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Challenges to the Protection of Cross-Border Climate Migrants

*Analysing the Scope for Protection Under
European Union Migration and Asylum Policy*

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Summary

Climate change constitutes one of the greatest challenges to the effective enjoyment of human rights. Recognising that billions of people across the world already do, or will soon, live in places where their human rights are threatened by climate change, this thesis recognises that every person wishing to move away from areas affected by climate change must be able to do so in a safe and legal manner which respects their rights.

This thesis will explore the protection of cross-border climate migrants. In doing so, it takes a broad understanding of protection as any measure facilitating access to safety and rights. This thesis identifies two challenges to the protection of cross-border climate migrants under international law. The first challenge relates to the difficulty of identifying an obligation to grant asylum to climate refugees. The second challenge relates to the lack of a general right to move across an international border, forcing those who seek protection to move in dangerous ways.

This thesis explores how efforts taken by the European Union (EU) address, and to what extent they overcome, these challenges. It finds that the EU has offered minimal engagement with the protection of climate migrants, neither recognising a clear right to asylum for climate migrants nor facilitating (and even restricting) legal climate migration to the EU. This stems from the EU's general approach to migration, which prioritises the protection of borders over the protection of migrants. As such, the EU's approach to climate migration may be described as continuing to exacerbate, rather than filling, the protection gap created for climate migrants under international law.

Keywords: climate change, migration, climate migration, human rights, asylum, protection, deterrence, securitisation

Preface

I would like to thank my supervisor, Eleni Karageorgiou, for all her guidance and support. Eleni, I could not have asked for a better supervisor – thank you!

I would also like to thank Lund University and the Raoul Wallenberg Institute, not only for enabling me to further develop my knowledge in, and passion for, international human rights law, but also for the friends I have had the opportunity to meet along the way.

List of Abbreviations

CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CSDP	Common Security and Defence Policy
CSR	Convention Relating to the Status of Refugees
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FRONTEX	The European Border and Coast Guard Agency
GAMM	Global Approach to Migration and Mobility
HRC	Human Rights Committee
ICCPR	International Covenant on Civil on Political Rights
IHRL	International Human Rights Law
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
PDD	Platform on Disaster Displacement
SDGs	Sustainable Development Goals
SWD	Staff Working Document
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UNHRC	UN Human Rights Council

1 Introduction

1.1 Background and Context

“Movement away from areas affected by climate change is a fundamental right.” –
The United Nations Office of the High Commissioner for Human Rights
(OHCHR), 2018¹

*“Work to [...] address the challenges of climate change can [...] help people feel
that their future lies at home.”* – The European Commission (EC), 2020²

1.1.1 Climate Change and Human Rights

We have entered the Anthropocene, an epoch wherein human activities have had such a substantial impact on the planet that we have exceeded, and are expected to continue exceeding, planetary boundaries.³ Climate change, primarily driven by the burning of fossil fuels, is a defining characteristic of the Anthropocene.⁴ Broadly defined as long-term shifts in weather patterns,⁵ climate change has exacerbated both “gradual processes of environmental degradation” as well as “the frequency and intensity of natural disasters.”⁶ This includes both sudden-onset events, such as flooding and earthquakes, as well as slow-onset events, including desertification and sea-level rise.⁷

¹ United Nations Office of the High Commissioner for Human Rights (OHCHR), ‘Human Rights, Climate Change and Migration: Key Messages’ <[https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KM Migration.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KM%20Migration.pdf)> accessed 12 February 2022.

² European Commission (Commission), ‘Communication on a New Pact on Migration and Asylum’ COM (2020) 609 final, 23 September 2020, section 6.3.

³ For further information see: Nicole Castree, ‘Anthropocene and Planetary Boundaries’ in Douglas Richardson and others (eds), *International Encyclopaedia of Geography: People, the Earth, Environment, and Technology* (Wiley-Blackwell 2017), pages 161-174.

⁴ United Nations (UN), ‘What is Climate Change?’ (*UN Climate Action*) <<https://www.un.org/en/climatechange/what-is-climate-change>> accessed 1 February 2022.

⁵ Ibid.

⁶ International Organization for Migration (IOM), ‘Climate Change, Environmental Degradation and Migration’ (2012) IOM International Dialogue on Migration No. 18, page 64.

⁷ The Platform on Disaster Displacement, ‘Key Definitions’ <<https://disasterdisplacement.org/the-platform/key-definitions>> accessed 3 February 2022.

Throughout this analysis, climate change shall be used as an umbrella term for these processes and events.

It is well established that the impacts of climate change adversely affect the enjoyment of human rights, with United Nations (UN) Secretary-General António Guterres having referred to climate change as a “code red for humanity.”⁸ The 2022 UN Intergovernmental Panel on Climate Change (IPCC) report on ‘Impacts, Adaptation and Vulnerability’ affirms that climate-related impacts are already widespread and, in some cases, irreversible.⁹ While it is not possible to enumerate every link between climate change and human rights, OHCHR has highlighted that “climate change particularly impacts, among others, the rights to life, self-determination, development, health, food, water and sanitation, adequate housing and a range of cultural rights.”¹⁰ It must furthermore be recalled that climate change presents the greatest risk to the human rights of “those already in vulnerable situations.”¹¹

1.1.2 Climate Change, Human Rights and Human Mobility

This thesis shall focus on the relationship between climate change, human rights and human mobility. It is well established that the adverse impacts of climate change may contribute to, or exacerbate, in situ vulnerability, which may “in turn act as a driver of migration.”¹² Crucially, the impacts of climate change could render habitation in certain locations “technically unfeasible or

⁸ United Nations Secretary General, ‘Secretary-General's statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment’ (9 August 2021), <<https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>> accessed 12 February 2022.

⁹ Intergovernmental Panel on Climate Change (IPCC), ‘Climate Change 2022: Impacts, Adaptation, and Vulnerability - Summary for Policymakers’ (IPCC 2022).

¹⁰ OHCHR, ‘Factsheet No. 38: Frequently Asked Questions on Human Rights and Climate Change’ (OHCHR 2021), page 2.

¹¹ United Nations Human Rights Council (UNHRC), ‘The slow onset effects of climate change and human rights protection for cross-border migrants’ (22 March 2018) A/HRC/37/CRP.4, para. 5.

¹² Ibid.

morally intolerable”¹³ and as many “as 3.6 billion people now live in settings that are highly vulnerable to climate change.”¹⁴ Moreover, the IPCC has projected “an increase of 200% in human displacement across Africa for 1.6°C of warming, and an increase of 600% for 2.6°C degrees of warming.”¹⁵ As Scott notes, given that “the IPCC’s best estimate is that global average temperatures will increase by 3°C with a likely range of 2.5°C to 4°C, far more attention should be paid to the phenomenon than is currently the case.”¹⁶

Recognising that people move away from areas affected by climate change, and cross international borders when doing so,¹⁷ this thesis shall focus on the protection of cross-border climate migrants. This thesis defines protection broadly, consisting of any measures which facilitate access to safety and rights,¹⁸ thereby including not only a right to move to another country, but also to move in a safe, and legal, manner. This is based on the recognition that while “movement away from areas affected by climate change is a fundamental right” and may afford individuals the opportunity to avoid or minimise the adverse impacts of climate change,¹⁹ “if irregular and not properly supported, [movement away from areas affected by climate change] may expose people to exploitation, discrimination and other violations of human rights and further exacerbate vulnerability by placing individuals and families in a more precarious situation than if they had stayed in their place of origin.”²⁰

¹³ Kira Vinke and others, 'Migration as Adaptation?' (2020) 8(4) Migration Studies 626, page 626.

¹⁴ IPCC, (n9), SPM. B.2.

¹⁵ Matthew Scott, 'How the New IPCC Report Addresses Migration and Human Rights' (*The Human Righter*, 8 March 2022) <<https://rwi.lu.se/blog/how-the-new-ipcc-report-addresses-migration-and-human-rights/>> accessed 9 March 2022.

¹⁶ Ibid.

¹⁷ See for example: UNHRC, (n11).

¹⁸ This definition is based on the definition of the UN Inter-Agency Standing Committee which, in its common policy on protection, defines protection as all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law.

¹⁹ OHCHR, (n1).

²⁰ Walter Kälin and Sanjula Weerasinghe, 'Environmental Migrants and Global Governance: Facts, Policies and Practices' in Marie McAuliffe and Michele Klein Solomon (convenors), *Migration Research Leaders' Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration* (IOM 2017), page 2.

It is important to acknowledge that efforts to address, and protect, climate migrants must be accompanied by preventative actions, such as mitigation and disaster risk reduction efforts.²¹ This is especially important given that many people do not wish to move from their homes despite a changing climate. Nonetheless, this thesis recognises that preventative measures may not always succeed in preventing migration. In 2019 alone, 24.9 million people were internally displaced by disasters, while this number rose to 30.7 million in 2020.²² Recognising that “both internal and international migration is expected to increase as the impacts of climate change become more severe,”²³ this thesis is based on an understanding that action is needed to address the protection needs of climate migrants.

1.2 Identification of Problem and Research Question

1.2.1 Gaps in Protection Under International Law

There exists no global mobility regime. Rather, as Ramji-Nogales has argued, “rather than offering a coherent and comprehensive approach to the movement of people across borders, international law presents a generally weak and fragmented field – with the exception of the principle of non-refoulement.”²⁴ This analysis shall explore the limits of international law in the context of climate migration.

In 2018, the UN Human Rights Council (UNHRC) stated that climate migration will “test the limits of international law and cooperation.”²⁵ This continues to be true, with relatively few efforts having been undertaken to

²¹ See for example: OHCHR, (n10).

²² International Displacement Monitoring Centre, ‘GRID 2020: Global Report on Internal Displacement’ (2020); and International Displacement Monitoring Centre, ‘GRID 2019: Global Report on Internal Displacement’ (2019).

²³ UNHRC, (n11), para. 128.

²⁴ Jaya Ramji-Nogales, ‘Migration Emergencies’ (2017) 68 *Hastings Law Journal* 609, pages 644-645.

²⁵ UNHRC, (n11), para. 6.

regulate this global phenomenon. While several initiatives have been undertaken to address climate migration at the international policy level, these do not create legally binding obligations.²⁶ This thesis identifies two challenges to the protection of climate migrants under international law:

First, it remains unclear whether international law establishes an obligation to grant asylum to climate migrants. While international refugee and human rights law may establish an obligation not to return an individual to a country where they face a serious risk of harm, climate change has not been explicitly identified as giving rise to such an obligation.

Even if states are obliged not to refoule climate migrants, these obligations only arise once climate migrants are within their territory. While individuals have the right to leave any country and move freely within their national borders,²⁷ there exists no general right to move across an international border. Likewise, international refugee and human rights law establish no obligation to facilitate legal migration. Rather, refugee law enshrines the principle of non-penalisation, thereby acknowledging that refugees may have to seek protection in an irregular manner.²⁸

This thesis identifies the lack of international mechanisms guaranteeing, or even facilitating, legal movement as the second challenge to the protection of climate migrants. Noting that the UNHRC has stated that “the lack of a general right of admission for those who seek to cross borders can result in more precarious journeys and dangerous entry attempts,”²⁹ it is submitted that it is paradoxical that individuals seeking protection must risk their rights to do so.

²⁶ For further information see UNHRC, (n11).

²⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), article 12.

²⁸ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention), Article 31.

²⁹ UNHRC, (n11), para. 66.

1.2.2 A Focus on the European Union (EU)

Having identified these challenges to the protection of climate migrants under international law, this thesis shall explore how the EU addresses, and to what extent it facilitates, climate migration. Transnational and supranational cooperation between EU states in several areas, including migration, has resulted in a comprehensive legal and policy framework which serves as a valuable case study for this thesis. Moreover, the EU has presented itself as a leader in the fight against climate change; the EU has been highly active at the international policy level, such as the UNFCCC COP meetings,³⁰ and has committed itself to “spearheading the global fight against climate change.”³¹

The EU has long recognised and sought to address the climate-migration nexus, both funding several research projects on climate migration and actively engaging in international dialogues on the matter.³² In this vein, the EU, and its Member States, have been highly involved in international policy efforts to address climate migration. Relevant examples include involvement in the development of the Agenda on Cross Border Disaster Displacement,³³ the UN Global Compact on Refugees³⁴ and the UN Global Compact for Safe, Regular and Orderly Migration.³⁵ Most recently, the EU assumed the vice-chair of the Steering Group on the Platform on Disaster Displacement (PDD) in 2022.³⁶

³⁰ Albert Kraller, Caitlin Katsiaficas and Martin Wagner, ‘Climate Change and Migration - Legal and policy challenges and responses to environmentally induced migration’ (European Parliament 2020), page 65.

³¹ European Council and Council of the European Union, ‘Taking the Lead on Climate Change’ (20 April 2021) <<https://www.consilium.europa.eu/en/eu-climate-change/>> accessed 3 March 2022.

³² See for example: the discussion on research funding calls under the EU Horizon 2020 programme in Ingrid Boas and others, ‘Climate Migration Myths’ (2019) 9(12) *Nature Climate Change* 901, page 902.

³³ The Nansen Initiative, ‘Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change: Volume I’ (2015).

³⁴ United Nations General Assembly (UNGA), ‘The Global Compact on Refugees’ (adopted 2 August 2018) UN Doc. A/73/12 (Part II).

³⁵ United Nations General Assembly (UNGA), ‘The Global Compact for Safe, Orderly and Regular Migration’ (adopted 19 December 2018) UN Doc. A/RES/73/195.

³⁶ Margit Ammer, Monika Mayrhofer and Matthew Scott, ‘Disaster-related displacement into Europe: Judicial practice in Austria and Sweden’ (Ludwig Boltzmann Institute and Raoul Wallenberg Institute 2022) <<https://rwi.lu.se/wp-content/uploads/2022/04/ClimMobil-1.pdf>> accessed 22 April 2022, page 4.

However, while the EU is a key player in the international discussion on climate migration, there has been limited consideration of whether, how, and with what implications, the EU has, within its own law and policy, addressed climate migration. This is problematic given the increasing recognition that “people do move into Europe, or seek to remain here, as a consequence of adverse environmental conditions, including disasters, that unfold in their countries of origin.”³⁷ This thesis seeks to fill this knowledge gap.

Consequently, this thesis shall seek to answer two questions:

- 1) *How does the European Union (EU) address the protection of climate migrants and to what extent does it facilitate entry to the EU?*
- 2) *How does this correspond to its obligations under international refugee and human rights law?*

1.3 Materials and Methodology

This thesis shall undertake a legal-doctrinal approach. The research questions are answered through an analysis of primary sources, primarily legal frameworks (international and European) and European Commission documents, as well as secondary sources, including academic literature as well as the work of international organisations including the UN and the International Organization for Migration (IOM).

The international legal instruments examined included international refugee law, namely the Convention Relating to the Status of Refugees³⁸ and the Protocol Relating to the Status of Refugees,³⁹ as well as international human

³⁷ Ibid.

³⁸ Convention Relating to the Status of Refugees, (n28).

³⁹ Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267

rights law, such as the Convention Against Torture⁴⁰ and the International Covenant on Civil and Political Rights.⁴¹ The examination of European legal instruments mainly focused on EU law, though the European Convention on Human Rights (Council of Europe)⁴² and relevant jurisprudence from the European Court of Human Rights (ECtHR) were also examined. The examination of EU law is grounded in primary law, including the Treaty on the European Union⁴³ and the EU Charter of Fundamental Rights,⁴⁴ as well as secondary law, primarily the Qualification Directive⁴⁵ and the Temporary Protection Directive.⁴⁶ Several legal instruments establishing legal migration pathways to the EU were also examined.

Building on these legal instruments, the EU's response to climate migration was primarily examined through consideration of European Commission documents. This is because the European Commission "promotes the general interest of the EU" by "drawing up proposals for new European legislation" as well as implementing decisions of the European Parliament and the Council of the EU.⁴⁷ Examination of the Commission's response to climate migration was particularly challenging given that it has been fragmented across several policy areas, including:

- Climate change

⁴⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85

⁴¹ ICCPR, (n27).

⁴² European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1952) ETS 5 (ECHR).

⁴³ Treaty on the European Union [2012] OJ C 326/1 ('TEU').

⁴⁴ Charter of Fundamental Rights of the European Union [2012] OJ C 326/02

⁴⁵ Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) ("Qualification Directive") [2011] OJ L 337.

⁴⁶ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212.

⁴⁷ European Union, 'European Commission' <https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/european-commission_en> accessed 1 May 2022

- 2009 White Paper⁴⁸
- 2013 EU Adaptation Strategy⁴⁹
- 2013 Staff Working Document (‘SWD’) on Climate change, environmental degradation, and migration⁵⁰
- 2018 report on the implementation of the 2013 adaptation strategy⁵¹
- 2018 Staff Working Document (‘SWD’) accompanying the 2018 implementation report⁵²
- 2021 EU Adaptation Strategy⁵³
- Migration
 - 2011 Global Approach on Migration and Mobility (‘GAMM’)⁵⁴
 - 2015 European Agenda on Migration⁵⁵ (‘EU Agenda’)
 - 2016 Migration Partnership Framework⁵⁶ (‘MPF’)
 - 2020 New Pact on Migration and Asylum⁵⁷ (‘New Pact’)

While climate migration is often referenced by the Commission, the only document expressly dedicated to the relationship between climate change and migration remains the 2013 SWD.

This thesis also draws upon norms and principles found in international policy processes and instruments to promote a more proactive approach to the

⁴⁸ Commission, ‘Adapting to climate change: Towards a European framework for action’ (White Paper) COM (2009) 147 final, 1 April 2009.

⁴⁹ Commission, ‘An EU Strategy on adaptation to climate change’ (Communication) COM (2013) 216, 16 April 2013.

⁵⁰ Commission, ‘Commission Staff Working Document - Climate change, environmental degradation, and migration’ SWD (2013) 138, 16 April 2013.

⁵¹ Commission, ‘Report on the implementation of the EU Strategy on adaptation to climate change’ COM (2018) 738 final, 12 November 2018.

⁵² Commission, ‘Commission Staff Working Document - Evaluation of the EU Strategy on adaptation to climate change’ SWD (2018) 461 final, 12 November 2018.

⁵³ Commission, ‘Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change’ (Communication) COM (2021) 82 final, 24 February 2021.

⁵⁴ Commission, ‘The Global Approach to Migration and Mobility (GAMM)’ (Communication) COM (2011) 743 final, 18 November 2011.

⁵⁵ Commission, ‘A European Agenda on Migration’ (Communication) COM (2015) 240 final, 13 May 2015.

⁵⁶ Commission, ‘Establishing a new Partnership Framework with third countries under the European Agenda on Migration’ (Communication) COM (2016) 385 final, 7 June 2016.

⁵⁷ Commission, ‘Communication on a New Pact on Migration and Asylum’ COM (2020) 609 final, 23 September 2020.

regulation of climate migration. Relevant instruments upon which such arguments are based include:

- The Global Compact on Refugees⁵⁸
- The Global Compact on Safe, Regular and Orderly Migration⁵⁹
- The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change.⁶⁰

1.4 Literature Review and Contribution

This analysis will build upon existing studies on the relationship between climate change and migration.⁶¹ Recognising that several studies have sought to explain why and when people move in the context of climate change, this thesis shall not focus on such questions. Rather, these studies shall form the basis of the claim and assumption on which this thesis is based, namely that people *do* move away from areas affected by climate change.

This analysis will evolve and build upon the claim based on existing empirical research findings that climate migration does not occur to, or within, Europe. Without challenging the consensus that most climate-related migration occurs “within countries or between neighbouring countries, rather than to more geographically distant high-income countries,”⁶² this thesis seeks to evolve the view that while “it is unlikely that those people who are forced or who

⁵⁸ The Global Compact on Refugees, (n34).

⁵⁹ The Global Compact for Safe, Orderly and Regular Migration, (n35).

⁶⁰ The Agenda for the Protection of Cross-Border Displaced Persons, (n33).

⁶¹ See for example: United Kingdom Office for Science, ‘Foresight: Migration and Global Environmental Change – Final Project Report (2011) (‘Foresight Report’); Robert McLeman and François Gemenne, *Routledge Handbook of Environmental Displacement and Migration* (1st edn, Routledge 2018); Walter Kälin and Sanjula Weerasinghe, ‘Environmental Migrants and Global Governance: Facts, Policies and Practices’ in Marie McAuliffe and Michele Klein Solomon (convenors), *Migration Research Leaders’ Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration* (IOM 2017).

⁶² Robert McLeman and others, ‘Conceptual framing to link climate risk assessments and climate-migration scholarship’ (2021) 165 *Climatic Change* 1, page 5.

choose to leave particularly vulnerable climate areas will all be able to make the journey to Europe – nor do they all want to.”⁶³

Recognising that studies on the protection of climate migrants generally focus on *either* asylum *or* other legal pathways to migration, this thesis shall seek to bring the two together. Without undermining the importance of asylum, characterised by the principle of non-refoulement, this thesis argues that non-refoulement is “not the panacea of protection” for climate migrants.⁶⁴ This is because non-refoulement obligations are only triggered once an individual is within the territory of the state where it seeks protection. As such, consideration of protection from refoulement without consideration of safe access to territory misses a crucial part of the picture.

The main contribution of this thesis is to the existing debate on the EU’s efforts to facilitate migration and thereby protect the human rights of people on the move. This thesis shall take existing critiques of the EU’s legal and policy approach to migration and the protection of human rights⁶⁵ as a starting point to explore climate migration. Evaluation of EU law and policy will support the claim made by most authors writing about climate migration that “increases in environmental migration could incentivize the introduction of more restrictive international migration controls than those already in place (i.e., increased securitisation of migration), further limiting movements of

⁶³ Caroline Zickgraf, ‘Climate Change and Migration: Myths and Realities’ (2020) <<https://www.greeneuropeanjournal.eu/climate-change-and-migration-myths-and-realities/>> accessed 14 March 2022.

⁶⁴ Shaindl Keshen, Steven Lazickas and Lucía Solórzano, ‘Non-refoulement: A Legal Hope for the Protection of Environmental Migrants and their Rights’ (*Columbia SIPA*, 3 November 2021) <<https://multilateralism.sipa.columbia.edu/news/non-refoulement-legal-hope-protection-environmental-migrants-and-their-rights>> accessed 9 May 2022.

⁶⁵ See for example: Cathryn Costello, ‘Overcoming Refugee Containment and Crisis’ (2020) 21(1) *German Law Journal* 17; Arantza Gomez Arana and Scarlett McArdle, ‘The EU and the migration crisis: reinforcing a security-based approach to migration?’ in Sergio Carrera, Juan Santos Vara and Tineke Strik (eds), *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis* (Edward Elgar Publishing 2019); and Gemma Pinyol-Jiménez, ‘The Migration-Security Nexus in Short: Instruments and Actions in the European Union’ (2012) 4(1) *Amsterdam Law Forum* 36.

people from less developed countries to migrant recipient countries in Western Europe, North America, Australia, and New Zealand.”⁶⁶

1.5 Delimitations

Recognising that climate migration offers many research opportunities, it is important to clarify the scope of this analysis. Firstly, this analysis shall only examine the relationship between climate change and migration. It shall not consider how the adverse impacts of climate change may be addressed by disaster risk reduction efforts or other measures promoting in situ adaptation.

Secondly, this analysis will only focus on cross-border migration. While consideration of the possibility of internal relocation is highly relevant to the protection of cross-border migrants, this analysis will not focus on the question of whether cross-border climate migrants could be protected within their own state. Likewise, while recognising that migration impacts migrants, their community of origin and their community of destination, this analysis will focus on migrants, and how their human rights are impacted.

Global data indicates that most climate migration occurs within, rather than between, states. This may be explained on the basis that people may wish to stay in their country of origin out of personal attachment or social connections as well as the fact that international migration typically requires greater capital and resources.⁶⁷ However, as environmental degradation and climate-related disasters continue to increase in both frequency and intensity, the number of cross-border migrants is likely to increase in the future. Recognising that, “while all people have the same rights, those who cross borders face difficulties accessing these rights which can be exacerbated by

⁶⁶ Luisa Veronis and others, ‘Environmental change and international migration: a review’ in Robert McLeman and François Gemenne (eds), *Routledge Handbook of Environmental Displacement and Migration* (1st edn, Routledge 2018), page 57.

⁶⁷ Dug Cubie ‘In situ adaptation: non-migration as a coping strategy for vulnerable persons’ in Dimitra Manou and others (eds), *Climate Change, Migration and Human Rights: Law and Policy Perspectives* (1st edn, Routledge 2017), pages 106-107.

conditions in transit and barriers to entry,”⁶⁸ this analysis will focus on the protection of climate migrants who cross an international border.

Despite its focus on cross-border climate migration from outside the EU, this thesis does not question the scientific and academic evidence that climate migration “is not the exclusive ‘problem’ of the Global South.”⁶⁹ Rather, it does acknowledge that “coastal erosion, flooding, hurricanes and storms are already displacing people in North America and Europe.”⁷⁰ Examples include the 2021 floods in Germany, the Netherlands and Belgium.⁷¹

Thirdly, as recognised in the Foresight Report, “environmental change is equally likely to make migration less possible as more probable.”⁷² While recognising that not everyone will want to move, for example due to a personal or cultural connection to the land, or be able to move, for example due to age, gender, ability and financial circumstances, this analysis will not focus on climate immobility.⁷³

Fourthly, while recognising that all states must respect, protect and fulfil the rights of all individuals within their jurisdiction, including in the context of climate change, this analysis will not consider the role, or responsibility of, countries of origin or transit. Rather, it will focus on the EU, as a desired destination. It is important to recognise that this focus will be on the EU as a union of states rather than individual EU states.

⁶⁸ UNHRC, (n11), para. 64.

⁶⁹ Caroline Zickgraf, (n63).

⁷⁰ Ibid.

⁷¹ See for example: Angela Dewan, ‘Germany’s deadly floods were up to 9 times more likely because of climate change, study estimates’ *CNN* (London, 24 August 2021) <<https://edition.cnn.com/2021/08/23/europe/germany-floods-belgium-climate-change-intl/index.html>> accessed 20 February 2022.

⁷² United Kingdom Office for Science, ‘Foresight: Migration and Global Environmental Change – Final Project Report (2011), page 9.

⁷³ For further information see for example: Caroline Zickgraf, ‘Immobility’ in Robert McLeman and François Gemenne (eds), *Routledge Handbook of Environmental Displacement and Migration* (1st edn, Routledge 2018).

Finally, while this thesis acknowledges that migration is increasingly referred to as an adaptation strategy, thereby moving beyond the dominant focus on protection as asylum, the advantages and disadvantages of conceptualising migration as an adaptation strategy shall not be examined in this thesis. Rather, this thesis simply acknowledges that the ‘migration as adaptation’ discourse may be used as a basis for increased efforts to facilitate climate migration.

1.6 Key Definitions

Recognising that a significant challenge to the discussion and understanding of climate mobility has been conceptual, largely revolving around the distinction between voluntary migration and forced displacement, this analysis will refer to all forms of cross-border climate mobility as ‘migration.’

Consequently, this analysis will refer to people who move away from areas affected by climate change as ‘climate migrants’ and any such mobility as ‘climate migration.’ Climate migration may refer to both reactive movements, namely “to deal with the impacts of sudden- or slow-onset disasters,” as well as anticipatory movements, namely “when people feel that, in the long-term, their homes will become uninhabitable, or their livelihoods destroyed due to environmental changes.”⁷⁴

Crucially, the adoption of these terms does not imply a linear or direct link between climate change and migration. Rather, these terms refer to the broad category of people who migrate, and different forms of migration, in the context of climate change. This approach is based upon the work of the IOM, which defines migration as “a population movement, encompassing any kind of movement of people, whatever its length, composition and causes.”⁷⁵ Defining migration in this way also complements, and intersects with, the definition of protection introduced in section 1.2.1.

⁷⁴ Walter Kälin and Sanjula Weerasinghe, (n20).

⁷⁵ IOM, (n6), page 137.

1.7 Outline

This introduction, chapter one, has introduced the relationship between climate change, migration, and human rights as well as two challenges to the protection of climate migrants under international law. Chapters two and three will explore how, and to what extent, the EU addresses, and offers opportunities, to overcome these challenges. Chapter two will focus on whether climate migrants may receive asylum in the EU while chapter three will explore whether the EU facilitates legal movement to the EU. This division mirrors the EU's general distinction between asylum and other forms of migration. Chapter four will consider the shortcomings of the EU's approach to climate migration and seek to situate this approach within the development of EU migration and asylum policy. A concluding chapter will summarise the main findings of this thesis and propose recommendations for further research on this topic.

2 Asylum in the European Union

2.1 Introduction

This chapter will examine whether climate migrants may be granted asylum in the EU. International law establishes that an individual must be granted asylum if she may be defined as a refugee under international refugee law or as a person otherwise in need of international protection in accordance with international human rights law. A right to asylum, defined as including the right to be admitted to the territory of a state and to a fair and effective examination, amounts to protection from refoulement.

This chapter will begin by considering whether there exists an international obligation to grant asylum to climate migrants before turning to consider how the EU has addressed climate migration in its own legislation under the Common European Asylum System (CEAS). While the EU has not adopted a specific instrument for the protection of climate migrants, this chapter shall explore whether climate migrants may qualify for asylum under either the Qualification Directive or the Temporary Protection Directive. This is especially important in light of the EU's international political commitments under the Global Compact on Refugees; paragraph 61 establishes that parties should establish “mechanisms for the fair and efficient determination of individual international protection claims [...] in a way which avoids protection gaps and enables all those in need of international protection to find and enjoy it.”

2.2 International Legal Obligations

This section will examine what obligations related to the granting of asylum are established under international law and to what extent they may extend to climate migrants.

2.2.1 International Refugee Law

International refugee law⁷⁶ does not explicitly provide an obligation to protect climate migrants. While several legal scholars have examined whether climate migrants may be recognised as “climate refugees,”⁷⁷ it is generally accepted that climate migrants do not fall within the international legal definition of a refugee.⁷⁸

For example, under the CSR, a refugee must have fled a country because of a well-founded fear of persecution, based a certain characteristic which the state is unable or unwilling to protect the individual against. Inherent to the concept of persecution is a discriminatory element which may be particularly difficult for climate migrants to satisfy.⁷⁹ While climate change poses the greatest risk to the human rights of those already in vulnerable situations,⁸⁰ the impacts of climate change itself are not legally described as “indiscriminate.”⁸¹

Likewise, some climate migrants may retain a level of agency not compatible with the definition of a refugee. For example, environmental and climate migration in West Africa has often been referred to as a “coping strategy,” thereby seemingly falling somewhere between the blurred legal distinction between forced and voluntary movement.⁸² As such, international refugee law establishes no clear obligation to protect people moving away from areas affected by climate change.

Nonetheless, while refugee protection is not triggered by climate change alone, there may be cases where people fleeing the adverse impacts of climate

⁷⁶ Defined as the CSR and the accompanying Protocol.

⁷⁷ See for example: Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (Cambridge University Press 2020).

⁷⁸ UNHRC, (n11), para. 69.

⁷⁹ Jean-Francois Durieux, ‘The Vanishing Refugee: how EU asylum law blurs the specificity of refugee protection’ in Hélène Lambert, Jane McAdam and Maryellen Fullerton (eds), *The Global Reach of European Refugee Law* (Cambridge University Press 2013), page 251.

⁸⁰ UNHRC, (n11), para. 5.

⁸¹ UNHRC, (n11), para. 51.

⁸² UNHRC, (n11), para. 101.

change fall within the legal definition of a refugee.⁸³ Examples of such circumstances include cases where climate change occurs in conjunction with conflict or where state or non-state actor conduct “contributes to a refugee’s predicament, not just the experience of or threats posed by the adverse impacts of climate change.”⁸⁴ Nonetheless, it is generally accepted that international refugee law does not readily apply to most people moving in the context of climate change.

Finally, it is important to note that while international law does not require states to protect climate migrants as refugees, it does not preclude them from doing so. Rather, Article 1(b) of the CSR establishes that parties may adopt wider definitions of refugees. As such, some regional refugee law frameworks, such as the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention),⁸⁵ have expanded the criteria for refugee status, thereby extending the scope for protection. In addition to granting refugee status based on the personal characteristics of, or risk to, the refugee, Article 1(2) of the OAU Convention recognises that events in the refugee’s country, including serious disturbances to public order, may give rise to refugee status. According to the UN High Commissioner for Refugees (UNHCR), “an evolutionary approach to interpretation,” whereby climate change is interpreted as an event “seriously disturbing public order,” could offer increased protection to climate migrants under regional refugee law.⁸⁶

2.2.2 International Human Rights Law

International human rights law may, through the principle of non-refoulement, also establish an obligation to grant asylum. The principle of

⁸³ UNHRC, (n11), para. 71.

⁸⁴ UNHRC, (n11), para. 70.

⁸⁵ See Organization of African Unity (OAU), ‘Convention Governing the Specific Aspects of Refugee Problems in Africa’ (1969) 1001 UNTS 45 and ‘Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama’ (1984).

⁸⁶ UNHCR, ‘Legal Considerations Regarding Claims for International Protection Made in the context of the Adverse Effects of Climate Change and Disasters’ (2021) 33(1) *International Journal of Refugee Law* 151, page 160.

non-refoulement has been expanded and incorporated into several international human rights instruments, including the Convention Against Torture (CAT) and the International Convention on Civil and Political Rights (ICCPR). For example, Article 3 of the UN Convention Against Torture (UNCAT) prohibits refoulement where there are “substantial grounds” for believing that the removed person would “be in danger of being subjected to torture,” as defined in Article 1. While recognising that UNCAT expands the scope of protection offered under international refugee law, it is submitted that the torture is defined in a way which hardly matches the context of climate change.

An obligation to grant asylum may also be grounded in the right to life and the right to be free from torture or ill-harm, protected respectively in Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee has recognised, in its 2019 decision of *Teitiota v New Zealand*,⁸⁷ that these rights may give rise to non-refoulement obligations in the context of climate change. Nonetheless, the Committee did not find the impacts of climate change to be specific or immediate enough to provide Teitiota with protection from refoulement. While identification of climate change as a serious harm warranting international protection is an important step in the right direction, the reasoning in *Teitiota* presents a serious challenge to individuals who are currently on the move in the context of climate change and begs the question as to when protection under such measures can be invoked. As recognised in the dissenting opinion of Duncan Laki Muhumuza, “it would indeed be counterintuitive to the protection of life, to wait for deaths to be very frequent and considerable, in order to consider the threshold of risk as met.”⁸⁸

⁸⁷ United Nations Human Rights Committee, *Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016 (24 October 2019).

⁸⁸ *Ibid.*

2.3 Asylum Under EU Law

Having established that international law generates no clear obligation to grant asylum to climate migrants, this chapter will explore whether EU law offers increased opportunities for asylum.

2.3.1 The Qualification Directive

The Qualification Directive establishes that an individual may receive asylum if she qualifies for either refugee or subsidiary status. While refugee protection is based on international refugee law, subsidiary protection mirrors protection under international human rights law.

2.3.1.1 Refugee Protection

Article 2(d) of the Qualification Directive defines a refugee as “a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it.”

The EU has not yet recognised, or protected, climate migrants as refugees under the Qualification Directive. While Apap and du Perron du Revel have noted that “many developing countries have urged the EU to grant climate migrants refugee status,” they have also found that “individual EU Member States have not supported the idea of creating a new category, that of 'climate refugee'.”⁸⁹ This conclusion is supported by consideration of the 2013 SWD on climate migration, wherein the European Commission stated that there was

⁸⁹ Joanna Apap and Capucine du Perron du Revel, ‘The concept of ‘climate refugee’: towards a possible definition’ (European Parliament 2021), page 10.

“no need for 'refugee-type protection' on climate-related grounds,” thereby closing the debate.⁹⁰

2.3.1.2 Subsidiary Protection

At the EU level, individuals not qualifying for refugee protection but otherwise in need of international protection in accordance with Article 2(f) of the Qualification Directive may be granted subsidiary protection. By protecting persons at risk of “serious harm” in their country of origin, subsidiary protection offers increased scope for the protection of climate migrants. This is in line with the EU’s political commitments under the Global Compact on Refugees, which encourages the use of complementary forms of protection for individuals not qualifying for refugee protection.⁹¹ Nonetheless, this analysis shall demonstrate that two factors render the application of the Qualification Directive, and thus granting of subsidiary protection, to climate migrants particularly difficult.

Firstly, Article 8 of the Directive stipulates that subsidiary protection cannot be granted if the applicant is able to seek protection in another part of her country of origin. Therefore, so long as an entire country is not rendered unable to protect its citizens against the adverse impacts of climate change, it seems unlikely that such individuals will be granted subsidiary protection in the EU.

Secondly, Article 15 of the Directive defines serious harm as consisting of: the death penalty or execution; torture or inhuman or degrading treatment or punishment; or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of conflict. It does not explicitly include climate change or environmental degradation within the types of serious harm which can lead to the granting of subsidiary protection.

⁹⁰ 2013 Commission SWD, (n50), section 4.1.5.

⁹¹ Global Compact on Refugees, (n34), paras. 94-96.

Despite this, it may be argued that an understanding of ‘torture or inhuman or degrading treatment or punishment’ in accordance with Article 3 of the European Convention of Human Rights (ECHR) may enable the EU to address climate migration. While the EU has not acceded to the ECHR, all 27 Member States have and are thereby bound by its provisions.⁹² Moreover, examination of several judicial decisions in Austria illustrate that Article 3 ECHR is considered in the granting of subsidiary protection under the Qualification Directive.⁹³

In offering absolute protection from refoulement,⁹⁴ Article 3 ECHR offers a wider scope for protection than the CSR⁹⁵ and may be better suited to the protection of climate migrants. However, it is important to note that the European Court of Human Rights (ECtHR) has, in its jurisprudence on Article 3, limited the circumstances in which non-refoulement obligations are triggered. This has been achieved by determining obligations based on the source of harm rather than whether the definitional threshold of Article 3 has been reached.⁹⁶

The ECtHR has broadly distinguished between two sources of harm.⁹⁷ On the one hand, if the harm emanates from intentional acts and omissions, including armed conflict or the application of the death penalty, the normal Article 3 threshold should apply. On the other hand, if the harm emanates from natural conditions which the state is, due to socio- economic deprivation, unable to cope with, “exceptional circumstances” are needed to trigger protection from refoulement. While a comprehensive analysis of the case law on subsidiary

⁹² Council of Europe, ‘European Union accession to the European Convention on Human Rights - Questions and Answers’ <<https://www.coe.int/en/web/portal/eu-accession-echr-questions-and-answers>> accessed 4 March 2022.

⁹³ Margit Ammer, Monika Mayrhofer and Matthew Scott, (n36), page 4.

⁹⁴ *Chahal v UK* [1996] 23 EHRR 413, para 41.

⁹⁵ Individuals may not qualify for protection under the CSR if they fall under Articles 1 (d), (e) and (f) of the CSR.

⁹⁶ This is because, since *Soering v UK* [1989] 11 EHRR 439, the Court has sought to limit the circumstances in which non-refoulement under Article 3 are triggered.

⁹⁷ See for example: *N v. United Kingdom* [GC] App No 26565/05 (ECtHR, 27 May 2008); *Sufi and Elmi v. The United Kingdom*, App Nos. 8319/07 and 11449/07 (ECtHR, 28 June 2011).

protection under Article 3 falls beyond the scope of this analysis, it is likely that climate migrants will fall into the “exceptional circumstances” category. As such, climate migrants may only qualify for subsidiary protection in the EU if the harm upon return to their country of origin is inflicted intentionally.

The Court of Justice of the EU (CJEU) has affirmed the ECtHR’s approach, recognising that while protection from refoulement may be triggered against the risk of socio-economic harm or deprivation, the harm must be of an intentional character. For example, in *Mohamed M’Bodj v État Belge*, the CJEU stated that the harm that would be inflicted upon expulsion “cannot therefore simply be the result of general shortcomings in the health system of the country of origin.” Rather, it emphasised that the applicant would have to be intentionally deprived of health care by a third party in order to qualify for subsidiary protection.⁹⁸ The need for the harm to be of an intentional nature was affirmed in *MP v Secretary of State for the Home Department*.⁹⁹

2.3.1.3 More Favourable Standards

Finally, it is important to acknowledge that Article 3 of the Qualification Directive allows EU Member States to “introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.” As a result, some EU Member States have, in their national legislation, included expanded subsidiary protection provisions for people unable to return to their country of origin. Nonetheless, these remain non-harmonised and entirely discretionary forms of protection.

In its 2013 SWD, the Commission pointed out that a person “unable to return to the country of origin because of an environmental disaster” may qualify for

⁹⁸ Case C-54213 *Mohamed M’Bodj v État Belge* [2014] CLI:EU:C:2014:2452.

⁹⁹ Case C-35316 *MP v Secretary of State for the Home Department* [2018] ECLI:EU:C:2018:276.

asylum in Sweden or be granted a residence permit in Finland if “he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe.”¹⁰⁰ While demonstrating an important sense of initiative amongst Member States, as of May 2022, both provisions have been repealed. Repeal was largely justified on the basis that such provisions were rarely, if ever, used and that there was an interest in harmonising national legislation with the wider EU protection framework.¹⁰¹

2.3.2 Temporary Protection

Temporary protection measures also provide some scope for the protection of climate migrants. While a temporary protection mechanism may take “different forms worldwide,” “it is generally described as an exceptional measure and specific provisional protection response to situations of mass influx, aimed at providing immediate emergency protection from refoulement.”¹⁰² Temporary protection measures are not regulated under international law and, as such, their availability remains a matter of discretion. Nonetheless, paragraph 61 of the Global Compact on Refugees explicitly calls on parties to support “measures to assist those forcibly displaced by disasters [...] such as temporary protection.”¹⁰³

At the EU level, the Temporary Protection Directive has been created to protect “persons who have fled areas of armed conflict or endemic violence and persons at serious risk of, or who have been victims of, systematic or generalised violations of their human rights.”¹⁰⁴ Nonetheless, the EU has

¹⁰⁰ 2013 Commission SWD, (n50), section 4.1.5.

¹⁰¹ For further information see: Matthew Scott and Russell Garner, ‘Nordic Norms, Natural Disasters, and International Protection’ (2022) 91(1) *Nordic Journal of International Law* 101.

¹⁰² 2013 Commission SWD, (n50), section 4.1.6.

¹⁰³ The Global Compact on Refugees, (n34), para. 61.

¹⁰⁴ 2013 Commission SWD, (n50), section 4.1.6.

generally demonstrated a resistance to the application of this Directive, thus far having only granted temporary protection once.¹⁰⁵

Though it does not explicitly mention climate change, the Commission has noted that the Directive leaves “wide room for manoeuvre” through its “open definitions of key words” such as “mass influx.”¹⁰⁶ Nonetheless, there seems to be no European consensus on the application of the Directive to climate migrants. Cooper, in examining the travaux préparatoires to the Directive, “pointed out to the fact that the Finnish proposal to add “persons who have had to flee as a result of natural disasters” was opposed by Spain and Belgium on the basis that that category “was not mentioned in any international instrument on refugees.”¹⁰⁷ Likewise, while the Commission has recognised that this Directive might apply to climate migrants, it has not specified under which circumstances.¹⁰⁸

The discretionary, and often ad-hoc, nature of temporary protection measures means that they generally “do not provide a clear and secure way of obtaining protection.”¹⁰⁹ Moreover, while temporary protection may provide protection for sudden-onset events, it fails to provide a solution for slow-onset disasters such as sea-level rise.¹¹⁰ This, combined with the fact that most sudden climate migration occurs internally or to neighbouring countries (as opposed to the EU),¹¹¹ means that the Temporary Protection Directive is likely to only offer protection for a limited number of climate migrants.

¹⁰⁵ The Temporary Protection Directive was activated for the first time in March 2022 to protect people fleeing Ukraine. For further information see: Council of the European Union, ‘Ukraine: Council unanimously introduces temporary protection for persons fleeing the war’ (4 March 2022) <<https://www.consilium.europa.eu/en/press/press-releases/2022/03/04/ukraine-council-introduces-temporary-protection-for-persons-fleeing-the-war/>> accessed 17 March 2022.

¹⁰⁶ 2013 Commission SWD, (n50), section 4.1.6.

¹⁰⁷ Michael D. Cooper ‘Migration and Disaster-Induced Displacement: European Policy, Practice and Perspective’ (2012) Center for Global Development Working Paper 308 <https://www.cgdev.org/sites/default/files/1426605_file_Cooper_disaster_displacement_FINAL.pdf> accessed on 24 April 2022, page 41.

¹⁰⁸ 2013 Commission SWD, (n50), section 4.1.6.

¹⁰⁹ 2013 Commission SWD, (n50), section 4.1.6.

¹¹⁰ Albert Kraler, Caitlin Katsiaficas and Martin Wagner, (n30), page 73.

¹¹¹ Robert McLeman and others, ‘Conceptual framing to link climate risk assessments and climate-migration scholarship’ (2021) 165 *Climatic Change* 1, page 5.

Finally, it must be acknowledged that the Commission has proposed replacing the Temporary Protection Directive with a regulation addressing situations of crisis and force majeure in the field of migration and asylum.¹¹² This is explicitly highlighted in the New Pact on Migration.¹¹³ If this were to be adopted, the Pact states that “protection, equivalent to subsidiary protection, could also be immediately granted to a pre-defined group of people, notably to people who face an exceptionally high risk of indiscriminate violence due to armed conflict in their country of origin.”¹¹⁴ By expressly limiting protection to “indiscriminate violence due to armed conflict,” the proposal removes the discretion afforded under the current use of the term “mass influx” and thus effectively renders the granting of such protection to climate migrants nearly impossible.

2.4 Conclusion

This chapter has demonstrated that there exist limited opportunities for climate migrants to be granted asylum in the EU, both under international and EU law. The conceptual requirements these instruments leave little room for protection when harm is generalised and largely protect reactive rather than proactive mobility. While “human rights safeguards may step in at times [...] they do not (yet) ensure full recognition of the problem and thus do not provide for an appropriate umbrella of protection.”¹¹⁵ This is especially problematic in the context of slow-onset climate change where people know that their human rights will be adversely impacted but do not know when this will happen. As such, social tipping points, namely the decision to migrate, may not match up with environmental ones.¹¹⁶

¹¹² Commission, ‘Proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum,’ COM (2020) 613 final, 23 September 2020.

¹¹³ Communication on New Pact on Migration, (n57), section 3.

¹¹⁴ Ibid.

¹¹⁵ Albert Kraler, Caitlin Katsiaficas and Martin Wagner, (n30), page 88.

¹¹⁶ Platform on Disaster Displacement, ‘In conversation with Caroline Zickgraf’ <<https://disasterdisplacement.org/staff-member/in-conversation-with-caroline-zickgraf>> accessed 26 March 2022.

3 Legal Pathways to the European Union

3.1 Introduction

This chapter will explore whether the EU facilitates safe, here defined as legal, movement to the EU. As OHCHR has recognised, migration which “takes place through authorized channels of ‘regular’ migration and in full respect of the rule of law is more likely to promote and protect the human rights of migrants.”¹¹⁷ Recognising that the EU has, under its 2011 Global Approach to Migration Mobility (GAMM),¹¹⁸ sought to regulate the entry of non-nationals to the EU, this chapter will explore to what extent actions taken under the GAMM facilitate safe and legal entry to the EU. Consideration of the GAMM is especially relevant to climate migration given that, in its 2013 SWD, the Commission explicitly acknowledged that the GAMM may regulate, and facilitate, climate migration to the EU.¹¹⁹

3.2 Introduction to the GAMM

The GAMM provides the overarching framework for the EU’s approach to migration outside of EU territory. It aims to provide a “migrant-centred” framework for addressing mobility beyond EU borders, “based on the principle that the migrant is at the core of the analysis and all action and must be empowered to gain access to safe mobility.”¹²⁰ It is important to emphasise that this chapter does not aim to offer a comprehensive overview of all external action taken under GAMM. Rather, it seeks to provide an overview

¹¹⁷ United Nations Office of the High Commissioner for Human Rights (OHCHR), ‘A Human Rights-Based Global Compact for Safe, Orderly and Regular Migration’ <https://refugeesmigrants.un.org/sites/default/files/stocktaking_ohchr.pdf> accessed 14 March 2022, page 5.

¹¹⁸ The Global Approach to Migration and Mobility (GAMM), (n54).

¹¹⁹ 2013 Commission SWD, (n50), section 4.2.

¹²⁰ The Global Approach to Migration and Mobility (GAMM), (n54), section 2.

as to how the EU uses the GAMM as a framework to address and manage movement towards the EU.

Recognising that the GAMM is based around four pillars, namely: (1) organising and facilitating legal migration and mobility, (2) preventing and reducing irregular migration, (3) promoting international protection and asylum, and (4) maximising the development impacts of migration and mobility, this chapter will examine to what extent efforts taken under these pillars promote safe mobility for climate migrants seeking protection in the EU. As LeBoeuf has identified, implementation of the GAMM “requires juggling acts involving multiple policy considerations, including fundamental rights and border control. The overall result is a complex policy field guided by objectives that are not inherently opposed to one another but generate tensions upon their implementation.”¹²¹

3.3 Pillar 1: Legal Migration

Organising and facilitating legal migration has often been affirmed as a key priority for the EU. At the international level, the EU has politically committed to promoting “safe, orderly and regular migration for the benefit of all.”¹²² In the context of climate change, the Global Compact calls on states to “develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin [...] such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits.”¹²³ This analysis acknowledges that while the EU was “united during the discussions of the Global Compact,” it has lost the support of several Member States.¹²⁴

¹²¹ Luc Leboeuf, ‘Legal Pathways to Protection: Towards a Common and Comprehensive Approach?’ (*EU Immigration and Asylum Law and Policy*, 3 December 2020) <<https://eumigrationlawblog.eu/legal-pathways-to-protection-towards-a-common-and-comprehensive-approach/>> accessed 10 April 2022.

¹²² The Global Compact for Safe, Orderly and Regular Migration, (n35), para. 13.

¹²³ The Global Compact for Safe, Orderly and Regular Migration, (n35), para. 21(g).

¹²⁴ Mauro Gatti, ‘EU States’ Exit from the Global Compact on Migration: A Breach of Loyalty’ (*EU Immigration and Asylum Law and Policy*, 14 December 2018)

Nonetheless, given that the majority of EU states still officially support the Compact, it remains an important demonstration of the EU's political commitments.

The importance of facilitating legal migration has also been affirmed at an EU-level. For example, in 2016, the Commission released a recommendation on enhancing legal pathways to protection in the EU.¹²⁵ Likewise, the New Pact recognises a need for “sustainable legal pathways for those in need of protection and to attract talent to the EU.”¹²⁶ In the context of climate change, the 2013 SWD explicitly recognised that facilitating migration could reduce “the likelihood to remain 'trapped' in a highly vulnerable situation or ending up displaced in regions with no hosting capacity.”¹²⁷ It further stated that “measures which aim to constrain movement at all costs rather than adequately planning for this can represent forms of maladaptation which risk failure and may increase the likelihood of later irregular movements or unplanned displacement.”¹²⁸

There exist no legal pathways to the EU which are specifically aimed at climate migrants. As such, climate migrants seeking to enter the EU in a regular manner must do so under existing pathways. It is important to recognise that the Commission has not recognised this as an obstacle to the facilitation of climate migration. Rather, noting that “there is no need to 'brand' measures to promote mobility as specifically targeting a certain type of migrant,”¹²⁹ it stated that climate migrants could move to the EU under existing legal pathways. The following sections shall explore this claim.

<https://eumigrationlawblog.eu/eu-states-exit-from-the-global-compact-on-migration-a-breach-of-loyalty/> accessed 28 April 2022.

¹²⁵ Commission, ‘Recommendation (EU) 2020/1364 of 23 September 2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways’ (2020) 6467, 23 September 2020.

¹²⁶ Communication on New Pact on Migration, (n57), section 1.

¹²⁷ 2013 Commission SWD, (n50), section 4.2

¹²⁸ Ibid.

¹²⁹ 2013 Commission SWD, (n50), section 4.3.2.

3.3.1 Existing Legal Pathways

In theory, climate migrants may enter the EU under several legal pathways. This section shall offer a brief overview of three potential pathways. The first pathway through which climate migrants may seek to enter the EU is through humanitarian visas. As Dempster and Ober note, humanitarian visas, broadly defined as short-term visas issued for humanitarian purposes, have provided safe pathways for climate migration around the world.¹³⁰ Though the EU does not offer a harmonised procedure for the granting of humanitarian visas, the EU Visa Code establishes that EU Member States may issue two visas on humanitarian grounds.¹³¹

Firstly, Article 19(4) establishes that Member States may grant individuals failing to meet the general admissibility requirements for a Schengen Visa¹³² such a visa if it “may be considered admissible on humanitarian grounds or for reasons of national interest.” Secondly, Article 25(1) allows Member States to exceptionally issue a short-term visa with limited territorial validity (LTV visa) for humanitarian grounds, for reasons of national interest or because of international obligations. While ‘humanitarian grounds’ remain undefined, it is plausible that this term may include climate change and thus facilitate movement to the EU. Writing in 2002, Noll, Fagerlund and Liebaut noted that “it is contextually clear that the granting of visas to alleviate threats to the applicant’s human rights is covered by the term.”¹³³

Secondly, resettlement schemes may also facilitate migration away from areas affected by climate change by allowing persons in need of international protection to enter [a state] “legally and safely and receive protection for as

¹³⁰ Helen Dempster and Kayly Ober, ‘New Zealand’s “Climate Refugee” Visas: Lessons for the Rest of the World’ (10 January 2020), <<https://reliefweb.int/report/world/new-zealands-climate-refugee-visas-lessons-rest-world>> accessed 27 April 2022.

¹³¹ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

¹³² As listed under Article 19(1) of the Visa Code.

¹³³ Gregor Noll, Jessica Fagerlund and Fabrice Liebaut, ‘Study on the feasibility of processing asylum claims outside the EU’ (The Danish Centre for Human Rights on behalf of the European Commission 2002), page 235.

long as they need.”¹³⁴ Since 2015, EU-sponsored resettlement programs have helped more than 700,000 people in need of international protection “find shelter in the Union.”¹³⁵ While the Commission recognises that the number of people in need of resettlement are likely to increase in the coming years, it fails to mention climate change, environmental degradation, or disasters as giving rise to protection needs.

Thirdly, as recognised by the Commission in its 2013 SWD, climate migrants may access EU territory by moving to the EU as labour migrants.¹³⁶ While primarily formulated for labour purposes, such migration pathways are increasingly introduced and amended to reflect the adverse impacts of climate change. For example, many of New Zealand’s labour mobility schemes facilitate migration from “countries seriously affected by sea-level rise and extreme weather events.”¹³⁷ Since 2001, the Pacific Access Category has facilitated permanent labour migration for a limited number of citizens of Kiribati, Tuvalu, and Tonga.¹³⁸ Similarly, in seeking to fill gaps in the Spanish agriculture sector, the EU-funded Temporary and Circular Labour Migration agreement between Spain and Colombia targeted communities affected by recurring environmental disruptions including volcanic eruptions, drought and floods.¹³⁹

3.3.2 Availability of Legal Pathways

While climate migrants may theoretically enter the EU under several legal pathways, it is submitted that the availability of these pathways remain extremely limited. First, the availability of protection-based pathways remains a matter of discretion. While the EU has sought to harmonise some of these pathways, such as in its 2016 Proposal for a Union Resettlement

¹³⁴ Commission, ‘Proposal for a Regulation Establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council’ COM (2016) 468 final, 13 July 2016.

¹³⁵ Commission Recommendation on legal pathways, (n125), para. 7.

¹³⁶ 2013 Commission SWD, (n50), section 4.3.2.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

Framework,”¹⁴⁰ this proposal has not yet been adopted. Thus, resettlement schemes remain ad hoc and fail to address rising protection needs.

Moreover, it is well-established that EU Member States are not obliged to provide entry to EU territory on humanitarian grounds. This has been affirmed by both the CJEU in *X and X v Belgium*¹⁴¹ as well as the ECtHR in *MN and others v Belgium*.¹⁴² Unfortunately, the fact that the granting of such visas is a discretionary rather than harmonised procedure means that humanitarian visas “are issued rarely,”¹⁴³ thereby minimising “the use of these visas as a safe and legal avenue to accessing protection in the EU.”¹⁴⁴

Secondly, while labour pathways have generally been harmonised, they offer limited practical access to EU territory. Though the EU describes that it is “working on a number of interconnected measures which aim to produce flexible admission systems,” by facilitating entry for highly qualified workers as well as seasonal workers,¹⁴⁵ EU Member States retain a significant amount of discretion as to the regulation of labour migration. This has resulted in different approaches to migration across the EU, with Member States applying different quotas, and offering limited opportunities, for labour migration.¹⁴⁶

Given that existing legal pathways for labour migrants already fail to match labour market needs,¹⁴⁷ and many economic migrants thus move irregularly,

¹⁴⁰ Proposal for a Union Resettlement Framework, (n134).

¹⁴¹ Case C-638/16 PPU X and X v État Belge [2017] ECLI:EU:C:2017:173.

¹⁴² M.N. and Others v Belgium, Application no. 3599/18 (ECtHR, 5 May 2020).

¹⁴³ Commission, ‘Commission Staff Working Document - Climate change, environmental degradation, and migration’ SWD (2013) 138, 16 April 2013, section 4.1.5.

¹⁴⁴ Red Cross EU Office, ‘Humanitarian visas in practice’ <<https://redcross.eu/projects/humanitarian-visas-in-practice>> accessed 3 March 2022.

¹⁴⁵ European Commission, ‘Legal Migration and Integration: Work’ <https://ec.europa.eu/home-affairs/legal-migration-and-integration/work_en> accessed 1 May 2020.

¹⁴⁶ European Migration Network, ‘The application of quotas in EU Member States as a measure for managing labour migration from third countries’ (2013) <https://emn.ie/files/p_201403281253032014_emn_inform_application_of_quotas_en_version_final.pdf> accessed 13 April 2022.

¹⁴⁷ Marie McAuliffe and Anna Triandafyllidou (eds), *World Migration Report 2022* (International Organization for Migration 2021).

it is submitted that labour pathways offer limited scope to incorporate, and thereby facilitate legal, climate migration. Moreover, as Kälin has argued, labour pathways only apply to a limited number of people and often fail to protect the most vulnerable; they can facilitate climate migration for “good” workers, but not for those in the most need.¹⁴⁸

Thus, while climate migrants may theoretically enter the EU under several legal pathways, the practical access to these pathways remain limited, meaning that most movement to the EU occurs irregularly. This is reflected in the fact that “90% of those granted international protection reach the EU through irregular means.”¹⁴⁹

3.4 Pillar 2: Tackling Irregular Migration

Preventing and reducing irregular migration is identified as the second pillar of GAMM. The EU has devoted significant attention to tackling irregular migration, with the New Pact on Migration highlighting that while “1.82 million illegal border crossings were recorded at the EU external border at the peak of the refugee crisis in 2015,” this had “decreased to 142 000 by 2019.”¹⁵⁰ Given that the New Pact explicitly refers to climate change as a root cause of irregular migration,¹⁵¹ it is important to examine to what extents EU efforts to prevent and reduce irregular migration influence safe entry to the EU.

While recognising that irregular migration presents significant human rights risks,¹⁵² it is submitted that EU efforts to prevent and reduce irregular migration have not been used to promote safe access to the EU. This is

¹⁴⁸ UNSW Kaldor Centre on International Refugee Law, ‘Moving beyond ‘climate refugees’ Ready law, policy & practice for displacement in a warming world’ (2021) <<https://www.youtube.com/watch?v=HZAhUNhqG3Y>> accessed 15 March 2022.

¹⁴⁹ Katrien Luyten and Selene González Díaz, ‘Legal Migration to the EU’ (European Parliament, 2019), page 7.

¹⁵⁰ Communication on New Pact on Migration, (n57).

¹⁵¹ Communication on New Pact on Migration, (n57), section 6.

¹⁵² See for example: Cathryn Costello, ‘Overcoming Refugee Containment and Crisis’ (2020) 21(1) German Law Journal 17, page 18.

because the EU has prioritised tackling irregular migration without offering increased regular pathways for migration. As Pinyol-Jiménez notes, “readmission agreements and cooperation in fighting irregular migration have been further developed than other instruments, such as visa facilitation or the promotion of legal migration channels.”¹⁵³

The EU’s focus on tackling irregular migration without a corresponding expansion of regular migration pathways has resulted in the creation of what may call “Fortress Europe,”¹⁵⁴ marked by both decreased access to EU territory and increasingly dangerous migration journeys. In 2021, the Guardian reported that “the EU and its members have spent hundreds of millions of euros over the past decade on technologies to track down and keep at bay the refugees on its borders.”¹⁵⁵ In 2020 alone, this resulted in the death of over 3000 migrants trying to reach the EU.¹⁵⁶ As a result, actions taken under the GAMM contravene OHCHR’s recommendation that measures aimed at addressing irregular migration must not adversely affect the enjoyment of the human rights and dignity of migrants.¹⁵⁷

It is submitted that the EU’s preoccupation with tackling irregular migration is a deliberate decision based in the GAMM framework. While all pillars are supposedly afforded equal attention, the GAMM explicitly states that “without well-functioning border controls, lower levels of irregular migration and an effective return policy, it will not be possible for the EU to offer more

¹⁵³ Gemma Pinyol-Jiménez, ‘The Migration-Security Nexus in Short: Instruments and Actions in the European Union’ (2012) 4(1) Amsterdam Law Forum 36, page 39.

¹⁵⁴ See for example Annette Jünemann, Nikolas Scherer and Nicolas Fromm, ‘*Fortress Europe? Challenges and failures of migration and asylum policies*’ (Wiesbaden, Springer 2017).

¹⁵⁵ Kaamil Ahmed and Lorenzo Tondo, ‘Fortress Europe: the millions spent on military-grade technology to deter refugees’ *The Guardian* (London, 6 December 2021) <<https://www.theguardian.com/global-development/2021/dec/06/fortress-europe-the-millions-spent-on-military-grade-tech-to-deter-refugees>> accessed 22 April 2022.

¹⁵⁶ United Nations, ‘Deaths at sea on migrant routes to Europe almost double, year on year’ (UN News, 29 April 2022) <<https://news.un.org/en/story/2022/04/1117292>> accessed 12 May 2022.

¹⁵⁷ United Nations Office of the High Commissioner for Human Rights (OHCHR), ‘Recommended Principles and Guidelines on Human Rights at International Borders’ (2014), page 8.

opportunities for legal migration and mobility.”¹⁵⁸ This is especially problematic in light of the EU’s failure to afford special consideration to “those who are forcibly displaced and must, in the absence of legal pathways, resort to unauthorised channels to reach the EU.”¹⁵⁹ Thus, while the EU boasts about the fact that “irregular arrivals to the EU have been reduced by more than 90%,”¹⁶⁰ this fails to recognise that, due to the limited legal safe pathways for migration, many seeking international protection must do so in an irregular manner.

3.5 Pillar 3: Strengthening External Protection

The third pillar of the GAMM is to strengthen international protection and asylum in the external dimension, thereby promoting the “protection elsewhere” rhetoric. Under the GAMM, the EU focuses on “building up the protection capacity and asylum systems” in partner countries while also supporting development programmes and disaster risk reduction efforts.¹⁶¹ It emphasises the Regional Protection Programmes (RPPs) “should be enhanced as the key instrument for this pillar.”¹⁶²

The “protection elsewhere” logic has been reaffirmed in subsequent policy documents adopted under the GAMM framework. For example, the 2015 EU Agenda on Migration recognises that “the EU has a duty to contribute its share in helping displaced persons in clear need of international protection.”¹⁶³ What exactly “contribute its share” means here is confusing and seems to suggest that the EU may, in certain circumstances, not be required to provide protection.

¹⁵⁸ The Global Approach to Migration and Mobility (GAMM), (n54), section 2.

¹⁵⁹ Albert Kraler, Caitlin Katsiaficas and Martin Wagner, (n30), page 22.

¹⁶⁰ European Council and Council of the European Union, ‘How the EU manages migration flows’ (24 March 2022) < <https://www.consilium.europa.eu/en/policies/eu-migration-policy/managing-migration-flows/> accessed 3 March 2022.

¹⁶¹ The Global Approach to Migration and Mobility (GAMM), (n54), section 4.

¹⁶² Ibid.

¹⁶³ A European Agenda on Migration, (n55), section 2.

Though it might be expected that the promotion of asylum under the GAMM would intersect with the Common European Asylum System (as discussed in chapter two), it is clear that the internal and external dimension of asylum are not in sync. Rather than focusing on making asylum more accessible to those in need, the EU's focus under the GAMM is on outsourcing. Consequently, even if climate migrants were recognised as persons eligible for international protection, the EU need not necessarily facilitate or support their entry to the EU.

3.6 Pillar 4: Migration-Development Nexus

The final pillar aims to maximise the development impacts of migration and mobility. It is submitted that an understanding of migration as beneficial for both migrants and the EU could serve as an important basis for efforts to facilitate legal movement to the EU. However, it is important to recognise that the GAMM also identifies a need to address the “downsides of migration,” such as “brain drain” and “social dependence on a foreign labour market.”¹⁶⁴

In its 2013 SWD, the Commission drew an explicit link between the migration-development nexus and climate change by acknowledging that migration away from areas affected by climate change could constitute an adaptation strategy.¹⁶⁵ Calling on the EU to promote the links between migration and adaptation in future initiatives, it noted that climate migration could both serve as an adaptation strategy “in its own right” as well as “an effective strategy to reduce environmentally-induced displacement.”¹⁶⁶

Despite this, the emphasis on migration as a form of adaptation has largely been dropped. While a 2018 SWD affirmed that “the potential role of migration as an adaptation option continue[s] to be a priority under the EU's

¹⁶⁴ The Global Approach to Migration and Mobility (GAMM), (n54), section 4.

¹⁶⁵ 2013 Commission SWD, (n50), section 4.3.

¹⁶⁶ 2013 Commission SWD, (n50), section 4.3.2.

external cooperation instruments for the period 2014-2020,”¹⁶⁷ no concrete actions have been taken in this regard. Moreover, the limited availability of labour pathways to the EU, both generally and specifically targeting climate migrants, illustrates that the EU has demonstrated minimal effort to facilitate migration as a form of adaptation.

Moreover, the ‘migration as adaptation’ discourse has been replaced by the outlook that adaptation can stop migration to the EU. This may be seen in the Commission’s 2018 statement that “climate change adaptation is seen as an effective tool to tackle root causes of migration”¹⁶⁸ as well as the narrative in the New Pact on Migration that development assistance, including in the context of climate change, can “help people feel that their future lies at home.”¹⁶⁹

The use of adaptation efforts as a tool to stop migration is mirrored in the EU’s general use of development assistance for migration management, perhaps most clearly illustrated by the EU Trust Fund for Africa (EUTF).¹⁷⁰ While the EUTF is problematic for several reasons, EUTF-funded projects and programmes have been criticised for undermining freedom of movement in West Africa.¹⁷¹ Thus, not only does EU development assistance stop people from reaching the EU, but it undermines their ability to move freely, and safely, throughout the region.

This is especially problematic given that regional free movement agreements are increasingly suggested as a legal framework for climate migration.¹⁷²

¹⁶⁷ 2018 Commission SWD, (n52), section 6.

¹⁶⁸ 2018 Commission SWD, (n52), section 3.

¹⁶⁹ Communication on New Pact on Migration, (n57), section 6.3.

¹⁷⁰ Milan Gagnon, ‘EU uses development aid to strongarm Africa on migration’ *Deutsche Welle* (13 April 2022) <<https://www.dw.com/en/eu-uses-development-aid-to-strongarm-africa-on-migration/a-61375189>> accessed 1 May 2022.

¹⁷¹ Clare Castillejo, ‘The influence of EU migration policy on regional free movement in the IGAD and ECOWAS regions’ (2019) Deutsches Institut für Entwicklungspolitik (DIE) Discussion Paper, No. 11/2019 <https://www.die-gdi.de/uploads/media/DP_11.2019.pdf> accessed 12 February 2022, pages 20-30.

¹⁷² For further information see for example: Tamara Wood, ‘The role of free movement agreements in addressing climate mobility’ (2022) 69 *Forced Migration Review* 62.

Although they do not specifically target climate migrants, regional free movement agreements provide individuals with the right to move temporarily or permanently to other countries and, by facilitating “long-term access to alternative income streams and more sustainable livelihoods for disaster and climate change-affected people,”¹⁷³ they could even minimise the need to move to the EU in seek of asylum. Thus, by undermining free movement in West Africa, the EU limits the protection of climate migrants both within and out of the EU.

3.7 Conclusion

This chapter has demonstrated that the EU offers limited opportunities for climate migrants to safely enter the EU. Not only has the EU failed to prioritise the facilitation of legal migration, but it has focused on making it harder for migrants to access EU territory. This is illustrated by its emphasis on tackling irregular migration through increased border controls, promoting elsewhere, and using development assistance as a tool to stop movement to the EU. As such, it is clear that, “in terms of the architecture of its migration and asylum policy, it appears that the EU is currently focused on building fences rather than bridges.”¹⁷⁴

¹⁷³ Tamara Wood, (n172), page 62.

¹⁷⁴ Karina Smreková, ‘The EU’s New Pact on Migration and Asylum – a Step Back or Forward for Human Rights?’ (*Czech Centre for Human Rights and Democracy*, 23 April 2022) <<https://www.humanrightscentre.org/blog/eus-new-pact-migration-and-asylum-step-back-or-forward-human-rights>> accessed 24 April 2022.

4 Making Sense of the EU's Approach to Climate Migration

4.1 Introduction

This chapter shall piece together, and attempt to make sense of, the EU's approach to climate migration. It finds that, while there has been some rhetoric on climate migration that could promote the protection of climate migrants, this has not been translated into legal action. As such, the EU's approach to climate migration may be understood as a by-product of, rather than opportunity to overcome, the gaps created under international law; international law affords the EU discretion in how it addresses climate migrants, and it uses this discretion to keep all third country-nationals away. The final section of this chapter will argue that, in order to better protect climate migrants, the EU must shift its approach to address climate migration in a proactive rather than reactive manner.

4.2 Minimal Engagement Beyond the Requirements of International Law

This analysis has revealed that the EU offers minimal engagement with the protection of climate migrants beyond what is required under international law. First, the EU offers limited scope for the recognition of climate migrants as persons in need of asylum. Though the EU has, at the international level, recognised a need to expand the scope of international protection to include climate migrants,¹⁷⁵ the EU does not do so in its own law and policy. While this may be critiqued as a contradiction to the EU's political commitments, it is important to recognise that this approach is not contrary to international law.

¹⁷⁵ For example, as has been demonstrated, in the Global Compact on Refugees.

This largely stems from the fact that international law does not provide a comprehensive response to the protection needs of climate migrants. As Ramji-Nogales argues, this is because “the field is dominated by a treaty aimed at protecting those fleeing the Nazi regime or communism.”¹⁷⁶ This is illustrated through the fact that the CSR was originally limited to people fleeing events occurring in Europe before January 1, 1951.¹⁷⁷ Though these temporal and geographic limits were lifted with the 1967 Protocol, the definition of a refugee remains unchanged. While international human rights law mechanisms have expanded the legal scope of non-refoulement, the content of the principle of non-refoulement “remains outdated as best.”¹⁷⁸ Thus, while the EU does necessarily not offer a progressive approach to the protection of climate migrants, it does not act contrary to international law. As such, it may be seen as a by-product of international law.

Secondly, recognising that international law establishes no obligation to facilitate legal migration, this analysis has revealed that the EU offers limited opportunities for legal migration. Moreover, it restricts access to EU territory, thereby making it more difficult, and dangerous, for climate migrants to seek protection within the EU. Thus, as Gammeltoft-Hansen and Tan, while the EU and its Member States may still “formally laud the international legal framework to protect refugees” and other persons in need of protection, they “simultaneously do everything in their power to exclude those fleeing international persecution.”¹⁷⁹

While disappointing, it may be argued that the EU’s approach to the facilitation of climate migration is, again, a by-product of the international protection regime. Ramji-Nogales has argued that the problem with the international protection regime, including as it applies to climate migrants, is

¹⁷⁶ Jaya Ramji-Nogales, (n24), page 645.

¹⁷⁷ Jaya Ramji-Nogales, (n24), page 645.

¹⁷⁸ Jaya Ramji-Nogales, (n24), page 646.

¹⁷⁹ Thomas Gammeltoft-Hansen and Nikolas F. Tan, ‘The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy’ (2018) 5(1) *Journal on Migration and Human Security* 28, page 28.

not “simply the problem of a legal regime that does not adequately respond to the problem it seeks to resolve.”¹⁸⁰ Rather, she claims that “it is a regime that at the same time lures migrants with the promise of lawful status if they can enter territory and prove a need for asylum, while diverting the debate away from the migration laws that offer few other legal grounds for migration and the powerful externalised border controls that make it hard for migrants to reach their destination safely.”¹⁸¹

Thus, the EU’s response to climate migration means that most climate migrants wishing to move to the EU must risk their lives to enter the EU, only to be returned to areas affected by climate change. This approach not only fails to address the protection needs of climate migrants, but it also contributes “to further risks and vulnerability.”¹⁸² Supporting this, Black and others have argued, “the greatest risks will be borne by those who are unable or unwilling to relocate and may be exacerbated by maladaptive policies designed to prevent migration.”¹⁸³

This is especially striking in light of the EU’s attempts to establish itself as a global guarantor of human rights. Article 3(5) of the Treaty on the European Union (TEU) explicitly recognises that the EU should contribute to the protection of human rights in “its relations with the wider world” while Article 21 recognises, amongst others, the rule of law, the universality and indivisibility of human rights and fundamental freedoms and respect for human dignity, equality and solidarity as the principles inspiring the EU’s external action.¹⁸⁴

¹⁸⁰ Jaya Ramji-Nogales, (n24), page 614.

¹⁸¹ Jaya Ramji-Nogales, (n24), page 646.

¹⁸² UNHRC, (n11), para. 66.

¹⁸³ Richard Black and others, 'Migration as Adaptation' (2011) 478 Nature 447, 447.

¹⁸⁴ Treaty on European Union, (n43).

4.3 Considerations Underpinning EU Migration and Asylum Policy

4.3.1 The Securitisation of Migration

It is submitted that the EU's response to the protection of climate migrants, and migrants generally, must be understood in the relation to the broader European integration project in which it is embedded. This section shall demonstrate that the EU's migration and asylum policy did not arise out of a perceived need to protect third-country nationals, but out of perceived security needs. While it is important to acknowledge that "security interests are clearly relevant in the regulation of migration" and the EU's security interests are not inherently problematic, the balancing – or lack thereof – of these interests within EU migration management are.¹⁸⁵ It is submitted that the EU's emphasis on security has led to the securitisation of migration. Security in this context is defined not only as national security and border control but also as the broader European integration project, including social cohesion and the functionality of the internal market.¹⁸⁶

As Moreno-Lax points out, the development of EU asylum and migration policy is rooted in discussions on the removal of internal borders and the internal market.¹⁸⁷ In this context, the purpose of asylum was not perceived to be international protection, "but on the administration of refugee flows and the prevention of abuse of the asylum regime as a way to avoid entry restrictions by other migrants."¹⁸⁸ Consequently, it is submitted that the development of the Area of Freedom, Security and Justice (ASFJ), has led to

¹⁸⁵ François Crépeau and Anna Purkey, 'Facilitating Mobility and Fostering Diversity: Getting EU Migration Governance to Respect the Human Rights of Migrants' (2016) CEPS Paper in Liberty and Security in Europe No. 92, page 23.

¹⁸⁶ Jef Huysmans, 'The European Union and the Securitization of Migration' (2000) 38(5) *Journal of Common Market Studies* 751.

¹⁸⁷ Violeta Moreno-Lax, 'Life After Lisbon: EU Asylum Policy as a Factor of Migration Control' in Diego Acosta Arcarazo and Cian C. Murphy (eds), *EU Security and Justice Law After Lisbon and Stockholm* (Hart Publishing 2014), page 155.

¹⁸⁸ Violeta Moreno-Lax, (n187), pages 149-150.

an exclusionary narrative, whereby all third-country nationals are viewed as intruders and against whom the EU's external borders needed to be strengthened. Containment and exclusion have often been reaffirmed as key priorities in the EU's migration management, for example by First Vice-President Frans Timmermans who stated in 2019 that, "in an area of free movement without internal border controls, strengthening and managing Europe's external borders is a shared responsibility."¹⁸⁹

Several terrorist attacks, including the 9/11 attacks in the United States of America followed by the 2004 Madrid and 2005 London bombings, further strengthened the migration-security nexus.¹⁹⁰ As Schmidhäussler and Nieman have argued, politicians and the media "reinforced and dramatized the connection between migration and security in public debates,"¹⁹¹ thereby providing the EU with "an opportunity to tighten control mechanism and increase the restrictiveness of migration policies."¹⁹²

Under this rationale, third-country nationals, including asylum seekers, were not only conceptualised as threats to the functioning of the internal market, but to national security. This is further illustrated by the fact that, as Luyten and Díaz note, while "entering the EU as a non-European is not too difficult for people from stable countries," it is much more difficult for people fleeing danger or "simply looking for a better life."¹⁹³ The hostility towards outsiders may also be seen in the blame-based logic underlying the Dublin system

¹⁸⁹ European Commission, 'European Border and Coast Guard: The Commission welcomes agreement on a standing corps of 10,000 border guards by 2027' (Brussels, 1 April 2019) <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1929> accessed 1 April 2022.

¹⁹⁰ Gemma Pinyol-Jiménez, (n154), page 45.

¹⁹¹ Natalie Schmidhäussler and Arne Nieman, 'The Logic of EU Policy-Making on (Irregular) Migration: Securitisation or Risk?' (2014) Mainz Papers on International and European Politics (MPIEP) No. 6 <<https://international.politics.uni-mainz.de/files/2014/07/mpiep06.pdf>> accessed on 4 April 2022, page 4.

¹⁹² Ibid.

¹⁹³ Katrien Luyten and Selene González Díaz, (n150), page 1.

under which the Member State which allows an asylum seeker to enter the EU must process their claim for asylum.¹⁹⁴

The influx of people arriving in the EU in 2015/2016 sparked what has often been referred to as a “migration crisis.”¹⁹⁵ This further strengthened exclusionary narratives and led to the integration of migration and security policy. For example, in 2015, the EU announced that migration would become part of the Common Security and Defence Policy, further strengthening the border management of existing CSDP missions, such as the ones in Niger and Mali.¹⁹⁶ The “crisis” also led to an emphasis on not only strengthening, but also militarising, EU borders. This is perhaps most powerfully exemplified by the statement made by First Vice-President Frans Timmermans’ in 2019 that a “10,000-strong standing corps” for the European border control agency, FRONTEX, “will help Member States to better protect our borders and our citizens” and that “by working together constructively and swiftly, we can create a safer Europe.”¹⁹⁷

It is important to acknowledge that the EU is not alone in its securitisation of migration. Several states, including the United States of America and Australia, have been criticised of taking a similar approach,¹⁹⁸ and Gammeltoft-Hansen and Tan have argued that “restrictive migration control policies are today the primary, some might say only, response of the developed world to a rising number of asylum seekers and refugees.”¹⁹⁹ This

¹⁹⁴ Eleni Karageorgiou, 'The Distribution of Asylum Responsibilities in the EU: Dublin, Partnerships with Third Countries and the Question of Solidarity' (2019) 88 *Nordic Journal of International Law* 315, 336.

¹⁹⁵ Marie Deridder, Lotte Pelckmans and Emilia Ward, 'Reversing the gaze: West Africa performing the EU migration-development-security nexus' (2020) 51 *Anthropologie & Développement* 9, page 14.

¹⁹⁶ A European Agenda on Migration, (n55), section 2.

¹⁹⁷ European Commission, 'European Border and Coast Guard: The Commission welcomes agreement on a standing corps of 10,000 border guards by 2027' (Brussels, 1 April 2019) <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1929> accessed 1 April 2022.

¹⁹⁸ Hazel Claeys, 'Migration in the European Union: Mirroring American and Australian Policies' (*E-International Relations*, 20 March 2022) < <https://www.e-ir.info/2022/03/20/migration-in-the-european-union-mirroring-american-and-australian-policies/>> accessed 15 April 2022.

¹⁹⁹ Thomas Gammeltoft-Hansen and Nikolas F. Tan, (n179), page 28.

reinforces the argument that, by failing to regulate access to territory, the international protection framework is plagued by an inherent protection gap.

4.3.2 The Securitisation of Climate Migration

Having established that the EU conceptualises third-country nationals as threats to the EU, it is submitted that climate migrants are not excluded from this understanding and general process of securitisation. In 2008, the High Representative and the Commission already identified climate change as a “threat multiplier,”²⁰⁰ laying the foundation for an understanding of climate migration as a threat.

The EU’s response to climate migration is marked by a focus on the vulnerability of the EU, rather than the climate migrants seeking protection. For example, in 2018, the Commission stated that “evidence is growing that Europe is also vulnerable to climate change impacts beyond its borders through, for example, [...] migration and security.”²⁰¹ Accompanying this report, a 2018 SWD stated that “climate change impacts in third countries can also have spillover effects on Europe, for example by affecting trade routes and patterns and triggering climate-induced migration.”²⁰² The 2021 adaptation strategy repeats this rhetoric, stating that “the EU already is, and will increasingly be, affected by climate impacts outside Europe through cascading and spillover effects on trade or migration.”²⁰³

Likewise, climate migration is increasingly referred to in EU security policy, perhaps most obviously demonstrating the securitisation of climate migration.²⁰⁴ Already in 2009, the Commission stated that “the effects of

²⁰⁰ Paper from the High Representative and the European Commission to the European Council ‘Climate Change and International Security’ S113/08, 14 March 2008, page 2.

²⁰¹ Report on the implementation of the EU Strategy on adaptation to climate change, (n53), section 1.

²⁰² 2018 Commission SWD, (n52), section 2.

²⁰³ 2021 European Adaptation Strategy, (n53), section 1.

²⁰⁴ See for example: Christoph Meyer, Francesca Vantaggiato and Richard Youngs, ‘Preparing the CSDP for the new security environment created by climate change’ (European Parliament 2021).

climate change on migratory flows should also be considered in the broader EU reflection on security, development and migration policies.”²⁰⁵ The CSDP is often mentioned as an important “part of the EU toolbox in this regard.”²⁰⁶ Likewise, the 2018 Commission SWD on the implementation of the 2013 adaptation strategy included a section on “foreign and security policy (including migration),”²⁰⁷ demonstrating the EU’s conflation of security, climate change and migration.

It is submitted that the conceptualisation of climate migrants as threats to the EU may also explain the shift in the narrative on climate migration in the EU. While migration was recognised as a potential adaptation strategy, and therefore beneficial, in 2013, this narrative had been dropped. This may be explained on the basis that, in 2013, the EU considered climate migration unlikely to significantly impact the EU, noting the “strong evidence that most [climate] migration [...] is likely to occur within the Global South,”²⁰⁸ while today, the occurrence of climate migration to the EU is addressed as a real possibility. Thus, when climate migration was unlikely to impact the EU, the EU emphasised the benefits migration could bring while, when migration is understood as affecting the EU – and thereby internal security - the EU promotes deterrence and restriction.

4.4 Implications of Securitisation: A Reactive Migration System

It is submitted that securitisation of migration has led to a system of reactive migration management, characterised by ad hoc reactive measures rather than long-term migration management. This is most clearly demonstrated through consideration of the events which led to the 2015/2016 “migration crisis.” While 2015 and 2016 were clearly marked by a significant influx in the

²⁰⁵ Commission White Paper, (n48), section 6.

²⁰⁶ Christoph Meyer, Francesca Vantaggiato and Richard Youngs, (n204), page 21.

²⁰⁷ 2018 Commission SWD, (n52) section 3.

²⁰⁸ 2013 Commission SWD, (n50), section 1.1.

number of people coming to Europe, the “crisis” should not be understood as a crisis of numbers. Rather, it was a crisis of governance.

This point is powerfully made through consideration of the EU’s response to the Syrian conflict. Costello argues that while the crisis “was by no means only about Syrian displacement, without the Syrian conflict, the tipping point into something extraordinary seems unlikely.”²⁰⁹ However, she also points out that the Syrian conflict began in 2011 – four years prior to the “crisis.” Thus, while “Europe had several years to address the potential of that Syrians would seek protection in Europe [...] it effectively chose to hope that containment would work.”²¹⁰ As a result, what Costello refers to as “the cost of doing nothing” was “to create demand for smugglers, and a political opportunity in particular for Turkey, keen to leverage refugees to its political advantage,” thereby effectively leading to a “crisis.”²¹¹

This reactive approach to migration is mirrored in the lack of EU law and policy addressing the protection of climate migrants. As the Organisation for Economic Cooperation and Development (OECD) stated in 2020, while OECD countries have “found ways to respond to” climate migration, “few OECD countries appear prepared for the potential scale of environment-related shocks in the future,” with many OECD countries lacking “the legal instruments for a more proactive response.”²¹²

4.5 Looking Ahead: A Proactive Approach to Climate Migration

It is submitted that the EU, in governing climate migration, must shift from a reactive to a proactive response, based on anticipation and preparedness. Ignoring the failures of the current system and “pouring more resources into an ineffective and paradoxical system of border closure will lead to further,

²⁰⁹ Cathryn Costello, (n153), page 19.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² OECD, ‘Towards 2035 strategic foresight: Making Migration and Integration Policies Future Ready’ (2020), page 7.

avoidable human suffering, as well as wasted resources and lost opportunity costs from not reaping the rewards of organised mobility.”²¹³

While the 2013 SWD on climate migration accompanying the 2021 adaptation strategy constituted an important and proactive step in the right direction, it cannot be ignored that the 2021 adaptation strategy had no such accompanying document. This demonstrates a missed opportunity to recognise, and address, new developments relating to climate migration.

If the EU is to respect, protect and fulfil the human rights of all climate migrants, it must adopt an approach that “better anticipate[s] human mobility and that proactively seek[s] to protect rights before, during, and after movement.”²¹⁴ As such, it is submitted that the EU should facilitate, rather than restrict, climate migration. Every individual must be able to move to avoid the adverse human rights impacts of climate change and must be able to do so in a safe manner. Measures which facilitate, rather than restrict climate migration, reflect the reality that people move, allow for proactive and preventative governance, and ultimately, better promote and protect human rights. Moreover, a proactive approach to climate migration is better aligned with the measures required to address climate change. Climate change cannot be ignored nor wished away; its impacts are already widespread and, in some cases, irreversible.²¹⁵

Finally, “we must recognise that migration itself is a natural part of human existence; it is not a crime, it is not necessarily a problem and it even has the potential to be a solution.”²¹⁶ Noting that migration “has long been a means to adapt to changing conditions”²¹⁷ in regions such as the Sahel, it is important to recognise that people may use, or wish to use, migration as a coping or

²¹³ UNHRC, (n11), para. 59.

²¹⁴ UNHRC, (n11), para. 137.

²¹⁵ IPCC, (n9).

²¹⁶ François Crépeau and Anna Purkey, (n185), page 1.

²¹⁷ Robert A McLeman and Lori M Hunter, ‘Migration in the Context of Vulnerability and Adaptation to Climate Change: Insights from Analogues’ (2010) 1(3) *Wiley Interdisciplinary Reviews: Climate Change* 450, 451.

adaptation strategy. As such, facilitating migration with dignity – rather than as a measure of last resort – may play an important role in the prevention of displacement and protection of human rights.

It is encouraging to note that the Commission has explicitly recognised a need to move towards a proactive migration system. For example, the New Pact on Migration states that “the task facing the EU and its Member States, while continuing to address urgent needs, is to build a system that manages and normalises migration for the long term and which is fully grounded in European values and international law.”²¹⁸ Nonetheless, the New Pact has been the subject of much criticism for failing to truly constitute a “change in paradigm.”²¹⁹

These critiques are further strengthened through consideration of the Commission’s framing of climate migration in the 2021 Adaptation Strategy. Noting that climate change may trigger “the migration of up to 70 million people by 2050 in sub-Saharan Africa alone,” the Commission emphasises that the EU will respond to this by continuing to help Africa adapt, and that the EU has already mobilised 3.4 billion euros between 2014-2019 to support climate adaptation in the region.²²⁰ As such, there does not seem to be significant political appetite for a proactive approach to the facilitation of climate migration.

4.6 Conclusion

This chapter has argued that the EU offers minimal engagement with the protection of climate migrants beyond its (limited) obligations under international law. It has demonstrated that EU migration and asylum policy

²¹⁸ Communication on New Pact on Migration, (n57).

²¹⁹ Paula García Andrade, ‘EU States’ EU cooperation on migration with partner countries within the New Pact: new instruments for a new paradigm?’ (*EU Immigration and Asylum Law and Policy*, 8 December 2020) <<https://eumigrationlawblog.eu/eu-cooperation-on-migration-with-partner-countries-within-the-new-pact-new-instruments-for-a-new-paradigm/>> accessed 12 April 2022.

²²⁰ 2021 Adaptation Strategy, (n53), Box 2.

is underpinned by an understanding of migrants as threats to the internal security of the EU and, as such, the EU's approach to migration, including climate migration, has been reactive. Recognising that the EU must afford greater attention to the protection of climate migrants, this chapter has argued in favour of a proactive, rather than reactive, approach to climate migration.

5 Conclusion

It is well established that climate change threatens the effective enjoyment of human rights all around the world. Recognising that people do, and will continue to, move away from areas affected by climate change, this thesis has argued that states, and unions of states such as the European Union, must take measures to ensure the protection of climate migrants; people must be able to move away from areas adversely affected by climate change and must be able to do so in a safe and legal manner.

This thesis has identified that international law creates two challenges for the protection of climate migrants. First, it remains unclear whether, and unlikely that, states are obliged to grant asylum to climate migrants. Secondly, states are not obliged to facilitate legal migration, forcing many who seek protection to move in dangerous ways which fail to respect their human rights. This analysis has sought to explore to what extent the EU, acting under its migration and asylum policy, may fill this gap.

In exploring whether climate migrants may receive asylum in the EU, this analysis has found that the EU offers limited opportunities for protection beyond those established in international law. Where such opportunities may be identified, they remain a matter of interpretation and/or discretion, and as such, dependent on political will. Therefore, it remains unlikely that climate migrants may qualify for asylum within the EU. Moreover, even if climate migrants were to receive asylum, neither international nor EU law establishes a corresponding right to legal entry.

As such, this thesis has also explored whether the EU offers legal pathways for climate migration to the EU, and to what extent it facilitates such movement. It has found that, though the EU has often reaffirmed the importance of facilitating legal migration, it offers limited legal pathways to the EU, including for climate migrants. Moreover, this thesis has found that,

in addition to offering limited legal pathways, the EU actively deters movement towards, and seeks to limit access to, the EU. Thus, while the EU seeks to present itself as an international guarantor of human rights, it seeks to avoid and minimise any legal responsibilities that may arise once climate migrants have entered EU territory. As such, it is submitted that, rather than offering scope to fill the protection gap on climate migration, the EU continues to exacerbate this gap.

The final chapter of this thesis has sought to make sense of the EU's approach to climate migration. It has argued that the EU's limited and reactive engagement with the protection of climate migrants stems from an understanding of migrants generally, as well as climate migrants specifically, as threats to the security of the EU. This thesis has briefly argued in favour of a proactive approach to climate migration. This is important as it both better reflects the reality of climate change and facilitates an approach to migration rooted in human rights, rather than state-driven security considerations.

It is clear research on EU law and policy on climate migration remains a work in progress. Several areas for further research should be contemplated:

- Firstly, promising arguments in favour of the facilitation of migration may be rooted in notions of climate justice or international obligations under climate change law. Further examination of these obligations, and to what extent they may require the EU to facilitate climate migration, would complement the claims made in this analysis.
- Secondly, having identified a fragmented and reactive response to climate migration, it may be helpful to explore what challenges exist to the adoption of a harmonised EU approach to climate migration.

In conclusion, it is time for the EU to take its commitments to the protection of human rights, including in the context of climate change, seriously. While the facilitation of climate migration is not a one-size-fits-all solution, and

many people may not wish to move away from areas affected by climate change, it is an important step towards protecting those who do move in the context of climate change.

Bibliography

Legal Instruments

International

Adoption of the Paris Agreement, Decision 1/CP.21 2015 (FCCC/CP/2015/L9/Rev1) ('Paris Agreement')

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85

Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 ('Refugee Convention')

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR')

Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267

United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 ('UNFCCC')

Regional

European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1952) ETS 5 (ECHR)

Charter of Fundamental Rights of the European Union [2012] OJ C 326/02

Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212

Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of

international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (“Qualification Directive”) [2011] OJ L 337

Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

Organization of African Unity (OAU), ‘Convention Governing the Specific Aspects of Refugee Problems in Africa’ (1969) 1001 UNTS 45

Treaty on the European Union [2012] OJ C 326/1 (‘TEU’)

Books and Contributions to Edited Volumes

Castree N, ‘Anthropocene and Planetary Boundaries’ in Douglas Richardson and others (eds), *International Encyclopaedia of Geography: People, the Earth, Environment, and Technology* (Wiley-Blackwell 2017)

Cubie D, ‘In situ adaptation: non-migration as a coping strategy for vulnerable persons’ in Dimitra Manou and others (eds), *Climate Change, Migration and Human Rights: Law and Policy Perspectives* (1st edn, Routledge 2017)

Veronis L and others, ‘Environmental change and international migration: a review’ in Robert McLeman and François Gemenne (eds), *Routledge Handbook of Environmental Displacement and Migration* (1st edn, Routledge 2018)

McLeman R and Gemenne F, *Routledge Handbook of Environmental Displacement and Migration* (1st edn, Routledge 2018)

McAuliffe M and Triandafyllidou A (eds), *World Migration Report 2022* (International Organization for Migration 2021)

Zickgraf C ‘Climate Change and Migration Crisis in Africa’ in Cecilia Menjivar and others (eds), *The Oxford Handbook of Migration Crises* (1st edn, OUP 2018)

Gomez Arana A and McArdle S, ‘The EU and the migration crisis: reinforcing a security-based approach to migration?’ in Sergio Carrera, Juan Santos Vara and Tineke Strik (eds), *Constitutionalising the External*

Dimensions of EU Migration Policies in Times of Crisis (Edward Elgar Publishing 2019)

Moreno-Lax V, 'Life After Lisbon: EU Asylum Policy as a Factor of Migration Control' in Diego Acosta Arcarazo and Cian C. Murphy (eds), *EU Security and Justice Law After Lisbon and Stockholm* (Hart Publishing 2014)

Durieux J 'The Vanishing Refugee: how EU asylum law blurs the specificity of refugee protection' in H el ene Lambert, Jane McAdam and Maryellen Fullerton (eds), *The Global Reach of European Refugee Law* (Cambridge University Press 2013)

J unemann A, Scherer N and Fromm N, '*Fortress Europe? Challenges and failures of migration and asylum policies*' (Wiesbaden, Springer 2017)

K alin W and Weerasinghe S, 'Environmental Migrants and Global Governance: Facts, Policies and Practices' (IOM 2017) in Marie McAuliffe and Michele Klein Solomon (convenors), *Migration Research Leaders' Syndicate: Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration* (IOM 2017)

Scott M, *Climate Change, Disasters and the Refugee Convention* (Cambridge University Press 2020)

Zickgraf C, 'Immobility' in Robert McLeman and Fran ois Gemenne (eds), *Routledge Handbook of Environmental Displacement and Migration* (1st edn, Routledge 2018)

Journal Articles

Allain J, 'The jus cogens Nature of non-refoulement' 13(4) *International Journal of Refugee Law* 533

Boas I and others, 'Climate Migration Myths' (2019) 9(12) *Nature Climate Change* 901

Black R and others, 'Migration as Adaptation' (2011) 478 *Nature* 447

Costello C, 'Overcoming Refugee Containment and Crisis' (2020) 21(1) *German Law Journal* 17

Deridder M, Pelckmans L and Ward E, 'Reversing the gaze: West Africa performing the EU migration-development-security nexus' (2020) 51 *Anthropologie & Développement* 9

Flahaux M and De Haas H, 'African migration: trends, patterns, drivers' (2016) 4 *Comparative Migration Studies* 1

Gammeltoft-Hansen T and Tan N, 'The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy' (2018) 5(1) *Journal on Migration and Human Security* 28

Huysmans J, 'The European Union and the Securitization of Migration' (2000) 38(5) *Journal of Common Market Studies* 751

Kälin W, 'The Global Compact on Migration: A Ray of Hope for Disaster-Displaced Persons' (2018) 30(4) *International Journal of Refugee Law* 664

Karageorgiou E, 'The Distribution of Asylum Responsibilities in the EU: Dublin, Partnerships with Third Countries and the Question of Solidarity' (2019) 88 *Nordic Journal of International Law* 315

Mayer B, 'Environmental Migration' as Advocacy: Is It Going to Work?' (2012) 29(2) *Refuge: Canada's Journal on Refugees* 27

McLeman R and Hunter M, 'Migration in the Context of Vulnerability and Adaptation to Climate Change: Insights from Analogues' (2010) 1(3) *Wiley Interdisciplinary Reviews: Climate Change* 450

Nishimura L, 'Adaptation obligations and adaptive mobility' (2022) 69 *Forced Migration Review* 39

Pinyol-Jiménez G, 'The Migration-Security Nexus in Short: Instruments and Actions in the European Union' (2012) 4(1) *Amsterdam Law Forum* 36

Ramji-Nogales J, 'Migration Emergencies' (2017) 68 *Hastings Law Journal* 609

Scott M and Garner R, 'Nordic Norms, Natural Disasters, and International Protection' (2022) 91(1) *Nordic Journal of International Law* 101

UNHCR, 'Legal Considerations Regarding Claims for International Protection Made in the context of the Adverse Effects of Climate Change and Disasters' (2021) 33(1) *International Journal of Refugee Law* 151, page 160

Vinke K and others, 'Migration as Adaptation?' (2020) 8(4) Migration Studies 626

Wood T, 'The role of free movement agreements in addressing climate mobility' (2022) 69 Forced Migration Review 62

Wood T, 'Who is a Refugee in Africa? A Principled Framework for Interpreting and Applying Africa's Expanded Refugee Definition' (2019) 31 International Journal of Refugee Law 290

United Nations Documents and Decisions

Brown O, 'Migration and Climate Change' (2008) IOM Migration Research Series No. 31

International Law Commission (ILC), 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' (2006) UN Doc A/CN.4/L.682, para. 415

International Organization for Migration (IOM), 'Climate Change, Environmental Degradation and Migration' (2012) IOM International Dialogue on Migration No. 18

International Organization for Migration (IOM), 'Glossary on Migration' (2019) International Migration Law No. 34

United Nations Human Rights Committee (HRC), *Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016 (24 October 2019)

United Nations General Assembly (UNGA), 'The Global Compact for Safe, Orderly and Regular Migration' (adopted 19 December 2018) UN Doc. A/RES/73/195

United Nations General Assembly (UNGA), 'The Global Compact on Refugees' (adopted 2 August 2018) UN Doc. A/73/12 (Part II)

United Nations Human Rights Council (UNHRC), 'Report of the Special Rapporteur on the human rights of migrants, François Crépeau' (8 May 2015) A/HRC/29/36

United Nations Human Rights Council (UNHRC), ‘The slow onset effects of climate change and human rights protection for cross-border migrants’ (22 March 2018) A/HRC/37/CRP.4

United Nations Office of the High Commissioner for Human Rights (OHCHR), ‘Factsheet No. 38: Frequently Asked Questions on Human Rights and Climate Change’ (OHCHR 2021)

United Nations Office of the High Commissioner for Human Rights (OHCHR), ‘Human Rights, Climate Change and Migration: Key Messages’ <<https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMMigration.pdf>> accessed 12 February 2022

United Nations Office of the High Commissioner for Human Rights (OHCHR), ‘Recommended Principles and Guidelines on Human Rights at International Borders’ (2014)

United Nations Office of the High Commissioner for Human Rights (OHCHR), ‘A Human Rights-Based Global Compact for Safe, Orderly and Regular Migration’ <https://refugeesmigrants.un.org/sites/default/files/stocktaking_ohchr.pdf> accessed 14 March 2022

European Commission Documents

Commission, ‘A European Agenda on Migration’ (Communication) COM (2015) 240 final, 13 May 2015

Commission, ‘Adapting to climate change: Towards a European framework for action’ (White Paper) COM (2009) 147 final, 1 April 2009

Commission, ‘An EU Strategy on adaptation to climate change’ (Communication) COM (2013) 216, 16 April 2013

Commission, ‘Commission Staff Working Document - Climate change, environmental degradation, and migration’ SWD (2013) 138, 16 April 2013

Commission, ‘Commission Staff Working Document - Evaluation of the EU Strategy on adaptation to climate change’ SWD (2018) 461 final, 12 November 2018

Commission, ‘Communication on a New Pact on Migration and Asylum’ COM (2020) 609 final, 23 September 2020

Commission, ‘Establishing a new Partnership Framework with third countries under the European Agenda on Migration’ (Communication) COM (2016) 385 final, 7 June 2016

Commission, ‘Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change’ (Communication) COM (2021) 82 final, 24 February 2021

Commission, ‘Proposal for a Regulation addressing situations of crisis and force majeure in the field of migration and asylum,’ COM (2020) 613 final, 23 September 2020

Commission, ‘Proposal for a Regulation Establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council’ COM (2016) 468 final, 13 July 2016

Commission, ‘Recommendation (EU) 2020/1364 of 23 September 2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways’ (2020) 6467, 23 September 2020

Commission, ‘Report on the implementation of the EU Strategy on adaptation to climate change’ COM (2018) 738 final, 12 November 2018

Commission, ‘Report on the implementation of the Global Approach to Migration and Mobility 2012-2013’ COM (2014) 96 final, 21 February 2014, section 5.1.3.

Commission, ‘The European Agenda on Security’ (Communication) COM (2015) 185 final, 28 April 2015

Commission, ‘The European Green Deal’ (Communication) COM (2019) 640 final, 11 December 2019

Commission, ‘The Global Approach to Migration and Mobility (GAMM)’ (Communication) COM (2011) 743 final, 18 November 2011

Commission, ‘State of Play of Implementation of the Priority Actions under the European Agenda on Migration’ (Communication) COM (2016) 85 final, 10 February 2016

Noll G, Fagerlund J and Liebaut F, 'Study on the feasibility of processing asylum claims outside the EU' (The Danish Centre for Human Rights on behalf of the European Commission 2002)

Paper from the High Representative and the European Commission to the European Council, 'Climate Change and International Security' S113/08, 14 March 2008

Reports for the European Parliament

Apap J and du Perron du Revel C, 'The concept of 'climate refugee': towards a possible definition' (European Parliament 2021)

Kraler A, Katsiaficas C and Wagner M, 'Climate Change and Migration - Legal and policy challenges and responses to environmentally induced migration' (European Parliament 2020)

Luyten K and González Díaz S, 'Legal Migration to the EU' (European Parliament, 2019)

Meyer C, Vantaggiato F and Youngs R, 'Preparing the CSDP for the new security environment created by climate change' (European Parliament 2021)

Moreno-Lax V, 'EU External Migration Policy and the Protection of Human Rights' (European Parliament 2020)

Other Reports, Discussion and Working Papers

Castillejo C, 'EU engagement with Africa on migration: a change of approach required' (2018) Deutsches Institut für Entwicklungspolitik (DIE) Briefing Paper, No. 9/2018 <https://www.die-gdi.de/uploads/media/BP_9.2018.pdf> accessed 12 February 2022

Castillejo C, 'The influence of EU migration policy on regional free movement in the IGAD and ECOWAS regions' (2019) Deutsches Institut für Entwicklungspolitik (DIE) Discussion Paper, No. 11/2019 <https://www.die-gdi.de/uploads/media/DP_11.2019.pdf> accessed 12 February 2022

European Migration Network, 'The application of quotas in EU Member States as a measure for managing labour migration from third countries' (2013)

<https://emn.ie/files/p_201403281253032014_emn_inform_application_of_quotas_en_version_final.pdf> accessed 13 April 2022

Cooper M ‘Migration and Disaster-Induced Displacement: European Policy, Practice and Perspective’ (2012) Center for Global Development Working Paper 308

<https://www.cgdev.org/sites/default/files/1426605_file_Cooper_disaster_displacement_FINAL.pdf> accessed on 24 April 2022

Crépeau F and Purkey A, ‘Facilitating Mobility and Fostering Diversity: Getting EU Migration Governance to Respect the Human Rights of Migrants’ (2016) CEPS Paper in Liberty and Security in Europe No. 92

International Displacement Monitoring Centre ‘GRID 2019: Global Report on Internal Displacement’ (2019)

International Displacement Monitoring Centre ‘GRID 2020: Global Report on Internal Displacement’ (2020)

Jegen L, Claes J and Cham O, ‘Towards Mutually Beneficial EU-West African Migration Cooperation’ (2020) CRU Policy Brief <https://www.clingendael.org/sites/default/files/2020-11/Policy_brief_EU-West_African_migration_November_2020.pdf> accessed 10 March 2022

Liguori C, ‘The response of the European Union to human mobility in the context of climate change’ (2021), Refugee Law Initiative Working Paper No. 54 <<https://sas-space.sas.ac.uk/9505/>> accessed 20 February 2022

OECD, ‘Towards 2035 strategic foresight: Making Migration and Integration Policies Future Ready’ (2020)

Perrels A and others, ‘Proactive adaptation to climate change creates more benefits than reactive adaptation’ (2022) Kustannusarvointi ilmastonmuutokseen liittyvästä toimimattomuudesta (KUITTI) Policy Brief 2022:16, page 1.

Schmidthäussler N and Nieman A, ‘The Logic of EU Policy-Making on (Irregular) Migration: Securitisation or Risk?’ (2014) Mainz Papers on International and European Politics (MPIEP) No. 6 <<https://international.politics.uni-mainz.de/files/2014/07/mpiep06.pdf>> accessed on 4 April 2022

Singh H and others ‘Costs of climate inaction: displacement and distress migration’ (Action Aid 2020)

The Nansen Initiative, ‘Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change: Volume I’ (2015)

United Kingdom Office for Science, ‘Foresight: Migration and Global Environmental Change – Final Project Report (2011) (‘Foresight Report’)

Wood T, ‘The role of ‘complementary pathways’ in refugee protection’ (Kaldor Centre for International Refugee Law 2020) <https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Complementary_Pathways_in_Refugee_Protection.pdf> accessed 1 March 2022

Zanker F and others, ‘Free Movement in West Africa: Juxtapositions and Divergent Interests’ (2020) Mercator Dialogue on Migration and Asylum Policy Brief 2020/1 https://ecdpm.org/wp-content/uploads/MEDAM_PolicyBrief_ECOWAS.pdf> accessed 16 February 2022

Other Electronic Sources

Ahmed K and Tondo L, ‘Fortress Europe: the millions spent on military-grade technology to deter refugees’ *The Guardian* (London, 6 December 2021) <<https://www.theguardian.com/global-development/2021/dec/06/fortress-europe-the-millions-spent-on-military-grade-tech-to-deter-refugees>> accessed 22 April 2022

Andrade P, ‘EU States’ EU cooperation on migration with partner countries within the New Pact: new instruments for a new paradigm?’ (*EU Immigration and Asylum Law and Policy*, 8 December 2020) <<https://eumigrationlawblog.eu/eu-cooperation-on-migration-with-partner-countries-within-the-new-pact-new-instruments-for-a-new-paradigm/>> accessed 12 April 2022

Claeys H, ‘Migration in the European Union: Mirroring American and Australian Policies’ (*E-International Relations*, 20 March 2022) <<https://www.e-ir.info/2022/03/20/migration-in-the-european-union-mirroring-american-and-australian-policies/>> accessed 15 April 2022.

Council of Europe, 'European Union accession to the European Convention on Human Rights - Questions and Answers' <<https://www.coe.int/en/web/portal/eu-accession-echr-questions-and-answers>> accessed 4 March 2022

Council of the European Union, 'Ukraine: Council unanimously introduces temporary protection for persons fleeing the war' (4 March 2022) <<https://www.consilium.europa.eu/en/press/press-releases/2022/03/04/ukraine-council-introduces-temporary-protection-for-persons-fleeing-the-war/>> accessed 17 March 2022

Dewan A, 'Germany's deadly floods were up to 9 times more likely because of climate change, study estimates' *CNN* (London, 24 August 2021) <<https://edition.cnn.com/2021/08/23/europe/germany-floods-belgium-climate-change-intl/index.html>> accessed 20 February 2022

European Commission, 'A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity' (Brussels, 23 September 2020) <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706> accessed 4 April 2022

European Commission, 'European Border and Coast Guard: The Commission welcomes agreement on a standing corps of 10,000 border guards by 2027' (Brussels, 1 April 2019) <https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1929> accessed 1 April 2022

European Union, 'European Commission' <https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/european-commission_en> accessed 1 May 2022

European Commission, 'Legal Migration and Integration: Work' <https://ec.europa.eu/home-affairs/legal-migration-and-integration/work_en> accessed 1 May 2022

European Council and Council of the European Union, 'How the EU manages migration flows' (24 March 2022) <<https://www.consilium.europa.eu/en/policies/eu-migration-policy/managing-migration-flows/>> accessed 3 March 2022

European Council and Council of the European Union, 'Taking the Lead on Climate Change' (20 April 2021) <<https://www.consilium.europa.eu/en/eu-climate-change/>> accessed 3 March 2022

Dempster H and Ober K, 'New Zealand's "Climate Refugee" Visas: Lessons for the Rest of the World' (10 January 2020), <<https://reliefweb.int/report/world/new-zealands-climate-refugee-visas-lessons-rest-world>> accessed 27 April 2022.

Gagnon M, 'EU uses development aid to strongarm Africa on migration' *Deutsche Welle* (13 April 2022) <<https://www.dw.com/en/eu-uses-development-aid-to-strongarm-africa-on-migration/a-61375189>> accessed 1 May 2022.

Gatti M, 'EU States' Exit from the Global Compact on Migration: A Breach of Loyalty' (*EU Immigration and Asylum Law and Policy*, 14 December 2018) <<https://eumigrationlawblog.eu/eu-states-exit-from-the-global-compact-on-migration-a-breach-of-loyalty/>> accessed 28 April 2022

Guild E 'Negotiating with Third Countries under the New Pact: Carrots and Sticks?' (*EU Immigration and Asylum Law and Policy*, 27 November 2020) <<https://eumigrationlawblog.eu>> accessed 27 March 2022

International Labour Organization (ILO), 'Climate change, displacement and labour migration' <<https://www.ilo.org/global/topics/labour-migration/climate-change/green-jobs/lang--en/index.htm>> accessed 25 March 2022

Platform on Disaster Displacement, 'In conversation with Caroline Zickgraf' <<https://disasterdisplacement.org/staff-member/in-conversation-with-caroline-zigraf>> accessed 26 March 2022

Keshen S, Lazickas S and Solórzano L, 'Non-refoulement: A Legal Hope for the Protection of Environmental Migrants and their Rights' (*Columbia SIPA*, 3 November 2021) <<https://multilateralism.sipa.columbia.edu/news/non-refoulement-legal-hope-protection-environmental-migrants-and-their-rights>> accessed 9 May 2022.

Leboeuf L, 'Legal Pathways to Protection: Towards a Common and Comprehensive Approach?' (*EU Immigration and Asylum Law and Policy*, 3 December 2020) <<https://eumigrationlawblog.eu/legal-pathways-to-protection-towards-a-common-and-comprehensive-approach/>> accessed 10 April 2022

Red Cross EU Office, 'Humanitarian visas in practice' <<https://redcross.eu/projects/humanitarian-visas-in-practice>> accessed 3 March 2022

The Platform on Disaster Displacement, 'Key Definitions' <<https://disasterdisplacement.org/the-platform/key-definitions>> accessed 3 February 2022

Smreková K, 'The EU's New Pact on Migration and Asylum – a Step Back or Forward for Human Rights?' (*Czech Centre for Human Rights and Democracy*, 23 April 2022) <<https://www.humanrightscentre.org/blog/eus-new-pact-migration-and-asylum-step-back-or-forward-human-rights>> accessed 24 April 2022

Scott M, 'How the New IPCC Report Addresses Migration and Human Rights' (*The Human Righter*, 8 March 2022) <<https://rwi.lu.se/blog/how-the-new-ipcc-report-addresses-migration-and-human-rights/>> accessed 9 March 2022

Someshwar S, 'Adaptation to Climate Change: Moving Beyond "Reactive" Approaches' (*World Resources Institute*) <<https://www.wri.org/our-work/project/world-resources-report/adaptation-climate-change-moving-beyond-reactive-approaches>> accessed 4 May 2022

United Nations Environment Programme (UNEP), 'Mitigation' <<https://www.unep.org/explore-topics/climate-action/what-we-do/mitigation>> accessed 2 February 2022

United Nations, 'Deaths at sea on migrant routes to Europe almost double, year on year' (UN News, 29 April 2022) <<https://news.un.org/en/story/2022/04/1117292>> accessed 12 May 2022.

United Nations (UN), 'What is Climate Change?' (*UN Climate Action*) <<https://www.un.org/en/climatechange/what-is-climate-change>> accessed 1 February 2022

United Nations Secretary General, 'Secretary-General's statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment' (9 August 2021), <<https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment>> accessed 12 February 2022

UNSW Kaldor Centre on International Refugee Law, 'Moving beyond 'climate refugees' Ready law, policy & practice for displacement in a warming world' (2021)
<<https://www.youtube.com/watch?v=HZAhUNhqG3Y>> accessed 15 March 2022

Ursula von der Leyen, European Commission President, 'State of the European Union Address' (Speech at the European Parliamentary Plenary, Brussels, 16 December 2020)
<https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_20_165> accessed 13 March 2022

Table of Cases

European Court of Human Rights

Chahal v UK [1996] 23 EHRR 413

Soering v UK [1989] 11 EHRR 439

M.N. and Others v Belgium, Application no. 3599/18 (ECtHR, 5 May 2020)

N v. United Kingdom [GC] App No 26565/05 (ECtHR, 27 May 2008)

Sufi and Elmi v. The United Kingdom, App Nos. 8319/07 and 11449/07 (ECtHR, 28 June 2011)

European Union

Case C-54213 Mohamed M'Bodj v État Belge [2014] CLI:EU:C:2014:2452

Case C-35316 MP v Secretary of State for the Home Department [2018] ECLI:EU:C:2018:276

Case C-638/16 PPU X and X v État Belge [2017] ECLI:EU:C:2017:173

National Decisions

Sweden: Cases UM4471-12 and UM22776-10

Austria: Case W159 2124047-1