RLI Working Paper No. 54

REFUGEE LAW INITIATIVE | SCHOOL OF ADVANCED STUDY UNIVERSITY OF LONDON

The response of the European Union to human mobility in the context of climate change

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March 2021

Abstract

Human mobility in the context of climate change is a complex issue, which has been addressed through different approaches, frameworks, and proposed solutions. This research differs from previous studies. It attempts to demonstrate the importance of taking a holistic approach. To do so, it focuses on analysing the European Union's response to the issue and the factors that have influenced it. The research finds that the EU's response to human mobility in the context of climate change has been patchy, under-developed and generally inadequate. Although the EU has shown some interest in the topic, the climate-migration nexus is mostly mentioned in relation to policies aimed at tackling the root causes of migration and avoiding displacement and irregular migration. Very little has been done to facilitate more regular migration path-ways as a way to provide options to those living in areas severely affected by climate impacts, and nothing has been put in place to ensure effective protection in Europe of people displaced in relation to climate change. The EU case study shows the importance of responding to climate-related mobility in a comprehensive manner and argues for more advocacy and policy-oriented research to bring elements of climate justice back into the discussion and to "re-politicise" the issue.

Keywords

Contents

LIST OF ACRONYMS AND ABBREVIATIONS

COP	Conference of the Parties to the UNFCCC
DG Home	European Commission Directorate General for Migration and Home Affairs
DG Clima	European Commission Directorate General for Climate Action
DG ECHO	European Commission Directorate General for European Civil Protection and Humanitarian Aid Operations
DG DevCO	European Commission Directorate General for International Co-operation and Development
DRR	Disaster Risk Reduction
EC	European Commission
EEAS	European External Action Service
EP	European Parliament
EU	European Union
GAMM	EU's Global Approach to Migration and Mobility
GCM	Global Compact on Migration
GCR	Global Compact on Refugees
GEF	Green European Foundation
IDPs	Internally Displaced Persons IDPs
MS	Member States
NI	Nansen Initiative
PDD	Platform for Disaster Displacement
QR	Qualification Regulation
SWD	European Commission Staff Working Document on "Climate, environmental degradation and migration" (2013)
TFD	Task Force on Displacement
TFEU	Treaty on the Functioning of the European Union
TPD	Temporary Protection Directive
UNEP	United Nations Environment Program
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
WIM	Warsaw International Mechanism on Loss and Damage

1.   Introduction

The interaction between climate change and human mobility has been a hot topic in academia and policy for more than two decades, with very different approaches, framings, and numerical projections being used, and several different solutions proposed. What is certain, though, is that climate change acts as an important driver of migration and displacement and will increasingly do so if the climate crisis is not rapidly addressed.

Those most impacted or at risk are people living in countries with high levels of exposure to disasters and other climate-related events and limited means to adapt to climate change due to underlying causes such as political and socio-economic factors.[1]

While the majority of climate-related movements are and are expected to remain internal, an increase in cross-border movements is also predicted, especially affecting people living in small islands or low-lying areas, or occurring as a type of secondary movement, frequently as a reaction to deficient durable solutions to internal displacement.[2]

Human mobility related to climate change is a complex and multi-dimensional issue, with climate change just one of the factors influencing mobility patterns. Such multi-causality represents an important conundrum when it comes to identifying protection options for those who move across borders. While many studies and debates have revolved around the protection issue, other aspects are also crucial when studying human mobility in the context of climate change. These include identifying measures to be taken in the countries of origin to prevent forced displacement, and others that require collaboration between countries of origin and destination to ensure mobility options that provide real solutions to the affected people, their communities of origin and the countries of destination. Considerations related to responsibility for climate change and the rights of most affected people should also play a role when discussing possible solutions to ensure a fair and human-centred response.

This paper differs from previous studies in that it attempts to demonstrate the importance of taking a holistic approach to human mobility in the context of climate change. To do so, it focuses on the European Union's (EU) response to the issue as a case study.

The choice of the EU as a case study is based on multiple factors. First, EU Member States (MS) are among the biggest contributors to greenhouse gas emissions since the industrial revolution and the EU is one of the world's leading donors for humanitarian aid and development cooperation. It is therefore important to assess how such a big player in the international arena with such a heavy weight of responsibility for the climate crisis has dealt with the topic of climate-related human mobility. Second, migration is a burning topic in Europe, traditionally and even more so in the last few years, after a temporary surge in the number of arrivals in 2015 and the nationalist and anti-migrant rhetoric that ensued, often fuelled by opportunistic far-right populist parties.[3] As a consequence, it is important to analyse whether the climate-related dimension of movements towards Europe has been considered at all in the broader migration debate and in the current policies. Finally, this research attempts to fill the gap occasioned by the scarcity of recent and comprehensive studies on the EU response.

In this study, I pay special attention to the internal dimension of climate-related movements, namely to how the EU has been addressing in-bound human mobility in the context of climate change. The is primarily because the protection of cross-border disaster displaced people is an area where major legal and policy gaps exists at national, regional, and international level. In addition, since migration is increasingly seen as a form of adaptation to the worst impacts of climate change, I analyse whether the EU has taken this aspect into account when designing labour mobility schemes and regular migration pathways. On the

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1   Greenpeace, *Climate change, migration and displacement – The underestimated disaster* (2017); available at: https://www.greenpeace.de/sites/www.greenpeace.de/files/20170524-greenpeace-studie-climate-change-migration-displacement-engl.pdf

2   Nansen Initiative, Agenda for the Protection of Cross-Border Displaced Persons in the context of Disasters and Climate Change (Protection Agenda), Volume I. (2015); available at: https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf

3   See for example R. Wodak, *The Politics of Fear. What right-wing populist discourses mean* (Sage, 2015).

contrary, knowing that the EU is a leading humanitarian and development donor, and assuming that the EU policies to provide assistance to IDPs do not differentiate on the basis of the reasons for displacement, I have chosen not to focus my analysis on the EU response to internal displacement related to climate change in third countries.

The rest of this chapter clarifies terminology and describes the methodology used. The second chapter reviews several academic studies on the issue of human mobility in the context of climate change, including sources that take the broader angle of environmentally induced migration and displacement. The third provides an overview of the most recent policy frameworks addressing human mobility in the context of climate change. The fourth chapter analyses how the EU has responded to the issue, while the fifth chapter identifies several factors that might have influenced that response, and the last chapter presents the conclusions.

1.1   Scope and terminology

Because of the complexity of the issue, there is no single term to refer to the problem. This paper generally uses the phrase "human mobility in the context of climate change". Used by several authors and international organizations,[4] the phrase takes a comprehensive view of human movements related to climate change as it includes displacement (understood as primarily forced movements), migration (understood as primarily voluntary movements) and planned relocations (understood as planned processes to settle persons or communities to a new location away from areas at risk of severe climate impacts).[5] "In the context of" is also a more nuanced way to describe the relation between human mobility and climate change, as it avoids establishing causal and exclusive links, which are inaccurate in most contexts. However, for simplicity, this paper sometimes refers to the issue with the term "climate-migration", "climate-displacement" or "climate-related mobility", depending on the context.

The thematic scope of this study is human mobility in the context of climate change because it is a global and urgent phenomenon with far-reaching impacts. It is also a problem whose causes and responsibilities are clearly established, something that is relevant when discussing responses to human mobility. However, it is undisputed that often climate change interacts with other environmental factors as a driver of migration. It is also a fact that in many cases displacement related to climate change follows the same patterns and generates the same needs as displacement caused by non-climate related disasters. For these reasons, this paper uses sources that take a broader view at the problem and uses other framings such as "environmental migration" or "disaster displacement".

While the literature review does not have temporal limitations, the scope of the analysis of policy frameworks and of the EU response is limited to the last ten years. However, references to crucial previous documents is made when relevant.

1.2   Methodology

This study is primarily based on a combination of primary and secondary sources. The analysis of the EU response is grounded in academic or think tanks' studies and on the analysis of relevant official documents issued by the European Commission (EC), the European Parliament (EP) and the Council of the EU. The purpose of analysing EU official documents was to identify whether climate-related mobility was mentioned and, if so, to assess how it was framed and which solutions were proposed. Key EU official documents among the categories listed below were analysed:

-    documents on climate change

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4   See for example S. Nash, 'Knowing human mobility in the context of climate change', *Movements – Journal for Critical Migration and Border Regime Studies* (2018) 4(1); available at: https://movements-journal.org/issues/06.wissen/04.nash--knowing-human-mobility-in-the-context-of-climate-change-the-self-perpetuating-circle-of-research-policy-and-knowledge-production.html; Advisory Group on Climate Change and Human Mobility, 'Human mobility in the context of climate change. Recommendations from the advisory group on climate change and human mobility COP20 Lima, Peru', (2014); available at: https://www.iom.int/files/live/sites/iom/files/pbn/docs/Human-Mobility-in-the-context-of-Climate-Change.pdf

5   Nansen Initiative, Protection Agenda, 2015, n 2.

- documents on migration policy
- documents on development cooperation and humanitarian aid policies
- EU positions on: a) the negotiations of the Global Compact on Migration (GCM), b) the work of the Task Force on Displacement (TFD) within the United Nations Framework Convention on Climate Change (UNFCCC) and c) within the Nansen Initiative and Platform for Disaster Displacement (PDD).

The desk research was complemented with five interviews with key experts. Four are staff members of EU institutions, while the other one was identified for his knowledge of policy processes such as the NI/PDD and GCM and the EU engagement with them. All the interviewees chose to remain anonymous.

2.   Literature review

This chapter reviews the academic debate around human mobility in the context of climate change, including points of view that take the broader angle of environmentally induced migration and disaster displacement. It attempts to provide an overview of how different authors have dealt with the complexity of the issue. It identifies the main schools of thought in framing the issue and highlights some individual important perspectives that should be considered to ensure comprehensive, just, and human rights-centred responses. The debates and views illustrated in this chapter are also relevant to understand how most recent intergovernmental policy forum have been dealing with this issue (see chapter 3) and to contextualize and analyse the response of the EU (chapter 4 and 5).

2.1   Main schools of thought on climate-related mobility

As documented by Piguet,[6] the connection between the environment and human mobility became a topic in academia and policy circles from around the mid-1980s, especially with the publication of three major reports.[7] These reports raised the interest of environmental and natural science scholars who highlighted the risk of mass displacement as the direct or indirect consequence of environmental degradation, and climate change in particular. The best-known is Norman Myers, who investigated how climate change-related effects, combined with population growth, would drive people living in densely populated, low lying areas to migrate and fuel conflicts over resources.[8]

The concept of "environmental refugee"[9] and the connection established by Myers between environmental degradation/climate change, migration and conflicts led to the development of the **"maximalist" or "alarmist"** school of thought and the **"securitization"** approach to climate migration, which was adopted by several scholars, think-tanks and institutions active in the field of security studies. For example, Homer-Dixon raised the spectre of environmental refugees spilling across borders and destabilising recipient countries and negatively affecting "international stability".[10] Migration was described both as a consequence of environmental conflicts and as the cause of conflicts over natural resources.[11] This school of thought saw environmental migration mostly as a security threat from the global South to the global North requiring a security response "through agendas of military intervention, development and modernisation".[12] This contributed to strengthening the arguments in favour of the securitization of migration in general.[13] Such views proved very influential among policy-makers, as they re-appeared in later reports and statements by several institutions, including the EU.[14]

However, researchers from the field of migration studies took a **"minimalist"**[15] view of the problem, dismissing the climate or environmental refugee label by highlighting the multi-causality of migration and

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6   E. Piguet, 'From "Primitive Migration" to "Climate Refugees": The Curious Fate of the Natural Environment in Migration Studies' (2013) *Annals of the Association of American Geographers*, 103(1), 148.

7   E. El-Hinnawi, 'Environmental refugees' (1985) United Nations Environmental Program; J. Jacobson, 'Environmental Refugees: a Yardstick of Habitability' (1988) *Bulletin of Science, Technology & Society*, 8(3), 257; Intergovernmental Panel on Climate Change, *Climate Change – The IPCC Scientific Assessment* (1990), Cambridge: Cambridge University Press.

8   J. Morrisey, 'Environmental Change and Forced Migration - A State of the Art Review', (RSC, 2009); available at: https://www.rsc.ox.ac.uk/files/files-1/dp-environmental-change-forced-migration-2009.pdf.

9   The term was first used by El-Hinnawi in 1985. See F. Gemenne, 'How they became the human face of climate change. Research and policy interactions in the birth of the 'environmental migration' concept' in E. Piguet, A. Pecout, P. De Guchteneire (eds.) *Migration and climate change (*Cambridge University Press, 2011).

10   T. Homer-Dixon: 'On the Threshold. Environmental Changes as Causes of Acute Conflict', (1991) *International Security* 16(2), 76; 'Environmental Scarcities and Violent Conflict. Evidence from Cases' (1994) *International Security* 19 (1), 5.

11   Gemenne, 2011, n 9.

12   R. Cooper et all, 'Being(s) framed: The means and ends of framing environmental migrants' (2015) *Global Environmental Change* 35, 106, 110.

13   M. J. Trombetta, 'Linking climate-induced migration and security within the EU: insights from the securitization debate' (2014), *Critical Studies on Security*, 2(2), 131.

14   German Advisory Council on Global Change, 'Climate Change as a Security Risk' (2008); available at: http://ccsl.iccip.net/wbgu_jg2007_engl.pdf; High Representative and European Commission to European Council, 'Climate Change and International Security' (2008), Paper to the Council of the European Union, S113/08.

15   For the distinction between "maximalists" and "minimalists", see Gemenne, 2011, n 9; Piguet, 2013, n 6.

the difficulty of isolating environmental factors as the exclusive cause of human mobility.[16] They questioned the methodology used by Myers and others to predict the size of the future "environmental refugee" population and advanced that the spectre of hordes of "environmental refugees" could just be a myth unsupported by data from empirical studies and statistics of the time and inspired by neo-Malthusian narratives. They also pointed out that presenting environmental migration as the movement of masses of poor people from the global South, was not only unfounded but also dangerous, as it could fuel the anti-immigrant rhetoric of parties and governments and lead to even tougher border control measures.

Nevertheless, the "climate (or environmental) refugee" framing was also used by several scholars, mostly from an environmental law background,[17] to advocate for **protection-like approaches**. They advanced specific legal solutions to enhance the protection and assistance of "climate (or environmental) refugees". For all, the starting point is the observation that international law is utterly inadequate to protect this category of people on the move and this is something that needs to be remedied, especially in the light of the projected exponential increase in the number of people forced to move due to environmental change. Some authors and the government of the Maldives in 2006 therefore advocated the expansion of the refugee definition by amending the 1951 Refugee Convention.[18] Others, more mindful of the challenges of the previous approach, suggested adopting a separate international legal instrument.[19] While their views diverged on several issues, what all these authors have in common is the recognition that climate change and environmental degradation are global man-made phenomena, which trigger responsibilities from the international community towards those most affected by its impacts. So, all their proposals suggested an institutional and legal framework for protection with dedicated resources for its implementation. They also all viewed human mobility in the context of climate change as being limited to forced displacement and focused their attention in designing almost exclusively ex-post interventions.

Starting from a similar framing of "climate refugees" as victims in need of international protection and assistance, other authors rather took a **climate justice** approach, based on the premise that people forced to move due to climate change are victims of the reckless conduct of the most polluting countries, which therefore bear a heightened responsibility to receive and support "climate refugees".[20] These authors' main distinctive feature is that they build their arguments around a "victim/perpetrator dichotomy".[21] When they use the "climate refugee" label, they do so for political rather than legal reasons.[22] While the proponents of international legal instruments limit the role of the international community mostly to provide funding for resettlement, humanitarian assistance to home and host countries or displaced people themselves, authors adopting a climate justice framework put forward concrete proposals to ensure that states most responsible for climate change take more responsibility for assisting "climate refugees", by resettling them in their own countries and/or providing adequate and proportional contributions to a "loss and damage" fund.

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16   See for example R. BILSBORROW, 'Rural Poverty, migration, and the Environment in Developing Countries: Three Case Studies' (1992), Background paper for World Development Report; available at: http://documents.worldbank.org/curated/en/777691468767386516/Rural-poverty-migration-and-the-environment-in-developing-countries-three-case-studies ; G.KIBREAB, 'Environmental causes and impact of refugee movements: A critique of the current debate' (1997) *Disasters,* 21 (1), 20; R. BLACK, 'Environmental refugees: myth or reality*?*' (2001), UNHCR Working Paper No. 34; available at: https://www.unhcr.org/uk/research/working/3ae6a0d00/environmental-refugees-myth-reality-richard-black.html; S. CASTLES, 'Environmental change and forced migration: making sense of the debate' (2002), UNHCR, Working Paper No 70; available at: https://www.unhcr.org/en-lk/3de344fd9.pdf

17   Gemenne, 2011, n 9.

18   M. Conisbee, and A. Simms, 'Environmental Refugees: The case for recognition' (2003), New Economics Foundation; available at: https://neweconomics.org/uploads/files/e3cd1b834fc83fb11e_9pm6bkf32.pdf; M. Chemillier-Gendreau, 'Faut-il un statut international de réfugié écologique ?' (2006) *Revue Européenne de Droit de l'Environnement*, 4, 446; A. Williams, 'Turning the tide: Recognizing climate change refugees in international law' (2008) *Law & Policy*, *30*(4), 502

19   F. Biermann and I. Boas, 'Preparing for a warmer world: Towards a global governance system to protect climate refugees' (2010), *Global Environmental Politics*, *10*(1), 60; B. Docherty and T. Giannini, 'Confronting a rising tide: a proposal for a convention on climate change refugees' (2009), *Harvard Environmental Law Review*, 33, 349; D. Hodgkinson and all "The hour when the ship comes in": A Convention For Persons Displaced By Climate Change, (2010), *Monash University Law Review*, 36(1), 69; CRIDEAU (Interdisciplinary Centre for Research in Environmental Law, Land and Urban Development) and all, 'Draft Convention on the status of environmentally displaced persons', Fourth Version (2018); available at: https://cidce.org/en/deplaces-environnementaux-refugies-ecologiques-environmentally-displaced-persons/

20   R. Eckersley, 'The common but differentiated responsibilities of states to assist and receive 'climate refugees'' (2015) *European Journal of Political Theory*, 14(4), 481; R. Kuusipalo, 'Exiled by Emissions - Climate Change Related Displacement and Migration in International Law: Gaps in Global Governance and the Role of the UN Climate Convention' (2017), *Vermont Journal of Environmental Law*, 18, 614; R. Buxton, 'Reparative Justice for Climate Refugees' (2019), *Philosophy*, *94*(2), 193.

21   Cooper et all, 2015, n 12.

22   Eckersley, R. (2015), n 20, 492.

While, influenced by the "minimalist" approach, several authors from the migration and forced migration field of studies have been focusing on the conceptual challenges related to the definition, the quantification and the solution of the problem in itself, others have opted for a more **empirical or "pragmatic" approach**, focusing on assessing the relationship between environmental change and migration through empirical data, either by using quantitative methods to weight the impact of the environmental changes on migration in particular countries, or by conducting large surveys with the aim of "collecting data on past or current migration, environmental pressure, and socioeconomic context".[23] The development of the state-led Nansen Initiative, together with the allocation of funds for research on the topic by the EU and specific governments,[24] provided opportunities to develop such knowledge through a wealth of empirical studies.[25]

These studies confirmed many of the minimalists' arguments, showing that environmental factors, including climate change, do influence migration choices, not in a direct, deterministic manner, but rather as part of a what Van Hear and all call "driver complexes", in which environmental reasons interplay with cultural, political, economic and social factor and processes at local, national and international level.[26] They also indicated that climate-related mobility is largely internal and, when it occurs across border, it generally affects neighbouring or culturally proximate countries.[27] Some specifically highlighted the dynamics which lead some people to be forced to stay, despite adverse environmental conditions, because of the lack of human, social and economic capital to face a migration journey, especially internationally, and stressed the importance of dedicating special attention to those "trapped populations" in disaster preparedness and climate change adaptation programs.[28]

A crucial finding of empirical studies was that migration in the context of environmental change is not necessarily a measure of last resort but can be a pondered decision and an important coping strategy for households who seek to diversify their income in the time of environmental and economic adversity. That led to crafting the notion of "**migration as adaptation**"[29], which is intimately connected with the development approach to migration.

The concept was revolutionary in many ways. Rather than victims in need of protection and assistance, it viewed people on the move as active agents of change capable of taking conscious decisions about whether to move, and when, where and who from the family should move. Human mobility in the context of climate change was no longer equated with displacement, but the importance of the voluntary dimension in migration outcomes was recognised. From being something negative to be prevented or feared, under the "migration as adaptation" approach climate-migration is seen as a positive and normal phenomenon, and even a solution to the adverse impacts of climate change, which therefore needs to be facilitated and praised as a transformational opportunity.

A significant shift in conceiving solutions also occurred, with the focus moving from protection and assistance after displacement to a preventative approach. The underlying idea is that, since migration is unavoidable and can even offer important adaptive opportunities to migrants, their families and theirs communities of origin, it is crucial to facilitate it through managed migration approaches which includes concepts of labour and circular migration, upskilling and remittances.[30] Correspondingly, a shift in anchor-

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23   Piguet, 2013, n 6, 156.

24   See for example the EU-funded EACH-FOR project; available at: https://knowledge4policy.ec.europa.eu/projects-activities/each-environmental-change-forced-migration-scenarios_en and the British-funded Foresight report; available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287717/11-1116-migration-and-global-environmental-change.pdf

25   R. McLeman, and F. Gemenne, 'Environmental migration research: Evolution and current state of the science' in *Routledge Handbook of Environmental Displacement and Migration* (Routledge, 2018).

26   N. Van Hear and all, 'Drivers of migration', (2012) Migrating out of Poverty Research Programme Consortium - Working Paper 1; available at: https://assets.publishing.service.gov.uk/media/57a08a7fed915d622c000787/WP1_Drivers_of_Migration.pdf

27   R. Obokata and all, 'Empirical research on international environmental migration: a systematic review' (2014) *Population and Environment*, 36(1), 111.

28   R. Black and all, 'Climate change: Migration as adaptation' (2011), *Nature*, 478, 447.

29   R. McLeman and B. Smit, 'Vulnerability to climate change hazards and risks: crop and flood insurance' (2006), *Canadian Geographer/ Le Géographe canadien*, 50(2), 217; C. Tacoli, 'Crisis or adaptation? Migration and climate change in a context of high mobility' (2009), *Environment and urbanization*, 21(2), 513; J. Barnett and M. Webber, 'Migration as adaptation: opportunities and limits' in J. Mcadam (ed), *Climate change and displacement: multidisciplinary perspectives* (Hart Publishing, 2010); Black and all, 2011, n 28.

30   Cooper and all 2015, n 12.

age of climate-migration can also be observed, with the "climate refugees" approach being generally anchored in the fields of either security or humanitarian emergency management while "migration as adaptation" finds its roots in development and human security theories.[31]

Despite its attractiveness, the "migration as adaptation" approach has also attracted a wealth of criticism. Many authors maintained that the benefits of "migration as adaptation" can be overrated and its cost understated, especially referring to the social and economic cost that migration can have on households, the observation that remittances can exacerbate existing inequalities and vulnerability in the context of disasters[32] and the lack of gender analysis when researching the impacts of remittances.[33] Others pointed out that the insistence on individuals' agency and resilience masks links with neoliberal strategies, in which the individual is left alone to deal with adverse impacts of climate change and find the best coping strategy by themselves. [34]

Some authors also expressed concerns that the "migration as adaptation" approach could lead to letting wealthier countries off the hook and lead to a de-politicisation of climate-related human mobility. [35] By normalising migration as a positive adaptation strategy, it reduces pressure on states to mitigate climate change as a way to diminish the need for people to move.[36] It also obfuscates climate justice arguments, since the "wrongs" of climate change are ignored, while the attention almost exclusively focuses on the opportunities available to individuals.[37] From rights-holders, individuals become just resilient subjects with the responsibility of adapting. Conversely, states' role shift from that of duty-bearers obliged to mitigate climate change and to provide remedy to people forced to move due to climate change to the simpler role of facilitating people' adapting capacity.

2.2   Human rights-based perspective and attempts to "re-politicise" the issue

Some authors have brought up the importance of human rights-based approaches and the need to re-politicise the issue.

For example, concerning rights-based arguments, McAdam claimed that proposals for an international legal instrument to protect "climate refugees" may be "not necessarily respond to communities' human rights concerns, especially those relating to cultural integrity, self-determination and statehood".[38] Similarly, preoccupied by the passive role of migrants under approaches to climate-migration excessively focused on protection, Zetter argued that the aim of protection-like responses should be both to safeguard vulnerable people and to defend the "rights of migrants to deploy their agency".[39]

Building on these considerations, McAdam, Klepp and Herbeck have been advocating for national and regional responses, particularly using solutions adopted in and within Pacific small-island states as case studies. In particular, inspired by regional negotiations on-going among Pacific states to deal with climate-migration, Klepp and Herbeck stressed the importance of encouraging solutions which "take climate justice aspects into account", and are "emancipative" for migrants and "migration friendly".[40]

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31   G. Bettini and all, 'One step forward, two steps back? The fading contours of (in) justice in competing discourses on climate migration' (2017) *The Geographical Journal*, 183(4), 348.

32   Cooper and all, 2015, n 12; Bettini at all, 2017, n 31.

33   G. Gioli, and A. Milan, 'Gender, migration and (global) environmental change' in R. McLeman and F. Gemenne (eds), *Routledge Handbook of Environmental Displacement and Migration* (Routledge, 2018).

34   See for example G. Bettini, 'Climate migration as an adaption strategy: de-securitizing climate-induced migration or making the unruly governable?' (2014) *Critical Studies on Security*, 2(2), 180; C. Methmann and A. Oels, (2015) 'From 'fearing'to 'empowering'climate refugees: Governing climate-induced migration in the name of resilience', *Security Dialogue*, 46(1), 51; A. Baldwin, 'Climate change, migration, and the crisis of humanism' (2017), *Wiley interdisciplinary reviews: climate change*, 8(3), 460.

35   Methmann and Oels, 2015, n 34; Bettini and all, 2017, n 31.

36   Methmann and Oels, 2015, n 34.

37   Bettini and all, 2017, n 31; S. Klepp, *Climate change and migration*' (2017) Oxford Research Encyclopedia of Climate Science; available at: https://oxfordre.com/climatescience/view/10.1093/acrefore/9780190228620.001.0001/acrefore-9780190228620-e-42?rskey=m1moJE&result=6

38   J. McAdam, 'Swimming against the Tide: Why a Climate Change Displacement Treaty is Not the Answer' (2011), *International Journal of Refugee Law*, 23(10), 2, 17.

39   R. Zetter, 2010, 'Protecting people displaced by climate change: some conceptual challenges' in J. McAdam (ed.), *Climate change and displacement: multidisciplinary perspectives (*Hart Publishing, 2010), 149.

40   S. Klepp and J. Herbeck, 'The politics of environmental migration and climate justice in the pacific region; (2016) *Journal of Human Rights and the Environment*, 7(1), 54; S. Klepp, 2017, n 37.

Some authors reached the conclusion, which I very much support, that a rights-based framework necessitates avoiding using different approaches to climate-migration in isolation, but rather adopting a combination of approaches that can best protect rights and foster migrants' agencies in all contexts and situations. For example, McNamara and all show how unhelpful it is to present climate-induced relocation as either an adaptation strategy or a manifestation of "loss and damage".[41] They explain that only by considering them under both approaches, is it possible to design solutions that truly protect rights and respond to the needs of those concerned. Others[42] supported the "toolbox approach" adopted by the Nansen Initiative and its successor, the PDD, in which legal and policy solutions are identified at national and regional level to reduce the need for people to move, facilitate voluntary migration as an adaptation strategy, and protect the rights of those displaced.

Concerning the importance of re-politicising the intersection between climate change and human mobility, Zetter and Morrisey used case studies to illustrate the political dimension of issues that influence "(im)mobility decisions" such as the distribution of social and political power at national and local level.[43] Going a step forward, Cooper et al. identified a less mainstream way of framing the environmental migrant which is that of a "political subject".[44] Such framing is built on the understanding that constraints related to unequal power relationships can limit people's mobility choices in times of environmental adversity, but it also stresses migrants' capacity to challenge these structures and claim their place in decision-making processes that affect them.

In a similar spirit, other authors have highlighted the political nature of disasters, and in particular states' responsibilities, not only in causing climate change, but also in maintaining certain groups of people in situation of marginalisation and discrimination which heighten their vulnerability to disasters. Scott used these arguments to encourage innovative ways to consider eligibility for refugee status.[45]

In a comparable attempt to re-politicise the climate-migration nexus, especially after being reduced to a technocratic issue under the "migration as adaptation" framework, Gemenne re-considered the use of the "climate migrants or climate refugee" label, especially to promote awareness of the impacts of climate change or to stress the responsibility that we, as humans who have contributed to climate change, have towards those who feel compelled to move.[46]

These views are extremely important to help shaping comprehensive responses that are not only workable for states and international organisations but also mindful of the rights and the needs of those most affected, while also taking into account the political nature of climate change and climate-related human mobility.

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41   Karen McNamara and all, 'The complex decision-making of climate-induced relocation: adaptation and loss and damage', *Climate Policy*, 18|(1), 111.

42   See for example J. McAdam and all 'International Law and Sea-Level Rise: Forced Migration and Human Rights' (2016), University of New South Wales Law Research Paper No 60; available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2834832

43   R. Zetter and J. Morrisey, 'The Environment-Mobility Nexus: Reconceptualizing the Links between Environmental Strees, (Im)mobility, and Power' in E. Fiddian-Qasmiyeh and all (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press, 2014).

44   Cooper an all, 2015, n 12.

45   M. Scott, 'Finding agency in adversity: Applying the refugee convention in the context of disasters and climate change' (2016), *Refugee Survey Quarterly*, 35(4), 26.

46   F. Gemenne, 'One good reason to speak of 'climate refugees' (2015), *Forced Migration Studies*, 49, 71.

3.   Relevant policy frameworks

The academic debates and empirical research illustrated in the previous chapter have profoundly influenced the way in which intergovernmental organisations have dealt with the issue of climate-related mobility. This chapter briefly reviews how the topic has been considered in the most recent policy-making spaces, namely the Nansen Initiative and its successor, the PDD, the Task Force on Displacement under the UNFCCC and the Global Compact on Migration.

The Nansen Initiative is a state-led consultative process established in 2012 by Norway and Switzerland and aimed at "build[ing] consensus among states on key principles and elements to protect people displaced across borders in the context of disasters caused by natural hazards, including those linked to climate change.[47] The Initiative's main outcome was the adoption in October 2015 of the Protection Agenda, endorsed by 109 states, whose main contributions is to promote a comprehensive approach to disaster displacement. The PDD, which took over from the Nansen Initiative after the adoption of the Protection Agenda, is tasked with supporting states and other stakeholders in the implementation of the Agenda.[48]

The Task Force on Displacement was set up in 2015 under the UNFCCC Warsaw International Mechanism on Loss and Damage. It was tasked to develop recommendations on measures "to avert, minimize and address displacement related to the adverse effects of climate change".[49] The recommendations were adopted at COP24 in 2018, and the Task Force is now supporting states to implement them.[50]

The GCM, adopted at an intergovernmental conference in December 2018, represents the first international agreement setting a "common approach to international migration in all its dimensions".[51] It is also the first time that an international instrument on migration recognizes the link between migration and disasters, environmental degradation and climate change.[52] Despite being careful not to mention "international protection", the GCM represents the most solid recognition in an international migration instrument that forced movements of people due to disasters and climate change need to be addressed through preventative actions, measures aimed at facilitating movement in dignity and others aimed at providing solutions to those unable to return to their countries of origin. However, due to its non-binding nature and the prevalent anti-migrant rhetoric in western states, several doubts remain with regards to the willingness of states to implement it.[53]

While these three initiatives vary considerably in terms of nature, composition, ways of working and focus, they seem to align around a similar framework to deal with human mobility in the context of climate change. This is articulated around three pillars: a) reducing the need for people to move, b) facilitating managed migration and, as a last resort, planned relocations to safer areas as a way to avoid forced movements, c) providing solutions to those displaced.

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[47]   The Nansen Initiative, *Towards a Protection Agenda for People Displaced Across Borders in the Context of Disasters and the Effects of Climate Change,* www.nanseninitiative.org/secretariat/

[48]   See https://disasterdisplacement.org/the-platform/our-response

[49]   See UNFCCC Decision 1/CP.21, 29 January 2016, UN Doc. FCCC/CP/2015/10/Add.1, para. 49. It is worth noting that during the negotiations for the Paris Agreement, developing and least developed states included a reference in the draft text to the establishment of a "climate change displacement coordination facility", that would have provided support for emergency relief, assisted in providing organized migration and planned relocation, and undertaken compensation measures. However, due to the opposition of developed countries, parties had to settle for the Task Force, which was designed with a much less operational role and more as an advisory body. On this see J. McAdam, 'From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement', *University of New South Wales Law Journal,* 39(4), 2016, 1518.

[50]   The recommendations are available at ; available at: https://unfccc.int/sites/default/files/resource/cp24_auv_ec%20wim.pdf. For the latest Terms of Reference for the Task Force, see https://unfccc.int/sites/default/files/resource/TFD_ToR.pdf

[51]   See https://refugeesmigrants.un.org/migration-compact. The GCM, and the sister Global Compact on Refugees, result from the New York Declaration for Refugees and Migrants, adopted by the UNGA in September 2016 (UN Doc. A/RES/71/1).

[52]   W. Kälin, 'The Global Compact on Migration: a ray of hope for disaster-displaced persons' (2018), *International Journal of Refugee Law*, 20. Of the GCM's 23 objectives, objectives 2 and 5 are particularly relevant. In particular, objective 2, dedicated to "minimiz[ing] the adverse drivers and structural factors that compel people to leave their country of origin", includes a sub-section on "natural disasters, the adverse effects of climate change and environmental degradation". Objective 5, which focuses on "enhanc[ing] availability and flexibility of pathways for regular migration", includes relevant mechanisms to facilitate admission and stay of people who are compelled to leave their countries due disasters and climate change.

[53]   The US, Australia and several European states withdrew from the negotiations or refused to adopt the final text. See S. Fella, 'The United Nations Compact for Migration' (2019), House of Commons, Research Briefing CBP-8459; available at: https://commonslibrary.parliament.uk/research-briefings/cbp-8459/

Firstly, there seems to be consensus among the three policy initiatives that preventative actions are crucial both to *avert* displacement and to allow people to stay in their places of habitual residence. These measures include mitigating climate change, as well as supporting people to adapt to its unavoidable effects and strengthening disaster risk reduction (DRR) measures. For this purpose, the integration of human mobility considerations in national plans such as National Determined Contributions,[54] National Adaptation Plans and national DRR plans plays an important role.

Secondly, the three policy frameworks seem to accept that in managed migration and, as a last resort, planned relocations can be effective ways to *minimize* forced movements. This is clearly anchored in the theory of "migration as adaptation".

Thirdly, the three initiatives are also aligned on the understanding that, despite the preventative actions described above, a certain amount of displacement will be inevitable, especially as the impacts of climate change intensify. It follows that effective solutions need to be identified to *address* displacement and respond to the needs of those displaced. While the TFD is less specific on this point, the NI/PDD and the GCM identify the need to multiply and harmonize the practices already existing in some countries to allow admission, stay and non-repatriation of those compelled to move due to disasters and climate change.

In addition, the three policy frameworks seem to be inclined towards developing solutions at bilateral, sub-regional, and regional level more than at international level. This is a very pragmatic approach and one that could bear most fruit in the long term, including in terms of paving the way to codification under international law.

Finally, while the three policy frameworks provide a multi-prong approach to climate-related mobility, they lack a climate justice angle, and particularly the recognition that, especially when it comes to climate change, not all states bear equal responsibility and that those most responsible should also step up in their role to provide effective solutions to avert, minimize and most of all to address displacement.

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54   Under the Paris Agreement, state parties are due to submit Nationally Determined Contributions to the UNFCCC Secretariat, indicating the national target for emission reductions and the actions to meet that target.

4.   The EU response

4.1   introduction

The previous chapter showed the alignment of different policy initiatives around a similar framework for responding to human mobility in the context of climate change, articulated around three pillars. Here I refer to these three pillars with the terms used by the TFD: "averting", "minimizing", and "addressing" climate-related displacement.

In this chapter, I use this framework to study how the EU has been responding to the issue of human mobility in the context of climate change over the last decade, analysing policy positions and legal developments at the EU level in each of those three areas.

4.2   Averting displacement

Averting displacement is "understood as measures to reduce or avoid the risk of forced and unmanaged migration as much as possible. Measures may include: disaster risk reduction, climate change adaptation and mitigation, resilience building and community stabilization".[55]

EU institutions have long acknowledged climate change and environmental degradation as important drivers of migration and displacement.

Initially, EU institutions were influenced by "maximalist" approaches described in chapter 2 of this study and viewed climate and environmental-related migration as a threat to national security. For example, in a 1999 Resolution, the EP warned how environmental factors were increasing the incidence of so-called "environmental refugees" and how this phenomenon would put pressure on EU policies such as migration, development and humanitarian aid and would increase instability including, indirectly for the EU.[56] Similarly, in a 2008 paper from the High Representative and the EC, "environmentally-induced migration" is listed as one of the threats related to climate change, on the assumption that "such migration may increase conflicts in transit and destination areas" and that the "substantially increased migratory pressure" to be expected in Europe would negatively impact Europe's stability.[57]

As the migration–development nexus emerged in EU policy discourse,[58] since the early 2010s, EU institutions have predominantly seen climate-related mobility as an issue pertaining to development cooperation and humanitarian assistance,[59] even though the framing of environmental migration as a security threat continues to be used in some official EU documents, such as the Council of the European Union's conclusions on European Climate Diplomacy between 2016 and 2020.

This framing first became evident in the 2013 Commission Staff Working Document (SWD) on "Climate, environmental degradation and migration",[60] which still remains the only EC document dedicated to the topic. The SWD bases its arguments on the Foresight report's findings that environmental migration is and will be mostly internal and will mostly occur within the Global South. As a result, the SWD concentrates most of its analysis and recommendations to EU policies with an external focus, including on development, foreign policy and humanitarian aid.

Although the development approach differs from the securitization one as it emphasizes the positive contributions of migration, the EU has used the development-migration nexus mostly "as a means to control

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55   International Organisation for Migrations (IOM), 'Mapping Human Mobility and Climate Change in Relevant National Policies and Institutional Frameworks' (2018), WIM Task Force on Displacement Activity I.1, 6; available at: https://unfccc.int/sites/default/files/resource/20180917%20WIM%20TFD%20I.1%20Output%20final.pdf

56   European Parliament, *Resolution on The Environment, Security and Foreign Policy* (1999); available at: https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A4-1999-0005+0+DOC+XML+V0//EN#Contentd1030708e346

57   N 14, 4.

58   S. Lavenex and R. Kunz, 'The Migration-Development Nexus in EU External Relations', (2008), *Journal of European Integration*, 30(3), 439.

59   M. Mayrhofer and M. Ammer, 'People Moving in the Context of Environmental Change: The Cautious Approach of the European Union' (2014), *European Journal of Migration and Law*, 16(3), 389.

60   SWD(2013) 138 final

migration better"[61] and to craft interventions that can reduce the risk of people having to move, therefore preventing people coming to Europe.[62]

As my analysis will reveal, this approach is reflected in the fact that that the majority of references to the climate-migration nexus in EC's documents are found in relation to the need to tackle climate change vulnerability as a way to address some of the root causes of migration and displacement.

For example, in the 2011 Communication on the Global Approach to Migration and Mobility (GAMM), which sets out the overarching framework of the EU's external migration policy, the Commission referred to climate change only as an increasing driver of migration and displacement and considered that "addressing environmentally induced migration, also by means of adaptation to the adverse effects of climate change should be considered part of the Global Approach".[63]

Similarly, the 2015 Agenda for Migration, recognizing that "civil war, persecution, poverty, and climate change all feed directly and immediately into migration", reaffirmed that preventing and mitigating these threats is of primary importance to addressing the root causes of irregular migration and forced displacement in third countries.[64] Equally, the 2020 Communication on the New Pact on Migration and Asylum stated that addressing the challenge of climate change, alongside work to *inter alia* reduce poverty, promote human development, democracy and peace, "can all help people feel that their future lies at home".[65]

Also the Council of the EU, in its Conclusions on European Climate Diplomacy after COP21, stated that "by further analysing climate vulnerability links with fragility and security risk, the EU will be in a better position to identify areas where combined risks are particularly high and where there are critical opportunities for conflict prevention and resilience, including in the context of a wider migration challenge".[66]

In international fora in which the climate-migration nexus has been specifically debated, the EU has been also particularly vocal concerning the need to address the root causes of migration as a way to avert displacement.

For example, in a speech endorsing the Nansen Initiative's Agenda for Protection in 2015, the EU representative, recalling the different root causes of forced displacement and migration including climate change, stressed the intention to "join up" EU actions aimed at tackling root causes, and praised the Nansen Initiative for "addressing some of these root causes in very practical and well-conceived ways".[67]

In its negotiating position for the GCM, the EU also prevalently dealt with the climate-migration nexus in relation to addressing the drivers of migration. In particular, the EU's input to the UN Secretary-General's report informing the Zero Draft of the GCM recommended, inter alia: enhancing climate risk assessment to better predict the impact on migration; integrating human mobility and migration management into DRR policies, preparedness and early-warning mechanisms and climate change adaptation strategies; addressing drivers of migration through an integrated approach to conflict and crises. [68]

In the context of the UNFCCC negotiations on loss and damage, the EU also stressed the need for a "comprehensive response to the link between climate change and mobility, addressing at once security, climate resilience, disaster risk management, food security, natural resource management, and environmental degradation and sustainable urban/rural development".[69]

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61   Lavenex and Kunz, 2008, n 58, 443.

62   Ammer and all, 'Time to act - How the EU can lead on climate change and migration' (2014) Heinrich Böll Stiftung; available at: https://eu.boell.org/en/2014/06/12/time-act-how-eu-can-lead-climate-change-and-migration

63   COM(2011) 743a final, p. 7.

64   COM(2015) 240 final, p. 7.

65   COM(2020) 609 final, p. 20. COM(2020) 609 final, pp. 19-20.

66   Council of the European Union (2016), Doc. 6061/16, p. 5.

67   Statement by Dominic Porter, Deputy Head of the European Union Delegation to the United Nations in Geneva (2015) in *Nansen Initiative, Global Consultation, Conference Report*, 12-13 October 2015, 11; available at: https://www.nanseninitiative.org/wp-content/uploads/2015/02/GLOBAL-CONSULTATION-REPORT.pdf

68   See https://refugeesmigrants.un.org/sites/default/files/stocktaking_eu.pdf

69   Bulgarian Presidency of the Council of the European Union, Submission on behalf of the European Union and its Member States, on views in the context of activity (a) of the strategic workstream (e) of the five year rolling work plan of the Executive Committee of the Warsaw Inter-

What this long non-exhaustive list shows is an abundance of references by EU institutions to the need to avert displacement through a "root cause approach". While this is a very important tactic, it is not in itself sufficient to fully address the needs and protect the rights of people facing the worst impacts of climate change. Moreover, as the next chapter will show, the "root cause approach" to deal with irregular migration and displacement, has proved to be limited, especially if its main objective is migration control rather than the protection of rights of people at risk of displacement.

4.3   Minimizing displacement

Minimizing displacement is understood as measures to avoid forced displacement by facilitating human mobility in a way that is orderly and as beneficial as possible for the affected people, the communities left behind and those receiving them. Such measures may include ensuring regular migration pathways or, as a last resort, planning relocations of people living in high-risk areas, internally or cross-border.[70]

The analysis of most recent EU documents on migration policy, as well as negotiating positions within the GCM and the UNFCCC, reveals some awareness on the part of the Commission, and even more so of the Parliament, about the need to increase regular migration pathways. This is motivated mostly by the understanding that, due to European demographics, migrants are necessary to sustain the European economy and its welfare system.[71] There is also the acknowledgement that "well-managed migration" can reduce the incentives for people to enter the EU irregularly.[72]

However, my analysis also shows a very limited degree of recognition that enhancing pathways for safe, regular and orderly migration towards Europe is particularly important to provide alternatives to people living in areas severely affected by climate change and environmental degradation, who might otherwise be then forcibly displaced. With the exception of a 2013 position paper by the Greens in the European Parliament, the issue of regular migration pathways and the response to human mobility in the context of climate change remain largely unconnected.[73]

In the 2013 SWD, the Commission seemed to embrace the "migration as adaptation" approach as it argued that "facilitating well-managed mobility and labour migration from environmentally degraded areas can represent an effective strategy to reduce environmentally-induced displacement" and that the potential of migration to contribute to adaptation "should be fully exploited, including through measures to promote well-managed legal mobility".[74] Similarly, the 2013 Communication on Maximizing the Development Impact of Migration of May recognized "the role of migration as a strategy to strengthening adaptation and household resilience".[75] However, the measures suggested by the Commission in the SWD only refer to promoting regular migration among third countries, neglecting the need for Europe to also provide more regular migration avenues to those at risk of being forcibly displaced by the effects of climate change.[76]

In the 2018 Communication on enhancing legal pathways to Europe, the Commission made no specific reference to climate-related mobility, even though it acknowledged that "controlled legal migration" should be facilitated both on the basis of market needs and *"for humanitarian reasons"* (emphasis added).[77]

In its positions during the GCM negotiations, the EU advocated facilitating opportunities for safe, orderly and regular migration but did not connect this with the need to minimize displacement of those most at risk due to the climate crisis,[78] despite the EU being quite "vocal" on including people displaced by disas-

national Mechanism on Loss and Damage, 15 February 2018.

70   IOM, 2016, n 55.

71   See for example European Commission: COM(2011) 743 final, COM(2015) 240 final, and COM(2020) 609 final; European Parliament, Resolution 2015/2342(INI).

72   See for example European Commission: COM(2018) 635 final, COM(2019) 126 final, COM(2020) 609 final.

73   The Greens in the European Parliament, Position paper on *"Climate change, refugees and migration"* (2013); available at: http://rosamar-tinez.org/wp-content/uploads/2015/11/Greens-EFA-Position-Paper-Climate-Change-Refugees-and-Migration.pdf

74   SWD(2013) 138 final, respectively pp. 26 and 25.

75   COM(2013) 292 final, p. 12.

76   Mayrhofer and Ammer, 2014, n 59; Ammer et all, 2015, n 62.

77   COM(2018) 635 final.

78   EU input to the UN Secretary-General's report on the Global Compact for Safe, Orderly and Regular Migration (2017); available at:

ters and climate change in the GCM.[79] The same applies to the EP, which in its resolution on the two Global Compacts, only referred to climate-related movements in relation to the importance to retaining a focus on "addressing the diverse drivers of irregular migration and forced displacement, [including] climate change and natural disasters".[80] Even though it recognized migration as a "proactive adaptation strategy" and advocated "opening more legal pathways for migration", it did not refer to that as being, inter alia, an important strategy to respond to climate-migration.

Similarly, none of the analysed EC's documents on climate change adaptation and resilience mention migration as a possible mechanism to facilitate adaptation to adverse climate impacts.[81] The EU dedicated policy framework on displacement, based on the Commission's Communication **"Lives in Dignity: from Aid-dependence to Self-reliance"**[82] and the Council Conclusions on forced displacement,[83] also fail to acknowledge migration as a solution to minimize climate-related displacement.[84]

The 2019 Commission Staff Working Document on "Fitness check on EU legislation on legal migration" includes a timid attempt to connect the dots, as the evaluation analysed the relevance of the EU legislation on legal migration with respect to "the socio-economic, environmental (including climate change) and security factors that are expected to be the main drivers of migration to the EU in the short/medium term (2030)".[85] However, the topic was not studied in great detail due to wide breath of the study in general, and the 2013 SWD was taken as the main reference document. Consequently, the Fitness Check only concluded that "there is a need to understand better and take greater account of the impact of evolving socio-economic and environmental factors (including climate change) on the relevance of the acquis".[86]

The 2020 Communication on a New Pact on Migration and Asylum only refers to climate change as a driver of migration and in relation to the tackling the root causes of irregular migration. While it includes some lines about the development of legal migration pathways to Europe, it once again fails to identify clear mechanisms to facilitate the mobility of those who might be at risk of displacement due to climate change.

In any case, it is a widely shared observation that the EU policy on facilitating regular migration has been largely inadequate until now.[87] This is mostly due to the Treaty of the European Union leaving "legal migration" as an area of shared competence between the EU and its MS. The EU's actions are therefore severely limited by MS' positions which, so far, have privileged containment of irregular migration over facilitation of safe, regular and orderly movements. As per the Commission's own assessment, "the sharper political focus on addressing irregular migration has made it more and more difficult to develop an EU policy on legal migration, particularly beyond the highly skilled migrants".[88]

The harmonization of EU rules on entry and residence have only concerned specific categories of migrants, such as highly skilled workers, students, scientific researchers, and seasonal workers. As observed in the Fitness Check report, important categories of migrant workers are not covered by the EU Directives, at least in terms of admission conditions, such as "non-seasonal low/medium-skilled workers, jobseekers, service providers covered by the EU's trade commitments except intra-corporate transferees, and the self-em-

https://refugeesmigrants.un.org/sites/default/files/stocktaking_eu.pdf

79 Kälin, 2018, n 52.

80 EP, Resolution of 18 April 2018 on progress on the UN Global Compacts for Safe, Orderly and Regular Migration and on Refugees (2018/2642(RSP)).

81 EC, Communication on "The EU Approach to Resilience: Learning from Food Security Crises", COM (2012) 586 final; EC, 'Resilience Compendium. Saving lives and livelihoods' (2015); EC, 'Building Resilience: the EU's approach' – Factsheet (2016); EC, Report on the implementation of the EU Strategy on adaptation to climate change, COM(2018) 738 final.

82 COM (2016) 234 final.

83 See https://www.consilium.europa.eu/en/press/press-releases/2016/05/12/conclusions-on-forced-displacement-and-development/

84 EP, Climate Change and Migration (2020); available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/655591/IPOL_STU(2020)655591_EN.pdf

85 SWD (2019) 1055, 29.

86 SWD (2019) 1055, 100.

87 P. De Bruycker, 'Towards a New European Consensus on Migration and Asylum', EU Migration Law Blog, 2 December 2019; available at: https://eumigrationlawblog.eu/towards-a-new-european-consensus-on-migration-and-asylum/; R. McLeman, 'International migration and climate adaptation in an era of hardening borders' (2019), *Nature Climate Change*, 9(12), 911.

88 SWD (2019) 1055, 5.

ployed/entrepreneurs".[89] A limited fraction of people affected by the worst impacts of climate change and environmental degradation would therefore be covered by the existing EU legislation.[90] While the Seasonal Migrant Worker Directive could be a tool for those willing to use seasonal migration as an adaptation strategy, it has some important loopholes from a human rights perspective as highlighted by the UN Special Rapporteur on the Rights of Migrants.[91] In addition, as per the Commission's admission,[92] conditions for the entry and circulation of highly-skilled workers regulated by the 2009 Blue Card directive are overly restrictive and the reform of the directive has been stalled for the past few years due to disagreement between MS.

Moreover, the set-up and the implementation of several pilot projects on labour migration between selected EU MS and certain African third countries has proved difficult due to "high operational costs, limited employer or migrant buy-in, and insufficient political support".[93]

Although the 2020 Commission's Communication on a New Pact on Migration and Asylum recognizes the importance of facilitating "legal migration and mobility", the document remains imprecise on the nature of the actions to be adopted and on a roadmap for regular migration.[94] As argued by several NGOs, its proposals also lack ambition[95] and frame labour migration as an issue of "attracting skills and talents".

Scholars and independent institutions have also observed that the framework for orderly migration has been given a subordinated function to the prevailing imperative of controlling irregular migration, especially in the EU's relation with countries of origin or transit.[96] For example, Akermann, referring to the Joint Valletta Action Plan,[97] observed that the EU "has used legal migration, and the issuing of visas, as a bargaining chip with African countries, to force them to strengthen border security and to accept deported migrants".[98] Despite the promise of a "fresh start", the Commission's New Pact on Migration and Asylum leaves this approach unchanged.[99]

To sum up, my analysis reveals on the one hand very limited recognition by the European Institutions that facilitating regular migration also represents an effective response to climate-related mobility. On the other hand, it shows that the EU's actions to enhance regular migration pathways to Europe has been largely inadequate, providing little solace to the people most impacted by climate change.

4.4   Addressing displacement

Despite the many possible preventative strategies, climate-displacement remains inevitable under certain circumstances. "Addressing displacement" therefore refers to "measures to prepare for and respond to displacement when it happens, including through ensuring assistance and protection for those on the move due to climate change, and seeking lasting solutions".[100] Measures include both those to be taken in the

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89   SWD(2019) 1055, 101.

90   Ammer and all, 2014, n 62.

91   Mayrohfer and Ammer, 2014, n. 59.

92   COM(2018) 635 final

93   K. Hooper, 'Exploring New Legal Migration Pathways: Lessons from Pilot Projects' (2019), Migration Policy Institute, p. 5; available at: https://www.migrationpolicy.org/research/exploring-new-legal-migration-pathways-lessons-pilot-projects

94   D. Ruy and E. Yayboke, 'Deciphering the European Union's New Pact on Migration and Asylum', Centre for Strategic & International Studies, 29 September 2020; available at: https://www.csis.org/analysis/deciphering-european-unions-new-pact-migration-and-asylum; E. Dempster and M. Clemens, 'The EU Migration Pact: Putting Talent Partnerships into Practice', Centre for Global Development, 19 November 2020; available at: https://www.cgdev.org/blog/eu-migration-pact-putting-talent-partnerships-practice

95   NGOs joint statement, 'The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded'; available at: https://www.hrw.org/sites/default/files/media_2020/10/NGO-Statement-Pact-Oct-2020-FINAL.pdf; ETUC Statement on the New Pact on Migration and Asylum, 24 November 2020; available at: https://www.etuc.org/en/document/etuc-statement-new-pact-migration-and-asylum

96   De Bruycker, 2019, n 87.

97   The Plan was adopted at the EU-Africa Summit on Migration held at La Valletta, Malta, in November 2015. The action plan aims at enhancing migration governance between Europe and Africa and includes "[p]romoting regular migration channels for migration and mobility from and between European and African countries".

98   M. Akermann, 'Expanding the Fortress. The policies, the profiteers and the people shaped by EU's border externalisation program' (2018), Transnational Institute and Stop Wapenhandel, p. 38; available at: https://www.tni.org/en/publication/expanding-the-fortress

99   D. Ruy and E. Yayboke, 2020, n 94.

100   IOM, 2018, n 55, 6.a

country of origin, such as contingency planning and humanitarian relief aid, and those to facilitate protection of people moving across borders, such as humanitarian protection measures to enable the temporary admission and stay, or non-return policies.[101]

In 2012, Coopers stated, "there is little foundation for claiming that Europe has, by any measure, addressed the growing protection gap created by disaster-induced displacement".[102] Unsurprisingly given the political context and the EU restrictive approach to asylum and international protection, my analysis reveals that this statement continues to hold true. I will illustrate this by discussing the EU's failure to amend relevant pieces of EU legislation or to harmonize European practices.

The Temporary Protection Directive (TPD), adopted in 2001, is considered to have some potential to provide responses at least to certain categories of people in need of international protection due to climate change. Although it contains no explicit reference to people moving due to disasters or climate change, many have supported the idea that it could cover mass influxes originated by rapid onset disasters, especially because the definition of "displaced persons" included in article 2(c) is not exhaustive.[103] Even the Commission recognized this possibility in the 2013 SWD, although without specifying the circumstances under which it would consider the Directive to be applicable for environmentally-displaced persons.[104] However, looking at the *travaux preparatoirs*, Cooper has 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."[105] In addition, an EC study on the TPD did not mention its possible application to displacements related to climate change, disasters or the environment.[106]

Most authors also agree that the TPD would only be of limited use for the protection of people displaced in relation to climate change. First, it is only applicable in the event of a "mass influx" or imminent mass influx of displaced persons. While the directive does not define what constitutes a mass influx and leaves the decision to the Council on a case-by-case basis by a qualified majority and upon proposal by the Commission, it is clear that the directive would not apply to individuals in need of protection who would not be arriving as part of a "mass influx".[107] Secondly, as per its name, the directive would only provide temporary protection and would therefore not represent an adequate response to those unable to return home after a set amount of time, including those whose territory may have become uninhabitable.[108]

In addition, art 2(a) specifies that the Directive would apply "in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation", suggesting the existence of another layer of conditions besides the objective need to provide temporary protection to people unable to return to their countries.

In any case, given the high political threshold for its activation, it has been impossible to activate the TPD even in more straight-forward cases, such as when Italy and Malta requested the Commission to propose its activation in 2011, following the arrival in several months of about 26,000 people on the Italian island of Lampedusa.[109] Not even the arrival of over a million displaced people in 2015 and the consequent pressures from the EP, UNHCR and civil society led to its activation.

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101   Ibid; Nansen Initiative, 2015, n 2.

102   M. Cooper, 'Migration and Disaster-Induced Displacement: European Policy, Practice, and Perspective' (2012), Center for Global Development, Working Paper 308, 88; available at: https://www.cgdev.org/publication/migration-and-disaster-induced-displacement-european-policy-practice-and-perspective

103   V. Kolmannskog and F. Myrstad, 'Environmental Displacement in European Asylum Law' (2009), *European Journal of Migration and Law*, 11(4), 313; W. Kälin, 'Conceptualising climate-induced displacement' in J. McAdam (ed.), *Climate Change and Displacement. Multidisciplinary Perspectives* (Hart Publishing2010); EP, 'Study on "Climate Refugees" – Legal and policy responses to environmentally-induced migration' (2011); available at: https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-LIBE_ET%282011%29462422

104   Ammer et all, 2014, n. 62, 32.

105   Cooper, 2012, n 102, 48.

106   EC, Study on the Temporary Protection Directive (2016); available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/asylum/temporary-protection/docs/final_report_evaluation_tpd_en.pdf

107   Kolmannskog and Myrstada, 2009, n 103.

108   Ibid; G. Sciaccaluga, 'Sudden onset disasters, human displacement and the Temporary Protection Directive: space for a promising relationship?' (2018), RLI Working Paper Series Mini-volume (Papers 23–26); available at: https://sas-space.sas.ac.uk/9172/1/Mini-Vol_Environmental%20Displacement%20in%202018.pdf

109   Sciaccaluga, 2018, n 108.

In September 2020, as part of the "new pact on migration and asylum" the Commission presented the proposal for a new regulation providing immediate protection in situations of crisis, which would repeal the TPD.[110] While the proposal aims to simplify the activation process and increases the level of protection offered to eligible persons, the eligibility criteria have been defined much more narrowly than the TPD.[111] It applies to "displaced persons who, in their country of origin, are facing an exceptionally high risk of being subject to indiscriminate violence, in a situation of armed conflict, and who are unable to return to that third country" (art 10), leaving very little hope that it could apply to people who are displaced in the context of climate change.

The applicability of the Qualification Directive to people fleeing for environmental reasons was also a subject of debate.[112] In particular, the discussion has revolved around its articles regulating subsidiary protection,[113] which is a form of complementary protection for those who do not qualify as refugees under the Geneva Convention but cannot be returned home based on human rights law and customary international law.

According to the Directive, people eligible to subsidiary protection are those who, if returned to their country of origin would face a real risk of suffering serious harm. Article 15 defines "serious harm" as a) death penalty or execution; b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

In 1999, during the consultation preceding the presentation of the first proposal, the Commission asked MS whether subsidiary protection should be extended to people displaced by "environmental disasters".[114] This option was finally not included in the first proposal and, although the Parliament claimed that cross-border environmental displaced persons 'equally need protection' and that 'there is an urgent need to devise the appropriate instruments and policies of prevention',[115] this element was not included in the final text. Similarly, the Commission's original proposal included a wider formulation of article 15(c), providing subsidiary protection to all those displaced as 'a result of systematic or generalized violations of their human rights', but was then amended by the Council.[116]

Although grounds for "serious harm" do not explicitly mention environmentally-displaced people, some believe that the article 15(b) could be used to extend subsidiary protection to that category, specifically when, after extreme disasters or degradation, returning the persons to their country of origin would amount to torture or cruel and inhuman treatment.[117]

The Commission took a different view in the 2013 SWD where it stated that the Directive does 'not include environmental degradation nor climate change amongst the types of serious harm which can lead to granting such protection' (p. 18). However, this conclusion was poorly explained and failed to take into account the potential effect of returning a person to a certain situation after extreme disasters and other forms of environmental degradation.[118] This has become more evident following the 2020 decision by the UN Human Rights Committee in the case *Teitiota v. New Zealand*, indicating that returning someone to a country where, due to the climate crisis, their life is at risk, or in danger of cruel, inhuman or degrading treatment could be unlawful.[119] The European Commission should therefore dedicate the necessary atten-

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110   COM(2020) 613 final.

111   I.G. Meltem, 'What a difference two decades make? The shift from temporary to immediate protection in the New European Pact on Migration and Asylum', EU Migration Law Blog, 11 November 2020; available at: https://eumigrationlawblog.eu/what-a-difference-two-decades-make-the-shift-from-temporary-to-immediate-protection-in-the-new-european-pact-on-asylum-and-migration/#more-3339

112   The Directive was first adopted in 2004 (2004/83/EC), then recast in 2011 (2011/95/EU) and a proposal for a Regulation Directive was issued in 2016 but has not been adopted yet.

113   Art. 2(e) and 15 in the 2004 Directive and 2(f) and 15 in the 2011 version.

114   Kolmanskogg and Myrstad, 2009; EP, 2011, n 107.

115   EP, Committee on Civil Liberties, Justice and Home Affairs, Report, 2002, Doc. A5-0333/2002; available at: https://www.europarl.europa.eu/sides/getDoc.do?reference=A5-2002-0333&type=REPORT&language=EN&redirect

116   EP, 2011, n 103.

117   Kolmanskogg and Myrstad, 2009, n 114; Mayrhofer and Ammer, 2014, n 59.

118   Mayrhofer and Ammer, 2014, n 59; Ammer et all, 2014, n 62.

119   UN Doc. CCPR/C/127/D/2728/2016.

tion to ensure MS follow this decision and also UNHCR guidance[120] when assessing claims for international protection made in the context of the adverse effects of climate change and disasters.

The Commission has shown no interest in reforming the Qualification Directive to provide a clear reference to people displaced in connection with environmental factors. The Greens in the European Parliament lamented that "the relevant article was not opened for amendments in the recast proposals, completed in 2011".[121] Similarly, a proposal for a Qualification Regulation (QR) issued in 2016 contains nothing on this aspect.[122] The Parliament's Rapporteur sought to expand the concept of serious harm as set out in Article 16 of the proposal to include, among others, "severe violations of human rights or events seriously disturbing public order".[123] However, this proposal did not receive sufficient political support within Parliament and therefore did not make it into its mandate for negotiations with the Council. Since this mandate for negotiations has not changed after the 2019 elections and does not include any reference to climate change or environmental degradation, the possibility of a reform in this regard remain remote even when the negotiations on the QR proposal re-start.

Previous analysis of MS legislation revealed that only Finland and Sweden adopted provisions to explicitly provide protection to people displaced for environmental reasons, while in several other countries, legislation is broad enough to allow for progressive interpretation.[124]

However, the failure to harmonize such protection mechanisms and achieve a "regional disaster-related displacement protection scheme"[125] has led states towards a race to the bottom, with Sweden and Finland rolling back on their model legislation. Following the arrival of a large number of asylum-seekers in Europe in 2015, Finland and Sweden repealed (although temporarily in the case of Sweden) their provisions on humanitarian protection, which included environmentally displaced people.[126] This was due to the fear that their more progressive legislation compared to other MS would have led to receiving a disproportionate number of people in need of protection.

This example shows the importance for the EU to take harmonised action to address the protection needs of cross-border displaced people who reach EU territory. Unfortunately, Europe was among the few regions not covered by the process of regional consultations hold by the Nansen Initiative, mostly due to budget constraints but also to the perception that Europe was less of a priority given the regime of free circulation within the EU and the less likelihood of Europe receiving cross-border disaster-displaced persons from third countries. Similarly, by early 2020, within the PDD, discussions on how to promote harmonization among European countries of humanitarian protection for cross-border disaster displaced persons have yet to start.

In summary, my analysis paints a bleak picture of the EU's willingness and capacity to fill the legal and policy gaps in ensuring adequate protection to people fleeing in relation with climate change, with restrictive interpretations of existing EU legislation and failure to adopt relevant amendments in European law and to harmonize domestic laws.

120   UNHCR, Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters, 1 October 2020, ; available at: https://www.refworld.org/docid/5f75f2734.html

121   The Greens in the European Parliament, n 73.

122   COM/2016/0466 final.

123   EP, Committee on Civil Liberties, Justice and Home Affairs, Report, Doc. A8-0245/2017; available at: https://www.europarl.europa.eu/doceo/document/A-8-2017-0245_EN.html

124   ICMPD, 'Comparative Study on Categorized Protection' (2006); available at: http://cmr.jur.ru.nl/cmr/docs/cb.study.pdf; EMN, 'The different national practices concerning granting of non-EU harmonised protection statuses – Synthesis Report' (2010); available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/non-eu-harmonised-protection-status/0_emn_synthesis_report_noneuharmonised_finalversion_january2011_en.pdf

125   Scott, 2016, n 45, 29.

126   E. Hush, 'Developing a European Model of International Protection for Environmentally-Displaced Persons: Lessons from Finland and Sweden' (2018), *Columbia Journal of European Law*; available at: http://cjel.law.columbia.edu/preliminary-reference/2017/developing-a-european-model-of-international-protection-for-environmentally-displaced-persons-lessons-from-finland-and-sweden/

5.   Factors influencing the EU response

The previous chapter identified the insufficient EU response to human mobility in the context of climate change over the last decade, with the issue of climate-related mobility emerging mostly within discourses and strategies to prevent irregular migration and displacement and a lack of political will to facilitate labour migration as a form of adaptation and to provide protection in Europe to people displaced in connection with climate change.

To deepen the analysis, this chapter discusses possible factors that have contributed to shape EU's policies, legislation, and positions on this topic.

5.1   Complexity of the issue

The issue of human mobility in the context of climate change is undeniably complex. As we have seen, scholars and institutions have often taken diverging opinions on how to conceptualise the problem and on best possible solutions to recommend and implement.

The exact role played by environmental factors in influencing mobility decisions, the mobility patterns of those who move in relation to environmental reasons, the degree of voluntariness in mobility decisions when environmental factors are at play, and the specific protection needs of those who move in connection with environmental reasons are among the difficult questions that academics and policy-makers have struggled with.

Despite the large amount of research commissioned by the EU to fill knowledge gaps, EU decision-making has undoubtedly been affected by persisting uncertainties. As stated by the Commission in the SWD, "gaps in conceptualising environmentally-induced migration hamper policy-making".[127] A symptom of this conceptual challenges is the lack of an agreed definition, which also affects EU institutions.[128] Another is the difficulty of quantifying the phenomenon, resulting in different approaches and reactions by different European institutions.

My analysis reveals the coexistence within European institutions of different framings and approaches, such as the securitization and the development ones. This confirms Mayrhofer and Ammer's assessment in 2014, that the complexity of the issue makes it difficult for the EU to achieve "a distinct EU position not to speak of a coherent policy and legal framework".[129]

5.2   Different entities involved

The issue of human mobility in the context of climate change is inter-disciplinary. It falls at the intersection of multiple policy areas, such as migration and asylum, climate change, humanitarian aid, disaster risk reduction, development cooperation, and external relations. Within the Commission, this means the involvement of at least four different Directorates (respectively DG Home, DG Clima, DG ECHO, DG DevCo). Each of these directorates approaches the issue applying their specific perspective to the issue. The EU's diplomatic service, the European External Action Service – EEAS, is also a key actor, with its own viewpoint.

The result is difficulty in implementing a coordinated and effective migration policy in general and the on-going lack of a specific policy to address the issue of human mobility related to climate change and other environmental reasons, despite the wealth of EU-funded research and policy papers.[130] The only official document dedicated to the topic, the 2013 SWD, does not represent a fully-fledged policy.

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127   SWD(2013) 138 final, 12.

128   Mayrhofer and Ammer, 2014, n 59.

129   Ibid, 398.

130   E. Petrillo 'Environmental Migrations from Conflict-Affected Countries: Focus on EU Policy Response' (2015), The Hague Institute for Global Justice, Working Paper 6; available at: http://www.thehagueinstituteforglobaljustice.org/wp-content/uploads/2015/10/Working-Paper-6-Environmental-Migrations-1.pdf

Similarly, my research identifies some disparities in how and how much different Commission Directorates and different EU institutions raise the issue in different *fora*. For example, on the one hand the EU, mostly through the EEAS, has championed the issue of climate-related mobility by funding the research and consultations within the Nansen Initiative and being an active member of the steering group of both the Initiative and the PDD and co-chairing the Group of Friends of the PDD, as well as by promoting the inclusion of the topic in the GCM. Also, DG DevCo is currently funding a project to support Pacific island countries to strengthen their response to disaster displacement.[131] On the other hand, DG Home appears less proactive on the issue, with no interest shown in promoting the reform of relevant EU laws on international protection and only a timid recent acknowledgement of the need to further monitor the impacts of climate change on migratory flows to assess the relevance of EU legislation on regular migration.[132] Concerning DG Clima, although it engages on this topic mainly through the TFD in the UNFCCC, my analysis of key policy documents on climate change shows that little attention is paid to climate-related mobility. For example, only one reference was found in pre-COP negotiating positions,[133] indicating that the EU might not be attaching a high importance to the topic within climate change negotiations. Despite climate change figuring high on top of the agenda for the current President of the Commission, no reference was found to proposed solutions to the issue of climate-related mobility in her speeches, nor in recent Commission's proposals on climate change.[134]

5.3   Role of member states in asylum and immigration policies

Compared to other fields, asylum and immigration are areas where the process of "Europeanisation" is still young. Before the adoption of the Maastricht Treaty (1992), the European Community had no role in coordinating immigration and asylum policies. While the Maastricht Treaty brought these areas into EU competence, it nevertheless left MS largely in charge of decision-making through the Council.[135] The Amsterdam Treaty diminished the power of the Council, but it was only the Lisbon Treaty, entered into force in 2009, that made Parliament a co-legislator on an equal footing with the Council, with the exception of provisional measures to be taken in the event of a sudden inflow of third-country nationals.[136]

Even with these important changes, reaching a truly common immigration policy has proved difficult, as has been achieving a truly integrated Common European Asylum System, mostly due to disagreements between states which have translated into blockages at different levels. Particularly in the area of immigration, reaching a 'common immigration policy', as mandated by the Treaty on the Functioning of the European Union (TFEU), has been complicated by the fact that, while the EU is competent to "lay down the conditions governing entry into and legal residence in a Member State",[137] MS retain the "right to determine volumes of admission of third-country nationals coming from third countries to their territory to seek work".[138] The importance that MS attribute to this principle is evidenced by the multiple reassurances issued by the EU during the GCM negotiations about the fact that the GCM did "not entail any transfer or restriction of national sovereign rights or competences" and that it could "not change the allocation of competences between the European Union and its Member States".[139] Despite these reassurances, three EU MS decided to vote against the official adoption of the GCM at the UNGA in December 2018, while another

131   See: https://www.internal-displacement.org/pacific-disasters

132   SWD(2019) 1055.

133   Council of the EU, Council conclusions on the Paris Agreement and preparations for the UNFCCC meetings, 2017; available at: https://www.consilium.europa.eu/en/press/press-releases/2017/10/13/conclusions-paris-agreement-and-unfccc-meetings/

134   *Opening Statement in the European Parliament Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission*, 16 July 2019; available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_4230; *Speech in the European Parliament Plenary Session Ursula von der Leyen President-elect of the European Commission*, 27 November 2019; available at: https://ec.europa.eu/info/sites/info/files/president-elect-speech-original_en.pdf; *Speech by President von der Leyen on the occasion of the COP25 in Madrid*, 2 December 2019; available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6651; EC, Communication on "*The European Green New Deal*", COM(2019) 640 final

135   Cooper, 2012, n 102.

136   EP, Factsheet on European Immigration Policy; available at: https://www.europarl.europa.eu/factsheets/en/sheet/152/immigration-policy

137   Ibid.

138   TFEU, art 79(5).

139   EC, '*What is the Global Compact For Safe, Orderly And Regular Migration?* Memo, 14 November 2018; available at: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_6417

five abstained.[140]

Given the role maintained by MS in decision-making on immigration and asylum and how sensitive this issue has been for European countries over the last decades, it is not surprising that the EU response to human mobility in the context of climate change has not been more progressive, and not even very developed.

5.4   EU migration and asylum policies focused on containment

Influenced as it is by MS's interests, the EU policy on migration and asylum has always revolved around the imperative to restrict migrants' arrival, stay and circulation in the EU territory. It was not a coincidence that the "communitarisation"[141] of asylum and immigration policies overlapped with the completion of the European internal market, which included the free circulation of people. The need for common immigration and asylum rules regulating the entrance and circulation of non-EU citizens was regarded as a way of counter-balancing the abolition of internal borders.[142]

When the EU realised that domestic border control measures were not sufficient to stop or reduce migrant flows towards Europe, it increasingly tried to prevent migration through cooperation with countries of origin and transit.[143] The so-called "external dimension" of EU immigration and asylum policies, developed since the Tampere European Council in 1999, is based on a double approach. The first is the externalization of migration policies, which consists in demanding third countries to adopt policies and practices of border and migration control that serve the EU interests, as well as enhancing mechanisms to ensure the return and readmission of irregular migrants to their countries of origin.[144] The second, although less prevalent, is the "root causes approach", which focuses on preventing migration and displacement by tackling the root causes that lead people to move. Both approaches are based on increased cooperation and partnerships with countries of origin and transit and on the mainstreaming of migration considerations in all EU external policies. The result is an EU external migration policy which is to be "firmly embedded in the EU's overall foreign policy, including development cooperation, and better aligned with the EU's internal policy priorities."[145]

The external dimension of EU immigration and asylum gained further strength after the huge increase in asylum-seekers' arrivals in 2015. The Agenda for Migration identifies cooperation with third countries as a central element in all its four pillars. The Partnership Framework on Migration, launched in 2016, involves the conclusion of agreements on migration with countries of origin and transit and is based on a system of "positive and negative incentives", or a "carrot-and stick approach" in which development cooperation and visa policies are used as a tool to ensure cooperation on border control.[146] The Emergency Trust Fund for Africa, set up in 2015, is the "flagship instrument in tackling the root causes of irregular migration"[147] which however has been criticised for using development and humanitarian aid funds in large part for security measures and border management projects.[148] The Commission's New Pact on Migration and Asylum confirms this approach, despite its promise of a "change of paradigm" in migration cooperation with third countries.[149]

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140   Fella, 2019, n 53.

141   Communitarisation is the process of inclusion of a certain field within the competence of the European Union, as opposed to matters which remain the exclusive competence of member states.

142   V. Chetail, 'The Common European Asylum System: bric-à-Brac or system?' in P. De Brucker and all (eds), *Reforming the Common European Asylum System: the new European refugee law* (Brill Nijhoff, 2016).

143   C. Boswell, 'The 'external dimension' of EU immigraation and asylum policy' (2003), *International Affairs*, 79(3), 619.

144   Ibid; Amnesty International, 'The human rights risks of external migration policies' (2017); available at: https://www.amnesty.org/en/documents/pol30/6200/2017/en/2017; Akermann, 2018, n 98.

145   European Commission, GAMM, COM(2011) 743, p 5.

146   Akermann, 2018, n 98, 20.

147   V. D'Humiere, 'European Union/Africa cooperation: the externalisation of Europe's migration policies', Foundation Robert Schuman, European Issues No 472, 30 April 2018; available at: https://www.robert-schuman.eu/en/european-issues/0472-european-union-african-cooperation-the-externalisation-of-europe-s-migration-policies

148   E. Kervyn and R. Shilhav, 'An emergency for whom? The EU Emergency Trust Fund for Africa – migratory routes and development aid in Africa'(2017), Oxfam International; available at: https://www.oxfam.org/en/research/emergency-whom-eu-emergency-trust-fund-africa-migratory-routes-and-development-aid-africa; Akermann, 2018, n 98.

149   P. García Andrade, 'EU cooperation on migration with partner countries within the new Pact: new instruments for a new paradigm?', EU

This background provides some clues to interpret the EU response to climate-related mobility. It may explain why EU positions to "avert" climate-related displacement are more developed than those aimed at "minimizing" and "addressing" it. It also shows some possible limitations of the "root causes approach" to avert climate-related displacement if its intention is mostly weighting towards preventing migration rather than protecting the rights of people at risk of displacement. In addition, it reveals some contradictions, in as far as measures to tackle the root causes are made dependant to third countries' cooperation on migration control.

5.5   The 2015 "refugee crisis"

The arrival in Europe of more than one million asylum-seekers and migrants in 2015 sparked a variety of different responses from MS, with some opening their borders, like Germany, and others shutting their doors to refugees in need of protection. This situation "exposed serious flaws in the EU's asylum system".[150] It also ignited national debates about migration, with far-right parties exploiting the "crisis" for political gains. As a result of this further politicization of the migration issue, the EU, under pressure from MS, has adopted even more restrictive and control-oriented policies, as briefly touched upon in the previous section. The consequences have been harsh for migrants and refugees, pushed even more to undertake perilous journeys, trapped in unsafe third countries like Turkey and even more in Libya, and even less able to access international protection and safe regular pathways to migration.

This perceived crisis should have been the opportunity to reflect on how to make the EU asylum and immigration system more capable of providing access and protection to those fleeing in relation to natural disasters and climate change. However, there are no indications that this occurred, and on the contrary the issue of human mobility in the context of climate change seem to occupy an even less prominent position in the EU policy-making agenda,[151] probably because that is perceived as a future problem in contrast with "contemporary migration and asylum issues that the EU has to cope with".[152]

What is certain is that the recent political climate makes even more remote the possibility of expanding protection mechanisms to people displaced in the context of climate change or to open up labour markets.[153] Even in the current EP, which has so far been the most progressive European institution on this issue, the prospective of adopting resolutions or own-initiative reports capable of taking a decisive stand on this issue appear remote, given the current composition and difficulties of building a majority.

The EU's insistence on maintaining a rigid distinction between migrants and refugees does not matches the reality of human mobility in the context of climate change. In this regard, it is worth noting the European Council's note to delegations on negotiations of the GCM, dated 15 June 2018, which stated that the final text should "preserves the distinction between migrants and refugees while recognizing the need to address specific vulnerabilities resulting from natural disasters and environmental degradation without creating new legal categories" and recommended avoiding the inclusion of a new objective on climate change.[154]

The implementation of the GCM could be an opportunity to revisit some of the EU positions and take further steps to ensure adequate actions to minimize and address displacement related to climate change. However, there is a real risk that the EU, like other parties, could "pick and choose on different objectives",

Migration Law Blog, 8 December 2020; available at: https://eumigrationlawblog.eu/eu-cooperation-on-migration-with-partner-countries-within-the-new-pact-new-instruments-for-a-new-paradigm/#more-3432

150   European Parliament, '*Asylum and migration in the EU: facts and figures,*' updated 30 October 2020; available at: https://www.europarl.europa.eu/news/en/headlines/society/20170629STO78630/asylum-and-migration-in-the-eu-facts-and-figures

151   Green European Foundation (GEF) 'Climate Refugees and Climate Migration' (2019); available at: https://gef.eu/publication/climate-refugees-and-climate-migration/

152   R. Vestita, 'Environmentally Displaced Persons in Europe: Limits of the Legal
Protection of this Controversial Category of Migrants' (2017), *Kent Student Law Review*, p. 30; available at: https://journals.kent.ac.uk/index.php/kslr/article/view/342

153   GEF, 2019, n 151; M.G. Manieri, 'Asylum in a Climate-Changed World: Bridging the Protection Gap in the EU' (2020), *Green European Journal*; available at: https://www.greeneuropeanjournal.eu/asylum-in-a-climate-changed-world-bridging-the-protection-gap-in-the-eu/

154   Council of the European Union, *HLWG/CONUN discussion of 15 June 2018 on the negotiations of the Global Compact on Migration - Chairs' Summary*, 28 June 2018.

prioritising only those in which they have more pressing interests motivated by migration containment imperatives.[155]

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155   Manieri, 2020, n 153.

6.   Conclusions

This research shows that the EU response to human mobility in the context of climate change has been patchy, under-developed and generally inadequate. It is also marked by stark contradictions. On the one hand, the EU considers itself to be at the forefront of efforts to address climate-related mobility.[156] It is one of the major funders of empirical research on environmental migration, and particularly on migration-as-adaptation approaches.[157] It has also played a very active role in the Nansen Initiative and PDD and has advocated the inclusion of the climate-migration nexus in relevant policy frameworks, and particularly in the GCM.[158] On the other hand, my analysis reveals that the climate-migration nexus is mostly mentioned in relation to policies and actions aimed at tackling the root causes of migration and avoiding displacement and irregular migration, or in relation to mobility among third countries. Conversely, very little has been done to facilitate more regular migration pathways as a way to provide options to those living in areas severely affected by climate impacts, and nothing has been put in place to ensure effective protection in Europe of people displaced in relation to climate change.

This analysis is consistent with those of other authors[159] who, especially after the publication of the SWD, pointed out that climate-related mobility is mostly seen by the EU as a matter of external relations, to be dealt with either through development cooperation, DRR and climate adaptation and mitigation to address its root causes, or through humanitarian aid for people moving internally or across borders in third countries. This approach is also visible within the Nansen Initiative/PDD, where the EU has generally been playing a leading role, but this engagement has not translated yet into discussions to enhance harmonization of protection measures at EU level or to facilitate "migration-as-adaptation" towards Europe.

The EU response to climate-related mobility reflects some of the most prevailing academic and policy discourses. For example, the "securitization" approach is focused on avoiding the conditions that makes people wanting to reach Europe. Even when EU institutions have embraced the "migration as adaptation" discourse, this has been applied to third countries but not to facilitate migration towards Europe. The EU response is also a reflection of the EU's general approach to migration, and particularly of the EU external dimension of immigration and asylum policies, which have aimed at integrating migration consideration in all EU external policies for the purpose of fostering EU strategies to contain mobility towards Europe, even more so after the 2015 "refugee crisis".

In this light, although interventions to avoid displacement related to climate change are much needed, the fact that the EU response to human mobility in the context of climate change is prevalently oriented towards "averting" displacement casts a doubt about the genuine intentions of such actions. The EU case study therefore shows the importance of responding to climate-related mobility in a comprehensive manner, where measures to avert displacement are accompanied by actions aimed at facilitating labour mobility and by others aimed at enhancing protection of those displaced, not only in third countries but also in Europe.

The EU case study also reveals a total lack of attention paid to "climate justice" considerations. This reflects the prevailing policy frameworks at international level that, although structured around a multi-dimensional approach to "avert", "minimize" and "address" displacement, leave more political issues related to responsibility and liability completely aside. Such alignment comes as no surprise, knowing the stark opposition to those concepts by developed countries, including the EU, and given that the current policy frameworks have been elaborated through intergovernmental processes, in which the EU has played an

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156   EU, Submission to the UN Special Rapporteur on IDPs ahead of her report on internal displacement in the context of the slow-onset adverse effects of climate change (2020); available at: https://www.ohchr.org/Documents/Issues/IDPs/International-Regional/european-union-idp-climate-2.pdf

157   K. Ober and P. Sakdalporak, 'How do social practices shape policy? Analysing the field of "migration as adaptation" with Bourdieu's 'Theory of Practice' (2017), *The Geographical Journal*, 183, 359. For information of current research projects funded by the EU, see EU Submission to UN Special Rapporteur on IDPs, n 159.

158   EU, 2015, n. 67.

159   Mayrhofer and Ammer, 2014, n 59; Petrillo, 2015, n 130; J. Blocher, 'Climate Change and Environmental Migration in the European Union policy: an organisational shift towards adaptation and development', in K. Rosenow-Williams and F. Gemenne (eds), *Organizational perspectives on Environmental Migration* (Routlege, 2018).

important role. However, the EU cannot ignore its responsibility for climate change. Nor can it use the observation that climate-related mobility mostly affects third countries to neglect its responsibility to provide effective solutions to all those forced to move in the context of climate change, including those who reach Europe. These are crucial considerations to design truly comprehensive responses to climate-migration.

Consequently, further advocacy is needed from climate justice activists to bring elements of responsibility and justice into current policy frameworks regulating states' responses to human mobility in the context of climate change. Similarly, further research is needed to find a suitable manner to "re-politicise" the issue generally, and particularly at the EU level.

This could entail adopting climate justice considerations as a cross-cutting issue that needs to underpin all actions to "avert", "minimize" and "address" displacement. For an entity like the EU, which has a high share of responsibility for the climate crisis, this could mean contributing to averting climate-displacement by reducing its emissions in a manner that respects its fair share. It could also imply "minimizing" displacement by recognizing its responsibility to redress the heighten risk of displacement due to climate change and consequently facilitating regular migration towards Europe. It could also entail "addressing" climate-related mobility on the one hand by making sufficient funds available to adequately address the loss and damages suffered by displaced people, and on the other hand by establishing clear protection mechanism to admit and integrate in EU territory displaced people who cannot return to their countries due to the severe impacts of climate change.