

Climate migration between narratives and multilevel governance: genealogies, ambiguities, and emerging trajectories

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Abstract: La migrazione climatica tra narrazioni e governance multilivello: genealogie, ambiguità e traiettorie emergenti – This article examines the relationship between climate change and human mobility, challenging linear causal explanations and the conceptual validity of the “climate migrant” category. It highlights the fragmented nature of the international legal framework and the EU’s difficulty in articulating a coherent governance approach, despite emerging interpretive openings in national systems such as Spain and Italy. The contribution advances a relational perspective that captures the interplay between environmental, social and institutional factors, and frames mobility as a potential form of adaptation rather than a deterministic outcome. This approach supports the development of governance tools grounded in climate justice and shared responsibility.

Keywords: Climate-induced mobility; Climate justice; Migration governance; Legal frameworks; Discursive constructions

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1. Climate crises and human mobility: towards a critical reappraisal of interpretative categories

Understanding socio-environmental phenomena requires an approach that transcends the mere analysis of natural events or the political systems structuring affected communities, and instead encompasses the examination of the motivations, intentions, and practices through which individuals and collectivities orient and shape their actions¹. Within this interpretative

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¹ I. Berlin, *The Pursuit of the Ideal*, in *The Proper Study of Mankind: An Anthology of Essays*, New York, 1998, 2, as cited by C.T.M. Nicholson, B. Mayer (Eds.), *Climate Migration. Critical Perspectives for Law, Policy and Research*, Oxford, 2023, who criticise the prevailing tendency to construct classifications for the purpose of status recognition that are necessarily stripped of their broader contextual elements.

horizon emerges the historical evolution of the nation-state, which developed in Europe as a response to the political disorder of the early modern period and gradually consolidated as a universal political model in the post-war era. Founded upon the triad of sovereignty, territory, and government, the nation-state provided a shared institutional grammar for governing culturally heterogeneous societies and fostered the development of infrastructures designed to produce standardized and comparable data on populations and territories².

It is within this cognitive and institutional architecture that the contemporary concept of anthropogenic climate change has taken shape. Far from being an immediately perceptible phenomenon, it constitutes a scientific-statistical construct enabled by global measurement systems, shared knowledge standards, and a widely disseminated vision of climate as a unified and observable entity. The very notion of a global climate thus presupposes a range of technical and political capacities capable of translating heterogeneous processes into coherent and governable objects of knowledge.

This global and interconnected framework also structures the manner in which contemporary societies interpret the social effects of climate change, including human mobility. The emergence of the category of “climate migrants”³ responds to the need to render a complex phenomenon administratively and politically governable through classificatory practices; however, scholarly literature consistently highlights its semantic indeterminacy and the difficulty of identifying unequivocal causal criteria. The dominant representation, grounded in a linear logic that associates extreme climatic events with migratory outcomes, is marked by a significant epistemological simplification.

Human mobility is, in fact, an inherently multidimensional process shaped by economic, institutional, cultural, and relational factors which often prove more decisive than environmental conditions per se. Attributing a direct and primary causal role to climatic variables entails a form of reductionism that collapses complex social dynamics into a deterministic interpretative framework.

² J.C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, New Haven, 1992.

³ The concept was first elaborated in the second half of the twentieth century. In this regard, see L.R. Brown, P.L. McGrath, B. Stokes, *Twenty-Two Dimensions of the Population Problem*, Washington DC, 1976; L.M. Svart, *Environmental Preference Migration: A Review*, in 66(3) *Geo. Rev.* 314 (1976); P.E. Graves, *A Life-Cycle Empirical Analysis of Migration and Climate, by Race*, in 6 *J. Urb. Econ.* 135 (1979); P.E. Graves, *Migration and Climate*, in 20(2) *J. Reg'l Sci.* 227 (1980), available at ssrn.com/abstract=1438711; D.R. Haurin, *The Regional Distribution of Population, Migration and Climate*, in 95(2) *Q.J. Econ.* 293 (1980); L. Timberlake, *Environmental Wars and Environmental Refugees: The Political Background to the Cartagena Convention*, London, 1983, cited in B. Terminski, *Environmentally-Induced Displacement: Theoretical Frameworks and Current Challenges*, Centre d'Étude de l'Ethnicité et des Migrations, Research Paper, 2012, available at ssrn.com/abstract=2027858; E. El-Hinnawi, *Environmental Refugees*, UNEP, 1985; S.S. Khalil, *The Socio-Economic and Political Implications on the Environmental Refugees in the Vicinity of Omdurman*, Institute of Environmental Studies, Khartoum, 1987, 132; S.S. Ramphal, *The Environment and Sustainable Development*, in 135(5376) *J. Royal Soc'y Arts* 879 (1987).

Drought, for instance, may generate socio-economic stress; yet migration decisions are mediated by access to resources, social networks, institutional capacities, and local political structures. In many contexts, the populations most severely affected lack even the material means to relocate. Migration, therefore, cannot be conceptualised as an environmental automatism, but rather as a strategic response embedded within systems of opportunities and constraints.

Public discourse, however, frequently reproduces a dichotomous moral narrative: on the one hand, victims; on the other, those responsible for emissions. This schema reflects a Western cultural genealogy that links causality, blame, and responsibility, transforming complex processes into simplified ethical-political narratives. The conflation of physical causality, statistical in nature, with social causality, interpretative in nature, fuels a renewed form of climate determinism that obscures the political dimension of vulnerability and reinforces technocratic or humanitarian approaches oriented more towards managing symptoms than addressing structural causes.

Categories such as “climate migrants” are not neutral descriptors but performative constructs that contribute to the production of legal and political subjectivities. The explanatory frameworks advanced by scientific and international institutions, although presented as neutral and objective, embed normative assumptions rooted in modern rationality: order, predictability, and control. Relating climate models to migration projections thus entails participation in the construction of a political and institutional imaginary that determines who is deemed vulnerable, who is considered responsible, and which policy responses are rendered legitimate.

A more analytically robust perspective requires the abandonment of linear causal reasoning in favour of a relational conception of causality, capable of integrating multiple levels – environmental, economic, institutional, and cultural – without reducing them to a single causal sequence. Climate change does not directly determine migration; rather, it interacts with specific social systems, amplifying or mitigating pre-existing vulnerabilities. Within this framework, migration may be understood as a form of complex adaptive strategy rather than as a mechanical response to environmental stimuli.

Reconceptualising the relationship between climate and mobility therefore necessitates a rethinking of the analytical language employed and the development of heightened awareness of the intrinsic link between knowledge production, power, and policy formulation. Climate migration is not merely an empirical object of analysis, but a prism through which contemporary societies negotiate and redefine responsibility, vulnerability, and the future within an era of global transformation.

This article contributes to the ongoing debate in three interconnected ways. First, it critically reassesses the epistemological foundations of the “climate migrant” category, challenging linear and mono-causal accounts. Second, it develops a relational analytical framework that situates mobility within the interaction of environmental, socio-economic and institutional factors. Third, it examines how these dynamics are constructed and governed within the European migration regime, highlighting both

regulatory fragmentation and emerging interpretative openings at the national level.

2. Climate Migration as a Systemic Challenge to International Law

Reflection on the nexus between human mobility and security is deeply rooted in ancient cultural traditions. In Aeschylus' *Supplici* emerges the tension between the obligation of hospitality and the safeguarding of collective order, while in Sophocles' *Antigone* one can discern an early awareness of the destructive impact of human action upon nature⁴ and the risk that such action may ultimately rebound upon individuals themselves. These references reveal how the dialectic between environmental vulnerability, collective security, and human mobility constitutes a longstanding concern, now re-emerging with renewed intensity as a consequence of climate change.

Nevertheless, contemporary engagement with this nexus has become entangled in definitional processes that neither adequately capture nor exhaust its critical dimensions and that tend to disengage from a rigorous examination of its intrinsic complexity.

The current use of the expressions “environmental refugees” or “climate refugees” raises significant definitional and legal concerns. Forced displacement driven by environmental factors does not fall within the refugee definition enshrined in the 1951 Geneva Convention and the 1967 Protocol, which presuppose intentional persecution attributable to human actors and the presence of the individual concerned outside their country of origin. This results in structural limitations, notably the exclusion of climatic phenomena from the recognised grounds of persecution and the impossibility of extending protection to internally displaced persons, who in fact constitute the majority of climate migrants.

Some regional instruments have partially broadened the notion of refugee. The 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Organisation of African Unity (OAU), includes in Article I(2) «every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality»⁵, a formulation interpreted by legal scholarship as potentially encompassing natural disasters within its scope. A similar provision appears in the 1984 Cartagena Declaration, Section III(3), which extends protection to those fleeing “circumstances which have seriously disturbed public order”. However, these instruments do not explicitly refer to climate change and do not

⁴ «There are many fearsome things here below, but no one is more fearsome than the human being ... He is that being who incessantly harasses the supreme creature. The Earth, the imperishable earth!» (as translated from Sofocle, *Antigona*, 97, <https://www.academia.edu/8224039/Antigona-Sofocle>).

⁵ The Convention is available at <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa>.

impose legally binding obligations, leaving their application largely subject to state discretion.

Similarly, international human rights law, while safeguarding the rights to life, security, and dignity, does not impose upon States a legal obligation to admit individuals displaced for climate-related reasons. It thus functions as a complementary normative framework, capable of recognising the fundamental rights of climate-displaced persons and of prohibiting return to situations of environmental danger. Yet it does not establish a distinct legal status of “climate refugee”, nor does it impose specific duties of admission or resettlement, while its protection mechanisms – committees, courts, and complaint procedures – operate predominantly on an individual basis in the context of large-scale collective displacement. In the absence of a coherent and comprehensive regulatory regime, the protection of climate refugees therefore remains entrusted to a fragmented assemblage of normative instruments and evolving interpretative practices⁶.

International environmental law, for its part, has traditionally prioritised prevention, mitigation, and adaptation in relation to global environmental risks rather than the direct protection of individuals; however, in recent years it has begun to incorporate the dimension of human mobility. The 2015 Paris Agreement⁷ and the Warsaw International Mechanism for Loss and Damage, including its Task Force on Displacement established by the Conference of the Parties (COP21), represent significant steps towards integrating climate governance and human rights considerations. Nonetheless, these instruments do not create legally binding obligations and remain confined to political and governance-oriented commitments.

Within this framework, principles such as precaution, equity, and common but differentiated responsibility increasingly operate as normative reference points for the development of protection mechanisms and for supporting States most exposed to climate impacts. Among these, small island States such as Kiribati, Tuvalu, the Maldives, and the Marshall

⁶ In this regard, see the following among the leading contributors to the scholarly debate on this critical issue: G. Cundill, A. Singh, N. Adger, R. Safra, K. Vincent, M. Tebboth, A. Maharjan, *Toward a Climate Mobilities Research Agenda: Intersectionality, Immobility, and Policy Responses*, in 69 *Glob. Env'l Change* 1 (2021); W. Kaelin, *International Responses to Climate-related Migration*, in 73(1) *J. Int'l Affs.* 255 (2019); L. Nishimura, «Climate change migrants»: *Impediments to a Protection Framework and the Need to Incorporate Migration into Climate Change Adaptation Strategies*, in 27(1) *Int'l J. Refugee L.* 107 (2015); F. Biermann, I. Boas, *Climate Change and Human Migration: Towards a Global Governance System to Protect Climate Refugees*, in J. Scheffran, M. Brzoska, H.G. Brauch, P.M. Link, J. Schilling (Eds.), *Climate Change, Human Security and Violent Conflict: Challenges for Societal Stability*, Berlin, 2012, 291-300; R. Leal-Arcas, *Climate migrants: Legal options*, in 37 *Procedia: Soc. Behav. Sci.* 86 (2012); B. Mayer, *The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework*, in 22 *Colo. J. Int'l Env'l L. Pol'y* 357 (2011); S. Borrás Pentinat, *Refugiados ambientales: el nuevo desafío del derecho internacional del medio ambiente*, in 19(2) *Rev. derecho (Valdivia)* 85 (2006).

⁷ With the mandate to examine protection mechanisms for persons displaced as a result of climate-related impacts; to promote cooperation among States and international organisations; and to develop preventive and in situ adaptation strategies aimed at reducing the need for forced migration.

Islands face irreversible processes – including sea-level rise and the salinisation of water and soil – that threaten their very territorial existence, with unprecedented implications for international law.

Legal scholarship increasingly interrogates whether statehood can subsist in the absence of a physical territory, provided that governance structures, a permanent population, and international recognition persist⁸. The 1954 and 1961 Conventions on Statelessness do not contemplate scenarios of territorial disappearance caused by climatic factors, thereby leaving a significant normative lacuna. Some scholarly reflections have advanced pragmatic proposals, including automatic attribution of nationality by third States, bilateral agreements for collective naturalisation, or the establishment of “States in exile”⁹ endowed with representative functions. Such solutions, however, presuppose complex political arrangements and levels of international consensus that rarely materialise in practice.

In this context, planned relocation assumes a pivotal role. Strategies range from preventive migration – as exemplified by Kiribati’s “Migration with Dignity” programme towards Australia and New Zealand¹⁰ – to collective emergency resettlement in cases where territory becomes uninhabitable. Scholarly debate has further explored the creation of dedicated instruments, such as a Climate Mobility Fund or a Global Relocation Mechanism, aimed at compensating territorial and cultural losses and supporting adaptation initiatives¹¹.

Climate-induced migration and the potential disappearance of entire States pose profound challenges to contemporary international law. Existing instruments appear fragmented and insufficient. It thus becomes necessary to articulate a new, comprehensive framework integrating environmental protection, humanitarian safeguards, and climate justice, grounded in shared responsibilities, equitable resettlement mechanisms, and guarantees for the continuity of citizenship and collective identity. Ultimately, climate change cannot be understood merely as a natural phenomenon, but rather as the outcome of global political choices, rendering climate migration a collective responsibility that can no longer be deferred¹².

3. The European construction of the relationship between climate change and human mobility

⁸ Among the leading contributors to this debate: R.G. Rayfuse, (2009) *W(h)ither Tuvalu? International Law and Disappearance of States*, University of New South Wales Faculty of Law Series, Working Paper No. 2009-9; J. Crawford, *Brownlie’s Principles of Public International Law*, Oxford, 2012.

⁹ See: S.K. Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid*, Ithaca, 2005.

¹⁰ J. McAdam, *Climate Change, Forced Migration, and International Law*, Oxford, 2012, 186 ff.

¹¹ See K. Whyte, J.L. Talley, J.D. Gibson, *Indigenous Mobility Traditions, Colonialism, and the Anthropocene*, in 14(3) *Mobilities* 319 (2019).

¹² On this regard: S.E. Salako, *Migration, “Climate Change Refugees” and Global Justice*, in 16(2) *Beijing L. Rev.* 1260 (2025).

In line with this framework, which highlights the normative shortcomings and the fragmentation of the international protection regime, scholarly literature on the relationship between climate change and migration likewise reveals a markedly uneven distribution of knowledge. A significant portion of existing analyses continues to focus on movements – actual, anticipated, or prevented – located in the Global South or along South-North trajectories, thereby privileging an interpretative lens centred on the most visible and critical migratory dynamics. Such an approach has generated a pronounced interpretative asymmetry, relegating to the background the impact that climate change is exerting on public policies, governance instruments, and decision-making processes within the Global North¹³.

This tendency is compounded by the prevailing weight of scholars, academic institutions, and financial resources originating from the North¹⁴, which directly influences the selection of research priorities and contributes to the reproduction of knowledge asymmetries that ultimately shape the very definition of the disciplinary boundaries. Within this context, it becomes essential to examine how European institutional actors frame, interpret, and govern the nexus between climatic transformations and human mobility.

The institutions of the EU play an increasingly prominent role in knowledge production and in setting the public agenda on this issue. As stated in a 2022 Commission staff document, the EU presents itself «as a major actor in the quest to advance knowledge on disaster and climate-related displacement and migration over the past years. Research in this area is an important pillar of the Commission’s work towards a new policy framework on climate change and migration»¹⁵. This form of institutional self-narration reveals that the EU does not merely intervene through discrete policy instruments but actively participates in shaping the constellation of actors, the contours of the problem, and the range of solutions deemed legitimate.

At the supranational level, the Council of Europe has likewise addressed this issue. The Parliamentary Assembly, through Resolution No. 2307 of 3 October 2019 on “A legal status for ‘climate refugees’”, reiterated and strengthened the positions expressed in Resolution 1655/2009 and Recommendation 1862/2009, acknowledging that environmental factors – including climate change – increasingly affect the livelihoods of exposed populations, generating forms of mobility that are often unavoidable. From this perspective, the absence of a legally binding definition of “climate refugee” is not regarded as an impediment to the adoption of specific protective policies. The Assembly has accordingly called upon member States to adopt a proactive approach, recognising migration as a legitimate

¹³ G. White, *Climate Change and Migration: Security and Borders in a Warming World*, Oxford, 2011.

¹⁴ E. Piguet, R. Kaenzig, J. Guélat, *The Uneven Geography of Research on “Environmental Migration”*, in 39(4) *Population Env’t* 357 (2018).

¹⁵ EU Commission, *Commission Staff Working Document: Addressing Displacement and Migration Related to Disasters, Climate Change and Environmental Degradation*, Luxembourg, 2022, 15, available at https://ec.europa.eu/echo/files/policies/sectoral/swd_2022_displacement_and_migration_related_to_disasters_climate_change_and_environmental_degradation.pdf.

and, in some cases, necessary form of adaptation to climate change and advocating a revision of migration policies in light of these dynamics.

Despite these developments, scholarly reflection on the ways in which European decision-makers construct their own interpretation of the phenomenon and on the governance options currently under consideration remains comparatively underdeveloped. Moreover, an exclusive focus on the supranational level provides only a partial representation of the decision-making landscape, as pronounced political divergences among Member States significantly affect the prospects for coherent and shared strategies. The post-2015 context – marked by the so-called “migration crisis” – has further intensified polarisation around asylum and migration governance, narrowing the space for political compromise.

The stalemate of reforms aimed at alleviating pressure on frontline countries, the lack of unanimous adherence to the Global Compact for Safe, Orderly and Regular Migration – supported by only nineteen of the twenty-eight participating States at the time – and Austria’s veto on the accession of Romania and Bulgaria to the Schengen area¹⁶, justified by perceived deficiencies in border controls and the volume of asylum applications, constitute clear indicators of persistent institutional fragmentation. Within this framework, any meaningful regulatory advancement concerning the climate–migration nexus requires a degree of political alignment that remains far from assured.

In light of these dynamics, a significant strand of the literature¹⁷ underscores the importance of integrating the analysis of normative dimensions and governance instruments with the study of discursive frameworks that contribute to defining policy problems and shaping institutional responses. This entails examining the processes through which the relationship between climate change and human mobility is constructed as an object of public intervention and political regulation, as well as the manner in which such construction influences both the configuration of public debate and the operational choices of the competent institutions.

3.1 Stay ahead of the curve!

Data from the WMO¹⁸ indicate that the consequences of global warming are profoundly uneven: the regions most severely affected belong to the Global South, and particularly the African continent, where environmental degradation operates as a multiplier of migratory drivers. In the Sahel, for example, communities with a negligible contribution to global emissions

¹⁶ A. Ștefănel, A. Momoc, R. Surugiu, *Downplaying Euroscepticism in Mainstream Media: The Schengen Accession of Romania and Bulgaria*, in 11(4) *Media Comm.* 5 (2023).

¹⁷ Especially, S.L. Nash, *Negotiating Migration in the Context of Climate Change: International Policy and Discourse*, Bristol, 2019.

¹⁸ See: World Meteorological Organization, *State of the Climate: Update for COP 29*, Geneva, 2024, 1-12, at 2, available at <https://library.wmo.int/records/item/69075-state-of-the-climate-2024>; *The Year 2024 Set to End up as the Warmest on Record*, 7.11.2024, available at <https://climate.copernicus.eu/year-2024-set-end-warmest-record>.

disproportionately bear the impacts of climate change¹⁹, which depletes essential resources and progressively compels both internal and cross-border displacement²⁰.

This form of mobility increasingly concerns the EU, especially Spain and Italy, which constitute the main points of arrival across the Mediterranean²¹. However, the current European legal framework on migration and asylum still does not formally recognise climate-related causes as a ground for international protection, thereby rendering a reassessment particularly pressing in light of the New Pact on Migration and Asylum (2024).

The evolution of the European legal regime governing migration reflects a process of gradual integration and continuous negotiation between Union institutions and Member States²². Crises – such as the 2015 refugee crisis – have exposed the structural fragility of the Common European Asylum System and reinforced a predominantly securitised approach

¹⁹ Between 9,000 and 6,000 years ago, the Sahara hosted lakes and extensive vegetation; the populations inhabiting the Sahel were able to traverse the region and move through it towards Europe and Asia. See: M. Waldinger, S. Fankhauser, *Climate Change and Migration in Developing Countries: Evidence and Implications for PRISE Countries*, ESRC Centre for Climate Change Economics and Policy - Grantham Research Institute on Climate Change and the Environment, 2015, 11, available at: https://eprints.lse.ac.uk/64526/1/Climate-change-and-migration-in-developing-countries_final.pdf; J. Tomalka *et al.*, *Climate Risk Profile: Sahel*, Potsdam Institute for Climate Impact Research (PIK), Potsdam, Germany, 2021, available at <https://www.unhcr.org/sites/default/files/legacy-pdf/61a49df44.pdf>.

²⁰ Internal Displacement Monitoring Centre, Norwegian Refugee Council (NRC), *2024 Global Report on Internal Displacement*, Geneva, 2024, at 24-34, available at https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf?_gl=1*16zw9e1*_ga*OTY2Nzg4MDUxLjE3NjM2NTY2MzU.*_ga_PKVS5L6N8V*cze3NjM2NTY2MzQkbzEkZzAkdDE3NjM2NTY2MzQkajYwJGwwJGgw. See also United Nations High Commissioner for Refugees (UNHCR), *No Escape: On the Frontlines of Climate Change, Conflict and Forced Displacement*, Geneva, Switzerland, 2024, at 15-18, available at <https://www.unhcr.org/media/no-escape-frontlines-climate-change-conflict-and-forced-displacement>.

²¹ IOM, *DTM Europe - Displacement Tracking Matrix (DTM)*, Yearly Regional Report (January-December 2023), Vienna, Austria, 04.04.2024, at 6-7, available at https://dtm.iom.int/sites/g/files/tmzbd11461/files/reports/DTM_Mixed%20Migration%20Flows%20to%20Europe_Yearly_2023_0.pdf; Ministerio del Interior, *Informe quincenal, Inmigración irregular 2024, datos acumulados del 1 enero al 30 noviembre*, Madrid, 2024, at 2, available at https://www.interior.gob.es/opencms/export/sites/default/.galleries/galeria-de-prensa/documentos-y-multimedia/balances-e-informes/2024/24_informe_quincenal_acumulado_01-01_al_31-12-2024.pdf.

²² With the Single European Act (1986), the objective of establishing an area without internal controls and ensuring the free movement of persons was introduced, while the Treaty of Amsterdam (1997) initiated the communitarisation of policies on borders, visas, asylum and immigration, thereby laying the foundations for an Area of Freedom, Security and Justice (AFSJ). This process reached its full consolidation with the Treaty of Lisbon (2007), which enshrined co-decision and the “common” nature of migration policies, while leaving national sovereignty intact as a substantive constraint. On this point, see S. Peers, *The EU Institutions and the Title IV*, in S. Peers, P. Rogers (Eds.), *EU Immigration and Asylum Law. Text and Commentary*, Leiden, 2006, 47-79.

centred on containment and border control²³. Although asylum, immigration and border policies are formally distinct, they remain deeply interconnected and reveal the persistent tension between the internal dimension (border protection and the allocation of responsibilities) and the external dimension (cooperation with third countries)²⁴.

The Union is bound to comply with fundamental principles enshrined in primary law: Article 21(3) TEU, in conjunction with Article 7 TFEU, requires the coherence of external action²⁵, while Article 11 TFEU mandates that environmental protection be integrated into all Union policies. The issue of climate-induced migration therefore lies at the intersection of environmental, migration and international protection policies²⁶.

Building upon this tension between the internal and external dimensions of migration governance, the need to address the emerging climate challenge has nevertheless progressively strengthened EU climate diplomacy²⁷, which has evolved into a globally recognised point of reference. The expression “climate emergency” appeared for the first time in 2019, through a resolution of the European Parliament calling for the alignment of environmental legislation with other Union policies²⁸. Since then, references to climate change have increased exponentially in official documents²⁹, evidencing the Union’s intention to address the crisis through an integrated approach. It remains, however, to be verified whether such coherence effectively extends to the field of migration and asylum.

In its September 2020 Communication, the Commission acknowledged that climate change affects migration flows³⁰, emphasising the need to avoid separating climate policies from migration policies. However, over the course of the negotiations, this focus progressively weakened, to the point of nearly disappearing from the final text of the Pact. Likewise, the proposal for a Crisis and Force Majeure Regulation, which had

²³ A. Del Valle Gálvez, *Refugee Crisis and Migrations at the Gates of Europe: Deterritoriality, Extraterritoriality and Externalization of Border Controls*, in 7 *Peace & Security-Paix et Sécurité Internationales* (EuroMed. J. Int’l L. Int’l Rel.) 117 (2019).

²⁴ V. Faggiani, *La protección internacional de los migrantes en la UE: Estándares de tutela, límites y perspectivas de reforma del derecho de asilo*, Navarra, 2023, 43.

²⁵ Art. 21(3), TEU and art. 7 TFEU («The Union shall ensure consistency between its policies and activities»).

²⁶ P. García Andrade, *La acción exterior de la Unión Europea en materia migratoria*, Valencia, 2014, 57-60.

²⁷ S. Keukeleire, T. Delreux, *The Foreign Policy of the European Union*, London, 2022, 256-257. See also T. Fajardo Del Castillo, *La Diplomacia del Clima de la Unión Europea: La acción exterior sobre cambio climático y el Pacto Verde Mundial*, Madrid, 2021, 27-49, 73-86.

²⁸ EP Resolution of 28 November 2019, OJ 2021 C 232/06.

²⁹ Several national parliaments have likewise declared a state of climate emergency within their respective legal orders. See Climate Emergency Declaration, ‘Climate emergency declarations in 2,366 jurisdictions and local governments cover 1 billion citizens’, 24.03.2025, available at <https://climateemergencydeclaration.org/climate-emergency-declarations-cover-15-million-citizens/>.

³⁰ *New Pact on Migration and Asylum*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, Com/2020/609 final, Brussels, Belgium, 23.9.2020, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52020DC0609>.

initially opened up the possibility of recognising climate change as a ground for protection, ultimately resulted in a generic reference to natural disasters³¹. Although the Pact purports to address the weaknesses exposed during the 2015–2016 crisis, it continues to frame migration as an episodic emergency, detached from environmental, social and development policies. The approach thus remains reactive and fragmented, unable to provide a systemic response to future forms of climate-induced mobility, which would instead require an integrated, long-term strategy.

3.2 Climate migration as an integrative element of the EU migration regime?

What accounts for the persistent difficulty in conceiving migration as a phenomenon to be examined and governed through an integrated perspective, grounded in its political, socio-economic, and environmental context?

The concept of the migration regime, now firmly established within migration studies³², embodies this essential integrated perspective, as it captures the complex interplay between legal norms, discursive constructions, forms of knowledge, and institutional practices which, in a heterogeneous manner, structure and condition migratory processes.

One of the most influential definitions, provided by Sciortino, describes the migration regime as a «mix of implicit conceptual frames, generations of turf wars among bureaucracies and waves after waves of “quick fix” to emergencies, triggered by changing political constellations of actors»³³. This approach underscores the composite, non-linear, and

³¹Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147. See A.-H. Neidhardt, *The Crisis and Force Majeure Regulation: Towards Future-Proof Crisis Management and Responses?*, Brussels, 2024, available at <https://library.fes.de/pdf-files/bueros/bruessel/21303.pdf>.

³² A. Pott, C. Rass, F. Wolff (Eds.), *Was ist ein Migrationsregime? What is a Migration Regime?*, Osnabrück, 2018. A strand of scholarship has employed the concept of a “climate migration regime” as if it were an offshoot of the general migration regime, emphasising the performative dimension of climate policies, which contribute to constructing the figure of the climate migrant and, in so doing, render the phenomenon of so-called “climate migration” governable. More recently, within the framework of studies devoted to “climate mobilities”, authoritative scholarship (I. Boas, C. Farbotko, H. Adams, H. Sterlyng, *Climate Migration Myths*, in 9 *Nature Clim. Change* 901 [2019]; I. Boas, H. Wiegel, C. Farbotko, J. Warnerb, M. Sheller, *Climate Mobilities: Migration, Im/Mobilities and Mobility Regimes in a Changing Climate*, in 48[14] *J. Ethnic Migration Stud.* 3365 ([2022]) has defined climate mobility regimes as interconnected assemblages of socio-economic and political relations composed of a plurality of actors, within which the relationship between mobility and climate change is framed, managed, and regulated in specific ways, thereby producing distinctive modes of governance of such mobilities. This theoretical approach informs the conceptual framework adopted and enables a more precise analysis of how the climate–migration nexus is constituted as an object of governance.

³³ G. Sciortino, *Between Phantoms and Necessary Evils: Some Critical Points in the Study of Irregular Migrations to Western Europe*, in A. Böcker, B. de Hart, I. Michalowski (Eds.), *Migration and the Regulation of Social Integration*, Osnabrück, 2004, 17.

reactive nature of migration regimes, which can only be adequately understood when situated within a specific historical, political, and social context.

The European migration regime exhibits a distinctive internal coherence, characterised by a specific constellation of institutional actors, norms and procedures, classificatory mechanisms, epistemic criteria, and modes of problematisation concerning both migratory movements and the production of knowledge. Taken together, these elements contribute to shaping the manner in which the nexus between climate change and migration is rendered governable within the European space. In this sense, climate migration may be understood as an articulation of the broader migration regime of the EU.

In the absence of a robust and genuinely integrated supranational strategy for migration governance, any examination of how the relationship between climate change and migration is framed, governed, and regulated must necessarily commence at the nation-state level. National policies should therefore be situated within a unified analytical framework, with the aim of delineating the overall configuration of the European regime, elucidating the interconnections among its various dimensions, and assessing the potential implications for future European policies on climate change and human mobility.

At the state level, discourse on climate migration is characterised by the recurrent deployment of conceptual frames such as security, human rights, responsibility, adaptation, migration as adaptation, protection, climate justice, humanitarian assistance, mobility-related loss, and mobility as a choice or opportunity. However, no single global narrative prevails; rather, a plurality of representations of the relationship between climate and mobility emerges, shaped by heterogeneous actors and by the diverse – institutional and non-institutional – arenas in which these representations are produced. In this process, governmental actors do not enjoy exclusive authority over the definition of the issue; instead, multiple stakeholders contribute to shaping the ways in which climate mobility is understood, debated, and governed.

A crucial dimension of the European debate lies in the persistent difficulty of forging a shared perspective on the climate–migration nexus. Divergences among Member States with regard to migration policy appear significantly deeper than those observed in international fora, where disciplinary, geographical, or geopolitical differences tend to be more readily mediated³⁴.

A central issue that emerges concerns the absence of a shared definition of the climate migrant. Across European countries, the

³⁴ On this regard v. S.L. Nash, *The View from the Fortress: European Governance Perspectives on Climate Change and Migration*, in C.T.M. Nicholson, B. Mayer (Eds.), *Climate Migration. Critical Perspectives for Law, Policy and Research*, *op. cit.*, 130-150. In her contribution, the Author draws on the empirical data of the project “Climate Diplomacy and Uneven Policy Responses on Climate Change and Human Mobilities”, which is based on an extensive document analysis and thirty-four interviews conducted between 2020 and 2022 with institutional representatives, members of political parties, and civil society actors. Some of the considerations developed in the remainder of this paragraph are grounded in the interview findings as reported in the Author’s study.

phenomenon is indeed interpreted through highly heterogeneous conceptual frames. Although in most European states public perception predominantly associates the figure of the climate migrant with Sub-Saharan Africa, in Austria a number of institutional actors link migration to the climatic impacts affecting African agricultural areas, while nonetheless attributing such impacts to pre-existing economic dynamics. It is therefore unsurprising that, within the Austrian political-institutional narrative, the majority of persons affected by climate change are expected to remain within their regions of origin, and that direct movement towards Europe is regarded as unlikely.

Accordingly, although the effects of climate change – such as wildfires, floods, or coastal risks – are already manifest within Europe, they are not associated with the prospect of future intra-European climate-induced mobility. The dominant narrative continues to externalise the issue, locating it primarily in Sub-Saharan Africa, South Asia, or small island states. This orientation results in the phenomenon being addressed predominantly as a matter of foreign policy and development cooperation, rather than as a domain relevant to internal European policies. Such an approach contributes to predefining the spectrum of admissible responses, channeling priorities and instruments towards an externalised mode of governance.

The second dimension through which the functioning of a migration regime may be examined concerns the practices through which mobility is governed: the ways in which it is interpreted, integrated into policy planning, and translated into operational and normative instruments. This entails analysing how migration is represented within national policies and assessing the extent to which such representations influence the policy tools that are ultimately deployed.

From this perspective, climate-related migration emerges as an external and problematic phenomenon to be contained, rather than as a potential strategy of adaptation. Mobility is not conceived as a resource within climate planning but rather as a negative externality to be prevented, insofar as it is perceived as capable of placing strain on asylum systems and border regimes. In Austria, this orientation is explicitly reflected in the objective of strengthening adaptation policies with a view to averting migration; in Denmark, the climate–migration nexus is addressed almost exclusively within the framework of development cooperation, with the declared aim of reducing migratory pressure towards Europe. In Germany, although securitising rhetoric is less pronounced, the approach remains anchored in cooperation policies intended to enhance individuals' capacity to remain in their places of origin.

Overall, climate migration is thus situated within the sphere of development cooperation, with a predominant focus on interventions addressing the so-called “root causes” and on strengthening the resilience of vulnerable communities. This approach, however, tends to externalise the phenomenon and to concentrate attention on extra-European regions, thereby obscuring the possibility that the European continent itself may likewise be affected by climate-related mobility.

In Austria and, even more markedly, in Denmark, climate–migration discourse converges with narratives centred on border security and the control of migratory flows. Danish policy documents explicitly refer to the

risk of increased migratory pressure on the EU, thereby legitimising investments in external border control mechanisms; in Austria, the debate recurrently emphasises the imperative of preventing irregular migration.

Finally, the use of research appears predominantly instrumental: studies are chiefly employed to estimate scenarios, identify risks, or support the design of emergency measures. By contrast, analyses that critically interrogate the categories in use, research addressing climate-induced mobility within Europe, or governance approaches that recognise mobility as a legitimate form of adaptation remain marginal.

The final dimension relevant to analysing the functioning of a migration regime concerns the regulatory phase, namely the set of legal instruments and procedures that concretely govern mobility. Within the European context, a recurrent feature emerges: there is no specific legal framework nor any formal categories expressly dedicated to climate migration. This lacuna mirrors the situation at the international level, where no shared definition of “climate migrant” exists and no binding legal obligations are imposed on States. National administrations are fully aware of this regulatory vacuum and, in most cases, regard the introduction of new forms of protection as politically unrealistic.

Some normative interventions in this direction can be found sporadically in countries such as Finland³⁵, Sweden³⁶ and the Czech Republic³⁷; however, the first two states subsequently abolished any form of legal protection specifically addressing the category of climate migrants. The Czech Republic provides solely for non-refoulement in cases involving return to a country affected by a natural disaster.

In this context, the debate on the protection of persons affected by climate impacts continues to revolve almost exclusively around the instruments already provided by the asylum system, notwithstanding the widespread recognition that such mechanisms are not structurally designed

³⁵ *Finish Aliens Act* (301/2004, amendments up to 1152/2010 included), sec. 88a.1: «(1) An alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if there are no grounds under section 87 or 88 for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an *environmental catastrophe* or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation». Nondimeno, alla sec. 109: «Temporary protection may be given to aliens who need international protection and who cannot return safely to their home country or country of permanent residence, because there has been a massive displacement of people in the country or its neighbouring areas as a result of an armed conflict, some other violent situation or an environmental disaster. Providing temporary protection requires that the need for protection may be considered to be of short duration. Temporary protection lasts for a maximum of three years in total».

³⁶ See *Swedish Aliens Act* (2005:716), 29.09.2005, available at https://www.government.se/contentassets/784b3d7be3a54a0185f284bbb2683055/aliens-act-2005_716.pdf: «In this Act a ‘person otherwise in need of protection’ is an alien who in cases other than those referred to in Section 1 is outside the country of the alien’s nationality, because he or she ... is unable to return to the country of origin because of an *environmental disaster*» (Chapter 4, sec. 2.3).

³⁷ S. Borràs-Pentinat, *Environmental Refugees: Reshaping the Borders of Migration in the EU*, in M. Campins Eritja (Ed.), *The European Union and Global Environmental Protection*, London, 2021, 109-131.

to address situations determined – or even merely exacerbated – by environmental factors. Denmark, consistent with its particularly restrictive approach, reiterates that climate change does not constitute a ground for the recognition of international protection. In Austria, access to protection is envisaged only in entirely exceptional circumstances, particularly where climatic impacts intersect with armed conflict or conditions of widespread violence.

A potential area of regulatory innovation could consist in the creation of regular entry channels for individuals most exposed to the effects of climate change. However, none of the States examined have developed initiatives in this direction. In Germany and Sweden, certain civil society organisations have advanced proposals concerning humanitarian visas or complementary pathways, yet without securing political endorsement. In Denmark, the issue remains absent from the public debate, while in Austria it is regarded as politically unfeasible.

In the absence of internal protection mechanisms, the governance of the phenomenon is predominantly oriented towards strategies of externalisation, including agreements with third countries, the reinforcement of the EU's external borders, programmes aimed at containing mobility within countries of origin, and forecasting and early-warning initiatives. This approach is particularly evident in Denmark, where the governance of climate migration effectively overlaps with policies targeting irregular migration. In Austria, political discourse frequently associates climate change with the risk of new waves of migration, thereby legitimising further containment measures. Germany and Sweden adopt a more measured stance, yet continue to situate their response within the framework of development cooperation and risk management.

Institutional actors frequently invoke the EU to justify the absence of national-level interventions, pointing to the EU's competence in matters of international protection, the political difficulties surrounding solidarity mechanisms, and the requirement of unanimity for the introduction of new forms of protection. However, as observed by Boas and colleagues, there are no discernible indications of convergence towards a shared European vision of the climate–migration nexus. The reference to the EU thus tends to function more as a device for legitimising domestic inaction than as an expression of genuine commitment to a common initiative.

Taken together, these dynamics delineate a regulatory configuration marked by a structural vacuum: no State has introduced specific legal categories, existing instruments are considered inadequate, and the strategies adopted prioritise externalisation, development cooperation, and the containment of mobility. This approach reinforces the representation of climate migration as a phenomenon external to Europe and fails to engage with the possibility of intra-European movements linked to climate impacts.

What emerges is an incipient European regime that is not grounded in formal legal norms but rather in recurrent discursive practices: the externalisation of the phenomenon, the construction of mobility as a threat, the absence of regular entry channels, and the invocation of the EU framework as a political constraint. The result is a configuration oriented towards containment, which ultimately constrains the capacity of the Union and its Member States to envisage more inclusive modes of governance,

capable of recognising mobility not only as a risk to be managed but also as a strategy of adaptation and as a constitutive dimension of climate justice.

3.3 The exceptions that prove the rule: the Spanish and Italian cases

Within a European context marked by a structural regulatory vacuum and by an approach to climate-related mobility primarily oriented towards containment and externalisation, the experiences of those Member States that, despite operating within the same framework of uncertainty, have developed more advanced interpretive margins appear particularly significant. In this scenario, Spain and Italy³⁸ constitute two paradigmatic cases: both are frontier countries, directly exposed to migratory flows and, at the same time, endowed with legal systems that, through an evolutive use of existing legal categories, have opened avenues for the recognition of environmental and climate-related vulnerability. These experiences – while not amounting to a coherent model – nonetheless illustrate how national legal orders may contribute to partially filling the gaps left by the absence of a consistent European framework.

Within the Spanish system, humanitarian protection operates within a triangular framework composed of international protection, subsidiary protection and the humanitarian residence permit, the latter historically characterised by broad wording and openness to evolutive interpretation. Although Ley No. 12/2009 has absorbed part of humanitarian protection into subsidiary protection – described by the Tribunal Supremo as its “natural heir”³⁹ – Articles 37(b) and 46(3) preserve the possibility of authorising residence on humanitarian grounds pursuant to Ley Orgánica 4/2000⁴⁰, while Article 125 of Royal Decree 557/2011 governs the corresponding residence permit⁴¹. Case law has progressively clarified that such grounds do not constitute a closed list, thereby allowing protection to be granted also in relation to situations linked to environmental or climatic factors⁴². Humanitarian protection may therefore be recognised both on the basis of the applicant’s personal circumstances and in relation to the conditions prevailing in the country of origin, and courts are empowered to grant such protection even in the absence of a favourable administrative decision⁴³.

Two principles, in particular, guide interpretation: administrative discretion must not give rise to arbitrariness, and the humanitarian purpose of the protection must be preserved. Within this framework, the Tribunal

³⁸ On this point see E. del Álamo Marchena, *Displacement and Climate Change in the Renewed European Framework on Migration and Asylum: Insights from the Practice in Spain and Italy*, in 28 *Spanish Y. Inte'l L.* 399 (2024).

³⁹ STS 2675/2016, 28.02.2017, 1-6.

⁴⁰ Art. 37(b) and 46(3) of Law 12/2009. The current legislation on foreigners refers to Organic Law 4/2000 (BOE no. 10, 12 January 2000).

⁴¹ See Art. 125 of Royal Decree 557/2011.

⁴² The circumstances that may justify the granting of the permit are neither exhaustively nor openly enumerated, but must differ from those provided for subsidiary protection. Cfr. STS 875/2012, 18.10.2012, 1-13.

⁴³ STS 2476/2011, 24.02.2012, 1-9.

Supremo distinguishes between a general regime⁴⁴ and a special regime applicable to applicants already engaged in international protection procedures⁴⁵. The latter is especially relevant for climate migration, as it allows environmental vulnerability to be considered directly within the asylum procedure, without the need for a separate application, and acknowledges that socio-ecological conflicts and environmental disasters may also constitute grounds for protection. The assessment must further take into account the concrete impact of the environmental event on the individual and the risk of fundamental rights violations in the event of return⁴⁶, thereby reflecting an approach aimed at safeguarding those most exposed to the consequences of climate change.

The Italian legal system, although more exposed to political fluctuations, likewise presents a normative and jurisprudential structure that allows for the inclusion of forms of environmental vulnerability within existing categories of protection⁴⁷. The constitutional basis of the right to asylum (Article 10(3) of the Constitution) and the three-tier protection system – refugee status, subsidiary protection (Legislative Decree No. 251/2007) and humanitarian protection (Article 5(6) of Legislative Decree No. 286/1998)⁴⁸ – are complemented by the temporary protection mechanism provided for in Article 20 of the same decree for situations of conflict or natural disasters⁴⁹. At the jurisprudential level, numerous

⁴⁴ STS 1067/2024, 17.06.2024, 1-12, at 10.

⁴⁵ *Ibid.*, at 10-11.

⁴⁶ STS 1067/2024 17.06.2024.

⁴⁷ C. Scissa, *The Climate Changes, Should EU Migration Law Change as Well? Insights from Italy*, in 14(1) *Eur. J. Legal Stud.* 6, 18 (2022).

⁴⁸ Art. 5(6) of the Legislative Decree 286/1998.

⁴⁹ Art. 20 Legislative Decree 286/1998. See C. Scissa, *La protezione per calamità: una breve ricostruzione dal 1996 ad oggi*, in *Forum Quad. Cost.*, 2021, 1, 136, 140-141. This reform, consistent with international human rights obligations, extended protection to climate migrants through Articles 20 and 20-bis of Legislative Decree No. 286/1998. Within the Consolidated Immigration Act (Legislative Decree No. 286/1998), Article 20 provides for temporary protection measures to be adopted on a residual basis, including by way of derogation from the ordinary legal conditions governing protection, in the presence of compelling humanitarian needs arising from conflicts, natural disasters, or other events of particular gravity; Article 20-bis, in turn, establishes that a “residence permit for natural disasters” which, in comparison with the previous legal framework, appeared to broaden the scope of application of the former Article 20-bis of the Consolidated Act No. 286/98. Although the notions of “calamity” and “natural disaster” raised interpretative issues, particularly with regard to persons displaced as a result of slow-onset environmental degradation, such as sea-level rise or the salinisation of aquifers, Italian legislation could nonetheless be regarded as pioneering.

The 2020 amendment – subsequently incorporated into Article 19(1.1) of the Consolidated Immigration Act – provided that rejection, expulsion, or extradition of a person to a State shall not be permitted where there are substantial grounds for believing that the individual would be subjected to torture or inhuman or degrading treatment, or where the obligations referred to in Article 5(6) apply. In assessing such grounds, account shall also be taken of the existence, in that State, of systematic and serious violations of human rights. Rejection or expulsion shall likewise not be permitted where there are substantial grounds for believing that removal from the national territory would entail a violation of the right to respect for private and family life, unless such removal is necessary on grounds of national security, public order and

decisions have interpreted vulnerability in a broad sense, encompassing exposure to natural disasters or environmental conditions capable of impairing fundamental rights. The legislative trajectory of recent years nonetheless reveals significant volatility: Decree-Law No. 113/2018 restricted protection to “contingent and exceptional” events, thereby excluding slow-onset climatic phenomena⁵⁰; Decree-Law No. 130/2020 reopened the scope of protection by replacing “exceptional” with “serious” and by allowing the permit to be renewed for as long as the risk conditions persisted⁵¹; Decree-Law No. 20/2023, however, reintroduced the contingency clause, preventing the conversion of the temporary permit into a stable status⁵². The conversion law (Law No. 50/2023) confirmed this approach, once again reducing the system’s capacity to respond to long-term climate-related phenomena⁵³. Despite these oscillations, the Italian legal order retains a solid constitutional and international foundation that constrains the power of the contingent legislator to restrict protection. This has been affirmed by the Corte di Cassazione, which in judgment No. 5022/2021 recognised that a severe environmental disaster or a widespread degradation of natural resources may constitute a valid ground for humanitarian protection.

Taken together, the cases of Spain and Italy demonstrate that, even in the absence of a structured European regime, it is possible to activate and valorise legal instruments already embedded within national legal orders. The decision of the Cour administrative d’appel de Bordeaux (2020)⁵⁴ in France – which annulled a return order due to environmental degradation in the country of origin – further confirms this trend, showing that national courts can respond to situations of environmental and climate-related vulnerability.

security, or the protection of public health, in accordance with the Convention relating to the Status of Refugees, implemented by Law No. 722 of 24 July 1954, and with the Charter of Fundamental Rights of the European Union. For the purposes of assessing the risk of violation referred to in the preceding sentence, consideration shall be given to the nature and effectiveness of the person’s family ties, their actual social integration in Italy, the duration of their stay in the national territory, as well as the existence of family, cultural, or social ties with their country of origin.

This amendment effectively removed both the requirement to demonstrate the contingent and exceptional nature of the calamity and the six-month temporariness requirement of the residence permit, renewable only once, thus allowing the permit in such cases to be renewed without a fixed time limit, that is, for as long as conditions of insecurity persisted in the country of origin and, ultimately, to be converted into a longer-term work permit. In this manner, discriminatory distinctions among different categories of forced migrants were eliminated.

⁵⁰ Art. 20 bis of Law Decree 133/2018.

⁵¹ N. Zorzella, *La nuova protezione speciale introdotta dal d.l. 130/2020. Tra principio di flessibilità, resistenze amministrative e problematiche applicative*, in *Dir. imm. citt.*, 2021, 129; G. Conti, *La protezione umanitaria e il nuovo sistema di accoglienza e integrazione nel d. l. n. 130/2020*, in *Federalismi.it*, 2020; S. Nicolosi, *Il nuovo sistema di protezione speciale introdotto dal d.l. 130/2020*, *ivi*.

⁵² Law Decree 20/2023.

⁵³ See M. Di Filippo, *La protezione dei migranti ambientali nel dialogo tra diritto internazionale e ordinamento italiano*, in *Dir. Um. Dir. Internaz.*, 2023, 313, 334.

⁵⁴ *Cour administrative d’appel de Bordeaux*, 18.12.2020, n. 20BX02193.

These experiences do not eliminate existing normative gaps nor resolve the tensions between securitised approaches, development cooperation and the protection of fundamental rights; however, they show that interpretative margins do exist which may anticipate – or compensate for – the regulatory inertia of the EU.

In this sense, they constitute significant legal laboratories for the future evolution of protection for climate migrants and signal the potential to develop, even in the absence of immediate normative reform at EU level, an approach more consistent with international obligations and with the transformations imposed by the climate crisis.

These developments also align with the jurisprudence of the United Nations, which has paved the way for an expansive interpretation of the principle of non-refoulement, extending its application to situations in which return to the country of origin would expose individuals to serious risks arising from climate change. In the decisions *Ioane Teitiota v. New Zealand* (2020)⁵⁵ and *Torres Strait Islanders v. Australia* (2022)⁵⁶, the Human Rights Committee recognised that extreme environmental conditions and State inaction may violate the rights to life and personal dignity, as enshrined in Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR). Although not legally binding on EU Member States, these rulings consolidate an interpretative trend that reinforces the framing of climate change as a human rights issue, consistent with Articles 2, 3, 4 and 19 of the Charter of Fundamental Rights of the EU and with Article 78 TFEU.

A further development is represented by General Recommendation No. 37 (2018) of the CEDAW Committee⁵⁷, which underscores the need to adopt gender-sensitive adaptation and migration policies, recognising that women and girls constitute the majority of those affected by climate-related disasters and often experience multiple forms of discrimination in displacement processes. In line with this perspective, the report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change⁵⁸ has called upon States to integrate a gender dimension into protection and non-refoulement mechanisms, promoting safe and inclusive migration.

Overall, the cases of the judicialisation of climate protection demonstrate how certain national legal systems are already adapting their domestic law to emerging forms of forced mobility linked to environmental degradation. By drawing inspiration from these practices, the EU could develop a model of European harmonisation capable of integrating environmental, humanitarian and security dimensions, and of introducing a complementary form of protection for climate-displaced persons. Only a

⁵⁵ *Ioane Teitiota v. New Zealand*, UN Human Rights Committee, CCPR/C/127/D/2728/2016 (07.01.2020).

⁵⁶ *Torres Strait Islanders v. Australia*, UN Human Rights Committee, CCPR/C/135/D/3624/2019 (2022).

⁵⁷ Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, available at <https://docs.un.org/en/CEDAW/C/GC/37>.

⁵⁸ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, *A/HRC/50/39*, 24.06.2022.

coordinated approach, grounded in the principles of solidarity and sincere cooperation (Articles 2 and 4(3) TEU), will enable the EU to respond effectively to the complexity of climate-induced migratory phenomena and to reaffirm its global leadership in the protection of fundamental rights, in coherence with the European Green Deal and the objectives of the 2030 Agenda.

4. Migrating in a changing climate: beyond categories, within transformations

Climate-related mobility cannot be adequately understood through deterministic narratives or isolated legal categories. By deconstructing the performative dimension of the “climate migrant” label, analysing the fragmentation of international and European legal frameworks, and examining the discursive and institutional configuration of the EU migration regime, this article has sought to reframe climate mobility as a relational and governance-shaped phenomenon rather than as an automatic environmental outcome.

The relationship between perceptions of climate change and migration decisions proves to be extremely complex and resistant to mono-causal explanations⁵⁹. A substantial body of scholarship⁶⁰ has shown that subjective perceptions of the increase in extreme weather events or of climatic transformations significantly influence migratory intentions, often independently of objective data. In many cases, it is not the “empirical reality” of risk that shapes decision-making, but rather its individual and collective representation⁶¹. For some communities, the perceived threat of phenomena such as sea-level rise or coastal erosion increases the propensity to migrate⁶²; in other contexts, heightened awareness of climate risks instead

⁵⁹ On this topic see: C. Dannoura, *Il ruolo delle percezioni nella decisione di intraprendere una migrazione*, e C. Ioli, *Multicausalità e vita personale nelle migrazioni climatiche*, both in M. Di Pierri, M. Marano, *Le rotte del clima*, respectively 52-67 e 78-88.

⁶⁰ Among the most significant, see: T. Afifi, A. Milan, B. Etzold, B. Schraven, C. Rademacher-Schulzb, P. Sakdapolrak, A. Reif, K. Geest, K. Warner, *Human Mobility in Response to Rainfall Variability: Opportunities for Migration as A Successful Adaptation Strategy in Eight Case Studies*, in 5(2) *Migration & Dev.* 254 (2026); G.M.M. Alam, K. Alam, S. Mushtaq, *Climate Change Perceptions and Local Adaptation Strategies of Hazard-Prone Rural Households in Bangladesh*, in 17 *Climate Risk Mgmt.* 52 (2017); M.J. Kabir, R. Cramb, M. Alauddin, C. Roth, S. Crimp, *Farmers' Perceptions of and Responses to Environmental Change in Southwest Coastal Bangladesh*, in 58(3) *Asia Pac. Viewpoint* 362 (2017); L. Parsons, J.Ø. Nielsen, *The Subjective Climate Migrant: Climate Perceptions, Their Determinants, and Relationship to Migration in Cambodia*, in 111(4) *Ann. Am. Ass. Geographers* 971 (2021); I. Steimanis, M. Mayer, B. Vollan, *Why Do People Persist in Sea-Level Rise Threatened Coastal Regions? Empirical Evidence on Risk Aversion And Place Attachment*, in 34 *Climate Risk Mgmt.* 100377 (2021).

⁶¹ See F. de Longueville, P. Ozer, F. Gemenne, S. Henry, O. Mertz, J.Ø. Nielsen, *Comparing Climate Change Perceptions And Meteorological Data in Rural West Africa to Improve the Understanding of Household Decisions to Migrate*, in 160 *Clim. Change* 123 (2020).

⁶² On this point, see: R. Stojanov, B. Duží, I. Kelman, D. Němec, D. Procházka, *Local Perceptions of Climate Change Impacts and Migration Patterns in Malé, Maldives*, in 183(4) *Geo. J.* 370 (2017); A. Milan, R. Oakes, J. Campbell, *Tuvalu: Climate Change and*

reinforces the determination to remain, grounded in economic, identity-based or cultural motivations⁶³.

These divergences depend on a multiplicity of factors: socio-economic conditions, availability of resources, exposure to vulnerable sectors such as agriculture and fisheries⁶⁴, access to meteorological information⁶⁵ and, not least, psychological and cultural variables. Fear, trust or resignation may exert a stronger influence on decisions than the objective nature of the risk itself. A decisive element is place attachment, rooted in affective, cultural or spiritual bonds⁶⁶. For many communities, migration represents a last resort, activated only after other adaptation strategies have failed⁶⁷. Recent research further highlights the relevance of both voluntary and forced immobility⁶⁸, demonstrating that climate change can simultaneously generate mobility and permanence.

Even where migration is interpreted as a form of adaptation⁶⁹, it may generate new material and social vulnerabilities, undermining established community networks⁷⁰. In many situations, mobility appears less as an adaptive choice than as an imposed survival strategy, reflecting the failure of local public adaptation policies.

Migration – Relationships between Household Vulnerability, Human Mobility and Climate Change, Report No.18, Bonn, 2016.

⁶³ On the other point of view, see: W.N. Adger, R.S. de Campos, S.N.A. Codjoe, T. Siddiqui, S. Hazra, S. Das, H. Adams, M.F. Gavonell, C. Mortreux, M. Abu, *Perceived Environmental Risks and Insecurity Reduce Future Migration Intentions in Hazardous Migration Source Areas*, in 4(1) *One Earth* 146 (2021); V. Koubi, S. Stoll, G. Spilker, *Perceptions of Environmental Change and Migration Decisions*, in 138(3–4) *Clim. Change* 439 (2016).

⁶⁴ For an in-depth discussion, see V. Koubi, G. Spilker, L. Schaffer, T. Böhmelt, *The Role of Environmental Perceptions in Migration Decision-Making: Evidence from Both Migrants and Non-Migrants in Five Developing Countries*, in 38(2) *Population Env't* 134 (2016).

⁶⁵ C.K. Jha, V. Gupta, U. Chattopadhyay, B.A. Sreeraman, *Migration as Adaptation Strategy to Cope with Climate Change: A Study of Farmers' Migration in Rural India*, in 10(1) *Int'l J. Clim. Change Strat. Mgmt.* 121 (2018).

⁶⁶ Among the most significant contributions on this issue, see: C. Farbotko, *Anti-Displacement Mobilities and Re-Emplacements: Alternative Climate Mobilities In Funafala*, in 48(14) *J. Ethnic Migration Stud.* 3380 (2022); C. McMichael, C. Farbotko, A. Piggott-McKellar, T. Powell, M. Kitara, *Rising Seas, Immobilities, and Translocality in Small Island States: Case Studies from Fiji and Tuvalu*, in 43 *Population Env't* 82 (2021); A.E. Piggott-McKellar, C. McMichael, *The Immobility-Relocation Continuum: Diverse Responses to Coastal Change in a Small Island State*, in 125 *Env'l Sci. Pol'y* 105 (2021); M.M. Rabbani, M. Cotton, R. Friend, *Climate Change and Non-Migration: Exploring the Role of Place Relations in Rural and Coastal Bangladesh*, in 44 *Population Env't* 99 (2022).

⁶⁷ A. Arnall, U. Kothari, *Challenging Climate Change and Migration Discourse: Different Understandings of Timescale and Temporality In The Maldives*, in 31 *Glob. Env'l Change* 199 (2015).

⁶⁸ On this regard: I. Boas, H. Wiegel, C. Farbotko, J. Warner, M. Sheller, *Climate Mobilities: Migration, Im/Mobilities and Mobility Regimes in a Changing Climate*, in 48(14) *J. Ethnic Migration Stud.* 3365 (2022); C. Zickgraf, *Climate Change, Slow Onset Events and Human Mobility: Reviewing the Evidence*, in 50 *Curr. Opinion Env'l Sust'y* 21 (2021).

⁶⁹ In line with this approach, see F. Gemenne, J. Blocher, *How Can Migration Serve Adaptation to Climate Change? Challenges to Fleshing Out a Policy Ideal*, in 183 *Geo. J.* 336 (2017).

⁷⁰ Within this scholarly debate, see K. Vinke, J. Bergmann, J. Blocher, H. Upadhyay, R. Hoffmann, *Migration as Adaptation?*, in 8(4) *Migration Stud.* 626 (2020).

This dimension is closely intertwined with the decisive role played by institutional and public narratives on climate and migration. Discourses produced by governments, international agencies and the media do not merely describe reality; they actively contribute to constructing it, shaping perceptions, expectations and collective decisions⁷¹. Narratives such as the “inevitability of disaster” or “imminent uninhabitability” have, in certain contexts, legitimised forced relocations or preventive migration, as documented in Bangladesh⁷². Adaptation policies, including planned relocation schemes, have likewise contributed to rendering mobility socially imaginable and politically acceptable⁷³.

These dynamics make it clear that “climate migration” cannot be explained through linear models and that the language used to describe it performs a constitutive function. As highlighted by a substantial body of literature, the concept represents a discursive construction that aggregates heterogeneous phenomena – from sudden displacement to slow and cumulative mobility – under a single label⁷⁴. While this unification creates an appearance of intuitive clarity, it conceals a high degree of conceptual ambiguity: it implies a direct causal link between climate and migration that empirical research consistently challenges. It is therefore unsurprising that the term has achieved rapid institutional legitimisation, owing to its political and communicative versatility: for humanitarian agencies it delineates a field of intervention; for climate scientists it embodies a concrete dimension of climate impacts; and for governments it functions as a device to justify security-oriented or containment policies.

Within the sphere of global governance, the concept operates as a technology of government: to define “climate migrants” is to create administrative categories, monitoring systems and management instruments. This reinforces the tendency towards the securitisation of the climate–migration nexus, which since the twenty-first century has increasingly linked climate change to geopolitical risks and instability, foreshadowing waves of “climate refugees” to be contained. This perspective ultimately transforms migration from a potential strategy of adaptation into a threat, thereby legitimising the reinforcement of borders and the militarisation of frontiers. At the same time, it produces a depoliticising effect: by attributing mobility to natural and impersonal dynamics, it obscures the structural factors – poverty, inequality and institutional fragility – that constitute the real conditions of vulnerability.

⁷¹ For a comprehensive analysis, see A. Bertana, *The Role of Power in Community Participation: Relocation as Climate Change Adaptation In Fiji*, in 38(5) *Env't & Planning C: Pol. Spaces* 902 (2020).

⁷² K. Paprocki, *Threatening Dystopias: Development and Adaptation Regimes in Bangladesh*, in 108(4) *Ann. Am. Ass. Geographers* 955 (2018).

⁷³ E. Hermann, W. Kempf, *Climate Change and the Imagining of Migration: Emerging Discourses on Kiribati's Land Purchase In Fiji*, in 29(2) *Contemp. Pac.* 231 (2017).

⁷⁴ In this respect, noteworthy is the work by G. Daoust, J. Selby, *Climate Change and Migration: A Review and New Framework for Analysis*, in 15(4) *WIREs Clim.Change* 1 (2024), for the interpretative framework proposed and the accompanying review of evidence, which advocates a broader and more complex reading of the migration implications of climate change.

Overcoming such reductions requires a multidimensional and relational approach, grounded in climate justice and shared global responsibility. Migration cannot be interpreted as a mechanical reaction, but rather as the outcome of complex interactions among material constraints, risk perceptions, social narratives and opportunity structures. Referring instead to disaster displacement or migration driven by territorial degradation allows for greater empirical depth and helps foreground the agency of the individuals and communities concerned.

Ultimately, the governance of climate-related mobilities should shift its focus from managing migrants to managing the conditions under which choices are made: strengthening local resilience, improving access to resources, creating safe and legal corridors, and recognising that mitigation policies and energy transition strategies directly shape migratory dynamics. Public narratives also play a decisive role, as they contribute to rendering mobility more or less legitimate and more or less imaginable, thereby influencing both risk perceptions and adaptation strategies.

Only by integrating climatic, socio-economic, psychological and discursive dimensions can an interpretative framework be developed that fully captures the complexity of the climate–migration nexus and guides coherent, effective and dignity-oriented policy responses to the transformations of the twenty-first century. Therefore, by reorienting the analytical lens through which climate mobility is interpreted and governed, space is opened for forms of governance grounded in climate justice, shared responsibility, and institutional coherence.

