Climate-related migration within the EU legal framework: the dark side of the green transition

di Antonia Baraggia

Abstract: La migrazione climatica nel quadro giuridico dell'Unione Europea: il lato oscuro della transizione ecologica - This article examines climate-related migration within the European Union legal framework, highlighting the structural limits of existing asylum and protection categories in addressing environmentally driven mobility. It argues that the Common European Asylum System is ill-equipped to capture the multi-causal and slow-onset nature of climate-induced displacement. In the absence of a dedicated legal status, protection has increasingly relied on human rights law and the principle of non-refoulement. The article further explores the tension between the EU's green transition objectives and its predominantly securitarian migration policies. It concludes that climate-related mobility constitutes a critical test of the EU's capacity to adapt its legal order to emerging forms of vulnerability.

Keywords: Climate-related migration; EU asylum law; Non-refoulement; Human dignity; Green transition

1. Introduction

Contemporary legal systems are increasingly confronted with complex claims that no longer fit neatly within traditional categories. The climate crisis is emblematic in this respect: it reshapes the material conditions of life and both drives and constrains human mobility in ways that escape the binary classifications on which migration and asylum law have historically relied, such as voluntary/forced, economic/political, or internal/international. Climate-induced migration – or, more broadly, climate-related mobility – thus confronts the law with the task of a profound conceptual and normative recalibration[1].

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[1] W. Kälin, N. Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change. Normative Gaps and Possible Approaches*, in *Legal and Protection Policy Research*

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What kind of protection should legal systems afford to people «who, for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, either temporarily or permanently, and who move either within their country or abroad»?[2] Are climate-induced migrants a self-standing category of migrants, or are environmental factors simply one among several triggers for mobility, alongside poverty, conflict, land-use changes and governance failures? Do we need a genuine paradigm shift in the regulation of migrant status, moving beyond the post-war legal architecture?

The temptation to respond to these challenges by coining a new label – "climate refugees", "environmental migrants", "eco-migrants" – is understandable. Yet this move risks obscuring the complexity of the phenomenon and overstating what law can realistically deliver. Experience suggests that terminological innovation alone is insufficient. What is at stake is not only how we name climate-affected persons, but whether, and how, existing legal orders are prepared to redistribute protection, responsibility, and resources in light of migration processes that are shaped, directly or indirectly, by climate-related circumstances. New categories become meaningful only when they are embedded in enforceable rights, institutional procedures and concrete obligations for states and regional organisations.

Before coining new legal categories, the legal perspective must therefore rely on the knowledge and data produced by other disciplines, including geography, sociology, anthropology, and climatology[3]. These different approaches illuminate specific dimensions of the issue and help us grasp both the empirical reality and the distinctive features of the phenomenon. From a geographical perspective, as Amato argues, portraying climate change as a "silent factor" behind so-called "migration crises" is one of the most pervasive simplifications of the last twenty years[4]. From an anthropological standpoint, climate-related migration can be seen as a very old form of mobility: historically, people have moved in search of fertile soil and water resources[5]. Climate-induced migration was largely forgotten in the modern era, only to be rediscovered in the context of contemporary climate-change debates.

Series, UNHCR, Geneva, 2012; J. McAdam, *Climate Change, Forced Migration, and International Law*, Oxford, 2012.

[2] International Organization for Migration, *Discussion Note: Migration and the Environment*, MC/INF/288, 1 November 2007, §6. For the protection tools, see R. Picone, *Migrazioni ambientali e ordinamento nazionale. Quali strumenti di tutela?* in *Actualidad Jur. Iberoamericana*, 20, 2024, 1246-1287; A. Stevanato, *I migranti ambientali nel decreto-legge n. 20 del 2023. Che cosa resta della loro protezione?* in *Corti Supr. Salute*, 2, 2023, and A. Brambilla, *Migrazioni indotte da cause ambientali: quale tutela nell'ambito dell'ordinamento giuridico europeo e nazionale?* in *Dir. imm. citt.*, 2, 2017.

[3] See A. Vedaschi, *Diritto comparato e interdisciplinarietà: tra innata vocazione e incompiuta realizzazione?* in *Dir. pubbl. comp. eur.*, 2021, 2, 301-325.

[4] F. Amato, *Antropocene e migrazioni in una prospettiva geografica*, in F. Amato, V. Carofalo, A. Del Guercio, A. Fazzini, V. Grado, E. Imparato, Anna Liguori (Eds.), *Migrazioni e Diritti al Tempo dell'antropocene*, Napoli, 2023, 147-170.

[5] E. Piguet, *From "Primitive Migration" to "Climate Refugees": The Curious Fate of the Natural Environment in Migration Studies*, in 103 *Annals Ass. Am. Geographers* 148 (2013).

From a sociological point of view, we must also acknowledge that only a limited number of studies examine how environmental factors shape migrants' decisions to move. Most respondents in empirical surveys do not identify ecological elements as having a direct, primary impact on their decision[6]. Nevertheless, the environment may still exert a powerful indirect effect by altering individuals' economic prospects, social relations, or political conditions, rather than operating as a clearly identifiable, standalone cause of migration. Any legal response to climate-related mobility that aspires to be both realistic and normatively robust must take these interdisciplinary insights seriously.

The European Union (EU) is a particularly revealing arena in which to observe this tension between old categories and new realities. On the one hand, the EU has positioned itself as a global climate leader through the European Green Deal[7], the European Climate Law[8] and the EU Strategy on Adaptation to Climate Change, committing to climate neutrality and to a "just transition" that leaves no one behind. On the other hand, its migration and asylum acquis – recently overhauled by the New Pact on Migration and Asylum – remains largely structured around traditional distinctions between refugees and other migrants[9], and is increasingly framed in terms of border management, deterrence and return[10].

Climate-related mobility lies at the crossroads of these two policy fields, yet it is not systematically addressed by either of them. Against this background, this article asks how EU law – understood in a multilevel perspective that includes EU institutions, Member States and local government – is responding to the challenges posed by climate-induced migration, and whether it can generate the kind of category-building that previous transformations in international protection have required[11]. It says that, even though EU law has so far used existing categories (such as refugee status, subsidiary protection and national humanitarian permits) to deal with

[6] International Organization for Migration, *Impacts of Environmental Changes on Mixed Migration Europe: Insights from Flow Monitoring Surveys in Italy, Malta and Spain*, 5 December 2024.
[7] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM/2019/640 final.
[8] Parliament and Council Regulation 2021/1119 of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'): see K. Kulovesi, S. Oberthür, H. van Asselt, A. Savaresi, *The European Climate Law: Strengthening EU Procedural Climate Governance?*, in 36(1) *Journal Env. Law* 23 (2024).
[9] F. Perrini, *Il nuovo patto sulla migrazione e l'asilo ed i migranti ambientali: una categoria "dimenticata"?*, in 2 *Freedom, Security & Justice: Eur. Legal Stud.* 245 (2021).
[10] Cfr. D. Butros, V. Brodén Gyberg, A. Kaijser, *Solidarity Versus Security: Exploring Perspectives on Climate Induced Migration in UN and EU Policy*, in 15(6) *Env't Commc'n* 842 (2021); M.J. Trombetta, *Linking Climate-Induced Migration and Security within the EU: Insights from the Securitization Debate*, in 2(2) *Crit. Stud. Sec.* 131 (2014).
[11] As remembered by A. Ruggeri, *Per i migranti ambientali: non muri o respingimenti ma solidarietà e accoglienza*, in *Ordine internaz. dir. umani*, 2021, 1156, «le migrazioni ambientali, al pari di altre forme di migrazioni [...], sollecitano la messa in atto di uno sforzo poderoso, comune, dell'intera Comunità internazionale e di organizzazioni sovranazionali, quale l'Unione europea, non potendo gravare sulle sole, comunque limitate, forze dei singoli Stati».

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claims related to climate change, the scale and structural nature of the climate crisis is such that a more explicit and coherent set of rules is needed. The question, ultimately, is whether the EU legal order's categories and institutions can once again be adapted to a changing world, or whether climate-induced mobility will remain, for the time being, a blind spot in the Union's self-proclaimed project of climate-just and rights-based integration.

2. A preliminary conceptual clarification: who are we talking about?

The fact that climate change is one of the drivers of contemporary migration is now widely acknowledged, both in policy debates and in the scientific literature. Less clear, however, is *how* law should conceptualise and name the people whose mobility is affected, directly or indirectly, by climate-related phenomena. The blind spots of the current legal framework in addressing climate-related migration are closely linked to this conceptual opacity: as long as the relevant category remains vague, fragmented or contested, the design of coherent protection regimes will remain elusive[12].

The term "climate refugee" is frequently used in news reports and advocacy initiatives. However, as legal experts have repeatedly emphasised, this term is not defined in the 1951 Refugee Convention. The Convention is based on the concept of a well-founded fear of persecution due to factors such as race, religion, nationality, membership of a particular social group, or political opinion. This template is not fit for purely environmental harm unless it can be connected to persecutory conduct by state or non-state actors. Even then, as Jane McAdam and others have argued, the typically diffuse, cumulative and collective nature of climate impacts makes it difficult to satisfy the legal notion of "persecution" as developed in international and domestic refugee law, which tends to focus on more targeted and intentional patterns of harm[13].

In response to these limitations, international organisations and a large part of the literature have moved towards broader, more descriptive notions such as "environmental migration", "climate-related mobility" or "environmentally displaced persons", which explicitly recognise the multi-causal nature of movement. A frequently cited definition describes environmentally displaced persons as «those individuals of a country who for compelling reasons of sudden disasters (in particular cyclones, storm surges and floods) or progressive environmental degradation (in particular drought, desertification, deforestation, soil erosion, water shortages and other climate change related conditions), natural and/or human-made, impacting on their lives or livelihoods, are obliged to leave their country of origin temporarily or permanently to a third State». This shift in terminology marks an important step away from a narrow, refugee-centred lens, but it also underscores that environmental factors usually interact with

[12] L. Pierini, *I migranti ambientali e climatici: inquadramento del fenomeno e tutela dei diritti umani*, in *Ordines*, 2023, 1, 35-57.
[13] B. Mayer, *The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework*, in 22(3) *Colo. J. Int'l Envt'l L. & Pol'y* 357 (2011).

– rather than replace – other structural drivers such as poverty, conflict, land-use changes and governance failures.

The IPCC's Sixth Assessment Report, for instance, situates migration within a broader spectrum of responses to climate change, alongside in situ adaptation and planned relocation, emphasising that people move for multiple, overlapping reasons rather than solely "because of climate change".

The legal scholarship[14] has similarly stressed that this multi-causal reality complicates any attempt to construct a strictly "climate-only" legal category and instead calls for contextual, rights-based assessments of vulnerability and risk. In the same vein, McAdam warns against the illusion that a separate "climate refugee" treaty could magically close existing protection gaps, and argues instead for the creative use of human rights, refugee law and regional instruments to address climate-affected mobility in a more incremental but realistic fashion[15].

Against this background, human rights law has so far been the main lever for protecting persons affected by climate change at the international level, particularly through an expanded interpretation of the principle of non-refoulement. According to this principle, individuals may not be removed to a territory where they face a real risk of serious harm. A landmark decision by the UN Human Rights Committee in the case of *Teitiota v. New Zealand* established that, in extreme cases, returning a person to a place where climate impacts create life-threatening conditions could violate the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), thereby opening the door — at least in principle — to non-refoulement claims based on climate-related risks[16]. Building on this development, literature[17] has explored how complementary forms of protection based on non-refoulement could be extended to environmental migrants who do not qualify as refugees, but who would face serious threats to their fundamental rights upon return. Di Filippo contends in particular that complementary protection anchored in non-refoulement is a more feasible option than expanding the refugee definition, provided that courts and administrations treat environmental degradation as a potential source of "serious harm"[18].

Meanwhile, a series of soft-law instruments — most notably the 2018 Global Compact for Safe, Orderly and Regular Migration and the work of the Platform on Disaster Displacement — have explicitly identified

[14] M. Guglielmini, *Cambiamento climatico, migrazioni, vulnerabilità. Riflessioni per una tutela dei migranti ambientali*, in *L'Ircocervo*, 2025, 24, 99-118; S. Borràs-Pentinat, A. Cossiri, *La protezione giuridica dei migranti forzati per causa climatica all'incrocio degli ordinamenti giuridici*, in *Dir. imm. citt.*, 2024, 3; A. Del Guercio, *Cambiamento climatico, migrazioni internazionali e diritti umani*, in AA.VV., *Migrazioni e diritti al tempo dell'Antropocene*, Napoli, 2023, 193-232.

[15] J. McAdam, *Climate Change, Forced Migration, and International Law*, Oxford, 2012.

[16] J. McAdam, *Current Developments - Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-Refoulement*, in 114(4) *Am. J. Int'l L.* 708 (2020).

[17] V. Basile, *UNHCR Guidelines on Granting Refugee Status to Those Fleeing the Consequences of Climate Change*, in N. Krstevska, O. Koshevaliska, E. Maksimova (Eds.), *Essay on Migration and Asylum*, Štip, 2022, 73 ff.

[18] F. Di Filippo, *La protezione dei migranti ambientali nel dialogo tra diritto internazionale e ordinamento italiano*, in *Dir. Umani Dir. Internazionale*, 2023, 17(2), 313 ff.

environmental degradation, disasters and climate change as drivers of human mobility, calling for strengthened legal and policy frameworks at the national, regional and international levels. Although non-binding, these processes contribute to normalising the idea that the impact of climate change is legally relevant in terms of mobility and protection. They also encourage regional actors, such as the European Union, to experiment with approaches that offer greater protection in relation to climate-related movement.

In this international law context, in which human rights bodies, treaty organs, expert platforms and soft-law initiatives collectively push towards recognising climate-affected mobility not as a marginal anomaly, but as a structurally significant feature of contemporary migration governance, it is interesting to explore the role for the European Union as a global actor both in the realm of climate change and in the realm of migration management.

3. The EU at the crossroads

Seen from within the EU legal order, the response to environmental and climate-related displacement is characterized by a kind of *limbo*. Over roughly the last decade, the Union has started to speak the language of climate mobility: Commission communications[19] and Parliament reports[20] increasingly acknowledge climate change and environmental degradation as important drivers of migration.

However, this acknowledgement and this increased awareness of the interplay between climate change and migration have not been reflected in the creation of new standards or regulatory path.

In this vein, it is notable that a dedicated protection status has not been established, clearly codified rights for climate-related migrants have not been granted, and not even a minimally coherent body of secondary legislation specifically addressing climate-induced movement has been created. Instead, climate-related claims are absorbed into the existing Common European Asylum System (CEAS), whose categories were never designed with environmental harm in mind. It is not surprising that this system structures and, in many ways, constrains the legal imagination of EU and national decision-makers in adapting asylum frameworks to the emerging phenomenon of climate-related displacement.

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[19] See for example COM(2020) 609, 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. Here the Commission acknowledges climate change as one of the issues affecting migrations: "Demographic and economic trends, political instability and conflict, as well as climate change, all suggest that migration will remain a major phenomenon and global challenge for the years to come".

[20] It is quite notable that the EP addressed the issue of climate migration already in 1999, see European Parliament, January 14, 1999, *Report on the Environment, Security and Foreign Policy*, available at https://www.europarl.europa.eu/doceo/document/A-4-1999-0005_EN.html. More recently see the EP Briefing, *The Concept of "Climate Refugee": Towards a Possible Definition*, 2023, available at https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698753.

Within this framework, EU law offers three avenues for protection. The first is refugee status under the Qualification Directive/Regulation[21] and, from July 2026, the newly adopted Qualification Regulation[22], which basically reproduces the refugee concept of the 1951 Convention.

In abstract terms, nothing in the Convention definition or its EU transposition excludes the possibility that environmental destruction might be associated with persecution on a Convention ground. For example, a state might deliberately withhold adaptation measures from a particular ethnic or religious minority or weaponize environmental degradation, such as the diversion of water or the forced relocation of people from fertile land, against political opponents. In such exceptional scenarios, climate impacts are not the sole cause of displacement, but rather a tool used in persecutory conduct. However, doctrinally, these cases sit uncomfortably at the boundaries of the persecution concept: adjudicators must reconstruct discriminatory intent or effect in contexts dominated by diffuse, structural harms and disentangle climate factors from socio-economic mismanagement and corruption[23]. As McAdam[24] and others have argued, this makes refugee status an unsuitable option for most climate-related claims, as these are generally not perceived as targeted persecution, but rather as the cumulative result of global processes and domestic governance failures.

The second tool is subsidiary protection. Article 15 of the Qualification Directive sets out three types of "serious harm" that are used to determine whether subsidiary protection applies. (a) the death penalty; (b) torture or inhuman or degrading treatment; and (c) a serious and individual threat to life or personal safety due to indiscriminate violence in situations of armed conflict. This assumes either an identifiable author of the harm (a State or non-State actor) or a setting that can be described as "armed conflict". Environmental degradation and climate disasters only fit this template if the notion of inhuman or degrading treatment is expanded to encompass structurally degrading living conditions, such as where heat, drought and lack of access to water make survival or basic subsistence impossible, or if climate impacts are closely intertwined with conflict dynamics, for example in the form of resource wars or forced displacement following disaster in conflict zones. Some scholars and courts have started to explore this approach by drawing analogies with case law on extreme socio-economic deprivation and health-related removal[25]. However, this remains an

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

[22] Regulation 2024/1347, Art. 3(5), 2024/1347.

[23] P. Mathur, G. Agarwal, *Reframing Persecutions: A Socio-Legal Analysis of Asylum Claims Based on Climate Change-Induced Conditions*, in 14(Special Issue 1) *Christ University Law Journal* 25 (2025).

[24] J. McAdam, *Current Developments*, *op. cit.*

[25] ECHR, *N. v. the United Kingdom*, Application No. 26565/05 (27 May 2008) and *Paposhvili v. Belgium*, Application No. 41738/10 (13 December 2016). In Colombia, in a historic ruling (Judgment T-123/2024) of April 2024 dealing with an action for the protection of fundamental rights, the Constitutional Court recognized the existence of internally displaced persons as a result of environmental factors.

interpretive and contested move. Subsidiary protection is conceptually anchored in violence and conflict; interpreting structural climate vulnerability in this context requires a normative leap that many Member State authorities are reluctant to take.

The third option is temporary protection. The 2001 Temporary Protection Directive, which was recently invoked for Ukrainians, provides a robust group-based status in cases of 'mass influx' of displaced individuals. In theory, there is nothing to prevent the Council from activating it in response to disaster-related displacement on a large scale. In practice, however, the instrument is politically controlled and temporally framed: activation depends on a Council decision adopted by qualified majority, and the regime is conceived as short-term, exceptional and crisis-oriented. It is not set up to deal with slow-onset processes like sea-level rise, desertification, where mobility takes years or decades to unfold and does not appear as a sudden, visible "arrival wave" that might trigger the mass-influx narrative.

Each of these channels is limited by its own internal logic – persecution, armed conflict, mass influx – and by significant procedural or political limits (recognition practice for refugee and subsidiary status; Council activation for temporary protection). The net effect is that most environmentally displaced persons fall through the cracks of EU asylum law. They are either regarded as "standard" irregular migrants, directed into return procedures once their asylum claims are refused, or, in the most favourable of circumstances, contemplated under discretionary humanitarian programmes with limited entitlements and considerable vulnerability. This is what makes the concept of "structural invisibility" so persuasive[26]: the mismatch is not accidental or episodic but embedded in the very vocabulary through which the CEAS organises protection.

In this context, the most meaningful innovation has not come from EU legislation but from judicial bodies, through a gradual turn to human rights and non-refoulement as the primary lens for thinking about environmental displacement. The UN Human Rights Committee's Views in *Teitiota v New Zealand* are rightly seen as a milestone[27]. Although the Committee ultimately found no violation and allowed the removal of Mr. Teitiota, it accepted in principle that climate-related harm can fall within the scope of the right to life and can therefore trigger non-refoulement obligations under Article 6 ICCPR. Crucially, the Committee indicated that such obligations may arise *before* a State is literally submerged or its entire territory rendered uninhabitable: the relevant question is whether climate impacts, combined with other factors, create a foreseeable, real risk to life with dignity. This is a significant conceptual shift: environmental degradation is no longer merely background context but becomes a potential source of legally cognisable risk.

At the same time, *Teitiota* lays bare the limits of a purely jurisprudential path. The evidentiary burden placed on the applicant is

[26] F. Passarini, *Environment: Protection of Environmental Migrants in Italy in Light of the Latest Jurisprudential Developments*, in *Italian YIL* 446 (2022).
[27] Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016 (24 October 2019).

extremely high: he or she must show not only severe environmental degradation, but also an imminent, individualised risk that goes beyond the general plight of the community. The assessment remains strongly case-by-case, with little room for recognising structural vulnerability or collective exposure as such. The threshold for finding a violation is so demanding that only the most extreme scenarios are likely to succeed, and even then, only for those individuals who are able to access legal representation and navigate complex international procedures. In other words, the human-rights route opens an important doctrinal door, but it does so in a way that is narrow, reactive and highly selective.

Despite these limitations, the human-rights turn has clear implications for the EU. If we accept, following *Teitiota* and the broader case law of Strasbourg on health-based and socio-economic non-refoulement[28], that obligations under instruments such as the ICCPR and the ECHR extend to serious environmental harm, then an EU asylum system that continues to erase climate-induced vulnerability from its positive law runs the risk of drifting into structural tension – if not outright conflict – with its own foundational commitment to fundamental rights. An EU that constitutionally enshrines the Charter, proclaims itself a human-rights and climate leader, and yet treats climate-displaced persons as legally indistinguishable from any other "irregular migrants", exposes itself to charges of normative incoherence.

In this light, the reform options, highlighted by the literature,[29] are relatively clear at the normative level, even if they are politically contested. A first route would be a targeted reform of the Qualification regime, broadening the notion of "serious harm" to explicitly include situations of grave environmental degradation and heightened exposure to natural hazards, irrespective of armed conflict or direct persecution. This would not solve all evidentiary problems, but it would send a powerful signal: certain climate- and disaster-related harms are, in themselves, capable of giving rise to EU-level protection. Courts would no longer be forced to shoehorn climate harms into the language of "indiscriminate violence" or "torture", nor to rely exclusively on general Charter provisions to justify protection.

A second route would be the establishment of an EU-level humanitarian protection mechanism, autonomous from refugee and subsidiary status but anchored in non-refoulement and fundamental rights. Such a status could be designed with sufficient flexibility to respond to slow-onset crises and recurrent disasters and could be informed by evolving scientific evidence on climate risk. One advantage of this model is that it could rely, at least in part, on objective triggers – internationally recognised disaster declarations, IPCC-based indicators, or threshold indices of climate vulnerability – thereby reducing the need for each applicant to prove an almost impossibly high level of personalised risk. This would shift part of the burden from the individual to the institutional level, aligning legal thresholds more closely with the collective nature of climate harms.

[28] E. K. Blöndal, O.M. Arnardóttir, *Non-Refoulement in Strasbourg: Making Sense of the Assessment of Individual Circumstances*, in 5(3) *Oslo L. Rev.* 147 (2019).
[29] F. Passarini, *op. cit.*

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Realistically, however, all these avenues collide with strong political headwinds. The negotiation of the New Pact on Migration and Asylum, and the adoption of the Crisis and Force Majeure Regulation, provide a telling indication of Member States' current priorities: rather than expanding the circle of rights-holders, the legislative energy has largely been invested in designing derogatory regimes for exceptional situations, speeding up procedures, and reinforcing return and border control. In the short term, therefore, much will depend on how far courts – national, European and international – are prepared to go in reading existing EU instruments in the light of an evolving understanding of non-refoulement, and on whether they are willing to embrace a more structural conception of vulnerability in environmental cases, instead of clinging to an almost fetishised individualisation of risk.

Even in the best-case scenario, however, this judicial evolution can only be a second-best solution. It may mitigate some of the harshest outcomes of the current framework, prevent the most egregious forms of climate-related refoulement, and gradually shift interpretive baselines. But it cannot substitute for the political and normative choice that the Union has so far refused to make: to acknowledge environmentally displaced persons as rights-holders within the EU legal order and to offer them a clear, predictable and coherent form of protection. Without such a choice, the EU's response to climate-induced displacement will remain characterised by the inherent tension that this section has sought to describe: a system that knows enough to name climate mobility, but not enough – or not yet willing – to protect those who move because of it.

4. The EU in transition: climate-migrations in the EU changing path

While reflecting on the flaws of the climate-related migrant protection scheme, we cannot overlook the broader context of the EU's contemporary reassessment. As Goldner Lang argues, we are in the midst of a reconfiguration of the EU, where «shifting priorities could redirect its resources toward internal resilience, protectionism, and defense, thereby marginalizing EU climate action and external aid— precisely as the U.S. withdrawal from international initiatives is creating a significant global leadership and funding gap»[30].

In this light, beside the substantive definition of the regime for climate-related migration, an interesting perspective is offered by analysing the EU funding in the field of climate-related migration. Lacking a comprehensive legal regime, «the EU has largely engaged in indirect financing, prioritizing climate action that reduces drivers of climate migration over direct support for displacement or resettlement»[31], operating through mitigation and adaptation strategy.

[30] I. Goldner Lang, M. Lang, *Challenges to EU Climate Finance under Shifting Priorities*, in 119 *AJIL Unbound* 95, 100 (2025).
[31] Ivi, 97.

The impact of the financial dimension is increasingly relevant in the field of migration law[32]: as Tsurdi and Zardo have argued, funding has evolved as a tool of international governance migration, since countries «use funding instrumentally, to pursue migration management objectives through externalization practices»[33]. Even looking at the specific topic of climate-related migration, the funding perspective may reveal some general trend.

Already in the current Multiannual Financial Framework (MFF) for the years 2021 to 2027, significant resources for both mitigation and adaptation are allocated[34]. In addition, the European Union Solidarity Fund (EUSF) provides financial support to EU member states and accession countries facing severe natural disasters.

Trying to trace a possible trajectory of the EU evolving approach vis-à-vis climate-related migration, also in the light of the competing interest of security and border control, it is key to look at the structure and the content of the proposed Multiannual Financial Framework (MFF) 2028-2034, which is presented as a "budget for a new era".

The proposed budget is around €2 trillion (1.26% of EU GNI), and the overall program poses a strong focus on sovereignty, security and the green–digital transitions. Migration and border management emerge as clear political priorities. The Commission proposes to triple spending in this area, with around €30.6 billion for "Migration and border management" and some €81 billion overall when related facilities and envelopes are included.

Regarding cohesion funds, the Commission proposal merges 14 previously separate funds covering cohesion, agriculture, and migration into a single €771bn (in 2025 prices) European Fund for economic, social, and territorial cohesion, agriculture and rural, fisheries and maritime, prosperity and security. This fund would be distributed through 27 National and Regional Partnership Plans, with National governments largely deciding what to fund. They can allocate their NRPP envelope not only to cohesion goals but also to areas like agriculture, migration, and security. This provision will give a lot of discretion to the MS on where to allocate the funds among very different policy objectives.

From the perspective of climate-affected mobility, however the proposal is silent. The MFF maintains the 35% climate and biodiversity target and massively scales up migration-related spending, yet the documents contain no reference to "climate migrants" or "climate-related mobility." Extra funds are mainly justified by the Pact on Migration and

[32] E. Lebon-McGregor, N. Micinski, *The Changing Landscape of Multilateral Financing and Global Migration Governance*, in T. de Lange, W. Maas, A. Schrauwen (Eds.), *Money Matters in Migration: Policy, Participation, and Citizenship*, Oxford, 2021, 19-27; L. Den Hertog, *Money Talks: Mapping the Funding for EU External Migration Policy*, CEPS Paper in Liberty and Security in Europe No. 95, Centre for European Policy Studies, 2016.

[33] E. Tsourdi, F. Zardo, *Migration Governance Through Funding: Theoretical, Normative, and Empirical Perspectives*, in 23 *J. Immigrant & Refugee Stud.* 1, 2 (2025).

[34] See I. Goldner Lang, *Financial Implications of the EU's New Pact on Migration and Asylum: Will the Next Multiannual Financial Framework Cover the Costs?*, in G. Barrett, J.-P. Rageade, D. Wallis, H. Weil (Eds.), *The Future of Legal Europe: Will We Trust in It?* Liber Amicorum *in Honour of Wolfgang Heusel*, Cham, 2021.

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Asylum, border control and internal security. Climate is treated on the mitigation/adaptation side of the budget, not on the mobility side, signalling a choice not to recognise climate-affected people as a distinct group in need of EU mobility and protection policies.

Three structural reasons help explain the absence of a specific budget line. First, as already discussed, the EU and international law still lack a separate status for climate-affected individuals[35]; climate change is framed as a "risk multiplier" rather than a legal category. Second, the Commission largely relegates climate-related displacement to external action, development and humanitarian aid instead of EU-level admission schemes. Third, climate and migration are "mainstreamed" across headings and NRPPs without targeted allocations, leaving the climate–mobility overlap conceptually and financially vague.

Nevertheless, several components of the MFF will indirectly shape responses to climate-related mobility. The migration fund (AMIF[36]) will provide financial support for the execution of the Pact, encompassing asylum, resettlement, humanitarian admission, integration and legal migration. Any future use of asylum, subsidiary protection, or national humanitarian statuses for climate-affected people will likely draw on this fund. The same is true of potential climate-sensitive resettlement schemes. At the same time, the Fund for Integrated Border Management, which has been strengthened, will examine how people affected by climate change cross EU borders. It is possible that stronger infrastructure and screening systems will lead to a security-focused approach to their mobility, rather than an approach that focuses on protection and global justice.

Externally, the successor to NDICI–Global Europe and other instruments will channel funds into climate adaptation and disaster risk reduction, as well as providing support for displaced populations in third countries. While these measures may help to prevent forced migration and manage displacement, they are part of a broader agenda of external migration control and the stabilisation of regions of origin and transit rather than rights-based mobility schemes for climate-vulnerable groups. Internally, the integration of migration, cohesion, agricultural and social-climate spending into National Recovery and Resilience Plans (NRPPs) could, in principle, support place-based strategies that link green transition, social policies and migrant integration — including that of climate-affected migrants — in regions facing demographic decline or structural change. However, as climate-related mobility is not recognised as a planning parameter, its inclusion will depend entirely on domestic politics and may easily be overlooked.

In normative terms, the MFF 2028–2034 thus places the EU at a crossroads. While the Union is prepared to increase spending on borders and climate, the connection between climate and mobility remains implicit and fragmented across existing tools.

[35] S.A. Atapattu, *A New Category of Refugees? "Climate Refugees" and a Gaping Hole in International Law*, in S. Behrman, A. Kent (Eds.), *'Climate Refugees' Beyond the Legal Impasse?*, Abingdon, 2018, 34 ff.

[36] Asylum, Migration and Integration Fund (2021-2027), https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2021-2027_en .

For scholars and advocates concerned with "climate migrants," this calls for a dual strategy: scrutinising how expanded migration and border budgets may entrench externalisation and security logics that sideline protection needs, while also exploiting the flexibility of NRPPs, the migration fund and Global Europe to promote climate-sensitive uses of EU resources. This includes pushing for climate-aware interpretations of "serious harm" and non-refoulement, piloting climate-linked admission schemes within current legal categories, and ensuring that adaptation and just-transition programmes treat climate-affected movers as explicit beneficiaries rather than invisible by-products of Europe's green transition.

5. Is a different approach possible now? The Italian case

In this context, attempts to ensure some protection for climate migrants can be found in national legislation and in the judicial activity of domestic courts. At a national level, the European response to climate-induced mobility is highly fragmented and, in many cases, has regressed rather than progressed. A useful snapshot of this landscape is offered by Finland, Sweden, Cyprus and Italy. Together, they demonstrate the potential impact of domestic political choices and the vulnerability of climate-related protection in the absence of an EU-wide framework.

Finland and Sweden are often cited as early "pioneers" in this field[37]. Provisions allowing a residence permit for people unable to return home because of an environmental disaster were introduced in the 2000s by both legal systems. These people were typically categorised as other persons in need of protection under the Aliens Acts. In practice, however, very few people were granted protection on this basis; these provisions were more symbolic than operational.

However, the symbolic aspect was important: it showed that climate- and disaster-related harms could, in theory, justify international protection that went beyond the traditional refugee/subsidiary split. This experiment was short-lived. In the wake of the so-called 'refugee crisis' of 2015-2016, both Finland and Sweden removed the explicit environmental-disaster clauses in the context of broader restrictive reforms of their asylum systems.

As a result, at the moment, no country has a special legal path for climate migrants. Instead, these claims must be added to larger international protection groups or, if they fit, dealt with through humanitarian permits that are given on a case-by-case basis. The Nordic approach is therefore mixed: while it shows that environmental grounds can be legislated for, it also illustrates how quickly such legislation can be overturned when political priorities change.

A different type of national practice is represented by Cyprus. Although it has not created a dedicated status for climate-displaced persons, its asylum legislation, which transposes the recast Qualification Directive, is firmly anchored in the principle of non-refoulement.

[37] E. Hush, *Developing a European Model of International Protection for Environmentally Displaced Persons: Lessons from Finland and Sweden*, in *Columbia JEL* (2018).

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Cypriot law interprets the removal of individuals whose lives would be at risk due to environmental reasons as prohibited. This means that non-refoulement protection is extended to cases involving serious environmental harm, even when there is no formal climate-specific status.

This approach is rights-based and situation-specific: climatic factors are considered within the overall non-refoulement evaluation, typically in conjunction with other vulnerabilities, rather than as a standalone basis for admission or residency.

Finally, Italy is the most complex and contentious example in the EU. On the legislative side, the central instrument is the residence permit for natural disaster, which is now codified in Article 20-bis of the Consolidated Immigration Act (Testo unico sull'immigrazione, D. lgs. 286/1998). Initially introduced by Decree-Law 113/2018, this permit was significantly broadened by Decree-Law 130/2020 to allow a residence permit for third-country nationals whose return to their state of origin was impossible or unsafe due to a serious natural disaster. Holders of this permit are permitted to work and enjoy some degree of social integration. Between 2018 and 2024, the Italian authorities issued 181 permits for calamities[38]. This confirms that only a small number of individuals are eligible to benefit from this regulation.

The normative context, however, has significantly changed after the introduction of Decree-Law 20/2023 (converted into Law 50/2023), which has markedly restricted this instrument, rolling back many of the 2020 extensions and crucially eliminating the possibility of converting permits for natural disasters into work permits. This effectively ties the migrant's legal status to the persistence of the disaster in their country of origin.

The underlying message is clear: while the Italian legislator is willing to acknowledge environmental crises as grounds for temporary residence, they are reluctant to establish this as a stable pathway to permanent settlement.

The Decree-Law 20/2023 has also brought about a narrowing of the scope of special protection, Italy's main national complementary status anchored in Article 19 TUI and traditionally used for the covering of a wide range of serious humanitarian vulnerabilities, including socio-environmental degradation. By amending Article 19 and removing some of the broad references to serious humanitarian reasons and integration ties, the reform has reduced judges' and administrations' room for manoeuvre.

This tightening does not fit with what most court cases have been doing, which is to be more open to arguments about environmental and climate problems. In terms of jurisprudence, the turning point was the ordinance no. 5022/2021 of the Court of Cassation, which concerned a Nigerian applicant from the Niger Delta[39].

In that well-known ruling, the Court of Cassation stated that when assessing special protection applications, trial courts must consider the applicant's personal circumstances as well as the socio-environmental

[38] C. Scissa, *Il permesso di soggiorno per calamità: un aggiornamento sulla sua applicazione, numeri e beneficiari*, in *Questione Giustizia*, 20 November 2024.

[39] A. Del Guercio, *Migrazioni connesse con disastri naturali, degrado ambientale e cambiamento climatico: sull'ordinanza n. 5022/2020 della Cassazione italiana*, in *Dir. Umani Dir. Internazionale*, 2021, 521.

context of their country or region of origin. The issue of environmental degradation caused by oil exploitation, pollution, and climate change is one of the issues it includes. The Court adopted the reasoning of the UN Human Rights Committee in Teitiota, explicitly linking the Italian concept of special protection to the principle of human dignity. Judges are required to compare the individual's actual living conditions in Italy with what would await them in their country of origin. The individual must be granted protection if returning them to their country of origin would result in them falling below the minimum essential level of rights. Environmental and climate factors play a central role in this assessment. Combined with poverty and weak state capacity, these challenges can create living conditions so harsh that they fall below what the Court deems acceptable for a dignified life. It is important to note that the harm does not need to be intentional or directly inflicted by the state. What matters is the foreseeable consequence of removal in terms of human dignity.

As Bonetti argues, this approach allows the legal system to address climate-related harm without requiring a new 'climate migrant' status or the unlikely reform of the Geneva Convention. Dignity becomes the common denominator, connecting different legal sources: the Italian Constitution, the ECHR (particularly Articles 3 and 8), the ICCPR, and evolving international practice on non-refoulement. Secondly, it compels judges to take a step back and consider the bigger picture when determining whether climate change is a problem impinging on the principle of dignified life.

They cannot separate the effects of climate change from the wider social and economic situation. Instead, they must ask whether, when considered as a whole, these factors reduce people to a life that is below the basic level of decency set out in the Constitution. In this way, climate change is treated not as an exceptional or marginal issue, but as one dimension of an integrated human rights analysis[40].

In the absence of new international norms, national courts and constitutional principles are currently the most effective tools for protecting environmental migrants[41]. The Italian Court of Cassation's reading of special protection marks a significant step in this direction[42], but it remains a case-by-case, judicially driven solution, which would need to be complemented by clearer legislative and international reforms if environmental displacement is to be addressed stably and predictably.

6. Conclusions

[40] On the invocation of national Constitutions in climate litigations in a comparative persective, see F. Gallarati, *Il contenzioso climatico di tono costituzionale: studio comparato sull'invocazione delle costituzioni nazionali nei contenziosi climatici*, in *BioLaw J. – Riv. BioDiritto*, 2022, 2, 157-181.

[41] P. Bonetti, *La protezione speciale dello straniero in caso di disastro ambientale che mette in pericolo una vita dignitosa*, in *Riv. trim. dir. pen. amb.*, 2021, 49.

[42] F. Perrini, *Il riconoscimento della protezione umanitaria in caso di disastri ambientali nel recente orientamento della Corte di Cassazione*, in *Ordine internaz. dir. umani,*, 2021, 349-362, and L. Galli, *La protezione dei migranti climatici in Italia: luci e ombre nelle prime pronunce dopo l'ordinanza n. 5022/2021 della Cassazione*, in *RGA*, 2022, 1, 79-120.

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The analysis presented in this article has revealed that climate-related mobility acts as a stress test for the EU legal order, highlighting multiple tensions.

Firstly, it reveals the limitations of a protection framework based on a mid-twentieth-century concept of forced migration and the ability of a rights-based constitutional system to evolve and adapt to new protection needs. However, the human rights approach primarily adopted by courts is in tension with the securitarian approach taken by political decision-makers at the EU and domestic levels. Indeed, we are in a «socio-political climate marked by the rise of right-wing political parties, reframing migration as a security issue and redirecting EU funds from resettlement to strengthening the EU's external borders and migration deterrence»[43].

Thirdly, climate-related migration within the EU tests its commitment to the green transition and to fighting climate change. The limited attention paid to recognising climate migrants has highlighted the limitations and contradictions of the EU's green transition.

In this context, the prospect of a short-term structural recognition of the status of climate-related migrants does not seem realistic. However, as mentioned, we are currently defining EU priorities: the future of climate-related migration must be considered in the context of the EU's future role as a global actor.

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[43] I. Goldner Lang, M. Lang, *Challenges to EU Climate Finance under Shifting Priorities*, *op. cit.*, 99.