

Displacement and climate change in the *renewed* European framework on migration and asylum: Insights from the practice in Spain and Italy

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Abstract: This article aims to provide a first approximation whether the European Union recognizes the group of persons who flee their homes due to the effects of climate change, through its immigration and asylum policy, recently modified by the New Pact. Notwithstanding the importance of the European legal framework in this regard, the case of Spain and Italy as the two Member States currently facing most of the migratory pressure requires looking at how they address in their domestic law the phenomenon of climate displacement.

Keywords: Climate change Displacement New Pact environmental degradation humanitarian reasons

(A) INTRODUCTION

The current state of climate on Earth points to worsening environmental factors that enhance the devastating effects of climate change, that international community will have to face unknown scenarios.¹ According to the World Meteorological Organization (WMO), from January to September 2024, the global mean surface air temperature was 1.54°C above the pre-industrial average due to the emission of increasing levels of greenhouse gases.² Furthermore, it is expected that 2024 will set to be first to breach 1.5°C global warming limit as established in the international legal framework on climate change.³

Despite the increase in global average temperature, its effects are unevenly distributed in different regions of the world, being mostly in the global south due to the temperature variation. This is the case on the African continent, whose regions

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¹ See UN News, ‘Hottest July ever signals ‘era of global boiling has arrived’ says UN chief’, published on 27 July 2023, accessed 21 November 2024.

² J. Kennedy *et. al.*, *State of the Climate: Update for COP 29* (WMO, Geneva, Switzerland, 2024) 1-12, at 2 [Permalink: <https://library.wmo.int/idurl/4/69075>].

³ See Climate Copernicus EU, Monthly Climate Bulletin, ‘The year 2024 set to end up as the warmest on record’, published on 7 November 2024, accessed 21 November 2024. See Art. 2(1)(a), Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) *UNTS 3156*.

have experienced higher temperatures than the global average.⁴ The Sahel region is a paradoxical case in the sense that their countries emit hardly any greenhouse gases that fuel the climate crisis, but their population are extremely vulnerable to its effects through the environmental degradation of their habitats, and by acting as a multiplier of the drivers of displacement.⁵ Unable to adapt to the new challenges that emerge as a result of slow or sudden onset degradation events, the population will be forced to migrate, internally and externally.⁶

This second pattern of human mobility is expected to be directed to European Union (EU) affecting mainly southern European countries such as Spain and Italy.⁷ According to the data provided by the International Organization for Migrations (IOM), in 2023, a total of 292,985 migrants and refugees were registered arriving through the three Mediterranean routes and the Western African Atlantic route to Europe.⁸ In 2024, until October, 157,319 arrivals were registered, being Spain and Italy the two main Member States (MS) that endured the burden of migratory pressure.⁹

Notwithstanding that the doctrine has stated that the European framework on migration and asylum doesn't recognize *prima facie* the environmental or climate factor as an element to grant international protection¹⁰, the adoption last May 2024 of the New Pact requires us to take a closer look at the new legislative package to see if there have been any changes in this regard.

This paper is divided in two sections. The first part briefly addresses the European immigration and asylum policy, focusing on the New Pact with the aim of offering a first observation on the inclusion of the climate factor in its new normative framework. The second section highlights the practice in Spain and Italy in relation to their national immigration law with the goal of studying the interpretation that they provide for

⁴ See C.H. Trisos *et al.*, '2022: Africa', In H.O. Pörtner *et al.*, *Climate Change 2022: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC, Cambridge, UK and NY, USA, 2022) 1285-1455, at 1324-1325 [doi:10.1017/9781009325844.011].

⁵ See J. Tomalka *et al.*, *Climate Risk Profile: Sahel* (Potsdam Institute for Climate Impact Research (PIK) and the United Nations High Commissioner for Refugees (UNHCR) under the Predictive Analytics project in support of the United Nations Integrated Strategy for the Sahel (UNISS), Potsdam, Germany, 2021) 1-20, at 9 [https://publications.pik-potsdam.de/pubman/item/item_26168].

⁶ See IDMC, *2024 Global Report on Internal Displacement* (IDMC), Norwegian Refugee Council (NRC), Geneva, Switzerland, 2024) 1-69, at 24-34 [https://www.internal-displacement.org/global-report/grid2024/]. See UNHCR, *No escape: On the frontlines of climate change, conflict and forced displacement* (United Nations High Commissioner for Refugees (UNHCR), Geneva, Switzerland, 2024), 1-60, at 15-18 [https://www.unhcr.org/media/no-escape-frontlines-climate-change-conflict-and-forced-displacement].

⁷ O. Puig Cepero, *et al.*, *Climate change, development and security in the Central Sahel* (CASCADES, Research Paper, Brussels, Belgium, 2021) 1-97, at 40-41.

⁸ See IOM, *DTM Europe — Mixed Migration Flows to Europe, Yearly Regional Report (January-December 2023)*, (IOM, Vienna, Austria, April 2024), 1-15, at 6-7.

⁹ See Ministerio del Interior, *Informe quinquenal, Inmigración irregular 2024, datos acumulados del 1 enero al 30 noviembre* (Ministry of Interior, Government of Spain, Madrid, Spain, 2024), 1-10, at 2; See Frontex, *FRAN and JORA data as of October 2024* (Frontex, Warsaw, Poland, 2024).

¹⁰ Among others, see J. Verdú Baeza, 'Refugiados climáticos, ¿refugiados sin derechos?', in A. Del Valle Gálvez (dir.), L. Calvo Mariscal and R. El Houdaïgui (coord.) *Inmigración y derechos humanos en las fronteras exteriores del sur de Europa* (Dykinson, Madrid, 2021) 125-136; G. Fernández Arribas, 'Cambio climático, inestabilidad y desplazamientos en el Sahel. Desafíos y respuesta por parte de la Unión Europea', 75 No.1 *Revista Española de Derecho Internacional (REDI)* (2023), 49-74 [doi.org/10.36151/REDI.75.1.2].

persons who arrive due to environment degradation because of the effects of climate change.

(B) THE EUROPEAN LEGAL FRAMEWORK ON MIGRATION AND ASYLUM: AN AREA OF HIGH VOLATILITY

The regulatory regime governing migration and asylum in the EU is the result of a long process of legislative evolution and continuous negotiation within the Union with the different MS. Through the Single European Act of 1986, the aim of creating an area without internal borders controls and guaranteeing the free movement of persons was introduced into the Treaties, which would call into question hypothetical rules in the area of external borders control.¹¹ Through the Treaty of Amsterdam of 1997, the path of “communitisation” of borders, visas, asylum and migration matters opens by gradual creation of an area of freedom, security and justice (AFSJ) although “communitisation” on migration and asylum would not be comprehensive.¹² Finally, the Treaty of Lisbon in 2007 achieves the total “communitisation” of the institutional framework on border control, asylum and migration, saving the figure of co-decision and making it possible to refer to a “common” policy, though the persistence of MS in relation to their national sovereignty is still resent.¹³

Nevertheless, immigration and asylum policy is a highly volatile issue and susceptible to changes depending on migratory pressures affecting Europe’s external borders. This causes a scenario of deadlock due to the different perceptions that exist between MS, leading to situations in which the Common European Asylum System has been overwhelmed, as happened in the 2015 refugee crisis. This was a turning point in the origin and development of what has been called the “security approach” to migration and asylum.¹⁴

Asylum, immigration and external borders are autonomous and different but complementary areas.¹⁵ The connections are relevant regarding the status of the individual, but also to the objectives to achieve in the framework of the AFSJ, and the interconnection between the internal and external dimension in those matters. Now, we will briefly address the latter two aspects by adding the climate factor to assess the state of the European policy’s consideration of this issue.

(1) The immigration and asylum policy in times of climate emergency

It is worth mentioning that the EU, when designing its diverse policies, must strive to comply with a series of principles imposed on it by primary law. In this sense, article 21(3)

¹¹ D.J. Liñán Noguerras, ‘El Espacio de Libertad, Seguridad y Justicia’, in A. Mangas Martín y D.J. Liñán Noguerras, *Instituciones y Derecho de la Unión Europea* (Tecnos, Madrid, 10^a ed., 2020), 90-95.

¹² See S. Peers, ‘The EU Institutions and the Title IV’, in S. Peers and P. Rogers (ed.), *EU Immigration and Asylum Law: Text and Commentary* (Martinus Nijhoff Publishers, Leiden, 2006) 47-79.

¹³ Art. 79(5) and (4) TFEU.

¹⁴ A. DelValle Gálvez, ‘Refugee Crisis and Migrations at the Gates of Europe: Deterritoriality, Extraterritoriality and Externalization of Border Controls’, 7 *Paix et Sécurité Internationales* (2019) 117-160 [doi.org/10.25267/Paix_secur_int.2019.i7.04].

¹⁵ V. Faggiani, *La protección internacional de los migrantes en la UE: Estándares de tutela, límites y perspectivas de reforma del derecho de asilo* (Aranzadi, Navarra, 2023), at 43.

of the Treaty on European Union (TEU) linked to article 7 of the Treaty on the Functioning of the European Union (TFEU)¹⁶, establishes consistency as a guiding principle that should lead and develop EU's external action and its different policies. Thus, there are a series of principles that shall guide the Union's external action with the principle of consistency occupying a predominant position in the formulation of migration policy (both internal and external) and affecting others such as the environment and climate change.¹⁷

On this basis, article 11 TFEU highlights the inclusion of environmental protection in each of the Union's policies and activities, on which the different European institutions are called upon to act, as is the case of the European Council in article 15 TEU. The issue of climate displacement covers areas such as migration, international protection and environment-climate change.

The immigration and asylum policy rests in the AFSJ, established in the TEU¹⁸ and developed in the Title V of the TFEU¹⁹. The inclusion of the AFSJ in the Title I of the TEU indicates that it must be considered as a *target value* in the sense that the AFSJ is a coherent result of the process of European integration whose content shall be developed taking into account the concerns and demands of modern societies.²⁰ As it is already mentioned, European migration policy has a dual dimension – internal and external – and a series of principles must be guaranteed, such as the principle of consistency.

Having said that, climate change is not only a great environmental issue but also a phenomenon with internal and external dynamics that require strong coordination between its legislation and policies. The Union has developed a dense network of strong environmental legislation internally, whose components have also attempted to be externalized in several ways.²¹ The EU is considered to be a leader on international environmental affairs and they have launched the Climate Diplomacy as a commitment to shaping the global climate agenda.²²

The term “climate emergency” first appeared in an EU's document in 2019 as a consequence of the approval at the European Parliament (EP) of the Resolution²³ that urged to the European institutions and MS to urgently take actions to “fight and contain this threat” through legislation in this area but extensively to all other policies in order to achieve coherence between them. As a result, some MS followed the EP's guidelines and “climate emergency” was declared in their national parliaments.²⁴

¹⁶ Art. 21(3) TEU and 7 TFEU states that “The Union shall ensure consistency between its policies and activities”.

¹⁷ P. García Andrade, *La acción exterior de la Unión Europea en materia migratoria*, (Tirant Lo Blanch, Valencia, 2014), at 57-60.

¹⁸ See Art. 3(1) TEU.

¹⁹ See Art 78 and 79 TFEU.

²⁰ Liñán Noguera *supra* n. 11, at 90-91.

²¹ S. Keukeleire and T. Delreux, *The Foreign Policy of the European Union*, (Bloomsbury Academic, London, 3^a ed., 2022), at 256-257.

²² See T. Fajardo Del Castillo, *La Diplomacia del Clima de la Unión Europea: La acción exterior sobre cambio climático y el Pacto Verde Mundial* (Reus, Madrid, 2021), at 27-49, 73-86.

²³ EP Resolution of 28 November 2019, OJ 2021 C 232/06.

²⁴ See Climate Emergency Declaration, ‘Climate emergency declarations in 2,364 jurisdictions and local governments cover 1 billion citizens’, accessed 3 December 2024.

From 2019 onwards, the presence of climate change (directly or indirectly mentioned) in EU's documents and statements has been increased exponentially proving the EU's commitment to face climate hazard from a holistic approach as a priority²⁵. However, does the EU's faithfulness to achieve climate goals extend to immigration and asylum policy?

(2) The great forgotten in the Pact on Migration and Asylum

European Commission's Vice-President Margaritis Schinas described the Pact as a "house of three floors" with its respective layers. Thus, the first floor concerns the external dimension whose target is to robust the external borders' management. The second floor attend to intensify the cooperation with third countries, especially in the area of returns and readmissions. Lastly, the third floor is focused on the shared responsibilities aspects by MS.²⁶

The Pact emerged in September 2020 through a Communication from the Commission.²⁷ In its content, it foresaw the issue of climate change. Notwithstanding that the Commission mentions only four times the term climate change in the Communication on the New Pact, it correctly identifies the axes on which this phenomenon has an impact, emphasizing that it must be considered in the content of the new legislative package. Thus, the Commission states that different policies that have an effect on migration such as environment and climate policy should not be dealt in isolation.²⁸

Unfortunately, the importance granted to climate change by the EC would be deflated during the Pact negotiation phase until it faded away in its approval. The inclusion of a Proposal of Crisis and Force Majeure Regulation is quite enlightening in this regard.²⁹ Although there was no mention to climate change, its consideration as an element to bear in mind to grant a kind of international or national protection was discussed by the Committee of the EP in charge of its procedure.³⁰ Nevertheless, the final text of the Crisis and Force Majeure Regulation only includes a vague mention to natural disasters.³¹

We have said that the combination of these three dimensions pursues a change of paradigm in the Common European Asylum System, undermined since the refugee crisis in 2015-2016. Notwithstanding that the Pact seems to address the weak points that

²⁵ See Fajardo Del Castillo *supra* n. 22, at 51-71.

²⁶ See EC Press Corner, 'Speech by Vice-President Schinas on the New Pact on Migration and Asylum', published on 23 September 2020, accessed 3 December 2024.

²⁷ See *New Pact on Migration and Asylum* (Communication from the EC to the EP, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2020) 609 final, Brussels, Belgium, 23.9.2020) 1-29 [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DCo609>].

²⁸ See *New Pact on Migration and Asylum* (Communication from the EC...) *supra* n. 27, at 1, 17-20. See Commission Staff Working Document, 1-107, at 23-24 [<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020SCo207>].

²⁹ See A. H., Neidhardt, *The Crisis and Force Majeure Regulation: Towards future-proof crisis management and responses?* (Policy Study, Foundation for European Progressive Studies, Friedrich-Ebert-Stiftung and European Policy Centre, Brussels, Belgium, 2024) 1-40 [<https://feps-europe.eu/publication/the-crisis-and-force-majeure-regulation-towards-future-proof-crisis-management-and-responses/>].

³⁰ See Legislative Observatory: Crisis and force majeure Regulation, 2020/0277(COD) [[https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2020/0277\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2020/0277(COD))].

³¹ Regulation (EU) 2024/1359. Council Regulation 2021/1147, OJ 2024 L 1359.

collapsed the regular application of the European policy on migration and asylum, it fails in the task to project the migratory phenomenon as structural.

It appears that the Pact understands migration from a point-in-time crisis management approach, taking migration governance as an isolated agenda away from other forms of administration including Europe's environment, social or external policies. This perception triggers the absence of response to long-term future displacement of persons exacerbated by climate change.³²

Having noted the Pact's lack of foresight on the issue climate-change induced human mobility, let us turn our attention to the practice in this regard to the Southern European MS most affected by migratory pressure: Spain and Italy.

(C) THE PHENOMENON OF CLIMATE DISPLACEMENT IN SOUTHERN EUROPEAN COUNTRIES: THE CASE OF SPAIN AND ITALY

It is argued that the more the European migratory legislative package is the more the problems related to it grow. In this sense, the normative turns into a blurred sphere with several sources whose scope constitutes an impassable terrain. As a result, this perception gets the impression that the regulatory bases are not appropriate to address the situation realistically.³³ Similarly, the climate and environmental factor as an element to be weighed in migration issues is a source of dissent and scepticism in European immigration and asylum policy. Surprisingly, this is not the case in the national policy of some MS with Italy and Spain as two paradigmatic examples. This is representative because we refer to Southern MS with external borders that face a notable migratory pressure.

(1) The evolution of Spanish case law on protection by humanitarian reasons: A path opens up for the climate factor?

Protection for humanitarian reasons is, alongside international protection and subsidiary protection³⁴, one of the figures provided for in Spanish law within the legal system of territorial protection for those individuals who meet the requirements established by law. Notwithstanding the distinctions between these types of protection, the figure of humanitarian reasons has suffered a misinterpretation due to its vague drafting. However, because of the practice of the courts, this figure has been endowed with a content in which environmental and climatic reasons could be included as grounds for protection.

Since the entry into force of the Law 12/2009, on the one hand, the regime of protection for humanitarian reasons has been replaced by the figure of subsidiary protection,

³² See T. Fajardo del Castillo, 'La Política Migratoria de la Unión Europea ante el Cambio Climático. ¿Aún sin respuestas?', in G. Fernández Arribas (dir.) *Cambio climático y desplazamientos: El Sahel como caso de estudio* (Aranzadi, Navarra, 2023) 67-93.

³³ See A. Remiro Brotóns, 'Presentación' in A. Remiro Brotóns, C. Martínez Capdevila (edit.) *Movimientos migratorios y derecho. Anuario de la Facultad de Derecho de la UAM 7 (2003)* (Universidad Autónoma de Madrid, Boletín Oficial del Estado, Madrid, 2004) 13-22, at 16.

³⁴ See Art. 13.4 (referring to Art. 13 of the Spanish Constitution). See also Art. 3 and 4 of Law 12/2009, 30 October 2009 (BOE no. 263, 31 October 2009).

which is considered to be its heir according to the jurisprudence of the Supreme Court (*Tribunal Supremo*).³⁵ On the other hand, Articles 37(b) and 46(3) of the aforementioned law provided the possibility of authorising a stay in Spain for humanitarian reasons in accordance with the Organic Law 4/2000.³⁶ This reference leads us to Article 125 of the Royal Decree 557/2011 which provides for “temporary residence authorisation for reasons of international protection”.³⁷ At present, the grounds on which a residence permit may be granted on humanitarian grounds are not listed in *numerus clausus* or *numerus apertus*, the only requirement being that the grounds must be different from those listed for subsidiary protection.

It is worth mentioning that humanitarian reasons can be granted on the basis of the specific circumstances of the asylum seeker, but also in connection with the situation in the country of origin.³⁸ Moreover, such a concession may be granted directly by the courts even if the Administration has not ruled on the concurrence of humanitarian reasons.³⁹ Two other important aspects are that the margin of discretion to grant authorisations for humanitarian reasons cannot amount to arbitrariness, and that the granting of these authorisations must be based on humanitarian grounds in accordance with the spirit of this figure.⁴⁰

The permanence in Spain by humanitarian reasons as a third level of international protection, is aimed at those, whose exceptional personal or family circumstances, would cause serious detriment if they were to leave Spain.⁴¹ At this point, the element of special vulnerability acquires substantial importance because its consideration will be differential in the procedure for obtaining protection for humanitarian reasons. Thus, the Supreme Court has distinguished two regimes depending on whether the request for protection for humanitarian reasons is requested by an individual in a situation of special vulnerability or not. The first regime, the ‘general’ regime, covers any person seeking international protection and who must invoke grounds other than those identified in the subsidiary protection status.⁴²

As for the ‘special’ regime, the Supreme Court qualifies it as a more specific and restricted subjective scope, as it applies exclusively to applicants or beneficiaries of international protection in a situation of vulnerability. Under this regime, the main application for international protection is required, but a specific subsidiary application for a temporary residence permit for humanitarian reasons is not required.⁴³

This is relevant since it opens a way, within the special regime, for those individuals who are in a situation of special vulnerability and whose scope is not taxed, giving rise to the consideration that climate displacement may be covered by this figure. The

³⁵ STS 2675/2016, 28 February 2017 (with link to *CENDOJ*), 1-6.

³⁶ Art. 37(b) and 46(3) of Law 12/2009 Art. 46(3). The current legislation on foreigners refers to Organic Law 4/2000, 11 January 2000 (BOE no. 10, 12 January 2000).

³⁷ See Art. 125 of Royal Decree 557/2011, 20 April 2011 (BOE no. 103, 30 April 2011).

³⁸ STS 875/2012, 18 October 2012 (with link to *CENDOJ*), 1-13.

³⁹ STS 2476/2011, 24 February 2012 (with link to *CENDOJ*), 1-9.

⁴⁰ STS 374/2016, 26 July 2016 (with link to *CENDOJ*), 1-6. STS 3083/2014, 9 December 2016 (with link to *CENDOJ*), 1-6.

⁴¹ SAN 289/2020, 12 November 2021 (with link to *CENDOJ*), 1-6, at 4.

⁴² STS 1067/2024, 17 June 2024 (with link to *CENDOJ*), 1-12, at 10.

⁴³ STS 1067/2024 17 June 2024... *ibid* at 10-11.

Supreme Court establishes that the analysis of the social conflict and the way in which it affects the person immersed in it becomes relevant. It shall also assess whether there are grounds or circumstances that would be incompatible with the enjoyment of the person's fundamental rights if they were to return to their country.⁴⁴

In conclusion, it is early to assess whether this differentiation of protection regimes can be considered as an avenue for those applications that are based on environmental degradation, taking into account the personal circumstances of the individual concerned and the situation in their place of origin.

(2) The presence of the environmental element in the Italian Legal Order: The figure of the residence permit for *calamitous events*

The Italian perspective combines the contribution of the normative body with that of case law by the courts. In relation to the second aspect, there is a lot of Italian jurisprudence pointing out that vulnerability (regarding humanitarian protection) needs to be interpreted broadly to encompass, *inter alia*, the asylum seeker's exposure to natural disasters, as well as the general environmental and climatic conditions of the country of origin, if these are such as to jeopardize the core of basic human rights of the individual.⁴⁵ Given the extent of this issue, we are going to concentrate on the first element, i.e. the legal body following the aim of this paper.

The Italian Constitution establishes the right to asylum specifying that the conditions for granting asylum shall be determined by law.⁴⁶ Notwithstanding that a law developing the content of asylum has never been adopted, the guarantee of this right involves the possibility of recognising the two main forms of international protection for asylum seekers: refugee status and subsidiary protection status.⁴⁷ Apart from these two figures, there is a third one, the aforementioned complementary protection: humanitarian protection⁴⁸. According to the Legislative Decree 286/1998, this protection was granted to those individuals in presence of serious cases, in particular of humanitarian nature or resulting from constitutional or international obligations of the Italian State. In addition to humanitarian protection, there is the possibility of establishing specific extraordinary reception and temporary protection measures for significant humanitarian needs in the event of conflicts, natural disasters or other particularly serious events in countries outside the European Union⁴⁹, though there is no information available about it.⁵⁰

⁴⁴ STS 1067/2024 17 June 2024... *ibid* at 11-12.

⁴⁵ See C. Scissa 'The climate changes, should EU migration law change as well? Insights from Italy', 14 No. 1 *European Journal of Legal Studies* (2022) 6-23, at 18 [doi:10.2924/EJLS.2022.01].

⁴⁶ Art. 10(3) Italian Constitution.

⁴⁷ Art. 2(1)(e) and 2(1) of the Legislative Decree 251/2007, 19 November 2007 (GU Serie Generale no. 3, 4 January 2008).

⁴⁸ Art. 5(6) of the Legislative Decree 286/1998, 25 July 1998 (GU Serie Generale no. 191, 18 August 1998).

⁴⁹ Art. 20 Legislative Decree 286/1998.

⁵⁰ See C. Scissa, 'La protezione per calamità: una breve ricostruzione dal 1996 ad oggi', 1 *Forum di Quaderni Costituzionali* (2021) 136-147, at 140-141 [https://www.forumcostituzionale.it/wordpress/wp-content/uploads/2021/01/09-Scissa-FQC-1-21.pdf].

In 2018, the Law Decree 113/2018 introduced a new provision that offered protection to asylum seekers whose country of origin was in a situation of contingent and exceptional calamity that did not allow for a safe return⁵¹. It is worth mentioning that the requirement that the calamity should be contingent and exceptional meant that slow-onset events were excluded from its scope of application, allowing only sudden and singular events, such as earthquakes or floods.⁵² Afterwards, Law Decree 130/2020 opened the scope for the issuance of residence permits in the context of a “serious” calamity.⁵³ This amendment intended to allow for a broader interpretation of the concept based on the degree of severity rather than on its progression over time. Additionally, the provision improves the length of the protection because the initial six-month permit can be renewed for as long as the conditions of environmental insecurity in the country of origin persist. Thus, “a broad range of environmental causes of migration are expressly protected under Article 20 and 20 bis, respectively, through temporary protection and protection against serious calamity”.⁵⁴ In this sense, that regulation not only complied with human rights norms and their obligations according to international law, but also to ensure a functioning asylum system prepared for foreseeable future inflows.

Unfortunately, in 2023, the Law Decree 20/2023 amended and restricted the scope of residence permit applicable to situations of calamity established in the Law Decree 130/2020 as the main consequence in this regard.⁵⁵ Moreover, the new content of Article 20 bis is even narrower than the original wording in the Law Decree 113/2018 due to the fact that not only the “contingent and exceptional” calamity reappeared, but the residence permit shall not turn into a permanent permit in cases of significant humanitarian needs such as events of environmental or climate disruptions (floods, droughts, landslides...).⁵⁶

Despite the above, it should be taken into consideration that Italian legal order is equipped with more than one legal basis – due to their constitutional and legislative framework – fit for offering a complementary protection to climate displacements in a vulnerable or distress situation. In this respect, there is a “limited capacity of *pro tempore* policy makers of altering in a substantive way the width of the protection afforded by international and constitutional legal obligations”.⁵⁷

To conclude, the current figure of the residence permit for calamitous events as established in the Law Decree 20/2023 is not adequate to grant protection to climate displacements.⁵⁸ Despite of this step backwards in the above-mentioned legal figure, case law of the court suggests a trend towards extending the protective framework provided to individuals granted international protection to those who flee their homes due to climate change.

⁵¹ Art. 20 bis of Law Decree 113/2018, 4 October 2018 (GU Serie Generale no. 231, 4 October 2018).

⁵² Scissa, ‘The climate changes...’ *supra* n. 45, at 18-19.

⁵³ Law Decree 130/2020, 21 October 2020 (GU Serie Generale no. 261, 21 October 2020).

⁵⁴ Scissa, ‘The climate changes...’ *supra* n. 45, at 20.

⁵⁵ Law Decree 20/2023, 10 March 2023 (GU Serie Generale no. 59, 10 March 2023).

⁵⁶ See A. Stevanato, ‘Il paradosso della contemporaneità. La protezione giuridica del migrante ambientale nei più recenti sviluppi normativi’, *Accademia Diritto e Migrazioni* (ADiM BLOG, Analisi & Opinioni, Aprile 2024) 1-8.

⁵⁷ See M. Di Filippo, ‘La protezione dei migranti ambientali nel dialogo tra diritto internazionale e ordinamento italiano’, 17, *Diritti Umani e Diritto Internazionale* (2023) 313-335, at 334 [dx.doi.org/10.12829/108061].

⁵⁸ *Ibid.*, at 333.

(D) CONCLUSIONS

Having briefly analysed the trend of the European legal framework on migration and asylum in relation to the climate factor and the recent practice in Spain and Italy on this issue, we can conclude with the following reflections:

The EU has only addressed this issue in an indirect manner, insofar as climate displacement is one of the side effects of climate change. The European institutions have identified a triple nexus in which climate change, migration and security are correlated and linked. On the basis of the above, these elements are present in their respective policies such as migration, development cooperation and environmental protection.

The notion of security jeopardises principles such as consistency between the external dimension of migration and other policies, as well as the internal and external dimension of migration and asylum policy.

The practice of Spain and Italy in relation to the consideration of the environmental and climatic element as a factor to be assessed in the evaluation of applications for international protection (more established in Italy and taking its first steps in Spain) should, at least, be considered as a bridge in the process of integration policies in the European Union. Does the practice in this direction by two of the southern European MS with the greatest migratory pressure show a common interest whose harmonisation is in line with pre-existing national policies in this regard? In our view, the EU should take a closer look at the MS facing migratory flows over the years in order to establish a coherent migratory and asylum policy in line with the new drivers of displacement, such as slow onset and sudden onset disasters.