

## **Environmental Migration: A Global issue under European Union Leadership?**



**© Brendan Bannon/AFP /Getty Images  
Somali refugees displaced from their homes by floods cross a swollen river in Kenya.**

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# Abbreviations

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CEAS – Common European Asylum System

CEAP – Common European Asylum Policy

CEEC – Central and Eastern European Countries

CFSP – Common Foreign and Security Policy

COP – Change Conferences of the Parties

DG – Directorate General

DG HOME – Directorate-General for Home Affairs

EACH-FOR – Environmental Change and Forced Migration Scenarios

EC – European Community

ECHR – European Convention on Human Rights

ECJ – European Court of Justice

EFA – European Free Alliance

EP – European Parliament

EU – European Union

IDPs – Internally Displaced Persons

IEA – International Energy Agency

IGO – Intergovernmental Organisation

IOM – International Organisation for Migration

IPCC – Intergovernmental Panel on Climate Change

JHA – Justice and Home Affairs

LDCs – Least Developed Countries

LRTAP – Long-range Transboundary Air Pollution

MEP – Member of the European Parliament

NIS – New Independent States

OECD – Organisation for Economic Co-operation and Development

SEA – Single European Act

SIDS – Small Island States

TEC – Treaty of the European Community

TEU – Treaty of the European Union

TFEU – Treaty on the Functioning of the European Union

UN – United Nations

UNEP – United Nations Environment Programme

UNFCCC – United Nations Framework Convention on Climate Change

UNHCR – United Nations High Commissioner for Refugees

UNPD – United Nations Development Programme

UK – United Kingdom

US/USA – United States of America

# Introduction

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*“Environmental migrants are persons or groups of persons who, for reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to have to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their territory or abroad”*

International Organization for Migration (IOM), 2007, pp.1-2.

The number of natural disasters has doubled over the past decade from 200 to 400 per year and the majority of those disasters were climate change induced (UNHCR, 2009, p. 3). In 2008 alone 20 million people were displaced due to floods and storms. Sir Nicholas Stern, in his report on economic consequences of climate change, claims that by 2050, 200 million people will have been displaced due to environmental causes (Stern, 2006, p.56). In 1998, environmental disasters created more refugees than wars or other armed conflicts (Red Cross, 1999, p.180). Various other statistics support such evidence. There are many terms to describe the concept of environmental migration, such as climate-change-induced migration, ecological or environmental refugees, climate-change migrants and environmentally induced forced migrants. Besides the numerous terms used to describe environmental migration, there are various definitions of this concept. It is even argued that one cannot give a single suitable definition to cover the various situations of environmental migrants. However, for the purpose of clarity within this thesis, I shall use the working definition of the International Organization for Migration, stated above, given that, in my opinion, it comprehensively summarizes the different aspects of this type of migration. Environmental migration can result from earthquakes or floods leading to sudden forced displacement or it can be triggered by a slow-onset environmental change or degradation process, such as desertification. Moreover, certain environmental migration circumstances lead to voluntary rather than involuntary relocation, which is perceived to be a more common feature amongst ‘classical’ refugees. Clearly, defining environmental migration triggers debates on the

conventional status of a refugee as described in the 1951 UN Geneva Refugee Convention.

The term environmental migration first appeared in the literature in the early 1970's. In 1985, El-Hinnawi published a report on environmental migrants in the United Nations Environment Program (El-Hinnawi, 1985). However, it was not until the 1990s or even early 2000 that publications and debates upon the subject become plentiful. At present, there are many institutions tackling the issue of environmental migration, ranging from governmental, intergovernmental to non-governmental institutions. Mostly, there has been a lot of research done on the legal stance of this post-1951 Convention refugee type. Within the realm of international law, many have attempted to put the burden of the protection of environmental migrants on somebody's shoulders, in order for that certain body to assume legal responsibility of the victims of environmental migration. Unfortunately, the attempts have largely failed, leaving a void of international responsibility. The 1951 UN Convention is limited to victims of persecution or conflict. There is no legally binding instrument dealing with the issue of environmental refugees, merely the guiding principles of the UN. With these guiding principles, the UN aspires to "encourage more reflection on the humanitarian and displacement challenges that climate change will generate" (UNHCR, 2009, p. 2). The UN calls on the international community to adopt an approach based on respect for human rights and international cooperation to aid and protect such environmental refugees. Thus, there is a strong need to address this issue of displaced people and of statelessness due to environmental factors. However, there is a clear lack of leadership in this regard. I would like to examine whether this role would be a suitable one for the EU to assume. In how far has the EU assumed this role already? To what extent could the EU fill this international void of humanitarian responsibility?

The subject of environmental migrants is receiving increasing attention and pleas for aid, evident even at the UN Copenhagen climate change conference in 2009. Within the EU, the whole issue of migration is becoming a topic of common interest. Even though migration mainly falls within the competency of the Member States, it is increasingly becoming a common competency, with more power of decision-making going to the European institutions. With the establishment of the Common European Asylum System, the EU institutions are receiving much more power over migration

issues than they previously possessed. A common system is being set up to deal with the widespread problem of immigration. As the Schengen Agreement established the four freedoms and abolished internal borders, it is more appropriate to work together on such issues as immigration because once a migrant enters an EU country, he/she has full access to free movement within the EU. This has given an initial incentive to harmonising migration competency, a competency which would incorporate the environmental migration category.

Several expert researchers in this domain include Jane McAdam, François Gemenne and Jean Lambert. Each of these personalities comes from a different background of expertise, which shows that the interest in this subject touches many (academic) domains. Jane McAdam is a law professor at University of New South Wales (Sydney) and the director of several programmes at the Gilbert + Tobin Centre for Public Law, such as the International Law project on 'Climate Change "Refugees"'. McAdam is an expert in the areas of public international law and forced migration. She has written many papers about the topic of forced migration from an international law perspective, inspiring much debate on the topic. François Gemenne is a research fellow at the Institute for Sustainable Development and International Relations (IDDRI). Moreover, he teaches at several prestigious universities about the governance of migration and international politics of climate change, subjects on which he has published three books. Jean Lambert is currently a Member of the European Parliament in the Green party and has been actively fighting for the rights of climate refugees within the EU. In Chapter 2.3, Jean Lamberts activities will be reviewed in more detail.

The EU consists of a block of developed countries that, together with other developed countries, is responsible for generating a large part of the harmful gasses provoking climate change at present<sup>1</sup>. Nonetheless, the group most affected by climate change comprise developing countries. Partially due to this 'responsibility' of developed countries, the EU has become the world's forerunner in combating climate change. Nevertheless, could the EU be the suitable organisation to become the forerunner in the protection of environmental refugees also? The issue of environmental migration arguably falls within the scope of climate change, which is why this 'global' issue could be linked to the EU's goal of setting a good example on the climate change scene in line

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<sup>1</sup> View Graph 1 on page 27.

with the EUs projected identity. Additionally, the reason why the question of having a legally binding instrument for environmental migration enforced by a strong leader is important for contemporary politics, is because environmental disasters are becoming more widespread every day. My thesis will look into this 'unconventional' type of migration in depth, while examining in how far the EU is capable of taking it upon itself to tackle this global issue and to what extent this forerunner in combating climate change has already taken such measures.

In the *first chapter*, I shall start by looking into the notion of environmental migration, as well as the history of the UN, since it has been the instigator for the set-up of protection for refugees and Internally Displaced Persons. The UNHCR<sup>2</sup> is the most experienced organisation dealing with refugees as it has taken it upon itself to do so since the 1951 Convention. Therefore, it is an essential part of environmental migration history and the driving force behind the call for international responsibility. Thus, the reason why I first mention the UN and the history of environmental migrants is because the UN is the leading actor in the field of refugees, which will subsequently provide a good context for the understanding of the development of the environmental migrant definition. The UN Secretary-General on the Human Rights of Internally Displaced Persons has also concisely categorised the various types of environmental migration. Moreover, the UN would be a logical candidate to take up the legally binding responsibility of environmental refugees, were it not for the fact that the UN has stated it would do no such thing.

Initially, I begin the first chapter in terms of my theoretical framework by differentiating between the concepts of 'refugees' and 'migrants', to understand the difficulties of definition. Thereafter, I continue to portray the various elements of environmental migration as well as the international community's role in the issue. Subsequently, I look into the abnegation of the UN as a protector of the environmentally displaced and its plea for international support and responsibility. Looking into the UN appeal for international support is important since it triggered this thesis research.

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<sup>2</sup> The UNHCR was set up in 1949 as subsidiary organ of the United Nations General Assembly. However, the body was at first only intended to function for three years. The 1951 Convention officially recognised the UNHCR as the main UN body dealing with refugee issues.



My *second chapter* is dedicated to my hypothesis that the EU would make a good candidate to assume the legally binding responsibility of the protection of environmental migrants, due to its prominent role within environmental policy on the international scene. The EU proclaims itself to be a forerunner in the fight against climate change. Given that climate migrants can be seen as the human faces of climate change, one could argue that a leader in the climate change field would have to answer to the humanitarian side effects of climate change. First of all, it must be established whether the EU could, theoretically, be considered a global actor in the field of environmental policy. In order to do that, it must be clarified what 'actorness' consists of and which characteristics are necessary to possess it. However, practically, environmental policy is based on the promotion of norms and values, the 'inclusive' traits of EU identity, while migration policy displays 'exclusive' EU identity. To understand the impact of identity in the process of EU policy making, the last section of Chapter 2 will be dedicated to exploring EU identity.

The *third chapter* of this thesis shall examine existing and potential new EU policy concerning the inclusion of environmental migrants. The first subchapter will investigate EU legislation, in order to verify whether environmental migrants could rely on any EU provisions for protection or whether a legal loophole could be created to fit the profile of an environmental migrant. Thereafter, the European Parliament and the European Commission will be individually investigated to establish EU activity in the field of environmental migration. Subsequently, I will explore the overall Member State approach to the subject of the legal recognition of environmental migrants, with a specific case study on the migration policy of Finland. Finally, I shall incorporate my findings in my conclusion.

# Methodology

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The method of work I apply consists mainly of collecting information through documentation. My primary sources encompass speeches of EU officials, EU Treaties, primary Member State legislation, lectures, personal interviews and court rulings on case law and Conventions. For my secondary sources, I rely on books, newspaper articles, journals, seminar summaries, EU Directives, reports, working papers and other EU publications. Especially for my third chapter, collecting a wide variety of information made it possible to analyse the development of the discourse on environmental migration in the EU.

In my first chapter, I research the tools necessary to comprehend my later analysis. Thus, I clearly define the concept of environmental migration and the principle of the international 'responsibility to protect'. Since my first chapter is mainly dedicated to the notion and categorisation of 'environmental migration' and the role of the UN in the development and history of this notion, my research literature is primarily based on UN publications, such as the Convention and Protocol agreements, reports, working papers, and even a personal interview with an UNHCR official.

The second chapter looks into the theoretical and practical possibility of the EU taking up the role as the initiating body to legally recognise environmental migrants as a legitimate migration sort. I shall explore the theory of 'actorness' termed by Bretherton and Vogler and apply it to the EU's environmental policy<sup>3</sup>. Furthermore, in the last subchapter I intend to characterize the concept of EU identity<sup>4</sup>. In order to analyse this chapter, I must look into the history of the EU to study the achievements of the EU over time, as well as the development of the EU as an international institution. Thus, books and articles depicting EU history, in addition to provisions of significant conventions and conferences, will be a large part of my research. However, the book by Bretherton and

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<sup>3</sup> The reasoning behind applying the theory of 'actorness' to EU environmental policy relies on the thought that if the EU would be considered an influential international actor in the fight against climate change, it is more likely to be able to set a good example which others will follow if the EU were to accept the legal recognition of environmental migration. Moreover, if one considers environmental migrants as the human faces of climate change, as the forerunner in the climate change combat, the EU would have to accept the humanitarian effects of climate change.

<sup>4</sup> I will examine how the practice of EU policy making is dependent on EU identity.

Vogler<sup>5</sup>, *the EU as a Global Actor*, is central to this chapter. Other authors apprehending the notion of constructing identity will also be included.

The third chapter investigates what the EU has done hitherto on the road to the legal recognition of environmental migration. The first subchapter analyses current legislation. For instance, investigating various EU directives makes it possible for me to analyse the EU perspective in the field of migration policy. Moreover, following the development of a directive, from the first publication to the amendment request, right up to the publication of the amended version, provides a good insight to the development of discourse on a subject within the EU. The development of the Qualification Directive and the potential of its amendment, is a prime example of the positive progress that can be observed in the discourse of environmental migration in the EU. By looking at various activities within the EU, such as seminars and petitions, one can observe the growing pressure in the EU to accept environmental migrants as a migration type. Moreover, concerning the EP and the Commission, I will investigate the development of their position towards environmental migrants by means of legal documents, such as directives, or through seminars, speeches and other activities.

Furthermore, by investigating the implementation of a directive in the subject field of migration policy, I will observe the general attitude of Member States towards migration policy. Through these means one can examine which Member State has an open mind towards migration policy and which then indicates the willingness to widen the migration scope by recognising environmental migrants as a migration type. As a case study, I shall investigate the domestic policy of Finland owing to its humanitarian' based attitude towards migration policy, in order to review an example of an inclusive migration policy.

A challenge that I encountered throughout my research was the issue of the absence of a legal terminology associated with environmental migrants. Since, there is no official term, search engines (library catalogues, internet) do not automatically consider, for example, literature on climate refugees and environmental migrants to be on the same subject. Therefore, to achieve a comprehensive study on the topic it was

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<sup>5</sup> For the purpose of investigating the EU's international role in environmental policy, it seems to me that Bretherton and Vogler portray the most appropriate theory characterising the EU's role in the international arena.

necessary to attempt to search for all known associated term for this specific type of environmentally displaced persons. Nonetheless, this did lead to my observation of an interesting discourse analysis of the difference in terminology employed by various bodies, ranging from the UN to European Commission documents, right up to MEP speeches. Moreover, it was also a challenge to gather relevant information on my thesis topic. It seems that the connection between the EU and environmental migrants is not a commonly researched combination within literature. There is plenty of information on environmental migration and EU migration policy separately. Nevertheless, the combination was a link that I sometimes had to demonstrate myself. Therefore, analysing official EU documents and activities was an important part of my research for chapter three in particular.

# Chapter 1: Development of the Notion of Environmental Migration<sup>6</sup>

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## ***1.1 Differentiation & Categorisation***

When the 1951 United Nations Convention Relating to the Status of Refugees was drafted, there was considered to be a clear distinction between refugees and migrants. In Article 1 of the UN Refugee Convention the definition of a refugee regards he/she who:

“As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”  
(UN Refugee Convention, 1951, p.16)

In the 1967 UN Protocol Relating to the Status of Refugees, the geographical and time limitations of the definition were removed. As a result, the reformulated definition now applies to any person who is outside his or her country of nationality or habitual residence who has a well-founded fear of persecution (UN Protocol, 1967, p.6). The Convention and Protocol<sup>7</sup> define clearly who is considered a refugee and who is not. The

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<sup>6</sup> This chapter can be considered my theoretical framework, in which I explain the history of definition and categorisation of environmental migrants, as well as the international principle of ‘responsibility to protect’. This establishes a framework of the meaning of environmental migrants, which the reader can relate to throughout the thesis. The last segment comprises the explanation for the initial reason why I am writing this thesis.

<sup>7</sup> From here onwards, I shall merely refer to the 1951 Convention when discussing the 1951 United Nations Convention Relating to the Status of Refugees including the 1967 Protocol amendments.

aim of the 1951 Convention was to help persecuted victims by means of offering them international protection and other humanitarian assistance they may need to get back on their feet. In contrast to refugees, *migrants* were previously considered to be on the move mainly due to economic factors. An economic migrant is a person who moves (predominantly) voluntarily to another country to seek a better life. They are different from refugees in that, if economic migrants want to return home, they can do so and continue to live under the protection of their government. Refugees, on the other hand, are no longer safe in their home country and have to flee for fear of persecution. A refugee could only return home if there is a fundamental change in the situation of the home country, brought about, for example, through a change of government or a durable peace agreement (UNHCR, 2007, p.11).

In the case of environmental migrants, the distinction between refugee and migrant is not so evident. Many individuals fall out of the 'refugee' scope since they are not being persecuted in the 1951 Convention sense. Although these people are in need of international protection and humanitarian aid. The most common example of such a situation concerns individuals who are forced to leave their home due to sudden or progressive changes in the environment that adversely affect their lives or living conditions. This fairly recently recognised migration type does not fit into the clear cut boxes of refugee or economic migrant. This creates a classification dilemma, as there is no longer a clear distinction between refugees and migrants, exemplified by the fact that this new type of refugee is not being persecuted but is forced to leave his home and is therefore— in the first place — in need of recognition and (international) protection.

Walter Kalin, the representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, established five different categories of climate related scenarios that could create environmental migration, namely “hydro-meteorological disasters (flooding, hurricanes, mudslides, etc.), zones designated by Governments as being too high-risk and dangerous for human habitation, environmental degradation and slow onset disaster (e.g. reduction of water availability, desertification, recurrent flooding, etc.), the case of ‘sinking’ small island states and, finally, violent conflict triggered by a decrease in essential resources (e.g. water, land, food) owing to climate change” (UNHCR, 2009, p.4).

## ***1.2 International Community Intervention***

It is first and foremost the responsibility of a national government to ensure the safety of its entire population. Every state is entitled to 'state sovereignty', meaning that international actors cannot interfere in the internal workings of a national government. Thus, when a disaster strikes and climate induced displacement occurs, it is the responsibility of the state to take the necessary actions and precautions to protect its citizens. However, not all states are able to take up such accountability, which is when international assistance might be a necessary intervention. There are three main scenarios that can occur concerning national and international reaction to the internal problem of an environmental disaster, which induces internal displacement.

The first one involves individuals whose government are willing and able to protect them after being affected by an environmental hazard, such as for example Japan after the earthquake. The international community plays a limited role in such a case, as the state is strong enough to be able to provide the humanitarian aid necessary to supply the affected population. Moreover, in this context the occurrence of forcible cross-border migration is rare since aid can be sought from the national government.

The second category concerns individuals whose government is willing but unable to protect persons displaced by disaster or environmental hazards, due to economic reasons. In such cases, the national government will most likely appeal to the international community to help fulfil its duty of protecting the national population. The international community would in the latter situation assist the national government with financial and other aid. Finally, there are governments that are unwilling to protect their citizens from environmental hazards and harm. In this case it is the duty of the international community to invoke the principle of 'responsibility to protect' (Martin, 2010, pp. 56-57).

Within the 2005 World Summit, the doctrine of the 'Responsibility to Protect' was adopted. The Summit reaffirmed the United Nations Millennium Declaration and investigated the progress of the implementation of the Millennium goals. The initial objective of the Summit was set up to bestow a possible UN reform, a discussion that was largely postponed to the next meeting except for the imperative introduction of the principle of the 'Responsibility to Protect', inspired by Kofi Annan as part of his 'In Larger

Freedom' reform package under the heading of the 'right of humanitarian intervention' (Annan, 2005). The principle is conferred upon the protection of "populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (World Summit Outcome Document, 2005, para.139). However, according to Cohen, in accordance with the Guiding Principles on Internal Displacement, the widespread acceptance of this doctrine can on some level be deduced into denoting the international recognition of its responsibility to assist and protect internationally displaced persons (2007, pp.370-376).

The Guiding Principles on Internal Displacement, published in 1998 by the UN Commission on Human Rights, provides guidance for the method of protection relating to internally displaced persons (IDPs). IDPs can rely on the 1998 Guiding Principles on Internal Displacement for protection and assistance. A definition of IDPs is offered by these Guiding Principles, which consists of the following: "[...] persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border" (Commission on Human Rights, 1998, p.5). The Guiding Principles are not legally binding, which means that IDPs cannot legally depend on aid. Nevertheless, even though IDPs are not included in the 1951 Convention, the UNHCR has assumed responsibility to develop a legal framework for the protection of conflict IDPs. Unfortunately, in UN mandates, a distinction is made between conflict IDP and environmental IDP. Except for the legal status, the former receives full refugee provisions, while the latter is confined to the reception of shelter and supplies, rather than protection by the UN (Martin, 2010, p.53).

Considering the doctrine of the 'responsibility to protect' in cases where the national government cannot or will not assist its population, it is the 'responsibility' of the international community to intervene. The principle largely relates to cases of (conflict) IDPs. However, it was felt that those crossing international borders or environmental IDPs, should also be entitled to the protection of the international community. According to the UNHCR, "some cross-border movement scenarios may be dealt with within the existing international refugee framework, which has proven to be flexible over the past decades, but others may require new approaches, premised upon



new forms of inter-State cooperation, international solidarity and responsibility-sharing” (UNHCR, 2009, p.2). Thus, new legal frameworks would be necessary to deal with these new categories of migration. Victims of any type of environmentally induced displacement should be able to rely on the security of their fundamental rights.

### ***1.3 UN call for International Support***

Since the redefinition of the UNHCR to include the protection of (conflict) IDPs in its mandate, the number of people whom the UNHCR is responsible for, has risen drastically. In 1998, the UN assumed the responsibility of 22.4 million, whilst by the end of 2008 that figure had risen to 34.4 million. Of the 34.4 million, 14.4 million were IDPs, 10.5 million were refugees and the rest were stateless persons or IDPs and refugees who repatriated or returned home (UNHCR Global Trends, 2009, p.6). A spokesman of the UNHCR, Constantin Hruschka, stated that the UNHCR would not recognise environmental migrants in the refugee framework of 1951 nor would environmental migrants be eligible for additional protection similar to that which (conflict) IDPs receive. Moreover, opening up the 1951 convention to adapt the refugee definition, would be like ‘opening up Pandora’s box’. The UNHCR will provide environmental migrants with aid in the form of supplies. However, environmental migrants will not find protection within UNHCR mandates comparable with that bestowed upon refugees and conflict IDPs (C. Hruschka, personal communication, April 6, 2011).

The UN High Commissioner for Refugees, Antonio Guterres, stated that “although there is a growing awareness of the perils of climate change, its likely impact on human displacement and mobility has received too little attention” (Guterres, 2008). Thus, the UN is aware of the existence of the phenomenon of environmental migrants. However, even concerning conflict IDPs there are worries that the UN is engaged in more than it can handle. In the 2007 Executive Committee session, several governments expressed their concern that “UNHCR’s work with IDPs should not come at the expense of its protection of refugees” (UNHCR Executive Committee, 2007, p.21). In consideration of the fact that the UN cannot assume responsibility for environmental migrants, it turns to the international community to provide environmental migrants

with protection. The UNHCR urges the international community to reflect on the humanitarian and displacement challenges climate change brings about.

The UNHCR paper of 2009 on Climate change, natural disasters and human displacement, states that 'it is evident that prevention and adaptation activities at the local level should be supported by both the affected States and the broader international community, including relevant components of the UN system and the international financial institutions' and that the 'UNHCR considers advocacy as an important tool in ensuring the realization of the protection needs of persons of concern falling within its mandate' (UNHCR, 2009, pp.11-12). The UN is addressing the international community to support environmental migrants, by conveying protection and financial aid. Coming back to the notion of the 'responsibility to protect', if an environmental migrant does not receive any protection from its state, it is up to the international community to provide protection and assistance. As the forerunner in refugee and IDP protection, the UN is unable to guarantee such protection. Therefore, another body must step up to take this responsibility. Could the EU be the body to take that initial step towards the legal recognition of environmental migrants as a migration category entitled to international protection?

# Chapter 2: EU Actorness & Identity

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*“Climate migrants are the human faces of climate change”*

François Gemenne, 6th of May 2011, Stockholm

## **2.1 Explaining the theory of ‘Actorness’**

While suggesting the EU as a suitable body to instigate the initial step to recognise the legal responsibility of the protection of environmental migrants, it must be reasoned why. I would like to construct my hypothesis around the notion that environmental migrants are the human faces of climate change. This connotation implies that there is a correlation between climate change and environmental migrants. If the EU is a forerunner in the fight against climate change, it would seem that the EU should recognise the humanitarian impact of climate change. Moreover, as a consequence of ‘actorness’ in the field of environment, the EU would be considered a ‘role-model’ institution (Bretherton & Vogler, 2006, p.60). Therefore, were the EU to recognise environmental migration as a lawful reason for migration and grant the right for protection, it would be more likely that other international actors would follow suit, resulting in the international recognition of environmental migration. Thus, pre-eminence in the field of climate change could be considered a viable reason for EU incorporation of climate migration in environmental policy. However, the projection of EU identity is the final determinant in EU policy making. First of all, it must be established what ‘actorness’ consists of. After which, it must be determined whether the EU possesses ‘actorness’ in the domain of environmental policy. Finally, a closer look must be taken into the identity of the EU to regard the possibility of the inclusion of environmental migrants in future EU migration policy.

To define the EU as a global actor, one must first look into the workings of the EU. In a legal context, the 1648 treaty of Westphalia stated that only sovereign territorial states could make treaties, be accountable to other states and join international organisations. In the twentieth century, the rules of this first modern state system have been contested by intergovernmental organisations, such as the UN, being

granted international legal status. For the EU to embody the role of an international actor, it is argued that it must have a certain degree of legality in the area of its competencies, with the purpose of being able to act independently from its Member States. The Treaty of Lisbon conveys the EU with such a legal personality. Each policy field either falls under the category of full EC competence, shared EC and Member State competence or full Member State competence. Environment and migration both fall under shared competencies (Art. 4 TFEU).

Several authors have tried to explain the phenomenon of global EU actorness by setting requirements to determine this specific occurrence. Jupille and Caporaso stated that in order to identify the EU as an actor, the EU must comply with the four dimensions of cohesion, authority, autonomy and recognition. Cohesion looks into the ability of an entity, such as the EU, to produce internally consistent and coherent policy preferences. Authority concerns the legal competence of the EU to act. Autonomy refers to the capability of the EU to act comparatively independently from its Member States, giving the EU institutional distinctiveness. Recognition aims at achieving acceptance of the EU by others/third parties, as well as the interaction between such third parties and the EU (Jupille & Caporaso, 1998, pp. 214-217). The co-writers Groenleer and Van Schaik take these four interlinked dimensions of international actorness and add an institutional perspective to the creation of an EU actorness framework (Groenleer & Van Schaik, 2007, p.973). Nevertheless, owing to their use of Social Constructivism to conceptualise EU actorness, I deem the authors Bretherton and Vogler the most the most appropriate for the purpose of defining the EU's role as a global actor.

In their book *The European Union as a Global Actor* (2006), Bretherton and Vogler deduce from their research that Social Constructivism is the most competent theory to explain the nature of the EU, enabling us to comprehend the unique EU character. "We found particularly useful a Social Constructivist approach that conceptualizes global politics in terms of the processes of social interaction in which actors engage. These formal and informal processes shape the evolution of actors' identities and provide contexts within which action is constrained or enabled" (Bretherton & Vogler, 2006, p.13). This approach provides rich insights and permits the authors to examine how EU actorness is socially constructed. Social Constructivism is an apt way to describe the nature and development of the EU.

Looking into the distinctive features constituting the EU, one must first try to understand the EU's structure. The EU is neither an IGO nor is it a state, yet, it still rules several policy areas on an international scale. Most academics have acknowledged the EU as an actor *sui generis*, meaning an actor of its own kind. Lewis (1995, p.3) named the EU a 'multiperspectival' polity, in which the EU is in a constant course of construction. To make the entity work properly, there is the need for a relationship between both structure and agency/actor. Within Constructivism, actors are rule makers as well as rule takers, where as structures provide opportunities and constraints, both actors and structures are interlinked (Bretherton & Vogler, 2006, p.21). Moreover, it is important to keep the perceptions and take the actions of third parties into consideration, constructing international structures, while simultaneously establishing the political identity, the internal structure, of the Union.

One could say that the concept of Constructivism is construction and reconstruction, related to a constantly evolving identity (Palma & Cunha, 2006, p.18). These characteristics make the EU unique in conception and evolution. According to Bretherton and Vogler, there is a combination of three factors that shapes the EU's external activities, which are connected to the construction of EU actorness as a whole. The three notions are those of opportunity, presence and capability. "Opportunity denotes factors in the external environment of ideas and events which constrain or enable actorness [...] Presence conceptualizes the ability of the EU, by virtue of its existence, to exert influence beyond its borders [...] Capability refers to the internal context of EU external action – the availability of policy instruments and understandings about the Union's ability to utilize these instruments, in response to opportunity and/or to capitalize on presence" (Bretherton & Vogler, 2006, p.24). These three notions, inspired by Social Constructivism, are Bretherton and Vogler's means to illustrate and evaluate global EU actorness.

Within the component of '*capability*', Bretherton and Vogler have designed five fundamental requirements the EU must attain in order to demonstrate its capability. The requirements consist of the commitment to shared values and principles; the ability to identify policy priorities and to formulate coherent policies; the capacity to undertake international negotiation; access, and the capacity to use policy instruments; and the legitimacy of the decision processes (ibid, p.31). This subdivision gives a more detailed

insight upon the requirements necessary to claim actorness. However, the most important quality of capability is internal coherence and consistency. They are indispensable for the smooth functioning of the EU concerning foreign policy and decision-making.

An important determinant of the EU's position in the international arena is the identity associated with the EU by third parties. '*Presence*' represents the potential to shape and influence the perceptions and expectations projected onto the EU beyond its borders. Thus primarily, presence must be regarded as the EU's character and identity. The EU's character embodies its material existence, depicted by the political system consisting of every actor within the EU. Moreover, identity is essential to establish a country's actorness. It emblematises the fundamental nature and importance of the EU, in its being and its choices. The process of determining the EU's identity will be elaborated upon in the following part of this chapter. Secondly, the EU can wield influence by means of presence of its policies. This pertains to situations in which an EU policy is of interest to a respective third party, resulting in the desire of the third party to be a part of the EU policy. The third party recognise the EU's presence and by starting this international dialogue, EU actorness is created. The EU can be considered by the third parties as a model, one that they want to be a part of or that they want to be associated with. This is definitely the case within EU trade policy and arguably also for environmental policy (ibid, pp.27-28).

*'Opportunity'* operates in regard to the EU's international discourse resulting from political and economic structures. The EU narrative is constantly evolving, portrayed by the current key EU terms of interdependency and globalisation. Due to increasing globalisation, there is a high degree of interdependency between countries all over the world especially in the field of economy and trade. By glancing through history, '*opportunity*' could be considered coming from an economic perspective, since the EU deals chiefly with third parties in an economic arena. The concept of opportunity is derived from action, meaning that the EU will be judged by the EU's external environment of ideas and events and its action or non-action thereof. The following will depict the EU narrative through a quick historical review in the context of action and non-action (ibid, p.24).

In the 70's, the main notion of interdependence concerned the economy, whose discourse became globalisation. The end of the Cold war changed the previous EU concept regarding boundaries with the Soviet Union and Central and Eastern European Countries (CEEC). The discourse that the EU was portraying after the fall of the Wall was one of responsibility and inclusiveness. The EU borders were threatened by instability, due to Russia's loss of control of the region. As the EU was in the middle of redefining the 'European narrative', it unfortunately did not have the strength to prevent the atrocities that happened during the break-up of Yugoslavia. The resulting discourse of the EU in response to these events was 'tragic failure' (ibid, p.26). The EU was thus confronted with the consequences of its non-action, which changed the international discourse of the EU.

The talk of failure due to its constrained capabilities overshadowed the positive political impact the EU had had on the situation (and thereafter). The EU 'capabilities-expectations' gap was in need of reparation (Ginsberg, 2001, p.83). For an effective construction there is need for material capabilities. In the case of the break-up of Yugoslavia, the EU was at a security risk without the USA. The EU sought a new discourse, that of responsibility. It made clear that it must abandon its civilian power identity in exchange for adopting 'all necessary tools'. However, many contradicted the change from civilian power to a military power. This leads to the debate on EU identity, to which I will dedicate the last section of this chapter. Nevertheless, due to the post 9-11 foreign policy of the US, the EU received the chance to take up the discourse of 'responsibility' and a new role in the world order. US pre-emptive defence doctrine and failure to sign the Kyoto Protocol was considered by the Commission to be 'irresponsible'. Thus, in efforts to distance itself from the US, the EU has become a 'responsible' reliable alternative actor to the US (Bretherton & Vogler, 2006, p.26).

## ***2.2 Identifying EU 'Actorness' in the field of Environment***

The EU claims to be a leading actor in regional and global environmental governance. Within the same framework of Bretherton and Vogler's requirements for actorness, this subchapter shall evaluate if the EU can in fact be considered an international actor in the sphere of its environmental policy. The reason for this investigation, stems from the

hypothesis that if the EU is a global leader within the environmental field, and specifically, in the fight against climate change, then it could be argued that the EU should take up responsibility of all matters concerning climate change, i.e. the effect of climate change on migratory pressure. Environmental migration has become more frequent due to the effects of climate change. Thus, as a leader of the climate change combat and a promoter of its environmental policy, one could say that there is a certain amount of reliance or dependence on the EU to aid dealing with the consequences of environmental disasters. Moreover, as a unit of developed countries responsible for a large part of the harmful greenhouse gas emissions, the EU carries a certain responsibility towards developing countries suffering from climate change caused by these emissions. To review the 'actorness' of the EU in the field of environment, we shall first look at the history of environmental policy in order to see if Bretherton and Vogler's three requirements for actorness are met.

Initially, environmental policy was created for the purpose of removing trade distortions from different national standards and policies, with the exception of several policies aimed purely at the conservation of the environment. The EU's environmental perspective developed, depicted by the Single European Act's (SEA) stance concerning environmental objectives, which aspired the preservation, protection and improvement of the quality of the environment and contribution towards human health (SEA, 1986, p.17). Environmental policy encompasses not only DG Environment, but also many other policy areas. Within article 6 of the TEC, it was proclaimed that the other policies of the Communities should include environmental protection as a valuable component (ex Article 6 TEC, new Article 11 TFEU).

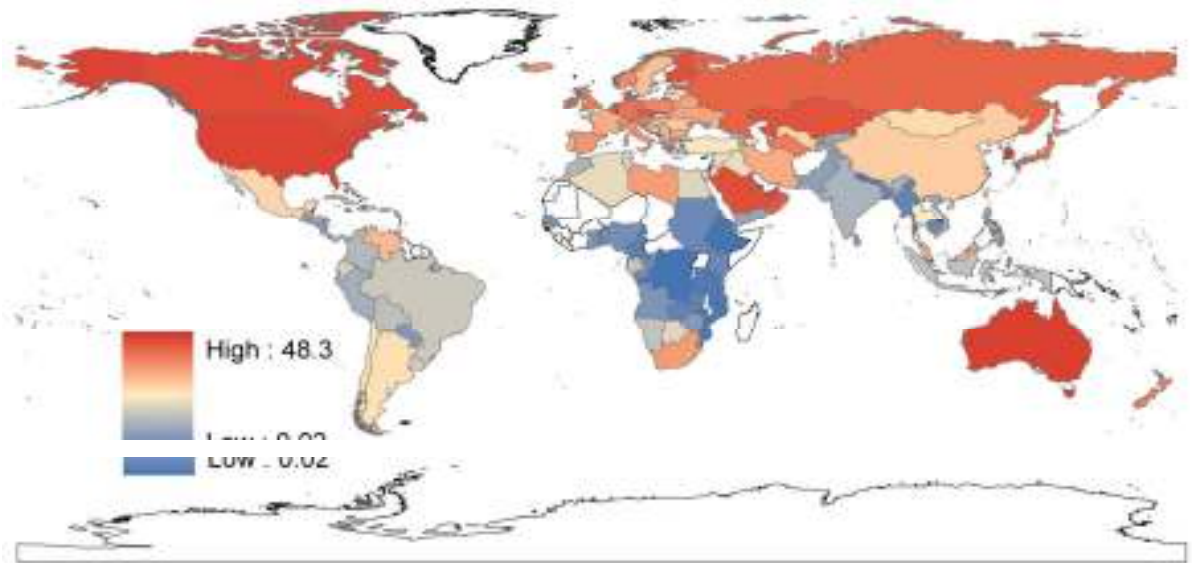
The externalisation of EU policies created a setting in which the dynamics that drove the creation of environmental policy, also drove the internationalisation of it. According to Bretherton and Vogler, there are three main drivers which led to the internationalisation of the environmental policy. The first concerns "pressure to respond to trans-boundary pollution and ... to global scale environmental changes in areas where the European Community was necessarily involved because of its legislative competence". Secondly, the "trade implication of environmental policy", and finally, the "increasingly articulate demands of European publics and pressure groups for action on



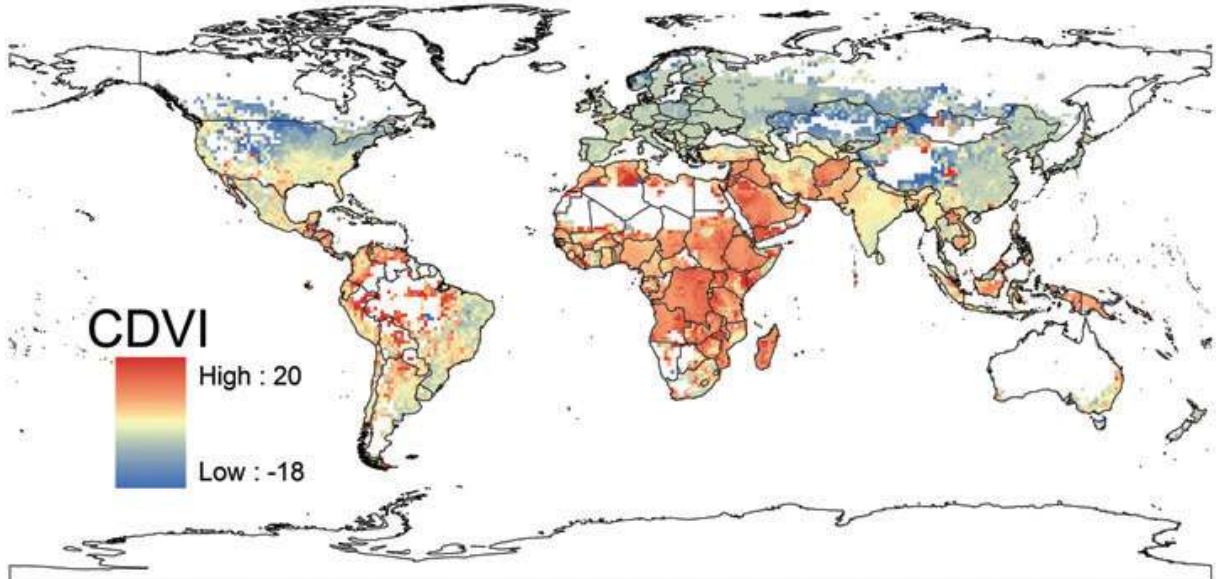
issues including animal welfare, climate change and genetically modified food” (Bretherton & Vogler, 2006, p.91).

The first attempt to deal with a trans-boundary threat was established in the 1979 Long Range Transboundary Air Pollution (LRTAP) Convention. The convention marked the beginning of EU conscientiousness on trans-boundary threats. The EU went on to assume more responsibility in the 80s, with an increasingly proactive stance on ozone depletion. During 90s, climate change caused by the enhanced greenhouse effect was the main topic on the international environment agenda (Oberthür, 2000, p. 88). The EU was not and is not the most effected by climate change. Nevertheless, within EU borders there is a certain danger to low-lying areas, such as the Netherlands, and the EU is also affected by unusual extreme weather conditions (Samson et al., 2011, p.2).

As developed Member States, the EU felt and feels its responsibility to be heavily involved in international negotiations concerning environmental strategies. Previously the involvement of developed countries, such as the entity of the EU, in the case of climate change, was one of ‘moral hazard’. The theory of moral hazard implies that one party acts without taking responsibility for its actions, because it knows that it will not have to account for the consequences. Paul Krugman describes moral hazard to arise in "any situation in which one person makes the decision about how much risk to take, while someone else bears the cost if things go badly" (Krugman, 2009). In terms of climate change and climate refugees, this can be translated into meaning that the EU, a big contributor to greenhouse gas emissions on a per capita basis (Graph 1), will likely not experience the most devastation effects that climate change provokes. Populations of developing countries will principally feel the wrath of climate change (Graph 2), while the developed countries are the main polluters aggravating the worsening environmental conditions (Samson et al., 2011, p.1). The climate induced degenerating living conditions which will eventually lead to migratory pressures, an effect of climate change that the EU should take into consideration.



Graph 1. National average per capita CO<sub>2</sub> emissions based on OECD/IEA 2006 national CO<sub>2</sub> emissions (OECD/IEA, 2008) and UNPD 2006 national population size (UNPD, 2007). Seventy countries with UN membership but without CO<sub>2</sub> emission data are excluded from this analysis (displayed in white), but represented less than 2.6% of the world population in 2006.



Graph 2. Global climate–demography vulnerability index (CDVI), retrieved from Samson et al, 2011, p.7.

Highly negative values, indicated in blue, represent low-vulnerability situations where current demographic growth is much lower than climate-consistent population growth, while highly positive values, indicated in red, represent high-vulnerability situations where current

*demographic growth vastly exceeds climate-consistent population growth. White regions correspond to human density values of zero in the global gridded population database.*

In 1992, the United Nations Framework Convention on Climate Change (UNFCCC) based on combating the threat of greenhouse gasses in the atmosphere, was set up. The EU has been a leading participant since the beginning of the UNFCCC, as well as with the Intergovernmental Panel for Climate Change (IPCC), providing financial and other support. Many other global climate change conventions enjoyed full EU participation. The results of climate change cumulated in a need for climate-change combat leadership, a task that developed countries sensed was their responsibility.

By the end of the 90s, the EU took up the apparent role of global leader in the area of environmental policy, due to the abdication of such leadership by the USA as a result of the failure of the US to sign the Kyoto protocol. An additional incentive for the EU to internationalise environmental measures existed in order to create a level-playing field for trade worldwide. Thus, being able to set environmental ground rules would enable the EU to regulate environmental issues with third parties within the field of trade. These involve the trade implications of environmental policy. This history of the EU's interaction on the environmental scene denotes the EU's 'opportunity' (Oberthür, 2008, pp.43-44).

Moreover, it is important to distinguish internal from external competencies because of the need for coherence on agreements and clear decisions that can be reflected upon internationally. As mentioned in the first sector of this chapter, coherence is the most important element to fathom concerning 'capability', a trait of actorhood the EU clearly possesses within the environmental field. Moreover, according to Bretherton and Vogler (2006, p. 27), it is a main requirement for third parties to recognise the EU as a leader in order for it to achieve such actorhood. The EC as an entity is involved in the conduct of international environmental negotiations. Within the treaties, the EU has shared competence of the environment policy area. However, there is the need to define that line of shared competence as to determine the true achievements of the EU in the environmental field. Thus, where does the Member State competency stop and where does that of the Community begin? Most environmental issues are a mixture of agreements and congruent competence. Externally, the EC has legal personality and co-signs agreements alongside Member States, such as is the case

for the UNFCCC. The first important step for EC was the LRTAP. Multilateral negotiations are at the heart of global environmental governance and the EU is a significant participant in virtually all major environmental negotiations since the 80s. The instruments and implementation processes of the EU on the international scene in environmental negotiations demonstrates EU 'capability', which is the second key component of 'actorness' the EU has achieved within environmental policy (Oberthür & Roche Kelly, 2008, p.40).

The EU possesses presence, experience and an extensive network of economic dependencies, in addition to the bilateral diplomatic links of the Member States. For example, the EU coordinated a diplomatic campaign in support of the Kyoto ratification. Externally, the EU wields most of its power over its neighbours by means of the ENP or potential accession prospects. The EU regional role is important due to ecological interdependence with neighbourhood states, such as the area of the Mediterranean Sea. The EU's single market ensures the EU role as a necessary participant in global negotiations by means of this interdependence and trade connection. Through influence over its immediate neighbourhood, the EU can enforce environmental standards before it grants access to its market. The EU can also influence foreign environmental policy by financial aid. Thus, the EU can influence the environmental policy applications of accession countries, as well as influence the environmental dimension in agreements within the ENP. In the policy field of environment, EU 'presence' on the international scale is embodied (Bretherton & Vogler, 2006, pp.99-103).

To conclude, theoretically, an EU leadership role in the politics of climate change is definitely within their reach. The EU has claimed to have had such a role since the 90s and it is still pursuing the same proactive goals. One of the most important current challenges is to develop a suitable follow up to the Kyoto Protocol post 2012. The EU has established a role of architect of sustainable development through implementing sustainable impact assessments on all trade agreements. Moreover, as a normative actor, the EU has disseminated environmental principles and practices that may inspire, influence and show the way ahead to third parties. Finally, the EU has proven to be a promising participant in global governance regimes.

### **2.3 Constructing EU Identity**

By considering the research presented in the previous two subchapters, theoretically, the EU could be regarded as a prime candidate to assume responsibility and recognition of environmental migrants. Nevertheless, EU policy-making is practically bound to the EU's portrayed identity within each policy field. Pursuant to Bretherton and Vogler's (2006, p.37) social constructivist approach, it can be observed that the EU is composed of two types of identity, namely inclusive identity and exclusive identity. Identity can be considered an entity that is socially constructed. Thus, Community opinion can vary from one policy field to another, leading to two different approaches to EU policies. The outcome of a policy is dependent upon which identity the EU wishes to portray in that particular domain. Inclusive identity is value based on the Community. It implies that all those who are not involved in the EU, care to join or want to be related to the Union. Exclusive identity refers to the idea of 'fortress Europe', in which the EU is an exclusive community, especially in the field of market protection, immigration and asylum. Exclusive identity is commonly associated with the negative characteristics of 'otherness', while inclusive identity is associated with positive character traits.

Identity reflects 'shared understandings about the essential nature of an entity, which is constructed through social interaction' (ibid, p.39). Socialisation often leads to internationalisation. However, internationalisation needs to be constructed through repetitive interaction, in order to assert a certain level of acquaintance with the EU's values and beliefs. Thus, identity is closely linked to the degree of familiarity of groups with EU (Checkel, 2001, p.561). EU officials would show more commitment to the value-based perception of the EU's identity, than Member State attachés are, since their familiarity and loyalty lies rather with Member State than the EU. Depending on the degree of interaction, third party representatives are also dedicated to commitment, awareness or are sceptical regarding EU identity (Bretherton & Vogler, 2006, p.39). Therefore, it is important that values are enshrined in treaties and frequently promoted externally. The EU's former High Representative of the EU for Foreign Affairs and Security Policy, Javier Solana, tried to promote values as the EU's identity. In Solana's speech of 2002 (p.2), on 'Europe's place in world' he claimed that:

"Our common foreign policy cannot just be interest-based. Protecting and promoting European values, which are part of our history and very dear to the heart of

our citizens, must continue to be a priority. The values of solidarity, of tolerance, of inclusiveness, of compassion are an integral part of European integration. We cannot give up on them, especially now that ugly racist pulsions are surfacing again; and that fighting against poverty is becoming critically important to prevent whole societies falling prey to radical and terrorist tensions”.

Third parties are the only ones who can truly validate such identity. Since, it is third parties who interact with the EU and are dependent on which message comes across concerning ‘shared understandings’. Here the Constructivist analysis comes into play as the failure to act would imply the failure of values. The identity of being the promoter of European values is the main identity the EU wishes to display. If the third parties do not experience these ‘values’, the identity of the EU based on norms and values is not valid. Whether internationally driven or not, identity is influential in shaping EU action and its role as an actor (Checkel, 2001, p.561).

The inclusive identity of the EU is based on singular characteristics and values. Article 2 of the TEU portrays the ‘European values’ mentioned by Solana in its promotion of the EU’s inclusive identity. The article states that “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

Duchêne (1973, p.19) claims that the EU’s character is equal to that of a ‘civilian power’, in which it promotes internal and external policy objectives and values by ‘civilising’ means. Civilian power upholds the exclusion of having a military power and encourages others to do likewise. Conversely, the EU policy advocating ‘no military power’ has changed since the Common Foreign and Security Policy (CFSP). Albeit militant security measures incorporated in the CFSP are mostly linked to human development and poverty eradication, it has led to the debate on whether the EU could still be considered a ‘civilian power’. Manners defied Duchêne’s concept of civilian power, claiming that the EU has a normative identity. According to Manners, normative power consists of an ideational dimension which accommodates the “ability to shape conceptions of ‘normal’ in international relations” (2002, p.239). The EU has a history of competing with the USA for being the most committed to core values and to being

morally superior. Manners depicts the EU's promotion of fundamental values in the case of the death penalty, as an important example of how the EU stayed committed to promoting its values on an external basis, particularly aimed at those US states in favour of the death penalty.

In contrast to inclusive identity comprising the civilian versus normative debate, exclusive identity is based on the negative practice towards others. Eligibility is a feature that can portray the exclusivity of EU identity. Here we come back to the concept of 'fortress Europe' (a metaphor coined by those who oppose its existence) where accession countries and migrants experience EU exclusivity (Zimmermann, 1995, p.45). Climate change refugees would also encounter this exclusive character trait of the EU. Within the TEU, the principle of freedom of movement of people aspires the necessity to develop coordinated policies on immigration and asylum, as well as the requirement to develop a common approach to manage EU external borders. This is one of the reasons why the immigration and asylum policy became a common policy area rather than one of sole Member State competence (Hatton, 2005, p.8).

This exclusive identity has been recently exemplified by the occurrence of the Maghreb uprisings and the flight of many Libyan refugees to the borders of the EU, especially to the Italian island of Lampedusa. With the emergence of so many refugees, the Union's fundamental values involving the freedom of movement of people and the abolishment of internal border controls, stirred much unrest in the EU. Many countries were afraid of being overrun by the mass-influx of people, which is what has happened in Italy (Waterfield, 2011). Denmark even set up temporary border controls, which was arguably an infringement of the EU provisions and fundamental 'European values'. The reaction of the EU to this situation illustrates that within the framework of the CFSP and the four freedoms, the EU is primarily concerned about its own security (securing its borders) rather than prioritising the protection of human rights. Succumbing to the EU's exclusive identity, in such a situation the likely EU reaction will be to set up border controls to control and restrict migration flows (Traynor, 2011).

Concerning identity, it is clear that environmental migration would fall under the exclusive characteristics of the EU. After the Cold War, the immigration flow coming from the East was worrying to EU Member States. Immigration fears were also established after the events of 9/11. These fears encouraged the concept of active

'othering'. At the time of the establishment of the Treaty of Maastricht, the Justice and Home Affairs (JHA) (third pillar) combined the asylum and immigration policy in the same policy box with terrorism and crime. Several MEP civil liberty groups were exasperated by this common association. The Treaty of Amsterdam provided the transfer of immigration and asylum matters to the Community pillar. The changes gave more control to the EP and ECJ concerning migration and asylum matters. Furthermore, over the years, the EC has accumulated increasing competence in the migration policy field (Bretherton & Vogler, 2006, p.48).

The EU has set up several procedures to deal with undesirable migration. These procedures present themselves in various forms, such as by establishing the priority of the repatriation of undocumented migrants and failed asylum seekers in formal agreements with foreign countries or by organising extra border controls via visa and document checks positioned for non-EU nationals. Restrictive measures to limit claims for asylum and facilitate their rejection, are becoming more apparent within the EU. This type of action is mostly supported by populist and/or nationalist parties within the Member States. The EU has encountered an increased rise in populist and nationalist parties groups over the last few years, such as in the Netherlands and Hungary. Consequently, there is a stronger hostility towards asylum and immigration policies, resulting in a stronger exclusive identity for the EU. This trend is inconsistent with the inclusive value-based understanding of EU identity promoted by EU officials (Wiesbrock, 2010).

In a response to justify the changing direction of EU policy, it can be observed that the EU puts great value on 'moving freely in security' as its external borders strategy, again depicting the fact that security seems a priority over humanitarian considerations. Borders are by definition exclusionary, generating insiders and outsiders. However, there are two ways to consider such borders via geographical limits or external border control. This constitutes the statement that the EU has two faces. Even though the inclusive identity is more pronounced, the exclusive identity is also clearly present under the surface.

According to Bretherton and Vogler (2006, p.60), as an inclusive international actor, the EU is observed to be associated with three main roles, namely that of a model, a promoter of its values and a counterweight to the USA. The first role refers to the



Union's power of attraction, which mainly stems from its internal policies leading to stability and prosperity. The active promotion of EU values and practices, aspiring others to join or emulate, depicts the EU as a model. The EU's association as a promoter can be exemplified by the fact that the EU requests the implementation of its *acquis communautaire* in relation to accession countries and the inclusion of EU norms and values in international agreements. Moreover, in regard to being a promoter of norms and values, the EU is internationally associated with the protection of human rights, promoting democratic governance and safeguarding the natural environment. Another apparent example of the EU acting out the role of the promoter, is portrayed by Ian Manners example of the EU's promotion in the abolishment of the death penalty. This also relates to the EU countering US opinion and becoming a reliable independent actor in its own right. The EU's promotion of norms and values makes it a reliable alternative to that of the USA, especially in regard to climate change.

On the other hand, the EU invokes its 'exclusive role' when acting as a protector of its Member States and citizens from a perceived external threat. Threats to prosperity, to stability and to security beseech the role of the EU as a protector. Temporarily, the EU possesses an exclusive identity concerning migration policy and, consequently, concerning environmental migration. The EU's environmental policy advocates an inclusive identity, in which the EU promotes its norms and values. Respect for human rights is an inclusive feature to which environmental migrants could appeal. However, migration policy consists of an exclusive identity, which is incompatible with the inclusive environmental one. One could consider the battle for the inclusion of environmental migration in EU legislation, as a battle for the inclusive identity to prevail over the exclusive identity. The development of migration policy will be dependent on the identity the EU chooses to associate with migration. Will the fight for human rights triumph over the fear for security? Until EU migration policy converts to a more inclusive approach, the EU will be unable to assume responsibility for environmental migrants. Nevertheless, the EU is receiving an increasing amount of internal and external pressure to officially recognise the phenomenon of climate migration. The following chapter will investigate what the EU has done so far concerning the inclusion of environmental migration.

# Chapter 3: EU-Policy & Environmental Migration

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## **3.1 The Legal European Framework**

Exploring EU law is relevant to investigate whether any existing EU law could incorporate the protection of environmental migrants or whether a legal loophole could be created to serve the purpose. As previously mentioned in the UN section, there are various types of environmental migration. Thus, a solution for the protection for environmental migrants must each be sought in a different way. Several migration types have a more advantageous position in the eyes of the law, such as cases where the effects of climate changes may lead to conflict over water or land scarcity and turn into a violent conflict in which the migrants become refugees in the 1951 sense of the word. The EU has several laws within its treaties that could be manipulated into covering the protection of environmental migrants, mainly in the context of displaced persons.

Firstly, the principle of *non-refoulement* must be explained. The right of *non-refoulement*, was stated in the 1951 Convention to protect refugees from being sent back to their home country where they would face life-threatening danger upon their return. Technically, this principle directly relates to the situation of environmental migrants as their life would be at risk if they would return home. Nonetheless, environmental migrants do not have the same rights as refugees to rely upon protection when they are in need. Even if they have crossed an international border, they will not be seen as a refugee until they can prove that they are being persecuted for a reason stated in the Convention. Nonetheless, the principle of *non-refoulement* must be seen as one of basic universal human rights and has been used as such in several instances of case law (de Moor & Cliquet, 2009, pp.4-5).

One such example of case law is the Soering-case. Article 3 of the European Convention on Human Rights<sup>8</sup> (ECHR) rules that “no one shall be subjected to torture or

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<sup>8</sup> Formally referred to as the Convention for the Protection of Human Rights and Fundamental Freedoms

to inhuman or degrading treatment or punishment". In light of the prohibition of torture, Jens Soering appealed to the European Court of Human Rights that his extradition to the US from the UK would violate Article 3 of the ECHR, since he would most likely be subject to the death penalty upon return. In the case it was ruled that "the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3 (art.3), and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country." (Soering v United Kingdom, 91).

Subsequently, the reasoning of the case law was used in various other cases, including the application to the expulsion of rejected asylum seekers (Vilvarajah and others v. The United Kingdom, 103). Article 3 ECHR and its related case law have broadened the scope of eligibility to rely on the principle of *non-refoulement* for protection. One can now rely on the principle of *non-refoulement* in cases of protection against torture, cruel, inhuman or degrading treatment or punishment and asylum seekers who would suffer human right violations upon their return.

There are two flaws in the principle of *non-refoulement*, namely that it is difficult to enforce the principle practically and once granted *non-refoulement*, a legal residence status is not guaranteed. Nevertheless, Art. 3 ECHR leaves room for interpretation, which can be used to the advantage of environmental migrants. Migrants coming to Europe could rely on Art. 3 ECHR for protection of their safety perhaps via asylum *non-refoulement*. Moreover, the reason why *non-refoulement* could involve environmental migrants is because the principle is part of customary law. Thus, every international body is bound to the principle, either through human right treaties or in general. The Treaty of Lisbon binds EU Member States to the principle of *non-refoulement* (de Moor & Cliquet, 2009, p.7).

Although the principle does not mention anything about environmental displacement, environmentally displaced persons are subject to inhuman or degrading treatment due to the conditions in their homes if they were forced to stay there. The principle of *non-refoulement* has been used in cases of natural disasters, such as when the UN appealed for the suspension of the return of Tsunami victims back to the affected area in 2004 (Kolmannskog and Myrstad, 2009, p.9). Thus, the principle of *non-*

*refoulement* could become a basis on which environmentally displaced persons can rely. Potentially, *non-refoulement* could evolve from a principle to a 'soft law' instrument, or as a binding norm progress into international law, such bottom-up development could be a solution to the problem of environmental migrants.

In terms of existing EU law, Council Directive 2001/55/EC of 20 July 2001 (Temporary Protection Directive) and Council Directive 2004/83 of 29 April 2004 (Qualification Directive) could both be manoeuvred in such a way as to partially cover the needs of environmentally displaced migrants. The Directive on Temporary Protection describes eligible displaced persons as the following:

"third-country nations or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular: (i) Persons who have fled areas of armed conflict or endemic violence; (ii) Persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights" (Article 2(c) of the Temporary Protection Directive).

The directive can be implemented when the mass-influx of displaced people applying for asylum results in the incapacity of the national asylum system to process the requests efficiently on an individual basis. A characteristic of environmental migration caused by a sudden natural disaster is that such disasters usually affect large groups. Moreover, it is more common for sudden natural disasters to cause temporary displacement, rather than slow on-set environmental disasters. Considering the directive judiciously, it should be applicable to environmentally-induced displaced persons. Environmental disasters could be considered circumstances where people are 'unable to return in safe and durable conditions because of the situation prevailing in that country' (Article 2(c) of the Temporary Protection Directive).

The European Council decides whether to appeal to the Directive on a case by case situation. This could give rise to a window of opportunity in which climate-induced migrants could appeal to the Directive. Nevertheless, as the title of the Directive clearly

states, it would only provide the temporary status of protection. Art. 4 of the Directive states that protection is appointed for the duration of one year, with the possibility of being granted an extension of that period up to three years (Article 4 of the Temporary Protection Directive). The reconstruction of a country after a natural disaster, on the other hand, may take more than three years. Furthermore, in cases of climate change induced slow onset disasters, the persons will most likely never be able to return home. Thus, if climate-induced persons cannot rely on the directive for a longer period of time than that allotted to them, the Directive may not be pertinent (Lopez, 2007, pp.395-396).

The Council Directive 2004/83 of 29 April 2004, also entitled the Qualification Directive, is applicable to those displaced persons who do not fall under the 1951 Convention, but who are still in need of international protection. Art. 2(e) prescribes the eligibility requirements for receiving such protection. The application to the Directive is viable if “substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country”. Art. 15 of the Qualification Directive, conveys that “serious harm consists of (a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”.

Environmental migrants are not initially entitled to subsidiary protection under EU law, as environmental destruction is not mentioned on the list of Article 15. Nevertheless, environmental migrants could attempt to appeal to the ‘inhuman or degrading treatment... in the country of origin’ clause of the article. According to Jane McAdam, the Article 15 (b) passage ‘inhuman or degrading treatment or punishment’ could leave room for interpretation (McAdam, 2005, p.3). Nevertheless, the acceptance of the eligibility of an environmental migrant under the Qualification Directive would be dependent on ECHR and ECJ ruling and case law. McAdam deems the Directive “a considerable step forward for some EU Member States, which had previously simply

‘tolerated’ the presence of non-removable persons but had not granted them a formal legal status” (2008, p.265).

In the 2010 European Commission review on the application of the Qualification directive, attention is drawn to the fact that not every Member State has correctly implemented all the provisions of the treaty. Thus, many national standards concerning eligibility for subsidiary protection, are not up to the Directive standards. For example, Member States are bound to Article 2(c) and (e) in regard to Articles 13 and 18, which grant the status of "refugees" and "persons eligible for subsidiary protection" to those who qualify for the Directive. However, in some domestic laws there is no requirement to grant such a status in compulsory terms. On the other hand, “the transposing legislation in Finland defines international protection as including not only refugee status and subsidiary protection but also a residence permit granted on the basis of humanitarian protection” (Commission Directive review, 2010, p.32). Finland has one of the most progressive legislations concerning the protection of environmental refugees. Therefore, in the last section of this chapter the case of Finland shall be specifically reviewed.

Moreover, the Directive leaves much room for interpretation. The conclusion of the review notes that “deficiencies were identified in the provisions of the directive themselves, the vagueness and ambiguity of several concepts such as actors of protection, internal protection, membership of a particular social group leaving room for widely divergent interpretations by the Member States”. The latter results in large disparities among Member States, in the granting of protection and the form of the protection granted. The Commission report concluded that the purpose of generating a “level-playing field with respect to the qualification and status of beneficiaries of international protection and to the content of the protection granted has not been fully achieved during the first phase of harmonization” (ibid, p.53). By arriving at this conclusion, the Commission adopted a proposal to modify the Directive in 2009. At the moment, the 2009 proposal to recast the Qualification Directive is still in anticipation of the final Parliament amendments. It is important to note that MEP Jean Lambert, who will be discussed at length in the following subsection of this chapter, was appointed in January 2010 as the leading *rapporteur* in the recast of this Directive.

The advantage of the Qualification Directive compared to the principle of *non-refoulement*, subsists in the fact that it offers legal status to those eligible for protection. The 'principle' merely states that a person cannot be sent back, leaving that person in a grey zone of safety in illegal residency (McAdam, 2008, pp. 266-270). States are prone to avoid obligation if possible. Thus, protection in the form of human rights principles, such as *non-refoulement* and solidarity, are preferred over subsidiary protection. However, human rights law 'is strong on principle but weak on delivery' (ibid, p.267). It remains to be seen if the new version of the Qualification Directive will include environmental refugees in its provisions. The amendment procedure of the Directive could be the perfect opportunity to broaden the scope of eligibility to include environmental migrants. Moreover, during the drafting of the first Qualification Directive, the European Parliament promoted the adaptation of instruments and policies regarding environmental displacement to be included within the provisions (European Parliament, 2002; Kolmannskog, 2009, p.6). Therefore, as the European Parliament has attained a stronger voice in the EU since the Treaty of Lisbon, there is fair reason to believe the chances are high that the amended Qualification directive will legally recognise environmental migrants. The legal recognition of climate migrants by the EU could initiate international mobilisation on the subject and instigate the development of the legal embryo that is 'climate justice', a long anticipated turn of events by the populations on the front line of global warming.

### **3.2 European Parliament Developments**

*"By recognising environmental refugees you recognise the problem. By recognising the problem you start on the road to accepting responsibility and implementing solutions."*

(Jean Lambert, 2002, p.4)

As far back as 2001, several MEPs attempted to shine the European spotlight on environmental refugees. On Friday the 26<sup>th</sup> of October 2001 Jean Lambert, a Green MEP from the United Kingdom, spoke about *Refugees and the Environment* at the World University Service. Due to her prominent role in the fight for recognition of environmental refugees within the European Parliament and consequently, within the

EU, I shall dedicate a large part of this subchapter by looking into Lambert's actions and discourse.

In her 2001 speech she expressed the importance of 'recognition', stating that "if we do not officially recognise that there is such a person as 'an environmental refugee', we have no responsibility for them. If they are a refugee, we have responsibilities and they have rights" (2001, October Speech). In the beginning of her speech she expresses her dismay over the 'deterrence' policy many EU officials invoke concerning the subject of environmental refugees. Thereafter, she presented shocking environmental migration related statistics from the UN and Red Cross, to exhibit the severity of the topic. A visible strategy of hers, in which she lets the statistics speak for themselves, also apparent on her website.

Interestingly, in her speech, Jean Lambert displays the 'discrepancy of opinion' within the EU concerning environmental refugees. Following a discussion on immigration and asylum policies, Lambert recollected a time when she asked Commissioner Vitorino, who was the Commissioner for Justice and Home Affairs at that point, whether the EU was "going to examine its policies and practices to see what [the European Institutions] do that act as a push factor for migration" (2001, October Speech). The Commissioner did not answer. As a member of the Green party, she considers it her obligation to seek a preventive solution to (environmental) migration for the long-run. One must look to solve the cause of the problem as well as to find a solution to its consequences. Lambert implies that, due to economic factors, the importance of ecological issues has been overshadowed.

In 2002, Lambert published a report entitled *Refugees and the Environment: The Forgotten Element of Sustainability*. In the report she attempts to explain the various facets pertaining to 'environmental refugees'. Primarily, Lambert pleads for international awareness of the need to create an agreement for the recognition, protection and assistance of environmentally displaced persons. She herself had been part of the Greens campaign to convince the EP to include reference to environmental refugees in the 2001 Common European Asylum Policy. Unfortunately, their request was denied.

Her report chiefly advocates recognition and the policy of taking preventive measures. She acknowledges the challenge of definition, resulting in the difficulty to



define an environmental refugee. Therefore, she attempts to categorise the various types of environmental refugees for a better identification once their rights are recognised, rights which should be recognised since everybody should be entitled to refuge. She then reasons that if preventive measures were taken seriously, there would be no refugee problem to discuss. Lambert denotes the disproportionate responsibility rich developed countries carry in climate change debacle compared to the part they play in the problems caused. She portrays the EU's 'social responsibility' to act. As a big contributor to pollution and having the greatest ability to pay for a solution, she believes that the EU should provide more assistance to parts of the world that are most affected by climate change and its consequences, countries which are chiefly not main polluting contributors. Thus, Lambert also alludes to the issue of 'moral hazard', discussed in Chapter 2.2. (Lambert, 2002, p.2)

Ironically capital can move freely, but barriers are put up to limit the human flow of (im)migration. Lambert cautions the EU that its territory will not be immune to the effects of climate change nor to an internal environmental migration situation, claiming that climate change effects within its own borders will be disastrous, especially in the low-lying areas of the Netherlands and East Anglia. In her 2002 report, she even refers to the possibility of a nuclear threat due to power plants in vulnerable low-lying regions. In the recent catastrophic environmental disaster causing the Fukushima nuclear power plant leak, her fear of an environmentally induced nuclear threat has proven grounded. Conclusively, she hopes actions will be taken preventively and not only after EU feels the wrath of environmental disruption (ibid).

In October 2002, Jean Lambert acted as a *rapporteur* for the proposal of a Council (Qualification) Directive on 'minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection' (Qualification Directive). The Directive aspired to the development of instruments and policies of prevention relating to climate-induced displacement. At the moment, she is once again the *rapporteur* for recast of the 'minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted' (Recast, Directive 2004/83/EC). If the internal lobby of the European Parliament achieves what it failed to do the first time

round, which is to extend the scope of eligibility to environmental migrants, it would mean a breakthrough for the international status of a climate refugee. The probability of achieving this goal is a lot higher than it was in 2001, because the Treaty of Lisbon has provided the EP with a more influential role.

Many of Lambert's fellow colleagues in the European Parliament Green fraction share Jean Lambert's concern for the environmental migration situation. In 2004, Jean Lambert together with French Green MEP Marie Anne Isler Beguin, requested, by means of a written declaration, the allocation of a Community status for ecological refugees (European Parliament, Lambert & Isler Beguin, 2004). Marie Anne Isler Beguin wrote another declaration requiring Community prerogatives to include the inscription of the principle of ecological interference (European Parliament, Isler Beguin, 2004). The documents introduced the question of the inclusion of environmental migrants in official EU reports for the first time. Regrettably, the documents were not followed up by a resolution, resulting in an attempted failure to launch the innovative concept.

Nevertheless, numerous MEPs have instigated activities to appeal to the EU's awareness of climate refugees, such as French Green MEP H  l  ne Flautre. In June 2008, when H  l  ne Flautre was President of the European Parliament's Subcommittee of Human Rights, in cooperation with the French initiative of Argos, she worked on an appeal addressed to MEPs, campaigning for European awareness of climate refugees (Argos, 2008). Several such seminars on climate refugees have been organised in the EP, for instance the one-day seminar on the 11<sup>th</sup> of June 2008, organised by the Greens / European Free Alliance (EFA) to direct the attention of the European Institutions to adopt a declaration on the recognition of climate migration (Declaration on Climate migrations, 2008, p.4).

On the two following days, the 12<sup>th</sup> and 13<sup>th</sup> of June 2008, the EP held an Agora on climate change aiming at the discussion of the topic and the possibility for the 500 participating European civil society organisations to present their proposals on the matter. The conclusion of the "Solidarity" workshop called upon the EU to develop a European strategy on forced climate migration and to launch a debate within the UN on the status of climate migrants and on a protocol to the UNFCCC on forced climate migration. In Jean Lambert's opinion, "it is essential that [the EU] support and enlarge the role of the UNHCR and give it the resources it needs" (2001, October Speech). In

October 2009, the Greens had an ice sculpture fashioned in the form of a climate refugee for the plenary session in Strasbourg. The melting statue was assembled to represent everyone in danger of global warming. According to the Greens, EU policies constituting the combat against climate change were inadequate to accomplish efficient solutions. Attention had to be drawn to the fact that EU policies lacked attentiveness towards the humanitarian effects of climate change (Euronews, 2009).

On the 3<sup>rd</sup> of March 2011, the Environmental Justice Foundation reported that the Executive Director of the Environmental Justice Foundation, Steve Trent, addressed the European Parliament at the 'Climate Refugees: A New Arena for Human Rights' seminar hosted by the Socialists & Democrats Alliance concerning climate change and the human displacement it causes. Trent demonstrated the global extent of environmentally-induced displacement through countless examples ranging from the rising sea level in Tuvalu, the lasting devastating effect of Hurricane Katrina, right up to future prognostics that at some point the ocean will reclaim its land from the Netherlands. His aim was to illustrate that environmental disasters can make millions homeless overnight, as did Cyclone Sidr in Bangladesh 2007, and that no country, no matter how affluent, is safe from such catastrophes. He appealed to the EP that action must be taken to generate a legally-binding instrument that can ensure protection and assistance for victims of environmental disasters. He warned the EU that "this is not about 'Fortress Europe, tightening border controls is not an appropriate response to this humanitarian crisis" (EJF, 2011, para.5).

The most recent cause for debate on environmental refugees is the March 2011 Japanese disaster. The devastating earthquake, tsunami and nuclear crisis have rendered thousands of people homeless, with many fleeing the country from the continuing nuclear threat. Naturally, the outgoing migration flow fleeing the environmental circumstances, sparks the debate as to whether the doors of the international community should stand wide open for these 'environmental refugees' as they would for 1951 Convention refugees. The question of legal recognition of environmental refugees is ever more vigorously being discussed in the European Parliament and the EU, as well as in other international bodies such as the UN Security Council and the International Committee of the Red Cross, since the event (Coughlan, 2011).

The subject matter of climate refugees has clearly become a hot topic on the agenda of the European Parliament. Conclusively, progress has been made since the emergence of the subject in the EP a decade ago, if only for the fact that at least two out of the seven EU political groups are actively fighting for the rights of environmental refugees, the Socialists & Democrats Alliance and the Greens, the second and the fourth largest groups respectively, giving a lot more weight to their opinion were they to form a coalition on the matter. If these EP parties collectively advocate for the inclusion of environmental migrants in the provision of the Qualification Directive, the legal recognition of environmental migrants could be realised. Whether, this time, success will be achieved in the EP to push for the inclusion of climate refugees in EU policies, revoking the failed attempt in the Common European Asylum Policy, remains to be seen.

### ***3.3 European Commission Perspective***

The European Commission is a key player in the dialogue on climate change. It represents the voice of the EU in various formal and informal meetings on the matter, including bilateral agreements and discussions with other chief actors. The Commission assists in the adaptation to the inevitable impacts of climate change in vulnerable countries such as the Small Island States (SIDS) and Least Developed Countries (LDCs). Moreover, the EU is actively involved in the UNFCCC, arguably the most important international climate change negotiation. In the previous UNFCCC COP at Cancun, each participating party was encouraged to work on an Adaptation Framework to carry out inter alia "measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation", in addition to a two-year work programme on loss and damage (UNFCCC COP, 2011, p.5). The European Commission is currently working on the implementation of such measures. In order to combat the versatile nature of climate change, it is necessary to incorporate it into all the external policies and development cooperation practices of the EU (European Commission Petition, 2011, p.1). Nonetheless, the Commission has not legally recognised environmental migration as a component of climate change. It has initiated several programmes to research the phenomenon of environmentally-induced migration.

In 2007, the European Commission established EACH-FOR (Environmental Change and Forced Migration Scenarios), a two-year long research project under the framework of FP6 (Priority 8.1- Policy-oriented research). The main aims of the project were to examine the direct and indirect factors contributing to forced migration in the framework of existing research, as well as to scrutinise the connection between environmental degradation and migration by means of case studies. The goals also included predicting, analysing and synthesising the processes of environmental degradation in terms of its effect on migration, in addition to setting up forced migration scenarios for a local and regional interdisciplinary analysis. Case studies of the project involved a wide range of regions, starting from Europe and Russia, NIS and Central Asia, Asia, Sub-Saharan Africa and Ghana, Middle East and Northern Africa, right up to Latin America (Vag et al., 2009, p.4).

The objectives were both to embody potential environmentally-induced forced migration scenarios and to determine and portray the roots of forced migration and its implication on other social, political and economic phenomena in the main countries of migration origin and in Europe. By the end of the project, on the 14<sup>th</sup> of May 2009, a synthesis of all the case studies and other investigatory work was published. The report consists of a summary entailing all the findings throughout the project, including causes resulting in forced migration and policy recommendations to prevent further environmental degradation. The report cautions that the problem of climate change is increasing and with it the pressure to migrate. Moreover, it concludes that permanent migration seems to be becoming more widespread compared to temporary migration. The decision to migrate implicates many factors such as social, political and economic considerations aligned with the environmental features (ibid, p.74).

In January 2008, organised by the UNEP and IOM, a common meeting was held on 'Migration and Environment' to invoke the awareness of the European Commission on the matter of environmental migration. The attendance consisted of numerous representatives from different Directorate Generals, indicating that there was high interest in this subject from various policy fields. On the 14<sup>th</sup> of March 2008, the High Representative, Javier Solana, and the European Commission, headed by Benita Ferrero-Waldner, the last Commissioner for External Relations, presented the European Council with a report regarding the international security threat of climate change and its effects

on Europe's security. It marked the first time a report mentioning environmentally-induced migration was tabled at an EU Summit. In part IV of the report, there is a section on environmentally-induced migration. The report states that it acknowledges the request by countries susceptible to climate change for the international recognition of environmentally-induced migration, warning Europe that it should prepare for a significant increase in migratory pressure, an outcome consistent with the conclusions of the EACH-FOR project. In the report, several climate change affected regions in the vicinity of the EU are depicted (European Commission & High Representative, 2008, p.4).

The geographical part denotes the fact that many of the EU's neighbours, such as North Africa and the Middle East, comprise regions that are highly susceptible to climate change, adding to the danger of migratory pressure at the EU's borders as well as the increasing liability of future climate-induced political instability and conflicts. Most notably regarding the case of Africa, the threat of climate migration originates from this region, but it is also considered the doorway for migrants from other regions willing to travel to the borders of the EU via North Africa. This demonstrates that climate change is increasing existing migration around the world. (ibid, p.6).

The conclusions of the report indicate that it is in the self interest of the EU to target the security implications of climate change by the implementation of a range of measures. These measures should be enforced at EU level, multilateral level and in bilateral relations. The report recommendations state that improvements must be made concerning EU knowledge on the "impact on human rights and potential migratory movements" within climate change and the EU must "consider environmentally-triggered additional migratory stress in the further development of a comprehensive European migration policy, in liaison with all relevant international bodies" (ibid, pp.9-10). The report states that the EU cannot act alone as regards climate change, obviously this refers to the adaptation to the phenomenon of environmental migration as well. Nevertheless, someone has to take that first step towards the legal recognition of environmental migrants, in order to tackle the problem adequately.

The 2004 Qualification Directive was one of the 'first building blocks' towards a common asylum. It established the first phase of the Common European Asylum System (CEAS). On the 17th of June 2008, the Commission set forth a proposal for the completion of the second phase of the CEAS in the Policy Plan on Asylum by raising and

ensuring the standards of protection throughout the EU. The 16th of October 2008 European Pact on Immigration and Asylum, presented additional political support for these objectives, by means of “inviting the Commission to present proposals for establishing, in 2010 if possible and in 2012 at the latest, a single asylum procedure comprising common guarantees and for adopting a uniform status for refugees and the beneficiaries of subsidiary protection”(Commission Directive review, 2010, p.3).

The Policy Plan on Asylum indicated that “an ever-growing percentage of applicants are granted subsidiary protection or other kinds of protection status based on national law, rather than refugee status according to the Geneva Convention. This is probably due to the fact that an increasing share of today’s conflicts and persecutions are not covered by the Convention. It will therefore be important during the second phase of the CEAS to pay particular attention to subsidiary and other forms of protection” (Commission Communication, 2008, p.3). One of the all-embracing objectives of the CEAS is to “ensure access to those in need of protection” (ibid). On the 21th of October 2009, the Commission collectively put forth a proposal amendment for Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (the "Asylum Procedures Directive") as well as for the Qualification Directive. The objective for these amendments attempts to ensure “a higher degree of harmonisation and better substantive and procedural standards of protection, towards the establishment of a common asylum procedure and a uniform status” (Commission Directive review, 2010,p.3). As mentioned in the previous section, the Qualification Directive amendments awaiting final EP recast could be a turning point for environmental migrants.

The first time environmental displacement was discussed at a formal international climate negotiation was during the UN climate change talks in Bonn 2009. The proposed negotiating text included a reference to climate related human mobility. Moreover, the text is highly favourable to become the basis for the new UNFCCC protocol that would succeed the Kyoto Protocol (UNFCCC, 2009, 25(e)). In the 2009 Commission White Paper, it was expressed that climate migration “should also be considered in the broader EU reflection on security, development and migration policies” (White Paper of the Commission, 2009, p.17).

On the 18<sup>th</sup> of December 2009, the Commission admitted a petition on the legal recognition of climate refugees written by Andy Vermaut, on behalf of the Pimpampoentje Climate and Peace Action Group. The petition requested the EU to officially recognise those who are forced to flee their homeland as 'climate refugees'. To depict the severity of the issue the petitioner mentions the two cases of Tuvalu and Bangladesh, who are momentarily struggling with 'climate refugees'. Moreover, the petitioner alerts the EU to the fact that there are already many 'climate refugees' illegally present in the EU. Subsequently, Andy Vermaut is requesting the "legal recognition for this category of refugee and wishes to know what form of protection the European Union intends to afford them" (European Commission, 2011, p.1).

On the 29<sup>th</sup> of March 2011, the European Commission sent a notice to the European Parliament with a reply to this petition. Concerning the formal recognition of a 'climate refugee' as a refugee covered by the 1951 Convention, the Commission shares the UNHCR position, namely "that refugee law should not be interpreted in such a way as to cover also environmental migrants as the Geneva Convention is very clear on the conditions of individual persecution" (ibid, p.2). Furthermore, the Commission stated that "national and local authorities are vital in responding to internal displacement" (ibid), since they can respond better to serious cases of environmental migration in their region. However, the Commission conclusion recognised the importance of climate change on the movement of people. It declared that an in-depth analysis would follow to examine current EU policies and legislation in order to see whether they could be used to address the issue satisfactorily. The conclusion ends by stating that the Commission will conduct such an investigation in 2011, as stipulated in the Stockholm Programme, to determine the outcome. In the Stockholm-programme 2010-2014, it is stated that "the connection between climate change, migration and development needs to be further explored, and the European Council therefore invites the Commission to present an analysis of the effects of climate change on international migration, including its potential effects on immigration to the European Union" (ibid). According to Jan Saver, an EU official in DG HOME, there is an expected paper to be published in the near future on Migration and Climate Change, which is likely to include elements reflected in the petition (personal communication, April 5, 2011).



### **3.4 Member States & Environmental Migration**

The position of Member States regarding the recognition of environmental refugees varies to a great extent from country to country. The difference can be perceived in terms of inclusive and exclusive identity in the field of migration policy. The majority of EU countries advocate an exclusive identity when it comes to migration policy (Wiesbrock, 2010). Nonetheless, several Member States incorporate an inclusive identity within their policy of migration. In general, it can be considered that Scandinavian countries have an elevated inclusive humanitarian policy approach in their domestic governance. The respect for human rights is more likely to prevail over the 'threat' of security. For instance, Finland and Sweden are the only Member States that recognise environmental migrants as "persons otherwise in need of protection" in their domestic migration policy. Similar to Finland, the Swedish Aliens Act protects persons "unable to return to the country of origin because of an environmental disaster" (Swedish Aliens Act, Chapter 4, Section 2(3)). However, Swedish legislation entails a clause which can restrict the application of this provision "if Sweden's absorption capacity is overwhelmed" (Kolmannskog and Myrstad, 2009, p.9).

The Swedish *travaux préparatoires*, consisting of the preparatory work for the establishment of a statute, has recognised the more permanent type of environmental migration, such as in the case of 'sinking islands'. However, no official legislation has been drawn up including this 'long-term' migration type. Furthermore, there have been proposals to limit the criteria of the scope for subsidiary protection to sudden rather than gradual environmental disasters. Swedish legislation can be considered inclusive, unless it instigates the limitation of the 'protection' scope (de Moore & Cliquet, 2009, p.16).

Denmark does not specifically mention climate refugees as candidates of Danish asylum policy. However, it does offer asylum to families with young children and single women coming from regions inflicted by severe drought and famine. This asylum approach on discretionary grounds is a pragmatic approach. Thus, Danish legislation applies 'survival criteria', giving humanitarian asylum to people coming "from areas where there was a lack of food and who would be in a particularly vulnerable position upon return" (Kolmannskog and Myrstad, 2009, p.10).

The implementation of the Qualification Directive denotes the strengths and weaknesses of Member States to comply with the protection established on a Community level for individuals eligible for subsidiary protection, as well as refugees. Analysing the compliance of countries to the Directive can offer an insight as to how agreeable Member States are when it comes to offering protection to those in need. If Member States prove to already have difficulties implementing a legally binding Directive on the protection of those in need, it is not likely that the exclusive characteristics of their domestic policies will allow for the recognition of environmental migrants.

For instance, Article 4(1) of the Qualification Directive provides Member States with the possibility to require an applicant for international protection to provide all the elements necessary for processing the application file as soon as possible. This provision could be perceived as entailing an exclusive identity, since it allows Member States to accord a time limit to an application. This time limitation can be manipulated by states for the purpose of using it as a viable manner to refuse the application of a candidate. This is especially the case in situations where the time limit is not set, such as in Bulgaria, Belgium, the Czech Republic, Cyprus, Hungary, Lithuania, Romania and Finland who chose not to invoke this article (Commission Directive review, 2010, p.4). This choice could be a conscious move to provide a more accessible application procedure for those applying for international protection, advocating an inclusive approach without any time limit.

The flaw of this Directive lies in the bad implementation of it. Generally, Directives provide a certain degree of flexibility for the implementation of Directive requirements into domestic law. For instance, the means by which the protection or form of protection is achieved is not of importance, as long as it is accomplished. However, in the example of the Qualification directive, the same standards of protection are not achieved. The imprecise wording of the Directive gives too much leeway for the inclusive or exclusive identities of each domestic policy to formulate the requirements. The recast of the Directive must involve strict outlines. Perhaps the inclusive identity lobby of the Scandinavians will influence the outcome to include environmental migrants. The future of EU migration policy and the legal recognition of climate refugees will be dependent on the promotion of the EU inclusive identity within this policy field. A

national lobby campaign for the rights of environmental migration could be one way of achieving this, besides the inter-Member States lobby.

#### **3.4.1 Case study: Finland**

Considering Finland's strong inclusive identity in the field of migration policy, it is an exemplary case study. Finland is one of the few Member States that has incorporated environmental migrants into national legislation, displaying an inclusive migration policy. In Finland, environmental migrants are categorised as "persons otherwise in need of protection". The Finnish Aliens Act Chapter 6 Section 88 a (323/2009) establishes that a person who "cannot return to his or her country of origin ... as a result of an environmental catastrophe" may be eligible for "humanitarian protection". Thus, if an 'alien' does not fall within the scopes granting asylum or providing subsidiary protection, the 'humanitarian protection' act will supply the 'alien' with a residence permit under Section 88a.

Moreover, the Finnish Aliens Act, Section 109(1) states that temporary protection is extended to those who are in "need of international protection and who cannot return safely to their home because there has been a massive displacement of people in the country or its neighbouring areas as a result of ... environmental disaster". If an 'alien' has been rejected for both humanitarian and temporary protection, the Finnish government can provide a one year 'temporary residence permit' rather than a protection status (Finnish Aliens Act, Section 89 (323/2009)). The use of this specific act is very rare. Nevertheless, it exemplifies the excessive extent of Finnish inclusiveness in the policy field of migration.

On the EU level, compared to many other Member States, Finland has a more inclusive migration policy and advocates this policy for the rest of the EU. For instance, Finland has lobbied for the inclusion of persons displaced by natural disasters in the composition of the Qualification Directive (Council, 1999, para.6). Unfortunately, the mention of such persons was not included in the first version of the Directive, an amendment that might occur after the European Parliament's recast of the Directive.

Moreover, at the time of the drafting of the Temporary Protection Directive, Finland was lobbying for the inclusion of persons displaced by natural disasters in Article 2(c). Nevertheless, the opponents of this inclusion, especially Belgium and Spain, argued that “such situations were not mentioned in any international instrument on refugees” (Council of the European Union, 2001; Kolmannskog and Myrstad, 2009, p.4). Thus, environmentally displaced persons were prevented from recognition within the Temporary Protection Directive. Nevertheless, Finnish national legislation does include temporary protection to persons displaced by environmental disaster.

The Commission review on the transposition of the Qualification Directive exemplifies the Finish ‘over-achievement’ in the field of the protection of refugees and asylum seekers compared to many other Member States. Article 2 of the Qualification Directive and the above-mentioned Article 4 are a few examples of Finland’s commendable actions towards refugees and others in need of protection. Article 2 (c) and (e) concern the obligatory status recognition of “refugees” and “persons eligible for subsidiary protection” for those who qualify for the Directive (Commission Directive review, 2010, p.4). However, numerous Member States do not consider the obligation to grant such status in their domestic laws. On the other hand, Finland not only recognises the status of those in need of international protection on the basis of humanitarian protection, it also grants residence permits.

# Conclusion

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The void in international law of the protection of environmental migrants is what inspired me to write about this topic. As Chapter one has clarified, to the detriment of environmental migrants, the UNHCR has reached the limit of its mandate. Thus, the leading body in the protection of refugees and conflict IDPs, is not able to guarantee the safety of 'climate' refugees or 'climate' IDPs. The lack of international recognition of environmental migrants leads to a lack of protection of those persons displaced by environmental disasters. Thus, according to statistics, several million people today are suffering from forced migration due to climate causes. Yet, they are not legally entitled to aid and cannot officially rely on international actors to invoke their 'responsibility to protect'. The reason for the absence of international protection can be explained, as competently summarised by Jean Lambert, by the fact and fear that "by recognising environmental refugees you recognise the problem... by recognising the problem you start on the road to accepting responsibility and implementing solutions" (2001). Countries do not want to accept environmental migrants as a migration sort in need of protection, since recognition would incorporate the burden of the responsibility to protect and act. However, the time has come to 'start on the road to accepting responsibility and implementing solutions.

My hypothesis suggested that the EU is a viable candidate for initiating the legal recognition of environmental migrants, mainly due to its role as a forerunner in the climate change battle. By means of Bretherton and Vogler's definition of actorhood, it was established that the EU can indeed be considered an international actor in the field of environmental policy and especially in the combat against climate change. Possessing 'actorhood', implies that the EU can be considered a role model by third countries, who would follow in the footsteps of the EU and mirror EU legislation. Thus, if the EU were to legally recognise environmental migrants, environmental migrants would most likely gain rapid international recognition. The determinant of the EU's 'presence' in the field of the environment is highly reliant on its presence in negotiating the terms of an agreement. If the EU officially accepts the term 'environmental migrant', it could

instigate others to do so by incorporating the terms in future EU agreements. The conclusions of the Commission and High Representative do state that the EU must “consider environmentally-triggered additional migratory stress in the further development of a comprehensive European migration policy, in liaison with all relevant international bodies” (ibid, pp.9-10). Including the acceptance and protection of environmental migrants could be added to agreements with accession countries or within the ENP, where the EU wields the most of its international influence. Theoretically, regarding its prominent role on the international environmental scene, the EU would be a prime candidate to be the first body to legally recognise environmental migrants.

As a leader in the field of the environment there is a lot of pressure on the EU to recognise environmental migrants. Nevertheless, practically, the validity of my hypothesis is dependent on the identity the EU wishes to portray within the policy fields of migration and environment. It has been established that the EU consists of two identities, an inclusive and exclusive identity. The favourable identity the EU wishes to display is the EU's inclusive role, since it is based on the external promotion of ‘European values’. Environmental policy is an inclusive policy. By promoting EU environmental norms externally, the EU is portraying the inclusive identity of the EU. Unfortunately, at the moment, EU migration policy falls under the category of exclusive identity, in which the EU favours internal security over respecting ‘European values’. Although the EU is under pressure from actors, internally (political parties) as well as externally (NGOs), on the climate scene to recognise environmental migration, the EU's hands are tied until the identities of the policies of migration and environment align and both equally form a part of the European Union's inclusive identity. Since environmental migrants are the faces of climate change, one could, theoretically, expect that the EU would take up the responsibility of this humanitarian aspect of climate change if one were to rely only on the inclusive identity of the EU. However, practically, the future of EU migration policy is dependent on which identity will triumph in the policy area. Thus, my hypothesis would only be accurate in the case of the alignment of both policy fields to form an inclusive identity. If its exclusive identity prevails, the EU will be unable to assume the role as prime candidate to initiate the legal recognition of environmental migrants.

Nevertheless, in Chapter three, I believe that it can be observed that the EU has started “on the road to accepting responsibility and implementing solutions”, turning towards that inclusive identity. Within the existing EU legal framework, it is possible for an environmental migrant to twist and turn legislation to fit the situation of an environmental migrant. However, it does not provide legal certainty that such a case will be accepted or recognised. Nonetheless, the decision to amend the Qualification Directive could be the ‘window of opportunity’ to include environmental migration in the provisions for reasons of eligibility. During the construction of the first draft of the Qualification Directive, there were several bodies lobbying for the inclusion of environmental migrants.

The Finnish delegation was one of those bodies promoting the inclusion of the mention of ‘environmental disasters’ as a viable reason to seek protection under the Qualification Directive. As could be perceived in the case study on Finland, Finnish legislation has a high humanitarian characteristic. Environmental migrants have several chances to be granted refuge in Finland, via the legal clauses of ‘humanitarian protection’, ‘temporary protection’ or ‘temporary residence permit’. This indicates a very inclusive migration policy, which is based on the humanitarian values such as the respect of human rights. Granting (temporary) protection and refuge to environmental migrants can be considered the fulfilment of a basic human right. Finland’s promotion for the recognition of environmental disruptions as a valid ground for protection, is part of an attempt to spread the inclusive identity in migration policy to other Member States.

Most Member States are apprehensive about opening up the definition of the responsibility of protection to include environmental migrants. Even in Sweden, where they acknowledge environmental disasters as a reason to seek refuge, they have a clause to revoke the provision of accepting environmental migrants. In recent developments of the mass-influx of migration due to the Maghreb uprisings, Denmark demonstrated its (extreme) exclusive identity by setting up (debatably unlawful) temporary border controls. In order for the EU to instigate international recognition of environmental migrants, Member States would have to review their domestic policy on migration to collectively invoke a more humanitarian/inclusive approach to the issue.

Jean Lambert and her fellow MEPs of the European Green party, also promoted the mentioning of climate refugees in the provisions of the Qualification Directive. However, their request was not included in the first publication of the Directive. Nevertheless, since the Treaty of Lisbon, the European Parliament has received a stronger voice within EU decision-making. Deducing from Parliamentary activities, it can be perceived that both the second and fourth biggest parties of the European Parliament advocate the official recognition of environmental refugees. If they would campaign together for the inclusion of environmental conditions as a valid reason for protection under the Qualification Directive, this could become a powerful movement. Especially with the enforced importance of the opinion of the European Parliament on their side, this time the campaign to include environmentally displaced persons in the Directive might prove to be successful.

As the Commission report on European security in the context of climate change advocates, the EU must become aware of the security implications of these climate change issues. This is a very 'exclusive' way to consider the importance of taking actions against climate change. The report is directed at heads of State and by appealing to an exclusive perspective on the importance of action against climate change, it seems as if the Commission is demonstrating that even from an exclusive point of view, the EU must take action. The report acknowledges the request for the international recognition of environmentally-induced migration. However, the Commission has not proceeded with any actions to fulfil the request. The Commission has encountered more pressure for the recognition of environmental migrants since then. In the Stockholm Programme, the EU has stipulated that it will look into existing legislation to review a solution for environmental migrants. The Qualification Directive would be the perfect framework to initiate the recognition of environmental migrants, since the Directive provides protection for refugees as well as persons in subsidiary protection. There is no need to redefine the status of the 1951 Convention refugee, an action that has been barred as a possibility by both the UN and the European Commission. The existing framework of the Directive, merely needs to broaden its scope to include environmental migrants as persons in need of subsidiary protection. However, it cannot be anticipated what the next steps of the Commission will entail until the publication of the results of its research.



What is often forgotten is that, recognising environmental migration does not imply that the EU should take in the millions of people displaced by environmental disasters. There is a tendency in the EU to create an image of fear of the possibility that a mass-influx of people will come to threaten the security (and economy) of a state. This is an image that populists have the propensity to portray. However, recognising this migration type merely implies the protection of the rights of these people suffering from environmental disruption of their livelihoods. Recognising environmental migrants provides them with the right of international protection and enables them to officially rely on international aid<sup>9</sup>. Migration is often the survival strategy employed by populations whose human security is threatened.

However, the solution to the problem of environmentally-induced displaced persons does not lie in short term aid in the form of supplies. A plan of adaptation and development must be incorporated to the international management of environmental migration. Emergency relief is not enough for the situation of environmental migrants, as depicted in the recent earthquake/tsunami disaster that struck Japan. People who lived in the radioactive zone of Fukushima will not be able to return home for at least 30 or 40 years. These people are in need of relocation with a new home and new jobs. The UNHCR is also “convinced that additional international funding will not only be needed to help States mitigate the impact of climate change, but also to bolster adaptation, disaster preparedness and risk reduction, and humanitarian response at national level. To avoid situations where people are compelled to migrate or become displaced, the resilience of communities must be better understood and reinforced, both in terms of their physical security and their ability to sustain adequate livelihoods” (UNHCR, 2009, p.10).

From March until May 2011, the National Theatre in London held an exhibition displaying ‘Postcards From The Future’. This initiative aimed at portraying the scenario of London in 50 years if no actions are taken against climate change. The exhibition illustrates ‘postcards’ of famous sites and what they will look like in this ‘future’ scenario. One such postcard portrays Buckingham Palace in the epicentre of a ‘climate’ refugee

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<sup>9</sup> \* I do recognise that the EU budget provides millions of Euro’s in catastrophe aid which is split up into humanitarian and food aid and which is technically administered by DG ECHO (the authorising officers). Nevertheless, it is not the same as providing environmental refugees with official recognition and protection of the rights that follow that recognition.

camp (see picture below). Officially recognising the problem of environmental migration, implicates the responsibility to find a solution to prevent further cases of environmental migration and to deal adequately with the aid of those already victim to environmental displacement (adaption and development). In this era of increasing climate change disruption, it is necessary that someone legally acknowledges the human faces of climate change. The EU would make a good body to initiate the recognition of the 'international' responsibility to protect environmentally-induced displaced persons. However, this act will only be possible if the lobby for an inclusive identity is strong enough to overthrow the predominantly exclusive identity currently present in the policy field of migration in the EU.



*The climate refugee crisis reaches epic proportions. The vast shanty town that stretches across London's centre leaves historic buildings marooned, including Buckingham Palace.*

*The Royal family is surrounded in their London home. Everybody is on the move and the flooded city centre is now uninhabitable and empty – apart from the thousands of shanty-dwellers. But should empty buildings and land be opened up to climate refugees?*

*Image © Robert Graves and Didier Madoc-Jones.*

*Background photography © Jason Hawkes*

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