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Struggles over the borders of international protection: A socio-legal analysis of climate-induced migration in Italy

Walka o granice ochrony międzynarodowej. Analiza społeczno-prawna migracji klimatycznych we Włoszech

Abstract: The paper explores the multifaceted nature of borders, drawing on Sandro Mezzadra and Brett Neilson's (2013) concept of a border as both a demarcation line between States and an instrument for governing global space. Borders, including legal ones, are simultaneously sites of control and resistance, as articulated by Bell Hooks (1991). The paper delves into border struggles within the international protection system, especially concerning environmentally driven migration. Climate change disrupts established migration control policies and protection frameworks, challenging legal spaces to reconcile human rights protection with migration control. By analysing documents related to residence permits issued for environmentally induced migration, this study aims to uncover the nuances of these border struggles through semantic analysis. In addition, this research situates itself within Sousa Santos' theoretical framework, "human rights theories" (2015). It examines how Italian jurisprudence responds to climate-induced migration, particularly focussing on the interpretation of humanitarian protection for those displaced by environmental factors. Despite judicial recognition of climate migration, legislative changes in 2018 eliminated humanitarian permits, limiting avenues for protection. The study advocates for reimagining legal frameworks to address emerging challenges, highlighting the pivotal role of human rights in shaping migration governance and advocating for a comprehensive approach that prioritises social justice.

Keywords: climate migration, international protection, human rights, courts, border struggles

Abstrakt: Przedmiotem artykułu jest badanie wieloaspektowej natury granic w oparciu o koncepcję granic Sandro Mezzadry i Bretta Neilsona (2013) jako zarówno linii demarkacyjnej między państwami, jak i instrumentu zarządzania globalną przestrzenią. Granice, w tym granice prawne, są jednocześnie

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miejscami kontroli i oporu, jak określiła to Bell Hooks (1991). Artykuł poświęcony jest zmaganiom granicznym w ramach systemu ochrony międzynarodowej, zwłaszcza w odniesieniu do migracji klimatycznych. Zmiany klimatu zakłócają ustalone polityki kontroli migracji i ramy ochrony, stając wyzwanie dla przestrzeni prawnych służących pogodzeniu ochrony praw człowieka z kontrolą migracji. Niniejsze badanie ma na celu odkrycie niuansów zmagania granicznych przy wykorzystaniu analizy semantycznej dokumentów związanych z zezwoleniami na pobyt wydanymi w związku z migracją spowodowaną środowiskiem. Ponadto badanie to sytuje się w obrębie rozważań teoretycznych Sousy Santosa (2015) odnośnie do „teorii praw człowieka”. Badanie dotyczy sposobu, w jaki włoskie orzecznictwo reaguje na migrację spowodowaną klimatem, a w szczególności koncentruje się na interpretacji ochrony humanitarnej osób przesiedlonych z powodu czynników środowiskowych. Pomimo sądowego uznania migracji klimatycznej, zmiany legislacyjne w 2018 r. wyeliminowały zezwolenia humanitarne, co ograniczyło możliwości ochrony. W badaniu opowiedziano się za zmianą ram prawnych w celu sprostania pojawiającym się wyzwaniom, a także podkreślono kluczową rolę praw człowieka w kształtowaniu zarządzania migracją i wskazano argumenty za kompleksowym podejściem do migracji.

Słowa kluczowe: migracja klimatyczna, ochrona międzynarodowa, prawa człowieka, sądy, zmagania graniczne

1. Environmental and climate-related migration and new vulnerabilities

It is estimated that approximately three billion people currently live in contexts that are highly vulnerable to climate change¹ (IPCC 2023: 4). The rise in extreme climate events – such as droughts, floods, heatwaves and changes in precipitation patterns – exposes millions of people daily to severe risks, including food and water insecurity and other life-threatening challenges. According to the IPCC (2023), human mortality resulting from floods, droughts and storms is 15 times higher in communities residing in highly vulnerable regions compared to those with lower vulnerability. This heightened vulnerability to the impacts of climate change is determined not only by the greater geographic exposure of certain territories, but also by social, political, demographic and economic factors.

In the context of global warming, whilst the *risk* is widely distributed spatially and temporally, it is the *vulnerability* that defines the asymmetry of risk (Longo, Lorubbio 2023). In this sense, vulnerability reflects the initial conditions with which a community experiences a specific climatic event and prompts us to reflect on the systemic conditions that determine that vulnerability (Davis 2002). Globally, the primary economic damage resulting from climate change has been observed in sectors particularly exposed to climate conditions, such as agriculture, forestry,

¹ According to Article 1(2) of the United Nations Framework Convention on Climate Change, climate change means a change of climate which is attributed directly or indirectly to human activity, that alters the composition of the global atmosphere and which is observed over comparable time periods in addition to natural climate variability.

fishing, energy and tourism. The higher temperatures affect crop yields and change ecosystems, which is compounded by the consequences of the increased risk of extreme and sudden precipitation and other meteorological events. Negative effects are also anticipated on marine ecosystems and their productivity due to rising water temperatures, acidifying oceans and the reduced available oxygen because of their combined effects. Consequently, the most vulnerable communities are small-scale agricultural producers, who rely on income from agricultural and fishing activities, and low-income families facing difficulties responding to the loss of livelihoods. Increasingly, due to the impacts of climate change, communities and families experience a loss of livelihoods – from the destruction of homes to loss of income, and from the destruction of transportation systems to unavailable food and water resources (IPCC 2023).

Extreme climatic and meteorological phenomena are increasingly driving displacement in Africa, Asia, North America and Central and South America, with small island states in the Caribbean and the southern Pacific being disproportionately affected (IPCC 2023). As stated by the authors of the Groundswell Report, “[m]obility is emerging as the human face of climate change” (Clement et al. 2018: 1). Water scarcity, declining crops, the destruction of homes and the consequences of rising sea levels are and will be significant factors in migration (Clement et al. 2021). According to the Internal Displacement Monitoring Centre (IDMC), in 2022 the numbers of internally displaced persons due to environmental disasters were 41% higher than the ten-year annual average (IDMC 2023). In 2023, out of 60.9 million recorded internal displacements in 151 countries (the highest number ever recorded), more than 32 million were people displaced by environmental causes, such as floods (19 million), storms (9 million) and droughts (2 million) (IDMC 2023).

The data provided by the IDMC has some methodological limitations that do not allow for a thorough understanding of the number of people involved in migration due to environmental or climate-related causes. IDMC estimates are specifically calculated for movements related to sudden meteorological disasters and are limited to national contexts; thus, they exclude movements resulting from slow-onset events and international migrations.

Since 1988, when estimates of climate migrants first reached 10 million, interest in estimating and predicting this type of human mobility has remained consistently high and debated (Ionesco, Mokhnacheva, Gemenne 2017). However, this interest clashes with the difficulty of synthesising such a complex phenomenon as climate migration into a single number. As the authors of “The Atlas of Environmental Migration” explain:

[t]he truth is that even if it can be supposed that the environment is one of the principal factors of migration throughout the world, a precise figure is impossible to establish. That would, first, suppose that a strict definition for these migrants exists; and, second, that the environment could be isolated as a distinctive factor for

migration – something that is not always the case. The average number of people displaced yearly due to natural disasters is 25.4 million, or one every second. In addition to this figure, the figure relating to the number of people displaced by more insidious environmental degradation would also be needed, degradation that includes sea level rise or deforestation, but this figure is not known. Finally, the number of environmental migrants is all the more difficult to estimate as it combines both voluntary and forced migrants, and both short and long-term displacement. (Ionesco, Mokhnacheva, Gemenne 2017: 12)

Climate and environmental migration constitute a multifactorial phenomenon that does not align well with the categories traditionally used to describe human mobility. Therefore, it requires a shift in perspective. The convergence of environmental and climate issues with economic, demographic, technological, political and social factors challenge many of the rigid categories we use to classify migration. Concepts such as “refugee” or “migrant,” movements of a political or economic nature, coercion and voluntariness are just a few of the dichotomies through which we label migrations. Those driven by environmental or climate reasons not only make it clear that these rigid distinctions are inaccurate for describing the complex mechanisms behind human mobility, but – more importantly – they reveal the power dynamics underlying these dichotomies and the governance techniques for organising and controlling migration.

In fact, the act of labelling does not merely produce a description, but is rather the result of the cultural, economic, social, political, religious and legal contexts that led to its definition (Foucault 1981). The power to produce discourse and labelling is, as explained by Michel Foucault, “an asset that consequently, from the moment of its existence (and not only in its ‘practical applications’), poses the question of power; an asset that is, by nature, the object of a struggle, a political struggle” (Foucault 1969: 120). In other words, defining climate migration not only serves the need to describe the phenomenon, but also involves the non-discursive realm (Foucault 1969), within which conditions for migration governance are determined. Falling into categories such as “migrant”, “refugee”, “minor” or “trafficking victim” will shape the migration experience, regulating the stages of the journey and defining its outcomes.

There is still no shared definition regarding climate and environmental migration, let alone a legal framework or form of protection. Conversely, this type of human mobility challenges some of the foundational elements of migration categorisation, foremost among them the dichotomy between economic and political migration. For this reason, within the legal realm, such as in formalising applications for international protection, the normative system contends with unrecognised forms of vulnerability.

The aim of the paper is to analyse how the legal system, specifically within the Italian context, addresses situations where the demand for protection is based on an environmental or climatic element. To achieve this, immigration legislation, including Italian immigration law and the international protection system, is examined

through the theoretical insights provided by the conception of borders proposed by Sandro Mezzadra and Brett Neilson (2013). Subsequently, some Italian judgments are analysed, seeming to confirm the possibility, as indicated by Boaventura de Sousa Santos (2015), that the law can serve as an emancipatory tool, under specific conditions. Finally, it is highlighted how the legislative changes of 2018 represented a halt to the innovative path opened by jurisprudential work.

2. The borders of international protection

The analysis of immigration policies in Italy, through the lens of border studies, provides critical insight into the complexity of governing human mobility. As explained by Sandro Mezzadra and Brett Neilson (2013), the concept of border no longer solely refers to the geographical lines of separation between nation-states, but encompasses power dispositifs that regulate human movements and sociopolitical dynamics. Immigration law represents a new border that emerges within this analytical framework. It constitutes a normative boundary, comprised of laws, regulations and administrative procedures that organise and regulate migrants' access and stay. From this point of view, the act of crossing is no longer confined to the passage between the territorial borders of two states. It also applies to all subsequent phases after entry into a national territory, which – like the crossing of national borders – can also lead to practices of expulsion. Sandro Mezzadra and Brett Neilson (2013) describe these dynamics as processes of border proliferation, of which legal boundaries represent an essential element. Indeed, the Italian immigration regulatory system does not provide for a subjective right to entry and stay for non-European foreign nationals. Entry and stay are always conditional on the purpose of the stay and the meeting of specific requirements. This system entails predefined legal categories, without which it is not possible to remain on the territory. The legal identities thus defined reduce the complexities of migrants' lives and subjectivity, confining them to predetermined categories they must adhere to so as to ensure regular entry and stay. As Latinos proclaimed in 2006 demonstrations across the United States, “We did not cross the border; the border crossed us”, summarising the effect of migration policies and border utilisation on the production and control of subjectivities (Mezzadra, Neilson 2013).

However, this legal boundary is not static; rather, it is subject to negotiations and reinterpretations in response to changing conditions and pressures exerted upon it. Sandro Mezzadra and Brett Neilson (2013) refer to these conflicting processes as “border struggles”, struggles for subjectivity whose end is not only the practice of crossing, but the changes they can bring about within the system. Borders can transform from instruments of exclusion into anti-hegemonic spaces (Hooks 2018), where claims and demands arise and whose outcome, in certain circumstances, can give rise to new political and normative horizons.

In recent years, Italian legislators have progressively restricted the regular modes of entry and stay, working towards a gradual, increasingly stringent fragmentation of categories with the aim of strengthening the processes of controlling, selecting and containing migrant subjectivities. It is argued that the international protection system is configured as a means of constructing subjectivities useful for governing migration rather than protecting people's rights. Sousa Santos (2015) defines this use of law and human rights as "configurative law". Being labelled a "migrant" or "refugee" informs how individuals are treated since these two categories represent distinct groups governed by separate legal frameworks (Closas Casasampera 2021). The power to label creates the need for those destined to become migrants or refugees to conform to these pre-defined categories as if they were real, pre-existing forms of subjectivity (Foucault 1969; 1981). A distinction as rigid as this leaves no room for ambiguity or ambivalence and presupposes the various forms of mobility, dictating how they should unfold and manifest. We are confronted with a system that shapes reality according to the imperatives of control and dominance. The ways these categories are experienced, asserted and resisted exemplify instances of "border struggles" and may bring forth new normative horizons (Mezzadra, Neilson 2013).

Climate migration emerges as a factor that challenges immigration borders and advocates for new forms of normativity and protection. Rising global temperatures, environmental changes and natural disasters are exerting increasing pressure on traditional borders and migration policies. Climate migrations challenge conventional categories of "migrant" and "refugee", questioning the existing legal distinctions between economic and political migrants. From a sociological standpoint, climate migrations represent an emerging form of human mobility that calls for critical reflection on existing border policies. These movements cannot be easily controlled or regulated by traditional immigration laws, as they often result from factors that exceed traditional requirements for ensuring forms of protection (such as persecution or conflicts), which introduces the theme of poverty and economic conditions into the realm of vulnerability.

The debate over introducing legal recognition for migration driven by environmental and climatic causes takes place in this dimension. Since 1985, when Essam El-Hinnawi coined the term "environmental refugee",² the discussion has evolved around the contrast between using "refugee" as opposed to "migrant". Indeed, within the realm of refuge/asylum as defined by the Refugee Convention of 1951, mobility is always forced, whereas in the case of "migrations" the reasons underlying mobility can be voluntary, including economic reasons. Economic reasons undergo a significant process of criminalisation and exclusion, according to European and Italian legislation, and cannot lead to forms of protection. In this context, climate migration precisely constitutes an excess, especially when it clearly

² "[P]eople who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life" (El-Hinnawi 1985: 4).

reveals that material conditions, including poverty, can represent a compelling factor and a form of protection. Given the moral, political and legal implications, the insistence on using the term “climate refugee” primarily aims to emphasise the environment’s role in forcing migration and to draw attention to States’ human rights protection obligations.

However, despite the decisive role of the element of compulsion in recognising a form of international protection, other authors emphasise how the incorporation of climate migration within the conceptual framework to which the term “refugee” refers directs the debate towards an arbitrary, problematic separation of elements characterising this type of human mobility (McGregor 1993; Richmond 1994). As highlighted in the description of migrations driven by environmental or climatic causes, the connection between migration and the environment is built upon the intertwining of environmental, social, economic, political and technological factors. A proper definition of the phenomenon can only organise the voluntariness–compulsion dichotomy along a continuum rather than a stark opposition (Richmond 1994). For reasons of discourse economy, other proposed terms for defining migrations driven by environmental or climatic causes will not be presented here.³ However, it is crucial to observe that the “forced” element is central to the definitional debate since it aligns with the characteristics of the legal framework. Climate migrations in fact intersect with existing legal categories. This comparison is complicated by the multifactorial dynamics accompanying this type of human mobility – which are always entangled in economic, social and political dynamics – and it aligns poorly with the architecture of European migration governance, leading to a deadlock both in terms of definition and legal recognition.

As explained by Chiara Scissa:

[s]till, the international community is far from reaching consensus on the definition to apply to this category of migrants and the protection status to which they should be entitled. Between the end of 20th century and the beginning of the 21st century, five proposals to define and assist environmental displaced people gained particular attention. These were: 1) extending the 1951 Convention Relating to the Status of Refugee; 2) adding a protocol on climate refugee to the United Nations Framework Convention on Climate Change (UNFCCC); 3) adopting a new legal framework; 4) promoting the Guiding Principles on Internal Displacement; and 5) using temporary protection mechanisms. However, none of them succeeded in convincing heads of state to process them further. (Scissa 2021: 42)

This political and legal limbo clashes with the social demand for protection voiced by communities increasingly vulnerable to climate change, sparking conflicts on the margin of legal spaces. Indeed, whilst immigration law and the international protection system function as tools for controlling subjectivities and bodies, the invocation of rights similarly represents the means through which securing the

³ For a deeper exploration of the evolving discourse on climate-induced environmental migration, please refer to Michela Trinchese (2024).

right to a dignified life is ensured, even in the context of climate change. Resorting to the language of rights and invoking the role of the courts comes to the “more modest, and realistic, acknowledgment that fundamental rights emerge as the only legal instrument challengeable against powers that truly do not embody any democratic logic” (Rodotà 2012: 58, translated by the author).

The legal space increasingly confronts numerous social demands, constituting itself as a conflict zone. Faced with injustices (Pisanò 2022), social demands become a collective creative process for new rights. Human rights principles defined in conventions and declarations need continuous recontextualisation and adaptation within the regulations (Bobbio 1990). They represent a synthesis of the past and an aspiration for the future, but for these documents to fulfil their purpose and remain effective in their intentions, their content must be continuously refined, articulated, specified and updated (Bobbio 1990). Within this evolutionary process of law, showing an emancipatory impulse, where law becomes a space and instrument for protection rather than dominion, a jurisprudential trend has developed. It contributes to recognising forms of protection for climate-related migrants through a dynamic and innovative interpretation of national and supranational law.

As Stefano Rodotà (2012) explains, the relationship between social dynamics and legal responses has evolved over time. In a context where politics seems increasingly unable to address social justice concerns, courts appear to assume the sole space where rights find legitimacy. In a scenario where politics is increasingly deaf to social justice demands, prioritising the interests of a few over the needs of many, fundamental rights emerge as the only legal instrument able to challenge economic powers and social inequalities (Rodotà 2012) – particularly when they appeal to foundational principles of freedom, dignity, solidarity and equality. The appeal to fundamental rights is decisive because it refers to a domain that looks at society and its evolution and the ways in which economic, technological and, in our case, climatic developments affect people’s dignity in new ways.

As explained by Sousa Santos (2015), the appeal to human rights functions when integrated within broader political mobilisations. A strong rights politics, according to him, is one that does not rely solely on law and rights. In his analysis of emancipatory law, Sousa Santos (2015) defines these processes of emancipation that find space within legal systems as “reconfigurative law”. Legal action refers to the pressure placed on legislation to implement rights or to undergo transformation.

My hypothesis is that climate migrations, namely the life stories of individuals who have migrated due to environmental or climatic issues, when they are heard in courtrooms, can constitute processes of reconfigurative law by advancing new questions of protection that judges may uphold in cases where they base their decisions on the invocation of foundational principles of human rights.

However, as Sousa Santos himself explains, protests of indignation argue

that the conditions for *legal* mobilization either do not exist or are deteriorating to such an extent that political mobilization must take unequivocal precedence over legal mobilization. According to the protestors, the impossibility of legal

mobilization is the result of the rise of authoritarianism that has led to top-down extra-institutionalism or deinstitutionalization, disguised by the invisible split between the law of the 1% and the law of the 99%. As a result, social transformation through legal and judicial activism cannot be achieved under the current conditions of global capitalism. (Sousa Santos 2015: 139)

As will be seen in the next section, this gap between the emancipatory power of law and its stalling by political power is clearly visible in the recent development of Italian immigration law. In fact, whilst the legislation in force before the 2018 amendments provided room for an interpretative space of the law in reconfigurative terms, the abolition of humanitarian protection and the introduction of the residence permit for disasters represented a setback to these processes.

Selected Italian judgments in which judges have recognised a form of protection for climate migrations are presented below, demonstrating the hypothesis that, in certain circumstances, the law can be emancipatory. It will then be briefly explained how the legislative changes of 2018 may represent a reversal of course.

3. An innovative jurisprudential trend

The judgments discussed below are part of a doctoral thesis that encompasses a much larger sample. As mentioned above, the aim is to demonstrate through which reasoning and hermeneutical developments Italian courts have recognised a form of protection for climate and environmental migrants. Specifically, the original sample consists of 16 judgments that exhibited two main elements: the close link between the migration project and the environmental climatic event, as narrated by the same plaintiff during the hearing, and reflections on the climate and environmental issue within the courts' reasoning. The judgments presented in this section have been selected because they are particularly interesting from an analytical perspective, but they are not exhaustive since the research process is still ongoing. Moreover, the analytical context is represented by the Italian legislative system, which integrates European directives and regulations concerning immigration law and international protection into its national framework. Specifically, the international protection system in Italy falls within the scope of common European policies and includes refugee status and subsidiary protection status. According to the Refugee Convention of 1951, a "refugee" is a foreign citizen who, due to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group or political opinion, is outside the country of nationality and cannot or, owing to such fear, does not want to avail themselves of the protection of that country (Art. 1-A, n. 2, para. 1). Subsidiary protection status is instead granted to a citizen who does not meet the criteria to be recognised as a refugee, but for whom there are substantial grounds for believing

that if they were to return to their country of origin, they would face a real risk of suffering serious harm (Art. 2, d. lgs. 251/2007). Until 2018, alongside the residence permits provided by the international protection system, Italy also offered the humanitarian residence permit (and other minor types of permits). Article 5(6) of the T.U.⁴ stated that it was possible to issue a residence permit even when the foreigner did not meet the conditions provided by law, in cases where “serious reasons”, particularly of a “humanitarian nature” or resulting from constitutional or international obligations of the Italian State, were present. This structure of the humanitarian residence permit did not define specific instances of “humanitarian reasons”, instead being presented as an open formula through which to recognise unprecedented rights violations, new vulnerabilities and different protection needs, diverging from the rigid model prescribed for international protection. In 2018, the then Minister of the Interior, Matteo Salvini, introduced significant legislative changes to immigration regulations. Among these was the repeal of the humanitarian residence permit, which was partly replaced by the residence permit for disasters. The latter are granted to foreigners already present in Italy who cannot return to their home country and stay in safety due to a severe calamity.

As anticipated above, the aim is to demonstrate how law, in certain circumstances, can constitute emancipatory law. In the case under consideration, this process is observed in the ways in which some Italian judges have interpreted humanitarian protection extensively, surpassing traditional implementation, legitimising vulnerabilities thus far ignored and going as far as recognising forms of protection for climate migrants. On the contrary, in line with the thinking of the indignation movements, this process came to a halt following the legislative changes introduced in 2018.⁵

The first judgment to be presented concerns an order issued by the Bologna Tribunal in November 2014 (7334/2014). The plaintiff, a Pakistani citizen from the Punjab region, left Pakistan in 2013 due to a flood that destroyed his home and caused the death of his family members. Faced with a lack of assistance from the Pakistani government, he decided to travel to Europe. The Court of Bologna, in its judgements, stated that the events that led the applicant to leave his country are in the private and economic sphere, outside the scope of the Geneva Convention and subsidiary protection. Despite this, based on the legislation then in force, the judge opted for a thorough analysis of humanitarian protection’s potential, interpreting it as a “safeguard clause” allowing residence permits for situations not covered by specific provisions but presenting circumstances worthy of protection. These circumstances could include the need for protection due to conditions leaving one particularly vulnerable, such as health, age, famine, natural disasters or other

⁴ “T.U.” refers to the Consolidated Text of provisions concerning the regulation of immigration and rules on the condition of foreigners (Legislative Decree 286/1998).

⁵ It is essential to clarify that the judgments discussed in the paragraph, despite being dated post-2018, pertain to protection applications lodged prior to the amendments’ enactment. Thus, the applicable legislation is that which was in effect when the application was submitted.

similar circumstances. Considering the plaintiff's extremely grave and delicate situation, the Bologna Tribunal partially granted the appeal, ordering a residence permit to be issued for humanitarian reasons.

A more detailed treatment of similar themes emerges in the judgment of the L'Aquila Tribunal dated February 2018 (1522/2017). The plaintiff, a Bangladeshi citizen who lost his land due to a flood, incurred heavy debt whilst trying to support his large family. In this instance as well, the judge engaged in an in-depth analysis of the humanitarian residence permit, defining it as a "safeguard clause of the system" aimed at providing protection even in circumstances not contemplated in specific provisions. The legislation did not provide an exhaustive list of "serious reasons", leaving room for broad interpretation. Subjective situations, such as the need for protection due to an individual's particular vulnerability – including health or age-related reasons, famine, natural or environmental disasters or similar circumstances – could fall under this provision. The judge argues that the extreme poverty of the plaintiff and his family, which motivated the migration, does not satisfy international protection requirements but could apply under humanitarian protection.

On 12 November 2020, the Supreme Court of Cassation issued a pivotal judgment reinforcing the legal direction initiated by the Bologna and L'Aquila Tribunals. Through Judgment No. 5022/2021, the Supreme Court further explored the connection between human rights protection and environmental disasters, with specific attention on climate change. Building on previous jurisprudence, the Court strengthened the possibility of recognising humanitarian protection in cases involving environmental degradation. The occasion arises from an appeal to the Supreme Court against the Ancona Tribunal's decision to deny subsidiary protection or, alternatively, humanitarian protection. The plaintiff contested the Tribunal's failure to consider the environmental disaster in Niger, where oil spills heavily contaminated numerous areas, leading to disease, food insecurity and conflicts. Despite the judge acknowledging these circumstances, they were not deemed sufficient for subsidiary or humanitarian protection.

In the case analysis the Court referred to the UN Committee's considerations (Human Rights Committee 2020) on environmental disasters in the October 2019 observation of the Teitiota case. Mr Teitiota, a citizen of the Republic of Kiribati, approached the UN Committee after New Zealand refused to recognise refugee status. Teitiota claimed that returning to his home country would have exposed him to life-threatening risks due to the damage to arable land caused by rising sea levels. Additionally, frequent floods destroyed homes and crops, causing gradual coastal erosion and saline infiltration that contaminated freshwater wells and rendered the soil poor and infertile. Teitiota emphasised the severe repercussions this situation had on his family, living in a traditional way and relying on fishing and agriculture for their livelihood. Due to the scarcity and quality of drinking water, his three children faced serious health issues. Teitiota concluded that all these factors constituted an obstacle to enjoying his right to life.

In addressing Mr Teitiota's case, the UN Committee stated that

[t]he Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. (Ioane Teitiota v. New Zealand 2020)

The Committee highlighted that the principle of non-refoulement extends to all situations of danger, including environmental degradation and climate change, as these situations can threaten the effective enjoyment of human rights in the same way as other circumstances. Continuing this argument, the Supreme Court reaffirmed the principle that the right to life includes the right to a dignified existence and the freedom from any act or omission that may cause unnatural or premature death. Therefore, for the recognition of humanitarian protection, the danger to life can arise from socio-environmental conditions caused by human action, where the context poses a serious threat to the individual's and their family's survival. This compromise occurs in situations where the socio-environmental context is so degraded that it exposes the individual to the risk of nullifying their fundamental rights to life, freedom and self-determination, or reducing them below the threshold of their essential and inalienable core – a level below which the necessary conditions for a dignified life are absent, and the individual's fundamental right to life is not guaranteed. Consequently, the trial judge is tasked with verifying the actual assurance of this minimum limit, not only in situations related to armed conflict but also those concerning conditions of social, environmental or climatic degradation and those characterised by unsustainable exploitation of natural resources.

According to the Marche Tribunal, despite acknowledging a strongly compromised environmental context in the Niger region, failed to specifically examine the violation of the plaintiff's right to life concerning the environmental disaster. Therefore, the Supreme Court decided to accept the plaintiff's appeal.

In all three judgments, the issuance of the residence permit followed two significant channels: on the one hand, the judges' recognition of a previously unprecedented situation of vulnerability within the legal system, such as that following a severe natural disaster, and on the other hand, the judges' ability to utilise a legal instrument, such as humanitarian protection, capable of accommodating unforeseen yet equally deserving protection situations. By invoking the principles of dignity and vulnerability, which also encompass the material conditions of individuals threatened by the natural disaster, the judges could work towards an extensive and thus emancipatory implementation of the norm.

As mentioned earlier, Legislative Decree No. 113 of 4 October 2018 modified the national protection system, abolishing the residence permit for humanitarian

reasons and introducing new types of residence permits. Article 20 *bis*, introduced in Legislative Decree 113/2018, stipulated that:

1. When the country to which the foreigner should return is in a situation of *contingent and exceptional calamity* that does not allow return and staying in safe conditions, the police chief issues a residence permit for disasters. 2. The residence permit issued under this article has a duration of six months and is renewable for an additional six months if the conditions of exceptional calamity referred to in paragraph 1 persist; the permit is valid only within the national territory and allows for employment but cannot be converted into a work permit. (Legislative Decree 113/2018)

The substantial difference to the residence permits for humanitarian reasons appears to lie in the limitation of specified circumstances. The residence permit for disasters, whilst introducing the environment as a reason for issuing a form of national protection, makes the protection system even more rigid. It is evident that in 2018, the legislator intended to compartmentalise forms of protection to minimise possibilities included in the “humanitarian reasons” formula. This modification leaves uncovered the right to access adequate food, housing and clothing (as sanctioned by Article 11 of the International Covenant on Economic, Social and Cultural Rights) and, in general, all the various situations that are not determinable *a priori* but are nonetheless deserving of protection (ASGI 2018).

With the abolition of humanitarian protection, one of the three pillars of the protection system designed to preserve fundamental rights in situations not contemplated by the international system has been eliminated. This change, from my perspective, fits into the previously analysed process aimed at strengthening the boundaries around the “political migrant”, widening the gap between the “refugee” and the “economic migrant” through increasingly strict, suspicious scrutiny of life stories. Humanitarian protection represented an obstacle to this process, as it constituted a space for recognising ambivalent vulnerabilities, closely tied to material and economic conditions, as seen in the migrations driven by environmental causes. In fact, for this type of human mobility, the cause of migration is often linked to the loss of livelihood due to climate or environmental events. The conditions of destitution in which individuals may find themselves (as described in the cases presented in the judgments) become the justification for their exclusion from the protection system, even though these circumstances constitute the most significant obstacle to the effective enjoyment of human rights.

The path inaugurated by the 2015 judgment, aimed at recognising vulnerabilities related to the environment and ensuring protection, now confronts a governmental approach to migration focussed on control and the criminalisation of people in motion. In this context, climate migrations emphasise that human rights violations are not a static list, but emerge in ever-new forms. Therefore, a legal protective instrument must consider the ever-evolving changes and innovations, coupled with the evolving needs of a society characterised by uncertainty, risk and fluidity, which underscore the necessity for a regulatory framework capable of adapting swiftly to

unforeseeable shifts (Bobbio 1990). The first step in this process is the decriminalisation of poverty. Continuing to relegate economic migration to the space of illegality, where “economic” refers to migration caused by extreme poverty, means accepting and facilitating an economic system based on exploitation and a State system built on racism. The appeal to fundamental rights, as tools of advocacy, self-determination and emancipation, is more important than ever to address these challenges without leaving anyone behind.

Concluding reflections

In conclusion, this research underscores the pivotal role of law in addressing the challenges posed by climate-induced migrations and environmental displacement. Through an examination of Italian judicial decisions, the study demonstrates how, in specific circumstances, the legal system can serve as an emancipatory tool for individuals facing severe socio-environmental vulnerabilities.

The focus on Italian jurisprudence concerning humanitarian protection and its expansive interpretation in cases of climate-related migration highlights the potential for legal mechanisms to accommodate unforeseen protection needs. However, this trend was disrupted by significant legislative changes in 2018, which restricted the scope of protection available to vulnerable individuals, particularly those affected by environmental disasters.

Despite these challenges, the study emphasises the growing importance of law in the context of climate migrations and the urgent need to reformulate legal frameworks to address emerging challenges. It underscores the fundamental role of human rights as a tool for advocacy and self-determination, highlighting the political, social and moral implications of migration governance.

Considering the complexities of climate migration and the challenges posed by environmental changes, the study advocates for a holistic approach that recognises the centrality of human rights and promotes solidarity and social inclusion. It calls for sustained efforts to address the intricate intersection of climate change, migration and legal frameworks, emphasising the imperative of safeguarding the rights and dignity of vulnerable populations in the face of environmental upheaval.

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