

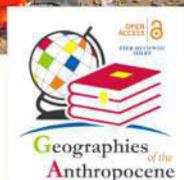
THE CLIMATE CRISIS IN MEDITERRANEAN EUROPE:

CROSS-BORDER AND MULTIDISCIPLINARY ISSUES ON CLIMATE CHANGE

**Jonathan Gómez Cantero - Carolina Morán Martínez
Justino Losada Gómez - Fabio Carnelli
(Editors)**



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Edizioni



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Jonathan Gómez Cantero, Carolina Morán Martínez, Justino Losada Gómez, Fabio Carnelli (Eds.)

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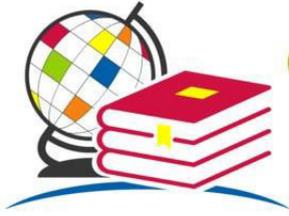


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8. European Union: Legal Challenges in a Global Environmental Crisis Context

Gustavo Di Cesare Giannella¹, Leonardo Freire de Mello², Sara Aparecida de Paula³, Maira Begalli⁴, Andrea Lise Suriano⁵

Abstract

This article aims to present global environmental change as a problem that requires broader and systemic analysis. Based on the understanding of migration as a result, or as a consequence of adapting to these changes, the main objective is to present legal issues that permeate the situation of the European Union. Issues such as the lack of a protective apparatus for those leaving the country, and for those who remain, by choice or lack of choice. It is intended to make an analysis of the current panorama of the issue, emphasizing the role of the European agenda in the elaboration and implementation of migratory policies, and also about the lack of policies and their consequences on the non-migratory movements.

Global environmental change has generated inequalities and several socio-environmental problems. The progress of technology, the development of States and their relationship with the environment are all aspects of the same process. The scale of this contemporary phenomena related to environmental

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changes is unique in the history of Humanity, increasing the need and urgency to promote a great effort to try to solve the problem.

The demographic dynamics tend to vary in multiple ways, depending on social, economic, cultural, political and environmental variables and characterize each society and each historical period. Civil wars, political persecutions and environmental changes can cause migration; therefore migrations are widely present all over the world, although especially at the surroundings and borders of the European Union.

Nowadays, migratory movements are widely discussed and the development of various government programs has provoked debates among scholars, politicians and civil population. Recent migrations policies have changed the relation to the social-economic order of migrants in Europe, so the prevention, mitigation and adaptation of, and to these threats, are very important for the migration debate, as well as to find more efficient and humane ways to deal with migration issues.

Keywords: Migration, Environment, Political Economy, Public policies, European Union.

1. Introduction

The social structure of a society is organized based on the relationships between the individuals that compose it. Throughout history, social structures have been changing. The first major transformation, called Neolithic Revolution or Revolution in Agriculture, was the domestication of certain plants and animal species, causing the first groups to settle in communities (Simmons, 2007). The introduction of new seeds and the use of fire allowed greater access to nutrients and proteins and led to physiological changes, such as brain enlargement (Pollan, 2013; Scott, 2017). In addition to a transformation in the way food was being produced, there were also large-scale cultural changes that played an important factor to the creation of the State as an apparatus that mediated social relations and people's relationship with nature.

The confluence of physiological factors with the need for an organized state apparatus influenced the development of other activities, such as bureaucratic sectors and sectors related to knowledge production. While not resembling the contemporary structure, state society already showed the differences between groups, classes, and / or caste.

The European colonization of Americas, Africa and Asia transformed the social structure of the society and shaped the relationship between countries representing a system of exploitation that has blocked the ability of the colonized nations to develop without interference (Rodney, 1975 [1972]). An inside-out production system has been institutionalized.

Patnaik (2015) describes that this system was based on double dependency, when Europe, facing problems such as famine and the depletion of fertile soil, needed food production, and the Third World and its geographical conditions allowed large production and variety of food that could be exported to Europe. And thus was born the model of having the Third World colonies as exporters of goods. Exclusive trade and high price goods meant that these populations could not consume what they produced, and had to import from their metropolis, accentuating the other side of the aforementioned dependence.

This system enabled Europe to get an economic surplus, which was determinant to the Industrial Revolution success, another major historical event of society transformation. However, the fact to be highlighted is that the relationship of dependence and inequality deepened, making this international division of labor and production even more evident in the second half of the twentieth century.

As stated by Emile Durkheim, “the political structure of a society is no more than the way in which the different segments that compose it have become the habit of living with one another” (Durkheim 1975, p. 51).

Marx and Engels, in the Communist Manifesto, argued that "civil society is divided more and more into two vast opposing camps, into two diametrically opposed classes: the bourgeoisie and the proletariat". In addition, it has been said that "the bourgeoisie can exist only on the condition of revolutionizing the instruments of production, and hence the relations of production, and with it all social relations" (Marx; Engels, 2010, p. 08).

Capitalism has been changing in the last centuries, facing decolonization in the 20th century, experiencing systemic crises, and facing problems in its ex-colonies.

Baran and Sweezy (1966) pointed out the theory of monopoly capitalism as a new stage of capitalism, having the monopolistic structure in the advanced sectors under the domain of financial capital. The economy's center of gravity shifted from production to finance.

From the 1970s, the 3rd Industrial Revolution began with increased productivity and lower wages, which has continued to the present and will certainly have effects in the 21st century. The financial system comes into finance consumption.

It should be noted that the Law of rising surplus demonstrates this downward trend of production costs and absolute increase in profits, leading to problems of absorption of the surplus and results in stagnation. Solutions addressing the problem of labor absorption involve the capital export, product differentiation and marketing, credit expansion and speculation, and public spending for civil and war purposes.

According to Giovanni Arrighi (1996), in Systemic Cycle Theory, capitalism is different from previous systems because it goes through cycles, that can be expansion, crisis, fall, and renewal. Each cycle needs a leading, so-called hegemonic country, until the arising of other competitors, which leads to the end of the system and general war until one new country leads another cycle.

The entry of many workers into the world economy, with rising wages, puts pressure on profits and the environmental costs, which were not initially put into the system, will eventually be not profitable to maintain capitalism.

Constant polarization between centers and peripheries, reproduced over five hundred years, allowed new countries to pass from peripheries to centers, however in capitalism's monopoly phase it would no longer be possible to occur. There is continuity in the 21st century of central economies' dependence on the natural resources of the peripheral ones, emphasizing the importance of the role of food in the reproduction of capitalism since countries in the Global North depend on food produced by the Global South.

Natural resources are limited, and advanced technologies can increase food production, but the simplest solution found in the North has been to reduce peripheral incomes so not to increase Northern food prices. Deprivation of consumption occurs through the periphery countries, where food is produced, in order to avoid systemic inflation and undermine the value of money.

There is an increased outsourcing of production facilities and activities from developed to developing countries of the South, while the rural population has been expelled from the countryside, resulting in a lack of decent and permanent work in an already precarious world.

Moore (2016) explains that capitalism is based on the exploration of four elements: labor, raw material, energy and food. Its purpose is to make them cheaper or even free for profit maximization. An example of this was the Green Revolution and the use of genetically modified seeds in the 1970s to make production more efficient and more pest resistant. In this kind of perspective, the environment is a simple provider, seen as something unlimited.

However, in recent decades it has become more evident that the scale of exploitation and consumption does not allow the environment to regenerate in the same proportion, causing problems of scarcity, affecting species biodiversity and soil fertility while assuring even more power to monopolistic corporations.

In a planet divided between North-South, where the North concentrates the monopolistic power of money, and the South concentrates the production of basic inputs, environmental change is currently the biggest contemporary challenge, because the economic system cannot exploit it unlimitedly, and large populations will be affected (Giddens, 2009). Not only because economic inequality creates vulnerabilities, causing many people to lose their livelihoods, and forces them to move, but because not everyone has the possibility to migrate.

Understanding that vulnerability and the decision whether or not to migrate are deeply associated with economic and political issues, as well as the characteristics of each country. This chapter aims to discuss the consequences of the Global Environmental Crisis and how these consequences are influenced by the social and economic structures in the world. The settled goal is to analyze, specifically, the European Union legal challenges facing the environmental consequences such as the increase in the displacement/movement of people that decide or are obligated to move because of a disaster.

2. Environmental changes and the Anthropocene era

The discussion of environmental change is relatively recent, especially in the Social and Human Sciences, and as described by Daniel Hogan (Hogan, 2007), did not arise from the academic environment, but rather from questions and pressures from society. According to the author, extreme events such as the 1948 Donora smog in Pennsylvania (when the term was coined and used by the first time) and the so-called the great smog of London in 1952, strongly stimulated the different societies to begin questioning the role played by industries and the patterns of production and consumption (which were beginning to become hegemonic with the globally spread of the American Way of Life) in generating pollution and all its undesirable effects.

In this way, Rachel Carson's book, *Silent Spring* (Carson, 1962) is a significant academic landmark in linking industrial processes to environmental changes, and their consequent effects on populations, particularly on the human.

Since then, scientists began creating awareness about the need to guide the world in the preservation and enhancement of the human environment, and the United Nations Conference on the Human Environment (Stockholm in 1972) was the UN's first major conference, and a turning point, on international environmental issues. The Stockholm Conference declared the industrial process as a central component of a broader economic and cultural system clearly connected to environmental disasters and impacts observed by then (UN General assembly, 1972).

In need to provide more scientific information, the World Meteorological Organization (WMO) and United Nations Environment created the Intergovernmental Panel on Climate Change (IPCC) in 1987, and the discussion about preserving the environment was the Earth Summit proposal, in 1992, when world nations committed to rethink economic growth and environment protection as the conference produced the Rio Declaration on Environment and Development, the Statement of Forest Principles, and Agenda 21. And also led to creation of the United Nations Framework Convention on Climate Change (UNFCCC) and of the Convention on Biological Diversity (UN Conference 1992).

The Kyoto protocol followed the 1992 United Nations Framework Convention on Climate Change (UNFCCC) to make nations commit to reduce greenhouse gas emissions based on global warming.

In the year 2000, chemist Paul Crutzen (Crutzen, 2002) suggested that the planet was living a new geological age, the Anthropocene, a time when the predominant and hegemonic power capable of transforming land cover and use (and consequently the biogeochemical cycles and other life support systems on Earth) would be exercised by the human species, and that force or capacity for transformation would have reached a degree of impact never seen before.

The intensity of human-led transformation is intrinsic to a broader political-economic framework, where nature is the main provider of system maintenance (Moore, 2016). Nevertheless, if we analyze the data from the IPCC reports (IPCC, 2007 and IPCC, 2014), it is possible to conclude, unquestionably, that environmental changes are consequences of the increase in the emission of so-called greenhouse gases, especially carbon dioxide (CO₂, methane (CH₄) and nitrous oxide (N₂O), which generate imbalance in the maintenance of the atmosphere, unable to recycle the huge amount of gases emitted daily.

The 2013 IPCC released its Fifth Assessment Report and its conclusion was categorical: climate change is real and human activities are the main cause of the phenomena. (IPCC, 2014)

Emissions driven by intensive agricultural production and the use of fossil fuels implies an increase in the average global temperature and influences processes such as melting glaciers, rising sea levels, changing the pH of the oceans, erosion of coastal waters areas, salinization of freshwater and changes in terrestrial and oceanic biodiversity, among other examples of how the environment is affected. (IPCC, 2014)

The fact is that those emissions come mainly from activities related to energy and food production, of which have widely developed over the last 200 years and played an important role in shaping international relations between the Global North, consolidated as a producer of technologically advanced goods, therefore imposing greater control over the forms of pollution, and by the South, established as a producer of primary commodities, yet demanding the right to pollute to guarantee their way to development Patnaik (2015).

Besides that, the relationship between the two groups of countries is also related to social and economic inequalities between them; how people are affected differently by environmental change depending on which group of countries they live; and the ability to meet and overcome the challenges posed by environmental change.

This mutual dependence relationship, in which the southern countries depend on the technology of the northern, and the north depends on the raw materials from the south, produces complex effects of economic inequality, negatively impacting the environment. have consequences on human societies and populations accentuating vulnerabilities and increasing the spatial mobility and redistribution.

3. Europe Union and migration laws

Human mobility is related in two ways to vulnerability. Significant increase in vulnerability can prevent people from having adequate access to their livelihoods, making displacement the only alternative to disasters (earthquakes, hurricanes, droughts and floods), which affect small farmers and landowners. On the other hand, as stated by the IPCC (IPCC, 2014) and by Hunter, Norton e Luna (Hunter, Norton, Luna, 2015), migration can be a way of adaptation. However, as an adaptation, migration and its means need to be institutionalized and supported by legal mechanisms protecting those

who migrate. Still, Helen Adams (2015) points out another complex issue: those who do not migrate. The fine line between those who migrate and those who don't, lie in individual choices and also in collective vulnerabilities such

as average income, gender issues, home structure, and other demographic relevant aspects.

According to the IDMC (IDMC,2015, and IDMC 2018), nowadays the number of people displaced due to disasters or other environmental issues is already three times greater than the number of people displaced by conflicts.

In this context, the environmental refugees, a term popularized by El-Hinnawi in 1985 in a United Nations Environment Program (UNEP) publication, defined them as “those who were forced to leave their traditional habitat, temporarily or permanently, because striking environmental disturbances (natural and/or triggered by people) put their existence at risk and/or seriously affected their quality of life” (Hinnawi, 1985).

These displacements create complex legal challenges regarding the recognition and full protection of environmental displaced persons and the definition of their legal status.

When discussing policy making and migration movements is important to review migration laws and migrants rights. Nationality is the broader right that binds its holder to a particular State, while Citizenship is a set of rights deriving from Nationality, because it is linked to the way a person acts in a particular State.

Despite the Universal Declaration of Human Rights proclaimed, in 1948, that all human beings are born free and equal in dignity and rights (UN General Assembly, 1948), the first instruments of international humanitarian law was the 1949 Geneva Conventions (UN General Assembly, 1949), also known as the Law of War or the Law of Armed Conflict, whose origins are mixed with the origin of International Law itself, once relations between States were essentially military in nature.

The Geneva Conventions law has become part of the legal system after World War II, protected individuals from violations committed by the state itself or through its agents, imposed legal sanctions against those nations who violate humanitarian principles, and extensively defined the basic rights of wartime prisoners both civilians and military, established protections for the wounded, and established protections for the civilians, as well as medical personnel in a war-zone. The Additional Protocols of 1977 supplemented the Geneva Conventions to give greater protection to victims of both international and internal armed conflicts, such as civil wars (UN General Assembly, 1977).

The office of the United Nations High Commissioner for Refugees (UNHCR) was created in 1950, during the aftermath of the Second World War, to help millions of Europeans who had fled or lost their homes.

Ratified by 145 States parties, the 1951 Refugee Convention (UN General Assembly, 1951) defined the term ‘refugee’ and set the guidelines to respect and protect the millions of European refugees and asserted that they shouldn’t be returned to a country where their freedom or life is threatened. Initially limited to Europeans, it was later opened up to all refugees with the 1967 Protocol (UN General Assembly, 1967).

According to Van Mol and de Valk, after World War II, the general patterns of migration within and towards Europe can be summarized in three periods (Van Mol C., de Valk H., 2016). Many European countries signed labour migration agreements between the 50’s and the 60’s and this guest worker schemes along with migration from former colonies in Africa/Asia to motherlands were the main characteristics of this first period of migration. Africans were released from their status as colonial subjects when European colonialism collapsed, but European powers continued to exercise economic dominance over their former colonies. Africans new nations were left with a culture of economic exploitation and corruption, shortages of natural resources, disruptive conflicts amongst themselves, farmers vulnerable to the world market and political instabilities (Springhall, 2001).

During the second period of migration, the North European nations restricted migration so migrants and asylum seekers turned to countries in Southern Europe.

The third period began with the Iron Curtain fall in late 80’s and ended with the global economic crisis in 2008 and showed the influence of the European Union (established in 1993) in controlling migration from third countries into the EU.

Since 1999, throughout the Common European Asylum System (CEAS), the EU States has been working to improve the current legislative framework through five key components: the Asylum Procedures Directive (Council Directives, 2005), the Reception Conditions Directive (Council Directive 2003), the Qualification Directive (Council Directive 2004), the Dublin Regulation (Council Regulation, 2003), and the Eurodac Regulation (Council Regulation, 2000). The objective of the CEAS is to set common standards so the process for applying for asylum is similar throughout the EU and build strong cooperation to ensure that asylum seekers are treated equally, wherever they apply.

From when El Hinnawi formulated the term “environmental refugee”, in 1985 (Hinnawai, 1985), climate change and migration emerged as a research topic, and in search for how to improve the protection of environmental migrants, several new laws have been introduced.

In the European context, there are initiatives to recognize the legal status of environmental displaced persons, as stated in the 2009 Report and Recommendation of the Council of Europe Parliamentary Assembly on environmental migration, (Council of Europe, 2009) in addition to the project organized at the University of Limoges in 2006, which launched the *Appel de Limoges sur les réfugiées écologiques (et environnementaux)*, (Appel de Limoges, 2006) that proposed the recognition and proclamation of an international status for environmental refugees.

The European Commission adopted a European Agenda on migration in 2015, and the Global Climate Agenda (UN, 2015) brought the inclusion of human mobility to 2015 Paris Agreement, proposing immediate measures to deal with the crisis situation in the Mediterranean and the actions to be taken in the coming years to ensure better management of migratory flows in all its aspects.

While the European Commission published the document “Towards a reform of the common European Asylum system and enhancing legal avenues to Europe”, (EC, 2016) with guidelines that includes creating a more coherent and effective model for managing legal migration to the European Union countries, the New York Declaration on Refugees and Migrants (UN, 2016) pointed to climate change, natural disasters and other environmental factors as drivers of migration.

So the international migration dynamic, especially in the 21st century, has shown its importance in relation to the creation and modification of migration policies in the beneficiary countries.

However, public policies are related to a whole process that involves decision-making focused on the common good, the well-being of society.

Because it is a process, the public policy formulation procedure involves several actors, both members of the Public Administration, as well as citizens and other stakeholders.

At this point, it should be highlighted that institutions, especially public ones, play an important role in the whole process of public policy, and the City Administration itself is the main responsible for the first phases of those processes.

Currently, in designing a specific public policy, the government plans not only to satisfy a current need for the community, but often acts towards a more electoral goal, to obtain votes or to please certain categories of people. Some may argue that this would be a distortion of the main need when generating public policy, which is the satisfaction of a need, an attempt to achieve social welfare. However, for many centuries, political issues have been closely linked to any government decisions taken, and it is virtually

impossible, in some cases, to separate the real intention of rulers from voting decisions.

Migrants face multiple risks during their journey and when they reach their destination those difficulties are shown in legal issues that prevent access to health care, housing, education and employment and make them easy targets for extortion and exploitation or make them being held in prolonged detention.

The 2016 New York Declaration on Refugees and Migrants will encourage the adoption of measures to facilitate access to civil registration and documentation for refugees as a protection tool and also sets out key elements of a Comprehensive Refugee Response Framework to be applied to large-scale movements. (UN General Assembly, 2016) By easing the pressure on host countries, enhancing refugee self-reliance, expanding third-country solutions and supporting conditions in countries of origin for safe return, the CRRF focuses on promoting the inclusion of refugees so they can begin to contribute to the local economies of the communities hosting them.

4. Conclusions

This article aims to discuss the main threads of the debate on climate change and climate migration. The analysis of social and demographic transformations during the XX century demonstrated how the production and economic cycles lead to the depletion and alteration of the environment. Thus, the Anthropocene can be seen as the result of the environmental global changes and as a main driving force of the inequalities created by those changes which lead to a growing global phenomenon of large movements of refugees and migrants.

The Anthropocene is a global scenario of environmental changes. It means the frequency and intensity of disasters tend to increase, affecting the entire world somehow. Still though, bringing up the debate about people movement (displacement and/or migration) shows that it does not occur in a homogenous way. Actually, it does happen the opposite; most of the people who are displaced are the most vulnerable ones.

As the chapter discusses specifically about the European Union, it is important to pay attention that movement of migrants and refugees to Europe, and internal movement as well, is something that occurs since a long time ago. What is essential to highlight is that policies have changed and also the characteristics of the people's movement, which is necessary to consider.

Although progress has been made in formulating public social policies, no normative change has been fully effective, and only a few guidelines were created to provide legal protection for the climate refugees despite the wide discussion of migratory movements. As the protection of environmental migrants through legal or political instruments is an important feature of the debate, the European Union agenda strives in the elaboration and implementation of migratory policies, and also about the lack of policies and their consequences on the non-migratory movements.

This critical problem requires collaborative approach among States and solutions at local, regional and global levels, thinking about public policies in the European level according to the local difficulties of the countries and observing the laws of each participant and the EU normatives.

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