**Complementary Pathways for Refugees in Times COVID? Failing Attempts to Bridge the Gap between ‘Us’ and Legal ‘Other’**

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**INTRODUCTION**

In the past few years complementary pathways have emerged as an additional tool for providing protection and support to the millions of displaced people around the globe. More specifically, historically they were first introduced in the New York Declaration of 2016,[[1]](#footnote-1) and further affirmed by the Global Compact on Refugees of 2018.[[2]](#footnote-2) They have later been taken up by the European Union and incorporated in the draft EU Pact on Migration and Asylum of 2020.[[3]](#footnote-3) Meanwhile, they have experienced a fast and ongoing proliferation as a result of bottom-up initiatives of civil society organizations, networks and consortia.[[4]](#footnote-4) International initiatives and networks have been established to further the implementation of complementary pathways in the areas of education,[[5]](#footnote-5) labour mobility,[[6]](#footnote-6) community sponsorship.[[7]](#footnote-7)

As a relatively new policy phenomenon in the field of migration studies the topic of complementary pathways has been gaining traction among academics but still remains wanting in a thorough analysis.[[8]](#footnote-8) This paper is part of a long-term project which analyses the relationship between legal pathways (with a focus on complementary pathways) and legal frameworks for access to territory and integration of people in need of international protection in the European Union.[[9]](#footnote-9) Its novel legal perspective on the topic brings in a critical position which aims to inscribe the phenomenon in its broader political contexts in order to bring to light underlying (and sometimes subversive) discourses and interests of the different decision-makers involved. In this specific paper, my focus is on the object and purpose of complementary pathways as enshrined in UN soft law documents, on the one hand, and in the EU legal order,[[10]](#footnote-10) on the other, to question whether there is an overlap and if not, to assess its possible implications for people in need of international protection.[[11]](#footnote-11)

Therefore, the main research question to be answered is: what is the object and purpose of complementary pathways as part of the wider context in which they are set; and are they an exclusionary or an inclusive practice? In order to answer it, I am using the concept of “othering” which offers an innovative theoretical frame that brings in a critical perspective in legal studies, showing how law can be bound to perpetuate inequality instead of remedying injustice in the first place, especially when it comes to migration law, and by doing this to suggest inner change (as opposed to undermining the legal system as a whole).[[12]](#footnote-12) In the next part of the paper I explain the choice of the methodology and the specific angles that the theory in question elucidates. Following the theoretical section is an analysis of complementary pathways in UN soft law instruments which looks at the purpose of complementary pathways in the broader context of refugee law in light of the Refugee Convention in the current context. This section aims to show if complementary pathways form part of wider discourses in refugee law that in addition to humanitarian goals include other ones, such as development, security, etc., and again what that would mean for refugees. The next section zooms in on the EU with its distinct legal order to locate the place of complementary pathways within the broader trends of containment and externalisation of the asylum processes.[[13]](#footnote-13)

Finally, in light with an optimistic reading of COVID-19 as “a kind of ‘Stunde Null,’ and at least temporary reset”,[[14]](#footnote-14) I look at the potential of complementary pathways to be a positive example in a wave of halted or severely restricted mobility for migrants during and after the pandemic. This section briefly engages with another more recent development that have had and are still having a disruptive (or enhancing) element such as the war in Ukraine, which equally offers room for complementary pathways to develop and realize their protection potential. The paper concludes with an analysis of the outcomes assessing the reasons for the limited potential of complementary pathways to serve as a middle way, that is a way for balancing the interests of both EU MSs and people in need of international protection.

**LAW AS A PROCESS OF “OTHERING”**

Before delving into “othering” as a characteristic of law, the term “othering” as a social phenomenon needs to be clarified. Jesse defines it as “a discursive group process wherein the in-group has the power to ascribe negative attributes to an out-group”.[[15]](#footnote-15) From this definition, it is important to retain the existence of (at least) two groups, one of them exerting power over the other which may take different forms, law being one possibility. Another element of the definition is the necessarily negative connotation of “othering”: if the relationship between the two groups is characterized by power imbalances in favour of the dominating group, the “othering” shall logically be at the detriment of the dominated. More specifically, in the context of immigration, there is always an interplay between the locals (nationals, citizens, broadly speaking) and the newcomers who, as Jesse puts it, do not *have* rights, but *are given* rights.[[16]](#footnote-16) If one thinks about the concept of integration, and the related legal frameworks in which it is inscribed, the link between the role of law in the process of “othering” becomes less opaque: newcomers are expected to obey certain rules and undergo certain procedures (such as civic integration tests, language proficiency tests, etc.) in order to be deemed worthy of becoming part of the political community (whether and how that happens is an empirical matter).[[17]](#footnote-17) As such law, and especially migration, integration and citizenship laws, is both a manifestation and a source of reproduction of the values of that same political community about who can enter and become part of it.[[18]](#footnote-18) A critical legal perspective, then, asks the question not if, but how a specific legal order leads to a process of “othering”.

Critical legal studies is a relatively new school of thought, especially in Europe.[[19]](#footnote-19) It makes a strong statement that “migration, mobility and asylum regimes continue to deploy facially neutral legal institutions and processes to sustain racialized [or other forms of] exclusion and that “liberal legal doctrine is also part of the broader system [of exclusion]”.[[20]](#footnote-20) One example of such seemingly neutral categories is the passport, introduced in the beginning of the 20th c. in developed (or First World) countries “as a means for the liberal exclusion of non-Europeans at a time when explicit reliance on race-based justifications became less tenable than it had been before”, whereby the function of race as an exclusion criterion is transferred to nationality as a more neutral term.[[21]](#footnote-21) Another more recent, but similar, example comes from the normalisation of the term “third-country nationals” in the EU legal order, which, as Thym aptly reminds that was introduced in the early 1990s with the establishment of the Schengen area, leading to the removal of internal borders at the expense of securitization of the external borders.[[22]](#footnote-22) It is not a novel idea that irregularity exists in reference to what is considered legal. It also concerns certain categories of foreigners (mostly defined by their citizenship) more than others, especially those who are not able to meet the entry requirements of the receiving (or desired) country which operate on the terms of that same country, i.e. it chooses whom to admit to its territory in accordance with the legal principle of sovereignty. In her detailed analysis of the racial considerations underlying the modern migration and asylum regimes, Achiume also traces the historical development of the common law doctrine of “absolute sovereignty” in the end of the 19th and the beginning of the 20th c. adducing evidence that it also took place within an exclusionary context of power imbalance between the First and the Third World countries.[[23]](#footnote-23)

Two important implications need to be highlighted at this stage. Firstly, while I agree that race is an important factor of exclusion, not only historically but still today,[[24]](#footnote-24) operating through seemingly neutral categories (such as nationality, citizenship, geographic location, literacy requirements, etc.), there are other categories alongside which exclusion functions (often in combination with race). These necessarily include economic considerations, as developed countries’ colonial pasts were to a large extent (but not only) driven by economic imperatives.[[25]](#footnote-25) Achiume stresses that “[a]ccess to the global mobility infrastructure depends greatly on nationality and class as a result of visas whose approval processes establish socioeconomic thresholds in the form of income or property.”[[26]](#footnote-26) Spijkerboer adds to this list of factors (race, nationality and socioeconomic status) another one, that is gender, as a yet another predictor of exclusion.[[27]](#footnote-27) Therefore, it cannot be stated that migration law is a proxy for racial exclusion, especially in the context of the European Union which from its outset is an economic project.[[28]](#footnote-28) This focus on trade and economic cooperation means that class may be a more weighty factor.[[29]](#footnote-29) Furthermore, no intent needs to be present in order for the migration and asylum system to qualify as exclusionary.[[30]](#footnote-30) In the end, the relationship between the exclusionary factors needs to be tested in each case study.

Secondly, while many would agree with the existing racialised and exclusionary underlying structure of migration and asylum regimes, the question becomes what next, and it is likely that disagreement will follow from that moment onwards.[[31]](#footnote-31) With these starting points in mind, I analyse complementary pathways from a critical perspective making their exclusionary potential a starting point of the research. This approach allows an internal criticism of law based on an external viewpoint.[[32]](#footnote-32) In this paper my goal is to contextualise complementary pathways in their broader discourses without offering an alternative. This is a conscious choice, as the project is still in its initial phase; and complementary pathways are still a recent phenomenon, their effect being further to be seen.

**ELEMENTS OF COMPLEMENTARY PATHWAYS**

With the above critical perspective in mind, I shall analyse the potential of complementary pathways to counter the exclusionary migration practices. In order to do that, first, I look at the definition of the term in UN soft law documents in relation to refugee law to locate it within a wider context and a frame of reference. In this part I outline the elements of complementary pathways. This part is declarative in nature and aims to elucidate the normative potential of complementary pathways to protect people in need of international protection. After that the concept will be reviewed critically. In my approach I do not use a pre-existing philosophical concept against which to assess the “virtues” of complementary pathways. I strive to employ a contextualist interpretive approach that reveals the functions of the phenomenon in a relational manner, both in time and space.[[33]](#footnote-33)

The first time the term complementary pathways appears in a normative document is in the New York Declaration of 2016 which urged states to expand the range of legal pathways, which include resettlement and complementary pathways.[[34]](#footnote-34) The Declaration does not offer a definition of complementary pathways. However, firstly, it ties them firmly to resettlement, that is, complementary pathways complement resettlement and should be analysed in light thereof. Secondly, complementary pathways, just like resettlement, are located under a section on durable solutions which forms part of Annex 1 of the New York Declaration, entitled Comprehensive Refugee Response Framework.[[35]](#footnote-35) More concretely, third countries (that is different from countries of origin and countries of asylum) “would” consider “making available or expanding, including by encouraging private sector engagement and action as a supplementary measure, resettlement opportunities and complementary pathways for admission of refugees through such means as medical evacuation and humanitarian admission programmes, family reunification and opportunities for skilled migration, labour mobility and education” as well as “broadening the criteria for resettlement and humanitarian admission programmes in mass displacement and protracted situations, coupled with, as appropriate, temporary humanitarian evacuation programmes and other forms of admission”.[[36]](#footnote-36) As can be seen, complementary pathways’ novel contribution lies in expanding the base of and the case for resettlement, understood as a third country solution which, unlike resettlement, does not only involve UNHCR, the receiving country, other international organisations, NGOs and the refugee, but follows a multi-stakeholder approach.[[37]](#footnote-37) At the same time, complementary pathways are to be seen as part and parcel of a comprehensive approach to solutions, which is a relatively new approach introduced by UNHCR in the early 2000s to mark a shift in the focus to countries of asylum instead of on third countries, thus bringing in a development perspective, in addition to the humanitarian one.[[38]](#footnote-38) This is a point I shall revisit after discussing the Global Compact on Refugees.

As foreseen, the Global Compact on Refugees was adopted in 2018 and indeed, building on the New York Declaration and its Comprehensive Refugee Response Framework, it further underlines the importance of complementary pathways. They, together with resettlement places, are included as a possible pledge by countries to be made at the Global Refugee Forum as a way to motivate countries to step up their commitments to providing protection and solutions to people in need of international protection (para. 18). This move is far from insignificant, having in mind that as a non-legally binding document the Global Compact on Refugees does not introduce a legal obligation for states to establish and implement complementary pathway schemes. The Compact is a continuation of the comprehensive approach taken up by the New York Declaration, and foresees complementary pathways as part of it, just like in the Declaration. And again, as in the Declaration, complementary pathways are mentioned as a possible durable solution (para. 85). However, the Compact further specifies that complementary pathways “can facilitate access to protection and/or solutions” (para. 94), implying that the latter may not necessarily offer a path to solutions. That aspect is problematic as already at this definitional stage, the Compact allows a leeway for states and other stakeholders implementing complementary pathways, thus broadening the range of possible pathways, while at the same time undermining some important safeguards.

An inexhaustive list of complementary pathways includes pathways for family reunification, private or community sponsorship programmes, humanitarian visas, humanitarian corridors and other humanitarian admission programmes, educational and labour mobility opportunities for refugees (para. 95). The complete list as well as the commitments of states which choose to engage in complementary pathways literally repeats the paragraphs cited above as part of the Comprehensive Refugee Response Framework. The Compact stops short of further defining complementary pathways. Such guidance is provided additionally in the UNHCR 3-Year Strategy (2019-2021) on Resettlement and Complementary Pathways[[39]](#footnote-39) and in the Key Considerations document on complementary pathways.[[40]](#footnote-40)

The UNHCR guidance documents specify that complementary pathways are “safe and regulated avenues for refugees that complement resettlement by providing lawful stay in a third country where their international protection needs are met”.[[41]](#footnote-41) By virtue of their intent, they may be tailor-made for refugees, but could also include programmes that are open for third-country nationals who are not necessarily refugees. Along these lines, complementary pathways may be divided into needs-based targeting vulnerable refugees thus to a large extent overlapping with the target group for resettlement, and skills-based which allow refugees to develop self-reliance and to contribute (faster) to the receiving country.[[42]](#footnote-42) The ultimate goal of complementary pathways is to achieve a greater scale of third country solutions for refugees.[[43]](#footnote-43) Thus they are in the interest of all involved parties: the host state (by easing the pressure), the receiving state (by bringing in skills and meeting labour shortages), and refugees (by exercising autonomy and gaining self-reliance). However, the document specifies some safeguards that need to be in place for complementary pathways to serve their purpose as a protection tool. These include the right to seek asylum and protection from refoulement, non-discrimination, flexibility and accommodation of refugee needs and specificity in the programme design (for complementary pathways that are not tailor-made), access to rights and services in the host country, and right to family unity, among others.[[44]](#footnote-44)

**COMPLEMENTARY PATHWAYS IN REFUGEE LAW**

On the basis of the above, it can be concluded that a broad set of activities can fall under the scope of complementary pathways. This is a sought-after effect as the main goal of these pathways is to increase the scale of third country solutions, in addition to resettlement. Therefore the more initiatives started, the greater the potential of complementary pathways to offer protection. Provided that they incorporate certain standards, they hold the promise of serving as a protection tool for people in need of international protection. This potential, though, takes place within the framework of the Global Compact on Refugees which has been criticised by some as contributing to the global containment policies of refugees in third world countries.[[45]](#footnote-45)

The guiding principle of the Global Compact is to “operationalize the principles of burden- and responsibility-sharing to better protect and assist refugees and support host countries and communities” (para. 5). It puts a focus on tackling the root causes of large refugee situations, prevention and resolution of conflict, peacebuilding, poverty alleviation, reduction of disaster risks (para. 9). While all these are noble and worthy goals, they shift the attention to supporting the countries of asylum and host countries, thus keeping refugees put. The main criticism against the Compact is that by introducing a development element to protection in the first countries of asylum (most of which are developing countries),[[46]](#footnote-46) the Compact prioritises the stay of refugees in these countries or their return to countries of origin, at the expense of third-country solutions.[[47]](#footnote-47) This is the case despite the fact that one of the objectives of the Compact is to “expand access to third country solutions”, because the latter remain vastly elusive.[[48]](#footnote-48) Furthermore, countries from the Global North can contribute financially and/or in-kind (material and technical support) for strengthening the reception systems of asylum countries, thus helping localize or contain refugees, instead of offering legal pathways.[[49]](#footnote-49) Indeed, combined together, most of the countries have made financial, material and/or technical support pledges.

Although the Global Compact acknowledges the security concerns of states, noting that they are legitimate and complementary to international protection and compliance with international law, it remains a humanitarian and developmental project.[[50]](#footnote-50) This orientation is not new, but follows a line of policies which are seeking novel ways of providing solutions to displaced populations in changing geo-political contexts. In this final section I place the humanitarian-development nexus enshrined in the Compact in a historical perspective in order to understand better the role of complementary pathways as a current phenomenon.

Historically, both resettlement and complementary pathways (in Europe) are not new phenomena, the first can be traced back to the late 80s with the reception of Vietnamese refugees under resettlement schemes in Western European countries, while the second dates back to 2013.[[51]](#footnote-51) However, the need to coin a special term to denote them signals a change in the context that can be traced back to the history of durable solutions in refugee law. There are three durable solutions in refugee law: voluntary repatriation, local integration and resettlement.[[52]](#footnote-52) Their prominence varied in the course of time.

Even before the establishment of UNHCR, resettlement, alongside with voluntary repatriation, can be traced as a possible solution to the refugee problem back to the period between the First and the Second World War. More specifically, the Office of the High Commissioner for Refugees (Jewish and Other) coming from Germany established under the League of Nations in 1933 adopted a Provisional Agreement regarding the Status of German Refugees of 1936 and later the Convention concerning the Status of Refugees coming from Germany of 1938, both of which included provisions foreseeing resettlement options.[[53]](#footnote-53) The Intergovernmental Committee for Refugees (IGCR) established in 1938 and its successor, the International Refugee Organization (IRO) (1946-1952) acted under the presumption that refugees could not be settled in their first country of asylum and were actively engaged in resettlement activities, mostly overseas.[[54]](#footnote-54)

The predominance of resettlement as a durable solution over local integration and voluntary repatriation continued until the end of the Cold War. Gottwald notes that “with the demise of communism and colonialism as well as the increase of migration from poor to affluent countries, industrialised countries began to favour voluntary repatriation over resettlement and local integration”.[[55]](#footnote-55) As a result of these political changes, since the 1990s UNHCR shifted its focus “from a ‘reactive, exile-oriented and refugee specific’ approach in countries of asylum to a ‘pro-active, home-land oriented and holistic’ approach in countries of origin”.[[56]](#footnote-56) This involved the establishment of partnerships with multiple actors working in the fields not only of humanitarian assistance and human rights, but also in development and security, as well as engagement with internally displaced persons and host communities.[[57]](#footnote-57) In that context in the 1990s UNHCR introduced the concept of “comprehensive approaches” towards the refugee problem which acknowledges the importance of engagement with the situation in countries of origin in order to facilitate voluntary repatriation and to prevent future refugee flows.[[58]](#footnote-58) The first edition of the UNHCR Resettlement Handbook of 2004 further clarifies that:

“A comprehensive approach to durable solutions refers to an effort to utilize all three durable solutions – voluntary repatriation, local integration, and resettlement – often in a concerted and systematic manner directed at achieving durable solutions for a specific group in a given country of asylum or in a region.”[[59]](#footnote-59)

It is not difficult to see the continuity between the Comprehensive refugee response framework introduced by the New York Declaration and its predecessors of the early 2000s. What it shows is that complementary pathways have emerged in an international protection context that is characterised by a focus on voluntary repatriation and conflict prevention and resolution that would prevent refugee flows in the first place. As part of this comprehensive approach complementary pathways is an acknowledgement that: 1. voluntary repatriation is not an appropriate solution to each refugee problem; 2. neither resettlement, nor local integration have the capacity to fill in the need for an alternative solution. As such complementary pathways aim to expand third-country solutions by upholding the ongoing expectation that voluntary repatriation is the “preferred solution”.[[60]](#footnote-60)

**COMPLEMENTARY PATHWAYS IN EU LAW**

After having analysed the role of complementary pathways in refugees law, in this section I look at their place in the EU legal order, taking a comparative perspective to refugee law. Such a comparison is apt as compliance with the Refugee Convention and other protection instruments and principles are required under EU primary legislation.[[61]](#footnote-61) Therefore, refugee law is an authoritative source for the interpretation of the Common European Asylum System (CEAS). This can also be claimed for the Global Compact on Refugees as it grounded in the international refugee protection regime, human rights law, humanitarian law and other international instruments.[[62]](#footnote-62) At this stage of the analysis it should be noted that despite the adopted critical stance to complementary pathways and refugee law in general, one needs to acknowledge that compared to EU law the Global Compacts enshrine higher human rights and protection standards.[[63]](#footnote-63) In the remainder of the section I firstly trace the beginning of the usage of the term complementary pathways in EU instruments, including soft law, and then offer a historical analysis of related concepts to see in what contexts complementary pathways are used and what functions they have.

The concept of complementary pathways is new in the EU legal order. It does not appear either in EU primary, or in EU secondary legislation. Instead, it forms part of the recently proposed EU Pact on Migration and Asylum of 2020.[[64]](#footnote-64) The legal form it has taken is more specifically is a recommendation by the European Commission.[[65]](#footnote-65) This comes to show that there is no obligation for EU MSs to implement complementary pathways which is in line with international refugee law. In the said Recommendation complementary pathways are mentioned alongside resettlement and humanitarian admission. This is an important observation as this choice of wording is determined by the previous usage of terminology in EU documents and by the adoption of the UN Global Compact on Refugees two years earlier.[[66]](#footnote-66) Therefore, in order to understand the place of complementary pathways in the EU legal order, the analysis should engage with alternative concepts that denote similar phenomena (such as legal pathways, and humanitarian admission). Before turning to them, let us briefly analyse the usage of the term in the above Recommendation, which is the most recent document on resettlement and complementary pathways in the EU.

Firstly, the Recommendation asserts that “providing and enhancing legal and safe channels for those in need of international protection” is a moral duty, an act of solidarity, a way to improve “the protection space outside the Union”, as well as a tool for “better overall management of migration”.[[67]](#footnote-67) Some of the elements above are easily recognised in the Compact: the burden-sharing element and the orientation towards the country of asylum and/or host country, or otherwise put, the development focus enshrined in the Compact. However, another aspect is discernible in the EU recommendation and that is the use of complementary pathways as a tool to control migration and to choose who can enter the EU space and who cannot. This aspect of complementary pathways is more restrictive than the one contained in the refugee law system and marks a stark difference between the two regimes. This line has been retained from previous soft law tools by the EU, as will become clear shortly. In relation to the migration control element, and unlike in the refugee law system, resettlement and complementary pathways are presented as important elements for “reduc[ing] irregular migration and counter[ing] the business model of smuggling networks”.[[68]](#footnote-68) This aspect of resettlement and complementary pathways points once again to the expectation that by introducing them, irregular entries will significantly reduce. Whereas the focus of the Compact is to improve the reception conditions and access to rights in the developing countries where refugees are located and thereby prevent exit, the focus of EU policies is to prevent illegal entry.

Secondly, the recommendation uses the term “legal pathways” to denote both resettlement and complementary pathways.[[69]](#footnote-69) As in refugee law, this choice signals the intrinsic link between the two modes of legal and safe channels, and the need to trace back the reference to “legal pathways” in EU legal instruments to be able to understand the recent concept of “complementary pathways”. Furthermore, the Recommendation establishes a link between EU development policies and legal pathways, placing them firmly in the external dimension of EU migration policy.[[70]](#footnote-70) As in refugee law, the Recommendation speaks of a “comprehensive approach to migration when engaging partner countries on the whole spectrum of migration-related areas”, linking legal pathways to development policies.[[71]](#footnote-71) In this regard, one can discern a predictable link between legal pathways and “EU external relation priorities and interests”.[[72]](#footnote-72) In the EU legal order, therefore, complementary pathways may serve interests that do not necessarily stem from humanitarian imperatives: a position that marks a stark difference to the principles underpinning them in refugee law.

The Recommendation upholds the proposed Union Resettlement Framework as part of package of EU secondary legal instruments aiming to reform the CEAS system in 2016.[[73]](#footnote-73) So far this proposal remains the most significant attempt to codify resettlement in the EU. If ever adopted in the form of a secondary legal act, it would have huge jurisdictional consequences for cases pertaining to humanitarian visas, for example.[[74]](#footnote-74) The Framework does not refer to complementary pathways in particular, but instead uses the terms resettlement, humanitarian admission, and legal pathways which encompasses the former two. For the above reasons, it is important to mark some highlights contained therein that have a direct bearing on complementary pathways.

The Framework aims to harmonise the resettlement and humanitarian admission practices without introducing a subjective right to be resettled.[[75]](#footnote-75) Such a harmonization is necessary in order to achieve the policy objectives of the EU. These are outlined in the European Agenda on Migration of 2016 which reflects the need to reform the CEAS following what is known as the refugee crisis to Europe in 2015 amidst the ongoing conflict and displacement in Syria aiming at preventing such influxes in the future. The Agenda has a clear securitisation approach which logically ties “safe and legal ways […] to reach the EU” to the fight against smuggling and trafficking in human beings.[[76]](#footnote-76) Further, the Framework states explicitly that one of its aims is to “help reduce the pressure of spontaneous arrivals on the Member States' asylum systems”.[[77]](#footnote-77) In this regard it clarifies that as part of a procedural safeguard “[r]esettlement should be the preferred avenue to international protection in the territory of the Member States and should not be duplicated by an asylum procedure”.[[78]](#footnote-78) A The legal basis of the Framework falls under Art. 78(2)g of the TFEU, thus placing legal pathways in the realm of external actions.[[79]](#footnote-79)

The Framework introduces novel eligibility and exclusion grounds. Firstly, it expands the eligibility criteria to go beyond the ones used by UNHCR for the purposes of resettlement,[[80]](#footnote-80) but this move’s inclusive potential is offset by the parallel introduction of broad and punitive exclusion criteria which also expand upon the exclusion criteria contained in Art. 1F of the Refugee Convention. For example, people who have irregularly stayed, entered or attempted to irregularly enter the EU or who have been refused resettlement by another MS in the past five years prior to resettlement (Art. 6(1) d and f).

The fact that the Framework has not been adopted six years after it was proposed signals criticism on many sides, including on the part of MSs. Although the inclusion of humanitarian admission as part of the Framework is noteworthy, the main point of contention among the MSs remains the issue of the voluntary character of resettlement and other legal pathways.[[81]](#footnote-81) In view of the proposed EU Pact on Migration and Asylum of 2020, many scholars are skeptical about the future of the Framework.[[82]](#footnote-82) What is clear, though, is the continuity between the principles underpinning the Framework and the latest EC Recommendation, analysed above, which forms part of the EU Pact on Migration and Asylum. All the above examples of EU legal instruments and soft law tools places complementary pathways in a relationship of necessity with processes of containment and externalisation. In the next section I explore if legal pathways have historically been inscribed in policy discourses that are not exclusionary, unlike the current state of affairs.

**Legal Pathways in the EU Legal Order – A Historical Perspective**

In the section on complementary pathways in refugee law it became clear that a comprehensive approach to solutions which is closely tied with developmental efforts in the countries of origin and/or of asylum since the early 2000s. A similar analysis is due in the EU legal order. Since there is a link between securitisation and legal pathways currently, a brief overview of securitisation as a predominant discourse should be offered as well in order to place legal pathways in context.

While the proposed EU Pact on Migration and Asylum is just one, but significant, example of a trend to legislative amendments which are characterized by an approach to containment, externalisation,[[83]](#footnote-83) at the same time the EU and its MSs remain committed to human rights and refugee law which underpin EU asylum legislation.[[84]](#footnote-84) The combination of these two elements of the asylum space points to the reason for a reinvigorated focus on legal pathways as a middle way.[[85]](#footnote-85)

Despite the dynamism of the asylum field in the EU, it seems that neither the trend to containment is new, nor are legal pathways as such. Tsourdi and Costello follow the process of the EU formation as a free movement area which excluded and keeps excluding asylum-seekers and refugees not only at the external EU borders, but also once they are within the EU and are granted international protection. This double exclusion is the first foundational tension characterizing current EU asylum law. The second one is between the commitment to international protection and human rights in the EU and the ongoing efforts to keep refugees in third countries.[[86]](#footnote-86) Containment is ensured by depriving people in need of international protection of the legal means to enter EU MSs. This is achieved though black-listing the countries producing the highest number of refugees and through the “privatization of migration control” achieved by imposing carrier sanctions unless travelers are in possession of a valid visa.[[87]](#footnote-87) These measures dating back to the 90s and early 2000s produce illegality, and lead to the emergence of dangerous phenomena such as smuggling, human trafficking and deaths at sea.[[88]](#footnote-88) Once asylum-seekers are within the EU, then they are immobilized under the Dublin Convention, the first one dating back to 1990s and persisting to date with a few (important) modifications.[[89]](#footnote-89) After 2015 these trends have intensified with the notable example of the EU-Turkey Statement of 2016[[90]](#footnote-90), followed by the conclusion of many soft law international agreements on migration cooperation between EU MSs and third countries,[[91]](#footnote-91) the development of action plans for strengthening comprehensive migration partnerships between the EU and Libya, Morocco, Tunisia, Egypt and others,[[92]](#footnote-92) as well as the outright externalization of asylum processing in Denmark[[93]](#footnote-93) and in the UK.[[94]](#footnote-94)

Going back to the Tampere Conclusions of 1999,[[95]](#footnote-95) after the introduction of the Area of Freedom, Security and Justice by the Treaty of Amsterdam the same year, one notices a combination of approaches which serve as sources of tension, as mentioned above. On the one hand, there is the commitment to the Refugee Convention and other human rights law instruments (item 4), and on the other there is the commitment to tightened border controls (items 23-5) and the fight against organised crime by stronger external action (items 59-61).

A noteworthy parallel between the refugee comprehensive approach and an EU “comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit” (item 11). As we saw while such an approach has its contribution to the wellbeing of refugees, it also serves the purpose of containment. Given the much more restrictive approach to migration and asylum taken by the EU, the appropriation of the development discourse under refugee soft law further legitmises the foundation of exclusionary policies of the EU.

The comprehensive approach to migration was further upheld in the Communication on the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin of 2004.[[96]](#footnote-96) A strong alignment between UNHCR and EU policies is visible, including in the continuation of a “new [EU] approach” to the international protection system outlined in 2003: “1) the orderly and managed arrival of persons in need of international protection in the EU from the region of origin; 2) burden-and responsibility sharing within the EU as well as with regions of origin enabling them to provide effective protection as soon as possible and as closely as possible to the needs of persons in need of international protection, and 3) the development of an integrated approach to efficient and enforceable asylum decision-making and return procedures,” (the third point signaling the securitisation approach).[[97]](#footnote-97) The Communication paves the way to a EU resettlement scheme, with Protected Entry Procedures (PEPs) being its emergency alternative (item 35). Such a scheme would have the goal to “provide international protection and offer a durable solution in the EU to those who genuinely need it and to faciltate their managed arrival in the EU, and to express solidarity with and share the burden of countries in the regions of origin faced with protracted refugee situations.” (item 24).

Another strand of development of resettlement policies falls entirely under external actions, namely through the development of EU Regional Protection Programmes, establishing partnerships with third countries in the region (item 49). In upholding the comprehensive approach, these programmes consist of the following elements: capacity building for reception of asylum seekers, processing of their claims and integration; increasing the registration capacity; an EU-resettlement scheme; improving the local infrastructure, cooperation on legal migration, action on migration management,[[98]](#footnote-98) and return.[[99]](#footnote-99) Already at this stage it becomes clear that under external actions resettlement and other legal pathways start serving exclusionary purposes tied to return and readmission, which depart from the rationale of the comprehensive approach employed by UNHCR.

This bifurcation is preserved in the reform of the CEAS in the 2010s. In 2012 the EU Commission adopted a Communication on the Establishment of a Joint EU Resettlement Programme.[[100]](#footnote-100) It maintained the voluntary character of resettlement (at this stage there is no mention of other legal pathways), and the further establishment of Regional Protection Programmes, side by side with improved cooperation with UNHCR, starting pilot resettlement projects, identification of best practices. This association between resettlement and external actions can be further observed in the Global Approach to Migration and Mobility (GAMM) of 2011.[[101]](#footnote-101) It is an embodiment of the continuation of the comprehensive migration policy, also adhered to in less restrictive terms by UNHCR throughout the years. Apparently, the GAMM has much broader aims than migration and international protection. More specifically it is meant to “firmly embedded in the EU’s overall foreign policy framework, including development cooperation, and well aligned with the EU’s internal policy priorities”.[[102]](#footnote-102) The GAMM has four pillars: legal migration and mobility, preventing and reducing irregular migration and trafficking in human beings; promoting international protection and asylum policy (external dimension) (this is where resettlement falls); and maximising the development impact of migration and mobility.[[103]](#footnote-103) Protected entry procedures and humanitarian admission are absent from the GAMM. The next stage of development of legal pathways has been accounted for in the previous section, being shaped by the influx of Syrian refugees in 2015.

**COMPLEMENTARU PATHWAYS IN PRACTICE – COVID-19 REALITIES**

After there is clarity on the context in which complementary pathways operate both on a global and on a EU level, as well as the different functions it may have depending on the legal framework of reference, it is time to see how legal pathways are implemented in practice. When discussing empirical data on complementary pathways, it is important to consider data on resettlement as well, due to the relationship of complementarity between the two. Moreover, since complementary pathways are often not initiated by states, but are rather bottom-up initiatives, reliable data on complementary pathways are difficult to get. An attempt to fill this gap was done in a report by OECD and UNHCR.[[104]](#footnote-104)

Traditionally, the number of resettled refugees is low compared to other durable solutions (voluntary repatriation and local integration). In 2020 only 34 400 refugees were resettled out of a 1.4 mln refugees estimated to be in need of resettlement.[[105]](#footnote-105) Data on refugees benefiting from complementary pathways is even more scarce, but according to OECD methodology, the ratio between those resettled and those using complementary pathways is 1:2.5.[[106]](#footnote-106)

The UNHCR 3-Year Strategy has given some benchmarks to be achieved up until 2028, both for resettlement and for complementary pathways.



Source: UNHCR 3-Year Strategy (2019-2021) on Resettlement and Complementary Pathways, 2019



Source: UNHCR 3-Year Strategy (2019-2021) on Resettlement and Complementary Pathways, 2019

As can be seen from these two charts, the target for complementary pathways is twice as high as the one for resettlement. These targets were established before COVID-19 which had a lasting effect on global mobility, including on resettlement and complementary pathways.

On 17 March 2020 UNHCR and IOM temporarily suspended resettlement, and it lasted until June. Despite the fact that officially countries were encouraged by the EU to continue with their resettlement and private sponsorship efforts, most countries took unilateral decisions with regard to the entry of third-country nationals, including refugees and for the purpose of resettlement.[[107]](#footnote-107) As a result, the below data shows the UNHCR-led resettlement data in a comparative perspective for the past five years. No such data are available for complementary pathways.



Source: UNHCR, Resettlement Data Portal, <https://www.unhcr.org/resettlement-data.html>

The comparison between the targets and the empirical data shows that resettlement departures for 2020 fell short of 66% of the target, and of 51% for 2021. If the data for the first four months is extrapolated until the end of the year, the gap between the target and the reality will also be about 50%. It is obvious that the targets will have to be readjusted for the next period of time in view of the pandemic. What becomes clear, though, is that resettlement seems to be picking up. Moreover, despite the overall securitisation trend in the EU, resettlement numbers continue to grow in both absolute and relative terms, as shown in the table below.



While this increase may be due to the limited resettlement efforts of other traditional resettlement countries such as the US and Canada, the EU shows its dedication to become a global resettlement leader.[[108]](#footnote-108) EU MSs pledged 29 500 resettlement places in 2020, a pledge which was carried over to 2021. The above data shows that while some countries used COVID-19 public health measures as a reason not to resettle refugees, many other adjusted the resettlement procedures in such a way as to accommodate both the needs of resettled refugees and the demands of the public health situation.[[109]](#footnote-109) The national data cannot be entirely attributed to the EU efforts to ramp up resettlement numbers, as in the end resettlement is a voluntary act on the part of the EU MSs. However, it should be noted that since 2015 the EU carried out a few resettlement schemes which it deems successful with more 85% of the quotas fulfilled.[[110]](#footnote-110) Therefore, as with the analysis of refugee law, an extreme critical stance towards complementary pathways will not do justice to a few initiatives that mark a certain progress when it comes to resettlement in the EU in the past few years.

The question becomes, though, if the (more) successful resettlement efforts in the EU will not ne used to justify more strict border closures and asylum externalisation. This observation is crucial for the future of complementary pathways. Hashimoto has noted that “host governments have used asylum as a political tool to extend their self-interest in such realms as security, global reputation, international trade, migration management, and domestic institutional survival”, and that they are introducing more and more criteria for entry (such as “integration potential”, for example).[[111]](#footnote-111) He speaks of the Japanese example as an example of elitism and cherry-picking and comes to the conclusion that such pathways are non-humanitarian.[[112]](#footnote-112) Whether such flaws are inherent in other complementary pathways schemes is a matter of empirical question. However, the overall data shows that on the level of the EU there is a conscious attempt to increase resettlement (and since recently complementary pathways). In a context where they are closely tied to exclusionary practices, this expansion may come at a cost of violation of the human rights of other people in need of international protection and *non-refoulement*. Such risks have been elucidated even more clearly by the above analysis of the historical context underlying complementary pathways on a global and on a EU level.

**CONCLUSION**

The critical stance taken in this paper reveals some disturbing parallels between the use of complementary pathways in refugee and in EU law. While the Global Compact on Refugees, as a soft law document, has limited power to engage countries, it serves to rally some support for third country solutions based on partnership and political will. At the same time, the analysis showed that the humanitarian-development nexus does indeed result in a risk for containment of people in need of international protection in their countries of origin or of asylum. This orientation of refugee law originated from the end pf the Cold War and the changed geo-political realities. In a context where voluntary repatriation is the most preferred option (allegedly for both countries of asylum and refugees), such orientation of the UNHCR can in a way be deemed reactive or an act of “damage control”.

The UNHCR has tried to engage with EU institutions in order to advocate for the adoption and/or amendment of EU instruments in the area of asylum so that they are in compliance with refugee law standards. However, the EU also seems to have an interest in cooperating with UNHCR, including to draw legitimacy for its restrictive practices in the area of asylum, more specifically on resettlement and complementary pathways. Despite the important difference of UNHCR and the EU on securitisation, both share a focus on development and improvement of the conditions in the countries of origin or of asylum which aim to prevent displacement or onward movement. Combined with the original interest of the EU to protect its external borders for the sake of maintaining freedom of movement within the EU, such an orientation results in strongly exclusionary practices for the majority of asylum-seekers. One reason is that still resettlement and complementary pathways schemes offer protection to a very limited number of people. However, an increase in scale will not necessarily improve the access to territory for all those who flee persecution, as legal access is tied to many requirements that are difficult to meet by a large number of people in need of international protection. If such increase in scale result in even stricter access policies, then the “complementarism” of complementary pathways becomes questionable.

There is no easy way out of such an ambivalent situation. The current analysis does not give an answer about how complementary pathways should be organised and implemented so that all the above risks are mitigated. However, by elucidating their embeddedness in policy discourses and legal frameworks that are prone to having exclusionary effects, this paper aimed to raise awareness of the pitfalls of complementary pathways. Firstly, they should be analysed alongside resettlement, and secondly, within the relationship with securitisation, especially within the EU. This raises the question if complementary pathways could have the potential to live up to the obvious expectation to offer protection to those in need of such or is it doomed to lead to “othering” (both of those refugees who cannot benefit from complementary pathways and of those who have benefited but are subject to othering vis-à-vis the local population). I believe that the historical analysis shows that other constellations of power are possible. Such as the COVID-19 pandemic could have a restarting effect, other events could, too. At this stage another transformative example could be the war in Ukraine. Whether one is an optimist or a skeptic is of less importance than the need to keep an eye for the hidden dynamics of migration and asylum legislation and policies in the long-run and act as watchdogs for the sake of prosperity and human rights.

1. UNGA, 71st Session, New York Declaration for Refugees and Migrants, A/RES/71/1, paras. 77-78, (2016). [↑](#footnote-ref-1)
2. UNGA, 73rd Session, Global Compact on Refugees, A/73/12 (Part II), paras. 94-96, *inter alia* (2018). [↑](#footnote-ref-2)
3. Commission Recommendation (EU) 2020/1364 of 23 September 2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways, L 317/13 of 1.10.2020. [↑](#footnote-ref-3)
4. For a recent outline of examples of complementary pathway initiatives around the globe, see S. Varjonen et al., Student, Worker or Refugee? How Complementary Pathways for People in Need of International Protection Work in Practice, Publications of the Government´s analysis, assessment and research activities, Finland, 2021. The authors give examples from a wide range of countries across the globe, including Canada, Australia, the UK, Germany, Italy, Spain, Belgium, Ireland, Japan, Portugal, Lithuania and others. [↑](#footnote-ref-4)
5. Global Task Force on Third Country Education Pathways, established in 2020, <https://edpathways.org/mission-goals> (last visited on 17.05.2022). [↑](#footnote-ref-5)
6. The Global Task Force on Labour Mobility was just launched in the end of April 2021. <https://www.canada.ca/en/immigration-refugees-citizenship/news/2022/04/expanding-refugee-access-to-third-country-solutionsinternational-leaders-launch-the-global-task-force-on-refugee-labour-mobility.html> (last visited on 17.05.2022); as well as an EU Talen Pilot Project for Ukrainian refugees, <https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_2655> (last visited on 17.05.2022). [↑](#footnote-ref-6)
7. See the CRISP initiative launched in 2020, <https://resettle.org/> (last visited on 17.05.2022), and the Global Refugee Sponsorship Initiative, <https://refugeesponsorship.org/> (last visited on 17.05.2022). [↑](#footnote-ref-7)
8. See among others J. Van Selm, *Complementary Pathways to Protection: Promoting the Integration and Inclusion of Refugees in Europe?*, ANNALS, AAPSS, 690136-152, at 139 (2020) who offers a historical account of their emergence and implementation and calls for further research in the area; N. Hashimoto, *Are New Pathways of Admitting Refugees Truly ‘Humanitarian’ and ‘Complementary’?*, Journal of Human Security Studies, 10(2), 15-31 (2021), who questions their humanitarian character and analyses their linkages with the neo-liberal contexts in which they function; V. Moreno-Lax, *From Complementary to ‘Primary’ Pathways to Asylum: a Word on the ‘Right to Flee’*, Forced Migration Review, 68, who advocates for an acknowledgement of the right to safe pathways, inscribing complementary pathways in the ongoing externalization trends; T. Wood, *The Role of ‘Complementary Pathways’ in Refugee Protection*, Kaldor Centre for International Refugee Law, at 7 (2020), underlining the protection potential of complementary pathways, but cautioning against the risks of exacerbating refugees’ vulnerabilities in case of absent protection safeguards. [↑](#footnote-ref-8)
9. This is my dissertation project which takes place within the broader project “The Borders Within. The Multifaceted Legal Landscape of Migrant Integration in Europe”, led by Assoc. Prof. Vladislava Stoyanova, Lund University, Sweden. [↑](#footnote-ref-9)
10. A legal analysis of complementary pathways definitely requires a third level of analysis, namely the national level, as eventually complementary pathways take place in compliance with national legislation and frame of reference. However, such analysis needs to be preceded by the current one. [↑](#footnote-ref-10)
11. I use the generic term “people in need of international protection” to denote both refugees under the Convention Relating to the Status of Refugees, 189 UNTS 150, 28 Jul. 1951 (entry into force: 22 Apr. 1954), hereafter referred to as the Geneva Convention or the Refugee Convention and subsidiary protection holders under EU law in accordance with the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ EU L 337/9 of 20.12.2011. [↑](#footnote-ref-11)
12. M. Jesse (Ed.) European Societies, Migration, and the Law. The ‘Others’ amongst ‘Us’ (CUP 2020). [↑](#footnote-ref-12)
13. See P. Mathew, *Killing asylum softly or leaving no one behind? The New York declaration and global compacts in a divided world*, Globalizations, 1-15 (2021). And E. Tsourdi and C. Costello, *The Evolution of EU Law on Refugees and Asylum*, in The Evolution of EU Law, P. Craig and G. de Búrca (eds.), 793-823 (OUP 2021). These trends include containment, externalization, and further institutionalization of asylum in the EU (e.g. FRONTEX enlargement, establishment of EUAA). At the same time the EU and its member-states (MSs) remain committed to human rights and refugee law which underpin EU asylum legislation which creates tensions. [↑](#footnote-ref-13)
14. E. Achiume, T. Gammeltoft-Hansen and T. Spijkerboer, *Introduction to the Symposium on COVID-19, Global Mobility and International Law*, 14 AJIL Unbound, 312-316, at. 312 (2020). [↑](#footnote-ref-14)
15. M. Jesse, *The Immigrant as the “Other”*, in M. Jesse (Ed.) European Societies, Migration, and the Law. The ‘Others’ amongst ‘Us’, 19-42, at. 20 (CUP 2020). [↑](#footnote-ref-15)
16. M. Jesse, *The Immigrant as the “Other”*, in M. Jesse (Ed.) European Societies, Migration, and the Law. The ‘Others’ amongst ‘Us’, 19-42, at 25 (CUP 2020). Here, as Thym rightly points out, the relationship of domination is further complicated by the emergence of the figure of the “denizen” who is a foreigner with (granted) more rights than newcomers: “Most legal residence statuses set into motion a pre-defined pathway to long-term residence and naturalization in law and practice.” in D. Thym, *Deciphering the Role of (Migration) Law in the Social Construction of ‘Otherness’*, in M. Jesse (Ed.) European Societies, Migration, and the Law. The ‘Others’ amongst ‘Us’, 323-355, at 343 (CUP 2020). While this is an important remark, it remains an issue of empirical assessment. Furthermore, while the denizen has been given access to (some) rights, that does not mean that she is freed from an expectation to fit the image of a “deserving” “other”. [↑](#footnote-ref-16)
17. See the examples of Belgium, Germany and the UK in M. Jesse, *The Civic Citizens of Europe*, Brill, 2017. [↑](#footnote-ref-17)
18. D. Thym, *Deciphering the Role of (Migration) Law in the Social Construction of ‘Otherness’*, in M. Jesse (Ed.) European Societies, Migration, and the Law. The ‘Others’ amongst ‘Us’, 323-355, at 323 (CUP 2020): “Migration is a perfect example to demonstrate how far the law embodies normative ideas and reproduces power relations.” On laws as embodiment of predominant values, see C. Dauvergne, *The New Politics of Immigration and the End of Settler Societies*, CUP, at 19, 2018. For a concrete example, see also E. Bratanova van Harten*, Integration Impossible? Ethnic Nationalism and Refugee Integration in Bulgaria,* in M. Jesse, European Societies, Migration and the Law: The ‘Others’ amongst ‘Us’*,* in M. Jesse (ed.), CUP, 230-246, 2020. [↑](#footnote-ref-18)
19. As explained by Thym, Critical Legal Studies originated in the US and later was later adopted in EU studies; see S. Rodin and T. Perišin, *The European Critical Legal Studies Perspective*, in S. Rodin and T. Perišin (eds.), The Transformation or Reconstitution of Europe, Bloomsbury Hart Publishing, 3-16, 2018; and R. Cryer, T. Hervey and B. Sokhi-Bulley, *Research Methodologies in EU and International Law,* Hart Publishing, 59-72, 2011. [↑](#footnote-ref-19)
20. For an excellent overview of the racialized character of migration, mobility and asylum law as part of the critical legal studies, see E. Achiume, *Racial Borders*, forthcoming in Georgetown Law Journal, 1-48, at 8 (2022). Achiume locates her work more specifically in the tradition of TWAIL studies which study the ways in which European colonialism has shaped international law. E.g. see J. Gathii, *TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography*, Trade Law and Development, 26(3), (2011). [↑](#footnote-ref-20)
21. E. Achiume, *Racial Borders*, forthcoming in Georegtown Law Journal, 1-48, at 13 (2022). [↑](#footnote-ref-21)
22. D. Thym, *Deciphering the Role of (Migration) Law in the Social Construction of ‘Otherness’*, in M. Jesse (Ed.) European Societies, Migration, and the Law. The ‘Others’ amongst ‘Us’, 323-355, at 347 (CUP 2020). [↑](#footnote-ref-22)
23. E. Achiume, *Racial Borders*, forthcoming in Georgetown Law Journal, 1-48, at 11-2 (2022). [↑](#footnote-ref-23)
24. A recent example is the reception and treatment of Ukrainian refugees compared to non-Ukrainian citizens fleeing Ukraine, which some experts have defined as discriminatory. E.g. see J. Prantl, Generous, but Equal Treatment? Anti-discrimination Duties of States Hosting Refugees Fleeing Ukraine, EJIL talk (2022), <https://www.ejiltalk.org/generous-but-equal-treatment-anti-discrimination-duties-of-states-hosting-refugees-fleeing-ukraine/>; or [K. Babická](https://opiniojuris.org/author/karolina-babicka/), Temporary Protection: Poland and Hungary Once Again Creating Their Own Rules in Breach of EU Law, Opinio Juris (2022), <https://opiniojuris.org/2022/04/11/temporary-protection-poland-and-hungary-once-again-creating-their-own-rules-in-breach-of-eu-law/> (last visited on 12 May 2022). [↑](#footnote-ref-24)
25. E. Achiume, *Racial Borders*, forthcoming in Georgetown Law Journal, 1-48, at 9 (2022). “Informal empire [is] an economic project—namely, the expansion of European capitalism and its projection of commercial and investment interests across the globe—whereas colonialism entailed formal empire as a territorial enterprise often fused with the economic ambitions of informal empire.” [↑](#footnote-ref-25)
26. E. Achiume, *Racial Borders*, forthcoming in Georgetown Law Journal, 1-48, at 24 (2022). [↑](#footnote-ref-26)
27. T. Spijkerboer, *The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control*, European Journal of Migration and Law 20, 452-469, at. 457 (2018). He suggests that law can have both an inclusive and exclusive function when it comes to the mobility of those who are desired, and those who are not. [↑](#footnote-ref-27)
28. See Art. 2 of the Treaty Establishing the European Coal and Steel Community, 18 April 1951: “The European Coal and Steel Community shall have as its task to contribute, in harmony with the general economy of the Member States and through the establishment of a common market […], to economic expansion, growth of employment and a rising standard of living in the Member States.” [↑](#footnote-ref-28)
29. In support of this, see M. Jesse, *The Immigrant as the “Other”*, in M. Jesse (Ed.) European Societies, Migration, and the Law. The ‘Others’ amongst ‘Us’, 19-42, at 39 (CUP 2020): “There is a ‘global hierarchy of citizenship’ and wealth in which persons from rich countries or of wealth usually ﬁnd it much easier to migrate and settle in all parts of the globe while poor people usually ﬁnd doors shut.” [↑](#footnote-ref-29)
30. E. Achiume, *Racial Borders*, forthcoming in Georgetown Law Journal, 1-48, at 47 (2022). [↑](#footnote-ref-30)
31. E. Achiume, *Racial Borders*, forthcoming in Georgetown Law Journal, 1-48, at 47 (2022). See also Thym who reminds that “othering” does not necessarily need to be exclusive and may have some positive effects depending on the case, and I would add on the interests in question. D. Thym, *Deciphering the Role of (Migration) Law in the Social Construction of ‘Otherness’*, in M. Jesse (Ed.) European Societies, Migration, and the Law. The ‘Others’ amongst ‘Us’, 323-355, at 338 (CUP 2020). [↑](#footnote-ref-31)
32. D. Thym, *Deciphering the Role of (Migration) Law in the Social Construction of ‘Otherness’*, in M. Jesse (Ed.) European Societies, Migration, and the Law. The ‘Others’ amongst ‘Us’, 323-355, at 325 (CUP 2020), who acknowledges the strengths of critical legal research. [↑](#footnote-ref-32)
33. I refer to a contextualist (also explanatory) approach as one possible interpretative approach alongside prescriptive and comprehensive approaches in political science, following Bell. The contextualist approach holds an explanatory power which takes into account historical and political contingencies. Prescriptive approaches define the boundaries of a phenomenon (possibly in a normative fashion) to include or exclude certain phenomena as falling within a certain category. Comprehensive approaches account for the empirical usage of a term. D. Bell, *What is Liberalism?*, Political Theory, 42(6), 682-715, at 685-6 (2014). [↑](#footnote-ref-33)
34. UNGA, 71st Session, New York Declaration for Refugees and Migrants, A/RES/71/1, paras. 77-78, (2016). [↑](#footnote-ref-34)
35. As stipulated in the Declaration, Annex I contains a comprehensive refugee response framework and outlines steps towards the achievement of a global compact on refugees in 2018, based on an evaluation of the framework. See UNGA, 71st Session, New York Declaration for Refugees and Migrants, A/RES/71/1, para. 21 and para. 19 of Annex 1, (2016). [↑](#footnote-ref-35)
36. UNGA, 71st Session, New York Declaration for Refugees and Migrants, A/RES/71/1, para. 14 a and c, Annex 1, (2016). [↑](#footnote-ref-36)
37. UNHCR, UNHCR Resettlement Handbook, at 4 (2011). Regardless of the partnerships involved, resettlement remains a UNHCR-driven process. [↑](#footnote-ref-37)
38. M. Gottwald, *Back to the Future: the Concept of “Comprehensive Solutions”*, Refugee Survey Quarterly, 31(3), 101-136, (2012). See also para. 65 of the Global Compact on Refugees. [↑](#footnote-ref-38)
39. UNHCR, The Three-Year Strategy (2019-2021) on Resettlement and Complementary Pathways (2019). [↑](#footnote-ref-39)
40. UNHCR, Complementary Pathways for Admission of Refugees to Third Countries. Key Considerations (2019). [↑](#footnote-ref-40)
41. UNHCR, Complementary Pathways for Admission of Refugees to Third Countries. Key Considerations, at 5 (2019). [↑](#footnote-ref-41)
42. UNHCR, Complementary Pathways for Admission of Refugees to Third Countries. Key Considerations, at 5, 7 (2019). [↑](#footnote-ref-42)
43. UNHCR, Complementary Pathways for Admission of Refugees to Third Countries. Key Considerations, at 5 (2019). [↑](#footnote-ref-43)
44. UNHCR, Complementary Pathways for Admission of Refugees to Third Countries. Key Considerations, at 12-4 (2019). Other considerations include prevention of statelessness, confidentiality and data protection, involvement of refugees and cooperation with UNHCR. [↑](#footnote-ref-44)
45. N. Maple, S. Reardon-Smith and R. Black, *Immobility and the Containment of Solutions: Reflections on the Global Compacts, Mixed Migration and the Transformation of Protection*, Interventions, 23(2), 326-347 (2021). [↑](#footnote-ref-45)
46. 86% of displaced persons are hosted in developing countries. UNHCR Global Trends Forced Displacement in 2020, <https://www.unhcr.org/flagship-reports/globaltrends/> (last visited on 14 May 2022). [↑](#footnote-ref-46)
47. N. Maple, S. Reardon-Smith and R. Black, *Immobility and the Containment of Solutions: Reflections on the Global Compacts, Mixed Migration and the Transformation of Protection*, Interventions, 23(2), 326-347 (2021). [↑](#footnote-ref-47)
48. The other objectives are ease pressures on host countries; enhance refugee self-reliance; and support conditions in countries of origin for return in safety and dignity. UNGA, 73rd Session, Global Compact on Refugees, A/73/12 (Part II), para. 7 (2018). Traditionally, the number of resettled refugees is low compared to other durable solutions such as voluntary repatriation and local integration, as per UNHCR terminology. In 2020 only 34 400 refugees were resettled out of a 1.4 mln refugees estimated to be in need of resettlement. See UNHCR Global Trends Forced Displacement in 2020, <https://www.unhcr.org/flagship-reports/globaltrends/> (last visited on 14 May 2022). Data on refugees benefiting from complementary pathways is even more scarce, but according to OECD methodology, the ratio between those resettled and those using complementary pathways is 1:2.5. UNHCR/OECD, Safe Pathways for Refugees. OECD-UNHCR Study on Third Country Solutions for Refugees: Family Reunification, Study Programmes and Labour Mobility, at 7 (2018). [↑](#footnote-ref-48)
49. An analysis of the type of pledges made by 31.01.2022 shows that most of the pledges fall under the Law and Policy category (54%), followed by Material and/or Technical Support (37%), whereas only 25% of the pledges involve financial support, and the lowest share of them, only 9%, include resettlement and complementary pathways. The rest falls under the category “other” (26%) (the total exceeds 100% as some pledges involve more than one type of pledge). UNHCR, Pledges and Contributions Dashboard, <https://globalcompactrefugees.org/channel/pledges-contributions> (last visited on 15 May 2022). [↑](#footnote-ref-49)
50. “Without affecting humanitarian assistance, development actors will work in a complementary manner to humanitarian assistance interventions to ensure that the impact of a large refugee situation on a host country is taken into account in the planning and implementation of development programmes and policies” that are consistent with the 2030 Agenda for Sustainable Development. UNGA, 73rd Session, Global Compact on Refugees, A/73/12 (Part II), para. 65 (2018). [↑](#footnote-ref-50)
51. J. Van Selm, *Complementary Pathways to Protection: Promoting the Integration and Inclusion of Refugees in Europe?*, ANNALS, AAPSS, 690136-152 (2020). [↑](#footnote-ref-51)
52. UNGA, 56th session, A/AC.96/1021, Conclusion on Local Integration No. 104 (LVI), 2005. See also UNGA, 48th session, 12/A (A/52/12/Add.1), Conclusion on International Protection No. 81 (XLVIII), 1997. [↑](#footnote-ref-52)
53. Provisional Arrangement concerning the Status of Refugees coming from Germany, 3952 LNTS 77, done July 4, 1936 (1936 Refugee Convention); Convention concerning the Status of Refugees coming from Germany, 4461 LNTS 61, done Feb. 10, 1938 (1938 Refugee Convention). See also J. Hathaway, *The Evolution of Refugee Status in International Law 1920–1950*, International and Comparative Law Quarterly 33, 348-80 (1984). [↑](#footnote-ref-53)
54. J. Hathaway, The Rights of Refugees under International Law, at 964 (CUP 2005). [↑](#footnote-ref-54)
55. “Similarly, developing countries have become increasingly reluctant to support local integration.” M. Gottwald, *Back to the Future: the Concept of “Comprehensive Solutions”*, Refugee Survey Quarterly, 31(3), 101-136, at 102 (2012) (references omitted). [↑](#footnote-ref-55)
56. M. Gottwald, *Back to the Future: the Concept of “Comprehensive Solutions”*, Refugee Survey Quarterly, 31(3), 101-136, at 102 (2012) (references omitted). [↑](#footnote-ref-56)
57. UNGA, 45th session, A/AC.96/830, Note on International Protection, 1994. If voluntary repatriation is the “preferred solution”, an engagement with the country of origin, internally displaced persons and host communities is necessary. This engagement also becomes a prevention tool for future refugee flows (see para. 58). [↑](#footnote-ref-57)
58. See UNGA, Agenda for Protection, A/AC.96/965/Add.1, para 12 (2004). [↑](#footnote-ref-58)
59. UNHCR, UNHCR Resettlement Handbook, at 30 (2004). The same wording is retained in the second edition of the Resettlement Handbook of 2011. [↑](#footnote-ref-59)
60. UNGA, 45th session, A/AC.96/830, Note on International Protection, para. 58, 1994. Arguably voluntary repatriation is the preferred solution both by refugees themselves and by host and third countries. In the first half of 2021 an estimated 126 700 refugees returned voluntarily to their countries of origin against 16 300 resettled and 20 100 naturalised refugees. UNHCR, UNHCR Mid-year Trends 2021, at 17-8. [↑](#footnote-ref-60)
61. Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), OJ EU C 326/47, Art. 78(1). [↑](#footnote-ref-61)
62. UNGA, 73rd Session, Global Compact on Refugees, A/73/12 (Part II), para. 5 (2018). [↑](#footnote-ref-62)
63. See E. Guild, K. Allinson and N. Busuttil, *The UN Global Compacts and the Common European Asylum System: Coherence or Friction?*, Laws, 11(35), at 4 (2022). The paper makes the case that the guiding principles of the Global Compacts, namely human rights and the rule of law, non-discrimination and non-regression all have their place in EU law, however, the principle of non-discrimination being better protected in the Global Compacts. [↑](#footnote-ref-63)
64. EU Pact on Migration and Asylum, 2020, <https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en> (last visited on 17.05.2022). [↑](#footnote-ref-64)
65. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13. [↑](#footnote-ref-65)
66. The Recommendation refers to the Global Compact once in the text which shows the influence of the Compact in shaping the EU policies in the area of asylum. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13, rec. 6. [↑](#footnote-ref-66)
67. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13, rec. 1-2. [↑](#footnote-ref-67)
68. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13, rec. 4. [↑](#footnote-ref-68)
69. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13, rec. 1. See also Commission Recommendation EU 2017/1803 of 3 October 2017 on Enhancing Legal Pathways for Persons in Need of International Protection, OJ EU L 259/21. [↑](#footnote-ref-69)
70. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13, rec. 3. [↑](#footnote-ref-70)
71. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13, rec. 4. [↑](#footnote-ref-71)
72. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13, item 13. [↑](#footnote-ref-72)
73. Proposal for a Regulation of the European Parliament and of the Council Establishing a Union Resettlement Framework and Amending Regulation No. 516/2014 of the European Parliament and the Council, COM(2016) 468 final, 2016/0225(COD). [↑](#footnote-ref-73)
74. See CJEU (GC), C-638/16 PPU, *X and X* v *État belge*, 7 March 2017. If the jurisdictional threshold were overcome, then Charter of Fundamental Rights of the EU would apply, more specifically its articles 2, 3 and 14, engaging the responsibilities of states in the case of people fleeing conflict and applying for a humanitarian visa at an embassy abroad. Such scenarios may very well explain part of the reluctance of EU MSs to adopt such an instrument. For a commentary on the case see L. Leboeuf and M. Foblets, *Introduction: Humanitarian Admission to Europe. From Policy Developments to Legal Controversies and Litigation*, in Humanitarian Admission to Europe. The Law between Promises and Constraints, M. Foblets and L. Leboeuf (eds.), 11-45 (Hart Publishing 2020). [↑](#footnote-ref-74)
75. Proposal for a Regulation of the European Parliament and of the Council Establishing a Union Resettlement Framework and Amending Regulation No. 516/2014 of the European Parliament and the Council, COM(2016) 468 final, 2016/0225(COD), at 19. However, it introduces a mechanism for redistribution of resettled persons to the different MSs: “The Council is authorised to establish through an implementing act on a proposal of the Commission an annual Union resettlement plan for the following year which determines the maximum total number of persons to be resettled and the number of persons each Member States is to resettle within this total.” *Ibid.*, at 14. [↑](#footnote-ref-75)
76. A European Agenda on Migration, COM(2015) 240 final, 13.5.2015, at 4. The main pillars to manage migration better include reducing the incentives for irregular migration with a focus on external cooperation and partnership and development projects, return, securing external borders, a strong common asylum policy and a new policy on legal migration. Out of these, only the latter may qualify as a providing safe and legal ways to the EU, serving to legitmise the securitisation approach, rather than to counterbalance it. [↑](#footnote-ref-76)
77. Proposal for a Regulation of the European Parliament and of the Council Establishing a Union Resettlement Framework and Amending Regulation No. 516/2014 of the European Parliament and the Council, COM(2016) 468 final, 2016/0225(COD), at 3. [↑](#footnote-ref-77)
78. Proposal for a Regulation of the European Parliament and of the Council Establishing a Union Resettlement Framework and Amending Regulation No. 516/2014 of the European Parliament and the Council, COM(2016) 468 final, 2016/0225(COD), at 13. [↑](#footnote-ref-78)
79. Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), OJ EU C 326/47, Art. 78(2)g, pertaining to the establishment of “partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection”. [↑](#footnote-ref-79)
80. UNHCR, UNHCR Resettlement Handbook, at 88-9 (2011). For the purposes of resettlement UNHCR uses a broader refugee definition to include the presence of “a serious threat to the applicant’s life, and physical integrity or freedom”. [↑](#footnote-ref-80)
81. F. Gatta, *Legal Avenues to Access International Protection in the European Union: Past Actions and Future Perspectives*, European Journal of Human Rights, 3, 163-201, at 183-4 (2018). Some examples of criticism include: Amnesty International, European Institutions Office, The proposed EU resettlement framework, Position Paper, 15 December 2016; ECRE, Untying the EU resettlement framework, ECRE’s recommendations on breaking the link with migration control and preserving the humanitarian focus of resettlement, see also the Joint Comments Paper on the EU resettlement scheme by Caritas Europa, Churches’ Commission for Migrants in Europe (CCME), European Council for Refugees and Exiles (ECRE), International Catholic Migration Commission (ICMC Europe), International Rescue Committee (IRC), Red Cross EU Office, Brussels, 14 November 2016. [↑](#footnote-ref-81)
82. Informal communication with scholars during various workshops held in 2021 and 2022. [↑](#footnote-ref-82)
83. P. Mathew, *Killing asylum softly or leaving no one behind? The New York declaration and global compacts in a divided world*, Globalizations, 1-15 (2021). [↑](#footnote-ref-83)
84. E. Tsourdi and C. Costello, *The Evolution of EU Law on Refugees and Asylum*, in The Evolution of EU Law, P. Craig and G. de Búrca (eds.), 793-823 (OUP 2021). [↑](#footnote-ref-84)
85. E. Tsourdi and C. Costello, *The Evolution of EU Law on Refugees and Asylum*, in The Evolution of EU Law, P. Craig and G. de Búrca (eds.), at 796. [↑](#footnote-ref-85)
86. E. Tsourdi and C. Costello, *The Evolution of EU Law on Refugees and Asylum*, in The Evolution of EU Law, P. Craig and G. de Búrca (eds.), at 794-5. Containment is not a phenomenon reserved for the EU, rather it is a regular practice of developed countries such as the US and Australia, characteristic of the North-South divide. See e.g. D. Scott Fitzgerald*, Refuge beyond Reach: How Rich Democracies Repel Asylum Seekers* (OUP 2019); D. Ghezelbash, V. Moreno- Lax, N. Klein, and B. Openskin, Securitization of Search and Rescue at Sea: The Response to Boat Migration in the Mediterranean and Offshore Australia, ICLQ 67, 315-351 (2018). [↑](#footnote-ref-86)
87. Asylum-seekers are normally not granted visas as they cannot pass the “risk of overstaying” test which is a ground for rejection. E. Tsourdi and C. Costello, *The Evolution of EU Law on Refugees and Asylum*, in The Evolution of EU Law, P. Craig and G. de Búrca (eds.), at 795. [↑](#footnote-ref-87)
88. The Schengen Agreement was signed in 1985 and entered into force in 1993 ratified by 7 EU countries. It introduced the abolitions of checks within the Schengen area and shifted the focus on security to the external borders. European Union, *Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders ("Schengen Implementation Agreement")*, 19 June 1990. Another example of the same trend are three resolutions on ‘safe third countries’, ‘safe countries of origin’, and ‘manifestly unfounded applications’. E. Tsourdi and C. Costello, *The Evolution of EU Law on Refugees and Asylum*, in The Evolution of EU Law, P. Craig and G. de Búrca (eds.), at 796. [↑](#footnote-ref-88)
89. European Union, *Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities ("Dublin Convention")*, 15 June 1990, Official Journal C 254, 19/08/1997 p. 0001 – 0012. It was superseded by Council Regulation (EC) No [343/2003](https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32003R0343) of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, and later by Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) which is still in force. [↑](#footnote-ref-89)
90. EU-Turkey statement, SN 38/16, 18 March 2016. For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU. [↑](#footnote-ref-90)
91. J. Santos Vara, *Soft international agreements on migration cooperation with third countries: a challenge to democratic and judicial controls in the EU*, in S. Carrera, J. Santos Vara and T. Strik (eds.), Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis: Legality, Rule of Law and Fundamental Rights Reconsidered, 21-38 (Edward Elgar Publishing Limited 2019). [↑](#footnote-ref-91)
92. EU Observer, Revealed: EU Migration Plans for Morocco, Libya and Others, available at: <https://euobserver.com/migration/153360>. [↑](#footnote-ref-92)
93. UN High Commissioner for Refugees (UNHCR), *UNHCR Observations on the Proposal for amendments to the Danish Alien Act (Introduction of the possibility to transfer asylum-seekers for adjudication of asylum claims and accommodation in third countries)* (2021). [↑](#footnote-ref-93)
94. UNHCR, UNHCR Warns against “Exporting” Asylum, Calls for Responsibility Sharing for Refugees, not Burden Shifting, <https://www.unhcr.org/en-us/news/press/2021/5/60a2751813/unhcr-warns-against-exporting-asylum-calls-responsibility-sharing-refugees.htm> (last accessed on 17 May 2022). [↑](#footnote-ref-94)
95. Tampere European Council, Presidency Conclusions, 15 and 16 October 1999, <https://www.europarl.europa.eu/summits/tam_en.htm> [↑](#footnote-ref-95)
96. Communication from the Commission to the Council and the European Parliament on the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin. “Improving Access to Durable Solutions”, COM(2004) 410 final of 4.06.2004. [↑](#footnote-ref-96)
97. Communication from the Commission to the Council and the European Parliament on the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin. “Improving Access to Durable Solutions”, COM(2004) 410 final of 4.06.2004, at 3. [↑](#footnote-ref-97)
98. “these arrangements would focus on improving the response of third countries and countries of transit to mixed migratory flows, as well as at combating illegal immigration and organised crime. Support could also be given to encourage the return of migrants.” (item 51) [↑](#footnote-ref-98)
99. “return could be aimed at the third country’s own nationals, as well as other third country nationals for whom the third country has been or could have been a country of first asylum, if this country offers effective protection.” (item 51) [↑](#footnote-ref-99)
100. Communication from the Commission to the European Parliament and the Council on the Establishment of a Joint EU Resettlement Programme, COM(2009) 447 final of 2.9.2009. [↑](#footnote-ref-100)
101. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, The Global Approach to Migration and Mobility, COM(2011) 743 final of 18.11.2011. It builds on the Global Approach to Migration adopted in 2005, European Commission, Global Approach to Migration, 5.12.2007, MEMO/07/549. [↑](#footnote-ref-101)
102. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, The Global Approach to Migration and Mobility, COM(2011) 743 final of 18.11.2011, at 5. [↑](#footnote-ref-102)
103. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, The Global Approach to Migration and Mobility, COM(2011) 743 final of 18.11.2011, at 7. [↑](#footnote-ref-103)
104. UNHCR/OECD, Safe Pathways for Refugees. OECD-UNHCR Study on Third Country Solutions for Refugees: Family Reunification, Study Programmes and Labour Mobility (2018). [↑](#footnote-ref-104)
105. UNHCR Global Trends Forced Displacement in 2020, <https://www.unhcr.org/flagship-reports/globaltrends/> (last visited on 17.05.2022). [↑](#footnote-ref-105)
106. UNHCR/OECD, Safe Pathways for Refugees II. OECD-UNHCR Study on Third Country Solutions for Refugees: Family Reunification, Study Programmes and Labour Mobility, at 10 (2021). “[T]he data presented and analysed cover the nationals of the Syrian Arab Republic, Eritrea, Iraq, Afghanistan and Somalia, with the addition of nationals of Venezuela and Iran, entering OECD countries and Brazil with regular visas or stay permits that may be related to complementary pathways for admission to third countries.” Therefore, the data is a rough approximation. [↑](#footnote-ref-106)
107. Communication from the Commission, COVID-19 Guidance on the Implementation of Relevant EU Provisions in the Area of Asylum and Return Procedures and on Resettlement, 2020/C 126/02, OJ EU C 126/12. [↑](#footnote-ref-107)
108. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13, rec. 6. [↑](#footnote-ref-108)
109. In Europe, these are the traditional resettlement countries: Sweden, France, Norway, Germany, the UK, Finland, Switzerland, the Netherlands, Italy, Belgium. Other countries either suspended resettlement, or limited the numbers. UNHCR, Regional Bureau for Europe, January-December 2020, Europe Resettlement. <https://reliefweb.int/report/world/europe-resettlement-regional-bureau-europe-january-december-2020> (last accessed on 17.05.2022). [↑](#footnote-ref-109)
110. Commission Recommendation EU 2020/1364 of 23 September 2020 on Legal Pathways to Protection in the EU: Promoting Resettlement, Humanitarian Admission and Other Complementary Pathways, OJ EU L 317/13, rec. 8, 9 and 11. Conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015 and Commission Recommendation (EU) 2017/1803 of 3 October 2017 on enhancing legal pathways for persons in need of international protection (OJ L 259, 7.10.2017, p. 21). The EU also deems the resettlement which takes place under the EU-Turkey Statement a success. [↑](#footnote-ref-110)
111. N. Hashimoto, *Are New Pathways of Admitting Refugees Truly ‘Humanitarian’ and ‘Complementary’?*, Journal of Human Security Studies, 10(2), 15-31, at 18-9 (2021). [↑](#footnote-ref-111)
112. N. Hashimoto, *Are New Pathways of Admitting Refugees Truly ‘Humanitarian’ and ‘Complementary’?*, Journal of Human Security Studies, 10(2), 15-31, at 22, 26 (2021). [↑](#footnote-ref-112)