

## Part 4: Outcomes and outlook

This book has engaged in a normative analysis and assessment of safe pathways to protection in the context of EU law. The assessment challenges the assumption that safe pathways are *per se* a solution to the asylum paradox – that is, the paradoxical interplay between the territorial concept of asylum and the prevention of access to territory through border and migration control.

This last part has two objectives. The first is to provide an overview of the findings. To this end, Chapter 16 revisits the main findings of the assessment and answers the research questions, while Chapter 17 provides a list of key findings. The second objective consists of providing an outlook and thereby pointing to areas for further research in Chapter 18.

### *16 Summary of findings*

This chapter provides a summary of the findings with a view to the research questions set out in Part 1 (Chapter 2). Against the backdrop of the asylum paradox (see Chapter 1), the two main research questions were:

1. What are the normative principles underlying the asylum paradox?
2. What are the normative effects of safe pathways to protection on these principles, and therewith on the asylum paradox?

In essence, Part 2 of this book answered the first research question by reconstructing the principles underlying the asylum paradox and confirming the hypothesis that the paradox reflects an imbalance of responsibility principles. The analysis in Part 3 answered the second research question and confirms the hypothesis that the *normative* effect of safe pathways on the asylum paradox varies depending on the outline of the pathway and the details of implementation. Overall, the book identifies fundamental normative differences between the pathways regarding their potential to mitigate or even overcome the imbalance of responsibility principles manifested in the asylum paradox.

While Chapter 17 provides a list of the key findings, the following sections provide summaries of the findings of each chapter, structured accord-

ing to the three preceding parts: the asylum paradox as point of departure (16.1), the responsibility framework as theoretical foundation (16.2) and the analysis and assessment of safe pathways (16.3).

## 16.1 Point of departure: the asylum paradox and established definitions

Part 1 set the scene by describing the asylum paradox (Chapter 1). The asylum paradox can be identified in the laws governing international protection, which provide a ‘right to leave any country’, a ‘right to seek asylum’ and protection statuses with individual rights and guarantees. At the same time, the law is silent in view of an ‘entry right’ to seek protection in a specific State. The asylum paradox can further be identified in State practice. On the one hand, EU Member States grant protection to a protection seeker who has managed to reach EU territory (and meets protection grounds). On the other hand, these same States prevent access to territory, thereby increasingly extraterritorialising their (legal) borders. Against this backdrop, Chapter 2 outlined two main research questions: what are the normative principles underlying the asylum paradox, and what effects can safe pathways have on these principles, and therefore on the asylum paradox?

Chapter 3 pointed to relevant definitions and delimitations in its outline of the scope of the book. In particular, it defined ‘protection seekers’ as third country nationals in need of or seeking any kind of human rights protection. Thus, the term ‘protection seeker’ is broader than the legal term ‘refugee’ or the term ‘asylum seeker’. ‘Safe pathways to protection’ are visa procedures granting safe and regulated access to State territory to individuals in need of protection, based on an individual protection claim or on quota-based admission programs, with the ultimate objective of providing a protection status after arrival. Finally, it defined the ‘State’ as a territorial polity with the delegated power to grant access to protection in a designated (supra-)national space.

Chapter 4 sketched the structure and the methodological approach of the book, which served as the basis for a more comprehensive elaboration of the methodology in Chapter 6.

Chapter 5 outlined the legal context and state of research the book builds upon, drawing two main conclusions: first, that the scholarly focus lies on access *prevention*; and, second, that the asylum paradox is primarily discussed as a tension between the territorial principle of sovereignty and the

universal principle of human rights protection. As will be further outlined in the following, this book chooses a different approach.

## 16.2 Theoretical foundation: the responsibility triad as basis of a responsibility framework

Part 2 of this book concluded that the asylum paradox reflects not merely a tension, but rather an *imbalance* of responsibility principles (see Chapter 10). To come to this conclusion, Part 2 reconstructed the asylum paradox according to three principles of responsibility – the *internal*, the *external* and the *inter-State responsibility* (Chapters 7 to 9). This triad of responsibility principles was derived from sovereignty, human rights and solidarity as structural principles of the legal regime governing access to territory and protection in the EU.

Chapter 7 discussed the *internal responsibility* of States for protecting the rights of everyone part of their ‘internal community’. This principle was derived from sovereignty as structural principle in the legal context of access to territory. Chapter 7 defined the ‘internal community’ as a term capturing everyone who has a pre-existing legal bond to a State based on citizenship, denizenship, any other kind of residence status, or mere legal presence in a State’s territory. The responsibility is referred to as *internal* and not *territorial* as its point of reference is the normative relationship between the State and everyone belonging to the ‘internal community’. Therefore, the *internal* responsibility captures the notion of the ‘shifting border’. In contrast to the principle of sovereignty, the principle of internal responsibility is not self-evident. It reflects the responsibility for the protection of the rights and interests of a community. On the one hand, the principle of internal responsibility allows for a collective perspective on measures of migration and border control; on the other hand, it can add transparency to the legal discourse by capturing a purpose.

Chapter 8 concerned the *external responsibility* States have for the protection of individuals not yet part of their ‘internal community’. The chapter started with a discussion of human rights as structural principles of the legal order on access to protection. As with internal responsibility, external responsibility varies depending on the circumstances of the individual case and the geographical context. The point of reference is the normative relationship between a State and a protection seeker not (yet) part of its internal community. Chapter 8 compared the international protection regime

to the civil law concept of joint and several liability. Thus, the commitment to human rights and refugee protection can be compared to the 'debt' owed collectively to protection seekers by all State Parties to respective human rights treaties.

Finally, Chapter 9 concerned the inter-State responsibility, which governs the relationship of States towards each other, based on solidarity and responsibility-sharing. The focus of this chapter was on a discussion of proposals addressing the main shortcoming of the current system governing the inter-State responsibility: the lack of fair and effective responsibility-sharing mechanisms. Chapter 9 discussed three approaches to responsibility-sharing, which set the course for the assessment: 'common responsibility', 'common but differentiated responsibility' and 'emergency solidarity'.

Based on the responsibility triad, Chapter 10 outlined a normative field to structure the analysis and assessment of safe pathways: a responsibility framework. The responsibility framework functions at a meta-level, based on an understanding of responsibility as a *principle*, in contrast to 'obligations' or 'duties' as *legal imperatives* enshrined in positive law, or 'accountability' as the *attribution* of responsibilities to a specific State. Chapter 10 concluded that the current legal framework governing access to protection in the EU has a predominant focus on States' internal responsibility for their 'internal community', creating an imbalance in relation to the external responsibility and the inter-State responsibility. The result of this imbalance is the asylum paradox.

Finally, Chapter 10 outlined the three functions of the responsibility framework. First, it functions as analytical tool, allowing the different elements of implementation of safe pathways to be structured according to the responsibility principles. Second, it serves as a heuristic, which can reveal and predict tensions and trade-offs, depending on the outline and implementation. Finally, the framework has a normative function regarding the evaluation of the potential effects safe pathways can have on the asylum paradox. The analytical function allowed for outlining aspects of implementation of safe pathways that would correspond more with one principle or the other. The heuristic function allowed for predictions of tensions and trade-offs potentially arising due to a focus on one principle or the other. The normative function allowed for delimiting three key considerations to guide the assessment of safe pathways with respect to its potential effect on the asylum paradox: aspects of implementation pointing to a primary focus on migration control, leading to (direct or indirect) deterrent effects; aspects promoting the consideration of individual rights

in the extraterritorial context; and aspects providing alternatives to the current allocation of responsibility at international level, against the backdrop of the three approaches to responsibility-sharing: ‘common responsibility’, ‘common but differentiated responsibility’, and ‘emergency solidarity’.

### 16.3 Analysis and assessment of safe pathways to protection

Part 3 engaged in an analysis of safe pathways to protection, with the aim of assessing the normative effects safe pathways to protection can have on the asylum paradox. Thus, Part 3 relied on the responsibility framework to structure the analysis of the following safe pathways to protection: asylum visas, resettlement, *ad hoc* humanitarian admission schemes and sponsorship schemes. At first sight, safe pathways seem to target the heart of the access dilemma, having great potential to counter the imbalance manifested in the asylum paradox. Safe pathways offer access to territory and protection, expressing a commitment to the principle of external responsibility. At the same time, they accommodate the principle of internal responsibility by allowing States to control entry to their territories, apply security screenings and prepare administrative structures for the arrival of protection seekers. At international level, safe pathways can work as instruments of solidarity and responsibility-sharing, in line with the principle of inter-State responsibility.

However, the assessment in Part 3 confirmed the hypothesis that the impact of safe pathways on the asylum paradox depends on the pathway and the details of its implementation. Chapter 15 concluded that there are fundamental normative differences between the asylum visa as individual pathway with procedural rights and guarantees and the other pathways in the assessment. Chapter 15 identified six key issues setting the course for the assessment, as they impact on all three principles of responsibility: the issue of how to facilitate *access to* and *safety during* the procedures (both *de facto* and legally); the difference between permanent and *ad hoc* schemes; the difference between discretionary schemes and procedures based on individual rights; the distinction between access to *territory* and access to *rights*; and, most importantly, the relation of safe pathways to territorial asylum (*additionality*), and the relation of safe pathways to each other (*complementarity*).

### 16.3.1 The asylum visa

Chapter 11 addressed the option of granting an ‘asylum visa’ as an application for a visa to access the national asylum procedure in the EU. While some Member States grant ‘humanitarian visas’ qualifying as ‘asylum visas’ in exceptional cases, there is no permanent asylum visa scheme at national or EU level providing access to an individual procedure. To illustrate the legal situation in the EU, Chapter 11 discussed the decisions of the CJEU (*X and X*) and the ECtHR (*M.N.*) in ‘asylum visa’ cases, setting the *M.N.* case into the context of the *N.D. and N.T.* ruling of the ECtHR. The chapter then referred to a proposal of the European Parliament for a ‘humanitarian’ visa at EU level, granting access to an asylum procedure (discussed as ‘asylum visa’ in this book).

In contrast to all other safe pathways, the asylum visa foresees an individual claim, independent of quotas or sponsors. Based on the relevance attributed to individual access schemes in Chapter 10, this chapter found that legally implementing a permanent asylum visa scheme at EU level would have a significant normative effect on the principle of external responsibility and thus on the imbalance manifested in the asylum paradox: a legally implemented asylum visa scheme would open a safe pathway to protection with individual claims and procedural guarantees, which does not yet exist at EU level.

As the asylum visa is a pathway significantly limiting State discretion, Chapter 11 discussed the ‘floodgate argument’, referring to the fear of an uncontrolled number of protection seekers trying to reach the EU through such a scheme. Chapter 11 argued that apart from a wide range of practical and legal impediments to access visa procedures, not all asylum visa cases would meet the high thresholds of non-refoulement. Thus, the asylum visa would most likely not affect the principle of inter-State responsibility as much as other pathways with a view to its predictability and actual admission numbers. The asylum visa could, however, have a significant *normative* effect on the inter-State responsibility: its implementation would change the current paradigm of an allocation of responsibility on the sole basis of geographical proximity.

### 16.3.2 Resettlement

Chapter 12 addressed resettlement as a quota-based pathway which is on the rise in the EU. The traditional concept of resettlement as a UNHCR co-

ordinated ‘secondary access route’ for protection seekers who have already found primary refuge in a first State of asylum, has a strong focus on protection and international solidarity and thus the potential to enhance the principles of external and inter-State responsibility. However, resettlement is a pathway focusing on the right of States to grant protection, without providing for individual rights and guarantees. Chapter 12 discussed the effect of legal and *de facto* ‘gatekeepers’ in this regard.

Additionally, resettlement can be instrumentalised as a method of migration control, as exemplified by an analysis of the 2016 proposal for a ‘Union Resettlement Framework’. Such an approach to resettlement risks outweighing the positive effects of resettlement on the external and the inter-State responsibility. Chapter 12 discussed the relation of resettlement to territorial asylum as a key issue in terms of the effect of this pathway on the asylum paradox. The chapter argued that if the aim of migration control becomes the defining scope of a pathway, even leading to deterrent effects, the asylum paradox, with the imbalance of responsibility principles at its core, will be exacerbated.

### 16.3.3 *Ad hoc* humanitarian admission

Chapter 13 assessed *ad hoc* humanitarian admission schemes, delimiting these schemes from traditional resettlement on the one hand (see Chapter 12), and schemes with a primary focus on private or community sponsorship on the other (see Chapter 14). This book defines *ad hoc* humanitarian admission schemes as:

Temporary governmental programs committing to an *ad hoc* admission of individuals, families, or groups of people in need of protection due to a specific situation of crisis, independent of their geographical location, often based on fixed quotas, not necessarily depending on private funding.

Chapter 13 identified three main issues: the framing caused by humanitarian admission schemes with a view to ‘good refugees’ and ‘bad asylum seekers’; the correlation of access and rights, as beneficiaries may be granted a weaker status in receiving States than protection seekers who entered irregularly; and, lastly, the wide range of admission criteria, including the ‘close tie’ requirement. Admission requirements can range from specific language skills and professional backgrounds to belonging to a certain gender or religion. ‘Utilitarian’ admission requirements mostly reflect the

urge to consider pre-existing links with the host State. They can therefore be attributed to the aim of safeguarding the internal order of States in line with the principle of internal responsibility. However, in most cases the underlying normative assumptions are questionable: whether a person of a certain cultural or religious background has, for instance, better prospects of integration or cultural acceptance is hypothetical. With a view to the principle of external responsibility, utilitarian admission requirements may cause an issue as soon as the protective scope of the admission is diminished due to the way they are applied or in case of a discriminatory practice.

Finally, Chapter 13 noted that the ‘close tie’ requirements could further be seen as a form of ‘responsibility allocation’, equally affecting the principle of inter-State responsibility. Overall, however, *ad hoc* admission schemes reflect an approach of ‘emergency solidarity’ in contrast to permanent schemes aiming at doing justice to a ‘common but differentiated’ approach to responsibility-sharing. This is not to deny, however, the humanitarian need for these schemes in situations of acute crisis.

#### 16.3.4 Sponsorship schemes

Chapter 14 addressed the last pathway in the focus of this book: the admission through ‘sponsorship schemes’. The term ‘sponsorship schemes’ is an umbrella term which this book uses to address ‘private- or community-based sponsorship’. More specifically, this book defines sponsorship schemes as (*ad hoc* or permanent) humanitarian admission schemes that make the admission of protection seekers dependent on a (mostly) financial commitment from civil society members as ‘sponsors’ in the receiving States. Sponsorship schemes can be set up as individual pathways, or quota-based schemes.

On the one hand, sponsorship schemes can empower civil society members to take an active role in expanding options of safe access to protection. Thus, they rely on a reciprocity between the sponsors and the State: while the commitment of civil society to humanitarian admission might lead to the implementation of safe pathways in the first place, the ‘safety net’ provided by States in case the sponsor fails to comply with the initial commitment might encourage members of civil society to participate in such schemes.

Overall, sponsorship schemes show great potential to strike a balance between the principles of internal and external responsibility. They can empower civil society and enhance the agency of protection seekers. However,

there are two key issues in this regard: the scope of the ‘responsibility transfer’ and the complementarity of sponsorship schemes, as these schemes may address family members of protection seekers abroad. The ‘responsibility transfer’ is thus at the same time the distinguishing and most controversial feature of sponsorship schemes. Drawing on the case of Germany, Chapter 14 discussed how the involvement of private sponsors, who are relatives of protection seekers abroad, can lead to situations of emotional pressure to provide a financial guarantee for an admission. This again, may cause follow-up problems for the sponsors, the protection seekers and the States. Chapter 14 argued that the tensions and trade-offs arising between States and sponsors could be mitigated, e.g. by providing beneficiaries with a protection status adjusted to their needs; avoiding an excessive burden on financial capacities, e.g. by adapting the transfer of responsibility to the sponsors to their financial capacities and the duration of the temporary residence permits granted (‘sharing responsibility, not burdens’); placing the responsibility transfer on a broad public basis; and, most importantly, ensuring complementarity of the schemes, particularly regarding family reunification.

### 17 List of key findings

1. The current state of access to international protection in the legal context of the EU can be framed along the lines of an ‘asylum paradox’: This book describes the paradoxical interplay between the granting of *territorial protection* on the one hand and the *prevention of access to territory* on the other as ‘asylum paradox’ (see Chapter 1). The asylum paradox can be identified in the laws, jurisprudence, and State practice governing access to territory and protection in the EU. To explain this ‘asylum paradox’, legal scholarship mainly draws on the tensions between sovereignty and human rights (see Chapter 5).
2. The asylum paradox is the result of an imbalance of three responsibility principles:  
This book argues that the asylum paradox can be reconstructed according to a triad of responsibility principles: the internal, the external and the inter-State responsibility (see Chapters 7 to 9). It further argues that the asylum paradox is the result of an imbalance of these responsibility principles, due to a predominant focus of States on the principle of internal responsibility (see Chapter 10).

3. The triad of responsibility principles serves as basis for a *responsibility framework*, which can offer a threefold function for the analysis and assessment of safe pathways to protection: an analytical, a heuristic, and a normative function:

First, the responsibility framework has an analytical function, as it allows different elements of safe pathways to be structured according to the triad of responsibility principles. Second, it has a heuristic function, allowing to reveal and predict tensions and trade-offs between the responsibility principles depending on the implementation of a pathway. Finally, it has a normative function as it serves as an evaluative standard for the assessment of potential effects safe pathways can have on the asylum paradox (see Chapter 10).

4. The responsibility framework sets out three key considerations to guide the normative assessment of safe pathways with a view to the effects on the asylum paradox:
  - a. Pathways with (direct or indirect) deterrent effects would enhance the predominant focus of the current system on the principle of *internal* responsibility and neglect the principle of external responsibility, thereby exacerbating the imbalance of responsibility principles and thus the asylum paradox.
  - b. Additional and complementary pathways promoting the application of individual rights in the extraterritorial context enhance the principle of external responsibility and can change the current protection paradigm grounded on territorial access to asylum.
  - c. Pathways providing alternatives to the current (geographical) allocation of responsibility at international level, as well as measures promoting a 'common but differentiated responsibility', enhance the principle of inter-State responsibility (see Chapter 10).
5. The asylum visa can change the current protection paradigm:

Safe pathways or methods of implementation promoting the application of human rights in the extraterritorial context reflect a strong commitment to the principle of external responsibility. They have the normative potential to counter the imbalance of principles manifested in the asylum paradox (see Chapter 10). An example is the asylum visa, offering an individual access scheme (*in addition* to territorial asylum), with individual rights, thereby overall enhancing the right to seek asylum. Thus, legally implementing a permanent asylum visa scheme would lead to a normative shift in paradigm with a view to the territorial concept of asylum as well as the geographical allocation of

responsibility (see Chapter 11). However, the asylum visa offers limited predictability for States and not all protection seekers would meet the high threshold of non-refoulement. With a view to the principles of external and inter-State responsibility, this pathway would therefore have to be *complemented* by other pathways to be effective.

6. Resettlement and *ad hoc* humanitarian admission schemes have a limited normative effect on the asylum paradox:

Resettlement and *ad hoc* humanitarian admission schemes reflect the right of States to grant protection. They do not provide for individual claims or procedural rights and include a range of utilitarian admission criteria reflecting State interests. Nonetheless, these pathways can bridge the protection gap on an individual basis. Compared to the asylum visa, however, they have a limited *normative* effect on the current paradigm of territorial protection and geographical allocation of responsibility at international level – and therewith on the asylum paradox (see Chapters 12 and 13).

7. Utilitarian considerations do justice to the internal responsibility. They can, however, also have positive effects on the principles of external and inter-State responsibility:

In voluntary schemes utilitarian considerations can facilitate admissions and allow for a consideration of individual ties to the receiving State. Both aspects can have a positive impact on the principle of external responsibility if protection considerations remain paramount and there is no discriminatory practice.

Regarding the principle of inter-State responsibility, ‘close tie’ requirements could be seen as a consideration of ‘solidarity bonds’ with a view to responsibility-sharing at international level. The effect on the principle of inter-State responsibility would then strongly depend on the complementarity of respective schemes, particularly with respect to family reunification (see Chapter 14.5.2).

8. The *de facto* effect of resettlement and *ad hoc* humanitarian admission schemes on the asylum paradox depends on their approach to responsibility-sharing and the scope of the quotas:

As permanent quota-based pathway, resettlement enhances a ‘common but differentiated approach to responsibility-sharing’, with a high level of predictability. Overall, resettlement reflects a strong commitment to the principle of inter-State responsibility. *Ad hoc* humanitarian admission schemes are crucial in times of crisis. They do, however, reflect an approach of ‘emergency solidarity’ with a limited effect on the asylum

paradox. Overall, the effect of resettlement and *ad hoc* humanitarian admission schemes on the asylum paradox depends on the scope of admission quotas.

9. Sponsorship schemes can have a significant impact on the asylum paradox, depending on their implementation:  
Sponsorship schemes rely on reciprocity between the sponsors and the States. Overall, their effect on the asylum paradox depends on the scope of the 'responsibility transfer' ('responsibility- instead of burden-sharing') and the complementarity of sponsorship schemes, particularly with respect to family reunification (see Chapter 14.5).
10. Safe pathways with direct or indirect deterrent effects exacerbate the asylum paradox:  
Safe pathways or methods of implementation with a primary focus on migration control and (direct or indirect) deterrent effects exacerbate the imbalance of responsibility principles manifested in the asylum paradox. They may have an impact on the right to leave and the right to seek asylum. Examples are elements of the 2016 proposal for a resettlement regulation at EU level, as well as the 'one-to-one approach' based on the 'EU-Turkey Statement' of 2016 (see Chapters 12 and 13).
11. Six key issues set the course in the assessment, leading to tensions and trade-offs between the principles of responsibility, influencing the effect of safe pathways on the asylum paradox (see Chapter 15, Section 15.2):
  - a. The relation of safe pathways and territorial asylum (no deterrent effects and *additionality* of a pathway).
  - b. The *complementarity* of safe pathways to each other, as they all target different situations.
  - c. The design of a pathway as individual access route with individual rights and guarantees or as a scheme at State discretion.
  - d. The design of a pathway as permanent scheme or as *ad hoc* scheme.
  - e. The way in which safe pathways regulate issues of *access to the procedures* and *safety during* the procedures, both *de facto* and legally.
  - f. The correlation of access and status rights after arrival.

## 18 Outlook

This book was finalised following a range of new challenges to the international protection system. From 2019 onwards, the COVID-19 pandemic led the world into a new state of exception and crisis. In various ways, protection seekers were affected by State measures aimed at preventing a further spread of the Coronavirus. Borders were closed and already scarce options of safe pathways, such as resettlement and *ad hoc* humanitarian admission schemes, were put on hold. The Taliban's takeover of Afghanistan in 2021, the war in Ukraine from 2022 onwards, the breakout of the civil war in Sudan and the war in Gaza since 2023 are just some examples of conflicts that have led to another significant rise of people being forced to flee. With over 108 million people forcibly displaced worldwide, mostly still in their home countries or regions of conflict,<sup>933</sup> the question of access to protection remains one of the most pressing concerns of our time. Drawing on Benhabib's prominent metaphor of the outdated normative 'map' we are using to navigate 'an unknown terrain',<sup>934</sup> this last chapter adds the notion of the 'vessel'<sup>935</sup> to this picture. With this image in mind, the following sections identify three key areas for further research with a view to access to protection: the 'map' (18.1), the 'vessel' (18.2) and the 'terrain' (18.3).

### 18.1 The map: human rights must follow borders and adapt to new challenges

This book advocates a progressive interpretation and application of human rights norms in the context of extraterritorial access control. It takes the view that a State may control entry to its territory. However, States may not legally move beyond their borders exclusively in furtherance of their internal responsibility. Where State action moves beyond borders, human rights are tied to these actions. By ratifying international human rights treaties States have voluntarily set limits to their discretionary power when deciding over entry to their territories. Limiting this commitment to situa-

933 See UNHCR, *Global Trends: Forced Displacement in 2022* (2022), available at <https://www.unhcr.org/global-trends-report-2022>.

934 Benhabib, *supra* note 130, at 6.

935 In scholarly literature, 'the vessel' has also been ascribed to stateless persons, who do not 'sail' under any State flag; see Mann, *supra* note 381, at 21, with further references.

tions at the territorial border, leading to an arbitrary allocation of responsibility based on geographical proximity, might have been convincing at the time of ratification. At a time when border regimes have long since left the territorial sphere of a State, this appears anachronistic and risks undermining the entire protection system. If State control moves beyond the territorial border, human rights must follow. This is not a claim for open borders; rather, it is a claim for granting access to the law.

The internal and the external responsibility outlined in this book are normative reflections of legal relationships. They therefore have the potential to unfold their validity independent of the territorial context. The assessment in this book pointed to the leading – but not exclusive – role of territory in this regard, acknowledging the legal concept of jurisdiction as essential element of the ‘legal bond’ between a State and a protection seeker in the extraterritorial context. However, this book argues that making this legal bond inaccessible by denying jurisdiction perpetuates the asylum paradox. While extraterritorial measures of border and migration control prevent access to territory, denying jurisdiction in asylum visa cases prevents access to the law.

Another issue calling for further research lies in the necessity to adjust the current protection system to new challenges faced in the 21st century. The impact of climate change on forced displacement raises new legal issues. While the particularly vulnerable situation of refugees under the Refugee Convention merits special attention, the dichotomy between the concept of ‘migrant’ and ‘refugee’ (even in its broader sense including complementary protection), creates a gap for those in need of human rights protection due to new kinds of human rights threats, not covered by the current protection system. A step towards bridging this gap was the adoption of the Global Compact for Migration, with its recommendations for the implementation of safe pathways for, *inter alia*, individuals displaced due to natural disasters or climate change. Legal scholarship can contribute to a progressive interpretation of these recommendations. Specific legal action with a view to both issues would lie in expanding and legally implementing safe pathways to protection, always in addition to territorial asylum. This book points to potential pitfalls to be considered with respect to protection-sensitive pathways.

## 18.2 The vessel: safe pathways to protection

This book concludes that the asylum visa is a key pathway to counter the imbalance of responsibility principles manifested in the asylum paradox. There is a need for research on how an asylum visa scheme could effectively function at EU level, also with respect to the current system of responsibility allocation in the EU. Crucial issues are how procedural guarantees could be upheld in the extraterritorial context and how the ‘fear of numbers’ could be countered, based on effective responsibility-sharing mechanisms. This book has compared the international protection regime to the civil law concept of joint and several liability, pointing to the system’s lack of a ‘compensation mechanism’. The question of how to set up a functioning inter-State cooperation raises several legal and practical issues. Apart from the works already discussed in this book, further research would be needed to outline how ‘compensation mechanisms’ could work at international level, and in particular how responsibility could be shared ‘fairly’ regarding inter-State relations and protection seekers alike. Given the highly sophisticated forms of international cooperation already in place with a focus on migration control, this task is not impossible. In any case, the answer cannot lie in keeping Pandora’s box closed by generally dismissing the application of human rights in the extraterritorial context.

The CJEU’s decision in the *X and X* case in 2017 triggered a legislative initiative for setting up an EU humanitarian visa scheme. Additionally, an EU Resettlement Regulation has been in the making since 2016, aiming at harmonising resettlement as a safe pathway to the EU. These proposals raise new issues. One of them is the relevance of the CFR, particularly regarding resettlement procedures based on a future EU Resettlement Regulation. The CFR could unfold its relevance regarding issues of discrimination in the selection procedure as well as procedural rights in the case of rejection of a claim. With respect to all these issues, the responsibility framework could serve as analytical tool, helping to structure the future legal discourse.

This book argues that drawing on the responsibility framework is not merely a terminological choice; rather, it can add analytical and normative strength to legal arguments. The content of the different responsibilities can thereby be further elaborated by different scholars, depending on the context and disciplinary background. Insights gained from reconstructing the asylum paradox based on responsibility principles could serve further purposes. Even if delimiting the normative scope of each principle in a different way, whether broadening or restraining it, thinking of access

against the backdrop of the responsibility framework forces all principles of responsibility – and therewith all three perspectives – to be taken into account. Eventually, the responsibility framework could be adapted for the analysis and assessment of other policy measures, laws or State practice concerning access to territory and protection.

### 18.3 The terrain: digitalisation, technology and mobility

This book put ‘traditional’ pathways to protection in the focus, addressing schemes and legal proposals already on the table of policy makers in the EU. There are numerous new ways of rethinking safe pathways with a view to the changing ‘terrain’ around us. There are two key issues this book wants to point out in this last section. The first is the role of digitalisation and technology. An example that may illustrate the impact that digitalisation and technology have had on the ‘terrain’ protection seekers and host States navigate is the digital EU fingerprint-database ‘EURODAC’. Digitalisation and technology can also provide opportunities to facilitate safe access to protection. For instance, technology can be used to enhance the agency of protection seekers by providing access to information and (digital) application forms, video interviews or contact with organisations that can assist in the travel process. Digitalisation and technology play a role with respect to the assessment of applications by States, and the cooperation and coordination between States. Further research in this regard could aid in answering some of the questions pointed out above, and open new ways of approaching the concept of asylum.

The second key issue is the need to further explore options of mobility and belonging. There is extensive research addressing the changing role of citizenship and political membership in the context of an ongoing globalisation. In this context, some scholars have picked up on proposals for special passports for protection seekers. This idea can be traced back to the ‘Nansen passports’, which existed from 1922 onwards. Today’s globalised and digitalised world opens new prospects for revisiting this option.<sup>936</sup>

---

936 Cf. for example the forum debate on the European University Institute’s Global Citizenship Observatory, with its opening contribution by Jelena Džankić and Rainer Bauböck, *Mobility without Membership: Do We Need Special Passports for Vulnerable Groups?* (December 17, 2021), available at <https://globalcit.eu/mobility-without-membership-do-we-need-special-passports-for-vulnerable-groups/4/>.