

Institution: Queen Mary University of London		
Unit of Assessment: 18 Law		
Title of case study: Access to Asylum in the Mediterranean: Promoting Legal Pathways to International Protection for Refugees and Forced Migrants		
Period when the underpinning research was undertaken Sept 2013-Dec 2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Dr Violeta Moreno-Lax	Role(s) (e.g. job title): Reader in Law	Period(s) employed: Sept 2013–Present
Period when the impact occurred: 2016-2020		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact		
<p>The Mediterranean refugee crisis has brought into sharp relief the difficulties facing asylum seekers in reaching safety, with over 20,000 cross-border deaths recorded since 2014. Dr Moreno-Lax's research has demonstrated that the main factor leading migrants to risk their lives is the absence of clear legal routes to countries offering asylum. It has identified humanitarian visas as the main solution. Its impact has been: (1) to shape law and policy-making on asylum in the Mediterranean and South-East Asia, including a pivotal resolution on humanitarian visas by the European Parliament and the UN Global Compact on Refugees; (2) to provide the framework for SAROBMED, a consortium of Search and Rescue (SAR) NGOs now breaking new ground as an observatory and database; (3) to shape the content and direction of litigation in Europe's highest courts.</p>		
2. Underpinning research		
<p>Dr. Moreno-Lax's research focuses on the devastating Mediterranean 'refugee crisis'. Between 2015 and 2020 1.5 million forcibly displaced people attempted to reach European Union (EU) states, which responded with migration restrictions leading to extraordinary levels of violence at Europe's borders. Moreno-Lax's research has focused on these developments in three ways:</p> <p>First, the research examined techniques of 'offshored' and 'outsourced' border control and their effects on access to asylum from the perspective of EU law [3.2], which built on her earlier work [3.1, 3.2]. The research analysed the main measures used to pre-empt irregular migration extraterritorially, including visas, carrier sanctions, and maritime interdiction. It concluded that:</p> <ul style="list-style-type: none"> • extraterritorial controls have the effect of encouraging the irregular movement of asylum seekers, pushing them into smuggling and trafficking circuits • the rights of asylum seekers apply extraterritorially, including at sea • in consequence, EU extraterritorial border controls, as currently designed, are incompatible with the rights that asylum seekers derive from EU law to resolve this situation, either national border controls must be reformed or refugee-specific means of access to asylum, such as humanitarian visas, must be developed. <p>Second, these findings were refined in parallel research, focusing on the particularly vulnerable category of 'boat migrants'. The 'Comprehensive Approach' research project (2014-16), co-led with Papastavridis (Oxford), resulted in the first detailed investigation of the way that different areas of law interact to the detriment of boat migrants [3.4]. The research:</p> <ul style="list-style-type: none"> • revealed the selective approach adopted by EU countries when intervening at sea, choosing rules that advance their powers, while disapplying their human rights obligations • exposed how this selective approach negates the rights of boat migrants • demonstrated that the Comprehensive Approach - an integrated, multi-disciplinary approach that considers all legal obligations and norms applicable at sea cumulatively, and which is co-ordinated by all relevant actors working together - is the safest and fairest way to manage maritime migration. 		

Third, the research has focused on whether measures adopted in cooperation with non-EU countries allow the evasion of human rights responsibilities. This was investigated (2017-19) with Giuffré (Edge Hill) [3.5]. Consequent research [3.6] evaluated, through the lens of the *S.S. and Others v. Italy* case at the European Court of Human Rights, how:

- the EU and its Member States collaborate with third countries through mechanisms of ‘consensual containment’ of ‘boat migrants’
- such mechanisms amount to measures of ‘contactless control’ that impede access to asylum this constitutes an exercise of ‘functional jurisdiction’ triggering human rights obligations that cannot be evaded.

The empirical material relied upon was gathered through *SAROBMED: The Search and Rescue Observatory for the Mediterranean* [4.2].

3. References to the research

[3.1] Lax, V. M. (2008). Must EU Borders have Doors for Refugees? On the Compatibility of Schengen Visas and Carriers' Sanctions with EU Member States' Obligations to Provide International Protection to Refugees. *European Journal of Migration and Law*, 10(3), 315-364. doi.org/10.1163/157181608X338180

[3.2] Moreno-Lax, V. (2017). *Accessing asylum in Europe: Extraterritorial border controls and refugee rights under EU law*. Oxford University Press.

[3.3] Moreno-Lax, V. (2011). Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Member States' Obligations Accruing at Sea. *International Journal of Refugee Law*, 23(2), 174-220. doi.org/10.1093/ijrl/eer005

[3.4] Moreno-Lax, V., & Papastavridis, E. (Eds.). (2016). *'Boat Refugees' and Migrants at Sea: A Comprehensive Approach: Integrating Maritime Security with Human Rights*. Brill.

[3.5] Moreno-Lax, V., & Giuffré, M. (2017). The Rise of consensual containment: from ‘Contactless Control’ to ‘Contactless Responsibility’ for forced migration flows. *Research Handbook on International Refugee Law* (Edward Elgar, Forthcoming).

[3.6] Moreno-Lax, V. (2020). The Architecture of Functional Jurisdiction: Unpacking Contactless Control—On Public Powers, *SS and Others v. Italy*, and the “Operational Model”. *German Law Journal*, 21(3), 385-416. doi.org/10.1017/glj.2020.25

Evidence of quality of the research

[EQR.3.1] Moreno-Lax, V. [PI]. (2006-2010). EU FP6 REFGOV Project. EUR96,000. <https://sites.uclouvain.be/cpdr-refgov>

[EQR.3.2] Moreno-Lax, V. [PI]. Rafael del Pino Foundation. EUR 25,000 and Caja Madrid Foundation EUR22,000.

[EQR.3.3] Moreno-Lax, V. [PI]. Exploratory Research scheme of the Law Faculty of the University of Oxford. GBP3,000.

[EQR.3.4] Moreno-Lax, V. [PI]. The University Association for Contemporary European Studies (UACES). GBP1,000. And Human Rights Consortium of the University of London GBP 2,000.

[EQR.3.5] Relies on SAROBMED, Moreno-Lax, V. [PI]. (2016-2018). Macquarie Research Development Grant. USD50,000.

[EQR.3.6] Equally relies on SAROBMED data and Moreno-Lax, V. [PI]. (2019-2021). Deliverable of the EU Jean Monnet MAPS Project. EUR47,000. <https://www.mapsnetwork.eu>

4. Details of the impact

The impact of the research is in three areas: Shaping European law and international policy on refugees and asylum, specifically across the Mediterranean and the South-East Asia Pacific region; establishing a multi-disciplinary human rights observatory and database, SAROBMED, a consortium of Search and Rescue (SAR) NGOs in the Mediterranean; and informing paradigm-shifting case law and strategic litigation processes in Europe’s highest courts.

Shaping European law and international policy on refugees and asylum

Moreno-Lax’s research shaped and contributed to the Resolution on Humanitarian Visas passed by the European Parliament (EP) on 11 December 2018. The Resolution calls on the European Commission (EC) to table legislation allowing those seeking international protection to apply for a

humanitarian visa at an EU embassy or consulate. In addition to the pressure it places on the EC to draft this far-reaching legislation, commentators regard the Resolution as a milestone in efforts to protect asylum seekers, and as an extraordinary achievement, given the prevailing hostile attitude to asylum seekers in many EU states [5.4, VI]. Moreno-Lax's contribution to the Resolution began with a request from the EP to prepare a background study 'to translate her research into concrete legal and policy proposals' on humanitarian visas [5.4, I]. That study directly influenced the Report on Humanitarian Visas by the rapporteur (MEP Juan López Aguilar), adopted on 6th October 2018, and subsequently formed the basis of the Resolution adopted by a broad whole-house, cross-party coalition. Moreno-Lax's research is directly acknowledged in the respective preambles of both the Report and the Resolution [5.4, IV] and has been described as having been drawn on 'extensively' [5.4, II], and as 'pivotal to articulate a clear and plausible set of policy proposals and recommendations that nurtured the discussion within López Aguilar's team ... and the European Parliament at large' [5.4, I].

Moreno-Lax's research has also helped shape the UN Global Compact on Refugees. The Compact comprises the multi-annual framework guiding the international community's refugee protection efforts and includes a section on 'complementary pathways for admission to third countries' within its Programme of Action, in which it draws on Moreno-Lax's research. Her 2016 study was included, alongside several items of her research, in the documentation submitted to the Thematic Discussions leading to the adoption of the final draft of the Global Compact on Refugees [5.3], to which she also delivered an expert statement. The research further shaped the Compact through its contribution to the Red Cross EU Office's 2016 study and advocacy tool, used by the UNHCR to inform its discussions. The Red Cross described Moreno-Lax's research as having 'guided [its] conclusions and inspired [its] advocacy and policy efforts in national and European fora', finding her reasoning 'very helpful to dispel doubts and consolidate [its] position around matters of access to asylum and refugee rights under EU law' [5.2].

Moreno-Lax's research has been used directly by NGOs in a range of initiatives, including training materials and advocacy briefings, to promote the right to access asylum in Europe. These include Association Nationale d'Assistance aux Frontières pour les Etrangers, Jesuit Refugee Service, Association of Christian Churches in Europe, European Council on Refugees and Exiles, IES, CEPS, BIM, Norwegian Organisation for Asylum Seekers, and the OHCHR Regional Office for Europe [5.1]. Three examples illustrate this extensive impact on NGO communities:

1. In 2019, following an invitation by the International Bar Association (IBA), Moreno-Lax transformed her research findings into a Model Convention for an emergency evacuation mechanism that would provide a standard legal instrument ready for adoption by interested States. The goal of the IBA is to translate efforts at EU level to the UN context, so that more asylum seekers can benefit from legal pathways to international protection, thus complementing the EU humanitarian visa initiative with a similar global mechanism. Moreno-Lax's research has provided 'the backbone to the Emergency Evacuation Visa (EEV) scheme endorsed by IBA', which IBA is 'taking forward ... in the international sphere and towards its implementation ... within the framework of the UN Global Compact on Refugees' [5.5].

2. Moreno-Lax's Comprehensive Approach [3.3, 3.4] has been used to form the basis of a professional training programme to shape the approach to sea migrants by navy and coastguard officials from countries participating in the Bali Process in the South-East Asia Pacific region. This Process comprises 45 member states, including Indonesia and Australia. Working alongside the UNHCR, IOM and the Bali Process Secretariat, Moreno-Lax delivered a pilot training workshop in January 2015, and the programme has subsequently continued to be run by the Bali Process Regional Support Office. The Bali Process Co-Chairs have explicitly endorsed the Comprehensive Approach in a joint statement of 2018 [5.8].

3. In March 2017, Moreno-Lax was commissioned to draft a policy brief for the Australian Kaldor Centre, comparing the interdiction policy of 'boat migrants' in Europe and Australia, and assessing compliance with international law. The brief attracted significant media interest and informed the national debate on the tenability of maritime 'push backs'. 'The Kaldor Centre ... received excellent

feedback [e.g.] from the Office of International Law in the Attorney-General's Department, with a senior official stating that he had read the Policy Brief with interest and circulated it to the Office as 'essential reading' ... noting that his office relied upon it in its daily work' [5.9].

Establishing a multi-disciplinary human rights observatory

The establishment of the human rights observatory [SAROBMED](#) in 2018 is directly attributable to Moreno-Lax's research and an outcome of the key findings contained in the Comprehensive Approach research project.

SAROBMED is an international, multi-disciplinary consortium of independent researchers, civil society groups, strategic litigation actors and other organisations. It comprises 31 members, including the main search and rescue (SAR) NGOs operating in the Mediterranean, and is co-ordinated by Moreno-Lax. It was established by consortium members following several workshops and conferences between 2016 and 2018 at which Moreno-Lax set out the case, developed in her research, for stakeholders to come together to implement the Comprehensive Approach 'on the ground'. SAROBMED activities are underpinned by, and draw directly on, the Comprehensive Approach, operating as a 'research in action' hub that covers the entire 'boat migration' cycle, from sea to courtroom. The Comprehensive Approach begins with the documentation by SAR NGOs, on SAROBMED's database, of human rights violations suffered by 'boat migrants'. SAROBMED researchers then process and analyse the data, disseminating it to the public, media and civil society. Finally, where victims can be traced and sufficient evidence collected, strategic litigation partners take cases to the most appropriate forum for redress. To date, over 70 cases have been analysed and made available by the Observatory. NGO partners are the main end-users of SAROBMED data which they employ to support evidence-based advocacy, strategic litigation, and research-led campaigning, as well as their 'own work regarding search and rescue at sea' [5.6, II]. For example, in November 2019 SAROBMED member MSF used the Observatory's database to substantiate its submission to the European Court of Human Rights (ECtHR) as third-party intervener in the *S.S.* case [see 4.3].

SAROBMED's use of the Comprehensive Approach has also been taken up by organisations beyond its immediate membership. In May 2019, United Against Inhumanity relied on SAROBMED information in a report condemning the criminalisation of asylum seekers and humanitarian actors and made recommendations that took SAROBMED research into account [5.8]. Within government, several European political groups have 'relied on the SAROBMED and Dr Moreno-Lax's research to buttress [their] argumentation' in political debates in the European Parliament, which they have used to 'add force to political opposition challenging [criminalisation] initiatives' affecting 'boat migrants' and SAR NGOs [5.7].

Informing paradigm-shifting case law and strategic litigation

Moreno-Lax's research has materially shaped the content and direction of high-profile litigation currently pending before Europe's highest courts. In doing so, her research has significantly contributed to the success of strategic litigation actors in raising public awareness on key access to asylum issues.

Moreno-Lax's research has contributed to three potentially paradigm-changing cases pursued by the Global Legal Action Network (GLAN), an international strategic litigation NGO, concerning access to asylum and the protection of migrant rights at sea. All three proceedings are based on data gathered by SAROBMED (itself informed by Moreno-Lax's Comprehensive Approach) and explicitly rely on Moreno-Lax's research. The *Nivin* case has been brought to the UN Human Rights Committee, and the cases of *Salam Aldeen* and *S.S. and Others* have been taken to the ECtHR [5.11]. All three cases break new ground, with the potential to radically change law, policy and practice in the management of boat migration [5.11]. *S.S.* is the most important of the three and, if successful, will transform prevalent views on how and when human rights obligations bind States in extraterritorial situations, including at sea. The case challenges the legality of the Italian 'pull back' policy in the Mediterranean, under which Italy arranges for the Libyan Coastguard to intercept 'boat migrants' and return them to Libya, achieving indirectly what Italy is forbidden from doing itself. The core argument is that such a mechanism of 'contactless control', via a third party

acting as a proxy, cannot be used by States to evade human rights responsibility. This central point made in GLAN's submission is directly based on Moreno-Lax's arguments in 3.2, 3.5 and 3.6, holding real potential to transform migrants' lives.

Although the S.S. case is still pending its impact is already significant. The direction and approach adopted by GLAN in S.S., based on Moreno-Lax's research, has transformed the landscape for strategic litigators, paving the way for new courses of action and new avenues for advocacy, while also increasing public awareness. Evidence of this is the considerable attention the case has attracted from the press [5.12]. The case has also stimulated reaction from the European Commission, which felt compelled to react to the case immediately after its filing was announced at a high-profile press conference in May 2018 [5.11]. Another important indication of the case's significance is that 12 organisations, including influential global NGOs such as UNHCR, the Council of Europe Commissioner for Human Rights, Amnesty International, Human Rights Watch, and MSF have intervened as *amicus curiae* in favour of the plaintiffs, endorsing Moreno-Lax's key contentions [5.11]. As such, the case is a 'live' illustration of the 'research in action' approach at the heart of SAROBMED [5.6], demonstrating the value of the Comprehensive Approach as a practical and impactful tool to reform migration management.

In addition to these pending cases, the Belgian Conseil d'Etat and the EU Court of Justice have relied directly upon Moreno-Lax's research. In a case heard by the Conseil d'Etat on 8 December 2016, Belgium's highest administrative court accepted that Moreno-Lax's findings cast doubt on the common understanding that there is no legal obligation to issue visas to asylum seekers who are at risk of persecution. It consequently stayed its proceedings and referred the matter to the EU Court of Justice for clarification, giving rise to the only case so far (C-638/16) in which the EU Court has dealt with this question [5.10]. While the EU Court declined to settle the matter, citing lack of competence, it is noteworthy that the Court's Advocate General delivered a dissenting opinion in which he disagreed with the other Court members on the point of competence and relied instead directly on Moreno-Lax's findings, describing them 'as a source of inspiration' [5.10].

Finally, Moreno-Lax's Comprehensive Approach to maritime obligations influenced the EU Court's Advocate General in Case C-670/16, who reached her Opinion through direct reliance on 3.3 and 3.4. In a case concerning a 'boat migrant' who sought asylum upon embarkation, the Advocate General expressly recognised 'the intersection of international law of the sea, international humanitarian law ... and EU law', a cornerstone of the Comprehensive Approach [5.10].

5. Sources to corroborate the impact

- [5.1] List of advocacy instruments relying on arguments in [3.1] and [3.2]
- [5.2] Red Cross Testimonial, Red Cross Study, Red Cross Advocacy Tool
- [5.3] UNHCR Testimonial: research items leading to adoption of the Global Compact on Refugees [Corroborator 1]
- [5.4] EU Testimonial, Rapporteurs Testimonial, Background Study, Rapporteurs Report, EU Parliament Plenary Resolution [Corroborator 2]
- [5.5] IBA Testimonial, Model Convention, Background Study EEV [Corroborator 3]
- [5.6] SMH Testimonial, Sea Watch Testimonial, United Against Inhumanity, third-party intervention in the S.S. case [Corroborator 4]
- [5.7] MEP Testimonial (Barbara Spinelli)
- [5.8] South-East Asia Pacific Reports
- [5.9] Kaldor Centre Director Testimonial, Kaldor Centre Policy Brief
- [5.10] Court's Advocate General Mengozzi testimonial, Council for Asylum and Immigration Proceedings Case, Opinion of Advocate General
- [5.11] GLAN Testimonial, EcThR, MSF Third Party Intervention [Corroborator 5]
- [5.12] Reuters 8 May 2018 <https://www.reuters.com/article/us-europe-migrants-italy/nigerian-migrants-sue-italy-for-aiding-libyan-coast-guard-idUSKBN1I9206> and Associated Press 8 May 2018: <https://apnews.com/article/5a8249f4d5864f18bfc1a89ea382ae6d>