



2030 AGENDA AND SUSTAINABLE MIGRATION GOVERNANCE: A COMPARISON BETWEEN EUROPEAN UNION AND BRAZILIAN CONTEXTS

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RESUMO

O foco principal deste artigo é analisar e comparar os contextos migratórios atuais da União Europeia e do Brasil, a partir da Agenda 2030 e da estrutura de governança da migração sustentável. Ademais, procura compreender, por meio de reconstrução histórica e contextual, como a troca de boas práticas entre esses dois atores pode colaborar na construção de uma governança migratória que conduza a um raciocínio que sustente legislação e políticas eficazes nesta matéria. Neste sentido, utiliza-se o método histórico-contextualista, por ser o mais adequado e confiável para a compreensão e melhor avaliação do tema, a fim de antecipar as questões epistemológicas que poderiam surgir a partir deste trabalho. Além disso, a análise comparativa interdisciplinar também se faz necessária. Este artigo traça uma estratégia inédita e necessária para abordar este assunto, a fim de preencher a lacuna da literatura existente na matéria, seja quanto ao tema como da metodologia. Após breve apanhado dos temas propostos, conclui-se que ainda não é possível celebrar aspectos que envolvam a governança migratória, pois há muitos que ainda são forçados a deixar suas casas devido a perseguições individuais, conflitos, ou diversos outros motivos, seja na Europa ou na América do Sul. A resposta dada no Brasil, ao grande fluxo migratório que o país recebeu nos últimos anos, alimenta a esperança de que é possível acolher com mais dignidade e humanidade, servindo de exemplo para o resto do mundo.

Palavras-chave: Direitos humanos; Agenda 2030; Governança de Migração Sustentável; União Europeia; Brasil.

AGENDA 2030 E GOVERNANÇA MIGRATÓRIA SUSTENTÁVEL: UM COMPARATIVO ENTRE OS CONTEXTOS DA UNIÃO EUROPEIA E DO BRASIL

ABSTRACT

The main focus of this paper is to analyse and compare the European Union and Brazilian current migration contexts, through the 2030 Agenda and sustainable migration governance framework. Other than that, it tries to understand, throughout a historical and contextual reconstruction, how the sharing of best practices between those two actors could collaborate in the construction of migration governance that would lead to a reasoning which will substantiate effective legislation and politics in this matter. In this scenario, the contextualist-historical method is adopted, as it is the most suitable and reliable for understanding and better assessing the topic, in order to anticipate the epistemological issues that could arise from this work. Besides that, an interdisciplinary comparative analysis is also necessary. This paper outlines an unprecedented and necessary strategy for addressing this subject in order to fill the existing

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literature gap in the field, both in terms of topic and methodology. After a brief overview of the proposed topics, it concludes that although it is not possible to speak of joy or celebration in the context of migration governance, which involves so many still suffering and being forced to leave their homes due to individual persecutions, conflicts, or many other reasons, whether in Europe or South America without. The response given in Brazil, to the large flux of migration which the country received in the last years, feeds the hope that it is possible to welcome these people with more dignity and humanity, serving as an example to the rest of the world.

Keywords: Human Rights; 2030 Agenda; Sustainable Migration Governance; European Union; Brazil

INTRODUCTION

The migration phenomenon is not new³. Human migration may be an age-old activity present in almost every society globally, yet this is the era of heightened interest in the subject, making it one of the trending topics nowadays⁴. The discussions about international migration at the global level are also not recent⁵, and it gains even more prominence with the 2030 Agenda for Sustainable Development recognizing migration as a cross-cutting issue⁶ and a powerful driver of sustainable development for migrants and their communities⁷.

This fact has provoked contrary manifestations from various segments of civil society⁸, although this is more pronounced in some regions, namely due to the outbreak of civil wars, ethnic and religious problems, armed conflicts and environmental issues⁹. Indeed, continuous and massive migration has produced serious consequences, both endogenous and exogenous, as Rui Leandro Alves Maia explains:

Qualquer que seja o sentido que dermos às migrações (internacionais ou internas), permanecem sempre como condicionamentos de explicação os elementos espaço e tempo. As migrações abrangem um número significativo de pessoas que, mudando

³ See the studies produced by GUERRA, Sidney; EMERIQUE, Lilian. *Minority rights and vulnerable groups. Ijuí: Unijuí*, 2008.

⁴ MCAULIFFE, M.; TRIANAFYLLIDOU A. (eds.), 2021. **World Migration Report 2022**. International Organization for Migration (IOM), Geneva, p. 14. Available at: <https://publications.iom.int/books/world-migration-report-2022>. Access in: 12/05/2022.

⁵ UNITED NATIONS. A/RES/73/195 - the Global Compact for Safe, Orderly and Regular Migration (GCM) - Resolution adopted by the General Assembly on 19 December 2018, p. 1. Available at: https://refugeesmi-grants.un.org/sites/default/files/180711_final_draft_0.pdf. Access in: 12/05/2022

⁶ UNITED NATIONS. IOM's Global Migration Data Analysis Centre (GMDAC). Global Migration Data Portal. Migration Data and the Sustainable Development Goals (SDGs). Available at: <https://www.migrationdataportal.org/sdgs?node=0>. Access in 09/05/2022.

⁷ UNITED NATIONS. A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development. The central reference to migration is made in Target 10.7 to facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. Available at: <https://sdgs.un.org/2030agenda>. Access in: 12/05/2022.

⁸ Nesse sentido, vide (JORDAN, Bill. *Irregular migration: the dilemmas of transnational mobility*. Cheltenham: Edward Elgar Publishing Limited, 2002, p. 15), que aponta [...] o significado sobre a migração irregular, especialmente nos chamados países de primeiro mundo, e apresenta a rejeição da sociedade civil diante desta questão: "Irregular migration – crossing borders without proper authority, or violating conditions for entering another country – has been seen as a threat to the living standards and the cultures of the citizens of rich, predominantly white, First World states. In the 1990s the rise in claims for political asylum by black and Asian migrants to such countries was defined as disguised irregular migration. Public opinion polls conducted in EU member states in 2001 gave 'race relations and immigration' as the fourth most important problem facing both the UK and the other states, well ahead of education, health and poverty".

⁹ Sobre esse assunto, vide GUERRA, Sidney. *Sociedade de risco e o refugiado ambiental*. In: **Direito no século XXI**. Curitiba: Juruá, 2008.

de um espaço para outro, provocam alterações no tamanho e composição das populações envolvidas: a do espaço da origem e a do espaço do acolhimento¹⁰.

The number of refugees and economic migrants has increased significantly, either because of the hope of finding new opportunities and better living conditions, or because of extreme poverty, natural disasters, or the worst of all reasons, war. And both those fleeing extreme poverty and those displaced by extreme weather, environmental accidents or war conflicts are, in reality, trying to save the most precious asset: life¹¹.

This situation has led to a growing interest in migration and in various attempts to assess and compare countries' migration policies and governance, including immigration, emigration and integration¹², in an effort to demystify the complexity and diversity of human mobility and resettlement. The exam of the shifts in scale, direction, demography, and frequency can illuminate how migration is evolving while pointing to long-term trends shaped by historical and recent events, looking for medium and long-lasting solutions and informing effective policies, programmes, and operational responses on the ground¹³.

The main focus of this paper is to analyse and compare the European Union and Brazilian current migration contexts, through the 2030 Agenda and sustainable migration governance framework. Other than that, it tries to understand, throughout a historical and contextual reconstruction, how the sharing of best practices between those two actors could collaborate in the construction of migration governance that would lead to a reasoning which will substantiate effective legislation and politics in this matter.

The comparative methodology will be used to compare general features and detailed provisions of different legal systems to ascertain their similarities and differences; process the similarities and differences that have been established, evaluating of the solutions utilized in the different legal systems; and treat the methodological problems that arise in connection with these tasks, including methodological problems arising in connection with the study of foreign law¹⁴.

In this scenario, the contextualist-historical method is adopted, as it is the most suitable and reliable for understanding and better assessing the topic, in order to anticipate the epistemological issues that could arise from this work. This method allows studying the origin of institutes, revealing the identity of the policy that moved that construction, recreating the context, and establishing normativity, concerned with identifying similarities and differences and establishing a process that helps to identify

¹⁰ MAIA, Rui Leandro Alves. O sentido das diferenças: migrantes e naturais. Lisboa: Fundação Calouste Gulbenkian, 2003, p. 41.

¹¹ GUERRA, Sidney; ACCIOLY, Elizabeth. O instituto jurídico do refúgio à luz do direito internacional e alguns desdobramentos na União Europeia. **Revista Jurídica Unicuritiba**, v.2, n. 47, 2017. Disponível em <http://revista.unicuritiba.edu.br/index.php/RevJur/article/view/2026>

¹² UNITED NATIONS. IOM's Global Migration Data Analysis Centre (GMDAC). Global Migration Data Portal. Migration Policies and Governance. Last updated on 29 September 2021. Available at: <https://www.migrationdataportal.org/ar/themes/migrationspolitik-und-regierungsfuehrung>. Access in 09/05/2022.

¹³ MCAULIFFE, M. and TRIANDAFYLLIDOU, A. (eds.), *Op. Cit.* p. 14.

¹⁴ BOGDAN, M. (2013). *Concise introduction to comparative law*. Europa Law Publishing.

the best research gaps. That is why, during this paper, the context and the historical aspects are so relevant and are going to be brought during all of its text.

Besides that, an interdisciplinary comparative analysis is also necessary. The migration approach that is not concerned with mobilizing legal theory or the culture context of its objects is not capable of producing nothing but theoretical constructions allegedly scientific and, at worst, wrong conclusions¹⁵. Migration is not uniform across the world but is shaped by economic, geographic, and other factors, resulting in distinct migration patterns, such as migration “corridors” developed over many years¹⁶. It occurs within broader dynamic long-term social, security, political and economic contexts, which restates the relevance of the interdisciplinary methodology as the right choice to help navigate this topic, contributing to a holistic understanding of the world and the place that humans occupy in it¹⁷.

Therefore, this paper will be organized into different sections: this introduction; 1. Sustainable Migration Governance: from a Historic Study to the Current Scenario, 2. A Brief Overview of the EU and South-American-Brazilian Migration Governance Contexts; 3. A Comparative Study of Migration Governance in the Two Contexts; Conclusion; and references.

1. SUSTAINABLE MIGRATION GOVERNANCE: FROM A HISTORIC STUDY TO THE CURRENT SCENARIO

As mentioned before, migration is not uniform across the world but is shaped by economic, geographic, and other factors, resulting in distinct migration patterns, such as migration “corridors” developed over many years¹⁸. This heterogeneity in the migration paths makes upholding fundamental rights and supporting migrants who are most in need an even more significant challenge. Nonetheless, there is a sense that some of the core values underpinning a well-functioning of global governance system can become key resources supporting the migrants’ rights protection process and their integration into the local community¹⁹.

From a historical perspective of the effort of the international community to create governance regarding migration issues, one can mention that with the end of World War I (1914-1918) the project for the creation of the League of Nations was conceived, which aimed to create an intergovernmental organization of a permanent nature, based on the principles of collective security and equality among States. The essential attributions of that organization were based on three main pillars: international

¹⁵ VASCONCELOS, Raphael Carvalho; DUTRA, Deo Campos. Direito Comparado e Política: Reflexões Necessárias, Comparative Law and Politics: Some Reflections Needed. *Brazilian Journal of International Law* 17, no. 1 (April 2020): 42-56. P. 43. Original in Brazilian Portuguese. Available at: <https://www.publicacoesacademicas.uniceub.br/rdi/article/view/6241> Access in: 07/07/2022.

¹⁶ MCAULIFFE, M. and TRIANDAFYLLIDOU, A. (eds.), *Op. Cit.* p. 18.

¹⁷ GARDINI, G.L. (ed.) 2020 **The World Before and After COVID-19: Intellectual Reflections on Politics, Diplomacy and International Relations**. European Institute of International Studies Press, Stockholm, p. 15. Available at: https://www.ieciweb.eu/wp-content/uploads/2020/06/Full_book_FINAL_EN2.0-UNIDO.pdf. Access in: 12/05/2022.

¹⁸ *Ibid.*, p. 18.

¹⁹ MCAULIFFE, M. and TRIANDAFYLLIDOU, A (eds.), *Op. Cit.* p. 22.

security; economic, social and humanitarian cooperation; and the execution of the Treaty of Versailles, which put an end to that conflict²⁰.

The League of Nations established some interesting assumptions for international law and governance, starting with its preamble, which states that member states must accept certain obligations not to resort to war; openly maintain international relations based on justice and honour; rigorously observe the prescriptions of International Law, recognizing henceforth as an effective rule of government procedures; to enforce justice and scrupulously respect all treaty obligations in the mutual relations of organized peoples²¹. It also proposed strategies for maintaining peace and collective security, also indicating mechanisms for peacefully resolving disputes, in particular arbitration, and established generic provisions relating to human rights, highlighting those aimed at the mandate system of the League, the system of minorities and the international standards of labor law – through which States were committed to ensuring fair and dignified working conditions for men, women and children²².

It is important to highlight the huge efforts of the League of Nations, the predecessor of the UN, regarding migration issues in 1921, when it was called upon to provide assistance, at the request of the International Committee of the Red Cross, to more than one million Russian refugees displaced by the Russian civil war who in addition to the lack of shelter, they also suffered from a lack of food. Hence, the League of Nations appointed a famous polar explorer, Fridtjof Nansen, as High Commissioner to deal with the problems of Russian refugees and the exodus of close to 2 million refugees from the war between Greece and Turkey²³.

Nevertheless, the problem of migration and refugees began to gain even more scope as a result of the events produced during the Second World War, in which thousands of people were displaced from their States of origin, producing a very adverse scenario, especially in Europe²⁴. In this way, the action taken by the States, even before starting the work of the UN, resulted in the creation, in 1943, of the UNRRA (United Nations Relief and Rehabilitation Administration). In the year 1947, therefore already in force of the United Nations, there was the transfer of attributions and goods to an international organization constituted with the purpose of taking care of the matter related to refugees: the International Organization of Refugees (OIR).

As a result of the low adherence by the Member States of the OIR, it was decided that a new body should be constituted to deal with the problem of refugees. Thus, on December 3, 1949, the United Nations High Commissioner for Refugees (UNHCR) was created, with the statute being approved on December 14, 1950, with the purpose of finding lasting solutions to the refugee issue.

²⁰ GUERRA, Sidney; ACCIOLY, Elizabeth. O instituto jurídico do refúgio à luz do direito internacional e alguns desdobramentos na União Europeia. **Revista Jurídica Unicuritiba**, v.2, n. 47, 2017. Disponível em <http://revista.unicuritiba.edu.br/index.php/RevJur/article/view/2026>

²¹ GENEVA, The Covenant of the League of Nations, 1919. Disponível em: [First World War.com - Primary Documents - Covenant of the League of Nations, 1919-24](http://www.firstworldwar.com/primarydocuments/covenantoftheligaofnations1919-24). Access in: 29/12/2022.

²² Ibid

²³ Ibid

²⁴ Ibid

That being so, after more than seventy years, the salience of migration as a critical issue in governance at the international, regional, national and sub-national levels continues to grow, and the increased focus on migration governance, despite the challenges of a geopolitically charged competition, made some progress in the last years towards achieving the SDGs²⁵, as well as on the specific issues of migration and displacement via the two Global Compacts for migration and on refugees²⁶. The main unfoldings of those migration governance politics in the EU and South-American-Brazilian context will be assessed from the next topic on.

2. A BRIEF OVERVIEW OF THE EU AND OF THE SOUTH-AMERICAN-BRAZILIAN MIGRATION GOVERNANCE CONTEXT

Nowadays, Europe is experiencing the deepest of its crises, putting solidarity, loyal cooperation, the rule of law and respect for human rights in check. Between advances and setbacks, the old continent seems to be more concerned with its political destiny, a priority not entirely unreasonable²⁷.

The idea that the “common immigration policy and the efficient management of current migration flows to European countries belong to the most sensitive areas of EU law²⁸” gain even more importance after the beginning of the Ukrainian war. As stated in the Treaty on the Functioning of the European Union in Article 78²⁹, three forms of refugees’ protection can be found at the EU level, based on three main documents respectively: Geneva Convention³⁰, Qualitative Directive (applies for the first two),³¹ and Temporary Protection Directive³². While there is an exhaustive list in the Refugee Convention, the subsidiary protection encompasses categories that go beyond the refugee definition, based on Member States’ obligations under international and European human rights law. Lastly, the Temporary Protection Directive stipulates conditions for the

²⁵ UNITED NATIONS. OIM. The Sustainable Development Goals Report 2021. New York. Available at <https://unstats.un.org/sdgs/report/2021/The-Sustainable-Development-Goals-Report-2021.pdf>. Access in: 12/05/2022.

²⁶ UNITED NATIONS. A/RES/73/151. 17 December 2018. *Op. Cit.*

²⁷ GUERRA, Sidney; ACCIOLY, Elizabeth. O instituto jurídico do refúgio à luz do direito internacional e alguns desdobramentos na União Europeia. *Revista Jurídica Unicuritiba*, v.2, n. 47, 2017. Disponível em <http://revista.unicuritiba.edu.br/index.php/RevJur/article/view/2026>

²⁸ SCHEU, Harald Christian. Citizenship, Migration and Anti-Discrimination Law. *International Journal for Legal Research. The Lawyer Quarterly*. TLQ 3/2014. P. 195–202. Available at: www.ilaw.cas.cz/tlq. Access in: 11/08/2022. P.195.

²⁹ EUROPEAN UNION. Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E078>. Access in 10/05/2022.

³⁰ UNITED NATIONS. General Assembly, Convention Relating to the Status of Refugees, 28 July 1951. Available at: https://www.unhcr.org/1951-refugee-convention.html?gclid=Cj0KCCQjw4PKTBhD8ARIsAHChzRIIm-zfwJyUsIPEhLmBi6_2QmpuydqXAqi4R9wYqx8MVq8iQLycKDGsQaAvCVEALw_wcB&gclidsrc=aw.ds. Access in: 12/05/2022.

³¹ EUROPEAN UNION. Council of the European Union, 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), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN>. Access in: 12/05/2022.

³² EUROPEAN UNION. Council of the European Union, Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences Thereof, 7 August 2001, OJ L.212/12-212/23; 7.8.2001, 2001/55/EC. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001L0055&qid=1648223587338>. Access in: 12/05/2022.

grant of protection status in cases of mass or imminent influx, guaranteeing a minimum level of rights and containing arrangements for accessing an asylum determination procedure and incorporates provisions on solidarity and balancing of efforts³³. The “proper function” of this concept/practice is “to facilitate admission and the obtaining of satisfactory durable solutions” in large-scale influx situations³⁴.

It is essential to highlight that the first two forms of protection are not adapted to Europe’s current situation with the large influx of refugees coming from Ukraine. The main reason is that those kinds of protection require an individual examination of each person’s case and therefore require an individual process, which can take some time, and it is not at all suitable when there are millions of people arriving. Meanwhile, temporary protection is the only form of collective protection and *prima facie*³⁵.

Before this year, the EU institutions had never activated the TPD “despite reiterated calls to put it in use in human displacement situations resulting from the so-called Arab Spring in the early 2010s or conflicts in countries like Afghanistan, Libya, or Syria”³⁶. The main reason for this is that the Directive’s concept of “mass influx” is not defined. Instead, the Council of the European Union should decide when this situation should take place. To do so, a qualified majority is needed in the Council of the European Union. However, this qualified majority has never been reached until now. When certain States³⁷ asked for this temporary protection directive to be implemented, there was always a blocking minority within the Council, which means that this is an unprecedented episode in more than 20 years of existence of this possibility.

In fact, before its activation, the Commission’s 2020 EU Pact on Migration and Asylum³⁸ had discredited the usefulness of its existence. They came along with a new legislative proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum³⁹,

³³ TSOURDI, Evangelia Lilian. Part III Regional Regimes, Ch.19 Regional Refugee Regimes: Europe. In: Cathryn Costello, Michelle Foster, Jane McAdam. The Oxford Handbook of International Refugee Law. 3 June of 2021. Available in: **Oxford Public International Law** (<http://opil.ouplaw.com>). (c) Oxford University Press, 2022. Access in: 20 May 2022. P. 43.

³⁴ DURIEUX, Jean-François. Part V The Scope of Refugee Protection, Ch.37 Temporary Protection and Temporary Refuge. In: Cathryn Costello, Michelle Foster, Jane McAdam. The Oxford Handbook of International Refugee Law. 3 June of 2021. Available in: **Oxford Public International Law** (<http://opil.ouplaw.com>). (c) Oxford University Press, 2022. Access in: 20 May 2022. P. 57.

³⁵ UN HIGH COMMISSIONER FOR REFUGEES (UNHCR), Guidelines on International Protection No. 11 : Prima Facie Recognition of Refugee Status, 24 June 2015, HCR/GIP/15/11. Available at: <https://www.unhcr.org/publications/legal/558a62299/guidelines-international-protection-11-prima-facie-recognition-refugee.html> Access in: 12/05/2022.

³⁶ INELI CIGER, Meltem. 201. Time to Activate the Temporary Protection Directive. **European Journal of Migration and Law**, Vol. 18., No. 1, p. 7. Available at: https://brill.com/view/journals/emil/18/1/article-pl_1.xml?language=en. Access in: 07/07/2022. P. 12.

³⁷ See for example: EUROPEAN UNION. Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece OJ L 248, 24.9.2015. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1601&from=EN>. Access in: 12/05/2022.

³⁸ EUROPEAN UNION. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum. COM/2020/609 final. 23/09/2020. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609>. Access in: 12/05/2022.

³⁹ EUROPEAN UNION. Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum COM/2020/613 final.23/09/2020.

which has called for repealing the Temporary Protection Directive because it “no longer responds to Member States’ current reality and needs”. The crisis proposal aimed at tackling the above obstacle by introducing an “immediate protection status” and shifting the activating role from the Council to the European Commission’s hands⁴⁰.

It is important to understand that this process of reforming the EU Migration and Asylum policies is not new and has dragged on in time mainly because of the lack of consensus⁴¹ among the Member States on the implementation of the principle of solidarity⁴². On the contrary, regarding the return system, for example, the Commission started using soft law acts to address this issue in 2015⁴³, which demonstrates that discontent with the current regulation is not recent. In this context, “the judiciary, as politically neutral and impartial arbitrators between human rights and states’ migration interests, have become the forum of last resort for solving at least some of the many issues affecting the functioning of the CEAS”⁴⁴.

Unfortunately, the war situation in Ukraine leads to a large number of refugees to the European Union. Observing the Ukrainian map, one can see that, apart from Moldova, all the other states close to Ukraine are member states of the European Union: Poland, Slovakia, Czech Republic, Hungary, and Romania. EU interior ministers dealt with the EU’s response to forced displacements from Ukraine on 27 February 2022 at the Extraordinary Justice and Home Affairs (JHA) Council Meeting. The Commission’s idea to activate the TP Directive found support among EU home affairs representatives. This meeting was followed by the publication of the Commission’s formal proposal⁴⁵ to trigger the EU Temporary Protection regime envisaged in the TP Directive, which was accompanied by a Communication⁴⁶ providing guidelines to the EU Member States on external border controls. Thus, in an unprecedented move, the European Commission proposed activating the 2001 Temporary Protection (TP) Directive. The EU Member States formally adopted it with the Council Implementing Decision

Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0613&from=en>. Access in: 12/05/2022.

⁴⁰ CARRERA, Sergio; ÎNELI CIĞER, Meltem; BRUMAT VosyliuteLeiz. *Op. Cit.* P. 53.

⁴¹ MORARU, Madalina. The Future Architecture of the EU’s Return System. in D. Thym and Odysseus Academic Network (eds.), *Reforming the Common European Asylum System. Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New ‘Pact’ on Migration and Asylum* **Nomos**, 2022 **187-208**. Available at: https://kops.uni-konstanz.de/bitstream/handle/123456789/57093/Thym_2-iogm6mqik8ag0.pdf?sequence=1. Access in: 16/05/2022. P. 191.

⁴² EUROPEAN UNION. Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01. Article 80. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E078>. Access in 10/05/2022.

⁴³ MORARU, Madalina, 2022. *Op. Cit.* P. 188.

⁴⁴ MORARU, Madalina, ‘The European Court of Justice Shaping the Right to be Heard for Asylum Seekers, Returnees, and Visa Applicants: An Exercise in Judicial Diplomacy’ (21-61). **European Journal of Legal Studies** Available at: <https://ejls.eui.eu/issues/special-issue-adjudicating-migrants-rights-what-are-european-courts-saying/>. Access in: 20/05/2022. P. 30.

⁴⁵ EUROPEAN UNION. Proposal for a Council Implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, and having the effect of introducing temporary protection COM/2022/91 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2022:91:FIN>. Access in 08/05/2022.

⁴⁶ EUROPEAN UNION. Commission Communication Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders 2022/C 104 1/01 C/2022/1404 OJ C 104I , 4.3.2022. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0304\(10\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0304(10)&from=EN). Access in 08/05/2022.

(EU) 2022/382 on 4 March of 2022⁴⁷, later complemented by other communication⁴⁸. The Decision was followed by one more Communication⁴⁹ entitled “European solidarity with refugees and those fleeing war in Ukraine”, published on 8 March 2022, which synthesizes the range of EU lines of action so far adopted, including humanitarian support through emergency macro-financial assistance⁵⁰.

It has already been stated that the speed and scale of large-scale arrivals justified the activation of the TPD, and it was the right move and will provide many benefits to those seeking refuge and the Member States⁵¹. Even so, numerous questions about its consequences have arisen after the activation. The answers to these questions are of central relevance when analyzing the compatibility of the EU’s responses to forced displacement from Ukraine with the legal human rights and refugee protection standards and the political commitments enshrined in the ideals of an orderly, safe, and regular migration governance, especially as stated in the UN Global Compacts on Refugees (GCR) and Migration (GCM).

Meanwhile, in Latin America, 18 of the 20 states are parties to both the Refugee Convention and its Protocol. Although the global refugee regime is virtually the same for all States that are parties to the Refugee Convention and its Protocol, the refugee definitions that are to be found in domestic legislation vary considerably. This results from a decades-long and uncoordinated process whereby the States have broadened the definition of a “refugee”⁵².

The legal framework in Latin America for the protection of political asylees and refugees also draws on the regional human rights regime, the two most relevant instruments being the 1948 American Declaration of the Rights and Duties of Man and

⁴⁷ EUROPEAN UNION. Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection ST/6846/2022/INIT OJ L 71, 4.3.2022. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D0382&from=EN>. Access in 08/05/2022.

⁴⁸ EUROPEAN UNION. Communication from the Commission on Operational guidelines for the implementation of Council implementing Decision 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection 2022/C 126 I/01 C/2022/1806 OJ C 126I, 21.3.2022. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0321\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0321(03)&from=EN). Access in: 08/05/2022.

⁴⁹ EUROPEAN UNION. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. European solidarity with refugees and those fleeing war in Ukraine. COM/2022/107 final. Available at: https://ec.europa.eu/info/sites/default/files/com_2022_107_1_en_act_part1_v4.pdf. Access in: 12/05/2022.

⁵⁰ [...] Recently, on the European Council conclusions on Ukraine, the membership applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and external relations of 23-24 June 2022 the European Council has decided to grant the status of candidate country to Ukraine and to the Republic of Moldova. Accordingly with the European Council President Charles Michel at 23 June “This is a historic moment. Today marks a crucial step on your path towards the EU. Our future is together”. The conclusion also grants Georgia the perspective to become a member, as a response to the Russian imperialism. For further information see: EUROPEAN COUNCIL: Council of the European Union. Available at: <https://www.consilium.europa.eu/en/meetings/european-council/2022/06/23-24/> Access in: 08/05/2022.

⁵¹ INELI CIGER, Meltem. 2022. 5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022. **EU Migration Law Blog**. Available at: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/>. Access in: 20/05/2022.

⁵² ANDRADE, José H Fischel. Part III Regional Regimes, Ch.17 Regional Refugee Regimes: Latin America. In: Cathryn Costello, Michelle Foster, Jane McAdam. **The Oxford Handbook of International Refugee Law**. 3 June of 2021. Available in: Oxford Public International Law (<http://opil.ouplaw.com>). (c) Oxford University Press, 2022. Access in: 20 May 2022. P. 18.

the 1969 American Convention on Human Rights. However, the Cartagena Declaration assumed an important role and had an unprecedented impact in Latin America, both on policy, legal developments, and the conduct of protection policy advocacy⁵³.

In addition to the global and regional instruments, protection for asylees is generally found within national constitutions, while the legal framework for protecting political asylees and refugees in Latin America is usually found in domestic legislation⁵⁴. The Mercosur Residence Agreement (MRA) provides two-year residence permits (by Argentina, Brazil, and Uruguay), while Colombia adopted a 10-year residence permit⁵⁵ in February 2021.

Concerns have been raised regarding the meaning and content of protection in the Temporary Protected Status for Venezuelans (TPSV) and Colombia's resources to provide effective access to social services. However, some also say that “such an approach promotes human rights while also stressing state control”⁵⁶. If successful, the Colombian Temporary Protection Statute could extend access to rights to hundreds of thousands (if not millions) of people. And indeed, it can serve as guidance for the EU “when choosing between enforced temporality and precarity or opening up possibilities for medium and long-term planning and meaningful socio-economic inclusion and security of residence”⁵⁷. As the Colombian approach acknowledges, people will keep crossing borders and seek protection abroad. Therefore, providing them with a regular status that increases their access to rights is the most feasible policy choice.

In the case of large-scale Venezuelan displacement, “Brazil is the only South American country that has applied the Cartagena definition to significant numbers of Venezuelan nationals”⁵⁸, which consists in one of the main reasons for its choice as a case study. Nonetheless, probably the best reason for studying Brazilian integration and migration governance initiatives is the “*Operação Acolhida*” or Operation Welcome⁵⁹, created in March 2018, which is the Brazilian government’s response to the large migratory flow from Venezuela due to the political, economic and social crisis. It is based on three pillars: border ordering, sheltering, and interiorization. The Interiorisation Process of Operation Welcome is the Federal Government’s primary strategy to reduce the pressure on public services in the State of Roraima caused by the exponential increase in the migratory flow resulting from the humanitarian crisis in Venezuela and to promote socio-economic integration in Brazilian society. Consequently, it increases tolerance and raises public awareness, which are key initiatives for achieving the ultimate goal of safeguarding individual freedoms and empowering migrants and civil society as a whole⁶⁰.

⁵³ ANDRADE, José H Fischel, 2022. *Op. Cit.* P. 25.

⁵⁴ ANDRADE, José H Fischel 2022. *Op. Cit.* P. 30.

⁵⁵ CARRERA, Sergio; INELI CIGER, Meltem; BRUMAT VosyliuteLeiz. *Op. Cit.* P. 40.

⁵⁶ BRUMAT, Leiza. (2022), Migrants or refugees? ‘Let’s do both’. Brazil’s response to Venezuelan displacement challenges legal definitions, Migration Policy Centre (MPC), **European University Institute (EUI)**, Florence. Available at: <https://blogs.eui.eu/migrationpolicycentre/migrants-or-refugees-lets-do-both-brazils-response-to-venezuelan-displacement-challenges-legal-definitions/>. Access in: 07/07/2022.

⁵⁷ BRUMAT, Leiza. (2022), *Op. Cit.*

⁵⁸ *Ibid.*

⁵⁹ BRAZIL. Casa Civil. Governo Federal. “Sobre a operação acolhida”. About Operation Welcome. Available at: <https://www.gov.br/casacivil/pt-br/acolhida/sobre-a-operacao-acolhida-2>. Access in: 13/05/2022.

⁶⁰ UNITED NATIONS. ACNUR/UNHCR. “Temas específicos: interiorização”. Specific topics: interiorization. Available at: <https://www.acnur.org/portugues/temas-especificos/interiorizacao/>. Access in: 13/05/2022.

It is essential to highlight that the third phase of this operation is already the most important one. Interiorisation is divided into four modalities, which are (I) institutional, (II) family reunification, (III) social gathering, and (IV) signalled job vacancy. The UNHCR supports all modalities and acts at all stages, be it before departure, during the trip, or even at the final destination. Specifically, in the institutional modality, which includes the departure of Venezuelan people from shelters in Roraima to reception and integration centers in other cities of destination, UNHCR works with non-governmental organizations and civil society entities to promote adequate reception and integration in the places of reception, promoting their peaceful coexistence with the host communities and local development⁶¹.

The Response for Venezuelans (R4V) platform⁶² brings together 13 UN agencies and 37 civil society organizations. Its functions, among others, are elaborating a harmonized annual response plan to assist refugees and migrants and the actions of local governments. Interiorization is a priority for "Plataforma R4V Brasil". One of the work fronts is the sector dedicated exclusively to discussing this strategy, how to support the Federal Government in its implementation and how to train the receiving states and municipalities to facilitate the process of integration of these people in the places of destination. In addition, cross-cutting discussions on the topic take place in other sectors, such as Shelter, Education, Protection, Health, WASH (Water, Sanitation, and Hygiene), and Nutrition⁶³.

Another good example would be the platform "MigraCidades: Improving Local Migration Governance in Brazil", the result of a partnership between the International Organization for Migration (IOM) and the Federal University of Rio Grande do Sul (UFRGS), with the support of the National School of Public Administration, which aims to train local actors, boost migratory dialogue, certify government engagement in improving migratory governance and give visibility to good practices identified in Brazilian states and municipalities.

3. A COMPARATIVE STUDY OF MIGRATION GOVERNANCE IN THE TWO CONTEXTS

At the regional level, the drivers of regional migration governance schemes follow either a top-down diffusion process of global scripts adopted by some regional trading blocs or a bottom-up and independent decision-making process that considers particular regional concerns or domestic interests. The first explanation:

Concentrates on common values or universal values — such as human rights — or supposedly successful regional models of migration management that other regions adopt because of a preference for readily available information to shape their decisions and on the other hand, the independent decision-making process explanation points

⁶¹ UNITED NATIONS. ACNUR/UNHCR. *Op. Cit.*

⁶² BRAZIL. "Plataforma Regional de Coordenação Interagencial R4V (Response for Venezuelans)". Available at: <https://www.r4v.info/pt/brazil>. Access in: 07/07/2022.

⁶³ UNITED NATIONS. ACNUR/UNHCR. "Conheça a estratégia que já transformou a vida de 50 mil refugiados e migrantes venezuelanos no Brasil". Discover the strategy that has already transformed the lives of 50,000 Venezuelan refugees and migrants in Brazil. Available at: <https://www.acnur.org/portugues/2021/04/20/conheca-a-estrategia-que-ja-transformou-a-vida-de-50-mil-refugiados-e-migrantes-venezuelanos-no-brasil/>. Access in: 13/05/2022.

to particular regional or domestic interests, such as the spillover effect of the economic integration projects or the domestic interests of the states.⁶⁴

The formal institutionalization of the European Union or the governance schemes of international organizations has been the templates to create and compare other forms of regional integration and regional governance worldwide⁶⁵. Even though this thought was predominant, at South America, it was possible to criticize the Western or Eurocentric approach at some level, rejecting the tendency to see the Western models as paradigmatic cases to follow. Thus, Compared with the EU, South American countries “on average are more progressive regarding the scope of protection and the socio-economic integration of asylum seekers and refugees”, and it is essential to highlight that “Argentina, Brazil, Costa Rica, Ecuador, Nicaragua, and Mexico surpass EU protection standards”⁶⁶. In the case of large-scale Venezuelan displacement, Brazil is the only South American country that has applied the Cartagena definition to significant numbers of Venezuelan nationals⁶⁷, which could serve as a good example for the EU to deal with the current migration crises.

Even though one can notice important differences in the migration patterns, both the EU and Brazil shared interests in promoting human rights globally, reinforcing this work's relevance. In 2007 they “concluded the Strategic Partnership, reaffirming that they intended to establish dialogues and reach a consensus on the actions that should be taken concerning human rights in the following years through a multilateral approach”⁶⁸. In addition, both parties agreed to hold annual summits to promote a dialogue about human rights, and this could also be an excellent opportunity to share best practices.

In Europe, the efforts to deal with the current situation demonstrated above are based on several different instruments. For example, the Regional Office of Vienna initiated a Migration Data Platform for Evidence-based Regional Development (M-Powered)⁶⁹, designed to help decision-makers leverage migration to support the advancement of the Global Compact for Migration and the SDGs⁷⁰. There are also agencies at the EU level that help in this process, such as the European Border and Coast Guard Agency (Frontex), the European Union Asylum Agency, the European Union Agency

⁶⁴ BRAZ, Adriana Montenegro. Migration Governance in South America: The Bottom-Up Diffusion Of the residence Agreement Of Mercosur. *Brazilian Journal of Public Administration*. Rio de Janeiro 52(2):303-320, Mar-Apr. 2018. Available at: <https://www.scielo.br/j/rap/a/nRGpNvGhemQKhzFTGRttPLJ/?lang=en>. Access in: 07/07/2022, P. 13.

⁶⁵ *Ibid.* P. 18.

⁶⁶ FREIER, F.L; GAUCI, Jean-Pierre. (2020), ‘Refugee Rights Across Regions: A Comparative Overview of Legislative Good Practices in Latin America and the EU’, *Refugee Survey Quarterly*, 39(3), pp. 321–362. In: CARRERA, Sergio; INELI CIGER, Meltem; BRUMAT VosyliuteLeiz. *Universidad Del Pacifico*, 2020. *Op. Cit.*

⁶⁷ BRUMAT, Leiza. (2022), *Migrants or refugees? ‘Let’s do both’*. *Brazil’s response to Venezuelan displacement challenges legal definitions*, Migration Policy Centre (MPC), *European University Institute (EUI)*, Florence. In: CARRERA, Sergio; INELI CIGER, Meltem; BRUMAT VosyliuteLeiz. *Op. Cit.*

⁶⁸ BOAVENTURA, Elísa Amorim; STEHLIK, Václav. The Human Rights Protection in the EU Brazil Relations: Structural Considerations and Current Legal Developments. *European Studies* – Volume 6/2019, pp. 141-156. P. Available at: <https://caes.upol.cz/wp-content/uploads/2021/02/BOAVENTURA-STEHLIK.pdf>. Access in: 07/07/2022. P. 148.

⁶⁹ UNITED NATIONS. OIM. Migration Data Platform for Evidence-Based Regional Development (M-POWERD). Available at <https://seeecadata.iom.int/>. Access in: 12/05/2022.

⁷⁰ These efforts can be seen all over the world. See, for example: BRAZIL. Supreme Court. News. STF launches RAFA, Artificial Intelligence tool to classify actions in the UN 2030 Agenda Initiative supports the classification of processes in the Supreme according to the United Nations Sustainable Development Goals. 05/12/2022. Available at: <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=486889&ori=1>. Access in: 13/05/2022. Which can become a valuable tool for migration studies in Brazilian Supreme Court.

for Law Enforcement Cooperation (Europol), and Eurostat, to keep the situation under constant monitoring and review. Besides that, one can also highlight the importance of the NGOs, especially at the local level as the Counselling Centre for Integration, the Association for Integration and Migration, the Organisation for Aid to Refugees, Inbáze and Caritas of the Diocese of Hradec Králové, and of the academy in this path as the Odysseus Network, among other institutions and projects that contribute to the study of the topic. Unfortunately, not even the most sophisticated mechanisms have been successful in the last year.

At the same time, South America, despite having “uneven” policy responses, has some of the most successful, progressive and liberal migration, and refugee legislation in the world⁷¹, based on the Cartagena Declaration on Refugees⁷² signed in 1984, which responded in an efficient way to the persistent economic crisis, poverty and insecurity that had arisen in Central America, as well as the longer-term experience with forcibly displaced persons and the adoption of political asylum as a response⁷³.

It is important to highlight in this comparison that, as mentioned before, the migration path is not homogeneous in the world and unlike the huge contingent of refugees that occupy the political debate in Europe, Latin America has a body of historical minorities highly damaged by years of exploitation and genocide. The situation in South America, where its minorities are concerned, has a different gravity.

It is a historical exclusion - economic and political - of a huge contingent of individuals who, for the most diverse reasons, had precisely their ethnicity as the basis for the withdrawal of their citizenship. When entering a social limbo, Latin American ethnic minorities, notably indigenous and black quilombolas, suffered a series of abuses of their most fundamental rights and the exercise of their autonomy as a high assimilationist and excluding cultural pattern is established. Thus, reducing the autonomy of these people. In short: they have become invisible.

The seriousness of the situation necessarily requires more incisive responses for a possible rebalancing and serves as a good example of the particularities that should be taken in consideration when comparing different migration scenarios and politics⁷⁴. Brazilian success with “Operação Acolhida” shows to the European Union (and to the rest of the world) the prominence of its model of governance following a bottom-up scheme and building a local network for cooperation.

⁷¹ CARRERA, Sergio; İNELI CIĞER, Meltem; BRUMAT VosyliuteLeiz. CEPS Policy Insights No 2022-09/ March 2022. The EU Grants Temporary Protection for People Fleeing War in Ukraine. Time to rethink unequal solidarity in EU asylum policy, **CEPS Policy Insights**. Available at: <https://www.ceps.eu/ceps-publications/eu-grants-temporary-protection-for-people-fleeing-war-in-ukraine/>. Access in: 12/05/2022.

⁷² CARTAGENA, 22 November 1984. Regional Refugee Instruments & Related, Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Available at: https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf. Access in: 13/05/2022.

⁷³ CARRERA, Sergio; İNELI CIĞER, Meltem; BRUMAT VosyliuteLeiz. *Op. Cit.*

⁷⁴ DUTRA, Deo Campos. “Multiculturalismo e Direito no País das Minorias Invisíveis: Fundamentos e Proposições para uma Nova Leitura da Identidade Constitucional Brasileira”. *Multiculturalism and Law in the Country of Invisible Minorities: Foundations and Propositions for a New Reading of Brazilian Constitutional Identity. Revista do Direito*, (53), 67-91. 2017. Original in Brazilian Portuguese. Available at: <https://doi.org/10.17058/rdunisc.v3i53.10477>. Access in: 07/07/2022. P. 85.

Thus, the necessary comparative methodology applied in the above-mentioned context demonstrates the importance of the sharing of best practices in the sustainable migration governance framework, in order to achieve the SDGs. Such comparison may be an inspiration for European governments to build upon and extend them to the populations affected by migration and reflect on the improvement and update of already existing local policies.

CONCLUSION

As migration and displacement occur within broader dynamic long-term social, security, political and economic contexts; it is important to recognize this phenomenon is not a simple path, especially considering that the world is still in many ways grappling with a significant global upheaval caused by the severe pandemic and now the Ukrainian war that has tested even the most resilient systems, countries, communities and people. Rather than looking only at the here and now, one needs to understand the change in terms of longer-term migration patterns and processes. The significance and implications of any migration crisis such as the Ukrainian war and Venezuela diaspora can only be sufficiently understood and articulated when contextualised and rooted in current knowledge of migration and its subsequent steps.

As demonstrated in this paper, it is urgent to rely on the sharing of best practices and apply the comparative methodology in order to better understand how certain situations can be addressed. Observing and transposing some protective steps from one into another reality (when applicable) can save important time, resources and ultimately, even lives. That is exactly what makes sharing best practices so relevant and using the comparative methodology so appropriate in such cases.

Although it is not possible to speak of joy or celebration in the context of any integration policy, which involves so many still suffering and forced to leave their homes due to individual persecutions, conflicts, or so many other reasons, whether in Latin America, Europe or elsewhere around the world, without a doubt, the response given in Brazil to Venezuelan refugees feeds the hope that it is possible to welcome these people with more dignity and humanity, taking them as active parts of the migration governance process built in the south and for the south, but serving as an example to the rest of the world.

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