

# SISTEMA EUROPEU COMUM DE ASILO?

O TRATAMENTO DESIGUAL DE REFUGIADOS SÍRIOS  
E UCRANIANOS

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## Introdução

A disparidade de tratamento entre os refugiados sírios e ucranianos levanta questões sobre a compatibilidade do Sistema Europeu Comum de Asilo com os compromissos internacionais assumidos pela União Europeia (UE)<sup>1</sup>, nomeadamente o postulado pelo art.3 da Convenção de Genebra de 1951<sup>2</sup>, que nos diz que os Estados contratantes devem aplicar as suas disposições sem discriminação de raça, religião ou país de origem. Nesta análise, procuramos abordar as razões que motivaram as diferentes respostas da UE quando confrontada com refugiados de origens distintas, nomeadamente o recurso a acordos com países terceiros e *push backs* durante a crise de 2015 e ativação da Diretiva de Proteção Temporária (DPT) durante a crise de 2022. O objetivo desta comparação é evidenciar a forma como a falta de homogeneidade entre os estados-membros (EM), a cobertura mediática e o discurso dos seus líderes políticos contribuem para a formação de uma opinião pública negativa e dificultam a possibilidade de consenso e cooperação em matéria de asilo. Consideramos que a construção de um verdadeiro sistema comum de asilo depende da ultrapassagem destes obstáculos.

De modo a compreender o direito europeu aplicável a esta matéria, importa fazer um pequeno enquadramento teórico acerca da inclusão da matéria do asilo no DUE, e ainda sobre o desenvolvimento do Sistema Europeu de Asilo Comum.

Na sequência das deslocações em massa produzidas no seguimento da Segunda Guerra Mundial, tornou-se evidente junto da comunidade internacional, a necessidade de regular a matéria do direito ao asilo. É neste contexto que surge a Convenção de Genebra de 1951 e o seu Protocolo Adicional de 1967, contribuindo essencialmente para reconhecer o conceito de refugiado e o princípio de *non-refoulement*. A introdução desta matéria no DUE data de 1992, quando no Tratado de Maastricht a cooperação internacional em matéria de asilo passou a integrar o quadro institucional da EU, especificamente o 3º pilar: Justiça e Assuntos Internos (JAI). Em 1997 através do Tratado de Amesterdão e ao abrigo do art.78 do TFUE, foi introduzida a competência para a UE desenvolver uma política comum em matéria de asilo, com a jurisdição do TJUE. Mas foi apenas em 1999, no Conselho Europeu de Tampere, que se iniciou conversações para o desenvolvimento de um Sistema Europeu Comum de Asilo que permitisse concretizar o previsto pelo art.78. Em 2000, a Carta de Direitos Fundamentais da UE é aprovada, consagrando no seu art.18 o direito ao asilo remetendo para a Convenção de Genebra e o Protocolo de Nova Iorque. Contudo, é com só o Tratado de Lisboa, em 2009 que a CDFEU ganha força de lei primária da UE e é estabelecido o Espaço de Liberdade, Segurança e Justiça (ELSJ) na Parte III do Título V do TFUE. O âmbito do art.67 é, assim,

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<sup>1</sup> The EU's solidarity with displaced Ukrainians illustrates the deeply politicized, and often discriminatory, nature of providing refugee protection compared to Syrian refugees, which violates the 1951 Convention and the subsequent 1967 Protocol that broadened it. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4>

<sup>2</sup> Organização das Nações Unidas. *Convenção relativa ao estatuto dos refugiados 1951* [online]. Disponível em: [https://www.acnur.org/fileadmin/Documentos/portugues/BDL/Convencao\\_relativa\\_ao\\_Estatuto\\_dos\\_Refugiados.pdf](https://www.acnur.org/fileadmin/Documentos/portugues/BDL/Convencao_relativa_ao_Estatuto_dos_Refugiados.pdf)

alargado, passando a prever o desenvolvimento desta política com base na solidariedade entre Estados-Membros e equidade entre nacionais de países terceiros.<sup>3</sup>

É neste contexto que surge o Sistema Europeu Comum de Asilo (SECA), desenvolvido em duas fases (entre 2008-2013 e entre 2015-2017). Este sistema começou por definir os standards comuns mínimos nesta matéria, com as diretivas Qualificação, Proteção Temporária, Procedimentos e Acolhimento e os Regulamentos Dublin II e EURODAC. No seguimento do Programa de Haia (2004) a segunda fase procurou avançar para uma maior uniformização e harmonização nesta matéria, tendo sido revistas as diretivas Qualificação, Procedimentos e Acolhimento, e aprovado o Regulamento Dublin III.<sup>4</sup> A Diretiva de Proteção Temporária surge na primeira fase de desenvolvimento do SECA, mas é ativada pela primeira vez em 2022, na sequência da invasão russa à Ucrânia.

A DPT foi desenvolvida no seguimento do conflito da Ex-Jugoslávia, que produziu, à época, a maior vaga de refugiados para EU desde a II GM, evidenciando a necessidade de criação de um mecanismo que capacitasse os EM a dar resposta a um afluxo maciço de pessoas deslocadas, conferindo-lhes proteção imediata.<sup>5</sup> Assim, a Diretiva 2001/55/CE relativa a regras em matéria de concessão de proteção temporária no caso de afluxo maciço de pessoas deslocadas e a medidas tendentes a assegurar uma repartição equilibrada do esforço assumido pelos Estados-Membros da EU, foi adotada, contribuindo para reduzir as disparidades entre EM e movimentos secundários<sup>6</sup>.

Contudo, apesar de a UE ter recebido várias vagas migratórias entre 2001 e 2022, a DPT não foi ativada em nenhuma delas. A literatura anterior à crise de refugiados oriundos da Ucrânia, explorou as razões que podiam explicar a não ativação da DPT, apontando essencialmente para a falta de consenso, a morosidade temporal, a ambiguidade do conceito de “fluxo em massa” e o receio de criação de um *pull factor*<sup>7</sup>.

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<sup>3</sup> European Parliament Policy Department for Citizen’s Rights and Constitutional Affairs. *The future relationship between the UK and the EU in the field of international protection following the UK’s withdrawal from the EU* [online]. Study requested by the LIBE Committee, 15-10-2018. [Consulted on the 11<sup>th</sup> of November]. Available on: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2018\)608836](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2018)608836)

<sup>4</sup> European Parliament Policy Department for Citizen’s Rights and Constitutional Affairs. *The future relationship between the UK and the EU in the field of international protection following the UK’s withdrawal from the EU* [online]. Study requested by the LIBE Committee, 15-10-2018. [Consulted on the 11<sup>th</sup> of November]. Available on: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2018\)608836](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2018)608836)

<sup>5</sup> European Parliament Policy Department for Citizen’s Rights and Constitutional Affairs. *The future relationship between the UK and the EU in the field of international protection following the UK’s withdrawal from the EU* [online]. Study requested by the LIBE Committee, 15-10-2018. [Consulted on the 11<sup>th</sup> of November]. Available on: [https://www.europarl.europa.eu/thinktank/en/document/IPOL\\_STU\(2018\)608836](https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2018)608836)

<sup>6</sup> Considerando n.º 15 da Diretiva 2001/55/CE relativa a regras em matéria de concessão de proteção temporária no caso de afluxo maciço de pessoas deslocadas e a medidas tendentes a assegurar uma repartição equilibrada do esforço assumido pelos Estados-Membros da EU [online]. Disponível em: <https://eur-lex.europa.eu/PT/legal-content/summary/temporary-protection-if-there-is-a-mass-influx-of-displaced-people.html>

<sup>7</sup> The most frequent arguments for its non-activation involve that it required lengthy procedures, that “mass influx” is a vague term, that it would be difficult to reach a qualified majority vote in the Council, and that the activation would create a ‘pull-factor’ for migrants. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. P.17. Disponível em: <https://hdl.handle.net/11250/3073837>

A utilidade desta diretiva foi questionada não só por autores que a consideraram obsoleta<sup>8</sup> como pela Comissão Europeia, que num estudo de 2016<sup>9</sup> sugere inclusive a sua revogação. Contudo, a sua rápida ativação, na sequência do início do conflito na Ucrânia (8 dias após o começo das hostilidades) coloca em causa as conclusões anteriores<sup>10</sup>.

A reação da UE à crise de refugiados após a invasão russa à Ucrânia, ao ativar a Diretiva de Proteção Temporária e aceitar um número considerável de refugiados, destaca-se em contraste com a resposta à crise de 2015<sup>11</sup>. Nesta última, onde os refugiados eram principalmente sírios, a UE enfrentou críticas por falta de solidariedade e ações coordenadas entre os Estados-membros<sup>12</sup>. A crise de refugiados após a invasão russa à Ucrânia evidenciou que a UE tem capacidade para mobilizar recursos e aceitar refugiados quando a vontade política está presente<sup>13</sup>. Contudo, a resposta à crise de 2015 levanta questões sobre a consistência dos valores humanitários dos diferentes EM da UE quando confrontados com diferentes origens de migrantes, o que coloca em causa a unidade e o projeto de integração europeu<sup>14</sup>.

São várias as causas apontadas para a iniquidade da resposta da UE às crises migratórias de 2015 e de 2022. Apesar de ambas partilharem as características de se

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<sup>8</sup> INELI-CIGER, Meltem. *5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022* [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>9</sup> European Commission. Directorate-General for Migration and Home Affairs. *Study on the Temporary Protection Directive: Executive Summary* [online]. January, 2016. Disponível em: [https://home-affairs.ec.europa.eu/system/files/2020-09/executive\\_summary\\_evaluation\\_tpd\\_en.pdf](https://home-affairs.ec.europa.eu/system/files/2020-09/executive_summary_evaluation_tpd_en.pdf)

<sup>10</sup> During the first year of the Syrian refugee crisis, dealing with one million refugees was depicted as unprecedented and impossible, but in 2022, over two million refugees arrived in Europe within the course of two weeks, revealing the falsity of the claim that Europe could not handle that many refugees within months (Khalid, 2022). NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>11</sup> While internal disagreements and inaction have characterised the EU's response to the 2015-2016 refugee crisis, the treatment of Ukrainian refugees fleeing the Russian invasion has been the first stone on the road to exemplary behaviour in the eyes of EU and international law. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>12</sup> This attitude not only contradicts Europe's international protection history but also leads many to question the founding common values of European integration: human dignity, freedom, equality, solidarity, principles of democracy and the rule of law (Charter of Fundamental Rights of the European Union, 2000) GENÇ H. Deniz and ŞİRİN ÖNER N. Aslı. Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union. [online]. ISSN 2630-6263, ss. 1-18. Disponível em: DOI: 10.14782/ipsus.539105

<sup>13</sup> The EU activation of the TPD was a significant step towards a more humane protection regime (Venturi & Vallianatou, 2022), and it sent a clear message of a joint EU commitment to implement a coordinated response to tackle the humanitarian catastrophe of the massive mobilisation of Ukrainian people into European borders (Carrera et al., 2022). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>14</sup> These actions not only violate the fundamental human rights of Syrian refugees, but also undermine the EU's commitment to the principles of human dignity and equality, and threaten the stability and security of the region as a whole. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4> Solidarity has been a fundamental principle of European integration so expressed concerns about burden-sharing and guaranteeing balanced efforts (minimal in many cases) among Member States in providing temporary protection shows that they have deeper problems of confidence and trust each other and in the mechanisms of European integration. GENÇ H. Deniz and ŞİRİN ÖNER N. Aslı. Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union. [online]. ISSN 2630-6263, ss. 1-18. Disponível em: DOI: 10.14782/ipsus.539105

consubstanciarem numa deslocação abrupta de um elevado número de pessoas<sup>15</sup> em fuga de um conflito, à procura de um refúgio no território de um pequeno e determinado número de EM da UE, a utilização de instrumentos jurídicos e políticos pela UE foi bastante diferente<sup>16</sup>. Consideramos que as razões que explicam essa disparidade são: a) cobertura mediática; b) identidade dos refugiados; c) vagas de migração anteriores; e d) proximidade do conflito, pelo que analisamos individualmente cada uma delas.

É desde logo importante salientar que apesar de em ambos os casos, as pessoas em fuga do conflito reunirem abstratamente as condições para requerer o estatuto de refugiado ao abrigo do direito internacional postulado na Convenção de Genebra de 1951, a grande maioria das pessoas oriundas da Ucrânia optou por requerer a proteção temporária providenciada ao abrigo da Diretiva de Proteção Temporária, pelo que juridicamente seria mais correto referirmo-nos a refugiados<sup>17</sup> no caso do conflito sírio e beneficiários de proteção temporária no caso da crise de 2022<sup>18</sup>, com implicações nos direitos<sup>19</sup> e liberdades conferidas por cada um destes estatutos. Contudo, de modo a facilitar a exposição, feita esta ressalva, os dois termos são utilizados indistintamente no decorrer da análise.

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<sup>15</sup> Both refugee crises were very sudden and their size was similar, about six million people in each case. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>16</sup> The EU had a clear refugee policy both in the case of Syria and Ukraine, but these policies could not have been more different. The EU policy on Syrian refugees was a legacy policy on political refugees not designed for Syria, while the EU adopted a specific policy on Ukrainian refugees. ÅLSUND, Anders. *How Can Europe Handle the Ukrainian Refugee Challenge?* [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>17</sup> the 2015 Syrian refugee crisis is categorized as a “refugee” crisis due to the fact that the majority of Syrians arriving in Europe were fleeing conflict and persecution, making them eligible for protection under international law (UNCHR 2015). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>18</sup> in the case of the Ukrainian refugee crisis, the term “refugees” is used for the same reasons [due to the fact that displaced persons were fleeing conflict and persecution, making them eligible for protection under international law], even though most individuals from Ukraine have applied for temporary protection status instead of seeking asylum (Eurostat 2023). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>19</sup> Moreover, the majority of Syrians were granted subsidiary protection and were entitled to residence and work permit but not to family reunion rights (Carrera et al., 2022). SALES, Matías Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

## Cobertura Mediática

Adotando uma perspectiva construtivista<sup>20</sup>, e admitindo o impacto dos media na formação da opinião pública e a consequente pressão exercida na esfera política, a diferente abordagem adotada no noticiar dos conflitos produtores de refugiados<sup>21</sup>, evidencia um apelo a preocupações desiguais. Desde logo a diferente cobertura mediática recebida pelos dois conflitos, um deles, noticiado diariamente e analisado por vários especialistas na matéria em horário nobre, o outro, relatado de forma vaga, escassa<sup>22</sup> e como sendo confuso<sup>23</sup> e complexo<sup>24</sup>. Depois a narrativa em torno do próprio conflito, com as reportagens feitas no âmbito da invasão Russa à Ucrânia a adotarem uma abordagem humanitária<sup>25</sup>, enfatizando a necessidade de empatia com o povo ucraniano, vítima da invasão de Putin<sup>26</sup>. Contrariamente, as reportagens feitas no âmbito da crise de refugiados de 2015 evidenciaram uma abordagem securitária<sup>27</sup> preocupada com a

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<sup>20</sup> The theory of constructivism can be used to explain how social constructions and resulting discourse have shaped the difference in the international response toward the Syrian compared to the Ukrainian refugee crisis. NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>21</sup> In migration-media studies, and in particular in the aftermath of the Syrian refugee crisis, extensive literature has investigated the role of the media in shaping public opinion and policy decisions in the context of humanitarian crises, the representation of refugees in the press, and the power of the media in framing narratives in refugee crisis-related contexts. (...) According to different literature, the media can play a crucial role in shaping public opinion and influencing policy-making cycles in crisis-related scenarios such as the Ukrainian-Russian conflict and its subsequent refugee crisis (Eberl et al., 2018). SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>22</sup> as the Syrian civil war gained momentum from 2011 to 2015, the Western world did not have the same understanding of the situation because no predominant international narrative of the conflict arose (CBC, 2022). NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>23</sup> The Syrian civil war was incomprehensible even to well-informed Europeans. Syria is known as a most colorful agglomeration of ethnic groups and religions, and such a state is difficult for outsiders to understand. On the one side stood the inhumane dictator Bashar Al-Assad. On the other side stood ISIS, the fanatical Islamic State, while all kinds of other ethnic and religious groups fell in between. Dozens of foreign parties aggravated Syria's domestic complexity. Russia, Turkey, and a score of Western countries had small numbers of special forces on Syria, overtly to fight ISIS, but also to check one another. The civil war slowly gained momentum from 2011 to the great exodus of 2015. Nobody succeeded in explaining to the public what the horrific civil war in Syria really was about. Several of the few heroic journalists who went there were killed. Therefore, no narrative evolved that evoked sympathy for the suffering Syrian refugees. Were they Muslims? Did they sympathize with ISIS? Were they Christians? If so, why did they sympathize with Assad? Without a credible narrative that arouses sympathy, no refugees are likely to attract much popular support among outsiders at any time. ÅLSUND, Anders. *How Can Europe Handle the Ukrainian Refugee Challenge?* [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>24</sup> In Syria, the main concern was perceived to be ISIS, and Russia was supposed to fight it, and so was the Syrian government, while dozens of other countries were somehow involved. The drama was too complex. ÅLSUND, Anders. *How Can Europe Handle the Ukrainian Refugee Challenge?* [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>25</sup> SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>26</sup> This humanitarian media framing and positive narratives circulated at the beginning of the crisis and claimed the necessary reception of refugees fleeing the horror of the Putin-initiated war and encouraged the idea of help and protecting our fellow Ukrainian neighbours. SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>27</sup> SALES, Matías Ibañez. *The Refugee crisis' double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em:

iminência do terrorismo, a falta de infraestruturas para receber o elevado número de pessoas em fuga e a consequente sobrecarga económica, denotando a falta de conhecimento sobre os contornos do conflito no Médio Oriente<sup>28</sup> e resultando numa falta de empatia com os refugiados sírios<sup>29</sup>.

Além disso, foram vários os líderes políticos que se manifestaram de formas diametralmente opostas em ambas as crises, nomeadamente o primeiro-ministro da Hungria, Viktor Orbán<sup>30</sup> e o primeiro-ministro da Bulgária Kiril Petrov<sup>31</sup>, demarcando a oposição dos EM da Europa Central no caso do recebimento de refugiados sírios, mas abrindo espaço para os refugiados ucranianos. A pressão exercida por este bloco de EM é aliás uma das principais razões apontadas para a impossibilidade de alcançar a maioria qualificada do Conselho, necessária para a ativação da Diretiva de Proteção Temporária no âmbito da crise de 2015, sendo simultaneamente a razão atribuída para o sucesso da sua ativação em 2022.<sup>32</sup>

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<https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>28</sup> The shortage of coverage of the Syrian civil conflict and the fact that it has not been framed to fit into the same distinct black-and-white boxes as the attacks on Ukraine has led to the lack of coherent, universal, humanitarian policies toward Syrian refugees. NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>29</sup> Europeans did not understand what the civil war in Syria was about or who fled and why. Therefore, they had little sympathy for the refugees from Syria. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>30</sup> Back in 2016, Hungarian Prime Minister Orbán had described non-European refugees as “Muslim invaders” and had claimed that “Hungary should not accept refugees from different cultures and religions to preserve its cultural and ethnic homogeneity” (Reilly & Flynn, 2022). However, one week after the Russian invasion, President Orbán said the motto “we’re letting everyone in” near the Hungarian-Ukrainian border (Bathke, 2022), while Bulgarian Prime Minister Kiril Petkov also echoed the media-fuelled discriminatory narrative by underlying that “these people are Europeans. These people are intelligent, they are educated people... This is not the refugee wave we have been used to, people we were not sure about their identity, people with unclear pasts, who could have been even terrorists...” (Brito, 2022). SALES, Matías Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>31</sup> In February 2022, when referring to Ukrainian refugees, Bulgarian Prime Minister, Kiril Petkov told journalists, “These people are intelligent. They are educated... This is not the refugee wave we have been used to... people with unclear pasts who could have been terrorists” (CBC, 2022). NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>32</sup> The reluctance to accept refugees among Central European governments posed obstacles to the activation of the TPD in 2015, while their support became crucial for its activation in 2022. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

## Identidade dos Refugiados

Na perspetiva da teoria pós-funcionalista, que atribui a cooperação internacional à crença de uma identidade comum<sup>33</sup>, e tendo em conta o fenómeno do Orientalismo<sup>34</sup>, torna-se claro que a identidade dos refugiados, produzidos por ambos os conflitos, teve um impacto na diferente abertura dos EM à sua entrada na UE<sup>35</sup>. A demarcação do Ocidente e Oriente com foco nas diferentes crenças religiosas e costumes, aumentou a desconfiança e contribuiu para diminuir o reconhecimento das pessoas sírias como necessitando de auxílio. Por outro lado, a identificação dos refugiados ucranianos com o povo<sup>36</sup> e as tradições europeias<sup>37</sup> contribuiu para aumentar a consciência da necessidade de auxílio e empatia. Esta demarcação foi inclusive feita através de uma comparação direta<sup>38</sup> entre os dois<sup>39</sup>. A componente xenófoba deste discurso torna-se ainda mais

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<sup>33</sup> Post-functionalism places a significant emphasis on identity politics. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>34</sup> Orientalist philosophy, which was present in the 20th century colonial discourse, as these types of narratives implicitly suggest that war is a natural phenomenon in places outside of the Western world and portrays a lack of civilisation (Ellison & Andrews, 2022). (...) Moreover, this Orientalist approach that portrays Ukrainian people as “civilised” and the Syrian refugees as “terrorists” or “problematic”, paves the way to treat them politically different, while our understanding of the situation (Khalid, 2022). Disinformation, misinformation and xenophobia played a key role in creating mainstream negative narratives on the reception of Syrian and other non-European asylum seekers back in 2015-2016, contrary to what happened in 2022 with the Ukrainian humanitarian crisis. SALES, Matías Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>35</sup> From a post-functionalistic perspective, the activation of the TPD during the 2015 refugee crisis would not have been expected due to the exacerbation of cultural divisions across Europe, pitting proponents of a multicultural and open Europe against opponents. (...) In contrast, when the war in Ukraine broke out in 2022, the question of how to coordinate a response was not subject to intense politicization. The focus shifted more towards the practical and humanitarian aspects of managing the influx of displaced individuals. Viewing this situation through a post-functionalist lens, the absence of significant cultural divisions meant that the issue of coordinating a response did not become politically contentious. Consequently, this lack of politicization facilitated the activation of the TPD. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>36</sup> Daniel Hannan, British reporter from The Telegraph, wrote in an opinion article on 26 February “They seem so like us. That is what makes it so shocking. War is no longer something visited upon impoverished and remote populations. It can happen to anyone” Charlie D’Agata, a senior CBS correspondent in Kyiv, stated on air “This isn’t a place, with all due respect, like Iraq or Afghanistan, that has seen conflict raging for decades. You know, this is a relatively civilised, relatively European – I have to choose those words carefully, too – city, where you wouldn’t expect that or hope that it’s going to happen”. SALES, Matías Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>37</sup> Through this dehumanising comparison, media coverage gradually helped push and frame a positive narrative on the need to protect Ukrainian refugees because they were similar to Europeans, behaved like Europeans, and had cultural and democratic values close to those of Europeans SALES, Matías Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>38</sup> Regrettably, this positive narrative was developed upon pillars of discriminatory comparisons with refugees from different origins, races or cultures, especially from North Africa and the Middle East, and, therefore, fostered on prime time TV double standards in the way they are treated. SALES, Matías Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>39</sup> In this very same line, Phillipe Corbé, a commentator at the French BFM TV, stated that “we’re not talking about Syrians fleeing bombs of the Syrian regime backed by Putin, we’re talking about Europeans leaving in cars that look like ours to save their lives” and Kelly Kobiella, a reporter for NBC News covering the refugee drama from Poland, mentioned in prime time: “Just to put it bluntly, these are not refugees from Syria. These are Christians or white” SALES, Matías Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute



evidente quando considerada a discriminação enfrentada pelos residentes na Ucrânia não-brancos<sup>40</sup> quando tentavam fugir do conflito.

Também não contribuiu para este efeito o diferente género dos refugiados, predominantemente masculino no caso da crise de 2015<sup>41</sup> e predominantemente feminino<sup>42</sup> na crise de 2022, na medida em que, existindo uma associação entre a proliferação do crime, mais facilmente associada ao sexo masculino, se criou uma imagem negativa ligada aos refugiados sírios<sup>43</sup> aliada também à crença de que o verdadeiro objetivo por detrás desta migração seria de cariz económico, mais uma vez descredibilizando a idoneidade dos requerentes de asilo oriundos do Médio Oriente.

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of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>40</sup> It is also important to note that while Western and European policies generally favoured Ukrainian over Syrian refugees, many Ukrainian refugees (especially those of colour) also faced discrimination. There are countless stories of the struggles faced by non-white students and migrant workers who did not fit the 'typical Ukrainian' image being stranded at borders, beaten by sticks, and denied access to accommodation and transportation (Luquerna, 2022). NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

<sup>41</sup> The composition of the refugees has also been very different. From Syria, families or young men emigrated. The prominence of young men aroused the suspicion that the real aim was for work, which has been less appreciated. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>42</sup> From Ukraine, the outflow has consisted of three groups: women, children, and old age pensioners, but virtually no men since Ukrainian men of the age 18–60 have not been allowed to leave the country because of potential military service. Women and children arouse compassion and no fear. Given that only some members of the families depart, the perception that they will return dominate. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>43</sup> The Syrian refugee group consisted of more men than the Ukrainian refugee group, as men aged 18–60 were prohibited from leaving Ukraine to defend their country (Karasapan, 2022). Male refugees tend to be depicted as more prone to crime, violence, and radicalization (Strickland, 2016). NATHOO, Asha Nenshi. *Night and Day: An Investigation of the Difference in International Response to the Syrian Refugee Crisis vs. the Ukrainian Refugee Crisis Through the Theoretical Lens of Constructivism* [online]. Vol. 1 No. 2 (2023): The Motley Undergraduate Journal. Disponível em: DOI: <https://doi.org/10.55016/ojs/muj.v1i2.77323>

## Vagas de migração anteriores

Além disso, a experiência anterior na receção de pessoas oriundas destas nacionalidades também é bastante distinta. Se por um lado, existem vários Estados-Membros como a Alemanha e a Suécia, que de forma bem-sucedida já tinham no passado recebido e integrado nas suas sociedades pessoas oriundas do Médio Oriente, esta experiência não foi partilhada pelos restantes<sup>44</sup>. Mas, em vagas de migração anteriores de pessoas de nacionalidade ucraniana, houve lugar à formação de um corpo de trabalhadores pouco qualificados necessário para responder à falta de mão de obra em alguns EM<sup>45</sup>, visto como benéfico para o desenvolvimento económico<sup>46</sup>. Estes fatores estão diretamente relacionados com a perceção da duração da estadia – se por um lado foram vários os emigrantes ucranianos que nestas anteriores vagas de migração acabaram por voltar para a Ucrânia<sup>47</sup>, este retorno não é visível nos migrantes sírios que se estabeleceram na Alemanha e Suécia<sup>48</sup>.

De facto, a diferença entre os vários EM é precisamente aquilo que coloca em causa a coesão e a sustentabilidade de um “Sistema Europeu Comum de Asilo”. Se por um lado existem EM como a Suécia e a Alemanha, historicamente pró-imigração e pró-europeus, abertos a receber refugiados independentemente da sua origem, este já não é o caso com EM como a Polónia, Bulgária e Hungria, que desde sempre se mostraram contra a possibilidade de partilha de responsabilidade e quotas de redistribuição/alocação dos refugiados recebidos pelos EM, tendo inclusive sido acusados de prática de *push backs*<sup>49</sup>.

O caso da Polónia é especialmente relevante para este efeito dado que a maioria dos refugiados oriundos da Ucrânia optaram por se estabelecerem neste EM<sup>50</sup>. Na crise de 2015 a Polónia recusou-se aceitar mecanismos de partilha de responsabilidade e

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<sup>44</sup> An issue that has received surprisingly little attention is the prior migration inflows. Two West European countries had received large inflows from the Middle East, namely Germany (mainly Turks and Kurds) and Sweden (many Christian Syrians, Iraqis, and Kurds). These were the two countries that welcomed Syrian refugees in 2014. In Southern and Eastern Europe, by contrast, surprisingly few people from the Middle East had arrived previously. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>45</sup> The Ukrainian immigrants typically worked in agriculture, construction, and household, low-paid and temporary jobs. They were rarely competing with locals. Many Ukrainian migrants went back and forth. Many worked for a few months in Central Europe and then returned to Ukraine. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>46</sup> This vast Ukrainian migration attracted minimal public attention because it was appreciated. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>47</sup> The Ukrainian migration to Europe was very different. It had been large for years. After Ukraine became independent in 1991, many Ukrainians went to various European countries to work or to study. Numerous Ukrainians, probably most, went home to Ukraine intermittently and then out to earn more money again. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>48</sup> The Syrian migration has been quite different since Syria has been in a terrible state for a long time. The main traditional European recipient countries, Germany and Sweden, have not seen much of a return of migrants to Syria for that reason. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>49</sup> Further, Eastern European States “illegal pushback policies” further demonstrate a discriminatory and polarized political climate toward Syrian refugees. Adnan Nasser & Alexander Langlois, World Leaders are Forgetting About Syrian Refugees, Carnegie Endowment for Int’l Peace (May 5, 2022), <https://carnegieendowment.org/sada/87079> (identifying Poland, Hungary, and Romania as a few states that have enacted these policies).

<sup>50</sup> So far, nearly half the refugees have chosen to stay in Poland and the rest are predominantly in Central Europe and Germany. ÅLSUND, Anders. How Can Europe Handle the Ukrainian Refugee Challenge? [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

redistribuição de refugiados, enfrentando críticas pelo seu tratamento de refugiados na fronteira com a Bielorrússia<sup>51</sup>. Já na crise de refugiados ucranianos, o tratamento concedido foi completamente diferente, tendo havido um esforço político para que fossem abertamente recebidos<sup>52</sup>, ainda que mais uma vez tenha sido evidente que esta abertura se baseava na concepção de ucranianos brancos e cristãos, quando em contraste, residentes da Ucrânia não suscetíveis de enquadrar nesta descrição, encontraram entraves quando tentaram passar a fronteira<sup>53</sup>.

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<sup>51</sup> Furthermore, in the case of *D.A. and Others v. Poland*, Syrian nationals suffered pushback at the Polish-Belarusian border and were repeatedly denied their right to protection under Articles 3 and 4 of the 1951 Convention, relating to the Status of Refugees and its 1967 Protocol, when Polish authorities unlawfully aimed to reduce the number of asylum applications registered in Poland. The Court held that Article 3 of the Convention was violated due to the illegally denied access to the asylum process and “exposed . . . risk of inhuman and degrading treatment and torture in Syria.” The mistreatment of Syrian nationals in this case highlights the serious consequences of the Polish government’s efforts to restrict the number of asylum applications, which disregards their obligations under international law. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4>

<sup>52</sup> For example, Poland displayed a warm welcome for Ukrainian refugees, taking immediate actions to integrate, protect, and assist Ukrainians. The State even enacted legislation to grant Ukrainian citizens and their families equal access to the Polish labor markets and afforded them social benefits such as the right to education and healthcare. The Polish Border Guard and other public services have expedited quick border crossings, arranged for free transportation, and facilitated humanitarian assistance and medical aid for Ukrainian refugees. Although the promptness and efficiency of aid for Ukrainians should be applauded, the apparent and unlawful bigotry toward Syrian refugees that it revealed cannot be ignored. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4>

<sup>53</sup> There are also accounts of Polish authorities taking aside African students and refusing them entry into Poland, although the Polish Ambassador to the UN told a General Assembly meeting on 28 February that assertions of race or religion-based discrimination at Poland’s border were “a complete lie and a terrible insult to us.” He asserted that “nationals of all countries who suffered from Russian aggression or whose life is at risk can seek shelter in my country.” According to the Ambassador, people from 125 different nationalities have been admitted into Poland from Ukraine. Global Detention Project. *The Ukraine Crisis. Double Standards: Has Europe’s Response to Refugees Changed?* [online] March 2022. Disponível em: <https://reliefweb.int/report/ukraine/ukraine-crisis-double-standards-has-europe-s-response-refugees-changed>

## Proximidade do conflito

Se olharmos para esta questão de uma perspectiva da teoria de *State-building*, especialmente na sua vertente de preocupação do Estado com a segurança interna<sup>54</sup>, a proximidade dos conflitos – um deles com fronteira direta com a UE<sup>55</sup> e outro bastante distante<sup>56</sup> e separado por outros países, pode talvez explicar a facilidade de consenso alcançada no início do conflito na Ucrânia<sup>57</sup> versus a distância e desligamento emocional ocorrido ao longo do conflito Sírio.

Para além disso, a pré-existência de um acordo em relação à concessão de visas por 90 dias a pessoas com passaporte ucraniano, admitindo-se assim uma via de entrada legal na UE<sup>58</sup>, levou à rápida compreensão de que haveria uma maior facilidade de entrada de refugiados ucranianos, evidenciando a impossibilidade prática de controlo das fronteiras externas da UE e indiciando uma grande pressão nas infraestruturas de receção e emissão de visas<sup>59</sup>.

Pelo contrário, a inexistência de qualquer acordo desta natureza que pudesse facilitar a entrada regular de refugiados sírios na UE<sup>60</sup> implica que aliada à dificuldade

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<sup>54</sup> “(...) the theory suggests that a security threat needs to be present for the member states to transfer authority to the EU on these matters. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>55</sup> In the case of Ukraine, the country has a direct land border with Romania, Poland, Slovakia, and Hungary and there is no third country where the EU can make a migration deal to stop the arrival of asylum seekers and to return them. CIGER, Meltem Ineli. *5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022* [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>56</sup> Building on the state-building lens, the theory suggests that the TPD was not activated during the 2015 refugee crisis, because the perceived collective security threat was not sufficient to persuade member states to transfer authority over their borders to the EU level. The civil war in Syria was not perceived as a direct threat to Europe. Therefore, member states were not willing to transfer authority over their borders. Instead, many reintroduced border controls to restrict migration and others disregarded the Dublin regulation to accommodate more refugees. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>57</sup> Moreover, the state-building lens points to that the activation of the TPD in 2022 for refugees from Ukraine was driven by a collective security threat. The Ukrainian refugee crisis was perceived as a potential threat to Europe, particularly in neighboring countries, due to fears of becoming the next target of Russian aggression. As a result of the perceived security threat, member states were willing to transfer authority to the EU on migration through the activation of the TPD. RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>58</sup> In the Ukrainian refugee crisis, displaced individuals from Ukraine had access to a legal route through neighboring countries, which facilitated their movement. Additionally, Ukraine has a Visa deal with the EU, allowing Ukrainians with biometric passports to enter the EU without a Visa for a period of 90 days (EEAS 2017) RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>59</sup> the likelihood of high migratory pressure on EU's Eastern borders (The Decision notes that “the Union is likely to be faced with a very large number of displaced persons, potentially between 2,5 million and 6,5 million as a consequence of the armed conflict, of whom it is anticipated that between 1,2 and 3,2 million would be persons seeking international protection” (...) a clear risk that the Member States' asylum systems will be unable to process the arrivals without adverse effects on their efficient operation and on the interests of the persons concerned and on those of other persons requesting protection. INELI-CIGER, Meltem. *5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022* [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>60</sup> In contrast, Syrian refugees faced a different situation. With the exception of quota refugees, the primary means of reaching Europe was through illegal and risky boat journeys across the Eastern or the Central Mediterranean route (Wagner 2015, 1). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

física de alcançar as fronteiras<sup>61</sup>, existiam barreiras administrativas<sup>62</sup>, que contribuíram para a consolidação da percepção de distância do conflito e de desnecessidade de uma resposta urgente<sup>63</sup>.

A separação física contribuiu aliás para o desenho da política que acabou por ser adotada pela UE no âmbito da crise de 2015, caracterizada por push-backs e pela realização do EU-Turkey Deal<sup>64</sup>. Contudo, consideramos que a ativação da DPT seria a opção mais adequada neste caso, dado que se responderia às necessidades dos refugiados sírios, evitando-se tratamentos desiguais em EM diferentes<sup>65</sup> motivados pela análise individual dos pedidos de asilo<sup>66</sup> e permitindo-se a possibilidade de escolha do EM<sup>67</sup>.

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<sup>61</sup> In contrast, Syrian refugees faced a different situation. With the exception of quota refugees, the primary 34 means of reaching Europe was through illegal and risky boat journeys across the Eastern or the Central Mediterranean route (Wagner 2015, 1). RIISNAES, Hedda Marie Grieg. *Once declared obsolete, now applied to refugees from Ukraine - The EU Temporary Protection Directive* [online]. Department of Comparative Politics, University of Bergen. Spring 2023. Disponível em: <https://hdl.handle.net/11250/3073837>

<sup>62</sup> It is quite difficult for persons fleeing conflict and violence to enter the EU territories legally: the Member States often close down their diplomatic representations in war-torn countries and “for nationals of these countries, obtaining a visa to enter the EU is nearly impossible”. Moreover, the EU law and/or the ECHR does not oblige MS to grant a visa to TCNs and stateless persons fleeing conflict or violence in view of applying for asylum upon their arrival in the Member State. (see X and X v Belgium ECLI:EU:C:2017:173; M.N. and Others v. Belgium [GC], Judgment of 5 May 2020). Although TCNs can apply for protection at the external borders, it is well known that the EU’s attempts to externalise its asylum policy to third states such as Turkey and the well-documented pushback practices make it difficult to seek asylum in the EU. Thus, for a Syrian, Afghan or Iraqi asylum seeker entering the Union territories legally or even approaching the EU border is very difficult and this lessens the number of displaced persons arriving in the EU and makes the activation of the TPD more difficult. CIGER, *Meltem Ineli. 5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022* [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>63</sup> The Syrian civil war started in 2011 and evolved during several years without any clear direction. The civil war turned much worse in 2015, especially with the Russian bombing of Aleppo, but this was not well understood in Europe. After all, ISIS was a serious problem in Syria, and Russia was supposed to combat it. Media reported Russia’s extensive bombing of hospitals, but that was only part of the reporting and did not arouse a strong public reaction. ÅLSUND, Anders. *How Can Europe Handle the Ukrainian Refugee Challenge?* [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>64</sup> The EU decided to try to resolve the Syrian refugee problem by persuading Turkey to stop them from crossing the border to Greece and keeping them in Turkey. This meant that the EU in fact declared that it did not want Syrian refugees if it could avoid them. In March 2016, the EU agreed with Turkey to limit the number of asylum seekers entering Greece. Irregular migrants attempting to enter Greece would be returned to Turkey. In exchange, the EU agreed to resettle Syrian refugees from Turkey on a one-to-one basis, reduce visa restrictions for Turkish citizens, pay 6 billion euros in aid to Turkey for Syrian migrant communities, update the customs union, and re-energize stalled talks regarding Turkey’s accession to the EU (Terry 2021). ÅLSUND, Anders. *How Can Europe Handle the Ukrainian Refugee Challenge?* [online]. iFO Institute, Munich 2022. Disponível em: <https://www.cesifo.org/en/publications/2022/journal-complete-issue/cesifo-forum-042022-how-can-europe-handle-ukrainian>

<sup>65</sup> In the absence of group-based temporary protection, asylum-seekers escaping from similar conditions were treated differently in each Member State. Some continued to move around within the EU while many remained stuck outside the EU’s borders, with front-line Member States placed under heavy pressure and burden. GENÇ H. Deniz and ŞİRİN ÖNER N. Aslı. *Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union.* [online]. ISSN 2630-6263, ss. 1-18. Disponível em: DOI: 10.14782/ipsus.539105

<sup>66</sup> While the TPD’s application ensures immediate temporary protection on a collective basis without individual assessment of each asylum request, this was not the situation for Syrian refugees (Garcés Mascareñas, 2022). This means that the asylum requests on an individual basis were made at the borders of EU member states while the asylum-seeking processes ranged from six months to one year to have a response. SALES, Matías Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

<sup>67</sup> “Moving away from “fortress Europe” and the robust Dublin asylum system, the TPD allowed the formal lifting of visa requirements and a particular protection status, granting residence permits to Ukrainian beneficiaries up to three years. It also provided harmonised rights across the EU, such as work permit and immediate access to national education and health systems, and housing benefits (Carrera et al., 2022). (...) the TPD allows the territorial distribution of refugees based on their own preferences of residence (Carrera et al., 2022), contrary to what happened with Syrian asylum seekers, who were dependent on the reception preferences of each member state (Garcés Mascareñas, 2022).” SALES, Matías Ibañez. *The Refugee crisis’ double standards: media framing and the proliferation of positive and negative narratives during the Ukrainian and Syrian Crisis* [online]. Barcelona: Euromesco, March 2023, Policy Brief N.129, Department of Sustainable Development and Regional Integration, European Institute of the Mediterranean (IEMed). Disponível em: <https://www.euromesco.net/publication/the-refugee-crisis-double-standards-media-framing-and-the-proliferation-of-positive-and-negative-narratives-during-the-ukrainian-and-syrian-crisis/>

De facto, a rápida e eficaz ativação da DPT no caso da crise de refugiados ucranianos mostra que a UE dispõe de mecanismos idóneos e capazes de responder a situações de afluxo abrupto e massivo de pessoas, quando a vontade política está presente. A ativação da DPT permitiu responder às necessidades dos refugiados ucranianos sem provocar uma crise no seio da UE, nem sobrecarregar as suas infraestruturas. Assim, pretendemos evidenciar que realmente é possível alcançar um consenso que assegure uma resposta humanitária, alinhada com os compromissos internacionais assumidos.

Apesar de terem havido vários pedidos de ativação da DPT durante a crise de refugiados sírios<sup>68</sup>, inclusive pela deputada ao Parlamento Europeu Elisabetta Gardini<sup>69</sup>, estes apelos não foram atendidos. A ativação da DPT contribuiu agora para densificar o conceito de afluxo maciço e para percebermos quais são os critérios atendíveis, suscetíveis de gerar o preenchimento dos requisitos necessários à sua utilização<sup>70</sup>.

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<sup>68</sup> While European policymakers were well aware of this mass influx, it was academics, activists and social workers that called for the activation of the TPD in 2015 (Orchard and Miller, 2014; Yeo, 2015; Tsourdi and de Bruycker, 2015; İneli-Ciğer, 2016). Nevertheless, despite these calls, the EU has not even considered implementing the TPD regarding the Syrian refugee crisis. GENÇ H. Deniz and ŞİRİN ÖNER N. Aslı. Why not Activated? The Temporary Protection Directive and the Mystery of Temporary Protection in the European Union. [online]. ISSN 2630-6263, ss. 1-18. Disponível em: DOI: 10.14782/ipsus.539105

<sup>69</sup> In 2015, MP Elisabetta Gardini asked the Commission whether it agreed that the legal conditions for triggering the Temporary Protection Directive had been met in view of the Syrian conflict and ensuing crisis in the Mediterranean and, hence, a proposal to the Council had to be submitted. However, once again, the Directive was not implemented. İNELİ-CİĞER, Meltem. *5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022* [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

<sup>70</sup> By reviewing the Council Implementing Decision 2022/382, one may conclude that the Council when determining the existence of a mass influx situation took into account: a) the number of arrivals, b) the rate of arrivals, c) potential migratory pressures, d) Ukrainians not needing a visa to arrive in the MS, d) potential inability of asylum systems of MS to cope with the mass arrivals. İNELİ-CİĞER, Meltem. *5 Reasons Why: Understanding the reasons behind the activation of the Temporary Protection Directive in 2022* [online]. EU Migration Law Blog. Disponível em: <https://eumigrationlawblog.eu/5-reasons-why-understanding-the-reasons-behind-the-activation-of-the-temporary-protection-directive-in-2022/?print=print>

## Conclusão

A análise crítica da resposta da UE a diferentes crises migratórias permitiu-nos destacar a necessidade de uma abordagem mais consistente e equitativa. Ao longo deste ensaio, examinámos as diferentes reações da UE perante crises migratórias distintas, destacando a ativação da Diretiva de Proteção Temporária (DPT) durante a crise ucraniana em contraste com a crise de refugiados sírios em 2015, marcada por falta de solidariedade e coordenação entre os Estados-membros.

Esta análise revela não apenas as complexidades do sistema de asilo da UE, mas também as disparidades políticas e sociais entre os Estados-membros, particularmente evidentes na resistência de países como Polónia, Bulgária e Hungria à cooperação e partilha de responsabilidades. A divergência de atitudes e abordagens evidencia os desafios enfrentados pela UE na procura de uma resposta unificada e equitativa às crises migratórias.

De facto, superar os desafios atuais requer não apenas reformas internas, mas também uma reflexão<sup>71</sup> sobre os valores fundamentais da UE e sua capacidade de traduzi-los em ações concretas. A implementação de medidas<sup>72</sup> que garantam a aceitação e proteção de refugiados, independentemente da sua origem, é crucial para construir um Sistema Europeu Comum de Asilo e uma UE verdadeiramente solidária, coesa e comprometida com os princípios humanitários que a fundamentam e os princípios internacionais a que se encontra vinculada<sup>73</sup>.

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<sup>71</sup> The Ukraine refugee crisis presents Europe with not only an important opportunity to demonstrate its generosity, humanitarian values, and commitment to the global refugee protection regime; it is also a critical moment of reflection: Can the peoples of Europe overcome their widespread racism and animosity and embrace the universalist spirit of the 1951 Refugee Convention? Global Detention Project. *The Ukraine Crisis. Double Standards: Has Europe's Response to Refugees Changed?* [online] March 2022. Disponível em: <https://reliefweb.int/report/ukraine/ukraine-crisis-double-standards-has-europe-s-response-refugees-changed>

<sup>72</sup> The EU must take immediate steps to address this issue, by providing safe and legal pathways for Syrian refugees to reach Europe and access asylum, and by ensuring that all refugees are treated fairly and with dignity and respect, regardless of their nationality, religion, or other characteristics. International cooperation is crucial to provide resettlement, family reunification, and humanitarian visas. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4>

<sup>73</sup> The EU's blatant and unlawful operations to stop Syrian asylum seekers from reaching safer EU shores unjustly excludes Syrians from their right to seek asylum, which is guaranteed under Article 18 of the EU Charter.<sup>53</sup> These actions not only violate the fundamental human rights of Syrian refugees, but also undermine the EU's commitment to the principles of human dignity and equality, and threaten the stability and security of the region as a whole. ALSBETI, Deanna. *A Double Standard in Refugee Response: Contrasting the Treatment of Syrian Refugees with Ukrainian Refugees* [online]. 2023, Human Rights Brief: Vol. 26: Issue 2, Article 4. Disponível em: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss2/4>

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