The Right to International Protection in the Face of Double Standards and the Dark Side of Group Logic: Anthropological Reflections

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ABSTRACT

This paper offers a critical reflection on the use of group logic in the recognition of international protection, starting from the differentiated treatment given to Ukrainian citizens following the outbreak of the conflict in 2022. The reflections aim to uncover the normative and political rationale behind management tools. In fact, the legal categories within the protection procedure, built on a group logic such as nationality, present an ambiguity that deserves to be critically examined: on one hand, they have become instruments of protection, but on the other, they have exacerbated the labeling process, making them exclusionary and sources of fundamental rights violations. Moreover, the proliferation of categorical distinctions fails to embrace the complexity that characterizes contemporary migration flows and, instead, becomes a dysfunctional mechanism, entangled in the problematic integration between the universal-individual logic of vulnerability and that of the group

KEYWORDS

Group logic; international protection; human hierarchies; whiteness; legal anthropology

O direito à proteção internacional diante dos padrões duplos e o lado obscuro da lógica de grupo: reflexões antropológicas

RESUMO Este artigo oferece uma reflexão crítica sobre o uso da lógica de grupo no reconhecimento da proteção internacional, começando pelo tratamento diferenciado dado aos cidadãos ucranianos após a eclosão do conflito em 2022. As reflexões visam a descobrir a lógica normativa e política por trás das ferramentas de gerenciamento. De fato, as categorias legais dentro do procedimento de proteção, construídas em uma lógica de grupo como a nacionalidade, apresentam uma ambiguidade que merece ser examinada criticamente: por um lado, elas se tornaram instrumentos de proteção, mas, por outro, exacerbaram o processo de rotulagem, tornando-as excludentes e fontes de violações de direitos fundamentais. Além disso, a proliferação de distinções categóricas não consegue abranger a complexidade que caracteriza os fluxos migratórios contemporâneos e, em vez disso, torna-se um mecanismo disfuncional, enredado na integração problemática entre a lógica universal-individual da vulnerabilidade e a do grupo.

PALAVRAS-CHAVE
Lógica de grupo; proteção internacional; hierarquias humanas; branquitude; antropologia jurídica

Introduction

«First and foremost, it would be necessary for the European masses
decide to wake up, shake their brains
and stop playing the irresponsible game
of the sleeping beauty in the forest» (Fanon, 1961:63)

This paper aims to reflect on how group logic functions in the recognition of international protection (Zetter, 2007) through an analysis of the governance implemented by the European Union in terms of security and the reception of forced[1] migrants from Ukraine following the outbreak of the conflict in February 2022[2]. Considering the European response to Ukrainian displaced persons as a "diagnostic event" (Moore, 2004), this study will explore the long-term processes that have shaped it, both legally and socially, with particular attention to how legal categories and governance policies were employed in that specific context.

The reflections are presented through a multifocal analysis, combining expertise derived from previous ethnographic research (participant observation in reception circuits and socio-health services for asylum seekers and refugees) with contemporary fieldwork (courtrooms and legal defense work) and the study of European governance policies and legislation. It is based on a document ethnography (Riles, 2006; Hull, 2012; Bierschenk, De Sardan, 2019), including legal texts, carried out alongside an analysis of institutional, political, and media discourses to understand the reasons behind the differentiated treatment of Ukrainian citizens since the start of the conflict.

By analyzing institutional dynamics (Douglas, 1986), media narratives (Biscaldi, Matera, 2019), and the institutional and bureaucratic discourse (Gupta, 1995), and shifting the focus «to policies and different national and supranational apparatuses» (Sorgoni, 2022: 150), this paper aims to intertwine two anthropological perspectives: an anthropology that seeks to understand, interpret, and communicate the ideologies and circumstances of political structure, organization, and action (Minicucci, Pavanello, 2010: 12), and a legal anthropology (Moore, 1983; Nader, [2002] 2003; Goodale, 2006, 2017; Perugini, Gordon, 2015; Author, 2024). From the outbreak of the conflict and over the following six months, an ethnographic study (Latour, 2010) was conducted on everyday institutional discourse and political and legal documents produced by the European Council. The aim is to demonstrate how group logic operated in this specific case and how legal categories are often influenced by unequal interests and power dynamics, ultimately undermining the

1 | In this article it is not possible to adequately explain the need to problematize the differentiation between forced and non-forced migrants; in recent years, attempts have been made to reflect on the need to rethink the validity of this dichotomy (Della Puppa, Sanò, 2021), which itself produces a binary logic incapable of understanding the different motivations behind contemporary migrations. For the author, it seems necessary to rethink the validity of the concept of "choice" applied to the different contexts of the countries of origin, problematizing the dichotomy created by the 2000 Palermo Protocol (smuggling-trafficking) regarding the conditions of dependence and indebtedness to which migrants are subjected.

2 | It is difficult to pinpoint the exact date that marked the beginning of the Russian-Ukrainian crisis. In fact, a series of events triggered it starting from the second half of February 2014: on February 22nd the ousting of Ukrainian President Yanukovych, Euromaidan from February 18th to 23rd, from February 23rd to March 19th the beginning of the crisis in Crimea and its subsequent annexation, up to the revolt of Russian separatists in Donbas. For the reasoning proposed here, however, it is worth emphasizing that until February 2022, Ukrainian citizens who asked for protection, for example to avoid compulsory military service, were denied it because the conflict was not perceived as serious, and Ukraine was still identified as a safe third country, despite the fact that Directive 2013/32/EU itself provides for the possibility of abstracting a portion of territory from the more general context of the country, thus recognizing the existence of a conflict and consequently granting protection to the citizens of that territory.

principle of equal protection that is central to international protection rights. The ethnography of the European Council's work will also engage with «macro-level legal questions that extend beyond the law itself» (Nader, [2002] 2003: 96), in order to identify the specific mechanisms through which legal norms have contributed to reinforcing exclusionary group-based logics.

Europe of solidarity?

To understand the exceptional nature of Europe's response to the management of Ukrainian displaced persons compared to the governance applied to all other third-country nationals deemed safe before and after the outbreak of the Russia-Ukraine conflict, it is necessary to reconstruct the «genealogical threads» (Pinelli, 2023: 260) of Fortress Europe's legal rationale and practices[3].

The European Union first addressed the issue of immigration and asylum indirectly in 1990[4] with the Schengen Convention, which established principles for managing external borders, designed to facilitate the removal of internal border controls within the European Economic Community. However, the first concrete immigration and asylum policies were only developed in 1992 with the Maastricht Treaty, and the Schengen principles were incorporated only in 1997 through the Amsterdam Treaty. It was not until the late 1990s, particularly after the Tampere Council in 1999, that immigration and asylum policies became central. It was at the margins of this Council that work began on harmonizing policies, procedures, and standards in international protection, laying the foundation for the Common European Asylum System (CEAS), in accordance with Article 78 of the TFEU, which defines the implementation of the Geneva Conventions among EU Member States.

Although certain gaps were already present in international treaties[5], Article 33 of the Geneva Convention – the principle of non-refoulement – was designed, at least in theory, to balance state interests with the rights of asylum seekers. This principle should prevent states from arbitrarily deciding who is worthy or unworthy of protection, ensuring unrestricted and unconditional access to asylum procedures[6]. International protection is a declarative right, meaning that a person does not become a refugee because a state identifies them as such; rather, they are recognized as a refugee because they already meet the criteria. The role of the state is merely to acknowledge this status, not to bestow it at its discretion[7].

Although these rights have existed since the 1950s, in terms of codification within United Nations principles, there was a significant delay in their implementation from the very beginning. It was only in 2000, with the adoption of the European Charter of Human Rights, that the Geneva and New York Protocols (Articles 18 and

3 | See: https://www.tni.org/en/publication/expanding-the-fortress. citizens of that territory.

4 | In 1990 the first version of the Dublin Convention was also adopted, relating to the determination of the state responsible for analyzing an application for international protection.

5 | Consider Article 14 of the Universal Declaration of Human Rights, which speaks of the right to seek protection but not to obtain it.

6 | The procedural aspects should translate into a guarantee of protection in the legal sphere. However, it depends on the point of view of interest, i.e. who the guarantee is intended for (the State or the migrant person).

7 | UNHCR (2019: 17) Manuale sulle procedure e i criteri per la determinazione dello status di rifugiato e linee guida sulla protezione internazionale, https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html.

19) were formally recognized[8]. This strengthening of legal applicability (from the direct application of the Geneva Convention to the indirect application via the European Convention on Human Rights) should, in principle, have meant that – despite an unjustified delay – the right to international protection in EU Member States had been made substantive.

However, group logic, which underpins the legal categories used in the European asylum system, undermines the essence of a fundamental individual right, transforming state obligations and safeguard clauses into "avoidable mechanisms." These safeguard clauses, which are anchored in the principles of the rule of law, are increasingly being discarded or bypassed through: spatial moulding (such as externalization processes or the fiction of not entering border areas), temporal manipulation (through the efficiency paradigm, which equates speed with effectiveness[9]), political-procedural project (such as the safe third-country list[10], which reverses the burden of proof onto asylum seekers).

The European harmonization project has therefore evolved over time, layering contradictions and competing interests. It was first revisited in the Aja Programme (2004) and later in the Stockholm Programme (2010), leading to the adoption of key directives: Procedures Directive (2013/32/EU), Reception Directive (2013/33/EU), Qualification Directive (2011/95/EU), Dublin Regulation Revision (604/2013), EURODAC Regulation (603/2013). All these instruments are currently under reform following the adoption of the New Pact on Migration and Asylum (2020). While the process is not yet complete, it is already evident that there is a general narrowing of rights for non-citizens.

For nearly twenty years, migration and asylum policies were relatively separate, as well as fragmented and lagging international legal frameworks. However, with the Lisbon Treaty (2007, in force since 2009), external border controls, immigration, and asylum policies were integrated, almost merging, thereby creating contradictions between legitimating principles, obligations, and stated objectives (for example, the criminalization of irregular migration in the national legislations of Member States).

In terms of shared border governance, efforts began in 2002 with the European Commission's Communication "Towards Integrated Management of External Borders in the EU"[11]. The creation of Frontex[12] in 2004, dedicated to border surveillance, became increasingly central following the migrant crisis triggered by the Arab Spring, particularly with the establishment of the European Border Surveillance System (EUROSUR) in 2013.

A further step, theoretically aimed at balancing internal and external security by organizing legal migration channels for safe access to the EU, was taken in 2011 with the Global Approach to Migration and Mobility (GAMM)[13]. However, this

8 | The principle of non-refoulement has been included in Article 4 of the Additional Protocol No. 4 to the ECHR.

9 | Regarding the way the paradigm of speed has become functional in an exclusionary sense, see Author (2023).

10 | The notion of safe third country (articles 36 and 37 of Directive 32/2013/EU) codifies the group logic of nationality as the primary criterion for assessing the application for international protection, invalidating - in itself - the content of a perfect subjective right and indirectly circumventing the principle of non-refoulement. If a migrant comes from a third country considered safe, the application is declared inadmissible or quickly screened as manifestly unfounded, exposing the applicant, who is unable to demonstrate why that country - generally safe - is not safe for him, to denials, up to forms of detention or forced expulsion. The European Court of Justice (Cgue, European Parliament v Council of the European Union, C-133/06, May 6, 2008) blocked the possibility of creating a single list of safe third countries common to all member states; currently, Spain, Poland, Latvia, Portugal, Bulgaria, Lithuania, Finland and Romania do not have a list, although the concept has been transposed into national law. See Pitea (2019) and Gattuso (2023) for further discussion. For a critical analysis of the Italian list of safe third countries, see https://www.asgi.it/wp-content/uploads/2019/11/Nota-ASGI-commento-d.M.A.E.-4-10-2019-paesi-sicuri-definitivo-27-11-2019.docx.pdf. There is no way to broaden and update the debate to the most recent jurisprudential developments starting from the Italy-Albania protocol; it is hoped that the European legislator will resolve the issue in the sentence expected for the end of June 2025.

11 | See: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52002DC0233 .

12 | For note 12 see page 5

13 | Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled "The Global Approach to Migration and Mobility", SEC(2011) 1353 final.

translated into a proliferation of bilateral agreements between the EU and origin countries, designed to externalize borders[14] and block migration flows through development aid blackmail – a strategy reinforced by the Rabat Process (2006) and Khartoum Process (2014).

The current policies are thus the result of a progressive definition of increasingly exclusionary objectives and management methods. These have worsened the impact on migrants, depriving them of fundamental rights protections through the 2015 Migration Agenda[15] (particularly the hotspot approach[16]), the 2016 EU-Turkey Agreement[17], the 2020 New Pact[18], characterized by a strong push for standardization. The New Pact is based on efficiency principles borrowed from administrative law. Its priority is speed, achieved through pre-screening mechanisms, fast-track asylum procedures, border procedures[19] that normalize detention as a standard practice and reinforce externalization mechanisms[20].

From this brief reconstruction, it becomes clear that the protection system implemented by the European Union – on paper aimed at safeguarding refugees – is, in practice, deeply flawed by securitarian, exclusionary, and selective logics. This system transforms border violence into systemic abuses (Breen, 2016), "externalizes brutality"[21], and is far from being coherent or effective in ensuring human rights protections for individuals crossing borders or residing within EU territory. By doing so, the EU undermines its own credibility and legitimacy, creating fundamental paradoxes (Favilli, 2018). As Zetter (2014: 71) pointed out, the CEAS remains trapped in restrictive logic, failing to uphold even theoretically "automatic" rights (Albano, 2018). A migrant either manages – through considerable difficulty – to enter the asylum circuit, or they do not. This system itself produces widespread illegality (De Genova, 2002). Given this context, it is worth analyzing the contrast between this long-standing restrictive approach and the rapid, exceptional response granted to Ukrainian displaced persons. The stark differences in rights granted and response times reveal the dark side of group logic in migration governance.

Is this war (not) like the others?

From the start of the Russian-led special military operation on Ukrainian territory, the media and political narrative has described it as different/peculiar compared to all the other armed conflicts going on in the world. Still emotionally shocked by the "pandemic war", in a few hours the "war in the heart of Europe"[22] catapulted us into the climate of "real war", with bombs, civilians fleeing, millions of refugees and displaced persons, martial law for Ukrainian men who wanted to leave their country and not fight. A scenario so distant from Europe's envisioned that it

12 | Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 2004, OJ L 349. The mandate was renewed and extended with Regulation (EC) No. 1168/2011 of the European Parliament and of the Council amending Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 2011, OJ L 303/1, (9). This is not the occasion to reconstruct the countless violations in which Frontex has been involved. However, it is worth mentioning the scandals that led to the resignation of the head of the agency, Fabrice Leggeri, in April 2022 following the investigation by the European Anti-Fraud Office (OLAF) charged with investigating whether European officials complied with the obligations set out in the regulations; in this specific case, the European agency allegedly concealed and facilitated illegal pushbacks by its officials. It also seems appropriate, for the reflections proposed here, to refer to the Ombudsman's inquiry in 2015 to investigate Frontex's compliance with human rights standards and the requirements of the EU's Fundamental Charter (European Ombudsman, Special Report in the context of the own-initiative inquiry on Frontex, OI/5/2012/BEH-MHZ). However, the conclusions of the European Ombudsman, in line with the position of the Parliamentary Assembly of the Council of Europe (PACE), did not resolve the original tension between the interest of sovereign states in controlling migratory flows and respect for the fundamental rights of migrants, indirectly justifying possible violations as collateral effects of the surveillance service. In this regard, in 2021, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs presented a report, the result of an investigation into the agency's alleged involvement in the illegal pushbacks of migrants and asylum seekers at the Union's external borders, which highlighted "shortcomings in the agency's monitoring mechanisms in reporting and assessing the fundamental rights situation".

appears apocalyptic, unprecedented and, above all, different. The link between the absence of conflict and civilization that had lulled our dreams and desires, affirming our moral superiority over the rest of the world and making us feel safe compared to everyone else, seemed to have been checked by Putin in the space of twenty-four hours. Questioning the motivations behind the differential treatment granted to Ukrainian citizens on the basis of the directive granting temporary protection is fundamental to understanding the moral justifications behind the actions taken in the weeks following by the European Union and its member states.

The attempt to understand the social and cultural mechanisms at the basis of this differentiated treatment and the functioning of group logic through a specific case aims to provide arguments to move away from the binary logic of "real/fake war", "real victims/fewer victims" which risks generating a blurred image from the point of view of fairness in the protection of civilians from armed conflicts at all latitudes, passed off as a "battle of civilizations in the globalized world"[23].

All people fleeing from conflicts, widespread violation of fundamental rights, and inhumane and degrading treatment should be treated in the same way, as theoretically provided for by international law but also by the primary law of the European Union. The objective is therefore to understand, through reflection on the specific case, the functioning of the categorical logic at the basis of the recognition of international protection; the group logic, in fact, seems to have eroded the inclusive attitude of this right, harnessing discriminatory restrictions for specific nationalities and reinforcing the security logic in a differential sense.

«This war cannot be compared to the wars in Iraq and Afghanistan, because Ukraine is more civilized»[24]; «Looking at them, from the way they are dressed, they are well-to-do middle-class people. Obviously they are not refugees trying to escape from the Middle East [...] or North Africa. They look like any European family you might live next to»[25]. «These people are intelligent, they are educated people. It is not the wave of refugees we are used to: people whose identity we are not sure of, people with an unclear past, people who could be terrorists»[26]. «It is very touching for me because I see blue-eyed, blond-haired Europeans being killed»[27].

Civilization, whiteness and class; these are the issues (unconscious and therefore "naively" declared) that make it different from other conflicts, more or less recent. A double moral standard (Luhmann, 1987) that prevents us from seeing, and consequently treating, non-whites as equals, as demonstrated by the events recorded in the days immediately following February 24, 2022 and reported on Twitter with #AfricansinUkraine[28], which appear particularly significant with regard to hospitality as a legal principle governing human mobility (Agier, [2018] 2020: 163). On February 25, the WHO special envoy, Ayoade Alakija, denounced the racist behavior taking place at the Ukrainian border on Twitter, while three days later the president

14 | According to the report "Mare Clausum. Italy and the EU's Undeclared Operation to Stem Migration across the Mediterranean" 2018, an undeclared operation is underway, circumventing the principle of non-refoulement, to "shield" the central Mediterranean route (http://www.forensic-architecture. org/wp-content/uploads/2018/05/2018-05-07-FO-Mare-Clausum-full-EN.pdf), similar to what was done to close the Balkan route with the Turkish-European agreement.

15 | https://eur-lex.europa.eu/legal-content/EN/TXT/ PDF/?uri=CELEX:52015DC0240 &from=EN.

16 | See: https://www.amnesty.org/en/documents/eur05/001/2014/en/ and https://www.oxfamitalia.org/wp-content/uploads/2016/05/Rapporto_Hotspots_Il-diritto-negato_Oxfam_DEF.pdf.

17 | From a legal point of view, the agreement between the EU and Turkey represented a further step in the more general process of externalizing European borders to circumvent the protection obligations and responsibilities of member states. The 2017 Italy-Libya Memorandum can be read in the same way. For a critical analysis of these measures, I refer to Autore (2020a), in particular par. 1.

18 | For note 18 see page 7

19 | The border procedure does not necessarily coincide with the accelerated procedure, with the possibility of priority assessment under the ordinary regime.

20 | For example, it is interesting to point out that in the debriefing module proposed by the Commission there is no explicit reference to the request for international protection; this is indicated as one of the conditions to be checked, together with being irregular on the territory or undocumented, from which the screening action derives; for how the module is structured, there is a risk that the declared nationality will inform the subsequent box of the reason for the screening. For a complete and concise critical analysis of the illegitimacy of the procedures and policies contained in the pact, see the dedicated ASGI sheet: https://www.simmweb.it/images/PolicyNote_Patto_8gen21-2.pdf. For a general comment on the pact and how it represents a step backwards in the protection of rights, consolidating outsourcing practices, see Liguori (2021).

of the African Union, Macky Sall, together with the former president of the African Union Commission, Moussa Faki Mahamat, issued a statement expressing dismay at the differential treatment of African citizens fleeing the country (Statement of the African Union on the reported ill-treatment of Africans trying to leave Ukraine)[29].

The blocking of non-white people at the Ukrainian border appears in fact as a paradigmatic example of "de facto racism" (Holmes, [2001] 2020), which materialized almost "naturally" at the moment of the crisis, having been fueled over time by the «razzismo discreto, invisibile, spesso inconsapevole dei gruppi dominanti e maggioritari che permette alle dinamiche sistemiche di discriminazione di strutturarsi. È il razzismo della classe media mascherato da buon senso, giustizia, etichetta che sostiene la segregazione istituzionale dei gruppi razzializzati» (Bartoli, 2012: 88). It is therefore interesting to analyze the European Union's response to this behavior, as it is representative of colonial sedimentations at the cognitive level that translate into illegitimate actions according to the same founding principles of the Union itself.

Selective protection, i.e. group logic working

The Russia-Ukraine conflict pushed the European Union to act, breaking away from the "out of sight, out of mind" logic (Co-author, Author, 2018) that has characterized its migration governance since its inception, as outlined in the previous section. However, why and how did the EU decide, for the first time, to undermine and overturn its long-standing governance structure that hierarchizes "desirable" and "undesirable" migrants[30], this time favouring Ukrainian citizens, who had previously been considered nationals of a third country deemed safe?

When compared to the EU's typical response times to other armed conflicts that have triggered mass migration flows, the reaction to the Ukrainian case was remarkably swift. The European Council's decision on March 4, 2022[31], marked a historic first: the activation of Temporary Protection Directive 55/2001, which had never been used before. This highlights how differential approaches have become an intrinsic feature of contemporary migration governance, shaping the system's legitimating principles and objectives according to political and economic interests of various EU Member States[32].

The countries most directly affected by the arrival of Ukrainian refugees – Poland, Hungary, and Slovakia – sought to legally formalize the differential treatment already being applied at their borders, where non-white people were being blocked from entry in the first days of the crisis. European Commissioner for Home Affairs Ylva Johansson anticipated several days of discussions before the Council could

18 | There is no space here for a careful examination of the rationality of the New Pact. However, for the reasoning that I intend to propose here, it is worth emphasizing that the European strategy appears increasingly characterized by a security-based and selective logic (for example, the implementation of accelerated procedures, border procedures, as well as the perverse effects - which imply the inversion of the burden of proof for the applicant for protection - of the list of safe third countries). Furthermore, the New European Pact seems to deliberately ignore the provisions of the 2018 Global Compacts: "for safe, orderly and regular migration" and "on refugees". However, the former, adopted in Marrakech in December 2018, indirectly reaffirms - starting from its very existence - a differentiation between "simple" migrant and refugee; in fact, in point 4 of the preamble, it states that "refugees and migrants are entitled to the same universal human rights and fundamental freedoms, which must be respected, protected and fulfilled at all times". Therefore, beyond the gaps and challenges not addressed even by the two Compacts, one can grasp in them the universal principle of the recognition of inalienable subjective rights equal for all, regardless of the recognized legal status, which would undoubtedly at least manage to scratch the current practices of exclusion, such as those of "copycat lawmaking" indicated by Ghezelbash (2018: 167). The author refers to practices through which States, by normalizing violations of international human rights, would be able to deny rights and protection; a further consequence of this process would be competition between these States to increasingly close their borders in order to shift the responsibility for protection and reception onto others. The two Global Compacts are available at the following link: Global Compact for Migration | IOM, UN Migration

21 | Lemberg-Pedersen stated this in a communication to the European Council for Refugees and Exiles in December 2017: https:

reach a unified statement[33]. This diplomatic impasse – which could not be officially acknowledged as it was blatantly illegal under both international and EU law – was partially resolved through mediation by the French Presidency of the Council, which ultimately led to a unanimous decision to implement differentiated[34] recognition of temporary protection based on nationality and residency status.

The breakdown of this policy was as follows: automatic protection for Ukrainian citizens, semi-automatic protection for third-country nationals with permanent residency in Ukraine, protection at the discretion of individual EU Member States for third-country nationals with short-term residence permits, complete exclusion for individuals without a legal residence permit, whose existence in Ukraine was ignored altogether in the Council's decision.

While the decision was reached relatively quickly, activating Directive 55/2001[35], a "legal fossil" up until that moment, it is important to analyze its content to understand how differential treatment based on nationality was legitimized in the March 4 ruling.

To fully grasp the arbitrariness of the Council's decision, we must revisit key aspects of Directive 55/2001, which was originally designed as an extraordinary measure during the Yugoslav wars. However, prior to the Ukrainian crisis, the directive had never been activated, not even in response to the Arab Spring, the Syrian war, or the Afghan crisis.

Officially, in previous cases, the EU had stated that those conflicts had not led to "mass influx situations"[36], and therefore, the directive was not applied. This reasoning is problematic for two key reasons: contradictions in EU Narrative – despite the official stance, these same conflicts were consistently framed in European political and media discourse as causing a "refugee crisis" and an "invasion"[37], used to justify restrictive measures, often in violation of international law[38]; several EU Member States directly involved as NATO allies in these conflicts, raising further questions of selective geopolitical interests. Today, years after those conflicts, many Syrians and Afghans remain stranded at EU borders in inhumane and degrading conditions – the same borders that allowed the smooth transit of Ukrainian citizens. This illustrates how double standards are at play on multiple levels.

This inconsistency brings up another fundamental question: how does the EU define "displaced persons"? Article 2(c) of Directive 55/2001 defines displaced persons as:

«Third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, particularly in response to an appeal from international organizations, and who are unable to return under safe and lasting conditions due to the prevailing situation in that country. This may apply to persons falling within the scope of Article 1A of the Geneva Convention or other

22 | This is how it has been described even though Ukraine is not a member of the European Union, and only after the conflict were the accession procedures accelerated; during the European Council of June 23, 2022, Ukraine was in fact "granted" the status of candidate country and the process is currently underway. For more information, please visit the European Council website: https://www.consilium.europa.eu/it/policies/eastern-partnership/ukraine/.

23 | «I say battle of civilisations because it is not even about racism and migration as specific issues, but about the substance of democracy in a globalised world» (Portelli, 2020: 95, Author's translation).

24 | Charlie D'Agata, CBS News foreign correspondent.

25 | Peter Dobbie, Al Jazeera English presenter.

26 | Kiril Petkov, Bulgarian Prime Minister.

27 | Statement to the BBC by David Sakvarelidze, Deputy Chief Prosecutor of Ukraine.

28 | https://twitter.com/ search? q=%23africansinukraine&src=typed_query

29 | https://twitter.com/yodifiji/status/1497299763695435779?s=20&t=Fzmosw-834tNQCnFa-RGfA; https://au. int/en/pressreleases/20220228/statement-ill-treatment-africans-trying-leave-ukraine#:~:text=Reports%20that%20Africans%20are%20singled,war%20notwithstanding%20their%20racial%20identity. In his statement to the United Nations Special Security Council on February 28, 2022, the Kenyan ambassador, Martin Kimani, asked that "the mistreatment of African people at Europe's borders must end immediately, both for Africans fleeing Ukraine and for those crossing the Mediterranean" (https://press.un.org/en/2022/sc14812.doc.htm).

30 | Arendt ([1973] 2004: 374) had already defined refugees and stateless persons as the «undesirables of Europe» because they are capable of interrupting «the nation-state-territory sequence» (Agamben, 1996: 35).

international or national instruments conferring international protection, in particular:

(i) Persons fleeing armed conflict zones or endemic violence;

(ii) Persons who are at serious risk or have been victims of systematic or generalized human rights violations».

According to this definition, the differentiated treatment of non-Ukrainians appears incoherent and unjustifiable, especially when considering the reasons and motivations for their displacement. While procedures linked to nationality-based asylum systems are not new, and are part of the broader trend of selective migration governance, what seems unprecedented in the Ukrainian case is a blatant and explicit differentiation based on race and nationality.

This concern was echoed by Eve Gaddie, director of Amnesty International, who stated:

«Anyone fleeing a conflict must be protected and assisted, and we are pleased that Ukrainians will receive swift protection. But by limiting this assistance primarily to them, the European Council has revealed the limits of European solidarity... The Council's decision is a reminder that Europe has long had the tools to protect people fleeing war and assist new arrivals. At the same time, the so-called "Fortress Europe" model is a politically motivated choice. The fact that the directive is being applied for the first time – mainly to benefit Ukrainian citizens – demonstrates that Europe's approach is riddled with double standards»[39].

From a legal perspective, how could Directive 55 be differentially applied? Chapter VIII of Directive 55/2001, titled "Specific Provisions," outlines grounds for exclusion from temporary protection. Article 28(1) states that individuals may be excluded if:

«a) There are serious reasons to believe that they: i. Have committed a crime against peace, a war crime, or a crime against humanity, as defined by international legal instruments; ii. Have committed a serious non-political crime outside the host Member State before being admitted as a beneficiary of temporary protection.

b) There are reasonable grounds to consider them a threat to national security or, if convicted of a particularly serious crime, they are deemed a danger to the host community».

Article 28(2) further clarifies that exclusion criteria must be based solely on individual conduct[40], meaning that – in theory – they cannot be applied on a group-based or nationality-based logic.

The EU's decision on March 4, 2022, which differentiated protection based on nationality, is difficult to justify legally and raises concerns of racial profiling. This practice refers to «abitudine degli agenti di assumere l'identità etnica o il colore della pelle di una persona come motivo per considerarla automaticamente sospetta-

31 | Decisione di esecuzione - 2022/382 - EN - EUR-Lex

32 | It is clear that the European Union's governance policies fall victim to the unilateral interests of individual member states - which can be seen as serious interference in the process of harmonization and solidarity - see, for example, the lack of convergence of strategies between the external border states and the internal states, which has led to the inability to reform the Dublin regulation on the country of first arrival responsible for the procedure of recognizing protection and reception, and the consequent activation of the rhetoric of asylum shopping to stem secondary movements.

33 | It should be emphasized that the behavior of the Visegrad countries towards displaced Ukrainian citizens is also functional to their rehabilitation as host countries, unlike the numerous violations perpetrated against other nationalities.

34 | It should be noted that the Council's first proposal did not make any distinction in the protection measures based on nationality (https://www.meltingpot.org/app/uploads/2022/03/CELEX-52022PC0091-IT-TXT.pdf).

35 | eur-lex.europa.eu/legal-content/IT/TXT/ PDF/?uri=CELEX:32001L0055&from=IT

36 | According to the second recital of the directive in question. Article 2(d) of the general provisions, on the other hand, defines a mass influx as "the arrival in the Community of a significant number of displaced persons from a specific country or geographical area, whether their arrival is spontaneous or facilitated, for example, by means of an evacuation program".

37 | The numbers recorded since 2011, while marking a substantial increase compared to the immediately preceding years, are nothing compared to the great refugee exoduses in 20th century history (Sorgoni, 2022: 11 et seq.); only « agli occhi di un'Europa bianca e paranoica » (Portelli, 2020: 88) can they, therefore, be considered an invasion.

ta di comportamenti criminali» (Portelli, 2020: 83). The racialized exclusion at EU borders and the differentiation in protection mechanisms strongly resembles racial profiling, where presumptions of innocence are reversed based on ethnicity – essentially meaning "guilty until proven innocent" for non-white individuals.

What arguments did the EU Council present to justify this selective approach? Ukrainians were granted automatic protection to "reduce administrative burdens" on asylum systems and minimize formalities given the emergency[41]. The Dublin Regulation was suspended, allowing Ukrainians to choose which Member State they wanted to settle in (a policy described as "self-relocation" by Commissioner Margaritis Schinas). However, these justifications directly contradict the EU's historical stance on "asylum shopping" and "secondary movements", which it has long sought to prevent.

In the next section, I will explore the implicit and structural mechanisms that underlie this differentiated treatment and the broader racial and geopolitical implications of the EU's selective protection policies.

Color matters, or beyond the hierarchies of citizenship

Rather than marking a rupture with the past, the refugee crisis triggered by the Russia-Ukraine conflict appears to reveal the true face of European migration governance. Beyond what is proclaimed in treaties, conventions, and other primary legal sources – which are simultaneously binding and legitimizing for the European Union and its member states – what emerges is a series of policies saturated with mechanisms of differentiation among displaced populations. These policies rely on a strategic use of law, which in turn enables the selection of mobility based on parameters of dangerousness and undesirability, producing hierarchies of inclusion shaped by group logic.

What has been normalized – and as of January 2025, this phenomenon appears even more evident – is the further crystallization of whiteness as a form of power. This power, rooted in a colonial past, is now being reproduced in new, legally sanctioned forms that align with what Mbembe ([2016] 2019: 15) calls «slave democracy», an ambiguous democracy governed by a double standard of protection, distinguishing between those who are "similar" and "not similar". As Bhabha (1983: 23) has pointed out, «the goal of colonial discourse is to construct the colonized as a population of degenerate types based on racial origins, to justify conquest, and to establish systems of administration and education».

Thus, the question arises: how is it possible for Europe and its member states to perpetuate colonial discourse (Chatterjee, 1986), despite being theoretically

38 | It is not possible here to reconstruct all the violations perpetrated along the Balkan route; for the reasoning proposed here, however, it is useful to remember what is happening on the border between Poland and Belarus, where Poland - through the declaration of emergency of September 2021 with which it legalized pushbacks and introduced simplified border procedures aimed at unappealable expulsions - has built a 187-kilometer wall in the Bialowieza Forest (estimated cost 350 billion euros). For monitoring of the violence at this border, also to the detriment of those who provide assistance and help to migrants, see the reports of the Helsinki Foundation for Human Rights: Who we are Helsinki Foundation For Human Rights.

39 | Unione europea: necessaria protezione temporanea per chiunque fugga dall'Ucraina - Amnesty International Italia

40 | This point was also reiterated in the decision of March 4th in relation to consideration 18.

41 | Exempt from identification in hotspots and therefore from biometric tracking by EURODAC.

bound to uphold fundamental rights without discrimination, without facing legal or social sanctions?

To address this question, it is useful to examine the function of whiteness in relation to processes of dehumanization and moral disengagement, which contribute to the hierarchical construction of humanity according to a group-based logic linked to citizenship. As Sassen (2006: 293) has already observed, differential treatment based on citizenship offers an important analytical lens for assessing the effectiveness of human rights protections.

The concept of whiteness, as defined by Gaia Giuliani (2010: 79), is particularly relevant here because it explicitly highlights the discretionary power of those who define it and its political implications:

«Whiteness is that social and cultural construct (explicitly or implicitly sanctioned by legal and political instruments) that the 'dominant' group implements through a process in which it 'rationalises' or imposes itself as neutral towards 'others' (black and non-white) who do not belong (or are therefore excluded) from the dominant group and who, because of their colour or particular phenotypic characteristics (or, rather, because of the dominant group's interpretation of these characteristics), are eliminated or kept in a condition of exploitation and/or subordination»[42].

42 | Author's translation.

If, as Frisina (2020: 68) suggests, «'White' people recognize humanity only in another 'White' person» presenting themselves as an «unmarked marker» (Frankenberg, 2001: 81), then whiteness functions as a form of property (Harris, 1993; 1995). Consequently, only White individuals appear to have the legitimacy to claim rights and freedoms, while non-White individuals are "naturally" excluded from such recognition (Davis [2003, 2005] 2022: 32).

Whiteness as a mechanism for maintaining privilege is thus a function of the status quo, sustained by reactionary tactics, in which those embedded in power structures facilitate a double standard of morality, particularly when they feel legitimized to do so (Lammers et al., 2010). Whiteness as property, similar to Shachar's (2007) concept of citizenship as inherited property, enables moral disengagement toward non-Whites, further entrenching a double standard of moral exclusion[43].

43 | Moral exclusion proceeds by distinguishing the deserving from the undeserving, making injustice normal and generating three types of denial: excluding others, excusing the self and minimizing the action (Optow, 1990).

At this point, Albert Bandura's (1999) theory of moral disengagement provides a useful framework. Generally, moral development involves the internalization of ethical standards, which guide behavior and act as compasses for evaluating what is just, unjust, and intolerable. Bandura's model identifies four mechanisms of moral disengagement that normalize and justify otherwise reprehensible behaviors: reframing harmful behaviors in a positive light through euphemisms that justify them morally (e.g., "humanitarian wars"); minimizing individual responsibility by attributing the original responsibility to an external authority or diluting it with-

in the majority (e.g., "everyone does it," "orders from above"); distorting the consequences of those actions (e.g., civilian casualties in conflicts dismissed as "collateral damage"); shifting the blame from oneself to an external entity (e.g., "we wage wars to export democracy because they are uncivilized").

When these four types of disengagement reinforce one another, they lead to the dehumanization of the "other" at a psychological, social, and cultural level, thereby neutralizing moral accountability for violations of ethical standards.

This process appears to structurally underpin European migration governance. If we apply Bandura's model to current migration policies, we observe the following: a "war on illegal migration" (a euphemistic redefinition); border control for security reasons (shifting responsibility outside the individual state); migrant deaths rebranded as "fatalities", without acknowledging how European policies create illegality and force people onto increasingly dangerous routes; finally, migrant crossings framed as a "choice", suggesting that people "endanger themselves voluntarily" rather than considering the coercive conditions that force them to flee[44].

Applying Bandura's moral disengagement theory to EU and Member State actions toward non-Ukrainian refugees, it becomes clear how group logic, filtered through whiteness, underpins the political decisions – translated into unjust laws – that have been implemented since March 4, 2022[45]. The Ukrainian case reveals how moral disengagement operates exclusively against non-White people, exposing how all legal and cognitive contradictions stem not from citizenship per se, but rather from the racial line that determines who is deserving of rights.

If we consider Aime's (2009: 25-26) assertion that «it is no longer enough to be born to exist; you must have citizenship. There are no human rights. You have rights or you don't, not because you are a human being, but because you are a citizen, because you have a passport»[46], the Ukrainian case demonstrates that Europe has gone even further. It reveals what Rose (1999) terms "the capitalization of citizenship", where mobility rights are stratified according to economic, cognitive, and human capital. This privatization and hierarchical structuring of citizenship (Mellino, 2012: 14) aligns with the differentiated inclusion model theorized by Mezzadra (2007: 24) – an inclusion based on selectivity rather than universality.

The racialized exclusion of non-White people from EU migration governance reinforces the continuity of colonial logic. As Mindus (2014: 7, 11) highlights,

«the traditional conception of citizenship has paved the way for an international disorder in which migration patterns challenge the sovereign state's right to define who its citizens are… Citizenship implies a conceptual inversion, whereby those without this status are simply not (considered) persons».

However, the Ukraine conflict shows that race determines personhood and, consequently, one's right to claim rights. Thus, European identity remains «preda-

44 | Piantedosi, the Italian Minister of the Interior, following the Cutro massacre of February 26, 2023 - the last in order of severity to have touched the Italian coast - spoke in these terms to the victims of the shipwreck, or rather to the irresponsible people who endangered the lives of their children: Piantedosi: "Desperation can never justify journeys that endanger one's children" (rainews.it)

45 | As Waldenfels (2008: 150) reminds us, "doing the same thing, in fact, is an integral part of any production of order, bringing something into the order that did not belong to it before".

46 | Author's translation.

tory» in Appadurai's (2017: 141-142) terms, an identity rooted in ethnic singularity, where even the smallest minority within national borders is seen as an intolerable stain on national purity[47].

47 | I am referring to the concept of risk of contamination expressed by Douglas (2014).

Conclusions

> *Man does not possess a sovereign internal territory.*
> *He is integrally and always on a frontier:*
> *He looks within himself into the eyes of others*
> *or through the eyes of others. I cannot do without the other,*
> *I cannot become myself without the other (Todorov, 1984: 8)*

What I sought to demonstrate, using the Ukrainian case as a "diagnostic event", is the extent to which group logic, which underpinned the European response to this flow of displaced persons, operates along the lines of the whiteness device, a process of racialization aimed at a selective inclusion even deeper than the differentiation dictated by citizenship. This mechanism appears to be intrinsic and structural, embedded in power relations between the West and the rest of the world, and perpetuated (consciously or unconsciously) through a legal system that seems to betray its own legitimizing principles.

On the one hand, the actions taken after February 2022 have been portrayed as progress, moving beyond the self-serving logic of individual EU member states and addressing the structural shortcomings of the European asylum system. On the other hand, when considering the material conditions of existence for those seeking international protection, these measures seem instead to underscore the persistence of a colonialist logic of racialization, perpetuated through differentiated treatment (Balibar, 2001; Mezzadra, 2005, 2007) and reinforced by citizenship as an exclusive and selective privilege (Fanon, 1961; Mindus, 2014; Ong, 2005; Rigo, 2007).

Furthermore, considering the treatment of non-Ukrainians at the border, perceived as lacking the "right skin" (Tabet, 1997), Du Bois'words (1903: 13) remain highly relevant: «the problem of the twentieth century is the problem of the color line».

The actions taken reinforce the hierarchical stratification of humanity (Rose, 1999; Mellino, 2012) based on whiteness (Appadurai, 2007), as evidenced by media and political discourse at the start of the conflict, which framed it in terms of "real vs. false refugees" and "a war that is more of a war than others". This moral double standard (Luhmann, 1987) has translated into an ambiguous and discretionary use

of existing rights, becoming a pretext for reinforcing opposing identities (Boni, 2022: 212).

Thus, migration governance has proven to be not only a tool of instrumentalization and pressure in the delicate relations between EU member states but also an exceptional issue capable of transcending legal frameworks for political reasons. Beyond confirming the existence of a moral double standard, as previously discussed, this state of exception also reveals the continuity of colonial logic through the institutionalization of inequality, where the legal system itself serves as a barrier—both tangible and symbolic.

As de Sousa Santos ([2013] 2020: 11) aptly states, «the majority of the world's population is not the subject of human rights. It is the subject of discourses about human rights». This fact alone should alarm us, as it exposes troubling continuities with a past from which we claim to seek emancipation, yet which reveals our own predatory nature.

The "Ukraine affair" does not appear to have altered pre-existing logics, as evidenced by the massacre that took place in Melilla on June 24[48], 2022, where at least 37 people were killed and over a hundred injured. The words of Spanish Prime Minister Pedro Sánchez were unequivocal in this regard:

«I would like to thank, on behalf of the Spanish government, the extraordinary cooperation we are having with the Kingdom of Morocco, which demonstrates the necessity of having the best possible relations and close collaboration, including on internal issues, in the fight against irregular immigration, which has unfortunately affected the autonomous city of Melilla today».

The treatment of non-White individuals after the outbreak of the Russia-Ukraine conflict thus shows no real break with the past. The Mediterranean Sea remains the deadliest maritime border in the world[49], yet European policies continue to prioritize walls, fences, and high-tech surveillance systems over the protection of fundamental rights.

Skin color and citizenship, deeply intertwined, constitute a structural obstacle to the enjoyment of fundamental rights, including the right to migrate. If citizenship and skin color have become defining elements in the hierarchical structuring of humanity, and consequently in its differential capacity for movement, then Blank's (2007) concept of spheres of citizenship offers a potential path forward. According to this framework, the articulation of recognized rights operates at multiple territorial levels: local (residence), national (birth), and global (belonging to humanity).

In Kantian terms, the cosmopolitan sphere, defined by membership in the global human community, would be the only one capable of overcoming the discriminatory effects of group logic. This is precisely what is affirmed in the preamble of the Universal Declaration of Human Rights, when it speaks of the "human family".

48 | https://greenreport.it/news/geopolitica/la-strage-dei-migranti-africani-a-melilla-e-lipocrisia-di-spagna-ed-europa/

49 | Over 31,363 deaths since 2014: Mediterranean | Missing Migrants Project

More than a reform of legal structures, which was already extensively undertaken in the post-World War II period, what is urgently needed is a cultural transformation, one that fully politicizes the migrant figure, recognizing them as a subject capable of questioning the legitimacy of political power, the certainty of legal principles, and the broader cohesion of society.

Such a shift must also call into question our shared responsibility in perpetuating a profoundly unequal and unjust global system.

Thus, the ultimate task is to ensure that the rights already codified in law finally become enforceable and substantive, rather than remaining a privilege reserved for a select portion of the world's population. These rights theoretically belong to all, and they should be recognized as such, without any form of discrimination. This urgent and pressing necessity is essential to rectifying an attitude that future generations will inevitably perceive as hypocritical, exposing the rule of law as a hostage to moral double standards and vested interests.

After all, as Kant (2004: 68) reminds us in Perpetual Peace «hospitality is not a matter of philanthropy but of right, and it upholds that commonality among the peoples of the Earth [...] such that a violation of a right committed in one part of the world is felt in all others».

Challenging the cognitive, social, and cultural dynamics that obstruct this empathetic equity appears to be one of the essential paths we must take[50]. Problematizing group logic, which is reinforced and exacerbated by legal categorization and exploited for political ends, as though it were "natural" that some people, just born in the wrong part of the world[51], should have their fundamental rights violated (first and foremost, the right to life), could be a first step in this direction.

50 | [1] The process that leads to naturalization goes hand in hand with the depoliticization of the phenomenon, leading individuals to think that there are no alternatives to this way of functioning; in this way, an unfair and discriminatory status quo is reinforced to the advantage of those who hold the privilege, namely the ruling class.

51 | This refers to the concept of the lottery of birth by Shachar (2009), according to whom the rights granted in a differentiated manner by the institution of citizenship (Shachar, 2007) function as a value transmitted by inheritance, the prerogative of a certain part of the world population that can evoke the enjoyment of rights.

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