

## HUMANITARIAN CRISIS AND REFUGEES: WHAT HAS TRADE GOT TO DO WITH IT?

ANDRÉIA COSTA VIEIRA\*

*This paper aims to establish a link between some of the last humanitarian crises of this century (including the forced migration therefrom produced) and the suggestion that trade can lift people out of poverty and can resettle their lives back on trails. It analyses the world economic scenario in the middle of humanitarian conflicts to reply to a question: “[w]hat has trade got to do with it?” For addressing this common-usage questioning, good practices, World Trade Organization (WTO) Programmes, (Preferential Trade Agreement) PTA and (Free Trade Agreement) FTA clauses are herein brought to light and suggestions come out of this scrutiny to support the idea that inclusive trade can help resolve the issue of overcrowding and over-migrant population at the most common destinations in times of humanitarian crisis, having a focus on refugees’ protection, inclusion, and integration. In the end, it brings about a few suggestions and good practices on how inclusive trade can have real concerns to make a successful trade-peace nexus, not just as a matter of assistance, but also to accommodate economic policies in Europe, Africa, Asia, North America, and South America, whenever a humanitarian crisis is deflagrated and vulnerable forced migration is at stake.*

### Table of Contents

- I. INTRODUCTION
- II. THE WORLD ECONOMIC SCENARIO IN FACE OF THE AFGHAN AND OTHER HUMANITARIAN CRISIS
- III. BUT WHAT HAS TRADE GOT TO DO WITH IT?
  - A. THE GATT/WTO SYSTEM AND CONCERNS TOWARDS HUMANITARIAN CRISES
  - B. THE WTO AID FOR TRADE PROGRAMME

---

\* PhD in International Law, Attorney in Human Rights (Development, Refugees) and Trade Law registered at the Brazilian Bar Association, Professor of International Law in Brazil from 2003-2021, she lived for the last 8 months in a Refugees camp of Afghan holders of a Humanitarian Visa, in São Paulo - Brazil, wherein she was a collaborator. Any errors and omissions are attributable to the author. The author may be contacted at [andriacostavieira@hotmail.com](mailto:andriacostavieira@hotmail.com).

- C. THE WTO TRIPS AND CONCERNS ON VACCINES AND OTHER MEDICINES
- IV. INCLUSIVE TRADE CONCERNS TOWARDS REFUGEES AND OTHER FORCED MIGRANTS: GOVERNANCE, GOOD PRACTICES AND RECOMMENDATIONS
  - A. COOPERATION ON FLOW OF SERVICES – THE BRAZILIAN CASE
  - B. COOPERATION ON FLOW OF GOODS — THE RUSSIA-UKRAINE WAR CASE
  - C. COOPERATION ON SUPPORT TO HEALTH — THE HORN OF AFRICA FAMINE CASE
  - D. PLATFORMS OF DIALOGUES
  - E. PROVISIONS ON FTAs WITH CONCERN FOR HUMANITARIAN CRISIS AND TRADE COOPERATION
  - F. THE TRADE FOR PEACE PROGRAMME
- V. CONCLUSION

## I. INTRODUCTION

Those who arrived at Brazil's São Paulo-Guarulhos International Airport in the second half of 2022 saw hundreds of Afghan refugees camping on the floor of one of the largest South American airports.<sup>1</sup> On one hand, they were escaping persecution and generalised violation of human rights perpetrated by the new regime imposed in their motherland; on the other hand, after receiving a humanitarian visa, they arrived in Brazil: a place they knew very little about, where they had no one to go to, and where the agencies and civil society that engages with refugees for assistance were already preoccupied. Some questions remain: why did they cross three continents to arrive in Brazil? Were there no inclusive policies in the surrounding places where they came from? Was there no aid for shelter, jobs, health, and social assistance? And what is the side effect of this situation? But, above all, the question remains: what trade has to do with a humanitarian crisis such as this one?

The purpose of this paper is to establish a link amongst some of the last humanitarian crisis verified on a large scale, the forced migration produced therefrom and the suggestion that international trade cooperation can lift people out

---

<sup>1</sup> Gustavo Basso, *Refugiados afegãos acampam no aeroporto de Guarulhos*, DW GLOBAL MEDIA FORUM (Dec. 23, 2022), [www.dw.com/t-br/refugiados-afeg%C3%A3os-acampam-no-aeroporto-de-guarulhos/a-64197437](http://www.dw.com/t-br/refugiados-afeg%C3%A3os-acampam-no-aeroporto-de-guarulhos/a-64197437); Flávia Mantovani & Bruno Santos, *Famílias afegãs passam dias e noites no aeroporto de Guarulhos à espera de abrigo*, FOLHA DE SÃO PAULO (Apr. 13, 2022), <https://www1.folha.uol.com.br/mundo/2022/04/familias-afegas-passam-dias-e-noites-no-aeroporto-de-guarulhos-a-espera-de-um-abrigo.shtml>; Ítalo Lo Re, *Refugiados afegãos se aglomeram no aeroporto de Guarulhos em busca de assistência*, ESTADO DE SÃO PAULO (Oct. 10, 2022), <https://www.estadao.com.br/brasil/refugiados-afegaos-se-aglomeram-no-aeroporto-de-guarulhos-em-busca-de-assistencia/>.

of poverty and get their lives back on track; not just to solve the problems of the Asian, African or South American Least Developed Countries (LDCs), but also to solve the problem of Europe, Canada, the United States of America (USA), Asian, African or South American countries that have received a massive number of migrants crossing their borders every day as asylum seekers. With this purpose in mind, this article shows that PTAs, FTAs, or informal trade arrangements can incorporate clauses, or measures, that will support inclusive trade aimed towards refugee protection and inclusion. Good practices already existent and good governance that has already been implemented, in international trade arrangements are herein examined to give an overview on how international trade cooperation can be an instrument to achieve peace in the global sphere and to promote global sustainable development.

The first part of this article intends to analyse the global economic scenario and the current humanitarian crises. Next, it intends to reply to a question: “[w]hat has trade got to do with it?” A reply to this questioning is herein presented split into two parts (Parts III and IV). In Part III, three different WTO provisions are highlighted: the GATT/WTO system and concerns towards humanitarian crisis; the WTO Aid for Trade Programme; and the WTO TRIPS Concerns on Vaccines and other medicines. Followed by this, in Part IV, the following good practices and recommendations are brought to light: cooperation on flow of services (the Brazilian case), cooperation on flow of goods (the Russia-Ukraine war case), cooperation on support to health (the Horn of Africa famine case), construction of Platform of Dialogues in times of humanitarian crises, and the 2022 WTO Trade for Peace Programme.

In the end, it aims to bring about a few suggestions, programmes, and best practices on how inclusive trade can have real concerns towards refugees and other forced migrants, not just as a matter of assistance, but also to deal with overpopulation on the borders and demographic inflation at countries in Europe, Africa, Asia, North America, and South America, whenever there is a humanitarian crisis. Overall, this paper comes to the conclusion that, besides humanitarian help, this kind of intermediation that international trade can promote is a way of remedying the effects of humanitarian crisis on its very much affected value chains of production.

Trade rules can work in different manner towards promoting cooperation in times of humanitarian crisis. These can respect, promote, and/or fulfil human rights to achieve sustainable development. In this article, an analysis of a trade-peace nexus is brought to light, having the intention on promoting human rights in times of humanitarian crisis, without undermining the other two functions that trade might have — of respect and fulfilment. Besides, Sustainable Development Goal No. 16 highlights the need for the international community to promote peaceful and

inclusive societies for sustainable development, access to justice for all and build effective, accountable and inclusive institutions at all levels.<sup>2</sup> In this fashion, trade, law and development are linked together to promote sustainable peace.

## II. THE WORLD ECONOMIC SCENARIO IN FACE OF THE AFGHAN AND OTHER HUMANITARIAN CRISIS

A family of five people — two adults and three little children — from Afghanistan arrived at the Guarulhos Airport, São Paulo, Brazil, on September 2022, carrying few belongings. In their country, after the government's collapse in August 2021, the three little girls were forbidden to go to school, their mother was no longer allowed to work as a school teacher, and their father was barred from carrying on with his work as a public lawyer since he opposed to the new political regime of the country. They flew to the neighbouring country that charged them a daily tax for temporary residence. Eventually, they received a humanitarian visa and flew to Brazil — a country that they knew almost nothing about. After two weeks of sleeping at Sao Paulo airport's floor, they were taken to a refugee camp in the countryside and were given a house, where they stayed for a few months; therein, they had residence, shelter, food, assistance, and health care. Then, suddenly, they started migration again and left Brazil, crossing by bus and by foot one of the most dangerous jungles in the world,<sup>3</sup> the Darien Gap, in Panama, towards North America — a route that had already been chosen by Venezuelans, Syrians, and other forced migrants — in search of peace, jobs, besides another shelter. The issue is that this is not a one-off instance; this family's narrative is similar to so many stories of many Afghan forced migrants who arrived in Brazil from 2022 to 2023.<sup>4</sup>

Afghanistan is in the middle of a humanitarian crisis, and an economic collapse, which has been far worsened by environmental conditions stemming from climate change effects.<sup>5</sup> The international community's response to this crisis is to enable emergency evacuations of most vulnerable Afghans and foreigners that live in the country. What follows it is that the difficulties faced by those that leave the Afghan territory are enormous, since they have to cross-armed boundaries and, many times,

---

<sup>2</sup> UNITED NATIONS, SUSTAINABLE DEVELOPMENT GOAL NUMBER 16 (2023).

<sup>3</sup> Julie Tukewitz & Federico Rios, *In Record Numbers, Venezuelans Risk a Deadly Trek to Reach the U.S. Border*, N.Y. TIMES (Dec. 6, 2022), <https://www.nytimes.com/2022/10/07/world/americas/venezuelan-migrants-us-border.html>.

<sup>4</sup> Mica Rosenberg et al., *Hundreds of Afghans risk 11-country trek to seek haven in United States*, REUTERS (Feb. 1, 2023), <https://www.reuters.com/world/asia-pacific/hundreds-afghans-risk-11-country-trek-seek-haven-united-states-2023-02-01/>.

<sup>5</sup> Daniel Rajmil et al., *Afghanistan: A Multidimensional Crisis*, 34 PEACE REV: J. SOC. JUST. 41, 41-50 (2022).

two to three continents up to their host countries. The trouble faced by those who cannot leave the country are even worse; for instance, millions have lost their jobs and are currently unemployed, women have been forbidden to study and to work, children have been forbidden to go to school, currency exchange rates have been inflated, trade has been disrupted, and life has become unbearable for many in multiple regions of the country. Unfolding events require attention and reflections on the socio-economic and political hazards that come out of this humanitarian crisis together with the side effects of climate change and the catalysing feature of ethnic conflict disputes.<sup>6</sup> However, Afghanistan is not alone in the world scenario of humanitarian crises in the last years.

The figures on migration, particularly in the context of humanitarian crises, are extremely high in 2022-23; higher than thought to be, much higher than desired to be. Over 100 million people are forced to migrate due to conflict or natural disasters; over 300 million people are expected to be in need of humanitarian assistance.<sup>7</sup>

But why is this information provided in the Journal of Trade, Law and Development?

The information is taken from the World Economic Forum's (WEF) webpage (2023). As a matter of fact, WEF considers this kind of situation 'a global economic concern'. An Emergency Watchlist is published every year by the International Rescue Committee on the world's most worrying conflicts, which is intended to be a roadmap for strengthening the guardrails meant to put a limit on the side effects of these humanitarian crises.<sup>8</sup> The long-term impact of the COVID-19 pandemic — together with the economic turmoil caused by natural disasters, the Ukrainian war, and other conflicts in Asia, Africa and South America — has taken form of disruption of international trade and supply chains, generating a global crisis of food insecurity, mainly in the countries listed on this Watchlist.<sup>9</sup>

There are large and persistent impacts of wars on trade, national income, and global economic welfare. Studies have pointed that costs associated with lost trade can be as large as the "conventionally measured direct costs of war, such as lost human

---

<sup>6</sup> *Id.* at 41.

<sup>7</sup> David Miliband, *The 20 humanitarian crises the world cannot ignore in 2023 — and what to do about them*, WORLD ECON. FORUM (Dec. 14, 2022), <https://www.weforum.org/agenda/2022/12/the-20-humanitarian-crises-the-world-cannot-ignore-in-2023-and-what-to-do-about-them/> [hereinafter Miliband].

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

capital”.<sup>10</sup> Global economic turmoil, caused by humanitarian crisis, affects international trade on one of its most sensitive twenty-first century features: global production chains. Global supply chains are networks of worldwide reach, wherein a company buys goods and/or services from cross border companies to provide, produce and/or distribute certain products or services; thus, close cohesion is required between partner companies from different countries.<sup>11</sup> The current Russia-Ukraine conflict is a good example to better understand the disruption caused on international trade in times of humanitarian crisis deflagrated by war. It is clarified that the war “cut off many important shipping routes, forced transport companies to suspend service, and soaring air freight causes serious disruptions”.<sup>12</sup> Therefore, trade remedies are not just welcome but necessary to bring global trade back to ‘normal’, while at the same time it must be recognised that it pacifies these kinds of international conflicts.

According to the quantitative and qualitative data analysed by the International Rescue Committee, the countries which are most at the risk of forced migration due to a humanitarian crisis, in 2023, are Ukraine, Afghanistan, Somalia and Ethiopia,<sup>13</sup> and they, together with other 16 countries, represent an emblematic list of worldwide crises-affected communities that have faced different kinds of contemporary challenges. Even though contemporary in time, these are not new challenges, since their causes go back to armed conflicts, generalised violation of human rights, besides natural disasters that have been generated by climate crisis.<sup>14</sup> Moreover, direct effects and side effects of these conflicts are cross border ones. This means that neighbouring countries suffer the economic effects of these crises in an immediate way. Direct impact from such crisis on each industry varies and it depends on the duration of the conflict.<sup>15</sup>

Most of these pinpointed countries are home to only 13% of the world population and are an estimate of just 1.6% of the world GDP, but even so, they represent 81% of the world’s displaced people, 80% of the people that have faced food insecurity,

---

<sup>10</sup> Reuven Glick & Alan M. Taylor, *Collateral damage: Trade disruption and the economic impact of war*, 92(1) TREV. ECON. & STAT. 102, (2010) [hereinafter Glick & Taylor].

<sup>11</sup> Nguyen Minh Ngoc et al., *Russia-Ukraine war and risks to global supply chains*, 7(6) INT’L. J. MECH. ENG’G. 633, 635 (2022) [hereinafter Ngoc et al.].

<sup>12</sup> *Id.* at 636.

<sup>13</sup> Miliband, *supra* note 7 (Other countries on this list are: Haiti, Venezuela, Democratic Republic of Congo, Central African Republic, Nigeria, Burkina Faso, Mali, Niger, Chad, Sudan, South Sudan, Yemen, Syria, Lebanon, Pakistan, Myanmar).

<sup>14</sup> Bertrant Taithe, *Humanitarian History?*, in THE ROUTLEDGE COMPANION TO HUMANITARIAN ACTION, at 62-73 (1<sup>st</sup> ed. 2015).

<sup>15</sup> Ngoc et al., *supra* note 11, 638.

and 90% of those who are in global humanitarian need.<sup>16</sup> Besides, they have contributed to merely 1.9% of global CO<sub>2</sub> emissions, but are the victims of an accelerated process of droughts, floods, and other natural disasters caused by climate change.<sup>17</sup>

Having a closer look at the Emergency Watchlist's 20 countries, on the one hand, there has been observed a global weakening on the means of prevention of humanitarian crises on international, regional, national, and local levels, besides the reduction of instruments that are supposed to diminish the side effects of humanitarian crisis on a world scale, such as the UN resolutions.<sup>18</sup>

On the other hand, there has been an urgent need to tackle the causes and side effects of humanitarian crises and aid cannot be seen as the only instrument to be used; besides aid, international cooperation can be called to the stage. In this sense, international trade can play the role of opening markets to life-saving products such as vaccines, medicines, and medical equipment, which otherwise can be disrupted in their global supply chains.<sup>19</sup> Therefore, the way humanitarian crises have been approached and global risks have been tackled has to change and this change is an urgent one due to disruption in the movement of people and goods reflected in the figures of the last four years, besides disruption of the world trade supply chains.<sup>20</sup> Tackling these issues cannot be seen as a matter of just humanitarian assistance either, since the inflamed forced migration on the boundaries of many countries and the overflow of people in their working market is a reality and has caused disruption on national and international levels too.

In 2022, many examples of how humanitarian crises can be tackled took place on a global scale. In Bangladesh, investments in coastal shelter systems saved thousands of lives when Cyclone Sitrang caused a natural disaster in the country.<sup>21</sup> The Ukrainian grain agreement facilitated the export of more than twelve million tons of food via the Black Sea, benefitting many regions that suffered from the worst effects of the global food crisis.<sup>22</sup>

---

<sup>16</sup> Miliband, *supra* note 7.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Kelli K. Garcia & Lawrence O. Gostin, *One Health, One World – The Intersecting Legal Regimes of Trade, Climate Change, Food, Security, Humanitarian Crises, and Migration*, 1(1) LAWS 4 (2012) [hereinafter Garcia & Gostin].

<sup>20</sup> Miliband, *supra* note 7.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Humanitarian law is one of the oldest regimes of international law and it is the branch of law applicable in times of humanitarian crisis.<sup>23</sup> Having nineteenth century origins, it aims to minimize the human costs of war by defining the rights and obligations of antagonists, safeguarding civilians, the sick and wounded, prisoners,<sup>24</sup> as well as health personnel. To remedy the worst excesses of armed conflicts, states have developed a body of international humanitarian law (IHL) — the law of war or armed conflict — comprising the Hague Conventions of 1899, the four Geneva Conventions of 1949, disarmament treaties, and customary laws. Scholars have pointed out different ways by which these humanitarian conventions make an intersection with trade law; e.g.: i) the legality of trade measures set in response to violation of human rights obligations;<sup>25</sup> and ii) the potential of the Arms Trade Treaty to reduce violations of international humanitarian law and human rights law (arms control treaties, which aim to protect people against inhumane instruments of destruction, such as nuclear weapons, cluster bombs, and land mines, whose impact can be felt even in times of peace).<sup>26</sup> Regarding these conventions, State parties are obliged to prevent and put an end to IHL violations, as well as to punish those responsible for the worst breaches of war crimes. Even though IHL creates binding rules, they have been ignored so many times and different forces and interests that drive hostilities undermine the rule of law, such as when ethnic disputes make antagonists view each other as less than human, or when authoritarian leaders understand that their very survival is at stake.<sup>27</sup> These IHL treaties do not have provisions on the economic side effects of humanitarian crises; that is the reason for looking at other regimes of international law for enlightenment.

Besides, international environmental law also sees an intersection with IHL whenever natural disasters take place and cause forced migration and its humanitarian side-effects; the so termed ‘environmental or climate refugees’, which is a popular term (not a legal one) for the forced migration therefrom produced.<sup>28</sup> The last earthquake in Turkey and Syria in 2023,<sup>29</sup> left a large number of ongoing

---

<sup>23</sup> EMILY CRAWFORD & ALISON PERT, *INTERNATIONAL HUMANITARIAN LAW* (2020).

<sup>24</sup> Int’l Red Cross, *War and international humanitarian law*, <http://www.icrc.org/eng/war-and-law/overview-war-and-law.htm> (Oct. 29, 2010).

<sup>25</sup> ANTHONY E CASSIMATIS, *HUMAN RIGHTS RELATED TRADE MEASURES UNDER INTERNATIONAL LAW* (2007).

<sup>26</sup> Gro Nystuen & Kjølv Egeland, *The potential of the Arms Trade Treaty to reduce violations of international, humanitarian law and human rights law*, in *RESEARCH HANDBOOK ON INTERNATIONAL LAW AND PEACE* 267 (Cecilia M. Bailliet eds., 2019).

<sup>27</sup> Garcia & Gostin, *supra* note 19.

<sup>28</sup> Norman Myers, *Environmental Refugees: a growing phenomenon of the 21<sup>st</sup> century*, 357(1420) *PHIL. TRANSACTIONS ROYAL SOC. LONDON. SERIES: BIOLOGICAL SCI.* 609 (2002).

<sup>29</sup> See Adana & Antakya, *The earthquakes in Turkey and Syria have shaken both countries*, *ECONOMIST* (Feb. 19, 2023), <https://www.economist.com/europe/2023/02/09/the-earthquakes-in-turkey-and-syria-have-shaken-both->



concerns, since figures of its ‘environmental refugees’ are very high prompting a call for humanitarian assistance to the stage once again.<sup>30</sup>

Now, the question is, what if trade cooperation can take place to help accommodate the millions of displaced people forced to migrate?

### III. BUT WHAT HAS TRADE GOT TO DO WITH IT?

The subject of ‘trade and human rights’ has been developed under different perspectives.<sup>31</sup> First, there is the ‘coherence perspective’, wherein it is claimed that trade and trade-related rules should not undermine the enjoyment of human rights.<sup>32</sup> Second, there is the ‘conditionality perspective’, by which trade sanctions can be used as tools to ensure respect for minimum standards of human rights.<sup>33</sup> Third, there are those who have been cautious about human rights standards and their implementation since there is an understanding that they work against free trade. Fourth, there is the argument from development advocates who see a call for human rights in trade as a ‘useful slogan’.<sup>34</sup>

Some have even raised the question of whether or not this wedding between trade and human rights is a “marriage of convenience or a permanent match”.<sup>35</sup> For

---

countries?utm\_medium=cpc.adword.pd&utm\_source=google&ppccampaignID=19495686130&ppcadID=&utm\_campaign=a.22brand\_pmax&utm\_content=conversion.direct-response.anonymous&gclid=EAIaIQobChMIz4Hg6r7j\_QIVGDKRCh2n-Q-gEAAYASAAEgIQ0fD\_BwE&gcl. (The earthquake that devastated Turkey and Syria in February 2023 left 50 thousand dead in Turkey and 6 thousand dead people in Syria, by March 2023. Millions of people lost their homes; thousands started a flow of forced migration towards Europe, North and South America.).

<sup>30</sup> *Türkiye-Syria Earthquake Response*, UNITED NATIONS, [https://www.un.org/en/t%0C3%BCrkiye-syria-earthquake-response?gclid=EAIaIQobChMIz4Hg6r7j\\_QIVGDKRCh2n-Q-gEAAYAiAAEgIox\\_D\\_BwE](https://www.un.org/en/t%0C3%BCrkiye-syria-earthquake-response?gclid=EAIaIQobChMIz4Hg6r7j_QIVGDKRCh2n-Q-gEAAYAiAAEgIox_D_BwE).

<sup>31</sup> Caroline Dommen, *Trade and Human Rights: Towards Coherence*, 2(3) SUR INT’L. J. HUM. RTS. 7 (2005) [hereinafter Dommen].

<sup>32</sup> See Thomas Pogge, *World Poverty and Human Rights*, 19(1) ETHICS & INT’L. AFF. 1, 1-7 (2005).

<sup>33</sup> See Carlos Manuel Vázquez, *Trade sanctions and Human Rights-Past, Present, and Future*, 6(4) J. INT’L ECON. L. 797, (2003); Dursun Peksen, *Better or Worse? The Effect of Economic Sanctions on Human Rights*, 46(1) J. PEACE RSCH. 59, (2009).

<sup>34</sup> *Id.*

<sup>35</sup> Susan Ariel Aaronson & Jean Pierre Chauffour, *The Wedding of Trade and Human Rights: Marriage of Convenience or Permanent Match?*, WORLD TRADE ORG., [https://www.wto.org/english/res\\_e/publications\\_e/wtr11\\_forum\\_e/wtr11\\_15feb11\\_e.htm](https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_15feb11_e.htm) [hereinafter Aaronson & Chauffour].

policymakers, rules should not solely be there to govern trade, but also to assure that trade can be promoter of advanced human freedoms and opportunities.<sup>36</sup>

In general, trade liberalisation has had different potential human rights benefits; for instance, through the economic gains and increased job opportunities, which come from larger and fairer access to export markets, and through reduced consumer prices and greater availability of basic goods and services.<sup>37</sup>

In such a way, loose and non-binding human rights language started to be incorporated in the PTAs in the 1980s and 1990s.<sup>38</sup> The North America Free Trade Agreement (NAFTA) was one of the first PTAs to incorporate labour rights, transparency clauses, and public participation on side agreements. Currently, many of the contemporary PTAs (e.g., signed by Europe, Canada, USA, Brazil, Chile, and India) incorporate human rights language. Aaronson estimates that over 75% of the world's leading countries currently participate in PTAs with human rights provisions.<sup>39</sup>

A few examples can be brought to stage. The United States of America (USA) has human rights provisions in all of its last PTAs signed, except the United States-Israel (seventeen in force; three pending), besides its generalized system of preferences (GSP), which holds together 131 countries. The European Union (EU) has PTAs signed with fourteen countries; out of which thirteen have human rights clauses, and 120 partner nations are subject to human rights provisions in its GSP.<sup>40</sup> In all these human rights statements incorporated either on PTAs or on GSP, provisions are shaped by language in the preamble, non-derogation clauses, or extensions of Art. XX of GATT — either in a binding or a rhetorical way.<sup>41</sup> One such provision is the wording “measures necessary to protect human, animal or plant life or health” and “measures related to the conservation of exhaustible natural resources”, which are part of Art XX of GATT exceptions (b and g, respectively) to basic trade rules.<sup>42</sup>

*A. The GATT/WTO system and concerns towards humanitarian crises*

---

<sup>36</sup> *Id.*

<sup>37</sup> Jennifer Zerk & Rosie Beacock, *Advancing human rights through trade Why stronger human rights monitoring is needed and how to make it work*, CHATAM HOUSE 4 (2021) [hereinafter Zerk & Beacock].

<sup>38</sup> Aaronson & Chauffour, *supra* note 35.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See Claudia Hoffman et al., *The Content of Preferential Trade Agreements*, 18(3) WORLD TRADE REV. 365, (2018).

The idea that trade can be used to remedy situations of humanitarian crisis is not novel. Just after the World War II, different instruments were used to make peace possible in Europe; in fact, some of these instruments were ‘institutional ones’ and became known as the ‘Bretton Woods System’, which comprised three powerful ‘institutions’.<sup>43</sup> The General Agreement on Tariffs and Trade, 1947 (GATT 1947) came to existence with the aim to remedy trade in a post-war period, in the middle of an economic chaos and dealing with one of the worst humanitarian crises ever witnessed, which caused the largest forced migrations ever registered. The other two institutions also part of this project were the International Monetary Fund (IMF) and the World Bank. These three institutions together had the aim of using economic and trade instruments to diminish the devastating effects of the humanitarian crisis caused by the war.

Later, the WTO became a forum for this kind of discussion since its inception in 1994. In fact, most of the WTO Agreements have dealt with notions of inclusion and sustainability. For instance, the GATT brings, in the preamble, the affirmation that trade and economics should be conducted by an increase of better conditions of life for all.<sup>44</sup> It so prescribes that,

The Parties . . .

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce . . .<sup>45</sup> (emphasis added)

In 1994, pending the previous discussion of the Uruguay Round that led to the creation of the WTO, it became very much clear that the founders of this trading system truly intended for trade cooperation to raise the standards of living and

---

<sup>43</sup> JOHN H. JACKSON, *THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS* (2<sup>nd</sup> ed. 1997).

<sup>44</sup> EMMANUELLE JOUANNET, *THE LIBERAL-WELFARIST LAW OF NATIONS: A HISTORY OF INTERNATIONAL LAW* (2012).

<sup>45</sup> GATT 1994: General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter MARRAKESH AGREEMENT].

benefit the poor in times of humanitarian crisis. Nonetheless, almost three decades later, there remains controversy over the effects of trade on humanitarian crisis, the environment, economic inclusion, and sustainable development. Not to forget, this system is even older, since it became operational right after World War II, thus, making it an extension of a global peace project. This is the same project for counterbalancing the disastrous side effects of humanitarian crisis deflagrated by wars and other kinds of armed conflicts.

As part of this ‘inclusive’ and ‘remedying’ project of the GATT/WTO system, the Generalized System of Preferences (GSP) came into being as a trade programme, designed to promote economic growth in developing countries by allowing developed countries to offer non-reciprocal preferential treatment (such as zero or low duties on imports) on products originating in developing countries. The legal basis for this system is an ‘enabling clause’, which was adopted in 1979, allowing derogations to WTO rules on non-discrimination, such as the Most Favoured Nation (MFN) clause (i.e., most-favoured-nation status). The GSP has been pointed out, in monitoring systems, as an instrument that has promoted advancement of human rights through trade.<sup>46</sup> This instrument can be used in the form of provisions, under a rules-based system of allowances at the WTO, to calm down the side-effects of humanitarian crisis and to make corridor-regions and neighboring countries more capable of dealing with the massive forced migration that they have faced. Since GSP takes place in a legal and political context that is different from trade negotiations undertaken under FTAs, preferential access can be granted to developing countries without the need to afford the same treatment to other trading partners. For instance, as noticed by Zerk and Beacock, Australia, Belarus, Canada, the EU, Iceland, Japan, Kazakhstan, New Zealand, Norway, the Russian Federation, Switzerland, Turkey and the US have used GSP trade schemes; from these, the EU and the US have conditioned eligibility for these trade preferences on compliance with human rights standards, to some degree and in different manners.<sup>47</sup>

Trade analysts have come to the conclusion that such human rights provisions are, in fact, ‘legal inflation’, in the sense that governments have used trade agreements to impose their values and rules with a view to globalise their social policies or regulatory approach.<sup>48</sup> There are those who understand that an introduction of human rights provisions in general trade agreements, or in PTAs, is simply a new way of ‘protectionism in disguise’,<sup>49</sup> in the sense that trade agreements are not the right place to address human rights issues.

---

<sup>46</sup> Zerk & Beacock, *supra* note 37.

<sup>47</sup> *Id.* at 27-28.

<sup>48</sup> Aaronson & Chauffour, *supra* note 35.

<sup>49</sup> *Id.*

In a discussion on how to uphold human rights in trade, some radical human rights activists make a call for the ‘abolishment of the WTO’ as a ‘solution to human rights-inconsistent trade policies’.<sup>50</sup> On the other extreme, there are even other suggestions for adding the expression ‘human rights’ to WTO texts and agreements. Domen argues that all these are misguided calls since the right way to ensure that trade and trade rules work as promoters of human rights is by broadening the focus of human rights lens by the WTO. This requires integration of human rights’ concerns of non-discrimination, monitoring, democratic participation, and accountability at every step of the process of making and applying trade policies.<sup>51</sup>

Whenever there is a close look at reality, such as the one in São Paulo-Guarulhos airport and the Afghan camping of refugees on its floor in the years 2022-23, one might change its mind towards a more helpful approach of trade. Trade policies might not be a pathway to heaven, but they might be used to deal with geopolitical matters and humanitarian crisis such as this one.

Aaronson remarks that the proliferation of these provisions signals the new reality of international trade; that is, many of today’s PTAs are governance agreements. A growing number of PTAs with human rights provisions reflects a new ‘normal’, wherein policymakers have understood economic integration not to be successful without a stronger focus on enhancing governance among trade partners; e.g., USA, Canada, EU and the members of European Free Trade Association (EFTA) are the main claimers of human rights language in PTAs.<sup>52</sup> On one hand, EU and EFTA have a focus on human rights under the Universal Declaration of Human Rights, but, at the same time, they have relied on aspirational language and dialogue; on the other hand, Canada and US have focused on specific human rights, but have put these provisions in the body of the trade agreement and often made them binding.<sup>53</sup> Besides, there are some WTO specific programmes that have dealt with the issue of accommodating trade and inclusion, such as the Aid for Trade Programme.

### B. *The WTO Aid for Trade Programme*

Since 1994, the WTO scenario has brought about the accession of many LDCs and developing countries, upholding a democratic principle based on equal rights for votes and negotiations. The inclusion of so many poor countries into the world scenario enables them to raise their main issues, their primary social and economic problems, and their difficulties — most of them quite different from the developed nations who used to lead the scenario alone so far. In such a way, the world was no

---

<sup>50</sup> Dommen, *supra* note 31, at 7-8.

<sup>51</sup> *Id.*

<sup>52</sup> Aaronson & Chauffour, *supra* note 35.

<sup>53</sup> *Id.*

more a bipolar one; no more a North-South one; no more a West-East one. The world truly became a multilateral one.<sup>54</sup>

In this sense, the Program Aid for Trade of the WTO was launched in 2005, having a command of helping LDCs, as well as developing countries, to build their supply-side capacity and trade related infrastructure in a way that would assist them to implement and benefit from WTO Agreements and expand their trade.<sup>55</sup> The Aid for Trade Program helps to mobilise resources to address trade-related difficulties faced by LDCs and developing countries and to involve the WTO community into a process of global development.<sup>56</sup>

A summary of the main concerns and elements of the Aid for Trade Program can be so displayed: i) the major scenario is that high trade costs continue to be a problem for developing countries and LDCs; ii) the program targets building up supply side capacity and trade related infrastructure for developing countries and LDCs; and iii) in the end, it focuses on promoting connectivity by reducing trade costs.<sup>57</sup>

Even though the Aid for Trade Program cannot alone assume the stand of the main contributor to change a scenario of inclusion, it has to be remarked that multilateral trade, in the Geneva corridors, has changed its feature towards a more inclusive one and towards trade that is more related to sustainable development. Issues that were once marginalized - such as development and environment, digital inclusion, micro, small and medium size enterprises (MSMEs) and women empowerment - have been on the highlights of the WTO agenda in some of the last WTO events.<sup>58</sup> The 2015 and 2017 WTO Ministerial Conferences, respectively in Nairobi and in Buenos Aires, are evidence that even location for discussion has changed features and geopolitical perspectives. The outcomes of such new features have also changed the way International Trade Law has been reconceptualized in distinct institutions, incorporating a speech of sustainable development. In this sense, the WTO has stressed the importance of encouraging more flows of Aid for Trade from different sources - bilateral, regional and multilateral sources alike, to uphold demand for trade-related capacity building from developing countries and LDCs. It has also supported better instruments of monitoring and accessing the initiative as well as

---

<sup>54</sup> Andreia Costa Vieira, *Inclusive Trade through the lenses of the WTO Aid for Trade Program*, RDCI-REUTERS (2019), <https://www.thomsonreuters.com.br/content/dam/openweb/documents/pdf/Brazil/revistas-especializadas/rdc1-114-julago-sumario.pdf> [hereinafter Viera].

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

encouraging the use of trade as a tool for domestic development strategies.<sup>59</sup> It should be reminded that this is not an assistance programme; rather, it has more features of an investment-related one.

Nonetheless, under the last humanitarian crisis of 2022-23, the perspective is even different. Human rights provisions would be included in programmes such as the Aid for Trade, PTAs or GSP not just to incorporate labour rights, transparency features, to promote public participation or to assure governance. As the forced migrations due to conflicts and natural disasters increased in the last years intensified by the COVID-19 pandemic period, inclusive clauses of human rights and humanitarian concerns come up as necessary instruments to prevent overpopulation on ‘the borders’ of the main host countries or to diminish the tragedy of overpopulation of asylum seekers looking for a better life in the host countries, and urgently in need of economic inclusion. The issue is a geopolitical one, having features of international cooperation and policy space to deal with the spatial distribution of the population, demographic concentration, and economic readjustments.

### C. *The WTO TRIPS and Concerns on Vaccines and other Medicines*

Knowledge and ideas have emerged as an increasingly important part of international trade, and companies have sought to ensure the protection of new inventions and trademarks in global markets. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)<sup>60</sup> establishes standard levels of Intellectual Property (IP) protection that governments must afford to rights holders, thereby ensuring more uniformity and bringing national policies under international trade rules, within a dispute settlement system.<sup>61</sup> As informed in Article 7 of TRIPS, the aim of the agreement is to protect and enforce IP rights for the promotion of technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge, in a “manner conducive to social and economic welfare”.<sup>62</sup> However, members are allowed, under the WTO system, to adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development.<sup>63</sup>

---

<sup>59</sup> *Id.*, at 206-207.

<sup>60</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994) [hereinafter TRIPS AGREEMENT].

<sup>61</sup> Garcia & Gostin, *supra* note 19.

<sup>62</sup> TRIPS AGREEMENT, *supra* note 60, art. 7.

<sup>63</sup> *Id.* art. 8(1).

Whether or not TRIPS has achieved a fair balance between IP and health has been a subject of some long-debated disputes.<sup>64</sup> There has been deep debate over the effects of TRIPS implementation on LDCs and developing countries. As a matter of fact, many poor countries do not have the systems of education, manufacturing, and marketing to make innovation and to gain the benefits of IP protection; for them, the agreement may have little advantage because they possess very few, if any, products that are patentable.<sup>65</sup> Moreover, TRIPS can make it difficult to produce or purchase affordable generic medications so necessary for the implementation of public health systems. There are some estimates that over \$60 billion per-year transfer from poor to rich countries (\$40 billion in patent payments and \$20 billion in copyright royalties) would have occurred if TRIPS were fully implemented, which are caused mainly by increased patent and royalty payments as well as higher prices.<sup>66</sup> First, the overall effects of the acquired immunodeficiency syndrome (AIDS) pandemic brought the shortcomings of TRIPS into stark relief; patented drugs can cost from three to fifteen times their generic equivalents.<sup>67</sup> Many LDCs and developing countries could not afford to pay the high costs of combination drug therapy for human immunodeficiency virus (HIV)/AIDS, even though civil society put pressure on pharmaceutical companies to lower prices and make drugs more accessible.<sup>68</sup> As a matter of global awareness, the international community started to be more sensitive to public health concerns, lessening international support for the stringent IP demands of developed countries.<sup>69</sup>

In 2016, the United Nations Human Rights Council (UNHRC) adopted a landmark resolution on access to medicines (relation between intellectual property rights, trade agreements, and access).<sup>70</sup> The claim was introduced by Brazil, China, India, Egypt, Indonesia, Senegal, South Africa, and Thailand; the UN Resolution was adopted by consensus. Claims, such as this one, were initiated much earlier in 2001, when Brazil raised claims at the UNHRC that became part of its strategy to have recognition of access to medicines as a human right, through supporting developing countries' efforts in the WTO to ensure recognition of their right to make low-cost generic drugs available to their populations.<sup>71</sup>

---

<sup>64</sup> Mutually Agreed Solution, *Brazil — Measures Affecting Patent Protection*, WT/DS199 (July 19, 2001); see Ben Sihanya, *Patents, Parallel Importation and Compulsory Licensing of HIV/AIDS Drugs: The Experience of Kenya*, in *MANAGING THE CHALLENGES OF WTO PARTICIPATION* (Peter Gallagher ed. 2011) [hereinafter Sihanya].

<sup>65</sup> Garcia & Gostin, *supra* note 19.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> See Sihanya, *supra* note 64.

<sup>69</sup> Garcia & Gostin, *supra* note 19.

<sup>70</sup> Human Rights Council Res. 32/15, U.N. Doc. A/32/15 (Jul. 18 2016).

<sup>71</sup> Dommen, *supra* note 31, at 23.



The COVID-19 pandemic and its economic fallout started to reshape discussion on human rights implications of trade policies in different ways.<sup>72</sup> Together with raising public awareness and concerns about outcomes of inequality and poverty at local and regional levels, it has also highlighted the inequalities and power imbalances among partner countries on multilateral, regional, or bilateral arrangements. Besides, a heightened awareness of the interconnection between economies and the importance of successful food supply chains operations have helped to call to attention the poor working conditions of those people that work in them. One such outcome is the desperate need of vaccines, which provoked reflection on the lack of access to medicines in so many nations, and the common interest in ensuring that these problems find a solution. The world witnessed, during the pandemic period, “legitimate national concerns, such as the availability of medical devices and vaccines”, which can be addressed via a deeper cooperation and mutual support, instead of restrictive measures.<sup>73</sup> Even though national security and public morals are legal exceptions to the application of multilateral trade rules, they should not be “abused under unilateral restrictive measures”.<sup>74</sup>

Not much to say that the COVID-19 pandemic brought about a discussion on a new type of refugee, which can be herein called ‘health refugees’ (i.e., those who flow to have access to public and individual health care), even though this term cannot be used as a ‘legal one’. Besides COVID-19, the humanitarian crisis in Afghanistan can also be brought to the light on this issue. Many of those who have crossed three continents from Afghanistan to Brazil arrive in Brazilian territory in search of a basic right that has been denied to them in their motherland and in the neighbouring countries: the right to access health care. The Brazilian National Care System, or Sistema Único de Saúde (SUS),<sup>75</sup> with its universal access approach, has been one of the reasons of this forced migration, having Brazil as the migrant’s first choice, even though later they decide to go elsewhere.<sup>76</sup>

Once world leaders face the challenge of rebuilding their economies in the middle of a pandemic crisis, many calls from UN agencies and international organisations to ‘build back better’ have been followed up by demands from a range of actors,

---

<sup>72</sup> Zerk & Beacock, *supra* note 37, at 5.

<sup>73</sup> Carlos Primo Braga et al., *Confronting Deglobalisation in the Multilateral Trading System*, 14(1) TRADE, L. & DEV. 1, 26 (2022).

<sup>74</sup> *Id.*

<sup>75</sup> *Sistema Único de Saúde*, MINISTÉRIO DA SAÚDE, <http://www.gov.br/saude/pt-br/assuntos/saude-de-a-a-z/sus>.

<sup>76</sup> *Saúde - Brazil*, UNHCR, [help.unhcr.org/brazil/saude/](http://help.unhcr.org/brazil/saude/).

both state and non-state ones, for new strategies to achieve better alignment between trade policies and sustainable development goals.<sup>77</sup>

#### IV. INCLUSIVE TRADE CONCERNS TOWARDS REFUGEES AND OTHER FORCED MIGRANTS: GOVERNANCE, GOOD PRACTICES AND RECOMMENDATIONS

Refugee law is a part of humanitarian law. Herein, the intersection to be made is between international trade law and humanitarian law of refugees.

The correlation between refugees and international trade can give rise to numerous interrelated consequences. Forced migration can affect the economies of host countries whenever a large number of asylum seekers cross their borders. These forced migrants can bring along new demands for new products, thereby generating a new flow of trade in, and between, countries. Some would raise the issue that refugees would compete with local workers for job opportunities, but that is not always the case. In many circumstances, this new labour force is employed in jobs and roles that domestic workers are not interested in or capable of.

Nevertheless, trade flows can have a direct effect on forced migration in different ways. Initially, trade restrictions and protectionist trade policies can potentially serve as catalysts for forced migration when they result in reduced job prospects within the affected countries' borders. Nonetheless, trade policies can also be remedies in the situation of forced migration, helping to accommodate the new labour force in a specific territory, enhancing the supply-side of certain goods and services therein. Thus, for this part, an important definition is the one of 'refugees', alongwith that of 'forced migrants', in general. For that, a legal source might be the best option. The 1951 United Nations Convention on Refugees (1951 UN Convention) and its 1967 Protocol are the main legal documents on this issue, outlining the rights of refugees, as well as the legal obligations of States to protect them.<sup>78</sup> In the 1951 UN Convention, amended by the 1967 Protocol, Article 1 defines the term 'refugee' as any person who is persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>79</sup>

---

<sup>77</sup> Zerk & Beacock, *supra* note 37, at 5.

<sup>78</sup> Convention relating to the Status of Refugees, opened for signature July 28, 1951, 189 U.N.T.S. 150 (entered into force April 22, 1954).

<sup>79</sup> *Id.* art. 1.

The very expression of the legal text “is persecuted” implies that the concept of refugee is closely linked to ‘persecution’, thus excluding other kinds of forced migrants; e.g., economic migrants (those who are escaping from economic crisis, famine and misery) and environmental/climate migrants (those that are escaping from the outcomes of natural disasters).

The Cartagena Declaration on Refugees, adopted by Latin American nations in 1984, expands the definition of refugees to include persons who have left their countries due to generalised violence and other circumstances that have seriously disturbed public order. Even though not legally binding, thirteen Latin American States have adopted this definition. The Cartagena Declaration has been recommended by the Organization of American States (OAS), the United Nations General Assembly as well as the United Nations High Commissioner for Refugees (UNHCR).

In this article, the expression “forced migrants” includes refugees, economic migrants and environmental/climate migrants alike, since the focus of the present research is trade and humanitarian crises, which are caused by persecution, natural disasters, or economic crisis alike.

The scope of international trade arrangements (formal or non-formal ones) for accommodating scenarios of humanitarian crisis is the one that takes into account not an individual case of persecution or any other individual case of forced migration. In this case, these arrangements take into account massive amount of people crossing borders and forced migrants. Instead of benefiting individuals, these kinds of human rights clauses would support mainly countries that border regions facing humanitarian crisis, in order to help them to be inclusive host countries, thus avoiding the flow of migrants into further destinations. That kind of international cooperation can also help countries that, even though not neighbour ones, are willing to adopt resettlement policies to host forced migrants in a situation of emergency. Thus, the flow would be kept within planned geographic limits and would be part of an emergency geopolitical regional or world agenda. This is not a matter of assistance alone. This is international trade cooperation to prevent both inflationary humanitarian crisis at the borders of an affected region as well as overpopulation and demographic concentration that can otherwise disrupt national economies, national public health and domestic assistance systems in other common destinies in times of crises. This kind of policy would not just support ‘humanitarian corridors’ but also territories of countries that make a first official step to be inclusive hosts.

Still, it is natural that necessary policies will differ from region to region and from humanitarian crisis to humanitarian crisis; one-size-fits-all solutions do not exist. The

scope of trade policies and cooperation — through a multilateral, regional or local trade agreements — is a vast one, which might range from accounting and advertising to telecommunications, tourism, or transport as well as it can have implications for access to basic services and human rights in areas such as education, health care, job security, or access to water.<sup>80</sup> Some few good practices already implemented and some few suggestions will be outlined next.

*A. Cooperation on Flow of Services – the Brazilian Case*

Whenever a humanitarian crisis is triggered, trade cooperation can be called to the stage in an inclusive manner. In an analysis of cooperation in trade in services and a questioning on education, Domen comes up with a good example that is worthy to have a look at in times of humanitarian crisis, even though her analysis is much more related to the broadened application of the WTO General Agreement on Trade in Services (GATS) and compatibility to its rules.<sup>81</sup> Suppose that a WTO member (country X) did not make any commitment to liberalise trade in education services and most of its schools are public ones, even though private education is also available. Having a shortage of teachers in the public schools, and the side effect of this shortage on the right to education, country X decides to enter into a bilateral agreement with country Z, in such a way that teachers from Z will have special derogations from immigration requirements, so that they can teach in country X. Although country X has not made commitments in the area of education, the agreement with country Z might be brought before the WTO Dispute Settlement Mechanism for having violated the GATS non-discrimination principle, since it gives preferential treatment to service suppliers from country Z over country Y. Preferences granted to Z might have a true public policy purpose if the mother tongue in country Z is the same as in country X, or even if they have more of a shared culture and history than X does with Y.<sup>82</sup> This kind of educational policy, associated with policies related to trade in services and forced migration, provides and adequate illustration on how to accommodate the so many specialized forced migrants with educational backgrounds that can be smoothly integrated in the host countries' communities.

Besides the sector of Education, many countries have already introduced trade cooperation in moments of urgent need of inclusion regarding their neighbour's emergency conditions. For instance, New Zealand has exempted from its GATS obligations, the current or future measures at the central and sub-central levels

---

<sup>80</sup> Dommen, *supra* note 31, at 15.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

according to MFN treatment to Maori persons,<sup>83</sup> or organisations in relation to the acquisition, establishment or, operation of commercial or industrial undertakings; even Australia and Malaysia do much the same for their indigenous peoples.<sup>84</sup> Even though these measures are related to domestic and displaced people instead of those forced to migrate abroad, they can be applied in the same fashion for this second group of people.

Another way of dealing with the issue of trade and refugees' inclusion is to look at the regional communities of countries and their needs in order to better visualise on how they can accommodate the new labour's working force into their industrial park, according to their expertise and capability. In Brazil, for instance, refugees from Muslim tradition were employed in slaughterhouses of Halal production, having the knowledge of halal meat production and thus, helping in the expansion of Brazilian trade on Halal meat and meat-products. By far, Brazil is the largest exporter of Halal meat in the world and, in fact, it exports more than twice as much as the world's second-largest producer, which is Australia.<sup>85</sup> Halal chicken meat has accounted for 40% of Brazilian poultry exports, and currently, there are estimates that a quarter of Brazilian beef exports and half of its poultry exports are halal.<sup>86</sup> Not much to say that Brazil became one of the largest exporters of Halal meat within a decade and that this was possible due to employment of specialised Muslim migrant working force. These industries are constantly in need of Muslim workers for keeping up with their production and the halal rules.<sup>87</sup> It is a fact that the Brazilian halal meat industry has received many criticisms and the news range from unfair salaries to trafficking of migrant workers.<sup>88</sup> Nevertheless, the Brazilian halal industry showcases a possibility of employment and there are already many suggestions on how it can become a good option for Muslim forced migrants; one of them is having the involvement of the Organization for Islamic Cooperation (OIC) and halal certification agencies.<sup>89</sup>

---

<sup>83</sup> See *Māori culture is an integral part of life in Aotearoa, New Zealand*, 100% PURE NEW ZEALAND, <https://www.newzealand.com/int/maori-culture/> (For millennia, Māori have been the tangata whenua, the indigenous people of Aotearoa, in New Zealand.).

<sup>84</sup> *Id.*

<sup>85</sup> Ibrahim Hariri, *Brazil, Migrant Workers and the Global Halal Industry*, MUSLIM VIBE (Aug. 25, 2020), <https://themuslimvibe.com/community/brazil-migrant-workers-and-the-global-halal-industry>.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *See id.*

<sup>89</sup> *Id.* (Ibrahim Hariri explains that "Brazil's halal meat industry sought to rectify this. Following intense lobbying by the industry, the law was adjusted: it was now possible for foreign workers to demonstrate their professional experience without providing an educational or employment history. Effectively, this meant that you could get a Brazilian work permit if you could prove that you were Muslim. If you were Muslim, you were qualified

Besides the need to have a good offer of employment and fair working conditions, the case of Brazil is a good case study for dealing with language barriers, differences in labour legislation culture, recognition of university certificates, and instability of the working market due to the many economic crises of the country, since these are said to be the main barriers that an average migrant worker faces in Brazil.<sup>90</sup>

The language barrier is, by far, one of the main obstacles in Brazil. Many Brazilian institutions have dealt with this situation and have worked on it as its main concern in hosting refugees and other forced migrants from different language cultures. Since the grant of humanitarian visas to Haitians (2012), Brazil acquired a tradition of receiving in its territory migrants from different places as holders of humanitarian visas (from Haiti, Syria, Venezuela, Afghanistan, and Ukraine).<sup>91</sup> A humanitarian visa is granted by Brazil once the relevant humanitarian crisis is recognised officially by the Brazilian government, and usually those who are legitimate ones to receive humanitarian visas come from regions of war or conflicts, natural disasters and generalised violation of human rights; thus, once he/she enters the Brazilian territory, the holder of humanitarian visas have the right to reside and to work, besides get social assistance and inclusion in the Brazilian public health care system. The humanitarian visa helps as it shortens the bureaucracy to apply for refuge (a much longer procedure).

---

to enter Brazil. Although it didn't end trafficking, it was a clever way of reducing the impact of the trafficking problem and quelling the critical voices in the media").

<sup>90</sup> André Rego Viana, *Refugiados No Mercado De Trabalho Brasileiro*, in *A MIDIAÇÃO DO REFÚGIO NO BRASIL* (2020).

<sup>91</sup> Brazilian authorizations for humanitarian visas were granted by governments for nationals from Haiti (Resolução Normativa CONARE, RN n. 97 2012), Syria (Resolução Normativa CONARE n. 17 2013, [https://portaldeimigracao.mj.gov.br/images/portarias/PORTARIA\\_INTERMINISTERIAL\\_MJSP.MRE\\_N%C2%BA\\_24\\_DE\\_3\\_DE\\_SETEMBRO\\_DE\\_2021.pdf](https://dspace.mj.gov.br/handle/1/5788#:~:text=DSpace%20MJ%3A%20Resolu%C3%A7%C3%A3o%20Normativa%20n%C2%BA,20%20de%20setembro%20de%202013&text=Abstract%3A,armado%20na%20Rep%C3%BAblica%20%C3%81rabe%20S%C3%Adria), Venezuela (Portaria Interministerial n. 670 2022), Afghanistan (Portaria Interministerial n. 24 2022, <a href=) ), Ukraine (Portaria Interministerial n. 28 2022, [https://portaldeimigracao.mj.gov.br/images/portarias/PORTARIA\\_INTERMINISTERIAL\\_MJSP.MRE\\_N%C2%BA\\_28\\_DE\\_3\\_DE\\_MAR%C3%87O\\_DE\\_2022.pdf](https://portaldeimigracao.mj.gov.br/images/portarias/PORTARIA_INTERMINISTERIAL_MJSP.MRE_N%C2%BA_28_DE_3_DE_MAR%C3%87O_DE_2022.pdf)). 'Portaria Interministerial' and 'Resolução Normativa' are the "legal administrative documents" that have created, in Brazil the humanitarian visas; thus differing from legislation since they are not law from Legislative but from Executive; see Liliana Lyra Jubilut et al., *Humanitarian visas: building on Brazil's experience*, 53 FORCED MIGRATION REV. (2016).

Brazil is a natural flow for Venezuelans and Haitians, due to geographic positions; but not much so for Syrian, Ukrainian, and Afghan refugees. Whenever Brazil is no longer an option, Venezuelans and Haitians try other locations in North America. Trade cooperation arrangements between Brazil, neighbouring countries, and destination countries for these forced migrants can take place to help Brazil and other South American destinies to integrate them into their working markets. It would certainly be a win-win for all. The same might happen ever since the case is for faraway places of origin, such as Syria, Afghanistan, Turkey, and Ukraine. Trade cooperation arrangements can take place in different shapes (e.g., GSP, memorandum of understanding (MoU), provisions in regional trade agreements) to accommodate the integration of these forced migrants and to avoid demographic inflation in the usual destiny countries. It can be a regional or a global win-win, depending on the original geographic location of the forced migrants.

Similar results can be reached bearing in mind the reality of so many forced migrants already in the country, who are dependent on humanitarian assistance. Brazil or any other host country can link their help to the improvement of a specific commercial sector or geographic area, according to the new labour force available, thus making a flow of migrants to that specific place where jobs are abundant but not filled on by the local labour force. For many countries, the permission of residence can be conditioned to this geographic reorientation.

#### *B. Cooperation on Flow of Goods — the Russia-Ukraine War Case*

The outbreak of the war in Ukraine, on February 24, 2022, caused many disruptions in the Ukrainian-Russian markets as well as in the surrounding countries, besides the continuous flow of forced migrants. After a year of war, the region has been a target of human rights monitoring groups as well as the implementation of trade policies to minimize the conflict.

On March 2023, after a year of conflicts, the WTO Secretariat published a Trade Monitoring Update, which provided a brief overview of trade policy developments since the outbreak of the war. The WTO Secretariat's note brings to light the trade instruments introduced in the context of the war, which are related to the food, feed, and fertilizer sectors.<sup>92</sup> This 2023 report titled 'A Year of Turbulence on Food and Fertilizers Markets' is based on research developed in the corridors of the WTO in Geneva, and comes up to light in the shape of monitoring instruments, which were circulated in July and November 2022; therein, trade measures were submitted or

---

<sup>92</sup> WTO Secretariat, *WTO Issues Note on Trade Policy Developments Following One Year of War in Ukraine* (Mar. 2, 2023) [https://www.wto.org/english/news\\_e/news23\\_e/trdev\\_02mar23\\_e.htm](https://www.wto.org/english/news_e/news23_e/trdev_02mar23_e.htm) [hereinafter *WTO Note on Trade Policy Developments*].

confirmed by WTO members and observers, at the same time that trade policy trends were monitored.<sup>93</sup>

After the outbreak of the war, export restrictions on sugar, seeds, wheat, and barley from Ukraine and Russia were implemented. This trade concern is better understood when information comes together to explain that Ukraine and Russia are very large food and agricultural exporters and, in 2021, these two nations ranked amongst the top exporters of wheat, seeds, and seeds oil; besides, Russia is a top producer and supplier of fertilizers. Meanwhile, domestic shortages of basic foodstuffs pushed other countries to introduce export restrictions on those products or their substitutes. On a global scale, these restrictions had an immediate effect on food markets and consumers, mainly for those in developing countries and LDCs in Africa, the Middle East, and parts of Asia.<sup>94</sup> Trade disruption is globally verified by a year of war and its side effects are unemployment, food shortage, economic crisis, displaced people, and forced migration. WTO Trade Monitoring data suggest that a noticeable spike took place after February 2022, irrespective of existing export restrictions on food, fertilizers, and feed before the war.<sup>95</sup> This update displays that the nature of export restrictions became more diversified over time and it seems that the fear of domestic shortfalls of food, feed, and fertilizers made authorities resort to export bans and quotas, which are some of the worst types of quantitative barriers since they are very restrictive and have an immediate effect on trade flows.<sup>96</sup> Again, immediate side effects are market disruption, displaced people, and forced migration. However, this scenario is not a new one, conflicts between countries have been enormously disruptive of economic activity,<sup>97</sup> and studies have suggested that solutions might come from integration of different regimes (trade law, food security, environmental law, humanitarian law, and refugee law).<sup>98</sup>

Stabilisation of such trade restrictions took place in May 2022 since less restrictive measures were implemented to control the trade distortions. One of the measures applied was licensing requirements and duties that were included in the export restrictions; moreover, some of the bans adopted earlier were removed or replaced by less restrictive measures.<sup>99</sup> These less restrictive measures were not enough to avoid forced migration since the conflicts continued, but they minimised the

---

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *WTO Note on Trade Policy Developments, supra* note 92.

<sup>96</sup> Ram Shivakumar, *Strategic trade policy: Choosing between export subsidies and export quotas under uncertainty*, 35(1-2) J. INT'L ECON. 169 (1993).

<sup>97</sup> Glick & Taylor, *supra* note 10.

<sup>98</sup> García & Gostin, *supra* note 19.

<sup>99</sup> *WTO Note on Trade Policy Developments, supra* note 92.



economic crisis and helped local authorities and the local market to better accommodate their shortages and inflation in that period.

In order to deal with this crisis, WTO members and observers introduced different import-facilitating measures for the products involved as an attempt to minimize the side effects of export restrictions on food and fertilizers since the outbreak of the war, which is directly linked to turbulence on the international trade and growing food insecurity.

The WTO Trade Monitoring mechanism pinpointed, in February 2023, seventy-one measures facilitating imports of food, feed and, fertilizers, which included sixty-three on food/feed, seven combined on food/feed and fertilizers, and one only on fertilizers.<sup>100</sup> These facilitating measures were applied by sixty-two WTO members together with two other observers and a side effect of these implementations was strengthening that fragile market and keeping up part of situation under temporary control.<sup>101</sup>

Besides, some import measures were immediately implemented and they included reduction and/or elimination of import tariffs and other duties as well as removal of import quotas, thus keeping up the prices lower that they would be if such measures were not in place. A display of the targeted market gives a better understanding of the range of these measures: they had a focus on different agricultural commodities, including wheat, rice, flour, edible oils, cereals, and meats.<sup>102</sup>

Again, even though these measures did not avoid forced migration since conflicts carried on, they minimised the effects of the crisis and permitted to better accommodate the situation of many displaced people and immigrants in the surrounding countries.

### *C. Cooperation on support to Health — the Horn of Africa Famine Case*

The 2011 famine in the Horn of Africa exemplifies how intersecting legal regimes can influence global health by playing an important role in how people fared during the worst drought in sixty years in that region.<sup>103</sup>

A twenty year-long civil war in Somalia, together with a breakdown in infrastructure, considerably worsened the drought's impact, leaving millions of African people

---

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Garcia & Gostin, *supra* note 19.

malnourished and starving, inducing mass migrations to refugee camps in Kenya and Ethiopia.<sup>104</sup> Millions of these victims passed by starvation; among them, there were 30% of children strongly malnourished.<sup>105</sup> Besides, the rebel group al-Shabab diverted water sources from family-run farms to their protected commercial farms, which provided support for their armies; once they were in control of the region, they had little interest in governing it and they impeded foreign aid to arrive, and did not allow people to leave the region in search of food and safety.<sup>106</sup>

As a result of the drought and conflicts, around 3,000 people became forced migrants; from Somalia to Kenya and Ethiopia. This led to one of the worst humanitarian crisis in that region, which was already passing by an unrelenting drought.<sup>107</sup> Garcia and Gostin acknowledge that the public health effects of the refugee crisis were devastating, and in the Dallo Ado refugee camp, the mortality rate among children was as high as fifteen per 10,000 every day.<sup>108</sup>

Armed conflicts, food security, and migration are key determinants of health together with trade agreements and climate change effects, which are all part of global governance in the global or regional health sector. Such importance increases with the fast growth in urbanisation, population, and globalisation. However, the essence of these legal regimes (commercial, economic, and geostrategic) is often in conflict with public health. Garcia and Gostin suggest that these intersecting regimes must be strengthened, so they can protect and promote, rather than detract from, major health goals.<sup>109</sup>

In this way, trade can become a strategic instrument to remedy famine, public health and correlated issues since it can open markets to life-saving products, such as vaccines, medicines, and medical equipment. Trade agreements or other kinds of trade arrangements (e.g., provisions in PTAs and GSP) can also make essential medicines more affordable, so they would be accessible by the poorest ones. Besides, trade in services can reallocate the highly qualified workers and companies to places where there is an urgent need for them. In such fashion, international trade, in an intersection with other legal regimes, can cooperate to alleviate the effects of humanitarian crisis caused by droughts and famines.

---

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

In general, global economic crises, climate change, and armed conflicts have all exacerbated world hunger, making it all the more urgent for a call of international law in order to enhance food security.

Even though GATT prohibits discrimination, according to the MFN and national treatment obligations,<sup>110</sup> Art. XX(b) of GATT explicitly allows discrimination by WTO members whenever it is “necessary to protect human, animal or plant life or health”.<sup>111</sup> This kind of clause has also been incorporated in other WTO treaties, such as GATS, the Agreement on Technical Barriers to Trade (TBT) and the Agreement on Sanitary and Phytosanitary Measures (SPS).

The TBT, which applies to regulations governing ‘product characteristics or their related processes or production methods (Annex 1, 1), permits trade restrictions for legitimate objectives’;<sup>112</sup> e.g., the protection of human health or safety, animal or plant life or health, national security requirements, the prevention of deceptive practices, or environment protection. The TBT also requires that such barriers, which often come in the shape of technical requirements (product standards, testing, or certification procedures) cannot create unnecessary obstacles to trade or be more severe than necessary to achieve their legitimate purposes – the so termed ‘proportionality principle’.<sup>113</sup> Similar understanding applies to the SPS.

Therefore, in cases similar to the Horn of Africa herein related, WTO Members can be exempted from their obligations under GATT, TBT, or SPS in order to protect human life and health, which is a basic protection in times of humanitarian crises. Cooperation arrangements can be so conducted, either on a WTO stage or on an FTA/PTA scenario, for the protection of refugees and other forced migrants, as well as for their social and health assistance in regions of humanitarian corridors or in middle or final destination countries.

#### D. Platforms of Dialogues

The term ‘dialogues’ has been of common usage in international cooperation, and it has currently become a ‘must’ in treaty negotiations, implementation of good practices, governance, and stakeholder’s consideration. From its ‘popular’ to its

---

<sup>110</sup> MARRAKESH AGREEMENT, *supra* note 45, art. I & III.

<sup>111</sup> *Id.* art. XX(g).

<sup>112</sup> Agreement on Technical Barriers to Trade, TBT, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).

<sup>113</sup> *Id.* art. 2.2; Andreia Costa Vieira & Vera Thorstensen, *WTO Case Law on TBT and SPS: It is time to review some concepts*, in WTO DISPUTE SETTLEMENT MECHANISM -A DEVELOPING COUNTRY PERSPECTIVE (2019).

‘technical usage’, much has evolved.

One of the theories that bring about a better understanding of the ‘technical usage’ of such expression, in parallel with its popular usage,<sup>114</sup> within a legal and international framework is the theory of ‘dialogue of sources’, which was originally built to be applied in moments of treaty interpretation.<sup>115</sup> According to this doctrine, three kinds of dialogues of sources that can be applied to international legal regimes have been identified by scholars — a dialogue of coherence, a dialogue of coordination and adaptation, and a dialogue of complementary.<sup>116</sup>

A general treaty, such as an umbrella treaty, or other kinds of general international rules (i.e., Declarations, Resolutions), can complement, with basic terms, other specific treaties that belong to different regimes — this is the so termed ‘dialogue of coherence’.<sup>117</sup> One such example is the application of the Vienna Convention on the Law of Treaties (VCLT) — a general treaty, which can be invoked for treaty interpretation in specific international law regimes. According to Article 31 of VCLT — this is an expression of a dialogue of coherence.<sup>118</sup>

---

<sup>114</sup> See Andréia Costa Vieira, *The Sustainable Dialogue between International Trade Law and the Right to Water*, USP: PHD THESES AND DISSERTATIONS (Feb. 14, 2014), <https://www.teses.usp.br/teses/disponiveis/2/2135/tde-27012015-152818/pt-br.php> (The popular usage is often dealt with by academia or ordinary literature in different areas of knowledge to express two or more scientific or literary viewpoints simply in communication with each other.).

<sup>115</sup> Erick Jayme, *Identité culturelle et intégration : le droit international privé postmoderne : cours général de droit international privé*, in COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW (1996).

<sup>116</sup> Alberto Amaral Junior, *Le ‘Dialogue’ des Sources: Fragmentation et Coherence dans le Droit International Contemporain*, in REGARDS D’UNE ENERATION SUR LE DROIT INTERNATIONAL 7 (Jouann E. et al. eds., 2008) [hereinafter Junior]; Andréia Costa Vieira, *The WTO and the Paris Agreement: A Dialogue on Climate Change Mitigation*, 11(2) BEIJING L. REV. 399 (2020) [hereinafter Costa].

<sup>117</sup> *Id.*

<sup>118</sup> Vienna Convention on the Law of Treaties, arts. 31-32, May 23, 1969, 1155 U.N.T.S. 331. (“ . . . 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;

(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

A dialogue of coordination and adaptation occurs whenever treaties and regimes relate to each other, and it is so verified by a mutual comprehension and coordination of their contents.<sup>119</sup> A dialogue of complementarity occurs when rules and principles that complement each other from different regimes are applied together. This means that one should verify the foundational values of the system and apply them by an interpretative method.<sup>120</sup> An extension of this doctrine has been suggested to make its application suitable to moments of treaty negotiations and to non-formal arrangements.<sup>121</sup> From this extension, the same pattern of ‘technical dialogues’ can be used and can be helpful for building up ‘platforms of dialogues’.

In such a fashion, a platform for dialogues and engagement between trading partners might be constructed in times of humanitarian crisis, similar to the ones constructed in times of monitoring mechanisms,<sup>122</sup> and can use the same pattern of construction of treaty negotiations — arrangements for dialogues of coherence, coordination/adaptation, and complementary.<sup>123</sup> Besides the need to monitor compliance with human rights-related conditions or commitments, which includes commitments made in relation to the maintenance of a level playing field, it should be recognised the role that a platform of dialogues can play in the implementation of trade rules concerned with humanitarian crisis. This kind of platform would have the role of interconnecting different legal regimes and diminishing kinds of biases existent among their specialists or technicians. Not to forget that the aim is to be able to better help people who are in a situation of extreme vulnerability.

Platforms of dialogues can be established through engagement with different stakeholders, by promoting features of good governance in an intersection between trade and humanitarian mechanisms.<sup>124</sup> These kinds of dialogues can provide valuable means through which affected stakeholders can raise concerns with policymakers. Such concerns may be on the different manners that trade arrangements can be implemented, as well as the effectiveness or the impacts of external threats or developments (e.g., post-COVID-19 impacts) in terms of the nature, extent, or distribution of different types of human rights risks.

---

(c) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.”)

<sup>119</sup> Junior, *supra* note 116.

<sup>120</sup> *Id.*

<sup>121</sup> Costa, *supra* note 116.

<sup>122</sup> Zerk & Beacock, *supra* note 37, at 12.

<sup>123</sup> Costa, *supra* note 116.

<sup>124</sup> Zerk & Beacock, *supra* note 37, at 13.

As such, non-state actors can exercise influence at the WTO fora. For instance, in an intersection between trade and human rights concerns, international organisations, such as the World Health Organization (WHO) and the Food and Agriculture Organization (FAO), have been granted observer (or ad hoc observer) status in specific WTO councils and committees. The WHO holds observer status in the WTO Ministerial Conferences and on the SPS Committee, as well as ad hoc observer status on the Council for GATS and the Council for TRIPS.<sup>125</sup> Similarly, WTO has held observer status at the WHO Assembly, Framework Convention on Tobacco Control (FCTC) negotiations, and the joint WHO-FAO Codex Alimentarius Commission (Codex).<sup>126</sup>

Such platforms of dialogues have helped to make an intersection between the work of these organisations involved, at the same time that they allow other different stakeholders' voices in their premises. Thus, civil society and co-related organisations can also be called to be part of the solution. In this way, strengthening civil society procedures and empowering civil society organisations that are related to support in times of humanitarian crisis can also be a key achievement of the arrangements that might be established for the purposes of cooperation between trade and sustainable development in times of humanitarian crisis. Instead of being 'assistance only' provisions, such kinds of help diminish the economic and social impacts that a large amount of migrants crossing borders can have in times of humanitarian crisis, at the same time that the most vulnerable ones can be truly helped by trade-related rules: a win-win for all.

Enhancements in the *ex-ante* evaluation and scrutiny of human rights-related risks connect to trade to the extent that they are accessible by members of the public (thus including human rights organizations and trade unions that represent affected people and communities),<sup>127</sup> and have a potential role in the democratisation of the 'about to be implemented' trade emergency policies.

All this is just a fulfilment of what can also be called WTO's mandate; after all, the Marrakesh Agreement, which brought to life the WTO in 1994, called upon the WTO to take "appropriate arrangements for consultation and cooperation with nongovernmental organizations" (NGOs)<sup>128</sup>. In 1996, the General Council adopted guidelines to clarify its relations with NGOs. In the early years of the WTO, the organisation was criticized for not appropriately engaging civil society by institutionalizing relationships or giving NGOs a meaningful voice in the making of

---

<sup>125</sup> Garcia & Gostin, *supra* note 19.

<sup>126</sup> *Id.*

<sup>127</sup> Zerk & Beacock, *supra* note 37, at 13.

<sup>128</sup> MARRAKESH AGREEMENT, *supra* note 45, art. 5.

WTO decisions.<sup>129</sup> WTO's posed difficulties of "unequal access, shallow relations, and limited reciprocity in civil society dialogue" meant "barriers to WTO transparency, effectiveness, and accountability".<sup>130</sup>

Ever since, efforts have been made to improve NGO relations in the WTO institutions, and the arrangements with civil society have taken the shape of allowing attendance at Ministerial Conferences, and symposia on specific subjects, besides regular meetings between civil society and WTO staff and briefings and position papers that are circulated to NGOs and Members.<sup>131</sup>

Notwithstanding all these efforts, in times of humanitarian crises, much more has to be done for the engagement of civil society and WTO Members, not to have loose relationships, but meaningful involvement that really matters. One such thing is to diminish the bureaucracy of these engagements and uphold such meetings as soon as a humanitarian crisis is deflagrated, having the perspective that trade will certainly be affected and that trade-related cooperation can be much more effective than assistance in many different circumstances. Platforms of dialogues can be the right instruments for moments of emergencies whenever the stakeholders involved can be not just 'listened voices' but also partners to implement trade-related humanitarian provisions. In such a fashion, dialogues of coordination, adaptation, complementary and coherence,<sup>132</sup> can take place to make the inclusion of refugees and other forced migrants, at the same time that they can help host countries bear the costs and diminish the impacts of massive migration.

#### *E. Provisions on FTAs with concern for humanitarian crisis and trade cooperation*

A new trade cooperation arrangement can be installed whenever it is possible to accommodate the emergency of the situation on its negotiations. However, instead of creating a totally new agreement or entering into negotiations for a totally new MoU, which can be a time-consuming procedure, provisions can be added in already existent trade agreements or trade arrangements in times of humanitarian crisis.

An example of this type of provision can be found in the labour chapter of the Canada–South Korea FTA,<sup>133</sup> which provides that "parties may initiate cooperative labour activities".<sup>134</sup> Such provision can include "policy issues of common interest and their application", and "such other matters as the Parties may agree" via projects

---

<sup>129</sup> Garcia & Gostin, *supra* note 19.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Andréia Costa, *supra* note 116.

<sup>133</sup> Canada-Korea Free Trade Agreement, Can-South Korea, art. 18.11, Mar. 11, 2014.

<sup>134</sup> Zerk & Beacock, *supra* note 37, at 22.

of information-sharing, joint research programs, collaborative arrangements or other ways of technical exchanges and cooperation, or even “future cooperative activities”, including joint plans of action, which are mentioned in the Canada–Israel FTA.<sup>135</sup> In the chapter on ‘trade and gender’ of this FTA, the parties are committed to “develop programs of cooperative activities based on their mutual interests”, having “to improve the capacity and conditions for women, including workers, business women and entrepreneurs, to access and fully benefit from the opportunities” therein created.<sup>136</sup>

A closer look at these kinds of provisions displays their loose commitments, which might not be, in fact, a good sign of what the trading partners actually intend, even though such flexible language may have been used since harder undertakings would not be negotiable. However, practical arrangements can take place as side effects of these negotiations and much can be done at the dialogues level (e.g., real and effective cooperation between administrative agencies of interested countries). Later, a more robust set of arrangements for increasing cooperation towards forced migrants’ integration in specific geographic locations can take place. In circumstances different from humanitarian crisis, that has been much the case of how MoUs are born.

Besides, the non-reciprocal nature of GSP schemes makes it possible to attach trade-related incentives to accommodating cooperation in times of humanitarian crisis and forced migrants’ integration. GSP are unilaterally enforced, not really negotiated between trading partners, which gives the granting party considerable leverage through which it can promote different human rights-related features of the aimed cooperation policies. Whenever specific benefits are attached to specific product lines, there is the “possibility of quite targeted use of both positive and negative conditionality, creating opportunities for initiatives directed at addressing human rights problems at a sector level (as well as at a country level)”, which makes GSP schemes a potentially less ‘blunt instrument’ for promoting human rights objectives than free-trade agreements.<sup>137</sup>

#### *F. The Trade for Peace Programme*

In October 2022, WTO launched a programme which comprehended a ‘trade-peace nexus’ and it comprised experts from the fields of trade, peace, security, and humanitarian affairs to share experiences, having the aim of equipping trade practitioners and peacebuilders with the training necessary to use trade and

---

<sup>135</sup> Canada-Israel Free Trade Agreement, Can-Isr., art. 12.10, Jan. 1, 1997.

<sup>136</sup> Zerk & Beacock, *supra* note 37, at 22.

<sup>137</sup> Zerk & Beacock, *supra* note 37, at 36.



economic integration as an instrument to promote peace.<sup>138</sup> The Trade for Peace Programme was initiated in Buenos Aires in 2017, by the time of the 11th WTO Ministerial Conference, and it grew out of the launch of the G7+ WTO Accessions Group.<sup>139</sup> This Group, which is composed of nine LDCs that applied to join the WTO, aims at facilitating “the integration of their fragile and conflict-affected economies into the multilateral trading system”.<sup>140</sup>

The Trade for Peace Programme was built “to assist countries in transitioning from fragility or conflict to stability and economic well-being”, having four distinct pillars: (i) political engagement and partnerships, (ii) outreach and public dialogue, (iii) research, and (iv) training and capacity building.<sup>141</sup>

International cooperation is necessary to make any solution in times of humanitarian crises a long-lasting solution and it might come in the shape of international treaties, international informal agreements, having the frame of FTAs, IIAs, PTAs, GSP, and others. In all these arrangements, political engagement is the key to make a step forward in the framework required for situations of emergency.

Besides, dialogues between public entities and civil society make arrangements more inclusive and closer to reality. An inclusive outreach deals with real needs of the vulnerable population involved at the same time that it takes into account the scenario in the host countries, which was transformed by massive migration. Academia’s involvement and consolidated research on the issues co-related to forced migration, integration of refugees and their trade-related impacts are a must on times of building up platforms of dialogues. Expert’s opinions have to be taken into account in order to consolidate the trade-peace nexus.

Even though the present research was not primarily based on the trade-peace nexus programme of the WTO, most of its content was developed on the upholding of the Pillars 1, 2, and 3, just as briefly explained in the three paragraphs above. Pillar 4 has been consolidated in this trade-peace nexus programme just as this paper was in construction in February 2023.

In general, Pillar 4 has a focus on creating learning opportunities on the issue, besides the possibility of joining together experts from the fields of trade, peace, security, and humanitarian affairs to share their experiences, build up a knowledge-based group on the trade-peace nexus and to enhance opportunities to leverage the

---

<sup>138</sup> *Trade for Peace Programme*, WORLD TRADE ORG., [https://www.wto.org/english/thewto\\_e/acc\\_e/tfp\\_pillar4\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/tfp_pillar4_e.htm).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

multilateral trading system for peace and stability.<sup>142</sup> One of the aims is to equip peacebuilders and trade practitioners with the training necessary to trade and economic integration as instruments “to promote inclusive and sustainable peace and security”.<sup>143</sup>

From this initiative, solutions might come up to deal with the up-to-date challenges in building peace and dealing with side effects of humanitarian conflicts.

A step forward in this program can consider the so many qualified forced migrants from the regions in humanitarian crises. Their voices should be heard; their opinions should be taken into account. Calls for scholarship on building up peace in times of humanitarian crises can be very much inclusive if they take into account the possibility of granting opportunities to the forced academic migrants, who have left all their belongings, positions, and titles behind on the way out of their countries, but who carry with them a knowledge-based luggage that cannot be taken from them. This kind of highly qualified working labour is one of the most difficult ones to be integrated in times of refugee inclusion. Usually, they have highly qualified knowledge but have been employed in basic jobs in their host countries for survival. A proper inclusion of this kind of forced migrant through scholarships and opportunities in academic jobs can be a plus for the host countries as well, since this kind of qualified workers means years of investments in education and might bring about consolidated research outcomes. In this fashion, calls for scholarships can be opened as partnerships between institutions from destiny host countries and institutions from countries located in regions of evacuation in times of humanitarian crises. This can be a way of making this kind of workers more welcome in places where they manage to arrive first. Moreover, these grants can be trade-related ones and can accommodate the very idea of a trade-peace nexus.

Besides, special scholarship programs can be created for academic women, whose difficulties faced might even be greater if they carry the ‘burden’ of being mothers or aged ones; or even if they come from cultures that have created barriers for educated women, such as the ones imposed by the Sharia Rule across Afghanistan pending the Taliban’s regime.<sup>144</sup> Not to forget that in times of humanitarian crisis, women have been at the forefront as targets of conflicts and violence. As such, the need is an urgent one to enable women’s economic empowerment in humanitarian crises.<sup>145</sup>

---

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Sheikh Shoib et al., *Women in Afghanistan: a call for action*, 9(5) LANCET PSYCHIATRY 342 (2022).

<sup>145</sup> Dorothea Hiorst et al., *Gender, sexuality and violence in humanitarian crises*, 42 DISASTERS S3 (2018).

The four pillars — political engagement and partnerships, outreach and public dialogue, research, and training and capacity building — are in a moment of consolidation, but they have already served a purpose of breaking out of bias towards a trade-peace dialogue, and they are a welcome starting point to make trade cooperation work for geopolitical concerns of humanitarian crises, refugees' integration and their related trade and economic impacts.

## V. CONCLUSION

In 2001, former New Zealander WTO Director-General (DG) Mike Moore came out with a speech that has been quoted very often: “[t]oo much of this century was marked by force and coercion. Our dream must be a world managed by persuasion, the rule of law, the settlement of differences peacefully within the law and cooperation”.<sup>146</sup> Even though this was a speech from the beginning of the millennium, it is very much relevant today, and it has also been confirmed by the current Nigerian WTO DG Ngozi Okonjo-Iweala, who is a “firm believer in the power of trade to lift developing countries out of poverty and assist them to achieve robust economic growth and sustainable development”.<sup>147</sup>

This article aimed at setting a ‘contemporary look’ at some of the humanitarian crises deflagrated in the past years - due to armed conflicts, generalised violation of human rights, famine or natural disasters, their side effect of forced migration and suggestions on how trade cooperation can be an instrument for building peace and constructing economic rehabilitation in geographic regions of humanitarian corridors or destiny host countries, as well as in the lives of so many people. Herein, a short trade-related context of the COVID-19 pandemic, the Brazilian inclusion of migrant workers, the Russia-Ukraine war, the Afghan multifaceted crisis, the 2023 Turkey-Syria earthquake consequences and the Horn of Africa’s years of famine and forced migration were just examples of the so many humanitarian crises that have disrupted peace and economic stability in the last decades as well as some policies therein implemented to overcome difficulties faced by migrants.

It is a fact that many prosperous countries with powerful economies complain about the large number of asylum seekers that they receive each year; nonetheless, they offer too little, on large scale, to prevent refugee crises and displaced people (like investing in conflict prevention, return, reintegration) — remarked Rudd Lubbers,

---

<sup>146</sup> Mike Moore, *The Case for the ‘Open Society’ and the Role the WTO Plays*, WTO NEWS (Feb. 2, 2001), [http://www.wto.org/english/news\\_e/spmm\\_e/spmm51\\_e.htm](http://www.wto.org/english/news_e/spmm_e/spmm51_e.htm).

<sup>147</sup> WTO, *WTO Director-General: Ngozi Okonjo-Iweala*, [www.wto.org/english/thewto\\_e/dg\\_e/dg\\_e.htm](http://www.wto.org/english/thewto_e/dg_e/dg_e.htm).

a former Dutch UN High Commissioner.<sup>148</sup> This was a 2001 remark, but more than three decades later, it remains a real concern on the outcomes of the last humanitarian crises deflagrated and their trade-related impacts. By the time of the 50<sup>th</sup> session of the Human Rights Council, in 2022, the Chilean High Commissioner Michelle Bachelet reminded the international community that “the commitments made by almost all States in placing human rights at the forefront of the UN activities need also be matched with funding and resources”.<sup>149</sup>

By setting a contemporary look at this reality too, the present research showed different good practices, experiences and, knowledge to support the idea that trade cooperation can be a helpful tool to build up a trade-peace nexus. It represents a break-out of bias towards a trade-peace consensus, at the same time that it introduces a shift on the reason that this nexus is a welcome one for the most common destiny host countries.

In the situations presented herein, the focus shifted towards the motivation of the human rights clauses in trade treaties or human rights provisions on trade arrangements. Such kinds of provisions are designed to accommodate not only emergencies of humanitarian crisis as a matter of assistance, but they also address real geopolitical concerns towards avoidance of demographic inflations on targeted forced migrations routes and destinies, having a trade-peace nexus with consequent global economic aim.

In this sense, it is a win-win situation for all. First, it is a helpful hand for the integration and inclusion of refugees and other kinds of forced migrants. Second, it is a welcome kind of international cooperation for final destiny countries, since prevention might cost less than remediation. Third, it is an effective remedy for the neighbouring host countries that will receive financial and technical support to uphold their economies and infrastructure. In the end, all stakeholders involved might gain from this trade-peace nexus endeavour.

To go back to the question we started with: ‘humanitarian crises and refugees: what has trade got to do with it?’ As we saw through the course of this paper, in the 21<sup>st</sup> century reality of a post-COVID-19 scenario, a Russia-Ukraine war, an Afghan multifaced crisis, an Africa famine forced migration, and their side effect of

---

<sup>148</sup> Marilyn Achiron, *The Geneva Convention has been the cornerstone of protection for 50 years, but there is a lively debate about its relevance today*, 2(123) REFUGEES 4 (2001), <http://www.unhcr.org/3b5e90ea0.html>.

<sup>149</sup> UNCHR, *Statement by Michelle Bachelet, UN High Commissioner for Human Rights* (Jun. 15, 2022), <https://www.ohchr.org/en/statements/2022/06/statement-michelle-bachelet-un-high-commissioner-human-rights>.

demographic inflation and urgent need of economic accommodation in Europe, the US, Asia, Africa, and South America, trade has a lot to do with it.