

**BRAZIL: HUMAN RIGHTS AND
ENVIRONMENTAL REFUGEES**

***BRASIL: DERECHOS HUMANOS Y
REFUGIADOS AMBIENTALES***

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ABSTRACT

These notes seek to establish a discussion regarding the evolution of the refugee definition, particularly the so-called “*environmental refugees*” in the context of human rights and environmental law in order to establish possible proposals for the modification or extension of the concept, in the international treatise and in the Brazilian law, with regard to the issue of forced displacement in the contemporary world. The text aims to analyze the trajectory and the advancement of human rights in view of the category of refugees in Brazilian and international legislation in the context of new phenomena that challenges the current definition, like desertification, soil degradation, biodiversity loss and insecurity food, which can also cause displacement. These environmental phenomena have gained the centrality of the political debate of the world’s political agenda since the end of the Cold War until nowadays, since few times in history, there have been so many people moving from one country to another, from one continent to another, or even one region to another, fleeing from persecution or natural phenomena or lack of food.

Keywords author: Human rights, environmental refugees, brazilian law.

Keywords plus: Human rigths, environmental degradation, human rights violation, environmental refugees, Brazil.

RESUMEN

Estas notas buscan establecer una discusión sobre la evolución de la definición de refugiado, particularmente los llamados “refugiados ambientales” en el contexto de los derechos humanos y las leyes ambientales, con el fin de establecer posibles propuestas para la modificación o extensión del concepto en el tratado internacional y en la ley brasileña, con respecto al tema de desplazamiento forzado en el mundo contemporáneo. El ensayo analiza la trayectoria y los logros de los derechos humanos en términos de la categoría de refugiados en la legislación brasileña e internacional y en el contexto de nuevos fenómenos que cuestionan la definición actual, tales como la desertificación, la degradación de suelos, la pérdida de biodiversidad y la inseguridad alimenticia, también causas del desplazamiento. Tales fenómenos ambientales han llegado al centro del debate político en la agenda política mundial desde el final de la Guerra Fría hasta hoy, debido a que pocas veces en la historia ha habido tanta gente moviéndose de un país a otro, de un continente a otro, o incluso de una región a otra, sea huyendo de la persecución, de fenómenos naturales o de falta de alimentos.

Palabras clave autor: *Derechos humanos, Refugiados ambientales, ley brasileña.*

Palabras clave descriptores: *Derechos humanos, degradación ambiental, violación de los derechos humanos, refugiados ambientales, Brasil.*

SUMMARY

I. INTRODUCTION.- II. BRAZIL AND HUMAN RIGHTS.- III. HUMAN RIGHTS AND ENVIRONMENTAL REFUGEES. A. *Refugees.* B. *Environmental Refugees.*- IV. CONCLUSION.

I. INTRODUCTION

These notes seek to establish a discussion regarding the evolution of the refugee definition, particularly the so-called “*environmental refugees*” in the context of human rights and environmental law in order to establish possible proposals for the modification or extension of the concept, in the international treatise and in the Brazilian law, with regard to the issue of forced displacement in the contemporary world.

The text aims to analyze the trajectory and the advancement of human rights in view of the category of refugees in national and international legislation in the context of new phenomena that challenges the current definition, like desertification, soil degradation, biodiversity loss and food insecurity, which can also cause displacement.

These environmental phenomena have gained the centrality of the political debate of the world’s political agenda since the end of the Cold War until nowadays, seeing that, few times in history, there have been so many people moving from one country to another, from one continent to another, or even from one region to another, fleeing from persecution or natural phenomena or lack of food.

Brazil has established a law on refugees, Law 9474/97, called the Status of Refugees, inspired by the Geneva Convention of the United Nations (UN), in 1951, and its Additional Protocol in 1967, as well as the Cartagena Declaration in 1984, within the Americas, as a product of the context of World War II, the Cold War and decolonization of Africa and Asia. Refugee is defined, in an international level, as that established in Article 1 of the Geneva Convention, an extremely exhaustive detailed definition, as a product of a specific context of political and cultural persecution that was evident in the twentieth century, when thousands of people suffered all types of cases of persecution still in the European con-

text¹. And the magnification to what is referred as “*massive violations of human rights*” in the legal text in its Article 1, paragraph III, has appeared the decolonization of Africa and Asia, in the second half of the twentieth century, in the context of a growing understanding of refugee as a Cold War and political maverick.

In all these changes what is considered a refugee, it did not appear, until the 70s, notions about the mass migration produced by disasters arising from climate change and environmental problems. In other words, the concept created by the United Nations (UN), and adopted by most countries, includes only the prospect of national or international displacement caused by wars and persecution of any kind involving human action.

Hence the need for new laws and regulations to these displaced populations in unequal situation for social, economic and historical reasons, that migrate not only for reasons relating to national or international armed conflicts, since the reasons for forced migration have been changing rapidly in the contemporary world.

The dynamics of international organizations, institutions and national states in the production of new definitions then starts to play an important role in the understanding and promotion of human rights, environment and international refugee law, in search of a direction and dissemination of actions aimed at a global political will to cover new situations, new dynamics that produce migration and might occasion refugee. For purposes of this paper, the refugee category adopted is the one devoted by the Geneva Convention of 1951 and its Additional Protocol in 1967, as well as the mentioned by Brazilian law, Law 9474/97, named as the Status of Refugees.

1 H. Arendt, *Origens do totalitarismo—antisemitismo, imperialismo, totalitarismo*, tradução de Roberto Raposo, 300-313. (Companhia das Letras, São Paulo, 1989).

II. BRAZIL AND HUMAN RIGHTS

In the context of the end of the Second World War (1945), Brazil signed ad referendum London Agreements of 1946 on the expedition of travel vouchers to refugees, supervised by the Intergovernmental Commission, and subsequently recognized, approved as Legislative Decree n. 21, July 22, 1949, guaranteeing to refugees not inferior treatment of immigrants received in terms of other agreements².

Brazil was also represented in the creation of the Universal Declaration of Human Rights, at the United Nations (UN), in 1948. This Declaration would be the international instrument that would raise the issue of human rights internationally, and enshrine the right to asylum in the article 14, which states that any person who is persecuted has entitled right to seek and enjoy asylum in other countries. From that moment, the countries started to engage, even morally, with the international protection of the human being.

This document is the most important achievement of human rights at international level, consolidating the so-called contemporary conception of human rights³, signed in Paris on December 10th, 1948, which, in its document would later include the environmental law, in the UN Conference in Stockholm in 1972. The universality of this normative document is an undeniable claim⁴ since most of the later constitutions of sovereign States members of the UN have been inspired by this statement after its adoption by the UN General Assembly. It is a policy document with great potential for universality.

Started, then, the configuration of The Mixed Comission Brasil- Intergovernmental Comitee for Refugees, during the government of Eurico Gaspar Dutra (1945-1950), the country

2 A.Cançado Trindade, *Repertório da prática brasileira de direito internacional público: período 1941-1960*, 306 (2ª Ed. Brasília: FUNAG, 2012).

3 F. Piovesan, *Temas de Direitos Humanos*, 77 (Max Limonad, São Paulo, 1998).

4 J. Lindgren Alves, *Os Direitos Humanos como Tema Global*, 4 (Perspectiva, São Paulo/ SP 2003).

was committed to effectively receive the refugee group survivors of World War II. It would have been occurred only when the country joined the Geneva Convention in 1951, recognizing the United Nations High Commissioner for Refugees (UNHCR) and so, entering the institution's overall system for refugee protection.

At first, the Brazilian government promulgated a Decree, but did not adhere to the articles fifteen (15) and seventeen (17) of the Convention, which meant non-recognition of the right of association, work and gainful employment for refugees, because the Brazilian legislature refused to approve such acts, by means of Legislative Decree n.11, of 07 July 1960. This refusal was founded to defend the national labor market for the Brazilians, to impose restrictions on foreign immigrants, including refugees.

Later, with the advent of military rule in 1964, Brazil has moved away from the UN system regarding human rights protection, retreating to the accession to the United Nations system, taking defensive positions towards international bodies on human rights in its external policy⁵.

The dictatorial control of country was guaranteed by Institutional Act n.5, of 1968 (which closed the Congress for a while, decreed intervention in states and municipalities, and given absolute powers to Executive), by the Press Law (1967) and the National Security Act (1969). Citizens who disagreed or practiced acts considered subversive by the regime suffered the punishment of banishment from the country, which would amount a forced exile. The banishment was not forecast in the Constitution or criminal laws, but the military regime produced institutional acts to expel undesirable⁶.

The work of the Catholic Church and organizations such as Ordem dos Advogados do Brasil (OAB) –the Brazilian Bar Association- and Associação Brasileira de Imprensa (ABI) –the Brazilian Press Association- were crucial in this period for the

5 M. Moreira Alves, *Estado e oposição no Brasil (1964-1984)*, 66 (3ª Ed., Vozes, Petrópolis, 1985).

6 N. Mariano, *As garras do condor – como as ditaduras militares da Argentina, do Chile, do Uruguai, do Brasil, da Bolívia e do Paraguai se associaram para eliminar adversários políticos*, 307 (Vozes, Petrópolis, 2003).

protection of refugees and political prisoners. The Catholic Church, for example, was involved in the protection of political prisoners, in denouncing human rights violations as state policy in that period. The Conferência Nacional dos Bispos do Brasil (CNBB) –the national Conference of Bishops– was the Catholic Church organization that most acted during this time, organizing an Archdiocesan Commission for Justice and Peace in the State of São Paulo, reversing its official position in the beginning of the movement, in 1964.

The National Conference of Bishops of Brazil had founded Caritas Archdiocesan in Brazil, in 1956. This institution has been dealing with the theme of refugee in Brazil since at least the mid-70s, even during the military regime that persecuted dissidents and did not recognize refugees, due to their participation in “*Condor Operation*” between the political regimes of South America⁷. Even this time, the institution developed a work of protecting refugees that arrived in Brazil from Argentina, Uruguay, Chile and Paraguay, although not recognized as such by the government, accumulating extensive experience and expertise on the subject⁸.

The Commission for Justice and Peace (São Paulo) and Caritas Brazil (Rio de Janeiro), were partners in humanitarian work from the first moments of increased violence and persecution by the military regime against refugees, dissidents and politics prisoners, including detention, torture and murder without trial and against the principles of international law. Both took care of receiving, forwarding and welfare of asylum seekers. According to estimates, the Centers for Reference resettled approximately twenty thousand South American refugees⁹.

7 N. Mariano, *As garras do condor – como as ditaduras militares da Argentina, do Chile, do Uruguai, do Brasil, da Bolívia e do Paraguai se associaram para eliminar adversários políticos*, 17-34 (Vozes, Petrópolis, 2003).

8 E. Araújo Sales & P. Evaristo Arns, *A história não contada do refúgio no Brasil antes da Lei 9474/1997*, in *Refúgio no Brasil – a proteção brasileira aos refugiados e seu impacto nas Américas*, 62-69 (L. Barreto (org.), ACNUR/Ministério da Justiça, Brasília, 2010).

9 G. Almeida, *Direitos Humanos e não violência*, 119 (Atlas, São Paulo, 2001).

The addresses of Metropolitan Curia in São Paulo or Rio de Janeiro were the most sought after by refugees or asylum during the military regime. Political refugees arrived there, as well as, relatives of the missing, people who want the new and information about refugees or political prisoners. Dom Paulo Evaristo Arns, archbishop of São Paulo, became convinced that it was necessary to accommodate refugees who were not recognized by the government and denounce violence and encourage humanitarians actions¹⁰.

The United Nations, through The UNHCR, reached the point of criticizing the treatment that Brazil's government gave the refugees in this period, not recognizing them as such. The Brazilian government tolerated them as tourists and argued that only recognized refugees from Europe, maintaining the geographic clause of the Geneva Convention of 1951¹¹, while the Foreign Minister, Azeredo da Silveira, showed Brazil's position in the face of human rights in the UN General Assembly: the thesis of "*absolute sovereignty*" used as an argument¹² It is in this context that reaches a mission of unhcr in Brazil in 1977, opening an office in the city of Rio de Janeiro, which started working in January 1978.

In this opportunity, the following agreement was signed between UNHCR and the Brazilian government: a) Brazil accepted the UNHCR presence in its territory, but does not accept the implementation of its mandate as an international organization. b) Brazil does not recognize as a refugee asylum seekers entering the Brazilian territory (excepting Europe, of course), just give them a tourist visa, which entitles to a provisional stay of 90 days, without character of immigrant¹³.

10 E. Araújo Sales & P. Evaristo Arns, *Óp.cit.*, 63.

11 A. Cançado Trindade, *O Brasil e o direito internacional dos direitos humanos: as duas últimas décadas (1985-2005)*, in *Relações Internacionais do Brasil – temas e agendas*, 2, 237 (H. Oliveira & A. Lessa (orgs.), Saraiva, São Paulo, 2006).

12 Ministério Das Relações Exteriores (MRE), *A palavra do Brasil nas Nações Unidas (1946-1995)*, 338-339 (Fundação Alexandre de Gusmão/Ministério das Relações Exteriores, Brasília, 1995).

13 G. Almeida, *Direitos Humanos e não violência*, 119 (Atlas, São Paulo, 2001).

In this period, as already mentioned about Caritas or Commission of Justice and Peace, the UNHCR office is sought exclusively by Argentines, Chileans, Uruguayans and Paraguayans. These asylum seekers and refugees were resettled in countries of North America and Oceania. The legislation and political culture in Brazilian society were not favorable to refugees and political exiles in view of the climate of the Cold War that impregnated the military and much of the middle class. The regime had to do counter-strategy in this context and focus on political prisoners, exiles and refugees as terrorists before society¹⁴.

Between 1945 and 1964, in the so called Cold War, an ideology became strong related to the division between the Brazilian military. Such divisions often appeared in elections and debates of Military Club along the 50's. The anticommunist groups and those identified with western political culture who favored the United States, were precisely those who overthrew President Joao Goulart, in 1964¹⁵.

Thus, the leaders of the military regime in a matter of foreign policy were allies of the United States in the Cold War, virtually since the beginning of the regime, only taking serious friction with the Americans during the administration of Ernesto Geisel (1974-1979), who was related to the preservation of human rights and the Nuclear Program with West Germany¹⁶. The president of The United States, James Carter (1977-1981), had a foreign policy platform preserving human rights, and started to press the Latin American dictatorships, including Brazil. The political clashes between Brazilian diplomacy and the U.S. government by human rights and nuclear technology have resulted in the

14 N. Mariano, *As garras do condor – como as ditaduras militares da Argentina, do Chile, do Uruguai, do Brasil, da Bolívia e do Paraguai se associaram para eliminar adversários políticos*, 306 (Vozes, Petrópolis, 2003).

15 C. Arturi, *A cultura política da linha-dura militar: os “ideais traídos” do general Sylvio Frota*, in *Cultura(s) política(s) e democracia no século XXI na América Latina*, 246 (M. Baquero (org.), Editora da UFRGS, Porto Alegre, 2011).

16 P. Vizentini, *A política externa do regime militar brasileiro*, 213-225 (Editora da UFRGS, Porto Alegre, 1998).

cancellation of military agreements between the two countries, existing since 1952¹⁷.

Although the real intentions of the U.S. government would denounce the violation of human rights of Soviet dissidents, the international credibility demanded the universalization of this official discourse, which was reflected on all authoritarian governments, even in “friendly countries”¹⁸. Anyway, the clash between diplomats of the two countries put the preservation of human rights at the center of the political agenda, pressing further the regime towards a political opening.

In 1979, the year of adoption of the Amnesty Act, there was the return of the Brazilian Refugees who were outside the country. This attitude of the Brazilian government, of Joao Baptista Figueiredo, the last military president, reflected the treaty with the UNHCR. When Brazil recognized the mandate of the United Nations High Commissioner for Refugees in the country in 1982¹⁹, it was transferred permanently from Rio de Janeiro to Brasilia in 1989.

The transition to a democratic regime still remained in the legal body, inspired this period, informed by national security doctrine, the Law 6815/1980. The so-called Status of Foreign still take effect even today, with occasional changes over thirty years. Obviously the changes that this legislation could benefit foreigners in general, include refugees and displaced for environmental reasons.

The military government lasted from 1964 to 1985, and produced about 366 people dead or missing, around two thousand victims of torture, 130 sentences of banishment, thousands of illegal arrests, hundreds of layoffs and forced retirements, as the Special Committee established by Law n.9.140, of 1995²⁰. A

17 *Op.cit.*, 225.

18 *Ibidem*, 224.

19 A. Cançado Trindade, *O Brasil e o direito internacional dos direitos humanos: as duas últimas décadas (1985-2005)*, in *Relações Internacionais do Brasil – temas e agendas*, 2, 237 (H. Oliveira & A. Lessa (orgs.), Saraiva, São Paulo, 2006).

20 N. Mariano, *As garras do condor – como as ditaduras militares da Argentina, do Chile, do Uruguai, do Brasil, da Bolívia e do Paraguai se associaram para eliminar adversários políticos*, 290 (Vozes, Petrópolis, 2003).

special key to be emphasized that distinguishes the Brazilian military regime from the others of Latin American is the fact that its leaders have always considered authoritarianism as a political formula fleeting, and maintained during the whole period the existence of political parties (MDB – Brazilian Democratic Movement and ARENA – National Renewal Alliance), a calendar election, National Congress in operation; but with important political constraints and a period of violent repression between 1969 and 1974²¹.

Thus, with the democratization of the country that occurred gradually over a period of ten years²², Brazil started to engage rhetorically with human rights²³ recognizing the global and regional system of protection, establishing a solid institutional policy on human rights and setting the legal pillar of the new Constitution in 1988²⁴. And this pillar has been strengthened politically with Brazil's participation in the Second World Conference on Human Rights in 1993. By adhering to international human rights commitments, the Brazilian government sought to change the international perception about the country, including environmental issues, at least since the World Environment Conference, headquartered in Rio de Janeiro in 1992.

The legal adviser of Ministério das Relações Exteriores (Itamaraty) –the Ministry of Foreign Affairs–, at the time, drew up legal basis for the new position that the country should take from then on towards Human Rights in the foreign policy, and would be exposed in the constitutional text in 1988²⁵.

In fact, since 1985, the beginning of democratization in Brazil, in political speeches of President Jose Sarney in the UN Gener-

21 C. Arturi, *A cultura política da linha-dura militar: os "ideais traídos" do general Sylvio Frota*, in *Cultura(s) política(s) e democracia no século XXI na América Latina*, 249 (M. Baquero (org.), Editora da UFRGS, Porto Alegre, 2011).

22 J. Zaverucha, *FHC, forças armadas e polícia—entre o autoritarismo e a democracia 1999-2002*, 55-56 (Record, Rio de Janeiro/São Paulo, 2005).

23 B. Belli, *A politização dos direitos humanos: o Conselho de Direitos Humanos das Nações Unidas e as resoluções sobre países*, 176 (Perspectiva, São Paulo, 2009).

24 *Op.cit.*, 177.

25 A. Cachapuz De Medeiros, *Pareceres dos consultores jurídicos do Itamaraty, VIII (1985-1990)*, 293 (Senado Federal, Brasília, 2004).

al Assembly, and the legal adviser of the Ministry of Foreign Affairs, showed up to change that the Brazilian government wanted to give in foreign policy and internal policy regarding human rights and refugee²⁶.

With regard to refugee law, the legal adviser of the Ministry of Foreign Affairs, argued the need for removal of the geographical limitation and safeguards of the Geneva Convention of 1951, setting out the legal arguments for achieving this purpose, in this opinion of 1986, repeated in 1989, which came to be realized effectively by Decree n. 98 of 19.12.1989, leading Brazil to finally accept fully the Geneva Convention of 1951²⁷.

In 1992, Brazil became part of the International Covenant on Civil and Political Rights, of the International Covenant on Economic, Social and Cultural Rights, and also of the American Convention on Human Rights, giving greater visibility to the country on the accession to the international system of human rights. As mentioned above, its delegation participated actively in the work of the Second World Conference on Human Rights held in Vienna in 1993, and thus assumed the commitment to implement its Declaration and also its Program of Action²⁸, which later would become the Programa Nacional de Direitos Humanos (national program of human rights), Decree 94/1996, having existed more than two versions of this program, and from the first one, quoting the issue of refugees and environment as goals to be developed.

The policy of signing and ratification of international treaties on human rights by the Brazilian government continued throughout the 90s, with the government confirming its participation in almost all international instruments that protect

26 A. Cançado Trindade, *O Brasil e o direito internacional dos direitos humanos: as duas últimas décadas (1985-2005)*, in *Relações Internacionais do Brasil – temas e agendas*, 2, 227-238 (H. Oliveira & A. Lessa (orgs.), Saraiva, São Paulo, 2006).

27 A. Cançado Trindade, *A proteção internacional dos direitos humanos e o Brasil*, 74 (2^a ed., UNB, Brasília/DF, 2000).

28 J. Lindgren Alves, *Direitos Humanos como tema global*, 72 (2^a Ed., Perspectiva, São Paulo, 2003).

human rights²⁹ in order to overcome misperceptions or mistaken views about Brazil.

Thereby, successive governments have taken many initiatives and several measures enacting human rights culture throughout the nation, being one of the first countries to establish internally the plan targets to meet the guidelines of the Declaration and the Program of Action of Vienna, and that currently is already in its third model (III Programa Nacional de Direitos Humanos, Decree 7.037, 2009, updated by Decree 7.177, 2010), and that includes among its strategic objectives the promotion and protection of environmental rights as human rights, seeking to leave to future generations a balanced environment and a sustainable economic development.

Independent of approval of standards, in fact, the current civilian governments are aware that the combination of poverty, marginalization, discrimination, persecution, authoritarian political culture produce massive violations of human rights anywhere in the world, including asylum seekers, refugees and displaced for environmental reasons, for many migrate irregularly, victims of abuse and human trafficking. And legally, since the Cartagena Declaration of 1984, was expressed at least in Latin America that the problem of refugee is a human rights problem, expanding the definition of refugee.

The Cartagena Declaration was a decisive boost for the treatment of refugees in Latin America that would be continued by other documents of enormous relevance in the region: the document “*Principles and Criteria, of 1989*” or “*Evaluation of Implementation, of 1994*” produced by the International Conference on Refugees Centroamericanos (CIREFCA), who noted that the topic of refugees could only be properly addressed for a comprehensive vision of human rights, including international humanitarian law and international refugee law³⁰.

29 B. Belli, *A politização dos direitos humanos: o Conselho de Direitos Humanos das Nações Unidas e as resoluções sobre países*, 176-177 (Perspectiva, São Paulo, 2009).

30 J. Ruiz De Santiago, *El derecho internacional de los refugiados: desarrollos en America Latina y sus perspectivas en el nuevo milenio*, in *Seminario El sistema interamericano de protección de los derechos humanos en el umbral del siglo XXI*, 457-458 (2ª Ed. Corte

In order to make reference of the extension of the definition of refugee, the Declaration reiterates that in view of the experiences in Central American area, inspired by the African Convention of 1969, should be considered a refugee all the people who have left their countries because their lives, safety or freedom have been threatened by a widespread violence, foreign aggression, internal conflicts, massive violence of human rights or other circumstances which have seriously disturbed public order³¹, that just opening for framing considerations of displacement for environmental reasons that would not let another option for migrants.

But, it is important to say that the refugee definition of the Cartagena Declaration ended up being included in the national legislation of significant numbers of countries in the region, including Brazil (Law n. 9.474/1997), connecting the issue of forced displacement of people as a human rights issue, reinforced by the Declaration and Plan of Action of Mexico 2004 (UNHCR, 2006, 49). Linking between human rights and refugees will be discussed in the next section in relation to Brazil, which is the main topic of the text.

III. HUMAN RIGHTS AND ENVIRONMENTAL REFUGEES

A. Refugees

Human rights observed in Brazil in carrying out its new regulatory framework from the 90s, also reached the population forcibly displaced from their countries and regions, known as refugees, according to the Constitution (1988) and domestic law (Law 9474/97), which was adopted as a result of international treaties by which the country became part and also because it was one of the goals of the first version of the National Program of Human Rights, in 1996.

Interamericana de Derechos Humanos, San José, 2003).

31 *Op.cit.*, 457.

The National Program in Brazil is considered one of the most complete in Latin America³², largely reproducing the Vienna Declaration and Program of Action, and establishing among its objectives, some of medium and longterm, for social and politically vulnerable groups (refugees, indigenous peoples, African descendants, women, elderly, people with disabilities, the incarcerated population, etc.).

Being over than five years, this program has been up dated through the publication of a new decree (Decree 4229 of 05/13/2002). And the guidelines for medium and long term established in 1996, became a reality the Statute of Refugees in 1997, and many other laws for the protection of human rights, such as the law of environmental crimes or the law of nature, law 9605/98 or the Maria da Penha Law (11340/06).

Therefore it was created under the Status of Refugees, the National Committee for Refugees in Brazil (CONARE). The governing collective body that officially decides who is a refugee or not, composed by representatives of the Ministry of Justice (President), Ministry of Labor, Health, Education and Sports, Foreign Affairs, the Federal Police Department and a non-governmental organization engaged in the work on behalf of refugees. All of them appointed by the President, following Article 14, paragraph 2, of this law. The United Nations High Commissioner for Refugees (UNHCR) is also part of the body, only with voice but without vote, but having a big influence on its international experience in dealing with the subject.

This collective body according, to UNHCR³³ has, more denials than acceptances of refugees to applicants since its inception, being extremely discerning and rigid, working under the authority of the Ministry of Justice and recognized around some more than four thousand refugees in the country, originated

32 J. Lindgren Alves, *Relações internacionais e temas sociais – a década das conferências*, 144-145 (IBRI – Instituto Brasileiro de Relações Internacionais, Brasília/DF, 2001).

33 R. Ribeiro Leão, *O reconhecimento dos refugiados pelo Brasil-decisões comentadas do Conare*, 75 (ACNUR/CONARE, Brasília, 2007).

from different countries of Africa, the Middle East, Asia or even Latin America.

The refugee legislation in Brazil is unique in extending to the family of the applicant on a refugee status, ascending and descending. It covers all its devices in the spirit and vision of the world's greatest possible protection to refugees, meaning the full doctrine of human rights, and explicitly applies the principle of prohibition of non-refoulement, though it is a controversial principle in its full implementation³⁴. And this is the demonstration that the asylum seeker will not be returned even if the refugee status is denied permanently, the applicant will then be subject only to the Foreign Act, the Law 6815/1980.

The refugees, more specifically people persecuted in their countries of origin for several reasons, or stateless persons who were out of their usual place, or even people whose country has a policy of widespread human rights violations, in accordance with the Article 1 of Statute of Refugees of 1997, come to the country in an official way - already recognized as one brought by UNHCR -with the policy goal of "*resettlement*" (receive displaced people who have not been adapted to the country of first asylum), or coming across the borders clandestinely and having a long way to go for legal recognition as displaced, often requiring expert advice.

They must make the request at the Brazilian federal police, which send the request to CONARE in Brasília, which will decide the legal status of the applicant. Meanwhile, the refugees may go through a rigorous screening by national authorities, with advice of lawyers in reception centers, like Associação Antonio Vieira, in Porto Alegre/RS, Instituto de Migrações e Direitos Humanos in Brasília/DF, or Cáritas Archdiocesana in São Paulo or Rio de Janeiro. The Centers are smalls and policies are limited.

At first the authorities need to make a border called "*State-ment of Declaration*", recounting the circumstances and con-

34 H. Poole, *Direitos humanos: referências essenciais*, tradução de Fábio Larsson, 322-324 (Edusp/Núcleo de Estudos da Violência, São Paulo, 2007).

ditions of entry of the asylum seeker in the country, bringing the qualification, marital status, occupation, native country and family, if any. This term will document the applicant to the issuance of the Provisional Protocol produced by the feds. This Protocol is primordial because it will be the legal basis for requesting the stay until the final decision on their situation by CONARE, therefore allowing the issuance of the Employment and Social Security, interim, by the Ministry of Labor, through its agencies, during which the applicant will be subject to the Status of Foreigner³⁵.

Non-governmental organizations such as Cáritas Arquidiocesana, the Instituto de Migrações e Direitos Humanos (IMDH) or the Associação Antônio Vieira (ASAV), along with UNHCR help the applicant to make possible his/ her stay in this country, and he/she may be forwarded to the final administrative decision, in Brasília, the federal capital. It happens because it is noticed³⁶ that an applicant can be recognized as a refugee by the UN and not be at the Brazilian government or vice versa, and then in the first case, this international organization, through UNHCR becomes responsible for his/her promotion (dissemination of their rights) and protection (to avoid possible violations of their rights).

And as mentioned, they come from all over the world, making a total of more than seventy different nationalities in the country. The last UNHCR report exposes in 2010 reaches 4.500 recognized refugees, besides the ones who are potentially in this situation, undocumented migrants that may be around six to ten thousand people³⁷.

Estimates, according to this latest report released, are that the majority are from African countries, being around 63% of the total. And currently in relation to resettled refugees

35 J. Carvalho Da Rocha & T. Henriques, *Direitos humanos: desafios humanitários contemporâneos*, 435 (Del Rey, Belo Horizonte, 2008).

36 L. Jubilut, *O Direito internacional dos refugiados e sua aplicação no ordenamento jurídico brasileiro*, 97 (Método, São Paulo, 2008).

37 UNHCR-Brasil, *Relatório Tendências Globais 2010*, http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/portugues/Publicacoes/2011/Relatorio_Tendencias_Globais_2010_-_Principais_estatisticas.

(displaced people who have not adapted to the place of first asylum) it increases the number of Colombians arriving in the country, alongside the Palestinians brought by UNHCR and resettled in the southern region of Brazil, or coming voluntarily. In order to strengthen the legitimacy and legality of work to protect refugees and asylum seekers, there are tripartite agreements for legal aid and interview for the displaced, between UNHCR, NGOs and the Ordem dos Advogados do Brasil (OAB) particularly in sections of São Paulo and Rio de Janeiro, through the Human Rights Commissions.

For these agreements, the OAB indicates lawyers that address the issues concerning the procedure for recognition of refugee status and other procedures for applicants. The training of lawyers is supported by UNHCR³⁸, towards development of advice on eligibility, which then end up coming to CONARE, the final decision.

The role of international organizations, like UNHCR or organizations such as Cáritas Arquidiocesana and the Instituto de Migrações e Direitos Humanos (IMDH) are among the few who make a more solid, consistent and long term work for refugees and asylum seekers in the country. Besides the actions taken by lawyers and organizations committed to human rights in the legal protection of applicants, we have a picture still very shy of receipts and a great lack of information regarding the issue of refugees, which needs the support of media through mass educational campaigns.

B. Environmental refugees

If Brazil has a great law and it incorporated all the regional and international instruments of refugee protection³⁹, these instruments still do not cover the so-called displaced people by disasters and environmental phenomena, such as thousands of

³⁸ L. Jubilut, *Óp.cit.*, 177.

³⁹ R. Ribeiro Leão, *O reconhecimento dos refugiados pelo Brasil-decisões comentadas do Conare*, 16 (ACNUR/CONARE, Brasília, 2007).

displaced victims of hurricanes, earthquakes, desertification, or all of them combined. They are people who lost homes and were displaced from their place of origin even if temporarily. The international norms and the Brazilian law cover specific situations, as a product of the reality of forced displacement as a function of political persecution in the context of World War I, II and the Cold War.

Thus, establishing a particularized and detailed concept⁴⁰ so illustrative for various situations that can generate refugees (founded by persecution, racial, political, social groups, and religious fear), so there is no causal link between the situation of the refugee and the climatic causes and ecological problems that may cause forced displacement to the point of becoming permanent, since it is not mentioned in legislation.

However, the forced migration cannot be classified as motivated by a single cause, and often do not easily fit the categories established by Brazilian law or international law, nor the procedures for requesting are usually placed within the refugee official legal description. These are the situations that bring ambiguity or vagueness in the event rules, or are outside the official classification, such as those displaced by predominantly economic and environmental reasons. Someone may have migrated for social reasons, fleeing poverty, and even being on the run from natural phenomena that have reached their region or country like when the Haitians arrived in Brazil, since their country is under UN administration and, at the same time, was the victim of a spectacular earthquake that decimated much of the infrastructure of the site.

The crisis in the Horn of Africa, as another example, with millions of starving and displaced people, mostly Somalis, has multiple reasons. The most visible reason is the drought, the worst in sixty years⁴¹, but also is an arid region where it rains very little

40 I. Raiol, *Ultrapassando fronteiras-a proteção jurídica dos refugiados ambientais*, 96 (Nuris Fabris, Porto Alegre, 2010).

41 A. Campolina, *Somália e semiárido brasileiro: seca, fome e política*, 52 *Jornal Le Monde Diplomatique-Brasil*, 30-31 (2011).

and yet have low rates of economic development, combined with intermittent civil war for control of natural resources, especially in Somalia. Obviously, considering the current international law would be framed Somalis as refugees, but we can't ignore the "industry" of drought⁴² and food insecurity as the motivating context of forced displacement, to the point that the African heads of state proposed an Euro-African partnership on climate change on the continent, called the "Great Green Wall for the Sahara and the Sahel", in 2007, to try to neutralize their effects⁴³.

In International Conference on Environment, Forced Migration and Social Vulnerability, held in October 2008 at The United Nations University (UNU), in Bonn, Germany, experts said that, in 2008, twenty five million people migrated for environmental reasons, a number that is expected to rise to two hundred million at 2050, mostly affecting women and children. Only the advancing desert in Sub-Saharan Africa already lead millions of people to migrate that region to north of the continent and to south of Europe, by 2020⁴⁴.

The truth is that the tragedy of refugees has multiple motivations and different consequences. And they are all happening simultaneously in contemporary times, challenging the regulatory classifications of treaties and laws. Not only the political, religious, social or cultural persecution, but also the movements caused by all types of environmental and ecological disasters, with or without human interference.

The solution found by the national authority in the case of Haitians, for example, granted a humanitarian visa, through the National Immigration Council, a body linked to the Ministry of Labor, denying them, however, the refugee status, making a restrictive interpretation of national refugee law. But with an analogous view to the situation of environmental refugees and the request of the UN itself, would completely deny the acceptance

42 *Óp.cit.*

43 M. Hertsgaard, *A grande muralha verde da África*, 52 *Jornal Le Monde Diplomatique-Brasil*, 32-33 (2011).

44 E.Araia, *Refugiados ambientais – as primeiras vítimas do aquecimento global*, 37 *Revista Planeta*, 443, 36 (2009).

of a political embarrassment to Brazil because the country heads the UN Peace Mission which manages the territory of Haiti⁴⁵. The number of haitians who have managed to reach Brazil is relatively a small number, what produces no significant impact on society with 190 million of people, according IBGE - Brazilian Institute of Geography and Statistics, in 2010⁴⁶.

Desertification, loss of biodiversity and water resources, soil degradation, food insecurity. These examples can produce massive displacement of people. International law has included environmental issues in a decisive role of human rights from the 70s, with global conferences like Stockholm (1972) and bilateral and regional agreements that culminated, later, to the meeting in Rio de Janeiro, the ECO-92 and the Kyoto Protocol in 1997 as attempts to preserve the environment. Only in the 80s they began to seriously discuss, in a doctrinal level, the existence of potential environmental refugees in the contemporary world.

The pioneering definition of “*environmental refugee*” was coined by Lester Brown of World Watch Institute in the 70s⁴⁷. However, it has become popular in the academy from the work of Essam El-Hinnawi, the Egyptian National Research Center⁴⁸ and the United Nations Environment Program (UNEP) in the 80s. In other words, an “*environmental refugee*” would be a person or a group of people who due to environmental changes and disasters - natural or by human action, whether permanent or temporary - had to forcibly leave their place of origin or residence to find refuge and shelter in another region of the planet, another country or area.

As noted⁴⁹, this doctrinal definition of environmental refugee is quite different from that proposed by UN Convention of

45 The United Nations called for the haitians were repatriated in view of the adverse conditions of their country, and humanitarian visas were granted to support CONARE, the UNHCR and civil society. <http://www.onu.org.br>.

46 <http://www.ibge.gov.br>.

47 G. Almeida, A. Ramos & G. Rodrigues, *60 Anos de ACNUR: perspectivas de futuro*, 222 (CLA Cultural, São Paulo, 2011).

48 I. Raiol, *Ultrapassando fronteiras-a proteção jurídica dos refugiados ambientais*, 159 (Nuris Fabris, Porto Alegre, 2010).

49 *Op. cit.*, 160.

1951 or even Brazilian law, distinct in the sense of being further extended. And also because the abandonment of the place of origin does not necessarily mean that the possible refugee needs to cross international borders, joining the concepts of refugee and internal displacement in the environment. As the environmental disorder affect the possible refugee's life.

It is needed to emphasize that this doctrinal definition is far from having some consensus and its criteria is still very low in relation to the possible acceptance by the international community. Regardless this debate, the human tragedy of massive displacement of refugees continues, the reasons range from natural phenomena to the new and old wars, as stresses UNHCR representative in Brazil, André Ramirez⁵⁰.

Either way, it is noted that this terminology has appeared in many environmental scholarship and interdisciplinary survey data on refugees in the world, the most diverse social sciences, linked to climate change of the environment that cause forced displacement, which is seeking to demonstrate insufficient classification established by international agreements or by national legislation.

In fact, the environmental damage caused by human activity or natural disasters, in different situations can produce migration and refugees arising from there, however, this is not the only cause of forced migration, but at least a decisive one, being new to the rigid classifications provided by the normative world. Examples of hurricane "*Katrina*", the current environmental disaster in the Fukushima plant in Japan, earthquakes in Haiti and Mexico, or the accident of the Chernobyl plant in Ukraine, still in the former Soviet Union, could fit in the case of environmental refugee, where people must have moved decisively against these phenomena.

50 The current representative of the United Nations High Commissioner for Refugees stated his opinion that the environmental phenomenon that occurs simultaneously with other causes for refuge in the First Colloquium on Human Rights at Universidade do Vale do Rio dos Sinos (UNISINOS) on November 28th, 2011. www.unisinos.br.

Environmental law is an interdisciplinary law⁵¹, diffused as it interprets the Constitution of 1988 and its specific laws, running through several branches of law, and being highly collective. But it would be difficult to connect the logic of the refuge and the parameters worked in the national body, because, as said before, CONARE has more denials than granted refuge to the applicants, since its creation, even within the present legislation, looking at individual cases of refuge. The environmental problem is not definitely connected with the classic reasons related to the systematic persecution that would produce well-founded fear to the asylum seeker, and would not be the product of systematic human rights violations (the third hypothesis of the Law 9474/97), unless the environmental damage repeatedly made by men, and as seen in the doctrine of human rights.

There are maximalist and minimalist opinions for the changes of the international concept of refugee, in order to change the world scenario. Maximalists want to expand as much as possible the concept of refugee for every imaginable situation, working with an even broader definition of refugee⁵². Minimalists want a careful classification and more rigor when framing. But as noted by Antonio Augusto Cançado Trindade (Brazilian judge in International Court of Justice), since the First World War⁵³, the general evolution of the refugee definition has been towards a widening of the legal notion of the term, to reduce to a minimum number of unprotected victims of events caused by man's own action.

In this sense, the big breakthrough would be a total reform of the Geneva Convention of 1951 or even the Additional Protocol in the UN environment in 1967, and covering new situations, especially the forced displacement by ecological and environmental reasons. But a challenge, still unlikely to be overcome, given the

51 J. Leite & P. Ayala, *A transdisciplinaridade do direito ambiental e a sua equidade intergeracional*, 21 *Revista Sequência*, 41, 113-136 (2000).

52 I. Raiol, *Ultrapassando fronteiras-a proteção jurídica dos refugiados ambientais*, 160 (Nuris Fabris, Porto Alegre, 2010).

53 A. Cançado Trindade, *Princípios do direito internacional contemporâneo*, 240 (UNB, Brasília, 1981).

more immediate interests of states and the barriers placed, for example, even for the fulfillment of the Kyoto Protocol of 1997, is the current environmental scenario. A global change for the term refugee in a new Additional Protocol would also be unlikely immediately, needing time and a more favorable environment in the international arena.

As Andre Ramirez explains, this alternative to open a new discussion within UN to reform the Geneva Convention or the Protocol of 67 could even worsen the current situation of refugees, given the time of extreme conservatism, feelings of xenophobia and surfaced racism, as well as the returning of intolerance among people, particularly in the European world. A realistic and transient view that can be amended according to the change of the patterns of the global environment and also the adequacy of the environmental law to international refugee law⁵⁴.

To see how insufficient the current concept of refugee proposed by the UN Convention and the Brazilian law is, another fairly unique situation that challenges the strict classifications that come from those laws called “*boat people*” or shipwrecked, UNHCR terminology used in textbooks procedures to unify a number of different situations⁵⁵, which often bring ambiguity or vagueness in the definition.

Shipwrecked sailors do not have automatic right to shelter according to the standard international norms, but if they express interest in seeking refuge in a state, they can do it and UNHCR recommends several specific procedures that the captains of the boats must follow, including rescuing anyone in high seas, but very often the captains of the ships themselves put the shipwrecked illegal immigrant at risk⁵⁶. They can be considered either as migrants, or as refugees, as it varies the procedures and

54 Exposure in the First Colloquium on Human Rights at the University of River Valley of the Bells (UNISINOS), during which representatives were debating civil society, academia and the Brazilian government about the situation of the refuge and the Brazilian commitment the cause of refugees. November 28th, 2011. www.unisinios.br.

55 P. Bálamo, *Perigoso é não correr perigo: experiências de viajantes clandestinos em navios de carga no Atlântico Sul*, 335f, Tese (Doutorado), 176 (Programa de Pósgraduação em Antropologia Social, Universidade Federal do Rio Grande do Sul, Porto Alegre, 2009).

56 *Op. cit.*, 177.

attitudes of the authorities of a National State, and the captains of vessels.

It is certain that as the momentum in the real world will determine new situations and new causes of forced displacement, it is increasingly evident the insecurity and inadequacy of existing regulatory classifications towards the refugees, or the practice of restrictive interpretation of national and international refugee law by states.

IV. CONCLUSION

We can then move on some theoretical lines regarding to human rights and environmental refugees, particularly in Brazil. Human rights in its contemporary design are inaugurated by the Universal Declaration of Human Rights of 1948, particularly in relation to refugee law, in its Article 14. The formation of a legal system of refugee protection occurs with the international treaties, subsequently produced in the environment of the United Nations as well as an exhaustive and circumstantial definition of who would be considered a refugee, as a result of political persecution proliferated in the two world wars in the European world.

Circumstances and situations that had undergone to gradual changes especially in regional environments and vary as forced displacement, domestic or international. In this context, Brazil has established its specific legislation in the late twentieth century, as a product of the rise of the doctrine of human rights and also of the global and regional refugee protection, the law 9474/97, although it has been dealing with the refugees issue from the first half of the twentieth century.

The country is committed to human rights, including environmental law, from the creation of a National Program of Human Rights in the 90s, which is already in its third version in 2009. The environmental phenomena, caused or not by human action, which has speeded recently around desertification, land degradation, drought, global warming, earthquakes also cause

displacement of people around the world, combined or not with other factors, countries such as Somalia and Haiti are evident.

Such phenomena challenge traditional and circumstantial concepts about who would be considered refugees, legally born in that context of the mid-twentieth century and the crisis in the European world. Nevertheless, the expanded definition of refugee which Brazil has adopted, through its Law 9474/97, does not cover the so-called “*environmental refugees*”, mainly because it lacks the causal element of the pursuit of the possible refugee, as well as a clearer connection between legal and international refugee law and environmental law.

Although the concepts and definitions are constantly evolving, and the dynamism of everyday life is not accompanied by strict regulatory ratings, it lacks of maturity and political will from the national and international community in considering the forced displacement for environmental reasons, also capable of producing refugees, just like the diffuse environmental law needs to be technically adequate to the procedures of international refugee law, and vice versa.

The biggest change needed would be a reform in the 1951 Geneva Convention and its Additional Protocol in 1967, just as the law 9474/97 in relation to Brazil. The failure of the classifications of those laws for refugees is more than obvious, especially when it comes to new phenomena that can produce displaced people- ecological accidents, global warming, desertification, drought and food insecurity.

The global landscape changing in a more favorable environment for the displaced ones, would be of fundamental importance to an open debate on the amendment of the normative definition, since the technical legal barriers could be more easily to overcome in environmental law. The major limitations reside at the current moment experienced by the international community, in a more focused political world to combat intolerance and economic crises, and poor public politics to refugee in relation to Brazil.

The legislative changes (national and international) are more than necessary in order to benefit the displaced for environmental reasons, or broad legal interpretation in favor of environmentally-displaced persons, by authorities. Even at the International Conference on Environment, Forced Migration and Social Vulnerability, held in 2008, in Germany, it was warned that by around 2050 an astronomical number of environmental refugees, about two hundred million people affected by drastic climate changes will appear. Groups of environmental refugees who comprise usually women, children, elderly and vulnerable people rooted in their places, in desperate and less able to perform shifts by large distances.

Legislative gaps or restrictive legal interpretation cannot be obstacles for the care and protection of millions of displaced people, given that migration flows are not homogeneous and the causes of forced displacement can be simultaneously armed conflicts, environmental disasters or political persecution on a global scale. Asylum seekers, refugee and environmental displaced may resort to the same forms of traveling, using the traffickers, massively. This is the great tragedy that governments and authorities of states have to face, because international migration affects all parts of the globe; currently it should be viewed in the context of the doctrine of integral human rights. Currently migration caused by environmental and ecological issues is becoming increasingly common, these refugees should be protected by regional human rights regimes, international human rights regimes interconnected with international and regional refugee laws.

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