



REFUGEES AS AN IMPORTANT ITEM FOR THE DEVELOPMENT OF THE INTERNATIONAL HUMAN RIGHTS AND BUSINESS AGENDA

REFUGIADOS COMO UM TEMA IMPORTANTE PARA O DESENVOLVIMENTO DA AGENDA INTERNACIONAL DE DIREITOS HUMANOS E NEGÓCIOS

LOS REFUGIADOS COMO UNA CUESTIÓN IMPORTANTE PARA EL DESARROLLO DE LA AGENDA INTERNACIONAL DE DERECHOS HUMANOS Y EMPRESAS

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ABSTRACT

International migrations are crossings of borders, being a natural process of social dynamics and one of the most relevant historical elements of the constitution of a state. Migration processes have several peculiarities, in which migrants undergo various transformations, since these mobilities affect countless aspects of the lives of those who decide to move. Taking into account this globalized scenario, especially in the last 50 years, transnational corporations and financial institutions have become the main actors in the process of economic globalization. The insertion of these cooperations and institutions has triggered numerous consequences in international and national society. In this area, there is a need and an obligation to address the numerous cases of human rights violations being committed by such transnational corporations. Through documentary analysis, this research will seek to answer whether the current development of the international human rights and business agenda has developed aspects for the protection of refugee guarantees. The manuscript, by way of conclusion, points out the importance of states positioning themselves as instruments guaranteeing the protection





of human rights - this implies that national states should assist in development and support the promotion of guarantees for refugees and also as suppressors of human rights violations by national and transnational corporations.

Keywords: International agenda. Human Rights and Business. Refugees. Violations.

RESUMO

As migrações internacionais são cruzamentos de fronteiras, sendo um processo natural da dinâmica social e um dos elementos históricos mais relevantes da constituição de um Estado. Os processos migratórios possuem diversas peculiaridades, nas quais os migrantes sofrem diversas transformações, haja vista que essas mobilidades afetam inúmeros aspectos das vidas daqueles que decidem se deslocar. Levando em consideração esse cenário globalizado, principalmente nos últimos 50 anos, as corporações transnacionais e as instituições financeiras se tornaram os principais atores no processo de globalização econômica. A inserção dessas cooperações e instituições tem desencadeado numerosas consequências na sociedade internacional e nacional. Nesta área, há a necessidade e a obrigação de se abordar sobre os inúmeros casos de violações dos direitos humanos que estão sendo cometidas por tais empresas transnacionais. Através da análise documental, esta pesquisa procurará responder se o atual desenvolvimento da agenda internacional de direitos humanos e negócios desenvolveu aspectos para a proteção das garantias dos refugiados. O manuscrito, a título de conclusão, aponta a importância dos Estados se posicionarem como instrumentos garantidores da proteção dos direitos humanos – isto implica que os Estados nacionais devem ajudar no desenvolvimento e apoiar a promoção de garantias para os refugiados e também como supressores de violações de direitos humanos por corporações nacionais e transnacionais.

Palavras-chave: Agenda internacional. Direitos Humanos e Empresas. Refugiados. Violações.

RESUMEN

Las migraciones internacionales son cruces de fronteras, siendo un proceso natural de la dinámica social y uno de los elementos históricos más relevantes de la constitución de un Estado. Los procesos migratorios tienen varias peculiaridades, en las que los migrantes sufren diversas transformaciones, dado que estas movilidades afectan a muchos aspectos de la vida de quienes deciden desplazarse. Teniendo en cuenta este escenario globalizado, especialmente en los últimos 50 años, las empresas transnacionales y las instituciones financieras se han convertido en los principales actores del proceso de globalización económica. La inserción de estas cooperaciones e instituciones ha desencadenado numerosas consecuencias en la sociedad internacional y nacional. En este ámbito, existe la necesidad y la obligación de abordar los numerosos casos de violaciones de los derechos humanos que están cometiendo estas empresas transnacionales. A través del análisis documental, esta investigación buscará responder si el desarrollo actual de la agenda internacional de derechos humanos y empresas ha





desarrollado aspectos para la protección de las garantías de los refugiados. El manuscrito, a modo de conclusión, señala la importancia de que los Estados se posicionen como instrumentos garantes de la protección de los derechos humanos, lo que implica que los Estados nacionales deben colaborar en el desarrollo y apoyar la promoción de garantías para los refugiados y también como represores de las violaciones de los derechos humanos por parte de las empresas nacionales y transnacionales.

Palabras clave: Agenda internacional. Derechos humanos y empresas. Los refugiados. Violaciones.

1 INTRODUCTION: *the emergency of refugee protection*

The human being has always been in movement – each of the flows witnessed represented specific events and situations within the national and international plan – at this point, making a parallel with the legal sphere, it is possible to perceive that each of these moments "of diasporas" had made the jurisdiction need matters differentiating the subjects according to their migratory situation.

Although circumstances have changed, migrations make up part of human history, as mentioned, and constitute a phenomenon that grows every day (JUBILUT; APOLINÁRIO, 2010). It is clear that there is no broad and unified international instrument that regulates the conduct of states with respect to the various variables in the migratory flow (JUBILUT; APOLINÁRIO, 2010). There is, in this area, talk of the existence of specific rules at the international level that regulate issues related to nationality, statelessness, freedom of movement of persons, human rights, refuge - which, in a certain way, touch on the issue of migrations (JUBILUT; APOLINÁRIO, 2010).

However, it is important to mention that the situation of refugees has a developed (and constantly developing) system of international protection - this is because, due to different aspects and conditions of the migration context, in which they are immersed, they have – and lack – international solidarity (JUBILUT, APOLINÁRIO, 2010).

In this context, from the reconfigurations of Law through the globalization movements (SANTOS, 2007) and the myriads of expansions and possibilities of





increasing social complexity, new international postulates were necessary (ROLAND *et al.*, 2018). Therefore, the problem guiding this research is: has the current development of the international human rights and business agenda established mechanisms for the protection of refugee guarantees?

The main objective of this research is to show whether the construction of the international Human Rights and Business agenda includes the protection of refugee guarantees; in this environment, they become specific objectives: to understand what are the aspects that currently guide (or should guide) the actions of businesses within this axis; in the same way, to understand whether the construction of the Human Rights and Business highlights the protection of vulnerable groups, such as refugees.

In order to accomplish the stipulated objectives, in the same way to answer the research problem, this work, of exploratory character - that is, through the exploration and, consequently, the documental analysis of several primary and secondary specialized sources will seek to build the final result, generating a new perspective on the thematic axis developed – uses the qualitative methodology. The great desire of this article is to corroborate for the field of studies (still little explored) the socio-juridical implications of *possible new international actors* (MOREIRA, 2020) in the protection of vulnerable groups.

For a more systematized approach to this article, in the first discussion section an overview of refugee protection in the international system will be made, so that in the subsequent section the development of the international human rights and business agenda can be addressed. Finally, the fourth section will discuss the importance of protecting this vulnerable group on the agendas.

2 INTERNATIONAL REFUGEE LAW AND PROTECTION FRAMEWORKS

International Law is attributed as the aspect linked to the international system. It is applied in several relationships, including between States and individuals – considered as subjects of International Law (PEREIRA, 2009).





This area is subdivided into two major groups: Public International Law and Private International Law. The first branch, in its conventional format, has always worked on harmonization and peacekeeping in the face of the diverse dissimilarities of international actors. However, as a result of globalization movements and social, economic and political transformations, innovations were required in international postulates (ROLAND *et al.*, 2018).

In this context, as far as Human Rights are concerned, the establishment of¹ the 1948 Universal Declaration of Human Rights began a new moment in international law. This moment highlighted the need for human rights to be enforced not only in the domain of States (RODRIGUES; BIAZATTI, 2016).

The International Refugee Law, *henceforth* DIR, which emerged after World War II, has the purpose of protecting international migrants forced to move for reasons of race, nationality, political opinion, religion, or membership of a particular social group. In this context, DIR is related to the protection of human beings under specific migration conditions.

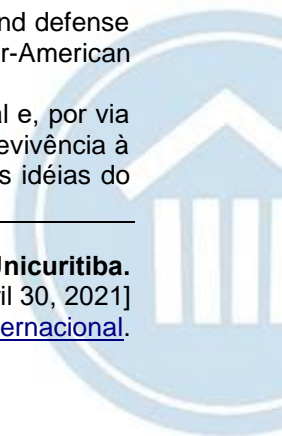
(...) as one of the greatest concerns of the international community and, consequently, of the UN, since its main function is to provide minimum guarantees of survival to the human species, through the assurance of essential human rights, based on the ideas of Immanuel Kant's categorical imperative [...] (JUBILUT, 2007, p. 51)².

In this scenario, the Geneva Convention of 1951 and the additional protocol of 1966 are established – as the second removes the geographic and temporal limits of the first Convention, aimed at World War II Refugees (UNHCR, online, 1951).

From this point on, when states ratify the Convention and the additional protocol, they directly accept cooperation with the United Nations High Commissioner for Refugees

¹ It is also worth mentioning the development and creation of further human rights protection and defense documents and organizations - for example, the European Court of Human Rights and the Inter-American Court of Human Rights.

² Direct translation of: "(...) como uma das maiores preocupações da comunidade internacional e, por via de consequência, da ONU, pois a sua principal função é fornecer garantias mínimas de sobrevivência à espécie humana, por meio da assegurarão de direitos essenciais ao homem, com base nas idéias do imperativo categórico de Immanuel Kant [...]" (JUBILUT, 2007, p. 51).





(UNHCR, online, 2019). In addition, the Convention provides that states may develop their own rules, which are favorable to the group of refugees. This allows each of the signatory states to develop policies that are concrete for the real context.

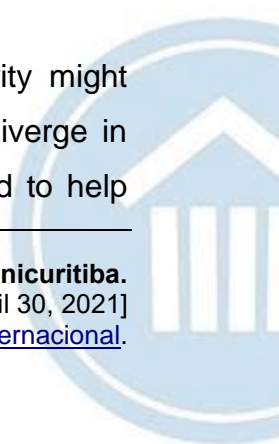
Even so, despite the discretion of States to elaborate their own legislation, the legal definition of who are the individuals under the protection of the United Nations and its specialized agencies and States themselves remains the same and is not subject to such discretion, being directed towards humans whom, due to well-founded fear of persecution, have to flee their homes of origin and seek this specific form of asylum elsewhere (UHNCR, online, 2019).

Regional documents, from the Inter-American (UNHCR, online, 1984) and African (UNHCR, online, 1969) Systems of Human Rights have further developed the concept, as to encompass individuals fleeing massive violations of human rights, but the core of the protection, in all systems, revolves around the most important aspect of refugee protection: the protection only exists inasmuch as no refugees will be returned to a place in which their lives are in danger. This important precept is named the non-refoulement principle (JUBILUT, 2007, p.86).

But this is not the only principle from which refugee protection stems from. Some that could be mentioned are the principle of non-discrimination, the principle of international cooperation, the principle of international solidarity, and last, but not least important, the principle of family unity (BENEDETTI, FRIEDRICH, 2016, p.71). These four principles, alongside non-refoulement, are at the foundation of refugee protection, as we know.

As stated in the Universal Declaration of Human Rights (OHCHR, 1948), the principle of non-discrimination means that all human beings are equal, regardless of any aspect of their human condition. This is especially important for refugees, for migrants are frequently deemed different from the local society fabric by nationals, which causes distance and discrimination (CHUERI, CÂMARA, p.170).

The principles of International Cooperation and International Solidarity might sound the same to readers from outside of Law. However, their directions diverge in important aspects. International Cooperation means that States are supposed to help





each other, as a matter of International Relations, as to promote the interests of the international community, when one nation is unable to fend for itself, as the 1951 Convention states: it is about collaboration between governments (UNHCR, online, 1951). International Solidarity, on the other hand, is directed towards individuals, in the sense that States are supposed to help fellow human beings, regardless of their origin, as it is corollary to the peaceful coexistence of all human beings (OHCHR, online).

The concept of family unity and its importance to refugee protection is enshrined in the 1951 Convention as well (UNHCR, online, 1951), in these terms:

The Conference, considering that the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened, and noting with satisfaction that, according to the official commentary of the ad hoc Committee on Statelessness and Related Problems (E/1618, p. 40), the rights granted to a refugee are extended to members of his family, recommends Governments to take the necessary measures for the protection of the refugee's family especially with a view to:

- (1) Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country,
- (2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.

The role of the United Nations High Commissioner for Refugees (UNHCR) has expanded throughout the decades, alongside the concept, and the organ covers not only transnational refugees, those who effectively cross the borders of their homelands, but also internally displaced persons and other individuals whose inclusion in the concept of refugee remains unclear, as Venezuelan refugees, for example (UNHCR, online, 2020).

It can be seen, then, that the transformations coming from these revolutions have brought re-reading of classic paradigms. The State ceases to be positioned as an end in itself and begins to be positioned as a tool for the protection of human rights (RODRIGUES; BIAZATTI, 2016). This implies that States should assist in the development and support of guidelines that can promote the protection of vulnerable groups in the national human rights and business agendas, for example.





3 THE DEVELOPMENT OF THE HUMAN RIGHTS AND BUSINESS AGENDA

In 2014, especially on June 26th, was adopted the resolution 26/9 (also known as resolution A/HRC (Human Rights Council)/RES/26/91). This resolution established the intergovernmental working group to elaborate and develop an international legally instrument on transactional corporations – passing also through other types of business – to respect human rights³.

It is important to mention that:

Notwithstanding the fact that the debate on how to better control the actions of transnational corporations regarding human rights has been included in the multilateral agenda for more than forty years in different fora, and the fact that in this period some attempts have failed in the purpose to issue general international rules on this respect, such as the United Nations Code of Conduct and the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, until now the only proposals have restricted to the adoption of non-binding rules, such as the United Nations Guiding Principles on business and human rights (UNGPs), endorsed by the same HRC, or the International Labour Organization (ILO) Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration). These efforts have included regional or other initiatives limited to groups of countries, such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (SALAS, 2017, p. 1-2).

When we talk about human lives being lost due to the insufficient treatment given to them by transnational corporations, it is unquestionable that the thematic axis Human Rights and Business becomes important and urgent (LEAL, 2020)⁴. Thus, the Treaty,

³ See resolution: HRC – Human Rights Council. Resolution A/HRC/26/9 – “Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights”, adopted on 26th June 2014. Available at: < http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9 >.

⁴ The United Nations selected some cases that were considered the most emblematic that culminated in the creation of strategies for more specific debate on the subject (LEAL, 2020): (I) The methyl gas leak at the pesticide plant of the US company Union Carbide (UC) and its Indian subsidiary Union Carbide India Limited (Ucil), in Bhopal, India (LEAL, 2020); (II) The conduct of the Dutch company Shell, in the region inhabited by the Ogoni people, in Rivers State, Nigeria; and (III) "The episode in which the Chinese journalist Shi Tao used in 2004 his personal email account maintained by the company Yahoo! to send, anonymously, to a pro-democracy site in New York, a document denouncing government instructions on how the media should act to avoid social demonstrations on the eve of the Heavenly Peace Massacre, which resulted in the death of 10,000 people" (LEAL, 2020, p. 5).





currently in Draft 3, will seek to fill several regulatory gaps, among them the protection of Refugees within the axis Human Rights and Business.

In 2020, the 6th Session took place (between October 26 and 30), and Draft 2 was revised: "The new proposal incorporated some of the discussions and demands of the 5th Session, but it is still unable to address the most urgent demands of the people affected, besides presenting inconsistencies with the objectives of the Treaty" (HOMA, 2021, p. 2). The researchers of the Center for Human Rights and Business, at the Federal University of Juiz de Fora (HOMA/UFJF) also mention the importance of the primacy of human rights as one of the most important pillars for the foundation of the Treaty on Human Rights and Business (HOMA, 2021). In this perspective, states still have the duty to develop strategies for the elaboration of a "system of protection and reaffirmation of fundamental rights and freedoms of the people against transnational corporations" (HOMA, 2021, p. 3).

The HOMA experts point out that there is a "difficulty of consensus among countries, especially with regard to the implementation of points that represent a greater intervention" (HOMA, 2021, p. 23). It is important to mention that:

the international political-economic context is of great relevance to the discussion of a Treaty on Human Rights and Business, as the regulation of business activity is seen by many countries as a problem that would lead to a strong impact on international capital. Thus, many countries have an interest in keeping the situation with as little legal regulation as possible, leaving the burden of combating such violations on the hands of the States, thus perpetuating the power of large transnational conglomerates (HOMA, 2021, p. 24).

In this scenario, therefore, there is no denying the advance of transnational companies and their often-violating actions. The 6th Session, in the words of HOMA's experts (2021, p. 24), "represented a wake-up call to the international community, as the countries present were largely unhappy with the few additions - or even the maintenance - of parts of the text that demonstrate a more guaranteeing bias, in terms of human rights protection".





4 WHY MUST THE AGENDA COVER REFUGEES?

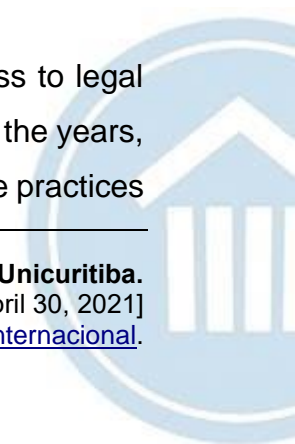
With the increase in refugee flows and forced human displacement in the first two decades of the 21st century, there are countless questions raised by host states regarding the combination of human rights and self-sufficiency. Currently, it is estimated that 79.5 million individuals are in these conditions, 26 million of whom are refugees, 45.7 million internally displaced persons, 4.2 million asylum seekers and 3.6 million Venezuelans, making up 1% of the world population (UNHCR, *online*, 2020).

The economic question as an argument against migration - even if it should not be the main concern when compared to the need to welcome this human whom, due to the threat to his life, cannot return to his home of origin -, considering whether there are resources to welcome migrants or not, permeates the debates, especially when we notice, worldwide, a weakening of democratic institutions and a considerable increase in policies that could allow the advance of totalitarianism (LEVITSKY; ZIBLATT, 2018) or when cross-border migration occurs in small cities, with little infrastructure and, at times, little empathy to welcome these migrants. Or all of these situations combined.

In the current scenario of globalization (SANTOS, 2007), cooperation, as well as transnational financial institutions, can be considered as the main actors in the process of economic globalization - which has intensified over the past 50 years. That is, global society is immersed in a growth in the transnationalization of business economic activities (MENDEZ; PLUA, 2017). In this context, one can even see that globalization has been increasing the power - economic power and power of influence, not only in its State of origin, but also in several other underdeveloped States - of companies (MOREIRA, 2020).

The insertion of these cooperations and institutions has triggered countless consequences in international society and, consequently, in national contexts as well. In this area, the need and obligation to face countless cases of human rights violations that are being committed by companies are being revealed.

In many cases, victims of these violations do not have effective access to legal remedies against these companies (SILVA; MOREIRA, 2020). A fact that, over the years, led to the adoption of several measures - and attempts at measures - so that the practices





of human rights violations would not exist or decrease substantially in the near future. Without disregarding all previous progress, an example of the formulation of measures was the establishment of the “Guiding Principles on Business and Human Rights”⁵, as developed by John Ruggie – appointed by the Secretary General of the United Nations.

The Guiding Principles, approved in 2011 by the United Nations, presents guiding parameters for the protection and guarantee of human rights by companies. From this perspective, this research seeks, as mentioned, to analyze the existence of refugee protection mechanisms within the construction of the international human rights and business agenda, given that the transnational migration flows have intensified again in recent years.

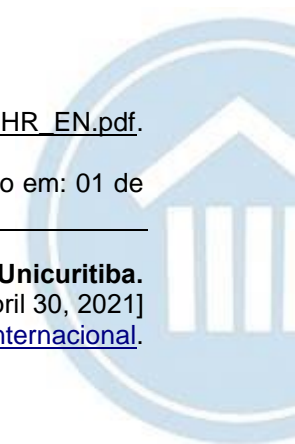
According to “Migration and Refugees: A guide for private social investors and philanthropic organizations”⁶, there are 272 million international migrants in the world (GIFE, 2020), refugees or not. Among several challenges and issues related to the vulnerabilities generated by the migration context and, therefore, by the refugee scenario, there is a need to think about the development of an international agenda of human rights and companies that cover, with due attention, the protection and guarantees of vulnerable groups.

As Guamán (2018) points out, the relevance of the presentation of concrete proposals within the construction of a Treaty, arising from the Guiding Principles, on the confrontation of human rights violations in business activities, concerning women, children, indigenous peoples, migrants, refugees, people with disabilities and also internally displaced persons.

What is essential to emphasize is that humanitarian welcoming and recognizing refugee status are not an element of discretion or benevolence of the host State; it is a conventional obligation with regard to international documents for the protection of refugees and migrants. The right to be welcomed is a human right. Migrating too. (OHCHR, 1948).

⁵ Disponível em: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf. Acesso em: 01 de novembro de 2020.

⁶ Disponível em: <https://www.empresascomrefugiados.com.br/materiais-de-referencia>. Acesso em: 01 de novembro de 2020.





Especially with regard to refugees, the situation is even more delicate, as we are talking about people who cannot or do not want to return to their place of origin because of what supports the informative core of refugee protection: the well-founded fear of persecution (UNHCR, 1951).

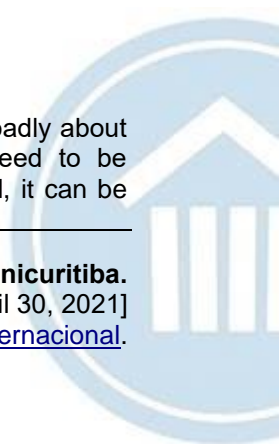
Fearing for their lives, due to race, origin, political opinion, gender, armed conflicts (UNHCR, 1951) and massive human rights violations (UNHCR, 1984), refugees have no choice. In this sense, it is necessary to seek short and long-term solutions for their welcoming and integration, in order to guarantee autonomy and self-sufficiency for those individuals to whom fleeing their homeland was not an option, but an imposition of fate.

The expansion of the economic ecosystem to welcome refugees is vital to these long-term solutions, in addition to the creation of new jobs, beyond the mere needs of the economic system, subjecting migrants to the demands of capital (RAIMONDI, RICCIARDI, 2004) - what is understood to be an issue that also affects Brazilians -, as it is necessary to expand the strategies for the emergence of small refugee companies, generating jobs and being extremely important for the reconstruction of people's lives.

The importance of social capital needs to emerge in the discussion, with regard to interpersonal relations and the ability to create networks of mutual recognition that all individuals have, as a concept of sociology, based on Bordieu (1986). In other words, a strategic concept, in the face of racialization and institutional racism in social relations, which place the migrant as an inferior figure, victimized and devoid of autonomy (MEZZADRA, 2012).

Entrepreneurship helps to promote the autonomy of refugees, as it must be demonstrated that forced migrants and refugees are not a burden on the economy (BETTS, et al, 2017, p.35), a word often used in hate speech and xenophobia. Refugees and forced migrants contribute to the local economy, pay taxes, bring fresh ideas to the market, with new skills, new ways of thinking about the flow of capital, which also means that

Today, there may be 'game changing' opportunities to think more broadly about how development relates to refugees. 'Development' does not need to be understood to be synonymous with development assistance. Instead, it can be





conceived more broadly in market-based terms. The private sector, innovation, and recognition of the skills, talents, and aspirations of displaced populations themselves may instead hold the key to opening up opportunities to enhance self-reliance. Yet, realizing these opportunities in turn relies upon developing a new way of understanding the economic lives and impact of displaced populations (BETTS, et al, 2017, p.39).

This allows a shift in the perspective of protection from dependency to self-reliance, and this brings light to the role of innovation in such processes, as protection and market-led solutions can enhance the livelihoods of migrants and also increase the adaptability potential of local economies (BETTS, et al, 2017, p.166), especially considering that, given the nature of refugee protection, it is unlikely, unless for the near future, that refugees will be able to return to the place threatening their lives. The solutions must be long-term.

5 FINAL CONSIDERATIONS: *between small accomplishments and big challenges*

Transnational companies are carrying out activities all over the globe, as indicated, in order to achieve greater efficiency, many of them end up expanding their activities to underdeveloped countries, in which - but not only - they end up finding several vulnerable groups that end up integrating themselves into these large networks. In this scenario of global transformations, the international human rights and business agenda is beginning to attract the attention of various scholars and researchers to the debate on the issue in its various faces and perspectives - in an analogous way, the refugee issue in the international scenario and regional contexts.

The borders constantly intend to mark the marks between refugees and nationals, promoting various struggles - what has been agreed in the so-called globalized society as a "crisis" of refugees, part of an attempt to again frame the imperialist view on the most diverse forms of violence in societies. In this way, there is talk of even greater protection of groups that live in the dichotomy of flight and resistance, in search of the realization of the dignity of human life.





The analysis proposed in this article aimed at contributing to and deepening both agendas, focused on human rights, highlighting the need to think about breaking the state-centered paradigm on accountability for human rights violations (not only of vulnerable groups - in this research, in question, refugees). What is evident is that in the current scenario of protection (be it regional or global) of human rights, it has not shown themselves capable of combating these violations by holding companies accountable when they do not respect these rights.

Here, as mentioned, one eagerly awaits the extension of protection, that is, to think of protection as an ordinary right should extend from the "right to migrate" / "right to flee from violence" (in search of better conditions) to the "right of resistance" – extending to the "right to life".

States need to stop positioning themselves as an end in themselves and should position themselves as guarantor instruments for the protection of human rights - this implies that national states should assist in the development and support the promotion of guarantees for refugees and also as suppressors of human rights violations by national and transnational corporations.

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