CLIMATE CHANGE AS A GLOBAL CATASTROPHE AND THE SUSTAINABLE MIGRATION GOVERNANCE: A STUDY OF THE MAIN ASPECTS OF GOVERNANCE MODELS AND THE LABELLING OF THE SO-CALLED CLIMATE REFUGEES

MUDANÇAS CLIMÁTICAS COMO UMA CATÁSTROFE GLOBAL E A GOVERNANÇA MIGRATÓRIA SUSTENTÁVEL: UM ESTUDO DOS PRINCIPAIS ASPECTOS DE MODELOS DE GOVERNANÇA E A ROTULAÇÃO DOS CHAMADOS REFUGIADOS CLIMÁTICOS

Luísa Monteiro Chaloub[1]

Abstract: The main focus of this paper is to analyse climate change as a global catastrophe and the consequent displacement phenomena in the sustainable migration governance framework, from a brief study of the main aspects of governance models to the labelling of the so-called climate refugees. Other than that, it also tries to understand, throughout a historical and contextual reconstruction, the main political reasons that shaped the models of governance and the consequent decision of labelling or not the climate-displaced people as refugees. In this scenario, the contextualist-historical method is adopted, as it is the most suitable and reliable for understanding and better assessing the topic, in order the anticipate the epistemological issues that could arise from this work.Besides that, an interdisciplinary comparative analysis is also necessary. The migration approach that is not concerned with mobilizing legal theory or the cultural context of its objects is not capable of producing nothing but theoretical constructions allegedly scientific and, at worst, wrong conclusions. This paper outlines an unprecedented and necessary strategy for addressing this subject in order to fill the existing literature gap in the field, both in terms of topic and methodology. It concludes that the labelling as a refugee of certain groups of displaced people is nothing but a political decision and highlights the need for the recognition of the climate displaced in this category.

[1] Doutoranda em Direito pela Masaryk University (MUNI). Mestra em Direito Internacional pela Charles University (CUNI) - International Law in Central European Countries Program. Membro da European Law Student Association - ELSA (Praga). Pesquisadora do Laboratório de Estudos e Pesquisas Avançadas em Direito Internacional Ambiental – LEPADIA (UFRJ) e do Núcleo de Estudos e Pesquisa em Direito Internacional - NEPEDI (UERJ). ORCID: https://orcid.org/0000-0002-5884-6100. Contato: luisachaloub@gmail.com.

Resumo: O principal foco deste artigo é analisar as mudanças climáticas como catástrofes globais e o consequente deslocamento de pessoas no contexto de governança migratória sustentável, desde um breve estudo dos principais aspectos dos modelos de governança até a rotulagem dos chamados refugiados climáticos.Para além disso, procura também compreender, através de uma reconstrução histórica e contextual, as principais razões políticas que a moldaramos modelos de governança e a consequente decisão de rotular ou não as pessoas deslocadas por fatores climáticos como refugiados. Nesse cenário, adota-se o método histórico-contextual, por ser o mais adequado e confiável para a compreensão e melhor avaliação do tema, a fim de antecipar as questões epistemológicas que possam surgir deste trabalho. Além disso, também é necessária uma análise comparativa interdisciplinar. A abordagem migratória que não se preocupa em mobilizar a teoria jurídica ou o contexto cultural de seus objetos não é capaz de produzir nada além de construções teóricas pretensamente científicas e, na pior das hipóteses, conclusões equivocadas. Este artigo esboça uma estratégia inédita e necessária para abordar esse assunto a fim de preencher a lacuna existente na literatura na área, tanto em termos de tema quanto de metodologia.Conclui que a rotulagem como refugiados de certos grupos de pessoas deslocadas nada mais é do que uma decisão política e destaca a necessidade do reconhecimento dos deslocados climáticos nesta categoria.

Summary: 1. Introduction. 2. Climate change as a global catastrophe and the consequent displacement phenomena. 3. A brief study of the migration governance framework. 4. The labelling of the so-called climate refugees. 5. Conclusion. 6. References.

1 INTRODUCTION

The migration phenomenon is not new[2]. Human migration may be an age-old activity present in almost every society globally, yet this is the era of heightened interest in the subject, making it one of the trending topics nowadays[3]. The discussions about international migration at the global level are also not recent[4], and it gains even more prominence with the 2030 Agenda for Sustainable Development recognizing migration as a cross-cutting issue[5] and a powerful driver of sustainable development for migrants and their communities[6].

Especially in the aftermath of World War II and more recently with the conflict in Ukraine, the world has witnessed the refugee population multiply exponentially. Although some protection mechanisms have been put in place, they have not been sufficient to curb the growth in numbers critically and the deepening of internal and external crises. In the context of climate change, this has been no different, and its consequences are increasingly felt in the territory of countries and in the international community.

It is important to note that, as Professor Sidney Guerra explains, "environmental problems go beyond the territorial limits of national states and, therefore, joint actions are needed within the international society"[7]. Thus, with the worsening of the situation, the subject requires a stronger, fairer, and more interdisciplinary response to the large migratory movements and related situations, especially with regard to the limitations on the protection of these individuals due to the non-recognition of refugee status.

The main focus of this paper is to analyse climate change as a global catastrophe and the consequent displacement phenomena in the sustainable migration governance framework, from a brief study of the main aspects of governance models to the labelling of the so-called climate refugees. Other than that, it also tries to understand, throughout a historical and

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[2]See the studies produced by GUERRA, Sidney; EMERIQUE, Lilian. Minority rights and vulnerable groups. Ijuí: Unijuí, 2008.

[3]MCAULIFFE, M.; TRIANDAFYLLIDOU A. (eds.), 2021. World Migration Report 2022. International Organization for Migration (IOM), Geneva, p. 14. Available at: https://publications.iom.int/books/world-migration-report-2022. Access in: 12/05/2022.

[4] United Nations. A/RES/73/195 - the Global Compact for Safe, Orderly and Regular Migration (GCM) - Resolution adopted by the General Assembly on 19 December 2018, p. 1. Available at: https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf. Access in: 12/05/2022

[5] United Nations. IOM's Global Migration Data Analysis Centre (GMDAC). Global Migration Data Portal. Migration Data and the Sustainable Development Goals (SDGs). Available at: https://www.migrationdataportal.org/sdgs?node=0. Access in 09/05/2022.

[6] United Nations. A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development. The central reference to migration is made in Target 10.7 to facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. Available at: https://sdgs.un.org/2030agenda. Access in: 12/05/2022.

[7]GUERRA, Sidney. As Mudanças Climáticas como Catástrofe Global e o Refugiado Ambiental. Revista Estudos Institucionais, v. 7, n. 2, p. 537-559, mai./ago. 2021.

contextual reconstruction, the main political reasons that shaped the models of governance and the consequent decision of labelling or not the climate-displaced people as refugees.

In this scenario, the contextualist-historical method is adopted, as it is the most suitable and reliable for understanding and better assessing the topic, in order the anticipate the epistemological issues that could arise from this work. This method allows studying the origin of institutes, revealing the identity of the policy that moved that construction, recreating the context, and establishing normativity, concerned with identifying similarities and differences and establishing a process that helps to identify the best research gaps. That is why, during this paper, the context and the historical aspects are so relevant and are going to be brought up during all of its text.

Besides that, an interdisciplinary comparative analysis is also necessary. The migration approach that is not concerned with mobilizing legal theory or the culture context of its objects is not capable of producing nothing but theoretical constructions allegedly scientific and, at worst, wrong conclusions[8]. Migration is not uniform across the world but is shaped by economic, geographic, and other factors, resulting in distinct migration patterns, such as migration "corridors" developed over many years[9]. It occurs within broader dynamic long-term social, security, political and economic contexts, which restates the relevance of the interdisciplinary methodology as the right choice to help navigate this topic, contributing to a holistic understanding of the world and the place that humans occupy in it[10].

This paper will be organized intodifferent sections: this introduction; the first section about the climate displacement; a brief study of the migration governance framework; reflections on the labelling of the so-called climate refugees; conclusion, and, finally, its references.

2 CLIMATE CHANGE AS A GLOBAL CATASTROPHE AND THE CONSEQUENT DISPLACEMENT PHENOMENA

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[8]CARVALHO DE VASCONCELOS, Raphael; CAMPOS DUTRA, Deo. Direito Comparado e Política: Reflexões Necessárias, Comparative Law andPolitics: Some Reflections Needed. Brazilian Journal of International Law 17, no. 1 (April 2020): 42-56. P. 43. Original in Brazilian Portuguese. Available at: https://www.publicacoesacademicas.uniceub.br/rdi/article/view/6241 Access in: 07/07/2022.
[9]MCAULIFFE, M.; TRIANDAFYLLIDOU A. (eds.), *Op. Cit.* p. 18.
[10]GARDINI, G.L. (ed.) 2020. The World Before and After COVID-19: Intellectual Reflections on Politics, Diplomacy and International Relations. European Institute of International Studies Press, Stockholm, p. 15. Available at: https://www.ieeiweb.eu/wp-content/uploads/2020/06/Full_book_FINAL_EN2.0-UNIDO.pdf. Access in: 12/05/2022.

According to Professor Sidney Guerra, the concern about climate change and its impacts on human life and the environment is a matter of international politics with various forums, debates and others[11]. He also warns of catastrophic climate change by initially addressing the dominant scientific (and political) position and approaches surrounding discussions of impacts and the concept of "dangerous anthropogenic interference" with the climate system[12].

It is worth noting that people who migrate for climate-related reasons are now generally recognized as being climate displaced. The concept of displaced people is encompassed by the idea of the movement of people who have been forced to flee or leave their homes or usual places of residence, usually as a result of armed conflict, situations of generalized violence, human rights violations, or natural or man-made disasters.Despite the fact that the very concept of displaced brings in its core a clear notion of vulnerability of these actors in the international community, even so, they are not entitled to the same protection that refugees enjoy in the international order.

Another very current issue that has been aired regarding this topic concerns the consequences of the current pandemic of COVID-19 that is faced by the world to this group of people. It is worth noting that migration flows did not diminish significantly during the pandemic as expected, just as the environmental damage did not diminish and/or was not efficiently reversed. Thus, migrations continued to occur in an even more dangerous way for these subjects who, besides all the already known challenges, also ran the risk of getting contaminated during their journeys. Furthermore, even if they managed to cross borders, in general, these people do not count on any form of protection from the State, without access to public health systems, and many remain without access to vaccination even today.

On this subject, it is worth mentioning once more the position of Professor Sidney Guerra[13]:

> Em outras palavras, o reconhecimento do refúgio ambiental trará diversas consequências, tanto para aqueles que precisam dessa proteção, como para os Estados que precisarão se adaptar para receber mais esse contingente de pessoas. Tal circunstância pode causar resistência em alguns países em aderir a formalização da categoria aqui tratada.

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[11] GUERRA, Sidney. GUERRA, Sérgio. Curso de Direito Ambiental. 2.ed. São Paulo: Atlas, 2014. p.15.

[12] GUERRA, Sidney. As mudanças climáticas como catástrofe global e o refugiado ambiental. Revista Estudos Institucionais, v. 7, n. 2, p. 537-559, mai./ago 2021. P. 545

[13] GUERRA, 2021, *Op. Cit.* p. 538.

> Ademais, imperioso mencionar que por meio da formalização desse grupo, será possível realizar melhor controle de quantas pessoas são forçadas a mudar por essa causa. Esses números ajudarão a compreender as proporções que essa modalidade de refúgio vem tomando. A partir disso, será possível demonstrar à comunidade global a necessidade de aplicação dos tratados de proteção ambiental.
> (...)
> Ante o exposto, pode-se perceber que o reconhecimento internacional dos refugiados ambientais trará consequências para os Estados, que vão desde políticas públicas para recepcionar essas pessoas, até maior controle sobre a responsabilização pela intervenção no meio ambiente. Para a sociedade civil, que passará a saber como lidar e recepcionar esse novo contingente e, principalmente, para esse grupo de vulneráveis que se encontra no limbo jurídico e que a partir da formalização poderá contar com maior amparo legal.

Even though the proper treatment of the theme is listed as part of the democratic package, there is still an absence of content and specialized professionals able to draw strategies guided by the principles of solidarity, international cooperation, and shared responsibility, enabling States and other relevant actors to become partners in the search for effective and lasting solutions, not only focused on the recognition of this refugee status, but also on the need for the correct application of their international guarantees.

Although it is clear that the advantages resulting from this status would be numerous, this group still faces at least two problems. The first and most pressing at the moment is the difficulty of this recognition by key international actors. International organizations can provide some support for those who are experiencing an emergency, but this issue has not been addressed with the vigor one would expect in the face of such a serious crisis.

States have not been able to solve the problem either. In recent years, countries have been struggling to cope with refugee crises, so it is no surprise that they do not want to add more people to the definition in order to extend the protection they would be obliged to offer under international law. These migratory flows already cause truculence even among nationals and lead to the proliferation of xenophobic popular manifestations against immigrants, often based on the consequentialist and utilitarian economic bias, either by fear of insufficient resources or by the increase in unemployment that ends up triggering an upsurge of the population in relation to the reception of foreigners. For this reason, recently, the population of some countries has legitimized anti-democratic and authoritarian movements, culminating in the election of conservative parties in several states, such as Hungary, which bring in their core the hardening of state policies regarding immigrants[14].

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[14]DULLIEN, Sebastian. Paying The Price: The Cost Of Europe's Refugee Crisis, In European Council on Foreign Relations. Berlim: 2016. Available at: http://www.jstor.com/stable/resrep21576. P. 2.

Faced with this scenario, the international community cannot remain apathetic and impartial, under penalty of suffering from its own conformism in the face of the worsening of an already severe crisis. Clear and effective measures must be taken, leaving aside utopian elements and taking into consideration the most viable and sensitive approaches to climate change and the consequent worsening of an already serious refugee crisis. When looking at their own territory and the international community, they must view those displaced by these changes as refugees, while considering the particular needs of those who make up such a plural group.

For this very reason, the hypotheses found in this paper contain a strong bias of complexity that bring with them other issues to be developed. Nothing less than robust, inclusive, multilevel and multidisciplinary policies and approaches based on the principles of solidarity and mutual responsibility and encompassing a plurality of actors would come close to what is needed in the face of the enigmatic refugee crisis and the consequences of climate change for its worsening. It is undeniable to recognize that policies must also include raising awareness among the population, since *"indeed, in at least some cases, the decision to pursue refugee deterrence policies has been pushed not from the top down but from the bottom up"*[15]. Thus, in the next section, one can find an analysis of the policies involved in that process.

3 A BRIEF STUDY OF THE MIGRATION GOVERNANCE FRAMEWORK

The issue of migration has become increasingly central in the transformations of both originating and receiving societies and has also become a strategic topic of interest in the 21st century, as it raises several uncertainties about institutions until recently unquestionable, such as state sovereignty. It is both a national and an international issue, and this ambiguity makes state migration control efforts fragmented and limited. In addition, it also involves issues related to immigrants' rights, migration policies and the effects of political decisions on integration processes. Thus, the state's management of migration phenomena and its model of migratory governance is directly crossed by the political factor and conditioned by its leaders

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[15]TAGLIAPIETRA, Alberto. The European Migration Crisis: A Pendulum between the Internal and External Dimensions, In IstitutoAffariInternazionali, Roma: IAI, 2019. Available at: http://www.jstor.com/stable/resrep19673. P. 17.

and civil society's perspective of them[16]. As Boaventura de Sousa Santos states, *"the uneven geography of border access is the product of the power that sustains it"*[17].

It is essential to understand that the creation of borders, in the sense of precise boundaries between countries, is one of many inventions that Europe later exported to the colonized world[18], as well as the international organization's creation process has European origins[19]. Contradictorily, it was also Europe that, in the modern period, advocated the idea of a world without borders based on universalism, cosmopolitanism, the Kantian principle of universal hospitality and its proposals for world citizenship or a global federation of states[20] at the same time, they recognize that *"the regulation of immigration, for centuries, has been understood as a key element of state sovereignty and consequently EU Member States have been conferring their relevant competences in this field to the EU rather reluctantly",* even though in the current context it turned out to be inevitable[21].

When thinking about migration governance, its creation, its structure, and the actors involved, it is necessary to work with a variety of epistemological challenges mentioned in the first chapter, such as incommensurability, ethnocentrism, colonialism and imperialism. Therefore, one must analyze how much of what has been applied in the global south (and is this thesis case, especially in Brazil) is an inheritance of the colonialism reflected in migration governance politics, how much of it has been applied by adopting a functionalist and uncritical[22] perspective and how much of it has been thought to one's own reality in a less north biased politics and could be more easily adapted to several different scenarios (including the European, which is more plural and diverse than the western would like to

[16]BAENINGER, Rosana; BONK MESQUITA, Romeu. Integração regional e fronteiras: desafios para a governança das migrações internacionais na América Latina. Revista Transporte y Territorio /15 (2016) ISSN 1852-7175. Available at: https://dialnet.unirioja.es/descarga/articulo/5692927.pdf. Access in: 06/07/2022.

[17]SOUSA SANTOS, Boaventura de. Epistemologiesofthe South: justice againstepistemicide. 2014, Taylor & Francis.P. 28.

[18]TAPPA,Truyitraleu. A Política Brasileira de Migrações no Contexto da Governança Global Migratória. The Brazilian Migration Policy in the Context of Global Migration Governance. Universidade de Brasília Instituto de Relações Internacionais Programa de Pós-Graduação em Relações Internacionais. Brasília, 2017. Available at: https://repositorio.unb.br/handle/10482/23312. Access in: 13/07/2022.P. 50.

[19]SOUSA SANTOS, Boaventura de. 2014.*Op. Cit.*P. 67.

[20]*Ibid.*P. 50

[21]SCHEU, Harald Christian. The Status of Citizens and Migrants in Light of the Non-Discrimination Principle. 2014. Urban People / Lidemesta 16, 2. P. 339-345. P. 340.

[22]CAMPOS DUTRA, Deo. Direito Comparado: Panorama Teórico e Metodologias de Pesquisa — Jornadas NEPEDIPRI 2022. Comparative Law: Theoretical Overview and Research Methodologies — NEPEDIPRI 2022 Conference. Online lecture in 07/06/2022. Available at: https://www.youtube.com/watch?v=gRdqir2CMys. Access in 09/06/2022.

admit), and would be, in the last instance, even more productive and effective migration governance constructed with the help of a less ambitious (and possibly less biased) south.

In order to answer those questions, one should understand the development of migration policies in the context of the system of states, which has shown three different approaches. First, there is the securitarian vision, which aims to defend the national sovereignty from possible threats posed by persons from other States. Thus, the foreigner is not desirable but is considered a person that will potentially break the social order and the national balance[23].

In contrast to this approach, the second one defends the presence of immigrants in the "destination" country from an economic perspective, based on the "economic contribution" of the foreign. Therefore, the immigrant appears "desirable" and a "solution" to the country's economic problems. This is the situation mentioned above in the historical section during the last decades of the 19th century and the first decades of the 20th century, when the European immigrant was seen as the economical solution to the free labour force (meanwhile, regarding the African immigrant, the securitarian approach would still be applied)[24]. Based on this argument, the immigrants are considered an illegitimate presence, forcing them to carry out constant "legitimacy" tasks to justify their presence and place in the society in which they reside. Thus, they would have a "right" to stay just while contributing to the country, which means that they are subject to a permanent evaluation and that if they stop making this contribution, their presence can again be questioned[25].

At this point, one can notice the uncertainty brought by this discourse, especially in times of economic crises (such as the one caused by the Covid-19 pandemic – the deepest recession since the end of the Second World War[26] -, mentioned in the first chapter), or in the case of work disability due to health reasons, or even the situation of those who operate in the informal market and, therefore, do not make contributions to the pension[27]. Regarding this

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[23]TAPPA, Truyitraleu, 2017. *Op. Cit.* P. 53.
[24]FIGUEIREDO FULGÊNCIO; Rafael. O paradigma racista da política de imigração brasileira e os debates sobre a 'Questão Chinesa' nos primeiros anos da República. The racist paradigm of Brazilian immigration policy and the debates on the 'Chinese Question' in the early years of the Republic. 2014. P. 203-221. Original in Brazilian Portuguese. Available at: https://www2.senado.leg.br/bdsf/bitstream/handle/id/503045/RIL202.pdf?sequence=8 Access in: 29/06/2022. P. 205.
[25] TAPPA, Truyitraleu., 2017. *Op. Cit.* P. 55.
[26]IBDR+IDA. World Bank. Migration and Development Brief 34: Resilience: COVID-19 Crisis Through a Migration Lens. KNOMAD, World Bank, Washington, D.C. 2020. Available at www.knomad.org/publication/migrationand- development-brief-34. Access in: 07/07/2022.
[27]TAPPA, Truyitraleu, 2017. *Op. Cit.* P. 55.

approach, one can state, for example, the Czech system of public pension insurance, which is a modern social system and sustainable in the long term. The most significant risks to its functioning are not imposed by the immigrants (not even those working informally) or to politics to favour asylum seekers, refugees or people granted some form of international protection, but by *"reckless decisions of domestic political elites subject to local lobbying pressures"*[28]. Thus, in many cases, the country's economy is not threatened by a new external factor but by a very traditional and internal one.

Finally, the last perspective would be the one focusing on human rights. Within the prism that assumes the defence of migrants, the "human rights" perspective embraces the issue of migration, considering these people are in a vulnerable situation and need international protection[29]. International organizations such as UNHCR and IOM (which will have their work with "*Operação Acolhida*" further studied in the following chapter) have been the main sponsors of this approach, which permeates the South American debate and several countries in particular, such as Brazil.

After several decades of the predominance of a securitarian view of the migrations (usually combined with the economic one for specific groups of immigrants), certain social sectors (especially social organizations, academics, and some politicians) celebrated the migration debate in terms of "human rights". In fact, the immigrant went from being a "threat" to the "national security" or, depending on the situation, salvation and threat to the "national economy" to being a subject of rights[30]. It is relevant to highlight that even though one could mention an "evolution" in terms of perspectives, the economic and human rights approaches nowadays appear in dialogue with a more subtle vision of security, which is still present and not overcome by the other two.

Nevertheless, at this point, it is necessary to reflect on some of the epistemological problems mentioned above, especially the European colonialist influence this last approach can place in different countries, focusing on those from the global south. It is essential to recognize that those ethical views that build the foundations of the human rights perspective derive from the European context and were self-proclaimed as universal and desirable for all

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[28]ŠTEFKO, Martin. Vybranéotázkyčeskéhoprávasociálníhozabezpečeníjakoprointegračníhonástroje. Acta Universitatis Carolinae Iuridica 2:73-83. Available at: https://karolinum.cz/casopis/auc-iuridica/rocnik-64/cislo-2/clanek-5826. Access in: 13/07/2022.
[29]TAPPA, Truyitraleu, 2017. *Op. Cit.* P. 56.
[30]*Ibid.*P. 57.

the peoples of the planet, as the so-called "European universalism"[31]. The concern pointed out here is that this strategy could be used to expand and intervene in territories of the global periphery and semi-periphery implemented throughout the concept of governance.

First of all, the concept of governance might be defined even though "*governance can be associated with a wide variety of phenomena that can be classified according to whether aspect they emphasize*"[32]. For this thesis, governance will be taken in its political dimension, which defines it as the "*decision-making process in which an agent´s interests are developed to reach a concrete political goal; therefore, it can be matched to the policymaking process*"[33].Thus, as states Boaventura de Souza Santos, "*as borders, territorial or otherwise, are never natural, it is necessary to ask who has the power to build and demolish borders and determine for whom they are insurmountable walls or crossings, or for whom the crossing can be life-threatening or a trivial practice*"[34].

Migration governance, by its turn, can be understood as a "*set of rules, roles and social practices constructed above and beyond the nation-state that can help to appreciate the different levels, institutional arrangements and types of coordination involved in the negotiation and adoption of this regional migration policy*"[35].It can help to go beyond the state as a unified entity and understand the role of other public and private actors in constructing this migration policy at different levels of analysis.

It is essential to mention that the concept of migration governance brings the idea that there are "disordered", "ungoverned" migratory movements and that it is this character of "disorganization" in the current migratory movements that are causing the violation of the human rights of migrants. Therefore, this perspective presents the solution to favour and encourage "orderly", "safe", and "planned" migration, as stated by the Global Compact on Migration[36], justifying its own existence. Hence, the argument that has gained international legitimacy is based on the understanding that the "defence of human rights" must prevail over

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[31]*Ibid.* P. 58.

[32]*Ibid.* P. 62.

[33]BRAZ, Adriana Montenegro. Migration governance in South America: The bottom-up diffusion of the Residence Agreement of Mercosur. Brazilian Journal of Public Administration. Rio de Janeiro 52(2):303-320, Mar. - Apr. 2018. Available at: https://doi.org/10.1590/0034-761220170069. Access in 07/07/2022. P. 13.

[34]SOUSA SANTOS, Boaventura de. 2014. *Op. Cit.* P. 78.

[35]BRAZ, Adriana Montenegro. 2018. *Op. Cit.* P. 15.

[36]United Nations. General Assembly. A/RES/73/195. Global Compact for Safe, Orderly and Regular Migration. 2019. Available at: https://www.iom.int/resources/global-compact-safe-orderly-and-regular-migration/res/73/195. Access in: 11/07/2022.

the sovereignty of (some) States, justifying a foreign intervention in the case that human rights are being violated in that (selected and usually south) territory[37].

Historically, there has been an international division of the shaping of the knowledge that has operated since the beginning of scientific production: Europe or the north/western countries were in charge of building concepts and theoretical frameworks, while the south or the "peripherals countries" were considered data sources that have the task of collect raw information (to be interpreted in the north) or to test the theories produced in the north[38]. The production of a non-north theory is the unprecedented aspect of this thesis. This includes an approach based on empiricism that is supported by the historical and contextualized method and that tries to rescue the history of a different region of the globe, the south area.

It is also worth mentioning that an only state-centric perspective would be extremely restricted in dealing with the issue of international migration. The migratory phenomenon transcends national borders, and precisely because of this, it needs a look that is not resigned to them, or the analysis will be myopic from a scientific point of view[39]. In this context, it is crucial to examine the role of international organizations linked to the subject, such as IOM and UNHCR. Concerning their respective origins, in both cases, they are rooted in post-war Europe and, as vehicles for the ideas of the "core" countries to reach agreements between governments, using narratives that include undeniable values that present themselves as universal[40].

Initially, the existence of these organizations was essential to the maintenance of power of those who created them since they have gathered the experience and statistical data needed to develop and implement policies at the global level. Nowadays, they have their values, their own interests and visions and are engaged in the debates on migration in the global scenario. Consequently, as the States, they are also not neutral bodies or spectators but political actors active in disputes over global migration[41]. Thus, as mentioned in the first chapter, the international organizations act in a way that is often equated with the subjects *par excellence* and even manage to create international forums capable of producing - or,

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[37]BRAZ, Adriana Montenegro. 2018. *Op. Cit.* P. 18.
[38]*Ibid.* P. 19.
[39]*Ibid.* P. 19.
[40]*Ibid.* P. 20.
[41]*Ibid.* P. 21.

depending on the dynamics of applicable power, of imposing – governance, which can, under these parameters, tarnish neutrality and consensus intended by international regulations[42].

Therefore, it is essential to understand that the concepts and politics shaped by migration governance are not necessarily analytical results arising from empiricism but conceived by some (not all) actors. Although the aforementioned actors share epistemological choices, the concepts and politics are normative. They seek to institute a world vision according to their interests, where human mobility is understood in a certain way but does not correspond to ontological cases, often imposing supposedly universal solutions in matters they do not apply[43].

Even though the states and international organizations are some of the central actors involved at the very heart of the process, the weight attributed to their positions cannot exceed that attributed to those who they directly impact, the migrants. Therefore, the "human rights" perspective in migration governance can help to open up the possibility (and necessity) of start thinking about people in mobility, not just as threats or workers, but as subjects of rights and, above all, as political actors. Migration governance in this approach also allows changing the perspective not only from "who one should think about" but as well to "who is involved in this epistemological process", meaning who is building (or helping to build) the thought and, consequently, the knowledge; moving away from a solely state and institutional based perspective (descendant mainly from western Europe) to a much more inclusive, multiple, dynamic and consequently realistic perspective.Especially because, as it has already been argued in this thesis, "*migration is a multiple and complex phenomenon, not uniform across the world but shaped by economic, geographic, and other factors, resulting in distinct migration patterns, such as migration 'corridors' developed over many years*"[44].

Hence, there is an idea that migration governance can lead to the construction of the reasoning which will substantiate effective legislation and politics. Thus, the non-north non-state/institutional production of knowledge could be able to answer the questions proposed at the beginning of this section about how much of the political product of the migration governance could have real contributions. These contributions should be valuable to understanding not only a particular region but a global phenomenon. In order to do that, it is elementary to identify the multiple actors and the main views currently existing around

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[42]CARVALHO DE VASCONCELOS, Raphael; CAMPOS DUTRA, Deo. *Op. Cit.* P. 47.
[43]BRAZ, Adriana Montenegro, 2018. *Op. Cit.* P. 22.
[44]MCAULIFFE, M.; TRIANDAFYLLIDOU A. (eds.), *Op. Cit.* p. 18.

migrations, considering that their arguments meet, dialogue and complement each other from the perspective of migration governance[45].

At the regional level, the drivers of regional migration governance schemes follow either a top-down diffusion process of global scripts adopted by some regional trading blocs or a bottom-up and independent decision-making process that considers particular regional concerns or domestic interests. The first explanation "*concentrates on common values or universal values — such as human rights — or supposedly successful regional models of migration management that other regions adopt because of a preference for readily available information to shape their decisions and on the other hand, the independent decision-making process explanation points to particular regional or domestic interests, such as the spillover effect of the economic integration projects or the domestic interests of the states*"[46].

The formal institutionalization of the European Union or the governance schemes of international organizations has been the templates to create and compare other forms of regional integration and regional governance worldwide[47]. Even though this thought was predominant, at Mercosur, it was possible to criticize the Western or Eurocentric approach at some level, rejecting the tendency to see the Western models as paradigmatic cases to follow.

The negotiation of the Agreement on Residence for Citizens of the States Parties of Mercosur and the Associated States — the Residence Agreement (RA)[48] — signed in 2002 presents an excellent illustrative case for the bottom-up approach, denying the eurocentric vision of migration governance in this region. It is necessary to point out that the Residence Agreement constitutes, even 20 years after, "*a cornerstone in the advances of migration policy worldwide, as regional migrants only have to prove to be a national of one of the signatory states in order to access temporary or permanent residence in another signatory state and this was a stark difference from the traditional migratory legislation criteria, which usually link a residence permit to labour, family reunification, studies, etc.*"[49].

When the negotiations for designing the RA draft started, mainly between Argentina and Brazil, they already knew that it was an impossible task to stop migration movements in countries with large borders such as those two. Therefore, at the time, they concluded that the

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[45]TAPPA,Truyitraleu. 2017. *Op. Cit.* P. 58.
[46]BRAZ, Adriana Montenegro, 2018. *Op. Cit.* P. 18.
[47]*Ibid.* P. 18.
[48]MERCOSUR Secretariat. Agreement on Residence for Citizens of the States Parties of Mercosur and Associated States — the Residence Agreement (RA). 2002. Available at: https://www.mercosur.int/documentos-y-normativa/normativa/. Access in: 13/07/2022.
[49]BRAZ, Adriana Montenegro, 2018. *Op. Cit.* P. 20.

European Union did not provide a model for the migratory policies in the region, and there was a need to build a different migration policy.

Although the Residence Agreement grants fundamental rights to migrants from signatory countries, the main concerns were identifying migrants within the territory of member states and controlling illegal activities related to migration. However, this was "an advanced and a reformist perspective by international standards, where most migration laws were based on the closure of borders and established throughout the securitarian migration laws of Mercosur´s member states, most of them developed during periods of dictatorship (as the Brazilian case at the time, explained below)[50].

It was a process of intense and long negotiations between the countries and their Congress, the institutions in charge of migration, and the civil society. It was these participatory discussions, under a more human and social rights perspective, that influenced the discourse on migratory matters in general and shaped the future migration policy, not only at the Mercosur level but at the national level as well, as studied in the next topic.

Brazilian immigration policies, for example, were historically designed as immigration regulation (also called a regulation policy) and did not aim to promote the incorporation and structuring of the living conditions of immigrants in the country (immigrant policy), having transferred this responsibility to international bodies installed in Brazil (such as the UNHCR, in the case of refugees) and to civil society (mainly the Catholic Church and the "Pastoral do Migrante")[51].

The concepts of regulation policy and immigrant policy make it possible to understand the complexity of migratory governance. Policies that rely solely on the regulation of immigrants (regulation policy) are insufficient and ineffective for the integration of immigrants into receiving societies, as they do not act directly or indirectly on the peculiar needs of the immigrant population - which would characterize an immigrant policy or integration policy[52].

The immigrant policy is outlined given the living conditions of the immigrant in the receiving country and its (un)documentation[53]. This includes issues of employment, housing,

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[50]*Ibid.* P. 21.
[51]BAENINGER, Rosana; BONK MESQUITA, Romeu. *Op. Cit.* P. 59.
[52]HAMMAR, T. (1985) Introduction to European immigration policy: a comparative study. In: Martinello, M., Rath, J. Selected studies in international migration and immigrant incorporation.Amsterdan: Amsterdan University Press. P. 20.
[53]*Ibid.*P. 21.

benefits and social services, opportunities for education and learning the local language, and participation in unions, communities, and political life, among others. Thus, public policies aimed directly at immigrants and those made for the population in general affect the immigrant community of a country.

Sometimes, these public policies addressed to the population in general can negatively affect immigrants when they are prevented from integrating or participating in the society to which they migrated. In this sense, the relationship between migration and governance also becomes part of the agenda for formulating social policies, both for understanding current migratory phenomena and for elaborating a national migratory policy that contemplates the border areas[54].

Interesting to mention that the reverse is also true. Sometimes immigration policies can affect citizens of the receiving state or restrict their behaviour within the state's territory. The category of refugee deterrence policies[55], for example, is "*often a component of a more comprehensive deterrence policy that can encompass not only immigrants and is the most likely to have significant impacts on domestic civil liberties*"[56].

4 THE LABELLING OF THE SO-CALLED CLIMATE REFUGEES

The process of labelling migrants is a migration governance practice that, when interpreting the nuances of migratory flows, determines its proper means of regularization based on the implementation of current instruments provisions (for example, the recent and unprecedented TPD's activation in the EU context due to the war in Ukraine) or the creation of new. This process is based on the state's interests in the domestic and foreign policy of the receiving countries and, therefore, the "labels" applied to migrants cannot be considered

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[54]*Ibid.* P. 22.

[55] "Current deterrence policies may be seen to fall into five main categories: 1) non-admission policies limiting access to asylum procedures, 2) non-arrival measures preventing access to the territory of asylum states through migration control, 3) offshore asylum processing and relocation of refugees to third countries, 4) criminalization of irregular migration and human smuggling, and 5) indirect deterrence measures intended to make the asylum country less attractive." GAMMELTOFT-HANSEN, Thomas. The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy. Journal on Migration and Human Security by the Center for Migration Studies of New York. 2017. Available at: https://journals.sagepub.com/doi/pdf/10.1177/233150241700500103#:~:text=Under%20this%20broader%20vie w%2C%20current,asylum%20processing%20and%20relocation%20of .Access in: 14/07/2022.

[56]ORMSBY, Eric. The Refugee Crisis as Civil Liberties Crises, In: Columbia Law Review, Nova York: Columbia Law Review Association, 2017, Vol. 117, nº 5, p. 1205.

"neutral", but they represent political positions (as are all migration governance, in fact). Classifying migrants as refugees imply denouncing the country of origin as a State that does not respect the most basic rights of its population (as the right to a health environment) and, therefore, does not constitute itself as democratic. In this sense, the labelling of refugeesis part of the strategy of political positioning before the international community in relation to the emigration country[57].

The sense that some of the core values underpinning a well-functioning of global governance system can become key resources supporting the migrants' rights protection process and their integration into the local community is only partly true. With the intensification of social displacements, expulsions, war and precariousness of human life, controlling the movement of transnational migrants, refugees and asylum seekers has become a priority for public agendas of multilateral agencies and national governments. The production of international standards aimed at harmonizing or standardizing the law, as the migration governance intends to do, if made uncritically, can lead to reproducing the dynamics between universalism and cultural relativism. The idea of governance as an externalization of supposedly neutral patterns resulting from the comparison of systems - mainly of law - can result in a structure that masks a hegemonic instrument eminently western and, after all, does not solve the migration issues it was aimed for.

As part of the diffusion strategies of these hegemonic visions, including for the Latin America territory, the international actors have re-elaborated human rights discourses for the realization of surveillance and mobility control practices that simultaneously emphasize the protection of the well-being of immigrants and the integrity of territorial borders. Many times, these actors adhere to the protection of the human being, contribute to the construction of discourse on the universality of these rights, and, when confronted with the need to act definitively to promote the materialized in the norm, are reluctant. Political needs create the right, and the same policy later resists the efficiency of the established normative body.

This creates a logic of selective social exclusion, anchored in a neo-colonialism rationality and the production of social categories. Therefore, "labelling" migrants is one of the strongest political acts, defining who will benefit from the refugee definition and have a

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better chance to begin a new life, integrated into a different community or who will be discarded, having denied the most elementary right to be human. It thus creates contingents of people that do "not belong" anywhere, treated as "others" all around the world.

5 CONCLUSION

In recent years, countries have been struggling to cope with refugee crises and their consequences on the internal community. As seen before, these migratory flows already cause truculence even among nationals and lead to the proliferation of xenophobic popular manifestations against immigrants, often based on the consequentialist and utilitarian economic bias, either by fear of insufficient resources or by the increase in unemployment that ends up triggering an upsurge of the population in relation to the reception of foreigners.

With the intensification of social displacements, expulsions, war and precariousness of human life, controlling the movement of transnational migrants, refugees and asylum seekers has become a priority for public agendas of multilateral agencies and national governments. Many times, these actors adhere to the protection of the human being, contribute to the construction of discourse on the universality of these rights, and, when confronted with the need to act definitively to promote the materialized in the norm, are reluctant. Political and economic needs create the right, and the same factors later resist the efficiency of the established normative body.

At the end of the analysis of the elements pointed out above, we must conclude that there is a gap between the legal protection of people displaced by climate change. The legislation analysed shows that it does not include this group of people, who are in a situation of extreme vulnerability and are responsible for a significant portion of the so-called migration crisis.

Although there is a lack of interest from many international actors, this scenario can only be modified by their effective influence, who are capable of collaborating with the adaptation of the refugee regime to the new social demands, as has historically been possible in view of the documents analysed, expanding its concept and its form of application in order to weave positive impacts both in its scope and its effectiveness.

Therefore, these are some of the reflections (and perhaps the most urgent and effective) to develop clear and sufficient guidelines to deal with climate change and the

consequent migration crisis, taking into account the balance between regional needs to reduce migratory flows and consideration of the needs of the refugees themselves. Any attitude contrary to these standards exposes the international community to the risk of its own neglect and puts in jeopardy the basic principles that underlie its own existence.

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