

## Analysis of The Refugee Institute in Brazil

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### Abstract

Refuge is a theme as old as mankind. For many reasons as religious, politics and cultural, millions of people already had and still have to leave their countries and to look for protection in other. Spite of this, only post- cold war the issue of refugees became most prominent in the international scenario. The end of the First World War, The Russian Revolution, and the downfall of the Ottoman Empire placed the world into massive movements of people. Later, with the World War II, the refugee problem has taken proportions never seen before: tens of millions people seeking to escape of the Nazi expansionist delirium, asked for protection in other countries. Given the increasing number of refugees was established a subsidiary organ within the UN to protect this group: The United Nations High Commission for Refugees (UNHCR). It was also established the main international instrument for refugees: The 1951 Convention relating to the Status of Refugees. Brazil was inserted in this context of protection for the refugees, but his performance stood out only after political democratization. In 1997 it was elaborated a national legislation for the refugees, it brought a refugee definition considered advanced, the create Committee National for Refugees (CONARE), and also the solidarity resettlement program as a durable solution for refugees.

**Keywords:** Refugee, Human Displacement, Refugees, Asylum, Law 9.747/97

### Introduction

In this empire of sigil XXI, the Brazilian State has shown itself to be increasingly receptive to the victims of widespread violence, accepting refugees from all over the world. Despite the fact that the refugee test has gained prominence in the international context since the end of the Second World War, when a subsidiary body was established in the context of the UN to protect this group (the United Nations High Commissioner - UNHCR) , it was only after the political re-democratization that the performance of Brazil stood out in the international context surrounding refugees.

In 1997, a National Refugee Law was raised that created a definition of refugee considered advanced, created the National Committee for Refugees (CONARE), and established solidarity resettlement. Based on this, the present work aims to study the refugee institute in its historical perspective, in order to analyze in a way how the development develops in

the Brazilian State and, mainly, if it is effective in guaranteeing the refugees the conquest of fundamental rights for a dignified existence.

For that, the deductive method has been used, with bibliographic review of legislation, doctrine and periodical material.

### 1. The Concept of Refuge and Its Perspective

The practice of granting asylum in foreign lands to people fleeing their persecutors is one of the oldest characteristics of civilization. This practice has found references even in the Bible, more directly in the Old Testament, which has used the most diverse expressions such as "refuge", "asylum" and "protection" (VEJA, p. 71-72). Fact is that there have always been refugees and descolados in all times of humanity (MARINUCCI; MILESI, 2003, p. 13). And, in the 21st century, millions of people are still persecuted for the same or much closer reasons compared to what happened for centuries.

Although the existence of refugees is as old as the story itself, it was only at the end of the First World War (1914-1919) that the international community became concerned with this phenomenon. Despite the efforts of the League of Nations in (1919), this institute has only gained effective protection for the international community years later with the Geneva Convention on the Law of Two Refugees and its 1967 Protocol, celebrated in New York, has seen that the Second World War (1939-1945) has been presented as an important historical framework in relation to the refugee problem, both because at this time the greatest atrocities already practiced against the human being were verified, causing international concern with the dignity of the human person (PIOVESAN, 2004, p.131-132), as well as because the greatest human displacements observed in the history of the modern world were generated.

In this sense, there is Marinucci and Milesi:

*However, it is from the twentieth century that the international community began to regulate this phenomenon. The horrors and crimes penetrated during*

*the two world wars led people, especially those involved in conflicts, to reflect on the inviolability of each human being. (MARINUCCI; MILESI, 2003, p. 13)*

Thus, with the end of the Second World War and the emergence of the need for the reconstruction of human rights (PIOVESAN, 2004, p.140), together with the creation of the United Nations Organization, the Administration of the United Nations for Aid and Restoration (ANUAR). However, this body was created directly as an organization for refugees, once it provided aid to everyone who was displaced by the war.

However, the reluctance of the refugees to wrap up for their own countries of origin has generated a dominant problem in the post-war period, it has been one of the most contentious issues for the Security Council in its first year of existence. Based on this event, the US government, which secured 70% of ANUAR's financing, refused to extend the organization's mandate after 1947 to grant more financial support.

Ahead of that picture and it gives great pressure on the part of the USA to create a new organization for refugees in 1947 an international organization dedicated especially to refugees emerged, the International Organization for Refugees (OIR), which was created as a specialized agency at the United Nations permanent, because it was expected that its program would be completed at the end of three years, however, at the end of the program, the OIR had assisted the repatriation of just 73,000 people and the reinstatement of more than a million<sup>3</sup>.

Thus, with the extinction of the OIR, in 1951 a body responsible for the protection of refugees and for finding solutions for them, existing until today, was created: the United Nations High Commissioner for Refugees (UNHCR).

Later, the first and main international instrument regarding refugees was celebrated: the Geneva Convention on the Law of Refugees, and its 1967 Protocol, celebrated in New York, which has brought the definition of refugee known as classic - applicable to Any person that,

*We fear being persecuted for reasons of raça, religion, nationality, social group or political opinions, we find ourselves outside of your country, of your nationality and that you cannot, in virtue of fear, do not want to be protected in that country, O that, it is not a nationality and it is found for the country not like its habitual residence in consequence of such events, it cannot be, due to the aforementioned fear, it does not want to return to it<sup>4</sup>.*

According to the Convention, the expression "events that have occurred before January 1, 1951" could be understood in two ways: first, as those that took place in Europe (the one that became known as a geographical reserve) ; and, secondly, as those that take place in or outside Europe. The previous Convention that would be up to the Contracting State to adopt one of these formulas, by means of a declaration made when the subject, accession or ratification of the instrument. Beyond that, at any time, the State that had adopted the first (more restrictive) formula could, by communication to the UN Secretary-General, adopt the

second one, which covered a larger group of people in the definition of refugee (UNHCR, 2000, p. 62).

In 1957, the UN General Assembly decided to create the Executive Committee of UNHCR, which was established by the UN Economic and Social Council (ECOSOC), of which fifteen States were part, which had received a large number of refugees originating from the Second World War, and that began its activities in 1959.

However, only in 1967, the geographic clause was withdrawn, when the Protocol on the Status of Refugees was concluded, thereafter not only European refugees, but from any continent, could be legally recognized.

In the 1960s, other events, such as Afro-Asian decolonization, would create new ways for refugees. Already the 1970s and 1980s were marked by dictatorial regimes in Latin American countries that were the scene of armed conflicts by political regimes, causing a movement of more than 2 million displaced people (ANDRADE, 1998, p. 400).

In the face of that they were created from the other documents: the Convention of the Organization of the African Union (OUA) of 1969, which included the concept of the extension of protection to all persons who are compelled to cross the national borders in the face of disasters caused for the man, regardless of the existence of fear of persecution; and the Declaration of Cartagena of 1948 (applicable to the countries of Latin America), which also expanded the concept including those who lived in their countries because of their life, security, liberation was mitigated by widespread violence, by foreign aggression, by conflicts interns, for the violation in mass of human rights, or for other circumstances that have seriously disturbed the public order<sup>5</sup>.

Moreira points out that the refugee movements refer to individuals who leave their countries of origin and have tried to establish themselves in other states, have portrayed the currents of people across national borders that have been accentuated in recent decades (MOREIRA, 2006, p. 10).

It should be noted that this fact does not occur due to the free and spontaneous willingness of those who leave their country of origin, but it is characterized by the fact that it consists of groups of people who are obliged to leave their countries of origin because they have fear for their lives. , freedom and security.

According to this, for Barbosa, the refuge is an instrument where:

*[...] The unspeakable suffering experienced by millions of human beings that survived the great catastrophe of the 20th century, the Second World War (which claimed the lives of more than forty million people), led the United Nations to elaborate one of the most important conventions international law governing the legal situation of refugees. (BARBOSA, 2007, p. 17).*

<sup>3</sup>THE SITUATION OF REFUGEES IN THE WORLD: 50 years of humanitarian action. UNHCR, 2000. Available at <<http://www.cidadevirtual.pt/acnur/Sowr2000/cap01.pdf>>. Accessed on: 27 apr. 2020.

<sup>4</sup>Regarding Refugee Status. In: Manual of procedures and criteria to be applied to determine refugee status. Lisbon: UNHCR, 1966. Available at: <[https://www.acnur.org/fileadmin/Documentos/portugues/BDL/Convencao\\_relativa\\_ao\\_Estatuto\\_dos\\_Refugiados.pdf?view=1](https://www.acnur.org/fileadmin/Documentos/portugues/BDL/Convencao_relativa_ao_Estatuto_dos_Refugiados.pdf?view=1)>. Accessed on: 27 apr. 2020.

<sup>5</sup>DECLARATION of Cartagena. In: ARAUJO, Nadia; ALMEIDA, Guilherme Assis de (Coord.). International Refugee Law: A Brazilian perspective. Rio de Janeiro: Renew, 2001, p. 426.

So, it can be said, generally, that the refuge consists today in a receipt for humanitarian reasons, involving rank, religious, nationality, social groups, the same political opinions.

In this sense,

*The escape to a safe place presupposes the preservation of life. It is a human institute. To safeguard their own existence and that of their loved ones, threatened by persecution of the most diverse causes, millions of people move from their homes, looking for a place where they can be safe (ANNONI. VALDES, 2013, p. 79).*

To delineate the foundation of the rights of two refugees, it is also necessary to verify the existence behind the concept of refugee.

That is, what is the scope given to the person of the refugee. Thus, according to Annoni and Valdes, refugees could be recognized based on an individual or collective analysis, depending on the specific case (ANNONI; VALDES, 2013, p. 83).

The first hypothesis occurs when, individually, or when a small group of people requests refuge, having moved from their countries for reasons of rank, nationality, religion or political positions.

An evaluation in that case takes into account two criteria: o subjective - that considers a situation declared individual hair - and o objective - that considers the reality of their country of origin (ANNONI; VALDES, 2013, p. 83).

When the second hypothesis occurs, that is, when "a considerable number of refugees flee their country, in that case the flight is en masse and generally motivated by armed conflict, widespread violence and human rights violations." (ANNONI; VALDES, 2013, p. 83), the evaluation is hardly objective, after which the group is already considered, from the start, as a refugee.

Thus, the individual is considered to be a refugee whenever her fundamental rights have been violated or have been in the eminence of being violated. This factor leads the individual to seek state protection from another state, given that what he is from has failed to guarantee "the integral protection that he makes to justice as a human being and the holder of human dignity to be preserved" (ANNONI. VALDES, 2013, p. 86).

This right to request asylum in another country is supported in Article 14 of the UN Universal Declaration of Human Rights, which declares that "every person, victim of persecution has the right to seek and enjoy asylum in other countries."

However, before these people have fled, generally en masse, the contingent that arrives at the welcoming State can cause internal problems (MOREIRA, 2006, p. 36), given that many times the States that receive these people or come to you as invaders, who are going to enjoy their already restricted resources, or are not financially and socially prepared to receive them.

In that sense it stood out:

*In the first place, there are economic costs involved in the reception of a large contingent of people, which refers to the provision of food, medicines, to the creation of the necessary infra-structure to shelter them (such as fields or campsites), among others. In the second place, it is possible that the local população do not have oil at the entrance of individual individuals, especially there are different cultural (ethnic-racial or religious) traces other than that. Comisso to local community can pressure the national authorities so that they take measures to withdraw them from the territory (MOREIRA, 2006, p. 36).*

It is worth mentioning the realities of refugees, who, in the majority of times, have abandoned their homes and businesses to live in camps, financed by UNHCR or by other non-governmental entities that care about the cause.

About life in these refugee camps located in the Afganistán in the periodical "See online" described:

*Refugees' lives are horrible. More than twenty people live huddled in each of the tents, which for the most part are nothing more than a wooden frame covered with plastic or old clothes. There is a lack of water, and food is increasingly scarce, 60% of children are malnourished and die of diarrhea. Skin diseases, parasites and typhoid fever are also common among the refugee population. If that weren't enough, people still share the space with snakes and scorpions, which are abundant in the desert region. Life there is just spending time waiting for a daily ration of wheat flour, tea, oil and sugar, distributed by entities such as the French NGO Acted and the British Medical Emergency Relief International<sup>6</sup>.*

Moved by international solidarity, the States are working to find lasting solutions and mainly for the removal of these people from the refugee camps.

In this context, Piovesan says that,

*The moment human beings become superfluous and disposable, the moment when the logic of destruction prevails, when the value of human dignity is cruelly abolished, the reconstruction of human rights becomes necessary, as an ethical paradigm capable of restoring the logic of the reasonable. (PIOVESAN, 2004, p. 117).*

The sea, the Human Rights need to be rebuilt, since humankind has become accustomed to a vision through which each other is proportionate to the interests of those who see it - the attitude that is wrong.

## 2. Differences between Refuge, Asylum and Internal Displacement

The phenomenon of human displacement is characterized by people or groups of people who are forced to leave their homes for reasons of persecution, armed conflict, or other forms of violence, due to environmental, economic, or human rights violations. Beyond the refuge, there are species of human displacement, internal displacement and asylum (ANNONI; VALDES, 2013, p.91).

<sup>6</sup>LIVING as animais. In.: VEJA magazine on-line. Available at: <[http://veja.abril.com.br/171001/p\\_078.html](http://veja.abril.com.br/171001/p_078.html)>. Accessed em: Apr 27. 2020.

Seeking to expand protection for displaced persons, in 1998, the Representative of the Secretary-General for Internally Displaced Persons, Francis M. Deng, presented the Guiding Principles Relating to Internally Displaced Persons to the United Nations Commission on Human Rights.

Those principles will establish international norms on internally displaced persons, based and consistent with humanitarian law, human rights and, consequently, refugee law, although these principles do not have a binding legal character similar to that of a treaty.

The documents cited above define internally displaced persons as:

*[...] people, or groups of people, forced or forced to flee or leave their homes or your usual places of residence, particularly in consequence of, or in view of avoiding, the two armed conflicts, situations of generalized violence Violations of two human directions or human calamities are natural, and that no one has crossed an internationally recognized border of a State (OHCHR, 1998).*

Then, consider as "internally displaced" what in some way was forced or forced to leave his residence in the recurrence of some threat or attempt on his life, but that, did not cross an international border, contrary to what happens with the individual when in refugee status. This affirmation implies saying that internally displaced persons do not focus on the protection of international norms that protect and help refugees, despite the fact that they are still covered by other norms, such as the Geneva Conventions I, II, III and IV. , of 1949, and its Additional Protocols I and II, as well as the Rome Statute of 2002, regarding the protection of civilians in areas of armed conflict.

Thus, unlike what happens to refugees, internally displaced persons legally remain under the protection of the national authority of their country of habitual residence and, thus, should enjoy the same rights as the rest of the population. The displaced are part of the civilian population and only differentiate themselves from other citizens by having a situation of greater vulnerability and special needs (OLIVEIRA, 2004, p. 75).

In this way, it can be said that beyond the principles under analysis, there is no specific treaty or institute for the protection of these people.

Currently, aid has been born through the joint action of agencies turned to various areas, such as: UNICEF, the World Health Organization and also UNHCR, the main responsible for the protection of refugees in the international system and to which, subsequently, the responsibility for aid and protection was attributed, in the same way, to internally displaced persons.

In the one that says regarding the institutes of asylum and refuge, it has been taken that both keep each other similarities in the de facto of both present themselves as institutes that have seen the protection of the human person victim of persecution; they begin with international solidarity and cooperation; they have not been submissive to reciprocity; independent of the nationality of the

individual; and excluding the possibility of extradition. In other words, both "allow the foreigner to live legally in a State." (REBELLO, 2008, p.12).

Franco et alii (2001) have made a concept of asylum, such as:

*Protection granted, in its territory, by a State against the exercise of the jurisdiction of the State of origin; It is based on the principle of non-refoulement and characterized by compliance with the recognized international rights of refugees. It is generally awarded without time limits<sup>7</sup>.*

Concomitantly, it is a condition that differentiates these legal institutes from being or asylum an exercise of a sovereign act of the State, it is a political decision whose compliance is not subject to any international organization. As for that, refuge, it continues as an international convention of a universal nature, applied in a non-political way, aiming at the protection of people with well-founded fear of persecution (BARRETO, 2006).

Thus, asylum, strictly speaking, applies to cases of individual political persecution where the subject has persecuted for reasons of opinion or the practice of political activities; The refuge, for its part, has been applied more broadly in cases where there are well-founded fears of persecution based on rank, religion, nationality, social group or political opinions, cases that involve the protection of a group of people who are consequent on a persecution that assumes a more generalized character as well as for cases of foreign occupation or domination, violation of human rights or ahead of events that seriously modify the internal public order of the country of origin.

In this sense, the Convention on Diplomatic Asylum determines that "every State has the right to grant asylum, but is not obliged to grant it, it does not declare itself because it refuses."

Thus, "forward gives guard proportionate to the Universal Declaration of Human Rights, it is a true right to" seek asylum "whenever the person is persecuted in her native country" (ANNONI; VALDES, 2013, p. 96).

Being then, although the differences are striking, it is worth noting that these institutes have the same objective, whatever it may be, to protect the individual who is in a situation of persecution in their country of origin, being or asylum expressly provided for in subsection X, article 4, of the Brazilian Federal Constitution as a guiding principle of relations with the international community.

### 3. The Protection Conferred to Refugees in Brazilian Law

Regarding the treatment of refugees from Brazil, during the postwar period, the country signed the 1951 Convention in the year following its elaboration, when it adopted the geographical reserve, and ratification it in November 1960. Thus To all non-Europeans, only the tourist visa was granted, which allowed the provisional stay of ninety days in the country.

<sup>7</sup>FRANCO, Leonardo; ESPONDA, Jaime; SAN JUAN; Cease. About The terminological confusion "refugee asylum". Progress report. [s / l], 2001. Available at <<http://www.acnur.org/biblioteca/pdf/>> Accessed on: Apr 29, 2020.

During that period, these people waited to be resettled in a third country (ALMEIDA, 2001, p.119), which was modified in 1989, by means of Decree No. 98,608, with the reception of refugees from all continents (REBELLO, 2008, p. 28).

Furthermore, even though the government has not signed the Cartagena Declaration, it has passed the application of the expanded refugee definition contained in that instrument since its existence (ALMEIDA, 2001, p. 148).

A short time later, in 1997, Brazil has drafted specific legislation on refugees, to Federal Law No. 9,474, which contemplates both the classical motives (given by the 1951 Convention) and the expanded reasons for refuge (conferred by the 1984 Declaration), by declaring that:

Art. 1º Any individual will be recognized as a refugee who:

*I - due to well-founded fears of persecution on the grounds of race, religion, nationality, social group or political opinions he found to be from his country of nationality and cannot or does not want to embrace the protection of that country;*

*II - I do not have nationality and being abroad in the country where I previously had your habitual residence, I do not wish to return to you, in the circumstances described in the previous paragraph;*

*III - Due to a serious and widespread violation of human rights, he was forced to leave his country of nationality to seek refuge in another country<sup>8</sup>.*

On that, Jubilut still highlights that,

*The Brazilian refugee law (Law 9474/97) of the National Program of Human Directs of 1962, or which clearly demonstrated or wished the Brazilian government to be inserted in an international order not concerning protection of human weight<sup>9</sup>.*

Create, from that norm, an organ responsible for the analysis and to play the refuge request: the National Committee for Refugees (CONARE), foreseen no Title II of the study legislation, and composed by representatives of the Ministries of Justice, of the Foreign Relations, Labor, Health, Education and Sports, from the Federal Police Department and Caritas. CONARE is responsible for various attributes pertaining to the refuge, among which are cited to receive refuge requests, provide documentation that identifies you as a refugee, the resettlement received in the country, so that you can work and access public services.

In addition, Law No. 9474/97 has invoked when dealing with the resettlement program, cited in articles 45 and 46, which has as its mission the reception of refugees that has not yet managed to adapt in the first country of refuge. However, the resettlement operations are financed by UNHCR, so their realization depends on the availability of resources from the international organization.

Dominguez and Baeninger, ahead of that, record that Brazil does not have previously fixed annual rates for resettled people, and that it sends missions to the countries of first refuge, to guarantee the viability of the refugees who have been resettled in national territory (DOMINGUEZ, BAENINGER, 2006, p. 7). Thus, Brazil, by adopting its own

law on the subject, and has caused a change in the domestic legal order. However, due to internal weaknesses, the country has not yet been able to offer refugees full protection of human rights, and has even failed to protect its own citizens. Although that, the country follows refugee resettlement programs, which consists of the process by which a third country receives refugees who were rescued from the receiving country, and who cannot return to the countries of origin.

UNHCR also indicates to the north that Brazil is one of the few countries in South America that determines a resettlement program specifically aimed at refugees in situations of greatest vulnerability. In the past three years, nearly 120 women have been recognized as refugees or resettled due to gender-based persecution or a cliff situation.

However, the Brazilian government has created alternatives for the inclusion of refugees, such as the registration of Syrian families in the Family exchange program, which is originally returned to Brazilian families in a situation of misery. About 400 Syrians are currently receiving aid, according to the Ministry of Social Development and Fight against Development.

In addition, it is perceived that despite the unfortunate nature of receiving these individuals, there is still a lack of action plan with concrete and long-term measures to meet with refugees, for example the Syrians, after their arrival in the country. This problem is not, however, an exclusive problem in Brazil, experiences obtained from academic analysis in Uruguay have allowed the perception that the productive way, the Uruguayan way of life and the consequent capacity of this country to absorb the refugees, enters sometimes they are shocked by the culture of these people, especially when it comes to family insertion in the labor market and the size of family groups, and that there is a contention to be faced by countries that have admitted refugees.

## Final Considerations

Brazil's performance in relation to refugees stands out, especially since the 1990s, with the elaboration of the national refugee law and the creation of the specific committee to judge refugee requests in the country, as well as establishing the resettlement program.

However, even with Law nº 9,474 / 97 being considered modern, the Brazilian State is still far from adopting large-scale public policies and sufficient resources to facilitate and favor the reception of refugees, and even civil society has not yet receptive sample in relation to refugees. In this way, even with regulatory advances, national legislation has found serious limits, which makes the situation of refugees precarious, and allows the practice of respect to be guaranteed to be, normally, discriminatory and selective, in addition to, at times of crisis, abusive and manipulable, according to political interests - the one that ends up affecting the real interest of the refuge institute, whatever the inclusion of refugees in society.

<sup>8</sup>BRAZIL. Lei nº 9,474 / 97, dated July 22, 1991. Brasília, 1991. Available at: <[http://www.planalto.gov.br/ccivil\\_03/Leis/L9747.htm](http://www.planalto.gov.br/ccivil_03/Leis/L9747.htm)>. Accessed em: Apr 29, 2020.

<sup>9</sup>JUBILUT, Liliána Lyra. The Refuge Granting Procedure in Brazil. Available at: <<https://www.justica.gov.br/central-de-conteudo/estrangeiros/o-procedimento-refugio-no-brasil.pdf>> Accessed on: 27 abr. 2020.

These are, therefore, the challenges to be won, and, once society as a whole begins to see the refugees as a being equal to itself, as well as the State adopting effective public policies to provide for a dignified life for these people within the Brazilian territory, durable solutions will be presented to solve the problem of the forced displacement of people that affects a large part of the world population.

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