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Unfinished globalization: the failure to address colonialism's legacy in international human rights and migration governance

Globalização inacabada: o fracasso na abordagem do legado do colonialismo nos direitos humanos internacionais e na governança migratória

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ABSTRACT: The post-World War II era of International Law was prolific in generating intricate and complex processes of advancing human rights through the creation of norms and agencies, framing the protection of individuals in major human rights documents. Most of these instruments were incorporated at State level to predominantly protect the nationals and legal civilians. This perspective is very attached to the territorial dimension of State Sovereignty. Therefore, in terms of governance, the International System fails to advance the process of decolonization as historically overcoming colonialism, and not only a process of legally addressing the emancipation of colonies, but of breaking the paradigm of the power dynamics in its very structures, for no major international mechanisms were created to overcome the colonial advantage within International Organizations – and this reflects on the institutional dynamics of specialized agencies and subsidiary organs of the UN, such as the UNHCR, designated to work with refugees, as some of these were not designed to last more than its original mandate. Additionally, in the last decades, with the expanded flow of information, goods and services, no such expansion was allowed when it comes to migrants. The figure of the migrant rises as much more interesting to the economic system as being undocumented, differently from the protected civilian. Since most economic migrants and refugees



are from the Global South, it might imply an unfinished globalization process, as the system itself feeds on this colonial logic, promoting this figure of the illegal migrant to nourish itself from it. Saskia Sassen and Anne Orford will bring light on this matter, about how economic globalization depends on the current international division of labor and migration, exploiting these migrants, because this deprivation of rights that renders them undocumented is the necessary condition for their labor exploitation.

KEYWORDS: UNHCR. Globalization. Decolonialism. Colonialism. International Law.

RESUMO: A era pós-Segunda Guerra Mundial do Direito Internacional foi prolífica na geração de processos intrincados e complexos de promoção dos direitos humanos, por meio da criação de normas específicas e agências especializadas, enquadrando a proteção dos indivíduos nos principais documentos de direitos. A maior parte destes instrumentos foram incorporados a nível doméstico dos Estados para proteger predominantemente os nacionais, os civis legais – uma perspectiva ainda muito ligada à dimensão territorial da Soberania do Estado. Dessa maneira, quando se trata de governança dos diferentes ramos do Direito Internacional dos Direitos Humanos, o Sistema Internacional ainda falha em não avançar no processo de descolonização como uma superação histórica do colonialismo, e não como apenas um processo puramente legal de emancipação das colônias, mas de quebrar o paradigma da dinâmica de poder dentro das próprias estruturas do Sistema, pois não foram criados mecanismos internacionais importantes para superar a vantagem colonial dentro das Organizações Internacionais – e isso se reflete na dinâmica institucional de agências especializadas e órgãos subsidiários da ONU, como o ACNUR, destinados a atender refugiados, sendo que alguns deles sequer foram projetados para durar mais do que seu mandato institucional original. Além disso, nas últimas décadas, com a expansão e facilitação do fluxo de informações, bens e serviços, tais facilidades não foram permitidas, em extensão, aos migrantes, e a figura do estrangeiro passa a ser tão mais interessante para o sistema econômico quando permanece indocumentado, ao contrário do cidadão nacional, protegido, e como a maioria dos migrantes econômicos e refugiados são do Sul Global, isso pode implicar em um processo de globalização inacabado, pois o próprio sistema se alimenta dessa lógica colonial, fazendo com que essa figura do migrante ilegal se alimente dela. Saskia Sassen e Anne Orford trarão luz sobre este assunto, sobre como a globalização econômica depende da atual divisão internacional do trabalho e da migração, explorando esses migrantes, porque esta privação de direitos que os torna indocumentados é a condição necessária para a sua exploração laboral.

PALAVRAS-CHAVE: ACNUR. Globalização. Decolonialismo. Colonialismo. Direito Internacional.

1. INTRODUCTION

Centuries of colonial advantage have promoted a level of development to European powers that would not likely be achieved without the - unwilling - support of the colonies. International Law, has created the rules that surround the concept of State Sovereignty, as the State, itself, needed to rely on the idea of exclusion of the non-nationals to create the figure of the citizen, the national subject to the monarchs.

The beginning of the overseas campaigns promoted initially by the Spanish, as they succeeded in creating their Sovereign State, also marked an era of domination by force - the same concept that would later, in the 20th Century, be rejected, through the principle of non-intervention, as all Sovereign States would be deemed *equal*. The colonies also have started their emancipation process, and the self-determination of peoples have encouraged the new nations to recollect their past memories - those without the exploitation of the colonizer.

Still, International Law has played an interesting role in this process. After World War II, there was a new era of rules that aimed to treat all human beings as part of a family. However, this idealistic concept of universal brotherhood was challenged by the reality that not all actors came from the same background, and therefore, equity was not possible. Despite efforts to create mechanisms to prevent the colonial advantages of the metropolitan powers, it seemed that all mechanisms were provided to protect the sovereign powers of the colonizers. In other words, there was a lack of action to decolonize and level the playing field.

This translates into the structures of international organizations, and specially of the largest one ever created by human efforts, the United Nations. The same powers that have dominated the seas for centuries still dominate the international scenario with little resistance from the political actors of said organizations. And this reflects in the

strict mandates of the humanitarian organs and agencies that form the branches of the UN. One of those is the United Nations High Commissioner for Refugees.

The UNHCR, since its foundation, in 1950, is meant to protect refugee populations that are, by definition, forced to flee under well-founded fear of persecution, inside the dimension of civil and political rights. Despite its contribution to the protection of refugees, the Convention that introduced this concept was originally intended to safeguard only European refugees displaced by World War II, thereby limiting its scope.

This changed in 1967, but little has been pursued, in legal terms, to overcome barriers still closely linked to State Sovereignty and the discretion of States to welcome people or not, combined with the fact that refugees and economic migrants – another marginalized category – usually come from countries both economically and politically destroyed by centuries of colonialism.

In this sense, is it possible to affirm that a solution is in sight for overcoming the colonial influence in the operations of refugee protection agencies, such as the United Nations High Commissioner for Refugees? To better proceed with the development of the problem presented here, the research will rely on documentary data and literature review about colonialism, globalization and, the center of the present debate, refugees.

2. STATE SOVEREIGNTY AND COLONIALISM

The fact that International Law is still overly attached to State Sovereignty and its means the non-nationals, though a multiplicity of new international actors arise (especially with the expansion of globalization after the 60s, is directly connected to the very idea of borders.

The creation of the Modern State, which centralized power in the hands of absolute monarchs by the 15th and 16th centuries,

was also at the core of the economic movements that promoted the Age of Exploration and Decolonization, as new doctrines to permit such interactions, between Europeans and non-Europeans were first designed (ANGHIE, 2006).

It was not until 1492 that overseas navigators gained the status of “conquerors of the new World”, as Christopher Columbus voyages reached the Americas for the first time, as Spain relied on the notion, inherited from Roman Law, that islands belong to those landing on it first (KOSKENNIEMI, 2011). 1492 also signified the end of the War of Granada and the military campaigns that resulted in the expulsion of the Arabs from the Iberian Peninsula, followed by the expulsion of Jewish minorities and the centralization of power in the hands of the Catholic elite.”

It was the same Catholic elite that, in the figure of the priests of the University of Salamanca, such as Francisco de Vitoria, claimed by many scholars to have fathered the *Law of Nations* as we know it, through a very controversial set of principles, as we would later come to know as *ius communicationis*, the right to communication, as means of hospitality, given the fact that humans are generally quite sociable creatures (CHETAIL, 2016).

It was also used to justify the violent land claims of the Spanish over the local indigenous peoples of the Americas, as to refuse the entrance and hospitality to such lawful, communicative humans as the Europeans were back then, itself, was an act of war from the so-called “barbarians” (CHETAIL, 2016) – needless to say the locals did not succumb to the invaders, despite their usage of arguments long known since the Crusades (ANGHIE, 2006, p.744). The results of it are History. Colonialism, in other words, was an open “invite to co-depend” (ACHIUME, 2017), a dynamic still not overcome in current days.

Migration has undergone significant changes since the era of European explorers sailing in Caravels to discover new lands. The forced migration patterns of the Slave Trade that peaked between the 16th and 18th centuries marked a significant shift. This shift led up to the

present-day migration trends of the 21st century, which largely consist of forcibly displaced individuals, such as refugees. Though colonialism, *per se*, is no longer a reality, individuals who fit the “archetype of the Third World Migrant” (ACHIUME, 2019, p.1514) are still treated as the outsiders of a system that was not designed to encompass them. Since the Age of Exploration, their homelands have been regarded as Terra Nullius (ANGHIE, 2006) and they are still exploited as subordinates.

Surprisingly enough, as Globalization itself means enhanced freedom of movement of capital, goods, and services, the same is not to be said about humans, still facing harsh restrictions to their entrance into major economic powers, in a form of “counter-geography of globalization” (SASSEN, 2009), meaning the literature on the mistreatment of refugees and migrants often contrasts with the mainstream view of universal human rights. (ORFORD, 2002).

This shifting portion of the planet, in the figure of displaced persons, is permanently on the move, as it serves capitalism itself that people are never attached to a single border for periods long enough to allow them to dream in there, forming the new *ethnoscapes* of mankind. (APPADURAI, 1990). This migrant is much more interesting to capitalism as remaining marginalized and undocumented, with the Sovereign States failing to legalize their labor relations, because the system feeds from these abusive relations of power between employers and workers.

At the same time, international legislation on migration is insufficient and puzzled, as human mobility poses multiple gridlocks about the governance of migrant flows: from which agency is adequate to deal with the migrants, to the categorization of humans with different visas (usually handed out according to their places of origin), permitting the perpetuation of power and dominant relations that very much resemble those of colonization, as an “a pressing challenge remains a reimagination of the relationship between the nation-state and the non-national that destabilizes territorial exclusion as a fundamental feature of state sovereignty” (ACHIUME, 2017).

Concomitantly, this relevance of Sovereignty to State affairs directly affects International Organizations and their agencies. Owing to the fear that the activities of multilateral mechanisms could “hijack core national security interests” (BARNETT, 2001), severe restrictions to humanitarian action were posed towards many organizations – but those dealing with migration were among the ones who suffered most. Humanitarianism, for the sake of the principle of non-interference, was often related to paternalism (BARNETT, 2011), resorting to control and exclusion. Another aspect, less considered in academic texts, is the fact that power relations and Sovereignty are also at the core of actions of States who expel their own citizens, forcing them into displacement (BARNETT, 2011).

Despite decolonization processes, the colonial power of states continues to be heavily represented in power relations. The advantages built up over centuries of colonialism have not been fully overcome (ACHIUME, 2017). This is particularly true of the same states that claimed sovereign power over their own territories in the 17th century, inextricably linked with the era of navigations and economic growth.

The post-colonial politics that were later developed in countries like Rwanda, Côte-D’Ivoire and Zimbabwe reflect the past centuries’ power relations, as they have contributed to the conflicts that today underlie the displacement occasions in these regions (BETTS; LOESCHER, 2011).

As Saskia Sassen would claim in *Expulsions* (2016), “economic growth is never benign”, as the economic powers from the Global North still take advantage of the natural resources and commodities of the Global South, connecting poverty, natural abundance, and underdevelopment, as the links between developed countries and their less developed fellows have been long conducted through the imposition of colonial power. Some still remain, leaving deep wounds to those at the lowest of power balance. The diamond trade in Sierra Leone exemplifies that (BETTS; LOESCHER, 2011).

All of these elements compose the institutionalization of the right to exclude, as the non-permission of the entrance of non-nationals

reflects the Sovereign aspect of the right to self-determination - which can be used for the legal independence of Nations from colonial powers, but also to countries aiming to create excluding policies, based on their right to politically, socially and economically determinate, based on the interests of the citizens, the nationals.

To International Private Law, of major European influence¹, there is a partial explanation as to why this Sovereign social fabric somewhat excludes migrants. This is to be seen under the guise of the difference between recognizing political and civil rights to non-nationals. Despite the fact that both categories of rights do belong to joint international documents, it does not imply so in the national sphere: political rights, those concerning the organization of the state, are not shared with those coming from outside of the national human material (BATIFFOL; LAGARDE, 1981).

Civil rights, on the other side, were supposed to be freely recognized to all human beings, only as a matter of respect for human existence, but even those are subject to the discretion of the political organization of the state, as not all migrants are allowed into the territory (BATIFFOL; LAGARDE, 1981).

What needs to be recalled is that there is a tendency to exclude migrants coming from the “Third World”, a term used to define those territories that once belonged to European colonial powers (ACHIUME, 2019). As a consequence, the “First World” - and the lack of usage of the expression “Second World” denotes the gap between First and Third Worlds - is composed by the corresponding powers

¹ ‘Si en effet l’unité foncière de la nature humaine, toujours pressentie, affirmée par le christianisme, soulignée par les exigences du commerce international, a conduit à reconnaître à l’étranger les droits indispensables à l’homme en tant que tel, c’est-à-dire le bénéfice du droit privé, celui du droit public ne s’est pas imposé avec la même nécessité. En tant que le droit public organise la chose publique, il paraît concerner l’individu d’abord dans la mesure où celui-ci fait partie de l’organisation politique, ce qui n’est précisément pas le cas de l’étranger, si on définit les nationaux comme la population constitutive en droit de l’organisation’. In: BATIFFOL, Henri; LAGARDE, Paul. **Droit International Privé**. 8. ed., t. 1, Paris: L. G. D. J., 1993, pp.284-285.

that colonized the Third World, the ones excluding those who seek legal validation of their status in the current economic powers.

One of the aspects to be analyzed here is the fact that the definition of the expression *refugee* is somewhat limited in its scope, which means that, despite the fact that the power relations after World War II have promoted a broadening of protection, the reasons behind the resistance against further broadening the term as to encompass more categories of migrants that would not originally fit under the refugee concept could be related to the unfinished decolonization process, that pours into globalization as well.

3. THE DYNAMICS OF UNHCR IN GLOBALIZATION AND DECOLONIALISM

Multiple questions arise from the broadening of the humanitarianism of agencies like the UNHCR (BARNETT, 2001). Humanitarian organizations were once created with strict mandates that did not cross the border of State Sovereignty, as it is much explicit in the UN Charter that by all means the principle of non-intervention, represented in the ruling to *refrain from the use or threat of use of force*, shall be crucial to the stability of world harmony, and this reflects in the organization's bodies and agencies behavior.

States wanted to make sure they could keep their share of territorially limited power, despite the fact that, gradually, institutions would be created to help nations cope with the need for human preservation. And still, in the realms of power, violence is used within borders to promote the forced fleeing of peoples, without ignoring the fact that compulsory power may also not resort to physical violence, but act in more symbolic dimensions, as the “*name and shame*” promoted against nations (BARNETT, 2011), an action that can impact the political stability of a given region.

Another example, the way the UNHCR's mandate was restricted by major powers to reflect their ambitions is an example of institutional

power, as the structural powers shape the difference between citizens and non-citizens (BARNETT, 2011). These relations were not built overnight.

As it is not a stretch to surmise, State Sovereignty is strongly tied to colonialism, the latter being at the core of some of the current conflicts that propel people to flee their homes of origin (FONKEM, 2020), as the previous centuries of severe interference and bad governance left deep marks in some colonized countries, meaning that the narrative of non-intervention is somewhat recent in historical terms to even claim that it does no longer projects its consequences in international relations, although it is clearly stated at the foundation of today's largest international organization of universal pretensions: the United Nations.

States in the Middle East and Africa keep some of the power features inherited from the colonial powers (FONKEM, 2020), even in those where democratic systems have been implemented, as it is the case of the Horn of Africa and the Great Lakes region. The lack of political freedom resulting from centuries of European oppression has placed certain nations at a significant disadvantage in today's power dynamics. As a result, the normative frameworks to which these nations are subject must take this into consideration. However, international bodies such as the International Criminal Court have only convicted African leaders, indicating that more needs to be done to address the systemic biases within these organizations. (SENYONJO, 2013).

In Africa, it is also important to mention that, concerning the mandate of UNHCR, one of the reasons for the expansion of the definition of refugee, removing the geographical and temporal limits from the 1951 Convention into the 1967 Protocol, was the fact that individuals from countries fleeing the decolonization process were not encompassed by the concept of refugee, nor those previously fleeing colonial dominance (GLASMAN, 2017), in a time in which UNHCR was itself not operational and only dealt with the "side effects" of the decolonization process, not the main issues at stake (HANHIMÄKI; ELIE, 2008).

It is also to say that the High Commissioner, with its very limited initial scope of only concerning European refugees², though it was an organ created to be strictly humanitarian, did reflect the political environment at the time of its creation, with integral Western influence – as UNHCR was first boycotted by the Soviet Union, due to the fact that some individuals fleeing the Communist block were also protected by the agency (HANHIMÄKI; ELIE, 2008).

It did, indeed, reflect Western values, as most of the legislation from the World War II aftermath, which was gradually lessened by the evolution and expansion of the scope of the High Commissioner. What needs to be brought to mind is the fact that the Soviet Union, despite not abiding by the UNHCR at first, had a major influence in the anti-colonialist movement, which automatically drew the United States attention to Africa and Asia (LOESCHER, 2001).

In this sense, the attention towards refugees from newly independent states was much more of a geopolitical war between major powers for influence over non-alignment than purely *humanitarian* interests (LOESCHER, 2001). The first occurrence in this context was the Algerian War of Independence, in 1954, though the expansion of UNHCR began in 1956, once again, with an European event, the Hungarian Revolution, against the Soviet influence and politics of the dominant party (HANHIMÄKI; ELIE, 2008).

Up to the present day, the criteria for the selection of who is going to fill the post of High Commissioner remains unclear, bringing criticism as to whether the position should be held by someone freely indicated by the General Assembly, heavily influenced by economic

² Article 1. definition of the term “refugee”. B.(1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either: (a) “events occurring in Europe before 1 January 1951”; or (b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention. In: UNHCR. (1951; 1967). Convention and Protocol Relating to the Status of Refugee. Available at: <https://www.unhcr.org/3b66c2aa10>

powers, and accepted by the Secretary General, or if it should be a career professional, among the UNHCR specialized staff, including the years-long experience of those in the field, suffering with the physical, emotional and familiar consequences of dangerous contexts (LOESCHER, 2001).

This outlines an intersection of problems that extend beyond the number of displaced persons and are rooted in the political issues that give rise to displacement. While globalization has accelerated the production and movement of goods and services, the same freedom of movement has not been extended to human beings. As a result, humanity is currently experiencing an unfinished and contradictory process of globalization (MARTINE, 2005; IANNI, 1996), as richer States have started this period of history in advantage (MARTINE, 2005).

Globalization, in general, promotes greater flows of people, as it stimulates cultural exchange, and encourages people to abandon their comfort zones and seek new life alternatives - which is closely related to consumption patterns (MARTINE, 2005). But the opposite also occurs: in the spaces of non-consumption, such as poorer countries and peripheral areas of the metropolises, people migrate to spaces where they can exercise consumption (translated into better living conditions), due to the economic discrepancy between the rich and the poor.

In short, inequality forces people to migrate (MARTINE, 2005), and globalization helps to spread information about better living opportunities, about living standards in large cities, as opposed to a world marked by conflicts, natural disasters, and misery. However, developed countries have not expanded access to these opportunities for migrants, which have not expanded access to these opportunities for migrants, creating a gap between what liberalism sells and what liberalism offers these migrants (MARTINE, 2005).

It can even be said from the literature on refugees and migration, that such mobility has promoted an increase in human trafficking and exploitation of women (ORFORD, 2002), in which globalization

endorses the creation of a category of undocumented refugees and migrants that can be further exploited due to their undocumented conditions, in what Saskia Sassen would name as the “counter-geography of globalization”, composed by the structural conditions in which the circuits of human trafficking can operate, as means to support the advance of economic globalization, in a hidden manner (SASSEN, 2002). Once again, the category of nationals, non-nationals, documented, undocumented, allowed, or not allowed derives from the law in its most obscure face.

One could affirm that such different conditions of free and limited mobility stem from the same issues that kept colonialism alive for centuries. The colonial advantage of the metropolitan powers has not yet been overcome, as the mechanisms of oppression and subordination persist. Classic International Law, influenced by European and Western thought, brought States to the same level of legal equality, while still being the means through which the “uncivilized/aberrant/violent/backward/oppressed” (ANGHIE, 2006, p.742), would remain peripheral to a world of “civilized” Nations.

This is expressed in the sources of International Law, as inscribed in the Statute of the International Court of Justice, applying “the general principles of law recognized by civilized nations” (ICJ, 1945) to all decisions. Surprisingly enough, the expression “civilized” remains part of the legal structure that informs the existence of the largest Court of universal jurisdiction known to man. It is also the same logic implied in the aforementioned exclusive conviction of African leaders in the International Criminal Court (SENYONJO, 2013). In conclusion, neocolonial dominance continues to be imposed over previously colonized minorities (ACHIUME, 2019), often through the institution of legal documents that were meant to efface such relations.

Needless to say, Sovereignty was never far from the minds of those creating the global institutions mentioned here, including UNHCR, since only a world order in which sovereign states could create a category of nationals, the *citizens*, could produce a category

of people labeled *refugees*, alongside a shortening of locations to which people could flee (BARNETT, 2006), once the end of colonialism meant the metropolitan European nations could sever nationality ties with their former colonial subjects. This is exactly why the 1951 Convention brings in its preamble the paternalistic idea of “solution” and “protection” – it was, indeed, a *problem* that required a solution.

But this solution should be limited in numbers and follow three sets of consequences: integration in the country of asylum, resettlement to a third country, and the not-so-welcomed third way, repatriation (BARNETT, 2006). Repatriation is currently not a possibility, as it is a remote option and could configure a violation of the *principle of non-refoulement*, as it was at the beginning of the definition – repatriating Soviet refugees was not an option (BARNETT, 2006).

Sovereignty also poses an important challenge when it comes to Internally Displaced Peoples (IDPs) since they do not cross the borders of their homeland while fleeing whichever circumstances propelled them to flee, unlike refugees, and also due to the fact that it is very difficult to address their claims, as it is difficult to determine their nationality and the validity of their persecution narrative, on these terms (HANHIMÄKI; ELIE, 2008).

The same is to be said about stateless refugees, since protection is recognized based on proof (the *well-founded fear*) of persecution, and such persecution, in the definition of Article 1 of the 1951 Convention, is promoted by the conditions experienced in *the country of origin or habitual residence*, which appears to be of very difficult to operate in practice, since stateless people hold few official documents, if any, of their own.

And the 21st Century challenges the Sovereign limits of the concept surrounding refugee protection, once again, as climate change starts to make its victims in the group of *Small Island Developing States*³,

³ The group of Small Island Developing States (SIDS) are composed by 38 United Nations Member States: Bahrain, Cabo Verde, Comoros, Guinea-Bissau, Maldives,

set to disappear in the coming decades. It remains unclear where the estimated 500 million people to 1 billion, in less optimistic predictions (KOSER, 2009) – will flee to, when environmental issues prevent them from remaining in their homes of origin, as no definition of collective refugee protection exists (which would be the case with climate migrants), nor climate change fits under the scope of *persecution*, an exclusively human action.

UNHCR has struggled, mostly through its staff intentions to pursue the full humanitarian nature of its mandate, to expand its protection in the field, embracing migrant minorities that would not often be encompassed by its actions (HANHIMÄKI; ELIE, 2008), but certain minorities, as IDPS, are less likely to draw funds from States as the transnational refugees. This being said, it is not to blame on the High Commissioner that the structure itself is tainted with the Sovereignty of States to such a degree that it is difficult to evolve across the current reality. States are to blame. If the migrants do not fit the legal definition set by States in International Law, States hold the power to restrict their entrance by imposing criteria that must be met to recognize certain statuses, such as that of a refugee (HURRELL, 2011).

From this point of view, Sovereign States decide according to their Sovereignty issues. The very condition of existence of the State is that there are internal affairs and international affairs, as to define, in exclusion, what is a State and what is not. This includes citizenship, and welcoming migrants or not. And the United Nations is a part

Mauritius, São Tomé and Príncipe, Seychelles, Singapore, Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu, Vanuatu. Another 20 Non-UN members also are part of the initiative: In: United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and the Small Island Developing States – UN-OHRLLS. **Small Island Developing States**. Available at: <http://unohrlls.org/about-sids/country-profiles/>

of this as well, as it is composed of Sovereign States that bring to the General Assembly matters of their very interest. It is not, however, to say States are only the problem from which the non-operationality of the protection and overcoming the colonial advantages stems from, but they are also the solution – “they are the source of the system, the locus of responsibility, and the focus of pressure for change” (HURRELL, 2011, p.96).

The pressure for accountability of States and individuals for their actions is at the core of Human Rights, though there is still a considerable lack of pressure when it comes to enforcing such rights, including the protection of refugees. It all traces back to Sovereignty. And migration as a political affirmation of decolonization, against the imposing rules of the new imperial powers, as in a “reverse colonization”, could be a response to the oppressing disadvantages yet to be overcome (ACHIUME, 2019).

In this sense, what can be implied, until now, as Koskenniemi (2001, p.513) would address is that

Whatever globalization may mean, it has certainly not strengthened international public policy. Nothing may have undermined the need for a middle ground between the Empire and the tribe, capitalism and identity politics. But whether it is possible to articulate and uphold such a space, without repeating the tired antics of statehood, the Rule of Law, and a State-centered international system remains an open question.

With this in mind, the pressing issue presented here is a critical view of how UNHCR, unfortunately, still operates alongside these colonial structures, at the same time recognizing that the organ is not to blame for it, as it does what is at its reach to fulfill its given mandate, to protect refugees and analogous populations against harm and persecution, as it cannot flee the power relations stemming from the international organization that has founded the High Commissioner, the United Nations.

4. CONCLUSION

The rise of the State, as we know it, is intimately linked to the idea of Sovereignty, a mandatory characteristic of State power itself. It is also closely related to how European nations have dealt with their colonies in the past centuries, embedded in a century-long International Law logic that enforces the power of the metropolitan States, without breaking the chains of colonialism, once the colonies started to seek their emancipation.

This Eurocentric rationale is at the core of main International Organizations, and it would not be different with the United Nations, the largest experience of IO of universal pretense. As newly independent nations have started to join its structure, no major changes were accomplished in order to grant true equity among the members, since no move was ever implemented to overcome the colonial advantages that have remained unquestioned for centuries.

In this sense, it is important to note that the economic migrant, especially the undocumented migrant, has a very specific face in the surge of globalization: this group is usually composed of individuals from former colonies, seeking better living conditions in the former metropolitan powers. The issue here is that capitalism partially feeds itself from the flow of undocumented individuals, since it is less expensive to keep them in such conditions.

As Sassen and Orford, previously mentioned, would argue about the “counter-geography of globalization”, the migrant is the frontier, and the rules are created according to the needs of the market: the more the big cities depend on cheap labor conditions, the more the system will create it – and this is closely related to Sovereignty, since States bear the right to choose, under its discretion, those who can enter their territory and those who cannot. The local citizen only exists under the exclusive idea that, if there is a national, there is someone labeled non-national. And this is related to the borders of the Sovereign State.

And it is even more harmful to the migrants when we consider the refugees and internally displaced peoples in this account, as they do not possess any trace of will in their fleeing process: they flee because they are forced to, due to the well-founded fear of persecution. This conflicts with the interests of institutions that were created to never cross the limits of the Sovereign State, despite the pretense of universality. This is true about International Organizations, and it is also true about its most famed branches, such as the United Nations High Commissioners, especially the UNHCR.

The mandates of any humanitarian organization, here considering the State composed ones, are somewhat limited in scope, as they are meant to remain strictly humanitarian. Though it is difficult to define what strictly humanitarian could imply, it is not a stretch to imagine that the power relations that create the international organizations play a significant role in what dimension the protection of individuals can play.

In this sense, it is possible to say that the UNHCR still operates in this colonial structure, but the organ is not to blame – specially with such a brave staff risking their lives in the field to protect individuals seeking their protection. States, as said, are to blame. States create the rules of entrance, States limit the mandates of international organizations to fit their interests, States colonize peoples and render the native lands incapable of fending for themselves to the extent that conflicts will very unlikely cease to exist in the coming future.

Still, migration is an act of resistance. It is the ultimate cry of those who have been exposed to oppression for centuries and now seek to fulfill their dreams in the very lands that stole those from their people. This “reverse colonization”, as Achiume would name it, could be, and most probably is, the solution to the disadvantages that still cannot be overcome due to State Sovereignty and power relations. But in this regard, these questions remain unanswered.

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