


Chapter 17

Disputes for the formation of the international regime of human rights: the formation of the regime, the recognition of the human right to development and latin american alternatives to development

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ABSTRACT

International regimes are composed of principles, norms, rules, and decision-making procedures capable of converging the expectations of international actors on a given theme. According to this understanding, they are intervening variables between basic causatological factors of the international system, such as the interest and power of its actors, and the consequences of these in terms of the behavior of the same actors. The liberal approach to International Relations attaches great importance to regimes, considering that states rationally agree to adhere to them to make the system more predictable; since its dissemination would sustain a pattern of behavior over time and would open more and more room for cooperation. Although it is possible to consider the independence of the United States of America and the French revolution as the beginning of the process of politicization of human rights, this set of prerogatives only became a subject dealt with in the arena of international politics after the end of World War II. At the time, the current international order was in formation under the already clear leadership of the Government of Washington, so the international regime of human rights, which springs from there, creates contours defined by the idea present in the United States. Thus, a modern and Western philosophy, which excels in civil and individual rights, prevailed when the United Nations General Assembly of the Universal Declaration of Human Rights was accepted in 1948, a document considered the inaugural landmark of the current international human rights regime. From the signing of the declaration, the same philosophy was endorsed with universality and international legitimacy. According to the liberal paradigms of International Relations, regimes gain a great deal of importance because they allow the balance and stability of the international system. The

critical perspectives of the discipline, in turn, see them as an expression of the power dynamics underway at a given time. Thinking in this way, the prevalence of the forged ideary from the United States and Western Europe in the drafting of the 1948 declaration (and, consequently, in the conformation of the entire international human rights regime) can be understood as a mechanism for sustaining a particular hegemonic order of global scale. Thus, the existing disputes in international politics would be reflected in the concept of human rights and in the universalism with which human dignity is characterized; and would have as instruments the model of development and the human right to development thought from it. This work seeks to address how the international human rights regime not only consolidates patterns of behavior on the part of international actors but also mirrors the factic relations of power between them. Moreover, from a critical perspective, the present work shows how the disputes surrounding the construction of the aforementioned regime are, in fact, ways of consolidating or contesting the hegemonic order in force. To this end, it begins with the analysis of the context and discussions present in international relations in the immediate post-Second World War, at a time of bipolarization typical of the Cold War and the beginning of the internationalization of human rights. It takes place in the examination of the world order of the late twentieth century and, in particular, of how it is reflected at the Vienna World Conference on Human Rights in 1993. The work is finalized with discussions about Latin American alternatives to the way universalism and the human right to development were conceived in Vienna in 1993. Such alternatives concern the ownership of rights by nature and Good Living, which, as demonstrated throughout this essay, are capable of challenging the way the international human rights regime is shaped and, ultimately, the hegemonic order itself in force.

Keywords: Human Rights, Right to Development, Critical Theories, Alternatives to Development

1 INTRODUCTION

Partir of the critical theories of International Relations, especially that of Robert Cox (1996), the present work considers that the alternatives to development present in the current constitutions of Ecuador and Bolivia are ways of contesting the hegemony of the international system. To this end, the article looks at the disputes surrounding the formation of the international human rights regime and the human right to development. The concept of hegemony adopted here is composed of three elements: material capacity, ideology, and institutions (Cox, 1996), so it is possible to perceive how all of them are contested during the disputes addressed here, especially by Latin alternatives to development.

The emergence of the United Nations is seen as an elementary and foundational framework for the advent of the current international human rights regime, and discussions within the UN arena on the specification of which guarantees should form human dignity from the signature of the Universal Declaration of Human Rights of 1948 as the beginning of disputes over this category. At the time, the international system was marked by the Cold War and the beginning of the formation of American hegemony, under constant and strong opposition from the Soviet Union. This scenario was reflected in the adoption of two international treaties on human rights, the International Covenant on Civil and Political Rights, with the support of the United States; and the International Covenant on Economic and Social Rights, with Soviet support.

The 1993 Vienna World Conference on Human Rights, at the end of the Cold War, is the basis for discussing the recognition of the human right to development, considering as its background a series of discussions between the countries of the North and the South. At the time, the countries of the South complained about not obtaining the benefits of what the North called development, it is a technical, scientific, and positivist model (Lang, 2006). Moreover, the countries of the global South feared new ways of having their respective national sovereignties disrespected; and demanded unfulfilled promises from the market economy, as well as protesting the lack of pluralism of liberal human rights universalism. In response, the right to development was recognized, together with the universality of the whole set of guarantees within the human rights category.

Despite the importance of the 1993 Vienna Conference for the legitimation of the universality of human rights (Cançado Trindade, 2009; and Lindgren-Alves, 2018), there is literature that points to a consequent invisibility of alternatives to the capitalist development model forged in the North (Bingel and Muñoz, 2020). Alternatives of this kind would have emerged from constitutions promulgated by progressive governments in Latin America that, together, are called part of the phenomenon of *Maré Rosa* (Panizza, 2006) or *Onda Rosa* (Silva, 2018). Specifically, the work will deal with the constitutions of Ecuador of 2008 and Bolivia of 2009 and their provisions that enshrine nature as a subject of rights and recognize the right to the Well To Live. Such devices are understood here as alternatives to development and as ways of challenging the hegemony of the international system.

2 THE BEGINNING OF THE FORMATION OF THE INTERNATIONAL HUMAN RIGHTS REGIME AND THE CONTEXT OF THE COLD WAR

John Gerard Ruggie (1993), in his article *Multilateralism: the anatomy of an institution*¹, defines multilateralism as an institutional arrangement endowed with general principles capable of prescribing the behavior of states encompassed by it. These principles are general since they would apply to all member countries of a given multilateral arrangement, regardless of their political and economic strength and conjuncture issues at each moment. According to the author, multilateral arrangements did not arise only after 1945; but their diversity and quantity grew considerably since the end of World War II.

Also according to Ruggie (1993), the preponderance of the United States at the end of the world conflict endowed the international order in the formation of multilateral contours, due to systemic issues intrinsic to multilateralism itself; as well as to American domestic conditions favorable to it. In terms of the system, multilateralism would build indivisibility among its members and a perception of diffuse reciprocity, so the schemes formed around it would be adaptable and enduring. As for the internal conditions of the U.S., it is noted that the country, under the presidency of Franklin Delano Roosevelt, would no longer be prone to isolationism traditionally practiced and that its electoral system and the transparency of its internal and external policies would give legitimacy to the arrangement architected from Washington, reducing the uncertainties of other states in adhering to it.

As, at the end of World War II, the United States already emerged as the largest economic, political, and military power in the world, even with the perceived rivalry with the Soviet Union, the United Nations was thought of as multilateral bases and to assure those who bear the burden of facing Nazifascism the rights to regulate world peace and security. To this end, a decision-making condominium occupied by the holders of permanent seats in the UN Security Council was constituted, as a kind of arrangement capable of hovering over the national rivalries of its occupants (Silva and Boff, 2017). As such an arrangement could be allegedly contrary to the Principle of Sovereign Equality preached by its occupants and present in the Charter of St. Francis, it was also necessary to create an organ through which all future members of the organization had speech and voting space. Thus, the General Assembly was created as the maximum expression of the aforementioned Sovereign Equality, although its decisions are not binding (Silva and Boff, 2017).²³

The creation of the UN and other multilateral arrangements from it was premised on a liberal view of International Relations, according to which the law would be the ideal instrument of cooperation between states and the maintenance of world peace. Democracy and free trade would be important components of

¹ RUGGIE, Gerard John. *Multilateralism: The Anatomy of An institution*. In fashion: RUGGIE, John Gerard (Org.), *Multilateralism Matters: The Theory and pRaxis of An institutional form*. New York: Columbia University Press. Pp.3-47.

² SILVA, Karina de Souza; BOFF, Bruno Ricardo. We, the people of the United Nations: eurocentrism excluding the pluriversity of the UN. In fashion: SCHMITZ, Guilherme de Oliveira; ROCHA, Rafael Assumpção (org.). **Brazil and the United Nations System: challenges and opportunities in global governance**. Brasilia: Ipea, 2017. Pp. 59-88.

³ Op. Cit.

this, as would the creation of institutions and a logic of collective security (Muñoz, 2017). The same liberal view sees international regimes as a set of principles, rules, norms, and decision-making procedures capable of converging the expectations of different international actors around a given theme; being, therefore, an intervening variable between basic structural causes of the international system (such as interest and power) and its consequences (Krasner, 1982). The emergence of international regimes would happen, still according to the liberal paradigm of International Relations, due to the rationality of states and their perception that, from such formations, the dynamics of the international system would be more predictable. In this way, they would have their action constrained by the commandments of the regimes existing in certain times and spaces.⁴⁵

By the theory of international regimes, international organizations, such as the United Nations, would be a clear instrument for putting their principles, rules, norms, and decision-making procedures into practice, creating a complex interdependence between states (González, 2013). As said, the UN was thought out based on these liberal premises, and Article 1 of the Charter of St. Francis is an example of this, because it lists the objectives of the organization then in formation, among which is the promotion of and respect for human rights. From the signing and ratification of this international treaty, what is now called the international human rights regime has begun to be formed. The discourse behind it was in the need to have unconditional protection for any individual, for the simple fact of existing as a human being, and through certain basic guarantees to be ensured regardless of belonging to any political or social organization (Cançado Trindade, 2009). It happens that the document did not specify what prerogatives would be protected by the regime in training. This was only done when the United Nations General Assembly approved, in 1948, the Universal Declaration of Human Rights, which enshrined the indivisibility and universality of human rights, even in a world divided into the socialist, capitalist, and third-world blocs (Cançado Trindade, 2009).⁶⁷⁸⁹

⁴ MUÑOZ, Enara Echart **International relations**. *In fashion*: MUÑOZ, Enara Echart; BATISTA, Cristiane (org.). **Theory and practice of politics**. Curitiba: Appris, 2017.

⁵Op. Cit.

⁶ GONZÁLES, Laura Zamúdio. **International organizations: ¿Instruments the actors?** *In fashion*: LEGLER, Thomas et al (org.). **Introducción a las Relaciones Internacionales: Latin America and the Global Policy**, Oxford University Press: Mexico City, 2013. Pp. 146-158.

⁷ The Charter of St. Francis, or Charter of the United Nations, is the constitutive treaty of the UN; and article 1 reads as follows: "Article 1. The purposes of the United Nations are 1. To maintain international peace and security and, to this end: to take effective measures collectively to avoid threats to peace and to suppress acts of aggression or any other breach of peace and to arrive, by peaceful means and by the principles of justice and international law, an adjustment or settlement of disputes or situations that may lead to a disturbance of peace; 2. Develop respectful relations between nations, based on respect for the principle of equal rights and self-determination of peoples, and take other measures appropriate to the strengthening of universal peace; 3. Achieve international cooperation to solve international economic, social, cultural, or humanitarian problems, and promote and encourage respect for human rights and fundamental freedoms for all, regardless of race, sex, language, or religion; and 4. To be a center designed to harmonize the action of nations to achieve these common goals."

⁸ CANÇADO TRINDADE, AntôAugustus. **The Legacy of the Universal Declaration of Human Rights and its trajectory over the past decades**. *In fashion*. GIOVANETTI, Andrea (org.). **The 60th anniversary of the Universal Declaration of Human Rights: achievements of Brazil**. Brasília: Funag, 2009. Pp. 13-46. Available in: http://funag.gov.br/loja/download/547-60-Anos_da_Declaracao_Universal_dos_Direitos_Humano_Conquistas_do_Brasil.pdf. Accessed July 29, 2021.

⁹ Op. Cit.

The Universal Declaration of Human Rights was approved by the United Nations General Assembly, with the favorable vote of 48 of the body's then 58 members and without any contrary vote. The declaration was able to bring together, in a holistic approach, civil and political rights, and economic, social, and cultural rights and housed protective dimensions recognized by capitalist and socialist states (Cançado Trindade, 2009), although unequally. A first look at the process described here may corroborate some liberal premises of International Relations because it could be seen that the document had wide acceptance by the society of States and that they were rationally willing to cooperate. After all, they saw in it a path with lower costs for the achievement of their interests. On the other hand, a more careful analysis points out that, even if the resolution originating in that declaration had no contrary vote, it had abstentions from the countries belonging to the socialist bloc; which denotes protest to its wording. Moreover, as highlighted above, the General Assembly, even if it is seen as the most democratic body of the UN, does not have the power to issue binding resolutions; the declaration did not create legal obligations for the member states of the organization, which facilitated its adoption.¹⁰

Indeed, although the Soviet Union was on the side of the winners of World War II and holds a permanent seat on the United Nations Security Council, most of the multilateral documents and institutions that founded the post-war world order reflected (and still reflect) values present in the formation of European and American society and politics. Thus, socialist countries, under Soviet leadership, had the perception that the Universal Declaration of Human Rights would favor bourgeois rights. The very idea of the universality of human rights, present in the aforementioned document, for example, can be understood as the fruit of a Western Christian idea that every human soul would be seen equally through the eyes of God (Costa da Silva, Braga, and Milani, 2015).

The concept of hegemony formulated by Robert W. Cox (1996)¹¹ characterizes it as a combination of material capacity, ideology, and institutions, so, under the lens of such formulation, the Soviet Union's questioning of the prevalence of civil and political rights in the Universal Declaration of Human Rights would have as its American hegemony. The three constitutive elements of hegemony, in Cox (1996)¹², would guarantee stability when coherently embedded, as they would cause the weaker actors to take the configuration of power in force as legitimate and part of the interests of the strongest actors as general interests. Now, the multilateral institutions formed from the creation of the UN were the result of the American leadership position at the end of World War II, as Ruggie (1993) asserted, and, consequently, legitimized this position. Moreover, the aforementioned universality with which human rights were endowed spread values present in Western ideas to the whole world (Costa da Silva, Braga, and Milani, 2015), also contributing to the hegemony of the United States. Thus, disputing which prerogatives would

¹⁰ Op. Cit.

¹¹ COX, Robert W. *Social forces, States and world orders: beyond International Relations Theory. In fashion: KEHONE, Robert O. Neorealism, and its critics*. New York: Columbia University Press. Pp. 204-254.

¹² Op. Cit.

be universally considered fundamental to human dignity within a multilateral institution meant putting to the test the configuration of power around the American prevalence information at the time.

The fact that there are controversies about which guarantees should be considered as part of the set of human rights is made clearer by the subsequent difficulty of drafting a document with binding commandments for the protection of human dignity. The short period of preparation of the declaration of 1948 was not repeated when the formulation of treaties capable of creating legal obligations, was due to the lack of compatibility between the ideals present in the capitalist bloc and that of the socialist bloc. The drafting of a protective treaty was carried out by the Commission on Human Rights and was made throughout the period between 1947 and 1966 (Cançado Trindade, 2009) when the United Nations went through an abstentionist phase in terms of protection of human dignity (Kings, 2006). The year 1951 was key to the formation of the international human rights regime, because it was marked by the decision that the impasses between capitalist and socialist ideologies would be solved by the adoption of two different treaties, one for the positiveization of civil and political rights, and the other, providing for economic, social and cultural rights. The official justification for the elaboration of separate pacts was the fact that the first rights group would depend on the abstention of the State and would be of immediate applicability, while the second group would depend on state actions and would be of programmatic applicability (Cançado Trindade, 2009).¹³

From a critical perspective of human rights, such as that adopted by Joaquim Herrera Flores, the recognition of human dignity cannot be dissociated from the historical and political context in which it happens. Unlike jus-naturalist thought, which considers the set of prerogatives analyzed as something inborn to the human being, the critical perspective considers the concept of human rights as the fruit of political relations. The elaboration of two distinct pacts to protect human dignity can be read through such lenses, perceiving the phenomenon through bipolarity present at the time of the Cold War. Similarly, the justification that civil and political rights have immediate applicability, while economic, social, and cultural rights do not have them, can be understood as a greater influence of the United States in multilateral organizations than of the Soviet Union. Thus, even if one perceives the existence of two pacts protecting human dignity, it is possible to affirm that the hegemonic perspective forged from the West prevailed in the formulation of the universality of human rights (Costa da Silva, 2020).

The dispute over which prerogatives, in particular, would be encompassed by the set of human rights is seen as a mirror of the formation of a liberal hegemonic order under the American leadership constantly questioned by the socialist ideas of the Soviet Union. The rivalry between the capitalist and socialist blocs could already be witnessed when the Universal Declaration of Human Rights was voted on in 1948, but it became clearer in the process of drafting the Covenant on Civil and Political Rights and the Pact of Economic, Social and Cultural Rights, which contain legal obligations to its member states.

¹³ This is the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights; both from 1966.

Together with the Universal Declaration of Human Rights of 1948, the Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights form the so-called International Charter of Human Rights; however, even today, Russia is not a member of the first pact, and the United States is not a member of the second.

3 THE IMMEDIATE POST-COLD WAR AND THE RECOGNITION OF THE HUMAN RIGHT TO DEVELOPMENT

The 1990s were marked by a certain optimism, as the end of the Cold War brought hope that the international agenda would not be marked exclusively by security-related issues (Reis, 2006). The perception of the expansion of agendas was felt within the United Nations, through attempts to institutionalize matters previously marginalized in the organization's discussions. To this end, a series of conferences on social issues took place throughout this, which became known as the decade of conferences (Lindgren-Alves, 2018). The optimism of the then was settled on the idea that liberal democracy and the market economy were the only paths to be pursued by humanity since the dissolution of the Soviet Union (Mounk, 2019). Together with him, there was a perception that the greatest threat to human beings was no longer international, but within the States (or represented by the States themselves) (Lindgren-Alves, 1994; and Reis, 2006).

One of the best-known conferences held in the 1990s was the World Conference on Human Rights, which took place in Vienna in 1993, and the sessions of the preparatory committee for the event in previous years have already hosted different positions between the countries of the North and The South (Lindgren-Alves, 1994). It is worth remembering that, to a large extent, the optimistic expectations experienced at the immediate end of the Cold War did not consider the impoverishment of the South, the resurgence of religious fundamentalism, the increase in unemployment, migratory pressures, and the growth of nationalism and xenophobia in Europe (Lindgren-Alves, 1994). Moreover, the feeling that the State and the domestic environment represented the greatest threat of the time to human dignity, and no more disputes at the international level, fostered a dilemma about the scope of state sovereignty, that is, whether it should be conditioned on the capacity of a given State to guarantee human rights within its territory (Kings, 2006).

The preparation for the 1993 conference and the event itself mark a trend that has been witnessed since the last decades of the Cold War and that displaced the clashes of the international political arena from the East-West axis to the North-South axis. Specifically, in the field of human rights, northern countries saw the implementation of policies related to the right to equality as a threat to individual freedoms, while southern countries were in the process of being in the middle of the requirement to implement civil and political rights (Lindgren-Alves, 2018). The aforementioned controversy involving sovereignty also divided the two groups of States, because the mechanisms of humanitarian intervention, supposedly used to guarantee the application of human rights, began to suffer questions due to the perception of selectivity in their employment (Reis, 2006). From the South, it was feared that humanitarian

intervention would be another instrument of interference of the North in search of its interests, under the official discourse that some states (located in the global South) would not be able to render effectiveness to human dignity. The humanitarian interventions, then, were not seen as politically neutral because they allegedly carried a Western morality against countries that did not fit it (Costa da Silva, Braga, and Milani, 2015).

The universalization of human rights from the liberal experience formed in the North-West, as Costa da Silva (2020) says¹⁴, despite the demands of the Cold War era, ended up legitimizing a hegemonic order of power. It happens that not all countries of the globe perceived the benefits of this world order, nor did they share the optimism present in the society of States at the end of the 20th century; therefore the questions coming from the South and based on the concern with the guarantee of Sovereign Equality can be understood as unmet demands. In particular, such demands came from states whose populations were, in large numbers, victims of colonization when the documents constituting the International Charter of Human Rights were drawn up. These states and populations, therefore, were not able to have a minimum voice at the beginning of the process of formation of the international regime now under analysis.

According to Sanahuja (2019)¹⁵, the Western idea of universality is responsible for marginalizing the knowledge produced in times and spaces other than the modern West and for considering it a *threat to the status quo* of current hegemony. Thus, the universal characteristic of human rights forged from liberal ideology made other ideas about human dignity invisible (Costa da Silva, 2020). Still, universality was recognized as one of the great gains at the end of the Vienna Convention of 1993, by overcoming the so-called cultural relativism. Cultural relativism can be understood as questioning the ethnocentric character with which the universality of human rights was formed, especially during the elaboration and adoption of the Universal Declaration of Human Rights of 1948. It is estimated that, in 1948, about two-thirds of humanity lived under the regime of colonization, so most human beings did not participate in the construction of said universality and did not have their historical and cultural issues encompassed by this concept.¹⁶

According to Lindgren-Alves (2018), the 1993 conference would have been important to provide legitimacy to the expression "universal" present in the title of the 1948 document and, consequently, to the rights recognized there. This overcoming cultural relativism was only possible due to the foresight of

¹⁴ COSTA DA SILVA, Danielle. The contribution of the Southern perspectives to the universal conception of human rights in the international arena: conflict or complementarity? In: 12th Meeting of the Brazilian Association of Political Science, 2020, João Pessoa/PB. **Electronic Annals**. Rio de Janeiro: ABCP, 2020. Available in: <https://cienciapolitica.org.br/web/eventos/12o-encontro-abcp/anaais?page=9>. Accessed July 23, 2021.

¹⁵ SANAHUJA, José Antônio. **Ausencias and exclusiones: Una mirada reflexiva sobre la constitución de las Relaciones Internacionales como disciplina**. In *fashion*C: Lozano, A. et al. (coord.). **Cien años de relaciones internacionales?: disciplinariedad y revisionism**. Mexico City: Siglo XXI Editores, 2019. P.p. 132-153.

¹⁶ The universal character of human rights was already present in the first article of the declaration and the Vienna 1993 program of action, according to which: "1. *The World Conference on Human Rights reaffirms the solemn commitment of all states to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all following the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question*". (Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>. Accessed August 12, 2021).

prerogatives to development and self-determination as part of the all human rights set, in the Vienna Declaration and Program of Action of 1993, drawn up during the 1993 World Conference on Human Rights. It should be noted that the recognition of such rights would serve to address both the south's discontent with the unperceived benefits of the current international order, as well as the discomfort with the selective use of the mechanism of humanitarian interventions.

In particular, on the right to development, the Vienna Declaration and Programme of Action of 1993, adopted unanimously by conference participants, affirms it as universal and inalienable and provides for concrete actions for its implementation, such as international cooperation (Article 10 of the Declaration), the relief of external debts (Article 12 of the declaration) and the fight for an end to extreme poverty (Article 14, declaration). The document also brings the concept of sustainable development (Articles 17, 20, and 17 of the declaration), much discussed during the United Nations Conference on the Environment and Development of 1992, and that challenges economic growth to social gains and respect for the environment, to allow the satisfaction of the needs of present and future generations.¹⁷

Although it is understood that the universality of human rights was legitimized after the Vienna Conference of 1993 and that, consequently, there is a relative consensus on development as a human right; it is necessary to recognize that the ideas of human rights and development are not politically neutral. Thus, as much as official speeches try to pass on an image of neutrality, behind them will always be the interests of social groups, governments, states, or international organizations (Alvarenga and Muniz de Melo, 2019). As already pointed out, the conferences held throughout the 1990s were attempts to institutionalize new agendas within the United Nations, in an immediate post-Cold War context. Institutions, according to Robert W. Cox, are a way of negotiating limits to domination within a hegemonic order and thus empowering the interests of stronger actors with seemingly universal contours. Institutions, according to Cox, are one of the pillars of hegemony, together with material capacity and ideas, so the institutionalization of development as a human right, in the light of the critical approach of International Relations, can be taken as an instrument for maintaining the current world order. This is because its recognition in Vienna in 1993 was a way of establishing limits to hegemony in exchange for greater legitimacy for institutions forged from north-Western universalism.¹⁸¹⁹²⁰

It is worth noting that, at the end of the Cold War, liberal democracy and the market economy were seen as the only way to be pursued by humanity. In this context, the global popular imaginary was permeated by the perception of a lack of alternatives to the search for capitalist development, distancing

¹⁷ According to the document: "10. *The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights*" (Available in: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>. Accessed August 12, 2021).

¹⁸ It is worth mentioning that, although the Vienna Conference of 1993 recognizes human rights as universal and the existence of the human right to development in a very significant way, such ideas pre-empt it. Development had already taken a leading role in international politics since the beginning of the Cold War, and the human right to development was recognized by the UN General Assembly, by Resolution 41/128 in 1986.

¹⁹ Op. Cit.

²⁰ Op. Cit.

from politics the debates around such a search (Bringel and Muñoz, 2020). Thus, even attempts to adjective the concept of development, such as the one that gave rise to the aforementioned expression "sustainable development", is used by political and economic actors to strengthen the capitalist system itself (Bringel and Muñoz, 2020). Following this line of reasoning, the adjectivations, would not be alternatives to development, but alternatives to development (Acosta, 2016), because they plan actions and prescribe behaviors still within the logic of capitalism's production and effort for economic growth.²¹²²

As well as sustainable development (and other additions to the word development), international development cooperation, provided for in the 1993 Vienna Declaration and Plan of Action, can also be the subject of critical analysis. It began to be practiced after World War II with the implementation of the Marshall Plan and was disseminated with the advance of Afro-Asian liberations in the second half of the twentieth century. Based on practices such as development cooperation, the former metropolises tried to maintain a level of influence in the states that had recently freed themselves from colonization, by conditioning the transfer of resources to the adoption of certain public policies. Multilateral mechanisms of global financial governance, such as the International Monetary Fund and the World Bank, also condition the transfer of resources to the adoption of macroeconomic adjustments and the cutting of spending by the recipient and may generate considerable social losses (Barbé, 1997).

Universality and the right to development were enshrined by the 1993 World Conference on Human Rights, in the immediate post-Cold War, a propitious moment for the disregard of alternatives to development and the logic of capitalist production, as highlighted by Bringel and Muñoz (2020). According to Hannibal Quijano (2000), development reproduces a certain pattern of power, so that what develops is not a country, but the power structure centered on the duality between capital and work. Thus, the world classification of developed and underdeveloped countries supports, on a global scale, this pattern, which was inherited from colonization. The human right to development, although seen as an achievement of the countries that were victims of colonization, when combined with universalism, helps to shape the forms of state around a model considered unique and linear. The persecution for this model ends, in fact, by reinforcing the structure of hegemony in force, based on the capitalist economy and which, according to Quijano (2000), dates back to colonial domination.²³

4 THE RIGHTS OF NATURE AND THE GOOD TO LIVE AS ALTERNATIVES TO DEVELOPMENT

In the last decade of the 20th century, Latin America was also marked by a popular imagination that liberal democracy and the market economy were the only paths to be traveled toward development. Here,

²¹ BRINGEL, BRhine.; MUÑOZ, EEchart nara. *Imaginario sobre el desarrollo en América Latina: entre la emancipación y la adaptación al capitalismo*. In fashionC: OJEDA, T. y VILLARREAL, M. (Eds.). *Latin American critic thinkabout desarrollo*. Madrid: IUDC-UCM/ Los Libros de La Catarat, 2020. Pp. 55-73.

²² Op. Cit.

²³ Op. Cit.

the relationship between the United States and the region was at its best in decades, as American leadership was seen as more committed to human rights and was free from cold war-era contradictions (Panizza, 2006). It occurs that, during the 1990s, the optimism described here gave rise to disappointments about the models of liberal democracy and market economy, in a process of disbelief that can be attributed to institutional deficits of democracies recently installed in the region and to social deficits of economic reforms undertaken following the Washington Consensus (Panizza, 2006). Thus, the perception was created that, even under the democratic regime, different governments would not have been able to meet the demands of significant portions of Latin American societies. As a consequence, leaders identified with the political spectrum of the left came to power, in a phenomenon called by Francisco Panizza²⁴ (2006) as Maré Rosa.

The leftist governments embedded in the Phenomenon of Maré Rosa were elected at a time when critical thinking to neoliberalism was struggling to establish itself. Even so, these leaders succeeded in winning the elections of their respective countries with a speech disapproving of the neoliberal cutting reforms of their predecessors and generated expectations of progress in the democratic regimes of each state, possibly imposing new agendas on the public debate (Pereira da Silva, 2018). Since then, there was a greater breadth of breath on the part of movements that called in to check the "myth of development", through postcolonial and post-developments intellectual propositions. Such movements called for attention to the knowledge produced by groups of marginalized people since colonization, representing alternatives to the development model (Bringel and Muñoz, 2020).²⁵²⁶

Although it is understood that the political cycle of Maré Rosa came to an end in the mid-2010s, some constituent processes were able to enshrine, within the magna carta of the states where they took place, these are alternatives to development. These are, noded, the Constitutions of Ecuador and Bolivia, which foresee the rights of nature and the right to good living, as ways away from extractive and dependence on the international market (Lang, 2016). The Constitution of Ecuador, in its title II, chapter II, recognizes nature (²⁷*or pacha mama*) as a subject of rights, as well as the right to good living through the perception of benefits from the environment and natural wealth by all and all. The Living Good is also present in chapter eight of the current Ecuadorian constitution, called rights of protection. The Constitution of Bolivia, in turn, does not bring in such an explicit way ²⁸²⁹*Pacha Mama* is a subject of rights but recognizes the

²⁴ Cf. PANIZZA, Francisco. *La marea pink*. **OPSA Conjecture Analysis**, 8. Rio de Janeiro: OPSA, 2006; and SILVA, Fabrício Pereira da. The end of the pink wave and neogolpism in Latin America. **South American Journal of Political Science**. Platoons, v. 4, n. 2, 165-178. UFPel, 2018.

²⁵ Leaders such as Hugo Chávez in Venezuela; Nestor Kirchner in Argentina; Lula da Silva, in Brazil; Evo Morales in Bolivia; and Rafael Correa in Ecuador.

²⁶ Op. Cit.

²⁷ LANG, Mirian. Introduction: alternatives to development. *In fashion*: DILGER, Gerhard; LANG, Mirian; PEREIRA FILHO, Jorge (org.). **Decolonize the imaginary**: Debates spost-extractivism and alternatives to development. São Paulo: Editora Elefante, 2016. p. 24-45.

²⁸ Article 71 of the 2008 Constitution of Ecuador says the following: "*La naturaleza o Pacha Mama, donde se y realiza la vida, tiene derecho a que se respete integralmente su existencia y el mantenimiento y regeneración de sus ciclos vitales, estructura, estructura, e procesos evolutivos. [...]*".

²⁹ Article 74 of the 2008 Constitution of Ecuador reads as follows: "*Las personas, comunidades, pueblos y nacionalidades tendrán derecho a beneficiarse del ambiente y de las riquezas naturales que les permitan el buen vivir [...]*".

prerogative of every citizen to protect it and to claim its protection, even if the whistleblower is not directly affected by possible degradation (Busso, 2020). The Good Living can be infrared, within the current Bolivian constitutional text, from the recognition of plurinational as a model of state and the right to self-determination of the peoples originating in that country.³⁰³¹³²

Recognizing the rights of nature means shifting the axis of the productive system exclusively centered on the human being to all that is alive, challenging the anthropocentric logic of capitalism. Thus, nature is not seen as a source of resources available to human societies, but as a holder of prerogatives by itself. Then, there is a departure even from the idea of sustainable development, whose main objective is the preservation of natural resources for the use of future generations. Nature as a subject and rights holder, unlike the more traditional propositions of sustainable development, looks at *respect for Pacha* as an end in itself.

The Living Well, in turn, when transformed into a constitutional guarantee, calls into question the model of development as the only way, because it begins to see the ways of life of the original peoples resistant to colonization and coloniality. Indigenous knowledge often does not adopt a linear conception to interpret the world and, consequently, does not establish a delayed stage of underdevelopment and an advanced stage of development to be sought (Acosta, 2016). Bem Viver considers this knowledge, marginalized from the formation of human knowledge, to assume a socio-biocentric posture (Acosta, 2016), welcoming many lives and capable of integrating the human and the non-human. Thus, the alternative proposed by The Living Well subverts universalism, to the extent that it considers the diversity existing in human groups to foster a community life between society and nature (Acosta, 2016).

It is noted that combined, the rights of nature and the Living Good can challenge the model of linear development and the idea of universality, both forged from the North and exalted in Vienna in 1993. By representing an alternative to development (including their adjective forms), they break with the classification of the countries of the world (and their populations) according to their ability to integrate into a certain mode of production, distribution, and consumption. Moreover, they put universalism in check, because they recognize multiple worldviews (Lang, 2006) and the possibility of different forms of life living together under the same space and the same political institutions, ultimately contesting the concept of the nation-state (or one nation). The multinational and community characteristics of the Bolivian State, brought by the Bolivian Constitution of 2009, are the materialization of this idea.³³

³⁰ Article 34 of the 2009 Constitution of Bolivia reads as follows: "*Cualquier Persona, a título individual o en representación de una colectividad, está ejercitar para ejercitar las acciones legales en defensa del derecho al medio ambiente, sin perjuicio de la obligación de las instituciones públicas de actuar de oficio frente a los atentados contra el medio ambiente*".

³¹ "*Article 1. Bolivia se constituye en un Estado Unitario Social de Derecho Plurinacional Comunitario, libre, independiente, soberano, democrático, intercultural, descentralizado y con autonomías. Bolivia se funda en la pluralidad y el pluralismo político, económico, legal, cultural y lingüístico, dentro del proceso de integración del país*".

³² "*Article 2. Given the existence of precolonial nations and indigenous peoples and their ancestral domain over their territories, their free determination is guaranteed within the framework of the unity of the State, which consists in their right to autonomy, self-government, their culture, the recognition of their institutions and the consolidation of their territorial entities, according to this Constitution and the law*".

³³ Op. Cit.

It is worth mentioning that, even if the constructions analyzed now seek complementarity and balance between the human and the non-human and the recognition of times that do not submit to the designs of the economy, they do not mean a denial of technology and scientific technique. The rights of nature and good living aim to change the anthropocentric use and use of techniques (Busso, 2006). Here, it is possible to notice an approximation with what Milton Santos wrote about globalization, which, according to the author, is made possible by the technique in conjunction with politics. The way technical means and instruments are used is defined by politics, and if politics were not driven by the market, its use could happen so as not to produce perverse globalization (Santos, 2003). Similarly, *the rights of Pacha Mama* and *Bem Viver* do not preach a return to a period before modernity; instead, they seek to change how current technology and techniques are produced and employed, which is a political decision.

The challenge to universalism also does not mean the return to cultural relativism preached during the Vienna conference of 1993. Far from denying the importance of individual human rights, civil and political; *Bem Viver* aims to see different ecological, political, and cultural visions, of matrices away from extractive and Christian evangelization (Acosta, 2016). Thus, the criticism of Western universalism applied to human rights lies in the insufficiency charged by it to face the legalities of the times of colonial and imperialist exploitation, especially concerning inequalities and injustices. It is reinforced that this is not a use of cultural relativism, which ultimately relativizes what is right and what is human (Ballestrin, 2014); but the acceptance of human diversity made invisible by a process of homogenization. This process was initiated with colonization and endures, to remove the uniqueness of non-Western societies and replace them with a racial identity seen as incapable of producing knowledge and culture (Quijano, 2005). Unlike homogenizing universality, *Bem Viver* seeks a logic of pluriversality as a universal project (Mignolo, 2008), so that there is the coexistence of multiple systems.³⁴

Although the rights of nature and good living do not deny the use of technology or the importance of human rights, they represent a challenge to Western hegemony, sustained, according to Robert W. Cox, by three pillars: material capacity, institutions, and ideology. The challenge to material capacity lies in the fact that these constructions take nature not as a resource for the disposition of human beings, but as an inseparable part of and that surrounds societies, resisting the integration of all the peoples of the world into capitalism. Institutions are called into question, since, when adopting the logic of pluriversality, the interests of the dominant peoples are no longer considered general and universal interests to be pursued. Thus, the rights of nature and good living go beyond a mere negotiation of limits to exploitation. Hegemonic ideology, on the other hand, is challenged when one takes into account knowledge produced in times and spaces other than the modern West and consequently breaks with the universal ordering of people and knowledge by their origin. ³⁵

³⁴ QUIJANO, Hannibal. Coloniality of power, Eurocentrism, and Latin America. *In fashion*: LANDER, Edgardo (org.). **The coloniality of knowledge: eurocentrism and social sciences. Latin American perspectives.** Buenos Aires: Clacso, 2005. Available in: <http://biblioteca.clacso.edu.ar/ar/libros/lander/pt/lander.html>. Accessed July 28, 2021.

³⁵ Op. Cit.

Although the alternatives to development are foreseen in the constitutional texts of Ecuador and Bolivia, the presidents and presidents identified as part of the Phenomenon of The Rose Tide, both in these and other Latin American countries, ended up adopting a neo-developmental and neoextractive logic. At the time, such leaders integrated the economies of their states into global value chains as commodity exporters, taking advantage of their high international prices at that time. This was done because it would be necessary for the implementation of social policies (Lang, 2016). In addition to deepening the dependence of economies on the international market, the practice has pushed progressive leaders away from part of their support base represented by indigenous movements and peasants.³⁶

The absence of implementation or partial implementation of the concepts of rights of nature and well-living does not prevent them from being possible and viable alternatives, especially if one considers the crisis of the coronavirus pandemic, which scans all the political and ethical dilemmas of today (Svampa, 2020). The worldwide wave of contagion by covid-19 empirically proved the existence of an unequal socio-economic system marked by injustices due to nationality, race, and gender; which could not be ignored by neoliberal governments, nor by major media vehicles (Milani, 2020). Latin American alternatives would open an important path in this scenario, because they approach globalization through the paradigm of care, which, as described by Svampa (2020), recognizes solidarity and interdependence as social and international bonds and jointly addresses social and environmental justice. The rights of nature and good living bring a relationship of integration and respect between human societies and nature, without one being considered far from the other. At the same time, they can perceive other times and marginalized spaces of capitalist globalization and rescue their uniqueness, without intending any kind of homogenization.

5 CONCLUSION

The word "development" is typical of the natural sciences and denotes the message of something that would naturally pass from one stage of evolution to another stage higher than the previous one. It was first applied to states by then-U.S. President Harry Truman in 1949 to differentiate less advanced, or underdeveloped, countries from more advanced or developed countries (Lang, 2006). This use of the expression was made at the early stage of the Cold War when the United States and the Soviet Union fiercely disputed zones of influence around the planet. At the same time, the current international human rights regime began to be formed, in a process that reflected an American hegemonic order in formation, under constant Soviet opposition. This fact is proven by the adoption of the Universal Declaration of Human Rights of 1948 by the United Nations General Assembly with the abstention of socialist countries; and the elaboration of two apart human rights pacts, one to provide for civil and political rights (understood as essential for human dignity by the capitalist bloc) and the other to provide for economic, social and cultural rights (understood as essential for human dignity by the capitalist bloc).³⁷

³⁶ Op. Cit.

³⁷ Op. Cit.

With the end of the Cold War, American hegemony and the liberal bases of the world order founded by it become clearer, and humanity becomes permeated by a feeling that there would be no alternatives to the models of liberal democracy and market economy present in the United States and Western Europe. The Vienna World Conference on Human Rights took place in 1993 under this spirit, but it was the scene of a series of discussions between the northern and southern countries. This is because the countries of the South did not realize the benefits of development preached by the North as a technical, scientific, and positivist model (Lang, 2006) and feared new ways of having their respective national sovereignties disrespected. Here, while the West demanded that civil and political rights be immediately implemented around the world, non-Western states demanded unfulfilled promises from the market economy and complained about the lack of pluralism of liberal human rights universalism. The issue was solved by the recognition of the human right to development, together with the universality of the whole set of guarantees understood as human rights.³⁸

The Vienna conference in 1993 would have given greater legitimacy to the international human rights regime, since, at the beginning of its formation, when the declaration of 1948 was taken, much of humanity was a victim of colonial domination. Thus, the recognition of the universality of human rights is pointed out as the great achievement of the 1993 meeting, because it was successful in overcoming the so-called cultural relativism (Cançado Trindade, 2009, and Lindgren-Alves, 1994). On the other hand, the legitimacy gained also served as an instrument to consolidate a trend of the 1990s to invisible alternatives to the development model based on capitalist modes of production and consumption. According to Quijano (2000 and 2005), the attempts to reproduce this model by the South replicate a pattern of power since the time of colonization. This pattern of power is constantly contested in Latin America, through the ways of life and worldviews of indigenous peoples who continuously resist the homogenizing tendencies of colonial domination.

Some forms of Latin American contestation and resistance were enshrined in the texts of the current Constitutions of Ecuador, 2008, and Bolivia, 2009, in the figures of the rights of nature and Good Living. Such constructions represent alternatives to development and not mere alternatives to development since they seek to break with anthropocentrism to see complementarity and interdependence between human societies and the environment. Although they originate in marginalized human populations of marginalized countries of the world order (Acosta 2016 and Lang, 2016), they challenge the western hegemony in force, by challenging its three pillars: material capacity, institutions, and ideology (Cox, 1996). Now,^{39,40} *the rights of Pacha Mama* and *The Well Living* are, together, an obstacle to the inclusion of all corners of the planet in world capitalism; they do not negotiate limits to exploitation, but resist it; and consider different worldviews from those formed in the North-West.

³⁸ Op. Cit.

³⁹ Op. Cit.

⁴⁰ Op. Cit.

The questioning of hegemony, as demonstrated, does not mean a denial of technology, or the importance of human rights. Instead, they preach a use of techniques away from the predatory logic adopted by a human being about nature. Moreover, they seek to include in the universal character of the guarantees present in the set of human rights other ideas of human dignity, to expand it (and not to restrict it). At a time when the pandemic the new coronavirus has seen all the flaws of the political and productive systems thought from the North-Western model (Svampa, 2020), it is necessary to consider alternatives such as the rights of nature and Good Living, not only the consequences of the pandemic are mitigated, but also for its causes to be addressed.

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