International responsibility of the state and the violation of human rights under the labor aspect due to the pandemic of Covid-19

ORIGINAL ARTICLE

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SUMMARY

Considering the great recession of the world economy, several states through their rulers, aiming at increasing economic indices through an adoured race for results, end up violating various human rights, including social rights that enjoy international protection. This unbridled search for economic stability through rapid growth is clashed with labor law, which has been suffering in a systemic way several violations consecrated not only in domestic law but also in international law. The present work aims through a careful analysis to
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demonstrate such violations of rights already enshrined internationally due to the Coronavirus pandemic and the possible international accountability of the State for such conduct based on international human rights protections.

Keywords: International Law, International Protection, Human Rights, International Responsibility, Labour Law.

INTRODUCTION

The end of 2019 will be recorded in world history by the emergence and rapid proliferation of a new species of virus of the Coronavirus family (Sars-Cov-2), resulting from a mutation in the already known viral species that is responsible for the pathology called Covid-19, which especially caused an acute respiratory syndrome. Little is known about this new pathology, which is why there are several health protocols to be followed according to the performance and improvement of certain groups that receive various treatment techniques. The health world is looking for a vaccine and effective protocols to treat and combat on-screen pathology.

The World Health Organization – WHO has declared a public health emergency of international relevance, recognizing the existence of health risks of international spreads of the virus and thus requiring coordinated global action to cope with the disease. Although the world has experienced other pandemics (such as the Spanish flu of 1918, the swine flu of 2009) there are several factors that contribute to this being a unique experience experienced by international society, especially considering the great level of current globalization (in which the world economy is interrelated), the need for distancing and social isolation in order to reduce contagion, eventually caused an economic downturn in several countries, the scarcity of some materials and the common worldwide interest in certain utensils (such as personal protective equipment, Coronavirus tests and ventilators used for intensive care of critically obese patients).

It is well known that these points of tension have serious reflections on the repercussions of the behavior of certain States in the context of international responsibility for violating international agreements, conventions and treaties in the face of the pandemic. It is also
necessary to carefully analyze the internal measures adopted by states that are compatible with the international protection of human rights, such as, for example, the effectiveness of the measures adopted to protect the lives and health of individuals in the face of the pandemic. It should also be considered the compatibility of human rights with possible measures restricting individual rights to contain the advance of the virus, as well as the public and economic policies developed to guarantee basic economic and social rights to the vulnerable population.

This paper aims to outline an overview of the current global situation and how some states are behaving in the face of the situation, narrating some violations and raising some questions about the possible accountability of the state before international courts, especially in issues related to labor law.

1. OF THE INTERNATIONAL RESPONSIBILITY OF THE STATE

The state’s accountability occurs for acts that violate the legal order and cause damage to the very existence of the rule of law, to the extent that the limitation of the exercise of state power through the establishment of a state governed according to democratically established norms. State responsibility is not restricted to national borders, but also applies to the field of international law, especially in the face of the growing relationship between different peoples and their countries, resulting in new commitments between states, especially with regard to the protection of human rights.

Although it is an extremely relevant theme to international society, there is no codification of the subject in specific international treaties, and it is up to the doctrine and international jurisprudence to apply understandings on the subject. On this point, the United Nations Commission on International Law has adopted a text containing a draft of the International Convention on State Responsibility for illicit activities forwarded to the UN General Assembly to ensure the feasibility of adoption of the international document, although to date it has not yet materialised.

Therefore, in order to better understand the panorama of the state’s international responsibility, we must understand this institute as a means of holding a state accountable
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for the practice of an act that is attentive to international law, such as the rights or dignity of another State, or even against individuals subject to jurisdiction, providing for the need for compensation for the damage and aggravations unjustly caused (MAZZUOLI, 2016). Moreover, it is important to highlight that international responsibility is an intuitive concept, since “[…] to the extent that actions are practiced in violation of the rights of others, it is up to the one who caused the damage the duty to repair it” (GUERRA, 2017, p. 181). Thus, we can affirm that if a State violates individual or collective law it must answer for its abusive conduct through international accountability.

There are two main theories regarding the legal nature of the state’s international responsibility. They are those of a subjective nature who argue that international responsibility will only occur through the verification of guilt or deed in the behavior attributed to the State. In the other perspective there is the objective theory, which holds that state responsibility stems from the mere practice of the international illegal act, and it is unnecessary to verify the reasons for the spurious act. It has been used, especially, in cases related to the international protection of human rights and the environment.

It is noteworthy that among the main forms of international accountability of the State are the following forms: a) direct responsibility, that is, that practiced directly by the State itself directly from the government or government agency or from those who do so on its behalf; b) indirect or subsidiary liability is that practiced by a private party due to the fault of the lack of state supervision; c) by action or commissive stems from a commissive action of the State or its agents; d) by default, is that which arises from an omission of the State in the practice of an act required by international law, in respect of which it had a legal duty to practice (MAZZUOLE, 2016); e) conventional liability is that which results in non-compliance or violation of an international treaty to which the supposedly transgressive State is a party; f) Criminal liability occurs when the unlawful act is committed by the State due to a violation of a rule arising from international customary law.

In view of the foregoing, we can affirm that the State will always be responsible when an unlawful act takes place in accordance with the guidelines of international law, thus the duty to redress the damage caused.
2. INTERNATIONAL RESPONSIBILITY OF THE STATE IN VIEW OF THE COVID PANDEMIC – 19

The end of 2019 will be recorded in world history by the emergence and rapid proliferation of a new species of virus of the Coronavirus family (Sars-Cov-2), resulting from a mutation in the already known viral species that is responsible for the pathology called Covid-19, which especially caused an acute respiratory syndrome. Little is known about this new pathology, which is why there are several health protocols to be followed according to the performance and improvement of certain groups that receive various treatment techniques. The health world is looking for a vaccine and effective protocols to treat and combat on-screen pathology.

As ongoing research has taken place in China, with the city of Wuhan as its epicenter in the city’s seafood market (indicating, according to experts, that the viral mutation stemmed from transmission between exotic and human animals), spreading rapidly among the city’s humans, culminating in several restrictive measures by the Chinese government.

However, there are claims that the delay in reporting the existence of the new viral species and restrictions on access to information and the transmission of scientific data have not allowed other countries to have the exact extent of the impact of the advancing virus. In western countries, the advance and lethality of the Covid-19 were felt appreciably in European countries with wide openness to tourism, especially Italy, Spain, France and England. With the rampant proliferation of the virus, the World Health Organization – WHO declared a public health emergency of international relevance, recognizing the existence of health risks of international spread of the virus and thus requiring coordinated global action to cope with the disease.

The measures and recommendations adopted failed to curb the proliferation of the virus, spreading in an intercontinental and widespread manner, leading the WHO to declare on March 11, 2020 the contamination of the Covid-19 outbreak of epidemic to pandemic, officially recognizing that the virus has spread throughout the world. By April 2020, the new Coronavirus had nearly two million cases worldwide, spread across more than 185 countries, with more than 1,2 million deaths[3].

Although the world has experienced other pandemics (such as the Spanish flu of 1918, the
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Swine flu of 2009) there are several factors that contribute to this being a unique experience experienced by international society, especially considering the great level of current globalization (in which the world economy is interrelated), the need for distancing and social isolation in order to reduce contagion, eventually caused an economic downturn in several countries, the scarcity of some materials and the common worldwide interest in certain utensils (such as personal protective equipment, Coronavirus tests and ventilators used for intensive care of critically obese patients).

It is well known that these points of tension have serious reflections on the repercussions of the behavior of certain States under international responsibility, such as China’s delay in reporting the outbreak of respiratory syndrome cases, the retention of medical items destined for other countries by the United States of America – in an act called modern piracy by the German authorities and also criticized and denounced by other world leaders. It is also necessary to examine carefully whether the internal measures adopted by states are compatible with the international protection of human rights, such as the effectiveness of the measures adopted to protect the lives and health of individuals in the face of the pandemic. It should also be considered the compatibility of human rights with possible measures restricting individual rights to contain the advance of the virus, as well as the public and economic policies developed to guarantee basic economic and social rights to the vulnerable population.

Furthermore, it is certain that further questions will be raised about the behavior of international law as well as human rights in the face of the COVID-19 pandemic. But for the moment, it is only up to us to analyze some points of these repercussions on aspects of the state’s international responsibility.


The international protection of human rights, as we know today, is the result of an extremely recent phenomenon in the history of humanity, having as its background the last movements of the nineteenth and twentieth century, especially that of American and French Revolutions. However, several events followed in order to make possible the autonomous existence of a
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branch of law intended to confer international protection on conduct violating essential rights practiced within the internal scope of each State.

Although, only after The Second World War, as a form of aversion to the colossal violations of law and with the aim of avoiding future actions of this magnitude was that international human rights law began to gain contours and present itself as an autonomous branch of law, building its own hermeneutic principles and instruments, in addition to initiating the positiveization of its norms in international treaties and conventions that come to bind the internal action of states.

It is important to highlight that the internationalization movement of the protection of human rights was slow, but can be observed in events such as the establishment of minimum rules to armed conflicts (humanitarian law), movements opposed to slavery, the creation of the League of nations, brought by the victors of the first post-war war, and the regulation of the minimum rights of workers desired by the International Labor Organization – OIT, which aims at promoting the universalization of the principles of social justice in the area of work, noddedly through international cooperation to improve the living conditions of the worker, guaranteeing the right to a fair and dignified standard in working conditions. Therefore, its mission is to promote and ensure the right to decent work, the opportunity for men and women to have a productive and quality work, in conditions of freedom, equity, security and human dignity, being considered a fundamental condition for overcoming poverty, reducing social inequalities, ensuring democratic governance and sustainable development.

Therefore, international human rights law is the branch of law that confers protection and encourages the promotion of rights that are essential and indispensable for the person to have a dignified life, focusing on cases where domestic law does not adequately protect them or does not act to prevent and remedy a violation. It is important to draw the difference between human rights and fundamental rights, the first refers to international norms, to the extent that they relate to public international law; while fundamental rights are recognised and positive in the national law of the State.

Human rights have as characteristics universality, inalienability, irrenunciability, imprescritibility, indivisibility, essentiality, complementarity and relativity. The state’s international responsibility for human rights violations is directed to examining and
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determining whether States will take all necessary internal measures to prevent and punish possible human rights violations in their territory or over their jurisdiction. Here we want to be held internationally responsible for the State through international human rights bodies.

Thus, given the context of the pandemic of the new Coronavirus, a series of measures must be taken to safeguard the human rights of the population, noddedly the right to life and the right to health. It is also indispensable that economic and social rights be promoted to the population most vulnerable and most impacted by the pandemic, and the State is responsible for adopting effective internal measures to cross this phase.

In addition, the confrontation of Covid-19 also requires states to restrict some individual rights, but should do so only to the extent necessary and without promoting any unjustified distinctions between the population. Such limitations, however, must be compatible with the international protection of human rights, and if certain rights provided for in international documents are suspended, there should be immediate communication to the Secretary General of the OEA (Organization of American States) or the ONU (United Nations in Brazil).

It is noteworthy that the Inter-American Commission on Human Rights (IACHR) has issued resolution No. 1/2020[4] on the pandemic and human rights in the Americas. These are international documents aimed at guiding the action of the States of the American Continent in the fight against the new Coronavirus to be based on respect for and promotion of human rights. Thus, the IACHR establishes several specific recommendations for the protection of human rights, with special attention to the effectiveness of the right to health and other social and cultural economic rights; proportionality and transience of restrictive measures and the peculiar attention that should be given to vulnerable groups – such as the elderly, children and adolescents, LGBT population, Afrodescendants and people with disabilities.

Therefore, if states do not take the necessary internal measures to protect and promote human rights in the pandemic situation, injured individuals or legal representatives, after the exhaustion of domestic resources, may claim international accountability of the State to international human rights protection bodies and tribunals.
4. LABOR RIGHTS IN THE INTERNATIONAL SEARA: RESPONSIBILITY OF THE STATE IN CASE OF SERIOUS VIOLATION OF HUMAN RIGHTS IN FUNCTION OF THE PANDEMIC

Social rights are fundamental pillars of historiography and the perception of the realization of human rights. Such rights determine positive and protective conduct by the State which must ensure that these guarantees are not ousted. Second, Ingo Sarlet: “Freedom of and before the State is no longer taken care of, but of freedom through the State” (SARLET, 2012, p. 33). Based on this premise we can affirm that human rights, fundamental rights and social rights in particular the field of labor law have been elevated to international levels of protection. It is important to note that such protection was positive in the Universal Declaration of Human Rights of 1948 (DUDH, 2010).

Such guarantees have gained increasingly important contours due to the incessible performance of the International Labor Organization – OIT, as well as the Philadelphia Declaration, which tried to outline and safeguard aspects inherent to working conditions in the labor relationship. An important aspect addressed in the Philadelphia Declaration is the decommodification of labor, strife with ensuring the worker freedom of association and collective bargaining, elimination of all forms of forced labor, inequality and discrimination in employment, and the ban on child labor.

Article 23 of the Universal Declaration of Human Rights, promulgated by the ONU in 1948, defends guarantees of international status in its body, where every man has the right (I) to work, being free to choose jobs with fair and favorable conditions, so that there is protection against unemployment; (II) equal remuneration for the same work, without distinction, which (III) is fair and satisfactory capable of ensuring, also for his family, an existence compatible with human dignity; (VI) and to organize unions and join them to protect their interests.

It is clear that the text secured in question, schematizes pillars of human rights and brings labor law as a background due to its social character. However, the positiveness of these guarantees in Letters of Fundamental Rights of worldwide community recognition strengthens the discourse that work is an inherent condition of the human person, in which it aims to guarantee the minimum civilizing level, and therefore the association of labor law as a branch or a vital arm for human rights is undeniable.
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From this perspective, 7th Article of the Additional Protocol of San Salvador, the Inter-American Convention on Human Rights argues that it is the duty of the signatory States to ensure a fair, equitable and satisfactory level of work, being bound to ensure the enjoyment of labor law and to evaluate conditions in the adequacy of rules of domestic law. A fair and equitable remuneration should therefore be ensured for workers, capable of promoting the basic conditions of subsistence worthy of their family unit. It is up to the State to develop legal, political and judicial measures aligned with the recommendations of international documents that are signatories, to evaluate the protection of labor law. Therefore, economic measures cannot restrict jobs or promote any way of weakening or shrinking labor protection networks and organizations.

Another important point to be highlighted, came in the body of the American International Charter of Social Guarantees or Declaration of the Social Rights of Workers adopted at the American Conference of Rio de Janeiro, dated 1947, where he recommended the decommodification of work, stating that work is a social function that enjoys the special protection of the State, and should not be considered a trade article. Therefore, it is applied throughout its territory, without any distinction and any form of precariousization of the work relationship is being sealed. To protect such prerogatives there are several normative mechanisms that promote the application and effectiveness of such rights, from the protectionist perspective of international organizations through their own procedures to penalize the State that violates any of the guarantees internationally imposed through treaties or conventions.

The protection and immunities guaranteed to workers requires states to implement the normative instruments of international policies in their internal order, committed to the realization of social rights accompanied by public policy measures that praise the general rules and principles of labor protection.

Although there are several international protocols and guarantees regarding labor human rights, there have been several violations of such guarantees in the fight against the Covide-19 pandemic that has affected several labor categories, in line with the recommendations of Resolution No. 01/2020 of the OEA and IACHR, which outlined several recommendations so that there would be no violations of guarantees enshrined in the international order. Who brought the following recommendation: “...It is important to take
measures to ensure the economic income and livelihoods of all workers, so that they have a level playing field to comply with containment and protection measures during the pandemic."[5]

This recommendation has been ignored by several states due to low economic growth and the crisis that has worsened due to the pandemic, leading several countries to violate such rights guaranteed in international documents. The confrontation of the pandemic has occurred in a disorderly manner and with irreversible damage to the population, countries such as Brazil, the United States of America, Chile, Argentina, among others, have precarious the rights of workers with significant wage cuts without the assistance of unions, endangering the food subsistence of workers and their family unit. There are also more worrying situations, such as the unbridled increase in unemployment during the pandemic without any supervision, leaving the worker in a situation of complete social vulnerability and abandonment.

It is worth noting that these measures of precariousization has been occurring through provisional measures with force of law or also by special law entering into force on the date of their promulgations, making possible any minimum planning of the affected populations and contrary to item 15 of the resolution on screen “...Economic, political or any-kind measures that are adopted should not accentuate the inequalities that exist in society.”[6]

Such violations have been maneuvered and implemented by the State itself in contrast to its duty to ensure the inviolability of these international prerogatives.

The same document also brought in its body that the State should ensure the inviolability of such rights and promote access to policies that guarantee, as determined by item 16 “Ensuring the existence of mechanisms for accountability and access to justice in the face of possible violations of human rights, including DESCA (Development of a Simplified Consortium Agreement), in the context of the pandemics and their consequences, including abuses by private actors”[7]. Such attitudes have demonstrated the complete disregard for international guarantees on the part of countries, which will cause unhealthy losses to the affected population at an extremely critical moment for the world, which will certainly leverage future representations before international mechanisms and courts.
5. CONCLUSION

After a comprehensive analysis of the current scenario, it was possible to establish some important considerations on human rights violations due to the COVID-19 pandemic, mainly from the labour point of view. In the field of social rights, labor law occupies a prominent position, mainly from the perspective of international law, because it has an international organization intended only for the protection of the norms linked to it. The problem addressed in this study was based on the analysis of the conduct of several States that violate the protocol of recommendation to combat the current pandemic, in addition to the systematic violations of international norms enshrined in world law.

Although there are several international protocols and guarantees regarding labor human rights, there have been several violations of such guarantees in the fight against the Covid-19 pandemic that has affected several labor categories, in line with the recommendations of Resolution No. 01/2020 of the OEA and IACHR, which outlined several recommendations so that there would be no violations of guarantees enshrined in the international order. It was established by the Inter-American Court of Human Rights that the actions of countries to curb the contamination of the virus, follow several recommendations and not disrespect established rights, in view of their aspects of irrenunciability and inviolability of such rights.

It was established by the OEA and IACHR that state measures ensure the economic income and livelihoods of all workers, so that equal conditions to comply with containment and protection measures during the pandemic were protected. In this respect, it is undeniable that the situation of the pandemic aggravated working conditions, increased unemployment rates, aggravated the global economic crisis, leading to immeasurable effects of damage to the affected population and leaving it in a complete state of vulnerability. For the violations have departed exactly from the heads of the executive powers that precarious the conditions and employment relations going completely against the global recommendation.

What was evident is that the countries were not prepared and did not have an internal plan to face such a situation, it is worth noting that it is not the first pandemic that has plagued the world, although the lack of skill of the countries shows that it is necessary to discuss these issues and to address such failures in order to avoid the possibility of future
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The confrontation of the pandemic has occurred in a disorderly manner and with irreversible damage to the population, countries such as Brazil, the United States of America, Chile, Argentina, among others, have precarioused the rights of workers with significant wage cuts without the assistance of unions, endangering the food subsistence of workers and their family unit. The recommendations for coping with the pandemic highlighted the importance of economic, political or any measures that are adopted should not accentuate the inequalities existing in society as well as conditions of access to food and other essential rights.

Another relevant aspect was about the people who have to continue performing their professional activities should be protected from the risks of virus contagion and, in general, adequate protection should be given to work, wages, union freedom and collective bargaining, pensions and other social rights interrelated to the labor and trade union. These recommendations have been violated in a systemic way, further aggravating the current global situation.

Soon we can conclude that such state postures have demonstrated complete disregard for international guarantees, which will cause unhealthy damage to the affected population at an extremely critical moment for the world that will certainly leverage future representations before international mechanisms and tribunals. Unfortunately, as long as countries place the economy or market issues in search of power and financial stability as a priority in their governments, it will be inevitable to violate human rights and guarantees, making the process of social and democratic evolution increasingly vulnerable.

6. REFERENCES


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APPENDIX – FOOTNOTE REFERENCES


4. Resolution 01/2020 OEA and IACHR: 4. Ensure that the measures taken to address the pandemic and its consequences incorporate as a priority the content of the human right to health and its basic and social determinants, which relate to the content of other human rights, such as life and personal integrity, and other DESCA, such as access to drinking water, access to nutritious food, access to cleaning facilities, adequate housing, community cooperation, mental health support and integration of public health services, as well as responses to the prevention and attention of violence, ensuring effective social protection, including, among others, the granting of subsidies, basic income or other economic support measures. p.8: https://www.oas.org/pt/cidh/decisiones/pdf/Resolucao-1-20-pt.pdf acesso on June 20, 2020.

5. Resolution No. 01/2020 of the IACHR and OEA: 5. Protect the human rights, particularly THE DISMEMBERE, of workers at greatest risk by the pandemic and its consequences. It is important to take measures to ensure the economic income and livelihoods of all workers, so that they have a level playing field to comply with containment and protection measures during the pandemic, as well as conditions of access to food and other essential rights. People who have to continue performing their professional activities should be protected from the risks of virus contagion and, in general, adequate protection should be given to work, wages, union freedom and collective bargaining, pensions and other social rights interrelated to the labor and trade union spheres. p.8 <https: www.oas.org/pt/cidh/decisiones/pdf/resolucao-1-20-pt.pdf=“”> acesso on 23/06/2020.</https:> 

6. Resolution No. 01/2020 of the IACHR and OEA: 15. Integrating mitigation and care measures focused specifically on the protection and guarantee of DESCA, given the serious direct and indirect impacts that pandemic contexts and infectious health crises can generate. Economic, political or any-kind measures that are adopted should not accentuate the inequalities that exist in society. p. 9 <https: www.oas.org/pt/cidh/decisiones/pdf/resolucao-1-20-pt.pdf=“”> acesso on
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23/06/2020.

7. Resolution No. 01/2020 of the IACHR and OEA: 16. Ensure the existence of mechanisms for accountability and access to justice in the face of possible violations of human rights, including DESCA, in the context of the pandemics and their consequences, including abuses by private actors and acts of corruption or capture of the State to the detriment of human rights. Suspend or relieve foreign debt and international economic sanctions that may threaten, weaken or impede states’ responses to protect human rights in the face of pandemic contexts and their consequences, in order to facilitate the timely acquisition of essential medical supplies and equipment and to allow priority emergency public spending in other DISTHANC, without jeopardising all human rights and efforts made by other States at this juncture, given the transnational nature of the pandemic. 19. Demand and monitor that companies respect human rights, take due diligence on human rights and account for possible abuses and negative impacts on human rights, particularly the effects that pandemic contexts and infectious health crises often generate on the DISCLAIMS of populations and groups in situations of greatest vulnerability, and in general by the effects that pandemic contexts and infectious health crises often generate on the DISCLAIMS of populations and groups in situations of greatest vulnerability and, in general, on workers, people with sensitive medical conditions and local communities. Companies have an essential role to play in these contexts and their conduct should be guided by the applicable human rights principles and rules.

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