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Rivista di informazione giuridica
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INTERNATIONAL LAW SUBJECTS AND THE REALITY OF REGIONAL AND INTERNATIONAL COURTS

Right without might is an unproductive conclusion. After all, only through the demonstration that rights might be enforced on a Judicial System is that these can have the power to be respected everywhere, anywhere. Thus, it is mandatory the existence of International and Regional Courts specialized on Human Rights, fundamental principles and values

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IUS/09 - ISTITUZIONI DI DIRITTO PUBBLICO
Estratto dal n. 3/2018 - ISSN 2532-9871

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Pubblicato, Sabato 31 Marzo 2018

CamminoDiritto.it
ISSN 2532-9871

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1) Introduction

International Law is not always a fair and just modality of rights´ protection. There are some situations that can´t be considered by the Jus Gentium, notably when jurists face violations of ordinances within a domestic juridical system, as usually occurs. International Law, unfortunately, lacks the unopposable coercive force verified within Nation´s borders, what must be assessed by researchers.

Despite the clear existence of the reality above mentioned, violations of fundamental rights are a constant existence, and can´t be ignored. It is verified that the actions took by Courts are always a way to determinate a specified action regarding a concrete case, notably in Human Rights matter. Thus, mankind might be able to turn towards the Tribunals for a protection otherwise impossible or at least difficult to obtain.

However, it is important to underline that most of fundamental principles and values´ violations take place within a Nation´s border, notably when people face corrupt, obnoxious and distasteful governments. The State, nowadays, is transforming itself into an enemy of its own people. The International Society must not turn its back to an infinite number of crimes against mankind.

As considered by Hannah Arendt, Human Rights are a constant process of construction and reconstruction[1], and must be understood, also, as a necessity of the historical period that humanity lives. Therefore, the roster of fundamental principles never meets an end and is determined to be in continuous change, to match every concrete case.

The idea of an International System to protect fundamental principles and values can´t be dismissed. The transformation of the Jus Gentium into an empowered and enforced way of defence of mankind must be the more important theory to be brought upon the social stage within every nation. Yet, some magistrates still have profound difficulty to understand that International Law is part of the Law Science.

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Domestic protection taken with the International Treaties as a paradigm is always a difficult reality to imagine to a vast number of administrative agents worldwide. This also determinates that the coercive force, with the goal of protection of fundamental principles and values, shall be originated from International and Regional Tribunals, that are created throughout the planet.

Nevertheless, not every Tribunal existing at the international stage is available to people around the world to become plaintiffs on an action against a country, an administrative agent, or another International Law subject. On the contrary, the Courts that are considered to protect Human Rights, in general, are accessible only to International Law´s subject other than human beings.

And that can be considered when there are Regional Tribunals within a determined collectivity of countries. For instance, it is unimaginable the mere possibility of the lack of a Regional Court in Asia-Pacific. However, that is the absurd reality faced by citizens and nationals of States from that region of the world, despite the clear necessity of a Tribunal within the Eastern part of the planet.

With this introduction, the main goal of this article is to analyse, and, mainly, to defend, first, the creation of Regional Tribunals with jurisdiction at every part of the planet, to defend fundamental values and principles worldwide. After the elaboration of treaties regarding this matter, must all Courts be accessible to human beings, that is the main group suffering the immense plethora of violations of Human Rights.

2) Traditional Subjects of International Law

The personality is a vital attribute necessary to exercise rights within a domestic juridical system. An entity without personality can´t entitle any kind of possibility of a defence of its own rights, in any kind of sphere, judicial or administrative whatsoever. Thus, to access a determined Tribunal or even an Executive decision board, it is paramount the existence of personality.

It is not the goal of this article to discuss the different forms of personality. There is the personality which an entity detains and authorizes the access only to Court decisions, what can be called judiciary personality. Also, there is the broader notion of personality, which a person, e.g., will entitle and will make him or her subject of domestic law, in all kind of rights that might be possible.

Therefore, the parallel comprehension can be seen on the International Law stage. Despite

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the above mentioned potential differentiation, author Christian Walter considers that

"The terms international legal personality and international legal capacity describe the same characteristic, namely the fact that an entity is capable of possessing international rights and/or duties (…) both terms are used interchangeably".[2]

However, it is necessary to differentiate either concept. The personality can be described as the possibility of access to an International Court, what can be done only by those admitted as such by an International Treaty. The capacity is the mere entitlement of a right or duty, without the possibility of a defence of this principle or value in front of a Tribunal.

Capacity, thus, must be considered an institution without the necessary coercive force, already seen as one of the deepest disadvantages analysed within International Law theory. Capacity is "the personality without the personality", is just a beautiful painting into a canvas without the needful framework. It is almost impossible to maintain the capacity lacking a minimum coercive force to defend it.

With this primary analysis, is possible to bring the text which are exactly the traditional subjects of International Law. Those are the ones that have the above-mentioned personality, been entitled entirely and without any doubt to require a potential decision regarding a right or duty of their patrimony. Thereby, a traditional subject is just the one that can access an International Tribunal without any kind of limitation.

The most traditional one is the State. The State is the most ancient subject of International Law, be considered as such since the primary ordinances that resulted on the science that is now analysed. According to the late Brazilian author Celso D. de Albuquerque Mello[3], States, in free translation, are

"… the main subjects of International Law. They are the 'primary founders' of the international society, according to Aguilar Navarro. It was from their initiative that came to the International stage other subjects, like the International Organizations."

Professor Dr Walid Abdulrahim[4] also considers the necessary qualifications to a State be considered as such. Thus, the author mentions the Convention of Montevideo on the Rights and Duties of States from 1933, bringing that a State needs to have a permanent population, a defined territory, a government and, finally, the capacity to enter relations with another States.

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It is paramount to consider that these definitions, nonetheless the importance carried by them, must be modernized to the hodiern reality of International Relations. After all, a State shall also be one if there are uninterrupted and clear relations with other subjects of International Law, like, for instance, the United Nations, as an international organization.

Surely there is an immense range of hypothesis to be analysed, and it is also reasonable to consider that this discussion can´t even be profoundly studied within this article. However, it is also necessary to take in mind that the definition of State shall and must not be limited to the considerations made above. Therefore, regarding the protection of fundamental principles and values, States can be every single one that has relations with International Law subjects.

With the statement made in the previous paragraph, how is possible to bring upon the article the better definition of State? After all, is not, until this moment, possible to consider that only relations with any form of International Law subject might be able to make a territory with a certain population, some sovereignty, and any form of government a State formally elaborated. International Law needs acknowledgement from other subjects to exist.

Therefore, a State can be considered a limited territory, with population and self-government, with recognition from other States, and, preferably, support from International Organizations. With this idea, is possible to enforce these subjects, without forgetting the necessary respect from other States. Unfortunately, it is still unthinkable to analyse International Law without the vast holding of the States already present.

The International Organizations, already mentioned, are the second form of International Law subjects that must be considered within this article. Their formation came after great tragedies occurred in mankind´s history in most situations. The paradigm is the creation of the United Nations. After the crimes committed during the Second Great War, humanity only had one choice: peace.

Thus, the importance of the International Organizations as subjects of International Law is, without any doubt, unmistakeably vital to the maintenance of peace worldwide at least generally speaking. Also, they have the primary responsibility not only on preserving peace but in creating chances for peace worldwide. The UN Peace Corps is the example needed to be brought to the text. Unimaginable how worse the world could be without this kind of coercive force made possible by organizations like the UN.

Nevertheless, it is also mandatory the analysis of the Regional Organizations. After all, they are the “front door” of the International System, like a monocratic judge within a

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domestic Judicial Power. With that consideration, every single region on the planet ought to have a Regional Organization, to be called upon the stage every time that a Human Rights violation occurs, notably against individuals.

Yet, the empowerment, or even, the mere creation of Regional Organizations is still a remote reality worldwide. Surely, the European Union is the paradigm and must be commemorated as the result of centuries of conflicts that claimed millions of lives on the continent. However, it is also necessary to question: where is the Asia-Pacific Regional Organization? And how can the Regional Organizations at the Americas and in Africa be empowered as it has been done in Europe?

These are answers that shall be – at least partially – satisfied during the article. Nonetheless, it is unthinkable a present and a future without International Organizations. They are "gap-fillers", created to mitigate every human suffering made reality and augmented by governments and private organizations. In conclusion, International Organizations are unquestionably vital to humanity.

There are also others International Law subjects that can be considered "traditional" to Human Rights Promotion. The Holy See, for instance, can determinate, via Papal Bulls, principles and values that can guide others International Law subjects regarding the accomplishment of the most fundamental rights that individuals are entitled to.

The International Committee of the Red Cross/Red Crescent is also important. Despite its nature as an International Organization, the already mentioned late Professor Celso D. de Albuquerque Mello[5] considers the special nature of this committee, notably its creation as the first humanitarian organization after centuries of absurd battles that tainted with blood territories worldwide.

Belligerents and insurgents are also considered as International Law subjects by Professor Mello[6]. According to the celebrated Brazilian jurist, considering belligerents as subjects is, in a free translation:

"… a direct conclusion of humanitarian principles and the self-determination of peoples worldwide. It is humanitarian since it obligates the parties to acknowledge the Rules of War, avoiding acts of pure savagery. On the other side, if not recognisable the belligerency, third States would not be able to be under neutrality in front of these subjects, what, in conclusion, could result on the possibility of negotiations only with the local governments."

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ISSN 2532-9871

Similar consideration can be done with insurgents. However, according to Professor Mello[7], insurgents can be defined as a "minor stage" of the belligerent movement, since they are considered as such since the insurgency usually takes place on limited parts of the territory. Thus, recognising insurgents as International Law subjects concluding that this movement shall make negotiations with third States.

Finally, Professor Mello[8] wisely considered Nations as International Law subjects. After all, the necessity of recognition by third States to be considered a State itself promotes profound injustices. Possible to mention the example of the Kurdish Nation. The largest "Nation without a State" can´t be a mere subject of the National Governments on which territories they are. It would resonate as a direct violation of the citation made above defending otherwise.

In conclusion, these are the "traditional" subjects of International Law. States, organizations and collectivity of people have entitled to powers that a single individual is not. The coercive force of these entities is undeniably larger than that of a person, notably when that person is suffering violations of his or her most fundamental rights. And that is what going to be analysed on the further topic.

3) Human Right to be an International Law Subject

An impending question might be inside the reader´s mind now: aren´t individuals International Law subjects after all? Aren´t they already considered within covenants, treaties and pacts? Isn´t a reality a fact that they are, for example, acknowledgeable at the European Union as a potential subject of a Human Rights procedure at the Regional Court?

Yes, they are International Law subjects and intend to remain as such. Not only that: it is necessary to increase their participation, with the main goal to make them the most important and relevant subject in all the world stage. International Law and Human Rights Law exists only from them, through them and to them. Thinking otherwise would diminish the relevance of those sciences to the point of simple lack of necessity.

Nevertheless, there is still part of the juridical doctrine that understands differently. Former ICJ Judge and Brazilian jurist José Francisco Rezek[9] considers that individuals are not International Law subjects, and, defending on the opposite direction would also take as potential International Law subjects private enterprises, what would be impossible on the international stage.

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Always important to considerate the importance and to commemorate jurists that have contributed in a profound way to the development of International Law. Yet, to concur with the above mentioned former ICJ Judge would make all the International Law System useless to its pivotal objective: the protection of human beings. Rights without might are simply pointless.

Therefore, first, paramount to defend the possibility of individuals to act as full subjects of International Law, in whatever specific situation they are confronted with. For instance, a person must have the accessibility to every International and Regional Court, notably those that are created to defend and promote fundamental principles and values that are inseparable to every individual life.

In consequence, mutations must be made at most of the treaties, covenants and pacts that are responsible to define the process within the above-mentioned Tribunals. Another example that can be brought to the text is the one visualized at the American Court responsible for the defence of international fundamental principles and values, where individuals can´t access the Tribunal whatsoever.

It is clear how is important to emphasize the absolute necessity to recognise individuals as International Law subjects. Jurists are confronted with the empowerment of every human being, notably in realities where the violations of fundamental principles and values became a dystopian routine. As an example, how can a person within a warzone expect protection through a government, when all administrative agents are no more present?

Simple formalities can´t and won´t be a barrier for Human Rights protection. And, considering otherwise would just be the concordance with every crime against humanity that is visualized worldwide. The modification of the treaties, pacts and covenants that are responsible to determinate the process along the International and Regional Tribunals is mandatory.

It is possible to cite Andrew Clapham[10], that brings an important yet disturbing consideration regarding human beings as not been considered International Law subjects:

"… individuals currently have obligations and rights but no remedies under general international law. A traditional international lawyer might claim that inducing rights from obligations in this way is not appropriate, as states can impose obligations on individuals under criminal law without automatically generating the rights to a civil remedy for the victim. Similarly, the traditionalist might argue that even human rights treaties simply created rights and obligations for the states parties. Individuals were the beneficiaries of these treaties, just as animals might be the beneficiaries of an endangered species

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convention …"

Viewing individuals as not even potential International Law subjects configure just the reduction of human beings as simple spectators of their own History. After all, someone is going to decide how and even if is going to defend Human Rights and fundamental principles. And this might just be a politician democratic elected, or, even worse, a dictator.

The immense myriad of possibilities that might occur within a reality where fundamental principles and values are unconsidered is endless. And so, must be the means of protection of every individual worldwide. And this also comprehends the recognition of individuals as effective International Law subjects in every covenant that formalizes the existence of worldwide and Regional Tribunals.

Considering the analysis made previously, taking the International Law subject problem onto the world stage as a focal point of discussion is the most reasonable path to do. With this idea, it is going to be possible to visualize the natural consideration of it as a typical and one of the most important Human Rights that exists. After all, as considered above by Professor Clapham, human beings without means of self-protection seams as mere animals into an endangered species convention.

First, it must be recognized that there is a situation of undermining protection of individuals worldwide. Like every kind of problem, including the most personal ones, it is necessary to consider that the problem is there, it exists, period. Furthermore, recognising the diminished access to worldwide Tribunals is going to be the initial step to, finally, turn the reality towards another direction.

The roster of Human Rights is a never-ending one. The protection of fundamental principles and values must occur when a violation is mere visible or might become a reality. The ideal world would be the one that could prevent the crimes against individuals to take place. However, this reality is far from now, and might not even be possible on the most remote future.

Thus, the protection of individuals is possible only after the delict is a terrible reality. Instead of preventing, mending is the only chance on the majority of the hypothesis. Human Rights only become considered as such after the violation. With this, is paramount its protection, enforcement and empowerment, notably when the necessities of human beings become so clear as is today.

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And the protection of Human Rights is a reality only if is done by individuals. The rightful owner is not only the one that can be defended but can defend his or herself in the most effective manner. Surely, the so-called traditional subjects of International Law are vital and must be remembered every moment when the glimpse of a violation may occur. Nonetheless, individuals are the most important fighters for their own rights.

In conclusion, the consideration of human beings as not only an International Law subject, yet the most important International Law subject is paramount and shall be the most important battle to be fought by jurists and citizens in every State. Human Rights, as considered before, are a never-ending production. And the human right to be an International Law subject must be recognised throughout the planet, as soon as possible.

4) Access to the European Court – The Paradigm

Unfortunately, revolutionizing changes in Human History occurs usually after great traumatic experiences. Notably, when the Science of Law is studied, jurists tend to comprehend that profound legal and juridical modifications take place after pacts created within a country or a collectivity of countries. And this was the reality that concluded on the European Union.

With the ending of the bloodiest worldwide conflict in centuries, humanity discovered the sheer necessity of a Regional Organization within Europe, that could prevent another war so appalling as the one lived by that generation. Millenia of economic growth, social development and cultural creation were jeopardized by few people that thought they were superior to their equals.

When created, the European Union was largely limited to the boundaries of the States that encompasses the Western Region of the continent. Despite the location of Germany and Italy, these countries are culturally and economically tied to France and the United Kingdom, even more than to other States like Poland and Greece. Thus, the creators of the EU were dealing with a more homogenous region than that verified with the Organization of American States, for instance.

However, the EU needed to be enlarged, to accomplish its main goal: prevent another war from beginning in Europe and its consequential widespread throughout the world. And this could only be achievable via the enforcement and empowerment of the notion of Human Rights to the entire continent, from Moscow to London, from Lisbon to Istanbul.

Yet, during the last half of the Twentieth Century, Europe was divided by the teratologic

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situation created by the Cold War. Only after the fall of the USSR and the Berlin Wall, the continent could glimpse the light at the end of the tunnel, especially considering that democracy was a first-time experience on most of Eastern European States. With this complex scenario, EU needed to be enlarged, as soon as it could be possible.

Thus, the Eastern countries began to be admitted into the Union. This made the EU more heterogenic, stronger financially and politically, and with a population that is larger than the one of the United States. However, difficulties arose and demonstrated that the collectivity of States that made the European Union should have a more direct action towards the protection of the residents of Europe.

Before that profound change in the composition of the EU, it must be brought to the article that the European Convention regarding Human Rights dates to 1949, even prior to any kind of start regarding the Union of European Nations itself. This Regional Chart of Fundamental Principles demonstrates the importance given to human beings into the European Juridical System.

Like happens to every normative act, as considered by P. van Dijk and G.J.H. van Hoof, the parameters of the Convention are not static, yet must be the exact reflection of social transformations.[11] Thus, the Convention itself can´t stay as an ordinance without any kind of potential mutation, notably when institutionalizing the protection of Fundamental Principles within a more heterogenic European Union.

Continuing this analysis, the Convention itself must be ductile, notably during its interpretation by the European Union administrative agents, considering the ones that are responsible for the juris dictum. Therefore, the interpretation of the Convention is going to be the one with the most direct use within the European Union, considering how the changes have occurred during the history of Europe.

With that being said, in 1998 a new Protocol to the European Convention regarding Human Rights became valid[12]. With this normative act, the most important change that occurred within the European System, and is analysed here at this topic, came into the light of International Law: the article 25, that considered the possibility of adoption of an individual access to the Court as mere facultative, would now be obligatory, transformed into the article 34 of the Convention.

On the avant-garde of the Jus Gentium, the European Human Rights Protection and Promotion System came to consider human beings as not only one of the International Law subjects, yet the most important subject of them all, as analysed previously. Therefore, this made the European Union, with its Court, the most important producer of

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ISSN 2532-9871

decisions on this matter, notably viewing how every inhabitant legally installed within the Continent could now access the Court to protect the most fundamental values.

Brazilian author and Professor Flávia Piovesan state that, transliterated from her doctrine [13]:

"… the greatest advance introduced by the Protocol 11 was granting individuals, group of individuals and NGOs direct access to the European Court, through the right of petition, considering the hypothesis of a Human Rights violation … the Court´s jurisdiction is registered now through an obligatory clause with automatic enforcement."

The European Union chose the correct path. After all, as already considered on the previous topic, individuals are the main objectives of Human Rights and International Law. These juridical sciences are present only to protect them. And, to be rightfully protected, they must have the clear and unopposed access to the Court with jurisdiction to this matter.

Just as considered at the beginning of the analysis made here, revolutions must occur, notably after great traumatic experiences. And Europeans know that the enforcement and empowerment of Human Rights protection methods is the main consideration that must take place, notably during these dark times that the Continent is expected to face.

The paradigm, however, is not always perfect. Giovanni Bonello[14] affirms that:

"The Court is today victim to its own success, with insufficient resources and personnel to face the daily volume of actions – 39.000 new demands only in 2003 … Only a radical reform will be able to prevent the total collapse."

As always happens to new experiences, the European Court has new challenges to face. It must stay in accordance with the principles and values that intends and sworn to defend, nonetheless the clear difficulty that it has on compliance with all the demands that are presented by approximately 800 million potential subjects. And this number may and will rise, with the arrival of thousands at Sicily, Greece and Southern Spain.

Also, important to consider that the European Continent might be up against another unthinkable challenge: the potential violations of Human Rights occurred during the journey between Northern Africa and Southern Europe. From whom jurisdiction are those cases? Who is going to sanction the violators? Would be possible not to create a potential jurisdiction crisis between the European Court and its African counterpart?

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ISSN 2532-9871

These are answers that might be presented by the best protection of the Human Rights done by the most powerful and enforced Tribunal. However, this discussion must be assessed after solving the main question: Europe must export its paradigm to the Courts already formed, and, not only that, the ones that may be present in the future must initiate their activity already with this kind of consideration. Human beings must have access to the Courts created to protect themselves.

5) Access to the American Court

The American Continent, opposing to the European counterpart, is a profound heterogenic one since the womb. Formed by an immense plethora of people from every place on the globe, it is possible to have an individual with familiar backgrounds going back to Poland, Angola, Italy, Japan and Spain, without even analysing a second person´s history.

That intrinsic unequal nature of every inhabitant of the American Continent also has an interesting advantage when confronted with populations from another continent: Americans are always adaptable to diverse cultures and influxes of different human beings from every corner of the planet, considering that the countries that are part of America are so diverse between themselves.

With that consideration, should the American Court be the paradigm for Human Rights protection, notably within a region where fundamental principles violations are, despite notable improvements, still a regular and unfortunate reality. The American Continent is home, together with the African Continent, to the worst wealth distribution worldwide, especially in Latin America.

The scenario above mentioned came to create the so-called Pact of San José, the American Convention that is the ordinance responsible for the normative consideration of Human Rights within the Americas. This ordinance is the most important one in the region and must be enforced and empowered by every country that is part of the Organization of American States.

Nonetheless, the Pact is only the tip of the iceberg. The existence of a Court regarding Human Rights and fundamental principles, in general, is paramount to every region, notably the Americas, where, as already mentioned, the gaps between the 1% and the rest is more profound than anywhere else. Thus, a small proportion of the society owns much of the power.

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ISSN 2532-9871

Therefore, with the Pact and its consequential Protocol[15], it would be possible to consider that the access to the Court would be fulfilled. However, the right of petition to the Tribunal was not defended by either International Ordinances. Only through the Human Rights Commission would be an individual available to access the jurisdiction of the Court of San José.

Then, the bureaucracy within the American Regional System is deeper than the one verified at the European Union. It is necessary, for instance, the search of an amicable solution between the parties, notably a State and an individual or a collectivity of individuals that have already been mistreated on their most fundamental rights by that State that should have always defended them! And always through the Commission itself.

How absurd, ironic and even dystopian this attempt can be! Would it be possible that the parties involved might reach a consensus, when, during the time that the rights should be respected at first place, that State simply chose to violate the Pact itself? It doesn´t sound even reasonable the initial reunion of either party within a conciliation hearing. This is only a bureaucratic movement to retard the inevitable: the action must be taken by the Court, always.

As a comparison, the European Court is the one responsible to reach an agreement between the State that maculated the right of an individual and the one considered to have suffered the violation. Since the counterpart from the EU has recognised the right of petition, its potential consensus will be made with the mediation of judges that have the power of jurisdiction and not a Human Rights Commission.

Far from considering the American Commission pointless, but it doesn´t have the same coercive force as a Tribunal would have whatsoever. And this is elementary: after all, the Courts can and must enforce their decisions considering notably that a Tribunal that doesn´t act in this direction might be viewed as a weak Court, jeopardising its own existence.

That is the relevance of the right of petition that is still not a reality at the American scenario: the possibility of consensus is larger and it has more power if done within an already installed judicial process. Stating otherwise would be naïve. And this must be enforced due to the immense quantity of Human Rights violations that are testified at the American Continent.

It seems that paradoxes are never alone, unfortunately. Not only the Interamerican Court of Human Rights does not allow individuals or collectivity of individuals to access its jurisdiction, but only States – and the Commission – can incite a potential decision

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regarding Human Rights violations. It is reasonable to try a mental exercise: which country would, for instance, considerate an action against fundamental principles´ violation perpetrated by the USA?

It is paramount the immediate change of the American System. Human Rights deserve a profound and yet coercive protection from all institutions worldwide, notably when social and economic gaps are so deep as the ones still present on the continent. A new Protocol might be a solution, parallel to the one produced in Europe. American individuals must have full access to an independent and just Court.

6) The Case of the African Union

The cradle of humanity should have had a different past and present. The goal of this article is not to analyse the profound disparities and paradoxes within the African Continent, neither propose eventual modifications to its social, political and economic realities to visualize a glimpse of change to the teratologic reality that the continent must endure until this day.

Nonetheless, another mental exercise should be done: what if all the countries, united, came to common sense that the African Continent should perpetuate a better future to its citizens through specifically the enforcement of its Human Rights Court? What if Europe began the exportation of the right of petition theory to Africa? What if the African Court could have the same reality as the European counterpart?

Surely, theorists must theorize. However, it is from theories that humankind begins to think about potential changes. Considering otherwise would be the admittance that all modifications occurred throughout world history took place only from and through a somehow "superior force". And, besides the faith and religion that every person carries – or doesn´t – only human beings can change their own reality.

Thus, defining the sheer necessity of an African Court with the immediate potential access of individuals to the Tribunal is mandatory. However, as considered by Professor Piovesan[16], this Regional System is in process of creation and consolidation, in a position where it is staying behind the American Court, "intermediary" on its development, and the European Court, that could be viewed as the most "advanced" Regional Tribunal.

And here, it can be possible an appeal to the Regional Courts already created, and in more "advanced" stage of development than the African counterpart: due to the characteristics of the African Continent, considering how human history perpetuated centuries of

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ISSN 2532-9871

underdevelopment to generations of Africans, it is mandatory a combined action of jurists and policymakers with the goal to accelerate the development of the African Regional System.

Professor Piovesan[17] states that, on the opposite direction of what occurred in Europe and at the Americas, the African Chart, on its original draft, didn´t establish a Regional Court, but the Commission whatsoever. Surely, what starts on a wrong pace does not need to continue the awry situation. However, this demonstrates how the world still needs to enforce the idea of Regional Courts.

Not only that analysis must be assessed to. The Protocol that created the African Tribunal encompasses a facultative clause regarding the adhesion to the jurisdiction of the Court, what diminishes the power of the judges that must analyse an endless occurrence of Human Rights violations within the continent. Therefore, a State that adopted the African Chart can – and it is impossible to measure how absurd this clause is! – choose not to abide by the jurisdiction of the Tribunal.

Regarding the access to the Court, here is possible to envision how the intend was positive, nonetheless the result took the wrong direction. It is possible for individuals to access the jurisdiction of the African Tribunal, but the country that this individual came from must make a formal declaration affirming this possibility. One more time, a mental exercise: would this clause be largely adopted by some governments that are as dystopian as those verified within the African Continent?

Therefore, modifications must be proposed and adopted on a faster velocity than done in Europe or even concerning the Organization of American States. Africa can´t and must not wait for the upcoming of – eventually – decades of juridical development to protect fundamental principles and values that are been violated as this article is written. Jurists can´t concur with this teratology.

Finally, it is relevant to cite Professor Piovesan[18] once again, that wisely considered the following, transliterated from her book:

“Advancing on the dialogue between Regional Systems, allowing the interchange of its developments and experiences, identifying its successes and wrongdoings, its weaknesses and strengths, constitutes a fundamental measure for the fortification of an ethic and emancipatory cosmopolitanism, capable on celebrating the fundamental value of human dignity, in all times and places.”

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ISSN 2532-9871

7) Where is the Regional Asian-Pacific Court?

The Asia-Pacific Region has always been a place of superlatives. The largest landmass on the planet, with the highest human density and the most populated continent. It is also an area of profound contrasts, with States that range from immense social-economic development to countries destroyed by wars and poverty, with unbearable corrupted governments.

When parallel to the other experiences, the Asia-Pacific is the most diverse one. After all, an infinite range of cultures, histories, societies and economic realities are recognisable in the Eastern Region of the planet. With that consideration in mind, a Regional Organization or, even less, the creation of a Regional Tribunal would need to considerate all the realities that are viewed within Asia-Pacific.

Also, necessary to consider Asia-Pacific as a one. Without that comprehension, the Pacific would be relegated to a weaker position, due to the diminished number of inhabitants in that area. Also, Asia and the Pacific Region shares profound similarities, particularly considering that they are the only area of the planet that is located in only the Eastern Hemisphere.

Thus, the scenario is deeply complex. A region so heterogenic as the Asia-Pacific one can´t be treated as a mere collectivity of countries and shall be viewed as a unique reality whatsoever. First, the democratic States that are present must determinate the uttermost respect and protection of Human Rights, considering, for instance, their undiscussable adhesion to a potential Regional Court.

It is possible that the Region also can initiate a new modality of Human Rights protection. Since the creation of a Regional Organization demands years of study, diplomacy and cohesion of all parties involved, it might be possible to create, initially, a Tribunal with jurisdiction on every State that will be part of the treaty. With this idea, it can be put on a second position the creation of administrative bureaucracy inherent to a Regional Organization that is not needed now.

However, the protection of Human Rights must be done on a global basis, notably at the most populated area on Earth. And this can be reached only via a Judicial structure that can have its action regionally, serving as a new paradigm to potential reforms that might occur on already existing Tribunals. After all, the creation of this Regional Court, taking all the experiences already done worldwide, can have a more direct path towards its main goal: the protection of human beings living on that part of Earth.

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Surely, the elaboration of a treaty, or a great quantity of treaties, is never an easy task, especially with so diverse countries like the ones encountered on Asia-Pacific. The study of the others Regional Courts must initiate as soon as possible if there is the political will to create a Human Rights´ web of protection effective to every inhabitant of the Region.

The first and perhaps most relevant step to be taken is the elaboration of a profound, thorough and specified Chart of Rights. And, considering that this international ordinance will be produced after decades of Human Rights evolution, it must bring upon the stage all the dimensions or generations that the international juridical doctrine analyses nowadays, trespassing the original three-generation system from Karel Vasak, like Brazilian colleague Marco Antonio Valencio Torrano analysed on his article[19].

The original idea brought by the commemorated and late Czech jurist considers notably the liberty, equality and fraternity ideas from the French Revolution. This is the most celebrated comprehension coined by Vasak, however, it is important to state that this idea doesn´t reflect the hodiern perception, notably for jurists that visualize a deeper protection of fundamental principles.

As a mere theoretic curiosity, the first generation – or, even better denominated, dimension – of the human right would be the ones regarding liberties, civil, political and individual rights. For instance, the right of suffrage is analysed by Vasak as a first-dimension principle, and, concerning the proto-configuration of this theory, the first-dimension rights are the principle of a Chart of Rights.

The second-dimension rights are the ones that must be visualized as a direct consequence of the initial step above mentioned. Thus, these principles are directly related to the Covenant of Social, Economic and Cultural Rights, and might be exemplified by the values that are the basis to education, public health and social security worldwide.

Finally, the classic vision created by Vasak and adopted throughout juridical systems in every democracy considers the third-dimension rights, in which the rightful owner is the society or the collectivity of individuals. Therefore, it can be visualized as the rights regarding the environment, a typical “fraternity right”, in accordance with the French Revolution triad mentioned previously.

With the considerations made, a potential Chart of Rights for the Asia-Pacific Region must state, enforce and, mainly, defend the first, second and third-dimension principles. This demonstrates how deep inside the jurists´ mind these principles are protected, and the imperative necessity to make them present within every already existing or eventual Chart

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of Rights.

However, this potential treaty might not stop with only the classical theory. Jurists worldwide are already considering the enlargement of the traditional "pyramid of Vasak", how can be called the initial conception. For instance, Brazilian jurist Paulo Bonavides considers even a fourth and a fifth dimension[20], that might be inserted into a potential Chart of Rights for the Asia-Pacific Region.

A fourth dimension can be related to rights emanated from the process of globalization that is deemed more profound than ever. Despite the conceptual idea that globalization has always existed in different manners, it is easier to visualize this reality after the Second Great War and the, at that incipient, or, better considered, polarized integration between countries.

A fifth dimension, according to Bonavides´ theory, is the right of peace, and all consequences, that can advent from that reality. For instance, peace generates a better condition of living to all people involved, and the rights that are created from a peaceful reality can be theoretically considered within the above mentioned fifth dimension of fundamental principles.

Professor Torrano, however, defends that the doctrinal production of a what might be considered a "never-ending hypothesis of dimensions of rights" can be negative to the rights themselves.[21] Theorists might create different dimensions of rights that have no practical use for the principles but can be positive to the creators themselves whatsoever. This might just become a "battle of egos".

As a theoretical curiosity, Professor Torrano mentions still a sixth, a seventh, an eighth and even a ninth generation! On this pathway, worth taking the position defended by the Brazilian colleague, notably visualizing the sheer necessity of a rapid creation of a Chart of Rights for the Asia-Pacific Region. For this article, let´s just take the dimensions until the fifth one, despite the possibility of expansion of this potential Chart of Rights, especially considering that fundamental principles´ production is a never-ending one.

After the formation of a Chart of Rights, necessary to analyse another idea: would be paramount the creation of a Commission of Rights within the Asia-Pacific Region? Surely, commissions are a relevant bureaucracy to enforce and empower fundamental principles. Nevertheless, is there time to create this potential Commission? Considering the reality that the Asia-Pacific Region is facing, it might just be counterproductive the immediate elaboration of a Commission.

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Thus, first, it would be necessary the formation of a Court as soon as it could be possible, on the posterior moment that the Charter of Rights is formally adopted by at least most of the Asian-Pacific countries. The continuation of the Chart is the elaboration of a treaty regarding the Human Rights´ Regional Tribunal, what will take a long time and demands thorough studies by all States involved.

Finally, considering the formation of the Court, as already analysed, the access to individuals must be the initial idea of the treaty. Also, relevant to consider that this potential Tribunal must resonate the demographic reality of the region, despite eventual opposition from least populated States, notably in the Pacific. However, it is necessary to bear in mind that this Court might be a reflex of individuals´ protection, and must be the demographic mirror of the region.

Therefore, on the very first beginning of the International Ordinance that will be responsible for the creation of the potential Regional Human Rights Court for the Asia-Pacific Region, the access of individuals to the jurisdiction of the Tribunal must be assessed too, on the same path that it is already done at the European counterpart. Despite the necessity of a Protocol to consider individual access in Europe to the Court of Human Rights there, Asia-Pacific can trespass this reality and visualize the right of petition on the initial draft of its treaty.

As said previously, the job of a theorist is to theorize ideas that might become reality sometime. The initial idea of a Regional Asia-Pacific Court regarding Human Rights is here traced and must be improved by jurists worldwide. For the next decades, this can be one of the most relevant ideas for Human Rights enforcement on the Eastern part of Earth.

8) Enforcing Human Rights only through the Regional Commissions is Possible?

Right without might. This, unfortunately, is the initial idea that comes from the Human Rights Commissions. Far from taking them for granted, or diminishing their importance on the Jus Gentium´s theorization, fundamental principles´ violations can´t wait for a proper action from the subjects of International Law through the so-called Human Rights Commissions. Considering otherwise would be transforming these same rights as a scrap of paper.

Therefore, it is important to consider that, on the majority of hypothesis, the necessity of the duly action from institutions with high coercive force, deeply constructed on an international treaty properly approved and ratified by an expressive number of States worldwide. The power emanated from the decisions produced by a Tribunal is always the

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path chosen regarding Human Rights protection.

The conception of a Commission is always important, notably for the creation of a bureaucratic theorization of Human Rights. It is necessary to bear in mind that the Regional Commissions are important whatsoever. Nonetheless, every situation must be inferred from the reality that is present. For instance, where there is no form of Human Rights enforcement through a perennial bureaucratic institution, it is possible to "use" all the theories already created by Commissions that are present elsewhere. Theories coined by another Commission can be imported to a Court, for example

Surely, relevant to take the action with the unopposable adaptations. Africa is not the same continent as Asia, for example. And the paradigm created by Europe need to be visualized from the diplomatic reality that is verified at every concrete case. It is an important theory the plentiful access of human beings to Human Rights Courts. However, is it diplomatic doable?

This question can be answered only through a "trial and error" method. Legislative modifications are made only when necessary. It should be the other way around. Yet, it is not possible to attend the necessities even when they are present sometimes. Imagining the elaboration of treaties, covenants, pacts and other forms of International legislation prior to the social conflict is a beautiful, yet a naïve idea.

Nonetheless, it is paramount to try. Mankind can´t and won´t accept Human Rights violations only because "they are there". All efforts must be taken towards a deep, thorough, detailed, and, more important, jurisprudentially enforced Human Rights protection. As brought before, Human Rights Commissions are an important bureaucracy to fundamental principles and values. But they are only that: bureaucracy.

And the violations that are common nowadays will not and must not be assessed only via a bureaucratic, yet important institution. They must have the "sword of Justice" upon them, and, notably, upon the "heads of the violators". It is not defended here the punishment through death penalty, far from that. However, only the strength of a Tribunal can determinate the ending of constant Human Rights violations.

Is it diplomatic doable? Well, it must be. Mankind can´t take another direction only due to fear that something can´t be done. Individuals must, since the creation of every single Human Rights Tribunal, have the plentiful access to the jurisdiction from those Courts. And, first, these Courts must be a reality worldwide. Not only the Regional reality can be considered, yet an International Court must be a theory to be thought. This is what is going to be analysed at the further topic.

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9) The International Tribunal for Human Rights Protection

The International System of Human Rights Protection is not the last stand. Far from that, the ordinances created within the United Nations must be a beacon, the uttermost paradigm to Human Rights and fundamental principles in general. The United Nations are the example, the point to initiate the analysis of every concrete case where Human Rights might be a concern, in every occasion.

Then, with this consideration, is possible also to bear in mind that the United Nations system must be the most complex, and take the most profound perspective related to fundamental principles and values, notably when defending them. Without a UN strong and resolute enough, mankind itself might be jeopardized, and the future of humanity can be put in a grave danger.

The Basic Facts about the United Nations[22], handbook paramount to understand the UN, considers that:

"The United Nations has defined a broad range of internationally accepted rights, including civil, cultural, economic, political and social rights. It has also established mechanisms to promote and protect these rights and to assist states in carrying out their responsibilities."

Nevertheless, is this form of protection sufficient considering the immense range of violations perpetrated today? Does the UN have enough amount of treaties, covenants, and, more important, bureaucracy to defend all human beings from every kind of potential destruction of the human dignity caused worldwide, and as this article is written? Well, it has a lot, but not enough.

First, relevant consider the initial chart that is used as the pivotal point regarding fundamental principles and values. The International Bill of Human Rights is the spinal cord of the system, be used as a mean of measure the conduct of every State, undoubtedly adopted everywhere, anywhere. It must be comprehended as the most relevant ordinance, and be also the initial part of an immense web of protection.

However, mere normative acts, despite the forces that are carried within, are a mere scrap of paper without any form of enforcement. The coercive force is what makes a law productive, and what makes it possible to be adopted by every human being on earth, notably an International Law so relevant as the one above mentioned. The question of

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right without might is brought once more.

Thus, how can the bureaucracy, now, be used positively? Here, is possible to mention the Human Rights Council, responsible to create all the necessary theory to conclude on the enforcement of Human Rights and fundamental principles at every single country part of the United Nations. Here, bureaucracy exists with the main goal of Human Rights promotion, undoubtedly.

The Basic Facts about the United Nations, once again, must be mentioned, according to the segment brought below[23]:

"The Human Rights Council … is the main United Nations intergovernmental body responsible for promoting and protecting all human rights and fundamental freedoms. It was established by the General Assembly in 2006 to replace the 60-year-old Commission on Human Rights. The Council addresses human rights violations and makes corresponding recommendations."

As considered above, the Human Rights Council is paramount to the existence and enforcement of fundamental values and principles worldwide, notably visualizing how importance they are to the existence of mankind. Even though, it is also possible to foresee what was already analysed before: The Council lacks the necessary coercive force to make Human Rights applicable everywhere, anywhere.

With that idea in mind, how can be possible to obligate a specific country, for instance, to stop violating Human Rights, or start respecting them, without the unopposable coercive force made a reality with a Tribunal? The Council, once more, has its own importance, notably to analyse the fundamental principles situation worldwide, within the States that make the formation of the United Nations. Yet, here is verifiable the bureaucracy, but not the effective enforcement whatsoever.

The United Nations, however, does not stop its formation only with the mentioned Council. It is knowable that the most important bureaucratic process within the UN regarding the matter of fundamental rights and principles is made present by the United Nations High Commissioner for Human Rights. It is responsible to exercise the activities regarding Human Rights interests, notably with field operations created with the goal of fundamental values and principles´ enforcement.

Once again, bringing the consideration made within the Basic Facts about the United Nations[24], the tasks determined by the UN System for the High Commissioner are:

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"… promoting and protecting the effective enjoyment by all of all human rights; promoting international cooperation for human rights; stimulating and coordinating action on human rights in the UN system; assisting in the development of new human rights standards; and promoting the ratification of human rights treaties."

Far from taking the High Commissioner for granted, as mentioned before with the other parts of the fundamental principles and values bureaucratic protection and promotion. However, are either bureaucratic structures enough? How is the situation of Human Rights worldwide, nowadays? Humankind has arrived at a point where Human Rights protection became common sense?

It is not necessary to be a technical analyst to visualize how Human Rights violations are a current, incomprehensible and teratologic reality. What can be done to change this absurd scenario? Satisfying fundamental values and principles through bureaucratic rhetoric, regardless its importance to diplomacy, is not an acceptable reality while humanity will enter on the third decade of the Twentieth Century.

Therefore, the International Tribunal for Human Rights Protection is paramount. Considering the paradigm already designed by Europe, the United Nations can take the example already drawn and make the necessary modifications to create the Court with the jurisdiction on this matter. The primary idea is a reality at a well-recognised Regional Organization and can be used with the duly changes.

Also, necessary to bring the text the International Criminal Court. Regarding the existence of this Tribunal, some scenarios might be envisioned: first, the ICC can be only merged considering its administrative functions, remaining, thus, with the criminal jurisdiction for fundamental principles and values violations. This can be one prospected operation for the ICC, without simply terminating the already existing Tribunal.

It is also possible to imagine the possibility of accumulation of Human Rights matter into the jurisdiction of the potential Human Rights Court, finishing with the ICC whatsoever. Yet, this is not a reasonable scenario, considering that the International Criminal Court has a profound history of important decisions that built theories regarding fundamental values and principles protection that must remain with the existing Tribunal.

Thus, what can this new Court be responsible for? Its jurisdiction must be the one concerning notably the non-criminal consequences of a Human Rights violation. For instance, this Tribunal could have the jurisdiction for fixating sanctions against administrative agents or even citizens for fundamental principles and values situations

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that could be determined as clear stains against Human Rights.

A concrete case could be a one where a specified governmental agent could have violated a fundamental principle, considering, for example, the penitentiary system of some countries like Brazil. Thus, the President, the Minister of Justice, and others administrative agents could be accounted for the perpetration of illegal treatment of prisoners, and, therefore, could have financial assets considered as potential means of reparation for those that could have suffered within Brazilian prisons.

So, the jurisdiction of this Tribunal would be a crystalline non-criminal one, been responsible for determining the non-penal sanctions against citizens that could have acted on the opposite direction of what the Human Rights theory stands for. This would be a sanction not against a country, but against the person that created the teratological situation of Human Rights violation whatsoever.

In conclusion, the idea has been brought upon the academia, and, with this notion, it might be possible to consider the creation of a Tribunal acting towards this direction. Perhaps, with this vision, the situations where Human Rights became vandalized continuously by governmental agents might be on the past, and mankind shall be able to insert inside every person´s mind the idea of Human Rights protection and promotion, always.

10) Courts, Coercive Force and the Protection of Human Rights

The previous idea analysed throughout the article is finally visualized with more precise lenses within this topic. After all, it was defended for the entire duration of the text the augment of the coercive force with the objective of empowerment, promotion and protection of Human Rights, notably through the creation of an immense system of Human Rights Tribunal worldwide.

Despite that idea, it must be considered within this topic what is the importance of the creation of the triad mentioned in the title. The Courts are the most relevant way of promotion of a specific right, particularly considering the kind of fundamental principles and values that must be considered within this article. Human Rights, despite their clear relevance, are still extremely ductile whatsoever.

Thus, the jurisprudential creation coined by the Courts are important also for the theory of those rights. Within every decision it is also made the analysis of the rights there present, serving as a paradigm for further concrete cases that can be brought to the Tribunal. This

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is also a mean of enforcement and promotion of fundamental rights and principles, especially considering that most of the nations have adopted a mixed common law/civil law system.

The idea of an international system of Courts actuating only for fundamental principles and values is also important to create the idea of a more profound coercive force emanated from the decisions of those Tribunals. Court decisions are, as usual, punctuated by a deeper coercive force than administrative decisions. An international court, promoted by a great number of nations, can have an immense power when compared to the domestic counterparts.

Nevertheless, is not necessary to wait until the creation of every single international Human Rights Court to commence the promotion, enforcement, empowerment and protection of fundamental values and principles. This work is already done by the United Nations, by the European Union, by the African Union, by the Organization of American States, and others international law actors.

However, as visualized before, only the administrative action does not have the same results as the judicial one whatsoever. The reality is this: the decision of a Court has a potential of creating more respect, and even more fear, to the international law actors that even consider the idea of violating Human Rights worldwide. The certainty of punishment does have the potential of averting fundamental values and principles disrespect.

Finally, considering the existence of Tribunals with the necessary coercive force emanated from their decisions is the right path to be traced with the uttermost objective: protection of Human Rights and of their rightful owners. An administrative agent, a government servant, or even the private sector will think before violating those principles and values when facing the mere possibility of a swift cut of the sword of Justice.

11) Conclusion

In conclusion to this article, is important to consider that the possibility of exercising the right to be an International Law subject is vital to the protection of Human Rights worldwide. Despite the relevance that every subject has within the process here analysed, is paramount that the access of people to the jurisdiction of Human Rights Tribunal become an unopposable reality without any sort of barrier.

The European Paradigm, with the Protocol 11, demonstrates that this new idea is not diplomatic impossible whatsoever. Taking this possibility as an important International

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and Human Rights Law institute might be the path to be taken by every Tribunal already created or existing still in the theoretical world. Visualizing otherwise would diminish the idea since its very core.

Not only the necessity of an Asia-Pacific Court is important, but also the possibility of formation of a typical Human Rights Tribunal within the United Nations bureaucratic formation is also a demonstration that diplomacy is not mere rhetoric, yet the most relevant way to promote, protect and enforce fundamental values and principles without any doubt.

Thus, there is the Human Right to be an International Law subject, the crystalline demonstration that right with might is the only path to be chosen. Walking side by side with the right of petition of every human being, is the creation of an interconnected system of Tribunals, independently on hierarchical considerations, with the possibility of action in parallel with its counterparts.

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[12] The Protocol 11 is responsible to the transformation of the Commission and the Court, previously installed on a temporary manner, into a permanent Court, with the goal of protection and promotion of Human Rights at the European Level. Therefore, this document became the main ordinance to considerate the thematic.

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