

# Public policies, sovereignty and the right of asylum for people with disabilities: an analysis from the constructivist perspective

## Abstract

The theme of this paper is the relationship between states' adherence to the international regimes of human rights and the issue of sovereignty in view of the cogent obligations arising from treaties and conventions relevant to the theme, involving the adoption of policies formulated exogenously. The theme focuses on an extremely vulnerable subset within the general population of displaced people who are seeking asylum—those with disabilities—a population targeted by public policies. We chose the constructivist approach in international relations, particularly the aspect formulated by Alexander Wendt,<sup>1</sup> as well as the Theory of Social Construction of Target-Populations propounded by Anne Schneider and Helen Ingram,<sup>2</sup> in the ambit of public policies. The research concludes that social aspects in the interactions of agents, whether in the international (states) or the domestic sphere (policymakers) can constitute an important element not only in the adherence to international regimes but also for the implementation of public policies.

**Keywords:** public policies, sovereignty, asylum, disability, constructivism, policymakers, human rights, international relations

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## Introduction

### Initial inquiries and work methodology

The theme of this paper is the relationship between states' adherence to international regimes of human rights and the issue of sovereignty, in view of the cogent obligations arising from treaties and conventions relevant to the theme, which usually involve the adoption of policies formulated exogenously to states. Consistent literature points to the dominant role of the state as the actor responsible for formulating, implementing and occasionally extinguishing public policies,<sup>3-5</sup> a prerogative that suffers limitations when external commitments impose the implementation of public policies at the domestic level, the formulation of which took place within the context of multilateral mechanisms.

The theme is focused on the issue of people with disabilities who seek asylum, an extremely vulnerable target population that needs public policies to go beyond what is relevant to disability or to asylum if considered individually. Thus, the problem that guides the research refers to the combination of two characteristics in one individual that marginalize them in the domestic environment of states and the existence of which has been largely neglected in the international arena. From a discussion that unites the analysis of public policies and the issue of the existence of the state as a sovereign entity, we intend to deepen the still sparse debate about the treatment given to refugees who have disability.

Since the pioneering works by Berger and Luckmann<sup>6</sup> and Searle,<sup>7</sup> there has been the notion that our perception of reality is constructed socially, primarily by linguistic interaction. Institutions would be the result of perpetuated habits and involve the shaping of behaviors in the process of continuous feedback. The person with a disability and the refugee are not objects with an *a priori* existence but in fact social constructions that reflect the collective understanding of behaviors and roles to be played by those perceived as belonging to these categories.

This paper seeks to contribute to the academic debate about this intersection between such vulnerable and forgotten populations.

The methodology used here combines a bibliographic review of books and scientific journals on the subject and an analysis of international research on asylum and disability. The theoretical milestone is centered on the constructivist approach in international relations, particularly that formulated by Alexander Wendt,<sup>1</sup> as well as the theory of social construction of target populations propounded by Anne Schneider and Helen Ingram<sup>2,8</sup> in the ambit of public policies. Both theories focus attention on the importance of the social aspects of the interactions of agents, either in the international sphere (states) or in the domestic sphere (public policymakers).

## Context and literature review

### The legal regime of asylum

Traumatic historical events are usually followed by new normative developments. It was no different with the Second World War and we could say that the commotion generated by its pernicious consequences gave rise to not only the reformulation of the unsuccessful League of Nations into the United Nations Organization (1945) but also the adoption of the Universal Declaration of Human Rights (1948), the first instrument of international law to approach a subject close to the asylum issue, recognizing in Article 13 a person's right to leave the country where they are, including that of their origin, as well as recognizing in Article 14 the right of asylum in other countries to a person subject to persecution (UN, 1948). Subsequently, the Convention Relating to the Status of Refugees of 1951, in addition to consolidating previous international legal instruments related to refugees, established the basic standards for the treatment of this issue. It also standardized the concept of refugee, which became the prevailing paradigm in international law: [a person who] in fear of being persecuted for reasons of race, religion, nationality, social group, or political opinions, is outside the country of his nationality

and is unable or, owing to such fear, does not want to avail himself of the protection of that country, or who, in consequence of such events, is stateless and outside of the country in which he had his habitual residence, cannot or, due to such fear, does not want to return to it.

Article 33 enshrined the principle of *non-refoulement*, according to which a state cannot oblige a person to return to a territory where they may be exposed to persecution (UN, 1951). We can see two aspects to the scope of this protective principle: *Ratione personae* and *ratione loci*.<sup>9</sup> In relation to the person, protection is given to that individual who has a well-founded fear of persecution or where there are substantial grounds for believing that their human rights would be violated if they were returned to a given state. The territorial aspect, in turn, reaches the refugees or asylum seekers who are in the territory of the state of acceptance, or in territories under its effective control. An extraterritorial effect of the principle would still be there, covering border areas, the high seas, international zones, transit areas and even the territory of another state.<sup>9,10</sup> As for its legal nature, the aforementioned principle constitutes a rule of international law of cogent character (*jus cogens*) since it is recognized by the international community in nearly its entirety as a standard that is not liable to derogation, being also a customary international standard, in view of its reiterated practice by the states.<sup>9</sup>

In the ambit of Latin America, the Cartagena Declaration, resulting from the Colloquium on International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems, held in Cartagena, Colombia, between November 19 and 22, 1984, reiterated in its fifth conclusion the importance of the principle as a cornerstone of the system of international protection of refugees, as well as its cogent nature (UN, 1984). Fifth - Reiterating the importance and significance of the principle of *non-refoulement* (including the prohibition of rejection at borders), as the cornerstone of the international protection of refugees. This imperative principle relating to refugees must be recognized and respected in the current state of international law as a principle of *jus cogens*.

Boed<sup>11</sup> emphasizes that under the umbrella of the right of asylum, we can identify three distinct rights:

1. The right of the state to guarantee asylum;
2. The right of an individual to seek asylum; and
3. The right of an individual to obtain asylum.

This triple meaning pushes the boundaries of what is known as state sovereignty and defies the explanations from mainstream positions in international relations, considering that the voluntary adherence of states to the regime of international system of human rights and specifically to the asylum regime, necessarily entails partially abdicating the free exercise of the exclusive power to control their territory and the people in it.<sup>11</sup>

Asylum has a twofold legal nature: externally, it is seen as an international regime, whereas internally, it is configured as a public policy. With regard to the first aspect, it is noteworthy that the starting point of theories on international regimes can be anchored in the published article 'International responses to technology: concepts and trends'.<sup>12</sup> According to Ruggie,<sup>12</sup> international regimes would be 'sets of mutual expectations, rules and regulations, plans, organizational energies and financial commitments that are accepted by a group of States'.<sup>12</sup> Another more synthetic definition is proposed by Betts: a set of norms, principles, rules and procedures that govern the behavior

of international actors concerning certain issues.<sup>13</sup> The definition of Stephen Krasner is quite similar: sets of implicit or explicit principles, norms, rules and procedures around which actors' expectations converge into a given area of international relations.<sup>14</sup>

Thus, it is possible to deduce four basic variables for the formation of a regime: principles, norms, rules and procedures. Principles can be understood as actual beliefs that define the objectives to be achieved by the members of the regime. It is noteworthy that there are explicit principles, which are characterized by the standardization and politico-legal institutionalization of the principles and are implicit, being characterized by the institutionalization of behaviors, with the latter taking precedence over the former. Norms, in turn, would be standards of conduct defined in terms of rights and obligations, which confer legitimacy or illegitimacy on the actions of the members. The third criterion, the rules, can be understood as being specific determinations or prohibitions of actions, which can be changed more easily than norms and principles. Finally, the procedures would be predominant practices for carrying out the collective choice, implementing principles and changing rules.<sup>14</sup> In this context, the legal rules would be contained in the regimes and those that are called international rights would therefore be components of their respective regimes: international human rights law would be a component of the international human rights regime, just as international refugee law would be part of the international regime of refugees.<sup>15</sup>

As for the basis of cooperation, the mainstream approaches, particularly those with a neoliberal slant, maintain the pursuit of self-interest as being a motivation to subject states to international regimes. Keohane<sup>16</sup> leveraging the rational choice theory in microeconomics, argues that regimes may be regarded as facilitating devices for the achievement of agreements on substantive matters in the political world, particularly among states. The international regimes would help to make the expectations of governments consistent with each other's and would be developed because the international actors would believe that such arrangements would give rise to mutually beneficial agreements, which otherwise would be difficult or impossible to achieve.

In turn, the neorealism exponent Kenneth Waltz ratifies the realistic canon of anarchy as the main feature of the international system, which is understood here as the absence of a central authority with power over the other actors. Rationality would prevail and self-help would be motivated by the calculation of costs and benefits undertaken by states, the main actors in the system. The main goal of the states would be survival, a prerequisite for the achievement of any other goals.<sup>17</sup> Stronger states could, for example, impose human rights policies on weaker nations with the purpose of purchasing new geopolitical and geoeconomic spaces, in addition to reducing the autonomy of these nations and weakening their relative position.<sup>18</sup> Therefore, the small concession that the neo-neo approaches make to the importance of the ideas in international relations is still within the individual sphere of the actors and still under the gaze of wary eyes peeled on the satisfaction of the state's self-interest.

In relation to the nature of public policy, it should be emphasized that this present study is in line with a state-centric position in not only international relations but also and particularly, the study of public policies. Thus, the consolidated literature in the study of public policies<sup>4,5,19-22</sup> points out the action or omission of the state directed at influencing behaviors and/or facing public problems as elements characteristic of this type of policy. Hence, the primacy

of the formulation and implementation of public policy, effectively guaranteeing the right of asylum, would fall to the state signatory of the relevant international convention. It is inexorable, therefore, that once a state adheres to the international regime, whether of human rights or of asylum, that committed state immediately incorporates into its own internal legal system a relevant public policy, the mandatory implementation of which is symmetrical to the cogent character of the signed international instrument itself.

At this point, the level of complexity begins to increase because the internal element, despite the elusive silence of mainstream approaches, becomes important in the dynamics of the implementation of asylum as a public policy in the domestic sphere. Public opinion plays an important role in the process leading up to the adoption of a policy, particularly in setting its limits and direction and there are also indications of its importance for the adoption of one particular foreign policy at the expense of another.<sup>21</sup> When the paper here deals with the constructivist approach, we see that the structures and the actors are mutually constituted.<sup>23–24</sup> and that elements seen as diaphanous by neo-neo approaches, such as historical, cultural, social and political contexts, undertake the role of dependent variables in international relations.<sup>24</sup> Thus, when it comes to the target population of this paper, that is, refugees who have long-term limitations that are characteristic of the current concept of disability, formulating a public policy for asylum presents unprecedented challenges.

### Disability: from divine punishment to recognition

Each society has in each historical moment certain needs and social values, on the basis of which it establishes what is socially appropriate. In the same way, it establishes who is responsible for distinguishing the subjects, how to recognize who is different and the function they should perform in society.<sup>25</sup> People with disabilities constitute one of the most excluded groups from the social and economic perspectives, with sharp under-representation among the poorest sections of the population.<sup>26–28</sup>

The studies on disability were fashioned from two main opposing paradigms: the medical-functional or biomedical model and the social model. From the perspective of the first model, disability is equal to disease and constitutes a form of deviation that disrupts the social order. It is a normative and normalizing system that is based on the idea of an ideal model from which disability deviates. For the social paradigm, disability is mainly a social condition, not a biological imposition. Society, unable to find ways to meet the specific needs of a person with disabilities, chooses to deny those rights and transforms disability into a mechanism of segregation and discrimination.<sup>29</sup> From a cultural perspective, there are many specific circumstances that have influenced the living conditions of people with disabilities, not to mention the attitudes of people in relation to them. History shows that ignorance, neglect, superstition and fear are social factors that have exacerbated the isolation of people with disabilities.<sup>30</sup>

For a long time, the concept of disability was established as an opposition to the concept of normality. Davis<sup>31</sup> for example, suggests that the word 'normal' only began to have a meaning close to 'standard' in the English language in 1840, dealing solely with geometric configurations before that year. Currently, normal is a concept that derives from norm, from which it took the connotation of something mandatory, the violation of which would lead to sanctions.<sup>32</sup> A norm has a normalizing characteristic when it increases the capabilities and

expands the possibilities of power in social interactions.<sup>33</sup> The normal subject is less vulnerable to criticism and finds fewer social barriers to their free development. Therefore, the object of studies on disability is not exactly the person with disability but the set of social, historical, economic and cultural processes that regulate and control the means through which the body is perceived.<sup>31</sup>

The notion that normality is axiologically superior is directly linked to the biomedical paradigm that provided support to the new structure of the states in Europe with the arrival of liberalism. The theoretical framework of the biomedical basis that focuses the curative practices of medicine as a constant confrontation with pathology by seeking the restoration of normality finds its greatest chronicler in Canguilhem<sup>34</sup> however; it is in Foucault that we see the explanation of *ultima ratio* for the hegemony of this model of thought. With the emergence of the new liberal government mentality, the constant maintenance of inequality has come to be of vital necessity to the state itself, along with the control of all aspects of life of the population (known as biopower). As stressed by Foucault,<sup>35</sup> a social policy cannot have equality as an objective and should allow inequality to function. Therefore, from this perspective, separating those who are normal and desirable from those who are abnormal is fundamental to maintaining the *status quo*. Martins<sup>36</sup> points out the normalizing intent that is imposed when the classification of disability is developed on the basis of normality, from which it is inexorably excluded.

It is worth noting that the first moment in history when disability ceased to be seen as an abnormality or disease and came to be seen as a contingency (albeit long term) that prevented the full participation of the person in society on equal terms was during the Convention on the Rights of Persons with Disabilities. The most widely varying previous international standards had segmented people by disability and focused on welfarism. Thus, the approach to disability that is based on the concept of human rights comes as a breath of fresh air,<sup>37</sup> and the aforementioned convention brings with it a holistic concept of disability (UN, 2007): People with disabilities are those who have long-term impairments of a physical, mental, intellectual, or sensory nature, which, in interaction with various barriers, may obstruct their full and effective participation in society on equal terms with other people.

Finally, it is worth remembering that immigration controls, increasingly technological and focused on predominantly numeric criteria,<sup>38</sup> have a curious similarity with mechanisms of segregation based on the medical paradigm when dealing with people with disabilities. Both deal with institutionally choosing what would be desirable—the good migrant or the good patient.<sup>39</sup> Even a concept as relevant as inclusion can be tainted, particularly in the context of neoliberal policies as a mechanism of participation in the market of people with disabilities,<sup>40</sup> being important only because of their becoming consumers—of products, ideas and information.

In fact, people with disabilities requesting asylum present a great challenge to public policymakers. Research indicates that 7–10 per cent of all refugees in the world have a disability.<sup>41</sup> This is quite a dramatic contingent, whose inclusion in host societies often forces the recognition of issues not addressed in the domestic sphere. On this point, the actions of the international system can be extremely beneficial, leading states to face issues and implement policies that they would hardly do spontaneously if there were not an international commitment with a cogent character as a ballast.

## Constructivism and state sovereignty

Criticism of the excessively materialistic foundations of rationalist theories allows constructivism to establish a new way of perceiving international relations.<sup>42</sup> Constructivism shows that even the oldest institutions are based on collective understandings, which are reified structures that were once considered *ex nihilo* by human consciousness.<sup>43</sup> The material world would be shaped by human action and interaction in the process of constant feedback in the cycle between material structures and perception. Therefore, the focal point of social constructivism, which can be seen as being a true metatheory about the nature of the social world and not just as one more substantial theory of international relations, is the human consciousness or perception and its place in world affairs.<sup>44</sup> The conception of socially constructed ideas as an element fundamental to explaining the international system means to include in the study of international relations a component that tended to be overlooked by neorealist theory and only considered by neoliberalism in its individual bias.<sup>42</sup>

Among the many constructivist approaches, for this paper, we chose the vision of Alexander Wendt, who remains state-centric, just as with neorealism and neoliberalism, from which it distinguishes itself by granting an exogenous factor to national interests. For this constructivist conception, states would not interact within preformed identities and interests.<sup>1</sup> Wendt<sup>1</sup> accepts all five of Mearsheimer's<sup>45</sup> realist assertions: that the international system is anarchic, states have offensive capabilities, they cannot have total certainty about the intentions of other states, states have the desire to survive and they are rational. However, he adds two other assertions: a commitment with the state as a unit of analysis and the importance of a systemic theory.<sup>46</sup>

In an attempt to establish a bridge between the neo-neo approaches, Wendt argues that both the pursuit of self-interest and political power would not be logical consequences of anarchy and definitely not causal. If international relations seem to be motivated by self-interest, this would be a result of the process and not the structure. Anarchy is what states make of it.<sup>47</sup> Wendt<sup>47</sup> would not dispute that the contemporary international system is competitive; however, the issue would not be intrinsic to the anarchic structure of the system. The interaction between identity and interests may or may not involve competition. Identities and interests can dialog insofar as the former refer to who or what the actors are, while the latter relate to what they want.<sup>1</sup> For Wendt, there would be two types of interests—subjective and the objective. Subjective interests vary between states and relate to the need that they have to fulfill their identities. The objective ones relate to national interests and are formed from their state's corporate identity, i.e., the essence of what it is to be a state. Therefore, certain interests would be open to generalization. There would be, therefore, socially constructed interests particular to them and to those that would be the result of their identity as a state.

To the three national interests identified by George and Keohane<sup>48</sup>—physical survival, autonomy and economic well-being—Wendt<sup>1</sup> adds a fourth: collective self-esteem. The first interest was survival to which Waltz<sup>17</sup> would be the only national interest of states, does not demand more explanations because it constitutes a state's anthropomorphization, mirroring its own desire to maintain life, which characterizes human species. Autonomy refers to the ability of the state to exercise control over the allocation of resources and choices of the government. The third interest, economic well-being,

corresponds to the maintenance of the model of production of the state and by extension, of basic resources. The great contribution of Wendt<sup>1</sup> resides in the fourth interest (always remembering that the author himself mentioned that his list was not exhaustive and should be incremented over time), collective self-esteem related to the need of the group to feel good about themselves out of respect or status. Self-esteem would be a basic human need and one of the things that individuals seek in group conviviality. This self-esteem would have some similarity with interest in reputation was pointed out by Onuf<sup>23</sup> but would go a bit further. For Wendt,<sup>1</sup> mutual recognition and cooperation would result in positive self-image, reducing the need for security based on the weakening or destruction of another.

The constructivist premise that reality is built on social relationships implies the formulation of a new state ontology, equally social. Thus, the state could only be understood in the analysis of its interactions. Fierke<sup>49</sup> says it is not possible to treat the state separately from the context of normative meanings into which it is inserted and which defines its possibilities as part of the system. It can be inferred, therefore, that the conception of the state by constructivism denies the individual ontology of neo-neo approaches. To Onuf<sup>23</sup>, the state would be a collectivity that has agents that act and make choices on its behalf in the context of an anarchic reality.<sup>23</sup> It should be noted that the author is visibly a critic of the conception that states are completely independent of each other. For him, the idea of independence would be nothing more than a useful fiction but one that distorts reality. Therefore, the individualistic conception would be no more than a misleading image of the international scene since the social relationships in which states are inculcated would not allow for the development of an effective independence.<sup>42</sup> Wendt<sup>1</sup> ratifies this position calling the state a 'useful fiction' or 'metaphor' for what truly happens.

For Wendt<sup>50</sup> the state would be a social construction of the mind and even admitting that the action of social structures can only be verified from the behavior of individuals, he understands that considering the state as a social being allows it to be treated as a human being. Hence, Wendt<sup>1</sup> defends an anthropomorphic approach to states, seen as actors who have rationality, interests, beliefs and intentionality.<sup>1,50</sup> This is not to lend reality to the personhood of the state since its personification is also a fiction that serves as an instrument for organizing experiences and building theories.<sup>50</sup> Regarding sovereignty, this would be a property of the structure because of the state monopoly of force, which gives it the ability to keep any internal divisions under control.<sup>1</sup> A state, as well as a human being, cannot be reduced into smaller parts and should be treated as a unitary actor. On this point, Wendt's constructivism comes close to neorealists and neoliberals because these also start from the concept of the state as a unitary actor. However, what is peculiar in this constructivist branch is to recognize that, just as in the case of the individual, the state has identities and interests that are fundamental for the understanding of its behavior in the system. Identity, when determining certain motivational and behavioral dispositions, characterizes what or who the actor is. It is a subjective quality that is founded on the actor's understanding of themselves. There is also an intersubjective component in identity since it is affected by how the other actors of the system perceive the state.<sup>42</sup> According to Wendt,<sup>1</sup> identities are formed from structures that are internal and external to the state.

Thus, in the same way that individuals have multiple identities that coexist and present themselves according to the context, states also manage multiple identities. These would be divided into four types,

the list of which, according to Wendt,<sup>1</sup> would neither be exhaustive nor definitive:

1. The first type is personal or corporate identity, which is constituted by the self-organization of homeostatic structures (permeable), which, in turn, transforms the actors into distinct entities, in addition to being a platform for the projection of other identities.
2. The second kind of identity is type identity, which concerns the social category or labels applied to people who share common characteristics, such as appearance, behavior, attitudes, values, skills (for example, language), knowledge, opinions, experiences and common history.
3. The third form of identity is role identity, which has a dependent relationship with culture and the existence of the other. No preexisting condition based on which a student became a student or a teacher was observed. These identities only occupy a position in the social structure and follow the standard of behavior defined by the other. They cannot be performed by individuals/individual states themselves by being disconnected from the social context.
4. The fourth is collective identity, which relates to identification, a cognitive process in which the distinction between the self (individual identity) and the other becomes opaque and the limit is transcended. Someone may, for example, be a speaker of French without identifying themselves with France. Collective identity would be a distinctive blend between role identity and type identity, with the power to induce actors to define the well-being of others as part of their own, that is, to be altruistic.<sup>1</sup>

For the constructivists, sovereignty would be related to the modern political organization of the state. In Onuf,<sup>23</sup> linguistic investigations indicate three 'political languages' that conceptually precede modern sovereignty, the first of which, majesty (*majestas*), is linked to respect for the morality and dignity inculcated in the state, which would lead to respect for the institution. The second one is the empire (*imperium*), which is manifested in the government by the norm. The third political language would be popular sovereignty as understood today, i.e., the importance given to people in the conduct of political affairs.<sup>51</sup> Each antecedent marks an important aspect of political organization in its time and merging them enabled the creation of the concept of sovereignty.<sup>42</sup> The concept of sovereignty is socially constructed to the extent that the sharing of its understanding and acceptance is a precondition for a state to recognize others as sovereign entities.<sup>49</sup> To both Onuf<sup>23</sup> and Wendt<sup>1</sup> mutual recognition leads to certain powers and to authority, at least formally; hence, their relationship within the system comes to be seen as a relationship between equals.<sup>1,23</sup> Sovereignty would indicate, therefore, the independence of a particular community from the authority exercised in a territory.<sup>51</sup>

For Wendt, sovereignty has an ambiguous relationship with self-interest. On the one hand, it is an institution that is very open and compatible with a variety of interests by virtue of the primacy of states to determine their own interests and create a real measure of security. On the other hand, an important motivation for sovereignty is the need to satisfy corporate needs for security and recognition.<sup>1</sup> Thus, the Wendtian argument regarding the relationship between self-interest and sovereignty can be summarized in the following terms:

1. selfish interests are based on representations of the relationship between the self and the other and are not essentially a representation of individuality;

2. these representations are always a process even if the relative stability in certain contexts makes it easier to treat them as things in themselves;
3. many factors lead states toward selfishness; however, these do not negate collective identities. Even though international history has produced a majority of selfish states, the formation of collective identity needs to begin with or overcome a social fact.<sup>1</sup>

When treating identities and interests as being in a continuous process of interaction, Wendt notes that an evolution in the mechanisms of cooperation may lead to the development of the community itself.<sup>1</sup> Social structures have an inherent discursive dimension in the sense that they are inseparable from the reasons and self-understandings that agents carry to their actions. This discursive quality does not mean that social structures can be reduced to what the agents think they are doing as agents may not understand the structural background or implications of their actions. However, this means that the existence and operation of social structures depend on human perception and that social structures acquire causal effectiveness only through conscious practice and action.<sup>52</sup> The importance of human perception and social interaction as the founding mechanism of the state entails a review of the whole paradigm of state action, thus directly impacting the consolidation of public policies.

### Theory of social construction of target populations and public policies

As already seen the most widely accepted notion of public policy leads necessarily to the following elements: state action or inaction and the issue or problem of public relevance. At the domestic level, as already mentioned, the public policy to which the state committed at the time of signing the international instrument requires a series of steps for implementation, the stages of which can be framed in the theory of the cycle of public policies.

The contemporary theoretical approach to the cycle of public policies is divided into seven main phases:<sup>53</sup>

1. Problem identification
2. Formation of the agenda
3. Formulation of alternatives
4. Decision making
5. Implementation
6. Evaluation
7. Resolution

The first four phases include the identification of the sensitive issue of relevant public interest manageable by state action, followed by its inclusion in the public agenda that lead to the presentation of alternatives and a subsequent decision after the debates peculiar to the political arena. From the perspective of public policy resulting from commitments signed by states through international treaties and conventions, the first four phases occur in the ambit of multilateral entities. Issues tend to become more sensitive when it comes to implementation, with difficulties usually becoming dramatic,<sup>54</sup> particularly in relation to defining the target population. It is convenient to explain that to Schneider and Ingram,<sup>8</sup> the target populations were the individuals, groups and companies who were selected for a change of behavior by a public policy.

The theory of social construction of target populations developed by Schneider and Ingram<sup>2</sup> proposes an interesting explanation for the difficulty of implementing certain public policies. To synopsise, the theory adds that the social construction of target populations refers to the cultural characterization or popular image of people or groups whose behavior and well-being are affected by public policies. The social construction would therefore have an important influence on public officials and public policymakers in the formation of the agenda and in the design of policies. Public policies send messages regarding what the government assumes citizens as deserving or not, as well as the types of attitudes and ways of appropriate participation in a democratic society. Different populations receive different messages.<sup>2</sup>

The main merit of the theory would be to explain the reason why certain groups are more privileged than others regardless of traditional notions of political power and how public policies can reinforce or change these advantages. Social constructions are stereotypes of particular groups of people that are based on easily distinguishable characteristics and created by not only politics but also culture, socialization, history, media, literature, religion and taste.<sup>2</sup> Thus, to define the social construction of a target population, i.e., how the image of a particular group is placed socially is a task for an empirical analysis. It is a completely measurable phenomenon.

As pointed out by the consolidated literature of the study area of public policies,<sup>22</sup> two of the most important motivations for rulers are the production of public policies that help them to get re-elected (maintenance of power) and the need to be effective in addressing widely recognized public problems. Thus, it is not only the social construction of a target population that is important (either negatively or positively) but also the depiction and consequent perception of this population as being influential (from the perspective of power). To give substance to the theory, American authors formulated a matrix, from which an adaptation based on the original design is now presented (Figure 1).

		Constructions	
		Positive	Negative
Power	Strong	<b>Advantaged</b> The elderly Business Veterans Scientists	<b>Contenders</b> The rich Big unions Cultural elites
	Weak	<b>Dependents</b> Children Mothers Disabled	<b>Deviants</b> Criminals Drug addicts Gangs

Figure 1 Schneider and Ingram table

In the horizontal row, we see the sphere of power formed in the upper row by those identified socially as strong and in the lower row by those identified as weak, who hold little influence. The vertical columns show the social evaluation aspect, with the left-hand side column showing those identified socially as positive and the right-hand side column showing those who are seen in a negative way. In the intersection of social groups and persons who are the target populations of public policies, are classified as follows:

1. Advantaged
2. Contenders
3. Dependents
4. Deviants

The theory would explain, for example, why policies directed at groups of negative social construction face many types of resistance to implementation. As an example, policies in favor of drug addicts and criminals often suffer great opposition and only come into the political agenda in moments of crisis. The social imaginary about migrants and persons with disabilities has varied greatly over time and space. Mattiazzi<sup>55</sup> points out that in the case of the European Union, the paradigm that dominates theoretical discussion about the representation of immigrants in the democratic process limits them to marginalized citizenship and political standing. The study 'How the World Views Migration,' drawn up by the Gallup Institute at the request of the International Organization for Migration,<sup>56</sup> points out that in the 10 countries with the largest contingent of immigrants, the attitudes of residents with regard to immigration vary widely according to the following (Table 1).

Regarding the social view of disability, there are no major studies with a global scope. However, the way society and particularly the state, have dealt with disabilities throughout history indicates that people with disabilities were either seen as aberrations (often as a form of divine punishment) or as sick people who needed treatment. Currently, the World Report on Disability, drawn up in 2011 by the World Health Organization, reveals some worrisome data on the situation of people with disabilities: their health is more precarious; their school performance is poorer; they are less active economically; they have higher rates of poverty; and they show a low level of autonomy in their daily routines.<sup>57</sup> Therefore, people with disabilities are most often overlooked by state services.

The issue is actually more complicated when asylum and disabilities intersect because apparently, the vulnerabilities combine and contribute to the aggravation of the needs of this target population, which tends to be invisible to public policymakers. Refugees with disabilities tend to be too often characterized as being invisible, frequently forgotten, many times overlooked and constitute the most isolated, socially excluded and marginalized group among all the displaced populations.<sup>41</sup> In addition, they are more victimized by violence, including sexual, than people in general.<sup>58</sup> They also endure three major disadvantages: first, they are outside their country of origin; second, they are severed from the protection of their countries of origin; and finally, they live in fear of persecution if they are forced to return.<sup>59</sup> All this is in addition to having to live with the long-term limitation that characterizes disability.

Thus, considering the terms of Schneider and Ingram's<sup>2</sup> proposal, refugees with disabilities may, depending on the society in which they seek asylum, either fall into a position known as dependent (politically weak and socially positive) or deviant (politically weak and socially negative). Schneider and Ingram<sup>2</sup> indicate that society tends to imagine that the government treats the dependent population with compassion and that the deviant population should not benefit from public policies. Thus, policies in favor of those target populations tend to suffer resistance to development and implementation.<sup>2</sup> Much of the invisibility of the population dealt with in this study can be explained from the perspective of the social imaginary seeing their character displayed as either dependent or deviant.

**Table I** Attitudes toward immigration in the 10 countries receiving the most immigrants (in %)

In your opinion, immigration in your country should:	Maintain the current level	Increase	Decrease	Does not know / Did not Answer
<b>United States</b>	33	23	40	4
<b>Canada</b>	45	22	30	4
<b>United Arab Emirates</b>	49	21	13	17
<b>Russian Federation</b>	12	5	70	12
<b>United Kingdom</b>	24	5	69	2
<b>Spain</b>	35	5	56	5
<b>Germany</b>	49	14	34	2
<b>France</b>	40	6	44	10
<b>Australia</b>	40	30	25	6
<b>Saudi Arabia</b>	36	32	24	9

The UN Convention on the Status of Refugees of 1951 does not explicitly cover the issue of people with disabilities. Parekh<sup>60</sup> points out that the stricter interpretation given to the main concepts articulated in the Convention—*persecution, well-founded fear and social group*—leads to many countries tending to exclude people with disabilities from the protection conferred by asylum. In fact, there is a huge temporal lag between the development of the international norm of asylum (1951) and the adoption of a unified concept of disability (2007), which may lead to inconsistencies. However, occasional differences of interpretation arise from the invisibility that both groups—people with disabilities and refugees—bear since Articles 11 and 18 of the mentioned international convention establish, respectively, protection for persons with disabilities in situations of risk, as well as the recognition of their freedom of movement and freedom to choose residence and nationality on an equal footing with others. These devices, taken jointly with the general principles of human rights and standards pertinent to asylum, could serve as the basis for the formulation of specific policies for the group that is being studied here.

In the ambit of the United Nations, the main articulator of policies in favor of people with disabilities is the Division for Social Policy and Development (DSPD), the mission of which is to provide advice to governments and regional organizations to help them develop social policies. The joint action between DSPD and UNHCR became stronger after the International Convention on the Rights of Persons with Disabilities and fortified the policies in favor of migrants with disabilities. However, in the face of multiple problems arising from differences of interpretation of its member countries, the Executive Committee of the UNHCR issued Conclusion No. 110 in 2010, directed at the signatories of the International Convention on the Rights of Persons with Disabilities, which applies to refugees with disability. *This Conclusion No. 110 presents a series of recommendations and urges the member countries to commit to policies that promote equality of conditions among refugees with and without disabilities.*

## Conclusion

The international economic system is prodigious in producing redundant people, either locally ineffective, excessive, unemployable by reason of progress, or locally intolerable, rejected by unrest, conflicts and dissensions caused by social/political transformations and subsequent struggles for power.<sup>61</sup> The need to maintain

consumer markets in full operation encourages states to maintain strong immigration controls to avoid undesirables, known as flawed consumers.<sup>62</sup> People with disabilities who seek asylum present major challenges for inclusion;<sup>63</sup> this is particularly because studies on the intersection between these two populations are still very incipient.<sup>64</sup> International studies indicate that people with a higher chance of inclusion seem to be those who have their own means of including themselves rather than those who are dependent on social devices offered by public services.<sup>65-66</sup> In addition, the tension between what the collective identity of the state indicates and the perception of specific themes seen in the social imaginary of its population presents an additional challenge. States projecting a humanitarian and receptive collective identity often find themselves with the complex task of cooling the tempers of large contingents of its domestic population who are dissatisfied with the supposed benefits granted to foreigners. As pointed out by Hochschild<sup>67</sup>, often large portions of the population that are cut off from the larger market can direct their frustration against much more vulnerable groups that oftentimes receive emergency benefits of public policies, which are seen as undeserved.

At the present moment, in which migration flows are accentuated and bring new challenges to states that have always valued maintaining high levels of social welfare, tackling the problems means not only computing risks but also reacting to injustice.<sup>68</sup> Asylum and disability share the fact of being linked to the international system of human rights, the adherence to which by states can challenge their degree of sovereignty<sup>69</sup> and not always appear to be a direct manifestation of the search for self-interest. In most cases, there is an immediate and quantifiable advantage obtained by the country that accedes to this type of international regime. Probably it has to accommodate people whose inclusion entails major challenges and at certain times even face the opposition of a large part of its own population. However, countries continue to adhere to such regimes. In relation to the International Convention on the Rights of Persons with Disabilities, 174 countries are state-parties and 13 are signatories, leaving only 11 countries that have not adopted any stance. Until the present moment, 145 states are part of the Convention Relating to the Status of Refugees.<sup>70-71</sup>

Refugees and persons with disabilities share the dreadful fate of often being invisible or when seen, being treated as undesirable. The challenge is made, particularly by the fact that the theme has not yet reached the threshold level of prominence on the international agenda.

As Wendt<sup>1</sup> well remembers, only the mere pursuit of self-interest does not explain the actions of states. The articulation between interests and identities can add much more to the debate. The consolidation of a positive collective identity, particularly when states reach higher levels of social well-being, seems to be linked to a greater involvement in issues of recognition of human rights. Solidarity can have a beneficial effect on development. However, only more studies could confirm or refute this conjecture.

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## Conflict of interest

Authors declare that there is no conflict of interest.

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