

## ARTICLE

## Foreign Policy versus Migration Legislation: The case of Brazil (1979-2017)\*

**Marcelo de Almeida Medeiros<sup>1</sup>**

<https://orcid.org/0000-0001-8385-0358>

**Igor Henriques Sabino de Farias<sup>1</sup>**

<https://orcid.org/0000-0002-7593-8541>

**Ana Gabriela Belarmino<sup>1</sup>**

<https://orcid.org/0000-0003-0130-5482>

<sup>1</sup>Universidade Federal de Pernambuco. Department of Political Science. Recife/PE, Brazil

In the current international system, countries have responded in distinct manners to migratory phenomenon, principally in the internal sphere. Using Hermann's Model, this study intends to verify, using documentary analysis, the level of influence which the international treaties signed by Brazil exercised on the formulation of migration legislation in the country between the Foreigner Statute (Law N<sup>o</sup> 6.815/1980) and the 2017 Migration Law (Law N<sup>o</sup> 13.445/2017). The results show that the Migration Law was more successful in enshrining terms established in international agreements, since the Foreigner Statute was created in a period in which the foreign policy agenda did not defend post-national citizenship.

**Keywords:** Migrations; foreign policy; globalization.

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Correspondence: Igor Henriques Sabino de Farias. E-mail: [igorhsabino@hotmail.com](mailto:igorhsabino@hotmail.com)

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**D**uring the last forty years, various changes have occurred in Brazil regarding the relationship between national sovereignty and the protection of the fundamental rights of migrants and foreigners. Despite the history of the country, marked by the immigration of large numbers of people, twentieth century Brazilian legislation was particularly restrictive regarding citizens of other nations, often ignoring their contributions to national formation. In 1980, during the final years of the military regime, the Foreigner Statute (Law N<sup>o</sup> 6.815/1980) was presented as the new regulatory text for the entrance of migrants to Brazil. Concomitantly, in the same period the country did not demonstrate any particular concern with the protection of human rights as part of its foreign policy.

In this sense, the Foreigner Statute was the main instrument for defining relations between political institutions and immigrants for almost four decades. Even though a few years after it came into force a democratic opening had occurred, the precepts of national sovereignty remained preponderant within migration policy until 2017. Despite being presented as a protective text in relation to its territory and its residents, with the return to democracy and the election of a legislature considered more progressive, Law N<sup>o</sup> 6.815/1980 gradually approximated the ideals of international organizations, such as the UN.

In 2017, after the modification of many points in the original text, the New Migration Law was voted on in Congress and sanctioned by the then president, Michel Temer, forming the new national regulatory framework. Unlike the previous mechanism, the main focus of new Brazilian migration legislation was the human protection of migrants, not national security. This legislative change can be perceived as a transformation in foreign policy given the new challenges presented by the international system. After the impeachment of Dilma Rousseff, Michel Temer sought foreign legitimacy for his administration by seeking to make it compatible with the norms and rules of the main international institutions and regimes.

Given this panorama, this analysis proposes to answer the following question: is there any relationship between Brazilian migration policy and the country's foreign policy actions? The hypothesis is defended that the Brazilian strategy of international insertion conditions migration policy at a national level. As a theoretical reference for this hypothesis, we used Charles Hermann's model

(1990). This argument is widely used in the field of studies of Foreign Policy Analysis (FPA), mainly for the study of governmental transitions. It is intended to address the impact of foreign policy on migration law, specifically the Foreigner Statute (Law Nº 6.815/1980) and the New Migration Law (Law Nº 13.445/2017). In this sense, Hermann's model (1990) seems to fit, since as Vigevani and Cepaluni highlight (2007, p. 279) his concepts try to evidence characteristics of complex phenomenon, not easily found in a pure form in international policy, primarily involving an analytical function.

This study is divided into four sections in addition to this introduction. These are: revision of the literature, methods, results, and conclusion. First, some ways are discussed of studying Brazilian foreign policy (BFP), highlighting how Hermann's model (1990) explains changes. Following this, it is examined how the Content Analysis (CA) technique is used for the collection and verification of data. Next, the results are assessed and finally some conclusions are presented.

### Revision of the literature

One of the characteristics of Foreign Policy Analysis – and which differentiates it from other subareas of Political Science – is the study of international policy through the process of understanding domestic units. As highlighted by Salomón and Pinheiro, FPA “has the objective of studying the foreign policy of specific governments, considering its determinants, objectives, decision making, and actions effectively made” (SALOMÓN and PINHEIRO, 2013, p. 40). In the Social Sciences, however, one of the greatest difficulties faced by researchers is related to the question of change. Foreign Policy Analysis is no different and one of the most used models for examining transformations in foreign policy is the one formulated by Charles Herman, in his classic ‘Changing Course: When Governments Choose to Redirect Foreign Policy’, from 1990.

Despite the popularity of the model, its use in BFP research is still rare<sup>1</sup>. The most important studies have highlighted the changes that have occurred between the Fernando Henrique Cardoso and Lula da Silva administrations (VIGEVANI and CEPALUNI, 2007); between Lula da Silva and Dilma Rousseff (CORNETET, 2014);

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<sup>1</sup>In relation to the contributions of Hermann's model for foreign policy studies, see Carlsnaes (1993); Gustavsson (1999); Hudson and Day (2019).

and, finally, between Dilma Rousseff and Michel Temer (SILVA, 2019). The reason for this may be due to the fact that, once again, as highlighted by Salomón and Pinheiro (2013), more conventional studies of FPA – focused on the examination of decision-making units and the decision-making process ‘*stricto sensu*’ – aimed at the Brazilian reality are still relatively timid. Furthermore, the actual study of change in foreign policy in itself is still a somewhat recent topic when compared to other questions commonly dealt with in FPA (GUSTAVSSON, 1998, p. 03).

According to Blavoukus and Bourantonis (2014, p.01), for a considerable period foreign policy studies centered on continuity and stability, with sporadic attempts to analyze change. However, due to the systemic transformations of international politics, as well as the paradigms of Political Science, new research has emerged on foreign policy questions. Our proposal seeks to contribute not only to the diffusion of FPA in Brazil, but also offers new possibilities for the use of Hermann’s model (1990). Basically, this involves an attempt to use it to explain the changes that occurred in two non-consecutive administrations, separated by a long temporal space, with the guiding element being the relationship between foreign policy and migration policy.

This study does not involve an in-depth examination of the relevant transformations which occurred between the Figueiredo and Temer administrations. Instead, it is chosen to analyze only what are seen as the starting point and the most advanced point in the Brazilian political scenario in relation to migration legislation. A probable objection to this approach is perhaps the fact that changes occurred in the Brazilian political regime between the Figueiredo administration and that of Temer. The answer to this is that, despite the democratic transition, legal questions involving migration in the country remain almost unaltered, with the exception of the recognition of refugees (AMARAL and COSTA, 2017; GUERRA, 2017).

According to Hermann (1990), the foreign policy of a country can change in at least four levels: 01.small adjustments; 02.alteration of programs; 03.redefinition of objectives/problems; and 04.international reorientation. This can occur due to four reasons: 01.leader; 02.bureaucracy; 03.domestic restructuring; and 04.external shocks (HERMANN, 1990, pp. 05-06). These characteristics makes it possible to adapt the model to consider the impacts not only of the decisions of Brazilian

leaders, but also the influence of international events, such as the end of the Cold War or contemporary migration crises.

In relation to the four levels of change, the first is related to the (greater or lesser) intensity of efforts in relation to the scope of recipients. What is done, as well as the means and the purpose, remain intact. The second level is related to the modifications made in the methods or in the means by which the objective or the problem is approached. Thus, what is done and how it is done change, but the purposes remain the same. In the third, the purposes are replaced. Finally, the fourth level involves the redirecting of the entire orientation of an actor towards international politics. This is the most extreme form of change, since unlike other transformations, it does not affect only the relative positioning regarding a question or a set of other actors, but also involves a complete reorientation of the international role of the actor and their activities.

Regarding the causes of the transformations, those related to leadership refer to actions taken by political decision-makers which impact foreign policy, whether they are presidents or ministers. In turn, bureaucracy exercises power due to the fact that not all government agencies accept change easily, which can be an impediment to some reforms. In addition, important domestic sectors can be sources of renewal in foreign policy. Finally, external shocks are changes caused by dramatic international events (HERMANN, 1990, p. 06). Some examples are the end of the Cold War in 1989, the terrorist attacks of 11 September 2001, or also the COVID-19 pandemic in 2020.

For Hermann (1990, p. 05), US Vietnam policy exemplifies at different moments all these levels of change. In the Brazilian case, Vigevani and Cepaluni (2007, p. 322) state that between the administrations of Fernando Henrique Cardoso and Lula there was a change of adjustments and programs, which can be located between levels 01 and 02 on Hermann's model (1990). In relation to the Dilma Rousseff and Michel Temer administrations, Silva (2019, p. 33) shows that the modification was in terms of objectives, in other words, level 03.

## Methods

As explained above, this study involves a systematic revision of the last two pieces of Brazilian macro-legislation on migration – the Foreigner Statute (BRASIL,

1980) and the Migration Law (BRASIL, 2017a) – in the internal sphere, comparing them to the international treaties which Brazil signed on this question in the same period. The main objective, as also mentioned above, is to establish connections between the foreign policy agenda and compliance or non-compliance with the provisions of international treaties on migration in presidential administrations from João Figueiredo (1979-1985) to Michel Temer (2016-2018) and their respective migration legislation.

It is examined here how human rights are understood through the interpretation of migration legislation in force, from the level of bureaucratization to the establishment and development of migrating individuals and the programmatic content of international treaties signed by the presidents in question. Also presented here is a historic guide to the action of Brazilian legislation in relation to the situation of migrants and refugees, its evolution and changes. It is thus possible to draft a temporal line of BFP in relation to migration policy and understand which paths were followed by one piece of legislation or another. For this, content analysis was used based on documents related to the international treaties signed by Brazil in the foreign sphere and the alterations in legislation in the internal sphere.

CA became popular in the United States in the twentieth century as a form of evaluating journalistic reports and investigative documents in the social world. With the growing popularization of electoral studies and the importance of symbolically examining them, CA also came to spread in the Social Sciences and in its research methods. According to Bardin (1977), principal exponent of the CA approach and who is used here as a theoretical and methodological reference, this technique is based on the examination of communication and it is aimed at systematically observing the symbolic content present in texts, discourses, images, and all other types of communication between individuals. She argues that the use of Content Analysis involves three phases which are fundamental for robust results: pre-analysis, exploration of the material, and treatment of the results, in relation to inference and interpretation (BARDIN, 1977).

This methodology can be used in a quantitative, qualitative, or mixed manner. In the quantitative approach there is a special emphasis on the number of occurrences of a determined word or set of words and on textual statistics, which is

usually called frequency deduction. On the other hand, the qualitative approach proposes to analyze messages or fragments of them which may or may not contain symbolic content and which serve for the interpretation of a determined textual 'corpus'. Dividing the text into groups due to the similarity of characteristics is commonly called categorial analysis. The mixed approach proposes to mix both methodologies, in order to construct a more grounded framework for textual 'corpora' that are more extensive. In this study the qualitative approach is used.

CA is applied to the documents available on the Legislation Portal. The method of collection will be demonstrated next. Data related to the International Treaties signed by Brazil was obtained on the Concórdia platform, run by the Division of International Acts, part of the Ministry of Foreign Affairs' (DAI)<sup>2</sup>. This platform houses a collection of all accords, agreements, and acts in which Brazil has been involved.

The tools of the platform itself were used to search for documents to be analyzed. For a better understanding of the influences of international acts on the conception of the Foreigner Statute, all treaties dealing with the question of migration were examined, specifically those signed since the beginning of the 1970s, when the platform's records began. Furthermore, all acts of a bilateral, trilateral, and multilateral nature signed between 19 August 1980 and 24 May 2017 were selected, the period when the statute was in force as migratory policy.

The search for alterations in the legislation in this period allowed an understanding of the context in which the Migration Law was promulgated and thus its comparison with the content of the Statute. First, the parts of agreements of interest to the objectives of the study are filtered. All the acts are selected in which one of the parties is the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), the International Organization for Refugees (IOR), or the United Nations (UN). Agreements are defined according to their current status, namely: 01.being examined in MRE, Ministries/'Casa Civil', or the National Congress; 02.going through the ratification process; 03.being promulgated by the MRE/Casa Civil; 04.in force, expired, being ratified by other parties, 05.denounced, 06.replaced, 07.in a special situation, 08.pending, or

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<sup>2</sup>Available at: <<https://concordia.itamaraty.gov.br/>>. Accessed on August, 15, 2020.

09.outdated. On the other hand, the legislation related to the Foreigner Statute and its alterations was obtained in the archives made available by the Coordination of Technical Editions of the Secretariat of Publishing and Publications of the Federal Senate<sup>3</sup>. Acts, decrees, vetoes, and auxiliary considerations were obtained from the official platform of the Legislation Portal<sup>4</sup>.

Iramuteq<sup>5</sup> was chosen for the analysis of the collected documents, as it is a tool with a large reading capacity and a great reference within CA, lexicometry, and discourse analysis. This software is linked to the statistical package in the R program, which is currently one of the most widely languages used for programing. It was chosen as it allows the free handling of the visualization and analysis of data and because it is widely used in many areas of knowledge and different research methodologies.

Later, as well as using CA to obtain textual statistics related to the frequency of the most used words in each piece of legislation analyzed, the use of the Word Cloud (WC) method proved necessary for a deeper understanding of the central core of content in each law. The word cloud is one of the most used analysis tools, using the CA method through computer processing. WC uses statistical indicators to infer the relevance of determined words or grammatical classes. The results are shown by connecting the words where the emphasis and relevance of some terms occur through size and color.

Thus, using graphic resources which also measure and quantify the frequencies of the words used in a text or conglomerate of the texts, it is possible to construct images formed by dozens of words whose dimensions indicate their thematic relevance or frequencies in the middle of hundreds or thousands of textual corpora. This possibility is of fundamental importance to understand how the content of migration policies from a certain period is more concerned with a determined ideal of sovereignty or a perspective close to human rights and the international bodies which represent it.

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<sup>3</sup>Available at <<https://www12.senado.leg.br/institucional/old-documentos/institucional/SF/OSE/DGER/SEGRAF>>. Accessed on August, 15, 2020.

<sup>4</sup>Available at <<http://www4.planalto.gov.br/legislacao/>>. Accessed on August, 15, 2020.

<sup>5</sup>Abbreviation for Interface de R pour les Analyses Multidimensionnelles de Textes et de Questionnaires.

After carrying out the CA, how the transformation of migration legislation occurred in Brazil will be discussed, taking into account Hermann's model (1990). In this sense, it should be emphasized that the Hermann (1990) starts with the assumption that governments alter their foreign policy through a decision-making process, which can facilitate or hinder change. According to Hermann (1990), foreign policy begins with a problem which generates concern, whether it is a threat or an opportunity. As they are badly structured, these problems require that policymakers are capable of defining their nature and implications.

In this aspect, the possibilities for a solution are quite restricted, with it being necessary for the decision-making process to achieve active reformulations in order to overcome the usual resistance and bring about the necessary transformations. This process thus consists of seven stages: 01.initial policy expectations; 02.external stimulus; 03.recognition of discrepant information; 04.postulate of a connection between the problem and policy; 05.development of alternatives; 06.construction of an authoritative consensus for choice; 07.implementation of a new policy. Each of these stages will be highlighted in the following section, by discussing the motives which led Michel Temer to sanction the New Migration Law.

## Results<sup>6</sup>

According to Gonçalves and Miyamoto (1993, pp. 242-3), a premise common to the military governments related to foreign policy is the recognition of the peripheral position of Brazil in the international system. In virtue of this, the necessary means have to be used for the country to adapt to the existing conjuncture and, thus, be capable of carrying out national development. In this sense, what varied was only the strategy used by the different military presidents to achieve the aim of transforming Brazil into a great global power. In this sense the Figueiredo administration was characterized by overcoming the ideological division with the reduction of East/West tensions. Based on this, the Brazilian position was universality, marked by distance in relation to international powers (GONÇALVES, MIYAMOTO, 1993, pp. 242-3). As Vigevani and Cepaluni have stated (2007, p. 285),

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<sup>6</sup>For the purposes of revision or the replication of the work, readers who are interested in finding out more details about the method used, can obtain the archives and command instructions at <<https://osf.io/f76pu/>>.

in this period, despite the crisis of the national developmentalist model, Brazil was still guided by the idea of autonomy though distance.

Moreira (2012, p. 97) also mentions that throughout the military period an important element in the formulation of the Brazilian international insertion strategy was the question of national security. Something equally reflected in the domestic sphere, through the creation of norms and institutions focused on the security question, controlling and restraining the population. It was in this context that in 1980 the Foreigner Statute was passed (Law Nº 6.815/1980).

Before proceeding with the analysis of Brazilian legislation, it is necessary to clarify the migration context in the country during this period. As Dizner highlights (2015), the history of migration to Brazil is generally divided into three phases: from 1808 to 1850; from 1850 to 1930; and from 1930 to the present. The last phase is what corresponds to the temporal focus of this paper and stands out due to the reduction in transhumance, with the exception of between the 1950s and 1970s. The so-called 'economic miracle' was an important source for the attraction of investment and migrants, coming principally from the South American region. However, it was not the only one, as there were also questions of a political type (DIZNER, 2015, p.50).

In this aspect, Martes (2010, p. 12) highlights the existence of four different groups of migrants and displaced persons: 01.those suffering political persecution (1970-1980), the majority of whom were South Americans; 02.refugees, mainly Africans, Colombians, and Afghans; 03.qualified professionals either self-employed or employed by multinational and transnational companies, especially European and Argentinian (1970-2010); 04.labor migrants (1970-2010), in other words, poorly qualified and non-documented workers coming voluntarily, above all South Americans and Portuguese speaking Africans.

Given this panorama, it is opportune to highlight that during the period of authoritarian regimes in Latin America, Brazil received many professionals from Argentina, Uruguay, and Chile, victims of political persecution (DIZNER, 2015, p. 50). This throws light upon the approval of the Foreigner Statute. In the decades after the 1970s, there was a reduction in the four migratory groups. This would gain preeminence in the country after 2010, with the crisis of the Haitians. Due to the

earthquake that occurred in 2009 and the presence of the Brazilian military in UN peace forces, Brazil entered the route of emigrants from Haiti.

According to Fernandes and Faria (2017, p. 150), the first groups which reached the country in 2010, amounted to around 400 individuals, increasing to more than 4000 at the end of 2011, and reaching 65,000 Haitians in 2015. Many of them applied for refugee status, which was denied as they did not fit into the international definition of refugees adopted by Brazil. However, since they were fleeing a humanitarian crisis caused by an earthquake, they received special permission to remain, previously non-existent in the legislation. The so-called humanitarian visa, which after 2013 would also be offered to Syrians who wanted to enter Brazil to seek refuge, exposed the fragilities of the Foreigner Statute. This type of visa would also be one of the innovations of the New Migration Law.

In this sense, it is worth making a brief clarification about the availability and access to quantitative data related to migration legislation and its regulations by the Brazilian authorities. In Brazil along with the establishment of the Foreigner Statute, Law N<sup>o</sup> 6.815/1980 created the National Immigration Council (CNIg), responsible, amongst other things, for the Observatory of International Migrations (OBMigra) which was created very recently, in 2013, by Technical Cooperation Term N<sup>o</sup> 04/2013, between the then Ministry of Labor and Employment, through CNIg, and the University of Brasilia (UnB).

OBMigra is responsible for producing annual, quarterly, monthly, and structural reports of the migration phenomenon in Brazil. However, the availability of data remains irregular in relation to the years of analysis. Annual and quarterly reports are available for 2015 onwards. Conjunctural reports are open to the public on the Immigration Website, though Ministry of Justice ones only for 2019 and 2020, while the monthly reports are available from January 2019 to March 2021. The lack of standardization in the availability of data implies a more accentuated difficulty when referring to data analysis.

As a representation of migration policy based on the values of the symbolism of national sovereignty the Foreigner Statute has suffered, since its creation, from the unavailability of absolute data about migratory flows open to the public and reliable. The period covering the 1980s and the beginning of the 1990s also suffers from a lack of transparency in relation to numbers. The National

Committee for Refugees (CONARE) was established through Law N<sup>o</sup> 9.474, from 22 July 1997. However, only five editions of CONARE's annual report entitled 'Refugee in Numbers' have been published.

Furthermore, the microdata made available by the National Immigration Council used in the SISMIGRA, General Coordination of Labor Immigration (CGIL), and the Work and Social Security Document (Carteira de Trabalho e Previdência Social - CTPS) databases, contains data for distinct variables, but with little standardization of information. Some databases are spreadsheets which compile occurrences, in other words, the protocol for each request for entrance or recognition, for example, but do not contain absolute data or percentages which can allow graphic and descriptive visualization of migratory flows in the period in analysis. Having stated this, it is possible to move on to the discussion of the results obtained after the CA.

### **The Foreigner Statute**

Containing various demonstrations of the importance of security and the sovereignty of national interests given the presence of foreigners in the country, the text has 141 articles and 13 chapters which deal with the period spent by immigrants in Brazilian territory. The Law in itself does not make any allusion to international treaties previously signed by Brazil. Until the moment of the creation of the Foreigner Statute, the closest the country was to the signing and supposed promulgation of an international act in which the country participated was the occasion of the creation of the International Organization for Refugees (IOR), even without officializing the agreement.

During the period of the military government, Brazil did not demonstrate any great concern with the protection of human rights as part of its foreign policy. This can be observed in the fact that the country had not signed the Inter-American of Human Rights in 1969, only doing this at the beginning of the 1990s (MAHLKE, 2011, p. 4). This is one of the main regional mechanisms in relation to theme and is an important mechanism for the protection of migrants in Latin America. The fact that a treatise of this magnitude had been ignored by the João Figueiredo administration highlights some of his foreign policy priorities, internationally

marked by the end of détente of the Cold War and the worsening of the East-West ideological conflict (URT, 2009, p. 82).

In this period, little attention was given to the cause of refugees<sup>7</sup>. However, according to Jubilut (2007), Brazil was committed to the norms for the protection of these forcibly dislocated people since the beginnings of the phase of universalization of this institute, by also ratifying both the 1951 Convention and the 1967 Additional Protocol, referring to the status of refugees. Moreover, the country has been part of the Executive Council of the United National High Commissioner for Refugees (UNHCR) since 1958. Nevertheless, for practically two decades there was no effective Brazilian policy for dealing with this type of forced dislocation.

This was only altered at the end of the 1970s, with the signing of an agreement between Brazil and ACNUR in 1977 for the creation of an 'ad hoc' office in Rio de Janeiro. As Jubilut (2007) states, this office played a very limited role due to the autocratic nature of the government, not carrying out any resettlements. A fact explained by the Brazilian option to maintain the territorial clause of the 1951 Convention, meaning that it was valid only in Europe. Added to this was the refusal to offer refuge to people opposed to authoritarian regimes close to it, only giving them permission to move through the national territory, for later resettlement in another state (JUBILUT, 2007, p. 172).

In order to break down the text of the Foreigner Statute into textual frequencies and to graphical visualize its content, the most frequent terms in the legislation were counted using Iramuteq. The Statute was divided into textual segments based on chapters. Segmentation was done through codification \*\*\*\* \*Disc\_1; \*\*\*\* \*Disc\_2; \*\*\*\* \*Disc\_3; and so forth. The language used was UTF-8 and the standard Portuguese dictionary which the software possessed. After this, it was decided to observe only adjectives and verbs as active forms and the supplementary verbs as a complementary form for the analysis of terms to be more objective.

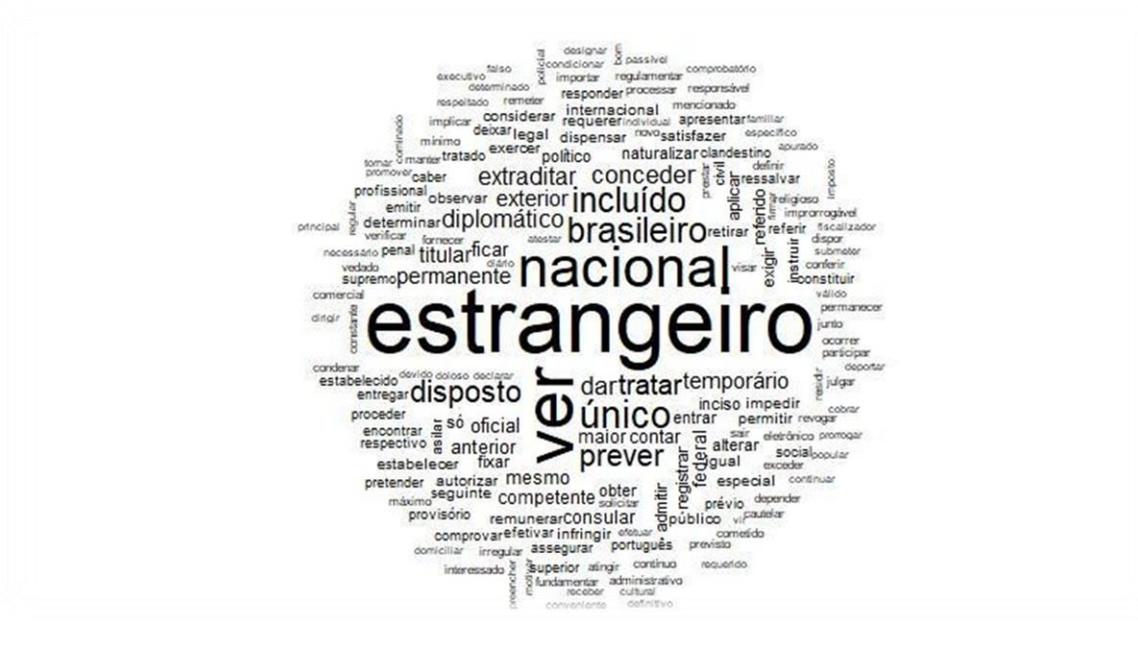
As demonstrated in Figure 01, some of the most frequent terms in the text which are worth citing are: foreigner (122 times), territory (45 times),

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<sup>7</sup>It should be highlighted that in Brazil, as well as in Latin America, refuge and asylum are differentiated. The former is based on a commitment to International Law, based on the 1951 Convention. In turn, the latter is an individual decision by each country (ANDRADE, 2014, p. 656).

national (73 times), extradite (23 times), expulsion (22 times), extradition (22 times), prison (21 times), deportation (20 times), crime (18 times), residency (16 times), and asylum (10 times) (Figure 01).

**Figure 01.** Word Cloud (Foreigner Statute)\*



Source: Prepared by the author.

\*Note: Words with a greater size and with more emphasis are those which are more frequent in the textual body: “estrangeiro” = foreigner; “nacional” = national; “ver” = see; “brasileiro” = Brazilian; “incluído” = included; “disposto” = disposition; “prever” = preview.

In order to verify if there is any similarity with Brazil’s international posture in the post-war period when the country became a partner of IOM or some reference to agreements from another period in the Foreigner Statute, the word ‘treaty’ was looked for. It appears seven times during the text, though in none of these is there any reference to the original text, before any later modification. Two are related to the extradition of foreigners whose country of origin is part of the bilateral treaty signed with Brazil, through the drafting and signing of Law N<sup>o</sup> 6.964, dated 09/12/1981; the other citations are part of Law N<sup>o</sup> 12.878, dated 4/11/2013, much after the original text of the statute, without modifications.

Mentions of the words: act(s), accords (and its variants with the same Portuguese root: -‘acord’) and convention (and its variants with the same Portuguese root: -‘convenc’) are also analyzed. However, no

reference is made to elements present in international acts which influence the position of Brazil and its migration policy. One of the main demonstrations of this lack of reference to international treaties signed by Brazil in its migration policy is the American Convention on Human Rights (Pact of San Jose, Costa Rica), from 22 November 1969. Although it was promulgated in 1992, the legislation does not make any explicit mention of any of the points agreed in this convention.

Years later, in 2002, Decree N<sup>o</sup> 4.246 promulgated the Convention on Stateless Persons. In relation to its alterations over time, the Foreigner Statute underwent the necessary modification in relation to its applicability and the scope of its duties to immigrants as a country valuing Human Rights. Nine laws or decrees modified the legislation, though only two laws were promulgated directly in response to the ratification of international treaties: a Law N<sup>o</sup> 8.069/1990 and Law N<sup>o</sup> 9.474/1997. The first is related to the Statute of Children and Adolescents, adhering to the Convention Related to the Protection of Children and Cooperation in Questions of International Adoption adopted by the Hague Conference in 1993. Seven years later, the second one, Law N<sup>o</sup> 9.474/1997 defined mechanisms for the implementation of the Refugee Statute of 1951 and determine other measures.

The situation of refugees underwent some normative changes in 1982, with the recognition of UNHCR as an agency of an international organization (JUBILUT, 2007, p. 174). Another important advance was the 1988 Federal Constitution which defended the principal of human dignity and the validity of international human rights treaties in Brazil. Amongst the latter were the 1951 Convention and the 1967 Protocol, as well as the 1984 Cartagena Declaration, which also assured protection to refugees. The Constitution is an exceptional framework for the defense of human rights in Brazil. Article 05, section LXXVII, leaves it clear that the rights and guarantees stipulated in the Brazilian constitution do not exclude other results of international treaties signed by the country.

However, in relation to refugees, the greatest change occurred in 1997, with the creation of specific legislation for them: Law N<sup>o</sup> 9.474, dated 22 July. This legislation stipulates the criteria for the determination of refugee status in Brazil and creates a specific body to administrate the area: the National Committee for Refugees (CONARE) (GAMA, 2018, p. 10, 13).

In relation to voluntary migrants – the main object of concern of the Foreigner Statute – however, the changes only occurred in 2017 three decades after the end of the military period, with the approval and sanction of Law N<sup>o</sup> 13.445/2017, popularized as the New Migration Law. The legislation covers both voluntary migratory flows and forced displacements. This can be seen in its first article which makes distinctions between the immigrant, emigrant, frontier resident, visitor, and stateless person. Moreover, it ensures that the enforcement of the law does not prejudice the application of specific internal and international legislation on refugees and asylum seekers. The Foreigner Statute, however, does not contain any similar concepts and refers only to voluntary migrants or asylum seekers. The former are described in Art. 04, though only in light of the type of visa that they can receive in order to enter Brazilian territory. On the other hand, asylum seekers are mentioned eleven times in the legislation, and their rights and duties are stipulated in articles 28 and 29.

According to Amaral and Costa (2017), the New Migration Law goes against the international tendency, especially in the US and Europe, of criminalizing migrants. As these authors emphasize, the Law, specifically in Art. 03, III, unlike the previous legislation, establishes as the governing principle of Brazilian policy towards foreigners the non-criminalization of international flows of people. Previously, these individuals had been considered as potential enemies, as stated in art. 18. Furthermore, it also contained, according to arts. 106, 107, and 125, the notion of exclusive crimes for foreigners, contradicting the Caput of art. 95 of the Federal Constitution (AMARAL, COSTA, 2017, p. 217).

### **The new Migration Law**

On 24 May 2017, Michel Temer sanctioned the text which thus became the applicable migration legislation. Although its original version suffered more than twenty vetoes, it still represents a great advance in relation to the recognition and treatment of migration and the framework of public policies which the state should provide to fulfill its role in the guarantee of Human Rights to individuals from other nationalities in Brazilian territory.

As described in the previous section, the most frequent terms in the legislation are counted using Iramuteq for a better visualization. As is done

with the Foreigner Statute, the Migration Law is divided by textual segments per chapter, while segmentation is also done by codification \*\*\*\* \*Disc\_1; \*\*\*\* \*Disc\_2; \*\*\*\* \*Disc\_3; and so forth. The language used is UTF-8 and the standard Portuguese dictionary it possesses. Equally, after this it was decided only to observe the adjectives and verbs as active forms and supplementary verbs as a complementary form for the analysis of the terms to be more objective (Figure 02).

Some of the most frequent terms throughout the text which deserve to be highlighted are: 'extradite' (30 times), 'diplomatic' (29 times), 'stateless' (26 times), 'migratory' (25 times), 'migrant' (22 times), 'foreigner' (19 times), 'emigrant' (11 times), 'frontier' (11 times) and 'humanitarian' (08 times). To verify the presence of references to international treaties signed by Brazil since the promulgation of the New Migration Law, as was done for the Foreigner Statute, the number of times the word 'treaty' appears during the text – and on which occasions – was counted. In the twenty-six times when it is present its appearances do not refer to specific treaties, but rather indicates legislation related to bilateral or multilateral agreements in which Brazil is a party and which discuss the situation of migrants.

During the text these references are articles or Caputs which define, for example, that "(...) Repatriation, deportation, and expulsion, will be done to the country of nationality or from where the migrant or visitor came, or another country which accepts them, in observance with the treaties of which Brazil is a part"(BRASIL, 2017a, Cap. IV, Art. 47). Mentions of the words: act(s), accords (and its variants with the same Portuguese root: -'acord'), and convention (and its variants with the same Portuguese root: -'convenc') were also analyzed. However, no reference is made to specific agreements at any moment of the text, and nor is there any innovation of the word act and its variants.

On the other hand, the term 'convention' – as well as its variants – is cited four times in the text. Once during the first article of the Law, making direct reference to the 1954 Convention on Stateless Persons, promulgated by Decree N<sup>o</sup> 4.246, from 22 May 2002, in defining the category of stateless in migration legislation – a condition which until then was not recognized. The term is mentioned another three times in relation to the Convention alluding to the Refugee Statute, promulgated by Decree N<sup>o</sup> 50.215, dated 28 January 1961, and Law N<sup>o</sup> 9.474, dated 22 July 1997 (Table 01). Just as there is also no reference to the American



the Human Rights of each migrant individual, it is still the function of the member state:

“(c) to provide, in accordance with the request of the interested states and in agreement with them, migration services, such as: recruitment, selection, transmission, teaching of languages, orientation activities, medical exams, placement, activities which facilitate reception and integration, advice on migration subjects, as well as any other type of assistance in agreement with the Organization’s objectives” (BRASIL, 2013, Cap. I, Art. 01).

**Table 01.** Convocations of International Treaties in the Migration Law

Article cited	International Treaty Convoked
Chapter I, Section I, art. VI – Defines the condition of stateless person.	1954 Convention on the Stateless Persons Statute
Chapter III, Section II, art. 26 §2º – Defines that while the process of the recognition of the stateless condition is underway, all the guarantees and protective mechanisms shall be incurred and social inclusion shall be facilitated.	<ul style="list-style-type: none"> <li>• 1954 Convention on the Stateless Persons Statute, promulgated by Decree Nº 4.246, dated 22 May 2002</li> <li>• The Convention on the Refugee Statute, promulgated by Decree Nº 50.215, dated 28 January 1961</li> <li>• Law Nº 9.474, dated 22 July 1997</li> </ul>
Chapter III, Section II, art. 26 §4º - Recognition of the stateless condition assures the rights and guarantees stipulated in the 1954 Convention on the Stateless Persons Statute.	1954 Convention on the Stateless Persons Statute
Chapter V, Section II I, art. 46 – deals with protection for stateless persons or other humanitarian situations.	1951 Refugee Statute and the 1967 Additional Protocol

Source: Prepared by the author.

In relation to compliance with previous laws on the issue, in its first article the Migration Law alludes to the Stateless Persons Statute, as this term is defined in the sixth paragraph. Also stated in the text is the commitment to the Refugee Statute and to the Rome Statute of the International Criminal Court. The laws and decrees that are part of the legislation related to the Foreigner Statute remain active without any explicit revocation and in most cases have only partial vetoes in specific points which contradict the interpretation of the new policy of the migration phenomenon. Undoubtedly, the new Migration Law is a mark of the progress related to this phenomenon, which is far from being something temporary, as the IRO classified it in the postwar period.

However, the law still ignores important questions related to the theme, such as internal and environmental displacements, two phenomena of great interest to Brazil. The first is due to its internal nature, expressed in the exodus of native populations from the 'sertão' in the northeast during the periods of drought. The latter is due to its international dimension, exemplified in the Haitians. Although these can be covered by the category of humanitarian visas, the idea is that there should be a specific designation for migration caused by environmental motives.

Nevertheless, the legislative change that occurred can be considered as a transformation in foreign policy given the new challenges presented by the international system, also due to the action of domestic groups. According to Silva (2019, p. 34), one of the characteristics of the Brazilian international insertion adopted by the Temer administration was the search for investment and the construction of the image of Brazil as a responsible country and defender of the international order in force, not giving signs of attempts to contest them. This posture was essentially due to internal questions and the changes in international policy.

Figueiredo, in turn, at the end of the period of military governments, acted differently from Temer. As Bueno and Cervo stated, at that time, "multilateralism was in crisis and Brazil supported it. In Latin America it was sought to reinforce the bilateral, reconciling disagreements and implementing mechanisms for joint action' BUENO and CERVO, 2010, p. 428). As a result, there was less of a concern with aligning the country with international human rights systems.

In relation to internal elements, Temer faced additional challenges. He had less than 5% of popular approval (VERDÉLIO, 2017) and needed to assure both Brazilians and the international community that the impeachment process which had brought him to power was legitimate, not constituting a threat to democracy in Latin America. In this sense, one of his first measures in the Ministry of External Affairs was to instruct diplomats to combat the narrative that a coup d'état had occurred (SILANO and FONSECA, 2019).

In relation to the approval of the Migration Law, there was also strong social commotion, coming from groups supporting and opposed to it. The bill, under the name of Aloysio Nunes – who would be the Minister of External Affairs in the Temer administration –, was initially submitted to Congress in 2013. However, it was

analyzed and passed by the Chamber of Deputies only in 2016, afterwards returning to the Senate, due to modifications. Throughout this period, various civil society organizations carried out advocacy actions for the law to be adopted. As a result, the bill was finally presented to the plenary of Congress and passed. After getting the approval of congress there were a series of protests by conservative groups for the new Migration Law not to be sanctioned by the president, as well as a campaign with xenophobic fake news. However, this strengthened still further the lobby in favor of sanctioning the law.

The first phase of the change described by Hermann (1990) about the perception of 'policymakers' – in this case, Temer – in relation to the need to modify an aspect of foreign policy in order to deal with a determined problem can be observed here. In turn, the second phase of the model highlights how unexpected external events can stimulate the revision of already adopted policies (HERMANN, 1990, pp.14-15). In this sense, the election of Donald Trump to the US presidency is highlighted, as well as the beginning of the process of the departure of the United Kingdom from the European Union – Brexit -, stimulating uncertainties about the future of international society and the processes of regional integration and cooperation.

Given this, it can be argued that Temer moved onto the third phase, that of the recognition of discrepant information, reaching the conclusion that it was necessary to assure the commitment of Brazil to respecting and protecting international institutions. This can be clearly perceived in the speech given by the Minister of Foreign Affairs, José Serra, when he took office in May 2016. In this talk the new foreign minister, who remained in the position until March 2017, committed himself, amongst other things, to the promotion of democracy and human rights; respect for non-interference; protection of the environment and the defense of peaceable resolutions of controversies (BRASIL, 2016).

This position would be maintained in the following years and can be included in the fourth and fifth phases of Hermann's model (1990, pp. 16-17). These phases consist of the recognition of the existence of a causal relationship between the problem and the existing policy and, next, the development of alternatives. In this sense, it is as if Temer perceived that to clarify Brazilian support for certain institutions it was necessary to modify its posture in relation to

the treatment of immigrants. Based on this, the sixth and seventh phases of the change in foreign policy are entered, involving the construction of a consensus for new options and the adoption of new measures (HERMANN, 1990, pp. 18-19). This actually appears to have occurred during the Temer administration and can be observed not only in the sanctioning of the new migration legislation, but also in Brazil's adherence in December 2018 to the Global Pact on Migration, a UN initiative, with a non-binding nature.

However, the change did not extend to the following administration, since President Jair Bolsonaro, an ally of Trump, removed Brazil from the Pact shortly after his election. Nevertheless, in his farewell speech, Temer's former foreign minister, Aloysio Nunes, tried to argue with the transition team for the new administration that the pact did not harm national sovereignty and thus had to continue to be a priority in the agenda of BFP (VEJA, 2019).

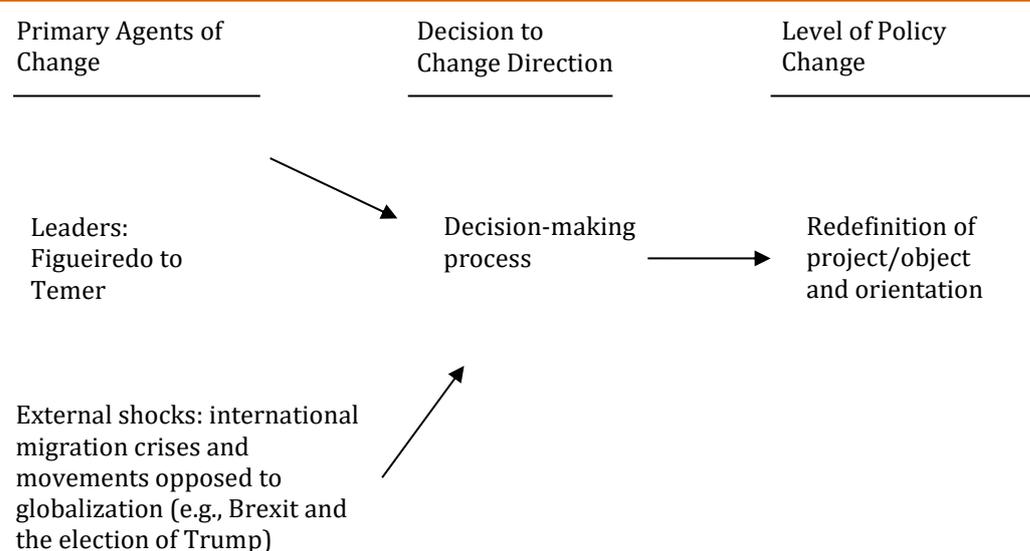
It can thus be noted, according to the concepts proposed by Hermann (1990), that in relation to the migration question, there was a change involving both the redefinition of the problem/object and international orientation. Based on what has been outlined, it can be perceived that from Figueiredo to Temer a significant transformation took place in relation to how migration came to be conceived by the Brazilian government. The question stopped being primarily perceived from the perspective of national security and became concerned with above all protecting human security. A very radical change thus occurred, reflected both in internal judicial ordering in Brazil and the international commitments signed by the country.

The causes of this resulted not from the simple change of presidents, since the formulation of the New Migration Law was a gradual process, running through various administrations until it was sanctioned by Temer. Nor does it appear sufficient to argue that the cause was simply domestic restructuring, since even decades after redemocratization, migration laws remained basically the same as in the military period. The best explanation seems to be that the change was predominantly caused by internal pressure and external shocks– See Figure 03.

Important among these were both the advent of globalization and movements opposed to it, the so-called 'anti-globalists', above all given the increase in forced displacement around the world. Among several conflicts the Civil War in

Syria stands out, with its more than six million refugees and its impacts on Western public opinion, above all in Europe and the US, contributing, respectively to the departure of the United Kingdom from the European Union and the election of Donald Trump as president (CAPORASO, 2018; OGAN et al., 2018; UNHCR, 2020). Similarly, it is necessary to highlight the Haitian question which, between 2010 and 2015 put Brazil on the route on transnational migrations in the twenty-first century (BAENINGER and PERES, 2017, p. 120). All these questions had a direct impact on the actions of groups favorable to and opposed to the adoption of a new migration policy in Brazil. The alterations were thus located between levels 03 and 04 of Hermann's model (1990).

**Figure 03.** The mediating role of the decision-making process among agents of change and the level of political change



Source: Hermann, 1990, p. 13.

In this sense, an important point to be highlighted in the use of Hermann's model (1990) for the study of changes in BFP is the role of presidents. As highlighted by Vigevani and Cepaluni (2007), in analyses on the US changes are caused by different actors and events, with the most relevant transformations being those which originated in actions carried out by political leaders. In the Brazilian situation, the president or some minister have the potential to interfere in the redirecting of foreign policy. However, Herman's premises (1990) are difficult to find in a pure form in reality. Even if there is a primordial cause for the alteration in the foreign

policy of the Brazilian government, it rarely results from the actions of a single actor and actually is almost always the result of various factors (VIGEVANI and CEPALUNI, 2007, p. 279).

This is evident in this study. Various elements have contributed to Temer changing BFP in relation to migration issues. However, the continuation of these changes increasingly depends on whoever occupies the Presidency. Despite the external stimuli, Jair Bolsonaro seems to be willing to adopt new rules similar to those of the Brazilian military regime, especially in relation to migration flows. In addition to having removed Brazil from the International Migration Pact, the current president is a strong critic of the current legislation on the issue, having been opposed to it when he was a federal deputy and has made threats to modify its content after having been elected president (MAIA, 2018).

### Conclusion

This article proposed to trace a parallel between the former Foreigner Statute, created in the military regime, and the New Migration Law, sanctioned in 2017, identifying what were the main similarities between the foreign agenda of the country and migration policy in the internal sphere. Using Content Analysis as a methodology, all the agreements, conventions, and treaties signed by Brazil were examined, with the interval between 1970 and 2017 being the temporal unit.

The results obtained from the analyses demonstrate that despite the efforts made by Brazil after World War II to become part of the International Organization for Refugees, this were not translated into effective actions in the internal sphere which were apparent in the long-term and in the original text of the Foreigner Statute. Although there was no formal compliance with the IOR through ratification, since its foundation Brazil was involved in its internal participation and organization. By observing the original text of the Foreigner Statute, it can be seen that there is no allusion to international acts on the rights of migrants and their defense.

However, it can be perceived that this posture in relation to voluntary migrants and refugees was consistent with the orientation of foreign policy adopted during the Figueiredo administration and the migration scenario in the country at the time. A characteristic of the international insertion of Brazil in the military

period was concern with security and economic development issues. This was done with the aim of altering the country's position in the international system, seeking to raise it to the status of power. Furthermore, there was a posture of avoiding involvement in discussions referring to the protection of human rights in multilateral forums, as a form of curbing criticism of the domestic abuses committed. At the same time, Brazil had become very attractive for political dissidents from other military regimes in Latin America, due to professional opportunities. These questions led to the adoption of a migration policy focused mainly on national security, remaining like this for decades.

In relation to the Foreigner Statute its original text converses with various points of the international agreements, as discussed above. The demonstration of cooperation in the domestic sphere is the result of decrees and revocations which modified the Foreigner Statute after the democratic opening. However, it's still very bureaucratic structure does not allow harmony between the terms pointing towards human security – added after the democratic opening – and those concerned with unique and exclusive national sovereignty. The same individual seen as a migrant citizen in one part of the text can in essence be seen as an imminent threat. The Migration Law was thus born as a more malleable apparatus whose purpose was not only compliance with international treaties signed by Brazil in recent decades, but also to create the image of how to see the migration phenomenon from other perspectives.

The existence of a relationship between foreign policy and migration policy can be observed. However, unlike Figueiredo, Temer took advantage of the human rights agenda as a form of guaranteeing international legitimacy and counterpoising the fears that Brazilian democracy was at risk after the impeachment of Dilma Rousseff. Adopting legislation favorable to migrants was quite strategic, taking into account the growth of populist movements around the world, whose main examples were the election of Donald Trump and Brexit.

In this sense, the importance of the figure of the leader can be seen in the application of Hermann's model (1990) to the study of changes in BFP. Despite the internal pressures of civil society and the constraints caused by international crises, the president of the republic is responsible for sanctioning the priorities of the country's external insertion.

A possible research agenda is the analysis of the regulatory process of the New Migration Law during the administration of Jair Bolsonaro. The first two years of his mandate were marked by a foreign policy one of whose main pillars was alignment with international conservative leaders with strong opinions opposed to migrants and refugees. It is interesting to observe if the legislative advances obtained during the Temer administration were actually applied to Brazilian migration policy or if there was any type of retrocession.

Another possible research agenda is the construction of a database of migration flows from the establishment of the Foreigner Statute until the present. This database can be established through the pairing of microdata divulged by entities which formed CNIg and the general collection of absolute numbers. It is interesting to note how modifications over time, as well as the recognition of new migration situations, such as refugees and stateless persons, influence the characteristic profile of this migratory flows.

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