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Humanitarianism and migratory control: refuge, medical care, and labor migration

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Abstract. This article reviews the relationship between humanitarianism and migratory control in international migration policies in Argentina. We analyze the processes of ambivalent categorization of migrant subjects as victims and/or threats, through three humanitarian categories that appear in the regulation of international migrations: refugees, migrants undergoing medical treatment, and labor migrants. The methodology employed is qualitative and analyzes: statements of international organizations; national regulatory frameworks related to migration, refuge, and the transplantation of organs and tissues; institutional discourses; laws; official reports; and public commentaries by government officials.

Keywords: Migration; victims; threats; Argentina; humanitarianism; control.

Acronyms

AMUMRA	Association of Women United, Migrants, and Refugees in Argentina (Asociación de Mujeres Unidas, Migrantes y Refugiadas en Argentina)
CONARE	National Commission for Refugees (Comisión Nacional para los Refugiados)

CONICET	National Council for Scientific and Technical Research (Consejo Nacional de Investigaciones Científicas y Técnicas)
CIECS	Center for Research and Studies on Culture and Society (Centro de Investigación y Estudios sobre Cultura y Sociedad)
DNM	National Office for Migration (Dirección Nacional de Migraciones)
INCUCAI	National Central Unified Institute for the Coordination of Tissue and Organ Transplants (Instituto Nacional Central Único Coordinador de Ablación e Implante)
Mercosur	Southern Common Market (Mercado Común del Sur)
RCIDT	Ibero-American Network/Council for Donations and Transplants (Red/Consejo Iberoamericano de Donación y Trasplante)
UNCHR	United Nations High Commissioner for Refugees
WHO	World Health Organization

Introduction

During the last two decades, international migration policies in Argentina and South America in general have increasingly incorporated humanitarian discourses and practices. In Argentina, the approval of Migration Law No. 25,871 in 2004 (regulated in 2010) and the Law on the Recognition and Protection of Refugees (Ley de Reconocimiento y Protección al Refugiado) No. 26,165 in 2006,[1] together with the implementation of programs and measures regulating migration, accompanied by official discourse, led to the emergence of new ways of representing migrations and the migrant subject. As never before, during this period migrants have come to be seen as victims that need the protection of the state, whether through the recognition of their human rights as incorporated in international conventions or through the implementation of specific programs and policies that permit them to cross borders or remain in a country other than the one where they are originally from. These transformations have been interpreted in different ways in the academic sphere, as Domenech and Pereira (2017) point out. Some have described the phenomenon as a "paradigm change," which implies a shift from a focus centered on the national security doctrine to one based on human rights, while other interpretations have problematized such affirmations.[2] In this sense, the notion of "control with a human face"[3] (Domenech, 2011, 2013) has allowed for reflection about the imposition of migratory control based on a human rights discourse. Thus, we can conclude that international migration policies view migrants not only as victims, but also as threats that the state must take measures to control.

Drawing on a dialogue between individual scholars and research collectives that deal with various aspects of humanitarianism and migrations,[4] in this article we seek to problematize certain classifications constructed in relation to migratory processes and, in particular, the representations of migrant subjects embodied in the idea of "victims" and/or "threats." We analyze three categories of migrations and mobilities in Argentina: refugees, individuals receiving medical treatment, and labor migrations. These

1 Henceforth: Migrations Law; Refuge Law.
2 For a detailed bibliography on each of these perspectives see Domenech and Pereira (2017).
3 All translations of quotes in Spanish are by *Apuntes*.
4 In the case of individual studies, we refer to the master's and doctoral theses of each of the authors in recent years. We have also participated in collective research projects that allowed us to identify discussions that transversalize our various studies. Of particular importance was the project "Movilidad, migración y seguridad desde el sur: una aproximación crítica a teorías generales y desarrollos latinoamericanos," accredited and subsidized by the Secretaría de Ciencia y Tecnología de la Universidad Nacional de Córdoba (2016-2017).

categories are articulated with measures and regulations adopted in South America and reveal, in our view, the coexistence of a humanitarian discourse on migrations together with migratory control strategies. This coexistence can be seen if we pay attention to the ways through which classification as a victim and as a threat, although constructed and presented as dichotomies, are related and operate in an ambivalent way within a single category. Our exploration of the categories identified here, presented independently but with an analytical articulation that we will describe below, constitutes a route of critical analysis of certain constants that are present in the nexus between humanitarianism and migratory control.

Our analysis is thus centered on the ways of regulating refuge, so-called economic migrations, and access by migrants to certain types of healthcare services, especially organ transplants, and special attention is given to the specific stays for medical treatment. The analysis of these categories will allow us to demonstrate that in all cases, the coexistence between humanitarianism and migratory control is based on the ambiguity of representing migrants as victims and threats at the same time. Refuge, (which contains the implicit suspicion of possible abuse by those who request this category without justification), migrants suspected of participating in "transplant tourism," and migrant workers whose irregular status could lead to exclusion and crime: each of these categories is constructed dichotomously based on a conception of an unprotected victim and, at the same time, a threat. In this sense, we intend to show some of the ways that the frontier between these subjects is understood as **legitimately and illegitimately deserving** of protection by the state.

In this study we introduce theoretical elements related to the categories of **humanitarianism** and **migratory control**. In relation to the former, we concentrate in particular on the works of Didier Fassin, employing his most important contributions expressed in the notions of **humanitarianism** and **humanitarian government**. We consider that the theoretical elements proposed by Fassin (2003, 2005, 2016) constitute an innovative lens through which to interpret the transformations of migratory policies on regional and national levels, especially in relation to the introduction of humanitarian language and human rights in the treatment of migrations. When it comes to control and securitization policies, we turn to the critical studies of security, and primarily the proposals of Didier Bigo (2002) regarding the processes of securitization and an understanding of humanitarianism as a byproduct of these. At the same time, this study is inspired by and refers to the results of previous studies in the field of migratory studies that investigate the ways in which humanitarianism and human rights can form part of control

policies in different social and political contexts (Domenech, 2009, 2011, 2013; Piscitelli & Lowenkron, 2015; Mansur Dias, 2014, 2017; Ticktin, 2008a, 2008b).

The discussion is based on a qualitative approach, using techniques such as content analysis and triangulation, and drawing on a variety of materials associated with the three categories dealt with here. In the case of refuge, various documents are analyzed (in particular, reports and publications published by the United Nations High Commissioner for Refugees [UNHCR] and by institutions associated with that agency in Argentina); declarations and action plans adopted in South America, starting with the Declaration of Cartegena of 1984, to which Argentina has acceded; the Refuge Law, which created the National Commission for Refugees (Comisión Nacional para los Refugiados, CONARE) and the directives of this commission; and interviews conducted by the authors with officials working within the orbit of CONARE (most during 2014 and 2015).

In order to analyze the category of "patients undergoing medical treatment," we first turn to the content of the Migrations Law referring to the right to healthcare of the non-national population, which includes this group as a possible subcategory of remaining in the country. We then examine one of the ways this is used politically through the Argentine legal framework on organ transplants, which establishes the conditions under which foreigners-migrants can access this type of treatment: the resolutions of the National Central Unified Institute for the Coordination of Tissue and Organ Transplants (Instituto Nacional Central Único Coordinador de Ablación e Implante, INCUCAI) regarding the registration of foreigners on their waiting list; some of the content of the "Istanbul Declaration" (adopted at the Summit on Organ Trafficking and Transplant Tourism held in 2008 in Turkey, and considered an indispensable source on transplant tourism[5]); as well as segments of an interview in 2015 with an INCUCAI official who participated in the preparation of the directives analyzed here.

In the case of labor migration, we review Argentine migratory norms from 2003 onwards, including those directives, decrees, and resolutions that provide the framework for migratory regularization processes. In addition, we review public statements made by political officials from the National Office for Migration (Dirección Nacional de Migraciones, DNM) during media appearances or DNM training workshops for other government employees.

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5 Sociedad Internacional de Trasplantes, The Transplantation Society, & Sociedad Internacional de Nefrología, International Society of Nephrology (2008).

The period analyzed is 2003 to 2015. This does not mean we are unaware of the transformation in international migratory policies after President Mauricio Macri took office at the end of 2015. The intention to construct a jail for migrants, the dictates of Decree No. 70/2017, the creation of a National Border Commission (Comisión Nacional de Fronteras), or the recent announcement of the use of mobile devices to facilitate migratory control, as well as the duplication of residence taxes, attest to a clear process of strengthening the control aspect of migratory policies in the last three years.

The article is divided into three sections, in addition to this introduction. In the first, we discuss humanitarian classifications, with particular emphasis on the notions of vulnerability and victimhood that emerge in the framework of each of the categories analyzed. This article could have been structured in many different ways, but we have opted to discuss the categories separately in order to describe some of the central aspects of each case and respect their specificities, so that these particular inputs can contribute to an understanding of the thesis presented here. In the second section, we analyze the manner in which humanitarianism ambivalently constructs migrants as threats to state security. Finally, we review the questions discussed in the article and reflect on the transformations implied by humanitarian discourses and practices in the contemporary construction of migrant control.

1. Humanitarianism and its classifications: refugees, migrant workers, and migrants undergoing medical treatment

Humanitarian language has become important in Argentina's policies on international migration in recent decades. Legislation, as well as some programs and public officials themselves, have referred increasingly to migrants ("forced" and "economic") as victims or as threats. In this way, humanitarianism emerged and became consolidated as a way of understanding and dealing with international migrations. Thus, refugees, migrant workers, or migrants undergoing medical treatment are categories that, from a humanitarian perspective, express different ways of understanding the notions of victims or threats.

Notwithstanding the debate that seeks to distinguish **humanitarianism** from **politics**, the former is in fact a new repertoire of political action that employs a different language – a form of legitimation that appears to be **apolitical** (since it puts moral concerns above other interests), but which reformulates what is at stake in politics (Fassin 2012, 2016). According to Fassin (2012), the idea of **humanitarian government** is useful in identifying

common conceptions about the shape that humanitarian language has taken in the contemporary world since the end of the 20th century.[6]

Concerns related to the body, health, and life of migrants and refugees have taken on increasing importance in national and international regulations regarding these populations (Fassin, 2004). In the current study, the introduction of humanitarian language with regard to the categories analyzed allows us to understand the way in which migrants are categorized as victims, and subject to protection not only by state institutions but also by a broader set of actors who define migratory discourses and policies. With suffering having become a question of humanity and a matter of everyone's responsibility, the declaration of the right or the duty to intervene on **humanitarian grounds** has formalized the supremacy of moral concern over political sovereignty, whereby, in the case of states that do not take care of their citizens, others have both the right and the obligation to intervene (Allen & Styan, 2000, in Redfield 2012). The concern or obligation to save lives that are physically in danger was now at the heart of the humanitarian argument. Nevertheless, a distinction can be made insofar as not all "humanitarian grounds" are on the same level: those related directly to the right to life, the fundamental basis of human rights, justify immediate intervention.

While the notion of humanitarianism implies, in one of its senses, the idea of a human condition common to all subjects, irrespective of any differences between them or even their nationality or their migratory administrative situation, it is clear that the processes of categorizing subjects who cross borders ultimately divides and hierarchizes human beings, resulting in differentiated treatment. These different forms of intervention stem from the intersection of various factors, including the matter of the distribution of goods considered "scarce"; the moral dimension, which implies the act of judging, that is, the exercise of "justice" (Fassin, 2012); and the types of mobility ("regular" or "irregular" migration), which sometimes constitute criteria not only for the distribution of justice, but also for the definition of threats.[7] In a manner of speaking, humanitarian perspectives establish

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6 Humanitarian government is defined by Fassin as a set of procedures established and put into practice by states, international bodies, non-governmental organizations, corporations, military forces, etc., which share a common vocabulary about the value of life and human suffering (although these various actors pursue different objectives) in order to administer and regulate the existence of human beings. This language is articulated around the two dimensions of the concept of humanitarianism: the fact that as human beings we share a similar condition of humanity (which constitutes the basis for a demand for rights and an expectation of universality) and the existence of an affective movement as human beings in relation to our fellow human beings (understood as humaneness), creating an obligation to help others (Fassin, 2012).

7 In the critical analysis proposed here, the notions of threats and victims produced in the frame-

priorities (which are themselves changeable) regarding certain "humans," characterizing them by the way they are constructed as victims and/or vulnerable subjects and by the strategies of protection that these definitions presuppose or bring about.

For Argentina's international migration policies, although with substantial differences, both refugees (as defined in the 1951 Convention on the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees)[8] as well as persons who do not have access to certain forms of medical treatment in their countries of origin are included in categories such as refugees, asylum seekers, patients undergoing medical treatment, or applicants citing humanitarian grounds. While these different categories could be considered to fall under the general conception of a victim – that is, a non-national individual or group whose lives are in danger under certain circumstances in their countries of origin – each particular category refers to particular situations (specific victims), regulated in the framework of international treaties, as well as national legislation, as we describe below.[9]

Refugees and asylum seekers

The concept of refuge in the framework of migrations are forced has been constructed on the basis of specific definitions and instruments, formulated in different socio-historical contexts. These mechanisms have been global as well as regional and national, and are interlinked. Thus, the manner in which the question of refuge has been addressed in Argentina bears a strong relationship with the regional and international guidelines adopted for the treatment of the refugee population,[10] and is in consonance with the

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work of humanitarianism are constitutive and inseparable. Throughout the text, we can see that those who are considered victims at a certain time can also be understood as threats. Here, the notion of threat is understood as an imminent or real danger for internal security, national security, or socio-economic security, as defined by Campessi (2012). In this sense, migrants so classified can personify some kind of danger for these three spheres or for a possible combination of some of them.

8 Henceforth: 1951 Convention; 1967 Protocol.

9 This distinction between victims in general and specific victims is inspired by the work of Mansur Dias (2014).

10 In the framework of forced migrations, recognition as a refugee is related to other categories that in some cases precede the granting of refugee status, including, for example, being an applicant for asylum or an internal forced displaced person when leaving the country of origin. In recent years, we have found studies that describe the refugee population in Argentina and the way it has been approached (Cicogna, 2009; Cicogna & Kerz, 2013); discuss issues related to the implementation of specific procedures directed at unaccompanied minors (Filardi, Dubinsky, & Mendos, 2012); analyze recent legislation (Lettieri, 2012); assess the practices and measures implemented after the approval of the Refuge Law (Figueroa & Marcogliese, 2018); provide information on developments related to the juridical aspects pertaining to the protection of Syrian refugees in Argentina (Hernández Bologna, Gómez Salas, & Filardi, 2014); and analyze measures related to humanitar-

approaches and practices promoted by the UNHCR, as the agency central to the treatment of the issue of refugees in diverse contexts.

The formal definition of refugees was established by the Convention of 1951 and its 1967 Protocol.[11] In Latin America, the instruments on refugees that have been adopted are based on the 1984 Cartegena Declaration, which expands the category of refugees[12] contained in the Convention of 1951 and provides the basis for later instruments.[13] In Argentina, in addition to international and regional norms, the Refuge Law[14] was passed, creating CONARA which, in contrast to the previous body, had the responsibility to create policies for protecting and assisting refugees and their families.[15]

The question of refuge has been associated with situations that are unpredictable and **uncontrolled** (Zolberg, 1983), which require **protection**, marking them apart from so-called economic migrations. According to the regulatory framework discussed above, the category of refugee refers to the figure of the victim in various senses, associated with **legitimate fear**, the **involuntariness** of the displacement, and the **lack of protection**. This absence of protection is viewed as a condition of being **orphaned by the state**, which primarily refers to the absence of an effective link between the state of which the refugee is a citizen, implying that another state **provisionally** assumes this guarantee in the framework of international humanitarian protection.[16]

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ian visas and the asylum system in the framework of the international protection system (Figari Costa, & Penchaszadeh, 2018).

11 A refugee is defined as a person who "[…] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, unwilling to avail himself of the protection of that country" (United Nations High Commissioner for Refugees, UNHCR, 1951).

12 The Cartegena Declaration on Refugees adds that "[…] the definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by widespread violence, foreign aggression, internal conflicts, mass violation of human rights or other circumstances which have seriously disturbed public order." (United Nations High Commissioner for Refugees, UNHCR, 1984, p. 36).

13 Among these, the Declaration of Costa Rica (1994); the Mexico Declaration and Plan of Action (2004); the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas (2010); (2010); and the Brazil Declaration and Plan of Action (2014).

14 Although draft regulations exist, to date this law has not been regulated.

15 Together with other entities, CONARE has introduced measures that include differentiated procedures based on a gender approach, age, and diversity; a protocol for unaccompanied minors; basic humanitarian assistance; and the program "Work to Integrate. Social Entrepreneurial Responsibility and Refugees: A Road to Inclusion (Trabajar para integrar. Responsabilidad social empresarial y refugiados: un camino para la inclusión), among others.

16 The principle of non-return is seen as one of the principal guarantees in international protection, added to which are measures in the framework of the so-called lasting solutions implemented in

"Refugee" is an (inter)state category that states recognize and selectively grant particular individuals, beyond self-identification; as such, it is not a natural condition but rather a category that is socially and politically constructed and operates in different ways in different contexts (Clavijo, 2017). In the case of Argentina, the evaluation of applications for asylum is linked to the testimony of applicants as well as an appraisal regarding the circumstances that led to forced displacement in the context of origin. This in turn influences the assessment of whether the situations that applicants experience in their places of origin[17] justify and legitimate forced displacement and obtaining the status of a refugee.

Migrants entering for medical treatment and on humanitarian grounds

The right to health as a fundamental human right has been recognized in various international declarations and treaties,[18] which reinforce the notion that states have the responsibility to take measures to assure the implementation of this right (both for citizens and non-nationals) and at the same time, recognize the importance of international cooperation in this area. In Argentina, the Migration Law recognizes the right of the migrant population to have free access to healthcare – a change in the law that marked a turning point in scientific interest, part of which was dedicated to analyzing the access of migrants to the Argentine public health system in different contexts. Thus, various studies agree that the Migration Law represented a significant advance in the recognition of rights; they also acknowledge that the rights and conditions of access to healthcare by non-nationals were subject to discussion even though healthcare assistance was recognized in the migration legislation, especially when migrants, who had irregular administrative status, needed expensive and/or complex treatment, or when they had crossed the border exclusively for health reasons (Jelin, 2006; Caggiano, 2008).

Our analysis in the present study seeks to open lines of investigation regarding the Migration Law itself in order to understand the link between humanitarianism and migratory control, with attention to the political use

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South America, particularly Argentina, through the implementation of resettlement agreements and "solidarity cities" such as Córdoba, Rosario, Mendoza, and Buenos Aires.

17 In regard to the flows of asylum applicants and refugees, according to official Argentine government data, between 2012 and 2016 the country received 6,093 applications for refugee status, of which 803 were approved (Comisión Nacional para los Refugiados, Conare, 2017).

18 For example, the World Health Organization Constitution; the Universal Declaration of Human Rights (United Nations, 1948); and International Covenant on Economic Social and Cultural Rights (United Nations, 1966), among others.

of the nexus between health and migrations. We accomplished this through research on the contents of migratory legislation in relation to other policies, such as the norms that define the conditions for access of non-nationals to organ transplants in Argentina. Here, it should be noted that the Migration Law treats the right to health of the migrant population in three ways: first, Article 8 establishes that the state has an obligation to provide healthcare, irrespective of the regularity or irregularity of an individual's migratory status; second, it formalizes the principle that citizens of states that cannot guarantee access to certain treatments may temporarily or transitorily stay in Argentina, in the subcategory of patients undergoing medical treatment; and third, it recognizes residence under the subcategory of humanitarian grounds for persons who cite risk of death, in accordance with DNM criteria, due to lack of treatment in the event of their compulsion to return to their home country. It is notable that humanitarian language permeates these stipulations, and that stays in the country for medical care and on humanitarian grounds are based on the idea that certain persons find themselves in situations of vulnerability because their lives may be in danger due to a possible lack of healthcare in their country of origin. As we will see later, this humanitarian language is an instrument of control to the extent that it is employed to restrict access to the transplant waiting list by migrants without permanent residence status.

Migrant workers

The creation of the so-called "new Argentine migratory policy" brought with it the development of a "rhetoric of inclusion," which incorporated elements of the pluralist discourse of human rights (Domenech, 2009). In this way, the language of human rights was adopted in relation to international migrations, and immigration from countries in the region was viewed by migration authorities based on a humanitarian discourse. Considerations regarding the vulnerability implied by the situation of administrative irregularity of these immigrants justified, in part, the implementation of a policy whose objectives included the facilitation of the regularization process, whether through substantial changes in the categories of residence provided for in the Migration Law (especially for migrants from Mercosur countries[19]); in the creation and implementation of migratory regularization programs such as Patria Grande (through decrees No. 836/2004, No. 1169/2004, and No.

19 For more information about changes in Argentine migratory policy and processes of integration such as Mercosur and Unasur see: Novick (2005); García (2016); Arcarazo & Freier (2015); Nicolao (2011).

578/2005; DNM); or in the regularization measures for migrants outside of Mercosur (directives No. 1 and 2 of the DNM, January 4, 2013). In these cases, irregular migratory status in the place of destination was identified from the official perspective as giving rise to situations of vulnerability associated with the possibility of access to a formal sector job, labor rights, and social security. A public presentation by an important DNM official in 2012 clearly portrays this idea of vulnerability:

> The migratory regularization that is also part of the law is a key piece in being able to insert a migrant, or for a migrant to clearly be able to integrate into the receiving society. If one does not have this regularization, it is difficult to be able to properly participate in the labor market; **what we all know is the impact that irregular status has on extreme labor informality, invisibilization, exclusion, lack of access to different mechanisms of social participation**.[20]

From this point of view, unlike refuge or stays for medical treatment, the idea of "the victim" is primarily associated with the receiving country and does not always imply an immediate risk to life but rather labor exploitation and difficulties in accessing rights related primarily, though not exclusively, to the world of work. To a great extent, it seems that state discourse generally follows the justifications that divide forced from voluntary migrations. In this sense, the idea of a victim in the destination country does not imply recognition of the right to be classified in the humanitarian category (as a refugee or for medical treatment), but can ultimately serve to initiate the process of regularization, implying, from the official perspective, protection and recognition of the human rights guaranteed in local legislation and international conventions.

2. Between humanitarianism and security: the ambivalence of these categories

As noted in the introduction, one of the characteristics of humanitarianism in the area of international migration policies is the construction of ambivalent categories around migrants in terms of whether they are victims and/or threats, providing evidence of the coexistence of humanitarian and control policies or control through humanitarianism. Fassin (2012) himself argues

20 Presentation by Federico Agusti in the V Jornada de Migración, Derechos Humanas y Vulnerabilidad Laboral, Asociación de Mujeres Unidas, Migrantes y Refugiadas en Argentina, Amumra (2012); emphasis ours.

that humanitarianism can give way to a kind of cynicism, to the extent that appeals to moral sentiments can produce policies that reinforce inequalities. Some of the research that we have reviewed in the area of migration studies and critical studies of security have explored, in different contexts, the manner in which humanitarianism is also linked to processes of control and securitization of migrations.

In Argentina, we have the work of Domenech (2011, 2013) who, using the category of **control with a human face,** refers to the way in which the language of human rights can be used to achieve greater legitimacy and efficacy in the control of irregular migration. Mansur Dias (2014, 2017) uses a case study to analyze the way that European and international norms on the trafficking and smuggling of persons can contribute to criminalizing those subjects who are supposed to be humanitarian victims. At the same time, Piscitelli and Lowenkron (2015) study – in the cases of Brazil and Spain – the fact that humanitarian rhetoric in relation to the trafficking and smuggling of persons does not match immigration repression policies, and speaks about **ideal victims** who awaken sympathy and compassion in the face of the use of violence and cruelty against women who do not correspond to this ideal. Similarly, Ticktin (2008b), proves how humanitarian language about sexual violence against certain migrant women serves, at the same time, as justification for migratory control in France.

The pioneering work of Bigo (2002) constitutes a variation on familiar interpretations, suggesting that humanitarianism in relation to migrations in Europe is a byproduct of the process of securitization that precedes it. In the view of this author, humanitarian discourses hide the general conditions of securitization, especially in the case of asylum seekers. He argues that human rights discourses in relation to asylum seekers are an important part of the process of securitization when they are used to distinguish between those who present genuine applications and those who do not. In this case, the former are helped through the condemnation of the latter, and this ultimately justifies border controls (Bigo, 2002). As Huysman and Squire (2016) maintain, human security approaches, which, ideally, are centered on the protection of victims from human rights violations, end up implying – both in essence and in practice – perspectives oriented toward state security.

As we suggest below, under certain specific conditions, refugees, asylum seeks, and migrants in general can represent a threat or a risk for the security of states. Similarly, just as the type of victims varies according to their origin, destination, and regularization status, so too are there different ways of constructing these mobilities as threats or risks.

Refugee and asylum seeker

In the case of refuge, the manner in which the ambivalence of the categories is revealed, and especially the classification of subjects as victims or threats, is linked to the same evaluation of the condition of refugee and the approval or denial of applications for asylum: in other words, whether these are truthful or false. Thus, the notions of **truth and suspicion** operate both in the process of eligibility and in access to protection and assistance.[21] The verification of the truth in relation to the needs and conditions of the subjects – that they are who they say they are –determines both access and the trajectory of applications through the states and organizations involved. It is not only necessary to demonstrate **legitimate fears** but also to prove that the applicant is not a threat to national security.

The suspicion and the need for verification in relation to the category of refugee reveals the concurrence of the moral and humanitarian dimension and the selective optic associated with the security of states and other actors. Suspicion arises in this context as an attitude of mistrust based on intuitions, preconceptions, and appearances. Some works define suspicion as "a way of proceeding that does not imply a change in mood, nor a particular affective state, but an unfavorable initial attitude toward the applicant" (Kobelinsky, 2013, p. 8).

On the other hand, the construction of a humanitarian government (Fassin, 2010) in relation to refuge, as well as moral commitments (such as solidarity, cooperation, and shared responsibility), can be conceived as principles that define interstate interaction in the treatment of the refugee population.[22] In this sense, one of the central questions regarding protection of asylum seekers is the **principle of non-return.**[23] Nevertheless, this guarantee of non-return, derived from the condition of being a refugee, can be limited for reasons related to national security.

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21 The literature about the causes of displacement and the grounds for application are related to the wide range of situations that the applicants describe, as well as their national origins. For example, in Argentina the number of people from Senegal who have been granted refugee status is low in comparison to the number of applications submitted by Senegalese nationals in recent years, which also affects the classification of applications as summary or ordinary (in relation to the procedures of eligibility in Argentina, see: Nejamkis & Álvarez, 2012; Pacecca, 2012; Figueroa & Marcogliese, 2018; Clavijo, 2018).

22 It is worth noting that the configuration of what we understand as humanitarian government is also characterized by asymmetric and hierarchized relations both globally and regionally.

23 The principle of non-return or *non refoulement* is considered the axis of the 1951 Convention. This principle establishes minimum criteria whereby the state signatories to the convention and its 1967 protocol, after approval, are compelled to avoid expulsion of a refugee or an asylum seeker from their territory.

Various documents insist on the need to establish an equilibrium between access to humanitarian protection and legitimate security concerns on the part of states. This question has not gone unnoticed on the regional and national levels. The Mexico Declaration and Plan of Action (2004), for example, expresses concern regarding certain selection procedures and the interpretation of the expanded definition of the refugee, and suggests taking into account "the legitimate security concerns of States, through a broad and open dialogue, with a view to systematizing doctrine and state practice" (United Nations High Commissioner for Refugees, UNHCR, 2004). This issue was taken up again in the drafting of the Brazil Declaration and Plan of Action (United Nations High Commissioner for Refugees, UNHCR, 2014) and during the consultations that took place as part of the Cartagena +30 (spaces in which delegates of the Argentine government participated actively), with the proposed implementation of formulas to establish such an equilibrium between security and protection.[24]

The association between refuge and security emerges with more clarity in relation to the figure of the false refugee and is also linked with migration in irregular situations, especial in the framework of so-called mixed flows.[25] Thus, the idea behind this association is centered on the illegitimate use of the condition of asylum seeker or refugee – or, to put it differently, the abuse of the status by migrant subjects who are not considered real refugees. Consequently, as noted above, humanitarian discourse and the division of asylum seekers into real and false refugees provides a basis for the application of control measures (Bigo, 2002).

This demonstrates a double perception of the subjects: one related to the need for protection, and another related to suspicion about this need or about whether this need is more compelling than any conduct interpreted as a threat. On the other hand, protection acquires another dimension, conceived in relation not only to subjects but also to states. That is, the state functions as an actor that fluctuates between the role of protector and protected, which lends a dual meaning to the notion of protection: of the subjects believed to merit this protection, and of states on the basis of their

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24 For example, the Brazil Declaration and Plan of Action insists "that practical methods should be developed and implemented to strike a balance between States' legitimate security concerns and a rights-based approach" (United Nations High Commissioner for Refugees, UNHCR, 2014).

25 According to the UNHCR, "Mixed movements (or mixed migration) refers to flows of people travelling together, generally in an irregular manner, over the same routes and using the same means of transport, but for different reasons. The men, women and children travelling in this manner often have either been forced from their homes by armed conflict or persecution, or are on the move in search of a better life" (https://www.unhcr.org/asylum-and-migration.html)

sovereignty and their national security. In both cases, control is justified as a protective measure.

These ambivalent roles, present in the different categories in the context of migrations catalogued as forced, and in processes of eligibility, once again become evident in terms of how the threshold and the classification fluctuates between worthiness of protection and representing a threat to security. Both categories can be found in the condition of irregular migration, justified in the former case by the involuntariness of their mobility and criminalized in the latter both as a threat to order and state sovereignty and for the abuse of having unjustifiably sought refugee status.

Migrants for medical treatment

We have mentioned that humanitarian language centered on the value of life and the right to health is contained in the Migration Law, and constitutes a tool that permits access to healthcare by "non-resident" migrant populations considered to be in a situation of vulnerability or at risk of death if they do not receive care; this creates the conditions for use by these populations of the status of staying for medical treatment or on humanitarian grounds so as to enter the country and receive the necessary healthcare. In the specific case of organ and tissue transplants in Argentina, there are specific regulations dealing with the situation of foreign-migrant individuals.[26] These norms show on the one hand that migrants without permanent residence are simultaneously constructed as vulnerable victims and/or threats depending on their association with certain "problematics"; and on the other hand that the status of staying for medical treatment, imposed as a condition for access to treatment in response to these "problematics," operates as a tool to keep the "irregular" population off the waiting list while also fulfilling (though under differentiated circumstances) their right to treatment.

In contrast to the provisions of Article 8 of the Migration Law, INCUCAI Resolution No. 342/2009,[27] which regulates registration on the transplant waiting list for the **non-national** population, states that only those foreigners who have permanent residence, and are not on waiting lists in their countries of origin, can be put on the waiting list. This resolution also

26 High-complexity treatments such as organ transplants are not the only cases for which there are different access criteria for non-nationals. Another paradigmatic case is Law No. 26,862, "Acceso integral a los procedimientos y técnicas médico-asistenciales de reproducción médicamente asistida," regulated by Decree No. 956/2013, which stipulates that foreign-migrant individuals can receive treatment in one of the Ministry of Health public healthcare institutions if they have permanent residence status granted by the DNM.

27 The first resolution about the access of foreigners or migrants to transplant treatment in Argentina was issued in 2004. In 2012, a new resolution modified the norms in place since 2009.

states that those who do not have permanent residence status can receive a transplant in Argentina from a living donor if they have temporary or transitory resident status (the latter is a subcategory of **entry for medical treatment**), provided that they enter the country with a donor from their country of origin or make use of tissues from a tissue bank abroad. The resolution also takes into account **exceptions** for foreigners from countries that have reciprocity agreements with Argentina, as well as situations considered **exceptional** by the INCUCAI after an evaluation. This is connected with relations established with other states, on the one hand, and the arbitrariness of evaluations of specific applications, on the other. [28] In conclusion, existing norms impose restrictions on the registration of "irregular" migrants on the national waiting list, but provides them with the possibility of receiving treatment by way of a living donor.

A high level INCUCAI official who participated in the drafting of the regulations stated during an interview that:

> The norms relating to the regulation of foreign patients were drafted with prior consultation and consensus with the National Office for Migration. You can see that **our Migration Law is a very broad law** which grants rights and benefits to foreigners **practically** on a par with Argentine citizens. Thus, **we had to make sure our norm did not contradict migration regulations**. [29]

In this excerpt from the interview with the official, it can be seen that the fact of "trying to make sure our norm [on transplants] did not contradict migration regulations" entailed fulfilling state obligations of a **humanitarian** character in the area of migrant rights, but not necessarily in similar conditions as **nationals**. Thus, the idea that the Migration Law

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28 During the 2000s, Argentina collaborated with some South American countries and with Spain on matters related to the transplants of organs and tissues, as part of bilateral cooperation agreements and regional integration spaces. This articulation corresponded to a broader context whereby the issue of migration was incorporated into the agenda of the Mercosur integration process in the 1990s. Transplant cooperation agreements dealt with a variety of issues. Thus, to promote regulation and accountability of transplant activity, bilateral agreements signed between Argentina and Spain (2003), Paraguay (2009, 2014), Chile (2011), Peru (2012), and Venezuela (2012) had the goal of educating and training human resources, promoting research projects on procurement and transplants, and fostering technical cooperation activities in the areas of management, information systems, and registers. Another type of agreement dealt with the exchange (or loan) of organs across borders; examples include those signed with Uruguay (2005, 2010) and Chile (2012). For more information about these agreements see: Instituto Nacional Central Único Coordinador de Ablación e Implante, Incucai (n.d.).

29 Interview with the coordinator of Legal Affairs in INCUCAI (Buenos Aires, November 2, 2015; emphasis ours.

guarantees "practically" the same rights to foreigners as to Argentine citizens is correlated to the way that stays for medical treatment are utilized to allow migrants without permanent residency to access transplants in **different** conditions. When it comes to the justifications employed by the INCUCAI when drafting its resolutions, the two most important concerns were the "scarcity of organs" and the need to control "transplant tourism" and "organ trafficking."

Resolution No. 342/2009 states explicitly that when analyzing the "problematics," the following were taken into account: national laws regarding migration and transplants, the opinion of the INCUCAI's Bioethics Committee; and a number of international declarations from the 2000s, such as the Istanbul Declaration (2008), the Declaration of Mar del Plata of the Ibero-American Network/Council for Donations and Transplants (RCIDT, 2005), and Agreement No. 5/2009, signed during the XXVI Meeting of the Ministers of Health of Mercosur (Mercosur, 2009), which is primarily related to the objectives of fighting organ trafficking and transplant tourism. These declarations were based on earlier regional- and international-level discussions in the 1990s, when organ trafficking began to be seen as a global problem. This concern for the commercialization of organs on an international scale was also linked to the attention given to border-crossing for the sole purpose of receiving transplants – a phenomenon that was labelled "transplant tourism"[30] (Scheper-Hughes, 2005). Many of the ideas that initially appear in various studies of this subject (Scheper-Hughes, 2000, 2002, 2005) were incorporated and resignified in great measure because of the official discourse of international bodies and nation states linked to the regulation of transplant activities.

Resolution No. 85/2004 on transplants for foreigners, enacted in Argentina in 2004, mentions the need to combat phenomena such as organ trafficking and transplant tourism, and also states that "the scarcity of organs" was a central problem, in that it "did not allow the needs for transplants of all the patients on the waiting list to be met, added to the

30 While not part of this study, it is important to mention the increasing importance in the last two decades of studies on "medical tourism." In general terms, both this industry and certain academic studies have used this category to refer to crossing borders as "tourists" exclusively to receive medical care. Various studies on this phenomenon have been done, in specific contexts, while typologies have been constructed to differentiate practices of mobility according to certain criteria. However, the category of medical tourism is currently subject to debate (Liberona Concha, Tapia Ladino, & Contreras Gatica, 2017; Connell, 2015). As regards the subject of this article, transplant tourism to a great extent has been considered a subcategory of medical tourism, and has received particular attention for its ethical implications. On the international expansion of legislation on transplant tourism, see Amahazion (2016).

increase in applications for registration by foreigners" (Instituto Nacional Central Único Coordinador de Ablación e Implante, Incucai, 2004). Given this situation, according to the resolution, "the Bioethics Committee of INCUCAI recommended promoting conditions of **local justice** that take into account the needs and realities of the society to which the subjects belong" (Instituto Nacional Central Único Coordinador de Ablación e Implante, Incucai, 2004), an issue again touched upon in Resolution No. 342/2009). The Istanbul Declaration, which was drafted by the International Summit on Transplant Tourism and Organ Trafficking in Turkey in 2008, defined transplant tourism[31] and outlined some ideas to promote reflection on the construction of categories around the figure of the foreigner and the immigrant as a victim and a threat:

> The many great scientific and clinical advances by dedicated health professionals, as well as countless acts of generosity by organ donors and their families […] **have been tarnished by numerous** reports of trafficking in human beings who are used as sources of organs and of **patient-tourists from rich countries who travel abroad to purchase organs from poor people** […] [**The] practices that prompt vulnerable individuals or groups (such as illiterate and impoverished persons, undocumented immigrants, prisoners, and political or economic refugees) to become living donors are incompatible with the aim of combating organ trafficking, transplant tourism and transplant commercialism**. (Alto Comisionado de las Naciones Unidas para los Refugiados, Acnur, 2008, p. 1).[32]

In the arguments constructed and/or recaptured in the norms discussed here, **non-nationals** are constructed as a threat when they are called "transplant tourists." This category, according to official discourse, refers

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31 The Declaration of Istanbul states that the idea of transplant tourism implies the concept of traveling to receive a transplant. According to the Declaration, travel for a transplant is "[…]the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes" (http://files.sld.cu/trasplante/files/2010/08/declaracion-estambul.pdf). "Travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centres) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population" (http://files.sld.cu/trasplante/files/2010/08/declaracion-estambul.pdf). For questions of space, it is not possible to analyze here the way that transplant tourism developed as a global problem through the intervention of academic sectors, actors in the field of healthcare, national bodies for the procurement and transplant of organs, and regional and international organizations linked to transplant activities. This topic was examined in a master's thesis and may be published in the future.

32 Emphasis ours. English version retrieved from http://files.sld.cu/trasplante/files/2010/08/declaracion-estambul.pdf

to subjects who cross the border to buy organs from donors who have few economic resources and/or to try to get on the waiting list, thereby altering principles of "local justice." On the other hand, **non-national** subjects who are refugees or undocumented immigrants are considered possible **victims** of the process of commercialization of transplants, since they are potential donors on the illegal organ market. From this perspective, both national subjects as well as foreigners and "resident" migrants on the waiting list (or potentially eligible to be on it) would see their possibilities of receiving a transplant endangered by the arrival of foreigners who travel for the sole purpose of receiving a transplant, in that there are insufficient organs to meet "internal" demand. Nevertheless, in the process by which **non-nationals** without permanent resident status are constructed as possible victims of tourism and transplant commerce and, at the same time, as the perpetrators of these phenomenon, they are limited – through the resolutions mentioned above – in their ability to access the national transplant waiting list, whether or not they actually reside in Argentina (Basualdo, 2017).

Migrant workers

As noted above, the recognition of the human rights of migrants, among these primarily labor migrants, and migratory measures and regularization programs, are based on the view that migratory irregularity becomes a source of vulnerability for immigrants in the destination country, in this case Argentina. Thus, different paths offered to obtain "legal" or "regular" status have a humanitarian justification on the basis of a recognition of situations of inequality, exclusion, and suffering related to labor exploitation. Nevertheless, in the discourse of DNM officials regarding irregularity, it is also notable that the migrants considered as victims and subjects of protection are also considered as a risk or a potential threat to internal security (Pereira, 2017).

Declarations by the different DNM directors from 2005 to 2015 make clear how migratory irregularity, which is understood as a problem for the state (Domenech, 2009), is not only linked to situations of vulnerability but is also considered as a source of common crimes:

> The major problem that we have regarding migrations is the one that we have tackled first because we believe it is the most important: the migrants who are called, quote unquote, illegal, who we call undocumented […]. These are individuals who don't pay taxes; the benefits of their own economy do not extend to the white economy but rather the black economy. In addition, we put them in a situation that leaves them on the

> brink of crime. Sometimes, survival is more important than respect for the law.[33] (Rodríguez, 2005)
>
> To force a person, by action or omission, to live in irregularity or escape permanently, constitutes and important **breeding ground** in situations of exclusion that inevitably create social conflicts, which can ultimately lead to a pre-criminal situation or the commission of crimes. (Arias Duval, 2012, p. 13-15).

In this sense, references to migratory irregularity by officials are somewhat ambiguous to the extent that they justify programs that can facilitate the regularization of the situation of migrants and recognition of certain rights, at the same time as they justify using a kind of preventive migratory control, through identification and collection of information about migrants, made possible by the facilitation of migratory regularity. In this sense, it can be seen that migratory irregularity remains the cornerstone of the control regime consolidated throughout the 20th century in Argentina (Domenech, 2011). In the following comment by another DNM director, we can clearly see how this aspect of control links irregularity with internal security:

> We don't have a securitist vision of migrations, but we have information today about migrants thanks to this migratory policy. If we want to think of it from the perspective of security, who are we going to look for if we don't have them register, if we don't know who they are, we don't have a photo, we don't have a document, we don't have any type of background information about this person who could be living in our territory. Thus, thinking about it from this perspective, that we don't view our migratory policy from this perspective, a migratory policy of this type is a realistic policy. (Arias Duval, 2012)

A broader view shows that the period covered here was not marked by a process of criminalization and securitization of migration such as that of the 1990s, when immigration from neighboring countries emerged as a threat to social order and national policy (Pereira, 2017). However, it is true that the discourses employed demonstrate a constant ambivalence between migrants as victims and as threats, as sustained in the figure of the irregular migrant, which leads officials to pursue both the need to protect and migratory control. To put it differently, the ambiguity evident in this type of discourses can be understood as part of what is called **control with a human face** (Domenech, 2011). Specifically, the above quote makes it

33 Emphasis ours.

possible to visualize, from this perspective, how "neighboring" migrants would be, on the one hand, vulnerable individuals who must be protected and, on the other, subjects who ultimately, under certain conditions (irregularity) could be transformed into criminals, and whom, from an official point of view, it is better to have identified.

3. Final considerations

The analysis of humanitarian perspectives in the field of international migration policies, which involves both so-called "forced" migrations and "voluntary" ones, should not preclude investigation of the forms of migratory control that are developed through the humanitarian government of international migrations. Humanitarian discourses and practices, which acquired increased importance in Argentina over the last two decades, have served to recognize the human rights of immigrants as guaranteed in various international conventions, while also imposing new forms of migratory control based on ambiguous or ambivalent views of migrant subjects. In this sense, the construction of categories that enable the understanding of migrants as victims who need state protection has been simultaneously accompanied by the production of new representations regarding the threats or risks that immigration represents for state security.

In this way, we can affirm that humanitarian discourses and practices in the field of international migration policies are composed of a constitutive ambivalence (victim and threat). Thus, under certain circumstances, migrants can be classified as subjects who are victims or subjects who are threats. As we have demonstrated in the three categories analyzed, the representations of victim or threat are related to certain conditions, such as the relationships between origin and destination or the consideration of whether it is life itself or other rights that are at stake in the mobility. In addition, we have found that there is a common theme in all the categories analyzed: migratory irregularity as an essential element in identifying possible threats.

The consideration of refugees, asylum seekers, and individuals requiring medical treatment as victims is constructed through the "verification" of certain conditions of vulnerability in the countries of origin. In these cases, international conventions and national legislation commit states to provide assistance and protection to migrant subjects under certain specific conditions laid out in these instruments and laws. In general, the idea of victim is associated with the loss or violation of human rights and in particular, imminent risk to life – something that justifies the principle of non-return in the case of refuge and the obligation to provide medical treatment in the case of patients. On the other hand, when it comes to so-called "voluntary

migrants," the notion of victim operates in the receiving country, since migratory irregularity is associated with social exclusion and the need to recognize rights through programs and measures to facilitate gaining regular migratory status.

As discussed above, migratory regularity/irregularity plays a central role in each of the categories discussed in this analysis. In the case of refuge, because the persons are considered victims they are granted the right of "legal" status at the same time as a suspicion develops that they could be "abusers." Stays for medical treatment, imposed by the right of migrants to transplants, are treated similarly: there is recognition of the risk to health or life that justifies access to "legal" status, but there is also mistrust constructed with regard to this "irregular" population, giving rise to treatment that is different than that received by "regular" migrants and citizens. Finally, migratory "irregularity," understood in official discourse as a condition of exclusion of those migrants who merit protection, is also seen to pose a risk to internal security.

This shows that irregularity "becomes a kind of question of 'meta-security', useful for structuring a plurality of discourses about threats" (Campessi, 2012, p. 8). Irregularity thus comes to be associated with possible abuses of the status of a refugee, common crime, "transplant tourism," and even international terrorism. Put differently, there is perhaps no other subject more useful for the construction of threats and risks, in that irregularity implies the infringement of state control and sovereignty. In the case of Argentina, this makes more sense when it is recalled that the construction of "illegals" has been fundamental in the historical construction of certain groups of international migrants as a threat (Domenech, 2011). Thus, we can affirm that the transformations implied in humanitarian discourses and practices have not substantially modified the importance of the illegalization or irregularization process in constructing undesirable subjects; on the contrary, these have been reactivated through the distinction between legitimate deservers and suspicious subjects or abusers.

As a consequence of this study, we can affirm that humanitarianism as a form of urgently dealing with a threat to the right to life can reinforce exclusion mechanisms relating to migrants who are not considered victims, at the same time as it fuels suspicion regarding the "abuse" that so-called voluntary migrants can cause. Along these lines, Ticktin (2008a) suggests that since humanitarians create a distinction between the innocent and the guilty, the innocence of the victim, represented most clearly in the figure of the refugee, is what enables humanitarian care through compassion – unlike the case of the economic migrant, who can be perceived as a subject who

exploits public services. At the same time, in the case of voluntary migrants, once again the use of the language of universal rights and compassion coexists with the idea of abuse of the state, which leads to policies of identification and "vigilance." In a certain way, regularization programs respond to a way of constructing exceptionality as more profound discussions are postponed until a new regularization program exists.

In this sense, at the same time as exceptionality establishes the imperative of saving lives as a resource that permits granting refugee status, access to certain medical treatments by "irregular" migrants, or obtaining the status of a "regular" migrant through access to regularization programs, humanitarianism, on the basis of exceptionalism, constructs unequal relationships between the one who "helps" and the one who is "helped" (Fassin, 2016). Added to this, the perpetuation of exceptionalism can have the effect of hiding the fact that these responses to particular cases reproduce inequalities to the extent that only some people manage to walk the "exceptional" paths. Nevertheless, as we have observed, all the routes of exclusion and inclusion that cut across each other are anticipated and considered in the normative frameworks of states.

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