



**CEBRI** 

# Artigos

Volume 1 | Ano 10 | 2015

**Human Rights and Democracy:  
a dialogue between Brazil-US**  
Various Authors





CENTRO BRASILEIRO DE RELAÇÕES INTERNACIONAIS

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## **Human Rights and Democracy: a dialogue between Brazil-US**

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Blümchen design

### COVER IMAGE

Rafael Costa and Jonathan Fernandes

Leonardo Paz Neves (org.)

"Human Rights and Democracy: a dialogue between Brazil-US", CEBRI Artigos, v. 3, ano 9. Rio de Janeiro: CEBRI, 2014.

1. Human Rights 2. Democracy 3. North-South Relations 4. UN

ISSN 2318-3713

# Human Rights and International Politics: between the construction of universalism and the geopolitics of North-South Relations

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## Summary

The article aims to contribute to current debates on the dilemma of the universality of human rights and the complexity of international politics. First, we intend to demonstrate the contradiction of the historical construction of the universality of human rights, more specifically in the foreign policy of world powers (selectivity, excessive political bias, double standards). We additionally wish to explain how the cultural diversity and differences between North and South but also between East and West involve different normative concepts and applications of human rights in the international political arena. We subsequently examine, in empirical terms, Brazil and South Africa's foreign policy, examining the human rights concepts that emerge as a result of the cultural, social and historical factors that underlie the domestic policies of both countries: aspects which form the groundwork for the construction of a critical vision from the South and East (counter-hegemonic) vis-à-vis the Universalist affirmation of the human rights norms of the North and West (hegemonic).

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## Introduction

Human rights comprise the norms that define the prerogatives of all men and women attributable to their human nature. Their essential characteristic is that they are natural, equal and universal. They are natural because they are inherent to all human beings; equal because all human beings have the same rights; universal because they are applicable to all mankind, indiscriminately. However, the perception of the universality of human rights has varied throughout history as a function of human needs and political, social and cultural factors, which have also evolved and changed. The universal character of human rights is contradictory: concurrently to the concept of universality accepted as a standard to be attained, there are also different interpretations of such universality. Additionally, the use of double standards in the use of international norms and their different applications lead to persistent criticisms.

In fact, the Western perception of the universality of human rights based on the primacy of the individual, the protection of human dignity and the equality of rights predominated at the time when human rights were integrated into international normative instruments. They were institutionalized in the United Nations Universal Declaration of Human Rights in 1948, enshrining the Western hegemonic perception of the geopolitical North and West on the international debates on human rights. However the argument about the universal quality of the norms that originated in the North/West is permeated by contradictions that are linked to the selective policies used at the time when international rules and sanctions are effectively applied, which in turn leads to conflicts between the universal vision and the foreign policies of

certain countries, especially developing countries in the South and the West. This chapter will not only examine the different conceptions of human rights derived from the social, cultural and political context of developing countries but it will also attempt to demonstrate both empirically and historically the contradictions inherent to the construction of Western Universalism based on two case studies: Brazil and South Africa.

# 1. The construction of Western Universalism on human rights

The concept of the universality of human rights was created throughout the course of history and undertaken with specific purposes. It was preceded by projects to universalize values that contributed to the construction of the Western perception of the universality of human rights. Norberto Bobbio (2004, pp. 47-49) defines three different stages in the history of human rights: a stage which emphasized philosophy and recognized that human beings have rights by nature, inspired on Jus Naturale; the stage of positivism, where rights are recognized within States and become the rights of the citizens; and the stage of internationalization that started with the UN Universal Declaration of Human Rights and where the affirmation of human rights is positive and universal.

The idea of the universality of human nature, a basic tenet of the theory and practice of human rights, originated and was disseminated by Christian tradition. The contribution of Christianity to the conception of the universality of human rights stemmed from the affirmation of the equality of each and every human soul in the eyes of God. The process of universalization of Christianity, initiated by Byzantium, aimed at the establishment of Christianity throughout Europe, through the (forced) conversion of peoples considered barbarians or pagans. Centuries later the same evangelical logic governed the colonization of the "New World". Europe launched a civilizing process

intending to bring "civilization" to the peoples in the Americas or according to Elias (1994, p.62), "the idea of a moral standard and practice" derived from Christian Universality.

However, the Universalist project created by Christianity historically involved only a portion of humanity, the "civilized" portion. In spite of the idea that all human beings were equal and deserving respect and dignity because of their divine origin, the treatment afforded to the conquered peoples by the European colonizing forces (especially the Spanish and Portuguese that had Catholic Monarchies) ignored the humanity of the conquered and demonstrated Europe's contempt for its own Christian rules, especially the notion of the divine dignity of human beings. The debate between Bartolomeo de las Casas and Juan Ginés de Sepúlveda, in the XVI century about the humanity of Indians is a perfect example of this controversy.

In addition to the theological dimension of Universality, the Jus Naturale conception originated the social aspect of human rights. It made the universality of human beings "natural" giving it precedence over individual rights. Jus Naturale or the Law of Nature is a universally valid, objective, immutable principle derived from human judgment, preceding any divine manifestation. The first natural right of human beings according to Hobbes<sup>4</sup> is the preservation of life, guaranteeing to all the necessary means for their self-preservation. The theory based on the Law of Nature supplied the essential elements to substantiate the first universal guidelines of human rights: from the rational justification of universal equality in nature (thus outlining the secularization of liberal political institutions), to reaffirming the preservation of humanity

4 According to Hobbes, natural law consisted on the principle established by reason that would forbid men to do things that could destroy their lives or deprive them of the means to preserve it. (HOBBS, 1974, p.83).

mainly by safeguarding the life of the individual through social pacts and political power, arriving finally at the concept of the triad of natural rights (liberty, equality and property), a triad that would later be elevated to the condition of fundamental rights within the context of liberal thinking. The theory based on Jus Naturale, although constructed on the basis of an idealized situation (the state of nature), justifying rights on an absolute basis, disseminated the perception of the natural rights of humanity.

The great revolutions of the 18th Century were the framework for the politicization of human rights. Modern civil rights, introduced by the liberal, universal and egalitarian ideals of the French and American revolutions became the model from which later universal human rights declarations and covenants were developed. The US Declaration of Independence in 1776 and the Declaration of the Rights of Man and Citizen in 1789 are the product of Liberal ideals and provided human rights with a civil and an individual meaning and were disseminated as examples of universal human rights declarations. This Western-Liberal philosophy of human rights predominated in the substantiation of the UN Universal Declaration of Human Rights, since the essential texts of human rights legislation derive from the corpus of domestic legislation in Western Europe and the United States. In this fashion, the traditional liberal doctrine attained international legitimacy through the institution of the UN document.

Hence, the universality of the traditional concept of human rights was established by the process of global predominance, which elevated the liberal perception of the respect for human rights to a universal status, by means of a two-pronged project driven by capitalism and democracy. Modern universality was constructed with the specific objective of affording legitimacy to the prerogatives of

a certain group of people. The understanding that all human beings, independently from geographical, ethnic, economic and gender specificities, have rights that are a function of their humanity, needed time and other extreme circumstances (mostly during the 20th Century) to establish itself in Western narratives as universally valid and above local historical contexts. The arguments used to justify human rights were varied: created by God, established by nature, the product of reason; both equality and universality changed in nature in accordance with the dominant ideals. The same can be said of rights: the understanding of fundamental rights changed in meaning in different circumstances or eras.

## 2. Transforming the liberal universal in theory: considering differences

Natural human rights were transformed into positive rights as they went through the processes of generalization and internationalization. International Organizations started to share the stewardship of human rights with the states (their main guarantors). In normative terms human rights are usually divided into three categories: the so-called negative rights that protect individuals against abuses from society itself, such as the right to freedom of expression and religious freedom; positive rights such as the right to work, education, health; and the rights that transcend individuals such as the right to peace and the need to defend communities that are being threatened especially because of ethnic conflicts and within the States (MENDES, 2006, p.23). Conceived as a philosophy to disseminate liberalism throughout the world, the original body of human rights was at the time, in favor of political and cultural homogenization and hostile to difference and diversity (MUTUA, 2004, p.54). The universality of the traditional, liberal conception of human rights would encompass only that which was humanly common, ignoring social and cultural differences that are also inherent to human societies.

With the restructuring of liberal societies an alternative way to determine who were entitled to rights was revealed: specification. The citizens covered under specification are the underprivileged, the victims of discrimination, individuals or groups that pursue a fair distribution of

resources and/or equal access to those resources: issues of gender, race, ethnicity, the different stages of life (such as childhood and old age). The specification of the subjects and therefore the multiplication of human rights are conditioned by a given social context. The weight shifted from the individual, as idealized by the liberals, to those who make up humanity as a whole. Thus, the concept of dignity acquires a double significance: universalism through the principle of equality for all and specificity or the politics of difference, which recognizes the specificity of individuals and groups. The affirmation of differences and the defense of collective identities were a response to the primacy of individual rights that emanated from liberal thinking, especially from three schools of thought: Communitarianism, Multiculturalism and Recognition.

The scholars of Communitarianism criticize individualism and, and to liberalism itself they add, they add the perception that individuals are integrated into several cultural and social contexts. They observe that different interests are identified and represented by social roles that create different identities within the social group; thus universal welfare should be understood through the specificities extant within a homogenous, liberal universalism. On the other hand, Multiculturalists focused their criticism on the assumption of the existence of the State's ethno-cultural neutrality (KYMLICKA, 2001) based on a common civic identity. Nevertheless, liberal democracies themselves allow for the emergence of differences, independently from civic identity, where ethnic and national minorities insert individuals within a social group. The demands for the rights of minorities are treated as a response to the civic universalism of nation building, which would transform difference into disadvantage, understanding the right of minorities as "mechanisms to prevent injustice" (KYMLICKA, 2001, pp. 1-2). The policy of recognition seeks to acknowledge the

unique identity of individuals or groups, their distinction from all others (TAYLOR, 1992, p.38), by means of their own liberal institutions, drafting laws that protect and promote differences while not violating the universal rights derived from liberalism. We should remember that authors labeled as multiculturalists have different interpretations and proposals on the issue of differential policies, which are not relevant for this chapter.

Extending equality to minorities by means of the creation of specific legislation can be interpreted as a transformation in the perception of the universality of human rights. Contemporary law should encompass not only the rules that protect individual citizens but also a differentiated content (or specific rights), to meet the needs of diversity in society thus transforming the concept of universality. This transformation is based on the assertion that since the liberal universalism of human rights does not effectively protect socio-cultural differences, its universality may be challenged by the need to expand equality (SILVA, 2011, p.86). Specific rights can be integrated into the universality of human rights without disturbing the indivisibility of civic and political rights because their specificity does not overlap but rather complements the gaps left by liberal thinking as it constructed its concept of human rights. There is therefore a difference between modern human rights and contemporary human rights: the modern conception (European and liberal) denies the diversity of subjects, its starting point is human universality derived from reason, but its focus on the individual thwarted the growth of collective rights. Contemporary conceptions on the other hand, recognize the diversity of peoples in the world; denounce violations derived from modern conceptions and see human rights as the constructs of social movements and struggles in specific regions such as for example Latin America (ESTEVEZ, 2012, p. 225-228).

### 3. The international institutionalization of the Western concept of human rights: from excessive politicization to selectivity

The liberal theory was responsible for the fact that Nations transformed human rights into positive rights and for their consequent insertion in international legislation. When Kant conceived in 1795 the cosmopolitan society, he underscored the need for national and international legislation whose main contribution would be respect for human rights based on the Kantian claim of the existence of a natural and universal law, independent from historical specificities and centered on the individual. Through the civil constitution of each state (Republics), the federation of free states and the cosmopolitan right of hospitality, Kant proposed a universal order without the coercion of a World State. Thanks to this German philosopher as well as to the contributions from John Stuart Mill (JAHN, 2005), the principles of liberal cosmopolitanism forcefully educated and structured the international order (RAO, 2007, p.14), since it was in the West that individuals were first designated as bearers of fundamental rights which in turn led to institutionalized demands for public powers to respect them (FORSYTHE, 2012, p.40).

The Universal Declaration of Human Rights was adopted in 1948 as a common ideal to be reached by peoples and states with the objective of guaranteeing peace and collective security. The United Nations Organization attempted to coordinate the relations among states in the post WWII era, and by means of the Declaration, the UN sought to put into practice a universal system of principles for the international protection of human rights that would prevent the repetition of the cases of severe violation that took place during both Great Wars as well as during the colonization processes. With this declaration as a basis, human rights became the fundamental object of international law and acquired their own instruments, agencies and application procedures, defined in its essence as a system for the protection of individuals.

The declaration basically reinforces the recognition of the liberal principles that affirm that everyone has the right to be treated with dignity and respect and to be recognized as a person vis-à-vis the law and that nobody can be excluded from the protection of the law. The universality that characterizes the declaration is related to the intrinsic humanity of every individual, it is "transcultural and trans-historical as it encompasses the individual independently from any specific community to which he may belong" (QUINTANA, 1999, p.323). However, because such universality is made up by a group of doctrines and ethical perspectives derived from the European context that have the ambition to be global universal values, in reality we are talking about a European universalism, a doctrine which is morally ambiguous, which attacks the crimes of some and overlooks those of others (WALLERSTEIN, 2007, p 60).

The first clash between the concepts of universalism and human rights in international relations took place

during the geopolitical context of the Cold War. During its initial phase, human rights were granted not only by the Universal Declaration (merely recommendatory in nature), but also by two other binding instruments which were enacted in 1966: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This thematic division mirrored the ideological split of the Cold War where the capitalist block emphasized the Covenant on Civil and Political Rights and the socialist block the Covenant on Economic, Social and Cultural Rights.

Alves explains the relation between the historical context and the human rights framework:

“The speed at which the Universal declaration was drafted during the first three sessions of the Human Rights Commission, and its approval by the III session of the General Assembly held on December 10, 1948, hides the profound ideological differences among the participants who were divided along the lines of the Cold War, with conflicting visions between Western individual liberalism, the economic collectivism of the socialists and the cultural and religious collectivism of the Asians. Nevertheless it was approved without consensus with 48 votes in favor and eight abstentions (South Africa, Saudi Arabia, Belarus Yugoslavia, Poland, Czechoslovakia, Ukraine and the Soviet Union)” (1994, p 138).

The historicity of the Universal Declaration of Human Rights creates for international organizations the problem of having to ensure the evolution of its principles by means of the generation of other interpretative and/or complementary documents to maintain the concept of human rights open and allowing for the reformulation of their universality. The emergence of

international documents for specific rights attempted to acknowledge the value of social groups for human universality, which were somehow invisible among the generalities of the existing documents, given that the threats to human dignity change through time and international human rights norms should accompany this evolution (FORSYTHE, 2012, p.62). Thus, other rights were recognized such as the rights of women, children, indigenous peoples, African descendants and people with special needs. Specialized agencies were created to ensure the protection of those rights. In the UN examples of the above are: the Declaration on the Elimination of Discrimination against Women (1967), the Declaration on Race and Racial Prejudice (1978), the Declaration on the Elimination of Violence against Women (1993), the Declaration on the Rights of Indigenous Peoples (2007).

However, some contentious issues arose on the interface between human rights and international politics. There is a latent dilemma between the two principles that are enshrined in the mandatory provisions of international law: on the one hand the sanctity of national sovereignty and on the other the guarantee of the protection of human rights; the ethnocentricity of the concept of human rights, based on the ideals of Western liberal democracies; the repeated inconsistency between human rights discourse and its enforcement and practice by Western powers and as part and parcel, the intense debate on the (in)effectiveness and (absence of) political neutrality in humanitarian interventions. Human rights together with democracy were the basis for the moral and political justification of the world system at the end of the 20th Century and at the beginning of the 21st (WALLERSTEIN, 2007, p.59) which viewed as acceptable the intervention of the strong (Western countries), on the territories of countries that

did not share the same morality (other countries that violated human rights).

The relationship between foreign policy and human rights is one of the issues that triggers most debates in the international relations arena. The antagonism between human rights and foreign policy can be identified as a reproduction of the terms of the first debate between idealism and realism, which sends us back to the classical dilemma between morality and politics. According to Vincent (2009), there is no obvious connection between human rights and foreign policy given the fact that the *raison d'état* emphasizes a specific morality among states, based on the principle of non-intervention. Since most of the governments base their foreign policy on a realistic vision of international relations (defense of sovereignty and national interest), intergovernmental actions that reflected the concern with human rights were scarce, nevertheless the violation of human rights was regularly invoked as propaganda from a government to condemn another (WALLERSTEIN, 2007, p.43). The philosophical perception of realism, which negates individual rights when faced with the world of politics, perishes in the extent that the rejection of human rights has effects on States of the rejection of human rights.

The construction of the normative structure known as the international human rights regime reflects their politicization, that is to say excessive political interference in decision-making: the organ directly responsible for the monitoring of human rights at the UN, the Human Rights Council, is under constant assault by the selectivity of the countries that defend their interests and that of their allies, protecting them from condemnation (politicization by subtraction), as well as the inclusion of countries in the list of those

which violate human rights only because of political criteria (politicization by addition) (BELLI, 2009 p.109). Hence, double standards are regularly used to deal with the cases that are submitted to the council.

The "thawing" in the relations between world powers favored a decade of international conferences, such as the World Conference on Human Rights held in Vienna in 1993, and nourished utopian desires for a Kantian liberal order, the feasibility of which was challenged by the genocides in Rwanda and the former Yugoslavia. The efforts to guarantee the principles of universality and indivisibility of human rights were seen as elements that could either be promoted or conveniently forgotten in keeping with the convenience of the countries. After the end of the Cold War and especially after the attacks of September 11, the trend has been for superpowers to combine traditional ethnocentrism with a renewed contempt for international law and multilateral institutions (BELLI, 2009, p.104). The actions of countries situated outside the Europe–US axis may open the door for new interpretations on the universality of human rights and particularly to foreign policies that question the functioning of the international human rights institutions, which have been systematically politicized to meet the needs of the countries that created the universal concept of human rights. We shall now examine Brazilian and South African policies within the above-mentioned perspective.

## 4. Questioning the international regime: human rights foreign policy in Brazil and South Africa

The international political and economic situation of the 21st century and the systemic context where developing countries played more prominent roles afforded more leeway to Brazil and South Africa. The financial crisis in 2008 strengthened new diplomatic initiatives involving both countries, such as the IBSA (India, Brazil, South Africa) Dialogue Forum, the B-20/G-20, and the BRICS. These coalitions proposed alternatives to the key international institutions as well as topics for an agenda, which were based on the autonomy which Brazil and South Africa have found, as compared to the 1990s, when both countries, in their respective domestic contexts, were starting to move towards the democratization of the relations between state and society. Since then, both countries' international projection has been focused on the respect for democratic laws and human rights as well as on the defense of multilateralism and peaceful solution for international conflicts. Their pre-eminent role in the international arena and in their specific regional contexts during the first decade of the 21st-century, has exposed their respective human rights foreign policies to frequent criticisms especially by civil society organizations, social movements as well as on the opinion pages and editorials of all major national and international newspapers.

### 4.1. Brazil

Brazilian foreign policy has been traditionally characterized by the defense of multilateralism, the peaceful resolution of conflicts and by cooperation with international human rights normative instruments, especially after the end of the military dictatorship. However, it was during the Lula da Silva administration (2003-2010) that an international posture governed by the principle of non-intervention, criticisms to the politicization in the international treatment of cases of human rights violations and support for the principle of non-indifference was consolidated.

For strategic reasons, President Lula's administration positioned pragmatic interests above normative concerns with regards to human rights. An example of this stance was Brazilian support to China and Iran, a measure aimed at trying to obtain a permanent seat in the Security Council and to support the right to development (ENGSTROM, 2011, p.17). During his government Brazil faced a growing demand to condemn countries that violated human rights, especially by human rights NGOs. The underpinning for these demands was the belief on the predominance of human rights over sovereignty and nonintervention in the affairs of other countries. Brazil's abstention in the UN Human Rights Council and the General Assembly on resolutions that condemned human rights violations in certain countries (Sudan, Sri Lanka and North Korea), as well as the rapprochement with countries with adverse reputations in that area (as for example the Brazilian-Turkish mediation in the Iranian nuclear crisis) was criticized by its own domestic media and human rights activists that qualified the Brazilian position on the issue as lenient with respect to those regimes (MILANI, 2012, p.50).

That is exactly the sticking point between foreign policy strategic objectives and the defense of human rights. Lula's and Celso Amorin's "active and lofty" foreign-policy aimed at diversifying partnerships and proposing alternatives to the world order. This translated into changes in human rights foreign policies on behalf of revisionist strategies, which changed the evaluation criteria for human rights in developing countries. Within the norm classified by Celso Amorin as "nonintervention and non-indifference", which used cooperation as the preferential means to improve human rights, "developing countries were positioned, during Lula's government, in a political framework that associated the defense of human rights to South-South cooperation and potential strategic transformations in the international order" (MILANI, 2012, p.54). This was a striking change that underscores a moderately revisionist position: when Brazil became party to the institutionalized mechanisms of the International Regime of Human Rights, it began to question its effectiveness.

Nevertheless the policies of President Lula's government strengthened Brazilian participation in the UN human rights institutions and cooperated in the quest for solutions for economic and social problems at a global level, forcefully connecting development to human rights. Lula's foreign policy was formulated to promote Brazilian development and that of other countries. In fact, in his government's human rights foreign-policy agenda the most important issues are interrelated: the fight against hunger and poverty and the development of countries especially on social issues, which were incorporated into foreign policy as an upshot of the guidelines for social policies in the domestic sphere. This effort was undertaken without prejudice to the Brazilian participation in the international human rights system (especially with reference to the signature and ratification of agreements and standing invitations to special rapporteurs).

This moderately revisionist position was continued by the current Rousseff administration (2011 -), which maintains the "active and lofty" Brazilian foreign policy in the defense of human rights, reinforcing the Brazilian position vis-à-vis the multilateralization of debates on human rights violations, while still guided by the principle of nonintervention but complemented by concepts of "nonintervention and non-indifference" as was the case during Lula's government. The most recent examples were the Brazilian support for the mission of inquiry into human rights violations committed by Israel during the recent military operation in Palestine and the rejection of the continued use of physical force by countries in the international system as the main route for the solution of conflicts, with Libya, Syria, Iraq and Ukraine as the most recent examples.

The project for a more sovereign, proactive and autonomist international insertion by the Lula-Dilma governments employed human rights as an instrument in the Brazilian strategy of moderate revisionism of the world order. The changes in Brazilian voting in the most important multilateral organizations was an argument used by Brazil in its criticism of the policy of double standards by Western powers and may be considered strategic for the diversification of Brazilian partnerships with countries accused of human rights violations by the West – such as Iran, Turkey, Russia and China. At the same time actors in the field of human rights, especially human rights NGOs and voices from the national media condemn Brazilian positions and its partnering with those countries, creating tensions that are the crux of the dialectic crossroads that Brazil faces today: does the Brazilian revisionism compromise or strengthen its human rights agenda?

We defend the argument that Brazilian revisionist practices reflect a change in scale in its foreign-policy

(MILANI, 2012a), generating contradictions between strategic and normative agendas as was the case in the history of other powers going through transitions in the international system. World powers make choices based on diagnostics constructed as a function of their strategic interests. The rationale created for the colonial project, for development assistance practices, for humanitarian intervention among other practices in the recent history of the international human rights regime demonstrates that when faced with human rights violations, Western powers have adopted diverse positions in accordance with economic, geopolitical and energy policy interests. Some of those powers have not even ratified important conventions of the human rights system, as is the case of the US on the issues of the rights of children and discrimination against women.

In the case of Brazil, changing its voting practices in the Human Rights Council for example does not undermine its commitments to the various human rights treaties and conventions. The existing distortions in the functioning of the international human rights regime demand a critical stance from moderately revisionist powers. The problem that arises with the changes in Brazilian voting could lead to questions about whether the country is being revisionist or is also behaving selectively and is therefore reproducing the patterns of Western powers. In that sense it is important that the country be consistent within its revisionism and that it underscore its position as a country that is geopolitically unsatisfied but ethically responsible. That is the paradox that Brazilian foreign policy has to resolve: the country must define criteria that justify its votes, applicable to its situation as a revisionist power.

Rather than being inconsistent with the values defended and enshrined in the constitution, Brazilian actions denounce a human rights international regime

characterized by the politicization and selectivity towards the condemned (BELLI, 2009). Challenges and criticisms are part of foreign-policy dynamics as a public policy exposed to the scrutiny of the several actors (NGOs, social movements, media, the academic world and political parties) who have a direct involvement on those issues. This is a positive symptom of Brazilian democratization and the diversification of the actors that play a role in the foreign policy agenda. The state's acceptance of the interference by international bodies (as for example the acceptance of the competence of international tribunals and committees), as well as the defense of democratic and human rights principles in the South American region, mitigate the onerous effects of the conflictive relationship between sovereignty and human rights – and it is in the confrontation of the paradoxes within that normative dilemma that the consistency of human rights foreign policies must be analyzed.

## 4.2. South Africa

Post apartheid South Africa endured a profound double transformation process: democratization and reinsertion in the international system. To build international credibility, the country demonstrated its adherence to the rules of the Washington consensus and undertook structural economic reforms that included fiscal reforms, monetary policy discipline, primary surplus targets, privatizations, flexibility in labor legislation and tariff reductions (PERE, 2002, p.9). At the time, credibility was synonymous with following the precepts of neo-liberalist theories in order to gain the trust of the major actors in the international system. This strategy also resulted in South Africa's participation in international regimes such as the human rights system.

During the Mandela administration South Africa signed and ratified several human rights conventions from the international human rights regime, both international treaties, the conventions for the elimination of racial discrimination and discrimination against women as well as the Rome Statute (in 2000). Therefore the concern to renew its diplomatic credentials and reestablish regional leadership was translated into compliance with human rights regimes and illustrates the crucial importance of human rights in post-apartheid South Africa's foreign-policy agenda. The defense of human rights was defined as the cornerstone of the country's foreign policy with a view to restore South African identity by negating its history of segregation according to Serrão and Biscoff's (2009) constructivist interpretation. Mandela was emphatic: "South Africa's future foreign relations will be based on our belief that human rights should be the core concern of international relations, and we are ready to play a role in fostering peace and prosperity in the world we share with the community of nations" (1993, p. 97).

South Africa volunteered to be a world harbinger for the defense of human rights thus increasing expectations and the potential for frustration when the country exhibited ambiguous positions on the interface between foreign policy and human rights, a recurrent issue in the political process.

With an initial clear position, South Africa adopted the embargo on arms exports to Turkey in 1995 because of concerns for human rights violations in that country; during the Iranian president's visit in 1996 (Rafsanjani), Mandela refused to draft a joint communiqué because he did not accept Iran's position on human rights issues (MALUWA, 2000, p 208). But to what extent would South Africa be ready to sacrifice alliances on behalf of the defense of human rights? These conflicts become more latent in the relations with the South as for example in the rapprochement with countries with poor human rights records but which supported the anti-apartheid struggle of the African National Council (ANC) such as Cuba and Libya.

During Thabo Mbeki's Government (1999–2008) foreign policy principles were virtually the same as in 1994 (NATHAN, 2005, p.362), underscoring commitments with democracy and human rights (GELDENHUYS, 2008, p. 8). However his defense strategy was deliberately different: it was based on an international vision committed to the "African renaissance". Mbeki strengthened the country's power resources in the region through the restructuring of the African Union (AU) and the status of the country as a regional power was demonstrated on empirical grounds such as economic strength, military capabilities and population size (GELDENHUYS, 2008, p. 20). The commitment to Africa gave momentum to partnerships with the global South through multilateralism (PERE, 2002, p.20) and the reinforcement of South-South cooperation.

With Zuma the rhetoric of global values was still strong but it changed towards cooperation and national interest including urgent domestic issues such as unemployment, violence and corruption. Recent controversies surrounding South Africa's votes in the crises of Zimbabwe, Swaziland, Madagascar, DRC and Burundi demonstrate, according to the critics, the country's departure from a human rights foreign policy (LANDSBERG, 2012, p.4). Borer e Mills (2011) classified the country's human rights foreign policy as paradoxical, especially because the country tried to reconcile its commitment to democracy and human rights with a pan-African and anti imperialist agenda. These criticisms are noteworthy in certain decisions such as: support for Zimbabwe's president Robert Mugabe, in spite of the growing humanitarian crisis in the country; South Africa's involvement in the policy of refoulement, or the forced return of refugees; and the defense of countries such as Myanmar and East Timor on the votes on violations of human rights in the UN system (BORER; MILLS, 2011, p.77). During its first mandate as a non-permanent member of the UN Security Council in 2007 and 2008, South Africa voted in favor of 120 out of 121 resolutions, however during the council vote against human rights violations by Myanmar, South Africa did not consider the country to be a threat to international peace and security; a draft resolution to impose sanctions on Myanmar failed, because of divisions within the Security Council. South Africa's position was challenged and it damaged the country's international and moral authority (SMITH, 2012, p.75).

These matters led to criticism by social movements, especially from domestic actors and human rights NGOs. The history of struggle and the breadth of the transnational activist network against apartheid (SATURNINO BRAGA, 2011), contributed to the creation in South African civil society of a culture of active participation and demand for social and political rights as well as participation in

the process of foreign policy formulation. The vibrant South African civil society demanded that the country comply with the expectation that it be a moral authority in the world; the Congress of South African Trade Unions (COSATU) played an active role in putting pressure on the government to ensure that countries in the region such as Nigeria, Zambia and Swaziland respected human rights (MALUWA, 2021, p. 213).

A significant action by the government was to revise its post-apartheid foreign policy and create a future scenario more in keeping with South African capabilities. After the normalization of diplomatic relations and regular participation in international organizations, the demand for a crucial role for South Africa in the defense of developing countries especially in Africa, has grown beyond its capabilities and resources (LANDSBERG, 2012, p.9). The Zuma government has emphasized the importance of foreign policy for domestic problems, as a means to manage the burden of expectations on its human rights foreign policy. The regional dimension of domestic problems justifies the priority afforded to its relations with Southern Africa and multilateral actions are increasingly becoming the focus of its foreign policy.

The trouble with adopting a more assertive posture vis-à-vis human rights violations in other countries arises mostly as the product of the tension within the guidelines for international action: South Africa's effort to attain regional leadership by means of a Pan-African ideological stance clashes against human rights violations in many countries that should be its allies. The selectivity of the international human rights regime directly impacts African states that spearhead resolutions on human rights violations in the UN General Assembly and the Human Rights Council. The problem of double standards and selectivity that dominates the regime reinforces the need for an African

leadership that is more sensitive to historical and cultural specificities in all the countries in the region and which can use its historical example to propose alternatives. The difficulty that South Africa must resolve is the absence of continuity on its votes, an example of which is Zuma's hesitation to condemn the abuses committed by President Bashar al Assad in Syria while at the same time supporting the African Union's decision to suspend Egypt because of the abuses committed by its military. South Africa must demonstrate that it is not reproducing the politicization and selectivity, which are the standard behavior of Western powers in the international human rights regime. Transparency in the motivation for the positions taken by the country and an open dialogue with its society are some of the choices the country can make to avoid the use of those paradoxes as a reason to challenge the legitimacy of its foreign policy.

## Conclusion

The perception of human rights is conditioned in space and time by multiple historical, political, economic, social and cultural factors. Therefore their real content is defined in diverse manners and the modalities in which they are realized vary with the development of societies: in the same fashion that the emergence of new interests and needs stimulates the emergence of specific human rights for minorities, the interests, the domestic determinants and the geopolitical vision of the countries in the South result in a moderately revisionist posture vis-à-vis the international human rights system.

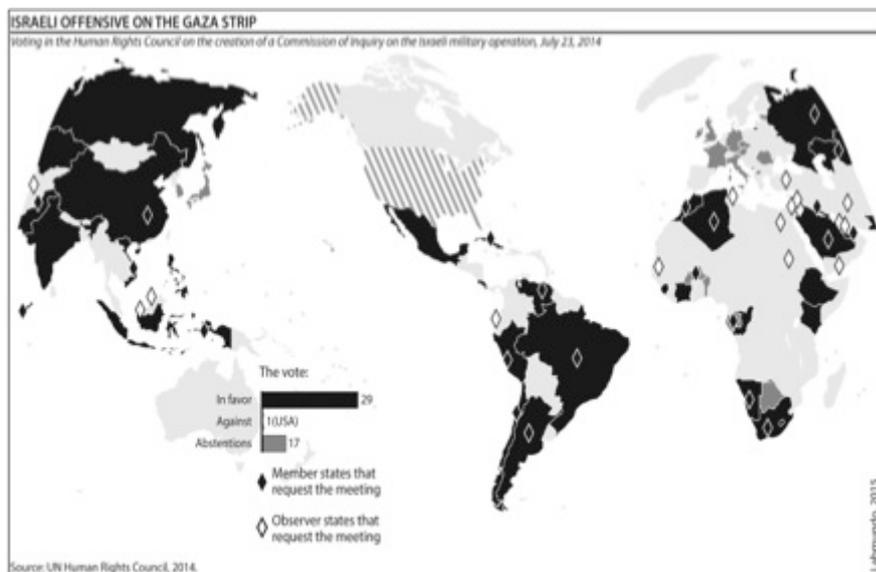
In political theory the criticism to the transformation of the universal concept does not consist in replacing hegemonic Western human rights but rather in complementing them with the protection of specificities, accepting that they are also part of the universal Human. Nonetheless, in the case of the criticism against the anti-hegemonic policy of the countries in the South what we observe is an incompatibility between the demand for the universal political perspective of human rights - beginning with the construction of its standards - to be more inclusive and pluralistic, and the perceptions originated in societies from the North and South and the West and East. From the systemic point, the demand for the respect for human rights does not have universal application, because they are often subservient to the geopolitical and strategic interests of core countries, who were for the most part, responsible for their conceptual and normative construction.

In light of the distortions of the international regime, its selectivity and double standards, the challenges that the votes and alliances by both Brazil and South Africa have been facing lose legitimacy. Questions have to be

asked about the countries' political calculations before condemning their human rights foreign policies: the decisions that are criticized are paradoxical because they challenge the normative human rights standards (who defines the rules?) or because they go against the interests of the countries in the North that constructed the normative structure of the human rights international regime? For Brazil to assert itself as an emergent power in the international system, worthy of a place in the Security Council, should it have to exhibit positions that are favorable to the hegemonic blocks on issues of human rights violations or should it continue to be seen as a critic of this biased system? Should South Africa adopt a discourse of condemnation and sanctions against countries within its sphere of influence or should it establish dialogue and cooperation using its projection of power in the African continent? Do the countries in the North relinquish their strategic alliances when they have to vote on human rights violations?

We illustrate this last point with the map below of a recent vote in the UN Human Rights Council on sending an inquiry mission to investigate human rights violations by Israel in its recent offensive in Palestine, which helps to understand world geopolitics and demonstrates the clear posture by emerging countries as anti-hegemonic forces. The mission was approved solely with the vote of the countries in the South while the US as Israel's preferential ally voted against and the Europeans abstained.

Brazil and South Africa requested the meeting and voted in favor of sending the fact-finding Mission. Both tried to be consistent in their position as moderate revisionists claiming for new standards of systemic organization, based on multilateral dialogue and cooperation rather than on coercion. To that end, it is essential that the diplomacy of both countries adopt transparency as a mainstay in their respective foreign policies so that the alliances and votes within Human Rights International Institutions



are understood within the anti-hegemonic perspective proposed by the countries of the geopolitical South. The contradiction inherent to the predominance of the interests and preferences of the Western hegemonic block is apparently no longer accepted by the leadership of the countries in the South. That is what the conceptions on the universality of human rights by the countries in the South, which result from their own social, economic, political and cultural trajectories seem to have been articulating in the multilateral arena.

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# Deepening the U.S.-Brazil Dialogue on International Human Rights

*Dr. Esther Brimmer<sup>1</sup>*

The United States and Brazil are large, multiethnic, liberal democracies in the Americas which endeavor to respect human rights at home. Both support the fundamental principle that human rights are universal. Together they could help improve respect for these rights globally. However, despite their commonalities, at times, they pursue different approaches to human rights. Further analysis may help explain the nuances in their different positions and contribute to efforts to forge greater cooperation.

Deepening the U.S.-Brazil dialogue could contribute to the global discussion of human rights. Both countries are diplomatically active. Greater cooperation could enable them to continue to support a fundamental principle they share – the universality of human rights. Defending this principle is especially important now as it is under threat from those who think rights should be based on religion or ethnicity.

## Heirs to the western tradition

Although diplomats and analysts place the United States in “the West” or the North” and Brazil in the “Global South,” both countries are heirs to the transatlantic exchange of ideas between Europe and the Americas and to the

demographic transfer of people from Africa across the Atlantic as slaves. Their experiences enrich the western understanding of human rights. Their ongoing struggles for social inclusion can provide examples for other countries.

Both countries are heirs to the great debates about liberty, equality and freedom. In the late 18th century, the revolution separating the United States from Great Britain and the French revolution launched dramatic political upheavals in pursuit of liberty. The creation of republics in the Americas expanded this movement. Brazil took a different path, but moved in the same direction. Brazil became an empire and declared independence from Portugal without a violent revolution.

Over time many countries became independent, but their people did not share the benefits of liberty because of internal inequalities. Therefore, from the late 18th century through much of the 19th and 20th centuries the next quest was for equality. The issue of equality was most acutely felt in the struggle to end slavery. Along with Cuba, Brazil and the United States were the last three countries in the Americas to abolish slavery, in 1886, 1888, and 1863 respectively. Over a century of civil rights struggles have wrought remarkable changes in the United States. With the election of Barack Obama in 2008, for the first time in two millennia the most powerful person on the planet is

<sup>1</sup> The author would like to thank Ms. Uduopa Abalu for her research assistance. The author would also like to thank George Washington University’s Elliott School Brazil Initiative and the SOAR faculty fund for their support.

of African descent. In recent years, Brazil has celebrated its African heritage. In her 2014 address to the United Nations, President Dilma Rousseff reminded the gathering that “As Brazilians we are united by ties of history, culture and friendship with the African continent.”<sup>2</sup> The search for equality continued in the 20th century with the expansion of rights to women and later to lesbian and gay people.

The next wave in the 20th and 21st centuries is the ongoing quest for freedom. This includes both the freedom from oppression and the freedom to enhance human dignity. Countries are grappling with how to realize freedom in ways that are meaningful to their people. An examination of U.S. approaches to international human rights may help clarify points of convergence and divergence with Brazil.

## U.S. Approaches to Human Rights

Deeply influenced by the seventeenth century English philosopher John Locke, the United States asserts that human rights originate in the individual. Individuals may choose to pool their rights and unite with others to form states for their protection, but individuals do not lose their place as the source of the framework of rights. This basic principle is evident in the U.S. tendency to support individual rights in international situations. Government is constituted to protect these rights, and at times, may need to be reformed to realize these rights better. Thus, the effort to achieve the just society is on-going.

The United States Constitution has been amended many times over the past two centuries to accommodate a wider understanding of liberty, equality and freedom from

ending slavery, to giving the vote to women, to directly electing the Senate. The deliberations and decisions of the Supreme Court which interprets the Constitution are still the stuff of current politics. In effect, Americans accept a high degree of flux in their national discourse on human rights possibly making some of them more likely to advocate social or political change to realize rights internationally.

This belief in human progress underpins the idealist school of U.S. foreign policy which is manifested in support for democracy. This idealism can be found on both the political right and left. The American idealist school is also heir to the tradition of Immanuel Kant. Of particular relevance is the argument of his 1795 essay, *Perpetual Peace*, that the internal political conditions of a country determine its external behavior: “...the republican constitution also provides for this desirable result, namely, perpetual peace, and the reason for this is as follows: ...the consent of the citizenry is required in order to determine whether or not there will be war...”

The idealist stand in U.S. foreign policy still holds that the internal situation of a country matters to its international behavior. The realist school takes the opposite approach arguing that the internal structures do not matter and that states’ overriding goal is to maximize their power. For idealists and proponents of a progressive foreign policy, support for democracy and human rights is important both for the realization of human dignity and for the maintenance of international peace. Speaking at the United Nations in 2012, President Barak Obama stated,

“We have taken these positions because we believe

<sup>2</sup> President Dilma Rousseff, “Statement by H.E. Dilma Rousseff, President of the Federative Republic of Brazil at the Opening of the General Debate of the 69th Session of the United Nations General Assembly.” New York, 24 September 2014.

that freedom and self-determination are not unique to one culture. These are not simply American values or Western values -- they are universal values. And even as there will be huge challenges to come with a transition to democracy, I am convinced that ultimately government of the people, by the people, and for the people is more likely to bring about the stability, prosperity, and individual opportunity that serve as a basis for peace in our world..."

The question is how to implement this vision. For centuries, Americans have been torn about how to realize human rights. One alternative is to try to perfect one's own society as an example; an alternative is to try to seek shared norms with others to raise the overall human condition. The former approach can be traced back to an inspiring speech to English settlers headed for the "new world." In 1630, while sailing on the ship *Arabella*, the future governor of the Massachusetts Bay Colony John Winthrop told his companions that "We shall be as a city upon a hill, the eyes of all people are upon us."

The image of a "city on a hill" still permeates U.S. political imagery. According to this view of the world, the U.S. should focus on improving democracy and human rights at home; and when it does speak internationally it should do so in its own voice. This school of thought is skeptical of working in international organizations with countries with poor human rights records and where the U.S. voice could be diluted and principles eroded to achieve a weak consensus. The alternative view sees Americans' work at home and abroad as part of a larger effort to realize human rights generally. Important domestic efforts such as the nineteenth century anti-slavery movement were linked to international campaigns. The modern expression of this latter approach underpins U.S. work in the UN Human Rights Council despite its flaws and the presence of countries with poor human rights

records. Rather than abandon the field, advocates of this approach want to use all the tools available to advance human rights.

Yet Americans also acknowledge that human rights have not been the only consideration. Too often other political considerations swayed policy leading to support for dictators or silence in the face of abuses. Nevertheless the idea of normative elements in foreign policy runs deep. The National Security Strategies of both Democratic and Republican administrations include some conception of advancing "values."

## Working in International Organizations

The United States and Brazil are part of both the global and the regional Inter-American human rights bodies. Both need to work to defend the Inter-American system which is under pressure. The American Commission on Human Rights was created in 1959 and is composed of seven independent experts who serve in their personal capacities. The Inter-American Court of Human Rights was founded in 1979 and was based on the American Convention of Human Rights. The U.S. participation in regional mechanisms is incomplete. The U.S. is not a party to the Convention.

This essay will focus on the global human rights mechanisms. The United States remains proud of the leading role of Eleanor Roosevelt and other diplomats in the creation of the Universal Declaration of Human Rights in 1948. One of the most important efforts to implement the goals of the document is the Universal Periodic Review

established in 2005. The United States presented its first UPR report in 2010 and is scheduled to present its next one in 2015.

There are two types of international human rights mechanisms in the United Nations system: Charter bodies and treaty bodies. Charter bodies derive from the United Nations Charter and include the old Human Rights Commission and its successor the current Human Rights Council which meets in Geneva. It also includes the General Assembly's Third Committee which meets in New York. Other mechanisms include the "special procedures" authorized by the Council such as human rights rapporteurs, the Human Right Council complaint procedure which works cooperatively with countries, and the ad hoc Commissions of Inquiry sent to investigate egregious emergency situations.

The treaty bodies include those entities established to provide a place to review states' compliance with formal agreements that they have signed such as the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR). Brazil is a party to these and other treaty bodies. The United States has adopted the ICCPR. However, the U.S. signed the ICESCR, but the U.S. Senate has not ratified it meaning that it has not been adopted.

## Debating Political Rights

A paradox for many observers of U.S. action or inaction on international human rights is the support for political rights, but the delay in adopting key treaties. Political rights

are embedded in U.S. framework documents. The first ten amendments to the Constitution are the "Bill of Rights" which outlines the fundamental U.S. approach to rights. Amendment 1 states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

At the UN and elsewhere the U.S. advocates freedom of speech and expression. U.S. support for freedom of expression extends to security issues. Some countries argue that limiting speech, or banning certain books or films, reduces derogatory or inflammatory insults and preserves respect and social stability. While not supporting derogatory statements, U.S. policy takes a different view arguing that the free flow of ideas will overwhelm intolerance and the hollow barbs of hate speech. Again, speaking in 2012, at a time when passions were inflamed by an offensive video filmed by private people in the United States, President Obama explained, "Americans have fought and died around the globe to protect the right of all people to express their views, even views that we profoundly disagree with. We do not do so because we support hateful speech, but because our founders understood that without such protections, the capacity of each individual to express their own views and practice their own faith may be threatened. We do so because in a diverse society, efforts to restrict speech can quickly become a tool to silence critics and oppress minorities.

We do so because given the power of faith in our lives, and the passion that religious differences can inflame, the strongest weapon against hateful speech is not repression; it is more speech -- the voices of tolerance that rally against bigotry and blasphemy, and lift up the values

of understanding and mutual respect.”

Indeed, the commitment to free speech drove the U.S. to take a reservation when it adopted the ICCPR. Article 19 states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

The language of 3(b) could be read as contradicting a broader commitment to free speech.

The United States continues work to improve civil rights and racial equality at home. It has ratified the Convention on the Elimination of Racial Discrimination (CERD), but like most of Africa and Asia, the U.S. does not accept Article 14, which provides that:

“A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider

communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.”

The U.S. does not accept that individual citizens might take complaints directly to an international body. Instead the U.S. provides extensive domestic measures to protect individual human rights. In a sense, this point echoes the “city on a hill” approach—provide and improve the mechanisms domestically. Do not rely on distant and unenforceable international protections.

## Rethinking Economic, Social and Cultural Rights

One of the most intriguing current issues is the evolving approach to economic, social and cultural rights. As noted, the United States has not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). Over the years, the U.S. has often voted against resolutions regarding these rights in multilateral venues. However, the United States does not inherently oppose such rights. Finding ways for the U.S. to agree on such rights with others while honoring its own traditions is an important contribution to preserving international human rights. Too often the U.S. and other strong supporters of human rights have been divided amongst themselves on these questions which risks leaving the field open to opponents of strong human rights protections.

The U.S. has drawn on its own contribution to international

human rights to rethink these issues. The Universal Declaration of Human Rights contains both political and economic rights. Even before the founding of the United Nations, President Franklin Delano Roosevelt articulated the “Four Freedoms” on June 6, 1941, to explain why the United States was supporting the United Kingdom in its fight against fascism. The speech was made six months before the U.S. entered the Second World War. President Roosevelt expounded:

“We look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression—everywhere in the world.

The second is freedom of every person to worship God in his own way—everywhere in the world.

The third is freedom from want—which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants - everywhere in the world.”

The fourth is freedom from fear—which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world.

These are still valid goals today; and there is still work to do.

Within the U.S., there is a right to education and provision of food assistance. Both could be improved substantially, but both do exist. The 2010 adoption of the Affordable Care Act expanded the provision of health care opening Americans to the idea of health care as a right. The ACA also made it more credible for Americans to talk internationally about

rights and health issues.

Important strides have been made to find agreement on issues that complement ongoing work on health and development. The United States has been working with others on enhancing access to drinking water and sanitation. The U.S. also supports the Millennium Development Goals which include access to drinking water. On September 30, 2010, the United States joined consensus at the UN Human Rights Council to adopt resolution (A/HRC/15/L.14) which in operative paragraph 3,

“Affirms that the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity;”

In paragraph 8(a), the resolution “calls upon States... to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation...” Brazil and the U.S. were both the on the Human Rights Council at the time and were part of the consensus.

## Country-specific resolutions

Another area of sensitivity is the adoption of UN resolutions that criticize a country by name for human rights abuses. Some countries prefer to use thematic resolutions that exhort all states to meet their obligations. Some states recognize the need at times to single out an egregious violator in a country-specific resolution. The U.S. has advanced both country-specific and thematic resolutions. Perhaps drawing on its wariness about diluting the national voice, the U.S. is

willing to advance country-specific resolutions, even if they are unpopular.

## Individual Rights and State Sovereignty

Perhaps the most difficult human rights issues involve the intersection of an individual's right to life and state sovereignty. The notion of the state's "responsibility to protect" was enshrined in the 2005 UN World Summit Outcome Document paragraphs 138 and 139 and further elaborated in the annual reports of the UN Secretary-General. The concept of "R2P" has three pillars:

I. Protection and responsibilities of the State to prevent certain acts (genocide, war crimes, ethnic cleansing and crimes against humanity);

II. International assistance and capacity-building; and

III. Timely and decisive response.

Most attention has been focused on Pillar III and the possibility of the use of military force as a response. In 2011, Brazil raised the concept of "responsibility while protecting." More recently this idea has been interpreted as emphasizing the duties of those empowered by the UN Security Council to intervene to do no harm and to keep the UNSC informed of actions taken under their authority. The U.S. does believe that at times, military force may need to be used to save civilian lives. Speaking on August 7, 2014, President Obama explained U.S. military action, consisting of "targeted airstrikes to protect our American personnel, and a humanitarian effort to help

save thousands of Iraqi civilians who are trapped on a mountain without food and water and facing almost certain death...

[He continued] ...So let me be clear about why we must act, and act now. When we face a situation like we do on that mountain -- with innocent people facing the prospect of violence on a horrific scale, when we have a mandate to help -- in this case, a request from the Iraqi government -- and when we have the unique capabilities to help avert a massacre, then I believe the United States of America cannot turn a blind eye. We can act, carefully and responsibly, to prevent a potential act of genocide. That's what we're doing on that mountain."

The hard question comes, should military force ever be used to save civilians without the consent of the local government? On resolution 1973 regarding Libya, the United States answered this question in the affirmative; Brazil chose to abstain.

## Conclusion: What U.S-Brazil cooperation could mean for the world

This essay suggests my personal views on some of the deep currents that flow under the U.S. approach to international human rights. I believe that continued dialogue between the United States and Brazil can enhance respect for international human rights. Each has its own connection in the world and is part of different sets of debates. Brazil is part of the "Global South" and the Non-Aligned Movement. The United States works closely with the European Union and other partners. Yet, both countries are heirs to centuries

of transatlantic philosophical and political trends.

Brazil and the U.S. can accomplish much together. Brazil has a long record of supporting LGBT rights internationally.

The U.S. and Brazil were part of the successful adoption of the first UN resolution supporting LGBT right in 2011. Despite their long and difficult and unfinished quest to achieve racial equality, both countries have come a long way. In 2008, the U.S.-Brazil signed a Joint Action Plan to Eliminate Racial and Ethnic Discrimination and Promote Equality. I am proud to have created and worked with Brazilian partners to launch the "Teaching Respect for All," joint initiative at UNESCO on January 18, 2012, which established a global project to develop a school curriculum for teenagers drawn from successful examples of combatting racism and intolerance around the world. Brazil and the United States will draw on their own traditions and policies to advance international human rights, but there is scope for greater cooperation which would benefit people everywhere.

# Human Rights and Political Islam: re-signification and multiplicity in the Muslim brotherhood

*Dr. Fernando Brancoli<sup>1</sup>*

## Summary

The aim of this article is to critically discuss the relationship between political Islam and the instruments for the protection of human rights and democracy. The premise of the essay is that Islamism is comprised of numerous interpretations about the possibility of merging religion and the above two concepts, which are viewed as essentially Western constructs. Finally the article uses the case of the Muslim Brotherhood in Egypt as an archetype to comprehend the agglutination and re-signification processes of the concepts presented.

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## Introduction

Studies that make the connection between Islam and Western modes of organization have grown substantially in the last decades, especially after the 9/11 terrorist attacks in the United States in 2001. Often using homogenized premises and consolidated responses as a starting point, which indicates a complete incapacity for interaction, a large part of the material produced ends up reinforcing a stereotyped vision in which the Clash of Civilizations (Huntington, 1997) becomes the only possible result.

These arguments gain strength from recurring news in which Muslims are seen as chronic violators of inalienable rights. Kidnappings of children justified as religious practices in Nigeria by the extremist group Boko Haram, or civilians murdered in cold blood by the Islamic State of Iraq and the Levant (ISIS), in Iraq are very good examples of these constructs.

Furthermore quantitative analyses indicate that countries with Islamic majorities face difficulties to create the means that allow for the existence of representative governments and that they are naturally non-democratic (Lewis, 2003). Although controversial, Western indexes that seek to measure and classify democracy in the world rank Islamic countries very low. Both the US Freedom House and the Democracy Index of the Economist, posit that only

Indonesia, of all the countries that include Islam in their legal code, is democratic. That direct relation between Muslim religion and absence of democracy ends up being the initial premise in numerous arguments and analysis.

In contradiction with this line of argument, this essay proposes to deconstruct the understanding that Islam is a monolith, presenting its numerous voices and especially pointing to some of the visions that can be re-articulated with values that may be construed as democratic and are related to Western interpretations of human rights. We do not ignore the schools of thought that point to the universality of human rights (Donnelly, 2012; Hunt, 2008) and democracy (Sharasky & Demer, 2006), which are the result of different combinations of philosophical nuances in the world. However, for this study, Political Islam is seen through the interpretation of local actors who perhaps, on one of the few issues where there is convergence, point to the fact that both are Western instruments. This generates interesting intellectual currents mainly because its starting point is a principle that would either require a hybrid combination between Political Islam and the concepts of democracy and human rights or the impossibility of their amalgamation.

# 1. Politics and Religion in the Islamic world and humanitarian issues

Before we perform any analysis it is necessary to find an adequate definition for Political Islam – that is to say religion as a political ideology rather than as a theological philosophy. Islam<sup>2</sup> emerged in the 7th Century, in the Arabian Peninsula, structured by prophetic principles when Mohammed, a merchant, allegedly received divine messages, which were later condensed in a sacred book, the Qur’an. The set of codes that was created at that moment is called Sharia, it encompasses not only the laws that were included in the Qur’an but also jurisprudence based on Mohammed’s documented actions (hadiths). The community made up of followers of this juridical and philosophical context became known as umma, and it represented the most important political conglomerate in Islamic thought. This collection of norms often constituted the loftiest framework for the policies of certain countries – even serving as the foundation for their constitutions.

Within this logic, political Islam can be defined as “a means to implement religion by individuals, groups and organizations that have political objectives”(Graham, 2003: 45). In keeping with this definition, Islam “provides political answers to the challenges of contemporary society, based on the underpinnings that have been

articulated and re- appropriated from the Islamic tradition” (Ibid). It is interesting to compare this assertion with the fictitious conception that was constructed during the golden era, when the newly founded religion was free from negative influences. The re-appropriation of the past through the invention of traditions is one of the most important aspects of this political model (Denoeux, 2002), especially because those traditions can be seen as detached from history. This de-contextualization of Islam allows, in theory, for local actors to ignore the historical, social, and political frameworks in which Muslim societies operate. This discourse generates ideological instruments that are not quite formed and that can be chosen and molded for specific political ends.

This scenario becomes even more complex with the argument that the narrative of “return to the mythical past” started to be more forcefully used during European domination, when Muslim countries were under colonial control. Contemporary political activity on behalf of Islam derives from the confrontation against Western forces, which started on the 18th Century, when European states established themselves as the strongest agents in the region. This scenario in the Islamic interpretation represented the reversal of a divine reality, in which the Muslim community should be at the forefront of global potentials (Brown, 2000:77).

A good way to understand the multiple interpretations on the possibility of hybridization between Islam and Western organizational tools is by briefly looking at two

2 Islam has a series of norms and rules – especially after the creation of specific groups. However the “Five Pillars” describe very well the duties of the faithful: (1) there is only one God and Mohammed is his prophet. (2) Pray five times a day, turned towards Mecca, the sacred city. (3) Fast once a year during the day, during the sacred month of Ramadan. (4) If possible, visit Mecca once in a lifetime. (5) Donate part of your salary to charity every year.

different intellectuals from the end of the 18th century and the beginning of the 19th Century, within the framework of colonial domination. Both tried to articulate religious concepts within a reality in which the physical and conceptual intrusion of the Europeans was growing – and therefore traditional values were losing ground. We do not intend to perform an in-depth analysis of the thinking of both intellectuals, but merely to show different and contrasting ways to interpret the contact between the West and Islam.

It is interesting to demonstrate that the specific interpretations of “democracy” at that time, were quite different from the way they are conceived in contemporary society - since we do not see for example, the inclusion of essential sectors in society, such as women, in the process of consultation. Nonetheless, we can clearly realize the diverse possible interpretations that can be created around the modes of contact with Islam. Both Afghani and Wahhab, interestingly used the same passage from the Qur’an, Sura number 21, to defend their arguments. There, Mohammed says: “my community [umma] would never agree with errors”. For Afghani this means that the prophet implies that decision-making processes should be collective, which dovetails with Western values. Wahhab on the other hand, says that the passage signifies that all those who make mistakes, within his specific interpretation of Islam, will be automatically excluded from the Islamic community and in consequence will be treated as aliens.

Hence, it becomes impossible to establish homogeneous meta-narratives about the applicability of Islam as a tool for political organization. The means chosen and considered most appropriate is an analysis of the microstructures, of the local phenomena, within a specific historical context. It is within this logic that we will try to understand the

articulation between religion, human rights and democracy in the Muslim world.

In this debate about Islam and the incorporation of Western standards, the consideration of the compatibility of religious principles with human rights is also a central element. We start again from the principle posited by a large number of Islamic intellectuals: that human rights are the product of Western historical experience, created in discussion fora that are essentially Western, such as the UN (Mayer, 2012). Thus the logic that permeates these interpretations always starts from the concept that this normative structure is essentially alien and that in some way it must be articulated with original internal values.

In spite of the fact that the attempts to frame Western values within Islamic views have a long history as we showed above, the normative structures related to human rights started to be discussed in a more specific fashion in the Middle East and the North of Africa during the 70s. For the first time, discussions had a very specific focus: the Universal Declaration of Human Rights. We start from the premise that for the argument we are developing here, human rights are a series of legal provisions binding or not, that confer inalienable rights upon the individual, as ruled by the ontology of the agent. In this sense, those provisions would precede, at least in terms of discourse, any discussion of human beings. Within this logic, the concept of human rights is often taken as absolute although its conception of power can change in time (Dalacoura, 2011). The issue therefore is to know whether this concept, understood at this moment as Western, is compatible with Islamic ideals. With these considerations in mind we can now examine the Muslim Brotherhood, as an interesting standpoint from which to understand the meaning of democratic models of human rights and

political Islam, always of course, within a framework of non-homogenization and multiple mindsets.

## 2. Emergence of the Muslim Brotherhood in Egypt and initial actions

In order to understand some central facts about the Muslim Brotherhood as a political actor during the Mubarak government, we must make a brief presentation of its history and its interpretation of political Islam. The Muslim Brotherhood – also known as the Society of Muslim brothers or Muslim fraternity – was created by Hassan al-Banna in 1928 in the city of Ismailiyya in Egypt. Amidst the dissatisfaction with British domination, al-Banna - a 22 year old primary school teacher – became the leader of the newly created religious society that sought to regain dignity for Arabs and Muslims whose political situation had been hurt by the native secularism which had been foisted upon them.

In that sense, the Muslim Brotherhood centers its ideology in the search for the creation of an Islamic state, where Islamic law (shari'a) would be implemented, but would not be limited to that single mainstay of political Islam. Al-Banna understood the Brotherhood not only within these political and institutional terms but also as a more encompassing social movement that would "mobilize Egyptians around Islam and create the basis for true freedom" (PINTO, 2010, p.148). The rejection of the models imposed by the West, the centrality of Islam in the life of its members and the social insertion of the movement would be its hallmarks throughout its trajectory.

The Muslim Brotherhood started to gain notoriety and became one of the most important political actors in Egypt at the outbreak of WWII (MITCHELL, 1993, p.12); captivating followers in the middle class as well as among civil servants, urban workers and peasants. During that stage, al-Banna defined the movement's scope of action, at a time when it was gaining a growing number of followers in the heart of Cairo and was becoming stronger as a structure: "a salafite message, a sunni path, a sufi truth, a political organization, an athletic association, an educational and cultural society, a business and a social idea" (Ibid, p.14). This conception reflects the early stages in the process of the organization of the Brotherhood: since its origin in the city of Ismailiyya it was upheld by the project of founding its own headquarters, and subsequently by the undertaking of other projects such a mosque, a club, a school, a small factory, which functioned as the center for activities and for the socialization of the local community (Ibid, p.9).

Increasingly perceived as a threat to the status quo by King Faruk I's regime, Hassan al-Banna was murdered in 1949 by the country's Secret Service. With the loss of its great leader and mentor, the Muslim Brotherhood decided to support the coup orchestrated by the movement of Free Officers, which they saw as a way to free Egypt from corruption, internal intrigues and foreign interference, perceived as characteristics of the monarchy. The coup was successful and Gamal Abdel Nasser and his nationalistic movement came into power in 1952, with the Muslim Brotherhood's support and hopes. However, the partnership between those political movements was short lived and soon Nasser began to repress the Muslim Brotherhood considering them a potential focus of opposition.

The years of persecutions, incarceration, torture and sometimes executions suffered by the members of the Muslim Brotherhood splintered the organization. One of the factions chose radicalization and violence as a means to act

and express political resistance. During that process Sayyid Qutb, a member of the Muslim Brotherhood imprisoned by the Nasser government emerged as the movement's ideological leader with his reflections from prison. Qutb emphasized the understanding of Islam as a system that touches every aspect of the life of its followers and allows them freedom. Qutb's central argument was that a society that walks away from God's commandments as revealed by the prophet Mohammed suffers from jahaliyya (the state of ignorance of an unfaithful society). This is manifested through absence of social justice, obsession for material things, lack of connection between man and God among many other aspects (COOK, 2012, p.87).

Qutb is often mentioned as somebody who influenced the radical Islamic groups that proliferated in the Muslim world during the 1970s, including al-Qaeda. However, as advocated by Paulo Gabriel Pinto, a selective and strictly political reading of his ideals is to be blamed for nourishing the upsurge in radicalism. Other interpretations of his texts are possible focused on the moral reform of the individual and not on armed struggle. As the author remarks, the word jihad according to medieval theologians had two meanings: the "great jihad" derived from the effort made by each individual to control his impulses and steer them towards devotion for God, and "small jihad", which was the armed struggle to defend the Islamic community (PINTO, 2010, p.152).

Independently from the perspective one takes on Qutb's teachings, the fact is that they played a central role on the path taken by the Muslim Brotherhood and by Political Islam in the north of Africa and the Middle East and led to Qutb's hanging in August 1966. At that moment the members of the brotherhood were divided between those followers that quit the organization and created a "vanguard" to defend his ideals – or a specific interpretation of such ideals – and those who remained organized within the Brotherhood seeking to avoid direct confrontations with the regime after the onslaught of

repression. At that moment the Muslim Brotherhood chose a path of relative moderation, giving up the use of violence and trying to work with the existing political structures without surrendering its local organizations and restructuring completely from the bottom up.

## The role of the Muslim Brotherhood in the Egyptian revolution

During the decade that preceded the popular uprisings known as the Arab Spring that began in Egypt in 2011, the country's economy had been at its best in modern history. Supported by sizeable foreign investments that reached more than \$10 billion dollars in 2007, the country, with over 18 million inhabitants, had the financial situation, which showed the greatest promise in the region. The dollar inflow ensued especially from the liberal reforms undertaken by the government, aided by the privatization of several state owned companies, made possible by IMF loans. From 2000 to 2007 Egypt grew an average of 5.3% a year; the impact of the global crisis in 2008 did not cause as large a downturn as it did in Europe, and already by 2010 the economy showed signs of recovery (Cook, 2011).

The population generally disliked the privatization process because it was seen as a means for Mubarak and his cronies to benefit financially. Large state owned companies were sold to businessmen with links to the regime and there were accusations that the prices were artificially low. As was also the case in Tunisia, the economic growth did not benefit important sectors of the population, especially young university graduates. In spite of the alleged vibrancy of the economy and of the fact that the political leadership declared that were opportunities for all, a large number of

Egyptians received very low salaries and more than 20% of the people were below the line of poverty. As an example Khalil remarked that more than 7% of Egyptian children under five are malnourished, their weight is below the recommendations set by the World Health Organization; half of the housing does not have sanitation, sewage is discharged without any treatment into the environment; 35% of the people are illiterate (2012, p.191).

The differences among social classes had been increasing in the last decade, with great differences between the rural and urban areas. This led to an accelerated growth in the population of the cities, which in turn put pressure on the public services that were already under stress, such as hospitals and schools. Cairo - a city characterized by streets and buildings stained by the sands of the desert and the pollution - watched impotently the weekly mushrooming of poor neighborhoods where the newly arrived from rural areas sought refuge.

As was said above, economic growth did not translate into improvements for a growing number of young people who, as was the case in Tunisia, finished college without any expectations for their future. Of the 2.5 million unemployed, 850,000 had some college education; this number was even higher in Cairo (De Leon and Jones, 2011). The majority of this contingent of the unemployed was forced into the informal labor market where they worked without any papers or legal protection from abuses by their employers. Visiting the country in 2012, it was common to find university graduates from popular schools such as engineering, working in diners and restaurants. The running joke was that they would need PhD's to be able to become dishwashers. What the low salaries meant was that changes in the economy had a greater impact on the poorer, especially given the skyrocketing inflation which was averaging 16.5% a year. The government reacted by donating groceries, especially

bread. Donation centers surrounded by mile-long queues where mothers were forced to spend the night embracing their children, contributed to the perception that the country was a decadent State.

Demonstrations and protests against the regime had been happening in Egypt for at least 10 years and they had always been repressed with violence. The "kefaya" movement ("Enough!" in Arabic) had been mobilizing the population during the 2000s accusing the government of lack of commitment to the causes of the Arab world. Seen by a large part of the population as subservient to the West, Mubarak was criticized for being too close to Israel and for not expressing a position vis-à-vis the Palestinian revolution at the beginning of the 21st-century. People also complained about his lack of criticism against the US military presence in the Middle East. During the demonstrations in 2011 many placards read: "The president can only speak Hebrew".

People also expressed their demands through strikes organized by labor groups relatively independent from the regime. More than 3000 strikes took place in the 12 years before the revolution, demanding salary increases and a better work environment (Cook, 2011). The strikes, which had their most visible face on the long marches, convened people who did not necessarily belong with the workers who were staging the strike, but who were unhappy with the government. The social media used the phrase "are you angry? Join the march for the strike"; this was circulated on the Internet to convene the young and the discontent. The government, concerned about the Muslim Brotherhood, did not seem to perceive the power that these movements could garner.

In that sense, among the groups that tried to minimally coordinate the chaotic strikes, the April 6th movement

stood out. It was mostly organized by young people who had started to use social media and had managed to convene smaller groups in its area of influence. Thus in 2010 when the young Egyptian activist Khaled Said was beaten to death by the police in Alexandria, his death rapidly became the symbol of the struggle especially through the massive dissemination by sites such as Facebook and Twitter. The phrase "We are all Khaled Said" became a slogan, which brought to discussion pages, hundreds of people angry at the corruption and violence that had become routine for the Egyptian government (Petras 2012). When they looked upon the political arena the discontent did not see any room to maneuver, inhibited by a centralizing government and a judicial branch controlled by Mubarak, which fabricated laws that aimed at closing out the participation of any reformist opposition.

Although the Brotherhood had not participated in the initial demonstrations on January 25th, which was essentially organized by students and human rights activists, its role grew exponentially with time. It is important to underscore that the Brotherhood should not be seen not a cohesive group (Hamid, 2012.b), but as factions which were still discussing internally what the next step should be. However, one of the justifications for their increasing participation in the demonstrations was the group's level of organization, which allowed it to rapidly coordinate its followers in spite of internal divisions. Although its participation was not expressive at the beginning of the Revolution ironically, the government automatically connected the Brotherhood to the outbreak of the uprising. It was in fact Mubarak's old strategy used mainly to garner external support, but which managed instead to consolidate the idea, especially in the international media, that the group had had a preeminent role in the rebellion. Thus, having faced the government's repression for many years, the

members of the Brotherhood were the best prepared to face the subsequent onslaught of violence exerted by the government.

Interestingly, the uprisings and confrontations brought the Brotherhood closer to the Egyptian people who had not yet had much contact with the group. The Muslim Brotherhood therefore had to adopt new policies to respond to the concerns and considerations of the population. Another relevant fact resulting from the belief that the Muslim Brotherhood had spearheaded the Revolution was the outreach by foreign groups seeking to establish a dialogue with them. In February 2011 while Mubarak was still in power and the organization was still illegal, the US State Department publicly initiated talks with the organization, even asserting that it would be an important link in the political transition of the country (Washington Post, 2011). Hamid (2012. B), remarked that the group was even more active in the background, providing groceries to the demonstrators in Tahir Square, for example. Therefore the real impact of the group in the revolution and especially in the minds of the local population is uncertain since the Brotherhood's actions can be characterized as reactive within the already established framework of confrontations, while at the same time they contributed to the success of the effort that deposed Hosni Mubarak.

There are two characteristics that can explain the role of the Muslim Brotherhood in the revolution. First they were one of the best-organized groups in the country capable of quickly mobilizing its followers and additionally the population and the social services had been perceiving them as a positive influence for a long time. Furthermore its leadership image was constructed during the uprisings, which helps to explain for example, why it became one of the interlocutors for demonstrations, even internationally.

With the fall of Mubarak and the rise of the Supreme Council of the Armed Forces (SCAF), Parliamentary elections were scheduled. But both the SCAF and the Supreme Court began efforts to restructure the rules for those elections, making important changes for example, on the number of chairs reserved for direct votes for the candidates or for specific political parties (Financial Times, 2012). Although the changes were envisaged in principle, to prevent the old regime's political party (NDP) from winning most of the seats, these changes provoked demonstrations by those who accused the military of curbing democracy and trying to control the elections.

## Different worlds

It is now necessary to make a small digression about the interpretation by some intellectuals and political parties of the Islamic world. This paper does not aim to represent all the thinkers in the region, given that it is multi faceted with many schools of thought. We believe however, that the following points will foster a better understanding of the political events in Egypt

In 1982 during a speech in Tripoli, the Libyan dictator at the time, Muammar Gadhafi, declared that "largest problem of the Arab world was called the Westphalia Treaty", (Gadhafi et al, 2001). Independently from whether the dictator in fact believed it, it represents the sentiment in the region. Hamid (2010) underscores a growing correlation in the minds of certain Arab groups between the rise of the West and the fall of Islam. In a classic zero-sum game the distribution of global power is finite and would have to be occupied by one of those poles. The best example would be the era between the Middle Ages and the Renaissance. During the so-called Dark Ages, the Arab world had been at its peak, gathering thinkers

and researchers and a geographically vast empire while Europe was backward and lacked influence. On the other hand with the unification of power in the old continent represented by the emergence of the nation-state, Islam lost space, prestige and influence. The organizational tools created by the West, namely the nation-state would have been fashioned to contain the inexorable Arab spirit, thwarting its inherent features. Gadhafi cited for example the "great harm" caused by the separation of the religious and political spheres, the creation of necessarily national soldiers for the armed forces and the absence of organic borders.

Conspiratorial as it may sound, this speech caused both small and large repercussions within the Muslim Brotherhood. In this study we identified two responses to those questions, firmly grounded on the historical structure of the brotherhood. Those segments seem to have assimilated them and generated in turn the tools to try to face external pressures and internal challenges in distinct but not necessarily opposed fashions.

The first group, which we imagine was closer to the founder of the group Hassan al-Banna, believed that it is possible to create organizational methods that combine Western principles with those that are natural to Islam. In this sense, Morsi could be placed within this group, since he decided to embark on his political battles within the rules imposed by the West without necessarily aiming to destroy them. Thus the nation-state, quintessentially Western, could be applied in Egypt if Islamic principles were associated to it.

The solution for Cairo to reacquire prestige in the international architecture would lie in its leadership's capacity to find a balance between the state – the political organization accepted by international powers – and the

instruments furnished by Islam, which in the past had helped the Arab world to be one of the great powers of the globe. The construction of his own image that Morsi tried to promote summarized the issue very well: on the one hand a moderate scientist who had studied in the west and spoke fluent English; on the other, a member of a notorious Arab group and representative of the population.

Additionally, other segments of the Brotherhood discussed the need to create their own structures, also based on Islam, to organize society. Although they did not brandish the idea of the end of the nation-state, members of the Muslim Brotherhood have been conceiving, or at least imagining, different ways to try to construe the country. These attitudes grew in intensity after the Supreme Court closed down the Parliament. This was seen by some sectors within the group as yet another way in which Western forces were trying to weaken Islamic aspirations. Within this perspective there is no way to establish the enmeshment Morsi and his followers attempted to adopt.

The clearest repercussion of these interpretations was the creation of pockets of governance within Egypt (Coleman, 2012). They started in Cairo and were then spread throughout the country establishing organizational clusters, created and governed by the Brotherhood. Within them, security and administration became the purview of the leaders of the Brotherhood and there are plans to establish their own schools. The creation of these places was radicalized after the closure of Parliament but their existence derives from a prior development. It is possible to establish a connection between this phenomenon and classical movements in Islamic cities: in times of crisis it was common for neighborhoods, seen as extensions of the family to close on themselves, especially to guarantee security. Bissio (2008, p.311) remarks that these movements entailed the establishment of closer relations

between individuals, converging with the Brotherhood's objective of going back to its origins, thus reinforcing the Brotherhood's socializing character and positioning it close to the community.

## 4. Final considerations

The Middle East lies at the center of contemporary discussions on political change and reconstruction of the states. The US and its allies' wars in Afghanistan and Iraq, the Arab spring and the Syrian civil war are examples of the continuing instability, which will remain a recurrent issue in the region. It is inevitable that non-material variables such as Islam should have an important role in any discussion that seeks to find sophisticated instruments to create models to help development and to bring peace to the countries. Thus, the discussions about the way in which religious discourse is articulated with concepts that are interpreted as Western, such as human rights and democracy are necessary and desirable.

In spite of a series of conceptions that point to an inherent barbarism in the Muslim world, we tried to demonstrate that it is not a monolithic religion but rather a series of interpretations and philosophical considerations. Starting from that principle there is no way to say categorically that the considerations in the Qur'an and in the hadiths are not necessarily against what we have accorded to call human rights. Only an analysis focused on micro practices, empirically relating specific actors can effectively demonstrate if those correlations are possible or not. Paraphrasing a classic sentence in international relations, Islam is what we make of it.

Nevertheless it is important to underscore that the capacity to assimilate or not with Western models is not a prerequisite for Western countries to establish deep political relations with certain agents as we see for example in the Syrian civil war. The existence or absence of religion in political discourse was never a pre-condition to reach agreements.

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# Brazil, Non-Indifference and Rwp: the way forward

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## Abstract

Brazil has traditionally based its foreign policy on the principle of non-intervention in the affairs of other states. With the goal of attaining a permanent seat on the Security Council – a constant aspiration of former president Lula's government – the country has demonstrated its effective engagement in peace operations. As a result of this new approach Brazilian diplomatic discourse has also changed. The principle of non-intervention has given way to two new principles. The first is that of 'non-indifference', which could be construed as a midway point between non-intervention and RtoP. A second major change in diplomatic stance stems from Brazil's proposal of the novel concept of 'Responsibility while Protecting' (RwP) in essence a new twist on the original concept of RtoP. While this initiative demonstrates the country's intention to participate actively in the UN debate, it is important to examine whether or not RwP represents a real innovation, or whether it tends merely to replicate the established principle of RtoP as initially envisaged in 2001. Should RwP be considered only a repackaged version of RtoP, or does it represent an important step forward in adumbrating RtoP?

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## Introduction

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Brazil has traditionally based its foreign policy on the principle of non-intervention in the affairs of other states. This reluctance to accept intervention by outside parties had its origins in the Latin American experience of European colonization and subsequent, repeated US interference in their own domestic affairs. Resistance to intervention remained almost intact even after 1980, when many Latin American states experienced a process of democratization after having put an end to a series of military regimes<sup>2</sup>. Non-intervention is also strongly rooted in the region's diplomatic and legal cultures, as well as in public opinion generally<sup>3</sup>. Indeed the principle is enshrined in many Latin American constitutions, including that of Brazil (Article 4), and appeared in the Brazilian government's first National Defense Policy (PDN) strategy document in 1996, which stipulates that Brazil's actions in the international community must respect the constitutional principles of self-determination, non-intervention, and equality among states.

The humanitarian disasters that emerged in the 1990s in Rwanda and in the Balkans, however, represented a major challenge to the principle of non-intervention. Many nations determined that they could no longer stand by in the event of grave abuses of human rights committed by other sovereign states against their own citizens; hence the gradual acceptance by the international community

of the principle of Responsibility to Protect (RtoP). This principle, first articulated in a report of the International Commission on Intervention and State Sovereignty (ICISS) published under the auspices of the Canadian government in December 2001, was based on the precept that sovereignty confers responsibility<sup>4</sup>.

Brazil, however, still feared that major powers might use RtoP as an excuse to intervene, at their own discretion, to impose their will on weaker countries<sup>5</sup>. Brazil reconsidered the question of pre-eminence of human rights over the principles of national sovereignty and non-intervention only after it recognized that if it did not, it would run the risk of isolation from the international community. The principle of non-intervention has given way to two new principles. The first is that of 'non-indifference'. Brazilian diplomacy now affirms the non-indifference of the country with respect to situations that pose a threat to international peace and security. A second major change in diplomatic stance stems from Brazil's proposal of the novel concept of 'Responsibility while Protecting' (RwP) in essence a new twist on the original concept of RtoP.

2 Spektor M, 'Humanitarian Interventionism Brazilian Style?', *Americas Quarterly*, <http://www.americasquarterly.org/spektor>.

3 Serbin & Rodrigues, op. cit., p. 272.

4 *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*. Ottawa: International Development Research Centre, 2001 available at [www.iciss.ca/menu-en-asp](http://www.iciss.ca/menu-en-asp)

5 Spektor M, 'The Arab Spring, Seen From Brazil', *The New York Times*, 23 December 2011.

# 1. The principle of Non-indifference

Although almost a decade after its adoption by the African Union<sup>6</sup> the principle of 'non-indifference' as it applies to Brazil came out of Lula's foreign policy. This was guided by three diplomatic objectives: first, obtaining a permanent seat on the UN Security Council through reform of that organization's charter<sup>7</sup>; secondly, strengthening and enlarging the Southern Common Market (Mercosur); and thirdly, concluding the trade negotiations started in 2001 within the World Trade Organization (the 'Doha Round'), as well as those conducted under the auspices of the Free Trade Area of the Americas (FTAA)<sup>8</sup>. The military guidelines contained in the 1996 PDN reinforced the country's aim to participate actively both in international decision-making processes and in international peacekeeping operations, in accordance with its national interests<sup>9</sup>. These twin goals go hand-in-hand: the desire to play a prominent role

on the international stage has motivated engagement in peacekeeping operations under UN authority.

The opportunity to demonstrate its new-found intent to participate more energetically in UN peacekeeping operations a more important role in international affairs first arose through Brazil's decision to assume command of the UN Stabilization Mission in Haiti (Minustah). The decision to command a UN peacekeeping force required the government to justify its engagement in the face of domestic critics, who immediately caught on to the contradiction between the constitutional principle of non-intervention and the official diplomatic discourse. Apparently, the government's objective was not to uphold intervention as a general doctrine, but to justify Brazilian participation in peacekeeping operations, particularly in Haiti. Brazil participated in Minustah from its inception through Security Council Resolution 1542 in June 2004<sup>10</sup>. According to the government this commitment followed an official invitation from the interim president of Haiti, as well as indications of support from other Security Council member states<sup>11</sup>.

6 Information note, Informal Interactive Dialogue on The Role of Regional and Sub-regional Arrangements in 'Implementing the Responsibility to Protect', UN General Assembly, 12 July 2011. See also Williams PD, 'From non-intervention to non-indifference: the origins and development of the African Union's security culture', African Affairs, 2007.

7 Amorim C, '*Política externa do governo Lula : os dois primeiros anos*', Análise de conjuntura - Observatório Político Sul-Americano, 4, March 2005, p.14 et seq.

8 Almeida PR, '*A diplomacia da era Lula: balanço e avaliação*', Política Externa, 20, 3, 2011–2012, pp. 95–114.

9 National Defence Policy 1996, point 5, 'b' and 'e'. See Hertz M, '*A reforma da Organização das Nações Unidas*' in Pinheiro Guimarães S (ed.), Desafios – Reino Unido e Brasil, Brasília, Instituto de Pesquisa de Relações Internacionais (IPRI) and Fundação Alexandre de Gusmão (Funag), 1997.

10 The UN Stabilisation Mission in Haiti (Minustah) established 1 June 2004 by Security Council Resolution 1542. The mission followed on a Multinational Interim Force (MIF) authorised by the Security Council in February 2004. See <http://www.un.org/en/peacekeeping/missions/minustah/>.

11 President Aristide had signed a letter relinquishing power and seeking the help of the UN, submitted to the Security Council 29 January 2004. The Council approved Resolution 1529 that night. See also Pereira AHR, *Operação de Paz no Haiti*, Brasília: Gabinete de Segurança Institucional; Secretaria de Acompanhamento e Estudos Institucionais, 2005, p. 11.

Brazil, in accordance with Chapter VII of the UN Charter, had traditionally avoided the use of force and indeed had declined to take part in the Multinational Interim Force mission to Haiti created by Resolution 1529, following the 2004 coup d'état that deposed President Aristide<sup>12</sup>. Its motives for engagement in Minustah therefore raised questions. Resolution 1542, establishing Minustah, makes specific reference to Chapter VII of the Charter, authorizing the use of force only with respect to Section I, which covers the mandate of the operation, in particular the objective of ensuring a 'secure and stable environment'. Under that Resolution, however, the definition of 'authorized actions' to ensure such an environment is broad enough to make it feasible to implement such a mission based entirely on Chapter VII<sup>13</sup>. In that case the Brazilian government would have to justify to a domestic constituency its participation in peace operations under this Chapter, even though it had always advocated a principle of non-intervention. The debate therefore seems to have much more to do with aligning Brazilian official discourse with its own laws and traditions than with actual legal authorization for the operation<sup>14</sup>.

Non-indifference was specifically related to the intervention in Haiti only after September 2005, when it was elevated to a principle<sup>15</sup>. Analysis of official discourse, however, shows that all references to non-indifference, whether as a policy or as a principle<sup>16</sup>, are followed by the notion of non-intervention: this appears nothing short of contradictory<sup>17</sup>. Several official statements have attempted to contrive a relationship between the two concepts, while always avoiding open mention of the principle of RtoP. It appears, therefore, that non-indifference lies somewhere between non-intervention and RtoP.

As an idea that remains undefined and ambiguous, non-indifference could be applied to a wide variety of situations in a discretionary and flexible way, in order to justify intervention in any country (although preferably after a request for assistance from the country concerned). On the face of it all these manifestations of non-indifference in public debate serve only to justify a policy that has already been put into practice, while

12 Uziel E, op. cit., p. 80; Carvvalho ASD & RM Rosa 'O Brasil e a não-indiferença à crise haitiana: solidariedade ou retórica do discurso?', *Universitas Relações Internacionais*, Brasília, 9, 1, 2011, p. 496; Kenkel, op. cit., p. 46; Diniz, op. cit., p. 92.

13 See section I of Security Council Resolution 1542.

14 See Kenkel, op. cit., p. 46, for more detailed scrutiny of this assertion.

15 Ministry of Foreign Affairs, *ibid.*, p. 583. See also statement by President Lula, Brasília, 1 September 2005: 'In a globalized and interdependent world, our contribution to peace and democracy is determined by the principle of "non-indifference". Therefore, we focus our efforts on stabilizing Haiti. We accepted the challenge of assuming command of the peacekeeping mission in that country, as requested by the United Nations ... While respecting the principle of non-intervention without arrogance, but also without indifference, we have contributed to solving crises in our countries of South America.'

16 See Seitenfus op. cit., p. 22. It has been argued that the principle of solidarity, considered the basis of the diplomatic policy of Lula's government, cannot of itself determine Brazil's participation in specific peacekeeping missions but can be used to show the country's interest in supporting a specific mission. This applies to the idea of non-indifference, defined either as attitude or as principle. Such an idea cannot guide specific choices, even if it can justify the country's support for UN peacekeeping operations. See Uziel E, op. cit., p. 104.

17 For another example, see statement by Celso Amorim before the general debate at the UN General Assembly, New York, 17 September 2005.

trying to reconcile it with the constitutional principle of non-intervention.

The ambiguity of the concept of non-indifference, the difficulty of translating it into tangible actions capable of guiding foreign policy, and the desire for a more active role in decision-making processes under the UN, together led Brazil to create what appears to be a new label for an already well-established idea: the Responsibility while Protecting (RwP).

## 2. The RwP

The RwP formula was proposed before the UN General Assembly by President Dilma Rousseff in September 2011 as a response to alleged excesses committed during the implementation of Security Council Resolution 1973 regarding Libya. Less than a year later, Brazilian diplomats are pleased that the concept of RwP was included in the last Secretary-General report on the Responsibility to Protect of July 25th, 2012. The presence of RwP demonstrates that the Brazilian initiative was absorbed into the UN agenda and to a large extent welcomed by the international community despite some uneasiness expressed by certain member states.

One should evaluate, however, whether the Brazilian proposal represents a real innovation, or if it tends to reproduce the basis already established in the concept of RtoP, as initially envisaged in 2001. Should RwP be considered only a repackaged version of RtoP or is it an important step in the development of RtoP? This article highlights a number of fundamental questions related to the RwP formula which has been considered the Brazilian major contribution to the debates regarding the use of force within the UN.

The 2011 Brazilian concept paper that circulated for discussion before the UN emphasized the subordination and strict chronological order of the three pillars of Responsibility to Protect (R2P)<sup>18</sup>. However, this interpretation appears contrary to the intention of the

18 See point 6 from annex to the letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, General Assembly, 66th session, paragraphs 14 and 117 of the agenda, A/66/551-S/2011/701.

former UN Secretary-General Kofi Annan in his *Report on the Implementation of the Responsibility to Protect* of January 2009<sup>19</sup>, and has been widely criticized because it could lead to inaction or delay, which would be irresponsible<sup>20</sup>. These criticisms have led Brazilian diplomatic representatives to be more careful with their words and to affirm that the three pillars of R2P must follow a logical and not chronological sequence, which is based on political prudence and not on arbitrary checklists.

Brazilian diplomats aimed to offer a new perspective on R2P by proposing a set of fundamental principles, parameters and procedures. The first principle and parameter outlined in the Brazilian RWP proposal is focused on prevention, since the current UN Secretary-General Ban Ki-Moon declared 2012 as the “year of prevention”. The restatement of this principle only reiterates the arguments already put forward in the RtoP debate from 2001 and then emphasized by the Secretary-General in his last report. There is a preference for the prevention of the 4 R2P crimes and violations, but Brazil presented no suggestions as how to strengthen either the state or UN capacities for prevention.

One cannot deny that building capacity of national governments to protect their populations is an essential component to implement RtoP’s three-pillar framework. Therefore, Brazil should move on from debating the

importance of preventive measures to taking concrete steps to implement RtoP at the national level. Indeed, the UN member states must be prepared to act from a preventive perspective, based on Chapters VI and VIII of the Charter. Brazil should embrace the Focal Points initiative, launched in September 2010 by the Global Centre for the Responsibility to Protect in association with the governments of Denmark and Ghana, which aims to support international cooperation through the creation of a formal network<sup>21</sup>.

Apart from the prevention debate, which should permeate every action taken on the basis of R2P, the Brazilian proposal could be unified around three main concerns: first, the adoption of criteria to guide the decision-making process about the use of force within the Security Council; second, the adoption of criteria to guide the implementation of a resolution authorizing the use of force by states mandated; and finally, the creation of a monitoring and review mechanism for the implementation of Security Council resolutions by member states, in order to ensure that the mandate given by it is duly respected<sup>22</sup>.

Regarding the first concern outlined in the Brazilian RWP proposal – criteria to guide the decision-making process at the Security Council – Brazil has highlighted the particular importance of a legal, operational and temporal limitation

19 The report of the Secretary-General, *Implementing the responsibility to protect*, General Assembly, 63rd session, Agenda items 44 and 107, A/63/677, 12 January 2009. The Secretary-General stated that “there is no set sequence to be followed from one pillar to another, nor is it assumed that one is more important than another. Like any other edifice, the structure of the responsibility to protect relies on the equal size, strength and viability of each of its supporting pillars (p. 2). And added: “all three must be ready to be utilized at any point” (Item 12, p. 9).

20 Remarks by the United States at an Informal Discussion on « *Responsibility while protecting* », New York, February 21st, 2012.

21 This initiative aims to institutionalize RtoP at the national level and to build a Focal Points network to facilitate coordination at the international level. Governments were asked to designate a national Focal Point on RtoP and to support international cooperation on the issue through the creation of a formal network. More information about The Focal Points Initiative is available online: <http://globalr2p.org/advocacy/FocalPoints.php>

22 See EVANS (G.), “*Responsibility While Protecting*”, Project Syndicate, 2012.

for the Security Council to authorize the use of force to avoid actions *ultra vires*<sup>23</sup>. These criteria, however, are not new: they result from the *Report on the Responsibility to Protect* prepared by the ICISS of 2001<sup>24</sup> and from the Report by the UN Secretary-General of 2005<sup>25</sup>. They also derive from an interpretation of the UN Charter, notably articles 40-42, which indicate that the Security Council should be guided by the principle of proportionality. Still, the Charter confers considerable discretion to the Council with regard to the proportionality of its measures for the aims pursued<sup>26</sup>. It is an old debate, pre-dating the responsibility to protect, and has always been under scrutiny in cases involving authorization of the use of force<sup>26</sup>.

Should the proposed criteria be subject to a binding resolution of the Security Council or a non-binding resolution of the General Assembly? Or thirdly, can criteria be adopted in the form of informal guidelines that the Security Council should take into consideration when making decisions to authorize the use of force under Chapter VII? In the case of rigid criteria, it is highly unlikely that the Security Council or the General Assembly would adopt such criteria for two reasons: one which is the official discourse on such restrictions, which states that each situation requiring the use of force is different and requires flexibility; the other has to do with the general and historic origins of the Security Council,

which was designed by the Charter to have very broad powers and to be subject to very few express limitations. Moreover, a non-binding approach would hardly be effective in limiting the Security Council when acting on the basis of Chapter VII. As stated by the Secretary-General in his last report, templates are to be avoided as each situation is different.

The absence of criteria for decision-making and for drafting Security Council resolutions has implications for the interpretation of such resolutions. Indeed, the openness and lack of precision of resolutions lend themselves to different interpretations. Moreover, the absence of a standard procedure to ensure that Security Council resolutions are legally well-drafted has a direct impact on their interpretation process, which is why the use of ambiguous terms should be avoided – even if such ambiguity was intentional to maintain flexibility and to adapt to the discretion of member states. An example of this is the use of term “all necessary means” when drafting Security Council resolutions, which makes it even more difficult to interpret and to control any actions taken *ultra vires*. In order to avoid ambiguity, the Security Council could establish sunset clauses and/or substantial limitations specified in the resolution authorizing the use of force.

23 T See point 5 from annex to the letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General, General Assembly, 66th session, paragraphs 14 and 117 of the agenda, A/66/551-S/2011/701.

24 See the principles for military intervention in the Report of the International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, International Development Research Centre, Ottawa, December 2001.

25 See statement by H.E. Mr. Gary Quinlan, Ambassador and Permanent Representative of Australia to the United Nations, Informal Discussion at the United Nations on “Responsibility while protecting”, New York, February 21st, 2012.

25 Nico Krisch, “*Introduction to Chapter VII*” in Bruno Simma (ed.), *The Charter of the United Nations?* (2nd edition, 2002), pp. 711-712.

26 Statement by Hon Gareth Evans, Co-Chair of the Global Centre for the Responsibility to Protect, Informal Discussion at the United Nations on “*Responsibility while protecting*”, New York, February 21st, 2012.

In reference to the adoption of certain criteria to guide the implementation of a resolution authorizing the use of force, Brazil asserted that the use of military action must be limited according to the letter and spirit of the mandate given by the Security Council or the General Assembly. In addition, the use of force must be judicious, proportionate and limited to the objectives established by the Security Council. The Brazilian key proposal concerns the creation of a monitoring and review mechanism for the implementation of Security Council resolutions by member states. This measure will ensure the legitimacy of any action authorized by the Council by enabling the wider membership to be properly informed about, and maintain scrutiny of the way in which its mandates are actually implemented<sup>27</sup>.

Debates about implementation are as old as the United Nations. But how to control state actions under Chapter

VII of the UN Charter when acting on the basis of R2P? Brazil's proposal is vague in this sense. In order to evaluate possible excesses committed by member states mandated by the Security Council, one must first analyze the terms of the resolution in question. An authentic interpretation is borne by the Security Council or by an organ authorized by the latter to do so<sup>28</sup>. The International Court of Justice (ICJ), as the main judicial organ of the UN, can only perform this task indirectly or incidentally since the Charter does not allow for any automatic review of the Council's decision<sup>29</sup>. Attempts have been made to identify the applicable rules for the interpretation of the Security Council resolutions, notably the ICJ Advisory Opinion regarding Namibia of June 21st 1971<sup>30</sup> and the discussion concerning the applicability and relevance of the criteria established by articles 31 and 32 of the Vienna Convention on the Law of Treaties to the acts adopted by the Security Council<sup>31</sup>.

27 Statement by the Hon Gareth Evans, Co-Chair of the Global Centre for the Responsibility to Protect, Informal Discussion at the United Nations on the "Responsibility while protecting", New York, February 21st, 2012.

28 As pointed out by the PCIJ, "it is an established principle that the right of giving an authoritative interpretation of a legal rule belongs solely to the person or body who has the power to modify or suppress it" (PCIJ, Certain Expenses of the United Nations case, 1962, ICJ Rep., p. 297; PCIJ, Jaworzina Advisory Opinion of 6 December 1923, PCIJ Series B, No. 8).

29 The Security Council was not conceived of as *legibus solutus* or unbound by the law, as held by the Appeals Chamber of the ICTY in the Tadić case (Prosecutor v. Tadić, Case No. IT-94-1, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 20-22, Oct. 1, 1995). See ALVAREZ (J. E.), "Judging the Security Council", *The American Journal of International Law*, vol. 90, No. 1, January 1996, pp. 1-39; CRONIN-FURMAN (K. R.), "The International Court of Justice and the United Nations Security Council: Rethinking a Complicated Relationship", *Columbia Law Review*, Vol. 106, No. 2, March 2006, pp. 435-463; ORAKHELASHVILI (A.), "The Acts of the Security Council: Meaning and Standards of Review", *Max Planck Yearbook of United Nations Law*, vol. 11, 2007, pp. 143-192.

30 The ICJ stressed that one should consider "the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council" (ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding SC Resolution 276 (1970), 1971, ICJ Rep., p. 53).

31 See WOOD (M. C.), "The Interpretation of Security Council Resolutions", *Max Planck Yearbook of United Nations Law*, pp. 73-95; PAPASTAVRIDIS (E.), "Interpretation of Security Council Resolutions under Chapter VII in the Aftermath of the Iraqi Crisis", *International and Comparative Law Quarterly*, vol. 56, January 2007, pp. 83-118.

In any event, Chapter VII resolutions should, in general, be narrowly interpreted<sup>32</sup>, and they must include the establishment of a monitoring and reviewing mechanism capable of evaluating any action *ultra vires* on the ground. Existing mechanisms within the Security Council could be strengthened to provide detailed information about military action taken in the field by authorized States or multinational operations. More specifically, the Council could issue an express reporting demand on those states or regional organizations seeking to implement its Chapter VII mandates in R2P situations.

First however, it appears that such a mechanism could be used to discourage states to implement Security Council mandates on the basis of the R2P. Secondly, double standards should be avoided, that is to say, more restrictive rules for the use of force in R2P situations than in other situations requiring the use of force in general. Finally, every attempt to control implementation of Security Council mandates by other organizations or coalitions of the willing will be difficult for the reasons already highly debated on the doctrine<sup>33</sup>. States did not place contingents of armed forces at the disposal of the Council. As the UN did not have the capacity to exercise the coercive military action provided under article 42, a finalistic interpretation

led to a system of substitution during the 1990s. The action was then decentralized, making the UN exposed to national interests and agendas.

This reality shows that the expectations of monitoring decentralized actions by member states should be limited in practice. If there are general limitations on the delegation of Chapter VII powers, including a precise definition of the scope of the delegated powers and an effective supervision of their implementation by a delegating body<sup>34</sup>, these limitations may not apply in practice to operations authorized by the Security Council<sup>35</sup>. The Security Council has sometimes limited itself to authorizing the use of force in broad and imprecise terms, as became apparent in the aftermath of the Second Gulf War<sup>36</sup>. Only recently has the Security Council opted for more precise definitions of the aims of the operations, establishing time limits and reporting requirements<sup>37</sup>.

32 Nico Krisch, "Introduction to Chapter VII" in Bruno Simma (ed.), *The Charter of the United Nations* (2nd edition, 2002), p. 713; PAPANAVRIDIS (E.), *op. cit.*, p. 107.

33 As pointed out by Robert Kolb, "the choice between complete inaction and imperfect action was made", in KOLB (R.), *An Introduction to the Law of the United Nations*, Hart Publishing, Oxford and Portland, Oregon, 2010, p. 86.

34 According to Nico Kirsch, "further limits on the delegation of powers are not expressly provided for in the Charter but can be deduced from general principles and from the object and purpose of the SC's delegation authority" (Nico Krisch, *op. cit.*, p. 713). According to article 53, the regional organization authorized to use military force on behalf of the UN must submit full information to the SC. The same obligation applies to states when they are authorized to act individually or in coalitions.

35 Frowein, Nico Krisch, "Article 42" in Bruno Simma (ed.), *The Charter of the United Nations?* (2nd edition, 2002), pp. 758-759.

36 See UNSC Resolution 678 (29 Nov 1990).

37 See, e.g., UNSC Res. 1080 (15 Nov. 1996); UNSC Res. 1101 (28 Mar 1997); UNSC Res. 1244 (10 Jun 1999).

## Conclusion

In conclusion, the Brazilian proposal has already caused much debate at the UN. It demonstrated that concerns expressed by other member states are to be taken into account in the future, as recognized by the Secretary General in his last report. The country continued to discuss RWP on several occasions and seized these opportunities to stress what has been considered its major contribution to the debates within the UN<sup>38</sup>.

If the Brazilian initiative was introduced to the UN agenda, being included in the last Secretary General Report of July 2012<sup>39</sup>, some fundamental questions regarding its implementation remain unanswered: how to establish criteria for limiting the action of the Security Council in the absence of a mechanism to control the legality of its resolutions? How to control the use of force by states authorized under Security Council resolutions? Which will be the competent authority that will monitor mandated states? How would it be composed and what would be the effectiveness of its decisions? Even if the existing monitoring mechanisms were expanded, they would still be subject to the good will of the Council.

As recognized by the Secretary General in his last report, improving decision-making and reviewing implementation are useful catalysts for further discussion. And how to move forward? How to translate words into deeds? The solution is far from simple and Brazilian diplomats made it clear that the country's intention is not to further develop the practical mechanisms that should be instituted. RWP is therefore faced with the same structural challenges of R2P, which jeopardize its implementation.

38 VIOTTI (M. L. R.), "R2P in 2022", in *Responsibility to Protect: the next decade*, The Stanley Foundation, January 18th, 2012; Statement by Ambassador Antonio de Aguiar Patriota, Informal Discussion at the United Nations on "Responsibility while protecting", New York, February 21st, 2012; EVANS (G.), Opening Presentation to Human Rights Council Side Event sponsored by Australia, Hungary, Nigeria, Thailand, and Uruguay, The Role of the Human Rights Council in Implementing the Responsibility to Protect, Palais des Nations, Geneva, June 19th, 2012.

39 Report of the Secretary-General on the Responsibility to Protect: Timely and Decisive Response (A/66/874) of July 25th, 2012.

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