

# Shifting Power and Human Rights Diplomacy

## Brazil

*Edited by Thijs van Lindert & Lars van Troost*



*The Strategic Studies Project* initiated by Amnesty International Netherlands

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The Strategic Studies Project is an initiative of Amnesty International Netherlands. Since 2013 the Strategic Studies Project has been mapping out national and international social, political and legal developments which can affect the future of human rights and the work of Amnesty International in particular. Contact: [StrategischeVerkenningen@amnesty.nl](mailto:StrategischeVerkenningen@amnesty.nl).

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## Introduction

Today's world is characterized by fundamental economic and geopolitical power shifts away from the West and towards the Global South and East. Emerging states such as Brazil, Russia, India, China and – to a lesser extent – South-Africa (the so-called BRICS) are already demographic, economic and geographical giants. In the coming decades BRICS countries will probably gain only more global economic, political and military weight. These changes in the global distribution of power may severely affect regulatory regimes of global governance.

While the presumed implications of these tectonic shifts have already since long caught the attention of those active in international regimes of security, finance and trade, comparable debates and studies are scant and only recent in the international human rights community. Strikingly few practitioners and academics working on the international human rights regime seem to be occupied with challenges that come with emerging powers outside the West. Perhaps the universality of human rights leads many to believe that over time rising powers will simply become new pillars of a by and large sustainable international human rights system.

However, the human rights regime, like any international regime, is not immune to the rise and decline of great powers. On the contrary, today's human rights regime is largely shaped by, and a consequence of, major transitions in global power.

After the implosion of the Soviet Union, the United States remained the world's hegemonic power in military, economic, political and ideological terms. It led many to believe that the West with its values and institutions was leading the way on a path that all states would walk. Francis Fukuyama (1989: 4) famously proclaimed:

“What we may be witnessing is not just the end of the Cold War, or the passing of a particular period of post-war history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government.”

The dominant idea was that liberalism, with its democracy, rule of law, human rights, free market and international free trade, would eventually entrench even the most remote areas of the world. And, during the nineties, there were indications suggesting that the globalizing world was indeed moving towards (cosmopolitan) liberalism with a worldwide moral community under an international rule of law equipped with enforcement mechanisms in the area of human rights.

However, just as quickly as human rights gained significance in international politics, they might lose it. Whereas major events of the twentieth century after World War II, in the seventies and in the nineties, contributed to the emergence of an international human rights regime, the conflicts of the early 21<sup>st</sup> century may lead to its corrosion. Security concerns trump human rights even in their own self-proclaimed heartland, the liberal democracies which are governed under the rule of law. In many authoritarian states, sovereignty – the adversary of human rights in international relations – has never left the stage.

### A new era for human rights

Scholars have speculated much about the implications for international relations of a shift from a unipolar world with the US as hegemonic power, towards one in which power is more equally distributed across the continents. While some foresee an eventual convergence (Mahbubani 2013), many predict a post-Western, diverging and multipolar world order wherein today's international norms and rules are contested (Haass 2008; Kagan 2009; Kupchan 2012; Laidi 2011; Stephens 2010; Zakaria 2008).

The relations of rising powers with international institutions, amongst themselves and between them and traditional Western powers, will shape the future of global governance. So far, the growing assertiveness of emerging states is met with an unwillingness of traditional powers to reform institutions still reflecting the post-1945 world order. This leads to stalemates in important global forums such as UN bodies and Bretton Woods institutions. The annual BRICS summits being held since 2009 and the recent creation of the New Development Bank indicate that if emerging powers are not effectively accommodated in existing institutions, such as the IMF and the World Bank, they will create their own alternatives. This might also happen when they continue to be excluded from top seats in other institutions, such as the UN Security Council.

Given these developments, many scholars predict deadlocks in important fields of global governance, including the trade, finance, security and climate regimes (Barber 2013; Bremmer 2012; Hale, Held & Young 2013). Gridlock scenarios are already undermining the effectiveness of today's human rights regime.

The question remains: what will be the effect of global power shifts on the future international human rights regime and how will the international human rights community anticipate these effects? In order to assess the influence of emerging states on the human rights regime, the Strategic Studies Project, an initiative of Amnesty International Netherlands, has started to collect differing views and perspectives on the human rights diplomacy of rising powers and the consequences for global and regional human rights regimes. This essay

volume on Brazil is the first of a series of critical essays on the pathways of influence that emerging states will exert on the human rights regime. Analyses of the foreign policy goals, self-perception and expectations of emerging states are of vital importance to assess future chances and challenges for the international protection and promotion of human rights and deserve a prominent place on the agenda of practitioners and academia in the field of human rights.

### The *Shifting Power and Human Rights Diplomacy* series

This collection of essays on Brazil's foreign policy is the first to appear in a series on emerging powers and their current and potential roles in the international protection and promotion of human rights. The *Shifting Power and Human Rights Diplomacy* series explores to what extent the current human rights regime will be supported, changed or challenged by power shifts. The series has a few principal objectives.

Firstly, it aims to research external policies of emerging powers to understand their (un)intended influence on the global human rights regime. How will their rise impact the global human rights regime? How important or unimportant will human rights promotion become in their foreign policy agendas? To what extent do their interests and values overlap with those of traditional powers and other powers?

Secondly, studying the foreign policy strategies concerning the human rights of Brazil, India and other powers will shed light on significant questions regarding norms and institutions. What will the future hold for the precarious International Criminal Court (ICC) and the 'Responsibility to Protect' in the 21<sup>st</sup> century? It might be that such progressive institutions and norms within the human rights regime will gain broader support and legitimacy now that power is shifting. But emerging states, on the contrary, could also use their new regional and global sway to steer world politics back towards a 'neo-Westphalian order' (Hopgood 2013) in which a state's sovereignty is sanctified again. In other words, that we will see 'a return of history' (Kagan 2009).

Thirdly, this new series aims to investigate whether there is a domestic constituency and discourse to give human rights (more) prominence in the foreign affairs of emerging states. How have domestic 'foreign policy elites' and civil society actors in emerging powers evolved? Are international human rights promotion and protection demanded by the rapidly rising middle classes or other groups in society, or is this hardly a political issue at all? Focusing on civil society in emerging states will shed light on their mobilization strategies, helps to understand their demands and to estimate their influence on the decision-making in foreign policy.

Last but not least, by analysing the foreign policy stances of rising powers on issues affecting the human rights regime, this series serves practical purposes as well. The examination by our authors will, hopefully, be valuable in the policy and strategy formation of human rights, democracy and rule of law advocates.

(And of course, views expressed in the following essays are those of the authors and do not necessarily reflect positions of Amnesty International, its Dutch section or the Strategic Studies Project.)

### **Brazilian foreign policy and its future role in international human rights**

This first volume in the *Shifting Power and Human Rights Diplomacy* series focuses on Brazil, a ‘sleeping giant’ finally waking up.

With its ‘redemocratization’, Brazil left the legacy of the military regime (1964-1985) behind to do justice to the *ordem e progresso* adage stated on the Brazilian flag. With 202 million inhabitants it is currently the fourth largest democracy and the seventh major economy in the world. Brazil takes such facts as an opportunity to further bolster its place at the global stage. Starting from the presidential term of Fernando Henrique Cardoso (1995-2003) but explicitly articulated under Luiz Inácio Lula da Silva (2003-2011), Brazil’s regional and global aspirations have grown. Including current President Dilma Rousseff, the last three Brazilian presidents had all been victims of the military regime and have used human rights language in political campaigns.

But will the international promotion and active protection of human rights become part of Brazil’s external policies?

Par Engstrom’s article provides an overview of recent Brazilian foreign policy and the (future) role of human rights therein. He focuses on Brazil’s behaviour at the global stage and elaborates on its attitudes towards human rights enforcement. Engstrom stresses Brazil’s discursive support of human rights and argues that the Ministry of External Relations, the *Itamaraty*, has sought to play a more prominent international role in the areas of conflict prevention and resolution.

Nevertheless, Engstrom argues that Brazil is not likely to fulfil the risen expectations of becoming an international human rights protagonist in the short term. In his words: “Brazil is likely to remain unwilling to convert rhetorical support for international human rights into concrete action.”

Oliver Stuenkel sketches two important attempts of Brazil to become a global norm entrepreneur and to set the global human rights agenda. He discusses Brazil’s efforts to adjust the R2P-doctrine with a ‘Responsibility while Protecting’ (RwP) and Brazil’s leadership in the international debate on Internet governance. Stuenkel states that both debates demonstrate Brazil’s potential “to play an important role as a mediator, consensus seeker and bridge builder”. But will the potential materialize?

Brazil’s norm entrepreneurship in debates on Internet governance and humanitarian intervention, both directly linked to human rights, are examined in more detail in the next two contributions. Maria Laura Canineu and Eileen Donahoe investigate Brazil as a forerunner in the debate on Internet governance, while Paulo de Tarso Lugon Arantes digs deeper into the Brazilian attitudes towards sovereignty and its thought leadership with RwP. Even while Brazil no longer follows up its initial commitment to RwP, and its influence on the Internet debate is still unclear, these are hints that Brazil will shape the global human rights agenda in the future.

Susanne Gratius compares Brazil and the European Union at the global and regional stage. She states that Brasília and Brussels share values that are of great importance for human rights. However, Gratius sees diverging interests at the global level between the EU and Brazil; mostly because of Brazil’s self-identification with the Global South and its strategic alliance with the other BRICS. On the regional level of Latin America, however, similar policies towards Cuba, Haiti and Venezuela offer prospects for cooperation between these two powers with restricted military capacities.

Gratius’ essay is followed by two contributions that assess Brazil’s impact on human rights in the Global South. Fernando Brancoli and Diana Thomaz zoom in on the role of Brazil’s National Development Bank in supporting Brazilian businesses in the Global South. They describe how Brazilian multinational corporations (MNCs) profited much from the state’s ethical ‘horizontality’ discourse and its financial backing in their expansion to the Global South, while the state appears reluctant to hold them accountable for their conduct abroad. Maurício Santoro writes about Brazil’s regional role in South America. He elaborates on the Brazilian efforts to stimulate regional economic and political integration projects such as Mercosur and Unasur to defend democracy, but he also highlights how Brazil’s reluctance to hold other states accountable for civil and political rights violations undermines its potential to curb human rights abuse in its own region.

The two final contributions focus on how domestic changes in Brazil affect its external policies. Whereas Fiona Macaulay’s contribution centres on the political system, Lucia Nader and Laura Trajber Waisbich give a civil society perspective on the democratization of Brazilian

foreign policy. Both contributions argue that even while the influence of more (heterogenous) domestic actors on Brazil's external policies might be growing, the public scrutiny of Brazilian foreign policy remains limited. As Macaulay states: "whilst the erstwhile monopoly of the Itamaraty has been broken, it still remains a matter of largely elite debate."

Taken together, the contributions in this volume signal that the emergence of Brazil offers opportunities, rather than threats, with respect to the global human rights regime. Brasília has the capacity to mediate differences and disputes between established and emerging powers in the international promotion, protection and realization of human rights globally. It is, however, still far removed from the pivotal part it could potentially have in modelling the international human rights infrastructure of tomorrow. Within a future power equilibrium, Brazil would have just as much to gain from this as the human rights regime.

Thijs van Lindert and Lars van Troost

*Par Engstrom*<sup>1</sup>

## **Brazilian Foreign Policy and International Human Rights Promotion: Existing Tensions and Future Prospects**

*Brazil is important for the present and future development of international human rights. Yet, any immediate expectations that the country will emerge as an active promoter of human rights internationally, are likely to remain unfulfilled.*

**Introduction**

Brazil's distinctiveness, both in terms of its domestic human rights record, and in terms of its historical relationship with the international human rights regime, means that the country is likely to impact on debates on the meaning and nature of human rights in the decades to come. From its membership in the so-called BRICS to its leadership role in the exclusive club of G20 countries, Brazil has indeed emerged as a pivotal player in global governance. There is also a host of domestic processes of change that have projected Brazil abroad. From Brazilian companies with mining interests in Africa, increased diplomatic activities and collaborations through various country constellations (IBSA, BRICS), through to its significant soft power projection, Brazil's international profile is more varied and extensive than ever before.

Much of the international interest in Brazil in recent years reflects a widespread view that the country matters to the rest of the world. The very active foreign policy agenda pursued by former President Luiz Inácio Lula da Silva raised Brazil's international profile. And, although current President Dilma Rousseff has increasingly turned inward over the course of her administration, the image of a 'rising' Brazil remains prevalent. It is of course not the first time that outside observers have had high expectations of Brazil. But what may be most striking in the current conjuncture is that these are increasingly matched by domestic expectations that the country should take its rightful place in elite international forums. Whether these expectations are likely to be fulfilled is a matter of dispute. For many international observers, particularly in the financial press, the recent sluggish performance of the Brazilian economy raises significant doubts. For other even more hardnosed observers, Brazil's limited military might – its hard power – seriously questions the capacity of Brazil to play any influential

<sup>1</sup> The author gratefully acknowledges the very helpful comments on an earlier draft from Bruno Boti Bernardi, Felipe Krause, Matias Spektor, Marcelo Torelly, Patrick Wilcken, and two AI reviewers. The usual caveats apply.



role on the global scene. Brazil remains a moderate military power, and will do so for the foreseeable future.

Still, how strongly Brazil is actually rising – however one may measure it – is at least partly distinct from the international perceptions and expectations on the subject. It may not be quite as simple as this, but as long as these perceptions and expectations persist, Brazil will continue its ascent. Important questions remain unanswered however, regarding Brazil and the character, meaning and direction of its rise. In this short article the aim is to assess, on the one hand, the considerable hopes that many have invested in Brazil, but also, on the other hand, to illustrate the many uncertainties that accompany Brazil's foreign policy in general, and with regards to the promotion of human rights abroad in particular.<sup>2</sup>

## Brazil in the world

Brazil has traditionally expressed support for universalist multilateral institutions, including with regards to the international human rights regime. There has always been, however, a clear instrumental side to Brazilian diplomats' attitude towards multilateralism, which has tended to frame Brazil's own narrow national interests in terms of arguments for greater justice and representativeness in international institutions (Hurrell 2008: 53). This has been particularly noteworthy in recent years as Brazil has sought to increase its international weight and influence by advocating reform of global governance. Still, from its (so far unsuccessful) struggles to gain a permanent seat on the United Nations Security Council (UNSC), to its (successful) efforts in joining the core group of states negotiating the Doha round trade talks of the World Trade Organization (WTO), Brazil has not been particularly radical in the positions taken. Nonetheless, successive Brazilian governments have expressed opposition to the status quo as reflected in the international policies pursued with regards to issues such as nuclear proliferation (regarding the sanctions regime imposed on Iran), and climate change (regarding the principle of 'common but differentiated responsibilities' that stresses the need for developed countries to shoulder the greater burden of the costs of adapting to climate change).

These demands resonate widely in the 'Global South' as they draw on the widespread sense of the unrepresentative nature of contemporary international institutions. Indeed, in recent years, Brazil has prioritized the expansion of relations with other major developing countries, especially China, India, and South Africa. Efforts to intensify South-South dialogues are reflected in the increasing formalization of the IBSA forum (India, Brazil and South Africa) and the gradual institutionalization of the BRICS group (Brazil, Russia, India, China and South

<sup>2</sup> For a fuller account see Engstrom (2012).

Africa). They can also be seen in the more activist Brazilian diplomacy, under Lula, towards Africa and the broader Middle East. Partly, these diplomatic efforts need to be understood in the context of Brazil's attempts to mobilize support for its bid for a permanent seat on the UNSC, although stronger ties with what was used to be known as the 'Third World' also have deep roots in Brazilian foreign policy.

The ambition to build South-South strategic alliances and to gain support for a UNSC seat has meant that pragmatic strategic interests have trumped more principled concerns for human rights. Brazil consistently supports China, gave a quick endorsement of Iran's disputed presidential elections in 2009, and former President Lula invited Iran's then President Mahmoud Ahmadinejad for an official visit. Supporters of this pragmatic approach stress the importance of engaging rather than isolating Iran, for example, and Brazilian diplomats may have calculated that they have very little influence to change the domestic behaviour of states such as China and Iran in any case. But there are also more deep-rooted reasons for Brazil's reluctance to criticize other countries' human rights record. Brazilian diplomatic practice continues to stress the importance of protection from external interference as enshrined in international law. From this perspective, Brazilian diplomacy has tended to be highly critical of the international human rights regime, which is viewed as unfair (strong countries criticizing weak ones), hypocritical (applied selectively), and ineffective (diplomatic 'naming and shaming' does not improve human rights on the ground).

This posture builds at least in part upon a nationalist tradition in Brazil – on both the political left and right – of viewing international institutions suspiciously and the international order as entrenching the privileges of the developed world. There has also traditionally been a certain ambivalence among Brazilian elites about whether the country is part of the 'West' and should seek convergence with the global liberal order, or whether the country is a member of the 'Third World' and should therefore ally with the developing world in order to push for a greater role in international affairs. These domestic divisions are very likely to persist over time and to continue to shape Brazil's ambivalent relationship with the international human rights regime.

## Attitudes towards human rights enforcement

The more general consequences for Brazil's human rights policy are significant. Brazilian diplomatic discourse on human rights stresses internationalism and multilateralism and support for global liberal values, such as human rights. Given that rhetoric matters for international human rights, however, such discursive support might become increasingly critical. The assertion by rising powers of alternative domestic and regional conceptions of human rights, or of rival sources of moral and political legitimacy, could increasingly bring

into question the current international human rights regime. From this perspective, Brazil's support for the fundamental tenets of the international human rights regime, and possibly its role as a diplomatic bridge between the critics of the regime on the one hand and its supporters on the other, will be important. Still, Brazil is likely to remain unwilling to convert rhetorical support for international human rights into concrete action. There has indeed been very little evidence of any 'mainstreaming' of human rights in Brazilian foreign policy. Brazil has remained a comparatively inactive participant in terms of diplomatically supporting the international human rights regime, launching human rights initiatives in multilateral forums, and funding and staffing international agencies with rights mandates.<sup>3</sup>

The refusal of Brazilian diplomacy to seek adherence to prevailing models of human rights enforcement is particularly apparent in its critique of the idea, and practice, of humanitarian intervention. Brazilian reluctance to support military intervention was seen in its response to the conflict in Libya. In March 2011 Brazil, as a temporary member of the UN Security Council, joined with China, India, Russia and Germany to abstain from the vote authorising 'all necessary measures' against Libya. Following the onset of NATO bombing of Libya, Brazil's opposition to the bombing hardened with the Ministry of External Relations, the *Itamaraty*, issuing statements condemning the loss of civilian lives, and calling for a ceasefire and the initiation of a dialogue. Often overlooked, however, given the focus on UNSC Resolution 1973 that authorized the use of force in the case of Libya and which Brazil opposed, is the fact that Brazil voted in favour of a previous UNSC Resolution (1970) that imposed sanctions on Libya and that referred the situation to the International Criminal Court (ICC). This is in contrast to previous Brazilian reluctance to support sanctions, for example in the case of Iran.

Nonetheless, Brazil's opposition to the NATO bombing campaign in Libya reflected the country's traditional aversion to the use of force, including for humanitarian purposes. However, expectations that Brazil will shoulder increasing responsibilities for the management of international security, may continue to grow. Brazil's leadership role in the UN peacekeeping mission in Haiti (MINUSTAH), for example, reflects an increasing willingness to engage in more robust UNSC-mandated missions. Similarly, the transfer of command responsibility of the UN mission in the DRC to a Brazilian force commander is another illustration of the Brazilian military's, and its civilian leadership's, projection of a more active role in coercive peacekeeping. And yet, the challenges for Brazil to engage more actively in ongoing human rights and security crises are formidable. For example, in the case of Syria the *Itamaraty*

<sup>3</sup> This is not to detract from the areas in which Brazil plays an active role internationally, such as global health (AIDS/HIV), sexual orientation, and food security. Still Brazil tends not to emphasize rights-oriented approaches or discourses to tackling these issue areas, opting instead for overlapping, yet distinct, arguments based on (distributive) justice and development needs.

seemed initially keen to sign off on a comparatively forceful condemnation of the violence in that country, which could have been construed as a call for a more active international intervention. However, following criticisms of Brazil by China and Russia on the one hand, and influential sectors of the pro-President Bashar al-Assad Syrian community in São Paulo on the other, Brazilian policy was quickly scaled back with regards to Syria. More recently, the Dilma government ratified its decision not to engage in international conflict resolution efforts by declining an invitation to participate in the Geneva talks on Syria that started in January 2014.

Moreover, the highly constrained space in international affairs for normative entrepreneurship by non-traditional powers was also clearly demonstrated in the hostile reception of President Dilma Rousseff's intervention during the 66th Session of the United Nations General Assembly in 2011 to promote her concept of 'Responsibility while Protecting'. The Brazilian government appeared to be motivated by the need to reshape the international debate over the legitimacy of humanitarian intervention, and specifically the notion of 'Responsibility to Protect' (R2P), to include a more robust concern for the responsibilities of the interveners. And for many, Brazil's insistence that the use of force in the name of human rights has a very problematic record is an important reminder that the traditional military powers have become discredited as promoters of human rights. Quite predictably the initiative was attacked by R2P proponents, and the Brazilian government has not returned to the topic since. The main point here is to emphasize the significant diplomatic costs and strategic thinking required for a country such as Brazil to reshape global norms and institutions. In contrast to her predecessor, President Rousseff is unwilling to expend these resources; a policy inclination that strengthened further in the run-up to the October 2014 presidential elections.

### Brazil in its region

The reluctance to expend diplomatic capital on the promotion of human rights abroad can also be seen closer to home. Traditionally, Brazil's multilateralism has tended to be projected beyond the region of Latin America. Under Lula, however, there was some recalibration of foreign policy priorities, as Brazil sought to intensify relations with the South American sub-region in particular. The regionalization of Brazilian foreign policy has been reflected in the creation of the Union of South American Nations (Unasur), and in efforts to broaden Mercosur to include Venezuela, as well as deepen it beyond purely economic relations and towards political cooperation, including on human rights matters. Brazil has also been more assertive in the wider Latin American region by becoming involved in politically contested issues, such as its own leadership role in the UN peacekeeping mission in Haiti. The limits of Brazil's regional leadership are apparent, however. Important regional countries –

Argentina and Mexico in particular – do not sign off on Brazilian regional leadership. With regards to human rights policy specifically, even if it were willing to promote human rights as part of its regional foreign policy (Brazilian relations with Cuba indicate otherwise), Brazil's capacity to shape political outcomes in the region is limited. This could be seen in the frustrated attempts by Brazil to negotiate a political solution to the 2009 coup in Honduras, but also in Paraguay's continuing resistance to any attempts by Brazilian diplomacy to intervene to support democratic forces in that country. And, in response to the turmoil in Venezuela of February/March 2014, the Brazilian government showed little appetite to do more than express vague hopes for an end to the violent clashes. The gap between the expectations on Brazil to play a more active role, particularly by influential international human rights NGOs, and its willingness to do so, is important to note. For example, according to José Miguel Vivanco, the director of Human Rights Watch's Americas Division:

“Brazil is an emerging power that aspires to [play] a global role, [and] that for some time has been looking for a permanent seat on the United Nations Security Council. But a global leader cannot remain silent faced with these human rights violations in its own region[.] [I]t is a big contradiction in its foreign policy and a policy failure in its strategy.” (*La Nación* 2014; author's translation).

Such exhortations notwithstanding, Brazil's hands-off approach is clearly on display with Brazilian government officials not willing to publicly express anything that might undermine the position of the Venezuelan President Nicolás Maduro. Brazil's attitude towards the Venezuelan crisis partly built on its preference for behind-the-scenes negotiations (and Foreign Minister Luiz Alberto Figueiredo indeed sought to mediate between the Venezuelan opposition and government), partly on the very high degree of uncertainty over any post-Maduro scenario, and partly on concerns for Brazilian economic interests in Venezuela that have grown significantly under former President Hugo Chávez.

The absence of Brazilian regional leadership is similarly apparent in its relative neglect of the regional human rights system in the Americas (i.e. the Inter-American Human Rights Commission and Court). True, Brazil's ratification record of human rights treaties is notable compared to many other regional states (the US for example). And, in part, the relative neglect of the regional human rights system is explained by the fact that Brazilian governments' engagement with international human rights has tended to be projected outside the region and towards the UN, which has led to Brazil not having a clearly defined presence within the Inter-American human rights system. Brazilian state institutions have tended either to ignore judgements by the regional system or have chosen not to implement sub-

stantial measures. This has been the response, for example, by the Brazilian state to the 2010 Araguaia ruling by the Inter-American Court of Human Rights, challenging the country's 1979 Amnesty Law.<sup>4</sup> Indeed, the absence of Brazilian regional leadership is particularly noteworthy in the area of transitional justice. The creation of a National Truth Commission notwithstanding, the contrast with Brazil's regional neighbours is instructive. Whilst very significant accountability advances have taken place in countries such as Argentina, Chile, Uruguay, and, arguably, Peru, the Brazilian government has maintained its policy preference for 'truth' over 'justice'. Again, this matters because many make explicit links between the Brazilian government's record and policies on international human rights, and its potential for regional and global leadership. For example, Viviana Krsticevic, the executive director of CEJIL (Center for Justice and International Law) makes an explicit link between the Brazilian government's lack of progress on transitional justice and its potential for regional leadership:

“Latin America has advanced significantly in the resolution of crimes against humanity committed by dictatorial governments. Brazil, however, is still in debt with family members [of victims] and society when it comes to the establishment of truth and justice in relation to this topic. [The ruling by the Inter-American Court in the case of the Araguaia guerrilla] represents a unique opportunity for Brazil to show that it is capable of leadership both internationally as well as nationally with regards to human rights and democracy. For this reason, Brazil must overturn [*dejar sin efecto*] the aspects of the amnesty law that prevent justice to be done when confronted by crimes against humanity” (CEJIL 2010).

No matter whether one substantively agrees with such discursive links between promotion of human rights at home and abroad, the important point here is that they are being made, and the expectations on Brazil that they highlight are likely to increase.

### **Brazil and the future of the international human rights regime**

Two structural features will continue to shape Brazilian willingness and effective capacity

<sup>4</sup> The Brazilian government under president Dilma Rousseff responded even more strongly to the Inter-American Commission's interim measures in the case of *Belo Monte*, which requested Brazil to suspend the construction of a hydroelectric dam on one of the Amazon's major tributaries. The government decided to suspend its annual contribution to the human rights body, and it withdrew the former Human Rights Minister, Paulo Vannuchi's candidacy to become member of the Inter-American Commission. Since then, there has been a gradual return to the status quo by the Brazilian government (as reflected in the eventual election of Paulo Vannuchi to the Inter-American Commission in June 2013), yet the incident demonstrates the Brazilian government's reluctance to accept the legitimacy of international scrutiny, particularly when human rights come up against policy priorities to pursue rapid economic development.

to promote human rights abroad. First, on the domestic side, democratization and the increasing participation of previously marginalized sectors of society, has had its impact even on [Brazilian foreign policy](#) making. Brazilian human rights NGOs and social movements are increasingly seeking to influence the country's foreign policy in human rights matters. For example, Brazilian NGOs played an active role in lobbying efforts that shaped the creation of the UN Human Rights Council. They have also worked with 'key countries' to produce international norms in relation to, for example, discrimination based on sexual orientation. And Brazilian human rights groups, such as Conectas and Justiça Global, are increasingly lobbying Brazilian policymakers on human rights and foreign policy matters. There are of course significant domestic challenges in terms of Brazil's own deeply problematic human rights record, and domestic NGOs are likely to continue to devote much of their limited resources on domestic advocacy.

Yet, domestic experiences of human rights challenges can provide important opportunities to pursue informed and effective policies abroad. This can be seen, for example, in the struggle against poverty and in Lula's international initiative on combating hunger, as well as in Brazil's constructive role in the follow-up to the Durban conference on racial discrimination. And, of course, dominant countries have had their own internal human rights challenges (US and racial segregation, UK and colonial rule, and France in Algeria), while simultaneously supporting the development of the international human rights regime. And this is even before the more contemporary rights violating policies and practices by powerful states in the 'war on terror'. The broader point remains, though: Brazilian foreign policy is no longer merely driven by traditional Brazilian policy elites. The democratization of Brazilian society more generally, and the widening of the country's middle classes, together with the broadening of their political demands (witness the drama of street protests in the months leading up to the World Cup), *may* lead to a realization among the Brazilian electorate that foreign policy indeed has domestic implications. The inescapable fact remains that Brazil is one of the most unequal and violent societies in the world, and more active and sustained engagement with human rights internationally is increasingly likely to have significant domestic policy implications.

Second, as already alluded to, internationally Brazil will have to manage increasing expectations that the country *should* play a more active and forceful role in the promotion of human rights abroad. For many the rise of Brazil is seen as distinct from authoritarian China, and other 'middle-powers' such as Iran. It is unlikely, however, that Brazil will gradually converge to global liberal norms and values, including human rights. Together with India and South Africa (and China), Brazil is not likely to develop understandings of human rights governance in line with Western ideals. This highlights some of the long-standing tensions in Brazilian foreign policy strategy and national identity. Does Brazil's future lie in a role as leader of the Global South? Or as mediator between North and South? Or as a rising power drawing

on universal standards of legitimacy, such as human rights, for its own instrumental purposes? (Hurrell 2008: 57). Whilst the first two sets of features of Brazil's identity are frequently referred to in foreign policy debates, the latter strategy was seen recently in Brazil's efforts to leverage widespread concerns for privacy and intrusive electronic mass surveillance by powerful states by pushing for reforms of global governance structures for the Internet (see also the following two contributions to this volume).

## Conclusion

It is against this background of policy ambiguity that the absence of a Brazilian vision for the future of the international human rights regime and the country's role in it can be understood. Indeed, it could be argued that the international dimensions of its human rights obligations are particularly important for Brazil. The Brazilian government has sought to play a more prominent international role in the areas of conflict prevention and resolution. And it seeks to insert itself as an international norm entrepreneur with regards to, for example, its notion of 'Responsibility while Protecting' and efforts to reform Internet governance. The setting up of regional offices in Brazil by Human Rights Watch and Amnesty International, reflects the rising expectations that Brazil needs to play a more active role in the promotion of human rights internationally.

And yet, these expectations raise tricky questions concerning how to carry out human rights advocacy both within and vis-a-vis Brazil. It cannot be assumed that the human rights advocacy strategies that are deemed to have 'worked' with the US and European governments are easily translatable into the Brazilian policy context. Clearly, the expectation that Brazilian diplomats will 'name and shame' alleged malefactors disregards deeply entrenched institutional practices and beliefs in policy circles across much of the ideological spectrum in Brazil. Moreover, efforts to leverage public opinion assume responsive domestic audiences and media outlets. These have traditionally been absent in Brazil, where the exposure of the general public to international affairs has been limited and foreign policy has played a subordinate role in domestic policy debates.

This is not to overlook what may be important domestic changes in contemporary Brazil in the form of an increasing willingness to publicly challenge political leaders. It is precisely for this reason that for human rights advocates the stakes are indeed high. The international human rights regime is facing an uncertain future, as highlighted in the debates surrounding the meaning and wider implications of shifting global power balances. From this perspective, Brazil may indeed be the country of the future – and may always remain so.

## **Brazil as a New Global Agenda Setter?**

*Brazil is increasingly trying to turn into an agenda setter of global debates, including those linked to human rights issues. The introduction of the concept of 'Responsibility while Protecting' and its leadership in the debate around the future of Internet governance underline Brazil's growing assertiveness and willingness to influence important norms at the global stage.*

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### **Introduction**

In the last decade, Brazil has engaged with the idea of an international 'Responsibility to Protect' (R2P) in a notable fashion. As a frequent member of the United Nations Security Council in the post-cold war era, the country resisted suggestions of a responsibility to intervene in humanitarian crises, fearing it would serve to justify military action outside the scope of the UN Charter and international law. Following the adoption of R2P at the 2005 World Summit, Brazil engaged with the concept more closely. This culminated in the 'Responsibility while Protecting' (RwP), a proposed addendum that would ensure clearer criteria and greater accountability of UN-authorized military interventions. Despite its limited hard power, Brazil thus exercised international leadership in the debate about humanitarian intervention. Likewise and more recently, Brazil turned into a forerunner in the international debate on Internet governance. Using the case of RwP and Internet governance as an illustration of Brazil's new assertiveness, this essay describes how Brazil is increasingly trying to become a norm entrepreneur in global affairs, including those with human rights components.

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### **The broader context**

Brazil's decision to introduce the concept of 'Responsibility while Protecting' marks, irrespective of its ultimate success or failure, a milestone in the process of multipolarization. Emerging powers no longer merely seek to obtain a seat at the table, they attempt to turn into agenda setters of the global debate. This process is bound to cause friction, for developing new terms or concepts is a sign of independence and unpredictability – thus disappointing those in the West who had hoped that rising powers would turn into 'responsible (and docile) stakeholders', graciously filling the space established powers had reserved for them.

Despite their recent relative decline, established powers still firmly control the agenda of the international debate – we still live in a world clearly divided between rule makers and rule

takers. In the eyes of the traditional rule makers, rule takers can either immediately embrace existing norms, or they can reject them – the latter causes them to be seen as dangerous revisionist powers with subversive intentions (Stephens 2010). What ‘revisionist’ means is subject to change. For example, while emerging powers used to be fully in line with the mainstream in the global debate about sovereignty, their – largely unchanged stance – is today seen as revisionist by the global rule makers who have turned R2P into a global norm.

The West is inviting emerging powers to assume global responsibility and engage internationally, but the fact that Beijing, Delhi and Brasília prefer to engage on their own terms has caught many in the United States and Europe by surprise. Brazil’s initiative was seen by many as an attempt to obstruct the debate rather than a genuine attempt to enrich the conceptual discussion about humanitarian intervention. Brazil has a long history of actively participating in the global debate about norms, but its RWP initiative was still notable in that it clearly sought to project global ‘thought leadership’.

All the arguments and proposals that appear in Brazil’s RWP concept have already been made, in one form or another, in the past. The novelty was much more Brazil’s decision to bring them together under the RWP header and support them explicitly in their entirety. Still, there was a strong surprise element in Brazil’s initiative, considering that the country’s reaction to R2P had initially been quite negative. Then Foreign Minister Celso Amorim described it as just another pretext emerging powers would readily use to pursue their economic interests with military force (Spektor 2012).

### The specific context

The origin of the concept of RWP must be seen in the context of the year 2011 – the year in which R2P was applied for the first time, first in Côte d’Ivoire, then in Libya. The UN Security Council (UNSC) did so in a historic composition of having all the BRICS present (Brazil, India and South Africa as non-permanent members, China and Russia as permanent ones). None of the BRICS voted against Resolution 1973 (though Brazil, China, India and Russia abstained, as well as Germany). Despite their decision to abstain, the result was seen at the time as a subtle signal of general support for humanitarian intervention in Libya.

Yet this support among emerging powers quickly turned into rejection when it became clear that NATO was using its mandate to protect civilians as a mandate for regime change, thus clearly misinterpreting the spirit of the resolution. In addition, NATO disobeyed the arms embargo by supplying Libyan rebels with arms and *de facto* acting as the rebels’ air force in the conflict (Gowan, O’Brien & Sinclair 2011). The bombing in Libya stopped not as soon as the rebels took control of Tripoli, but only when Muammar Gaddafi was killed.

It was during this time when Brazil changed its moderately supportive rhetoric and adopted a highly critical tone, falling in line with Russia’s assertions that the intervention in Libya was just another instance of Western imperialism. The way NATO intervened had led to a hardening of positions. In the West, it was seen as a great success, in the Global South as a step back. The result, in the words of Michael Ignatieff, was a return to the 1990s, when the world could decide between inactivity in the face of mass killings (as seen in Rwanda) and humanitarian intervention outside of international law (as seen in Yugoslavia) (Ignatieff 2012).

### Reception in Western capitals and the Global South

RWP can thus be seen as an attempt to bridge the widening gap that had emerged in the aftermath of the Libya intervention. The initial reception in the West was marked by scepticism. This came, first of all, in the form of accusations that the RWP concept paper lacked detail, which opened too much space for speculation. Its opponents quickly called it a plot to delay meaningful action against the mass atrocities in Syria. How, they asked, could such a short and generally worded concept paper be of any use, now that the world needed to take swift action against the Assad regime?

This narrative was strengthened by Brazil’s previous decision to abstain, on October 4, 2011, from the European UNSC resolution condemning Syria. Given that the RWP concept paper was so vague, it was natural for analysts around the world to look back and measure it by Brazil’s recent behaviour in matters related to humanitarian intervention (Luck 2012). The European proposal contained only symbolic threats and explicitly excluded the use of military force, so Brazil’s stance was seen as a sign that it stood closer to Russia and China on the matter than to the West.

The second reason for the rejection in Western capitals was the fear that RWP would make intervening quickly – if the circumstances required it – too difficult, as satisfying the long list of demands was too cumbersome. The rigid sequencing was particularly strongly criticized during early debates in New York (Brazil distanced itself from it later on). In addition, article 11 h and i of the Brazilian concept paper states: “Enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting; The Security Council must ensure the accountability of those to whom authority is granted to resort to force.” This led to worries among NATO countries that the UNSC would have a say in ongoing R2P operations – something almost impossible to find support for in the West. It is worth remembering that the United States find it difficult to even coordinate military action with NATO, so giving all UNSC members a say is seen as a non-starter.

The third reason for scepticism was that, among Western policy makers, Brazil was acting irrationally and driven by the anger of being relegated to the sidelines during the intervention in Libya. Brazil's and India's requests for information had been arrogantly brushed aside by NATO with the implicit argument that Brazil and India had no business in the rather serious business of war (Benner 2012).

This points to the fourth reason for scepticism. With Brazil's insignificant hard power and inexperience in armed international conflict, Western powers feel that Brazil has no business in assuming a leadership role in important global security questions. What do Brazilian diplomats know, they ask, about what it means to send fighter jets into combat? Few Western commentators realized that RWP had serious potential to bridge the gap between the Global North and the Global South. Quite to the contrary, Western analysts have argued that RWP could even increase the wedge between the West and the rest.

The reaction in the Global South to RWP has been far more muted than in the West. Dilma Rousseff mentioned the concept during the 2011 IBSA Summit, yet it did not find its way into the final declaration of the meeting, indicating South Africa's and India's scepticism. Rejection in China and Russia was even stronger, and Brazil failed to introduce RWP into the final declaration of the 4th BRICS Summit, in Delhi in March 2012. Brazil had thus successfully created an idea both the West and the emerging powers rejected, albeit for opposite reasons. RWP was seen in the West as a tactic to obstruct action. In the Global South, by contrast, policy makers were reluctant to accept any idea that seemed to limit the concept of sovereignty. Rejection in China and Russia seemed vindicated when Brazil supported resolution 66/253 B against Syria on August 3rd, 2012, strengthening those in Moscow and Beijing who thought of RWP as a Western plot to trick emerging powers into accepting Western imperialist intervention.

### Lost momentum

How did the RWP concept gain and, eventually, lose momentum? On February 21st 2012, a discussion organized by the Permanent Mission of Brazil to the UN on the RWP concept was held at the United Nations, co-chaired by Brazil's Foreign Minister Antonio Patriota and UN Special Adviser for the Responsibility to Protect Edward Luck. The concept note, 'Responsibility while protecting: elements for the development and promotion of a concept', presented to the Security Council on 9 November 2011 by Brazil's Permanent Representative to the UN, Maria Luiza Ribeiro Viotti, but first articulated by Brazilian President Dilma Rousseff in her opening address to the General Assembly in September 2011, was at the center of attention.

Unlike normal UN debates, the room was packed. The list of speakers grew so long that the

meeting took all day, and Patriota even had to decline requests from country representatives who sought to voice strong support of RWP. In the months after RWP's launch, it was impossible to speak about humanitarian intervention without mentioning Patriota's proposal. Brazil was ready to confront the often arrogant P5 (the five permanent UNSC members) and gained widespread admiration around the world for its audacity. It had finally turned into a global agendasetter. "The giant", as one Latin American diplomat put it, "had come to stay".

In many ways, RWP symbolized the very strategy Brazil aspired to pursue: to turn into a bridge builder, mediator and consensus seeker through thought leadership. RWP, despite its flaws, was an innovative and constructive proposal to bridge the gap between an overly trigger-happy NATO and excessively resistant China and Russia. Academics in Brazil and abroad lauded Patriota's initiative. It was the Rousseff administration's finest multilateral initiative.

And yet, more than one year after the memorable meeting, diplomats in New York privately confess to be disappointed with what some have called Brazil's 'enigmatic retreat'. February 21st 2012 turned out to be the apex of Brazil's activism. While RWP continues to be mentioned during debates, there is no longer the sense that Brazil prioritizes the matter. It has refrained from issuing an official follow-up note to deal with some of the most convincing critics. This is problematic: Brazil has since then distanced itself from the rigid sequencing approach that appears in the original concept note, but many commentators continue to read the only document available and believe that Brazil's official position has not changed.

Brazilian diplomats argue that the country has achieved its goal. It successfully promoted the debate about one of the most complex issues of our time. They argue that now that Brazil has left the UN Security Council, it can no longer play a leading role. Others should pick up the issue and take it forward.

Yet much more would have been possible. R2P only prospered because of a small group's tireless efforts to promote the topic. In the same way, RWP is unlikely to have a lasting impact on the debate without a powerful and credible sponsor like Brazil. No matter whether Brazil disengaged passively or actively, the move may have hurt Brazil's national interest. Future attempts to act as an agenda setter may receive a more hesitant reception because of a general uncertainty about Brazil's willingness to follow up and withstand the initial (and normal) criticism.

More than a year after the launch of the concept, the time to follow up and flesh out the concept has passed. The Brazilian government decided not to turn RWP into the foreign policy signature issue of Dilma Rousseff's first term. This became clear when the Brazilian President declined to explain the issue better during her opening speech at the UN General

Assembly in September 2012. In a debate about RWP on the sidelines of the UNGA, Brazil was markedly absent.

Looking back, it seems clear that upon launching the concept, there was a window of opportunity during which Brazil should have elaborated a more specific proposal to create momentum. Brazil would have had to develop a diplomatic campaign to garner support for the idea. For example, South Africa and India could have been potential candidates to support the concept. Rather than being 'Brazil's concept', it could have become 'IBSA's concept'. Yet Brazil declined to assume leadership in the matter, and RWP never achieved what R2P did – to turn into a household name in the public international relations debate. In theory, a country other than Brazil could have taken up this role – yet given the lack of a more specific description of what RWP entails and how it applies to the Syria crisis, no other country took the chance.

### **Internet governance: a new case of Brazil's norm entrepreneurship?**

On the other hand, the RWP initiative may have been useful to provide a glimpse of what Brazil is capable of on a global scale. Brazil temporarily exercised international leadership in a debate that is likely to shape international affairs for decades to come. Quite similarly, Brazil took a leading role in the debate about governance of the Internet.

"Brazil shows the way", the Indian newspaper *The Hindu* wrote when Brazil's President Dilma Rousseff canceled her state visit to the United States in October 2013, in what was the most explicit repudiation of US spying activities. The Indian newspaper argued that:

"In cancelling her state visit to the United States on account of the National Security Agency's spying excesses, President Dilma Rousseff of Brazil has taken a principled position that most leaders around the world have shown little appetite for. While every major power affected by the NSA's intrusive surveillance programme – with the honourable exception of Germany – has gone out of its way to brush U.S. high-handedness under the carpet, Brazil has expressed its displeasure at the highest diplomatic level."

India's reaction, at the same time, was unusually tame. *The Hindu* wrote that:

"India too was affected by the NSA's schemes: it is now on record that our embassies, government leaders and ordinary citizens were spied upon. When NSA documents were made public, Foreign Minister Salman Khurshid sought to justify the Agency's conduct as commonplace. And where Ms Rousseff chose to cancel her visit,

there are indications that Prime Minister Manmohan Singh might end up making concessions on a host of issues that are of great concern to American businesses when he meets with President Obama on September 27."

As expected, Rousseff went a step further in her speech at the 68th UN General Assembly, accusing the United States of violating international law by its massive collection of personal information of Brazilian citizens and economic espionage targeted on the country's key industries. Rousseff (2013) said that:

"[W]e are (...) confronting a case of grave violations of human rights and civil liberties as well as the invasion and capture of secret information about the activities of companies and above all, disrespect for the national sovereignty of my country (...) personal data of citizens was intercepted indiscriminately. Corporate information – often of high economic and even strategic value – was at the centre of espionage activity."

Alluding to her own history of resistance against the Brazilian military dictatorship, she further stated that: "In the absence of the right to privacy, there can be no true freedom of expression and opinion, and therefore no effective democracy. In the absence of the respect for sovereignty, there is no basis for the relationship among nations."

Rousseff's speech was bold, no doubt. "Forget RWP, the new playground for Brazil's norm entrepreneurship is Internet governance", Thorsten Benner of the Global Public Policy Institute (GPPi) commented moments after her presentation. Indeed, it will be thanks to Rousseff that Internet governance – aside from a potential thawing in the US-Iran relationship – will be the big story of this year's UN General Assembly.

"The time", according to Dilma Rousseff, "is ripe to create the conditions to prevent cyberspace from being used as a weapon of war, through espionage, sabotage and attacks against systems and infrastructure of other countries."

Rousseff (2013) promised that Brazil would reinforce its electronic security and called for a broad global discussion of international regulation of Internet use and governance through the UN. She advocated a new global legal system to govern the Internet, which can assure "freedom of expression, privacy of the individual and respect for human rights, the neutrality of the network, guided only by technical and ethical criteria, rendering it inadmissible to restrict it for political, commercial, religious or any other purposes".

Similar to her speech at the 66th UN General Assembly in 2011, where she introduced the concept of the 'Responsibility while Protecting' to regulate humanitarian interventions,



Rousseff thus took the initiative and placed Brazil in the center of another important international debate – that about the future of Internet governance. This is indicative of Brazil's growing willingness to play a key role in international affairs.

At the same time, Rousseff's presentation has also considerably raised global expectations. She asked the United Nations to take the lead in regulating electronic technology. At the NET-mundial conference in São Paulo in April, President Rousseff signed Brazil's landmark '*Marco Civil da Internet*', a comprehensive law that safeguards citizens' digital rights on key fronts. It was the result of a broad participatory process, and marked the decisive move by Brazil as a progressive player on digital rights on the global stage. This is a significant development, since for a long time Brazil had not clearly aligned itself with the set of countries working for an open and free Internet (Benner 2014). Brazil can now engage in norm entrepreneurship at the global level, for example by sponsoring regular reports that expose practices by governments that violate basic human rights.

## Conclusion

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Brazil's credibility as a global actor will, to no small degree, depend on its capacity to follow up more systematically on issues such as humanitarian intervention and Internet governance, and to make a meaningful contribution to these highly complex debates. Brazil's attempts to act as an agenda setter have been useful to provide a glimpse of what Brazil is capable of on a global scale. Between 2011 and 2012, it exercised international leadership in the debate about humanitarian intervention. In early 2014, Brazil took a meaningful first step in becoming a frontrunner in the debate about governance of the Internet, but it will be crucial to prepare for a tough discussion, which is likely to include fierce criticism from many sides, and which may take many years.

It is too early to tell whether Brazil's thought leadership in the realm of humanitarian intervention had any lasting impact. While the concept of RwP no longer plays a central role, some of the ideas may surface at a later stage. In the same way, Brazil's success regarding the discussion about Internet governance will depend on its willingness to persevere. This, in turn, will depend on the government's international priorities in 2015 and beyond.

Brazil's role in both debates points to the country's considerable potential to play an important role as a mediator, consensus seeker and bridge builder as there is growing scepticism that today's established powers still possess the legitimacy to solve global challenges alone. Yet the past few years have also shown that Brazil's leadership still strongly depends on a President who is personally invested in strengthening the country's international projection.

*Maria Laura Canineu & Eileen Donahoe*

## Brazil as the Global Guardian of Internet Freedom?

*Until fairly recently, 'Internet governance' was a term that made people's eyes glaze over. It has now become one of the most dynamic and challenging topics on the global political agenda. Digitization has escalated exponentially in the past several years, but social, legal and political institutions are struggling to keep pace with the implications. Internet governance will shape the future of global economics, security, communications, and human rights. The question arises: who will lead in the protection of Internet freedom in the digital age?*

## Introduction

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It would be hard to overstate the extent to which Edward Snowden's disclosures about US mass surveillance techniques in the post-9/11 period have shaken up geopolitical dynamics on Internet freedom, security and governance over the past year.

Even before Snowden, many governments had recognized the revolutionary, disintermediating and disruptive capacities of the Internet, and the corresponding empowerment of their citizens. Unfortunately, though, some chose to respond to the blossoming of free expression on the Internet by clamping down on social media, monitoring online activists, and imposing new restrictions on digital communications. Others chose to place themselves at the forefront of international reform, creating new momentum for a more informed global discussion on the right to privacy in the digital era.

This article will examine Brazil's role in the increasingly complex realm of Internet governance. During the past year, Brazil has taken several significant leadership steps toward ensuring protection for human rights in the digital age. These moves have shaken up previous geopolitical alignments and challenged governments around the world to take a stand to ensure protection of human rights in the digital realm. The question remains whether Brazil can be counted on as a champion for digital freedom, security and privacy in the 21<sup>st</sup> century.

## The geopolitics of Internet governance post-Snowden

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Post-Snowden, numerous governments, democratic or not, became more assertive in international Internet governance matters, whether in the name of fighting terrorism, protecting

their citizens' privacy or enhancing cyber security. For example, the Chinese government has pushed for 'cyber sovereignty', by which it means that each sovereign state should be able to establish its own Internet, governed by its own rules, according to its own definition of freedom online. Obviously, this proposal would destroy the open interoperable Internet as a global platform for communication and innovation, and would undercut the prospects for freedom, both inside China and globally.

Just as troubling, the US has set a dismal benchmark for the right to privacy online. Once viewed as a champion for Internet freedom, the US has now provided a roadmap for mass surveillance, including with the knowing and unwitting assistance of global Internet companies. Besides the widely reported impact on the privacy of heads of states and citizens around the world, government surveillance and secrecy are also undermining press freedom and the right to counsel within the United States, all human rights essential to a healthy democracy. US-based journalists and lawyers are routinely hampered in the exercise of their work and profession, by large-scale government surveillance conducted under unclear standards. Ultimately government surveillance is also obstructing the American people's ability to hold their government to account. If many others follow the United States' lead, privacy may quickly disappear in the digital age.

Furthermore, the Snowden documents report that the United Kingdom's Government Communications Headquarters (GCHQ) is engaged in mass surveillance of people in the UK and overseas, and the government has been criticized for these reported surveillance excesses. In contrast to the US government, which has publicly engaged with a range of stakeholders about current practices, the UK government has been largely silent on the issue. The government has refused to answer the most basic questions about its intelligence gathering practices, simply asserting that UK intelligence agencies complied with the law and acted to protect public safety. Disregarding public questions and concern, the government rushed through a law in July 2014 that extends the government's surveillance powers with no time for public debate.

At the same time, the Russian government has put in place increasingly restrictive censorship and surveillance regimes, favouring the use of the Internet as a tool to control its citizens. President Putin has called the Internet a 'CIA project', and the Russian parliament adopted a package of legislation that severely restricts Internet freedom: authorizing prosecutors to block certain websites without a court order; requiring bloggers with more than three thousand hits per day to register with the state and follow a set of regulations identical to those for mass media, with none of the rights that media outlets have; and requiring

website owners to store user data only in Russia which could lead to further fragmentation of the open, interoperable Internet.

### Where does Brazil fit?

One bright spot, though, in the geopolitical Internet governance sphere, has been Brazil. In September 2013, President Dilma Rousseff spoke to the United Nations General Assembly, where she laid down two very important principles of Internet freedom, security and governance:

- In the absence of the right to privacy, there can be no true freedom of expression and opinion, and therefore no effective democracy;
- The right to safety and security of citizens in one country can never be guaranteed by violating the fundamental human rights of citizens of another country.

These two principles go a long way in articulating essential human rights parameters that should guide national security calculations about surveillance going forward.

Brazil then placed itself at the forefront of international reform. Together with Germany, Brazil sponsored a United Nations resolution that was the first major United Nations statement on the right to privacy in 25 years. It is obviously noteworthy that both Dilma Rousseff and Angela Merkel were reported to have been victims of US espionage activities a short time before this effort. Yet, motivated by public outrage following Snowden's revelations that their leaders had been spied upon by the United States, Brazil and Germany helped create new momentum for the global discussion on digital privacy and led with strong democratic and human rights principles.

Taking off from the foundational consensus resolution at the UN Human Rights Council in 2012 that "[a]ffirms that the same rights that people have offline must also be protected online", Brazil and Germany extended the global consensus explicitly to "The Right to Privacy in the Digital Age" at the United Nations General Assembly: "Through this resolution, the General Assembly establishes, for the first time, that human rights should prevail irrespective of the medium and therefore need to be protected both offline and online," Brazil's representative said, echoing the statement delivered by President Dilma Rousseff on the centrality of privacy to the exercise of other human rights, during the opening of the 68<sup>th</sup> session. Following the passage of the resolution, some stressed the need to create an international human rights mechanism dedicated to the right to privacy. Others were disappointed with the outcome for its lack of a specific reference to any such mechanisms in the text, while others recognized the consensus as a decisive international response to the overreach of national and extraterritorial electronic surveillance activities conducted by the United States and the United Kingdom.

Despite the differing assessments, the General Assembly's approval of the resolution on privacy in the digital age was a vital first step toward stigmatizing indiscriminate global surveillance as a wide-scale violation of human rights. The resolution called for a report by the UN High Commissioner for Human Rights on the protection and promotion of the right to privacy in the context of domestic and extraterritorial surveillance, the interception of digital communications, and the collection of personal data, including on a mass scale. In addition, the resolution propelled forward a more profound debate about the need to recognize the obligation of all states to respect a global right to privacy.

Domestically, as a well-recognized regional leader in its relative support of and freedom for civil society groups, Brazil also has become a favorite refuge for digital activists and journalists who expose human rights abuses in the digital realm. Brazil also took an extremely important leadership step by enacting what is known as the Brazilian Digital Bill of Rights or '*Marco Civil da Internet*'.

Marco Civil is an historic law that can potentially serve as a model for other nations seeking to enact legislative measures that enshrine protection of human rights online. Importantly, Marco Civil includes protection for the right to privacy and free expression online, and serves to reinforce application of the rule of law in the digital sphere. In this regard, Marco Civil counters the negative global trend of governments restricting Internet user's digital activity within national borders. Furthermore, the law was drafted with democratic participation and serves as a significant counter-model to secret drafting processes that contradict promises of transparency.

Marco Civil establishes Brazilian support for net neutrality as a guiding principle for future Internet developments. But the legislation, while an important precedent, is not perfect, and several significant questions remain about whether implementation of certain aspects of the legislation will in fact protect users' digital rights. For example, the legislation requires Internet service providers to keep access logs of their services for six months. This leaves open the risk that the data might be misused, and imposes higher burdens on companies, especially new innovative start-ups, to keep all of these sensitive data properly and securely stored. Strong privacy protections and separate data protection legislation will need to be established to make sure these provisions are carried out in a way that is consistent with human rights.

### **Brazil's efforts for a multi-stakeholder approach**

In April 2014, Brazil also organized and led [NETmundial](#), a global gathering of governments, non-governmental groups, technologists, private sector actors, and academics on the future of Internet governance, and successfully demonstrated how a global multi-stakeholder ap-

proach to Internet governance policy making could work. The 'multi-stakeholder' approach is being developed as an alternative to most other UN processes that are 'multilateral' in nature, and as such, include only governments as stakeholders. Through relatively inclusive and transparent drafting and negotiating processes, NETmundial participants produced an outcome statement that prioritized human rights principles and provided a roadmap for future multi-stakeholder Internet governance conversations.

Brazil has not only hosted NETmundial, but has now been appointed for the second time to host the Internet Governance Forum, which will take place next year in João Pessoa, state of Paraíba. The Internet Governance Forum is meant to support the United Nations Secretary-General in carrying out the mandate from the World Summit on the Information Society to convene an annual forum for multi-stakeholder policy dialogue.

Brazil's embrace of the multi-stakeholder approach to Internet governance has very significant impact on the geopolitical dynamics within the UN. Last year, Pakistan, speaking on behalf of Ecuador, Venezuela, Cuba, Zimbabwe, Uganda, Russia, Indonesia, Bolivia, Iran and China at the 24<sup>th</sup> Session of the UN Human Rights Council, questioned the efficacy of existing UN mechanisms like the Internet Governance Forum, and instead proposed the creation of a intergovernmental or 'multilateral' mechanism for Internet governance.

Along with Russia and China, Brazil's other BRICS partner, the Indian government, also has pushed for 'multilateral' Internet governance in a variety of settings, including at NETmundial. Far from internationalizing and democratizing governance, the 'multilateral' approach could enhance the power of undemocratic governments to control the Internet, excluding non-governmental groups, technologists, academics and the private sector from the process.

Notwithstanding its alignment with the BRICS on other matters, the Brazilian government seems to have embraced the inclusive multi-stakeholder approach as an alternative to exclusively multilateral governance. Yet, even for Brazil, questions remain about when and where the multi-stakeholder approach will be favoured and incorporated. Representing Brazil at the opening ceremony of the 9<sup>th</sup> annual meeting of the Internet Governance Forum in Istanbul, Virgilio Almeida, the Secretary for Information Technology Policy of the Ministry of Science, Technology and Innovation (MCTI) said: "I'll present the Brazilian position: support for multi-stakeholder approaches in matters of Internet governance and also the multilateral relations between states in this process, especially in subjects like cybercrime, cyber-attacks and transnational economic issues over the network." The turn to a multi-stakeholder approach with respect to cyber security policy making will undoubtedly be one of the most highly contested.

Why does this multi-stakeholder approach matter to human rights? The Internet platform has become the essential tool for the exercise of virtually all human rights, whether exposing abuses, preserving privacy, making a living, organizing a protest, or choosing one's associates. It has also become the medium for organization of human rights work and advocacy. The open interoperable Internet platform has provided a means for fast, inexpensive global communication and connection, and for many new outlets for free expression, free association and assembly. Human rights protection now rests squarely on whether the Internet functions, and how it functions.

Accordingly, human rights defenders care about the maintenance of the Internet as an open, global and interoperable platform, as well as about the full protection of human rights. Yet, the characteristics that make the Internet so valuable for human rights as well as commerce and many other social functions, will be degraded and unsustainable if only governments have a seat at the governance table while technologists, academics, the business community and civil society are excluded, as would happen in a multilateral system. Similarly, if civil society is excluded from governance debates and governments alone determine the parameters of human rights protection online, protection of digital rights around the globe will suffer. Governments are not able to preserve the best that the Internet can offer, including in terms of digital security and protection, if they act by themselves in regulation and governance.

## Conclusion

We are at a decisive moment with respect to protecting both the open interoperable global platform, and human rights online. The leadership demonstrated by Brazil during this period of disruption has provided a significant challenge to other governments seeking to protect freedom, security and privacy in the online space.

Brazil's civil society, as well as the multi-stakeholder entity [CGI.br](http://CGI.br), deserve a great deal of credit for skillfully guiding the Brazilian government toward such positive outcomes on Marco Civil and NETmundial. But the years ahead will require even greater commitment and leadership, to ensure that Internet governance and regulation protect and strengthen rights, rather than undermine them.

Domestically, the Brazilian government will be urged to move forward on its own ground by implementing Marco Civil in a transparent and participatory way. Simultaneously, in the international arena, now that it has embraced the more inclusive, transparent 'multi-stakeholder' approach, Brazil will be expected to continue influencing the global debate on Internet rights and governance in a way that reinforces strong human rights and democratic principles. An immediate challenge in this process will be to build from the 2013 *Right to*

*Privacy in the Digital Age* resolution at the United Nations, and support an initiative within the international community to establish a UN Special Rapporteur on privacy in the digital age, with regular reporting on government surveillance policies and practices. This will entail willingness to review its own surveillance and intelligence services. In exercising this leadership, Brazil will be required to challenge its BRICS partners on their performance on digital rights and security as well.

Furthermore, Brazil could use its leverage to move the international community toward recognition that indiscriminate surveillance is in fact an invasion of the right to privacy. Just as the powers of digital surveillance now reach to every corner of the world, so do the obligations to respect the global right to privacy. In an age of borderless communication, no country can limit its human rights obligations to the rights of its own citizens while trampling on the rights of all others.

Brazil is in a privileged position to expand the coalition of governments and global citizens taking action to support and protect a free, open and secure Internet. The coherence of Brazil's domestic processes and its international behaviour on digital rights will reinforce and justify support for its global leadership in this realm. This is a crucial period for the protection of human rights in the digital age. Brazil's continued demonstration of leadership – to its own domestic constituencies on national policy and practices, as well as to the world on articulation and setting of international norms – is essential to global human rights protection in the digital age.

*Paulo de Tarso Lugon Arantes*

## **Brazilian Attitudes Towards Sovereignty and the Responsibility to Protect**

*Brazil has more than ever an important say on matters related to international security, sovereignty and the Responsibility to Protect (R2P). It has introduced the concept of Responsibility while Protecting (RwP), as a way to address human rights atrocities. However, further domestic and international debates are essential to gather greater understanding and acceptance of this new paradigm.*

### **Introduction**

Brazil is commonly seen as a genuine soft power. It is, in fact, a non-nuclear state with an immense territorial extension, for which non-interventionism is a weighty constitutional principle. In its diplomatic practice non-interventionism often goes hand in hand with principled diplomacy aimed at tackling the inconsistencies of the international community (Council on Foreign Relations 2012). State sovereignty, however, has lost its absolute value and within the Itamaraty<sup>1</sup> thinking, it can be partially surrendered in the name of human rights (Lindgren Alves 2003, Bierrenbach 2011). Moreover, contemporary Brazil, like other states in Latin America, takes a broad view on international security. It encompasses extreme poverty, pollution and natural disasters. This thinking has strongly influenced the OAS 2011 Declaration on Citizen Security (Lugon Arantes 2013). As a candidate for a permanent seat on the United Nations Security Council (UNSC) Brazil seeks to mediate between “the arrogance of those who claim to be ‘on the right side of history’ and the intransigence of those, who, under the pretext of an exaggerated defence of sovereignty, do not recognize that certain issues, such as human rights, have and will increasingly have universal appeal” (Amorim 2011). Thus, nothing more Brazilian than the country’s approach to R2P and the formulation of the concept of RwP.

### **Non-intervention, legitimacy, and non-indifference**

Having a moderate standpoint on sovereignty, in Itamaraty thinking on military intervention, legitimacy is the first and foremost issue. It lies at the heart of Brazil’s explanation of Security Council votes on contested resolutions that allow or call for coercive measures. In this regard, Parola makes a careful study of the so-called ‘Bush doctrine’, criticizing the USA’s imperialist realism, which tries to justify US national values as universal ones (Parola 2007). Hence, uni-

<sup>1</sup> The Brazilian Ministry of External Relations.

lateral intervention, as devoid of universality, is hardly ever acceptable for Brazil. Conversely, collective action, validated by the UN Charter, can be considered on a case-by-case basis.

Over time non-indifference became more and more important for Brazil's international agenda, particularly after it started to contribute troops to the UN peacekeeping mission in Haiti in 2004. This concept of non-indifference, still somewhat undefined, implies, in general lines, a moral responsibility to assist its peers when faced with humanitarian disasters and crises, including those resulting from hunger, poverty and epidemics, mostly by means of medium and long-term cooperation.

However, it can be also inferred from Brazil's recent moves that non-indifference includes speaking out on hard human rights issues, even as a means of preventive diplomacy. Evidence of that move include Brazil's backing the creation of the Universal Periodical Review (UPR), a human rights peer review enabling open criticism, while making constructive recommendations and offering cooperation. Moreover, President Dilma Rousseff's inauguration in early 2011 was marked by a change in the approach towards the UN Human Rights Council (HRC) by voting on country-specific resolutions on traditional allies, for instance Iran (2011) and Sri Lanka (2014, reversing its earlier abstention back in 2009).

### Brazil and the R2P process

Brazil has not rejected upfront the concept of R2P itself. Rather, Celso Amorim, the then Minister of Foreign Affairs, did not disregard its merits, but emphasized the need for exhaustion of diplomacy and persuasion first (Amorim 2005). Within the Caricom and the Rio Group, Brazil voiced concerns about the ambiguities and lack of clear criteria (Serbin and Rodrigues 2011), mainly with regard to the Third-Pillar<sup>2</sup> (timely and decisive action) of R2P. In Brazil's view R2P should not be constructed as a reinterpretation (read expansion) of the UN Charter itself. Thus, it rejected the 2005 World Summit Outcome Document early drafts on R2P that did not specify precisely the circumstances under which timely and decisive action would be allowed. An agreement was later on reached, with Brazil's support, restricting the scope of R2P to multilateral action (read intervention) only in case of war crimes, crimes against humanity, ethnic cleansing and genocide, instead of the broader 'violations of human rights', as stated in the early drafts (Bierrenbach 2011).

For the Brazilian diplomacy, the result of the 2005 World Summit Outcome, concerning paragraphs 138 and 139, on R2P, was successful. The text was clear enough to define the practical limits of application of the concept of R2P and did not attempt to rewrite the UN

<sup>2</sup> Brazil showed no reservations toward the two first pillars of the R2P concept (states' primary responsibility and mutual cooperation and assistance).

Charter's Chapter VII, but rather reaffirmed it. According to Viotti (2010), Brazil's Ambassador to the UN "[i]t is a powerful political call for all states to abide by legal obligations already set forth in the Charter, in relevant human rights conventions and international humanitarian law and other instruments". At the same time, for the country, the balance achieved in the negotiations of those two paragraphs implied the concept of "sovereignty as responsibility", by which neither state sovereignty is delegitimized, nor are states in any way exempted from their obligation to protect their population (Viotti 2010).

### The Libyan Crisis

The Libyan humanitarian crisis, in the wake of the Arab Spring in early 2011, served as the occasion for Brazil to take a strong stand on the means by which military intervention was dealt with in the UN. At the time, all BRICS and IBSA nations were member of the UNSC – China and Russia, as its permanent members; Brazil, India and South-Africa as non-permanent ones. Brazil abstained, together with India, Russia, China and Germany in the vote on UNSC Resolution 1973 that authorized the use of force for the protection of civilians and civilian-populated areas. Brazil's abstention could be interpreted as a soft approval of the resolution (Benner 2013) while pointing out the risk at collateral damage the military action could cause.

Ambassador Viotti's explanation of Brazil's abstention clearly set out Brazil's approach to military intervention. She stressed the need for the strict observance of the UNSC's mandate, particularly with regard to the use of the Council's powers of enforcement under Chapter 7 of the UN Charter, as she said: "It is our view that the text of resolution 1973 (2011) contemplates measures that go far beyond that call" (Viotti 2011).

Additionally, she was sceptical of the effectiveness of armed intervention as a way to end the conflict. "Such measures may have the unintended effect of exacerbating tensions on the ground and causing more harm than good to the very same civilians we are committed to protecting" (Viotti 2011).

### The Concept of RWP

Already on the first occasion after the Libyan crisis, President Dilma Rousseff advanced Brazil's views on R2P at the opening of the 66th Session of the General Assembly: "Much is said about the responsibility to protect; yet we hear little about *responsibility in protecting*. These are concepts that we must develop together" (Rousseff 2011, italics added). In November 2011, the Brazilian Permanent Mission to the United Nations in New York circulated a paper titled 'Responsibility while protecting: elements for the development and promotion of a concept', in order to introduce this concept to the international community.

While in R2P international responsibility is placed primarily on the individual state exercising sovereign power over its population, in RwP it is placed upon the international community, when discharging its duties to secure the rights of the concerned populations. This understanding flows from the principle by which whomever exercises power must act dutifully. Brazil's concept note defines: "As it exercises its responsibility to protect, the international community must show a great deal of *responsibility while protecting*" (Brazil 2011, italics added).

Hence, the *droit d'ingérence*, should be exercised in conjunction with a set of *conditions d'ingérence*, namely a preference to preventive diplomacy; rigorous exhaustion of peaceful means; action only authorized by the UNSC; strict abidance to the letter and the spirit of the mandate granted by the UNSC or the UN General Assembly (UNGA); a harm reduction approach; use of force proportionate and restricted to the relevant objectives set by the UNSC; and accountability of those to whom authority is granted to resort to force. Accountability is nowadays not restricted to an *ex post facto* responsibility, but to specific preventive guidance.

However, to operationalize these conditions, detailed directives authorizing the use of force, or the establishment of stricter terms of reference, are necessary. Evidently, guidance can be taken from international human rights adjudication. The European Court of Human Rights has ruled on several cases related to extraterritorial obligations of member states of the Council of Europe deploying military forces abroad, such as *Al-Skeini and Others*, which may serve as important advice.

Further, RwP underscores the material, temporal and formal restrictions of the applicability of R2P, articulated back in 2005. These limits are material, regarding the four crimes established in paragraphs 138 and 139 of the 2005 World Summit Outcome Document (see above). They are temporal, on the need to establish the manifest failure of a State to exercise its individual duty to protect its citizens. And they are formal, since it requires a previous approval of the UNSC, according to Chapters VI and VII of the UN Charter.

Another point clearly made is that the three pillars of the concept should follow "a strict line of political subordination and chronological sequencing". Therefore, this new component, of respecting each phase of the process, can be compared to Article 17 (issues of admissibility) of the Rome Statute of the International Criminal Court and the rule of the exhaustion of local remedies in international human rights conventions. These are, after all, provisions that give priority to domestic problem-solving and therewith respect state sovereignty without returning to exclusive state power over serious domestic human rights issues.

As far as collateral damage is concerned, a main reason for for Brazil's promotion of the RwP concept is the fact that interventions seem to have aggravated conflicts R2P is meant

to solve, leading directly to unnecessary civilian suffering, or indirectly to the insurgence of terrorist groups in new areas (Lugon Arantes 2013). Paragraphs 9 and 10 of the concept paper contain an unambiguous criticism of the occupation of Iraq in 2003.

Likewise, the concept paper openly denounces alleged hidden agendas, such as regime change. It states: "There is a growing perception that the concept of the responsibility to protect might be misused for purposes other than protecting civilians, such as regime change. This perception may make it even more difficult to attain the protection objectives pursued by the international community" (Brazil 2012).

### Later Debates on the Concept of RwP

On 21 February 2012, Brazil convened an 'Informal Discussion on Responsibility While Protecting' in New York. It was an occasion to exchange views among different stakeholders on the matter. Impressions from the meeting were mixed. Dr. Edward C. Luck, Special Adviser to the United Nations Secretary-General on R2P, has praised the initiative, while at the same time stressing that R2P should not be rewritten, but rather be more specified. He recognized the merits of the Brazilian proposal, by noting that "we must take care to do no harm in the name of doing good" and that "we need to sharpen all of the instruments for implementing the Responsibility to Protect", as "[a]ll of the tools of Chapters VI, VII, or VIII of the Charter – whether diplomatic, political, economic, or military – need to be wielded responsibly" (Luck 2012).

Gareth Evans, representing the Global Centre for the Responsibility to Protect (GCR2P), explained that the RwP rather dealt with the Security Council working methods on the question of the authorization of use of force, than with the merits of R2P itself.

The issue of chronological sequencing received a number of objections, particularly from States traditionally deploying military resources for interventions. For the EU delegation, the requirement of chronological sequence could not be seen as an 'automatism' and could not lead to a 'priorization' of a given pillar over another (EU 2012). Likewise, the US delegation stressed that it is "a grave error to equate manifest failure with strict chronological sequence", as "appropriate decision-making in this area requires not just 'temporal' considerations but a comprehensive assessment of risks and costs and the balance of consequences" (USA 2012). This view was also shared by the [International Coalition for the R2P \(ICR2P\)](#), a [worldwide NGO coalition promoting the development of R2P](#).

The merit of the Brazilian proposal, in this regard, is to make a strong case for the exhaustion of the diplomatic avenues and to draw a clear line between the end of dialogue and the start

of coercive measures. However, the European Union, also made clear that coercive measures under the third pillar are not restricted to military intervention, but also include measures such as referral of a situation to the International Criminal Court (ICC). In fact, involvement of this court and of the International Court of Justice (ICJ) require far deeper analysis in future debates.

On the part of the developing world, South Africa came with a plain statement: “the primary objective of implementing R2P is not regime change!”. It lent its support to Brazil in the question of much required accountability on the use of force, once it is authorized by the UNSC. South Africa also suggested a system of regular updates to that body to provide a clear picture of the situation on the ground (Sangqu 2012).

Within Brazilian academia, Benner (2013), a seasoned expert on the issue, praises the country for now acting as a ‘normative entrepreneur’, rather than merely a skeptical observer in hard issues such as military intervention. Moreover, Benner could not be more right in stressing that the decision-makers in the country realized that the automatic alignment with the G77 could not be the main fundament for its external policy. He adds that Brazil, in comparison with China or Russia, is a mature democracy, which justifies a greater observance of and support for human rights, and thus puts in check an unconditional defence of sovereignty.

Nevertheless, despite the initial impetus of the RwP proposal, debates did not progress in 2013, mainly due to the administration’s concentration on internal affairs. Reinitiating RwP discussions, both internally and externally, and among different stakeholders, would reinforce Brazil’s continuous role as an active player in international affairs.

### **Conclusion: a way forward for RwP**

Just as R2P has undergone a series of debates in many different venues, RwP can and should be further discussed.

Internationally, Brazil has the potential of galvanizing support from its key allies, especially emerging democracies that have an important say in military interventions today. Added discussions with both India and South Africa – Brazil’s partners in the IBSA group – are fundamental. The results of these debates should be convincing enough to make the point that the RwP concept, elaborated and upheld by the emerging democracies, can effectively address humanitarian crises differently from the much criticized interventionist way.

Latin American countries, including Brazil, have moved beyond a merely hesitant stance on military intervention and have engaged constructively in the new possibilities of address-

ing atrocities worldwide. A region that is proud of enjoying a century of peaceful relations can demonstrate that another way is possible. Particularly within the newly established South-American Security Council there is room for regional discussions about RwP.

At the same time, Brazil has privileged relations with Africa and should engage it in the RwP debate. African democratic partners have much to share in solving recent conflicts and in showing how to overcome obstacles. For instance, in the context of prevention of imminent violations, it should be studied which specific types of cooperative actions are effective in short and mid terms, besides the general long term expected results.

Domestically, development of RwP is not a task for the Brazilian government alone. More than ever, local constituencies and civil society actors are an indispensable component. It requires the involvement of a varied number of domestic stakeholders, including the Parliament. The Brazilian Ministry of Defence has recently adopted its own *White Book of National Defence* and the Ministry of External Relations is following suit. This *White Book* already introduces the concept of RwP that is defined as the use of force under the auspices of the UN, aimed at “not creating more instability than that one is trying to avoid or limit (...) based on four elements: security, institutional strengthening, national reconciliation and development” (Brazil 2012). Further domestic debates would strengthen the internal acceptance and support of the initiative.

More than a necessary internal consultation process, inspiration can play a key role. A vibrant generation of young Brazilian academics and professionals that have had different degrees of experience abroad, or aim at gaining it, is eager to give the country its contribution. Seminars and workshops on the concept of RwP would enrich the debates and provide the government with valuable feedback. Simulations involving young academics, mixing both civilian and military expertises, in order to help defining, operational scenarios, where worst-case scenarios imminence of unauthorized intervention are tested to the limit, would work only to the profit of the concept of RwP.



*Susanne Grätius*

## **Brazil and the EU at the Global and Regional Stage: Balancing Shared Values and Political Power Calculations**

*Brazil has become a more active defender of human rights both at home and abroad. Although the country shares the same normative principles as the EU, they differ on some instruments and policies. Apart from its self-identification with the Global South, Brazil's strategic alliance with the BRICS and its global power calculation explain the lack of common ground on human rights with the EU at the global stage. In Latin America, the picture is more positive, and similar policies towards Cuba, Haiti and Venezuela offer new opportunities for triangle cooperation.*

### **Human rights in Brazil-EU relations**

Since 2007, when the EU upgraded its relation with Brazil by establishing a Strategic Partnership under the Portuguese presidency, relations changed from political neglect to global dialogue. The result of seven bilateral summits and more than thirty sector dialogues is a closer and less asymmetric relationship. Although trade interests (with a share of 20 per cent total exports and imports, the EU is Brazil's main partner) and investment (mainly from Spanish and German companies) clearly prevail over common political interests, global issues like climate change, human rights, peace, and development dominate the bilateral agenda.

Different from other Strategic Partnerships of the EU, in the case of Brazil, economic issues are part of the negotiation process between the EU and [Mercosur](#) that started fifteen years ago without any prospects to conclude soon, given the zero-sum game between Mercosur's protectionism (services, automobiles, computer industry) and the EU's Common Agriculture Policy. The stagnation of the trade agenda has been partly compensated by regular bilateral summits between Brazil and the EU and the commitment to "converge further on the global agenda" (Council of the EU 2014).

There is little doubt that Brazil and the EU are highly committed to protect human rights at home and at the global and regional stage. Under the presidency of Dilma Rousseff – herself a victim of torture during the military regime – Brazil established in 2011 a national truth commission on human rights violations under the dictatorship (1964-1985). Brazil was elected into the UN's Human Rights Council in 2012 and former Foreign Minister Antonio Patriota is the current Chairperson of the UN Peacebuilding Commission. Human rights also play a stronger role in Brazil's foreign policy, with a clear multilateral vocation and a firm commitment to

respect and widen international norms and principles.

The issue also ranks high on the bilateral Brazil-EU agenda and has been discussed on three occasions at a special human rights dialogue between Brasília and Brussels. At their 7<sup>th</sup> summit, held in February 2014 in Brussels, Brazil and the EU reiterated that “the promotion and protection of all human rights of all persons lie at the core of our Strategic Partnership” (Council of the EU 2014). Nonetheless, their human rights practice at global forums differ. This divergence illustrates that common values do not necessarily translate into joint programs, actions or even similar positions on human rights and human security at the UN system. Particularly when it comes to controversial cases such as Iran, Libya and Syria at the global stage and, to a minor extent, Cuba and Venezuela in Latin America, the EU and Brazil often belong to different camps. While the EU has developed a complex toolbox of instruments to promote human rights by diplomatic means, development cooperation, electoral observation and sanctions, Brazil’s policy of human rights focuses on vulnerable groups and development assistance, and clearly rejects the imposition of coercion and economic sanctions.

These different policies on human rights and human security at the global stage could be explained by three main factors: (1) the classical North-South debate (Brazil identifies itself with both the West and the Global South, and the EU with the West and the North); (2) the long history of US interventions and violations of national sovereignty in Latin America; and (3) the participation in different global alliances: the EU with the three [NAFTA](#) countries (Canada, Mexico and the US) and Brazil with the BRICS.

### **Divergent views on human rights and human security**

Brazil and the EU are both highly committed to the UN human rights regime: they signed and ratified all relevant documents and agreements and play an active role at the UN General Assembly, the Human Rights Council and the UN Security Council. Nonetheless, they have a different understanding of the relationship between human rights, universal values and national sovereignty. Although they share the same concept of human rights, according to international relations theories, the position of the EU is close to solidarism and the Brazilian view coincides with pluralism (Czaputovicz 2003). This divergence has serious consequences for their attitude and voting behaviour on human security and humanitarian interventions under the umbrella of the UN Security Council.

From an EU perspective, individual human rights and universal values prevail over national sovereignty and the UN principle of non-interference in domestic affairs. Most EU members favour the doctrine of a ‘Responsibility to Protect’ (R2P) and support humanitarian interven-

tions under Chapter VII of the UN Charter as a last resort to protect the population against mass atrocity if national governments cannot, or do not want to, assume their responsibility. Particularly France and the UK take the position of solidarism: the defence of universal values and the belief that global values, norms and principles and individual human rights should be more important than sovereignty. They defend military interventions authorized by the UNSC for humanitarian reasons. This does not mean that their decisions are purely altruistic and interest-free, but their missionary stance, related to the dominance of Western ideas, is not shared by Brazil and other BRICS.

The EU position of a ‘responsible sovereignty’ contrasts with the Brazilian support of the classical concept of the nation state and the principle of non-interventionism. At the international stage, Brazil adopts the ‘pluralist position’: respect for national sovereignty, international law and regimes, and non-interference in internal affairs. Like the pluralists of the English School of International Relations Theory, Brazil is against any type of military intervention, not even under a humanitarian umbrella. This classical state approach, close to political realism, clashes with the more idealist universal view of the EU.

This difference in views has to do with the long history of unilateral US interventions in Latin America and the Caribbean and with Brazil’s scepticism about the real goals behind humanitarian interventions (regime change and economic interests), but also with the identity of both partners. Brazil is a nation state and acts accordingly, while the EU is becoming a supranational body beyond national sovereignty. These different identities explain the diverging voting patterns on human rights and human security at the UN system. The Brazilian abstention during the vote on Resolution 1973, approved in 2011 to authorize the UN intervention in Libya, and Brasília’s reluctance to support the proposal to agree on sanctions and military means in Syria, reflect that there is an urgent need for a fundamental debate on human security between Brazil and the EU. A concrete step in this direction would be to harmonize the UN principle of R2P with Brasília’s proposal of the ‘Responsibility while Protecting’ (RwP).

### **R2P versus RwP?**

The UN’s Outcome Document of the World Summit in 2005 included the Responsibility to Protect in paragraphs 138 and 139 to safeguard the people from mass atrocity crimes – at the last instance by a collective reaction of the international community. At that moment, Brazil did not oppose R2P, even though it was not an enthusiastic supporter, and particularly reluctant to apply it to Chapter VII of the UN Charter.

Backed by South Africa and other emerging countries like India, Brazil assumed a more relevant and proactive role in the global defence of human rights, human security and UN

system of peace building. One of the first initiatives by the Rousseff administration was the introduction in 2011 by former Minister Antonio Patriota of the concept of ‘Responsibility while Protecting’ (RwP) as a complement and alternative to R2P, originally pushed by Canada.

Brasília’s RwP stresses the need to define clear criteria for humanitarian interventions based on local information on the ground, as well as norms, rules and procedures for the application of R2P. The goal behind this is to avoid the imposition of other non-humanitarian goals such as regime change and ‘democracy by imposition’ under the principle of R2P, and, from a regional perspective, to soft-balance the US by the introduction of alternative ideas and concepts by Southern or emerging countries (Gratius & Grevi 2013).

Different to India, Brazil’s critical attitude when it comes to deciding on military means to protect a population from human rights abuses by its own government, is not motivated by post-colonialism and the distance from the Western powers. Until very recently, Brazil was one of the closest allies of the EU and the US in the Western hemisphere. The principal reason behind Brazil’s critical attitude, is that with this foreign policy strategy it hopes to become a global player.

Under the government of Luiz Inácio Lula da Silva (2003-2010) and for strategic considerations, Brazil changed its global identity towards a Southern alliance with emerging powers and the BRICS (Gratius 2012). This meant that Brazil does not accept a ‘conditioned national sovereignty’ and the imposition of Western values represented by the EU-NAFTA alliance at the UN.

R2P and RwP stand for different interpretations of human security; they reconfirm the traditional North-South division in Brazil-EU and Brazil-US relations. Despite the fact that Brazil and the EU share certain values, this has not resulted in common action or similar UN voting patterns on humanitarian interventions.

These differences on the defence of human rights and human security at the global stage contrast with brighter prospects for a broader cooperation between Brazil and the EU on human rights in Latin America. In this case, Brazil is coming closer to the EU position of solidarity and the EU to Brasília’s pluralist stance.

### Human rights and human security in Latin America

A large part of the EU’s human rights toolbox has been developed in Latin America. In the 1980s and 1990s, the EU exerted a strong normative power in the region and became a moral force and political counterweight to the US. At that time, Western European states clearly condemned the military dictatorships in many Latin American countries, supported

exile and opposition groups, and were recognized as a strong defender of democracy and human rights through diplomatic means and sanctions.

The democracy clause included in all external agreements of the EU, was initially proposed by Argentina to prevent a return to authoritarianism. Today, Latin American countries are no longer on the radar of EU’s human rights policy. The only exceptions to that rule are Cuba, Haiti and Venezuela. Nonetheless, in terms of political influence, the EU (and the US) have been increasingly replaced by regional actors, and particularly by Brazil’s strong political engagement in its larger neighbourhood.

Compared to the EU, Brazil is a very recent human rights promoter in Latin America and still has a problematic domestic record, including abuses and cases of torture by the police, racism, violence against women and rural conflicts (Amnesty International 2013). Since the end of the dictatorship and the approval of the democratic Constitution of 1988, Brazil’s foreign policy is value-oriented, including respect for human rights. An important indicator for Brazil’s clear commitment to the respect of human rights was the introduction of a democracy clause for membership in Mercosur and, later on, [Unasur](#). The democracy clause served as a preventive strategy against military coups (in Ecuador, Paraguay and Venezuela) but not as an active policy to demand the full respect for human rights (see also Maurício Santoro’s contribution to this edited collection).

Compared to the strong ‘pluralist approach’ at the global stage, Brazil’s regional policy can be characterized by a hybrid position with a still dominant focus on the defence of national sovereignty and non-interference in domestic affairs, but nuanced by what former Foreign Minister Celso Amorim called a “policy of non-indifference”. This policy of non-indifference served as a license for exerting a certain political influence in neighbouring Bolivia (the mediation between President Evo Morales and the opposition), Peru (President Ollanta Humala’s campaign was designed by a Brazilian advisor), Venezuela (the mediation efforts between the opposition and former President Hugo Chávez), Cuba (Brazil pushed for its inclusion in the Latin American and Caribbean Community [CELAC](#)), and Haiti (Brazil assumed the military command of the UN mission MINUSTAH).

Brazil and the EU play an active role in three countries earlier mentioned with a problematic human rights record: Cuba, Haiti and Venezuela. Different to the global stage, where positions tend to diverge and Brazil has been distancing itself from EU’s stance, the situation in Latin America is inverse: more recently, the EU has been coming closer to the *Itamaraty*’s policy of constructive engagement towards Cuba, Haiti and Venezuela.

*Cuba*

In February 2014, the Council of the EU agreed to start a negotiation process on a bilateral agreement between Brussels and Havana (Gratius 2014). Different to other attempts to sign a treaty with Cuba (in 1995 and 2000), ongoing reforms in Cuba, a policy shift towards 'engagement and sanctions' in Washington, and Havana's full integration in CELAC facilitate the negotiation process that could conclude in 2015. A successful dialogue could change the EU's Common Position on Cuba, approved in 1996, to further condition full relations to a democratization process. Although Cuba has never been a controversial issue, the political dialogue between Cuba and the EU coincides with the Brazilian policy of constructive engagement without any type of political conditionality. Under the Lula presidency, Brazil successfully pushed to end a special clause at the OAS to avoid a Cuban membership, and proposed Cuba's full integration into the Rio Group and the CELAC. Although President Rousseff doesn't have the same emotional relationship with the Castro brothers that Lula once had, she did not change the policy of constructive engagement and dialogue. The adoption of similar policies by Brazil and the EU opens a window of opportunity to push for further reforms in Cuba, including full respect of political rights.

*Haiti*

Ten years ago, Brazil assumed the military command of MINUSTAH, the UN stabilization mission in Haiti. Since then, Brazil and other South American countries have been engaged in Haiti's political, economic and social reconstruction process by diplomatic, military and economic means. Compared to the 1990s, when France and the US were the external key players in Haiti, Brazil's engagement was the starting point for an increasing regionalization of the conflict. In Haiti, Brazil exported its development model and transferred its own experience with the restoration of public security (among other things by the implementation of the Peace Police Units (UPPs) in favelas). Despite local criticism of MINUSTAH and a rather mixed success rate (Sánchez 2011), compared to the role of France and the US, as a neutral partner of the South, Brazil's international engagement is less controversial. For Brazil, Haiti has become a test case for its regional engagement outside its immediate neighbourhood and for the ultimate goal of its foreign policy: to obtain a permanent seat at the UN Security Council. In terms of development cooperation, Brazil's role in Haiti and the EU's development assistance could be used for a triangle cooperation.

*Venezuela*

Rather by accident than by strategic considerations, Brazil and the EU coincide in their policies towards Venezuela characterized by unconditional engagement. Neither Brazil nor the EU push for respect for human rights and democracy in Venezuela. Apart from some political declarations to condemn violence during the confrontations between government and opposition in the first months of 2014, the EU has neither adopted measures to demand

the respect for human rights in Venezuela nor openly criticized the government of Nicolás Maduro for the repression of political protests and the imprisonment of opposition leaders. Its passive policy can be attributed to the lack of instruments (low levels of development assistance and political dialogue) and the strong economic interests of Spanish companies. Brazil adopted a similar albeit more active policy by pushing towards Venezuela's integration in Mercosur, Unasur and Celac. Even though compared to the personal friendship between Lula and Chávez, Rousseff's relations with Maduro are more distant, Brazil did not alter its policy of close cooperation. Similar to Lula's efforts to mediate between president and opposition, the Rousseff government launched a mediation initiative of UNASUR and reached a first dialogue between Maduro and parts of the political opposition. In this sense, bilaterally and multilaterally, Brazil now exerts stronger influence in Venezuela than the EU or US (whose relationship with Chavism and post-Chavism has been distant and tense).

**Conclusion: limits and opportunities for cooperation on human rights**

This short review of human rights practices in some countries illustrate that Brazil has become a more diverse and autonomous country with a large number of external allies. It does not focus exclusively on its traditional partners the EU and US any more. China is a dominant economic and, in the future, political player for Brazil, India has become a stronger ally, and other countries such as Iran, Russia and South Africa with different positions on human rights, have a more prominent place in Brasília's foreign policy. These new spaces have also introduced changes in Brazil's international and regional human rights practice.

In the region, Brazil and Mexico are emerging global powers with larger influence on international organizations (WTO, OECD, UN) and international conflicts. Brazil's power strategy concentrates on balancing by joining the BRICS and establishing closer trade relations with China (Gratius 2013), while Mexico chooses the option of bandwagoning, through NAFTA and the asymmetric interdependence with the US. This is why Mexico is currently a closer partner to the EU and the US on the defence of human rights and human security than Brazil.

Nonetheless, there are no fundamental differences on human rights between Brazil and the EU and their policies on certain countries, as demonstrated by the cases above, could easily merge. Both the EU and Brazil defend constructive engagement and dialogue to promote human rights, but adopt different positions on sanctions and coercion at the global scene. Military intervention and/or regime change is clearly not a shared goal, and hinder a closer cooperation at the global stage, particularly when it comes to support for US positions. Therefore, the Brazilian concept of the RwP versus the R2P should rank high on the sector dialogues on human rights and security with the EU, as well as a closer cooperation at the Human Rights Council.

The situation at the regional stage is more favorable for EU-Brazil cooperation. Similar policies open a window of opportunity for a possible co-mediation in Cuba and Venezuela, using the influence of Brazil and the EU for the promotion of human rights in both countries that share a strong interdependence. Development cooperation in Haiti is also a shared goal and an issue for triangle cooperation.

Another field of opportunity is the human rights-development nexus. Both partners agree on an integral approach to link economic and social development to the respect of human rights through dialogue and development assistance. Like the EU, Brazil, as a new donor outside the OECD world, concentrates its aid flows equally between Sub-Saharan Africa and Latin America. These joint development and trade interests could be seen as an advantage for further triangle cooperation between Brazil, the EU and their African and Latin American partners.

*Fernando Brancoli & Diana Thomaz*

### **State-Supported Brazilian Business in the Global South: the Case of the National Development Bank and Vale**

*This article aims to analyse the internationalization of Brazilian companies in the Global South. It argues that Brazilian MNCs have benefited from the governmental ethical discourse and federal funds via national development bank BNDES. Using the case of 'Vale', we state that Brasília must create a formal structure to deal with human rights violations committed by corporations operating abroad.*

#### **Introduction: a Brazilian discourse of external relations**

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The last decade was marked by the economic awakening and international expansion of Brazil. The rise of the country's influence can be seen in numerous examples: Brazil opened a record number of new embassies (mainly in Africa) and attempted to influence important international issues, such as the discussions on the 'Responsibility to Protect' (R2P) and more recently the debate on the control of international espionage activity. Moreover, there is Brazil's engagement in UN peace operations with its leadership in MINUSTAH in Haiti as a central experience. Most of these initiatives, it is important to note, are concerned with states of the so-called Global South that were previously neglected by Brazilian foreign policy.

During the two terms of Luiz Inácio Lula da Silva (2003-2010), Brazil also embraced the Global South in pursuit of a greater international integration of its economy. Based on a period of strong growth, Brazil moved from being a receiver to being a donor of foreign aid (Hochstetler 2013), in addition to having repeatedly forgiven old debts of other states in the Global South. In this context, Brazil turned its attention to Africa and Latin America and between 2005 and 2010, the country spent around 1.6 billion dollars on international development programmes (Hiratuka & Sarti 2011).

In addition, the country's multinational companies (MNCs) also began expanding their activities in the Global South with significant support by the national government. In this sense, the relationship between the government and Brazilian MNCs fits into a broader strategy of the Brazilian foreign policy, in which the presence of these companies in the Global South would also represent an enhancement of the country's influence in this part of the world. Three major productive sectors – mineral, petrochemical and construction

industries – were especially considered for governmental support, corresponding to the three largest Brazilian multinational companies in other continents: Vale, Petrobras and Odebrecht, respectively. It is interesting to note that these companies are not only placed as important variables in a larger Brazilian presence abroad, but are constructed as key elements in the expansion and strengthening of the Brazilian presence in the Global South, especially in Africa.

Vigevani and Cepaluni (2007: 283) argue that the Brazilian foreign policy goal is to establish an *autonomy through diversification*, in which the government would expand its partnerships around the globe. The increasing numbers of South-South alliances, especially through economical agreements, would reduce, in the narrative deployed by the Brazilian government, the asymmetries in its external relations with powerful countries and increase the national negotiating capacity (Ibid). This Southern-focused diversification was strongly supported by a discursive line of reasoning that posits a supposed horizontality between Brazil and other Southern actors.

Considering this, it is important to highlight the discursive elements that attempt to legitimize Brazilian diplomatic and economic expansion southwards. Since most of Brazil's new initiatives were directed toward countries of the Global South, Brasília sought to distance itself from traditional aid and cooperation strategies carried out by Northern states that usually demanded forms of aid conditionality. Instead, Brazil emphasized commonalities between Brazil and the aid-recipient countries, such as a colonial legacy, poverty, massive slums in cities and an economy highly dependent on agriculture.

The common narrative of the Brazilian state was that its engagement with the Global South, often carried out through technical cooperation agreements, is based on equality and guided by far greater independence of the recipient country than Northern initiatives. Despite being debatable to what extent these considerations can be applied uncritically, it is important to keep in mind that this distinctive discourse is applied in almost all Brazilian international activities relating to the Global South. With it, Brazil seeks to legitimize its actions in the international arena.

### **The BNDES: internationalization of companies as a state policy**

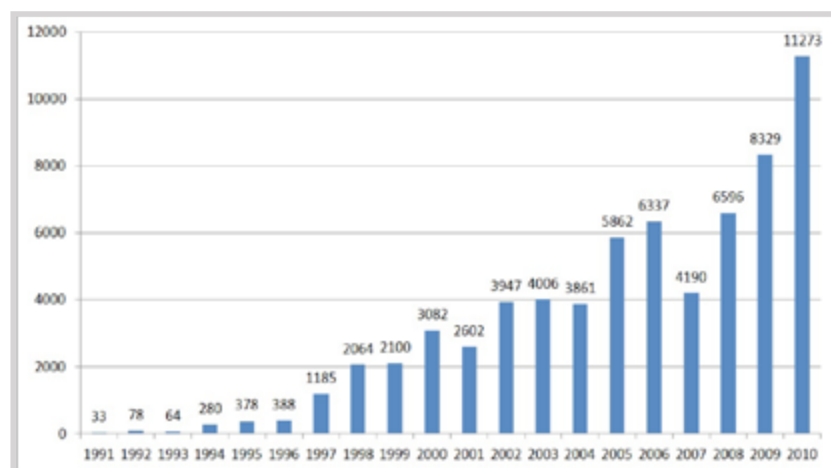
Although the ethical discourse mentioned above was mainly produced from within the government, Brazilian companies have benefited from it. Through the creation of direct negotiating channels with local authorities, the concession of loans and other financial supports, the Brazilian government has helped to pave the way for the internationalization

of Brazilian companies and their current establishment in countries of the Global South. Within this logic, Brazil increased the scope and financing of its national development bank, the *Banco Nacional de Desenvolvimento Econômico e Social* (BNDES). While the BNDES previously focused on domestic enterprises, it started to act internationally in 2003 offering credit for states considered of strategic importance and, as this article emphasizes, for the internationalization of Brazilian companies.

Brazil's investments through the BNDES for the internationalization of domestic companies became an official state policy. In 2005, Lula confirmed this at the World Economic Forum in Davos, saying that he constantly asked Brazilian businessmen not to be afraid to let their companies become multinational companies and make investments abroad, because this would serve the country (Cervo 2009). Freixo and Ristoff (2012: 6) argue that the role of the Brazilian state was decisive in the internationalization of national companies, especially in the Global South. They state that the Lula government adopted aggressive policies to support Brazilian companies abroad, and emphasize that this internationalization process helped many Brazilian sectors, especially through bilateral trade agreements and the opening of new markets in the Global South.

These statements are confirmed by data based on a survey of managers from Brazilian companies currently established abroad. It shows that a significant number of corporations considered the new credit lines offered by the federal government as an essential incentive for the decision to operate abroad. Two thirds of the respondents indicated that commercial and political agreements promoted by the government were important elements for choosing where these new companies would develop their businesses. The guarantee of lower tax rates negotiated in high-level meetings, for example, was one of the main reasons for the establishment of Brazilian companies in African states (Fundação Dom Cabral 2013).

As such, BNDES effectively served as an economic tool of Brazil's foreign policy. The graphic below illustrates the importance of the BNDES, showing how its export expenditures have risen over the last years (Cervo 2012: 9). This occurred mainly through the stimulus of a broader internationalization trend of Brazilian economy focusing on the private sector. In some situations, particularly in the opening of credit lines for infrastructure initiatives in South America and Africa, it is relevant to point out that the Brazilian aid – despite Brazil's rhetoric of unconditional aid – actually was conditioned to the hiring of national companies. Emblematic cases in Ecuador and Bolivia show that BNDES financed the reconstruction of roads and airports only if conducted by Brazilian companies.



Graphic 1. BNDES export expenditures in millions US\$. Source: Cervo (2012: 9)

These points demonstrate that the Brazilian state – through direct BNDES funding, the discursive use of a ‘differentiated Southern performance’ and political agreements – actively supported the expansion of national companies towards the Global South. Brazilian companies profited much from this material and political state support, as well as from the ethical discourse used by Brazil in its foreign policy.

This leads us to the question of how the Brazilian government must respond to companies that do not live up to the suggested governmental standard in their actions abroad. What if Brazilian MNCs are not walking the government’s talk? What should be the role of this same Brazilian government when the actions of these companies, already on international soil, do not meet sustainable practices or are violating human rights of the local population? If the country’s diplomatic discourse emphasizes a posture different from that of countries belonging to the Global North, what stance should it take to guarantee a non-exploitative performance of Brazilian companies abroad and avoid the reproduction of colonial constellations of power in its business with the Global South?

In order to further develop this argument, we will use the example of Vale, the second biggest mining company in the world, which receives significant financial support from the Brazilian government. This case study was chosen because the company illustrates Brazil’s contradictory relations with the Global South. The company’s internationalization can only be understood within the broader context of the country’s strategy of *autonomy through diversification*, but its exploitative conduct when operating in the Global South critically contradicts the horizontality discourse underpinning that strategy. Vale is, as we will demonstrate below, one of Brazil’s MNCs that is generously supported by BNDES funds and simultaneously is accused of grave human and environmental rights violations worldwide. In order to address the consi-

derable gap between discourse and (in)action of the Brazilian government, we will highlight in the last section of this essay some measures that could be taken both in preventing these rights violations and in guaranteeing accountability and redress.

### Vale and its close connections with the Brazilian state

Vale was created in 1942 as a mixed-capital company to explore mineral resources (especially iron) from Brazilian soil. It was originally named *Companhia Vale do Rio Doce* (CVRD) and was designed to compose a bigger project of industrialization and economic independence of Brazil by the nationalist government of Getúlio Vargas (1930-1945, 1951-1954). The company’s projects and profits multiplied with the passing of time. In the 1950s, CVRD became completely controlled by the Brazilian state and consolidated its position as a strong mining company in the world market. Initially operating in Minas Gerais, it gradually expanded its activities to other regions of the country, including the Amazon, where it started exploring the Carajás’s iron deposit in the 1980s.

In 1997, as part of the neoliberal policies under Fernando Henrique Cardoso’s administration, CVRD was privatized. Oddly, this transaction took place at the precise moment when it figured as one of the most profitable Brazilian companies. It was sold under suspicious circumstances for 3.33 million reais, an amount considered far too small for its mining resources and earnings. CVRD changed its name to Vale in 2007 and has kept a record of expansion and high profitability, ending 2013 with a US\$ 22.7 billion revenue.

Despite the fact that Vale is currently a private company, it still can count on considerable benefits from the Brazilian government. According to Revelli (2010), Vale not only received BNDES loans and advantages through the government’s infrastructural projects, but also profited from preferential electricity tariffs. In return, according to a probe carried out by the Brazilian Superior Electoral Tribunal, Vale supported 46 deputies, seven governors, and President Lula in his 2006 electoral campaign (Idem). Although these movements should not be understood as any form of official reciprocity, they expose a strong relationship between the company and the government.

Even though the Brazilian government owns only 5.5 per cent of Vale’s total capital, the massive loans conceded to the company via BNDES (like the 7.3 billion reais loan of 2008 and another of 3.9 billion reais in 2012) and the country’s expansive foreign policy towards the Global South, have contributed to the internationalization of the company. This began in 2001 but gained momentum in 2006. In that year Vale became the world’s second biggest mining company (after BHP Billiton). Currently, Vale extends its activities in 38 countries spread across the five continents.

## The birth of an international mobilization against Vale

Vale's worldwide expansion has been tainted by alleged violations of human, labour and environmental rights. In 2012, the company was elected the worst one in the world for its contempt for human rights and the environment by the Public Eye Awards. According to the NGO [Justiça Global Brasil](#), Vale's actions in 2012 were met with strikes and protests all over the world, including demonstrations in Maranhão and Altamira (Brazil), Cateme (Mozambique), Sudbury (Canada), Morowali (Indonesia) and La Loma (Colombia). Vale now has to deal with a global mobilization against its alleged violation of human, labour and environmental rights.

Created in 2010, the International Movement of People Affected by Vale aims to highlight the company's violations throughout the world, to elaborate strategies for pressuring governments and the company itself in relation to the damages caused by its mining projects, and to foster a space for the sharing of experiences. Amongst the members of the movement there are workers, environmentalists, politicians, students, indigenous peoples, displaced people and others who were somehow affected or mobilized by the company's infringements worldwide. The movement was consolidated in the International Meeting of People, Communities and Workers Affected by Vale, which gathered eighty organizations, unions and social movements from Argentina, Brazil, Canada, Chile, Ecuador, Germany, France, Italy, Mozambique, New Caledonia, Peru and Taiwan.

One explanation for the significant increase in the international visibility of Vale relates to its own field of activity and the economic change in the international system. Operating primarily with commodities, which reached record prices in the last decade, Vale found not only a favourable investment situation, but also the goodwill of the Brazilian government – its largest financial partner – in expanding its international activities.

The International Movement of People Affected by Vale produced the [Vale Unsustainability Report](#) (2012) as a direct challenge to the company's own annual 'sustainability report'. The document highlights unsustainable activities of the company through fifteen topics ranging from community, health and safety to land use and climate change, gathering examples from Brazil and abroad in an attempt to give voice to those whose lives and environment were negatively affected by Vale's projects.

Vale's activities are especially felt in countries of the Global South where mining activities are less regulated, as is the case in many African states. Vale has been present in the African continent since 2004 and has offices and mining projects in Mozambique, Malawi, Zambia, Angola, Democratic Republic of the Congo and Guinea. In Africa, Vale makes high rates of profit but is also involved in severe violations of human and environmental rights.

Thus, Vale has a great impact on the lives of local populations, as highlighted by the *Vale Unsustainability Report* (2012: 6):

“In Mozambique, for example, the Moatize mining mega project resulted in the removal of 760 of the 1,313 peasant farmer families registered for resettlement in a six month period between November 2009 and April 2010, to make way for the opening of coal mines. The company divided the families up between rural and semi-urban, using different criteria for the resettlements. Families that were considered 'rural' were relocated 45 km from their community of origin and 75 km from the city of Tete.”

## State responsibilities for Brazilian MNCs

Mining giant Vale, receiving generous support from the Brazilian government (both financially and diplomatically) is thus involved in some severe human rights violations in its overseas activities. As argued above, not only BNDES loans helped to facilitate the internationalization of Brazilian companies, but the government's diplomatic engagements with countries in the Global South helped pave the way for such investments. As stated earlier, these closer diplomatic ties are built upon a discourse of a common Southern identity and horizontality, contrasting with the (alleged) more imperialistic approach of states from the Global North. The question therefore remains: in what ways can Brazil assure that the internationalization of the domestic companies will correspond to the governmental rhetoric?

Within the arguments so far presented, there is a clear relationship between an increasing internationalization of Brazilian companies and governmental support. As noted earlier, the increasing credit flows of the BNDES, the diplomatic mobilization of Brasília and the corporate bandwagoning with the ethical discourse in which Brazil presents itself as a different actor in South-South relations were the key elements for a successful internationalization of domestic companies. Without these factors, the international presence of Brazilian companies would be different, if viable at all.

A problematic issue occurs when companies supported by Brasília, conduct business abroad while violating human rights of local populations and/or degrading the local environment. The case of Vale, as briefly presented in this paper, shows that one of the companies that has received considerable BNDES funding committed actions in clear violation of fundamental human rights in the last decade.

Under contemporary international law, it would not be possible to hold the Brazilian state responsible for actions outside the Brazilian soil undertaken by private companies like Vale. Despite the fact that Brazilian national law mandates that the state must ensure that com-



panies comply with human rights on national soil, the question is nebulous in respect to its applicability outside the Brazilian borders. However, non-binding mechanisms, of which the most prominent illustration are the 'United Nations Guiding Principles on Business and Human Rights' (UNGPs), already point to the responsibility of the state in cases similar to the one involving Vale. Endorsed by the United Nations Human Rights Council in 2011, the UNGPs are also known as 'Ruggie Principles', named after one of its central authors John Ruggie. The UNGPs attempt to provide guidance to states and companies in order to act in accordance with international standards of human rights, despite lacking any kind of binding structure.

Importantly, the UNGPs fourth principle addresses the nexus between state and companies, indicating that the former should adopt additional measures to protect human rights violations perpetrated by state-owned companies or those that receive significant support from state agencies and services. National governments could even require audits (due diligence) on human rights violations perpetrated by companies (Deva 2014).

In Brazil, the Ruggie Principles were adopted in 2003 with originally 31 signing actors, from governmental bodies to private companies, declaring that they would take the UNGPs as a guideline to operate. Today, the UNGPs have 593 signatories among companies and other organizations in Brazil, which makes it the fourth country in the world in number of signatories.

The issue of corporate social responsibility (CSR) has been gaining ground in the Brazilian business landscape in the past few decades, as companies have been showing an increasing interest in developing or supporting social projects and promoting the transparency and lawfulness of their work (Fischmann & Barbero 2003). The initiatives so far taken in that direction have been developed by companies themselves mostly operating domestically. This was often influenced by pressure from civil society, but without a consistent governmental agenda. However, when it comes to South-South engagements of Brazilian companies abroad, the debate is even more incipient, especially concerning the government's standing.

It is worth considering the state's possibilities in preventing and mitigating human rights and environmental violations like the ones committed by Vale. One possible strategy could entail the creation of an 'International Guideline of Social Responsibility' by the Brazilian government, to be followed by national companies. With this guideline, the country would commit itself to assist and finance companies wishing to operate abroad only if they pledge to respect a number of principles relating to human dignity,<sup>1</sup> especially those included in the

<sup>1</sup> Professor Adriano de Freixo (UFF - Brazil) presented this solution to the authors, in a private interview on February of 2014. Both authors thank professor Freixo for the pertinent argument.

mentioned UNGPs. The major difference between such a new guideline and the UNGPs is that the former would have a binding character. It would be a prerequisite for the Brazilian financial aid to companies, not just directions and instructions. It is noteworthy that this new apparatus would be complementary to the UNGPs, forming a broader framework related to companies and their respect for human rights whenever they operate abroad. This combination could enhance the implementation of the objectives proposed in the UNGPs in Brazil, galvanizing its viability. Despite the large number of companies indicating that they would follow the guidelines, the agreement was not significantly adopted in Brazil, and the government shows no signs of trying to increase their implementation. Vale, for example, is one of the signatories of the UNGPs; however, as already shown, its international activities were not constrained by the agreed principles.

This kind of practice would gather support from various NGOs operating in Brazil which have been calling for a greater commitment of the Brazilian government and national companies regarding the respect for human dignity in their international operations for decades. Awareness of the international activities of Brazilian MNCs is also increasing within academia and among legal professionals. It is fair to assume that these groups would also support actions in this regard. However, a range of interest groups could position themselves contrary to this normative apparatus. Yet, just the public debate that these negotiations could provoke would already represent a significant improvement.

In addition, a monitoring and accountability apparatus would need to be put in place so that the activities of Brazilian companies abroad could be tracked. Although the binding rules mentioned above may seem obvious, they could be important in the context of an *a posteriori* moment, i.e. in case a company already funded with public credits is found guilty of human rights violations. In such a scenario, this would not only allow Brazil to block future credit lines but also to demand the refunding of earlier credit transfers. This possible accountability and redress apparatus could combine governmental officials and a civil society network in tracking the activities of Brazilian companies abroad and holding them responsible through national judicial procedures. More than a significant bureaucratic structure, the promotion of a matrix of actors concerned with the subject, would be capable to produce awareness about the companies – and their possible human rights violations – and could generate enough momentum to prevent further violations.

## Conclusion

These arguments become important in the context of a broader discussion about the existence of new discursive and normative parameters of human rights in South-South relations. International investment and aid have historically been mostly restricted to countries from

the Global North, often igniting well-founded accusations of an exploitative neo-imperial relation. Brazil is currently classified as an upper middle-income economy and often referred to as an 'emerging country'. Still, its foreign policy discourse since Lula's government was based on the idea of a common identity with countries from the Global South, with which Brazil shares a colonial past and similar social problems at present.

The presence of Brazilian MNCs in countries of the Global South, as we have argued, is closely related to the political will of the government to support such companies. As shown at the beginning of this essay, only the significant funding from BNDES and vigorous diplomatic actions convinced the Brazilian business community to deploy commercial activities in countries of the Global South, an area which is traditionally perceived as being outside the scope of Brazil's international engagement.

The number of variables influencing the presence of Brazilian MNCs abroad is quite high. Economic crises and a change of government could suddenly rearrange the available funds and alter policy directions, perhaps removing the attractions for companies to invest in countries in the Global South. In recent discussions, opposition parties have indicated, for example, that they consider the 'sudden interest' in the Global South an erroneous choice, signalling that a rapprochement with former allies such as Europe and the US would be better for the Brazilian economy. Since it is a relatively new policy, it is also valid to assume that there is not a well-established bureaucratic apparatus to deal with these incentives for internationalization, which leaves even more fragile medium-term forecasts.

Independently from future projections, Vale's recent history of international expansion, made possible through governmental economic and diplomatic support, goes against the horizontal discourse held by the Brazilian government in its expanding South-South relations. The company has committed several human and environmental rights violations in the Southern countries where it established its activities. This has generated a worldwide civil society network aiming to curb its exploitative activities and hold it accountable to the wrongs committed. Surely, Vale is not the only company funded and supported by the Brazilian government disrespecting human rights abroad, but it is the one that has gained the most visibility in that area. The case of Vale prompts important questions about which responsibility the Brazilian government holds in guaranteeing that the country's companies do not behave through the same colonial logic as Northern actors, and that they align themselves with the Brazil's foreign policy discourse of respectful South-South engagements.

*Maurício Santoro*

## **Will Brazil Ever Become a Credible Human Rights Promoter in South America?**

*South America is the region where the emergence of Brazil is felt strongest. The country now has over 50 per cent of the continent's GDP and population, and borders almost every other nation in the region. But what role do human rights play in Brazil's foreign policy in the South American region since the return to democracy? This paper argues that even though Brazil has helped building important frameworks for international cooperation and democracy promotion (Mercosur and Unasur), it remains a reluctant human rights defender in the region. When it promotes human rights, it chooses non-confrontational, capacity-building approaches in the field of social and economic rights.*

### **Introduction**

To assess the role of human rights in Brazil's regional policies, we must start with some recent history. During the 1960s and 1970s, the Brazilian dictatorship (1964-1985) provided a model for the other national security states in the region. Its military officers and policemen played an important role in establishing Operation Condor, the regional alliance for political repression of opponents of the authoritarian regimes, which arrested and tortured many activists in South America, destroying the armed groups that fought the military governments.

The transition to democracy in Brazil (1984-1985) was a difficult process, achieved mostly through negotiations between a military junta on the one hand and more conservative wings of the opposition on the other. The fragility of these agreements is visible even today, for instance in the efforts of Brazil to pursue transitional justice and to punish those responsible for serious human rights violations committed during the authoritarian regimes. However, in spite of its weakness and instability, democracy was a game changer for Brazil, with a deep impact on its international relations.

In the 2000s, Brazil achieved a higher international status and started to be considered an emerging power, part of the BRICS, but this is a controversial concept with which to analyse its diplomacy, especially concerning human rights. The Brazilian governments of Fernando Henrique Cardoso (1995-2003), Luiz Inácio Lula da Silva (2003-2010) and Dilma Rousseff (since 2011) were able to control the hyperinflation, reduce poverty and inequality, and improve social and economic living conditions. However, Brazil did not experience any period

of high growth (unlike China and India), nor has it won wars (Russia) or radically change its foreign policy (South Africa). The Brazilian international strategy has been described as “soft balancing” (Flemes 2009) and “the quintessential soft power” (Sotero & Armijo 2007), highlighting the commitment to multilateralism and the peaceful resolution of conflicts. Its basic pillars have been present since the return to democracy in 1985, although there are changes which reflect the economic and political transformations of Brazil since that time.

There have been many discussions about the relation between Brazil's South American foreign policy and its other international goals as an emerging power. Some authors argue that regional leadership is an important basis for global standing (Lima & Hirst 2009). Others think that Brazil is a “leader without followers” in South America, but argue that this condition does not undermine its role in the BRICS (Malamud 2011). This is an important foreign policy debate, but for the purposes of this paper, it is enough to notice that the emerging power status is much more important to evaluate Brazil's position at the global stage than its regional position. In South America as a whole, the most meaningful watershed has been the end of the authoritarian regimes.

This essay argues that since the return to democracy in 1985, Brazilian diplomacy took an active role in promoting human rights in South America. That happened mostly in two ways: (1) the launching of regional integration projects (Mercosur, Unasur) which included clauses for the defence of civil and political freedoms; (2) the increased international cooperation in social policy and human rights, which is now particularly important in areas such as health, poverty alleviation and transitional justice, but is confronted with a big challenge in the field of migration.

There are limitations and contradictions in Brazil's approach to human rights in South America. The regional framework promoted by Brazil in Mercosur, Unasur or bilateral agreements, is based upon voluntary intergovernmental cooperation. This works better for preventing coups than for curbing human rights abuses committed by elected presidents. It does not have supranational mandatory institutions, such as the European Court. The Inter-American system of human rights does have these, for example the Inter-American Court of Human Rights. While Brazil is part of this Inter-American system, it is not an enthusiastic member. This, as we will see below, is especially true for the Lula and Rousseff administrations.

Article 4 of the Brazilian Constitution of 1988 states that foreign policy shall be based upon ten principles, including “the prevalence of human rights” and “non-intervention”.<sup>1</sup> In practice, this means that Brazil's diplomats attempt to solve international and internal crises only

1 [www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)

when they are invited to take on these roles by the foreign state's officials, and that they refuse measures of coercion or shaming authoritarian states in global human rights forums. The Ministry of External Relations considers these practices unfair and ineffective, for they would affect only fragile nations. Great powers and their allies are usually immune from this type of international pressure (Amorim 2011). Brazil has been especially reluctant in criticizing South American countries, which are usually among its major economic and political partners.

### Regional integration projects and human rights

The South American dictatorships suffered from an “overdose of geopolitics” (Ricupero 1995: 342), which led to a halt to most regional integration projects – at the time, they were developing plans for the creation of a free trade zone, *Alalc*. Although the authoritarian regimes cooperated in the political repression of dissidents, and Brazil and Paraguay joined forces to build the huge Itaipu power dam,<sup>2</sup> there was a strong backlash in trade negotiations during the 1960s and 1970s. The Argentine-Brazilian relations, for example, were marked by a high level of suspicion about each other's nuclear programme and a bitter dispute over the use of international rivers in the Southern Cone of the continent.

That changed with the return to democracy, combined with the difficult economic conditions of the 1980s and the foreign debt crisis. In Brazil, this led to a decision to seek a rapprochement with its old rival Argentina. This was inspired by both economic and political motivations. The new civilian presidents – José Sarney (Brazil) and Raúl Alfonsín (Argentina) – understood that they needed a *détente* period to calm down the extremists in their militaries. To rebuild mutual confidence, they created transparency measures in their defence systems and formed ABBAC, a joint binational agency to overlook nuclear facilities. They created the Integration and Economic Cooperation Programme (PICE, in the Portuguese acronym) between the two countries, with two dozen agreements. In 1991, Paraguay and Uruguay would join them in a customs union, the Southern Common Market (Mercosur). Venezuela joined in 2012 and the other countries in the region have trade agreements with the bloc or take part in some of its political forums.

Mercosur's focus on trade liberalization makes it a good example of the ‘open regionalism’ which characterized the South American continent in the 1990s. Mercosur, however, was not only about economic liberalization; it also gained a socio-political component when human rights, democracy and social issues became part of its scope. At the beginning, Mercosur was mostly concerned with labour rights and the participation of trade unions and business

2 Itaipu is the biggest hydropower dam of South America. It is a joint effort of Brazil and Paraguay, and its facilities spread through both countries. It currently is the source of 25 per cent of all electricity consumed in Brazil.

organizations. After facing several political crises – such as the attempted military coups in Paraguay (1996, 1999) – the leaders of the bloc negotiated the protocols of Ushuaia (1998) and Asunción (2005), which established that members of Mercosur must all be democracies that respect human rights. If prospective members do not fulfill these obligations, they are not allowed to join and if current members disrespect the protocols, they may be suspended from membership – in the precise terms: if there is “rupture of the democratic order” or “systematic violations of human rights and fundamental freedoms”.<sup>3</sup> This procedure was used for the first time against Paraguay in 2012, when the Congress impeached President Fernando Lugo without due process of law. Though the country did not have to suffer any economic sanctions, it was banned from Mercosur meetings until presidential elections were held in April 2013.

Mercosur is not the only regional integration initiative pursued by Brazil. The country also launched a political cooperation process – without the economic restrictions of a customs union – for the whole region, in an attempt to establish a stronger relationship with neighboring countries not attracted by Mercosur’s constraints, such as the high common trade tariff. This project, in which Brazil took on a leadership role, was launched in 2004 as the Community of South American Nations, and later its name was changed to Union of South American Nations (Unasur). It also has a clause on democracy, the Georgetown Declaration, modeled upon the Mercosur example. Though Brazil played a key role in creating Mercosur and Unasur, the question remains: what is the impact of these frameworks for Brazil’s promotion of human rights in the region?

### **Between rhetoric and practice: three examples from the region**

Since the end of its military dictatorship, Brazil has been preaching the importance of democracy and human rights for development in South America, and many times the country lived up to that commitment. For instance, Brazilian presidents and diplomats helped to prevent coups in Paraguay (1996, 1999) and in Venezuela (1992, 2002) and were mediators in serious political crises in Bolivia and Ecuador in the 2000s, which could have ended in a democratic breakdown. The fall of democracy in several Latin American countries was perceived as a threat to the regional stability, one that would risk the return of interventions by domestic armed forces (Santiso 2002).

However, there is a serious gap in that diplomacy: Brazil has not been willing to confront democratic governments in the region guilty of big human rights violations, even when they curb fundamental civil and political rights. There are three examples – Colombia, Peru and

<sup>3</sup> The full text of the protocols is available at: [www.mercosur.int/msweb/Normas/normas\\_web/Decisiones/ES/CMC.2005-06-19\\_NOR-DEC.17\\_ES\\_Prot-DD-HH-MCS.PDF](http://www.mercosur.int/msweb/Normas/normas_web/Decisiones/ES/CMC.2005-06-19_NOR-DEC.17_ES_Prot-DD-HH-MCS.PDF)

Venezuela – that illustrate this.<sup>4</sup> This pattern has remained constant for decades, but the emerging power status of the 2000s launched Brazil in what could be a new path in Haiti, which we will analyse in the next section too.

First, Brazil does not want to play a strong role in the Colombian internal armed conflict, the longest mass atrocity in South America, which took hundreds of thousands of lives since 1948. Nevertheless, Brazil avoids criticism of the Colombian government and of armed groups such as the FARC and ELN.<sup>5</sup> Brazilian diplomats helped to mediate in some hostage-taking situations by the guerrillas, but always refused to try a multilateral approach to the crisis in Colombia – something like the Contadora process for peace in Central America in the 1980s<sup>6</sup>, which Brazil supported only in a minor role. It is more a humanitarian approach than a political engagement. This is a serious omission, among other reasons because the Colombian violence has a spillover effect in many countries in South America, due to the impact it has on arms and drug trafficking. While the United States and the European Union consider the Colombian guerrillas to be terrorist groups, Brazil takes a different stand. It condemns the use of violence and urges the search for peaceful solutions, but does not have a list of organizations or countries classified as supporters of terrorism – in Colombia or anywhere else. In international discussions, Brazilian diplomats highlight the need to address the social and economic origins of terror, and are very cautious to the idea of military solutions, especially when they entail armed interventions by foreign states. Brazil is a critic of the US-backed [Plan Colombia](#) and stresses the possibility of a political solution for the Colombian tragedy, with the guerrillas becoming political parties – an argument especially strongly articulated under Lula’s presidency. The Brazilian governments have been ambivalent about the armed groups, allowing them to have representation offices in the country, but not granting them high-level meetings.

A second example brings us back to Peru 1992, when President Alberto Fujimori staged a

<sup>4</sup> Cuba is not a South American country, so it is outside the scope of this paper. Nevertheless, it is also a striking case of Brazil’s reluctance to criticize other Latin American nations which violate human rights, even that of the only authoritarian regime in the region.

<sup>5</sup> The Revolutionary Armed Forces of Colombia (FARC) and the National Army of Liberation (ELN) are left wing armed groups in the Colombian conflict, created in the 1960s in the context of the widespread influence of the Cuban Revolution and Marxism. They are responsible for many human rights violations, such as murders, kidnappings, rapes, torture, forced disappearances and bomb attacks against civilians.

<sup>6</sup> During the 1980s the Latin American countries were mediators in the political dialogue between guerrillas and dictatorships in Central America. The Contadora process was an important alternative to the military approach sponsored by the United States, and it resulted in several peace agreements, such as the ones in El Salvador and Guatemala. Óscar Arias, the President of Costa Rica, was awarded the 1987 Nobel Peace Prize for his leadership in this initiative.

self-coup, giving himself extraordinary powers to fight the armed insurgency of *Sendero Luminoso* and *Tupac Amaru*.<sup>7</sup> Brazil did not condemn the Peruvian leader, not even when he launched a border war with Ecuador in 1996, although Brazilian diplomats succeeded in mediating a peace deal between both countries. Fernando Henrique Cardoso, Brazil's President at the time, wrote that he did not support Fujimori, but did not want to interfere with the domestic politics of Peru when "more powerful countries" were doing that. This ambivalent expression was a euphemism for the United States. Brazil often rejected the US' military interventions in Latin America, especially its support to coups d'état, and has tried to balance US influence through diplomacy and political solutions. Nevertheless, Cardoso later admitted his embarrassment at being criticized by the Peruvian democratic opposition for his lack of action (Cardoso 2006: 639-640).

The third example concerns Venezuela. Brazil opposed both the attempted coups by Hugo Chávez (1992) and his enemies (2002). It also engaged in the negotiations between the Venezuelan government and the opposition in the 2000s, chairing the group called 'Friends of Venezuela', which included both South American and European countries (Brazil, Chile, Mexico, Portugal, Spain and the United States). There were some important measures undertaken which had positive consequences, such as the promotion of dialogue among the Venezuelan political parties. However, Brazilian authorities refused to condemn Chávez when he clearly violated civil and political rights, such as closing a TV network critical of his government or arresting politicians and a judge who conflicted with his interests. As a country respected for its moderate international statements, Brazil would have been an important player in containing the most disturbing actions of the Venezuelan government. Brazil's position was especially controversial when Venezuela joined Mercosur – was Chávez' behavior in compliance with the clauses on democracy and human rights? Venezuela became a full member of the bloc in 2012, while Paraguay was suspended due to the impeachment of Fernando Lugo. It is hard to argue that Chávez had more respect for the rule of law than the Paraguayan Congress, and the contradiction highlighted the problem of double standards about human rights violations in South American integration. Presidents – whatever their ideology is – do not get reactions as strong as those directed at the opposition forces that try to depose them.

The fact that Mercosur and Unasur do not have any supranational and independent mechanisms to address human rights violations, allows for the contradictions and double standards mentioned above. In order not to be subjected to a harmful decision or the negative vote of a majority of its neighbours, Brazilian authorities only accepted integration proces-

<sup>7</sup> Peruvian Marxist groups which launched a series of armed attacks against the government in the 1980s and 1990s.

ses based upon intergovernmental consensus. That makes it extremely hard to convince a president to allow criticism of himself from a regional forum. The condemnation of a coup is less difficult, because every government in South America shares an interest in stability, especially given the turbulent regional political history in the recent past.

### **Brazil and the Inter-American system of human rights**

Brazil is also a part of the Inter-American system of human rights, which falls under the Organization of American States (OAS). It is made up of a Commission, a Convention and a Court. The system applies to all American countries, and not just to South America, and it is the oldest integration process in the region. It was created in 1948, as one of the anti-communist alliances of the cold war. Historically, the United States had a strong reign over the system, and used it to impose economic and political sanctions on Latin American countries with which it was in conflict, such as Cuba (1962) and the Dominican Republic (1965). During the Carter administration in the US, it played an important role in reporting human rights violations in Argentina and Chile.

In the 1990s and 2000s, the Inter-American system developed a sophisticated framework with the creation of the Inter-American Court of Human Rights. Small but influential, it created an international jurisprudence in the region, with progressive decisions on issues such as LGBT rights, public security and transitional justice. Brazil ratified the American Convention on Human Rights in 1992, and accepted the jurisdiction of the Court in 1998. Remarkably, the US did none of these things.

However, participation does not mean that Brazil is happy with the OAS. Ever since the 1990s, Brazil chose South America – and not Latin America – as its priority for regional integration, considering that NAFTA and other free trade agreements tied Mexico, Central America and the Caribbean in the sphere of influence of the United States. Building Mercosur and Unasur, Brazil created institutions in which it does not have to compete with American power for leadership. This idea was also shared by other nations, especially the left wing governments of Argentina, Bolivia, Ecuador and Venezuela in the 2000s.

The Inter-American Commission and Court took many decisions that criticized Brazil for human rights violations, for instance on issues such as gender violence and public security. The governments usually accepted this criticism and engaged in a dialogue that led to the reform of legislation. For example, the *Maria da Penha Bill* (2006), an international benchmark in the fight for the rights of women, was one the results of discussions in the OAS. Nevertheless, two decisions of the system created controversy in Brazil.

In 2010, the Court ordered Brazil in the case *Gomes Lund: Araguaia guerrilla* to investigate serious human rights violations committed by the dictatorship and bring the perpetrators to justice, and stated that the Amnesty Law of 1979 does not apply to crimes against humanity. This decision was never implemented by the Brazilian government. In 2011, the Commission ordered Brazil to suspend the construction of the Belo Monte dam in the Amazon, in order to ensure that the rights of the indigenous peoples were respected. President Rousseff removed the ambassador from the OAS and threatened to cut the Brazilian financial contributions to the organization.

From 2011 to 2013, the Inter-American system went through a difficult reform and many Latin American countries (especially Bolivia, Colombia, Ecuador and Venezuela) became harsh critics of it. In the last years of Hugo Chávez' administration, Venezuela denounced the American Convention and left the jurisdiction of the Court. The Belo Monte affair was the low point in a troubled time in the relation between Brazil and the OAS, but the Brazilian positions during the reform debate were characterized by moderate criticism, mostly about the need for better accountability and transparency in the Court and the Commission of Human Rights. However, Brazil refused to condemn the attacks on the Inter-American system and up to the writing of this paper it still does not have an ambassador in the organization; it is being represented by a diplomat of lesser rank.

### Brazil and regional promotion of human rights

The return to democracy changed the way in which Brazil's foreign policy is being formulated. In the last three decades, it is moving away from being a closed affair to a multi-stakeholder process (Lopes 2013). This is a long road and the influence of Brazilian civil society on diplomatic affairs is still well behind the degree of citizen participation achieved in, for instance, the making of social policy. Nevertheless, the increasing pressure from civil society made the international relations agenda of Brazil broader, incorporating several human rights issues on health, food security and poverty reduction, through cooperation in social policies (Pinheiro & Milani 2012).

Perhaps the best example to illustrate how strong demands from Brazilian civil society were met by effective public policies, is the famous *Bolsa Família* (Family Allowance) programme. The programme targets the extremely poor families, that receive allowance from the federal government in exchange of fulfilling some conditions, like keeping their children in school and taking them to vaccination campaigns and other preventive health measures. It became one of the most important social policies in Brazil and a symbol of the country's development model, which aims for economic growth by the creation of a mass consumer market and uses state action to end extreme poverty and to reduce social inequalities. The programme

was replicated and adapted to local realities in other South American countries. Argentina, Bolivia, Chile and Venezuela by now have implemented local versions of the programme, all receiving technical support from Brazilian professionals.

Thus, the Brazilian way to promote human rights in South America is through international cooperation in social policy, helping its neighbours to develop similar initiatives to the successful examples in Brazil. Human resources – the training of foreign civil servants – is at the center of these efforts. It was a major reason for the creation of the Human Rights Policy Institute of Mercosur, which does exactly that, and is helping governments to develop common standards. This represents important achievements in promoting social and economic rights, but in terms of civil and political rights there are ambivalent positions, as noted above.

Last to mention is that, from 2004 on, Brazil took leadership in the UN's MINUSTAH mission aiming to stabilize Haiti. MINUSTAH is a very complex operation which deals with political stability and state building, and also promotion of democracy and human rights. The Brazilian government worked in partnership with NGOs such as Viva Rio and ActionAid in projects aimed at curbing violence, fighting diseases, protect children and dealing with other social and economic human rights. Although Brazilian soldiers have been part of peacekeeping operations for decades, and commanded ONUMAZ in Mozambique for one year, Haiti represents a different level of commitment for three reasons. Brazil's generals have been the force commanders for one decade, Brazil sent thousands of troops to the country (its biggest military operation abroad since World War II) and the scope of the mission has been broader than the usual, including combat and the control over slums in the Haitian capital. South American soldiers are half of MINUSTAH, so the mission became an important initiative for regional military cooperation, under Brazilian leadership (Hirst 2007). This high level of engagement is mainly explained by Brazil's desire for a permanent seat at the UN Security Council.

### Conclusion

Although there are ambiguities in Brazil's regional approach, its main contribution to human rights in the region was made indirectly through its support for regional integration and the creation of multilateral institutions. The two main regional integration projects, Mercosur and Unasur, have forums for international cooperation in the field of human rights and included mandatory clauses for the protection of basic civil and political freedoms. Though these regional institutions contribute to the spread of norms related to human rights, their current actual influence remains limited. They have been quite successful in preventing coups d'état, but lack efficient mechanisms and/or political will for curbing human rights violations committed by elected governments. Brazilian participation in the Inter-American

human rights system has also been important, but not a priority, and both Lula and Dilma Rousseff refused to comply with some of the decisions of its institutions. They see South American institutions, without the influence of the United States and mandatory supranationality, as safer grounds for Brazil.

Human rights are only slowly becoming part of Brazil's foreign policy for the South American region. Brazil itself is very reluctant to practice 'naming and shaming' of its neighbours, as illustrated in this paper with the cases of Colombia, Peru and Venezuela. Until today, narrow economic and political state interests of Brazil in its region keep prevailing over more principled ideas concerning human rights.

Brazilian foreign policy has a better record in promoting human rights through regional cooperation on social and economic rights, based upon the successful experiences of the last years in Brazil on issues such as improving public health and poverty reduction. The potential for Brazil as a regional human rights promoter might lie in this exportation of domestic successes.

The transition from dictatorship to democracy was a watershed for Brazilian foreign policy in South America. The new emerging power ambitions have been changing Brazil's goals on several global chessboards, but they did not transform the basic pattern of regional diplomacy. Of course, new levels of complexity were added – MINUSTAH is one important example – but being a member of the BRICS did not meaningfully alter the human rights positions in South America, which are largely an incremental development of the initiatives that began in the 1980s.

From the perspective of human rights NGOs, Brazil is a key player to address in debates on the politics of South America. Although Brazil is not the most innovative country in the region concerning this issue (Uruguay is far more daring), its positions are influential and help to settle regional agendas in the UN and other international forums. Its diplomats are also important mediators and negotiators in many crises on the continent, especially in the troubled Andean sub-region (Bolivia, Colombia, Venezuela). Let us hope that Brazil takes on a leading role in the region and that it becomes a more reliable human rights protagonist in the decades to come.

*Fiona Macaulay*

## **The Impact of Domestic Politics on Brazil's Foreign Policy on Human Rights**

*Domestic politics in Brazil is still very disconnected from the country's foreign policy and international stance on human rights issues. That indifference creates a twofold problem, both for Brazil's ambition to be a major world power, and for a world that needs a country with Brazil's heft and legitimacy with the nations and institutions of both the Global North and South.*

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### **Introduction**

The other contributors to this volume have noted a certain paradox in Brazil's attitude to human rights promotion beyond its borders: that it is an enthusiastic participant in norm building, but very reluctant to criticize individual nation states due to a strong underlying belief in national sovereignty. Its engagement with the international governance regime is driven largely by self-interest; that is, around power projection and achieving its 'destiny' as a global power, a position that has survived domestic political regimes of many different hues. In this sense, Brazil is quite self-obsessed and inward-looking, even as it participates in international forums. This chapter examines what is going on, politically, within Brazil that would see the country pursue human rights agendas more actively beyond its borders.

Specifically, it looks at the extent to which domestic politics and political institutions and actors influence Brazil's foreign policy, particularly its human rights dimension. Domestic politics is here understood principally as the institutions that comprise the systems of government and of representation (party politics, electoral contests and voter attitudes). Civil society is another important component of domestic politics whose engagement in foreign policy formation is addressed by the chapter contributed by Lucia Nader and Laura Waisbich from Conectas. In relation to the branches of government, the most important elements are the President of the Republic, the Ministry of External Relations (known as the *Itamaraty*), the Supreme Court, and the legislative branch. The latter is, of course, shaped by the ideological proclivities and voting behaviour of the elected representatives in the National Congress, in a very fragmented and loose party system. This last factor, combined with Brazil's unique geographical and historical characteristics, has not encouraged the Brazilian electorate to prioritize foreign policy issues, and the mass media have only recently become as interested in Brazil's impact on the world as in the world's view of Brazil.

This chapter also takes a wider view of human rights issues within foreign policy. Other contributors have discussed Brazil's engagement with new norms around interventionism and conditional sovereignty developed recently in the global system (R2P) and with specific regional or multilateral institutions for the defence of human rights (UN and OAS). However, Brazil contributes to norm- and institution-building in order to tackle not just the most egregious forms of human rights abuses (genocide, torture and so forth) but also specific rights, particularly in the field of civil/identitarian rights such as women's and LGBT rights. So, the chapter asks: what rights-related matters are important from the standpoint of domestic political actors and competition, and what implications does that have for Brazil's activities in relation to protecting these rights beyond its own borders?

### **The Ministry of External Relations: insulation or isolation?**

Foreign policy making in Brazil arguably suffers from too little politics as opposed to too much, as until very recently it was the preserve of a cautious and conservative bureaucratic elite within the Itamaraty that had deliberately insulated itself from undesirable political influences, of both political parties and individual presidents (Burgess 2013). Since the foundation of the Ministry's mission under Baron Rio Branco in the early twentieth century, the Itamaraty has regarded itself as a cosmopolitan, highly professional body modelled on European diplomatic corps, above partisan considerations, defending the national interest (by their definition) and to some extent, embodying the national identity (Casarões 2014). Given the instability of the party system, and two prolonged authoritarian periods, throughout the twentieth century, the moral authority held by the Itamaraty clearly served a purpose.

However, as both Brazil and Latin America began to democratize from the 1980s onwards, and other regions of the world underwent rapid change, that monopoly was first challenged by presidents who were unwilling to delegate in this area. Cardoso and Lula became far more pro-active personally; travelling, hosting summits and recalibrating foreign policy (Cason & Power 2009). The portfolio of foreign trade that the Itamaraty held alongside that of diplomacy was then gradually opened up to business sector representatives. Brazil's increasing co-operation with other developing countries as part of its 'South-South' soft power strategy has also seen more ministries, such as those responsible for health, education, agriculture and tourism, engage in bilateral relationships with their overseas counterparts without the direct guidance or oversight of the Itamaraty's Agency for Brazilian Cooperation. The 1990s also saw more intense scrutiny of Brazil's own human rights record as Inter-American, UN and non-governmental bodies carried out inspections and published reports, and violent incidents involving street children, prisoners, landless workers, and indigenous people hit the front pages of the world's press.

However, it seemed that the Itamaraty's Human Rights Secretariat was more interested in managing Brazil's international reputation and relationship with inter-governmental bodies than in debating the state of human rights in Brazil, or elsewhere in the world. Even in the democratic era, Brazil was very slow to submit progress reports to the various treaty bodies, or to engage with rulings of the Inter-American Court on Human Rights. Finally, since the mid-1990s the Ministry of Justice has pushed aside the Itamaraty's insistence on the principle of absolute sovereignty by getting Brazil to sign up to Optional Protocols to various human rights conventions and to the jurisdiction of the Inter-American Court, thus submitting it to the scrutiny of external bodies. It is now therefore consistent for Brazil to insist that other countries subject themselves to similar international scrutiny (as President Rousseff did in relation to Iran). Yet, it still resists criticizing individual countries unilaterally, and this half-way house creates paradoxes and hesitation.

Brazil's foreign policy and stance on international human rights issues are driven by the long-run tropes of economic nationalism, on the one hand, and by reciprocal multilateralism, on the other. Montero (2014) argues that these two principles are in tension much of the time, with Brazil happy to engage in relatively cost-free contribution to international institutions and norms for the protection of human rights, but unwilling to set aside its historical adherence to the principles of sovereignty and non-intervention to exercise significant leadership. To give an example: to the complete surprise of the relevant civil society groups, in 2003 Brazil presented a resolution to the UN Commission on Human Rights to affirm rights based on sexual orientation. It was of course immediately contested, with groups lobbying for and against. Brazil came under pressure both from the Vatican and the Organization of Islamic Conferences, particularly as it was courting the latter, and chose to defer the proposal until it lapsed from the Commission's agenda.<sup>1</sup>

### **Parties and the party system**

#### *The PSDB- and PT-led governments*

The two recent presidents who practised a new kind of presidential diplomacy, Fernando Henrique Cardoso (1995-2002) and Luiz Inácio Lula da Silva (2003-2010), were founders and builders of new parties; the *Partido da Social Democracia Brasileira* (PSDB) and the *Partido dos Trabalhadores* (PT) respectively (Cason & Power 2009: 118). Both were closely tied into transnational affinity networks (European social-democratic parties, European and Latin American socialist parties, and anti-imperialist movements from the Global South). Both presidents had suffered persecution and exile under the military regime and were well-disposed to a human rights agenda (Macaulay 2010). Indeed the Cardoso government

<sup>1</sup> [www.refworld.org/docid/492ac7c72d.html](http://www.refworld.org/docid/492ac7c72d.html)



created much of the federal government's enduring human rights infrastructure, such as the National Secretariat for Human Rights, and the National Human Rights Plan. However, the PSDB, inclined towards liberal principles of free market and civil liberties, was largely elite-led in party-organisational terms, meaning that its manifesto and human rights policy were the product of a tightly knit group around Cardoso. The PT, on the other hand, was a well-structured mass-based party whose rank-and-file, drawn from the trade unions, progressive Catholic church and social movements, instinctively spoke the language of human rights; particularly in relation to disadvantaged groups in society. It was the PT that constructed many of the additional human rights bodies, such as legislative committees in the Congress, state legislatures and municipal chambers, and the joint state-civil society advisory councils at all three levels of government. The PSDB- and PT-led governments of the last twenty years opened up Brazil to multiple inspections by human rights bodies and deepened, in general, collaboration with these bodies both in regard to Brazil's own internal affairs and, more generally, the human rights norm- and institution-building in which Brazil has been engaged since the end of the second world war.

However, the PT-led governments balanced apparently contradictory positions: following a very tight fiscal policy, and thus prompting criticism that it has delivered insufficient social distribution to satisfy the party rank-and-file, whilst championing economic nationalism and sovereignty by constructing South-South alliances – part of what Burges (2013) calls a collectivist strategy – that do appeal to the PT's electoral and party-activist base. It is this use of foreign policy, and related human rights positions, which tended to be more sympathetic to leftist governments such as those of Cuba and Venezuela, for a left-leaning domestic political audience that distinguishes the PT. President Dilma Rousseff (since 2011) signalled early that she might be more willing to criticize even 'friendly' governments, *pace* her initial criticisms of the Iranian regime. Although foreign policy, and hence human rights internationally, was given much less importance under her tenure, Brazil's withdrawal of its diplomats from Israel in July 2014 in response to the latter's assault on Gaza saw the government prepared to take an early stance (albeit not the first Latin American country to do so).

But most political parties in Brazil do not look or behave like the PT. International human rights debates have salience only among the PT and other smaller leftist parties, and, to a degree, among elements of the PSDB. Brazil's party system is notable for its fragmentation and lack of ideological differentiation. There is a discernible left-right spectrum, but many politicians are less interested in the ideological positions of their party than in its proximity to state power and the rent-seeking and public goods that that offers. As Power and Zucco (2009) note, since the transition to democracy the average ideological position of legislators has shifted to the left, the result of the twenty-year dominance of the centrist PSDB and the more left-wing PT under the presidencies of Lula and Dilma. There is also a reluctance

to identify explicitly with a neoliberal or conservative position. So, what does this mean for Brazil's human rights policy outside its borders? Generally, explicitly right-wing parties are more hostile than centrist or leftist liberal or social democratic parties to the international human rights regime, especially to the notion of supranational conventions and agreements that trump national constitutions and laws, and imply external scrutiny of domestic human rights records. The classic case is the US, where the Republican Party has not only refused to allow the ratification of key human rights conventions, such as those on the Elimination of all Forms of Discrimination against Women and on the Rights of the Child, but has also shaped its foreign policy on ideological lines, especially its development assistance policy and hostility to certain positions that emerged from UN conferences, such as the notion of reproductive rights. In Europe, resistance to supranational governance, in the form of the EU and its human rights system (the European Convention on Human Rights and Court of Human Rights), is also most vigorous from the right of the spectrum. In Brazil, there exists very little by way of a *party-centred* political right that holds vehement positions in relation to Brazil's foreign policy or external human rights policy and would or could exercise a veto. There is of course a notable conservative presence but this is manifest in different forms, particularly in cross-party groupings, which have increased, not decreased, in importance despite the passage of time and consolidation of democracy in other realms.

#### *The cross-party benches*

The fragmentation of the party system has increased since the transition to democracy. In the mid-1990s the eight largest parties held 90 per cent of the seats in the Chamber of Deputies; by the 2010 elections, when over twenty parties gained representation, they held only 77 percent of the seats. Although a ruling by the Supreme Court in 2007 put an end to the frequent post-election party-switching, the inevitable multiparty coalitions put together by Presidents Cardoso, Da Silva and Rousseff for the purposes of governing had very low ideological coherence. Few parties have a clearly stated programmatic position, and the most notable exception, the PT, has itself moderated its position as its experience of governing increased. Many of the smaller or newer political parties are simply personalistic rent-seeking vehicles. To get legislation passed under such circumstances, presidents have had to resort to offering elected representatives 'sweeteners' such as investments in their constituencies, or, in the case of the *mensalão* scandal under the first Lula government, a direct monthly backhander to keep them onside. Not only have ideological divisions between parties dissolved (Montero 2014), but voters themselves also do not hold deep-seated views on specific issues that map clearly onto a party preference. All of this means that foreign policy is not driven by ideological party-political positions, and that politicians do not feel pushed into foreign policy positions by the views of the electorate, or anticipate electoral reward or punishment for the foreign policy positions that they do take.

In this context, the Brazilian parliament has seen cross-bench single-interest groups grow in size and importance. The so-called *bancada evangélica* is composed of members of various Pentecostal churches, which are booming in Brazil and rapidly displacing the Catholic church in terms of adherents in large urban areas. It has been growing steadily since the 1980s and although it suffered a setback in the 2006 elections following high-profile political scandals in which members were involved, it bounced back in 2010 to elect 63 sympathisers to the Chamber of Deputies and three to the Senate. If this grouping were a political party, it would be third largest in the Chamber, with 12 per cent of seats.<sup>2</sup> Generally speaking this *bancada* votes with the government, except on key areas of domestic policy affecting sexuality and reproduction. Indeed, one of the reasons that the grouping has grown so rapidly is that the PT, despite its move into national government, has maintained its manifesto position that abortion should be decriminalized. Although the two PT presidents have not put forward any legislation in this regard, this issue made for an easy rallying point for religious opponents. Many evangelical representatives won their seats due to their access to the airwaves through local radio concessions and dedicated TV channels and their politicization of the abortion question forced Dilma Rousseff into a second-round run-off in 2010.

In the US, the increasing religious fundamentalist influence on the Republican Party has had a direct effect on overseas development assistance as a component of foreign policy: the 1973 Helms amendment prevented US dollars from funding any overseas organizations providing, or offering counselling about, abortion, whilst the 1984 Mexico City policy barred any overseas organisation receiving US funding from accepting money for abortion advice from non-US sources. This is clearly a party political issue: every Republican president has upheld the amendment and every Democratic one has overturned it. These two laws have severely compromised the US' capacity to be in the forefront of advocating for women's sexual and reproductive rights on a global stage. For Brazil, the force of the religious cross-bench grouping is primarily felt domestically: abortion is still allowable only in the severely restricted cases of risk to the mother's life, rape or incest, and the specific medical condition of anencephaly, with periodic attempts to outlaw it completely under any circumstance. Yet, Brazil has maintained its role of global good citizen when debating women's rights, including sexual and reproductive rights. It was a very active participant in the 1993 UN Conference on Human Rights, which established women's rights as human rights, the UN Conference on Women in Beijing and in the other UN conferences on social issues in the mid-1990s. Indeed, Brazil has a track record of opposing the Vatican's line on sexual and reproductive issues, articulated via several Latin American countries during the UN conferences in the 1990s.

<sup>2</sup> [politica.estadao.com.br/noticias/geral,bancada-evangelica-no-congresso-cresce-quase-50,622384](http://politica.estadao.com.br/noticias/geral,bancada-evangelica-no-congresso-cresce-quase-50,622384)

So, could the politics of religion played out in Brazilian domestic politics possibly cross over into Brazil's positions on such issues in the international arena, either in the shape of new international declarations and commitments on issues such as sexuality and reproductive rights, or in its development assistance? So far, there is no spillover from domestic to foreign politics. The country's Pentecostal churches are homegrown and, where internationally engaged, are seeking new adherents rather than engaging global networks seeking to alter global norms or the Brazilian government's activities overseas. Brazil was the first country to pledge South-South cooperation in the area of sexual and reproductive health in its United Nations Population Fund country plan, a partnership that was unopposed by domestic political actors.<sup>3</sup> Similarly, in relation to HIV/AIDS policy, the *bancada evangélica* won a domestic victory in June 2013 when it forced the resignation of the director of Brazil's Department for Sexually Transmitted Diseases in the Ministry of Health following the launch of public information material aimed at prostitutes with the aim of destigmatizing their work. The material they opposed was actually consistent with Brazil's policy approach, which has successfully halted the rate of infection since the 1990s by involving and empowering at-risk groups, and treating HIV/AIDS as a human rights issue. This approach is now strongly identified with Brazil, which has persuaded the international community of the effectiveness of the model, which tightly links prevention and treatment. However, its advocacy of local production and free distribution of generic anti-retroviral drugs has been easier to 'export' to other Global South countries than its espousal of the rights of at-risk groups. This is due less to the objections of religious advocacy groups within Brazilian politics, and more to local cultural attributes in other developing countries. So, in short, neither the organization of religious groups across party lines in Congress, nor the positions of the Catholic church or new Pentecostal churches, have had, or will have, much impact on the Brazilian government's support *internationally* for women's and sexual and other minority health and reproductive rights, whatever veto power they may exercise at home.

The counterpart to the evangelical cross-party grouping is the women's cross-bench forum, the *bancada feminina*. It also has been in existence since the return to democracy but, unlike the former, has been unable to grow due to the constraints imposed by an open-list proportional representation system in districts with large magnitude and by parties with weak social roots. The proportion of women elected to the Chamber of Deputies has barely shifted in twenty years, with only 8.6 per cent in 2010. However, despite their small numbers they have been relatively influential, working with networks of women's organisations and the federal government department for women in promoting women's rights both internally, in relation to domestic legislation, and externally, influencing the government's positions in UN conferences. The women's caucus has also, like human rights groups in Brazil, come

<sup>3</sup> [www.unfpa.org.br/novo/index.php/sobre-o-unfpa/cooperacao-sul-sul](http://www.unfpa.org.br/novo/index.php/sobre-o-unfpa/cooperacao-sul-sul)

to use 'boomerang' techniques, taking its claims to the international community when the government has failed to protect and promote specific rights. The Maria da Penha case, that of a woman whose abusive husband had left her disabled and had never been prosecuted, was the first case of domestic violence considered by the Inter-American Commission on Human Rights. Thus ironically it was the *omission*, rather than the advocacy, of the Brazilian government that opened up new ground in human rights in the region, even though it was Brazil that had hosted the conference that resulted in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, in Belém do Pará, the first such regional instrument in the world.

Perhaps the other salient caucus in Congress is the *bancada da bala* (literally, 'bullet benches'). Now 27 strong (holding 5 per cent of seats), it consists of representatives closely tied to the police and to major gun manufacturers. Fully half come from the southern state of Rio Grande do Sul, where the latter are located, which supplied over R\$2 million in election campaign donations in 2010. The implication of this leverage in national politics is not just domestic (funding from these manufacturers defeated an important referendum in 2005 that would have drastically curtailed small arms ownership in Brazil), but also regional (there have been largely failed attempts to curb legal and illegal small arms flows between the member countries of Mercosul), and international. Brazil is one of the largest small arms exporters in the world and the destination of its products is unregulated (Dreyfus et al. 2010).<sup>4</sup> This would be highly problematic for any situation in which Brazil wanted to support an arms embargo to a specific location. Another group of adherents to the *bancada da bala* are former civil and military police officers and their sympathizers elected to political office, which is a growing phenomenon (Macaulay 2011). They have managed to exercise the power of veto over any structural reform of the Brazilian police, who continue to violate human rights (through extrajudicial executions, torture and so forth).

This would seem a domestic impact, albeit one that inflicts reputational damage on Brazil as a credible human rights advocate. However, it does have an international dimension, as the majority of police forces remain militarized in Brazil, and the armed forces have retained reserve policing powers, which were consolidated rather than reduced under President Cardoso. Brazil's engagement in the MINUSTAH peacekeeping mission in Haiti serves the principal purpose, in the view of the army, of training soldiers, when called upon, to deal with armed violence back in Brazil's inner cities. This instrumentalization of peacekeeping and foreign engagement for domestic purposes still characterizes much of Brazil's approach to international human rights issues (Cavalcante 2010). In addition, the

<sup>4</sup> See also [apublica.org/2012/03/brazil-arms-exports-country-preaches-peace-sells-tons-arms](http://apublica.org/2012/03/brazil-arms-exports-country-preaches-peace-sells-tons-arms)

blurring of policing, military forces and peacekeeping, means that Brazil is unlikely to be a ground-breaker internationally on any of these issues, whereas other Latin American countries have invested far more in peacekeeping as an alternative role for their armed forces.

## Conclusion

Foreign policy, of which human rights is a subsection, is now engaging more political actors in Brazil than ever before. But this is a relative statement and, whilst the erstwhile monopoly of the Itamaraty has been broken, it still remains a matter of largely elite debate. The consensus is that the connection between domestic politics and foreign politics remains weak, particularly in the parliamentary/party domain where the quality of debate about Brazil's place in the world and the extent to which it should advocate for human rights protection, is fragmentary and contradictory. There is a disconnection between what Brazil's diplomats and presidents say in general terms and advocate on a world stage, debates at home, and the activities of its institutions. This leaves international actors unsure how to read Brazil, as the cordial gentleman of the Global South, always supportive of the big picture on human rights, but in the end still more concerned with its own domestic affairs, and how the world affects these rather than vice versa. At the time of writing, campaigns for the election of president, state governors, and federal and state legislators to be held in October 2014 (and a second round in November for majoritarian posts, such as the presidency) are underway. However, despite all the electoral uncertainties,<sup>5</sup> no major actor has indicated a different position on Brazil's long-held positions in relation to foreign policy and human rights. Political navel-gazing, the low public profile of these issues and continuing delegation of policy making to the Itamaraty and the president of the day, is likely to leave Brazil punching below its weight on international rights promotion and protection for some time to come.

<sup>5</sup> One of the candidates, Eduardo Campos, was killed in a plane crash in August 2014, throwing even the main line-up of candidates into disarray.

*Lucia Nader & Laura Trajber Waisbich*

## **The Long March Towards the Democratization of Brazilian Foreign Policy**

*Brazilian foreign policy is undergoing a progressive, yet still modest, process of transformation. The country's social and economic transformations and intense social pressure in order to open-up the black box of policy making have made the democratization of foreign policy not just inevitable, but also essential for Brazil's aspirations for prominence on the world stage.*

### **Introduction**

There is nothing more distinctive about Brazilian foreign policy (BFP) than the repeated calls to democratize global governance. In the country's diplomatic rhetoric, the democratization of international institutions is a prerequisite to guarantee their legitimacy and effectiveness in a changing world. This discourse, evident in proposals to reform the UN Security Council and the Bretton Woods institutions, is consistent with the pretensions of a rising power. Such emergence is symbolized by the sustained economic growth and reduction in inequality in recent years, which are the foundations of the claim for more global prominence.

Although compelling, this democratization rhetoric has no equivalent on the domestic front, involving Brazil's own foreign policy decision making process. This is hardly surprising, given that such a move would contrast with diplomacy's tendency for centralization. It is, however, an ongoing process responding simultaneously to the changes in the nature of contemporary international relations, and to a constant pressure from social actors willing to participate in the decision making process, as they see foreign policy as increasingly affecting their activities, concerns and goals.

This article claims that the legitimacy and effectiveness of foreign policy hinges on its democratization. This relies on the fact that any policy in a democracy should be citizen-centered and thus subjected to checks and balances, and open to public participation and scrutiny. Why would, for instance, the education policy be widely debated, having its detailed budget disclosed, and its priorities decided along with national and subnational citizens councils, but not foreign policy? By presenting an account of the experience of [Conectas Human Rights](#), we argue that working for transparency, accountability, and social participation in BFP is a necessary step towards making human rights a central part of the country's foreign engagements.

## Foreign policy is public policy

Despite its particularities, Brazilian foreign policy is a public policy and, as such, it should answer to the imperatives of democratic and social control typical of a state governed by the rule of law. Public policies are “responses by the state to socially problematic situations” that in the case of foreign policy involve “decision making processes, structured like poliarchies, forming a continuum – from national to international” (Sanchez et al. 2006).

The poliarchic nature is exemplified by the division of authority within government, which is regulated by the Federal Constitution of 1988, the one adopted after the redemocratization process. In it, the executive branch (Presidency and the Ministry of External Relations) is the primary actor in the formulation and implementation of international relations, the legislative branch plays the role of an ex-post ‘co-decision maker’, and the judiciary, meanwhile, operates primarily on an *ad hoc* basis in the stages of implementation and assessment of foreign policy (Sanchez et al. 2006). One example of this intra-bureaucratic division of labour can be seen in Brazilian migration policy, where the executive branch is the one signing international treaties on the matter, and the legislative branch will then act to internally ratify them. Another example can be found in Brazilian international development cooperation engagements, including debt forgiveness for least developed countries, where the commitments come from the executive branch, and the legislative will act only to homologate these decisions afterwards. A more detailed analysis on the role of the legislative branch on foreign policy making can be found further down in this article.

One innovation in the case of Brazil is [Article 4 of the Constitution](#), which lists the principles that govern Brazilian international relations as: self-determination of the peoples, non-intervention, peaceful settlement of conflicts, and prevalence of human rights; this last principle listed as item II. Thus, in addition to international obligations assumed by Brazil, the Constitution distributes authority and provides legal grounding for the country’s foreign engagements, raising ‘prevalence of human rights’ to the status of a constitutional obligation.

According to well known jurists in the country, including “the prevalence of human rights” in the Brazilian 1988 Federal Constitution had an important political and symbolic meaning, since the word ‘prevalence’ is rarely used. This clause would be in consonance with the new democratic feature of the Brazilian state and a key to enable the pending adoption and ratification of human rights protection instruments. It was also an expression of the country’s desire to build for itself a more positive international image: that of a country that respects and promotes human rights (Piovesan 2008). Other formal aspects that place BFP in the realm of public policy are, for example, the inclusion of the Ministry of External Relations’s budget in the Annual Budget Law and the inclusion of international relations within the scope of the recently approved [Freedom of Information Law](#) (FOI Law).

In foreign policy, the interconnection between the domestic and the international complicates the issues to be addressed and requires constant coordination between various different actors and social groups (Milani & Pinheiro 2013). The nationalization of international matters and the internationalization of domestic matters become progressively interlocked. The increased migration flows to Brazil and the dissemination of Brazilian social policies to other developing countries are examples of this trend. And issues like this will never be addressed without the necessary openness of decision makers to social dialogue.

Not coincidentally, the discussion on foreign policy as public policy has never been so in vogue. Increasingly noticeable is a gradual breaking of the historic insulation of the Ministry of External Relations, which made BFP a constant, with no dramatic changes regardless of the regime in place or the party in power. We observe two simultaneous and independent processes, happening since the 1990s: *horizontalization* of BFP (increase in the number of governmental actors – ministries, agencies and administrative units – involved in the decision making process) and *verticalization* of BFP (participation of non-governmental actors, including the business and academic community, political parties and organized civil society) (See: Pinheiro 2009; França & Sanchez 2009; De Faria 2012).

The partisan political debate over BFP is also growing. Although it is still not an issue with any significant electoral impact, foreign policy has become the subject of public scrutiny and debates linked to electoral processes. This has raised the political cost of decisions and is progressively making BFP an element of constituency-building for those in power. This policy has, therefore, taken on a distributive character (Lima 2000; [Casarões 2014](#)). In this context, its sustainability starts to depend on the capacity of the executive to engage with different sectors and generate ‘dividends’ for the different groups inside and outside of government, including, and primarily, a burgeoning middle class ([Spektor 2012](#)). All this exposes the multiple political dynamics that make foreign policy a result of negotiations and power correlations between actors in this field.

These processes reveal an undeniable democratic and democratizing potential. However, while in theory and in legislation foreign policy may be conceived as a public policy, in practice weaknesses still persist. Two of these weaknesses are notorious: insufficient transparency and unsatisfactory participation.

At a time when Brazil is increasingly more involved on the national and international level in matters of transparency, as demonstrated by the enactment of the FOI Law and by the prominent role played by the country in the Open Government Partnership, there is still a reluctance and, in some cases, an outright resistance by the Ministry of External Relations to adhere to it. That is based on the argument that secrecy is “essential to the security of soci-

ety or the state” or necessary “to not disclose secret data to other countries or international organizations” (respectively Articles 24 and 23 of the Brazilian FOI Law). These arguments, provided for in the FOI Law to justify exceptions to the rule of transparency, have been used repeatedly by the Ministry of External Relations to deny Conectas access to information on issues such as Brazil’s [positions in the Inter-American human rights system](#) and financial reports of the [IBSA Fund for Poverty Alleviation](#).

As for citizen participation, it remains *ad hoc* and varies significantly depending on the issue. There is still a high dose of informality in the decision making process, affecting the real effectiveness of formal participation channels. However, effective citizen participation in the decision making process cannot be sustained without a corresponding institutionalization and more permanent dialogue channels with society.

Some headway has been made on both fronts. One of the pillars of this opening is the preparation of the so-called ‘Brazilian Foreign Policy White Paper’, which is currently in progress. According to the government, the document “will have the objective to register and disclose the principles, priorities and courses of foreign policy, and also to promote knowledge and public scrutiny of the work conducted by the ministry” (Figueiredo Machado 2014). The prospect of drafting a White Paper was welcomed by stakeholders from numerous sectors. ‘[Dialogues on Foreign Policy](#)’ have been organized by the Ministry to assist in this process, but for these expectations not to be frustrated, its drafting and implementation processes must truly be participatory and inclusive (Asano & Waisbich 2014).

Another initiative is the creation of a formal and permanent mechanism for social participation in foreign policy, formed by representatives of various sectors of civil society, which many people call the ‘Foreign Policy Council’. For Conectas, such a body would perform two simultaneous functions: the Brazilian government would publicly report on its actions, and obtain feedback for future foreign policy decisions.

Both initiatives are important opportunities to put into practice the so-called ‘creative tension’, as [recently](#) put by one government official, of dialogue between government and society. To waste it would be to undermine important breakthroughs achieved over the past few decades.

If democratization is a necessity, the political and institutional challenges to achieve it are not small. It involves guaranteeing that the form and content (in other words, the way in which foreign policy is formulated and applied, as well as the nature of the decision that is being implemented) are in keeping with the democratic character of the state and the non-negotiable international and constitutional commitments to human rights. It is precisely in this hiatus between theory and practice where the work of organizations like Conectas comes into play.

### Conectas and social participation in Brazil’s foreign policy

The practice of applying the principles of Article 4 of the Brazilian Constitution as a means of controlling the content of foreign policy in human rights, has been frequently used by Conectas, through the actions of the *Foreign Policy and Human Rights Program*, created in 2005.

This initiative is the result of Conectas’ experience working along Global South organizations and “using the international system to promote domestic social change” (Keck & Sikkink 1998). It was precisely this South-South cooperation that raised questions about Brazil’s votes in multilateral human rights forums. The paradigmatic triggering case were Brazilian abstentions at the (former) UN Human Rights Commission on the situation in China, in early 2000. But this was not an isolated case; it was part of a pattern of abstaining that would be repeated in other situations, also in the current Human Rights Council (Conectas 2005; Ventura & Reis 2013), and that should be challenged.

Today, the Program works to strengthen the international protection of human rights, by monitoring and influencing foreign policy in countries of the Global South, particularly Brazil, and promoting the use of the UN and the regional systems by NGOs from Latin America, Africa and Asia. It also works, as already mentioned, for the democratization of Brazilian foreign policy, pushing for greater transparency and accountability and encouraging greater participation and social control. As such, it aims at raising the political cost of actions that disrespect human rights.

Organizations that want to influence and have an impact on this policy need to employ different action strategies throughout the policy cycle (i.e., throughout one of its six stages: agenda setting, identification of alternatives, assessment of options, selection of options, implementation and evaluation) (Souza 2006). Depending on the issue and on the political context, the same organization can (and will) interact with different phases of this cycle.

In the specific case of Conectas, and based on its strengths and what it sees as more favorable structures of opportunities for influencing Brazilian foreign policy making, the organization has been particularly focusing on the stages of agenda setting and -the identification of alternatives. The main action strategies used to influence the decision making process have been: gathering information and conducting research; forming networks and partnerships; employing mechanisms of democratic control (the so-called ‘checks and balances’); using the media and promoting public scrutiny; and monitoring international forums and mechanisms. Examples of the use of these strategies in the Brazilian context have recently been compiled by the organization in the publication ‘*Foreign Policy and Human Rights: Strategies for Civil Society Action*’ (Conectas 2013). Three of those examples are presented below.

The first is the creation of the Brazilian Human Rights and Foreign Policy Committee (CBDHPE) in 2006. In the absence of formal settings for debate on foreign policy issues in Brazil, Conectas and its partners came together to create the [CBDHPE](#) – a broad platform comprised of non-governmental organizations and agencies and institutions of the Brazilian government (such as congressional committees, the Health Ministry and the Public Prosecutor’s Office). The Committee’s mission is to “promote the prevalence of human rights in Brazilian foreign policy and strengthen citizen participation and social control over foreign policy through the establishment of dialogue mechanisms between the branches of the Brazilian government and civil society”. The Committee has been playing an important role influencing the Brazilian position in the international human rights systems. One example of the activities developed by the CBDHPE was the development, in 2010, of a [‘Minimum Agenda’](#) containing commitments on human rights and foreign policy for adoption by presidential candidates. All the candidates did so in a public hearing held in Congress, and the agenda has served as a reference to monitor and evaluate the actions of the current government on the matter.

The work developed by Conectas together with its partners from the Committee is quite significant in the sense that it challenges the current *modus operandi* of parliamentarians dealing with international relations, encouraging them to be more proactive. Despite having the competencies and the instruments to act *ex ante* and *ex post* on foreign policy issues, lawmakers usually do not engage on those topics because of what they perceive as having low impact on their electoral gains. Exceptions can be found on specific issues, such as the discussions around regional integration, and the negotiation of trade agreements, since the 1990s. Nonetheless, lawmakers’ engagement in BFP seems to be slowly moving from the traditional “abdication or delegation” (Lima & Santos 2001) to a more active role. By looking at Congressional debates, one sees external relations gaining some traction inside the legislative branch in the past years (on new issues such as internationalization of Brazilian companies, humanitarian assistance and migration); though parliamentary activity still depends on whether foreign policy can become an important issue for domestic constituencies.

The second example involved the participation in the process of reviewing the work of the Inter-American Commission on Human Rights (IACHR), also known as ‘the reform process’. For almost two years (2011 to 2013) the member countries of the Organization of American States conducted reviews of the IACHR, as part of an effort to reform the Inter-American system, allegedly to strengthen it by reviewing its methods of work and procedures. Conectas participated actively in the debates, demanding a responsible position from the Brazilian government to guarantee the [autonomy and independence](#) of the Commission. Conectas also worked to broaden the participation of society in the debate on the regional and national levels. Among the advocacy activities developed, Conectas made use of the FOI Law to uncover Brazil’s position in the reform process, organized meetings in Brazil between civil society

actors and the Ministry of External Relations on the Brazilian proposals, and presented written reports to the public consultations organized by the IACHR. Conectas has also engaged Brazilian public, raising awareness about the reform process by supporting academic events on the topic and publishing articles in newspapers to give more visibility to the process.

This case illustrates how the organization contributes to the identification of alternatives for the Brazilian position in a regional human rights body, including through alliances with other actors engaged in the field.

The third example is the political advocacy work developed by the organization on the matter of Haitian migration to Brazil. In August 2013, Conectas organized a mission to Brasília, a town on the Brazilian side of the border with Bolivia in the northern state of Acre, and the entry-point for immigrants, particularly Haitians, to Brazil. In Brasília, the organization conducted interviews and collected information on the violations suffered by the immigrants on their journey, which included the payment of middlemen and security officers. The mission to Brasília permitted the organization to examine the conditions in the shelter and discuss with local employees the main challenges they encountered in the upkeep of the shelter. In the months leading up to the mission, Conectas had already conducted interviews with Haitians who had made it to São Paulo, in a total of more than twenty hours of recorded testimonies.

The on-site visit to the shelter gave rise to a series of articles by Conectas on the hidden crisis of Haitian immigrants in Brazil. It is a crisis directly related to foreign policy, given the multidimensional engagement of Brazil in Haiti (through the command of the UN peacekeeping mission in the country – MINUSTAH – and the Brazilian technical cooperation initiatives currently in progress there). Besides the [material produced and made publicly available](#), the mission permitted advocacy activities on a national and international level, which included meetings with different agencies of the Brazilian government in Brasília and a hearing in the IACHR.

### Current challenges

For the past decades, and notably under President Lula’s mandate (2003-2010), Brazil decided it wanted to be not only an important player in international affairs, but also one of its protagonists. Government has accorded more importance to foreign policy, and so did organized interest groups. This growing internationalization and prominence of Brazil in the political and economic sphere has thus given leverage to Brazilian NGOs to develop their own cosmopolitan outlook on reality, beyond the state lenses. Ultimately, it has contributed to the expansion of the role of Conectas and other organizations, as legitimate stakeholders monitoring and influencing Brazilian foreign policy. Increasingly being a global player, Brazil

has not only internationalized its internal contradictions – such as the disputes over development models to be exported to Africa, which have been well described by Cabral (2012) – but it has also been called on by other countries to promote standards, values and policies (Piccone 2013).

Today, however, some of the expectations arising from Brazil's 'emerging moment' are being challenged. On the one hand, the country is currently stuck in the so-called 'middle income trap', wherein the task of transforming recently emancipated consumers into citizens becomes increasingly more difficult, given the need to reconcile growth with limited environmental resources, as well as the recent reduction in the pace of economic growth (Garavito et al. 2012). On the other, it is experiencing a "mismatch between strong economic growth and weak human rights organizations" (Nader 2013), since these organizations now find themselves in a funding vacuum, due to their historical dependence on both public and international funding, which has been shrinking.

Democratization itself does not come without its dilemmas, since it presupposes competition between an increasingly large number of actors interested in the course of foreign policy. Equally challenging is the job of assuring, on the back of social processes on the domestic level, that the opening does not turn into an assault on pluralism, wherein a majority (numerical or political) sacrifices the rights of a minority. There is no shortage of examples, nationally, of democratization that can be an affront to progressive thinking.<sup>1</sup>

Finally, the delicate moment through which BFP is passing cannot be ignored. Foreign policy has been the subject of intense and heated debate, in academia and in the media, on two fronts. First, concerning the course of diplomacy during the Dilma Rousseff administration, the fact that the President does not attach due importance to the country's international engagements and, more specifically, that she has not invested enough in defining clear foreign policy strategies and goals for her mandate. Second, concerning the way the policy is decided and enacted, including the nature of the Brazilian Ministry of External Relations, its institutional management, and its unstable relationship with the presidency and with society.

These two fronts are interlinked, just like the crisis of legitimacy and effectiveness of multilateral institutions on the global stage. Even if it is well known that foreign policy does not win votes (which of itself is not exclusive to Brazil), the current stage of globalization and interdependence does not allow us the luxury of pursuing international prominence only in times of bonanza (Stuenkel 2014). Isolationism is not, and cannot be, an option for a country

<sup>1</sup> Organizations working in defence of human rights are criminalized or accused of working for criminals and there is still a high approval rating for the death penalty (nearly 46 per cent in October 2013, according to [Datafolha](#)), to name just some examples.

that claims to be pursuing greater international prominence and that has historically based its international identity on being a 'bridge-builder'.

## Conclusion

Despite all the complexity, the current architects of the country's foreign policy have everything to gain from effectively applying the triad: *transparency-accountability-social participation*. Without this tripod, which brings citizens to the center of the policy, BFP's legitimacy is at stake. By continuing to isolate itself from society, and purely reflecting an inter-state game, foreign policy might even fall short in terms of achieving its proclaimed national interests – such as inclusive development and social well-being.

Greater dialogue between social actors in foreign policy aims to build an effective collaboration, considering both the competencies of each actor and the need to promote socially legitimate policies. Brazilian foreign policy, therefore, faces the challenge of consolidating the country's international prominence and active presence, using a responsible diplomacy that can promote the national interest in an inclusive and participatory way.

In this vein, respect for human rights, in its broadest sense, is both a means and an end to the effectiveness of Brazilian diplomatic action. *Realpolitik* and human rights are not incompatible, since this is not a war of principles but instead a political option to elevate human dignity as a pillar of international action, just like the issue has been handled, despite the challenges that separate theory from practice, on the domestic level since democratization.



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