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Brazil and the International Human Rights System

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*in memoriam* Michel Debra

After twenty five years of military dictatorship, democracy provoked decisive changes in Brazilian foreign policy vis-à-vis human rights. These changes were both accompanied by, and reinforced, increased activity and organisation in Brazilian civil society. This paper will discuss the main changes which have occurred in Brazilian human rights policy and diplomacy after the return to civilian government and democratic organisation in 1985. The first part discusses the initiatives of President José Sarney (1985-1990) to initiate a fuller discussion of human rights at the level of Brazilian diplomacy. Part two looks at how President Fernando Collor (1990-1992) implemented the ideas proposed by the previous administration through diplomatic discourse and through the ratification of international human rights instruments. The third part examines the efforts of President Itamar Franco (1992-1994) to consolidate a foreign policy of transparency in terms of gross human rights violations by opening the national situation to critiques from the international community and by integrating Brazilian civil society into the dialogue. Part four analyses the initiatives promoted by President Fernando Henrique Cardoso's administration to create greater space for the rapidly expanding Brazilian civil society to comment on the national situation and to collaborate with multilateral organs on human rights issues. The last part offers some final remarks and a tentative interpretation of the changes discussed.<sup>1</sup>

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<sup>1</sup> I would like to thank Professor Leslie Bethell for his generous invitation to come as a Visiting Fellow to the Centre for Brazilian Studies and as a Senior Member of St. Antony's College, Oxford University, during Hilary Term, 1999, and Professor Alfred Stepan, then Gladstone Professor of Politics, All Souls College, Oxford University, for his continuing support and inspiration. At the University of São Paulo, Department of Political Science, Professor Maria Herminia Tavares de Almeida granted me a leave of absence during that period. I should also thank the São Paulo Foundation for the Support of Research

## I. Cautious changes during an interim government

The return to civil rule had notable effects on Brazilian foreign policy. Until the political transition, during both democratic or authoritarian regimes, control over state violence and serious human rights violations had been non-existent; any reference to international human rights instruments was merely rhetorical; and there was an enormous gap between the illegal practices of state agents and the requirements of international human rights law. Even if Brazilian diplomacy had made important contributions to international and interamerican human rights instruments and machinery, these efforts had no repercussion on domestic policies before 1985.<sup>2</sup> In any case, monitoring of human rights in Brazil, as well as in the United Nations Commission on Human Rights, only became a reality after the 1970's, during the struggle against apartheid and in the investigation of human rights abuses by Latin-American dictatorships<sup>3</sup>.

In reality, the grammar of human rights in Brazil came to be successfully conjugated by Brazilian governments externally and internally only after 1985. That year marked the return to democracy with the election of the first civilian government -- even though this took place by indirect vote in an electoral

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<sup>2</sup> Ambassador Gilberto Saboia has situated in the evolution of the international diplomatic context the Brazilian presence during the elaboration of the Universal Declaration, see Gilberto Vergne Saboia, 'Brazil and the International System of Human Rights', Texts from Brazil, Special Edition, Fifty Years of the Universal Declaration of Human Rights. (Brasilia, Ministry of Internal Relations, II, n.6, May/August 1998 p.18),

<sup>3</sup> In 1975 the UN Commission on Human Rights established an ad hoc Working Group of five of its members to investigate the human rights situation which arose after the *coup d'état* of General Pinochet, which removed President Salvador Allende from power in Chile. In the 1980s, the Working Group on Forced and Involuntary Disappearances was established in response to developments in Chile and Argentina. See Phillip Alston, 'The Commission on Human Rights' in Philip Alston, (ed.) The United Nation and Human Rights. A Critical Appraisal (Oxford, Clarendon Press, 1995):126-210.

college defined by the previous dictatorship. The president elected, Tancredo Neves, was unable to take the oath because of an unexpected serious illness and his vice-president José Sarney, the former head of the party for military rule, ARENA, became the president and was sworn in on the 15<sup>th</sup> of March, 1985.<sup>4</sup>

Brazilian foreign policy during that period followed a dynamic which could be characterised as a “dual approach”<sup>5</sup>: *continuity*, directly related to the geographic location and dimension of the country and to its insertion in the international community; and *innovation*, which became possible as a consequence of democratisation. Human rights was precisely the area which was most affected by the new orientation of Brazilian foreign policy. But we cannot yet speak of a genuine new course because the legacy of continuity would prevail through the Sarney government, limiting bold initiatives. Sarney, during his speech in the United Nations General Assembly in 1985, praised the International Declaration of Human Rights as ‘the most important document written by man in contemporary history’. This was itself a very important change if we consider that between 1977 and 1984 Brazilian speeches, which traditionally open the UN General Assembly, had never even mentioned human rights.<sup>6</sup> He announced Brazil’s immediate acceptance of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and signed the Convention against Torture<sup>7</sup>. A

<sup>4</sup> In the morning of that day in Brasilia, Governor Franco Montoro held a meeting with several of his former secretaries who would become ministers in the new government, such as Roberto Gusmão and João Sayad. In the afternoon I went with Senator Severo Gomes to visit President Tancredo Neves in the Hospital de Base. In the entrance we met President Raul Alfonsin who was just leaving the President’s apartment in the hospital.

<sup>5</sup> See Fundação Alexandre de Gusmão, [Correa, Luiz Felipe de Seixas, apresentação] A palavra do Brasil nas Nações Unidas, 1946- 1995 (Brasilia, FUNAG, 1995) p.434.

<sup>6</sup> These phases also correspond to the various stages in the evolution of the Brazilian government’s participation in the UN Human Rights Commission, as José Augusto Lindgren Alves so well described. First, from 1978 to 1984, the period of political opening, ‘characterised by conservative, but not obstructionist positions.’ Second, from 1985 to 1990, the Sarney transition government, ‘characterised by the still relatively timid recognition of the legitimacy of multilateral initiatives to deter violations.’ Finally, the current period, beginning in 1991, characterised ‘by the understanding that the international mechanisms do not constitute threats to the principle of non-intervention.’ José Augusto Lindgren Alves, Os direitos humanos como tema global (São Paulo, Perspectiva, 1994) p.93.

<sup>7</sup> *op.cit.* p 442.

photograph of this moment became an important symbol of the new democratic phase. His speech also condemned racism in very strong terms and stressed the importance of women's rights.

Although we could define this change as declaratory, its importance should not be under-emphasised. Every change, even if only in terms of discourse, helps pave the way for subsequent changes in bureaucratic and legal structures, and eventually in political and social attitudes. Formal foreign policy statements and discourse can be decisive elements of, even the requirements for, change, and their value cannot be underestimated. The definition of state policies is a ritualised act in which speech plays an essential role: without declaratory change in foreign policy other changes in the international community of states are of no value. Thus every speech, every diplomatic circular, signature, and further ratification of international instruments counts. It should also be noted that declaratory changes inside the government and the Ministry of Foreign Affairs (Itamaraty) also reflect both conflicting opinions and assessments within government and, more importantly, interaction with civil society and the political arena.

During this period the Brazilian government submitted to congress several essential instruments for the protection of citizens against serious human rights abuses. These included the International Covenant on Civil and Political Rights, the Covenant on Economic, Social, and Cultural Rights, and the American Convention on Human Rights. In his message to congress proposing the ratification of both International Covenants, Sarney presented a series of justifications, including reference to the fact that Brazil had traditionally supported international human rights; that Brazil had taken an active part in the elaboration of the Covenants; and that it had voted in favour of GA Resolution 2200 A (XXXI), by which these instruments were adopted and made open to signature. (Although it should be noted that Brazilian support had been purely formal, and that it had not become a party to either covenant -- both of which

became effective in 1976 -- above all because the gradual process of democratization in the country which had begun in 1974 did not provide a secure enough domestic basis for ratification). In his message, Sarney stated that more than 80 countries with very different systems of legal, social and economic organisation were already parties to both Covenants, a testament to the universality of these documents.

Most important in the text of Sarney's message are the two motivations, one internal, another external, which may help us to reconstruct the primary aims of human rights foreign policy during the interim government, which, to a certain extent, would emerge in a more pro-active way during the administration of President Collor (1990-1992). The accession to the international documents was considered to be a 'significant outward token of the internal changes underway in Brazil through which the country endeavours to reorganise its social, economic and political framework and so inaugurate a new phase in its history'. In addition, it refers to the problem of the external 'image' of Brazil, which had been so much tarnished by the horrendous record of gross human rights violations during the dictatorship. It suggested that 'subscription to the Covenants would have positive repercussions in both the external and internal spheres besides sealing a commitment or additional guarantee of effective protection for human rights in the country.'

This reference to the 'image' of Brazil abroad demonstrated an important shift in national identity and self-perception, as Brazil made the transition from military rule. During the dictatorship Brazilian missions abroad had systematically denied gross human rights violations. During the transition this tendency was slowly being overcome, although the stance did remain somewhat defensive and it was only under Collor that denial was replaced by transparency. If a preoccupation with image did continue to exist in that administration, this concern was an impetus for change. However, the idea that change occurred solely out of concern for the national image undervalues the

importance and internal logic of declared goals and stated values in a democratic system, something that would have been quite absent during periods of military rule.

At the end of Sarney's message to congress he was candid in his recognition of Brazil's poor human rights record, offering an apology as well as acknowledging the value of international human rights monitoring: 'Conflicts and injustice occur in any society, and this naturally applies to Brazil, a developing country grappling with glaring inequalities. Brazil's accession to these Covenants ... should entail a natural willingness to countenance discussion in appropriate forums of possible allegations concerning failure to comply with these provisions'.<sup>8</sup> On any account, this statement was a breakthrough in so far as it indicated a clear departure from the politics of denial which had prevailed in Brazilian diplomacy throughout the authoritarian period.

Despite the importance of these decisions, the Sarney government was too cautious and timid and it cannot be said that his government had a proactive policy. Lindgren Alves, author of one of the best analyses of international human rights, considers that the previous phase of political opening, between 1979 and 1984, was 'conservative although not obstructionist'. There was not yet a definite shift but rather a slow process of change being initiated in some government fora, an example being the Conselho de Defesa dos Direitos da Pessoa Humana (CDDPH) [Council for the Protection of the Rights of the Person], established within the Brazilian Ministry of Justice. That council, created in 1964 under President João Goulart a few months before the military *coup d'état* of 31 March, was the first national human rights institution ever established in Brazil. The CDDPH boasted an unprecedentedly wide variety of

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<sup>8</sup> Human Rights Committee, Consideration of Reports submitted by State Parties under article 40 of the Covenant, Initial reports of States Parties due in 1993. Addendum (Brazil, 1 1, 17 November 1994), International Covenant on Civil and Political rights (Distr. GENERAL ,CCPR/C/81/Add.6, 2 March 1995, Original, English) p. 8-10.

members, including representatives of academia and civil society, (such as the Brazilian Bar Association (OAB), the Brazilian Press Association (ABI), and the Brazilian Association for Education (ABE). It also included government leaders from both the Senate and the House of Representatives, including the two leaders of the opposition in both houses. The CDDPH began to establish legitimacy for national and international human rights monitoring. Within this increased space for action, civil society organisations began exploring the possibilities of obtaining information from government institutions about cases of human rights abuses, despite the fact that punishment in such cases was not yet possible<sup>9</sup>. When the United States began to prepare Country Reports on Human Rights, the need to respond to those reports, as well as those prepared by the Bertrand Russell Tribunal and Amnesty International, became apparent. Ratification of the American Convention, (the San José Pact) remained unattainable at this stage. However the government's shift from denial towards acknowledgement of human rights abuses suggested that negotiation might be possible. The military government had always relied on Brazilian diplomacy to prevent close examination of its record in the UN Commission on Human Rights or in the Sub-Commission<sup>10</sup>. The Brazilian mission in Geneva established a defensive strategy when discussing issues which involved human rights. There was not yet an attitude of co-operation but rather one of 'damage control'. But one consequence of this shift was that information was required from the Brazilian government to prepare files on reported cases. Thus, external 'damage control' created the conditions for gradual reform within Brazil.

Between 1985 and 1990 the Sarney government was abstentionist in international human rights fora, such as the UN Commission on Human Rights, only faintly acknowledging the legitimacy of multilateral initiatives to enforce

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<sup>9</sup> Interview with Brazilian ambassador to France, Marcos Azambuja, Paris, May 1999.

<sup>10</sup> After 1999, the Sub-Commission for the prevention of discrimination and protection of minorities became the Sub-Commission for the Promotion and Protection of Human Rights.

human rights norms<sup>11</sup>. The initiatives of some of the principal international human rights organisations to criticise human rights violations which had occurred under the military dictatorship continued to be considered as damaging to the nation's image. One former Minister of Justice under the Sarney government and outspoken leader of the opposition to military rule, Senator Paulo Brossard, showed genuine support for the activities of the CDDPH. He pressed the council to initiate hearings on alleged incidents of rural violence and killings in the southern region of the state of Pará, in the north of Brazil. However, in response to their reports on human rights violations in Brazil, Brossard also attacked Amnesty International on national television, accusing it of being a subversive organisation. Clearly, the attitude of the Sarney government with regard to several key human rights issues was somewhat inconsistent: although the administration demonstrated relative open-mindedness in its acknowledgement of the importance of international norms, it showed a considerable degree of resistance to international human rights monitoring, claiming it to be an attack on national sovereignty.

During the Sarney government, human rights issues were dealt with by UN bodies under the supervision of the UN Division of the Ministry of Foreign Affairs (MRE). They were considered to be a political and multilateral issue. Most decisions regarding the formulation of the foreign policy of human rights were made at the level of the Minister of Foreign Affairs or the President<sup>12</sup>. The majority of initiatives contributing to the policy shift on human rights originated at the level of the executive. The legislature only played a role during discussions about the possibilities for ratification of legislation.

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<sup>11</sup> Alves, *op. cit.*, p. 93. 92. See also Francisco Panizza, 'The politics of human rights in Brazil under democratic rule' Paper prepared for the Latin American Studies Association, LASA, Guadalajara, Mexico, 17-19 April 1997. See also, Francisco Panizza, and Alexandra Barahona Brito, 'The Politics of Human Rights in Democratic Brazil: 'A lei não pega' in Democratisation, vol.5. Winter 1998 : 20-51.

<sup>12</sup> Interview with Ambassador Rubens Ricupero, secretary-general, UNCTAD, Geneva, 17 February. During the period of military government policy decisions concerning human rights were decided at the level of the General President, who probably referred to the National Security Council [Conselho de Segurança Nacional].

Despite these limitations, Sarney's interim government showed signs of effective participation at the III Committee of the XLII meeting of the General Assembly – which deals with human rights violations. During the meeting Brazilian representative, Marcos Azambuja, declared that 'the Brazilian government fully recognises the competence of multilateral international bodies in the defence and promotion of human rights,' and that 'Brazil fully acknowledges the competence of the United Nations and their representatives to monitor and consider case situations which appear to reveal a consistent pattern of gross violations of human rights'.<sup>13</sup> There were also signs of new-found support for the Special Rapporteurs procedure, although recommending that it 'should not be envisaged as a weapon of the international community against a certain Government and its policies'<sup>14</sup>. During this period, the Brazilian mission in Geneva received clear instructions to open a dialogue with NGOs – which had never been considered as acceptable interlocuteurs during the authoritarian regime – especially during the sessions of the Commission on Human Rights. The Brazilian embassies began to respond to inquiries and complaints made by international NGOs, especially Amnesty International.<sup>15</sup>

## **II. Human rights as a requirement of modernisation**

During the Collor administration, more emphasis was placed on the ratification of international human rights instruments, a process which the military

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<sup>13</sup> Brazilian Mission to the United Nations, XLII Session of the General Assembly, III Committee, Statement by the representative of Brazil, Ambassador Marcos Castrioto de Azambuja, on agenda item 12. I would like to thank Ambassador Celso Lafer and Ambassador Adhemar Bahadian, Brazilian Mission to the UN, Geneva, for granting me access to the collection of Brazilian delegation speeches at the Commission Human Rights and for the generous and rigorous research made by Conselheiro Antonio Pedro; Ms. Maria de Lourdes and A.D.Vignoli, at the Brazilian Mission at the United Nations, Geneva.

<sup>14</sup> *idem*.

<sup>15</sup> The source of this orientation was perhaps from Ambassador Rubens Ricupero, Secretary-General of UNCTACD, International Advisor to President Sarney and thereafter Ambassador to the UN, Geneva. Interview, Geneva, 1998.

governments had refused to promote. After 1990, thanks to the efforts of Ministers of Foreign Affairs, José Francisco Rezek and Celso Lafer, the ratification process accelerated. At this time, 'modernisation' was used as leverage to move Brazilian foreign policy away from its traditional alignment with developing and formerly non-aligned countries towards a position more closely resembling that of developed countries. Within this new framework, human rights and environmental issues were recognised as global concerns. While Brazil had taken a defensive position on such issues in the past, the new government attempted to redefine its outlook in terms of broad international co-operation.<sup>16</sup> Human rights became much more important in Brazil under the Collor administration, not only for ethical reasons, but because Brazil could not seriously pursue an influential role in multilateral institutions if it continued to disregard human rights. The traditional tendency to deny any record of human rights violations, delimiting it strictly as a domestic matter, and to attempt to sabotage any initiative to monitor human rights in Brazil were abandoned. In June 1990, the Minister for Foreign Affairs, José Francisco Rezek, received a mission from Human Rights Watch with the express intention of investigating rural violence in Brazil.<sup>17</sup>

In August 1990, Collor became the first Brazilian president to receive representatives from Amnesty International. Reports of torture and of the killing of children were submitted after this visit. They were examined by the Brazilian authorities, and Collor ordered the Minister of Justice to ask the state governments of the Brazilian federation to formulate concrete measures to confront the problems outlined in these reports.<sup>18</sup> In several meetings with his ministers, Collor clearly stated that 'national sovereignty cannot be a protection

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<sup>16</sup> Fundação Alexandre de Gusmão, *op.cit.*, p.507.

<sup>17</sup> Ministério das Relações Exteriores, 'Às Missões Diplomáticas e Consulados Gerais. PEMU-ONU-L00, SHUM-ONU-LOO, Circular Postal no. 9 869, DNU/DEA/DEMA/DIE/ Direitos Humanos'. Atuação dos Postos.[5p]

<sup>18</sup> *idem*

against gross human rights violations'.<sup>19</sup> In his speech during the XLIV United Nations General Assembly, Collor stressed that the world is marching towards 'an advanced stage of democratic construction and of respect for human rights'.<sup>20</sup> He demonstrated a genuine commitment to supporting international monitoring and transparency: 'Gross human rights violations must be denounced and combated with special vigour, notwithstanding where they occur'. Collor went a step further, stressing the indivisibility of human rights: 'human rights must be progressively considered in their global nature, without artificial distinctions.'<sup>21</sup>

A key document reflecting the policy shift from an obstructionist to a proactive stance seems to support this universalist ideal. Circular letter no. 9 867, November 8<sup>th</sup>, 1990, defined Brazil's human rights position<sup>22</sup>. This circular came out soon after Collor's speech at the XLV Session of the UN General Assembly, where the subject of human rights was approached in the following way: 'with the diffusion of democratic ideas, the international treatment of this subject will be increasingly incisive and comprehensive. Brazil will support this new trend. I believe we are at the eve of a quantitative jump in respect'.

In accordance with the principles of implementation and observation of human rights, it was recognised that 'the international community has the important role in improving human rights norms and in promoting their implementation', and it was acknowledged that Brazil had already ratified the principal instruments in that sphere. Brazil also recognised that 'the Commission on Human Rights has the right to comment on the status of human rights in any part of the world'. This recognition constituted a dramatic reversal in Brazil's conduct in the UN, since missions were now asked to provide regular information about the human rights situation in their respective countries.

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<sup>19</sup> Interview with Minister José Augusto Lindgren Alves.

<sup>20</sup> *op.cit.* p.508.

<sup>21</sup> *op.cit.*p.518.

<sup>22</sup> Ministério das Relações Exteriores, 'Às Missões Diplomáticas e Consulados Gerais', *op.cit.*

A key change which would come to influence the conduct of the Itamaraty over the next ten years can be found in the recommendation that missions should respond 'without resistance to complaints about the human rights situation and maintain contact with NGOs'. This is clearly an expression of the Brazilian government's concern to make an equal effort to communicate with both domestic and transnational NGOs. It is a proclamation of 'transparency' and an affirmation of the 'government's pledge to respect human rights and to ensure that they are respected by others, regardless of the difficulties which may present themselves.' Furthermore, it expresses the government's willingness to examine the validity of formal complaints.

Throughout the course of international covenant ratification, the Brazilian Congress was confronted with a series of obstacles. Several conservative members used various manoeuvres to delay the vote on ratification. Acceleration of the process of ratification required the support of former Senator Fernando Henrique Cardoso<sup>23</sup>, who at that time represented the Senate on the National Council for the Protection of the Rights of the Person<sup>24</sup>, Senator Severo Gomes, who had been the rapporteur of article 5 on civil rights at the 1988 Constitution Assembly, and Senator Eduardo Suplicy. At the end of 1991, thanks to their support, the two legislative decrees relating to the two international covenants were published. Ratification of the International Covenant on Civil and Political Rights was effective four years later, in July 1992.<sup>25</sup>

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<sup>23</sup> Interview 1998 with Jose Augusto Lindgren Alves, São Paulo. He was on the Conselho Nacional de Defesa dos Direitos da Pessoa Humana, CDDPH, as representative of the Minister of External Relations (MRE) from 1990 to 1996. He was the first head of the Human Rights and Social Questions Department (DHS) at the MRE from 1995 to 1996.

<sup>24</sup> We would like to stress that the CDDPH, created by president João Goulart in March, 1964, was the first body created in Brazil before the *coup d'état* of 1964 to deal with human rights under the designation of the 'rights of the person'. This highlights the resistance to the use of the expression 'human rights' eighteen years after the Universal Declaration.

<sup>25</sup> Decree no.592, 6 July 1992, signed by President Fernando Collor and Celso Lafer, Minister of External Relations, Human Rights Committee, *op. cit.*, p.6.

On the eve of the impeachment of President Collor, the Minister for External Affairs, Celso Lafer, presented an innovative view when he stressed the universality of human rights in the General Assembly. He declared that 'respect for human rights must be universal, as the Declaration of 1948 was universal, and as the provisions of the covenants and conventions which defined this question are also universal. In other words, human rights cannot be violated under any pretext'<sup>26</sup>. Thus, as the Collor administration came to an end, Brazilian diplomacy openly acknowledged the main attributes of human rights: indivisibility and universality.

### **III. Another interim government: Itamar Franco and Brazilian participation at the Vienna Conference, 1993**

In the 1990s, the Brazilian government was increasingly transparent about human rights violations in Brazil, and it accepted international monitoring initiatives aimed at overcoming institutional structures that impeded the full implementation of the rule of law.<sup>27</sup> Preparation for the World Conference on Human Rights, to be held in Vienna in July 1993, increased the momentum for consolidation of human rights foreign policy. The new interim government, under former Vice-President Itamar Franco, who took office after the impeachment of President Collor in 1992, demonstrated a clear commitment to the continuing process towards greater transparency and more pro-active human rights policies. When Fernando Henrique Cardoso became Foreign Minister, he accepted the suggestion, presented to him in a meeting in São Paulo with the Center for the Study of Violence at the University of São Paulo, the São Paulo Commission of Justice and Peace, and the Teotonio Vilela

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<sup>26</sup> Minister Celso Lafer, XLVII Session of the United Nations General Assembly, 1992, *op. cit.*, 548.

<sup>27</sup> See Alves, *op. cit.* n. 3.

Commission on Human Rights, that a meeting with diplomats and human rights NGOs should be organised in order to prepare a common agenda for the Vienna Conference. That meeting, which was held in May 1993 in the Ministry of External Affairs at the Itamaraty palace in Brasilia, was attended by approximately thirty NGOs. It was, perhaps, the first meeting in the history of Brazilian diplomacy to promote dialogue between civil society and the state on specific themes relating to human rights.<sup>28</sup>

This meeting contributed to an active dialogue between Brazilian government representatives and members of Brazilian NGOs during the Vienna Conference. There were several meetings between Mauricio Correa, Minister of Justice and head of the Brazilian Delegation,<sup>29</sup> the Brazilian Ambassador to Vienna, and Ambassador Gilberto Saboia, who had been elected Chairman of the Drafting Committee of the Conference<sup>30</sup>. During one of these meetings, Mauricio Correa proposed a meeting with the Brazilian NGOs present at the Parallel Forum of NGOs, to be held in Brazil after the return from Vienna. The main objective of that meeting would be to implement a dialogue between the government of Itamar Franco and human rights NGOs<sup>31</sup> from whence a series of initiatives to curb systemic violence in Brazil could be launched.

This was not the first time that violence, no longer considered solely in terms of the repression of political dissidents, had been the subject of a dialogue between the federal government and civil society. In the mid-eighties, it was already becoming clear that the transition to democracy was not itself

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<sup>28</sup> In 1991, a seminar on Human rights and the Application of United Nations Mechanisms was held in the Itamaraty, in co-operation with the United Nations Center for Human Rights, in June 1991, with speakers from UN, with the participation of four Ministers of State (Foreign Affairs, Justice, Health and Social Action), more than 90 federal and state authorities in the areas connected to human areas, as the civilian and military police, public prosecution. See José August Lindgren Alves, , *op.cit.*, p.97

<sup>29</sup> Correa had been appointed to head the delegation to Vienna because the newly appointed Minister of Foreign Affairs, José Aparecido de Oliveira was ill and could not travel to Vienna. But José Aparecido was able to influence the instructions for the mission in the direction of a pro-active human rights presence at the conference.

<sup>30</sup> See the excellent testimony about the work of the Vienna Conference by Gilberto Vergne Saboia, 'Improvável Consenso' (*Política Externa*, 2, 3, (1994): 3-18.

<sup>31</sup> See Ata da 9.(...) meeting between government representatives and members of civil society for the elaboration of a common agenda for human rights, AE, State Secretary, Debrasen, 5/8/93.

enough to curb rising crime and violence in Brazil. Systemic violence constituted a major obstacle to the process of democratic consolidation. Since the return of civilian government, a major question posed to it by civil society organisations was whether this trend towards the trivialisation of crime and violence could be controlled and reversed by democratic governance.<sup>32</sup>

At the end of 1984, immediately after Tancredo Neves became the presidential candidate for the opposition, he received a group of representatives from the Teotonio Vilela Commission on Human Rights,<sup>33</sup> chaired by Senator Severo Gomes, which presented a basic charter for the implementation of human rights in Brazil. In 1985, when José Sarney became president, he received the same commission. In this meeting the commission proposed the launch of an Initiative Against Violence [Multidão contra a Violência]. The president invited one of the members of the group, Fernando Gabeira, to write a programme for this initiative. This programme provided a framework for the Ministry of Justice, under the administration Fernando Lyra, to promote a number of policies of human rights education and also to improve training, education and equipment for the state police forces<sup>34</sup>.

During the government-NGO meeting, held on July 29 and 30, 1993, the establishment of a common agenda was discussed. The official conclusion of that meeting states that: 'The principal target of this dialogue is to make a common diagnosis of the situation of gross human rights violations in Brazil, with a view to the improvement and enforcement of legal and constitutional

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<sup>32</sup> See P.S. Pinheiro and Paulo Mesquita Neto, 'Human Rights in Brazil: The Outlook at the Close of the Century' (Minister of External Relations, Texts from Brazil, *op.cit.*) p.45.

<sup>33</sup> This Commission remains active after 17 years, despite the different party and political commitments of its members: Teotonio Vilela, Senator, Severo Gomes, Senator, Agostinho Duarte de Oliveira, Benedictine Monk, Eduardo Matarazzo Suplicy, Senator, Emir Sadar, Professor of Sociology, Fernando Gabeira, Writer and Federal Congressman, Fernando Millan, Lawyer and Art Dealer, Glauco Pinto de Moraes, Artist, Hélio Bicud, Lawyer and ex-Federal Congressman, Hélio Pellegrino, Psychoanalyst, João Baptista Breda, Psychiatrist and ex-State Congressman, Jocélio Drummond, Psychiatrist, José Gregori, Minister of Justice, Margarida Genevois, Coordinator of the National Education Network for Human Rights, Maria Helena Gregori, Human Rights Activist, Maria Inês Bierrenbach, Social Worker, Maria Tereza de Assis Moura, Lawyer, Marilena Chauí, Professor of Philosophy, Paulo Maldos, Psychiatrist, Paulo Sérgio Pinheiro, Professor of Political Science, Radhá Abramo, Museum Curator.

<sup>34</sup> See P.S. Pinheiro, and Eric Braun, Democracia e Violência (São Paulo, Paz e Terra, 1988).

mechanisms to curb disrespect for the human person and to promote justice, peace, and democracy, both in the countryside and in the cities, and in all sectors of Brazilian society.<sup>35</sup> Among the topics discussed at the meeting were: the transfer of competence for judging the crimes of the military police from the military police state courts to civilian courts; the 'disappearance' of political dissidents; a legislative initiative categorising human rights crimes; reform of the CDDPH and the functions of that council in the federal sphere. Other subjects under discussion included criminal statistics, the perpetrators of gross human rights violations, and penal execution law. During the opening ceremony of the National Program on Human Rights (PNDH), former Minister of Justice, Nelson Jobim, recognised the precursor work of Severo Gomes, as rapporteur of the 'bill of rights' of article 5 of the 1988 Brazilian Constitution, as well as those initiatives by Mauricio Correa, who proposed programs and laws on violence and human rights.<sup>36</sup> Such work prepared the way for future initiatives, such as the PNDH.<sup>37</sup>

Foreign Relations Minister, Celso Amorim, began his speech to the UN Assembly in September 1993 with a succinct summary of Brazil's current position: 'Transparency in the decisions and actions of the government constitutes an important aspect of Brazilian policy. This transparency is also manifested in the fluid and constructive dialogue with the segments and organisations of society dedicated to the fight for the observance of human rights in the country.'<sup>38</sup>

#### **IV. Human Rights become an element of foreign *and* domestic policies**

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<sup>35</sup> AE, Ata...p.3.

<sup>36</sup> The PNDH launching ceremony was held on September 7<sup>th</sup>, 1996, by President Fernando Henrique Cardoso at the Planalto Palace, Brasília.

<sup>37</sup> See Pinheiro e Mesquita Neto, *op. cit.*, p.45.

<sup>38</sup> See O Estado de S. Paulo, 28 October 1994.

Since 1985, the personal convictions and intentions of each president have been decisive: José Sarney responded to pressure to distance himself from the legacy of the fallen authoritarian regime, but was unable to make a clear break with the past; Fernando Collor, coincidentally the first president in the American continent to be impeached, effectively implemented the policy shift which had been gaining momentum through the 1980s; Itamar Franco established a firm stance in opposition to the dictatorship and filled his government with officials dedicated to social change; and finally Fernando Henrique Cardoso expressed the intention of using his presidential authorities to consolidate human rights law despite resistance from the establishment<sup>39</sup>.

What were the motives behind these government initiatives to incorporate concern for human rights into Brazilian foreign policy? One explanation is found in the increasing priority each of these administrations gave to the integration of Brazil into an increasingly globalised world economic order and to their appreciation that democratic transition and the promotion of human rights were inseparable in the international arena.

For a complete understanding of this policy shift, however, one must also explore the role of domestic forces. NGOs and the media, particularly the electronic media, exploded after the end of censorship and they initiated a new era of exposure of human rights violations. Civil society organisations and the Catholic leadership<sup>40</sup> were also able to place effective and organised pressure on successive administrations.

These internal pressures began to work in conjunction with external pressure from multilateral organisations, which had begun to utilise the space

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<sup>39</sup> There could not have been a scene of greater symbolic value than on December 10<sup>th</sup>, 1995, when the first National Human Rights Prize was awarded to Cardinal Dom Paulo Evaristo Arns, who had never won a Brazilian award, in the Alvorada Palace in the presence of some of the political leadership from the dictatorship.

<sup>40</sup> Such as Cardinal Dom Paulo Evaristo Arns, who published *Torture in Brazil*, one of the most devastating documents on the arbitrary violence of the military dictatorship. Research for the book was financed by the World Council of Churches (protestant) and published by a Catholic editor. Leonardo Boff, who founded the National Human Rights Movement from his monastery in Petrópolis, Rio de Janeiro, with his moral and intellectual prestige, was another influential Catholic leader.

afforded them by the new, open foreign policy. Although bilateral pressures from such countries as the United States<sup>41</sup> played an important role during military rule, their impact was much diminished during the period of democratic consolidation. This gap was quickly filled by international human rights NGOs, principally Amnesty International, Human Rights Watch in the United States, and the Federation Internationale des Droits de l'Homme (FIDH) in France, as well as by those international NGOs focusing on specific themes such as indigenous populations, children, or ethnicity. Also of increasing importance was the role of multilateral organisations such as the UN Commission on Human Rights, its thematic special rapporteurs on torture and summary execution, and those UN agencies like UNICEF that work with specific themes and population groups.

This new political orientation can be also be related to a new wave of opinion in Itamaraty during the political transition, when groups of diplomats became convinced that, when faced with accusations of gross human rights abuses, engagement and co-operation would be much more advantageous than resistance and denial. This change in perspective helped give an institutional underpinning to the shift in foreign policy. It also laid the groundwork for increasing participation by national and international NGOs operating inside Brazil.

The Cardoso government further consolidated this policy of transparency and reinforced its positive repercussions at the national level. The first Brazilian report relating to the International Covenant on Civil and Political Rights was prepared soon after Cardoso entered office. It was undertaken in an unusual collaboration with academics from the Center for the Study of Violence and published at the beginning of 1995. In his presentation of the report, Luís Felipe Lampreia, Minister of Foreign Affairs, stressed 'the commitment of the Brazilian

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<sup>41</sup> A notable exception to this phenomenon is the role played by the Country Reports on Human Rights, published annually in the United States and accepted openly by the Brazilian government in spite of guaranteed widespread social repercussions.

government to human rights, a necessary and irreplaceable corollary of democracy, and its desire to promote the betterment of Brazilian society, its social patterns and economic structure. This commitment is not simply a response to international pressure, it is a reflection of our growing awareness of the rights of citizenship that are being consolidated in the country.”<sup>42</sup>

In 1996, again in collaboration with the Center for the Study of Violence, the Brazilian government prepared the tenth report for the Committee on the Elimination of Racial Discrimination. The creation of the Department of Human Rights and Social Issues (DHS) at the Ministry of External Affairs by Cardoso’s government constituted a clear sign of the consolidation of the politics of transparency vis-à-vis human rights violations in Brazil.

Progress has been difficult. Brazil has often been referred to as a land of contradictions; it exhibits both the best and worst characteristics of the modern world. As every American and European newspaper reminded us during the *real* crisis of January 1999, Brazil has the eighth largest economy in the world. However, even after a decade of democratic rule, it has one of the most unequal income distributions on the planet: the richest 20% earn 32 times more than the poorest 20%. Social exclusion of the poor goes hand in hand with racial discrimination, systemic violence, brutal law-enforcement, and human rights abuses<sup>43</sup>.

In order to curb and reverse egregious human rights violations and to better control endemic violence, the Cardoso administration decided to implement the recommendations of article 71 of the Vienna Declaration and

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<sup>42</sup> Luís Felipe Lampreia ‘Um compromisso afirmativo’ in O Estado de S. Paulo, 6 March 1995. The publication of this report concluded with a polemic in the pages of Folha de S. Paulo (FSP) over the role of international NGOs, provoked by an article by the Brazilian ambassador in Washington, Paulo de Tarso Flecha de Lima, ‘Responder é preciso’ FSP 9.1.1995), followed by various others: Pinheiro, ‘Transparência é preciso’ (FSP, 11.1.1995); Flecha de Lima ‘As bases do diálogo’ (FSP, 19.1.1995); another by the Brazilian ambassador in London, Rubens Antonio Barbosa ‘O Brasil e as ongs- uma visão de Londres’ FSP, 2.2.1995). This debate was recounted by Miguel Darcy de Oliveira, Cidadania e Globalização: a política externa brasileira e as ONGS (Brasília, Instituto Rio Branco, Fundação Alexandre de Gusmão, Centro de Estudos Estratégicos, 1999) p. 143.

<sup>43</sup> See P.S. Pinheiro, ‘Brazil’s bold effort to Curb Police Violence’ in Time, June 10, 1996, p.98.

Programme of Action. This article received the active support of the Brazilian delegation, which stressed the need for technical co-operation. It was an initiative to prepare plans of action designed to identify concrete measures which could contribute to the promotion and protection of human rights. In August 1995 an ad hoc working group had been formed in the cabinet, chaired by Sergio Amaral, Minister in charge of the Secretariat of Social Communication. During the discussions about the 1997 Independence Day commemoration, José Gregori, who was Minister Nelson Jobim's chief of staff, mentioned that he had received a copy of the Australian Human Rights Plan and that perhaps the Brazilian government should follow its example. The suggestion was submitted to the president who subsequently decided to integrate the promotion and realisation of human rights into government policy, and to express his country's commitment to human rights in his Independence Day speech. Thus on 7 September 1995, Cardoso announced: 'The time has come for us to show in practice and on a national level how we are going to fight to put an end to impunity, how we are going to struggle to ensure that human rights will be respected'.<sup>44</sup> By making this pledge, the Brazilian government acknowledged that its domestic policies should conform to the principles of its foreign policy: the state has an obligation to protect and promote human rights and the indivisibility of human rights within its own borders.

Since Cardoso entered office, his administration has officially recognised the victims of political persecution under the 21-year military dictatorship, and it has compensated the families of the 'disappeared'. After the announcement of the preparation of the human rights Plan of Action, the federal government created a National Prize for Human Rights to be awarded each Independence Day, which, since 1995, has become a date dedicated to human rights. The candidates for the prize are nominated and the winners are chosen by an

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<sup>44</sup> See Pinheiro and Mesquita, *op. cit.*, p.45. See also Discurso.

independent committee. Two prizes are presented in the category of 'personalities', two to NGOs, and two to projects submitted by high-school and university students, who receive cash prizes sponsored by private companies. The first 'personality' to receive the prize was Paulo Evaristo Cardinal Arns, then Archbishop of São Paulo, in 1995.

On May 13<sup>th</sup>, 1997 – a date chosen because it was the anniversary of the 1888 abolition of slavery – Cardoso launched the National Human Rights Programme (PNDH). This took place amidst the trauma caused by the massacre of 19 rural workers affiliated to the Movimento dos Sem-Terra [Landless Movement] in Eldorado dos Carajás, in the state of Pará.<sup>45</sup> PNDH was prepared in partnership with civil society, under the co-ordination of José Gregori, and drafted by the Centre for the Study of Violence. Six regional meetings were held in Belem, Natal, Recife, São Paulo, Rio de Janeiro and Porto Alegre, where more than 350 NGOs and specialists collaborated on its drafting. This was the first plan for the protection of human rights in Latin America and only the third worldwide.<sup>46</sup>

In the introduction to the program, the clear relationship between foreign policy and domestic human rights policy is expressed: 'Human rights are not, however, just a set of moral principles that should inspire the organisation of society and the creation of law. Enumerated in various international treaties and constitutions, they ensure rights to individuals and communities and establish concrete juridical obligations for states. They are comprised of a series of clear and precise juridical norms that are meant to protect the most basic interests of the human being. They are cogent or programmatic norms that are binding on the state both at home and abroad'.<sup>47</sup>

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<sup>45</sup> At the last moment before the publication of the plan, José Gregori proposed to change the name for program to give a more pro-active commitment in the implementation of the plan. For the PNDH see Decree #001904 of the President of the Republic.

<sup>46</sup> The other national plans of action were launched in Australia and in the Phillipines.

<sup>47</sup> See English version [Program....](#)

Brazil's national human rights plan includes 268 proposals, ranging from guidelines for police training to directives for witness-protection and assistance to victims of violent crime. Two decisive reforms proposed by Cardoso to fight state immunity and to control abuses by state agents through police accountability have been approved by the National Congress. First, jurisdiction over military-police homicides was transferred from military courts to civilian courts— the project was approved in a landslide vote by the Liberal Front Party (PFL), on the right, and the Worker's Party (PT), on the left. Secondly, torture was included as a crime in the penal code. A third important reform, already proposed to the National Congress, was a project to establish federal competence to investigate, prosecute and judge human rights crimes. Approval of this project radically altered the *status quo* of arbitrary police violence and immunity. These reforms created the basis for a consistent struggle against violations of the right to life, freedom, and security; the right not to be submitted to torture; and the right not to be arbitrarily detained. These rights have been defined by the Universal Declaration and by the International Covenant on Civil and Political Rights, and they correspond to a 'fatal triangle' of violations<sup>48</sup>.

Several important factors, directly connected with changes in human rights foreign policy, have promoted progress in national human rights reforms. One such factor has been the mobilisation of NGOs which are now more active than ever before in all areas of civil and social rights. The struggle against the military dictatorship contributed to an awareness of these rights. In marked contrast to the situation of the 1970s or 1980s, there is a widespread network of NGOs, both urban and rural, as well as neighbourhood and professional associations, and environmental and indigenous groups. NGOs have

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<sup>48</sup> See P. S. Pinheiro, 'O Controle do Arbitrio do Estado e o Direito Internacional dos Direitos Humanos' in P.S. Pinheiro and Samuel Pinheiro Guimaraes, (eds.) Direitos Humanos no Seculo XXI (Brasilia, IPRI/FUNAG, 1998) p.331.

proliferated at a tremendous rate since the process of political opening began.<sup>49</sup> A open public space for criticism and debate is gradually creating a broad-based awareness of human rights issues, which necessarily influence the agenda of foreign policy.

Increasing political consciousness throughout the transition from dictatorship to democracy in the 1980s was accompanied by phenomena such as: increasing NGO activity; the growth of efforts to create public spaces; the development of a new form of interaction between businessmen and unions; and the resurgence of ethnic identity as a political factor.<sup>50</sup> The state was compelled to respond to this new reality, thus reinforcing the process and leading to new institutions.

According to Ruth Cardoso, social movements, like NGOs, have benefited from the fragmentation of the bi-partisan system which developed under the dictatorship. During the first years of the civil government, social movements reached their peak and they were slowly incorporated into the government practices of institutional democracy throughout the 80s and the beginning of the 90s. This popular movement called for the creation of formal organisations with local, regional and national structures. It also called for meetings and assemblies that would 'announce the emergence of a politically ethical movement to replace the traditional practices of populism and authoritarianism in contemporary political parties.'<sup>51</sup>

Some of these movements worked specifically towards better understanding of diverse rural and urban social themes and problems. Some simply formulated demands in response to past government failures, while others managed to open new political spaces, articulating these past failures within the context of the traditional political agenda. Other movements were

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<sup>49</sup> Pinheiro, State-sponsored... *op. cit.*, p. 275

<sup>50</sup> Peter Hengstenberg, Karl Kohut and Günter Mainhold (eds.) Sociedad civil en America Latina: representación de intereses y gobernabilidad, (Adlaf/Nueva Sociedad/Friedrich Ebert Stiftung. Caracas 1999).

<sup>51</sup> Peter Hengstenberg, Karl Kohut and Günter Mainhold (eds.) *op.cit.*

sufficiently large in scope to act as an umbrella for other types of demands which, instead of focussing on issues of access to public services (transportation, housing, and health), focussed on issues of identity (race, gender, and sexual orientation). This process demonstrated that the problems of authoritarianism were not simply of an institutional nature, but that they also took a social form.

In this way, NGOs have undergone extensive change during the process of democratic consolidation.<sup>52</sup> In the 1980s, NGOs increased their range of activity and achieved professional status. Their intention was to anticipate the national agenda and promote the implementation of rights, as well as to define an advisory role for themselves. They were looking for original solutions that involved the increased participation of civil society.<sup>53</sup> After the process leading to the 1988 Federal Constitution, NGOs continued to play an important role in monitoring government activities. They proposed alternative agendas for the development of the state and for the emerging neo-liberal model of the minimal state, placing themselves between the state and the market. A study in 1988 showed that there were 1208 NGOs (among which approximately 100 dealt

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<sup>52</sup> According to work done by the Human Rights Commission, Municipal Chamber of São Paulo, in the city there exist 105 entities which work in the defence of human rights. Included in this number are popular civil society organisations, councils, services and foundations. These entities have a wide variety of thematic concentrations that cover civil movements, defence of the homeless, HIV patients, handicapped, ethnic groups, homosexuals, women, children, and go all the way to unions and other services like those offered by the Foundation for the Protection of the Consumer – Procon. It would then be necessary to perform a more specific study to discover those organisations which are focussed specifically on human rights within the defined boundaries. The majority of the entities listed in the Guide were created within the framework of constitutional democracy, after 1988, mostly in the first years of the 90s.

<sup>53</sup> Maria da Glória Conh, História dos movimentos sociais e lutas sociais. A construção da cidadania dos brasileiros (São Paulo. Loyola, 1995) p.123. In this period, defined by the author as the period of negotiation and of rights, civil society demonstrated incredible vitality. In 1982, the National Movement for Human Rights was created after the organisation of the ecumenical movement and of the Commission for Justice and Peace and the Commission for the Defence of Human Rights, groups developed for the defence of those oppressed and tortured during the dictatorship. In 1983, the CUT and the Movimento de Luta pela Moradia das Associações Comunitárias were created. In 1984, there was a widespread movement that resulted in the movement Rights-Now (Diretas-Já). In the same period, the Landless Workers Movement (Movimento dos Sem-Terra) began to gain momentum and organise on the national level; between 1985 and 1988, there was a significant movement which inspired constituent debates; in 1985, the National Movement of Street Boys and Girls (Movimento Nacional de Meninos e Meninas de Rua) was created.

exclusively with human rights) active in 378 cities, and that 85% of them had been established over the preceding 15 years.

The aforementioned National Human Rights Movement (MNDH) was founded in 1982 under the banner 'the fight for life without violence'. MNDH attempts to pursue this ideal through human rights monitoring and research. Since its foundation, MNDH has fought to institutionalise human rights guarantees, demanding the punishment of those responsible for human rights violations, and calling on public powers to fulfil their obligations to promote these rights. By the end of 1999, MNDH had established its presence in every state of the Brazilian Federation, with a network of 278 offices, 196 partners and 178 international entities<sup>54</sup>. A rough estimate suggests the existence of some 250 thousand civil society organisations (CSOs) employing 1.5 million people in Brazil. These CSOs cover a wide variety of issues of public interest: social services, education, health care, leisure and recreation, environmental issues, production of jobs and salaries, arts and culture, science and technology, communication, public safety, etc.<sup>55</sup>

After the ratification of the Federal Constitution, the organisation and reinforcement of civil society effectively answered the call to establish the rule of law for the entire population, within the framework of a democratic constitution.<sup>56</sup> Aside from making explicit references to rights, the constitution left the fundamental responsibility to establish mechanisms for the promotion and protection of human rights to political struggle and social mobilisation<sup>57</sup>.

During the period of political transition, the human rights discourse was largely limited to the civil and political rights of those individuals who had been oppressed under the authoritarian regime. At the end of the 80s, human rights

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<sup>54</sup> see [www.mndh.org.br](http://www.mndh.org.br)

<sup>55</sup> see [www.rits.org.br](http://www.rits.org.br)

<sup>56</sup> Ana Maria Doimo *A vez e a voz do popular. Movimentos sociais e participação política no Brasil pós-70* (Rio de Janeiro. Anpocs/Relume Dumará. 1994) pp.191-199.

<sup>57</sup> Paulo S. Pinheiro, & Paulo Mesquita Neto *Primeiro Relatório Nacional sobre os Direitos Humanos no Brasil* (Brasília. Ministério da Justiça - Secretaria de Direitos Humanos - Núcleo de Estudos da Violência, 1999).

NGOs incorporated the broader idea of social struggle into this discourse. Aside from contributing networks of solidarity, social movements, and the professionalization of NGOs, the growth of the socio-political participation of civil society attracted favourable financial support from private international agencies. International human rights law, consolidated in international conventions and treaties, which the dictatorship had refused to acknowledge, has become an increasing part of the fabric of the Brazilian polity. This commitment to human rights has not simply been developed by diplomats as a means of gaining international acceptance, but was also the result of civil society's demands for rights and justice.

It has been argued that consolidation of these changes would have been impossible without the 'parallel diplomacy' of international human rights networking. Everything in this domain is extremely recent. As Keck and Sikkink have reminded us, human rights organisations proliferated and diversified in the 1970s and the 1980s. They were also able to form coalitions and communications networks: 'They developed strong links to domestic organisations in countries experiencing human rights violations. As these actors consciously developed linkages with each other, the human rights advocacy network emerged.'<sup>58</sup> The first Catholic Church Commission on Justice and Peace was founded in 1970 in Asuncion, Paraguay, and the second in São Paulo in 1972, by Cardinal Arns. As Lindgen Alves suggests, one of the most important tools of this international network of human rights NGOs is its 'power to embarrass' governments and its ability to 'mobilise shame' in the international community.

International human rights organisations, working together with national groups, have effectively pressured the government into dealing with the perpetrators of human rights abuses.<sup>59</sup> The first partnerships were built during

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<sup>58</sup> Margaret Keck and Kathryn Sikkink, Activists beyond Borders (Ithaca and London, Cornell University Press, 1998) p. 89.

<sup>59</sup> *idem.* p.117.

the years of military dictatorship in Brazil, but continuing human rights violations served to promote networking with international organisations, creating conditions for the establishment of solid alliances under the democratic regime. In 1987, Human Rights Watch/Americas (then called: Americas Watch) published the first report on police abuse after the return to democracy. This report was soon followed by another, published by Amnesty International, and dozens of others dealing with gross human rights violations under democratic rule.

Brazilian NGOs actively investigated allegations of human rights violations and often initiated legal proceedings. In 1992, Human Rights Watch/Americas, in collaboration with the Centre for the Study of Violence and seven other Latin American NGOs, established a corporate law office in Washington, the Centre for the Study of Justice and International Law (CEJIL). Its purpose was to present cases to the Interamerican Commission on Human Rights. The first complaint against Brazil filed by Human Rights Watch/Americas in this way denounced the Brazilian State for the killing of 18 prisoners in a cell at a police station.<sup>60</sup>

This pressure applied by NGOs demanding that the state guarantee human rights was felt more strongly after Brazil adopted the principal instruments of the international human rights regime. However, since the return of civil government and democracy there has been a clear tension between the federal government's more pro-active policy of promoting human rights and the immunity of the agents of state governments – such as state secretariats, the judiciary, and the police. The federal government is aware of this tension, and is not unwilling to address it (unlike during the period of authoritarian rule, particularly between 1968 and 1974). When faced with violations of human rights, the democratic regime does not systematically exempt itself, as it did during the period of populist democracy between 1950

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<sup>60</sup> Pinheiro, *idem*. p.278.

and 1964. On the contrary, at the same time that human rights foreign policy began to shift towards transparency, the federal government has begun to play a decisive role in protecting and promoting human rights, with the aim of ending illegal and violent means of solving conflicts.<sup>61</sup> A persuasive symbol of this policy was the support expressed by the Brazilian government to the candidature of Helio Bicudo, a Workers' Party Congressman, to the Interamerican Human Rights Commission. Bicudo has been one of the most important leaders in the struggle for human rights in Brazil since he positioned himself in opposition to military rule as the public prosecutor who successfully denounced the death squads in São Paulo. Bicudo was successfully elected to that Commission at the end of 1997.

During the commemoration of the 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights at the Itamaraty Palace in Rio on December 9<sup>th</sup>, 1998, in the presence of the presidents of the state parties to Mercosur, Cardoso announced that Brazil would recognise the competence of the Interamerican Human Rights Court, after the approval by congress of a government project. Thus, at the end of the last decade of the twentieth century, human rights policy was consolidated according to a set of basic principles, implemented since the return to democracy, which now guide Brazilian foreign policy.<sup>62</sup>

- 'Recognition of the legitimacy of international concern about the situation of human rights in the world.' – Brazil participates in the UN Commission on

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<sup>61</sup> Pinheiro & Mesquita, Human rights..., p. 45.

<sup>62</sup> The latest statement published by MRE on this foreign policy is Marco Antonio Diniz Brandão, and Candida Perez, 'The Foreign Policy on Human Rights', in Texts from Brazil *op.cit.*, pp.25- 29. A good moment to see how Brazilian diplomacy translated these principles, aside from its participation and speeches at the UN Commission on Human Rights, in Geneva, and at the Third Committee of the UN General Assembly, is the dialogue with the Committee which examined the first report presented by Brazil to the International Covenant of Civil and Political Rights. Of course, there are several other occasions where we could analyse the performance of Brazilian diplomacy, like during discussions in other treaty bodies which deal with women and indigenous rights, for instance, or at the Sub-Commission for the Promotion and Protection of Human Rights.

Human Rights and gives support to intervention in other countries on the basis of human rights, even in Latin America. Brazil's support for this principle has strengthened dramatically over the last fifteen years.

Following this principle, there are three others that were clearly stated in the Vienna Declaration, in which Brazil played a significant role:

- The indivisibility and interdependence of all rights, stressing that the Vienna Conference 'acknowledged the inextricable relationship between democracy, development and respect for human rights'. Brazil recognises the importance of all rights, unlike the case of China and other Asian countries, which give priority to social and economic rights and tend to refuse to discuss the enforcement of civil and political rights. But it has also given increasing support to greater emphasis on economic, social and cultural rights, and particularly the right to development.
- 'The universality of human rights'. While Brazilian diplomacy denies cultural relativism, it has also stated that 'each country's peculiarities should [not] be ignored'. These peculiarities are considered as factors 'that enrich and grant objectivity and complexity to an understanding of the situation and allow for effective co-operation on behalf of human rights'.
- 'The need for international co-operation in promoting human rights'. During the Vienna Conference, Brazil proposed the initiative to create a UN program for technical and financial assistance to member states in order to strengthen national structures for the protection of human rights.

The following principle demonstrates the most significant difference between contemporary policy and that practised in Brazilian diplomacy before the process of political opening (*abertura*):

- Transparent, frank, and constructive dialogue with other states, international organisations, and individuals interested in human rights matters.

Brazilian diplomacy now 'considers questions about the human rights situation in Brazil quite natural' and, furthermore, it welcomes 'criticism' from the international community. This is a positive sign of the way international and national NGOs freely operate in the country. Due to the previous convergence of perspectives from both right and left, this is one of the changes which has faced the most resistance in Brazilian diplomacy. The military, the right, and traditional sectors of Brazilian diplomacy refused transparency and dialogue with NGOs because this was regarded as interference in domestic affairs by subversive elements intent on mobilising a campaign against the values of the dictatorship. On the other hand, sectors of the left (including elements within Brazilian diplomacy) considered that most human rights initiatives as tools implemented by the industrialised nations (it didn't matter that those nations were democratic) against the interests of the Third World. Of course, for the sake of this analysis, these positions have been over-simplified, particularly that of the left. It must also be recognised that some criticism of the selectivity of the human rights policies of multilateral bodies is valid. And this is precisely the idea expressed by the next principle of Brazilian diplomacy:

- 'Refusal to make the treatment of human rights selective and political'. Brazil acknowledges the progress made with in juridical codification since the Universal Declaration and in 'creating monitoring mechanisms for the general situation of human rights ... Brazil plays an active and constructive role in this process and collaborates towards the strengthening of the international system of protection of human rights'. But Brazil considers 'that the system still suffers from a high degree of politicisation, which results in selectivity in the choice of

situations to be monitored and in an obvious imbalance between North and South’.

As Gliberto Saboia has written, there is now an intense dialogue between Brazil, the Human Rights Committee, and the special procedures of the Commission on Human Rights and the Sub-Commission on the Prevention of Racism and Protection from Discrimination. Some recent aspects of this dialogue have included: the Working Group on Forced or Involuntary Disappearances, with the adoption of law 9.140, 4.2.95 which created indemnities for the families of victims of arbitrary power during the dictatorship; co-operation with the UN Special Rapporteurs on Summary Executions and on Torture, the latter having been invited to make an official visit to Brazil during the second semester of 2000; there were visits to Brazil by the UN Special Rapporteur on New Forms of Racism and by the UN Special Rapporteur on Violence against Women.<sup>63</sup> Brazil also welcomed visits from the Interamerican Commission on Human Rights in 1995<sup>64</sup> and again in June 2000, and it has accepted the importance of the ‘friendly resolution’ [resolução amistosa] of cases involving the Brazilian state and the Interamerican Commission, such as the killing of prisoners in a police station in São Paulo.

## V. Final remarks

It is important to note that the changes outlined here were not achieved overnight. It is more appropriate to speak of a process beginning slowly, followed by sudden and unexpected growth, which levelled off to a steady momentum toward the end of the nineties. It would be very difficult to separate

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<sup>63</sup> Gilberto Vergne Saboia, ‘Brazil and the International System of Human Rights’ in Texts from Brazil, *op.cit.*, p. 17-18.

<sup>64</sup> See Organization of American States, Interamerican Commission on Human Rights. Relatório sobre a Situação dos Direitos Humanos no Brasil (Washington, DC, Secretary General, OAS, 1997).

the decision making processes of foreign policy and domestic policy, in government or civil society, but we have tried to indicate the main threads at each of these levels.

What is fascinating in this process is the progressive involvement of civil society in foreign policy decisions, perhaps for the first time in Brazil's political history. It may have been due to this involvement that specific diplomatic decisions came to affect the behaviour of civil society organisations and also the everyday life of Brazilian citizens – most importantly, the victims of human rights violations. Effectively this has broadened the concepts of citizenship and democracy in Brazil.

Changes in foreign policy during the 1980s and 1990s, which were marked by the acceptance of international monitoring, compliance with multilateral human rights organisations, accountability for state agents, and transparency in regard to human rights violations, were not the result of massive or overwhelming socio-political change. When Rudyard Kipling came to Brazil in 1924 to visit the electric plants in Cubatao, São Paulo, he said that politics in Brazil was like a gentlemen's club (he also mentioned that it was a very dangerous game). The considerable changes in human rights policies after 1985 were discussed and defined by a very exclusive group in government circles (even though they reflected a much larger constituency). There were no strong lobbies or political factions competing to be heard on human rights issues. The gradual opening of foreign and domestic policies to human rights was the result of the initiatives of just a few dozen players at the levels of the Presidency, the Ministry of Justice, and the Ministry of Foreign Affairs.

For these changes in domestic politics and foreign policy to be effective, it was necessary to mobilise other state actors working within those institutions in charge of controlling violence. The Federal Prosecutor's Office, state judges and public prosecutors (like Judges for Democracy and Democratic Public

Prosecutors) were able to form networks with human rights organisations and other actors from civil society.

Perhaps the contradictions which arose between the international and domestic arenas reveal some of the problems of introducing human rights considerations into foreign policy. One of the main paradoxes of the authoritarian regime in Brazil is that it was during that period that civil society 'discovered' human rights, specifically as a tool to call attention to the torture and murder of political dissidents. The struggle against the military dictatorship has contributed to an awareness of civil and social rights.<sup>65</sup> In marked contrast to the situation evident in the period before the 1970s, during the 1980s and 1990s there was a widespread network of non-governmental human rights organisations, both urban and rural, as well as neighbourhood and professional associations, and environmental and indigenous groups. The adoption of a new course in foreign policy by the federal government 'corresponded' in large part to the evolution and strengthening of these movements in civil society.

These changes did not correspond to a whole-scale commitment on the part of the country's population because a large proportion of Brazilians were denied true citizenship.<sup>66</sup> At the beginning of this process, a majority of the population had only a very vague notion of the existence of human rights. This is perhaps the case in most societies that have experienced similar political transitions. In a society where people who are not members of the elite have very little political influence, the dramatic change in foreign policy was inevitably an elite's game. It may have been more inclusive than previously, due to the involvement of a large network of human rights NGOs, but it was still extremely limited.

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<sup>65</sup> See P.S. Pinheiro, 'Popular Responses to State-Sponsored Violence in Brazil' in D. Chalmers; C. Vilas; Katherine Hite; S. Martin; Piester and M. Segarra (eds.) The New Politics of Inequality in Latin America. (Oxford, Oxford University Press, 1997) p.275.

<sup>66</sup> See Deep Citizenship

However, it is important not to linger on the negative aspects of this process, for they were inevitable. The process of political opening has created new spaces in the area of human rights for the interaction between the government and society. These spaces cover much larger and more comprehensive areas than just foreign policy, including the improvement and protection of the rights of non-elites. This new development in human rights limits the arbitrary practices of state agencies, particularly those in charge of the control of violence. Functional reform of those apparatuses was very important. Even after the Universal Declaration, the principles and norms of human rights were never genuinely respected in Brazil, even during the democratic period between 1946 and 1964.

Official recognition of international human rights machinery has the potential to become an important element in the prosecution of perpetrators of human rights violations. By establishing the means to exercise the 'power to embarrass', human rights activists are equipped with an extremely effective tool to make governments comply with human rights regulations. CSOs have learned that when they are unable to get the attention of the government, they can bypass the state apparatus and call on international allies, NGOs, actors in the UN system, treaty bodies, or special procedure mandates of the Commission on Human Rights, to apply external pressure. After most of the core human rights treaties were ratified by the Brazilian government in the 1990s, CSOs began to turn to international institutions – like the Interamerican Commission on Human Rights – responsible for promoting the implementation of such treaties.<sup>67</sup>

What sort of positive goals has Brazilian foreign policy sought to achieve? It is undeniable that the commitment of Brazilian diplomacy in the

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<sup>67</sup> On April 13, 2000, Interamerican Commission on Human Rights published Report # 34/00 on case 11291, where it acknowledged the responsibility of the Brazilian Government in the massacre of 111 inmates in the Carandiru House of Detention by the São Paulo Military Police- Seven years after the massacre not a single military police officer has been found responsible for these murders.

human rights forum has provoked scepticism from those who believe that increased activism has merely been a way of deflecting criticism whilst continuing with the country's older, more defensive stance. Of course, it is somewhat idealistic to believe that the ratification of international instruments can change the systematic nature of human rights violations in Brazil, which have continued after the end of dictatorship.

However, as was the case with foreign policy, the progressive opening of government to dialogue and discussion with civil society has affected the very nature of politics and citizenship. To control state violence, the incorporation of international norms of human rights into domestic legislation, as mandated by the constitution, is of immediate importance. Despite the institutional difficulties indicated here, the ratification of international agreements and the policy of transparency presently exercised by the Foreign Ministry make the judiciary's application of these norms more viable. Furthermore, reference to these principles by the state and by civil society can contribute to the transformation of the practices of the agencies responsible for state violence by encouraging more effective action to confront violations and abuses. As Andrew Hurrell has indicated, international norms have a decisive role in 'strengthening and empowering groups struggling domestically – both legally and politically, and in creating both material incentives and normative pressures for the internalisation of such norms in domestic legal and political systems'.<sup>68</sup> This is precisely what has been happening in Brazil since 1985.

There are structural obstacles that the Brazilian government will have to overcome in order to successfully implement human rights guarantees. The states of the federation have failed to promote the accountability of public actors, one of the touchstones for the promotion and protection of human rights. The most decisive step must be the implementation of institutional

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<sup>68</sup> Andrew Hurrell 'Power, principles and prudence: protecting human rights in a deeply divided world' in Tim Dunne and Nick Wheeler (eds.) Human Rights in Global Politics (Cambridge, Cambridge University Press, 1998) p. 283.

reforms – fifteen years after the transition the police structure remains untouched. The judicial court system, the inadequacy of which is paralleled by the police, must be rethought and its ideology must be thoroughly revised. The promotion of human rights, especially among the poor, has never received the attention and consideration of Brazilian judges. In order to begin instituting fully effective and legitimate reforms, the federal government must play an active role, as many of the necessary changes depend upon constitutional amendments.

At the risk of offering a somewhat melancholy conclusion, it does not seem that the dynamism of Brazilian foreign policy, in its acknowledgement of human rights since the return to democracy, has resulted in equivalent changes in domestic politics. It is undeniable that, as a member of the international community, it is the responsibility of the Brazilian federal government, to promote pro-active human rights policies. However, with a few exceptions, the 27 states of the federation and their respective institutions have not assumed the responsibilities conferred upon them as a result of this mission. One example is torture – that violation which most often draws the attention of concerned human rights actors. The first report prepared by the federal government on the implementation of the convention against torture clearly states that the practice of torture is commonplace in the states of the federation. This gap between its domestic reality and the international responsibilities assumed by the Brazilian government (the foreign policy of transparency, compliance with inter-state organisations, and the acceptance of monitoring by civil society organisations and other international actors) is most concerning because ultimately it is the state institutions which have the capacity to implement concrete change. Without approval for the project to grant the power to federal authorities to investigate and try cases of gross human rights violations, the federal government is simply not taking adequate measures to fulfil its human rights obligations. The Brazilian government is obliged to

respond to this challenge or risk losing both its credibility and the international prestige that has been accumulated by recent Brazilian diplomacy in the area of human rights.

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