



Revista Brasileira de  
Política Internacional

ISSN 1983-3121

<http://www.scielo.br/rbpi>

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# Clashing frames: human rights and foreign policy in the Brazilian re-democratization process

<https://doi.org/10.1590/0034-73292017001020>

Rev. Bras. Polít. Int., 60(1): e019, 2017

## Abstract

This article deals with the use of rights in the Brazilian foreign policy in the late 1970s. Two main arguments are advanced: there was a novel understanding of rights that clashed with the traditional statist one, and the Brazilian strategies were less a complete rebuttal of rights language and more a reading of rights as a possible threat to the Abertura process.

**Keywords:** Human rights; Brazilian foreign policy; Ernesto Geisel administration; democratic transition; Brazilian military regime.

Received: September 6, 2016

Accepted: June 26, 2017

## Introduction

**H**uman rights history has traditionally been a field dominated by lawyers. Before the 1990s, only a few historians dedicated themselves to the issue. However, more recently, the history of the field has become a burgeoning line of enquiry, and several works have generated heated debates; especially the question of origins. The canonical view usually portrays human rights as coming of age in a post-Holocaust world after a long path deriving from either a broader natural law tradition or the liberal revolutions of the late 18<sup>th</sup> century. The coming of age is, according to this view, confirmed by the international treaties of the 1940s considered as the birthplace of the present notion of human rights. Even though this view alleges that the force of human rights' normative language has deep roots in previous centuries, the 1948 Universal Declaration of Human Rights is highlighted as the apex of a coherent evolution of instruments bringing about the 'Age of Rights'.

Notwithstanding the broader acceptance of this perspective, it has also been increasingly disputed and undermined as simplistic and triumphalist. The linear conception of human rights by the

canonical historiography darkens the many competing agendas and processes often operating behind the general narrative. This article develops this critique by arguing that unpacking the various conflicting perspectives around human rights and associating them with particular normative vocabularies – put forward for political purposes – contributes to a better analysis. Existing critiques have generated alternative histories that locate the emergence of rights in different periods depending on which group of rights one wants to emphasize, or who is to be empowered by their vocabulary. For example, it is problematic to grasp the rights language of anti-slavery without tracing the ideas of the 19<sup>th</sup> century (Blackburn 2013) or the right to self-determination without tracing the decolonisation movement of the mid-20<sup>th</sup> century (Burke 2013; Jensen 2016). Nonetheless, a narrative that aspires to be linear and coherent hides more than it reveals.

In this article, I am interested in the use of rights in the regime transition in Brazil in the late 20<sup>th</sup> century, a period of significant normative expansion in international politics (Hurrell 2009) and of a complex relationship between rights and democracy in the Americas (Engstrom and Hurrell 2010). Particularly, I deal with a history of how two competing human rights frames clashed in the agenda of the Brazilian Ministry of Foreign Affairs in the second half of the 1970s. A large part of the literature on human rights and Brazilian foreign policy dismisses the military period as an aberration from a longer commitment to rights since the post-Second World War, or portrays the military period as against it somehow related to the authoritarian nature of the regime. Such perspectives rely on a liberal theoretical assumption that the authoritarian nature of the regime guarantees that its foreign policy will be against human rights *per se* (and hence that the re-democratization in Brazil 1985 would explain the adoption of rights treaties and institutions).<sup>1</sup>

I argue that this narrative obscures at least three processes, the first two about the broader idea of human rights and the other about its connection with the Brazilian transition to democracy: (i) the dispute of meanings over rights, (ii) the new transnational agency generated by this vocabulary advanced in the 1970s, (iii) the (potentially) disabling factor in the Brazilian political process of regime transition initiated in 1974.<sup>2</sup>

From this revisited historical analysis and based on primary data, my objective in this text is twofold. First, instead of restating that the dictatorship was against human rights due to the nature of the regime (the traditional liberal perspective on the matter), I argue that what happened in the late 1970s is better explained as a dispute of meanings: one that understood rights within the state and another that offered arguments for its association with external intervention. I claim that human rights were not the main issue for the Brazilian government; instead, the US, some NGOs and international organizations engaged in a particular reading of them that came about in the

1 Even among rationalist studies, such connection has been disputed. There is a growing literature that shows a more complex relationship between authoritarian regimes and their engagement with human rights institutions and norms. For example, according to one study, the effects of human rights treaties on the domestic sphere are not the same for democracies and authoritarian regimes, and in very autocratic ones the ratification can be associated with even more rights violations (Neumayer 2005). Other studies argue that authoritarian regimes that practice torture are more likely to accede the UN Convention Against Torture than the ones that do not (Vreeland 2008), and even that the dictatorships that sign such treaty are more likely to survive longer in office and face less domestic opposition (Hollyer and Rosendorff 2011).

2 In Brazil, this process is largely known as “*Abertura*” (“*Opening*”) and will be dealt with in part 3.1 of this article.

1970s and that the military government associated with foreign interference. Secondly, I analyze how Brazilian diplomacy resisted this frame. I argue that the strategies used were less a complete rebuttal of rights language and more a reading of rights as a possible threat to the controlled liberalization conducted by the military. Together these arguments should provide a historically nuanced analysis of human rights and Brazilian foreign policy during the transitional period.

For the purposes of the article, I centre my analysis on the second half of the 1970s, when the Ernesto Geisel government (1974-1979) was forced to respond to Jimmy Carter's (1977-1980) foreign policy, NGOs, and international organizations agitating for international human rights. The article is divided into two main sections. The first deals with the emergence of a particular interpretation of human rights in the 1970s that became central to Carter's foreign policy rhetoric. In the following section, drawing on formerly secret documents from the Ministry of Foreign Affairs, I detail Brazilian strategies toward the perceived threat of Carter's foreign policy, the actors and institutions generally involved, and specific decisions in the last years of the military regime in Brazil.

The sources used are primary and secondary. The first part of the article presents the literature on the emergence of human rights during the 1970s. The second part, which is divided into two others and occupies most of the article, is predominantly based on research with documents available at the Brazilian Ministry of Foreign Affairs and at the Getúlio Vargas Foundation (Centro de Pesquisa e Documentação de História Contemporânea do Brasil, CPDOC).<sup>3</sup> I use archival sources less because I wish to revisit the events chronologically and linearly and more because I am concerned with distinct moments and trends within the period studied.<sup>4</sup>

## Human Rights and Transnational Agency in the 1970s

During the 1970s a new understanding of human rights was being advanced by some agents and more importantly, it became central to a major power's foreign policy. The usage of the expression was experiencing a boom.<sup>5</sup> Even though it was used after the Second World War at distant diplomatic conferences and treaties, it had little impact on the routine of ordinary people.<sup>6</sup> Human rights in the 1970s were claimed in different situations, by other agents and for distinct purposes. The success of this tour de force would add a new vocabulary to the way social

3 I collected documents catalogued by the Ministry itself as "secret" and "confidential" and under the label "human rights". At CPDOC I selected the documents based on the archives available (mainly the Silveira collection) and on the nature of its contents. These documents were later analysed and the most relevant ones are quoted at the bibliography. I prioritised the documents that were largely unknown or not quoted in other academic papers about the subject.

4 For this matter, see: Losito 2013.

5 The New York Times used the term five times as often compared to all prior years since it commenced publishing (Moyn 2010).

6 Several treaties and institutions were created in the following decades after the Second World War and before the 1970s. To cite a few: the Universal Declaration of Human Rights (United Nations 1948), the European Convention on Human Rights (European Court of Human Rights 1950), the International Covenant on Civil and Political Rights (United Nations 1966a) and the one on Economic Social and Cultural Rights (United Nations 1966b), and the American Convention on Human Rights (Organization of American States 1969). Conferences were organised (such as the Tehran Conference on Human Rights, (United Nations 1968) and there were international monitoring organs such as the UN Commission on Human Rights (United Nations 2017).

and political demands could be made, and its process of vernacularisation would bring human rights closer to distinct agendas and their political and social demands, as well as empower those entitled to claim a compelling normative vocabulary.

One of the best analyses of the emergence of this new interpretation of rights is *The Last Utopia: Human Rights in History* by Samuel Moyn (2010). An intellectual historian, Moyn argues that human rights arose as a broad vocabulary for political change and action only in the 1970s when it began being used in lieu of others. Before that, according to him, the rights talk was linked within citizenship and hence sovereignty – its authority remained with the state, not separated from, nor above it. The “core meaning of ‘human rights’ in the 1940s remained as compatible with the modern state”, Moyn writes, “as the older tradition of the domestic rights of man had been”. The 1948 Universal Declaration “retains, rather than supersedes, the sanctity of nationhood” as a commonality of general principles that loosely unite nations. Even the inclusion of important rights such as the social and economic ones would be “earlier products of citizenship struggles and have still barely affected the international order” (Moyn 2010, 81-2). More importantly for the author: in the decades following the 1948 Declaration no significant social movements came out of it; human rights endured attached to international organizations like the UN without general popular appeal.

Three decades later, there would be a major turn according to the author’s narrative. Human rights “seemingly from nowhere” would emerge in the 1970s and would be invoked by more NGOs, dissidents from the left and other activists across the world than ever. “The popularity of its new mode of advocacy”, in Moyn’s words, “forever transformed what it meant to agitate for humane causes, and spawned a new brand and age of internationalist citizen advocacy.” Its core (new) meaning would crucially differentiate human rights from that notion of the 1940s: “human rights most often now meant individual protection against the state” (Moyn 2010, 3-4). To advance his argument, Moyn distinguishes the expressions “human rights” and “rights of man”: whereas the former would be a vocabulary from the 70s of emancipation without the condition of statehood, the later from the 40s would precisely presuppose its existence. Considering the ideological rise of human rights in this period, Moyn argues that the main reason was the waning of other universalistic schemes, namely nationalism, socialism, and anti-colonialism. The ruins of other vocabularies of political engagement and social change gave space for the emergence of a new persuasive moral alternative or, in his words, the “last utopia”.

The book has received both praise and criticism, but it has not gone unnoticed. It offers a convincing set of arguments that show how an international social movement arose around human rights three decades after the end of the Second World War. *The Last Utopia* seems less concerned, however, in assessing in length which particular group of rights were enlightened (and which were darkened) in this agenda as well as the argumentative process of appropriation of this “non-state vocabulary” by a particular state. For the purposes of this paper, the book helps to grasp the originality of the particular views of human rights that Carter’s foreign policy was trying to advance against others.

Human rights, as used in this interpretation, would offer a vocabulary of protection against the state for the individual, as well as a blueprint for transnational activism. The departure from

the state would lie at its theoretical and political move; without the state in its way, the rights vocabulary would be easily broadened. If the national/citizenship link was weakened or lost, the empathy that drives one's effort to improve social conditions would have to be expanded not to one's fellow citizens but to *humankind* as such. Among others, this intellectual move would entail: (i) a declared concern solely to humanitarianism and an impartiality of ideologies, and (ii) an adoption of a universalistic framework. The turn away from politics of this the liberal internationalism would meet critical reactions.<sup>7</sup>

Amongst its main enthusiasts and entrepreneurs that would empower (and be empowered by) this vocabulary, NGOs had their agency capacity strengthened. Its non-statehood defining feature would substantially match the emerging lingua franca of social change, and its platform for action was significantly broadened. The rapid prominence of organizations like Amnesty International symbolizes the new role that NGOs claimed in world affairs (Hopgood 2006). They had a decisive role in influencing jurisprudential outcomes in the years to come in places like Argentina, where the rights vocabulary played a crucial role in the transition (González Ocantos 2014; Schmidli 2013). In the 1970s, Amnesty professionalized its institutional design, enhanced its activism strategies and range, and helped shape human rights meaning by creating transnational campaigns capable of significant social mobilization. Its 1977 Nobel Peace Prize would crown the breakthrough year for the agenda of human rights that it put forward and helped it achieve international recognition. Also, political activists and dissidents from the left, especially in Latin America (Greco 2003) and Eastern Europe, disheartened by other vocabularies of social change and stimulated by forums such as the Helsinki process in 1975, reinforced the human rights movement (Snyder 2013).

The new vocabulary was becoming politically significant “from below”, albeit it also rapidly proved itself useful “from above”, particularly in the international arena. Somehow different from the previous years, when Carter became President, human rights “assumed an unparalleled prominence in foreign policy decision making” (Schultz 1981, 4).<sup>8</sup> At the stairs of Capitol Hill, Carter's speech delineated the rhetoric of the new administration: “The world itself is now dominated by a new spirit. Peoples more numerous and more politically aware are craving, and now demanding, their place in the sun – not just for the benefit of their own physical condition, but for basic human rights.” It was a call for action: “our commitment to human rights must be absolute (...) Because we are free, we can never be indifferent to the fate of freedom elsewhere” (Carter 1977a). “Human rights is the soul of our foreign policy” (Carter 1978), he asserted at the 30<sup>th</sup> anniversary of the Universal Declaration of Human Rights.

Placing human rights at the crux of American foreign policy was a way to emphasise a new path for the government, a route that resonated well among the constituency. Above all, it became

7 For a sound critical approach to this perspective of human rights, especially as a “further move of liberalism's efforts to constrain politics”, see: Koskeniemi (2011, 135). For a catalogue of difficulties with the discourse of humanitarianism, see: Kennedy (2002).

8 Some US legislators in the Congress were already in the 1960s concerned about human rights issues and American foreign policy, like Senator Frank Church (Keys 2010; Sikkink 2004; Spektor 2009). However, according to one commentator, the “issue of United States policy towards human rights violations in Latin America was never discussed directly by President Nixon” (Schultz 1981, 110).



a moral high ground and a rehabilitation of American power domestically and abroad after the Vietnam War (Keys 2014). When Carter stated that a human rights foreign policy would be a way “to regain the moral stature that we once had” (Carter 1977b) he agreed that it stood as a new base of legitimacy for action, particularly abroad. The emphasis on the wrongdoings of others alleviated the distance desired from the bitter taste of politics which the 1960s left.

However, this approach was not easy to implement when priorities had to be established, and different situations challenged a rigid framework. Accusations of incoherence and biased policies became recurrent when the Carter administration started targeting specific countries. It was a moment of uncertainty after *détente* when the Cold War dynamics were ambiguous. The hesitation portrayed as weakness by the press was personalised in the *mêlée* between the hawkish Brzezinski and the dovish Cyrus Vance and Carter in the middle, not torn between their worldviews but trying to implement them simultaneously (Mitchell 2010) with the constant peril of being incoherent and inefficient. In other words, Carter wanted a US foreign policy that echoed values which could be nourished by its society, but this did not help him set preferences and manage their clashes.

The heritage of Carter’s foreign policy is still contentious. His actions were received differently in many Latin American countries, and it had divergent consequences.<sup>9</sup> The set of rights defended by the US administration was the same that occupied the mainstream of the campaigns in the 70s: torture and political prisoners. These rights would put Carter’s foreign policy in a route of collision with the authoritarian regimes in Latin America. For the US-Brazil relationship, human rights, alongside Brasilia’s nuclear programme, were turned into a subject of high tension.<sup>10</sup> Human rights in Brazil were less important to the US when compared to Argentina, Uruguay, and Chile, as well as compared to nuclear proliferation (Hirst 2005). Nevertheless, it is hard to deny that the “first half of 1977 undoubtedly represented the lowest point in US-Brazilian relations in the post-1964 period” (Hurrell 2013, 279) and that human rights played a major role.

## The State Strikes Back: Human Rights at Brazil’s Foreign Policy During the Geisel Administration

### Framing human rights during the political transition

It is necessary to shed some light on the domestic context to comprehend the dispute between Washington and Brasilia over human rights. Different groups within the military competed for power: unlike other authoritarian regimes such as the Chilean, the Brazilian dictatorship was characterised by rival actors and agendas that were usually more noticeable during the choice for the presidential

9 For this matter, see: Sikkink (2004) and Schoultz (1981).

10 A number of documents about the tension related to the nuclear programme can be found at the diplomatic archives at the *Centro de Pesquisa e Documentação* at Fundação Getúlio Vargas.

successors. From 1974 onwards, the generals Ernesto Geisel and Golbery do Couto e Silva started the “*Abertura*”, a process of regime liberalization – distinct from that of ‘democratization’ – that mostly co-existed with a legal framework of authoritarianism that still had AI-5 at its core, and that left some institutions of the repression apparatus untouched.<sup>11</sup> The primary purpose of the Geisel administration was to orchestrate a distension, a relaxation of the political controls imposed on society, but one that would not open space for the opposition (within the military or the civilian dissidents) to control. It has been aptly described as a “conservative transition” since its continuities remained and many political elites survived the shift to civilian rule (Power 2000). Liberal rights were gradually re-inserted under the watchful guidance of the executive and a loose cooperation of the opposition in the parliament, structured in a way to avoid a regression to a more authoritarian regime (Skidmore 1988). Amongst other policies, the process of transition included the 1974 elections, important for the opposition party and the partial suspension of press censorship. For the purposes of this article, it is important to emphasize that it also included the reduction of the practice of political prisons and, the Amnesty Law in 1979 and the return of political exiles.

The regime liberalization added more complexity to the government’s international affairs. Geisel’s foreign policy had both elements of continuation and escalation vis-à-vis its predecessors’ (mainly Costa e Silva and Médici) regarding the search for more autonomy, assertiveness, and diversification of partners, as well as its connection with domestic economic pressure for development (Hurrell 2013). Within the liberalization operation conducted by the government, foreign policy became another tool adopted by Geisel to control opposing factions within the military elite, and to gain public opinion support (Spektor 2004). Geisel used it in three ways, according to Spektor: (i) to strengthen its leverage among the hard-line military by adopting a more “nationalist” approach to foreign policy, (ii) to associate it with the liberalization process by having a closer relation with the press and using international events to make statements, and (iii) to have some consensus domestically, since a “third-world” rhetoric and a more bold approach to Washington had the potential to please the left and the right agendas.

As I will discuss below, human rights became an issue in Brazilian foreign policy before the Carter administration, but it escalated into the domestic sphere when the US State Department published a critical human rights report about the country in 1977. Events like these with a freer press had the potential to weaken the image of the executive and imperil the transition. In such a delicate political operation a quarrel with Washington could be a potential threat to Geisel’s project, amongst other ways by providing a vocabulary for action for domestic dissidents that opposed the regime, by strengthening the right-wing military who nurtured the nationalist rhetoric and disapproved some liberalization reforms, or by weakening and shaming the country

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11 To Stepan, liberalization “may involve a mix of policy and social changes, such as less censorship of the media, somewhat greater latitude for the organization of autonomous working-class activities, the reintroduction of some legal safeguards for individuals such as habeas corpus, the release of most political prisoners, the return of political exiles, possibly measures for distributing the of income, and most important, the toleration of political opposition”. Democratisation, on the other hand, “entails liberalization but is a wider and more specifically political concept”: it “requires open contestation for the right to win control of the government, and this in turn requires free elections, the results of which determine who governs” (Stepan 1989, ix).

in international fora. Hence, to secure the political control of the process, it was critical for the Geisel administration to resist Carter's stance on human rights and by doing so, it uplifted rights into a privileged place in its foreign policy and disputed its interpretation.

So, what was the understanding of human rights advocated in the Ministry of Foreign Affairs documents? Rights, the traditional statist approach goes, are declared, enjoyed and protected by and within the state. Human rights – or “rights of man”, an expression largely used – would be citizen rights, shielded by a constitutional framework. They could only be granted by a strong constitution, according to a leading jurist who collaborated with the military (Ferreira Filho 1972).<sup>12</sup> Claims of rights would be interpreted as demands for the *presence* of the state in social disputes, not its absence or limitation. Such reasoning would match well the ubiquitous idea amongst the establishment regarding the requirement for a strong presence of the state in macroeconomic policies to tackle development. If the military regime curtailed political and civic rights with one hand, the other emphasized social and economic ones (Carvalho 2005) without abandoning the normative vocabulary. This understanding had to stand against the one put forward by the Carter administration.

If rights reinforce the state and do not undermine its authority, then at the international domain rights would be subjected to state consent. To this perspective, human rights are placed among cooperation efforts, which would leave a great margin for maneuvers: after all, debates around rights would be limited to the willingness of the state to engage in coordination and self-restraint. The key source was the UN that in the midst of the Cold War was not prone in meddling into domestic affairs and which framework did not place rights above other issues. “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction” reads the much-quoted article 2(7) of the UN Charter. Given that the only exception were measures under Chapter VII which were not understood to include rights violations at that time, human rights were recognised to be a topic of collaborative initiatives and normative development. Under the UN framework, human rights could be placed among (or sometimes even under) other principles, including the one of non-intervention, much quoted in Brazilian diplomatic documents.

## The search for systematic strategies

The violence of the Brazilian dictatorship was criticized from the beginning but from 1968 onwards the widespread practice of repression and torture triggered transnational networks and domestic actors to use the rights language. Different social movements backed various sets of rights, for instance the working classes who advocated for labor rights (Payne 1991). Human rights

12 At the Ministry of Justice Manoel Gonçalves Ferreira Filho was Chief of Staff (1969-70) and Secretary General (1970-71). He was also the Secretary of the Council for the Defence of the Rights of Man (1969-71). In 1972 he published a controversial book, “[The] Possible Democracy” (*A Democracia Possível*) in which he presented a weak justification for the military regime. After the dictatorship, in a law manual entitled “Fundamental Human Rights” (*Direitos Humanos Fundamentais*), Ferreira Filho argues that: “once [rights are] recognised it is up to the state to restore them coercively if they are violated, *even if the violator is a state organ or agent*” (*emphasis added*) (Ferreira Filho 1995, 31). All the power lies with the state: first the state has to recognise the rights and then it “restores” them, even if it is its main violator. Even though this was published in the mid-1990s it is very similar to the legal reasoning used by the military regime in the 1970s.



as such became strengthened by groups like the Feminine Movement for Amnesty (Greco 2003), Brazilian exiles networks acting transnationally (Green 2010; Cruz 1998) and more mainstream actors like the opposition party MDB and the Catholic Church (Kinzo 1988). These groups helped to construct the “frames of meaning” regarding human rights (Keck and Sikkink 1998, 4) that first focused on issues of torture and political prisoners (Serbin 2000).

Social movements and civil organizations used human rights not only to point to some isolated cases but also to criticize the regime itself. Accusations such as torturing priests<sup>13</sup> and “Brazil leaders rule by torture”<sup>14</sup> hit US headlines. Foreign NGOs used international fora to present cases against the country. Amnesty International sent reports to both the UN Human Rights Commission and the Inter-American Commission on Human Rights.<sup>15</sup> The report sent to the UN contained a list of 210 persons “who have died in mysterious circumstances in recent years while in custody” (Amnesty International 1974, 38) and it was also monitoring a total of 102 cases. Amnesty launched a campaign to coincide with elections and to mark the anniversary of the military coup.

Before the Geisel administration, the military regime reacted to these initiatives with caution but the documents at the archives show an initial hesitation about whether to consider it a serious threat. Most documents from the first half of the 1970s linked the topic to the US domestic agenda: used during the electoral debates or addressed scarcely by the media, but without genuine enduring interest by grassroots movements or the government. Also, before the 1970s, the Brazilian regime did not seem to place human rights as a crucial concern in relation to the rights organs at the UN and the Organization of American States (OAS).

The first document to indicate a more structured response dates from 1975. The Ministry of Foreign Affairs headed an inter-ministerial group responsible for formulating a strategy to respond to several accusations of rights violations which included genocide of indigenous people, and repression, torture, and killing of dissidents.<sup>16</sup> In its assessment, changes in international politics favored concerns regarding human rights, the “campaign against Brazil” (that was becoming “systematic and permanent” according to the document) could be intensified, and the mechanisms in the UN and the OAS could be broadened and strengthened. Brazil ought to “defend its international good name”. The report listed nine strategies the government should adopt: (i) a policy to elucidate questions and disseminate information regarding the country, which was considered to have “brought favourable results”, (ii) no dialogue with international groups and individuals that

13 Priest Describes His Torture in Brazil. *The Washington Post, Times Herald* (1959-1973); (Mar 13, 1971), p. D2.

14 Jack Anderson. Brazil Leaders Rule by Torture. *The Washington Post, Times Herald* (1959-1973); (Jun 30, 1973), p. E35.

15 For example: Amnesty International published a report in 1974 called “Deaths in Custody in Brazil” and sent it to the Inter-American Commission, in which it alleged violations of the right to life, liberty and security of the person, the right to humane treatment during the time of custody and the right not to receive cruel, infamous or unusual punishment. It also sent material to the UN Commission of Human Rights. Previously amnesty also published a report called “Report on Allegations of Torture in Brazil” (1972). According to Schoultz (1981, 83) because of the publication of this report the Brazilian government prohibited the domestic press to mention Amnesty.

16 The participants were from the Brazilian intelligence agency (in Portuguese, Serviço Nacional de Informações), the Ministry of Justice, an observer from National Security Council and several heads of departments within the Ministry of Foreign Affairs, namely: Division of International Organizations; Division of the Organization of the American States; Division of the United Nations; Division of the Security and Information; and also the Chief of the Press from the Cabinet.

would pressure the regime,<sup>17</sup> (iii) a “priority and permanent” follow-up of human rights issues at the UN and OAS, (iv) a special attention to international civil servants at the UN and the OAS who might be influenced by international pressure groups, (v) specific actions at the OAS, that included the participation at the Inter-American Commission on Human Rights, the re-election of the Brazilian commissioner and close relation with him (“since he is not a diplomat”), as well as at the UN, which meant a dialogue with UN Commission on Human Rights and joining it, (vi) the inter-ministerial group should meet regularly, (vii) the representative of the Ministry of Justice should coordinate the activities internally, (viii) the Ministry of Foreign Affairs would “formulate, coordinate and implement” the policy with international organizations, and (ix) areas in which Brazil could be seen as a “model” should be stressed<sup>18</sup> (Brasil 1975).

The political reading of the 1975 Report proved to be quite accurate, and henceforth strategies carried out by the military regime basically followed its suggestions. Human rights started to gain more prominence in the country’s foreign affairs agenda, and the response from the government set the main lines of defence for the years to come. Instead of open confrontation and ordinary rebuttal of rights talk, the military regime tried to influence the emerging debate by claiming the traditional statist position, by articulating ties with other target countries, especially in South America and by having limited cooperation with international institutions while at the same time opposing its further institutionalization process.

It is revealing that the Brazilian position found discrete acquiescence with the US State Department during the Kissinger years, as suggested by some documents. In June 1976, for example, when the US presidential candidates were not yet elected, the Brazilian representative at the OAS General Assembly was instructed to abstain from all votes regarding human rights: “these instructions are based on the principled position of the Brazilian government that the moral and juridical responsibility for the observance of human rights belongs to each state”. The document mentions that the Brazilian delegate consulted Henry Kissinger about Brazil’s position. The then US Secretary of State was “in agreement with this line of action”.<sup>19</sup>

If human rights was already a growing concern to the Brazilian diplomacy in the first half of the 1970s, Carter’s election was a turning point. In December 1976, a month after his victory at the elections and before the inauguration, a memorandum was sent to all the major Brazilian embassies in Europe and Washington.<sup>20</sup> The Ministry predicted that the “observed changes in the international political context seem to indicate that the attention given by the world community to human rights issues would not wane, but instead experience a possible intensification”, which would have “implications and repercussions in multilateral and bilateral forums”. Particular rights of worry were listed: political rights, civil rights, minority rights, racial discrimination, crime

17 The report names groups that were involved in campaigns against Brazil, such as Amnesty International, the International Commission of Jurists and the Bertrand Russell Tribunal.

18 Namely, according to the report: religious tolerance, racial equality, women and children rights.

19 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 423*, 15 June 1976.

20 It is revealing the perception where the pressure would come from Western countries and no non-Western embassy received this message.

prevention and treatment of prisoners, freedom of information, amnesty for political prisoners, issues relating to kidnappings and hostages, refugees and indigenous people. Any information concerning these should be reported back to Brasilia, with the necessary urgency, the report states. It demanded “*permanent and priority monitoring of all matters that may directly or indirectly refer to the topic, either concerning Brazil, or the US*”.<sup>21</sup>

Accordingly, from this period onwards the documentation regarding human rights sent from the embassies in Europe and the US surged. Reports from the press, NGOs, and even academic lectures are listed in the Ministry archives. A cable sent to all Brazilian diplomatic and consular missions abroad read: “all posts should immediately inform the Secretary of State [of the Ministry of Foreign Affairs] of individuals and organizations (private or public) directly or indirectly connected with human rights issues”. Should these people need visas to visit Brazil, they ought to be denied without previous authorization from the ministry.<sup>22</sup> Human rights were shouldered with traditional issues such as economic development and nuclear energy at the Brazilian foreign policy agenda. It is also interesting to note the regime’s perception of foreign NGOs as a serious threat.

The initial and leading line of defense was the corollary of sovereignty, the principle of non-intervention. References to it are abundant in documents of the Ministry of Foreign Affairs and public speeches. Most times the Brazilian representative would not even engage in a debate about the contents of the accusation but would automatically dismiss its base on the notion that these were matters to treat at the domestic sphere. Many documents depict the regime’s stance as a “principled position” (“*posição de princípio*”) in situating “the issue of human rights within the domestic competence of states”.<sup>23</sup> Proposals for enhancing human rights institutions would be limited accordingly. For example, when the US suggested the creation of the UN High Commissioner for Human Rights in 1977, Brazil’s reading is revealing:

The United Nations practice has been to appoint High Commissioners whose objects of activities are not subject to the sovereignty of any state, such as the High Commissioner for Refugees and the High Commissioner for Namibia, both composed by states. On the contrary, as human rights constitute one of the aspects of the relations between the state and the people over whom it has jurisdiction, they are included within the state competence orbit, [and therefore] it does not justify the existence of a High Commissioner to deal with the matter. For the purpose of achieving international cooperation in promoting respect for human rights – one of the Purposes of the United Nations expressed in the Charter – the Commission on Human Rights is more than qualified.<sup>24</sup>

The Brazilian foreign policy clashed with the new interpretation of human rights where it was being advanced: at international organizations and bilateral relations with Washington under Carter. Regarding the former, instead of isolating itself, the military regime pursued an overall strategy of resisting the changes from inside. The two main bodies where rights were gaining new

21 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 56*, 20 January 1976.

22 Brazil. Secretaria de Estado das Relações Exteriores. *Circular Telegráfica nº 10641*, 25 February 1977.

23 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 411*, 6 December 1977.

24 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 446*, 28 September 1977.

momentum were the UN Commission and the Inter-American Commission on Human Rights, and at both Brazil articulated and came closer to other countries that also were being targeted, continued to delegitimise NGOs reports (especially from Amnesty International), pressured the secretariats, and vigorously tried to drop all cases against the country.

Most of the struggle at the UN Commission on Human Rights involved one particular case. In 1974, Amnesty International brought a dossier against Brazil about violations that took place during the hardest years of repression, the so-called “years of lead” (“anos de chumbo”), from 1968 to 1972.<sup>25</sup> Since the beginning, Brazilian delegates initiated a political campaign with the members of the Commission for dropping it. As mentioned, for the first time Brazil considered joining the UN organ. The motivations were clear: the government believed it could better face the accusations from the inside; its presence at the Commission would enhance its “conditions of negotiation” there, instead of using indirect channels (Brazil 1974). When campaigning for the seat, the Brazilian delegate promised his colleagues that the country would “act to ensure that the defense of human rights is not made in a way that hurts the good rules of international coexistence and the principle of non-intervention in internal affairs of States”.<sup>26</sup> When the military regime presented its defense, it chose to do it in political terms (the particular accusations were not addressed, and no further details of the acts or victims were given) and it re-stated the country’s policy that human rights should be dealt with domestically.<sup>27</sup> Finally, it reaffirmed its “exclusive competence” to address the issue and that its act of replying was “solely due to its spirit of international cooperation”.<sup>28</sup> In the early months of 1976 the UN Commission dismissed and archived one of the most detailed cases against the country<sup>29</sup> and in 1977 Brazil joined the Commission for the first time.

The relationship between the military regime and the Inter-American system was more nuanced and complex.<sup>30</sup> For this article it is sufficient to highlight that from the initial years of the 1970s, when apparently the Brazilian representatives lacked the fundamental procedural knowledge of how the system worked (Cavallaro 2002), to the increasing number of cases brought against the country,<sup>31</sup> there was an intense diplomatic involvement with the system. The Brazilian delegation articulated joint strategies with other states of the Americas to limit the work of the

25 The contents of the case were kept confidential throughout the proceedings (in accordance with resolution 1503 of ECOSOC). It is worth noting that Brazil was not a party to the 1966 Covenant nor its Protocol and yet chose to respond the allegations.

26 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 345*, 25 April 1977.

27 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 12*, 6 January 1976.

28 Brazil. Secretaria de Estado das Relações Exteriores. *Circular Telegráfica nº 10597*, 23 December 1976.

29 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 113*, 16 March 1976.

30 For the use of the Inter-American human rights system by the US in its relations with Latin American, see: Engstrom, 2016.

31 Until 1974 Brazil accumulated the following cases against it: 1683 (Olavo Hansen), 1684 (Múltiplo I), 1697 (Três Advogados), 1740 (Manuel da Conceição and Luís dos Santos), 1746 (Presídio Tiradentes), 1769 (Bispo Pedro Casaldaliga), 1772 (Múltiplo II) 1788 (Ivan Axelrud de Seixas) and 1789 (Paulo Stuart Wright). Six others were brought against the country until 1977: 1844 (Fernando Augusto de Santa Cruz Oliveira e Eduardo Collier Filho), 1897 (Ana Rosa Kucinskiand Wilson Silva), 1920 (Fred B. Morris), 1962 (Isis Dias de Oliveira), 1999 (Manoel Conceicao dos Santos) and 2067 (Ieda Santos Delgado).

Commission,<sup>32</sup> tried to dissuade other countries to receive in loco visits from the Commission,<sup>33</sup> pressured commissioners,<sup>34</sup> tried to block the publication of lost cases,<sup>35</sup> advocated the replacement of the Secretary of the Commission (Brazil 1976), attempted to block a US proposal to increase the budget of the Commission<sup>36</sup> and deeply involved the Brazilian commissioner with its political articulation<sup>37</sup> (Brazil 1977). When analyzing the performance of the Commission, one diplomat wrote that there was a growing tendency in making the Commission “one of the most active organs of the [Inter-American] system”,<sup>38</sup> a perception present in other documents.

During the regimes final moments, the military government continued resisting the stream of human rights accusations while it orchestrated the slow return to democracy. Once Ronald Reagan, a skeptic towards the subject, occupied the presidency, NGOs assumed the avant-garde of shaming, but they had limited means to play a larger role in global politics. In the end, the liberalization process was carried out without having human rights as a disabling factor: when the Amnesty Law of 1979 freed political prisoners and fewer cases of violations against dissidents were reported,<sup>38</sup> the political price for democracy was an amnesty also for the perpetrators. Democracy was at the forefront of demands, not human rights. Together with the 1979 political reform that re-established banned political parties, the opposition’s victories in the 1982 municipal and state elections set the pace towards the end of almost twenty years of dictatorship.

## Final remarks

In this article, I considered an approach that highlighted the dispute over the meanings of human rights in the Brazilian foreign policy of the late 1970s. I first analyzed the rise of a particular reading of rights that became part of Jimmy Carter’s foreign policy and then contrasted it with Ernesto Geisel’s statist version in the process of *Abertura*. I understand that such perspective provides a historically informed reading of the role human rights played in the foreign affairs during the Brazilian transitional context. The liberal view resumes the complexity of this process in a causal (quasi-deterministic) mechanism regarding the nature of the regime. I argued that such traditional approaches obscures the political agendas and the theoretical novelties involved, as well as the particularities of the events, in this case, the Brazilian transition to democracy.

32 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 256*, 10 March 1976.

33 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 302*, 5 May 1977.

34 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 101*, 10 March 1976.

35 Brazil. Secretaria de Estado das Relações Exteriores. *Telegrama nº 274*, 27 July 1976.

36 Brazil. Ministério das Relações Exteriores. *Memorandum para o Sr. Chefe da DEA*. 3 November 1977.

37 Brazil. Ministério das Relações Exteriores. *Informação para o Sr. Presidente da República*. 4 March 1976.

38 “There have been markedly fewer detentions for political reasons in the past 18 months in Brazil, and Amnesty International has received fewer reports of the torture and disappearance of suspected political activists than it did in 1975. At present there are between 200 and 300 political prisoners, some 213 of them adopted by Amnesty International at the time of writing.” (Amnesty International 1977, 127). Schoultz (1981, 346) consider Brazil as the “primary example” for the increase in the level for respect of human rights related to torture and detention without trial in the 1980s.



The alternative explanation I presented underlines how the question of transnational agency lay at the core of the disputes between the two foreign policies over their readings of human rights. With the new understanding of rights in the late 70s came an idea that foreign actors became entitled through a normative vocabulary to question actions elsewhere, regardless of state consent and boundaries – a notion resisted by the Geisel administration who saw it as a potential threat to his political project.

## Acknowledgments

Funding information: Coordenação de Aperfeiçoamento de Pessoal de Nível Superior (CAPES).

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