

ALTRUISM, SOLIDARITY, IDEALISM... WHAT MAKES STATES RATIFY HUMAN RIGHTS TREATIES?

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ABSTRACT

International concern on human rights issues has been growing since 1945, when World War II ended. After the creation of the United Nations, UN member States adopted the Universal Declaration of Human Rights in 1948. Since then, several international binding treaties relating to human rights matters were signed and ratified by States which compromised in taking those standards domestically, *vis-à-vis* their own nationals and foreigners who reside in their territories. But what are the reasons for such commitment if human rights standards limit State's sovereign power? There are some theories which try to explain States behavior towards human rights. These theories discuss the relation between external and internal factors and the level of democracy within the country in order to explain States behavior. They view States behavior through a cost/benefit perspective. Brazil's ratification and accession to human rights treaties has intensified since the government transition (from a military dictatorship to a democracy) in 1985. At that time new Brazilian government emphasized the importance of observance of human rights standards internally as well as a policy to improve Brazilian external image.

Key Words: Human Rights. Treaties. States Behavior. Democracy.

1 INTRODUCTION

Human rights issues have been especially discussed lately. In fact, during the last 60 years there is a growing concern on the matter for several reasons: ranging from human dignity to market interests. Considering the number of human rights treaties in force and the ratification average of these agreements¹, the level of effectiveness of human rights standards

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worldwide is well below the expected margin². It is already recognized that human rights standards have a moral legitimacy which grants States credibility internationally. However, to what extent is the State willing to limit its sovereign decision power in order to abide by human rights treaties?

This article presents some considerations on the reasons why States decide to negotiate and become bound by human rights treaties. The question we aim at answering is: ‘Why do States Ratify Human Rights Treaties³?’ We assume that ‘human rights’ is a major concern in contemporary international law and foreign relations. We intend to put forward theories some scholars have already researched on the subject as well as observe the issue from a Brazilian perspective. We do not mean to discuss the complexity of human rights definition, limitations or effectiveness; neither dare we demonstrate an original answer for this problem.

This essay encompasses basically a review of already published bibliography on the theme and the discussion is outlined in 3 topics: firstly the evolution of human rights law in the international arena is briefly covered; then, some relevant opinions and conclusions from remarkable scholars on the matter are presented; finally, Brazilian perspective on the issue of human rights treaties and state behavior is added. There is no intention to exhaust the debate over the matter. To the opposite, the purpose is to stimulate more questions on the subject. This way, we hope to contribute to the discussion over human rights and state behavior in Brazilian academy.

2 WHEN DID HUMAN RIGHTS TREATIES COME TO INTERNATIONAL SCENE?

Human Rights became seriously taken in international arena after World War II, precisely following the creation of United Nations (UN)⁴. As the preamble of the UN Charter reaffirms “faith in fundamental human rights” and its Art 1 (3) asserts UN objective to

¹ There are approximately 50 human rights treaties in force (excluding optional protocols) and the average of ratification has been 160 ratifications for the core human rights treaties. See: <<http://www2.ohchr.org/english/law/index.htm#core>> visited July 15, 2008.

² See NGOs Reports: Amnesty International, available at <<http://www.amnesty.org/en/human-rights>> visited July 7, 2008; Human Rights Watch, available at <<http://www.hrw.org/countries.html>> visited July 7, 2008.

³ The words ‘Ratify’ and ‘Ratification’ are used here interchangeable with ‘Accession’, ‘Accede’ ‘Adhere’. They all mean the unilateral decision of a State to become bound by the treaty.

⁴ For a thoroughly discussion on historical development of human rights in international system see, *inter alia*, LAUREN, Paul Gordon. The evolution of international human rights: visions seen. 2 ed. Philadelphia: University of Pennsylvania Press, 2003.

promote and encourage human rights observation, UN members committed to discuss the matter internationally⁵.

The cornerstone for the implementation of human rights within UN system was the approval of the Universal Declaration of Human Rights in 1948 (hereinafter the Universal Declaration)⁶. Although not being a binding document, the Universal Declaration represents a consensus among international society actors and comprehends the core principles of human dignity and value as enshrined in its preamble⁷.

The influence of such Declaration on States constitutions and internal legislation as well as on the celebration of international treaties is substantial. After 1948, human rights became not only an issue of internal attention but also of international law attention. Among its principles there are: equality protection of the law, right to a fair trial, protection against slavery, freedom of speech, freedom of movement, right to property, equality of rights between men and women, right to work and social security, right to education, self determination, *inter alia*⁸.

From 1948 on, it took about 18 years - a kind of 'transitional period' – for States to begin negotiating treaties dealing with human rights subjects⁹. Some of them prescribing comprehensive topics: such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁰ and other ones with more special issues: such as the Convention Against Racial Discrimination (CARD) or the Convention Against Torture (CAT). Most of the main human

⁵ The development of international efforts on human rights is a very complex matter and dates back in time. As Lauren, points out, it comprehends the influence of religious beliefs, philosophical contemplation, artistic thoughts, political behavior (LAUREN, 2003, p. 1). Before the creation of the UN there were subjects discussed internationally which could be cited here as contributors to the evolution of human rights. Nevertheless, it is not our purpose to debate this historical development, so the constitution of the UN is a distinguished historical mark taken for the present essay.

⁶ UN General Assembly Resolution, 217A, December, 10, 1948. The Universal Declaration was approved with 48 favorable votes. There were 8 abstentions (by the communist bloc, South Africa and Saudi Arabia) and no dissenting vote. Prior to the Universal Declaration, on December 9, 1948, the UN General Assembly approved the Geneva Convention on the Prevention and the Suppression of Genocide.

⁷ SHAW, Malcom. International law. 5 ed. Cambridge: Cambridge University Press, 2003. p. 252.

⁸ One can conclude that the Universal Declaration on Human Rights principles encompasses the so called rights of first and second generations, although the document does not mention such a distinction and they were subsequently reaffirmed as being universal, indivisible and interdependent and interrelated at the UN Vienna Conference of Human Rights, 1993.

⁹ Treaties on human rights topics had been signed before, indeed. However, after 1948 they grew up in number, diversity and State parties. The average number of parties for the core human rights treaties is about 160.

¹⁰ ICCPR and ICESCR were meant to be part of a single human rights treaty. As Dixon puts it, "Originally it was intended that there should be only one treaty, covering the whole range of human rights, but in view of the rather more subjective nature of economic and social rights (hence second generation) it was rightly considered preferable to deal with them separately". (DIXON, Martin. Textbook on international law. 5 ed. Oxford: Oxford University Press, 2005. p. 329).

rights treaties (also called the core human rights treaties) have an organ which monitors their implementation¹¹.

Yet, the UN system evolved in order to assist human rights accomplishment. Besides the substantive norms and declarations, there are organs like UN Commission on Human Rights, existent since 1946, and more recently there was the establishment of UN Office of the High Commissioner for Human Rights in 1993¹². In addition to the UN human rights system, there are some regional regimes¹³, such as the European regime, Inter-American regime and African regime. These regional regimes chiefly reaffirm the global regime standards. But they are also functional to facilitate the inspection and effectiveness of universal human rights considering the proximity of the parties involved in the regime to the regional machinery¹⁴.

One can argue that all these treaties, organs and monitoring mechanisms, may constrain States' sovereignty, especially to those States which ratified the instruments. According to Donnelly, "Internationally recognized human rights impose obligations on and are exercised against sovereign territorial States."¹⁵ The idea of State sovereignty seems contrary to constraint¹⁶. Thus, one might ask: why do States ratify human rights treaties then? What are the advantages for the sovereign State when celebrating human rights agreements? What reasons are behind the scenes? This will be discussed in the next topic.

3 APPROACHES TO THE REASONS WHY STATES RATIFY HUMAN RIGHTS TREATIES

¹¹ According to UN Office of the High Commissioner for Human Rights, there are 9 core international human rights instruments: International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; International Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Rights of Persons with Disabilities. Available at: <<http://www2.ohchr.org/english/law/index.htm#core>> visited July 6, 2008.

¹² UNITED NATIONS. Office of the High Commissioner for Human Rights. Available at: <<http://www.ohchr.org/EN/AboutUs/Pages/BriefHistory.aspx>> visited July 5, 2008.

¹³ The word 'regime' is used here as equivalent to system. Regime is used by International Relations and Political Science scholars meaning "sets of implicit or explicit principles, norms, rules, and decision making procedures around which actors' expectations converge in a given area of international relations." (KRASNER, S.D. (Ed.) International regimes. Ithaca: Cornell University Press, 1983 *apud* BAYLIS, John; SMITH, Steve (Ed.). The globalization of world politics. New York: Oxford University Press, 2005. p. 373).

¹⁴ According to Donnelly, some regional and single-issue human rights regimes can usefully be seen as autonomous but relatively coherently nested international human rights (sub) regimes. (DONNELLY, Jack. Universal human rights in theory & practice. 2 ed. Ithaca: Cornell University Press, 2003. p. 138).

¹⁵ DONNELLY, 2003, p. 34.

¹⁶ John H. Jackson discusses the changing paradigm of sovereignty and the human rights constraints on the 'sovereign statehood'. (JACKSON, John H. Sovereignty, the wto, and the changing fundamentals of international law. New York: Cambridge University Press, 2006. p. 21).

Setting aside International Relations (IR) theories which aim at explaining States behavior, such as Realism, Liberalism, Neorealism, Constructivism, Neoliberalism¹⁷, our purpose here is to present some scholarly discussions about the association of States foreign policy and human rights obligations. Obviously those mentioned theories permeate and influence the scholarly discussions but it is not our objective to define or defend any of those IR theories. Additionally, labeling the discussions presented into one of those IR theories could be really hard or confusing. So, scholars' discussions are presented the way they were conceived, without sticking to any of those IR theories or disregarding their value.

Let us begin with Louis Henkin and his 'How Nations Behave'. In this distinguished book from 1968, Henkin argues that despite the obstacles faced, there was a considerable growth of human rights law as a result of "the influence of ideas and rhetoric, the sensitivity of modern governments to "public opinion," and the effectiveness of international organizations for exploiting that sensitivity to transform ideas and rhetoric into law and national policy and behavior¹⁸."

The author emphasizes that it is the nation's ideological traditions and commitments that drive it to adhere to human rights law internationally. Henkin believes that State's impulsion to participate in human rights treaties "[...] comes from idealistic, libertarian, or religious constituencies, especially those with links to counterparts in other countries.¹⁹,"

By the time Henkin wrote his book (1967), treaties like ICCPR and ICESCR were recently signed and were not in force yet²⁰. Henkin's approach is from 'a foreign affairs' perspective. His intention was to investigate the forces behind law creation and the links between international relations and international law, evading a strict legal view of norms creation, which was a tendency at that time.

Several decades after Henkin's book publication, Goldsmith and Posner, in a study printed in 2005, demonstrate an interesting theory where coincidence of interest, cooperation, coordination and coercion are applied in order "to explain the human rights practices of States²¹". The authors allege that the modern human rights treaties work

¹⁷ For complete dissertation on IR theories, see, *inter alia*, BROWN, Chris; AINLEY, Kirsten. Understanding international relations. 3 ed. New York: Palgrave Macmillan, 2005.

¹⁸ HENKIN, Louis. How nations behave. 2 ed. New York: Columbia University Press, 1979. p. 279.

¹⁹ *Ibidem*, p. 237-239.

²⁰ ICCPR entered into force in 23 March, 1976; ICESCR entered into force in 3 January, 1976.

²¹ GOLDSMITH, Jack L.; POSNER, Eric A. The limits of international law. New York: Oxford University Press, 2005. p. 108.

differently from the treaty *rationale* of Westphalia period or the British Bilateral slave trade treaties²².

According to their study, the Treaties of Westphalia as well as the British Bilateral slave trade treaties were based on bilateral symmetric or asymmetric cooperation. Symmetric cooperation (as in Westphalia) was due to reciprocity: both States involved had the same interest in protecting those human rights to their citizens. This was possible because there were minorities of ethnic groups from one State living in the other and vice-versa.

The authors explain that asymmetric cooperation is based on one State interest to protect human rights (these reasons may range from sympathy or altruism to instrumental interest) in another State which violates human rights. Thus, the former State uses cooperation or coercion to achieve its goals. The British Bilateral slave trade treaties are example of an asymmetric cooperation considering that United Kingdom offered rewards or otherwise applied reprisals in order to prohibit slave trade worldwide²³.

Nowadays, the nature of human rights treaties has its own peculiarities. One of the authors' conclusions is that increase on the number of ratification of a treaty does not relate to growing observation of human rights²⁴. On the contrary, States which did not ratify a human rights treaty may comply with those standards more than others that had ratified it. This is due to lack of an enforceability mechanism to monitor treaty compliance. When there's no coercion, a State may ratify a human rights treaty knowing that in the event it violates those provisions nothing will happen to affect its interests. So why do States commit to treaties when they do not intend to observe them? Well, Goldsmith and Posner elucidate that this is not a simple question with a simple answer. This is involved in a conundrum which can lead to different conclusions, depending on the State in question, on the treaty, the situation, among other factors²⁵.

The authors defend that there must be some kind of benefit for the state which ratifies a human rights treaty. They take for instance the ICCPR and then develop the following *rationale*: the treaty provisions comprehend a standard of conduct, conceived by powerful liberal democracies. Weaker States may comply with that standard or not. If they comply they will be 'accepted into the club' and may receive some kind of aid or reward. If they do not comply there is a high probability they may suffer any kind of pressure or

²² GOLDSMITH; POSNER, 2005, p.119.

²³ GOLDSMITH; POSNER, 2005, p. 113-115.

²⁴ The authors explain that States may use Reservations, Understandings, and Declarations (RUDs) in order to flex the treaty provisions to their reality. RUDs in Human Rights Treaties have been particularly used by liberal democracies, such as United Kingdom and United States. (GOLDSMITH; POSNER, 2005, p. 128-129).

²⁵ GOLDSMITH; POSNER, 2005, p. 120-127.

threaten. So, Goldsmith and Posner conclude, “[...] the treatment of human rights may improve as a result of cooperation or coercion in a bilateral relationship²⁶”.

According to their theory, every State (powerful liberal democracies, weaker States, authoritarian States) benefits from ratifying a human rights treaty. The smallest benefit States could receive would be: they could “no longer be criticized as non-rights-respecting because they failed to ratify the treaty²⁷”. They add that States which are in a transitional phase from authoritarian to liberal democracy, do give more importance to ratifying human rights treaties in order to increase their confidence and credibility although ratifying treaties does not mean practicing human rights²⁸.

One of their final remarks on the subject is that,

[...] the reason for the absence of any discernible pattern of ratification is that both the costs and the benefits of ratification of these treaties are very small. Because ratification matters relatively little on the international plane, one way or the other, ratification patterns are unlikely to correlate to systemic international factors, but rather to the vagaries of domestic politics and institutions, which are lost in noise²⁹.

The study presented by the authors assumes that States act rationally. This theory is called rational choice and tries to explain international law relationship to international politics³⁰. Thus, one can realize that the matter is quite interdisciplinary and complex.

Jackson, on his turn, affirms that ‘human rights’ is a subject that “involves important national domestic policy views, as well as perceptions of the necessity of international involvement³¹”. According to his thoughts, human rights may be a challenge to the nation-state since these rights may be a protection against States – the perpetrators of human rights violations. He asserts that this protection was necessary, especially right after World War II, and that in many contexts “nation-states have a conflict of interest when it comes to protecting human rights³²”.

The author points out possible motives for the differences on the way States deal with human rights treaties. He cites the case for European countries and their historical

²⁶ GOLDSMITH; POSNER, 2005, p. 128.

²⁷ GOLDSMITH; POSNER, 2005. p. 131.

²⁸ GOLDSMITH; POSNER, 2005.

²⁹ *Ibidem*, p. 132.

³⁰ On Rational Choice Theory, see: GUZMAN, Andrew T. How international law works: a rational choice theory. Oxford: Oxford University Press, 2008.

³¹ JACKSON, John H. Sovereignty, the wto, and the changing fundamentals of international law. New York: Cambridge University Press, 2006. p. 248.

³² JACKSON, 2006, p. 248.

experiences with wars. Those terrible experiences may explain why the European regional institutions and mechanism for implementation of human rights are robust while in other countries, even liberal democracies, as United States, the approach to human rights protection is not so internationally institutionalized³³.

Jackson also suggests that there may be a relation between markets and human rights and he questions whether international institutions for trade should explicit the function of rights (such as information, freedom of speech, property) to market development³⁴.

Oona Hathaway published an outstanding essay named “Why Do Countries Commit to Human Rights Treaties?” presenting the results of years of research on human rights treaties³⁵. In her research, she analyzed the behavior of more than 160 States towards human rights treaties comparing how human rights treaties could shape States behavior. Assuming that human rights treaties do not bring about obvious reciprocal advantages for States which ratify them, she affirms that understanding why some States commit to such treaties and others don't, is a hard case³⁶.

Like Goldsmith and Posner, Hathaway also claims that States are rational actors and they verify the costs and benefits before committing to a human rights treaty. She concludes that costs and benefits analysis depends mostly on whether the State expects to comply with the treaty (costs and benefits to complying with the treaty)³⁷. As human rights treaties predominantly impose obligations on a State *vis-à-vis* its own citizens (although other State parties can also claim its observation as well as international organs constituted by the treaties), each treaty has its own costs and benefits analysis characteristics³⁸. According to the author,

Domestic legal enforcement of the terms of the treaty and the collateral consequences of the decision—the expected reactions of individuals, states, and organizations to the state's decision to commit to the treaty and then to abide or not abide by its terms are the two central dynamics which influence state decisions to commit to and comply with human rights treaties³⁹.

³³ JACKSON, 2006. p. 249.

³⁴ *Ibidem*, p.252.

³⁵ HATHAWAY, Oona A. Why do countries commit to human rights treaties? *Journal of Conflict Resolution*. Volume 51, Number 4, Aug. 2007. p. 588-621.

³⁶ HATHAWAY, 2007, p. 589.

³⁷ HATHAWAY, 2007, p. 590.

³⁸ HATHAWAY, 2007, p. 590.

³⁹ *Ibidem*, p. 592.

Taking those two central dynamics (domestic legal enforcement and collateral consequences) into consideration, Hathaway establishes several variables in order to proceed with her data analysis⁴⁰. Her remarkably conclusions include on one hand, the high probability of States with a weak democracy and eminent levels of human rights violations that such human rights violations do not statistically influence the incidence on ratification of human rights treaties; on the other hand, States with solid democracies but eminent violations of human rights tend not to ratify human rights treaties. She adds this may suggest that the State fears a domestic pressure to enforce the treaty obligations because of its high level of democratic institutions⁴¹.

Interestingly, statistics suggest that presence of human rights NGOs may be an influence on States decision to ratify a treaty, but the same does not apply for establishment of organs to monitor compliance with the human rights treaty. Hathaway takes the number of ratifications of ICCPR and its Optional Protocol for instance and proposes that, “the government may be concerned that the NGOs will aid individuals in filing complaints under the procedure put in place by the Protocol and hence may be more reluctant to accept the Protocol⁴²”.

Hathaway’s study is really original and may help States in shaping human rights treaties in the future, as she stressed in her objectives.

There are many other theories, opinions, critics that could be exposed here on human rights treaties and States commitment⁴³. Nevertheless, considering the assumptions placed at the outset, there is no intention to exhaust the discussion on the subject but to demonstrate its main possibilities. In so being, we agree with Donnelly when he affirms that human rights have become a “significant international concern” but, as he explains, this is not sufficient for States to create a strong enforceable regime which could diminish their decision-making powers. Thus, human rights international regime is a strong promotional regime, which provides a comprehensive array of substantial norms with a precarious enforceable mechanism⁴⁴.

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⁴⁰ Her research presents several table and graphics which statistically prove her assumptions.

⁴¹ HATHAWAY, 2007, p. 608.

⁴² *Ibidem*, p. 609.

⁴³ For another theory on this matter see: MUTUA, Makau Wa. Politics and human rights: an essential symbiosis. In: BYERS, Michael (Ed.). *The role of law in international politics*. Essays in international relations and international law. New York: Oxford University Press, 2001. p.149-175.

⁴⁴ DONNELLY, 2003. p. 138.

The position of Brazil in relation to human rights treaties has been changing through these last 25 years. It is important to clarify that Brazil faced a dictatorship for several decades, changing to a democratic government from 1985 on and after the promulgation of 1988 Constitution it has substantially ratified/adhered to human rights treaties.

Brazilian 1988 Constitution is paradigmatic for the case of human rights in the country. The promulgation of the Constitution was considered a victory of democracy. Consequently, if the State was to experience a new democratic phase it was supposed to guarantee human rights once democracy and human rights are to walk hand in hand.

A year after the promulgation of the Constitution, Brazil elected a new President. Only after his election, Brazilian Congress approved the State's accession to ICCPR and ICESCR. Both treaties were adhered by Brazil in 1992⁴⁵. This fact could lead to the inference that the variable, New Regime⁴⁶, as demonstrated in Oona Hathaway's study, would explain the reasons why Brazilian new government decided to commit to these treaties because as a new regime was constituted, it would have "more to gain from establishing a reputation for a commitment to human rights and a desire to distance themselves from abuses by prior regimes to obtain collateral benefits such as investment, trade, aid, and political support⁴⁷".

Goldsmith and Posner also emphasize that democratic transitional governments demonstrate more willingness in ratifying human rights treaties in order to solidify their credibility and legitimacy internally and externally.

Pinheiro studied the relation of "Brazil and the International Human Rights System" and one of his considerations on the commitment to those treaties subsequently to the end of the military dictatorship could be found in a message submitted by former president, José Sarney, to Brazilian Congress when he urges congressmen to approve the State's accession to the ICCPR and ICESCR referring "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 dictatorship⁴⁸". He suggested that "subscription to the Covenants would have positive repercussions in both the external and internal spheres besides sealing a

⁴⁵ Brazil acceded to both treaties in 24 Jan. 1992 and national decrees were promulgated in 6 July, 1992. Available at BRAZIL MINISTRY OF FOREIGN AFFAIRS. Multilateral Treaties. Available at: <<http://www2.mre.gov.br/dai/dhumanos.htm>> visited June 2, 2008.

⁴⁶ Oona Hathaway tests the variable New Regime considering the behavior of states with regimes established in less than 10 years. She demonstrates that this variable positively influences the State to ratify human rights treaties. (HATHAWAY, 2007, p. 611).

⁴⁷ HATHAWAY, 2007 p. 597.

⁴⁸ PINHEIRO, Paulo Sergio. Brazil and the international human rights system. University of Oxford Centre for Brazilian Studies. Working Paper Series, CBS - 15, 2000. p. 7. Available at <<http://www.brazil.ox.ac.uk/workingpapers/pinheiro15.pdf>> visited July 10, 2008.

commitment or additional guarantee of effective protection for human rights in the country⁴⁹”.

President Sarney’s message supports the suggestion that Brazil acceptance of international human rights treaties, although at that time only on a declaratory level, was based on an idea of changing an old image and building confidence and credibility to the new government of the country⁵⁰.

Since 1992 Brazil has committed to approximately 20 human rights treaties either universal or regional (including treaties protocols)⁵¹. Conversely, Brazil has not adhered to ICCPR Optional Protocols so far⁵². ICCPR and ICESCR were both acceded with no Reservation, Understanding or Declaration (RUDs) by Brazilian government⁵³. But the government did present an Interpretative Declaration to the regional human rights treaty, American Convention on Human Rights (San Jose Pact), on its articles 43 and 48 (d) relating to the authority of the Human Rights Commission to inspect the country *in loco* and limiting this authority by the express acceptance from Brazilian State⁵⁴.

The State has also recognized the compulsory jurisdiction of the Inter-American Court of Human Rights since 2002, ten years after adhering to the American Convention on Human Rights. In doing so, it reaffirms its intention to give transparency to human rights practices in the country and also to submit such practices to international scrutiny. We guess this intention is embedded by legitimacy and credibility human rights best standards accrue to the State external image, notwithstanding the effects these treaties and organs may have on domestic level. However, there is no pattern in this behavior once Brazil accepts some enforceable mechanisms and not all of them.

Pinheiro posits that subsequent Brazilian governments have given priority to human rights and also the integration of the country to the global world economic order to

⁴⁹ PINHEIRO, 2000, p. 7.

⁵⁰ Importantly, Brazil started allowing human rights NGOs visits for inspections and reports in 1990, during Fernando Collor de Melo government. (PINHEIRO, 2000, p. 12).

⁵¹ Pinheiro points out that former Foreign Affairs Ministers, Francisco Rezek and Celso Lafer played an important role for human rights treaties ratification in Brazil (PINHEIRO, 2000, p.12). It is important to highlight the influence of Antônio Augusto Cançado Trindade who was consultant for Brazilian Ministry of Foreign Affairs from 1985 to 1990.

⁵² BRAZIL MINISTRY OF FOREIGN AFFAIRS. Multilateral Treaties. Available at: <<http://www2.mre.gov.br/dai/dhumanos.htm>> visited June 2, 2008.

⁵³ *Ibidem*. Available at: <http://www2.mre.gov.br/dai/m_592_1992.htm> <http://www2.mre.gov.br/dai/m_591_1992.htm> visited June 2, 2008.

⁵⁴ *Ibidem*. <http://www2.mre.gov.br/dai/m_678_1992.htm> visited June 2, 2008.

better fit the values of international arena⁵⁵. He also points out the importance of NGOs and domestic forces:

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 organizations and the Catholic leadership were also able to place effective and organized pressure on successive administrations⁵⁶.

After analyzing his study, it is possible to conclude that Brazilian changing behavior towards international human rights is due to a mixture of internal and external factors. International human rights treaties became more important in a global economy, encouraging States to adopt democratic regimes and human rights international standards. However, each State, with its own historical, cultural, political, economical reality receives these external influences in a particular way. The necessity of being accepted by this global society has made Brazil accede to human rights treaties and change its internal practice as a consequence. The changes of human rights practices within the country increases as democratic institutions get stronger.

Recently, Maliska wrote an essay discussing Constitutional Law change in Brazil concerning human rights⁵⁷. According to his thoughts, Brazilian 1988 Constitution adopted a model called “Cooperative Constitutional State” whose definition was conceived by Peter Häberle in 1978⁵⁸. He argues that this is the model accepted by the global society. Accordingly, when Brazil promulgated 1988 Constitution it was compromising to behave in a cooperative manner internationally for the accomplishment of better human rights practices. This cooperation would be achieved at the normative dimension, considering that when States negotiate international human rights treaties they are sharing their power to create legal norms. He adds that Brazil truly incorporated human dignity values after 1988 Constitution, although these values had already been guiding international human rights treaties since 1948⁵⁹.

⁵⁵ PINHEIRO, 2000, p. 29.

⁵⁶ *Ibidem*.

⁵⁷ MALISKA, Marcos Augusto. A cooperação internacional para os direitos humanos entre o direito constitucional e o direito internacional. Desafios ao estado constitucional cooperativo. Florianópolis: Fundação Boiteux, 2008. p. 7016-7030.

⁵⁸ See, HÄBERLE, Peter. O estado constitucional cooperativo. Tradução de Marcos A. Maliska e Lisete Antoniuk. São Paulo: Renovar, 2007. Original Title: *Der Kooperative Verfassungsstaat*.

⁵⁹ MALISKA, 2008, p. 7016-7030.

Hence, we highlight that Brazil has changed its position concerning human rights treaties in a manner consistent with its internal organization. The more democratic Brazilian institutions become the more committed the State turn to international machinery to promote human rights standards.

As Cançado Trindade claims, international society has changed and so has international law. This change has brought about the evolution of human rights law either, which demands the recognition of the human being as a subject of international law⁶⁰. Thus, human dignity must be considered the cornerstone of such legal system permeating the relations among States and also the relation of each State *vis-à-vis* all human beings within their territories.

4 FINAL REMARKS

We aimed at outlining some theories which analyze the reasons why States ratify human rights treaties. We took into consideration that human rights treaties are a quite recent phenomenon, starting right after the World War II.

When States began committing to human rights treaties, the main concern was the establishment of substantial norms which could be a common standard to all countries participating in the international society. Nowadays, such standard has been recognized as being the Universal Declaration of Human Rights from 1948.

Since then, dozens of human rights treaties have been signed. Most of them are in force for the States. However, there are considerable controversies about the motives which lead States to join such treaties, especially because they do not necessarily bring about any kind of direct benefit to the States parties.

A State party to human rights treaties will have a constraint in its sovereignty, taking into account that it will have to adequate its internal system to those norms conformed internationally.

One of the main factors analyzed by scholars is the relation between democracy and compliance with human rights standards. Democratic States give more transparency to human rights practice within their territory. Nevertheless not all democratic government is willing to ratify human rights treaties if those treaties have any kind of enforceability

⁶⁰ CANÇADO TRINDADE, Antônio Augusto. Hacia el nuevo derecho internacional para la persona humana: manifestaciones de la humanización del derecho internacional. In Revista da Faculdade de Direito da UFMG, nº 50, 2007. p. 65-90.

machinery. Scholars' theories explain this relation through the lens of the cost/benefit analysis.

Other factors, such as new governments, the presence of human rights NGOs within the State, liberty of information and expression, the role played by the media in the country, acceptance of human rights by other regional States, among others, influence States behavior towards human rights treaties and consequently to human rights practices. Each State has its own peculiar reasons for adhering to a human rights treaty or not. Sometimes these motives may be quite complex depending also on the treaty provisions.

Brazil has increasingly changed its attitude in relation to human rights treaties since the government transition in 1985. After 1988 Constitution, Brazil has ratified human rights treaties and submitted its internal practices to international scrutiny. The reasons why the country has changed its position may be explained by the same factors listed above: new democratic government, regional human rights treaties acceptance, NGOs influence, and so on. Most importantly, Brazilian 1988 Constitution gives especial consideration to human dignity and the promotion of human rights. Thus, Brazil faces a new challenge through the relationship of its internal law and international law concerning human rights. In so being, it has adopted the paradigm of the "Cooperative Constitutional State" as defined by Häberle.

ALTRUÍSMO, SOLIDARIEDADE, IDEALISMO... O QUE LEVA OS ESTADOS A RATIFICAREM OS TRATADOS DE DIREITOS HUMANOS?

RESUMO

A preocupação internacional com a questão dos direitos humanos tem crescido desde 1945, após o final da 2ª Guerra Mundial. Depois da criação das Nações Unidas, os membros da ONU adotaram a Declaração Universal dos Direitos do Homem em 1948. Desde então, diversos tratados internacionais de direitos humanos foram assinados e ratificados pelos Estados que se comprometeram a adotar aqueles padrões no plano doméstico em relação a seus nacionais e estrangeiros residentes em seus territórios. Mas, quais as razões para tal comprometimento se os padrões de direitos humanos limitam o poder soberano do Estado? Há algumas teorias que tentam explicar o comportamento dos Estados no que tange os direitos humanos. Estas teorias discutem a relação entre fatores externos e internos e o nível de democracia dentro do país para explicar o comportamento dos Estados. Elas percebem o comportamento dos Estados pela perspectiva do custo/benefício. A ratificação e adesão do Brasil aos tratados de direitos humanos aumentaram desde a transição governamental (de uma ditadura militar a uma democracia) em 1985. À época o então novo governo brasileiro

ênfatezou a importância da observância dos padrões de direitos humanos internamente, assim como para a melhora da imagem externa do país.

Palavras-chave: Direitos humanos. Tratados. Comportamento Estatal. Democracia.

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