SOUTH-SOUTH DIALOGUE: A NEW PARADIGM FOR INTERNATIONAL RELATIONS AND HUMAN RIGHTS PROTECTION*

DIÁLOGO SUL-SUL: UM NOVO PARADIGMA PARA AS RELAÇÕES INTERNACIONAIS E A PROTEÇÃO DOS DIREITOS HUMANOS

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ABSTRACT:Latin America and Africa share a similar history of colonization and of its' present-day effects in the political, socio-economic and cultural fields. It is within this shared historical context that the idea of "South-South Cooperation" was born in the 1970's, with the declared objective of promoting the joint development of economically emerging countries with common obstacles and challenges. Recently, Brazil has become a key actor within this particular field of international cooperation, especially as regards initiatives that go beyond mere economic cooperation. This article aims to help identify, and explore, the possibilities and potential for South-South cooperation in the field of formal justice, particularly as relates to the example of the Brazilian Constitution of 1988, and its' positioning of human rights as the central, organizing principle of established legal order.

KEYWORDS: South-South Cooperation. Brazil. Latin America. Africa. Brazilian Federal Constitution of 1988.

RESUMO: América Latina e Africa compartilham de um passado histórico comum em relação ao processo de colonização e seus efeitos até hoje entidos no campo socioeconômico e cultural. A partir desse contexto nasce no final da década de 1970 a "Cooperação Sul-Sul", com o objetivo de promover o desenvolvimento conjunto entre países com economia emergente que compartilham obstáculos e desafios comuns. Mais recentemente, o Brasil vem se destancando como um país-chave na filosofia cooperativa, com iniciativas que ultrapassam o campo meramente econômico. Este artigo pretende explorar a possibilidade de um intercâmbio cooperativo também no campo jurídico formal, em particular a partir do exemplo da Constituição Brasileira de 1988 que posicionou os direitos humanos como eixo central do ordenamento jurídico vigente.

PALAVRAS-CHAVE: Cooperação Sul-Sul. Brasil. América Latina. África. Constituição Federal Brasileira de 1988.

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Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

45

1. INTRODUCTION

Latin America and Africa share a common history of colonialism as well as its' heavy legacy. The colonization and domination of both continents were motivated by similar aims – economic, religious, territorial-, employed similar methods – destruction of established authority, subjugation and/or domination of native inhabitants, forcible extraction of natural resources and (slave) labor, coerced religious conversion, territorial imperialism-, and left similar legacies: artificially concocted and inherently unstable "states", with aspirationally Eurocentric models of governance, full of suppressed, or even newly instigated, social and economic tensions and conflicts.

Though there are also numerous differences in their respective colonization and decolonization processes, it can be argued that their present-day challenges are very similar, precisely because of the similarities of their shared past. And that these commonalities are a strong base from which to build a new and essentially different approach to their international cooperation for sustainable development.

By reviewing both the similarities and differences of their colonization and decolonization processes, it is easier to better comprehend the emergence of South-South Cooperation initiatives as coordinated responses to the modern "neo-colonialist" power struggles that have influenced the way less-developed, mostly Global South countries, are integrated into the globalization process. And within the framework of this emerging South-South Cooperation lies the opportunity for a crucial shift in international cooperation thinking, that can best respond to the challenges of the countries: putting human rights at the center of development cooperation. This is a shift that has already begun successfully, with Brazil being a good example of an ex-colonial, ex-lesser-developed country, rebuilding first its' internal institutions with a human rights core, and then expanding this approach to its' steadily increasing South-South cooperation efforts.

2. LATIN AMERICA AND AFRICA: A COMMON HISTORY OF COLONIAL LEGACIES

Over the course of several hundred years, both Latin America and Africa were colonized by a number of powerful European nations. Although in different periods of history – Latin America in the 16th and 17th centuries and Africa in 19th and 20th centuries – European colonialism and imperialism[1] brought into both continents a great

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[1] It is important to precise that "colonialism" and "imperialism" are often used as synonyms, but the two terms carry different meanings. According to the Stanford Encyclopedia of Philosophy: "The term colony comes from the Latin word *colonus*, meaning farmer. This root reminds us that the practice of colonialism usually involved the transfer of population to a new territory, where the arrivals lived as permanent settlers while maintaining political allegiance to their country of origin. Imperialism, on the other hand, comes from the Latin term *imperium*, meaning to command. Thus, the term imperialism draws attention to the way that one country exercises power over another, whether through settlement, sovereignty, or indirect mechanisms of control."

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

46

loss in population, through slavery and slave trafficking, as well as direct targeting of ethnic groups, for subjugation or elimination. It also fomented the extraction and –more often than not- the destruction of natural resources, among other negative consequences. Although some scholars insist that the establishment of "state governance systems" and the introduction of "formal education systems" can be considered positive aspects of the European colonization, it is quite clear that the creation of colonies worldwide with a "development approach" was mostly an excuse for greedy nations eager for economic expansion. The unjust and unnecessary death of so many people because of the European conquest and domination in Africa and Latin America is simply impossible to justify.

The history of colonization in modern times began with the expeditions of Christopher Columbus[2] to the Americas between 1492 and 1503. Following Columbus' voyages, other European sea powers such as Portugal, France and the Netherlands also sent expeditions to explore the natural resources of the so-called "New World"[3]. Central and South America (today Latin America…) were mainly colonized by the Iberian countries, throughout a long period of domination and large-scale exploitation that lasted over three centuries. By 1494, Spain and Portugal had agreed on the Treaty of Tordesillas, a formal boundary agreement, ratified by the Catholic Church, that divided the new continent into two parts: while the Spanish Crown concentrated its domination on the central and western sides of the continent, the Portuguese remained on the eastern side, more or less in what is now known as the country of Brazil.

The colonial project in Latin America had three main driving forces: a desire for material gain (preferably in the form of valuable natural resources, such as spices, or precious metals), a desire to spread (Christian) religion, and a desire to expand territory. Although the conquerors also discovered new agricultural products such as maize, pineapples, guava and potatoes, the search for gold and silver became the main goal of the European conquerors in Central and South America, while only sugar – called "white gold" in the European market at the time– was considered attractive enough to produce massively, and its' heartland became the large Caribbean plantations. Together with natural resources exploitation, slavery and slave trafficking[4] was another major economic

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[2] Italian explorer and navigator who, under the auspicious of the Spanish Monarchy, travelled across the Atlantic Ocean between 1492 and 1503 and established the first contact with the American continents in the Western Hemisphere.

[3] The expression "New World" was originated with the discovery of the Americas. Before this period, Europeans thought the world consisted only of Europe, Asia and Africa. The term was first appeared in a letter from the explorer Americo Vespucci to his patron.

[4] Slavery trade began in the mid-1500s when Portuguese colonists brought Africans slaves to Brazil to cut cane and clear forest area for the construction of settlements and churches. It is estimated that 15 million Africans were brought as slaves to the Americas by 1800, and a further 1.5 million or so died in the transatlantic crossing in the miserable conditions of the ships holds.

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

47

activity. Through the trans-Atlantic slave trade, forcibly displaced Africans became the main working force during colonial times, especially in Central America and Brazil[5]. Although the major driving force of the colonial expansion in Latin America was undoubtedly the stated economic reasons, the Catholic Church saw it also as an opportunity to spread Christianity in pagan societies. The missionaries travelled alongside the early colonizers, planning to convert the pagan beliefs of the indigenous people to the monotheism of Christianity. As for the third driver of the colonial process, the desire to conquer and expand territory, from the early 16th century, European colonial nations engaged in an increasing competition for territory, which ended up shaping the borders of the modern American nation states of today.

European colonialism brought irreversible changes to the Americas, most of them in terms of widespread destruction of lives and livelihoods. All indigenous cultures suffered and were irreversibly transformed by the colonial process, but some specific cultures and their civilizations have completely disappeared as a direct result of the conquest and colonization, such as the Inca civilization in South America. Around the 1500's, the Inca Empire was the largest and richest in pre-Columbian America, covering a 3.000 mile-wide expanse in Andean mountains in the western part of South America, including parts of the present days countries of Peru, Ecuador, Bolivia, Argentina and Chile. The Incas were rich in gold and silver, and it was these riches, as well as their strength as possible opponents and resistors to the colonizers plans and wishes, which ultimately brought down their empire, a process that began almost from the very arrival of the Spanish conqueror Francisco Pizarro in 1532[6]. European colonialism definitely changed the face of the lands and peoples of what today is called Latin America, and its' sad legacy are many, if not most, of the social, economic and cultural tensions that are still today at the root of the large inequalities and social injustices in the region.

By the beginning of the 19th century, the French occupation of the Iberian Peninsula created the opportunity for the decolonization process to begin in Latin America. Between 1807 and 1814 the Napoleonic Wars created a period of isolation of the colonies from their mother countries. During these years of isolation several nationalist movements and revolutions erupted in the colonies. As a result, by 1825 Spain had no formal colonies anymore in America and in 1822 Brazil was declared independent from Portugal.

At almost the same time that Latin America acquired its' freedom from the colonial powers, the conquest of Africa had just started, again led by European powers affected by the decolonization process in the Americas. By the end of the 18th century, Britain had lost its thirteen colonies in North America, while Portugal and Spain had also lost

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[5] Between 1560 and 1850, Brazil was consistently the largest destination for slaves in the Americas. Almost all of them came from West-central Africa and the Bright of Benin.

[6] See Pedro Sarmento de Gamboa, *Historia de los incas* (Madrid: Ediciones Polifemo, 2011).

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

48

almost all their colonies in Central and South America, and the Netherlands were struggling to hold on to a few they still had in the East Indies. Therefore, established empires like Britain, Portugal and France, and emerging powers such as Germany, Italy and Belgium, turned to Africa in search of renewed territorial expansion and expanded control of key natural resources. In order to avoid conflicts among the nations interested in exploring Africa, the main European powers – Austria-Hungary, Belgium, Denmark, France, the United Kingdom, Russia, the Netherlands, Portugal, Spain, Sweden-Norway (in union until 1905) –, as well as the Ottoman Empire and the United States, met in Berlin in 1885[7] to establish international rules for the acquisition of African territory[8]. The outcome of the conference was the General Act of the Berlin Conference, a legal document that formalized a new wave of imperialism and colonialism probably best referred to as the "Scramble for Africa"[9].

The colonialist movement in Africa had multiple root causes also, but again economic, social and political interests can be identified as the major ones. With the growing economic expansion created by the Industrial Revolution in Europe, the demand for raw materials, and the search for new and profitable markets were imperative. From this perspective, no other place was better than the African continent: plentiful agricultural and animal products such as cotton, wood, rubber, coffee, ivory, leather, and rich deposits of key minerals – gold, copper, diamond-, were easily available to feed the expanding European industries; while it also opened up potentially large new markets for manufactured goods like clothes, guns, beads and others. It was also an attractive place for investment with promising high profits, and once the territories were appropriately conquered, they could be colonized through the application of European capital investments, especially in mining and farming. Together with economic growth, the competition for gaining prestige in the political arena in Europe was an additional incentive for many countries to acquire territories in Africa. The more territory a nation-state was able to control in Africa, the more important and powerful it could become. This "new imperialism" completely changed the face of Africa in 20 years, with only Liberia (a colony run by ex-African-American slaves) and Ethiopia remaining free of European conquest and domination. Side by side with the natural resource explorations, Christian missionaries were also involved in the colonialist process. Throughout the 19th century most of the western Christian missionaries who arrived in Africa did have

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[7] Before the Conference, the occupation of Egypt by Britain and the acquisition of Congo by Belgium and France were already in place.

[8] See Förster, Stig; Mommsen, Wolfgang J., Robinson, Ronald E. *Bismarck, Europe, and Africa: The Berlin Africa Conference 1884–1885 and the Onset of Partition* (Oxford: Oxford University Press, 1989).

[9] Process of invasion, occupation and colonization and annexation of the Africa by European colonial powers between 1881 and 1914. See Pakenham, Thomas. *The Scramble for Africa 1876-1912.* (London: Abacus, 1992)

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

49

a deep concern with the end of slavery[10] however, alongside the focus on evangelization of pagan tribes.

As for the subsequent process of decolonization in Africa, this coincided with the Cold War between Soviet Union and the United States and with the early development of the United Nations. Most of the African colonies gained their formal independence between 1950 and 1980 (for example: Sudan in 1955, Morocco and Tunisia in 1956, Ghana in 1957, Guinea in 1957, Cameroon, Togo, Mali, Benin, Nigeria, among several others in 1960, Tanzania and Sierra Leone in 1961, Burundi and Rwanda in 1962, Kenya in 1963, Zimbabwe in 1965, Swaziland in 1968, Mozambique and Angola in 1975, Djibouti in 1977). But the struggle for independence was a complex movement that also brought civil war and uncertainty to the African continent. Today, decades after the last of the formal colonial empires have disappeared; the legacies of colonialism still remain very present in Africa. These legacies have had major consequences – differing from country to country given that the colonization process was different depending on the region– such as: (i) newly created countries were artificially established based on the colonial powers interests and not on the social and political realities of the inhabitants, creating major border problems and disputes, (ii) establishment of new dictatorships by nationalist leaders who initially fought for independence, (iii) displacement and destruction of ethnic groups and the rise of new tribal conflicts, (iv) cultural identity crisis originated by Eurocentric impositions on local language and traditions, and generally a consistent pattern of marginalization and underdevelopment that continues to this day.

The Second World War, the post-colonial independent movements in Africa, and more recently, the acceleration in the globalization process, have brought both to Latin America and Africa a contemporary form of asymmetrical power relations between states that is generally termed "Neocolonialism"[11]. The concept of neocolonialism is theoretically based on the Dependency Theory[12] which, in brief, stated -based on a Marxist analysis-, that the continued poverty of the countries in the so-called "periphery" is the result of the manner in which they are integrated into the world capitalist system, which assures their continued dependency from the "Global North". The dependency of those nations, also known as "underdeveloped" or "third world", is thereby postulated as a direct result of the development of the wealthy nations in this Global North[13]. Several similarities can

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[10] Regarding slavery trade, the famous quote of David Livingstone, a Scottish missionary who lived almost 30 years in Africa, well illustrates this concern: "Cannot the love of Christ carry the missionary where the slave trade carries the trades?"

[11] See Hobsbawm, Eric J. *The age of extremes, 1914-1991* (New York: Vintage Books, 1996).

[12] The Dependency Theory originated from with two papers published in 1949 by Hans Singer and Raúl Prebisch. In 1950 a study called *The Economic Development of Latin America and its Principal Problems* with the main ideas of the theory known as the "Singer-Prebisch thesis".

[13] See Marini, Ruy M. *Dialética da Dependência* (São Paulo: Vozes, 2000).

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

50

be easily pointed out between this neocolonialism and the first wave of colonialism, mainly: (i) poor nations providing cheap and abundant natural resources and labor, as well as new consumers for developed nations; (ii) these wealthy nations having a decisive multifaceted influence on the life of the dependent ones – in media, culture, formal education, banking, politics and others –; and (iii) a number of economic sanctions and military actions imposed to the dependent nations in case of resistance to the power of the wealthy ones.

As in the colonialist period, economic reasons are predominant in this complex phenomenon, but the social damages were brutal. Although some countries in these regions have been growing economically well, like Brazil and South Africa, in many others political instability, economic backwardness, ethical uprising and social disorder, forced displacements, loss of population and extreme poverty can be considered as long-term consequences of the colonization period. In the cultural context, the idea that African people and the indigenous people in Latin America were "inferiors" and "uncivilized" brought the imposition of a European standard of living that is predominant nowadays. Numerous languages, traditional religious beliefs, and whole cultures were thus lost.

The start of the 21st century however, has seen a renewed desire for, and emerging sense of, distinct identities in the Southern Hemisphere. In this regard, Latin America and Africa have a common colonial past and heritage, and from this past and legacy they also share a common responsibility, as well as a joint opportunity, to move towards a *new paradigm in international cooperation for sustainable development*, that can overcome the specific negative effects of colonialism and "re-invent" their identities.

3. THE SOUTH-SOUTH AXIS: BEYOND MERE ECONOMIC COOPERATION

Since the 1970s international cooperation has been experiencing significant changes. Before that time the term was used to refer to an exclusively North-South experience, not based in a real exchange of knowledge, but in a hegemonic imposition of economic standards and cultural values. However, from the 70's onwards, as an alternative to the asymmetric North-South relationship, and aiming to establish an equal and competitive balance of power, Southern nations decided to cooperate among themselves in order to promote self–sufficiency and to strengthen economic ties. In this regard, the concept of "South-South Cooperation" (SSC) refers to cooperative activities between newly industrialized southern countries and other, lesser-developed nations, of the Southern hemisphere. Such activities include developing mutually beneficial technologies, services, and trading relationships[14]. As described by the United Nations,

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[14] Corbin, Garin. "South-South Cooperation defies the North", posted on 06/12/2006. Global en Vision:

"the underlying principle of South-South cooperation is that it is a partnership among equals based on a shared solidarity born out of similar experiences and sympathies, which is guided by the principles of respect for national sovereignty and ownership, free from any conditions"[15].

Historically, the term "South-South Cooperation" has been used by academics, politicians and policymakers to describe exchanges of knowledge, resources and technology among "developing" countries also known as the Global South. In 1978, the United Nations created a Special Unit for South-South Cooperation to promote and investment, as well as support academic research among the Southern Nations[16]. In 1989, at the Ninth Non-Aligned Movement Summit meeting, over 100 countries not formally attached to any major economic power group, decided to establish an international organization originally known as the "Group for South-South Consultation and Coordination (G-15)[17]. As officially described, the G-15 was established in the firm belief of the considerable potential for greater and mutually beneficial cooperation among developing countries, especially in the areas of investment, trade and technology[18]. After 15 official meetings, the membership expanded to 17 countries – Algeria, Egypt, Kenya, Nigeria, Senegal, Zimbabwe, Argentina, Brazil, Chile, Jamaica, Mexico, Venezuela, India, Indonesia, Iran, Malaysia, Sri Lanka –, though recently the former member-state Peru decided to leave the group[19]. Important decisions have been taken by the G-15, and their unified input has influenced other organizations' policies such the World Trade Organization and the G-7 group of seven rich industrialized nations: France, Germany, Italy, United Kingdom, Japan, United States and Canada.

The idea of South and South solidarity in the world arena was further enhanced during the 1980's and 1990's as a needed response to reductions in the foreign aid provided by the Global North. Therefore, interregional agreements and bilateral forms of cooperation have been increasing considerably, led not only by governmental actors – although they play a key, and in many instances exclusive, role in this process – but by private and public businesses and entities as well. Several important examples can be quoted, such as: India has invested in farming initiatives in Mozambique and

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the Confluence of Global Markets and Poverty Alleviation. Available on: <http://www.globalenvision.org/library/3/1371>.

[15] United Nations General Assembly. Nairobi outcome document of the High-level United Nations Conference on South-South Cooperation. General Assembly Resolution 64/222 of 21 December 2009.

[16] For further information see <http://ssc.undp.org/content/ssc.html>.

[17] For further information see the official website <http://www.g15.org/>.

[18] <http://www.g15.org/gfaims.html>.

[19] Members until the 15th meeting to be held in 2012 in Colombo, Sri Lanka.

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

52

biofuels development in Western Africa; Egypt is helping Tanzania with irrigation projects, Brazil has invested and assisted with biodiversity projects in Mozambique, in biofuel technology in various developing countries to promote renewable crops such as sugar and wood, and in HIV/AIDS relief in Latin America[20]; India is helping Nigeria to boost their capacity to provide electricity access in the country[21]; Santa Lucia is helping other countries in the Caribbean on developing biodiversity and sustainable tourism[22], Liberia is helping Mali to train specialized nurses to assist surgeons during fistula operations[23], Brazilian health professional provided training on hospital administration, equipment maintenance, nursing care, radiology and laboratory to several health care facilities and hospitals in Angola.

The beginning of the new millennium has heralded a new phase in the South-South cooperation history. The first South Summit of the Group of 77, an important intergovernmental alliance within the United Nations system, was held in Havana in the year 2000. The Group has played a key role in the South-South cooperation development process as it is "the largest intergovernmental organization of developing countries in United Nations, which provides the means for the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development"[24]. This Summit set the groundwork for the Marrakech Declaration in 2003, a series of documents that established rules for technology transfer, skills development and related information management issues. A second Summit was held in 2005 in Doha, Qatar, and additional follow-up meetings are planned to monitor the program. Furthermore, in December 2003 the United Nations General Assembly adopted Resolution 58/220, declaring December 19th the annual United Nations Day for South-South Cooperation. Another measure to promote the Cooperation was the establishment of the South-South Cooperation Fund by the United Nations Development Program (UNDP). This fund supplements unilateral efforts by individual nations such as China, India, Brazil, Egypt and Japan to assist less developed Southern nations.

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[20] Corbin, Garin. "South-South Cooperation defies the North", posted on 06/12/2006. Global en Vision: the Confluence of Global Markets and Poverty Alleviation. Available on: <http://www.globalenvision.org/library/3/1371>.

[21] See <http://www.unops.org/english/whatwedo/news/Pages/Nigeria-India-South-South-cooperation.aspx>.

[22] See<https://www.cbd.int/doc/meetings/ssc/emssc-02/presentation/Saint-Lucia-Gaspard-Michel-Andrew-en.pdf>.

[23] See <http://ppdafrica.org/en/news/77-south-south-cooperation-in-maternal-health-and-hivaids>.

[24] See < http://www.g77.org/doc/#>.

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

53

Commitments to technical and economic cooperation among these countries remain strong but the challenges also remain of great concern among both scholars and the partners themselves. "International Cooperation" is deemed to be a core mechanism to promote global development in times of global economic liberalization. But despite the multitude of efforts and formal assistance agreements, many voices have been raised to point out that the gains of cooperation are not as high as expected. For instance, several Southern nations still depend on the industrialized Northern countries for export markets, foreign investment, concessionary finance and technology. Nevertheless, the South-South Cooperation has brought forth a new wave of optimism to encourage increased hemispheric partnership and solidarity, and this encouragement has a positive impact not only on economic or technological ties, but on civil society issues as well. Given that formal these multiple cooperation engagements among the nations from the South has already been established, it is time to re-think "cooperation" more in terms of "a new dialogue of inclusion and self-determination". While sustainable development remains primarily an economic challenge in the 21st century, a shared commitment regarding the promotion of human rights protection should be a priority for these nations in foreign policy affairs, in order to assure the social and political sustainability of the sought-after growth and development. Towards that goal, Southern nations should open and promote a wider dialogue to strengthen legal institutions and human rights defense mechanisms. The imperative of human rights could thus become a core foundation of each and every cooperation development project, as is already happening in a number of good examples to be found among the presently cooperating countries of the South.

4.   THE 1988 CONSTITUTION OF BRAZIL: HUMAN RIGHTS FIRST

In the field of South-South Cooperation, Brazil has been developing an increasingly successful model in several areas. In the last 7 years, the country has had an increasing prominence in international foreign affairs, and as a result, it has been switching from a position of recipient to a position of provider of development assistance. Although Brazil still has a relatively modest position in this respect compared to China and India, for example, the country is already ahead of many traditional donors by providing over $ 1 billion annually on overseas aid, which focuses on technical expertise and the transfer of knowledge. In this context, Brazil's form of South-South development cooperation aid has been called a "global model in waiting"[25]. Furthermore, Brazil's hybrid position places the country in an interesting situation among other cooperation countries: it is an important emerging Southern country, which is part of the developing world – mainly dominated by

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[25] The Economist. "Brazil's foreign aid programme: Speak soflty and carry a blank cheque". Available on: < http://www.economist.com/node/16592455 >.

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

54

the Global North – and it is also an important emerging nation among its' Southern partners, with a broader approach in terms of development and cooperation aid than China and India. In this context, "the overall aim of Brazilian partnerships for development is to improve the livelihood of citizens, achieve sustainable growth and social development through transferring know-how and technological expertise, to strengthen institutional structures and to provide advisory services and capacity-building measures. According to official declarations, Brazil's ODA[26] is not conditioned on profits for its enterprises and commerce, nor to political criteria, but is instead free of conditions"[27].

Beyond potential financial benefits for the partners, Brazil can also be seen as a good model of cooperation in promoting social development committed to democracy and social justice. Examples include health – antiretroviral treatment – and social protection – "Bolsa Família" is considered the world's largest conditional cash transfer programme. From a historical perspective, Brazil also plays a key social role in South-South Cooperation because of its cultural and historical regional ties with Latin America, as well as multiple affinities with the African continent. A common history of colonialism and similar neocolonialist recent influences, encourages Brazil to challenge other Southern countries to follow its path in building stronger democracies and promoting human rights protection. In this context, a Southern dialogue that includes legal system comparative analysis and judicial reform proposals could be another positive Brazilian contribution to consolidate formal democracies in post-colonial emerging nations.

Historically Brazil has a short but impressive tradition on consolidating human rights protection. After twenty-five years of military dictatorship, the path to democracy after 1985 brought the discussion of a human rights system to the center of the constitutional debate[28]. The current Constitution of Brazil was promulgated on October 5th 1988 and it is considered the pinnacle of the whole Brazilian Democratization process. This Constitutional Charter is the seventh in Brazil's independent history, and established a formal transition to democracy. Known as the "Citizen Constitution", the document represents a step forward in the field of international relations and human rights.

Interesting aspects can be pointed out together with the particular constitutional *focus* on the fundamental rights guarantees. The 1988 Constitution has unique characteristics *vis-à-vis* the previous Brazilian's Constitutions and other Constitutions

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[26] Official Development Assistance.

[27] Sousa, Sarah-Lea John de. "Brazil as a development actor: South-South cooperation and the IBSA initiative", posted on July 2008. Fride: Fundación para las Relaciones Internacionales y el Diálogo Exterior. Available on <www.fride.org/descarga/COM_**Brazil**_South_South_ENG_jul08.pdf>

[28] See Pinheiro, Paulo Sérgio. "Brazil and the International Human Rights System". (Working Paper Series. Centre for Brazilian Studies, University of Oxford, 1999). Available on: <http://www.brazil.ox.ac.uk/__data/assets/pdf_file/0005/9419/pinheiro15.pdf>

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

55

around the world. It is a Charter not based on drafts drawn by legal or political experts – as happened in Brazil in previous ones from 1891 and 1934 – nor it is considered a reproduction or a "mirror" from previous documents – as was the one from 1946. It was not a result of conclusive political process and the inauguration of a new order, but it came into being as part of the political democratic transitional process. But definitely what it is most unique about the 1988 Constitution is the fact that its text was not influenced by any particular ideology or specific foreign power[29].In this context, the document aimed at the reconciliation of interests of old and new actors, given that at that time the transition to democracy was still in progress. As was well noted by Paulo Sergio Pinheiro: "Brazilian foreign policy during that period followed a dynamic which could be characterized as a "dual approach": *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 democratization. Human rights was precisely the area which was most affected by the new orientation of Brazilian foreign policy"[30]. Therefore, it is possible to conclude that the 1988 Constitution was a result of a political *momentum*, marked by a need to legitimize democracy after dictatorship times. Following Brazil's traditional political model, the regime adopted was a presidential system within a federalist state.

As a result, the text of the 1988 is ambitious and extensive, regulating in details most aspects of the Brazilian state, and from the start aims to demonstrate its social drive by promoting social welfare and economic development. The original document has 250 articles -and a further 94 articles as transitory dispositions- and it is divided into eight parts, or "titles", organized as follows: fundamental principles; fundamental rights and guarantees; the organization of the State; the organization of powers; the defense of the State and of democratic institutions; taxation and budget; the economic and financial order and the social order[31].

In Article 1 the Constitution establishes its fundamental principles and together with citizenship and political pluralism, the "principle of human dignity" appears as a cornerstone of the whole legal system. According to Daniela Ikawa: "This principle implies the existence of a characteristic that all persons have in common by the mere fact of their humanity: dignity. The principle of human dignity encompasses, therefore, the principle of equality in dignity and that all persons are equal in dignity. Equality, therefore, is the foundation for the theory of constitutional rights and the theory of

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[29] Perhaps the only international influence that was slightly taken into account a during the Constitutional Assembly debates was the socially oriented Portuguese Constitution of 1976.

[30] Pinheiro, Paulo Sérgio. "Brazil and the International Human Rights System", p. 05.

[31] The full text of the 1988 Constitution of Brazil is available in English on: < http://www.v-brazil.com/ government/laws/constitution.html > .

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

56

international human rights. If we accept the argument that all persons have equal rights, we do so because we also accept the argument that all persons are equal regarding this one essential, non-homogenizing characteristic, whose possession does not override the possibility of human diversity. That essential characteristic is human dignity"[32]. Through much of the 20th century, the concept of "human dignity" appears in legal instruments as a reason for peacemaking and promoting human rights. It is found in Article 1 of the Universal Declaration of Human rights and it is a cardinal principle in the Constitutions of Germany, South Africa and Switzerland. In this context, the principle of human dignity is an overarching principle that has become a staple of international human rights law and it stands for the proposition the human dignity is an essential value of the system of fundamental rights.

Following the steps of the Universal Declaration of Human Rights, the 1998 Constitution adopted extensively the two first "generations"[33] of human rights in its Charter of Fundamental Rights. Known as "civil and political rights", the first generation was originated from the American and the French revolutions, which underscored the value of liberty. Briefly, the first generation protects the individual against the arbitrary actions of the State, and can be found in the articles 2 to 21 of the Universal Declaration of Human Rights. Examples of those rights include, among several others, freedom from racial and other forms of discrimination; freedom from slavery or involuntary servitude; freedom of movement and residence; freedom from opinion and expression; freedom from torture and from cruel, inhuman or degrading treatment or punishment; right to a nationality; right to life; liberty and security of the person. In the Brazilian Constitutional system, the civil rights were placed in the Charter in Article 5, which is composed of seventy-eight items or normative states, and four paragraphs, and the document basically acknowledges all civil rights determined by international legal order. Moreover, the same Article contains six instruments for protecting individual rights as follows: the *habeas corpus*[34] – to be invoked when a person suffers, or is faced with a threat of, violence or coercion of the individual's right to circulate freely as a result of an unlawful act or an abuse of power; the *habeas data*[35] – which purpose is to provide the average citizen with access to the information on record with public agencies concerning that person, and it also makes it possible to request that any errors in the data be corrected when this method

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[32] Ikawa, Daniela. "The right to Affirmative Action for Blacks in Brazilian Universities", p. 28. (The Equal Rights Trust, London, UK. The Equal Rights Review, Vol. III, 2009). Available on: < http://www.equalrightstrust. org/ertdocumentbank/daniela%20ikawa.pdf >.

[33] The division of human rights in three generations was initially proposed by the jurist Karel Vasak at the International Institute of Human Rights in Strasbourg in 1979.

[34] Article 5, LXVIII.

[35] Article 5, LXXII, "a", "b".

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

57

is preferred, rather than a secret, judicial or administrative procedure –, the writ of security (mandado de segurança)³⁶ – which is a remedy designed to protect the "exigible and certain right not covered by *habeas corpus* or *habeas data*", when the party responsible for the unlawful act or abuse of power is a public official or a juridical person exercising the authority conferred by public office –, the writ of collective security (mandado de segurança coletivo)³⁷ – which is a writ that seeks to defend the sundry rights of the members of an association or a community of persons, and can be requested by a political party that is represented in the National Congress or a labor organization, a class entity or legally constituted association that has been in operation for at least one year in the defense of its members' or associates' interests-, the injunction (mandado de injunção)³⁸ – which may be requested whenever the absence of a regulatory norm makes it impossible to exercise the constitutional rights and freedoms and the prerogatives inherent to nationality, sovereignty and citizenship –, and the popular action (ação popular)³⁹ – which allows any citizen to take a legitimate part in a proposed appeal against any administrative act prejudicial to public interests, or that of an agency in which the State is a partner, or to administrative morality, the environment, and the historical and cultural heritage. Also concerning the first generation of human rights, the right to nationality and its implications are fully described on articles 12 and 13, while articles 14 to 17 address political rights and together the rights of the political parties.

The rise of the 20th century, with the Russian revolution, gave birth to the second generation of human rights, also called "economic, social and cultural rights". This generation appeared as a result of the fight against economic inequalities for the material well-being of society. Those rights were described, but not in an exhaustive way, in articles 22 to 27 of the Universal Declaration of Human Rights, which include: right to a standard of living adequate for the health and well-being of self and family; right to education; right to rest and leisure; right to social security; right to the protection of one's scientific, literary and artistic production; right to work and to protection against unemployment. The Brazilian Charter develops the concept of social rights in Article 6 as the right to education, health, work, habitation, leisure, safety, social security, social welfare, and protection for motherhood and childhood. Throughout the Constitutional text the social rights are listed and regulated in details: Articles 7 to 11 described them in the work relationships and environment – protection of employment, holidays, maternity and paternity leave, freedom to organize unions and the right to strike, among others -; Article 196 recognizes the right to health as an universal an egalitarian right; Article

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³⁶ Article 5, LXIX.

³⁷ Article 5, LXX, "a", "b".

³⁸ Article 5, LXXI.

³⁹ Article 5, LXXIII.

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

58

201 emphasizes the right to social security; Article 203 assures that the right to social welfare should respect the needs of each individual, not dependent on prior contribution; Article 205 establishes the right to basic education; the rights to habitation and public safety are not clear defined as other social rights, but it is important to note that in Article 184, although the Constitution doesn't state the right to access to land, it authorizes the State to carry out expropriation of unproductive properties which don't fulfill their social function; Article 227 protects the rights of children and adolescents. Furthermore, in Articles 215 and 216 the Charter emphasizes a group of fundamental rights related to culture – an interesting example can be the obligation of the State to protect popular, indigenous, and afro-Brazilian cultural manifestation –, and in Article 170 the economic rights are described.

During the second half of the 20th century, human rights experts and international organizations have been paying attention to a *third generation* of human rights. They have been known as "solidarity rights" and at their core, the third generation aims to protect both entire populations and specific groups. Some scholars emphasize that these rights were born as a result of the changing needs of society in a contemporary world, and it can be perceived as part of development of the modern conception of human rights. In other words, they represent a step forward in substantially achieving the Western notion of "liberty, equality and solidarity". Nowadays those rights include, but are not limited to: collective rights; right to peace; right to a healthy and sustainable environment; right to humanitarian disaster relief; right to political, economic, social and cultural self-determination; right to economic and social development; right to participate in, and benefit from, the common heritage of mankind. From this perspective, the Brazilian 1988 Constitution can be considered a progressive legal text, since it incorporates the notion of "solidarity rights" in some of its normative descriptions. According to Oscar Vilhena Vieira: "In its environmental plan the Constitution ensured to everyone the 'right to an ecologically-balanced environment', regarding it as a public asset of the people and essential to a healthy quality of life, as something that must be preserved for future generations. Through this intergenerational pact, the 1988 Constitution imposes on the State and subsequent generations, a clear obligation to preserve and restore the environment, the diversity and integrity of the inherited public space of the country; to define and protect areas of preservation; to require a previous environmental impact study in relation to activities that are potentially harmful to the environment; to control the production, commercialization, and employment of techniques that possess a risk to life, to quality of life, and to the environment; to promote environmental education; and to protect flora and fauna"[40].

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[40] Vieira, Oscar Vilhena. "The Brazilian Charter of Fundamental Rights: a brief introduction", p. 09. (Working paper written for the II Courting Justice IBSA Conference, Delhi, April 28-29, 2008). Available on: <www.conectas.org/IBSA/Paper_**Introduction**.doc>

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

59

Although the Constitution tried to cover all aspects related to fundamental rights, it also left a backdoor in the second paragraph of Article 5 by establishing that the rights and guarantees therein expressed do not exclude others arising from the regime and principles adopted by the Constitution, and from *international treaties to which Brazil is a party*. Furthermore, in 2004 the Constitutional Amendment n. 45 added a third paragraph to Article 5 with the following discipline: "International human rights treaties and conventions which are approved, in each House of the National Congress, in two rounds of voting, by a majority of three-fifths of the votes of the respective members, shall be equivalent to constitutional amendments." This clause is a step forward in terms of protection of human rights since it openly recognizes the constitutional nature and the *supra-legality* status – above the law and below the Constitution – of international human rights treaties[41]. As a result, with the ratification procedure established by the Constitution for international treaties, any conflicting infra-constitutional norm is thereby rendered void.

By formally recognizing an extensive Charter of Fundamental Rights and guarantees for protection, Brazil has advanced on human rights issues since the beginning of the nineties. It is also worthwhile pointing that the process of re-democratization encouraged Brazil to sign and ratify all the most important human rights treaties of both UN and OAS systems. It has been a difficult process given our colonial domination history and the deep scars left by the slavery system, and it has placed Brazil as a country with advanced political-legal institutions living side-by-side with huge social inequalities and the persistence of social violence. In this sense, without forgetting the major challenges the country still faces, Brazil can also exchange legal knowledge on human rights and promote its experience among African countries that are planning to create or improve their legal systems.

5. CONCLUSION: TOWARDS A SOUTH-SOUTH DIALOGUE ON HUMAN RIGHTS PROMOTION

The emergence of the South-South Cooperation in the international relations arena has created a challenging opportunity for the Southern countries' governments and civil societies to carry forward a new dialogue on human rights diplomacy and legal institutions. Nowadays, countries like Brazil and South Africa are playing increasing roles in international affairs with a focus on economic and developmental approaches, and due to geo-political and historical parallels they also share a moral obligation to express

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[41] See Piovesan, Flávia. "Direitos Humanos e o Direito Constitucional Internacional", p. 51/77. (São Paulo: Saraiva, 7th ed., 2006); Trindade, Antônio A. Cançado. "Tratado de Direito Internacional dos Direitos Humanos", Vol. I, p. 513. (Rio Grande do Sul: Fabris, 2nd ed., 2003).

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

60

solidarity and encourage other Southern nations to engage their democratic institutions to take a firm stand on the promotion of human rights.

Since 2003, Brazilian international cooperation has been growing rapidly in line with the priority given to establishing a south-south axis in Brazilian foreign policy. At the same time, Brazil has been working hard not only to ensure that human rights laws are respected in the country, but also in promoting an effective human rights diplomacy at both national and international levels. In this sense, on a national level, in 2003 the Special Secretariat for Human Rights, a body of the Presidency of the Republic, was created and its main goal has been to coordinate National Policy on Human Rights in compliance with the directives of the National Human Rights Program. In the international arena, over the years Brazil has been actively participating in various multilateral forums dedicated to human rights issues. Furthermore, since 1978 the country has participated almost uninterruptedly in the United Nations Human Rights Commission, and in 2001 Brazil has openly invited all the Human Rights Observers of the Commission to visit the country. It is important to note that since that invitation Brazil is the country that has received the highest number of visits from the "Special Rapporteurs" of the Human Rights Commission, which shows a positive action towards transparency and a strong desire to improve through the recommendations of the Commission.

By being an active player in the human rights promotion field, Brazil is facing the challenge of building a public policy for international cooperation that is sustainable and long-lasting beyond the commitments of the political leaders in power. And this is also a challenge that emerging democracies in the Global South are facing. It is true that a multiplicity of approaches can be used in a cooperative process, especially sharing the best practices and mutual capacity building, but for an effective South-South "dialogue" the focus should be on the strengthening of institutions and processes, rather than on export of models. This new perspective of a "dialogue" on human rights has been already started between Brazil and Guinea Bissau, and Brazil and Cape Verde. In Guinea Bissau, Brazil has been a great supporter for the formulation and monitoring of national program of universalized civil registration birth[42], as well as towards the strengthening of its Human Rights Commission. In Cape Verde, Brazil has been contributing to the strengthening of the Human Rights Commission and Children's Rights policies.

There is a need for emerging democracies and southern countries to contribute to democracy-promotion initiatives, while assuring the centrality of human rights to any model

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[42] According to Marta Santos Pais: "Birth registration is a fundamental step towards good governance and a vital element in the fostering of democratic processes.5 Not only does the process of registration allow effective administration and bring children to the notice of decision-makers, it is the official and positive recognition of a new member of society, who is entitled to all the rights and responsibilities of a valued citizen." See "Birth Registration: Right from the Start". (Innocenti Digest, n. 9, March, 2002, UNICEF, Innocenti Research Centre, Italy). Available on: < http://www.childinfo.org/files/birthregistration_Digestenglish.pdf >.

Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

61

of development that seeks to be socially and politically sustainable. Their common past, and similar present-day challenges, can be seen not just as shared negative legacies, present difficulties and future struggles, but also in terms of common opportunities and capabilities towards the attainment of a more equitable, sustainable form of development.

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62

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Revista da Faculdade de Direito – UFPR, Curitiba, n.56, p.45-63, 2012.

63