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Brazil, South Africa And The International Recognition Of Lgbt Rights:

Proposals For A Comparative Research Agenda

Magno KLEIN, *Universidade da Integração Internacional da Lusofonia Afro-Brasileira*

Abstract: The paper proposes a comparative analysis of the LGBT rights agenda in the foreign policies of Brazil and South Africa. In both countries, authoritarian regimes gave way to democratic orders in the late 1980s / 1990s, which saw the formation of vocal LGBT groups and constitutional recognition of some rights. Both Brazil and South Africa have become leading voices in the global South supporting LGBT rights, in particular at the UN Human Rights Council. Brazil was the first country to propose an international normative text dedicated exclusively to LGBT rights, maintaining a long-term leadership position regarding the promotion of norms in this agenda at the global and regional levels. South Africa's position has been erratic. It was very active in the 90s, but regressive and silent in the 2000s. Since 2011, however, the country has again become a protagonist in relation to sexual issues, as illustrated by a major step in the recent presentation of a resolution on sexual orientation and gender identity. This research agenda is still little explored, especially from a comparative perspective of the political contexts of emerging democratic countries. In the end, the paper proposes six key questions for a comparative analysis of the performance of the two governments in this agenda, taking special account of the growing conservatism in both societies, which in the Brazilian case is marked by the election of President Jair Bolsonaro.

Keywords: LGBT Human Rights, Brazilian Foreign Policy, South African Foreign Policy.



Introduction

With the new emerging powers from the South, many are asking whether these 'rising' powers will contribute towards the maintenance of the liberal international order that has prevailed since 1945. This liberal international order is often considered to rest on five pillars, namely: peace and security, a market economy (specifically trade and investment), human rights, sustainable development and global governance networks. Focusing on the human rights dimension, this paper targets the issue of whether these countries are committed to the recognition of LGBT rights. Whilst most of the focus within BRICS forum - especially in the aftermath of the 2007/8 financial crisis - has been on economic development - much less attention has been devoted to the issue of human rights within BRICS. Given fundamental differences about norms within BRICS - not only about human rights but also other aspects such as varied conceptions about sovereignty - this is not surprising. However, this raises the question: can and do the democratic BRICS states - India, South Africa and Brazil - act as norm entrepreneurs towards China, Russia and the rest of international society?

This research contends that an investigation into the recognition of LGBT rights provides a fascinating avenue through which the complexities and contradiction of norm socialization and counter-socialization can be examined. Although India should ideally be included, this research will be delimited by a comparative analysis of LGBT rights in Brazil and South Africa's foreign policies. Numerous compelling reasons justify a comparative analysis between Brazil and South Africa. In both, authoritarian governments gave way to democratic orders in the late 1980s/1990s that saw the formation of vocal pro-LGBT groups and the subsequent constitutional recognition of LGBT rights. Both Brazil and South Africa (at least until 2014) became leading voices in the Global South supporting LGBT rights, culminating in their active diplomatic sponsorship of measures to recognize sexual orientation rights within the UN Human Rights Council. In fact, South Africa's hosting of the 2001 UN World Conference against Racism in Durban, culminated in Brazilian civil society activism opening the door for the adoption of LGBT rights in Brazil's foreign policy.

The history of international normative evolution of LGBT rights is marked by Brazil's leadership. Even without having any domestic legislation on the issue, Brazil was the first country ever to propose an



international normative text exclusively dedicated to LGBT rights and it has furthered its leading position as a LGBT norm promoter at global and regional levels over the years (Nogueira, 2017). Brazilian diplomacy engagement appears both in proposing legal documents and in supporting initiatives of other actors. That puts Brazil as one of the main entrepreneurs of LGBT rights, building on a long-standing tradition of Latin American “norm-protagonism” in human rights. This protagonism is not only the result of a simple strategic calculation or the mere extension of domestic practice to the international realm, but also a sixteen-year-long process involving different actors and interests that progressively converged toward strengthening Brazilian international activism and normative commitment. According to Nogueira,

from a bold initiative of midranking diplomats influenced by the platforms of the LGBT movement, Brazil’s norm entrepreneurship grew out of the widespread international recognition and encouragement of other states and activists to finally reach its highest political recognition by receiving the endorsement of the country’s president Dilma Rousseff (Nogueira, 2017, p. 552).

Internationally acclaimed as one of the world’s most progressive constitutions, South Africa explicitly prohibits discrimination on the basis of sexual orientation. Moreover, it is one of a very few number of countries in the world - not to mention in Africa - to allow same-sex marriages. With the exception of Brazil, South Africa stands alone amongst the BRICS in the extent to which homosexuals enjoy equal rights. Indeed, at the 1995 UN World Conference on Women in Beijing, South Africa became a vocal defender of sexual orientation rights, despite various African delegations confronting South Africa for raising the topic. By 2003 however, Pretoria increasingly stepped back from its commitment and failed to support various statements in the UN on sexual orientation. In June 2011, South Africa’s position shifted back again as it led the UN Human Rights Commission to adopt a progressive resolution on sexual orientation and succeeded in having Resolution 17/19 adopted, which reiterated the universality of human rights, expressed “grave concern” at the violence and discrimination against persons on the basis of their sexual orientation and gender identity and asked the UN High Commissioner for Human Rights for a report on discrimination and violence against people based on their sexual orientation and proposed a panel discussion of the Report in the HRC’s March 2012 session (Jordaan, 2017). In March 2019, South Africa promoted a resolution on intersex people at the Human Rights Council. As this research’s outputs will illustrate, Brazil and South



Africa's roles as international norm entrepreneurs did not arise without creating complications also for their roles as regional powers.

International relations have in recent years witnessed a growing interest in LGBT issues in general (Lind, 2014; Swiebel, 2009). Whilst much has been written about the domestic emergence of the LGBT movements in both South Africa and Brazil (Simões, 2010; Ryan, 2008; De La Dehesa, 2010) with ample analysis of the legal and/or constitutional dimensions of such rights (Croucher 2003; Massoud 2003; Correa, 2009), LGBT issues in relation to foreign policy has received scant attention, both in literature in a world dimension as well as in the specific cases of Brazil and South Africa. Singular exceptions include Jordaan's (2017) recent work on sexual orientation and South Africa's foreign policy and Nogueira's (2017) equally recent work on Brazil's role in support of LGBT rights internationally. Moreover, with the exception of the singular working paper by Correa and Khanna (2015) there are no/very rare analysis of LGBT rights within the BRICS. This research seeks to build on these works, but aims to contribute to the gap in the literature in two ways. Firstly, by providing a comparative analysis of the Brazilian and South African cases (as opposed to singular cases) and secondly, by focussing on the linkages and relations between the social movements/NGO's and Brazilian or South African governments.

Human Right, Foreign Policy Analysis and Norm Promotion from the South

The expansion of the international body of law and the growing evidence that state relations are driven not only by material interests, but also by moral purposes reinforces the importance of the study of norms in the field of international relations. Norms, understood as standards of appropriate behavior collectively defined, are a perennial element in international society, capable of altering the interests of states and limiting their behavior (Khagram *et alii*, p. 7).

In the study of norms, Martha Finnemore and Kathryn Sikkink (1998) highlight the importance of norm entrepreneurs, defined as agents capable of promoting notions of appropriate behavior through innovative framings and formulations. These agents may be states, transnational advocacy networks, experts, or international agencies, and generally advocate norms in order to regulate contexts where there is no consensus about the appropriate pattern of behavior. The study of moral



entrepreneurs began with the experiences of how individuals and transnational advocacy networks delegitimize practices once tolerated by the states. However, it is necessary to take into account new dynamics that understand the importance of the formulation of foreign policy in the entrepreneurial behavior of the states.

Foreign policy is the result of complex interactions between actors and bureaucracies in different structural constraints. When considered in this context, the model of the norm entrepreneur must take into account these dynamics that affect the construction of the identity of the states and the formation of their interests, which in turn would define the profile of the moral entrepreneurship that this state will carry out.

According to Nogueira (2017), at least four dimensions need to be taken into account in such an approach. First, one must look at the *origins of the ideational commitment* of the state in relation to the principled idea presented as norm. Second, normative engagement must be understood beyond moral commitment and also take into account material factors that influence the entrepreneurial stance. A third dimension is the *role of different actors* in defining the norm-promoting foreign policy. This is evident in the case of foreign policy on human rights, with a multitude of actors seeking influence: domestic human rights activists, international non-governmental organizations, policy makers, regional organizations, transnational networks, media, etc. The fourth dimension would be the consideration of normative structures in which political opportunities arise for states to act as normative entrepreneurs.

There are many studies that relate foreign policy and norm entrepreneurship. Several studies focus on the Scandinavian countries and their efforts to promote issues such as humanitarian assistance and sustainability (Björkdahl, 2007; Ingebritsen, 2002). In fact, the countries defined as traditional middle powers (such as Australia, Canada, Sweden and Norway) tend to act as moral entrepreneurs in international forums (Joordan, 2013).

However, the study of emerging middle powers becomes increasingly important in a context of deconcentration and multipolarization that the international system passes through. In this context, the relevance of issues such as human rights, sustainability and democracy increasingly depends on the action of countries such as India, Brazil and South Africa. In the human rights agenda, these countries have sought in recent decades to overcome a dichotomous position marked by



the North-South divide. The IBSA Forum composed of the three countries, for example, is based on the fact that they are three of the largest democracies in the Southern Hemisphere (Flemes, 2007).

The Panorama of International Promotion of LGBT Rights

Debates on the rights of the LGBT population have recently evolved quite strongly. It was only in the 1970s that homosexuality was excluded from the manuals of mental illness in the United States as a result of demonstrations by American activists. In Brazil, activists succeeded in getting the Federal Medical Council to remove homosexuality from the list of diseases in 1985 (Simões, 2010, p. 24). For over fifty years, homosexuality was considered a disease by the World Health Organization which, on May 17, 1990, removed it from its disease classification code. On the other hand, transsexuality remains on the list for psychiatric diagnosis until the present day and has been the subject of academic debate that seeks to deconstruct this concept as a pathology. LGBT population is still victim of numerous acts of violence and has no fully guaranteed rights by their states. In many countries, the practice of homosexuality is a crime and people are persecuted and killed because of their sexual orientation or gender identity.

Over the past 20 years, human rights violations linked to gender and sexuality issues have been increasingly debated in the UN decision-making arenas. This history has as its starting point the cycle of conferences in the 1990s on social issues, in particular the Vienna Conference on Human Rights (1993), the Cairo Conference on Population and Development (1994), the Fourth World Conference on Women in Beijing (1995) and their periodic reviews. In all these events, it has never been easy to reach consensus on these issues, since they were tense themes permeated by moral polemics, as well as being affected by strong North-South tensions (Corrêa; Parker; Petchesky, 2008; Girard, 2007; Saiz, 2005).

These debates originated from the feminist approaches (Girard, 2007) and the cycle of UN conferences that began with the 1992 Conference on Environment and Development (Earth Summit) in Rio de Janeiro, Brazil, provided an opportunity to push forward sexuality concerns. During the 1990s, when the Beijing Conference was a milestone



for transversalization of the gender issue, the theory of international relations debated gender mostly with a view to women's inclusion, but also gave space to the debate on masculinities (Steans, 2013, p.1-2). And it is in this context that the LGBT theme is now part of the contemporary debate on international relations.

Regional Contexts

The demand for recognition of LGBT rights has been attempted in the various spheres and courts, marked by strong activism by individuals and civil society organizations. The first manifestations of official recognition of LGBT rights have taken place in regional human rights protection systems, particularly in the European Union and Latin America. In 1999, the European Union was the first integration mechanism to explicitly mention the issue of sexual orientation as one of the forms of discrimination to be tackled in the context of the Amsterdam Treaty. The European Court of Human Rights, since the late 1990s, has progressively recognized LGBT rights. Its decisions have resulted in relevant changes in the domestic legislation of European countries as well as in the regulations of the European integration mechanisms.

In Latin America

LGBT rights have expanded unevenly across Latin America and the Caribbean. There has been remarkable progress as well stagnation on the legal status of LGBT individuals since there is great variation in the status of LGBT rights and protections across and within countries. There is a concentration in terms of legal LGBT rights: of the 40 political states in Latin America and the Caribbean, 11 have not legalized (male) same-sex activity as of 2015; all are English-speaking Caribbean countries (Corrales, 2015).

As in Africa, religiosity and faith-based groups are strong veto players in the promotion of LGBT rights and their power is connected with religious dynamics in the region. Some researchers point to a specificity of Latin American reality:

[In the West,] As the public became more tolerant of LGBT rights, states and courts became more willing to grant LGBT groups rights and protections. In Latin America, almost the reverse has happened:



laws have changed prior to significant changes in societal tolerance (Corrales, 2015, p. 56).

In the inter-American human rights system, attention to the topic was initially promoted through the reporting procedures, since until then the topic was timidly referred to in the annual reports of the Inter-American Commission on Human Rights, being the first mention only in 1999. It is in this same year that the first case on LGBT rights was admitted by the Inter-American Commission on Human Rights. The rapporteurship, created within the framework of the Inter-American Commission on Human Rights on the demand of social movements, has been important in order to make visible the violations as well as advances in the countries regarding LGBT rights. In 2008, the OAS General Assembly adopted its first resolution on human rights, sexual orientation and gender identity, which was followed by resolutions on the same theme in subsequent years. In 2011, the Commission set up a specific unit on LGBT rights. The regional meeting First Latin American Regional Conference on Population and Development (Montevideo, August 2013) delivered one of the most progressive final document of the various ICPD+20 regional rounds, with strong participation of Brazil. The Montevideo Consensus considers openly LGBT and sex workers' rights.

In Africa

The African continent is known as one of the most dangerous places for the LGBT community and several countries have discriminatory laws against the LGBT population, some even punishing alleged gays, including capital punishment. 36 African countries criminalize sodomy and this list includes those that impose life imprisonment and death sentence (Ibrahim, 2015). In addition, the region has recently experienced a homophobic wave, with an increase in legislation and persecution of non-heterosexuals.

In the continent, conservative movements resisting the promotion of LGBT rights are very vocal, and in many cases defend the thesis that homosexuality is “un-African”. African culture, stripped of its diversity, is presented as homogeneously heterosexual and intrinsically homophobic. This position ignores that homosexuality, tolerance and even homophobia are not strange to pre-colonial, colonial or post-colonial Africa. In fact, colonization has affected in the past and the present the way in which African countries deal with the question. In the words of Ibrahim (2015),



“Pre-colonial Africa entertained a diverse set of ways in which non-heterosexuality and non-heteronormativity were expressed and it was colonialism that introduced the now widespread religious and legal norms that policed sexuality and gender” (p. 263). Murray and Roscoe (1998) highlight that

[t]he colonialists did not introduce homosexuality to Africa but rather intolerance of it – and systems of surveillance and regulation for suppressing it ... these systems were not successful as long as the reaction of the colonized was simply to hide or deny such practices. Only when native people began to forget that same-sex patterns were ever a part of their culture did homosexuality become truly stigmatized (p. XVI).

In fact, the relationship with the global North makes the theme even more complex. Contemporary conservative laws in most of Africa were imposed on the continent by colonial powers, at the same time, many colonial practices have been so entrenched that they are no longer dismissed as alien. At the same time, LGBT rights movement, itself, is also heavily influenced by the Western LGBT rights activism, and is also backed by Western organizations. In the words of Ibrahim (2015) “the debate on LGBT rights in Africa is far from being solely African” (p. 266). Although the homophobic discourse is often fueled by anti-colonial sentiment, several ultra-conservative western groups have supported the restriction of LGBT rights (in particular, Christian religious groups from the United States).

The global LGBT agenda with its priorities (such as gay marriage) and identities is understood by some local activists as inadequate for the specific reality of the African continent. Therefore, it would be necessary to stimulate indigenous expressions and forms of signification beyond the westernized agenda.

Currently, Africa has a well-established regional system of human rights protection under the organization of the African Union, particularly the African Commission on Human and Peoples' Rights (African Commission). For some activists, however, using judicial mechanisms to promote these rights does not seem to be a good idea at the moment. Due to the strength of conservative ideas, there is the likelihood that judicial organs will set dangerous precedents that have the effect of thwarting the progressive development of LGBT rights. That is the opinion, for example, of the International Gay and Lesbian Human Rights Commission. Because of the conservative character of the African Commission, there is an



expectation of better results from acting in subregional bodies, like the Southern African Development Community (SADC) and its human rights treaty, of which South Africa is a part.

South Africa, which legally recognizes gay marriage, has a yet underexplored capacity of influence in the region. The country has supported LGBT rights in international *fora*, albeit without speaking out against the laws and practices of its African neighbors. Considering that the continent today is very reactive to the influence of foreign countries and NGOs in promoting LGBT rights, South Africa could play a role on promoting norms from within. The country is a relevant regional leader and could reinforce the argument that guaranteeing the rights of the LGBT population is not an imposition of the former colonial metropolises. To fulfill this mission, though, can jeopardize South Africa's regional hegemonic ambition. The country faces a true dilemma on dealing with human rights as a foreign policy.

At the Global Level: United Nations

At the global level, the international promotion of LGBT rights has a very recent history and still faces difficulties to be accepted as a legitimate agenda by most of the UN member countries. There have been several attempts to put in debate LGBT issues during UN world conferences since the 1990s. At the beginning, the feminist movement set the issue of sexual orientation, bringing discussions on sexuality, which eventually failed to be part of the agreed commitments, facing accusations from the Vatican and Islamic countries of posing a threat to religious and cultural values (Saiz, 2005, p.13).

Discussions on sexuality and human rights first made their debut in global arenas in 1993 during the preparations for the Population and Development Conference held in Cairo the following year, when the terms of sexual health and sexual rights were included. Sexual rights would be removed from the final text, but would return the following year in paragraph 96 of the Beijing Platform for Action, where women's rights in the field of sexuality are defined. Prior to 1993, the term had never been incorporated into human rights documents meaning sexuality. In the text of the Universal Declaration of Human Rights of 1948 and subsequent conventions, the term "sex" is always used to denote only differentiation between men and women (Correa, 2009). Negotiations for the Cairo Conference also counted on important geopolitical changes for the success



of the meeting. Latin American countries, such as Brazil and Mexico, have moved away from the positions adopted by the Holy See. South Africa, played a key role in the negotiations and also in terms of the persuasion of other African countries. Other countries of the South stood out as India and Egypt, the host country.

Discussions in Cairo and Beijing were intensified in the five-year review processes of the two conferences (1999 and 2000). Activists from the transnational network for the promotion of LGBT rights had their presence questioned by some countries at the first Special Session of the UN General Assembly on AIDS (UNGASS, June 2001) and in the preparation of the Conference against Racism, Racial Discrimination and Related Forms of Discrimination of Durban (2001).

At the same time that in the 1990s disputes escalated in major public conferences and in the search for resolutions in bodies such as the Commission on Human Rights, human rights monitoring committees also became an arena for the promotion of LGBT rights. Its emblematic starting point was the Toonen case against Australia in 1994. In that occasion, the Human Rights Committee, the mechanism responsible for monitoring the International Covenant on Civil and Political Rights, stated that the Australian law in the state of Tasmania which criminalized homosexual activity between adults violated the right to privacy. According to the understanding of the Committee, sexual orientation was protected against discrimination under the Covenant. Since then, treaty bodies have begun to address this issue in analyzing the fulfillment of the obligations of states parties, such as the Committee on the Elimination of All Forms of Violence against Women (CEDAW), the Committee against Torture and the Committee on the Rights of the Child. From this moment, experts appointed by the Commission on Human Rights on specific issues have expressed growing concern about the issue of sexuality as an important human right. “Their analysis has served not only to identify the specific forms, causes, and consequences of abuses based on sexual orientation and gender identity, but also to promote new approaches to human rights as they apply to human sexuality” (Saiz, 2004, p. 55). For instance, in 2000, the Special Rapporteur on extrajudicial, summary or arbitrary executions submitted a statement to the Human Rights Council, raising concerns about how members of the Council dealt with complaints of murders committed by state agents on the grounds of gender identity and sexual orientation. Similar concerns relating to sexuality and human rights were also expressed by the Special Rapporteur on Violence against



Women, The Special Rapporteur on Torture, Special Rapporteur on the Right to Health and others.

The international promotion of LGBT rights, as can be seen, had an important part of its history carried out by individuals, civil society organizations and members of transnational human rights networks. But state-driven initiatives favoring LGBT issues are also an important part of this trajectory. The first action of this kind is Resolution 2000/31 on Extrajudicial, Summary and Arbitrary Executions, sponsored by Sweden and adopted by the UN Commission on Human Rights in 2000. The document “notes with concern the large number of cases in various parts of the world of... persons killed because of their sexual orientation”. The expression “sexual orientation” had never before been used in a human rights resolution approved by the UN.

At the Conference against Racism, Racial Discrimination and Related Forms of Discrimination (Durban, 2001), Brazil proposed to include a paragraph on discrimination based on sexual orientation, which was not adopted. In 2003, the Brazilian government presented a draft resolution proposing the same idea to the UN Commission on Human Rights. Its vote was postponed to 2004, and then withdrew due to pressure from Islamic countries. The draft resolution Human Rights and Sexual Orientation stressed that the “enjoyment of [universal human] rights and [fundamental] freedoms should not be hindered in any way on the grounds of sexual orientation” and called on all states to “promote and protect human rights of all persons regardless of their sexual orientation”. The draft resolution, known as the “Brazilian Resolution”, faced divergences. While it was co-sponsored by Canada and eighteen European states, it was heavily opposed by states such as Pakistan (representing the Organisation of Islamic Cooperation), Syria, and Saudi Arabia.

The Brazilian Resolution was negotiated in a very difficult geopolitical panorama. One of the major forces against the proposition was taken in 2003 by Pakistan, representing the Organization of the Islamic Conference. The pressure from Islamic countries in the following year strongly contributed to the Brazilian decision to retreat. Girard (2008) lists some reasons why the resolution has not been successful, in addition to opposition from Islamic countries. Initially, Brazil had adopted a position consistent with its positioning in previous situations related to sexuality issues. However, the Brazilian diplomatic strategy was poorly calculated, as it was not anticipated for other potentially favorable actors, such as European countries and Brazilian LGBT activists. The



absence of consultations has created long-term tensions. The Brazilian diplomats in Geneva had little expectations of opposition since they were proposing non-discrimination on the basis of sexual orientation as a simple expression of the general principle of non-discrimination in human rights.

In 2004, Brazil decided to retreat. The European Union suggested that the text should be submitted again by one of the countries from the South, but Brazil declined claiming that there was insufficient European support and that no other country from the South had an interest in leading the Brazilian resolution (Correa, 2009). Since then, Brazilian actions by the government and its activist network have chosen to focus on the regional human rights system in promoting LGBT rights. For instance, the “Resolution on Non-Discrimination of Persons on the basis of their sexual orientation or gender identity” proposed by Brazil was adopted by the Assembly of the Organization of American States in Medellín in June 2008.

Although it was not able to have its text approved, the Brazilian action generated an international mobilization that helped stimulate the LGBT human rights advocacy within the UN. It is in this sense that a group of NGOs and legal experts, after a meeting in Indonesia in 2006, decided to propose what became known as Yogyakarta Principles, a declaration applying existing human rights law to the specific protection needs of the LGBT population. The document was officially launched in 2007 at UN headquarters during an event organized by Brazil, Argentina, and Uruguay. Since then, many organizations, states and individuals have cited the document.

With the abolition of the UN Commission on Human Rights and the subsequent establishment of the Human Rights Council in 2005 with a higher status in the structure of the organization, international human rights organizations, feminist and LGBT networks have also been working in this body to articulate human rights and sexuality.

Subsequently to the Brazilian Resolution, measures on the LGBT agenda were proposed by other countries traditionally related to the theme, such as New Zealand, which in 2004 proposed a declaration on human rights and sexual orientation that was signed by 31 countries. In 2006, Norway obtained the support of 46 member countries for a similar measure in the UN Human Rights Commission.



When visiting Malawi in 2010, the UN Secretary-General Ban Ki-Moon took part on negotiations with the local government to free a gay couple sentenced to 14 years in prison. On 10 December 2010, the United Nations celebrated International Human Rights Day with a focus on discrimination against the LGBT population. Still that month, UN Secretary-General Ban Ki-Moon delivered a speech declaring the United Nations commitment to end violence against the LGBT population¹. This speech was a milestone in the international LGBT rights agenda, giving rise to more significant advances in the following years. Ban Ki-moon took up LGBT rights as a key issue during his second term (2011-2016), as demonstrated in speeches, public statements and specially the “Free & Equal” global public education campaign launched in July 2013 to promote the observation of the human rights of LGBT people.

In June 2011, the Human Rights Council adopted the resolution entitled “Human rights, sexual orientation and gender identity”, Resolution 17/19 (UN, 2011), which was the first human rights document on the subject approved within the UN. The resolution was sponsored by South Africa and drafted in cooperation with Brazil and expressed “grave concern at the acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.” In September 2014, the Human Rights Council adopted a new resolution in the context of human rights related to sexual orientation and gender identity, Resolution 27/32 (UN, 2014), which requires updating of the report on discrimination against LGBTs.

Moves by the conservative forces were taken in 2012 with Resolution 21/3 “Promoting Human Rights and Fundamental Freedoms Through a Better Understanding of Traditional Values of Humankind” (sponsored by the Russian Federation and adopted by the UN Council), and the Resolution “Protection of the Family” (presented by Russia and sponsored by Egypt and adopted in 2014).

South-African Leadership on the International Promotion of LGBT Rights

According to Sonia Correa (2014), the profile of South Africa's positions on LGBT rights has been “erratic” and imprecise over time. Throughout the 1990s, South Africa was very active in the sexual and

¹ Speech available at: <http://www.un.org/News/Press/docs/2010/sgsm13311.doc.htm>



LGBT rights agenda, which was reversed in the 2000s. But, from the years 2010, the country has once again acted with prominence in relation to sexual issues, even tabling a resolution on sexual orientation and gender identity.

In South Africa's foreign policy for LGBT rights, it is important to highlight the country's regional stance. At the regional preparatory processes regarding the +20 Review of the International Conference on Population and Development (ICPD), South Africa supported the recognition of sexual and reproductive rights, including with regard to sexual diversity, in face of strongly regressive positions adopted by both North African and sub-Saharan States. In fact, South Africa faces the dilemma of acting as a regional leadership by reconciling a progressive LGBT rights agenda in a context of strong conservative forces. Retreats (such as dropping out tabling the second resolution unfolding from the 2011 text) seem to point to a recent fear of displeasing neighbors and affect regional interests, like a regional support for its candidacy to a seat in the Security Council in 2013.

From a hesitant stance, the country went to a regressive position. That same year, South Africa strongly supported the resolution proposed by Egypt "Protection of the Family" whose wording restricted the notion of family to the traditional model. The text gained support from all African countries and was approved. Months later, the country once again returned to a progressive pattern. In a document that followed Resolution 17/19, Chile, Colombia and Uruguay sponsored a new resolution of LGBTI rights, and South Africa returned to the progressive stance and supported the measure, even opposing all the conservative amendments proposed. In recent years, the South African government has continued to demonstrate normative activism. In March 2019, the Human Rights Council adopted a resolution proposed by South Africa on intersex people.

Brazilian Leadership on the International Promotion of LGBT Rights

The history of international normative evolution of LGBT rights is marked by Brazil's leadership. Brazil was the first country to propose an international normative text exclusively dedicated to LGBT rights and, since then, it has furthered its position as a LGBT norm promoter at global and regional levels over the years (Nogueira, 2007). Brazilian diplomacy



engagement appears both in proposing legal documents and in supporting initiatives of other actors. That puts Brazil as one of the main entrepreneurs of LGBT rights on the international scene, which reflects a long-standing tradition of Latin American “norm protagonism” in human rights. For Nogueira (2017, p. 552), this protagonism is not only the result of a simple strategic calculation or the mere extension of domestic practice to the international realm, but also a “sixteen-year-long process involving different actors and interests that progressively converged toward strengthening Brazilian international activism and normative commitment”.

According to Nogueira (2017), the norm entrepreneurship of Brazil would be composed of three phases. First, between 2000 and 2003, we see Brazil's first pro-LGBT rights positions in the preparatory events for the Durban Conference against Racism. This period was a natural evolution of the Conferences of the 1990s and the period of redemocratization. Openness to dialogue with activists and social movements originates in these processes. It is also strongly linked to the country's initiatives in favor of the right to access HIV/AIDS medicines that have brought government and activists closer together.

The second phase, from 2003 to 2011, was marked by the emergence of Brazil as a norm entrepreneur for LGBT rights, as in 2003 with the draft resolution on human rights and sexual orientation in the then Commission on Human Rights. The text was prepared by two young Brazilian diplomats, Frederico Meyer and Alexandre Ghisleni, but with experience in resolutions against racism and the issue of HIV/AIDS (Nogueira, 2017). Although the initiative was not approved at the UN Commission that year, the proposal guaranteed widespread recognition, support and praise of Brazil from Western states and activists. For Nogueira (2017), the perception of LGBT rights promotion as a coherent and low-cost positive agenda for Brazilian human rights foreign policy was the main driver of the country's norm entrepreneurship during this period and it was coherent with some domestic actions taken by the administration of Luiz Inácio Lula da Silva (2003–2010) in favor of the LGBT population. Important to note, the detachment of Brazilian foreign policy making from other political actors and from society in general shielded the entrepreneurship from domestic antagonism.

The third phase, between 2011 and 2016, was marked by strengthened leadership and increasing domestic influence. Polarization was seen in the domestic and international sphere, especially following



the approval of Resolution 17/19, with strong opposition of countries like Uganda and Nigeria. These increasingly conflicting debates had an impact on Brazilian norm entrepreneurship and diplomats decided to focus on norm promotion in the OAS while privileging lower-impact statements and declarations in the UN. For Nogueira (2017), international activism has had the courage to continue during the presidential campaign of Dilma Rousseff (2014) and her decision to support part of the LGBT agenda. Rousseff made an explicit mention of LGBT rights in the opening speech to the UN General Assembly in 2014, which has traditionally been delivered by the president of Brazil since 1945.

However, for Correa (2014) this third phase is also marked by retreats, showing tendency to a more conservative stand as well. Based on the argument that it would be necessary to maintain cohesion of the Group 77, Brazil did not advocate the retention of language on reproductive rights in the final version of the document resulting from the Rio + 20 negotiations in 2012. Correa cites one important retreat in the Brazilian position:

On 29 September [2013], in New York, Brazil co-sponsored a joint declaration against human rights violations on the basis of sexual orientation and gender identity. In this occasion, the ambassador made a strong public statement on the subject. Yet in the same month during the Human Rights Council session, in Geneva, Brazil avoided voicing concerns about the exclusion of sexual orientation and gender identity as a basis for discrimination from the text of the resolution proposed by Russia on the Olympics and human rights. Lastly, during the 26th Session of the Human Rights Council, in June 2014, the Brazilian delegation abstained in the final voting of a Resolution on the Protection of the Family that failed to include language on the diversity of family formations (Correa, 2014, p. 173).

Now, from 2019 on, it is possible to suggest the existence of a fourth phase, this time of consistent regressive character, with the rise to power of a far-right government widely supported by some of the most conservative sectors of Brazilian society. Current Brazilian President Jair Messias Bolsonaro (whose government began in January 2019) has a history of machist, racist and homophobic statements and acts and his successful candidacy for the presidency of Brazil was largely based on the support of conservative religious sectors who defended protection of the values of "traditional family" and fight against what they defined as "gender ideology" (as the arguments in favor recognition of the diversity of sexual orientation and identity) (SILVA, 2020). Human rights NGOs



have lost the already small space of dialogue with the Brazilian government. Perhaps the only chance to the Brazilian government's activism to continue in defending LGBT rights internationally is if there is a capacity for Brazilian diplomats in international organizations to maintain isolation from the leadership of Brasilia.

A Comparative Look at the Foreign Policies of Brazil and South Africa in LGBT Rights

The study of the international promotion of LGBT rights is an important agenda for understanding the main political and social dynamics of our time. Analyzing the Brazilian and South African governments positions over time is a great key to comprehend the main challenges in this theme. After considering the foreign policy agendas in both countries and analyzing the context in which they included the international LGBT rights agenda in their practices, this paper highlights six key points in which the comparative study can contribute to exposing the common and specific elements that define the current political dynamics in both cases based on the reflections already proposed in Corrales 2015.

Domestic and International Arenas

What makes a state a norm-entrepreneur in the LGBT rights agenda? The cases of Brazil and South Africa demonstrate that opening the decision-making process for the participation of civil society actors can enable activists and NGOs to pressure their states to take on more progressive roles in the human rights agenda. These groups can be part of transnational networks - being able to pressure their countries from outside -, they can produce specialized data and help their states generate winning coalitions in international forums.

The return of Brazil and South Africa to the democratic regime throughout the 1980s and 1990s meant an expansion on human rights protection in general (and of LGBT rights in specific) and their foreign policies reflected the domestic progress in this agenda. At the same time, the Brazilian and South African leadership are not immune to the domestic tensions that relate to the issue and that make it difficult to guarantee the rights of the LGBT population. In the Brazilian case, this is



reflected in the recent gain on political force of conservative groups, in the homophobic discourse of the presidential candidacy that won the 2018 elections and in the sad index of being the country with the highest number of LGBT homicides in the world.

New Civil Society Actors From The Global South

The study of the LGBT issue exposes the capacities of transnational advocacy networks to influence the major decision arenas of international politics. The participation of civil society organizations in the international human rights system has strengthened the defense of LGBT rights. ILGA - International Association of Lesbian, Gay, Bisexual, Trans and Intersex - was the first LGBT organization to receive consultative status in 1993 at the UN Economic and Social Council (ECOSOC), which was withdrawn the following year, and again accepted in July 2011. The Brazilian ABGLT, one of the largest networks of LGBT organizations in Brazil, has consultative status at the ECOSOC as well, which guarantee participation in the sessions of the Human Rights Council. Although its candidacy (proposed in 2006) was rashly opposed. Only with the intersection of the Brazilian government in 2009, did the ABGLT get its accreditation.

In this context it is important to point out the multiplicity of groups that fight for LGBT rights and that among them there is not always agreement on the strategies of action or agenda priorities. This was, for example, an issue in the coalition in support of the 2003 Brazilian Resolution: while groups of gay men tended to press for greater visibility on issues of sexual orientation, feminist groups prioritized other issues. The evolution of the international promotion of LGBT rights is also marked by the predominance of certain groups:

At the Cairo Conference, the driving force was determined by feminists involved in reproductive health and rights. In Beijing, lesbian networks came on the scene and the actual presence of gay groups would only happen after 2001 (UNGASS, Durban). Finally, trans and intersex activism would gain space and visibility in the context of the Brazilian resolution in 2003. (Correa, 2009, p.23).

The same point is highlighted by Corrales (2015) in his analyses of the LGBT rights in Latin America:

While the issue of marriage equality ended up unifying LGBT groups (despite significant disagreements at the early stages of this struggle),



for the most part, important issues still divide the LGBT community: 1) how much to cooperate with state officials and ministries; 2) whether to emphasize the importance of socioeconomic rights or other demands such as the rights and protections of homo-parental households; 3) how best to combat discrimination within institutions and within the labour force; 4) appropriate responses to hate crimes; 5) the status of sex work, etc. Furthermore, it is vital to understand the ways in which the concerns and demands of LBT folks do not get eclipsed by the wishes of gay men, who often tend to dominate within the LGBT community. It is important to study these intra-movement disputes (p. 59-60).

The diversity of civil society organizations also occurs with regard to support for LGBT rights. That is to say, there are also very vocal conservative organizations - generally religious - that seek to influence states to block the expansion of LGBT rights internationally. Again, in the case of the Brazilian Resolution, the European Union as a group had difficulty supporting the mention of gender identity in the text because the Conservative government of Ireland pressed contrary. Anti-gay conservative groups are still poorly studied and little is known about their domestic and international operations strategies.

Cultural Relativism X Universalism

The universal human rights discourse is widely accepted in the international community. However, on certain issues its defense is accused of ignoring local traditions and values. This is a reality on the subject of LGBT rights. In the most conservative countries in Latin America and Africa, it is commonly argued that homosexuality is a Western import (Ibrahim, 2015). In this context, there is great expectation from scholars and activists about more progressive positions from Brazil and South Africa that could reinforce the argument that LGBT rights are not a Western invention and need to be secured internationally.

Secularism x Religiosity

Since the 1990s, the importance of religious identity in many international issues has become even more evident. Conservative religious movements, specifically, have a long history of political action and international reach. While LGBT rights are often confronted on the grounds that they belong to the West, conservative, sexist and



authoritarian positions are often defended according to the argument of respect for traditional and sacred values. As Corrales (2015: 54) says, “The politics of LGBT rights is not just the civil rights issue of our time, but also probably the state-church issue of our time”. A common-based conservative view of LGBT rights has drawn Islamic countries and the Vatican (and its followers) in an attempt to bar consensus on reproductive and sexual rights. This alliance was nicknamed the “Holy Alliance” by the feminists (Correa, 2009). More recently, the Organization of the Islamic Conference emerged as a central veto player in global sexual politics, adding to the North-South divide a new tonality (West vs. Islam).

North-South / Anticolonialism

At the 60th anniversary of the Universal Declaration of Human Rights, during the December 2008 session of the General Assembly of the United Nations, 66 countries presented a joint declaration on human rights, sexual orientation and gender identity. Of the 66 countries that signed the declaration presented at the General Assembly in December 2008, only five were African or Asian (Gabon, Mauritius, Central African Republic, Japan and Nepal). There is still a very marked imbalance between South and North and between the regions of the South (Latin America vs. Africa, Asia, Pacific) in the LGBT international agenda.

In this issue, is quite interesting to analyze the emerging “rising” powers’ positions. In general, emerging powers have an intermediary stance in the international system, trying to influence the formulation of the main international regimes and also be an influential regional power. “New emerging powers” like India, Mexico and Brazil have changed their behavior becoming less predictable throughout the time and less dependent in the Vatican stances (Correa, 2014). In respect to sexuality matters, Brazil until recently was one of the most open emerging powers, whose “diplomacy works jointly with Latin American and European countries, as well as with the US, being usually able to move without much difficulty across the North and South divide, sometimes even functioning as a mediator” (Correa, 2004: 172).

The polarization between North and South encourages conservative forces to claim that there is a neocolonial attempt to impose strange values. That is, at the same time as historical studies point out how LGBT-phobia was stimulated by the ancient colonial empires (and it was so successful that many countries consider it as part of their historical



tradition), the fight against LGBT-phobia is also perceived as a tool of neocolonial domination (Ibrahim, 2015). That's why Brazil and South Africa, being both from the South as well, are expected once again contribute to the argument that LGBT rights should be universally recognized.

Strategies of action

Global promotion of LGBT rights began its recent history by trying to place rights related to sexuality in the debates of the great Conferences of the 1990s and in the concern of the main international organizations of the human rights system. The difficulty of moving forward through this strategy stimulated other approaches, this time focused on recognizing that LGBT rights are a natural interpretation of the already widely recognized human rights regime.

For some analysts, this new approach was the result of failures accumulated at the beginning of the 21st century, especially with the Brazilian Resolution. An example of this new approach is the Yogyakarta Principles. The document seeks to facilitate the promotion of LGBT rights by compiling and reinterpreting definitions of fundamental human rights enshrined in international treaties, conventions, resolutions and other texts on human rights, in the sense of applying them to situations of discrimination, stigma and violence experienced by individuals and groups on the basis of their sexual orientation and gender identity. Protecting LGBT rights would be to put into practice the general principles already recognized by most countries and signed and ratified in international human rights treaties.

It is also possible to see different strategies for the international promotion of LGBT rights in regional terms. In the case of the African regional human rights system, experts warn that bringing LGBT cases to human rights bodies can be counterproductive. This is because the African context has very powerful conservative forces capable of influencing the position of these organisms, even producing some kind of statement contrary to the recognition of these rights. In the words of Ibrahim, "If the African Commission were to hold that LGBT rights are un-African or takes some form of a cultural relativist stance in a binding decision, it effectively will set the clock back on the discourse that has picked up momentum over the last decade" (2015: 272). Still in the African context, Ibrahim stresses the importance of African defenders of LGBT rights gain more autonomy



from the West, since their priorities are not always equivalent (as in the case with gay marriage) and the deployment of forms of protest and symbols that typify the West may not be in the best interests of the LGBT rights movement in Africa.

Final Remarks

This paper presents the partial results of an ongoing research that seeks to compare the foreign policies of South Africa and Brazil in the international promotion of LGBT rights. Both countries are norm-entrepreneurs on this agenda, with a strong influence in regional and global contexts. If international recognition of LGBT rights is an important issue of our time, we need to better understand how these two countries have built a progressive position at important moments in the evolution of LGBT rights and what are the explanations for their conservative phases and postures.

Comparative research between developing countries' foreign policies is only just beginning and so there are still many issues to be considered. As we have seen, studies of the international human rights agenda in both Brazil and South Africa have already brought important reflections for understanding the political dynamics of the two countries. The dialogue between the two cases can bring new research problems and suggest innovative hypotheses for each of the local realities, both undergoing rapid political transformation, exposing convergence between civil society dynamics and new foreign policy interests.

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BRASIL, ÁFRICA DO SUL E O RECONHECIMENTO INTERNACIONAL DOS DIREITOS LGBT: PROPOSTAS PARA UMA AGENDA DE PESQUISA COMPARATIVA

RESUMO: O artigo propõe uma análise comparada da agenda dos direitos LGBTI nas políticas externas de Brasil e África do Sul. Em ambos os países, governos autoritários deram lugar a ordens democráticas no final dos anos 1980/1990, que viram a formação de ativos grupos pró-LGBTI e o subsequente reconhecimento constitucional desses direitos. Tanto Brasil como África do Sul se tornaram as principais vozes do Sul global apoiando os direitos LGBTI, em particular no Conselho de Direitos Humanos da ONU. A postura brasileira é notória, sendo o primeiro país a propor um texto internacional normativo dedicado exclusivamente aos direitos LGBTI, mantendo posição de liderança de longo termo com relação à promoção de normas nessa agenda nos níveis global e regional. A posição da África do Sul tem sido errática. Foi muito ativa nos anos 90, mas regressiva e silenciosa nos anos 2000. Desde 2011, no entanto, ela se colocou novamente como protagonista em relação às questões sexuais, como ilustrado por um grande passo na apresentação recente de uma resolução sobre orientação sexual e identidade de gênero. Essa é uma agenda de pesquisa ainda pouco explorada, em especial a partir de uma perspectiva comparada dos contextos políticos dos países emergentes democráticos. Ao final, o texto propõe seis questões-chave para uma análise comparativa da atuação dos dois governos nessa agenda, em particular a maior atenção ao crescente conservadorismo na agenda de costumes nas duas sociedades, o que no caso brasileiro é marcado pela eleição do presidente Jair Bolsonaro.

PALAVRAS-CHAVES: Direitos Humanos LGBT; Política Externa Brasileira; Política Externa Sul-Africana.

Magno KLEIN

*Universidade da Integração Internacional da Lusofonia Afro-Brasileira
Professor do Curso de Relações Internacionais da UNILAB/BA. Realiza
pós-doutorado no PPGCP/UNIRIO.*

E-mail: magnoklein@gmail.com

ORCID: <http://orcid.org/0000-0002-1840-5757>

Recebido em: 20/01/2021

Aprovado em: 21/12/2021