

THE RISE OF HUMAN RIGHTS ISSUE IN THE POST-COLD WAR WORLD: THE VIENNA CONFERENCE (1993)

MATHEUS DE CARVALHO HERNANDEZ¹

Abstract: This article aims to analyze the World Conference on Human Rights (Vienna, 1993) as a landmark in the human rights field. The goal is to discuss two hypotheses. First, that the Conference played an important role in the dissemination of human rights as an issue-area in international relations. Second, that the Conference contributed to the process of “relaxation of sovereignty”. The article is divided into three parts: the background to the Conference; the relationship between human rights and state sovereignty in the international system; the third section aims to connect the two hypotheses based on the debates of the Conference. The goal is not to analyze the Conference itself, but rather to demonstrate the trends that were empowered and unleashed by it in relation to the two hypotheses.

Keywords: Human Rights. International Relations. Vienna Conference. Sovereignty.

Contents: I. INTRODUCTION; II. BACKGROUND AND INITIAL DISCUSSION OF THE VIENNA CONFERENCE. SHORT-LIVED OPTIMISM: THE PREPARATORY PROCESS AND THE FINAL DOCUMENT; III. UNIVERSALITY AT THE VIENNA CONFERENCE: A UNIFYING CONTROVERSY; IV. THE COMPLEX RELATIONSHIP BETWEEN HUMAN RIGHT AND SOVEREIGNTY IN THE INTERNATIONAL SYSTEM; V. DEBATE ON INTERNATIONAL HUMAN RIGHTS: SOVEREIGNTY VS. GLOBAL ORDER; VI. MANIFESTATIONS OF TENSION IN THE VIENNA CONFERENCE; VII. FINAL CONSIDERATIONS

I. INTRODUCTION

The 2nd World Conference on Human Rights, organized by the UN, took place in Vienna from June 14-25, 1993. It was an event of great magnitude for human rights for several reasons. First of all, due to its high attendance figures: 171 state delegations and 2,000 NGOs (813 as observers), with some 10,000 participants overall. Moreover, the Vienna Conference also stands out for having taken place with the majority of the world’s independent states, unlike the 1st World Conference (Teheran, 1968) or the Universal Declaration of 1948.

¹ International Relations Assistant Professor of Universidade Federal da Grande Dourados, UFGD/Brazil (matheuschernandez@gmail.com; matheushernandez@ufgd.edu.br).

The Conference approved the Vienna Declaration and Programme of Action – the most comprehensive document on human rights adopted by the international community – which was prepared by a Drafting Committee chaired by Brazil.

The affirmation that the Vienna Conference constitutes a landmark for human rights is based on two hypotheses. The central hypothesis of this article is that the Conference, because it was held shortly after the end of the Cold War and provided the setting for a pluralized discussion (with the participation of delegations of various different states, NGOs and other civil society organizations), universalized the debate on human rights, which, from this point on, would be discussed (even when being contested) by actors from various cultural, social, political and economic backgrounds. The other hypothesis, intended to demonstrate the magnitude of the Conference, draws on the idea that the event was responsible for the intensification of the complex process of relaxation of state sovereignty that began after the Second World War.

The relationship between human rights and sovereignty may indeed be characterized as complex (Kritsch 2010). This means overcoming debates that are overly polarized, i.e. beyond merely complementary or antagonistic. It is based on this perception of theoretical and empirical complexity that I observe the occurrence of an ambivalent movement of relaxation of sovereignty, primarily in the post-Cold War period in which the Vienna Conference took place. The more normative human rights conceptions admit the continuity of the concept of state sovereignty, but envision that it will be overcome based on the observance of post-national trends. The more analytical conceptions, meanwhile, admit the existence of cosmopolitan trends but assert that this is insufficient to not consider state sovereignty a priority in the international system, both as an obstacle to the dissemination of human rights and that the national setting is still the primary sphere for guaranteeing and implementing these rights.

It is due to this complexity that, in this article, I describe this movement as a *relaxation* of sovereignty and not as a diminishment or relativization, which are the terms typically used, particularly in the field of International Human Rights Law². *Relaxation* opens up the possibility and illuminates the discussion on the historical rise not only of new actors on the international stage (such as NGOs), but also of other arenas of non-national jurisdiction.

This so-called relaxation does not necessarily imply the disappearance of the autonomy and independence of one state with respect to others, or even the total and

² This option results from the perception of the complexity of this process, i.e. the relationship between state sovereignty and human rights is simultaneously tense and complementary, often characterized by progress and setbacks. *Relativization* of sovereignty gives an idea of linear progress of human rights with respect to sovereignty, while *relaxation* indicates a process characterized by changes and continuities, which is the point of view adopted here. Moreover, the term *relaxation* seems to address the concurrent tensions and complementarities between human rights and the external aspects (considered synthetically as the horizontal relationship between the international actors and the rights to non-interference in internal affairs and to self-determination) and internal aspects (seen as the exclusive jurisdiction of a state over a given territory) of state sovereignty.

abrupt loss of the internal monopoly of exclusive jurisdiction of the state. But it does mean, based on the legitimacy of the international concern with human rights (approved in Vienna), the rise and legitimacy of new actors and voices in the international system (which often call for greater ethical commitment and political responsibility from the state towards its citizens) and the emergence and strengthening of new arenas of jurisdiction that coexist with states, permitting the rise of individuals as international rights holders alongside states and a more porous relationship between global norms and local contexts.

In order to examine these hypotheses, the article will begin by providing some background and an initial discussion of the Vienna Conference. This first part of the article presents the context of the immediate post-Cold War period in which the Conference was held. It also examines the preparatory process as well as the Conference itself and its final document. The central hypothesis of the article is introduced towards the end of this first section, when the discussions on the universality of human rights that took place at the Conference are presented. The second part consists of a theoretical discussion of the relationship between human rights and state sovereignty in the international system. For this, the debate between human rights academics in the field of international relations will be addressed based on the classification proposed by Koerner. In the third and final part, the analysis will turn once again to the Conference. Based on the preceding theoretical discussion, it addresses some of the controversial points of the event related to the tension between human rights and state sovereignty.

II. BACKGROUND AND INITIAL DISCUSSION OF THE VIENNA CONFERENCE. SHORT-LIVED OPTIMISM: THE PREPARATORY PROCESS AND THE FINAL DOCUMENT

Despite the Universal Declaration and the 1966 Covenants (International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) adopted by the UN and the 1st World Conference on Human Rights (Teheran, 1968), human rights, as a topic on the international agenda, remained for the duration of the Cold War in the shadow of the ideological conflict between the United States and the Soviet Union. In view of this, much of the international debate on human rights and their universalization was pervaded by this conflict, resulting in a dispute on the supposed hierarchy between the generations of human rights and frequent references to national security doctrines, based on state sovereignty, as an argument to refute international human rights standards.

For this reason, after the end of the Cold War and the *triumph* of Western capitalism, the stage appeared to be set, according to Trindade, for the building of a global consensus based on human rights, democracy and development (Trindade 1993: p. 39). However, at this very time, according to Alves (2000: p. 4), a conflict can be noted between “the reductionist Western view that traced the root of all evil to underdeveloped countries and the reaction of the local cultures overstating nativism against the importing of Western values.”

In order to defend their governments from Western criticism, whether through the close ties of these governments with religion (such as Iran) or through the sociocentric approach (such as China), some non-Western countries, mostly Asian, adopted culturalist positions. These positions predated the end of the Cold War, but the ending of this conflict gave them greater visibility, while they also grew intellectually stronger even in Western countries at the time (Ness 1999: p. 4). This culturalism gained strength as a response to the universalism propagated by Western powers in the post-Cold War era. As such, the debate on *Asian values*³ became fundamental in strengthening this particularist anti-universalism⁴ (Alves 2000: p. 196).

This debate gradually gained more ground, until it reached the floor of Vienna Conference, as Habermas observed:

As became evident at the Vienna Conference on Human Rights, a debate has got underway since the 1991 report of the Singapore government on “Shared Values” and the 1993 Bangkok Declaration jointly signed by Singapore, Malaysia, Taiwan and China. In this debate, the strategic statements of government representatives are in part allied with, and in part clash with, the contributions of oppositional and independent intellectuals (Habermas 2001: p. 155).

The inclusion of human rights on the international agenda may have aroused suspicions in some states that were concerned about guaranteeing their sovereignty, but it also started to unify an increasing number of actors around the topic.

Regional preparatory meetings were organized in order to pave the way for the drafting of a consensus document at the Conference. However, instead of strengthening universality by maturing the discussion on human rights, they resulted in disagreements between the states, making the drafting of a final document all the more difficult⁵ (Boyle 1995: p. 81).

³ The main criticism of the “Asian values” towards the Western concept of human rights was focused on the individualist nature of these rights. Asian countries also claimed a concept of human rights for themselves that was less individualistic and more communitarian, and that deserved equal priority in relation to the Western concept. Authors such as Habermas have stated that this Asian criticism of the West over the individualist nature of human rights is hollow. Habermas considers it a rhetorical tool used by Eastern states to cover up widespread human rights violations (Habermas 2001: p. 157). However, Eastern authors claim that the West cannot see in communitarianism and the Eastern tradition the presence of an awareness of tolerance and liberty that, although distinct from Western concepts, also exists (SEN, 1997, p. 27). Moreover, they claim that Eastern resistance is due to the exaggeratedly legal and individual character of the Western concept of human rights, which is always accompanied by hegemonic political behavior on the part of the West.

⁴ In this context of a decline in the initial optimism, one extremely important factor can be observed that was responsible for the trend: the exacerbation of nationalism. On this point, one can recall the resurgence, principally in Western Europe, of ultranationalist parties. It was in this context of change that the Conference was prepared. The initial optimism during which the Conference was proposed was replaced by a concern that the event may not even take place, and that if it did, it would represent a step backwards for human rights (Riding 1993: p. 1).

⁵ The first was the Regional Meeting for Africa (Tunis, November 2-6, 1992). It was attended by 42 states and NGOs and it produced the Tunis Declaration, which endorsed the universality of human rights

The three regional preparatory meetings, by emphasizing economic, social and cultural rights, the right to development and the cultural particularities of each region, made the building of a consensus at the Vienna Conference more complex, but also more plural.

It is worth pointing out that the Vienna Declaration, its Preamble and the Programme of Action are articulated parts of a single document, approved by consensus and known as the Vienna Declaration and Programme of Action. This document, besides endorsing various principles of human rights, grants legitimacy to international concern with human rights, supporting the hypothesis defended in this article. The comprehensiveness of the Conference's final document was responsible for consolidating the international importance of this topic in the post-Cold War world⁶.

In addition to approving the principle of the legitimacy of international concern with human rights, which underpins the dissemination of the topic on the global agenda, the Conference and its final document also addressed other points that comprise the complex process of relaxation of state sovereignty: as already stated, the opening up of participation and the legitimacy of human rights NGOs as intervening political agents, the encouraged emergence and/or strengthening of arenas of non-state jurisdiction (individual complaint systems in regional spheres and international courts, for example) and the creation of international non-intergovernmental human rights agencies, such as the Office of the High Commissioner for the Human Rights. However, both the process of elevating human rights on the global agenda and the process of relaxation of sovereignty, characterized by the points listed above, would be strengthened with the approval of the complex and fundamental principle of universality.

independently of political, economic and cultural systems – which was compatible with the intentions of the Conference – but alerted to the fact that the promotion and protection of human rights should take into account the traditional peculiarities of each society. The second was the Regional Meeting for Latin America and the Caribbean (San José, Costa Rica, January 18-22, 1993). The highlight of this Declaration was the emphasis given to the relationship between human rights, democracy and development. In addition to defending the principles of human rights, it also endorsed the creation of the UN Office of the High Commissioner for Human Rights. The third and most anticipated of the three preparatory meetings was the Regional Meeting for Asia (Bangkok, March 29-April 2, 1993). The final document enshrined the relationship between human rights, democracy and development, as well as the indivisibility and universality of human rights, while also evoking Asia's diverse and rich cultures and traditions. It was this emphasis on national and regional particularities and the various historical, cultural and religious backgrounds that instigated the debate on the universality of human rights at the Conference (ALVES, 2000, p. 13).

⁶ The Declaration reveals a scope and complexity in the promotion and protection of human rights around the world. These characteristics would also feature in the Programme of Action. The main purpose of this Programme was to formulate recommendations, based on the principles enshrined in the preamble and the Declaration, for implementing human rights (ALSTON, 1994, p. 387).

III. UNIVERSALITY AT THE VIENNA CONFERENCE: A UNIFYING CONTROVERSY

The debate on the universality of human rights was one of the most important aspects of the Conference. However, unlike what usually occurs, the controversy surrounding this issue will not be analyzed here as a setback of the Conference. Instead, this article intends to examine how this issue was responsible for the involvement – even though very often not in agreement – of a plurality of actors in the international debate on human rights, elevating it to the status of a universal issue-area.

According to Dornelles (2004: p. 189), “The affirmation of the universality of human rights [...] was one of the most debated points in the preparation of the Declaration.” According to Alves,

Given the fierceness of the “cultural” disagreements that substituted the ideological confrontations of the Cold War, the universality of human rights proclaimed in the Declaration of 1948 would again be seriously contested during the preparatory process of the Vienna Conference and into the Conference itself (Alves 2001: p. 13).

Universality was obtained amidst controversial discussions that were marked by clashes of concepts on human rights. Due consideration for this controversy, and the resulting clashes, is important because it shows how the discussion unified and involved delegations from a wide range of cultural origins, such as China, Portugal, United States, Singapore, Dominican Republic, Iran and Saudi Arabia.

Such diversity of participants is sufficient to demonstrate the central hypothesis of this article. It is undeniable that the pronouncements were not consentient and that this discussion of principles had not been intended when the Conference was planned. Indeed, its very occurrence posed a threat to one of the pillars of human rights. However, this article attempts to look at the positive aspects of these events. The maturing of human rights as an ethical reference on the international level depends on the establishment of an ongoing and open dialogue between the widest variety of participants and concepts possible. Only the explicit expression of views on human rights, even those critical of them, can promote their discussion on the international level⁷.

[...] the idea that universal human rights exist, that they establish a minimum standard of dignity to which all individuals should have access, [...] appears to be gaining more ground on the international level, as attested, for example, by the adoption by the UN, unanimously, of a new International Convention [Vienna Conference] in the area of human rights, in 1993 (Reis 2006: p. 25).

⁷ According to Gómez (2006, p. 4), “The existence of the international human rights system is the conclusive proof of the significance and the importance achieved by the topic of human rights in the contemporary world. Seen in broad historical perspective, this topic has never achieved such discursive legitimacy in terms of actors, spheres of action and values, nor such legal protection on a national, regional and global level as it has now.”

As such, it can be affirmed that the Vienna Conference constituted a landmark for human rights and was largely responsible for elevating human rights to the status of a reference of ethics and legitimacy on the international stage.

IV. THE COMPLEX RELATIONSHIP BETWEEN HUMAN RIGHT AND SOVEREIGNTY IN THE INTERNATIONAL SYSTEM

When addressing human rights on the international level, a major debate has ensued on the sovereign status of the state. The issue of universality of human rights is complex not only in its cultural and philosophical dimension, but also in its political and juridical dimension, given the structural and historical character of Westphalian sovereignty for the international system. The debate on universality is necessary in regard to the legal and political relationship between human rights and sovereignty because it illustrates the tension characteristic of this relationship. This tension is not only present in the institutional dimension, i.e. it does not only cause friction between international human rights mechanisms on the one hand and state-based jurisdictional mechanisms on the other. More importantly, it exposes the normative cracks that characterize the value provisions (state sovereignty on the one hand and universality of human rights on the other) that create social consensuses on the existence and persistence of these legal and political mechanisms (Glanville 2013; Levy; Sznajder, 2006; Reus-Smit, 2001). According to Bull (2002: p.152): “[...] carried to its logical extreme, the doctrine of human rights and duties under international law is subversive of the whole principle that mankind should be organized as a society of sovereign states.”

Similarly, Gómez identifies the fundamental contradictions of the international human rights system:

[...] on the one hand, the fact that it is based on the system of sovereign nation states, recognizing that states are the indispensable agents of the implementation and efficacy of human rights and, at the same time, one of the main violators of these rights; and, on the other hand, the fact that it has proven to be increasingly more limited and impotent in regulating, holding accountable and controlling the negative impacts of the complex and multifaceted structures and relations of global power that operate outside, above, below and through the states, even the strongest ones. (Gómez 2006: p. 12).

To lay the groundwork for the forthcoming empirical discussion, this second section will look at how the tension between human rights and sovereignty is addressed in the international relations literature.

V. DEBATE ON INTERNATIONAL HUMAN RIGHTS: SOVEREIGNTY VS. GLOBAL ORDER

An ambivalent process is noticeable, one that intensified in the post-Cold War years, between the notion of human rights and the paradigm of state sovereignty that is the backbone of the Westphalian interstate system.

The two opposite poles of the spectrum are evident. On the one hand, there stands the principle of sovereignty with its many corollaries [...] on the other, the notion that fundamental human rights should be respected. While the first principle is the most obvious expression and ultimate guarantee of a horizontally-organized community of equal and independent states, the second view represents the emergence of values and interests [...] which deeply [cut] across traditional precepts of state sovereignty and non-interference in the internal affairs of other states (Bianchi 1999: p. 260)

The contemporary debate on human rights is based on two main themes: the first is characterized by the tension between sovereignty and global order, and the other involves the relationship between universalism and relativism. In this section, the analysis will focus on the first theme, in which there are two theoretical poles: globalism and statism⁸ (Koerner 2002: p. 90).

The statist believe that states are the predominant actors in international relations. Despite the existence of common values and norms on the international level, they claim that the state political order takes precedence over the global order. However, the statist are not skeptical of human rights. They consider the aspirations to universalize human rights defended by the globalists to be legitimate. But they view these aspirations only as moral parameters of conduct in the international system, not as effective constraints on national states. According to the statist:

The international treaties and other mandatory pacts only create immediate obligations, or rather, agreements of limited duration and scope, given the impossibility of ensuring their effective enforcement by multilateral institutions. In short, there is no international law per se, since there is no global political entity with sufficient military capacity to force compliance with international norms by recalcitrant or disobedient states, thereby discouraging violations (Koerner 2002: p. 97).

Hurrell warns of the dangers of enforcement, arguing that it can undermine the very idea of consent and self-imposition on which international regulation is based, generating a suspicion among states in committing to human rights documents for fear of intervention (Hurrell 1999: p. 284).

⁸ Despite the clear and recognized connection between the two themes, this choice is justified by the hypotheses of this article, which are not based on the idea itself of the universalization of human rights, but instead that the Vienna Conference elevated human rights to the status of a globally debated topic.

Krasner considers state sovereignty to be a decisive condition for the international diffusion of human rights. As a result, he focuses his arguments on the willingness of states and their governments as a condition for the success of the international human rights system (Krasner 1993: p. 140-141).

For Hurrell, the effectiveness of International Human Rights Law is associated with its incorporation into national legislations. International norms need to be minimally compatible with state norms. Based on this, International Human Rights Law has power only as a source of International Law (Hurrell 1993: p. 50).

Generally speaking, statism conditions the effectiveness of international cooperation arrangements to acceptance by the state. In other words, international human rights laws are only binding when they are included in the national constitution as fundamental rights (Koerner 2002: p. 98). It can be said, therefore, that for statism the interpretation and implementation of human rights are functions of national political systems (and not international or transnational systems, as globalism advocates).

Donnelly considers the long-term effectiveness of human rights treaties to be unviable, since there is no global political entity with sufficient power to force compliance and punish violations. According to him, human rights are moral rights whose implementation is linked to the almost exclusive purview of the states (Donnelly 1999: p. 87).

The global human rights regime is largely a system of national implementation of international human rights norms. [...] International human rights policies are (at most) one part of national foreign policies, which all states consider to be driven primarily by the pursuit of the *national* interest (Donnelly 2000: p. 320).

However, according to Donnelly, human rights, unlike what the realists claim, have an impact and weight, particularly in the post-Cold War era, as an interest, even though very often not a priority interest, and as a reference language of international legitimacy. The fact that an interest is limited and has a limited effect does not disqualify it as an interest. And albeit marginally, this interest can be taken into consideration and influence the decision-making process or the formulation of a country's foreign policy (Donnelly 2000: p. 310).

Globalism, meanwhile, is generally characterized by the predominance of the global order, which has been developing since 1945, over all others; i.e. that its norms are superior to states. It believes in the capacity to transform the interstate system by strengthening this global order (Archibugi; Held; Köhler 1998: p. 2).

For this position [globalism], the changes in international policy since the end of the Second World War point towards the formation of a truly global order. [...] [globalists] have in common the proposal to strengthen the global order, and, to this end, they presume that it is possible to transform the current hierarchical and fragmentary interstate system, where strategic relations prevail between self-interested state agents, into a more stable, integrated and

democratic order that encourages cooperation, based on consensual norms and values (Koerner 2002: p. 92).

According to Koerner (2002: p. 93), for globalism “International law should acquire the status of global constitutional law, with human rights as its charter of fundamental rights. National law is legitimate only if compatible with the rules of international law.”

Held and Archibugi argue that, as a result of the globalization process in the post-Cold War world, the policies of one country can directly or indirectly affect people in other countries, even though they had no say in these decisions. As such, they claim, although from the state’s point of view the decision was taken democratically, from a cosmopolitan viewpoint, it creates a democratic deficit. Hence the need for an international system universally pervaded by human rights, which considers individuals, and not states, as the primary subjects of the system.

Archibugi proposes that the state paradigm should be articulated and complemented by more flexible frameworks based on the rights of the global citizen, freed from territorial restrictions:

If some global questions are to be handled according to democratic criteria, there must be political representation for citizens in global affairs, independently and autonomously of their political representation in domestic affairs. *The unit should be the individual*, although the mechanisms for participation and representation may vary according to the nature and scope of the issues discussed (Archibugi 1998: p. 212. Emphasis added).

Held defends the creation of new political constituencies, either larger or smaller than the nation-state, depending on the issue at stake. He proposes a model in which the people can enjoy a sense of membership in diverse communities and exercise it in various forms of political participation.

People can enjoy membership in the diverse communities which significantly affect them and, accordingly, access to a variety of forms of political participation. Citizenship would be extended, in principle, to membership in all cross-cutting political communities, from the local to the global (Held 1995: p. 272).

Making similar arguments, but based on Law and not Political Science, Ferrajoli (2007) defends the normative project of global constitutionalism. The project of Ferrajoli is directly associated with the defense of guarantees and elements that transcend strictly national boundaries. The human rights documents produced by the UN, including the Vienna Declaration and Programme of Action, would unleash a process through which sovereignty would stop being an unquestionable authorization and would start to be determined by two fundamental rules: the imperative of peace and the guarantee of human rights. Given the existence, on the normative level, of these elements that seek to transcend national-based sovereignty, the rise of individuals and

groups of people, in addition to states, as subjects of international law becomes a logically plausible possibility in Ferrajoli's project of global constitutionalism⁹.

The globalist project of Ferrajoli (2005) defends a true rupture with the community concept that underpins national sovereignty. He claims a constitution does not function as a representation of the common will of the people, but instead to guarantee everyone's rights, even in the face of the popular will. Therefore, the constitution would not be based on the consent of the majority, but on the equality of everyone in relation to the liberties and social rights. According to Ferrajoli, in an argument similar to the project of constitutional patriotism of Habermas (1996), the bonds of collective identity should be founded based on these individual and social guarantees and not on cultural bonds that produce exclusions and intolerances, such as ethnic, national, religious and linguistic identities.

Obviously, Ferrajoli recognizes the political and practical difficulties of his project of global constitutionalism, since it depends on the consent and willingness of international powers. Nevertheless, this does not stop him from recognizing in human rights and in their international institutionalization a manifestation of an embryonic global constitution, particularly on the value level¹⁰.

Ferrajoli, in fact, claims that the solution found for the tension between sovereignty and law on the internal level, i.e. the Constitutional State, should also be applied to the conflict between sovereignty and external law, with the inclusion on a world level of the same guarantees and fundamental rights as the constitutions of states, in other words a global constitutionalism.

Cosmopolitan arguments do not discard the state (and sovereignty) as a legitimate sphere. But they do advocate that in cases when the state is insufficient to assure a democratic functioning of relations, other autonomous and independent agencies should act, legitimized by the universal human rights of global citizenship and without any kind of constraint from the state structure.

According to Linklater (2007: p. 107), "In the new international environment it is both possible and desirable to realize higher levels of universality and diversity that

⁹ Canotilho (2008) also addresses the idea of global constitutionalism. According to him, the idea is supported by three pillars: the state/people relations (not the horizontal relations between states, but between the populations of states) as a basis for the legal and political system; the rise, through international declarations and documents, of an international *jus cogens* that extracts its legitimacy from universal values, principles and rules; and human dignity as a condition of all constitutionalism. It is in this regard, therefore, that Canotilho views the transformation of international law as a benchmark for the validity of national constitutions, i.e. having the rules of international *jus cogens* as a parameter for the validity of national constitutional provisions.

¹⁰ Ferrajoli views citizenship, based on national sovereignty, as "[...] the last pre-modern relic of inequality by status" (Ferrajoli 2001: p. 323). Given this context of tensions between global human rights violations and the apparatuses of national-based sovereignty, Ferrajoli (2000) argues that the rights available today only to national citizens – the right to housing and the right of movement in countries considered privileged – should be transformed into rights for all people.

break with the surplus social constraints of the ‘Westphalian era’.” Linklater, and globalism more generally, directly link the topic of cosmopolitan citizenship to the topic of universalization of human rights and the achievement of a fairer global order.

Currently, one of the main controversies on this issue involves the matter of so-called global constitutionalism, described above. Despite increasingly more frequent discussions on this matter (Fassbender 1998; 2007; Bogdandy 2006; Brunkhorst 2002; 2008), there is a good deal of reticence among authors who do not view a global constitution or a global harmonization of the legal traditions and jurisdictions as either desirable or beneficial¹¹ (Berman 2007).

On this point, I tend to agree with Seyla Benhabib (2009), a prominent defender of the cosmopolitan project. Criticisms of the globalist viewpoints, including those made by statist authors, seem to ignore the jurigenerativity of law and, in particular, the power of the most prominent cosmopolitan norms – human rights – to empower local movements. It does not seem to me that human rights norms work against the growth of democracy, as some authors such as Walzer, Skinner, Sandel and Nagel seem to fear.

According to Nagel (2005), for example, the nation-state is a political structure that is indispensable, since it is from this structure, he says, that issues of justice arise. This is why he claims that international law is nothing more than a quasi-contractual commitment that sovereign entities adhere to voluntarily¹². In other words, the citizens of one nation have no duty to foreigners, except for those resulting from the moral obligation of humanity.

[...] sovereign states are not merely instruments for realizing the preinstitutional value of justice among human beings. Instead, their existence is precisely what gives the value of justice its application, by putting the fellow citizens of a sovereign state into a relation that they don't have with the rest of humanity, an institutional relation which must be evaluated by the special standards of fairness and equality that fill out the content of justice (Nagel 2005: p. 120).

What Nagel overlooks, like nearly all the statist, is that human rights are not allocated only in the moral sphere, but also in the legal sphere, making it binding on the state to implement them (Archibugi 2008). Nevertheless, this moral sphere, of universal appeal, does not propose to be outside the circumscribed legal dimension, but it does propose to be superior and, for this reason, it becomes a normative (and questioning)

¹¹ This “sovereignist” posture can be divided into two types of visions: nationalist and democratic. The nationalist camp places legitimacy in the self-determination of the people, considered a homogenous entity (an *ethos*), whose law expresses and binds its collective will. The democratic variant affirms that laws may only be considered legitimate if the people they are directed at consider themselves both the authors and subjects of these laws. Therefore, for this democratic camp, laws do not express nor do they have to express the collective will of a people. More important than this is for there to be clear and recognized rules and procedures on the production, application and limitation of these laws (Nagel 2005; Skinner 2008; Walzer 1983; Sandel 1996).

¹² Authors such as Cohen and Sabel (2006), Pogge (2004; 2007) and Benhabib (2004) disagree with this exclusively moral view of Nagel on human rights and international law.

force for the emergence of other material bodies that can participate in the process of implementing these rights.

By ignoring the social movements, of which human rights NGOs are an important part, the statist literature is overly reliant on state actors as agents of democratic change.

Since the adoption of the Universal Declaration of Human Rights, in 1948, and reinforced by the Vienna Declaration and Programme of Action, in 1993, it can be argued that global civil society has entered a transition period from international norms to cosmopolitan justice norms. This is particularly visible with human rights norms, since they have the unique feature of limiting the sovereignty of states and their representatives, shaming them into treating their citizens and others residing in their territory in accordance with international human rights standards.

Benhabib takes a position in defense of legal cosmopolitanism, a defining feature of the globalists, and, as such, considers each human being to be entitled to basic human rights. Her argument is that the critics of the cosmopolitan viewpoint see the international legal order as a weak command structure and they ignore the “jurisgenerative” power of cosmopolitan norms.

“Jurisgenerativity” may be defined as the capacity of the Law to create a normative environment of meanings that can frequently escape the traditional legislative process. This means that laws acquire meanings as they are interpreted in a context of meanings about which the laws themselves have no control. And there is no rule with interpretation, i.e. rules can only be followed as they are interpreted. Moreover, no rule can control the varieties of interpretations possible within the different hermeneutic contexts.

“Jurisgenerativity” does not ignore the “legal” origin of the legitimacy, but sheds light on the interpretive dimension as a source of legitimacy of the rule. In short, “jurisgenerativity” works on the interrelation between the legal and non-legal origins of normativity.

Law's normativity does not consist in its grounds of formal validity, that is its legality alone, although this is crucial. Law can also structure an extralegal normative universe by developing new vocabularies for public claim making, by encouraging new forms of subjectivity to engage with the public sphere, and by interjecting existing relations of power with anticipations of justice to come (Benhabib 2009: p. 696).

I argue, therefore, that norms (especially human rights norms) are more than just means of domination or forms of coercion. Norms involve the anticipation of justice and, even if this justice is never served, it is always in this sense that norms are identified.

What the critics of cosmopolitan projects and globalist concepts often overlook is precisely the potential of international human rights norms to create a new repertoire for social demands and open new mobilization channels for civil society actors that join the transnational articulation networks. This is why, for example, as will be seen later, the participation of NGOs at the Vienna Conference was paradigmatic.

“Jurisgenerativity”, since it includes the interpretive dimension, does not disregard the need for local mediation of international human rights norms. The idea is precisely that through iterations, interpretations and articulations, international human rights norms are not imposed by elites, but integrated. The mandate of one of the main concrete results of the Vienna Conference, the OHCHR, addresses precisely this tenuous line of mediation between global and local, inspired by the conception of universality approved in Vienna.

Globalists, therefore, view International Human Rights Law as mandatory. As a result, their theoretical arguments are meant to strengthen multilateral institutions, since this would reinforce the mandatory status they support. Bearing in mind this and also the intent to enhance the consensus on the realization of human rights, globalism is a strong advocate of global conferences, such as the Vienna Conference, and in particular the consensual development of Action Plans (Bohman; lutz-bachmann 1997: p. 151).

This brief exposition of the arguments of statist and globalists is sufficient to demonstrate two things. First, that the tension between human rights and state sovereignty really is an extremely complex problem in the theoretical field. Second, considering that this theoretical complexity both reflects and is a reflection of the empirical condition, it is necessary to analyze some points in which this tension can be observed during the Vienna Conference.

Despite a series of major setbacks and recognizing that the state still has primary responsibility for the implementation of the norms of the international human rights system, my claim is that the Vienna Conference and the social processes unleashed by it, i.e. the Vienna Conference considered as a critical moment, as the historical institutionalists would say, reinforced trends that until then were dormant on the international level, held back in large part by the forces of the Cold War and by the low level of institutional maturity of the international human rights system. In this regard, although a long way from the full project idealized by the cosmopolitans, the Vienna Conference appears to have historically and institutionally strengthened normative processes that definitively challenged the exclusive supremacy of the state. These challenges paved the way for non-national human rights projects and mechanisms (such as the regional protection systems), the rise of non-state political actors that are less dependent on the forces of intergovernmental relations (such as human rights NGOs), the emergence of international human rights bodies (such as the OHCHR), the possibility of submitting the human rights performances of governments to international scrutiny (such as the emergence and strengthening of the National Human Rights Institutions and the UN Special Rapporteurs) and the rise of the individual as the subject of international law (with the different individual complaint procedures).

VI. MANIFESTATIONS OF TENSION IN THE VIENNA CONFERENCE

After this presentation of the Conference, the discussions of universality and the theoretical analysis, it is clear that the tension between human rights and state sovereignty is structural when we consider human rights in the international system. That said, and to demonstrate the hypothesis that the Vienna Conference was largely responsible for the intensification of the complex process of relaxation of state sovereignty that began after the Second World War, this section will discuss some specific points of the event pertaining to the tension between human rights and state sovereignty.

The first point that illustrates this tension at the Conference refers to the creation of an *International Court for Human Rights*. This point, among the points to be analyzed here, is the one that most clearly demonstrates the resistance of the paradigm of state sovereignty to human rights. However, it can also be noted that the Conference, although not immediately, influenced the process of relaxation of state sovereignty.

This proposal was put forward in the preparatory stage of the event. Despite the impact, it was mentioned only a few times by a small number of delegations. Nevertheless, it acquired widespread support among NGOs and was given broad exposure in the media. There was no initial euphoria by states to accept this proposal, since such a court – with a permanent and supranational status on the global stage – would represent a strengthening of the international human rights system and a challenge to the sovereignty of states

What the Programme of Action achieved, in its paragraph 92, was to encourage the proper UN authority, in this case International Law Commission, to continue its work on an international criminal court, since the Commission had already been preparing a Draft Code of Crimes against the Peace and Security of Mankind, which was not specifically geared towards human rights.

This point demonstrates the non-immediate progress achieved by the Conference, since after the conclusion of the aforementioned code by the International Law Commission, the International Criminal Court (ICC), according to Alves (2006, p. 24) “[...] an extraordinarily innovative institution in the system of international relations still based on the concept of state sovereignty”, was finally approved with few dissenting votes at the Rome Conference of 1998. In other words, the importance of the Vienna Conference lies not only in the event’s own accomplishments, but also in the issues it raised that would be followed through in the future.

The emergence of the ICC, which has one of its origins in the boost given by the Vienna Conference, shows how this event of 1993 contributed to the complex and ambivalent process of relaxation of sovereignty in favor of human rights. This can be argued given that the ICC is a permanent court with supranational status to handle crimes against humanity, i.e. its very existence challenges, to some degree, the prerogative of exclusive jurisdiction of a state and its government over a given territory

and population. The consolidation of this challenge is only legitimate because the ICC works with crimes against humanity, an agenda with high international appeal and moral acceptance that belongs to the dimension of serious human rights violations.

Another discussion that occurred during the preparatory process of the Conference, and one that is closely associated with the tension between state sovereignty and human rights, involved *the participation of NGOs*. The Western delegations were in favor of allowing their presence. However, the non-Western delegations, along with those from the Third World, were highly suspicious, since NGOs were not a representative part of their societies at that time. As such, they viewed these organizations as instruments of ideological propagation by Western powers. By the end of the preparatory process, however, the participation of NGOs ended up being approved.

The second session of the preparatory process had the participation of 77 NGOs (with consultative status with ECOSOC). However, it left the matter of their participation in the regional preparatory meetings pending until the subsequent sessions¹³ (TRINDADE, 1993, p. 6). The third session recommended that the UN Secretary-General invite different classes of NGOs to the regional preparatory meetings. Furthermore, it approved the Provisional Regulation of the World Conference on Human Rights, which authorized the attendance of NGOs as observers in the event.

The authorized participation of NGOs in Vienna, albeit only as observers, resulted in greater dialogue between governments and civil society for the duration of the event. However, it also began a trend, together with the Earth Summit of 1992, that would continue throughout all the major global conferences of the 1990s.

The Preamble to the final document of the Vienna Conference was what enshrined the legitimacy of the participation of NGOs and other new non-state actors on the international stage, even encouraging such participation. The Declaration emphasized the importance of NGOs, their right to carry out their activities, and their dialogue with states. The Programme of Action also recognized, in relation to the right to development, the vital cooperation between governments and NGOs for making progress on this right. By supporting NGOs, there is a clear intent by the Vienna Conference to promote a cohesive international movement for the purpose of relaxing the paradigm of state sovereignty¹⁴.

¹³ On this point, it is important to emphasize one event that illustrates the participation of NGOs in Vienna. Just days before the Regional Meeting for Asia, a meeting of human rights NGOs was also held in Bangkok. This meeting was underpinned by a different vision than its intergovernmental equivalent, and it expressly endorsed, for example, the protection of women, participative democracy and the universal ratification of human rights treaties. In the words of Trindade (1993: p. 21), "The Bangkok NGO Declaration went much further than its intergovernmental equivalent (the Bangkok Declaration itself), particularly concerning the universality of human rights and the matter of cultural diversity."

¹⁴ In addition to their strong support for the creation of the Office of the High Commissioner for Human Rights, NGOs also influenced the matter of discrimination against women. The women's group was one of the most supported groups during the event and, as such, one of the groups that received the largest number of references in the final document. This was due to the scale of the engagement by women's

The end of the Cold War, the rise of the topic of human rights and the occurrence of the Vienna Conference, in 1993, created an opportunity – still conditional on state sovereignty – for a group of actors that until then had little exposure to the international system, namely NGOs, to make their voices heard. This phenomenon demonstrates the hypothesis, defended here, that the Vienna Conference was a major contributor to the process of relaxation (but not suppression) of state sovereignty in the post-Cold War years.

It can be argued that this emergence of international NGOs during the Vienna Conference is in line with the two processes that make up the two hypotheses presented in this article.

The relationship between the structural process of the rise of human rights on the international agenda and the consolidation of NGOs as political agents is, as the constructivists of International Relations say, one of co-constitution. NGOs, which work on various levels (local, regional and international) for the realization of international human rights standards, maintain and disseminate these standards on the agendas of numerous states, and they also draw attention to situations that are being ignored by the international community. Meanwhile, the process of the rise of human rights as an internationally discussed topic, in which NGOs play an important but not exclusive role, empowers and legitimizes this form of social organization and its participation in multilateral forums.

Similarly, the consolidation of human rights NGOs as international political agents after the Vienna Conference is also related to the process of relaxation of state sovereignty. The international rise of human rights NGOs represents the appearance of voices in a setting that was previously all but monopolized by diplomatic voices. Moreover, international human rights NGOs work normatively on the defense of human rights of individuals as subjects belonging to humanity and not necessarily as national individuals, an important substratum for the affirmation of state sovereignty. Human rights NGOs contribute to the process of relaxation of sovereignty in that they work in networks that are not bound by national borders, i.e. they engage in transnational networks and coalitions, even when operating in regional arenas, such as the regional human rights protection systems¹⁵. They also promote and express the so-called

rights NGOs, which, besides being numerous, steered the discussions and exerted significant pressure. In the words of Chen (1996: p. 141), “At the 1993 Vienna Conference on Human Rights, the international women’s movement, brilliantly organized by Charlotte Bunch and her colleagues, forced the official delegates to recognize that women’s rights were human rights.”

¹⁵ Both the Vienna Declaration itself and the Programme of Action emphasize the importance of the regional protection systems, where the right to individual complaints is most consolidated. Article 37 of the Declaration states: “Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities. The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already

“global” public opinion. Finally, and perhaps most importantly, human rights NGOs, whose international legitimacy and consolidation has in the Vienna Conference one of its main triggers, have become agencies that are available to citizens. The citizens of states may seek out these NGOs to shame the offending state into remedying the abuses and also to urge other states, through their networking activities, to interfere and press for a resolution to the situation.

One of the most controversial topics, but also one that advanced the most in this process, was the proposal to create the *Office of the High Commissioner for Human Rights* (OHCHR). This topic had been debated since the 1940s in the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the UN Commission on Human Rights, but it had never been approved. The office, according to Reis (2004: p. 4), “Was created [...] for the purpose of coordinating the actions of the various different UN agencies that address the topic of human rights.”

This proposal reached the Vienna Conference through a suggestion by Amnesty International, which again demonstrates the importance of the participation of NGOs in Vienna. During the preparatory process, the proposal was welcomed by many delegations that saw a need for greater coordination on the subject of human rights (Gaer; Broecker 2014). However, it was also opposed by several other delegations, since they envisaged a potential for intrusive interference in their sovereignties. According to Alves (2000: p. 23-24), “For the opponents of the idea, the figure of a High Commissioner appears to have been viewed as a mechanism to be ‘remotely controlled’ by the West, developed for the exclusive control of civil and political rights in the Third World, and a threat to national sovereignties [...]”.

The lack of consensus on this point lasted until the end of the event. The full session of the Conference was forced to refer the proposal to the General Assembly, under priority status, in order to satisfy both the supporters of the proposal and its opponents. As a result, the proposal ended up being approved by consensus in New York, in the General Assembly, later in 1993. The consensus was obtained after it was perceived, during the negotiations, that the creation of the office would not constitute a threat to state sovereignty.

Despite not posing a material threat per se to sovereignty, since one of its focuses is technical cooperation, the OHCHR may also be viewed as one of the manifestations of relaxation of sovereignty unleashed by the Vienna Conference and its environment. This can be argued for a number of reasons. First, because several attempts to create this office were made unsuccessfully throughout the Cold War. The end of the bipolar conflict and the construction of a more favorable multilateral environment like the Vienna Conference were crucial for this difficult-to-approve

exist.” Paragraph 76 of the Programme of Action stresses: “The World Conference on Human Rights recommends that more resources be made available for the strengthening or the establishment of regional arrangements for the promotion and protection of human rights under the programmes of advisory services and technical assistance of the Centre for Human Rights.”

proposal to achieve consensus in 1993. Second, because this office, among its many unique features, is not an intergovernmental agency (like the former Commission on Human Rights or the current Human Rights Council are), which makes it more dynamic and independent. It is worth pointing out that the High Commissioner for Human Rights has the same rank as a UN Under-Secretary General and has primary responsibility for all the UN's human rights initiatives and activities. This empowerment resulting from this unique condition of quasi-independence permits this office to take actions and make statements without the need for prior authorization from the UN's intergovernmental political bodies and gives broad leeway to human rights NGOs. Finally, the OHCHR contributes to the process of relaxation of sovereignty in that it has national and regional offices around the world, which insist on compliance by countries to international human rights standards and publicly expose conduct by national governments that deviate from these standards. The installation of these offices involves negotiations with national governments over the local mandate of the institution. And, with varying degrees, the exercise of this mandate implies some ceding of sovereignty. In other words, the emergence of the OHCHR and its local offices, enabled by the political and normative environment of the internationally elevated theme of the Vienna Conference, is also part of the process of relaxation of sovereignty.

VII. FINAL CONSIDERATIONS

As this article has demonstrated, the Vienna Conference of 1993 managed to universalize the debate on human rights. But as the presentation of the discussions on universality in Vienna attempted to show, it is perhaps an exaggeration to say that the Conference managed to universalize human rights in the international system. However, these same discussions do demonstrate the success of the Conference in universalizing the debate on human rights, by involving a wide range of actors and effectively making the topic a universal issue-area in post-Cold War international relations. The universalization of the debate is not just about the diffusion of the topic among the states, but also about the rise and inclusion of new actors in the international discussions on human right, namely NGOs and individuals.

The other hypothesis, related to the first, has also been demonstrated over the course of this article. The Vienna Conference, primarily by universalizing the debate, authorizing participation by non-state actors, encouraging the emergence of and strengthening regional protection systems and international non-intergovernmental agencies, and legitimizing international concern, raised the status of the topic of human rights, which are not, in essence, totally aligned with the concept of state sovereignty. Therefore, by making these advances, the Vienna Conference intensified the process of relaxation of state sovereignty that began after the Second World War.

On the other hand, as has already been stated, the Conference relaxed, but did not suppress in any way, the concept of state sovereignty existing in the international system. The empirical discussions addressed here demonstrate this assertion, since the state is still the primary legal and political organization responsible for the

implementation of human rights. In addition, the theoretical discussion of statists and globalists, exposed in the second section, demonstrates the permanence of this structural tension and its complexity.

Currently, and in no small measure due to the Vienna Conference, not only does sovereignty condition human rights, but the inverse also occurs. Human rights, since they are based on the belief that all individuals are equal and, as such, have equal intrinsic value, pose a direct challenge to the paradigm of state sovereignty. All domestic or international action, even against human rights, must now be justified to their supporters. This shows how the introduction of human rights as an ethical reference for international relations is part of a trend of challenging the arbitrary exercise of state sovereignty, which demonstrates the magnitude of the Vienna Conference.

It is undeniable that the 1990s – and extending to the present day, despite the setbacks of 9/11 – saw a change in sovereignty brought about by so-called global issues. Among these issues, human rights were largely responsible for this process which, catalyzed by the Vienna Conference, advanced the legitimacy of international concern with human rights and ensured that the topic was raised to the status of an ethical reference for contemporary international relations. These days, the state *needs* human rights as an element of political legitimacy or international morality. And this has resulted from the elevation, on which the Vienna Conference had a sizable influence, of human rights to the status of a universal issue-area.

As a result of this debate, it is clear that the international human rights norms are important for two reasons. First, because as part of the foundation of the international system, human rights norms reveal that the international setting is not only comprised of facticity, but also legitimacy, normativity and validity. Second, because they demonstrate a form of compatibility between the national and the international or supranational sphere that does not automatically and necessarily imply the subordination of the former to the latter. The cosmopolitan projects of Habermas (2008), for example, just like Benhabib, were predicated on individuals and states, i.e. the possibility of non-hierarchical interaction between international human rights norms and the loyalty of citizens to their respective nations, the value base of sovereignty.

Placing the importance of international human rights mechanisms and norms only in the dimension of effectiveness and facticity, although an ongoing political need is inescapable, can obscure the importance of their normative dimension. And neglecting this dimension is to ignore the formation of an intersubjective consensus disseminated around human rights in the post-Cold War world. The Vienna Conference, therefore, by promoting the elevation of the topic on the international agenda and contributing normatively to the process of relaxation of sovereignty, is definitely an important historic episode in the construction of this intersubjective consensus that encourages the use of the language of human rights both to contest power imbalances and as an ethical reference of legitimacy in the international system.

REFERENCES

- Alston, P. (1994), "The UN's human rights record: from San Francisco to Vienna and beyond", *Human Rights Quarterly*, vol. 16, n° 2, p. 375-390.
- Alves, J. A. L. (2000), "Direitos humanos, cidadania e globalização", *Lua Nova*, n° 50, p. 185-206.
- _____, (2001), *Relações internacionais e temas sociais: a década das conferências*, IBRI, Brasília.
- _____, (2006) *A declaração dos direitos humanos na pós-modernidade*. Available at: www.dhnet.org.br/direitos/militantes/lindgrenalves/lingres_100.html. Last accessed on: September 21, 2012.
- Archibugi, D.; Held, D.; Köhler, M. (1998), *Re-imagining political community: studies in cosmopolitan democracy*, Stanford Press, Nova York.
- Archibugi, D. (1998), "Principles of cosmopolitan democracy", in Archibugi, D., Held, D. and Kohler, M. (Eds), *Re-imagining political community*. Polity, Cambridge.
- _____. (2008). *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy*. Princeton, NJ: Princeton University Press.
- Benhabib, Seyla. (2004). *The Rights of Others: Aliens, Citizens and Residents*. Cambridge: Cambridge University Press.
- _____. (2009). International human rights and democratic sovereignty. *The American Political Science Review*. Vol. 103, n. 4, p. 691-704.
- Berman, Paul Schiff. (2007). "Global Legal Pluralism." *Southern California Law Review* 80 (6): 1155-237.
- Bianchi, A. (1999), "Immunity versus human rights: the Pinochet case", *European Journal of International Law*, vol. 10, p. 237-277.
- Bogdandy, Arnim. (2006). "Constitutionalism in International Law." *Harvard International Law Journal* 47 (1): 223-4-2.
- Bohman, J. and Lutz-Bachmann, M. (1997), *Perpetual peace: essays on Kant's cosmopolitan ideal*, MIT Press, Massachusetts.
- Boyle, K. (1995), "Stock-taking on human rights: The World Conference on Human Rights, Vienna 1993", *Political Studies*, n° 43, p. 79-95.
- Brunkhorst, Hauke. (2002). "Globalizing Democracy Without a State: Weak Public, Strong Public, Global Constitutionalism." *Millenium: Journal of International Studies* 31 (3): 675-90.
- _____. (2008). "Die Globale Rechtsrevolution. Von der Evolution der Verfassungsrevolution zur Revolution der Verfassungsevolution?" In *Rechtstheorie in rechtspraktischer Absicht*, eds. Ralph Christensen and Bodo Pieroth. Berlin: FS Mueller; 9-34.
- Bull, H. (2002), *A sociedade anárquica*, Imprensa Oficial de São Paulo, São Paulo.
- Chen, M. A. (1996), "Engendering World Conferences: the International Women's Movement and the UN", in Gordenker, L and Weiss, T. G. (Eds.), *NGOs, the UN, and global governance*, Lynne Rienner, Boulder.
- Cohen, Joshua; Sabel, Charles F. (2006). "Extra Rempublicam Nulla Justitia?" *Philosophy and Public Affairs* 34 (2): 147-75.
- Dornelles, J. R. W. (2004), "A internacionalização dos direitos humanos". *Revista da Faculdade de Direito de Campos*, ano IV, n° 4, ano V, n° 5.

- Donnelly, J. (1999), "The social construction of international human rights", in Dunne, T. and Wheeler, N., *Human rights in global politics*. Cambridge Press, Cambridge.
- _____. (2000), "An overview", in Forsythe, D. P., *Human rights and comparative foreign policy*. United Nations University Press, Tokyo.
- Fassbender, Bardo. 1998. "The United Nations Charter as Constitution of the International Community." *Columbia Journal of Transnational Law* 36 (3): 529-619.
- _____. 2007. "We the Peoples of the United Nations': Constituent Power and Constitutional Form in International Law." In *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, eds. Martin Loughlin and Neil Walker. New York: Oxford University Press, 269-90.
- Gaer, Felice; Broecker, Christen. (Eds.). (2014). *The United Nations High Commissioner for Human Rights: conscience for the world*. Leiden: Martinus Nijhoff Publishers.
- Glanville, L. (2013). The Myth of "Traditional" Sovereignty. *International Studies Quarterly* 57, p. 79–90.
- Gómez, J. M. (2006), "Sobre dilemas, paradoxos e perspectivas dos direitos humanos na política mundial" in *Radar do Sistema Internacional*, Available at: <http://www.rsi.cgee.org.br/documentos/271/1.PDF>. Last accessed on: March 24, 2013.
- Habermas, J. (1996), *Between facts and norms*, Massachusetts, MIT
- _____. (2001), *A constelação pós-nacional: ensaios políticos*, Littera Mundi, São Paulo.
- _____. "The Constitutionalization of International Law and the Legitimacy Problems of a Constitution for a World Society." In *Constellations: An International Journal of Critical and Democratic Theory* 15 (4): 444-55.
- Held, D. (1995), *Democracy and the global order: from the modern state to cosmopolitan governance*, Stanford Press, New York.
- Hurrell, A. (1993), "International Society and the Study of Regimes: A Reflective Approach", in Rittberger, V. (Ed.), *Regime theory and international relations*, Clarendon Press, Oxford.
- _____. (1999), "Power, principles and prudence: protecting human rights in a deeply divided world", in Dunne, T. and Wheeler, N. (Eds.), *Human rights in global politics*. Cambridge Press, Cambridge.
- Koerner, A. (2002), "Ordem política e sujeito de direito no debate sobre direitos humanos", *Lua Nova*, nº 57, p. 87-111.
- Krasner, S. D. (1993), "Sovereignty, Regimes, and Human Rights", in Rittberger, V. (Ed.), *Regime theory and international relations*, Clarendon Press, Oxford.
- Kritsch, R. (2005), "Direitos humanos universais, estados nacionais e teoria política: algumas questões práticas e conceituais", *Filosofia Unisinos*, nº 6, p. 213-230.
- _____. (2010) Entre o analítico e o prescritivo: disputas em torno dos direitos humanos. *Mediações*, vol. 15, n. 1, p. 30-53.
- Levy, D.; Sznajder, N. (2006). Sovereignty transformed: a sociology of human rights. *The British Journal of Sociology*, Volume 57, Issue 4, p. 657-676.

- Linklater, A. (2007), *Critical theory and world politics: citizenship, sovereignty and humanity*, Routledge, New York.
- Nagel, Thomas. (2005). "The Problem of Global Justice." *Philosophy and Public Affairs* 33 (2): 113-47.
- Ness, P. (1999), *Debating human rights: critical essays from the United States and Asia*, Routledge, London.
- Pogge, Thomas. (2004). *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*. London: Polity Press.
- Pogge Thomas, (ed). (2007). *Freedom from Poverty as a Human Right*. Oxford: Oxford University Press.
- Reis, R. R. (2004), "Soberania, direitos humanos e migrações internacionais" *Revista Brasileira de Ciências Sociais*, vol. 19, nº 55, p. 149-163.
- _____. (2006), "O lugar da democracia: a sociedade civil global e a questão da cidadania cosmopolita", *Perspectivas*, vol. 30, p. 15-32.
- Reus-Smit, C. (2001). Human rights and the social construction of sovereignty. *Review of International Studies* (2001), 27, 519–538.
- Riding, A. (1993), "A bleak assessment as rights meeting nears", *The New York Times*, April 25, 1993. Available at: <http://www.nytimes.com/1993/04/25/world/a-bleak-assessment-as-rights-meeting-nears.html?pagewanted=print>. Last accessed on: July 6, 2012.
- Sandel, Michael J. (1996). *Democracy's Discontent: America in Search of a Public Philosophy* Cambridge, MA: The Belknap Press of Harvard University Press.
- Sen, A. (1997), *Human rights and Asian values: sixteenth Morgenthau memorial lecture*. Carnegie Council on Ethics and International Affairs, New York.
- Skinner, Quentin. (2008). *Liberty Before Liberalism*. Cambridge: Cambridge University Press.
- Trindade, A. A. C. (1993), "O processo preparatório da Conferencia Mundial de Direitos Humanos: Viena, 1993", *Revista Brasileira de Política Internacional*, vol. 36, nº 1, p. 1-45.
- _____. (1997) *Tratado de direito internacional dos direitos humanos*. Vol. I., S. A. Fabris, Porto Alegre.
- Walzer, Michael. (1983). *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.