

INTERNATIONAL RELATIONS

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In the contemporary world, no society is in a position to shape its own destiny in isolation. For this reason, the problem of the positioning of Brazil in the world is a critical topic on the national agenda. Proper resolution of that problem demands an appraisal of the factors of permanence and change in the international system.

The decade of the 1980s was a period of much change. From the North/South perspective, there was an erosion of power resources with which the countries of the Third World had imagined, during the 1960s and 1970s, they could construct a fairer international economic order through joint action (the Group of 77). On the other hand, the fall of the Berlin Wall symbolized a substantial change in the East/West dichotomy that had structured international affairs since the post World War II period. This situation has called into question the political logic of the non-aligned movement dating back to the 1950s.

Because of this new international context, it is necessary to reconsider Brazilian diplomacy to enable it to continue its course while responding in an up-to-date manner to the challenges of these transformations. In order to ensure national viability without loss of identity and specificity, one must broaden the reach of its operative rationality, through cultural, economic, political and social procedures that are compatible with world events.

Greater understanding of these problems can be gained by considering the insights revealed by Itamaraty (Brazil's Foreign Office or State Department), in the book *Topics in Brazilian Foreign Policy*.¹

The book, which contains contributing articles from career diplomats, shows how Itamaraty thinks about the meaning of the transformation the world is currently undergoing, from the viewpoint of Brazil's international position. It is, therefore, a useful guidebook for organizing an overview of the most significant international relations problems facing Brazil. The book is divided into five parts. The first, which deals with international economic problems, begins with an article on Brazilian trade policy by Ambassador Paulo Tarso Flecha de Lima,

¹ Gelson Fonseca Jr. and Valdemar Carneiro Leão, (eds.)

Temas de Política Externa Brasileira. The publication is an undertaking of IPRI — Institute for Study of International Relations of the Alexandre Gusmão Foundation, which, since creation in 1987, has become an open forum for debates on questions of contemporary foreign policy.

If I had been the attorney for the plaintiff, I would have pointed out to the judge that the applicable law should be that of the requesting country where the man was a proper witness. Absent a strong public policy in our country barring the application of that country's law in that case, the man should have been required to submit to the deposition. I think this may be an avenue which can be pursued with respect to documents of corporation as well.¹⁴⁶

This argument can actually be based on Article 13 of the Law of Introduction to the Civil Code, which states: "Proof of facts taking place in a foreign country is governed by the law in force there with regard to the burden and the means of producing the proof, but Brazilian court shall not admit proofs that are unknown in Brazilian law." "Unknown" has been interpreted as objectionable from a public policy point of view.

E. FOREIGN DISCOVERY REQUESTS

The 1988 Constitution introduced a novel rule in Article 181, which states: "Response to a requisition of a document or of information of a commercial nature, made by a foreign administrative or judicial authority to an individual or legal entity resident or domiciled in the country, needs authorization from the proper branch of the government."¹⁴⁷

Precisely what the Framers had in mind with this rule is unclear. Whenever a foreign court wishes to have a document or any other information of commercial nature, the letter rogatory is the best channel. The Supreme Court will invariably comply with the foreign requisition, unless it contains something highly shocking to Brazilian public policy. One cannot conceive the need of authorization of any other governmental branch, for the jurisdiction of the Supreme Court to enforce foreign letters rogatory is a constitutional rule.

A foreign administrative authority's direct request to the party domiciled in Brazil — without resorting to its courts for expedition of a rogatory letter — will probably fall under the new constitutional provision of Article 181. This is reflected in the Restatement of the Foreign Relations Law of the United States concerning foreign legal impediments to comply with requests of U.S. governmental agencies.¹⁴⁸ The novel provision in the 1988 Brazilian Constitution resembles the U.K. 1980 Protection of Trading Interest Act which, among other measures, extended the power of the British government to forbid compliance by British citizens and business with orders of foreign authorities, where those orders have extraterritorial effect and prejudice British trading interests.¹⁴⁹ The rule of Article 181 also resembles various cases in which discovery requests before U.S.

¹⁴⁶ Proceedings of the 77th Annual Meeting, American Society of International Law 73-4 (1983).

¹⁴⁷ Translation of Professor Keith S. Rosenn, as published in this "Panorama".

¹⁴⁸ Restatement For. Rel. 3d §§ 441 (1) (a), 442, 473 and 474.

¹⁴⁹ See A. V. Lowe, "Blocking Extraterritorial Jurisdiction: The British Protection of Trading Interest Act, 1980," 75 American Journal of International Law 257 (1981).

courts were rejected by European parent companies based on blocking statutes of their national legislation.¹⁵⁰

CONCLUSION

The Congress and Executive have been very hesitant about Brazil's participation in the progress of private international law. Brazil left the Hague Conference on Private International Law without any justifiable reason. During the period it was a member of the Hague Conference, Brazil did not ratify any of the Conference's conventions. Brazil has signed some of the Inter-American Conventions approved at the conferences held in 1975 (Panamá), 1979 (Montevideo), 1984 (La Paz) and 1989 (Montevideo), but it has not yet ratified any of them. Nor has Brazil approved the New York 1958 Convention on Recognition and Enforcement of Foreign Arbitral Awards or the 1961 Geneva Convention on Commercial International Arbitration.

Brazil's Judiciary has a completely different attitude. All levels of state and federal courts are ready to apply foreign law whenever indicated by the rules of Private International Law. Brazilian judges have been careful to apply foreign law in accordance with the effective practice of the *lex causae*, diligently searching for the proper construction of foreign law in the treatises written by the authorities on the law to be applied.¹⁵¹

In the field of international judicial cooperation — extradition, recognition of foreign judgments and compliance with letters rogatory — the Federal Supreme Court has maintained the Brazilian tradition of recognition of vested rights and of utmost cooperation with the judiciaries of other States. Brazil was a pioneer in liberalizing foreign judgment recognition, eliminating the reciprocity requirement over a century ago, never demanding *révision au fond*, applying the system of *giudizio di deliberazione* with fewer exceptions than the Italians, and ignoring whether the foreign court applied the law indicated by Brazilian rules of conflict of laws.

It is to be hoped that in the future the Brazilian Supreme Court will reexamine its customary *ordre public* approach in matters such as foreign judgments without an opinion (unfounded judgments) to permit their recognition, provided they fulfill all the legal requisites.

¹⁵⁰ See e.g., Remington Products Inc. v. North American Phillips Corp., 107 F.R.D. 642 (D. Conn. 1985). See also Restatement For. Rel. 3d §§ 441 and 442.

Professor Detlev Vagts has written — this author does not recall where — that instructions from the U.S. government should be complied with by foreign subsidiaries of American companies as long as those instructions do not collide with contrary orders from the government. Hopefully, we shall see the day in which transnational interests of multinational enterprises and jurisdictional conflicts will be intelligently settled in good will and harmony.

¹⁵¹ See Recurso Extraordinário 93.131, Banco do Brasil S/A. V. Antonio Champalimaud, 101 RTJ, 1149 (1982).

Secretary-General of the Ministry of Foreign Relations during the entire administration of President José Sarney, discussing Brazilian trade policy. The text shows the significance of the protectionist agricultural policies of the EEC and the USA, the declining trend in importation of foodstuffs and agricultural raw materials by developed economies, and the importance for Brazil as a major grain producer of the proposals for liberalization of international trade in agricultural products currently under study by GATT. It also underlines the role of technological innovations that are altering the comparative advantages of nations, and how for Brazil this translates into an economic loss of competitiveness and a diplomatic change in the area of intellectual property, now under examination by GATT. It emphasizes the relationship between technology and the role of globalization of the services sector in the new economic world pattern, also a topic of the Uruguay Round. Finally, it weighs the possible effects of the phenomenon of the formation of large economic blocs upon Brazil's foreign trade performance.

The important reflections of Ambassador Paulo Tarso Flecha de Lima, who takes into account the most recent economic disputes involving our country, well-known to him and to whose solutions he has contributed with his undeniable capability as a negotiator, is followed by an article by Ambassador Rubens Ricúpero, notable for his performance at GATT as Brazil's permanent representative in Geneva. Ambassador Ricúpero's analysis of the international economic scene demonstrates that the crisis was specifically African and Latin-American rather than world-wide in the 1980s. Unlike previous decades, he characterizes Brazil as "stagnant or regressing at the very moment when the greater part of the international economy continues to expand." In formulating a Brazilian strategy to overcome this crisis, Ambassador Ricúpero one of the most talented of Brazilian diplomats, recognizes the existence of adverse external factors, but nevertheless properly calls attention to domestic measures. These include, *inter alia*, restoration of investment levels (including those of a social nature), healing of the public sector, the reinvigoration of industrial policy and the maintenance of the dynamism of foreign trade, measures that require a political will that depends upon us alone, and not only upon a favorable or unfavorable international context.

The astute analysis of Ambassador Ricúpero is followed by Ambassador Sebastião do Rego Barros Neto, who shows how technology (energy, new materials, data processing, telecommunications, biotechnology) "impregnate today's international debates on foreign policy to the same extent and with the same intensity as territorial or ideological questions," and how these topics are decisive for the international positioning of our country in the decade of the 1990's.

The second part of the book deals with process of regionalization and its importance for Brazil. It contains an essay by Amaury Porto de Oliveira, a specialist in international energy questions. As Brazilian Ambassador to Singapore, he is an attentive observer of the rapid economic growth of the Asian rim of the Pacific, which is taking place against the background of the aging of the Second Industrial Revolution model. Discussing relocation of the dynamism the world economy from the Atlantic to the Pacific, Ambassador Amaury Porto de Oliveira calls attention to the importance of Brazil connecting itself to the paradigm of the Third Industrial Revolution, in which Japan is the epicenter of a new productive model.

The second essay is authored by Geraldo Holanda Cavalcanti, Brazilian Ambassador to the European Community. He discusses, both profoundly and broadly, the significance to Brazil of Europe 1992, which today represents one-third of the market for Brazilian exports. He shows that while the European Community is important for Brazil, on the other hand, Brazil is not particularly significant to European political and economic interests. Brazil accounts for only a little more than 0.30% of the total market for European Community exports and supplies only 1.0% of its imports. Herein lies a great challenge for the decade that has just begun.

The third essay, by Francisco Thompson Flores Netto, Brazilian Ambassador to Argentina, concludes the second part with a precise synthesis of Brazilian/Argentine integration. He examines the processes seeking to combine the resources of the two largest economies in South America in many different fields. His study of the prospects for this bilateral integration process calls attention to one basic fact: the equation for an international role for Brazil and Argentina and other Latin-American countries will have greater chances of success with the growth of a joint program of approximation, cooperation and integration, particularly within a rapidly changing world context that imposes upon the region within which we find ourselves located economically, politically and culturally, the imperative need to adapt to a new dynamism.

The third part is concerned with certain contemporary questions of multilateralism. It contains a long essay by Ambassador Dário de Castro Alves, which reflects his experience as Brazil's representative to the OAS. His analysis of the one hundred year life of the Inter-American system, with its retreats, weaknesses and restructurings, concludes that it is still "a defensible and supportable program."

The next essay, by Ambassador Marcos Azambuja, who was the chief of the Brazilian delegation on Disarmament and Human Rights in Geneva, deals with Brazilian positions on the question of disarmament. He begins with a lucid historical analysis of Brazilian positions, which derive from the fundamental perception that our geographical location is neither disturbing nor threatening, a situation makes Brazil predisposed to seek multilateral initiatives to strengthen peace in the world. Ambassador Azambuja points out how Brazil is today included "within that small circle of actors who are, at one and the same time, important protagonists on the disarmament scene, and important manufacturers and exporters of armaments." He concludes his analysis by calling attention to the importance of conceiving a new Brazilian policy for disarmament questions, one that corresponds, on the one hand, to the end of the "cold war," and on the other, to a scientific and technological framework undergoing speedy change. Most thought-provoking are Ambassador Azambuja's observations on the highly unpromising future of the universal multilateral approach to the entire field of disarmament questions; the possibility of progress in the field of conventional disarmament; and why Brazil, in disarmament matters, "should act more as its own agent than as a representative of groups (Latin-American, Group of 77, Non-Aligned Nations, etc.)."

Prof. Vicente Marotta Rangel brings to a close the third part with an essay on Brazil and the Law of the Sea, which represents the reflective contribution of the

Universities to this volume on Brazilian foreign policy. Prof. Marotta Rangel is the preeminent Brazilian specialist in the Law of the Sea and participated in the negotiations at the Third U.N. Conference that led to the Montego Bay Convention. He examines certain considerations in the field of internal political actions and international relations, factors such as geography, economics, living and mineral resources of the sea, ecology, science, safety, technology, geology, etc. In an exemplary manner, he clarifies, within this conceptual framework, the evolution and the coherence of Brazilian foreign policy from the 200 mile territorial sea to acceptance of the Convention. Thus, he demonstrates the role of internal and international policy in the creation of rules of International Public Law, which are of special relevance to Brazil.

The fourth part, which examines the future of Brazil's international relations, contains two studies. The first is by Ambassador Luis Felipe de Seixas Correa, who describes an important overview of the role of Brazil in the international system, with emphasis given to the post World War II period. He concludes that Brazil will probably reach the 21st century without having become part of the First World. Consequently, the limbo in which we find ourselves today will continue to be a factor in Brazilian foreign policy in a global framework of increasing diplomatic complexity.

The second study is by Ronaldo Mota Sardenberg, until recently Brazilian Ambassador to Moscow and recognized as one of our country's best theoreticians in international relations. He discusses the probable outlines of the global stratification in the decade of the 1990s. He maps out the new geo-economic spaces now being delineated, pointing out how this will weaken the parliamentary action of the Third World in multilateral forums. He suggests that the Third World is losing attractive force ("*vis attractiva*") because it has become associated with topics such as terrorism, violence, drug traffic, destruction of the environment, exploitation of cheap labor, etc. He calls attention to the potential modernization of neocolonialism, and concludes, with a logical and realistic analysis, by listing those assets Brazil counts upon to conduct its foreign policy in the next decade, assets seldom found in other Third World countries. Worthy of special note are this essay's analysis of the interests of the USA, Japan, the USSR and China in the Pacific Basin, and the dimensions of Brazil's relations with China and India, "the only developing countries which, like Brazil, are too large to be ignored in the process of reorganization of the international order."

As an epilogue, this book contains a succinct outline by Minister Gelson Fonseca Jr. of recent international relations studies. He subtly evaluates university and non-diplomatic contributions to the understanding of the problems of Brazilian foreign policy, thus clarifying the academic ties that exist between Itamaraty and society.

As can be seen from this synopsis, the book *Topics in Brazilian Foreign Policy* constitutes an important contribution to the mapping of the international agenda of Brazil in the coming decade. Needless to say, it does not exhaust the subject. It lacks specific studies on bilateral relations between the US and Brazil, the United Nations, ecology, foreign debt, drugs, and the area of values (democracy, human rights, cultural policy). Many of these subjects are concerns of

the present Administration of President Collor de Mello and will be dealt with in the final part of this contribution.

First is the vigorous nature of the new measures that the Administration intends to adopt in the area of ecology. In the words of President Collor on February 14, 1990, upon the occasion of his return from a trip abroad as President-elect, Brazil will seek to reconcile "observance of our sovereign rights together with the external treatment of a question which, as we well know, affects the destiny of humanity as a whole."²

A second topic on the agenda is the possible participation of Brazil in a reformulated Non-Proliferation of Nuclear Arms Treaty, keeping in mind the broader problem of access to technology, which Brazil considers a high-priority item in its foreign policy.³

A diplomatic style of non-confrontation with the countries of the First World appears to be growing, with a view toward facilitating practical dialogue within the present conditions of the international system. It is within this context that relations with the United States appear to be evolving. These should take into account the new world configuration, which may open new opportunities for economic intercourse.

Obviously, as Chancellor Francisco Rezek has said, the "definitive statement" of the new administration's foreign policy will depend upon domestic success.⁴ This success depends upon the results of the National Reconstruction Project delineated by President Collor in his inaugural address on March 15, 1990.

It is still too early to evaluate conclusively the impact of domestic measures presently being implemented, involving two great foreign policy topics to be faced by the country by the end of 1990 but which, as of the time of this writing, are not clearly defined. One is resolution of the foreign debt, and the other is Brazil's position in the negotiations of the Uruguay Round of GATT.

The Brazilian position on the foreign debt should have as a negotiating parameter, to use the words of President Collor in his inaugural address, "how much can we pay after guaranteeing our economic growth at levels consistent with their historical rate and with the projections of development and justice that will guide our future." This means there will be discussions on reduction of the debt through various technical mechanisms such as market value repurchases, collateralization agreements, and debt-equity conversions.

If the Uruguay Round is successful, it will represent a new institutional framework for world markets. It is, therefore, crucial to the Collor government's proposal for the competitive integration of Brazil into the international economy, also announced in his inaugural address. Since questions of foreign investment and intellectual property are being negotiated and discussed besides, *inter alia*, the liberalization of the flow of goods and trade in services and agricultural products,

² *O Globo*, Feb. 15, 1990, at 6.

³ *Folha de São Paulo*, May 22, 1990, 1st Sect., at A-4.

⁴ *Gazeta Mercantil*, May 12, 1990, at 6; *Jornal do Brasil*, May 13, 1990, 1st sect., at 27.

Brazil's positions will require choices based upon a weighing of which are the greatest interests of the country in niches affording opportunities for the competitive globalization of the Brazilian economy.

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