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Institutions of the Inter-American Human Rights System and Their Role in Shaping the Liberal International Order

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Cristiane de Andrade Lucena Carneiro and Mariane Monteiro da Costa

ABSTRACT

This paper chronicles the protagonism of two central institutions within the Inter-American human rights system in the process of co-constitution of the Liberal International Order: The Inter-American Commission on Human Rights (IACmHR) and the Inter-American Court of Human Rights (IACtHR). The paper analyses two cases, decided by the Commission and the Court, wherein the processes of norm creation are observable and well documented. The first case explores the role of the IACmHR in the development of „naming and shaming“ practices following the IACmHR’s in loco visit to Argentina in 1979. The second case (*Ximenes Lopes vs Brazil*, 2006) deals with the IACtHR’s decision involving the rights of individuals with mental illness to showcase the innovative approach the Court embraced. The conclusion highlights Latin American countries acting as co-constituents of the Liberal International Order – a role often ignored by the traditional historiography of international human rights.

1 INTRODUCTION

This paper chronicles the role of Latin American countries and institutions of the Inter-American human rights system in instances where principles of the Liberal International Order (LIO) were advanced. We rely on the mechanism of co-constitution to showcase instances where Latin American countries resisted American hegemony in the region. Likewise, the two institutions of the Inter-American human rights system were important architects of the LIO when they went above and beyond prevailing understandings and interpretations of these principles. Marcos Tourinho speaks of co-constitution by “weak” states to contrast the position of these actors *vis-à-vis* the original drafters of the LIO, the winners of World War II (Tourinho 2021).

Our analysis discusses three co-constitution mechanisms: resistance, community, and norms. We offer several examples of resistance, even prior to 1948 when the Organization of American States (OAS) was created. The two case studies presented in this paper speak more directly to the mechanism of norms, whereby regional actors contributed to building the LIO by advancing the substance and the process associated with liberal principles. The first case discusses the visit of the Inter-American Commission of Human Rights to Argentina in 1979 and the Commission’s decision to publish its final report in 1980. Twenty-six years later, the second case, *Ximenes Lopes vs Brazil* (2006), analyses the innovative legal approach of the Inter-American Court of Human Rights regarding the treatment of people with mental disabilities.

The paper analyses these cases involving the Commission and the Court to argue that the historiography of international human rights was directly impacted by Latin America. The contribution of Latin American state and non-state actors, including intergovernmental organisations, has often been neglected. Our paper seeks to address this gap. The paper proceeds as follows: section two offers a brief overview of international human rights from a Latin American perspective. This section chronicles the development of regional human rights institutions as a path-dependent phenomenon. Section three presents the Liberal International Order with a focus on key principles and on how these principles are in tension with the principles of the Westphalian Order.

This section also discusses the theoretical framework proposed by Tourinho (2021), which is subsequently mobilised in the case studies. Section four brings the two case studies, showcasing the protagonism of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. This section analyses how these two institutions “created” norms, thus contributing to the Liberal International Order through their actions. The final section concludes and identifies avenues for further research.

2 HISTORY OF INTERNATIONAL HUMAN RIGHTS IN LATIN AMERICA

It is a common mistake to suggest that the idea of international human rights only emerged after the end of World War II as a reaction to the Holocaust and the human suffering that the war entailed. In fact, the notion of an international dimension to protecting the most basic rights of individual human beings has been around in the realm of political philosophy for a long time. This same idea was at the heart of the constitutional revolutions in the late 18th century as well as the American Revolution. Even earlier, the Glorious Revolution in the 16th century had already institutionalised freedom of religion. These early developments were circumscribed by the national jurisdictions of sovereign states. The first efforts to overcome national boundaries and propose that the individual should be the subject of rights and protections beyond national jurisdictions are associated with the laws of war. The birth of International Humanitarian Law in the mid-to-late 19th century is predicated on the notion that there ought to be limits to the barbarian enterprise of warfare. Obligations toward civilians and a commitment to spare soldiers from the most egregious forms of human suffering, such as torture, were written into international treaties at that time. Several other efforts followed and were multiplied after the end of World War I. These initiatives counted

Western states as the main protagonists, but they gathered non-Western states amongst its signatories from early on. Thus, in 1924, countries signed the Geneva Declaration on the Rights of the Child, granting special protection to the many orphans of the Great War. Prior to that, we had the Hague Convention of 1904, and before the advent of World War II, countries also signed the 1934 Geneva Conventions. Each of these efforts intersected with the idea of protecting certain individual rights above and beyond the limits of national jurisdiction.

The novelty brought about by the Universal Declaration of Human Rights in 1948 consisted of both the reach of the rights written into the Declaration as well as the level of institutionalisation accomplished. For the first time, the Declaration encompassed political rights and civil liberties, together with economic, social, and cultural rights. There was also much wider support compared to the documents that emerged during the first four decades of the 20th century. As far as the Universal Declaration of Human Rights is concerned, the protagonism was primarily American, as the document was seen as one of the pillars of the newly proposed Liberal International Order.

The concept of international human rights also gained traction in Latin America in the aftermath of World War II, thanks to the protagonism of individuals in the region and their defence of an international human rights system. Not only did the American Declaration on the Rights and Duties of Man precede the 1948 Universal Declaration of Human Rights by several months, but it is now well known that a few countries in Latin America advocated for a stronger system than the one the United States (US) and its European allies were prepared to endorse at the time. Latin American protagonism was heavily influenced by three phenomena: 1) the progress towards democracy in the region, 2) American foreign policy and its pro-rights discourse, and 3) the role of

transnational advocacy networks (Carneiro 2019). The Organization of American States also dates from 1948, and within the OAS, the Inter-American Commission on Human Rights was born ten years later, in 1959.

The three phenomena described above had a somewhat limited reach during the first two decades of the Cold War. The Cuban Revolution in 1959 constituted a critical juncture that further increased the political rift between leftist-oriented governments and US allies in the region (Capoccia 2018; Hall 2018). The Cuban missile crisis in 1962 only deteriorated this relationship. Nevertheless, in spite of Cold War politics, the OAS never ceased to exist or had its activities suspended, and the newly established Inter-American Commission on Human Rights (IACmHR) was able to gather momentum and function minimally. At first, the IACmHR's mandate was restricted to reviewing the formal aspects of member state domestic legislation to assess the status of domestic law *vis-à-vis* the American Declaration on the Rights and Duties of Man. Soon after, via the pressure of human rights groups and policy entrepreneurs, the IACmHR sought the prerogative to conduct (invited) *in loco* visits. The right to hear individual complaints came in 1965, and in 1979, the Commission established the practice of publishing its reports. Democratisation processes were far behind; in 1979, the Polity IV Project ranked Latin America as not democratic.

The prevalent authoritarian regimes were the scene of atrocious violations of human rights, with widespread practice of political disappearances, torture, repression, and censorship. The legacy of the civil rights movement in the US meant a more nuanced view of Latin America, followed by increasing pressure by American members of Congress to address the severe violations of human rights by some countries in the region. The election of President Jimmy Carter represents another critical juncture, culminating with an important

shift in American foreign policy towards the region. Soon after his inauguration, the Carter administration imposed sanctions on a group of Latin American countries for their poor record of rights protection and authoritarian forms of government. The time was ripe for the creation of the Inter-American Court of Human Rights (IACtHR), a judicial organ empowered to hear and adjudicate cases against states that had accepted the jurisdiction of the Court under the 1969 Inter-American Convention on Human Rights. Ten years had elapsed between the signing of the Inter-American Convention and the creation of the Court in 1979! Another ten years would go by before the IACtHR became an active institution in the Inter-American human rights system.

In the case of Latin America, institution building took precedence over the full operation of the system (Buergethal 1987, 2006). We argue this gap is mostly due to the prevalence of authoritarianism in the region – often supported by the US, which limited the reach of pro-rights US foreign policy in the late 1970s and hindered the effort of international advocacy networks. Throughout the 1970s and 1980s, the United Nations treaty-based system was key to bringing visibility and some measure of redress to the severe violations of human rights perpetrated by Latin American dictatorships. Countless cases were brought to the United Nations Human Rights Committee and the United Nations Committee Against Torture. These individual submissions were instrumentalised by non-governmental organisations based in Latin America and had the support of US activists and a few American members of Congress.¹ The creation of the Inter-American Court of Human Rights

1 Between 1980 and 1983, for example, the United Nations Human Rights Committee received twenty-four country reports submitted under Article 40 of the International Covenant on Civil and Political Rights by several Latin American countries. Among these countries, Uruguay, Jamaica, and Colombia had been subject to individual complaints brought before the same committee for severe human rights violations. The country reports acknowledge the Committee recommendations in these cases, even if vaguely (Office of the High Commissioner of Human Rights n.d.).

and its eventual formal seating in San José, Costa Rica, was also a catalyst of political pressure. Ratification of the Inter-American Convention on Human Rights continued to grow as states in the region became democratic. By 1989, most countries in Latin America had become democratic (at least from a formal point of view).

Consolidation of transitions to democracy and, in some cases, processes of transitional justice brought human rights protection to the forefront of the political agenda in Latin America. With that came the demand for greater protagonism on the part of the Inter-American Court. Until the mid to late 1990s, the IACtHR was shy with respect to its adjudicatory mandate. The Court had seized a few cases and issued advisory opinions on legal questions, but a more proactive role by the Court required cooperation from the Inter-American Commission. According to the Inter-American Convention of Human Rights, the Commission has the prerogative to refer cases to the Court. Nevertheless, the referral of cases was not automatic until 2001, when the Commission started to refer every case that did not reach compliance by member states to the Court. This institutional reform has changed the dynamics within the Commission as well as the Court. One could argue that the entire *modus operandi* of the Inter-American system was transformed, as member-states had greater incentives to settle before the Commission in order to avoid a (likely) adverse binding decision by the Court.

The historical evolution of the system brought a division of labour and promoted the specialisation of its institutions. On the one hand, the IACmHR concentrated on the quality of settlements, whereas on the other hand, the IACtHR proceeded to consolidate its nascent jurisprudence and to gather new powers with respect to the monitoring of compliance (Hillebrecht 2014).

With the dissemination of democracy in the region came the explosion in the number of cases brought to the IACmHR. This increase led to procedural delays and some measure of discredit of the system. As the number of individual complaints grew, the Commission's infrastructure did not evolve in terms commensurate with this growing demand. Several authors attribute the shift toward country reports to the high number of individual complaints received by the Commission. In fact, the numbers were used as criteria to demand permission to conduct an *in loco* visit (Farer 1997). Around this time, private donors, mostly corporate donors, began to support the IACmHR financially. These resources were key to reinvigorate the Commission's role and minimally maintain its activities in the short term. Private and semi-private funding coexisted with mandatory funding from member states and discretionary funding. Recent studies document member states' instrumental use of discretionary funding to tame the Commission's reach. Data on discretionary contributions from state parties reveal a trend that triggered a financial crisis in the late 2010s, which was unprecedented in the IACmHR's history (Montal et al. 2022). At present, this financial downturn appears to be under control. Nevertheless, there was an important signal with respect to the vulnerability of the Commission, given its limited financial autonomy.

The Inter-American system has been the stage of important advances with respect to the understanding of and the international jurisprudence on human rights. This paper points to one procedural measure, analyses one development in institutional practice, and chronicles two "cases" wherein Inter-American human rights institutions co-constituted the Liberal International Order.

In our view, recourse to precautionary measures by the IACmHR, starting in 2006, constitutes a key development in the Commission's role with respect to recurrent violations of human rights in

Latin America. The need to preserve the legal objective of human rights claims was the main rationale for pushing the institutional reform that empowered the Commission to issue precautionary measures. Data on the number of requests for precautionary measures and the number of precautionary measures granted by the IACmHR reveal the dimension of the problem.² The availability of this powerful legal tool was the result of a costly institutional development that culminated with the 2006 reform of the Rules of Procedure of the Commission. It is not trivial for quasi-adjudicatory bodies, such as the IACmHR, to deploy instruments such as precautionary measures. Previous institutional developments related to the Commission's operations, like the decision to publish its reports related to *in loco* visits and the prerogative to hear individual complaints, did not entail such a degree of judicial technicality.

The case studies section explores other innovative practices of the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights that amount to a co-constitution of the LIO. As we will demonstrate through these selected practices and cases, the Commission and the Court gave substance to key principles of the LIO that, up until then, were limited to the domestic jurisdiction of sovereign states. This paper discusses the decision by the IACmHR to publish its reports as an example of this protagonism, together with advances in case law, such as the dedicated attention to the rights of people with disabilities in the Ximenes Lopes case (Inter-American Court of Human Rights 2006). We do so in light of the theoretical framework proposed by Tourinho (2021), which we introduce and explore in the next section.

² In 2008, the Inter-American Commission for Human Rights received 304 requests for precautionary measures and issued 28 such measures against countries in the region (Inter-American Commission on Human Rights 2022).

3 THEORETICAL FRAMEWORK

The Liberal International Order refers to a set of principles rooted in Kantian Liberalism that gained institutional form in the aftermath of World War II. It was orchestrated by the United States with the support of Western states – US allies. David Lake, Lisa Martin, and Thomas Risse list five principles as the pillars of the LIO: 1) Liberal democratic polity and economy, 2) Free movement of goods and capital, 3) Human equality (i.e. freedom, the rule of law, and human rights), 4) Multilateralism, and 5) Collective security. Four other principles are understood as the product of evolution, embraced by the LIO and its framers: 1) Sovereign equality of states, 2) Peaceful resolution of disputes, 3) Self-determination, and 4) Non-intervention (Lake et al. 2021: 5). Most importantly, the principles associated with the LIO are often in tension with the principles of the Westphalian Order, which evolved from the Peace of Westphalia in 1648 and gained momentum in the late 19th and early 20th centuries (Simmons/Kenwick 2022).

Tourinho challenges the notion of a LIO where non-Western or “weaker” states were passive observers of this institution-building process and mere subjects of its architecture. According to Tourinho (2021), “weak” states did influence and shape the Liberal International Order that emerged in the aftermath of the war. They did so via three mechanisms: resistance, community, and norms. Resistance operates through states challenging and refusing to comply with aspects of the LIO. Community entailed processes of socialisation whereby “weaker” states would reinterpret and re-signify aspects of the LIO to translate these into their own social environments. Norms involve the proposition of new forms to regulate behaviour, often at the local and regional levels, which build upon the pre-existing LIO framework and advance its reach. These mechanisms take

place at the individual, societal, and international levels.

The origins of the Inter-American human rights system, we argue, amount to an act of resistance by weaker states *vis-à-vis* the United States. The US historically intervened persistently in Latin America's domestic affairs, often supporting authoritarian leaders to consolidate their purported anti-communist campaign (Goldman 2009). The effort to "establish a regional public order system, based on the principles of non-intervention and the sovereign equality of states" can be seen as a direct response (resistance) to American interventionism. Since the early 20th century, these countries have discussed treaties to protect state sovereignty and promote non-intervention, including during the inter-war years. With the end of World War II, the protection of human rights gained visibility, and in 1948, the goal of establishing non-intervention as "an authoritative principle of the region's public order" was achieved with the signing of the Charter of the Organization of the American States (Organization of American States 1948: art. 3, para. b, e). That same year, Latin American states signed the American Declaration on the Rights and Duties of Men.

"Weak" states and organised groups of individuals use resistance as a strategy of power and political confrontation to engage in negotiating or renegotiating international norms (Tourinho 2021). As Latin American states resisted and placed non-intervention on the table, discussing this principle in several international forums until it was formalised into an international treaty, the Charter of the Organization of American States, these states opposed a recurrent American practice that opposed their interests. In the process, they influenced the creation of norms.

Another dimension explored by Tourinho is community. Communities become power as weaker actors create coalitions, negotiate alliances, and act

within international institutions to influence international results. These actors support each other in an attempt to increase political leverage and create more normative authorities (Tourinho 2021).

Other international non-state actors may play this role, especially when political communities are not autonomous enough. When these players become more active in international politics, they may reshape international law, shift, or create norms more aligned with their interests (Tourinho 2021). That was the case in the creation of the Inter-American human rights system. In 1948, the American Declaration of the Rights and Duties of Man was signed. However, it was not legally binding and contained specific norms regarding social and economic rights that were not covered in the constitutions of most American countries that signed the treaty. This lacuna was brought to light, leading states to raise concerns and create a mechanism that would monitor and guarantee the protection of human rights on the continent. Most American countries came together to create the Inter-American human rights system's constitutional charter, the Charter of the Organization of American States. That charter symbolised mutual support among countries to codify international law strategically and create strong norms that would subsequently shape the international human rights order.

With respect to the third dimension – norms, Tourinho suggests that weaker actors use normative and legal arguments as power mechanisms to reach political goals. "Shaming" is one such mechanism. States mobilise "shaming" strategies to reveal inconsistent behaviour, for example, when a powerful state proposes a set of rules at the international level but fails to adhere to these norms. As key sponsors of the LIO, the US and Canada's refusal to ratify the 1969 Inter-American Convention on Human Rights offers a good example of such inconsistency. International norms constitute versatile tools when it comes to shaping the

international order (Tourinho 2021). The US and Canada qualify as false negatives, states that afford a high level of rights protection domestically despite not ratifying several international (and regional!) human rights treaties (Simmons 2009). Beth A. Simmons argues that domestic politics, in particular judicial barriers to “entry”, are the source of common law regime scepticism towards international human rights law.³

As the United States and Canada remain outside the American Convention, they are increasingly losing influence and credibility within OAS political institutions, especially when they require that Latin-American states comply with their human rights obligations under the American Convention. Latin American countries are questioning and challenging this position. During the 1999 negotiations on treaty reform, several countries tried to bar the United States and Canada from the discussions because they were not members of the American Convention. The states that led this effort were Brazil, Mexico, and Peru (Goldman 2009).

In this section, we illustrated how two of the three mechanisms that can be mobilised in the co-constitution of order – in our case, the Liberal International Order – can be observed in the recent history of the OAS and Inter-American human rights system. Our emphasis was on resistance and norms operating at the international level (Tourinho 2021). The cases that follow chronicle specific instances where these mechanisms came into play, with a precise legal contribution to the co-constitution of the LIO in its human rights dimension. With this analysis, the paper chronicles the contribution of countries from the “Global South” to the historiography of international human rights.

³ According to Simmons (2009), judges in common law regimes tend to have more power and independence, giving them a more interpretative role. As a result, governments react to domestic pressure and delay ratification of human rights treaties or ratify these treaties with several reservations.

4 CASE STUDIES

4.1 REPORT OF THE COMMISSION FOLLOWING THE IN LOCO VISIT TO ARGENTINA

Argentina was the stage of an arbitrary and bloody dictatorship from 1976 until 1983. Carlos Santiago Nino’s 1996 book, “Radical Evil on Trial”, chronicles the political life of the country and its record of exceptionalism leading up to the military coup that overthrew the Peronist government. Pre-existing political violence, corruption, and urban guerrilla tactics were used as excuses for enacting a “dirty war” designed to rid the country of communism and violence. What followed was unprecedented torture in both numbers and form. The repressive policies were orchestrated by the military *junta* and implemented by state officials. The outcome of disappearances and reports of torture were leaked to the international media, often via foreign observers and diplomats, as well as organised civil society. Amnesty International produced a key report on the severe human rights violations taking place in Argentina in the aftermath of the military coup in November 1976, after a visit to the country (Weissbrodt/Bartolomei 1991). This report was the first of several that preceded the Inter-American Commission on Human Rights visit. We argue that the Commission’s visit had a special symbolic role and is central to our argument regarding the protagonism of Latin America in the co-constitution of the Liberal International Order.

The visit of the Inter-American Commission on Human Rights to Argentina between 6 and 20 September 1979 was not the first and would not be the last time that the Commission sought and received permission to observe the situation of human rights within the territory of a country. In fact, Panama, El Salvador, and Nicaragua all received visits by the IACmHR in the mid to late 1970s. What distinguishes the case of the visit to Argentina

is the status of the country in regional politics and the political context within which the terms of the Commission's visit were negotiated (Farer 1997; Novaro/Avenburg 2009). On the one hand, the government of Argentinian President Jorge Videla did not have a firm grip on power; on the other hand, newly elected US President Jimmy Carter lacked a green light to push forward with the pro-rights agenda on which he had campaigned. The visit by the Commission became a key signal to bringing Argentina and the US closer to each other. In the case of Argentina, President Videla sought to restore the relationship with the US, not least for economic and security reasons.⁴ He also saw the Commission's visit as an opportunity to take a first step in the direction of a (negotiated) transition to democracy. However, Videla's was not a consensual position within the Argentine government; fierce disagreement with the hardliners in the military challenged the wisdom of his foreign policy. These members of the military elite took concrete steps to block consent to the visit. At some point, negotiations appeared to have failed, with the US State Department retrenching and objecting to a World Bank loan that relied on collateral from a prominent American financial institution (Novaro/Avenburg 2009). Ultimately, the pro-rights group within the US State Department came back to the table with an attractive offer that entailed lifting sanctions, supporting the guaranteed World Bank loan, and resuming military assistance of some kind (Martin/Sikkink 1993). With these incentives, the Argentinian hardliners were sidelined, and Videla's government agreed to the terms that the Commission imposed and welcomed the visit.

The visit by the Inter-American Commission to Argentina is a hallmark of the human rights chapter in the history of the country, as well as the history

of the Inter-American human rights system. A Special Commission of six members of the IACmHR interviewed government officials, met with representatives of civil society organisations, visited detention centres and prisons, and made themselves available to hear complaints. The report on the 1979 visit to Argentina chronicles the dimension of the problem:

The total number of denunciations received was 5,580, of which 4,153 are new and are currently being processed pursuant to the Commission's Regulations; 1,261 communications referred to cases already opened and in process, and 166 dealt with questions that bore no relation to violations of human rights (Inter-American Commission on Human Rights 1980).

The 1980 report by the Inter-American Commission is organised into eleven chapters and deals with the right to life, the right to liberty, the right to personal security, the right to a fair trial and due process, the right to freedom of opinion, expression, and information, with political and labour rights as well as religious freedom and worship. The status of human rights organisations was also analysed in the report (Inter-American Commission on Human Rights 1980).

The IACmHR worked under the newly established protocol, which provided guidelines for the Commission's work throughout the visit. These guidelines were previously "accepted" by Argentina as a result of a protracted negotiation. Even though the document provided the Commission with wide investigative powers and granted it the prerogative to speak to alleged victims in private, guaranteeing legal protections for individuals and groups that came forward to denounce human rights violations, nowhere in the document was the IACmHR empowered to publish the contents of its findings – consolidated in a final report to the OAS. In the past, these reports were presented before the General Assembly of the OAS, where the concerned state was often asked by its peers

⁴ Jimmy Carter had imposed economic sanctions on Argentina and interrupted military assistance, sending a strong signal to other regimes in Latin America that systematically violated human rights (Carneiro 2014).

to address the recommendations made by the Commission, pursuant to a resolution by the OAS (Farer 1997).

Tom Farer was one of the six members of the IACmHR's Special Commission that visited Argentina in 1979. His account of the developments with respect to the Commission's report on Argentina in 1980, during the General Assembly of the OAS, illustrates the resistance with which the report was met by Videla's government.

On the appointed day during the Assembly, the Commission's President laid out before an eerily silent conclave of foreign ministers the evidence which had led the Commission to the moral conviction that the Government of Argentina had waged a war of elimination in violation of its most solemn obligations under international human rights law. The presentation and intent silence continued for over an hour. Nothing quite like it had ever happened before at such an Assembly. Nor would it happen again. Although it did not seem so at the time, the brief heroic age of the Commission was drawing to a close (Farer 1997: 540).

Farer also chronicles the window of opportunity that enabled the IACmHR's proactive role, explaining that it resulted from a convergence of domestic as well as international circumstances. The fractured state of affairs of domestic politics within Argentina and the US from 1978 to 1980 gave visibility and space to pro-rights coalitions. The brief hiatus in Cold War politics presented the Commission with an opportunity to seize the moment and embrace its mission of guarantor of human rights in the region. The Soviet invasion of Afghanistan and the election of Ronald Reagan – together with other historical events in Latin America – would bring an end to this brief triumph for regional human rights. However, the IACmHR's contribution to the co-constitution of the Liberal International Order via the practice of publishing its country reports would prove long-lived.

4.2 XIMENES LOPES VS BRAZIL

Damião Ximenes Lopes was a person with mental illness who received treatment at a psychiatric hospital affiliated with Brazil's public health system in Sobral, in the Brazilian state of Ceará. According to the facts of the case, Ximenes Lopes was admitted to the hospital on 1 October 1999 to receive psychiatric treatment. Three days later, on 4 October 1999, his mother went to the hospital to visit him and found Ximenes Lopes with his hands tied, bleeding, and with bruises (Friedrich 2006). That same day, Ximenes Lopes died as a result of the injuries inflicted on him by the hospital's employees. He was also living under inhuman and degrading conditions at the hospital (Inter-American Court of Human Rights 2006).

Ximenes Lopes' family sought justice, opening criminal and civil proceedings within the Brazilian domestic legal system. Due to a lack of investigation and legal guarantees, those responsible were not punished, and the hospital remained open. Irene Ximenes Lopes Miranda, Damião's sister, filed a petition about the case with the Inter-American Commission on Human Rights on 22 November 1999. Following the procedures within the Commission, Brazil had several opportunities to present its views on the case, including during the admissibility and friendly settlement phases, but chose to remain silent. The Commission decided that in this case, Brazil had violated the following rights of the American Convention: the right to life (Article 4), the right to physical integrity (Article 5), the right to legal guarantees (Article 8), and the right to legal protection (Article 25). Brazil contested the merits of the Commission's Recommendation but was too late – the deadline for presenting arguments had already passed.

As Brazil did not comply with the recommendations of the Commission, the petitioners requested that the case be submitted to the Inter-American

Court of Human Rights, which the Commission did on 1 October 2004. The Court condemned Brazil and decided the country should compensate Ximenes Lopes family morally and financially. The Court demanded that Brazil investigate and punish those responsible for Damião's death. It also asked Brazil to promote mental health education programmes and training for healthcare professionals (Inter-American Court of Human Rights 2006).

This case was the first case brought against Brazil that was admitted and adjudicated by the Court. The case led to the first sentence of the Inter-American Court of Human Rights against Brazil, enacted on 4 July 2006. *Ximenes Lopes vs Brazil* was also the first case concerning mental health and the treatment of people with mental illness. The sentence represented an example of how to act to guarantee the protection of the human rights of individuals with mental illness. It highlighted their rights and created new parameters for addressing these rights. According to Cássia M. Rosato and Ludmila C. Correia (2011), when the vulnerable situation of these individuals is recognised, the Court broadens its international jurisdiction and validates efforts to denounce human rights violations in psychiatric institutions at the national level.

Even though the hospital in which Damião died was a private institution, the Court acknowledged the responsibility of the Brazilian state of Ceará for the actions of its employees since the institution was financed and supervised by the Brazilian public health system. Among the state's duties towards people with mental illness, the Court emphasised the duty of assistance, which was not fulfilled by Brazil (Paixão 2007). The decision represented a change of perspective regarding the treatment of people with mental illness. The Court's decision established that the state must develop training and qualifications for psychiatrists and psychologists, as well as other

professionals who deal with mental health, on a continuous basis. Following the Court's decision, the Ministry of Health created a working group dedicated to human rights and mental health in 2006, named the Brazilian Centre on Human Rights and Mental Health (Rosato/Correia 2011). The Ximenes Lopes case contributed to broadening the visibility of the Inter-American human rights system, emphasising its role in preventing, combating, and remedying human rights violations (Merli/Rianelli 2020).

In terms of repercussions, even before the sentence by the IACtHR was issued, the case had important consequences: the hospital where Damião died in 2000 was closed, and a health centre named "Damião Ximenes Lopes" was inaugurated in 2004. Pursuant to a new piece of legislation (law n. 10.216/2001), Brazil implemented a new mental health policy with the goal of remodelling the treatment of mental health illnesses and protecting the rights of people with mental disability. The town of Sobral is currently a reference in mental health care, advocating for outpatient treatment (Rosato/Correia 2011).

In 2009, the state of Ceará judicial system identified the individuals responsible for Damião's death. These individuals were sentenced to six years of imprisonment and to pay a BRL 150 thousand compensation award to Damião's family. An appeal was filed, and the state of Ceará's higher Court upheld the sentence in 2010. Attached to the proceeding was a copy of the decision by the IACtHR, which condemned Brazil. The Ximenes Lopes case culminated in an international legal decision that had repercussions on national law, with immediate consequences for public policy-making, civil society, and legislation (Rosato/Correia 2011).

At the international level, this case precedes the International Convention on the Rights of Persons with Disabilities (CRPD), adopted on 13

December 2006, during the 61st session of the United Nations General Assembly, by resolution A/RES/61/106. The CRPD entered into force on 3 May 2008, a month after the deposit of the twentieth ratification or accession instrument, as established in Article 45 of the Convention. According to this treaty, mental impairment is also considered a disability, and Article 15 establishes that people with disabilities must be protected from torture or cruel, inhuman, or degrading treatment or punishment. The same article establishes that:

States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment (Office of the High Commissioner of Human Rights 2023: art. 15, para. 2).

When it comes to co-constitution in this case, one can see that the sentence by the Inter-American Court of Human Rights contributed to reordering the domestic legal framework. Pursuant to the Court's decision, Brazil also made an important contribution to the international order with respect to the rights of people with mental illness. Once the case was taken to an international judicial body and Brazil was found guilty, the Brazilian government had to revise its public health policy to comply with the Court's decision. The country became an international reference in mental health treatment. The new public health policies towards mental health helped to create a national identity and to promote awareness about mental illness. Together with the new legal mechanisms implemented by the Brazilian government, social awareness integrates the dimension of community, which was mobilised at the societal level.

The Ximenes Lopes case had important consequences for Brazil as well as at the international level. Because it was the first sentence issued by the Inter-American Court against Brazil, the case gained great visibility. Media coverage was

an important factor in the equation that led to greater awareness towards mental health illness within the country. International media coverage helped to coalesce organised civil society around the new regime that the UN was proposing. This visibility likely impacted the ongoing discussions culminating with the United Nations Convention on the Rights of People with Disabilities. As discussed in the previous paragraphs, the Convention was adopted after the Court's decision and became binding only two years later. We demonstrate how the dimension of norms was present in this case, with both the Court and the Brazilian government contributing to a new legal understanding of the protections owed to people with mental illness at the national and international levels.

5 CONCLUSION

The history of international human rights in Latin America did not start with the American Declaration of Human Rights but evolved prior to this mechanism. An important junction in this historical development was the creation of the Inter-American human rights system, mirroring the principles embedded within the United Nations global system. The development of a regional human rights system in Latin America is noteworthy, given that most Latin American countries throughout the 20th century were under authoritarian regimes. This paper analysed Latin American countries' protagonism in this process. We argue that this early adoption of a human rights system amounts to a co-constitution of the Liberal International Order that operated through three mechanisms: resistance, community, and norms. This paper is part of a larger project that explores each one of these three mechanisms. For now, we focus on norms as a mechanism of co-constitution in light of two cases decided by the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights.

These cases entailed normative developments at the national and international levels. In doing so, they contributed to shaping the Liberal International Order.

The paper engages with scholarship on the historiography of human rights to propose a more nuanced view of Latin America in this process. In doing so, we use Tourinho's co-constitution framework, which proposes that weaker states have been able to influence and shape the LIO. This process of co-constitution can take the form of resistance, whereby states take issue with principles of the LIO that were proposed by stronger states as a form of power. Another way co-constitution takes place is through community, where weaker states gather to negotiate and propose international institutions and influence outcomes. The third is norms, wherein states mobilise to build upon or contest the LIO through the proposition of legal institutions and interpretations. The mechanism of norms is central to our empirical analysis in this paper.

We first chronicle the visit of the Inter-American Commission on Human Rights to Argentina and the publication of the associated report in 1980. In this instance, the Commission innovated by deviating from previous practice when it decided to publish the report, sharing its observations of the atrocious human rights violations committed by the Videla government in Argentina with the public and the international community at large. This innovation became the new norm and remains valid up to this date. Second, we analyse the first case against Brazil to be taken to the Inter-American Court of Human Rights, wherein the Brazilian government was found guilty of human rights violations under the Inter-American Convention on Human Rights. It was the first time that the rights of people with mental illness were discussed within the Inter-American system. The judgement, published in July 2006, changed the legal framework that regulated mental health in

Brazil. Five months later, an international treaty was adopted – the Convention on the Rights of Persons with Disabilities (CRPD) – and entered into force two years afterwards. These two cases showcase advances in the legal sphere with respect to the prevailing normative framework. They are concrete examples of the Latin American protagonism in the co-constitution of the LIO and its historiography.

The focus of our paper is on norms as a mechanism of co-constitution. Our research revealed that this mechanism was central to Latin American protagonism vis-à-vis the process of co-constitution of the Liberal International Order. It is probably not the only mechanism that went underexamined by the traditional historiography of international human rights. Further research can explore the role of community and power more closely as alternative mechanisms that can coexist with norms in several instances. Our analysis chose to concentrate on dynamics at the national level and on how domestic institutions interacted with institutions of the Latin American human rights system to produce co-constitutive outcomes. This approach does not exclude other avenues of influence, for example, instances wherein dynamics at the national level interact directly with processes that take place at the international level, thus bypassing regional human rights institutions. The United Nations human rights system is a natural place to explore these dynamics and perhaps a next step in this research agenda!

REFERENCES

- Buergenthal, Thomas 1997: The Normative and Institutional Evolution of International Human Rights, *Human Rights Quarterly* 19(4): 703–723.
- Buergenthal, Thomas 2006: The Evolving International Human Rights System, *The American Journal of International Law* 100(4): 783–807.
- Capoccia, Giovanni 2016: Critical Junctures, in: Fioretos, Orfeo / Falletti, Tulia G. / Sheingate, Adam (eds.): *The Oxford Handbook of Historical Institutionalism*, Oxford: Oxford University Press, 89–106.
- Carneiro, Cristiane de Andrade Lucena 2014: Economic Sanctions and Human Rights. An Analysis of Competing Enforcement Strategies in Latin America, *Revista Brasileira de Política Internacional* 57(1): 197–215.
- Carneiro, Cristiane de Andrade Lucena 2019: The Inter-American Human Rights System, in: Di Giacomo, Gordon / Kang, Susan (eds.): *The Institutions of Human Rights. Developments and Practices*, Toronto: University of Toronto Press, 202–221.
- D’Antonio, Débora 2017: Vigilancia, Control Social y Agencia Política del Activismo por los Derechos Humanos ante la Llegada de la Comisión Interamericana de Derechos Humanos (Argentina, 1979), *Izquierdas* 32: 184–202.
- Dauer, Gabriel R. 2021: A Visita da Comissão Interamericana de Direitos Humanos na Argentina durante a Ditadura Civil-Militar (1976–1983), *Mural Internacional* 12: e58852.
- Farer, Tom 1997: The rise of the Inter-American Human Rights Regime. No Longer a Unicorn, Not Yet an Ox, *Human Rights Quarterly* 19(3): 510–546.
- Friedrich, Tatyana S. 2006: Sistema Interamericano de Proteção de Direitos Humanos. Uma Análise a Partir do Caso Damião Ximenes Lopes, *Revista Brasileira de Direito Internacional* 3(3): 18–29.
- Goldman, Robert K. 2009: History and Action. The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights, *Human Rights Quarterly* 31(4): 856–887.
- Hall, Peter 2016: Politics as a Process Structured in Space and Time, in: Fioretos, Orfeo / Falletti, Tulia / Sheingate, Adam (eds.): *The Oxford Handbook of Historical Institutionalism*, Oxford: Oxford University Press, 31–50.
- Hillebrecht, Courtney 2014: Domestic Politics and International Human Rights Tribunals. The Problem of Compliance, Cambridge: Cambridge University Press.
- Inter-American Commission on Human Rights 1980: Report on the Situation of Human Rights in Argentina, Washington: OAS General Secretariat, <https://www.cidh.oas.org/countryrep/Argentina80eng/toc.htm> (accessed 31 January 2024).
- Inter-American Commission on Human Rights 2022: Statistics, <https://www.oas.org/en/IACHR/multimedia/statistics/statistics.html> (accessed 2 January 2024).
- Inter-American Court of Human Rights 2006: Caso Ximenes Lopes versus Brasil. Sentença de 4 de julho de 2006, https://www.corteidh.or.cr/docs/casos/articulos/seriec_149_por.pdf (accessed 2 January 2024).
- Legislação Federal Brasileira 2001: Lei No 10.216, de 6 de Abril de 2001. Dispõe sobre a Proteção e os Direitos das Pessoas Portadoras de Transtornos Mentais e Redireciona o Modelo Assistencial em Saúde Mental, Brasília: Presidência da República Casa Civil, https://www.planalto.gov.br/ccivil_03/leis/leis_2001/l10216.htm (accessed 9 January 2024).
- Martin, Lisa L. / Sikkink, Kathryn 1993: U.S. Policy and Human Rights in Argentina and Guatemala, 1973–1980, in: Putnam, Robert

- D. / Evans, Peter / Jacobson, Harold (eds.): *Double-Edged Diplomacy*, California: University of California Press, 330–362.
- Merli, Isadora M. / Rianelli, Luiza L. 2020: *Caso Ximenes Lopes vs. Brasil (2006). O Assassinato de Um Deficiente e o Modelo Hospitalocêntrico*, Rio de Janeiro: Núcleo Interamericano de Direitos Humanos, <https://nidh.com.br/damiao/> (accessed 2 January 2024).
- Montal, Florencia / Pauselli, Gino / Urzúa, María J. 2022: *Democracy on a Budget. What Can Budget Analysis Tell Us About the OAS's Ability to Promote Democracy and Human Rights*, unpublished.
- Nino, Carlos S. 1996: *Radical Evil on Trial*, New Haven: Yale University Press.
- Novaro, Marcos / Avenburg, Alejandro 2009: *La CIDH en Argentina. Entre la Democratización y Los Derechos Humanos*, *Desarrollo Económico* 49(193): 61–90.
- Office of the High Commissioner of Human Rights 2023: *Convention on the Rights of Persons with Disabilities*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (accessed 2 January 2024).
- Office of the High Commissioner of Human Rights (no date): *United Nations Treaty Body Database*, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en (accessed 2 January 2024).
- Organization of American States 1948: *Charter of the Organisation of American States*, <https://www.refworld.org/docid/3ae6b3624.html> (accessed 2 January 2024).
- Paixão, Cristiano / Frisso, Giovanna / Penalva da Silva, Janaína L. 2007: *Caso Ximenes Lopes versus Brasil. Corte Interamericana de Derechos Humanos. Relato e Reconstrução Juroprudencial*, Casoteca Latino-Americana de Direito e Política Pública, <https://iusgentium.ufsc.br/wp-content/uploads/2017/08/Ximenes-Lopes-Relato-e-Reconstru%C3%A7%C3%A3o-Jurisprudencial.pdf> (accessed 2 January 2024).
- Rosato, Cássia M, / Correia, Ludmila C. 2011: *Caso Damião Ximenes Lopes. Mudanças e Desafios Após a Primeira Condenação do Brasil pela Corte Interamericana de Direitos Humanos*, *Revista SUR* 8(15): 93–113.
- Simmons, Beth 2009: *Mobilizing for Human Rights. International Law in Domestic Politics*, Cambridge: Cambridge University Press.
- Simmons, Beth A. / Kenwick, Michael R. 2022: *Border Orientation in a Globalizing World*, *American Journal of Political Science* 66(4): 853–870.
- Tourinho, Marcos 2021: *The Co-Constitution of Order*, *International Organization* 75(2): 258–281.
- Weissbrodt, David / Bartolomei, Maria L. 1991: *The Effectiveness of International Human Rights Pressures. The Case of Argentina, 1976–1983*, *Minnesota Law Review* 75: 1009.

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