Human rights in international relations and foreign policy

ALEJANDRO ANAYA MUÑOZ • GABRIEL C. SALVIA

COORDINATORS

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Coordinators:
Alejandro Anaya Muñoz and Gabriel C. Salvia

Authors:
Alejandro Anaya Muñoz
Julio Montero
Günter Nooke
Yevgeniy A. Zhovtis
Brian Schapira
Gabriel C. Salvia
Manuel Cuesta Morúa
Sybil Rhodes

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Verónica Alonso S.

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FOREWORD

Human rights were incorporated into the international legal and political spheres as a result of their inclusion in the normative and institutional structure that was created regionally and globally after the Second World War. In other words, following the entry into force of the Charter of the United Nations, the Charter of the Organization of American States and the Rules of Procedure of the Council of Europe, as well as the adoption of the American Declaration on the Rights and Duties of Man and the Universal Declaration of Human Rights and the coming into force of the Convention for the Protection of Human Rights and Fundamental Freedoms, human rights became part of the central aspirations of no longer a small group of nations –governed by constitutions based on liberal and republican values– but of the international community as a whole.

Despite some ups and downs, over the course of time the legal status of human rights grew stronger and their political relevance consolidated globally. Human rights are today a key element in the definition of «what ought to be» and what an «appropriate behavior» should be, at least for the countries who wish to be considered respectable or rightful members of the community of «civilized States». Therefore, and despite certain situations that

challenge or even weaken them in practice –such as the persistence of authoritarianism, the securitization of public agendas and the resurgence of nationalism– human rights continue to be an essential component of international relations: that is, of the interactions –sometimes cooperative and others competitive or even openly hostile– among States and between States and other stakeholders, across borders.

We cannot understand international politics today without taking into account human rights and the normative and institutional structure that has developed around them. But human rights, like rules and institutions, were created and designed to protect individuals; to safeguard their rights mainly from the power of the State, which despite the passing of time, continues to show its dark side over and over again: a tendency to abuse, oppression, intolerance and inequality. States, on the other hand, continue to be the dominant players in international relations and tend to view any intervention in their domestic affairs with concern and watch each other's backs. The «national interest» (or rather the interests of the elites in power in each State) is still the dominant force in the relations between nations and, consequently, in their foreign policy. This is a serious problem for the human rights agenda, because many times its enforcement goes against that national interest. Thus, almost eighty years after they appeared for the first time in the international scene, human rights continue to swim against the current.

What are the chances, then, that they will prevail and flourish in a global context that is still dominated by the power of sovereign

States, wary of any external interference and whose interests are often far from aligning with the promotion of human dignity? What is the basis for the claim or demand that human rights should prevail over the sovereignty and interests of States and the economic and political elites in power? What old obstacles and new challenges are faced by individuals promoting and defending equality, freedom and human dignity worldwide? These are the questions that guide and inspire the essays that compose this volume. From different views and professional backgrounds (mainly activism and academia), the authors identify and analyze the obstacles and challenges faced by the human rights agenda and, together, they develop a series of ideas and arguments that lead us not only to confirm our belief in the value and merits of human rights but also, as Kathryn Sikkink[1] recently highlighted, to substantiate our reasons for hope.

This book summarizes CADAL's work and challenges in the promotion of human rights and international democratic solidarity, ideals that are shared with the Konrad Adenauer Foundation, whose support to publish this work was critical.

Alejandro Anaya Muñoz y Gabriel C. Salvia

Guadalajara (México) and Buenos Aires (Argentina), april 2021

1 Kathryn Sikkink, *Reasons for Hope. The Legitimacy and Effectiveness of Human Rights as we Look to the Future*, Mexico, Buenos Aires and Barcelona, Siglo XXI Editores, 2018.

HUMAN RIGHTS FROM THE PERSPECTIVE OF INTERNATIONAL RELATIONS

Alejandro Anaya Muñoz

INTRODUCTION

Human rights are an element of contemporary international relations (in lower case, i.e. the phenomenon). It's hard to imagine today's global politics without the existence of international human rights norms, without intergovernmental organizations that specialize in the field, and without civil society organizations that work to promote and protect human rights worldwide. The aim of this chapter is twofold:

a) To provide the reader with a number of conceptual, theoretical and analytical tools developed from the perspective of International Relations (IR, in upper case, i.e. the scientific discipline that studies the phenomenon of international relations) to try to understand the political dynamics surrounding human rights;

b) To describe the main research lines that have been developed in connection with IR and the human rights agenda, and identify its main results.

The chapter begins with a brief definition of human rights, and presents an argument about their historical nature. Then, it uses the concept of «international regime», typical of IR, to describe the present human rights international institutional framework from an analytical perspective, and underlines the gap between «rights in principle» and «rights in practice» or, in other words, between «commitment» to human rights and «(non) compliance» with human rights norms by the States. And finally, it describes two research lines or areas developed in connection with human rights from an IR perspective. The chapter concludes by identifying the impact of the States' actions on human rights and highlighting the relevance of theories, concepts and analytical frameworks relating to this discipline for the study of human rights and their influence on the world.

WHAT ARE HUMAN RIGHTS?

Human rights are often defined as the rights that we are all entitled to simply by virtue of being human and, therefore, regardless of our race, sex or gender, language, religion, nationality, opinions or beliefs, immigration status, sexual orientation, physical or mental abilities, or any other criterion or factor. However, if we analyze this definition in more detail, we may find that it leaves us with some doubts or that some further clarification is needed.

To begin with, what is a «right» and what do we mean when we say that we, human beings, «have» rights? First, a human right implies a series of freedoms, powers, capabilities, immunity and entitlements for the holders of that right: freedoms, powers or

an ability «to do» something (for example, to express ideas or to vote); immunity or bans that apply to third parties, to stop them from committing certain abuses (for instance, the right not to be tortured); and entitlements or prerogatives to enjoy certain goods and services (for instance, health or education).

The correlative of a *subjective* right (such as a human right) is an obligation. Therefore, if we say that someone is the holder of a right, then there must be a third party that is bound to effectively respect, protect, guarantee and promote that right. In the case of human rights, the third party who has that obligation is, first of all, the State, although there has been some debate about whether certain non-state actors (such as armed groups or multinational corporations) may also or should also be considered, on some occasions, entities with obligations regarding human rights.

On the other hand, as the term «regardless of» suggests –a term that appears with some frequency in international law documents such as the Charter of the United Nations (UN) or the Universal Declaration of Human Rights (UDHR)– that human rights are universal. The concepts of «natural rights» of the 17th century and the «rights of man and of the citizen» of the 18th century did not include everyone in the group of right holders: slaves and women were excluded, to begin with. But human rights, as the term is understood today, are characterized by a radical universalism: all individuals have the same rights.

THE HISTORICAL NATURE OF HUMAN RIGHTS

Human rights are a merely historical idea or concept: that is, they have a specific origin in history, particularly in the history of ideas. While it is true that many cultures and religions, at different times and in different locations in the planet, have established concrete behavior restrictions and prohibitions relating to solidarity, charity, empathy, justice, etc., they should not be confused with human rights themselves. Human rights have their origin in the doctrine of «natural rights», developed at the dawn of the modern age by different thinkers, among whom stands out the name of John Locke, in the second half of the 17th century. One hundred years later, some very important steps were taken as part of the American war of independence and the French Revolution. Finally, the current concept and doctrine of human rights were introduced after World War II, particularly with the Charter of the UN, in 1945, and the UDHR in 1948 (Anaya Muñoz, 2014: 40-59).

THE HUMAN RIGHTS INTERNATIONAL REGIME: THE GAP BETWEEN COMMITMENT AND COMPLIANCE

Following their inclusion in the goals of the UN in 1945 and the adoption of the UDHR, human rights became eminently international. That is to say, as a legitimate aspiration and an obligation1, not only of the States, acting for themselves and/or within their respective jurisdictions, but also of the international community

1 See the chapters by Julio Montero, Brian Schapira, Gabriel Salvia and Manuel Cuesta Morúa in this volume.

as a whole and of the UN itself and its agencies. Since then, States have developed a dense *international human rights regime* (Anaya Muñoz, 2017) which is composed of a group of:

a) Principles: human dignity, equality in moral worth and rights (universality); internationalism, inalienability, interdependence and indivisibility.

b) Rules and norms: the list of human rights itself and the corresponding duties of the State (respect, protection, guarantee and promotion), as well as the procedural obligations of States in relation to the agencies of the said international regime (for instance, submitting regular reports on the implementation of treaty obligations).

c) Decision-making and implementation organs: For example, the UN Human Rights Council, the UN Committee against Torture, the Inter-American Commission on Human Rights (IACHR), etc.

We can say that the international human rights regime is composed of a set of specific regimes that have been developed by the different international organizations: the «universal» or UN regime; the European regime or the regime of the Council of Europe (CE); the Inter-American regime or the regime of the Organization of American States (OAS); the African regime or the regime of the African Union (AU) and even an incipient regime of the Association of Southeast Asian Nations (ASEAN). In reality, the degree of «institutional density» of the different human rights international regimes varies according to their evolution over the years (Anaya Muñoz, 2017).

The main functions that the States have delegated to the international regime's decision-making and implementation organs are the promotion, supervision and protection of human rights. Monitoring compliance with human rights means performing some sort of inquiry or investigation of *situations* of human rights violations in specific countries or of rights or specific groups. In other words, human rights international organizations monitor situations in relation to a specific country, right, topic or group and, based on that, they have authority to determine the degree to which a given right is being respected or not. The result of this monitoring exercise is generally a report (on a topic and/or country) that usually includes specific recommendations which, however, are not legally binding on the States. The protection of human rights, on the other hand, is performed in *cases* of human rights violations. When a violation is reported and following the relevant procedures to investigate and assess the merits of the case, the organs referred to above have authority to determine whether the State in question is effectively responsible for violating one or several human rights. The decisions of these organs) include not only a «sanction» on the State for having violated the norms of the regime, but also a number of measures designed to repair the harm done to the victims, that the States are required to take. These decisions, however, may be legally binding or not. Only the organs that are strictly jurisdictional –the European, Inter-American and African courts– may adopt rulings that are binding on the States or legally mandatory for them.

International human rights regimes have evolved over time, from being merely declarative and promotional systems to having

more monitoring and protection functions. However, none of these regimes has the power and, above all, the enforcement power to force States to follow their recommendations or reparations. Hence, we can conclude that international human rights regimes «have no teeth» (Anaya Muñoz, 2017).

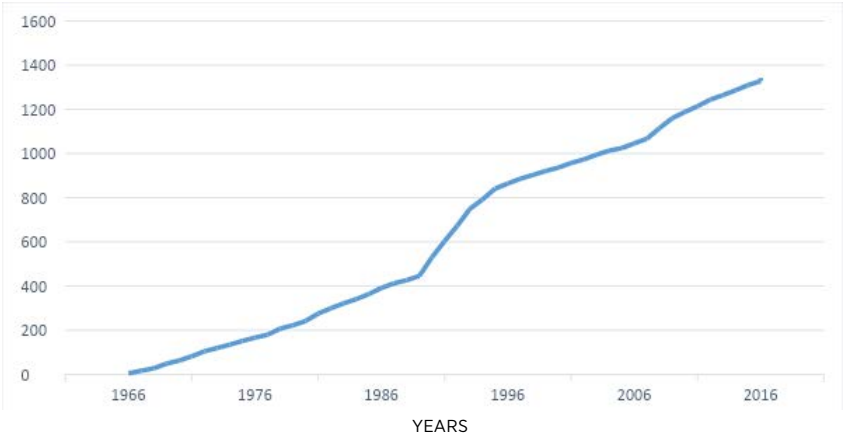
In light of this description, why have States created international human rights regimes? It is not the aim of this brief chapter to develop a single answer to this question. Regardless of the fact that this answer will surely vary, depending on the specific regime or the institutional development being analyzed. IR theories, however, offer a framework of concepts and causal mechanisms that allow us to answer this type of question, helping us formulate different hypothesis focused on (military) power, the creation of collective goods and the elimination of any obstacles to cooperation, the influence of domestic actors, or the constitutive role of international structures of norms and identities (Anaya Muñoz, 2014: 99-116).

On the other hand, perhaps the most important question is: so what? That is, the international human rights regimes do exist and have gradually grown stronger over time (Anaya Muñoz, 2017). However, do they make any difference in practice? Have they contributed to improving the situation of human rights around the world? Do they really influence the behavior of States?

At a global aggregate level, the number of international treaties protecting human rights that have been ratified by a large number of States is quite high. If we analyze trends over time, we will identify a clear, upward line. The level of «commitment» to the regime's norms is, in other words, very high.

CHART 1

AGGREGATE NUMBER OF STATES THAT HAVE RATIFIED THE NINE CORE HUMAN RIGHTS TREATIES OF THE UNITED NATIONS

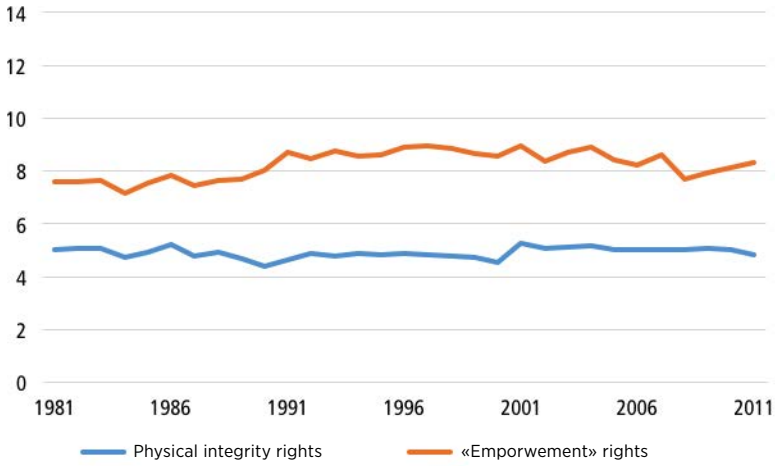


Source: Prepared by the author. Updated November 2017.

However, this has not been clearly reflected in a similar process in terms of «compliance». Using aggregate indicators at a global level as a reference, the situation of human rights worldwide has had, at best, only a marginal improvement over the last thirty years; precisely, the period in which international human rights regimes have expanded and strengthened and the transnational activism has been intense. A comparison between the chart 1 and 2 suggests a gap between «commitment» and «compliance», or between «rights in principle» and «rights in practice».

CHART 2

PHYSICAL INTEGRITY AND «EMPOWERMENT» RIGHTS SCORES (GLOBAL AVERAGE) [2]



Source: Prepared by the author with information from *Cingranelli and Richards Human Rights Data Project* (http://www.humanrightsdata.com/).

TRANSNATIONAL ADVOCACY NETWORKS

IR scholars have not always been interested in human rights. However, over the last three decades, an extensive literature has developed, that has focused precisely on studying the consequences or effects of the existence of an international human rights regime and transnational activism. A vast number of authors have explored the results of the transnational pressure exerted by the *Transnational Advocacy Networks* (TANs). The research on these

2 Physical integrity rights' scores are presented on a scale of 0 to 9, where 0 is no respect and 9 total respect. Empowerment rights' scores range from 0 to 14. See: http://www.humanrightsdata.com/.

TANs and transnational human rights activism, of a qualitative and mainly constructivist nature, was conducted around two theoretical proposals developed at the end of the 20th century which have had a significant influence on academic research: the «boomerang effect» (Keck and Sikkink, 1998) and the «spiral model» (Risse, Ropp & Sikkink, 1999, 2013). These proposals suggest, in very general terms, that by putting pressure on or «shaming» states, TANs put in practice both «the logic of consequences» and «the logic of appropriateness», through which States are convinced and/or persuaded to change their behavior; that is to stop violating human rights. More than fifteen years later and following a large number of case studies, however, the initially optimistic expectations regarding these approaches decreased considerably until the limits on the effects of transnational activism became clear. Today, this literature recognizes the prominent role of internal or «domestic» causal factors, rather than transnational reasons, in the desired transition from commitment to compliance (Risse, Ropp & Sikkink, 2013).

THE IMPACT OF TREATY RATIFICATION

In addition, several quantitative studies –which have been developed based on the intersection of IR and comparative politics– have focused on analyzing the effects of treaty ratification on the violation of physical integrity rights (the prohibition of extra-judicial executions, torture, forced disappearances and political impri-sonment) in practice. First, they found that the ratification of treaties not only did not improve respect for human rights, but it was possibly even associated with more human rights violations

(Hathaway, 2002). Other authors, however, found also no positive effects of the ratification of treaties itself, but they highlighted what they called the «paradox of empty promises», which means that while the effect of ratification is not directly correlated with an improvement of the States' behavior, it did increase the normative tools available for domestic organizations working to protect and promote human rights and even empowered them (Hafner-Burton & Tutsui, 2005). Other studies found that the ratification of human rights treaties does have a positive impact on State behavior, though small or moderate (Landman, 2005) or it has had a positive impact in certain circumstances: in more democratic countries and countries with strong civil society organizations with transnational links (Neumayer 2005). Finally, in the most complete and influential study in this field, Beth Simmons (2009) concluded that the ratification of treaties does have a positive influence on State behavior, particularly in democracies in transition or «in flux», with a civil society that is capable of taking full advantage of the best opportunities for litigation and action brought by the adoption of international normative commitments by their States. Basically, perhaps the main contribution of all this literature is the confirmation that, besides the international and transnational norms and actors, the key to deep changes in the field of human rights or to higher levels of compliance is mainly internal or domestic. In other words, the existence of international norms and organs, as well as activists of the transnational civil society, is important but the achievement of better conditions for human rights in specific countries (such as Latin American countries) depends largely on what is done «from the inside».

FINAL CONSIDERATIONS

Human rights are a very important issue in contemporary international relations. The doctrine of human rights, that following a development process of more than three centuries became a reality after the second world war, has modified the institutional outlook and relations between different stakeholders at an international level. On the other hand, despite «having no teeth», the international human rights regime has transformed the way States interact with international organizations, organizations of the transnational civil society and other governments. Regardless of its limited influence, international regimes and the dynamics of transnational activism have empowered local civil society actors and have had an impact on the way States take decisions and behave. The causes and consequences of the existence of the international human rights regime are not entirely clear. There are many questions still to be answered and there is still much research to be done, and the IR theory, concepts and analytical frameworks offer a useful set of tools for that.

In the new global context, severely affected by the COVID-19 pandemic, we should ask ourselves: what have been its effects on human rights? Besides the direct effects of the virus on the lives and health of millions of people, what impact have the measures adopted by States to prevent the spread of the virus had on human rights in our countries[3]? In Latin America, in addition to measures that have violated civil liberties, which have been implemented in a discriminatory fashion and have relied on the use of excessive

3 See Sybil Rhodes' chapter in this volume. See also Anaya Muñoz, 2020.

force, confinement or social distancing strategies have affected economic and social rights, such as the right to work, to social security, health, education, housing and food. The pandemic and the States' responses have widened the gap between the sectors of society that have greater access to these human rights and those that do not. In short, the human rights outlook in the age of COVID-19 seems devastating, particularly in contexts of low-quality democracies, limited institutional capacity and structural inequality. The pandemic presents itself as a new «acid test» for human rights as the normative framework and institutional scaffolding for the protection of human liberties, immunity and merits. There are still many unanswered questions and a lot of research to be done on the role of international human rights regimes in this context. The research on human rights from an IR (and comparative politics) perspective has focused on physical integrity rights, leaving aside economic, social and cultural rights. There is, therefore, a significant deficit in this research, that we, as internationalists, need to address using the tools made available to us by our discipline.

HUMAN RIGHTS AS A RESTRAINT ON STATE SOVEREIGNTY AND AS ITS BASIS

Julio Montero

INTRODUCTION

The notions of human rights and state sovereignty are the main pillars of the current international order. To some degree, this poses a theoretical tragedy, since both concepts seem to be in conflict. In its classical meaning, sovereignty refers to the capacity of a state to take final decisions within their jurisdiction, while human rights are rights that are common to all humans and that states should respect regardless of any other consideration. The obvious paradox that these definitions pose may be summarized in the following question: How can states be really sovereign if they are required to respect certain rights of their citizens and they are not free to make decisions about them? The purpose of this chapter is to provide a brief overview of the solutions that philosophy has offered to the supposed tension between state sovereignty and human rights, and to suggest that it is only an apparent tension. As we will see, human rights and sovereignty are not conflicting concepts; they are complementary categories with the same normative origin and they are also mutually reinforcing: human rights can only be realized under a sovereign authority and this sovereign authority can only be morally justified when it reasonably fulfills the human rights of its inhabitants.

FROM THE WESTPHALIAN ORDER TO A UNIVERSAL DECLARATION

The international regime created by the Münster and Osnabrück Treaties (1648), known as the «Westphalian Order», was an institutional manifestation of a philosophical approach that could be referred to as the «sovereigntist thesis». Initially proposed by Thomas Hobbes in *Leviathan*, sovereignism claims that states can govern their populations without limitations based on the assumption that ensuring order and safety for their citizens is the ultimate goal of politics. The sovereigntist theory does not deny, of course, that the political sovereign may have moral or prudential reasons to recognize certain individual rights of their subjects. But it insists that the decision not to do so does not compromise the internal or external authority of the ruler. This perspective, which resulted from the heated internal conflicts that shook the Great Britain of the time, was later extrapolated to the European international system. Under the Westphalian order, every state had full autonomy to implement their own internal policies, provided they respected the autonomy of the other nations too. Consequently, the treatment that a government gave to its residents was a merely internal issue, where no external agent had the right to lawfully interfere.

While an advantage of the Westphalian system was that it maintained world peace, it hid a serious latent danger that became evident with the Nazi crimes: governments could use the enormous jurisdictional power they were conferred by the international regime to tyrannize or intimidate their populations. According to most international law scholars, the human rights

project emerged as an attempt to fix this serious danger. In this regard, the Universal Declaration of Human Rights (UDHR) established a number of standards that restrict the behavior of states toward their own citizens and that all nations agreed to follow before the international community. Therefore, the practice of human rights brought radical changes to the relationship between human rights and sovereignty: while states still maintain significant internal autonomy, human rights operate as external restrictions on their powers and enjoy a categorical normative priority over the freedom of nations and their governments.

This new conceptual relationship between both notions was theoretically captured by Charles Beitz, who in his influential book *The Idea of Human Rights* defines human rights as «matters of international concern»[1]. As the author points out, the key premise of his approach is that violations of human rights by governments may justify external intervention. More specifically, Beitz identifies five categories of international intervention according to their frequency in international relations: (a) criticism and exposure in international forums; (b) support to local groups resisting an abusive government; (c) imposition of progressive and proportional sanctions, whether they are diplomatic, business or economic; (d) review of international structures preventing the states from conforming to human rights standards; and (e) armed humanitarian intervention, only in extreme cases and when all other resources have failed.

1 Charles Beitz, *The Idea of Human Rights,* Oxford: Oxford University Press, 2009.

HUMAN RIGHTS AS INTERNAL RESTRICTIONS

In recent literature, authors like Martha Nussbaum, Alan Gewirth and James Griffin have tried to complement the idea of human rights as external restrictions with the resources offered by the modern natural law tradition. Inspired by John Locke's ideas, this school of thought argues that human rights are universal moral rights that all human beings have by virtue of their humanity (Locke referred, in particular, to the natural rights to life, freedom, health and property). Since, by definition, natural rights impose duties upon others, they operate as conditions for the legitimate exercise of sovereignty. As a consequence, when a government violates the human rights of its residents, not only does it become vulnerable to external intervention, but its internal legitimacy is also compromised: its residents may engage in civil disobedience, rebel against the government's abuses and even bring the government down. So the fence that surrounds sovereignty becomes even more reduced: human rights are no longer merely an external corset for the sovereign power, but also internal restrictions resulting from the states' claim that they have authority over their own citizens.

HUMAN RIGHTS AS THE BASIS FOR SOVEREIGNTY

Despite their significant differences, all the approaches that we have analyzed so far share an important element: they see the relationship between sovereignty and rights as an antithetical relationship. Their common assumption is that both categories make opposing conceptual claims, which can only be accommodated by establishing the primacy of one category over the other. However,

there is no need to think about this issue in terms of rivalry. At least at a philosophical level, it is perfectly possible to achieve a full and harmonious integration between sovereignty and human rights. The author that laid the foundations to move forward in this direction is the philosopher Immanuel Kant. Like the natural law tradition, Kant holds that there is a fundamental human right: the right to freedom –as the absence of domination– of every individual to an equal sphere of freedom to carry out their own projects, including the material resources necessary to effectively exercise that freedom.

Kant's philosophical innovation, which places him in the podium of modern contractarianism, is his thesis that neither the human right to freedom nor any other right in general may be properly exercised without a sovereign political authority. This is because of two systemic problems that would pervade any pre-political context (a context that Kant and contractarian philosophers refer to as the «state of nature»). The first one is that human beings might reasonably disagree as to the exact scope of their spheres of personal freedom, including in particular the use of limited natural resources. And since human beings are equal moral subjects, no human being has authority to settle disputes or impose their point of view on other people. The second problem that Kant finds is that unless there is a central authority, the effective exercise of our rights will be chronically insecure, since it would rely on the goodwill of other individuals and on our ability to defend ourselves. From one moment to the next, someone who had acted with justice can turn into a tyrant and subject us to their arbitrary will. That's why Kant argues that in the state of

nature, the mere proximity of a stranger poses a threat that we are authorized to repel.

Based on the considerations above and in line with the republican tradition, Kant comes to the conclusion that the existence of a sovereign state capable of resolving disputes and enforcing compliance with rules is an essential requirement for the realization of our fundamental rights. Far from limiting our freedom, the political authority makes it possible in practice. From this perspective, the tension between sovereignty and human rights is just an illusion. Neither sovereignty is a threat to human rights nor human rights are mere restrictions on the authority of the state. Sovereignty and human rights are, in fact, an inseparable conceptual pair: both notions have the same origin and they are mutually inclusive. Human rights cannot be realized without a sovereign agent and, in turn, the normative function of sovereignty is precisely realizing human rights.

HUMAN RIGHTS AS THE BASIS FOR THE STATE SYSTEM

The last link in this evolutionary sequence consists in projecting the complementarity between sovereignty and human rights onto the states system as a whole. In a number of articles published in the 2000s, Thomas Pogge offered a new interpretation of the role of human rights, based on section 28 of the UDHR. In the said articles, he claimed that everyone is entitled «to a social and *international* order» where the rights and freedoms set forth in this Declaration can be fully realized. According to Pogge, this means that human rights impose duties on states in relation to their own

members, and also, more generally, on the global institutional order: human rights would set conditions for the legitimacy of the whole transnational governance apparatus[2].

This doctrinal insight is completed with a detailed empirical analysis of the impact of certain supranational regulations on human rights fulfillment. In Pogge's view, the current regime of medical patents, which offers to the laboratory that is developing a certain drug a compensation for the use of that drug during a given period, prevents the poorest states from providing their citizens with access to essential medicines. Similarly, Pogge argues that the present rules of international trade, including those established by the General Agreement on Tariffs and Trade (GATT) and those recognized by the World Trade Organization (WTO), have significantly reduced the ability of the poorest states to respond to vital needs, since they allow industrialized countries to protect their agricultural sector through tariff barriers while they force developing countries to open their markets to manufactured products. The foreseeable result of this asymmetry is a colossal transfer of resources from the poorest countries to the richest ones[3].

Even more thorough is Allen Buchanan's argument in *The Heart of Human Rights*[4]. His main thesis is that, while the modern

2 Thomas Pogge, *World Poverty and Human Rights,* London: Polity Press, 2002, chapters 1 and 2.

3 Thomas Pogge, *Recognized and Violated by International Law: The Human Rights of the Global Poor*, Leiden Journal of International Law 18 (4) (2005): 717-745.

4 Alan Buchanan, *The Heart of Human Rights,* Oxford: Oxford University Press, 2013.

state system created in 1648 brought many benefits for the political communities, it also posed considerable risks to the enjoyment of human rights. Essentially, these risks are related to five structural principles that are operative in the current international law, that is: (a) the principle of non-intervention, which prevents external agents from helping victims of human rights violations; (b) the principle of sovereignty over natural resources, which allows authoritarian governments to freely to dispose of their natural resources; (c) the principle of borrowing privilege, which allows dictators to borrow money from the international financial market, while their citizens will bear the cost of debt burdens for generations; (d) the principle of border control, which authorizes to exclude non-nationals from their territory, preventing the victims of abuse from fleeing their countries; and (e) the principle of effectiveness, according to which any group that effectively controls a territory is recognized as sovereign by the international community.

According to Buchanan, the risks that these five international principles pose to the protection of human rights are so high that the state system can only be consider legitimate if the international community adopts reasonable measures to reduce them and cooperates actively in their implementation. His conclusion is that if the international system for the protection of human rights significantly minimizes several of these threats, human rights are a crucial requirement for the current international regime to be acceptable from a normative perspective. Otherwise, the partition of the world in multiple sovereign territorial units capable of taking final decisions about their population would be

an arbitrary imposition and people might justifiably challenge regulations that compromise their vital interests. What I would like to highlight as a conclusion is that whether we follow Pogge's «cosmopolitan» theory or Buchanan's «mitigation» approach, the intrinsic relationship between human rights and sovereignty explained by Kant expands far beyond the sovereignty of states and comprises the international order as a whole. Human rights become, therefore, the grammar behind sovereignty itself.

HUMAN RIGHTS BEFORE AND AFTER THE FALL OF THE BERLIN WALL

Günter Nooke

INTRODUCTION

The European Parliament chose August 23 to remember different past experiences in Europe and named it the International Day of Remembrance of Victims of Totalitarianism. However, some left-wing politicians argued against mixing together victims of the German NS terror regime with victims of Russian suppression and their respective crimes against humanity. The historic perception is different in the different European nations.

Many people suffered under the terrible crimes committed by Stalin and the communist leaders in Russia, for example the people in the Baltic States. Germans need to be aware of their responsibility for the unique crimes of the Holocaust, also in future. Coming to terms with the past is one of the most challenging tasks for nations like Germany with such a terrible history. And, please remember, we had two dictatorships in Germany, one before and during the Second World War and one after it, in East Germany, in the territory occupied by the Russians.

Finding adequate ways to describe complex histories is always a challenging task. And today we have to be aware of the historic

situation. Sometimes it is more enlightened to compare dictatorships with each other rather than comparing a dictatorship with a democracy. At least from a German point of view, we are all treading on sensitive ground. And in the time being, we have a very new situation with an ongoing digital revolution and Covid-19. Both will change our understanding of human rights and it will limit individual freedom rights possibly everywhere on globe. Digital control and social scoring of everyone 24 hours a day seems realistic and is actually going on in China. But it can happen in democracies too when people want to survive in a pandemic and agree voluntarily that health authorities record all necessary data of a person. This danger of a new dictatorship of an omniscient state is not part of this article. We had not seen this in 1989 when we struggled for freedom and rule of law and I did not know during the preparation of the speech I gave in 20161 and upon which this article is based. But what I knew was the threat to our western model of society. Even ten years ago it seemed clear and it has become more obvious over time being: The western world is no longer naturally a role model for other countries like those in Africa or Latin America. On the one hand, China's economic rise is attractive for many people and heads of state worldwide. Economic wellbeing is key and a precondition for better life of people in every country. The main reason for leaders is the promise of easy ruling without much concern for human rights protection. On the other hand, Islamic states

1 At the Conference on the International Day in Remembrance of the Victims of Totalitarianism, organized by CADAL and the Konrad Adenauer Foundation in Buenos Aires, Argentina, on August 23, 2016.

have established their own understanding of order and security in many regions on different continents. That is acceptable for many believers if this seems to be the only way to stay save in their homes. Consequently, a contradiction between individual human rights and the need for traditional and religious bindings will remain.

In other words: we need the idea of universality and stable states. Universal human rights or liberal freedom rights need a functioning state to ensure them. In the medium term the nation state will probably be the only concept. That in turn means, an absolute totalitarianism leading into a chaotic or locally clan stabilized order. But here is not the room for explanations in detail.

THE HISTORICAL FRAMEWORK

On 23 August 1939, the Hitler-Stalin Pact was signed. It was a German-Soviet non-aggression pact and it paved the way for World War II. Hitler and Stalin agreed not to go to war with each other and to split Poland between them. The outside world was stunned by this agreement, given that Hitler and Stalin espoused diametrically opposed ideologies. Hitler started the invasion of Poland on 1 September 1939, the Red Army of the Soviet Union invaded Poland from the east 16 days later on 17 September 1939. Both dictators pursued courses defined by their own political needs.

On 7 October 1939 the Communist International welcomed the invasion as «an example of cooperation of socialist nations against Anglo-French imperialisms». The Nazi Party was called National Socialist German Workers' Party.

That leads us to a first assumption: It is more important to differentiate between democracy, rule of law and protecting human rights on the one hand and totalitarian dictatorships with highly effective propaganda on the other hand than to look at the incompatible, contradicting ideologies of authoritarian regimes.

On 13 August 1961 the Berlin Wall was erected by the East German Communist Party. At the end of World War II, Poland's borders had shifted westwards and Germany became divided into East and West. This happened because the Allied Powers conquered Adolf Hitler's Nazi terror regime in 1945 and because of decisions taken at the conferences in Yalta and in Potsdam. After World War II a period of Cold War began between the powers of the Western Bloc as represented by the North Atlantic Treaty Organisation (NATO) and the powers of the Eastern Bloc (Warsaw Pact). A lot of the communications on both sides at that time were shaped by ideologies. But at the end of the day one could say that the US, Great Britain and France were striving for a free world with free markets. The Soviet Union, with its dictator Stalin and its socialist satellite states, was promoting a communist world system without personal freedom rights and with a planned economy.

As I have already mentioned, if we are going to be speaking about «Human rights before and after the Fall of the Berlin Wall», we have to be aware of this historical background.

There was less legitimacy on the eastern side compared to the free world in the West. That is due to the fact that human rights were not protected by the Soviet Union and its socialist

satellites; rather, in that part of the world, elementary civil rights and liberties were heavily abused by state authorities.

Not all communist countries might be seen as totalitarian states, like Germany under the Nazi dictatorship or China under Mao. But the German philosopher Peter Sloterdijk made a disturbing statement in his book «Zeit und Zorn» («Rage and Time») with regard to the NS Terror Regime, which was responsible for the murder of over 6 million Jewish men, women and children, as opposed to communist countries where dozens of millions died in China and the Soviet Union alone: «The ideology of classes called Marxism and Leninism and Maoism came at a far higher price than the ideology of races»[2].

HUMAN RIGHTS IN A COMMUNIST DICTATORSHIP

After World War II, the four allied powers influenced development in West and East Germany in line with their own political agendas. Both sides were supported but also exploited by Washington and Moscow respectively. The West Germans acted of their free will, mostly because of the benefits like the Marshall Plan and quick and successful economic recovery, the so-called «German Wirtschaftswunder» (German economic miracle).

West Germany got a new Basic Law, which guaranteed the rule of law, free and fair elections and the protection of human rights. To quote from the German constitution –The Basic Law, Article 1– «Human dignity shall be inviolable. To respect and

2 Peter Sloterdijk, *Zorn und Zeit: Politisch-psychologischer Versuch,* Frankfurt: Suhrkamp, 2006, p. 256 (translated by the author).

protect it shall be the duty of all state authority. The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.»

On paper the first Constitution of East Germany sounds very nice too, even regarding civil rights and liberties. But the reality experienced in East Germany quickly became quite different.

In the late 1980s, I was involved in the civil rights movement. I became a member and founder of a small oppositional group under the umbrella of the Protestant church in my hometown Forst, on the border with Poland, not far from Berlin.

We wanted to open up the country, get rid of the dictatorship. The German Democratic Republic called GDR was a true dictatorship! Even if, at that time, many Western diplomats didn't like to say so and after reunification some professors came up with all kinds of arguments designed to rebut this assessment of the East German experience. The GDR, however, used Marxist-Leninist terms, describing itself as a «dictatorship of the proletariat». I was once told by an official in my hometown that we –a bunch of human rights activists, an ecumenical peace group– shouldn't be discussing civil participation. Here in the GDR «we don't have democracy, we have the dictatorship of the proletariat!», so I was informed. And it was of course the state official, not the proletarians in our group, who dictated policies in the GDR.

To this day I am most grateful for such clarifications. Now, too, dictators and authoritarian rulers must be taken seriously, let me warn you. They are not democrats, but they are often extremely

shrewd politicians who use their power with consummate skill. That still holds true, even when there is nothing new about the methods they use.

In the late 1970s and the 1980s, before the Wall came down, the socialist centrally planned economy in East Germany had obviously already lost the ideological battle against the social market economy in West Germany. This specific West German system combines a free market economy, which was much more innovative than central planning, with social responsibility, which ensured the welfare of millions of workers during the first three decades after the Federal Republic of Germany was founded in 1949.

Of course, the economic challenges in the East were much bigger than in the West after the war. The Russians did not support economic growth. On the contrary, they rebuilt factories and railways in the destroyed regions solely in order to produce goods as war reparations and transported them to the Soviet Union.

At first, that was not so crucial for the people in the East. Millions left their homes for a better life in the West, where there was a prosperous economy and better living conditions. But after the Berlin Wall was built in 1961 they risked their lives just to get into the other part of the city of Berlin and to be free.

For me, and from a human rights perspective, the struggle between the East and the West was not about economic, social or cultural rights. It was about civil rights or personal freedoms.

But even with regard to social rights in the health sector, labor conditions, assistance for disabled people or the educational system, the situation in West Germany was much better than in the East.

The former GDR, the East German State, existed for 40 years. During that time more than 200,000 people were arrested as political prisoners or prisoners of conscience. There was no free speech, no freedom of the media or freedom of opinion. Children were indoctrinated with the ideology of «Marxism and Leninism». Only a few people were actually murdered by the East German intelligence service, the Stasi, but it did happen. I shy away from comparing the situation in the 1970s or 80s in East Germany with what is happening in other countries today. Perhaps, the situation regarding civil liberties was better than North Korea in 2016 and worse than the situation in Cuba today. The new information and communication technologies have changed a lot of things.

Now, as then, however, we should not be under any illusions about the nature of certain political systems. It is important to think clearly, after all, even if –for diplomatic, political or economic reasons– one cannot always speak frankly.

THE PEACEFUL REVOLUTION IN AUTUMN 1989 AND GERMAN UNITY ON 3 OCTOBER 1990

To speak about what happened before and after the fall of the Berlin Wall, let me tell you a short but essential story. I would like to call it «Freedom came before unity». It is a personal story about the key message of our peaceful revolution.

The collapse of East Germany started with rigged local elections in May 1989 and ongoing protests against the government. Many people fled the country via Hungary during the summer. The West German embassies in Budapest and Prague were overcrowded with those who wanted to escape. On 10 September 1989 Hungary officially opened its border with Austria.

But also inside East Germany more and more people were taking part in peaceful demonstrations in the streets. They were not thinking about leaving the communist state. One goal was to achieve more openness and freedom of opinion and the press. They wanted to change the political system. They were chanting «We are the people». They were hungry for democracy and freedom.

The peaceful demonstration which took place on Monday 9 October 1989 in Leipzig is the most important date when you are talking about the collapse of the East German regime. No one knew whether the forces of the state would intervene. After some other demonstrations on 7 October in Berlin and the little town of Plauen and the official acknowledgement of the opposition as negotiating partners on 8 October 1989 in Dresden, the rally on 9 October 1989 was in fact, also for me personally, the tipping point.

The situation had remained peaceful because there were so many ordinary people who had the courage to go out and join the Peaceful Revolution. After that day I personally no longer feared it might all end in a blood bath. That's why this day is so important. A dictatorship without fear among those who are oppressed cannot remain a dictatorship any longer.

On 16 October 1989, just one week later, twice the number –namely 150,000– demonstrated on the streets of Leipzig and many other cities in East Germany. On 6 November 1989 around 600,000 marchers demonstrated in the pouring rain.

«Freedom came first» when the Berlin Wall fell on 9 November 1989.

Before the Wall came down, intimidation was everywhere but people overcame their fear and had been chanting «We are the people». After the Wall came down, they chanted «We are one people», which meant the demand for German unity. After the fall of the Wall, free and fair elections took place. What people wanted in the first place was freedom: freedom of opinion, of travel, of the press, of the arts, of scholarship and research…

But what are the lessons we should learn from «Freedom first»?

Then as now, totalitarian systems, dictatorships and authoritarian regimes survive only because people living in these oppressed societies are afraid to say what they really think and feel. That makes human rights so important. That is exactly the situation in several countries today where people are unable to say what they are really thinking because of a climate of fear.

Often, I have heard the opinion: The West won the Cold War. I think that's not true. That's a typically Western view of things, history as heads of state see it. But up to 9 November 1989 their chief concern was stability. It was only when the Wall came down that they realized how strong the desire for freedom and change

was among ordinary people. The winners of the Cold War were the people living in the oppressed countries of the Eastern bloc!

And also today, it will be the ordinary people living under dictatorships or authoritarian regimes who, in the long term, will emerge the victors in the struggles they are facing for the time being. The only question is how long it will take. And how much genuine, strong support others will give them.

But - is it really right to transfer the lessons learned from the period of the Cold War to the present world?

THE COMPLEXITY OF THE WORLD TODAY

What about the situation as it is today?

East Germany, officially known by its leaders as the German Democratic Republic, the Soviet Union and –except for Cuba and North Korea– all the countries of the so-called Socialist World System vanished after 1990. During the Cold War, do not forget that also countries in Africa belong to one side or the other.

Today, international terrorism, the Islamic State, or Daesh as it is sometimes called, and other terroristic and criminal groups are dominating the headlines on almost every continent.

After 1990, human rights received a boost. In 1989, Francis Fukuyama wrote an essay «The End of History?», which was published in the international affairs journal The National Interest. Fukuyama argues that the advent of Western liberal democracy may signal the endpoint of humanity's sociocultural evolution and the final form of human government: «What we

may be witnessing is not just the end of the Cold War, or the passing of a particular period of postwar history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalization of Western liberal democracy as the final form of human government»[3].

He was wrong in his argument. Currently, states are not being challenged by oppressed people from inside. Currently, democratic and non-democratic states are being attacked by International Terrorism. That does not mean that all terrorists are Islamist groups; Thailand for example is an exception. Outside the Americas, however, Daesh is the most dangerous and it would seem the most attractive movement.

Today, human rights are caught in a downward spiral. Many people and therefore many governments have focused on security issues. But, they might be going the wrong way again.

The current world has become incredibly complex. There is no longer one simple solution, no single approach that fits all.

Strong and weak national states have not found a way to work together to combat international terrorism. One reason for that could be described as follows: authoritarian governments are interested in using the term terrorist in a broader, undetermined manner as an excuse for the suppression of disagreeable people. Liberal democracies fear to speak publicly about the actual danger posed by real terrorists because they want to avoid

3 Francis Fukuyama, «The end of History?», *The National Interest,* No. 16, Summer 1989, p. 4.

a feeling among voters of insecurity. On the other hand, populist parties are interested in such discussions. Instead of objective debates to find ways of dealing with these dangers, populists are creating unrest and even relatively stable democracies are at risk of becoming unstable.

There is a contradiction per se between human rights and security. Which approach is best depends on concrete conditions and environments. Human rights and security could become part of an ideology used for specific interests and not for ensuring that human beings can live in dignity.

THE ROLE OF HUMAN RIGHTS

In presenting the report entitled 'In Larger Freedom' in 2005, Kofi Annan used the image of world peace based on three pillars: security, development and human rights.[4] He stated that we will not enjoy development without security; we will not enjoy security without development, i.e. economic prosperity; and we will not enjoy either without respect for human rights. We could therefore say that the realization of human rights throughout the world is the most important prerequisite for human development (defined as freedom from poverty and suffering) and human security (defined as freedom from fear and violence).

In the past, defending human rights was a particular foreign policy focus of both the EU and Germany.

4 General Assembly, *In larger freedom: towards development, security and human rights for all.* Report of the Secretary General, 21 March 2005, A/59/2005.

Despite some progress, human rights are currently under threat from three angles. The first is a tendency to demand so much in the realm of human rights that, in the end, very little is achieved.

The second is a growing movement that prioritizes the rights of the collective over individual rights. This started with the right to development at a UN human rights conference in Vienna 1993. Who is being addressed with development? For individuals it means self-fulfillment. But who can guaranty the welfare of a nation other than the people and its government? When I led the German delegation at the Human Rights Council in Geneva, the Organization of the Islamic Conference was advocating collective human rights and that's still true today. This approach is not about protecting the right of the individual; it is about protecting the right of a religious group. Such group rights have nothing to do with the original concept of human rights. Individuals, not religions, have human rights. The individual has the right and the state is obligated to respect and protect that right.

The third angle is the need for security. Ordinary people are right when they want to be protected by the state. But how can a liberal state limited by the rule of law avoid the loss of lives when terrorists use suicide bombers?

Nowadays we certainly cannot take it for granted that our understanding of human rights is accepted throughout the world. On the contrary, that understanding is much more at risk than it was 20 or 30 years ago. This is all the more true when hardly anyone dares to openly address this issue. But the basic approach

is actually quite simple: successful human rights policy is about translating a fantastic idea into reality. This idea applies to everyone, regardless of whether they were born in Germany or Switzerland or in China, Zimbabwe, Cuba or North Korea. The political art of human rights policy consists of placing the individual at the heart of all efforts, while at the same time taking into account traditions, culture and religion. This is often particularly difficult when persuasive arguments are put forward by those who consciously disregard human rights for the sake of shoring up their own power.

BASIC PRINCIPLES OF HUMAN RIGHTS POLICY IN EUROPE

Let me end with the following basic principles for better coordination of European Policy which I had prepared for a meeting of human rights commissioners of EU member states in Berlin in 2009. What I wrote describes an ideal situation from a human rights point of view. Politics needs such guidelines. But in the end a pragmatic approach and a concrete policy focusing on the actual dignity of human beings is needed even more.

1. Human rights are the core of EU foreign policy.

Human rights policy does not replace security and development policy. But human rights are an important pillar, alongside security and development. The protection of individual, inalienable human rights is the *sine qua non* for the co-existence in human dignity of nations and people across the world. Efforts to combat terrorism and poverty must not violate elementary human

rights. Due to its own history and values, Europe has a particular obligation to protect human rights.

2. Human rights are universal.

The EU member states are pursuing the protection of human rights first and foremost in their own countries and are taking care to face up to critical dialogue. The same standards apply to EU member states and to all other countries. These standards must not be undermined by pointing to overriding goals or collective interests.

3. The idea of universality is the political core of the human rights concept.

Any attempt anywhere to relativize this idea must be clearly countered. The protection of cultural diversity, traditions or religions as an alternative political concept to human rights is to be rejected. What is being advocated is a non-ideological human rights policy that allows for the diversity of cultures, religions and traditions based on the protection of elementary human rights. That, however, requires concentration on elementary human rights as such. Only those rights that are without question basic human rights and not rights based on certain cultural or ideological ideas can be applied universally. Discussions on the understanding of human rights are important. They should not be dodged by pointing to terms such as human dignity or respect.

4. Human rights are indivisible.

Economic, social and cultural rights create the prerequisite for exercising classic civil rights and liberties. The indivisibility of human rights means individual rights or categories of rights must not be played off against one another. Indivisibility does not mean all rights are equally important. It is important to set political priorities.

5. Human rights policy must improve the situation of people affected by human rights violations worldwide.

Implementing minimum standards and concrete steps to protect elementary human rights in all countries have priority over extending the catalogue of human rights regarding their content and over codifying them legally without mechanisms of sanction.

6. The governments of sovereign states bear primary responsibility for the protection of human rights.

It is essential for national governments, the EU Council, Commission and Parliament to take a public stance on grave violations of human rights no matter where in the world they occur. The gravity of the violation and not special, good or strategically and economically important relations to the state responsible for such violation should be the yardstick that is used. Standing up for the protection of elementary human rights does not constitute unauthorized interference in the internal affairs of a state.

7. Human rights protection is not possible without stable states.

Stability, good governance, the rule of law, development and democracy are essential steps when it comes to anchoring and implementing human rights. On a case by-case basis, it may seem better to pursue these goals sequentially, rather than simultaneously.

8. Strengthening the competences and the independence of the International Criminal Court in The Hague is a key part of human rights policy.

Human rights policy must combat impunity. Grave violations of human rights such as war crimes, crimes against humanity and genocide must not go unpunished. The International Criminal Court in The Hague and Regional Human Rights Courts must be strengthened.

9. International human rights policy must not undermine the protection of basic rights and the rule of law in EU member states.

Maintaining scope for existence in a free, democratic and social state based on the rule of law is not something to be taken for granted. UN resolutions can also impact the manner in which we live together in our own countries. Fundamental human rights standards in the EU should not be played off against other goals of international politics.

A CRISIS IN THE HUMAN RIGHTS CONCEPT IN THE BEGINNING OF THE 21ST CENTURY AND FIGHT FOR TRUTH, FREEDOM AND JUSTICE

Yevgeniy A. Zhovtis

INTRODUCTION

We are living in the period of new problems and new challenges. The COVID-19 pandemic that have swept across the world shows that with a few exceptions all governments, dictatorships, authoritarian regimes and democracies, have demonstrated an inability to find adequate responses to these challenges. The whole architecture of the international treaties and agreements, international structures and organizations is shaking and cracking, including the key ones –World Health Organization and UN. In many countries, even in most democratic ones we are witnessing how populist and far right politicians are democratically coming to power, how the nationalism and xenophobia are growing, in particular in social networks. The human rights concept as such start to erode.

OIL&GAS, GEOPOLITICS AND WAR ON TERROR: «ENEMIES» OF DEMOCRACY, RULE OF LAW AND HUMAN RIGHTS

I am a human rights defender and more than ever I'm convinced that the human rights are at the heart of democratic development.

At one conference few years ago[1], I have said that nowadays human rights and democratic development have three main enemies, namely oil&gas, geopolitics and war on terror. The war on terror in this context includes wide range of efforts: from rooting out extremism and radical thought to imposing stability that many governments tend to interpret in the way they see fit.

Results of the 21 century's two decades show that these three enemies of democracy are winning on all counts. Oil&gas clearly have got an upper hand in domestic politics. Majority of countries with oil and gas driven economy tend to cultivate dictatorship, authoritarian and vastly corrupt regimes that use national resources to make the rich richer and to keep the rest under control.

In foreign politics oil and gas have become a winning argument in any debate about the failure to observe international human rights obligations.

Where authoritarian state has a benefit of important geographical location, its government plays the geopolitics card in any dealings with the democratic countries, taking advantage of regional and global power shifts. Under the pretext of combating terrorism, extremism and radicalism many countries, including those who never faced any clear threat, have opted to increase repression of dissent and curtail civil rights and freedoms.

1 Seventh Assembly of the World Movement for Democracy (WMfD), October 14, 2012 in the city of Lima, Peru.

THE CRISIS WE ARE WITNESSING

I believe that today we are witnessing not just a deterioration of the human rights situation, but a widespread crisis of human rights concept as such.

Here are my reasons behind this thesis: The very concept of human rights is based on recognizing the supreme value of human rights and human dignity. If we put it simply, we can say that human rights are realized in three dimensions. First is legislation (both international and domestic), second are institutions (also international and domestic) and third dimension lies in practical, everyday life.

But a closer look at each of these dimensions warrants a very disturbing picture. Human rights conventions are clearly taking a backseat to other international treaties. Failure to observe human rights commitments is almost a new norm that does not entail any legal, political or moral consequences.

Increased number of journalists, human rights and opposition activists are killed, more people are imprisoned on political motives, more newspapers closed, mass meetings dispersed, religious communities and dissident individuals prosecuted.

The largest part of the former Soviet Union, including Russia, Belarus, Azerbaijan and Central Asian republics, has turned into an enclave where basic human rights principles are distorted, misinterpreted or completely ignored.

The beginning of the 21st century sees the old, mothball covered arguments being resurrected. Repressive regimes are

once again saying that democracy and human rights concepts are at odds with national and cultural tradition of their people. As if there is any nation that has natural aversion to truth, freedom and justice. At the same time international debates on human rights almost never go beyond political correctness.

Many countries with authoritarian regimes have joined both international covenants, ratified conventions against torture, on refugee rights, on abolition of slavery, on rights of the child and many other treaties. And they choose to disregard majority of provisions of these binding documents. Are they held accountable by the international community? Not in the least!

These countries send reports to the UN Human Rights Council, receive recommendations from the UN committees and rapporteurs, but continue disrespecting their obligations nonetheless.

They dismiss any international criticism of their human rights record as an interference with their sovereignty. It is almost like the international organizations and democratic countries are playing a hide-and-seek game with the authoritarian states. If you pretend to share our vision of human rights, democracy and rule of law, then we will pretend to not notice your disregard for your commitments. Take a look at the current composition of the Human Rights Council. Russia, China, Cuba and Pakistan were elected to become members of the HRC and together with Venezuela, Sudan, Bahrein and Eritrea will assess the human rights situation in other countries in 2021.

International human rights context now uses a new, politically correct language, spoken by the representatives of international organizations, such as UN and the OSCE. Any official statement on their behalf starts with recognition of cooperation, continues with praise of positive developments and goes on to point out a one, single problem never condemned strongly enough to interfere with the positive overall tone. In fact, constitutions of many countries incorporate international treaties into the national legislation. But, however, binding, these commitments are still not met.

This problem needs to be addressed! If the international human rights treaties are legally binding, countries should face real legal consequences if they fail to observe these treaties. Or we all should just agree that international legal human rights obligations are simply optional, which will then make it pointless to have any debate on political or moral human rights commitments.

Given the human rights nihilism of many authoritarian governments, it makes little sense to focus on specific deficiencies in the national legislation that does not conform to international standards.

There is usually a lot of focus on repressive legal provisions adopted by a specific state. The discussion is especially heated when it comes to provisions that affect freedom of expression, freedom of religion, freedom of assembly or movement, protection of privacy and many other laws that fell victim to the war on terror, extremism, radicalism and to the 'fight for stability'.

But this debate really only focuses on the details, while we need to start looking at a bigger picture. We need to start by pointing out that many governments build their entire legal framework, including their constitutions, on perverse and distorted concepts.

Legislation of many post-Soviet states is a case in point, as it clearly favors government's interests over citizens' rights and freedoms. Essential human rights principles say that for citizens 'everything which is not forbidden is allowed' while for the government 'everything which is not allowed is forbidden'. But authoritarian states manage to turn these principles upside down both in law and it practice. Ordinary citizens have to prove that they have rights while authorities can take any action in violation of citizens' rights unless this action is directly prohibited by the law.

I do not see any sense in trying to improve legislation that is built on flawed foundation. Either the government acknowledges that laws are there to protect human rights and starts a legal reform, or else any attempted improvement is simply about building Potemkin villages and painting the facades of shabby buildings.

The same is true of the institutions. We can no longer pretend that single-party parliaments, or security forces engaged in total control of citizens, or law-enforcement concerned with protecting the ruling elite, are all just a normal occurrence.

Authoritarian system with flawed legislation has no independent judiciary, no checks and balances and no rule of law. They cannot provide for conditions favorable for human rights.

I do realize that majority of answers to my questions directly depend on the politics and political developments in different states. It is very difficult to change the course of these developments, especially in view of the serious global challenges.

But I do believe that we need to continue resisting and trying to prevent the authoritarian governments from blurring concepts, eroding ideas and undermining principles that humanity fought so hard to establish.

FIGHT FOR TRUTH, FREEDOM AND JUSTICE

The essential values of TRUTH, FREEDOM and JUSTICE should be promoted, supported and guaranteed for all of us, independently of our residence, race, gender, age or other factors.

TRUTH is a fundamental value shared by all of us and is based on our right to receive and disseminate any information, except for the calls to violence and direct insult to morals. This is freedom to speak and listen, to write and read, to choose from different views and facts. Truth runs counter to empty rhetoric mixed with lies.

FREEDOM is a fought for right to be free of oppression and coercion, to be protected from violence and abasement of dignity. It means freedom from dictators and single-minded doctrines. It is a freedom to assemble and take part in public life. It is a freedom not just on paper, but in real life.

JUSTICE is a right to fair and unbiased trial. It also concerns fair distribution of wealth and equal access to opportunities. It is the rule of law and equality of all in front of the law.

These truths are well worn, but they can never be worn out. No matter how these truths are abused, battered and ignored, millions people around the world will not stop dreaming of them and reaching out to get them. Independently of race, place of birth or historical realities.

Democracy is a process, not a final destination. All of the above are building blocks for this process. Sometimes I get the feeling that we just have to start all over. But then I think that it is not about a new start, but about keeping going. We need to keep saying that black is black and white is white, that two plus two equals four, that either you have freedom or you don't and there is no middle ground. Keep saying this in simple and clear language and base our actions on our deep conviction in what is right.

I believe there is no other way to take democracy forward.

DEMOCRACIES AND DICTATORSHIPS AND THE HUMAN RIGHTS UNIVERSAL SYSTEM: THE CASES OF ARGENTINA AND CUBA

Brian Schapira

INTRODUCTION

It seems difficult at first to make generalizations about democracies and dictatorships, and in particular about their stance on human rights protection systems. Not all democracies and dictatorships are the same. They each have their unique characteristics and their own approaches to both human rights, internally, and the international protection systems, externally. The same can be said about how they perform when they vote in forums such as the Human Rights Council (HRC) of the United Nations (UN) in discussions about human rights violations in other countries.

On the one hand, democracies may exhibit different degrees of institutional development, quality and strength. In addition, the transfer of power from one political leader to another may result in changes in their internal and diplomatic behavior. There are many historical, political, geopolitical, economic, social and cultural elements that shape them.

Dictatorships and autocracies are influenced by several factors. They each have their own characteristics and levels of intensity and seriousness when it comes to human rights abuses.

All countries, even the strongest democracies may engage in some sort of human rights abuse. Not all democracies show the same quality and the same level of respect for human rights. They can all be improved, whether they are mature, robust and advanced or young and developing. However, the question is how these democracies position themselves in relation to international human rights protection systems and how dictatorships and authoritarian regimes react to them.

While the former tend to collaborate with, and embrace, the agencies and mechanisms of international protection systems, accepting their recommendations –many times despite considerable conflict and disagreement– the latter generally hide behind a certain rhetoric that may range from a false commitment to an open confrontation and accusation when faced with criticism or opposition.

That is why generalizations are so dangerous and do not necessarily lead to positive outcomes. However, this chapter is intended to analyze the cases of Argentina and Cuba and share some reflections that may be useful to understand how dictatorships like Cuba and democracies like Argentina react to international human rights protection systems and perhaps draw a general valid conclusion.

It should also be mentioned that the issue discussed in this article will be approached from different angles. In the case of Cuba, these reflections will be based on two research projects conducted by CADAL, which analyze Cuba's commitment –or lack of commitment, actually– to the universal human rights system

when confronted with criticism or accusations[1], and its behavior when it votes at the HRC meetings on cases of serious violations in other countries[2]. In the case of Argentina, these reflections will be based on the author's experience as a member of the Cambiemos administration from 2015 to 2019, when he was in charge of the relationship with international human rights organizations, the application of human rights policies and the management of internal conflicts concerning this matter. In this case, the author will present his view on what the attitude of a democratic country with a long tradition of responsible collaboration with these systems should be, especially considering the circumstances surrounding the human rights question in Argentina and who its main actors are.

THE CASE OF CUBA

Despite having been a dictatorship for more than 60 years, the oldest in our region, Cuba has always considered being a member of the HRC to be a priority in its foreign policy. When the council was created in 2006, Cuba became a member and continued to be so for four periods –twelve years–, the maximum number permitted by the council's rules, that is, three years per period, plus a re-election for other three years. Then, it left the council for

1 Brian Schapira and Roxana Perel, *Cuba's Lack of Commitment to the Universal Human Rights System,* Center for Latin American Openness and Development (CADAL), June 8 2020, https://www.cadal.org/publicaciones/informes/?id=12867.

2 Brian Schapira and Roxana Perel, *Cuba's Voting Behavior during its 12 years as a Member of the UN's Human Rights Council,* Center for Latin American Openness and Development (CADAL), September 2 2020, https://www.cadal.org/publicaciones/informes/?id=13124.

one year and returned afterward. The country has recently been selected by the UN General Assembly to be part of the entity in the 2021-2023 period.

Evidently, Cuba wants to be part of the HRC to be able to legitimize their policy of systematically restricting human rights. Being a member of the council contributes to the government's internal propaganda and to cover up their behavior. It also helps influence the council's decisions concerning the composition of the special procedures and its handling of human rights violations across the globe.

But the truth is that there has been a lot and severe criticism from different actors of the international protection system about Cuba's internal situation and its partial openness to human rights mechanisms[3].

The country is questioned for not adhering to the terms of the core international human rights treaties, particularly for not ratifying the two most relevant human rights instruments (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) that Cuba signed in 2008. It is also encouraged to adhere to other similar treaties, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention on the

3 For more information about these objections, see Brian Schapira and Roxana Perel's book Cuba's Lack of Commitment to the Universal Human Rights System, op. cit.

Elimination of All Forms of Discrimination against Women; the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; the 1951 Refugee Convention and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; the 1961 Convention on the Reduction of Statelessness and the Rome Statute of the International Criminal Court.

When faced with this criticism, Cuba avoids explaining the reasons for its lack of commitment and gives dubious excuses like the ratification procedures are still being evaluated (they have said this for 13 years) and it is necessary to amend the local legislation and political system. It is especially relevant that Cuba is the only country in Latin America that has still not ratified the International Covenant on Civil and Political Rights that it signed in 2008. Additionally, at a regional level, Cuba has not signed the American Convention on Human Rights either.

Cuba is also one of the few countries in the world that has not extended a «standing invitation» to the United Nations special procedures, while 124 other states already have. This did not prevent the country from receiving human rights experts, over the past decade Cuba has only permitted two of them, and since 2015 it has not even responded to thirteen requests for visit by these experts.

When we analyze the pattern of Cuba's response to the special procedures' communications, we first realize that the country does not even bother to answer all of them. And when it does, it keeps repeating the same phrases, using arguments that are like slogans and offering no evidence of any kind, and worst of all, it

attacks and tries to discredit both the independent experts and the victims. The Cuban government repeats the same arguments that the UN experts are used to promote fake campaigns designed by the government of the United States, that the directives of the HRC are misinterpreted or that they are used to channel and make false allegations to ruin the reputation of the Cuban people. With respect to the victims, Cuba usually claims that their behavior is morally or socially unacceptable, and that this justifies penalizing them; that they usually have links with the Cuban counterrevolutionaries financed by other countries; that they are trying to make antisocial people look like human rights defenders; and that they have links with anti-Cuban terrorists or that they are usually part of an agenda funded by the US government[4].

All this behavior is in open contradiction to its false claims of cooperation with the system, which seems even rude if one reads the documents where Cuba presents candidates for the Human Rights Council, assuming its voluntary commitments.

In these documents, the Cuban government boasts about their policies and practices, some of which are even being questioned by the system, for example, those relating to cultural rights –the regime is being observed for persecuting artists– or those relating to the country's medical missions abroad –seriously questioned by a number of Rapporteurs who consider them a form of «forced labor», labor exploitation and a serious limitation to the doctors' rights[5].

4 Ibid., pages 17-22.

5 Ibid., page 10.

As regards Cuba's behavior toward the treaty bodies to which it is a party, the country has consistently failed to submit reports on time. The remarks and observations made by these committees are varied and grave, especially regarding civil and political rights, judicial independence, discrimination on the grounds of gender equality, communities of African descent and LGBTI organizations, among others[6].

Concerning the Universal Periodic Reviews (UPR) of the HRC, Cuba has frequently rejected the recommendations of other countries. In the last review (3rd period), Cuba received 339 recommendations. 226 of them (66%) were accepted, 30 were rejected and the other 83 were taken note of. In the previous period, Cuba had accepted 78% of these recommendations[7].

It is interesting to see how Cuba tends to accept recommendations from countries with which it has a good relationship and to reject recommendations from others.

When serious situations of human rights violations in other countries are discussed at the HRC, Cuba always maintains an alignment with authoritarian regimes.

Of the 205 resolutions adopted in connection with problematic human rights situations in different countries or territories during the twelve years that Cuba was a member of the HRC, the country has voted as follows: a) against their approval, 74 times; b) for their approval, 66 times (62 of which correspond to situations taking place in Palestine and Golan and 4 in Darfur, Congo, Honduras

6 Ibid., pages 31-49.

7 Ibid., pages 50-56.

and Burundi); and c) on 65 occasions, resolutions were passed without registered vote.

These 74 negative votes meant opposing HRC measures taken against serious human rights abuses, such as appointing Special Rapporteurs, designating commissions of inquiry, requesting the Office of the United Nations High Commissioner for Human Rights (OHCHR) to take action, or condemning certain situations of abuse, among others.

In addition, Cuba voted against condemning or taking action to deal with serious situations in countries with varied contexts such as North Korea, Sudan, Iran, Belarus, Myanmar, Sri Lanka, Ukraine, Georgia, Venezuela, Burundi, Yemen, Nicaragua, Eritrea and the Philippines[8].

At the same time, we can say that the countries that voted in line with Cuba's position in these cases are, in general, undemocratic regimes[9].

As a first general conclusion about a dictatorial government like Cuba, it may be affirmed that the country's approach to the different actors and mechanisms of the universal human rights system is to be on the defensive and counterattack whenever their practices are questioned. The country's commitment to the system is merely declamatory, since it is not even a party to all major human rights treaties, it does not accept any special procedures, it boasts about and claims a commitment that it has not kept and it even supports ideas for which it is being questioned. As regards

8 Ibid., page 7.

9 Ibid., page 27.

its diplomatic commitment to protecting human rights in other countries, Cuba's attitude has been one of total complicity and connivance toward authoritarian regimes and systematic human rights abuses.

However, this behavior is combined with a consistent policy of securing a seat at the HRC, which by the way has been successful. Probably, as it was previously mentioned, with the intention of legitimizing the country's disrespectful human rights practices.

THE CASE OF ARGENTINA

As regards Argentina, the country is a party to all human rights treaties with treaty-based bodies and to their additional protocols. The Argentine constitution has granted treaties constitutional status and the country has a standing invitation to the special procedures of the HRC.

Since democracy was restored in 1983, we can say that even with subtle differences and despite some back and forth (conditioned by certain circumstances) in certain periods, both the Argentine society, or most of it, and the Argentine political leaders, have been convinced that democracy and human rights are values acknowledged by all. Even despite certain specific situations where, by force of circumstances –like with the Due Obedience and Period laws during the Alfonsin administration– and sometimes due to political decisions –like with the pardon granted by president Menem to leaders of armed forces and guerrillas–, there has been progress and steps backwards in the trials for crimes against humanity committed during the dictatorship of 1976-1983.

Broadly speaking and with some differences, Argentina has shown respect, appreciation and support for the human rights protection international systems and has committed to pointing out violations elsewhere in the world.

In particular, regarding the Cambiemos administration (2015-2019), it should be mentioned first that there was a commitment to complying with human rights treaties and also to placing great importance on the country's relationship with international and universal protection systems. This commitment was also part of a decision to reposition Argentina back into the world among the strongest Western democracies, in marked contrast to the previous international alignment of the populist Kirchner administrations (2003/2015), characterized by their poor institutional quality and their ambiguity in their position on the «Bolivarian Axis» led by Chavez in Venezuela. It should be mentioned, however, that the Kirchner administration's decision to reopen and advance in the trials for crimes against humanity was, in general, very positive despite certain objections to the judiciary relating to a number of specific issues, mainly long preventive detentions and keeping elderly people in prison, many of whom were denied the benefit of being placed under house arrest. The Kirchner administration's political decision to move forward with these trials and allocate plenty of funds to traditional human rights organizations that had been created during the dictatorship years and that have historically played a valuable role in that field, resulted in a complete and open political alignment of these organizations with that government. This later conditioned their position toward the Cambiemos administration, taking the topic of human rights to

a political conflict. This translated into a deliberate decision to, from day one, try to stigmatize the Cambiemos administration as a right-wing reactionary government, which was not true at all. Cambiemos is a coalition of democratic and republican parties with different centrist ideas, which includes for example, the «Unión Cívica Radical», for whom the human rights issue has been a key topic and whose role in the restoration of democracy and the trials of armed forces and guerrilla leaders was key.

Trying to show the Cambiemos administration as a government that is against human rights resulted in continuous unfounded attacks like, for example, demonstrations with slogans such as «Macri, bastard, you represent dictatorship».

However, the Cambiemos policy on this subject was to continue the trials about crimes against humanity, where the Department of Human Rights carried on with its role as the plaintiff in hundreds of cases, keeping the same professional teams. It even added new criminal complaints, as that of General Cesar Milani, Commander-in-Chief of the Argentine Armed Forces during the Kirchner administration, and a request to become the plaintiff in the case of Julio Lopez disappearance (a witness in trials over crimes against humanity) which took place during the same administration.

In addition, there was a firm decision to promote human rights policies in new issues that have acquired more relevance, which was reflected mainly in the implementation of the First Human Rights National Plan.

In this context, the government's approach to international protection organizations was one of openness, dialogue and compliance.

In a responsible attitude, the government assumed that the international protection systems' main role is to identify breaches of human rights obligations by the states. And, without prejudice to any positive comments that they may make about certain policies, it is not their role to praise governments. And that's how it should be. This means that there are times when the relationship with these systems is difficult and tense. But while a government may not agree on certain finger-pointing or consider them unfair or not in accordance with reality, a democracy should always be open to have a conversation, discuss disagreements, exchange ideas and show their truth in a constructive manner.

In the context referred to above of human rights traditional organizations decidedly confronting the Cambiemos administration, the international protection systems were used many times arbitrarily and/or exaggeratedly to stigmatize the government as one that did not support human rights. This was seen on several occasions, and particularly in controversial cases that were widely reported in the media, such as the cases of Milagro Sala and Santiago Maldonado. Without prejudice to the legitimate role of civil society organizations, and even to situations that may be arguable, these and other similar cases were used with extreme exaggeration and dishonestly. Precisely, from the beginning and with no evidence at all or even with false statements, the intention was to establish the idea that Maldonado had suffered an «enforced disappearance» by gendarmerie officers and that

this was part of a plan coming from the highest circles of the Ministry of Security. The purpose of establishing this idea was to self-fulfil the prophecy that the Cambiemos administration was a «dictatorship». Nothing could be further from the truth (I assume that the facts of the case are known so I will not elaborate further on this) since the absolutely tragic and sad situation experienced by Maldonado was finally proved not to be an enforced disappearance[10].

In these cases, and also in other controversial situations, the government's attitude was always of openness and dialogue with these civil society organizations (to the extent they accepted it) and, in particular, the international protection systems. During the Maldonado crisis, there was a continuous interaction and communication with the Inter-American Commission on Human Rights (IACHR) and the United Nations' Committee on Enforced Disappearances (CED), until Maldonado's body finally appeared with no signs of aggression11, which caused the precatory measure (before the IACHR) and the urgent action (before the CED) to be both finalized.

The same open dialogue approach was adopted in the Milagro Sala case (her pretrial detention as part of numerous criminal procedures), where the government itself encouraged inviting the IACHR and the UN Working Group on Arbitrary Detention –while

10 An interesting analysis of this case may be found in *The Maldonado Case*, written by Marcos Novaro, which describes the behavior of these organizations (Edhasa publishing company).

11 This was verified in the legal autopsy, in the presence of numerous experts appointed by the human rights organizations themselves.

procedures before them were in progress– to meet with her and with the authorities of the province of Jujuy. Additionally, once the provisional measure of the Inter-American Court of Human Rights was dictated, the Secretariat of Human Rights started without delay the formal legal proceedings necessary for the relevant court to order compliance with the provisional measure, which materialized in the Supreme Court's ordering a house arrest.

The same approach of openness, dialogue and exchange of ideas (sometimes coinciding with the systems and sometimes not) was used when other policies were questioned, which resulted in thematic hearings of the IACHR or interactive dialogues with UN treaty bodies.

This openness was also seen in the large number of visits of Special Procedures that were accepted during the four years of the Cambiemos administration, an average of two annual visits (eight in total), something that had never happened before, while during the twelve years of the Kirchner administration, 2003 to 2015, only six visits were received. In addition, between 2015 and 2019, the Inter-American Court of Human Rights and the IACHR held sessions in our country.

The Special Procedures that visited Argentina during those years were: Special Rapporteur on racism; Independent Expert on protection against violence and discrimination on the basis of sexual orientation and gender identity; Special Rapporteur on Violence against women, its causes and consequences; Working Group on arbitrary detention; Special Rapporteur on the right to food; Special Rapporteur on the right to privacy and Working Group on People of African Descent.

In all these cases, several meetings were held with all the areas and officers of the government required by them. When it was necessary, complete and free access to detention centers and neuropsychiatric hospitals was guaranteed and visits with provincial governments were coordinated. All this meant the recognition of the experts and, of course sometimes facing and accepting criticism for situations that were actually questionable and needed to be resolved.

In the last Universal Periodic Review (UPR), which was conducted in 2017, Argentina accepted 175 out of 188 recommendations (93%) and took note of the others.

Returning to the Cambiemos administration's human rights internal policies, integrated promotion policies that included all government departments were adopted and resulted in the implementation of the First National Human Rights Action Plan and Mid-term Report.

The first stage of the SIMORE system (Recommendation Monitoring System), was also launched, although it could not be completed because the administration's term came to an end. This system, available on the internet, would include all the recommendations of the UN mechanisms (treaty bodies, special procedures and UPRs). The relevant government areas –within a centralized system managed by the human rights department where each area would have someone officially in charge– would apply policies designed to comply with the UN's recommendations and enter any progress made into the system. The implementation of this system had also been planned at a national level through

the Human Rights Federal Council, where all provinces are represented.

Regarding human rights violations elsewhere in the world, in general terms, since the restoration of democracy, Argentina's stance has been one of commitment. However, it should be noted that the previous Kirchnerist administration decided to align with the Chavist government, not criticize the Venezuelan situation when it strongly deteriorated and, of course, not criticize situations in Cuba but instead express admiration for the Fidel Castro regime. In addition, the present Fernandez administration's ambiguity regarding serious violations committed by Nicolas Maduro in Venezuela is a really worrying situation. The Argentine OAS Ambassador in October 2020 practically defended or justified the Venezuelan regime, which contradicts the government's stance weeks later at a meeting of the UN's HRC, when the council discussed the extension of the mandate of a Fact-Finding Mission and Argentina voted for the resolution. This contradiction was also seen in the government's decision to leave the Lima Group, which was announced on March 24th 2021 (paradoxically the Truth and Justice Remembrance Day recalling the coups d'état of 1976) which means a stronger alignment with the Venezuelan dictatorship.

Contrarily, during the Cambiemos administration, the situation in Venezuela was denounced in all of the major forums. The government's commitment to human rights and democratic solidarity was also reflected in the depositions that were taken from approximately 40 exiled Venezuelans living in Argentina on human rights violations suffered in their country. The task

was carried out according to the protocols and guarantees established by the International Criminal Court, and once finished a Report was submitted to the International Criminal Court, to be included in the investigation that is currently being conducted about Venezuela.

The said administration has also been consistent regarding the situation in Nicaragua and made a valuable contribution during the UPR of China in November 2018.

As to the country's stance on Cuba, unfortunately we cannot say the same. We can take as an example the indulgent Argentine intervention in the last UPR of Cuba in May 2018.

CONCLUSION

As a general conclusion, and having already pointed out that it is difficult to arrive at anything conclusive by analyzing only two cases –and also from different perspectives–, we can however affirm that from dictatorships we can only expect an evasive, reluctant, misleading, hypocritical and hostile attitude toward international protection systems. Additionally, their overplayed membership to organizations such as the HRC derives from the need to hide their own failures, using it for internal propaganda and to influence its decisions in order to limit and weaken its actions. We cannot expect from them any true commitment aimed at strengthening international protection systems. In fact, the reverse is true. The same as to their commitment to denouncing serious situations in other countries.

On the other hand, while democracies are certainly not exempt from experiencing isolated cases of human rights violation, they are expected to adopt an open and collaborative approach when faced with observations or denunciations. That is the purpose of the international protection systems: making remarks and criticisms. And while for different reasons the relationship with these systems is not always free of conflict, disagreement or differences, democracies should always aim to adopt an approach of open and constructive dialogue, even when they have conceptual or factual differences regarding the disputed facts. But it is essential that a democracy maintains this relationship on the basis of commitment and good faith, knowing that it will be criticized but also that this criticism will benefit and strengthen the international protection system and its own democracy. They also need to irrevocably undertake to comply with all binding decisions, such as the decisions of treaty bodies on individual communications and the decisions of regional courts.

Regarding their behavior toward human rights violations in other countries, democracies are expected to adopt at international forums (and particularly if they are members of the HRC) a diplomatic policy that is committed to the protection the protection of human rights. Unfortunately, this is not always the case.

Realistically, we must admit that the topic of human rights is just one among numerous others in the field of international relations (and not precisely the most relevant) in a complex context of geopolitical, strategical and economic interests. All states, and even the world's strongest democracies, take decisions based on

these interests rather than on values. However, some pressure is necessary in order for human rights to be considered as relevant as possible. It is desirable, and should even be required, that a democratic country should be truly committed to human rights so that human rights are taken into consideration when they take decisions in connection with authoritarian governments and they report them to bodies such as the HRC and in any other relevant forum.

On the contrary, dictatorships and autocracies clearly tend to act with concealment and i complicity with other regimes that also violate basic rights.

Finally, it should be mentioned that the UN's General Assembly Resolution 60/251 should be amended to include a requirement that any country wishing to be a member of the HRC should also be a party to the nine major human rights treaties (those which establish «treaty bodies») and their additional protocols, accepting their individual communication procedures, and maintain a «standing invitation» status to the HRC's special procedures (in addition to other possible amendments to make the election of the HRC's members more transparent and public). In that scenario, Argentina would be eligible to join the HRC, while Cuba would not.

THE LIMITS OF HUMAN RIGHTS FOREIGN POLICY AND THE IMPORTANCE OF INTERNATIONAL DEMOCRATIC SOLIDARITY

Gabriel C. Salvia

INTRODUCTION

The adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations on December 10th 1948 established a clear limit on the principles of sovereignty and non-intervention in the domestic affairs of States, especially in its articles 2, 28 and 30.

Article 2 reads:

> «Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.»[1]

1 UN General Assembly, *Universal Declaration of Human Rights,* A/RES/217(III), December 10th 1948.

Article 28 in turn provides as follows: «Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.»[2]. And, finally, article 30 specifies that: «Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.»[3]

Regarding the supremacy of human rights over state sovereignty, Václav Havel has pointed out that:

> «I am not against the institution of the State as such. I am talking about the real existence of something that is more valuable than the State. That something is humanity. The State serves the people, not the other way round. If someone serves their State, they should do so only as necessary for the state to provide a good service for all its citizens. Human rights are above state rights. In the international law, the provisions that protect human beings should take precedence over the provisions that protect the State.»[4]

Along the same lines, the then president of the Federal Republic of Germany, Joachim Gauck, stated that «transcending borders is necessary to impose human rights in the way intended by the international community: with universal validity, without

2 Ibid.

3 Ibid.

4 Václav Havel, *A Limited Sovereignty,* La Nación newspaper, March 9th 2000, http://www.lanacion.com.ar/8336-una-soberania-limitada.

limitations and conditions and for all human beings, simply because they are human beings»[5].

While many democratic countries declare officially, through their foreign offices' websites, that promoting and defending human rights is one of the main goals of their foreign policy, in practice it is a merely declarative and, in some cases, demagogic statement.

It is then civil society the one in charge of leading the international defense of human rights, denouncing governments with state policies that criminalize fundamental freedoms and pressing democratic countries to speak up and demand change. In this regard, together with prestigious international human rights organizations founded in Europe and the United States, the civil society that has emerged over the last decades in countries that have lived under a dictatorship and authoritarian governments in general has the authority and moral obligation to become, from other regions in the world, the voice of those who have no voice and speak out for others who cannot do so for themselves.

Human rights activists that experienced the military dictatorships of the Southern Cone, South Africa and the communist regimes of Central and Eastern Europe recognize that the democratic solidarity received from other countries during the periods of repression and political persecution was as a key source of moral support. Also the committed support of leaders from democratic countries and international organizations was crucial as they

5 *Human Beings for Human Rights,* 2014, Department of State, Federal Republic of Germany.

denounced human rights violations and absence of freedom in countries governed by dictatorial regimes. Argentina, Chile and Uruguay are an example of this, which now would put their governments in a position to take on a regional and international leadership role in the promotion and protection of human rights.

International democratic solidarity, in its role as moral support for those who live in countries ruled by dictatorships and pressure for their illegitimate authorities, is a critical element to promote respect for fundamental rights in these places, and it becomes even more important since in practice democracies have no specific state policy regarding this matter.

HUMAN RIGHTS IN FOREIGN POLICY

Foreign policy is defined as «any activity carried out by a State in its dealings with other nations, conducted or implemented through regular or traditional diplomatic channels (i.e. foreign affairs agencies or departments) or other official means»[6].

The inclusion of human rights in a country's foreign policy has an impact on how the country explains its internal situation and votes at meetings of intergovernmental organizations (IGO); on its involvement in the Universal Periodic Review (UPR) of other States at the Human Rights Council (HRC) of the United Nations (UN); on the inclusion of topics on the global agenda; and on the activism to defend democracy and fundamental freedoms.

6 Anaya Muñoz, Alejandro, *Human Rights in and from International Relations* (CIDE, 2014).

The explanation of a country's internal situation before IGOs includes all members of the UN, and also regional organizations such as, for example, the Organization of American States (OAS) and the European Union (EU).

On the other hand, since the UN's HRC was created in 2006, all member states are required to go through a Universal Periodic Review (UPR), which includes a country report by the Office of the United Nations High Commissioner for Human Rights. Every country submits its own report and during an interactive meeting, they receive feedback, recommendations and observations from other member states.

In addition, if a country is a member of the HRC or other IGO where situations involving human rights in other countries are voted on, the country's position (for, against, abstention or absence) will be part of their human rights foreign policy, and the same will happen if they participate with observations or recommendations in the UPRs of other countries.

In other words, regardless of their political regime –from the most vigorous democracies to the most closed dictatorships– all States are required to go through the UPR process and participate in the evaluation of other countries through the same procedure, as well as to vote on resolutions of the HRC regarding situations in specific countries or other issues. Consequently, even if they do not want to, human rights become part of their foreign policy.

Now, any action undertaken in connection with the political and human rights situation of other countries means intervening in their domestic affairs and expressing an opinion on that matter. However, almost all countries that include human rights in their

foreign policy contradict themselves when they add the principle of non-intervention in the internal affairs of other nations. When a country expresses an opinion about the human rights situation in another country, it is necessarily intervening in its domestic politics. This type of intervention is defined by the jurist Martin Farrell as weak: «…it is limited to criticizing the internal politics of a foreign State and advising that State to help it improve their politics». According to Farrell: «A weak intervention hardly requires any justification»[7]. Other interventions involve economic sanctions and, the most extreme of them is military intervention, which is associated with the right to protect[8].

Some democratic countries have chosen a specific topic as a State policy to include in the global agenda, but they have not been able to adopt a foreign policy that actively defends democracy and fundamental freedoms and is aimed at supporting human rights activists in other countries. This would imply taking article 27 of the UDHR on democracy as a guide:

> «A democracy should support democratic principles in international relations. In that respect, democracies must refrain from undemocratic conduct, express solidarity with democratic governments and non-State actors like non-governmental organizations that work for democracy and human rights, and extend solidarity to those who are victims of human rights violations at the hands of undemocratic regimes»[9].

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7 Martín D. Farrell, *Ethics in Domestic and International Relations,* Barcelona, GEDISA, 2003, page 258.

8 See also the essay written by Julio Montero, in this same volume.

9 World Inter-Parliamentary Union, *Universal Declaration on Democracy,* adopted in El Cairo, on September 16th 1997, http://archive.ipu.org/cnl-e/161-dem.htm.

A foreign policy active in human rights requires a committed diplomacy –that is, public servants that are instructed to provide recognition, support and protection to human rights activists in countries governed by dictatorships. The Swedish diplomat Harald Edelstam, who was considered a hero during the beginning of the military dictatorship of Augusto Pinochet in Chile, pointed out that «modern diplomats should not only go to parties and meet upper-class people. They should have contact with regular people, labor unions, the opposition, when there is a regime against the people. And they should be brave and get involved in social issues. I believe this is very important for diplomats nowadays. I believe it is worth the cost»[10].

Another hero during the military dictatorships of Chine and Argentina, the Italian diplomat Enrico Calamai, said: «I was able to verify the real possibilities of humanitarian intervention offered by the privileges and immunity granted by international law. I imagine a diplomatic corps that uses them based on the values of civil society». And he added: «Diplomatic intelligence should find a way to come between the brutality of the State and its victims; the State, only worried about suppressing any opposition to the government's policies, and the victims, looking for any open door for their physical survival»[11].

However, what abounds in any diplomacy that performs functions in countries ruled by dictatorships –as was the case in Argentina– is indifference. According to Calamai, «the temptation to act as if nothing happened is strong (…). There is a way to

10 *The Black Carnation*, a movie directed by Ulf Hultberg (Sweden, 2007).

11 Enrico Calamai, *State Reason: Politically Persecuted Argentines without Refuge*, Buenos Aires Tuscan Cultural Association, 2007, page 100.

stop feeling guilty: do something. Share my privileges with those wandering around the city crying for help». And he concludes: «There is an instinctive strength that pushes a normal man to help someone in danger (…). In my opinion, the other people are not normal; they do not see or they pretend they do not see, or what is even worse, they do not do anything although they see»[12].

In short, when a democratic country speaks about the national interest, it cannot exclude from that interest the international defense of human dignity. This implies adopting what is now known as «the principle of non-indifference» in foreign policy, the original definition of which may be attributed to the former president of the United States, Jimmy Carter, who at the beginning of his administration in a speech at the University of Notre Dame, said: «Because we are free, we can never be indifferent to the fate of freedom elsewhere.»[13].

REQUIREMENTS, LIMITATIONS AND ALTERNATIVES FOR A HUMAN RIGHTS FOREIGN POLICY

The first requirement is to respect human rights in one's own country, that is, to have moral authority to be able to give an opinion about the situation in other countries. Therefore, a human rights foreign policy would be limited to countries with high standards of internal respect for civil and political freedoms. And even if these countries experience cases of human rights violations, such as police brutality, the important thing is to expose

12 Cited in ibid., pages 130 and 203.

13 Samuel Moyn, *The Last Utopia: Human Rights in History*, Bogota, Pontifical Xavierian University, 2015, page 180.

them and prevent them from going unpunished. Quite a different thing is the case of defective democracies with a long history of murdering journalists and human rights activists —that is, serious situations that prevent them from having the leadership necessary to condemn situations in other countries. However, their commitment to the universal human rights system and the establishment of standing and open invitations to the United Nations' special procedures enable also these defective democracies to express an opinion on serious situations in other countries.

Therefore, while human rights foreign policies are from this point of view limited to democracies, democracies have certain disadvantages when compared to dictatorships, and it is important that the former condemn and «shame» the latter. In democratic countries, the government's priority lies in domestic issues, since political leaders need to respond to their citizens' demands in general and those of their voters who have elected them. In addition, in a democracy, different governments hold office as a result of competitive elections and new authorities may mean both a change in the country's foreign policy and a change in government officials, which may affect its international commitment to defending human rights. Conversely, dictatorships remain in power indefinitely and they attach great importance to obtaining international legitimization in order to secure their internal repression. An example of this is the relevance that countries like China and Cuba place upon being part of the United Nations' HRC[14].

14 Gabriel C. Salvia, *The Council's Chairs. Authoritarianism and Democracy and the Evolution of the UN Human Rights Division,* Center for Latin American Openness and Development (CADAL) and Konrad Adenauer Stiftung, 2020, https://www.cadal.org/informes/pdf/Las-sillas-del-Consejo.pdf.

The second requirement for a foreign policy focused on human rights is its general application, which means not having «double standards». This almost never happens in any country in the world. The «national interest» associated with economic factors is given greater priority, which means that countries care more about exporting products and attracting foreign investment, forming geopolitical alliances and any other issues that may be relevant to obtaining international support. Many democratic countries exchange favors with dictatorial governments. China is the most obvious example, though not the only one, where the economic interest prevails over the international commitment to defending human rights. We should take into account, also, that the most powerful dictatorial government on earth takes retaliation measures such as ceasing to buy certain products, to offer loans and to make investments. The point is that, for instance, it seems contradictory to actively denounce the Venezuelan dictatorship and at the same time have ties with China, ignoring the human rights situation there, as if in both cases we were not talking about people and –besides– allied countries.

Consequently, democratic countries need to find alternatives to their international commitment to defending human rights if they really consider it a top priority of their foreign policy. One option is to determine where to do this from. Is it compatible that the ministries of Foreign Affairs encourage trade with a country and at the same time denounce that country for human rights violations or receive its political opponents? Is it necessary to create human rights agencies within a country's Foreign Office so as to stress their importance in its foreign policy? Or would it be more convenient that the country's National Human Rights

Institution had an agency especially created for the purpose of promoting human rights and democratic solidarity worldwide? In this last case, the dictatorships' embassies would not be precisely interested in having relations with an agency that they don't have in their own countries and democracies would be able to address their goals through two different government areas.

Another option is a human rights diplomacy by the Parliament, as the latter is an independent branch of government, which a dictatorship does not have either. For instance, the national legislators may submit projects condemning human rights violations in dictatorial regimes and demand statements from their respective governments at intergovernmental organizations; denounce election processes that are not free, fair and transparent in autocratic regimes; acknowledge the activities and initiatives of democratic activists in danger; and become a hub for political dissidents from that country.

There is also the interesting example of Germany's Commissioner for Human Rights Policy and Humanitarian Assistance, created in November 1998, that operates under the direction of the Ministry of Foreign Affairs. Its creation was based on the following principle:

> «Protecting human rights and promoting universal respect for them is a cornerstone of German foreign policy. In the international arena, the German government's efforts are aimed not only at creating an international institutional and political framework for the protection of human rights but also –and most importantly– at protecting victims and potential victims of human rights abuses.

In practice, this means that protecting human rights is a task which involves all areas of our foreign policy»[15].

Therefore, the Commissioner works closely with many other institutions that are actively involved in human rights and humanitarian aid initiatives, including other ministries, the Parliament, parliamentary groups, subnational governments, the Humanitarian Aid Coordinating Committee, political and private foundations, and national and international non-governmental organizations[16].

REMEMBRANCE AS THE BASIS FOR A FOREIGN POLICY ACTIVE IN HUMAN RIGHTS AND INTERNATIONAL DEMOCRATIC SOLIDARITY: THE ARGENTINE CASE

During the last military dictatorship in Argentina, it was very important to see signs of international democratic solidarity, mainly from the Jimmy Carter administration in the United States, the role of a number of foreign diplomats in Buenos Aires, the support to local human rights organizations and even the Nobel Peace Prize awarded to Adolfo Pérez Esquivel.

Samuel Moyn considers the 1970s as a crucial decade for human rights because of how the situation in the military dictatorships of Latin America was addressed, as well as in the countries of the socialist bloc in Central and Eastern Europe, and in the Soviet Union itself[17].

15 https://www.auswaertiges-amt.de/en/aamt/koordinatoren/mr-koordinatorin/uebersicht/228992.

16 Ibidem.

17 Samuel Moyn, *op. cit.*

In Argentina, the Jimmy Carter administration played a key role in denouncing violations of fundamental rights, particularly the Secretary of State for Human Rights, Pat Derian, and Allen «Tex» Harris, the American diplomat appointed for the US Embassy in Buenos Aires. In addition to addressing reports on disappearances at the embassy and joining the Mothers of the Mayo Square demonstration outside the national government office, the Pink House, Harris managed to get a loan for the Argentine Army in exchange for accepting a visit of the Inter-American Commission on Human Rights (IACHR). The visit, which took place in September 1979, was a turning point in the Argentine military dictatorship[18]. When he passed away in February 2020, the Argentine Foreign Office issued the following statement:

> «Tex Harris was foreign-service officer in Argentina from 1977 to 1979, a period during which he opened the doors of the US Embassy to the relatives of victims of enforced disappearance and tried to help them find their loved ones. During this period, he filed 13,500 complaints about human rights violations and exposed to the world what was going on in our country, through detailed reports prepared based on a collection of testimonies. He was decorated for his outstanding service by the Nestor Kirchner administration, receiving a medal of the San Martín Liberator Order in 2004»[19].

18 Roberto Álvarez, *40 Years of the Inter-American Commission on Human Rights (IACHR) Visit in Argentina (CIDH), Documents,* Year XVII, Number 79, September 24th 2019, https://www.cadal.org/documentos/Documento_PD_79.pdf.

19 Argentine Ministry of Foreign Affairs, *Former Diplomat Tex Harris'Death,* Press Release Number: 040/20, February 24th 2020, https://www.cancilleria.gob.ar/es/actualidad/noticias/fallecimiento-del-ex-diplomatico-tex-harris.

In addition to Harris, Italy's consul Enrico Calamai and Canada's ambassador, Dwight Fulford[20], as well as diplomats from France and Sweden, were recognized for their humanitarian work in Argentina during the military dictatorship.

On the other hand, despite the enforced disappearances, the illegal detentions and the acts of torture, during the Argentine military dictatorship, several human rights organizations were able to operate legally –with legal personality– and receive foreign aid. For example, the Permanent Assembly for Human Rights (APDH), founded in 1975, received strong support from the World Council of Churches, which also helped the Mothers of the Mayo Square Association. This association was also assisted by the Women Dutch Association, that helped them buy their first premises. The Center for Legal and Social Studies (CELS), founded in 1979 by Emilio Mignone, a lawyer and father of a victim of enforced disappearance, was assisted by the United States Department of State, the Ford Foundation[21] and the Peace and Justice Service (SERPAJ) of the French Catholic Committee. In 1980, the Director of SERPAJ, Adolfo Pérez Esquivel, was awarded the Nobel Peace Prize, and the funds were used to support the tasks carried out by the organization.

The award of a Nobel Peace Prize to Pérez Esquivel may be considered as an international democratic solidarity action, since he was not such a popular public figure, and the prize helped

20 Robert Cox, *Dwight Fulford: The Unknown Story,* Center for Latin American Openness and Development (CADAL), March 26th 2013, https://www.cadal.org/publicaciones/articulos/?id=6048.

21 Santiago O'Donnell and Mariano Melamed, *Human Rights: The History of CELS. From Mignone to Verbitsky. From Videla to Cristina,* Buenos Aires, Sudamericana, 2015.

expose human rights abuses in Argentina and embarrass the military dictatorial government[22].

With this background, a democratic Argentina has grounds to adopt a foreign policy active in human rights. Something that, however, has not happened yet. And traditional human rights organizations have only intervened to condemn situations which suit their ideological beliefs. For example, they never said a word about the human rights situation in Cuba, which, in addition to being a single-party system that criminalizes civil and political freedoms, was an accomplice of the Argentine military dictatorship[23]. Journalists Santiago O'Donnell and Mariano Melamed have pointed out in this regard that CELS, together with organizations from all around the world with which they have a network, have denounced:

> «… the CIA's acts of torture in secret jails, have condemned the interruption of Efraín Ríos Montt's trial in Guatemala, have sought clarification over the disappearance of forty-three high school students that were victims of criminal organizations composed of drug trafficking groups, the police and civil authorities of Ayotzinapa, Mexico, and they have even warned against the abuses of power by Zimbabwe's dictator Robert Mugabe, who has ruled the country since 1980 and has been consistently condemned in international human rights forums

22 Ceferino Reato, *Final Resolution: Videla's Confession about Victims of Disappearance,* Buenos Aires, Sudamericana, 2012.

23 Gabriel C. Salvia, C., *Closed Memory: The Cuban Revolution's Involvement in the Argentine Military Dictatorship,* Center for Latin American Openness and Development (CADAL), https://www.cadal.org/informes/pdf/Memoria-Cerrada_24-3-2020.pdf.

for corruption and fierce repression. But not a single word was said about Cuba»[24].

As for the Mothers of the Mayo Square, they have always supported and they continue to support the old Latin American dictatorial regime, which shows their political use of human rights[25].

INTERNATIONAL DEMOCRATIC SOLIDARITY FROM CIVIL SOCIETY

If political realism means, in many cases, refusing to speak against human rights abuses in other countries to preserve the government's national interests, then civil society's idealism becomes critical. Unlike democratic governments, which come and go, civil society organizations that manage to build a good reputation continue to exist and symbolize hope for those who live under conditions of slavery in different parts of the world.

However, the promotion of human rights and international democratic solidarity has a recent history in Latin America, like in Eastern Europe. In both regions, those who experienced either military dictatorships or communist governments agree that those who have been victims should help today's victims, reinforcing Carter's principle of non-indifference. That is to say, the fact that they live today in a democratic country and are free, and they have experienced dictatorial regimes in the past and received international solidarity during difficult years, reinforces

24 Santiago O'Donnell and Mariano Melamed, *Human Rights: The History of the CELS…*, page 357.

25 Estela de Carlotto, *Meeting with an Honest Man,* Página/12 newspaper, November 27th 2016: https://www.pagina12.com.ar/5594-mis-encuentros-con-un-hombre-integro.

their moral obligation to help others that are in the same situation today.

Unlike international organizations with longer histories, such as Amnesty International and Human Rights Watch, one based in the UK and the other in the US, both developed democracies, one might question the concern of countries like Argentina about the human rights situation in other nations; nations that are closer, like Venezuela and Cuba, and others that are further away, in places like Africa, Asia, post-soviet Eurasia and the Middle East. In addition to exercising the right to freedom of assembly for a specific social purpose, in this case based on solidarity, defending human rights globally contributes to promoting and valuing those rights locally. For example, transparent and competitive elections, freedom of the press, speech, assembly and peaceful demonstration, and the right to leave a country and return to it freely. It seems obvious in a democracy like ours, but they are rights and freedoms that are nonexistent in nearly one third of the countries in the world, three of which are Latin American: Cuba, Venezuela and Nicaragua.

The fact that other countries that violate human rights but are not dictatorial regimes are not condemned is also controversial. That is the case of Mexico and Colombia, just to mention two cases of gross violation of human rights. Nevertheless, it would be a mistake not to admit that these countries hold elections and change governments, have freedom of the press, speech and protest, legally formed human rights organizations and access to international cooperation. Consequently, international democratic solidarity gives priority to politically closed societies and countries

where the rule of law and democratic institutions are weak, issuing warnings about the danger of becoming dictatorships.

Kathryn Sikkink asks herself:

> «If human rights international law, institutions and movements have been effective, why do so many people believe that human rights violations in the world are getting worse rather than better? Why do so many people believe that there are more violations and acts of torture and repression today? The answer is simple: we think the world is worse off because we care more and know more about human rights than ever before. The human rights movement was successful by drawing our attention to an increasingly wide range of human rights violations around the world. Inadvertently, as reports pile up and are read by the media, this may also convince people that human rights movements are making no progress in stopping these violations»[26].

Nevertheless, regardless of its achievements, the impact, often invisible, of international democratic solidarity activism represents a message of moral support that may be summarized in Václav Havel's words: «I know how important it is for a person to know that there are people out there who are not indifferent to their future»[27].

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26 Kathryn Sikkink, *Evidence for Hope. Human Rights Legitimacy and Effectiveness Going Forward*, City of Mexico, Buenos Aires and Barcelona, Siglo XXI publishing company, 2018.

27 Václav Havel, *Letters to Cuba* (People in Need, 2005).

CUBA: A NEW GLOBAL SAMARITAN?

Manuel Cuesta Morúa

The concept of «global good Samaritan» was introduced by Alison Brysk, who used the term for the first time to refer to the States that have defined and placed human rights at the center of their foreign policy[1].

It is a happy notion. It brings together three essential elements of a good Samaritan: the morality of their actions, the idealism of their purposes and the repression of their own interests in any situation or scenario that might compromise their values. According to Brysk, Norway and Sweden are the most visible examples of an active foreign policy based on values rather than interests. They are the global good Samaritans par excellence.

Will Cuba be able to join this glamorous club of Samaritan States? In my opinion, the country not only can, but it should. The foreign policy of a democratic Cuba should be founded on and imbued with a respect for human rights. They are, on the one hand, the most powerful idea of our time. And on the other, they have been part of our existential identity for more than 30 years in a row, in our attempt to determine both the democratic status

1 Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy*, Oxford University Press, New York, 2009.

of our country and its national identity and security. I will come back to this point –the unequivocal relationship between human rights and national security– later in this article.

The International Human Rights Charter and the International Humanitarian Law are some of the global rules that govern international organizations and constitute, at the same time, the most powerful guarantee of legitimacy for States in the global arena.

Very few governments include human rights in their foreign policy narrative and, among the ones that do, even fewer regard them as a priority in their relationship with other governments. But also very few States want to be considered global outcasts; a category reserved for troublemaker countries in their international relations or for countries that proudly despise human rights.

Despite some regressions and an accumulation of atrocities in this area all over the world, there is international consensus that the admission of States to the United Nations' global hall requires certain moral labels and credentials, which have to do with their commitment to human rights, however small it may be. And this is evidenced, as a negative certification, by the concerted action of autocratic States to get these labels and credentials at any unimaginable cost. Not only to have them, but also to lead the human rights waltz. In this regard, a serious confrontation is brewing between the global powers to determine who the next president of the United Nations' (UN) Human Rights Council (HRC) will be, which reveals the importance of this issue.

As is evident today, the link between human rights and foreign policy is not inherent in States simply because they are

democratic. An article published by CADAL[2] shows that only 15 of the 34 countries in Latin America, Central America and the Caribbean have included human rights specifically in their foreign policy. The others do not even mention them. And only one, Costa Rica, identifies human rights as a priority to determine the strategic degree, level and depth of their international relations. In addition to this, some sort of cloudy diplomacy looms on the hemisphere in light of the business, financial and interventionist pressure of the Chinese regime, one of the worst violators of human rights in the world.

Human rights are incorporated into foreign policy through a label. The appearance that States should behave properly with their citizens force them to adhere to certain written codes of acceptable conduct, regardless of whether or not they observe them or respect them.

But can an image be compatible with reality in the foreign policy of countries that include human rights considerations in their political vision?

From *The Role of Human Rights in the European Union and its Foreign Policy: A Model of Analysis,* the book written by the Basque jurist Koldo Casla Salazar, that I have used as a basic reference for this article, I am going to mention here some important premises that contextualize this idea[3].

2 Jeanne Foucaud, *Human Rights in the Foreign Policy of Latin American Countries,* Observatory of International Relations and Human Rights, CADAL, April 2019.

3 Koldo Casla Salazar, *The Role of Human Rights in the European Union and its Foreign Policy: A Model of Analysis,* International Relations, Number 17, June 2011, pages 13-39.

The most ancient tradition in international relations, recalls Casla Salazar, which is realism (today known as neorealism), tells us that States' relations are based on two realities: power and interests. Moral considerations (human rights) are not just a constructivist illusion of the idealists' desiderative thinking, but also an obstruction to the only intransigent reality that shapes international relations: the insuperable reality of States, their power and their strategic interests. In light of the post-world war order, constrained by an international law with its idea that all sovereign states are equal, neorealism affirms the preeminence of disorder under the mask of a set of international rules whose effectiveness ends where certain States feel that they have the capacity and the power to impose their interests or ambitions over that international law.

Neorealism does not deny the role of international law. It only considers that States get what they want by manipulating, reinterpreting and, when that's not possible, suspending the same international order that they support. And the present reality of the HRC seems to have proved them right. The truth of neorealism confirms the preeminence of the sovereignty of States over the sovereignty of citizens.

Neorealism explains what is happening, while liberalism, which has paved the way for constructivism in international relations, places emphasis on what emerges as a result of both the experience of the post-World War II period and the rational will of States. Human rights are introduced after the postwar period as an international reality, and an agreement to create an international order based of peace emerges from the will of States. What

liberals warn is that, if peace is important to the States' interests, only human rights may guarantee peace.

A powerful argument for the States to be able to include human rights as part of their foreign policy without contradicting their interests.

In *Redefining the National Interest,* Joseph Nye put it like this: «A democratic definition of the national interest does not accept the distinction between a morality-based and an interest-based foreign policy. Moral values are simply intangible interests. Leaders and experts may point out the costs of indulging these values. But if an informed public disagrees, experts cannot deny the legitimacy of public opinion»[4].

Casla Salazar offers a disruptive and very promising argument for the topic of human rights and their relationship with foreign policy when he says that «the uncertainty in the process of defining a country's foreign policy is explained by the uncertainty in the process of building national interests»[5].

Peace or war? Or peace and war? Solidarity or national interests? Or solidarity as the interests of powerful actors that are sold as national interests? This uncertainty in relation to foreign policy responds to the domestic uncertainty surrounding the place of nationals in the whole sociopolitical process: Subjects or citizens? Consumers or users? Owners or beneficiaries? A society of rights

4 Joseph Nye, *Redefining the National Interest, Foreign Affairs,* Volume 78, Number 4, 1999, page 24; cited in Koldo Casla Salazar, op. cit. page 16.

5 Koldo Casla Salazar, op. cit., page 17.

or a society of obligations? Supremacy or plurality? Citizen sovereignty or national sovereignty? State versus citizens?

The elimination of both uncertainties allows the definition of foreign policy to reflect the true identity of a society as a State policy, regardless of the different administrations, or the government. In other words: certainties in State policies are possible when they express more about the society than they do about governments, and they help distinguish the policies of the government from the policies of the State. This requires two conditions to be fulfilled: citizens' access to and control of power and the preeminence of the rule of law. This combination is called human rights.

Latin America has lost leadership in the field of human rights, a leadership that it had during and immediately after the creation of the Universal Declaration of Human Rights (UDHR), because it has not been able to overcome these two uncertainties.

That is the vision that helps gradually leave the dilemma of «interests versus ideas» behind, as proposed by Casla Salazar. Many authors support this idea in relation to human rights. For example, Stanley Hoffmann argued in 1983 that States should promote human rights by following moral, strategic and utilitarian criteria to «transform the nature of the 'game' of international politics»[6].

Since the nineties of the last century, authors like William Schulz have supported the argument that human rights «should

6 Stanley Hoffmann, Reaching for the Most Difficult: Human Rights as a Foreign Policy Goal, Daedalus, volume 112, Number 4, 1983, page 7; cited in Koldo Casla Salazar, op. cit., page 17.

be presented, to the extent possible, in the language of the *realpolitik*»[7]. Or, as suggested by Tom Porteous, in order to defend human rights in other countries not only is it necessary to resort to ethical principles but also to adopt realistic approaches associated with both national and international security[8]. Venezuela is an example of this. The Group of Lima shows the debilitating effect of political uncertainties in the Latin American region. With its profound contradictions.

A foreign policy rooted in human rights is feasible because it can align with the interests of a country and boost them. In fact, it can become the distinguishing feature of a nation, a comparative advantage on the world stage of moral values, and even attract investment by offering a place that is safe for capital and stable for profitability.

To achieve this, it is necessary to become a normative power, a term introduced by Ian Manners[9]. A normative power is a power based not on economic or military strength but on ideas and norms, or on ideas turned into norms. The strength of the exemplary rules of the game that govern behavior and the contractual relationship between citizens and State is the basis for economic welfare and peaceful coexistence. And also for the stability necessary to foster a society's creativity, which almost always translates,

7 William Schulz, *In Our Own Best Interest,* Boston, Beacon Press, 2002; cited in Koldo Casla Salazar, op. cit., page18.

8 Tom Porteous, *A Humane Nation is a Safer Nation*, The Guardian, July 7th 2010; taken from Koldo Casla Salazar, op. cit., page18.

9 Ian Manners, *Normative Power Europe: A Contradiction in Terms?* Journal of Common Market Studies, Vol. 40. No. 2, 2002; taken from Koldo Casla Salazar, op. cit., pages 19-21.

or may translate, into an external beneficial influence and the capacity to stabilize and pacify international relations.

Cuba may become the new pole of attraction in the global spectrum of values with a foreign policy that abides by the International Human Rights Charter. In fact, in terms of political realism and rationalism, we have made remarkable progress in this area, with the adoption of important international agreements and treaties, which in itself is a significant guarantee of our national security as it sends a clear message to the world that our country is committed to act in accordance with agreed-upon international rules. Nobody threatens a State that has accepted global governance rules and is willing to act in accordance with them.

What would Cuba need in order to become that new global pole of attraction, beside its beautiful beaches? As Helene Sjursen says, a step toward a policy «based on power by strengthening not only international law but also the cosmopolitan law, emphasizing the right of individuals and not only the right of States to sovereign equality»[10]. An almost Copernican shift that implies adherence to the International Human Rights Charter and its clear normative translation into domestic law and foreign policy.

Can we make this Copernican shift? There are certain conditions for a country to become a normative power with a foreign policy centered on human rights. The country's size, history,

10 Helene Sjursen, *The EU as a 'Normative' Power: How Can This Be?* Journal of European Public Policy, Vol. 23, No. 2, 2006, page 245; cited in Koldo Casla Salazar, op. cit., page 21.

institutions and civil society are not sufficient elements. But they are, however, necessary to achieve this goal.

Cuba is not a demographic power, but has enough size and population to sustain a humanistic policy of global ambition. We have –I admit that this comparison may trigger sarcastic remarks– the size of Holland and more population than Sweden and Norway. Certainly, our institutions and our institutional history are not based on solid foundations, which says little about our institutional culture. However, our consciousness of our experience suggests that we should prepare to give institutions the place they never had in our republican history. And civil society is the most vivid reality in our country, a civil society that has inevitably moved between the specific agendas of their areas of definition and the general human rights agenda. An important difference with other civil societies around the world. Approximate data show that there are more than 4000 organizations in Cuba's civil society.

Other specific factors need to be taken into account. Cuba's usual presence on the world stage. In different ways. As a redeeming myth, that is worth reconverting and laicizing as a model of human rights; because of the country's diplomatic bureaucracy, which should be professionalized and freed from ideologies, and because of its global implication: we have been everywhere, first making war and more recently participating in controversial humanitarian missions that have strengthened Cuba's image as a humanitarian actor and paved the way in one of the basic chapters in the human rights history: access to health and access to freedom.

And we should also mention a tradition that we must go back to when we talk about human rights. The idea of an empire, that we inherited from Spain, has continued to exist in the Cuban elite. Hence our inclination to globalization (we are always meddling into other countries' affairs) which has little to do with the regime's sovereigntist rhetoric, from our tendency to deliver sermons to the world –I usually recommend reading an interesting newspaper article written in 1947 that is almost cultural anthropology, *And the Prophet Talks about Cubans*, which can be found on the Internet– to our first-class presence in diplomatic circles. I believe that it is therefore important to resume here Cuba's work in the United Nations at the time the UDHR was imagined, discussed and written.

I will stop at that time, when delegates of 50 countries gathered in the city of San Francisco in April 1945, on the path to the creation of the future United Nations, Cuba was among the countries that wished the new global organization would also deal with humanitarian issues and not just collective security. We stood out with other countries that made suggestions to the draft of the United Nations Declaration about the elimination of all forms of racial discrimination –uncomfortable certainly to the United States and other then colonialist powers.

Even before 1945, prior to the San Francisco conference, Cuba had participated in a draft submitted by Panama, together with Chile and Mexico, to persuade the conference attendees to include an international declaration of human rights in the United Nations Charter. In fact, we were among the first governments to submit human rights catalogues for discussion, which

the then director of the UN's human rights area, the lawyer John Humphrey, presented for consideration. This contribution was officially recognized on December 9th 1948 by the Lebanese secretary of the UN Human Rights Commission, Charles Malik, at the time the UDHR's draft was submitted to the UN General Assembly for approval.

In a heated debate between the global powers about whether the United Nations should or should not accept the topic of human rights, Cuba joined other Latin American countries –in a delegation that participated the most in debates– to put pressure on the organization for the topic to be given the highest priority after the world powers accepted the creation of a Human Rights Commission. On the other hand, and for reasons relating to our attempt to achieve institutional consolidation in the 1940s, Cuba had an important role, together with Lebanon, in demanding the creation of international coercive mechanisms to sanction governments that violate human rights.

Cuba was also represented in the third Commission, as a member of the United Nations, to discuss the content of the UDHR, section by section. An interesting fact: The Cuban delegation supported the proposal of the then Soviet Union to add to section 3 of the Declaration (everyone has the right to life, liberty and security of person) a prohibition against the death penalty. A motion that was rejected.

And the most curious of all facts: Thanks to Cuba's suggestion, the social rights of the UDHR were given the same rank as its civil and political rights. And we were particularly responsible

for including the special needs of families in the section about the right to an adequate standard of living.

The face of all this was Guy Pérez Cisneros, from Camagüey, who was then only thirty years old and was renowned for his eloquence to defend democracy. He was the author of the successful proposal of comparing line by line the draft of the UDHR with the Bogota Declaration. In his memoirs, John Humphrey mentions the Latin American initiatives as the «Bogota threat» and reveals his frustration with the «very intelligent Pérez Cisneros using his argumentative ability to convince the majority. In his speeches, we can identify signs of a catholic social philosophy and, consequently, it seems at times that the true protagonists in the conference room were the Catholics and the communists, with the latter in a poor second place»[11]. And he adds that: «Cubans may burn in hell, but they will probably go down in history as great defenders of freedom»[12].

Tradition matters because it expresses the principles of a culture and ensures, in this case, that human rights become also a national identity. And this tradition deserves to become a premise of our identity as a nation. We need to move in that direction.

There are facilitating conditions that help a country become a normative power in human rights. The Norwegian scholar Jan Egeland developed the idea, in his paper *Impotent Superpower, Potent Small States*, a comparative study of the Norwegian and

11 Cited in Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights,* Fondo de Cultura Económica, Mexico, 2011, page 352.

12 Cited in ibidem.

the United States foreign policies, that the size of a country is one of the key differences between States that are committed to human rights and States that are not committed to human rights. For Egeland, the United States has no relevant achievements in the field of human rights «because of, and not despite of, the country's status as a superpower»[13]. This analysis is of fundamental importance in the case of Cuba.

On the contrary, small States are rarely forced to choose between human rights and other objectives, such as economic interests or national security. Egeland concludes his analysis by stating that: «The frequency and intensity of the conflict between one's own interests and rules (international human rights rules) seem to be proportional to the economic and military power of a nation as well as to its foreign policy ambitions»[14]. Cuba has been an exception to this theorem, but this is due more to an inherited Spanish complex, with its idea of a spiritual (ideological) empire, than to interests that can be verified in economic terms, or to its own expansive sustainable foreign policy. We are always acting as an extension of another empire (the Soviet empire). Back to our real dimension, we fit Egeland's theorem perfectly.

And now we go back to a structural issue that is relevant to our national security. While larger States choose a bilateral policy, smaller States need multilateral mechanisms in order to make themselves heard. Cuba's present conflict in the multilateral

13 Jan Egeland, *Impotent Superpower, Potent Small State: Potentialities and Limitations of Human Rights Objectives in the Foreign Policies of the United States and Norway,* Norwegian University Press, Oslo, 1998, page 5; cited in Koldo Casla Salazar, op. cit., page 24.

14 Ibidem.

sphere has nothing to do with the country's institutional absence, but with its incapacity to honor its commitments in the situations that it refers to in its external rhetoric, where it can do more and better. We have adhered to multilateralism, but we do not respect the internal coherence of its rules.

There are structural obstacles to meet the requirements of a normative power. Alison Brysk argues that states that are equipped to have a foreign policy anchored in human rights are usually «globalized, democratic and moderately developed regional powers»[15], which is related to other topics that have already been mentioned but merit further consideration: a robust civil society and a political system receptive to its concerns.

However, obstacles may be overcome through investment in the logic of development. We generally tend to believe that a vigorous institutional development is achieved once a certain economic development has been reached. Economic liberalism and Marxism, whose views coincide on this subject, rely on economy as the basis for everything else. In *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*, the economists Daron Acemoglu and James A. Robinson show, with data at hand, that institutional development is significantly responsible for the economic development opportunities in a country, territory or region[16].

15 Alison Brysk, Global Good Samaritans: Human Rights as Foreign Policy, page 5; cited in Koldo Casla Salazar, op. cit., page 25.

16 Daron Acemoglu y James A. Robinson, Why Nations Fail: The Origins of Power, Prosperity, and Poverty, Barcelona, Deusto publishing company, Planeta Group, 2012.

I say what I mean to say and what I want to highlight. With the appropriate institutions, Cuba could reach growth levels that would comparatively place it in a qualitative dimension of exponential development like the one it had before 1959. It is said that we need investment right here and right now in order to achieve our full potential, as if the problem was a global financial drought. They never explain why these investments that exist right here and right now have still not landed in Cuba. The answer is there: what we lack is the right institutions for development. The cases of Argentina and Venezuela, each one with its particular circumstances and a different combination of the same reasons, show the role of deinstitutionalization in chronic crisis and the decline toward underdevelopment.

From this angle, we can explain and understand the relationship between human rights and national security. A constitutional order based in the combination of fundamental rights, progressivity of human rights (successive generations of rights) and the rule of law is all the architecture that we need to break the spell of the four crises that threaten our national security (meaning the continuity of Cuba as a national, autonomous and, consequently, sustainable entity).

First, the food sustainability crisis (associated with, not reducible to and worse than an economic crisis). Second, the demographic crisis (that disassociates, for example, the digital nature of knowledge and the current economy of its potential bearers: the young people). Third, the crisis of national disruption (the accelerated transnationalization of Cubans shocks and delocalizes families and the source of nationality). And fourth,

the representativeness crisis (a non-elective body, the Communist Party, has appropriated, by exclusion, of the right of the State's political will over citizen sovereignty).

Human rights as the identity of a nation are a strategic option and, therefore, a political option to guarantee national security. This issue requires further analysis, which I am currently working on in greater depth, but is seems clear that our national continuity is associated with our human rights.

To define them as a structured vision of foreign policy may and should be construed as a structured vision of our civil society toward other countries. The idea of carrying out, if not leading, a substantial reform of the HRC, follows this strategic route.

This can be summarized in a prospective analysis that places Cuba in a position of political leadership, with an active and glamorous civil society and an ideology consistent with human rights principles.

It may sound strange, but the institutional options for this project seem in part vague and in part clear, according to the present Cuban Constitution. The discussion whether the Constitution of April 2019 is democratic and based on the rule of law is misleading because it is essentialist. The question that I always make myself in this regards is a negative one: Is the Cuban Constitution sufficiently totalitarian? If it is not, as I believe, we can understand its contradictions, its narrative porosity and ambiguity and its attempt to create an impossible synthesis of unrelated worlds: the pre-modern world of absolutists and the modern world of rights.

This opens an array of civic legitimacies and rights that no Constitution that is essentially unconstitutional would allow, which would be a contradiction. A Constitution that today claims to be constitutional should protect rights, even if roughly and approximately. This may seem exaggerated, but the progress made by the Cuban Communist Party, an antediluvian and scarcely ideological power group, having to admit that the institutions that it has created and controls wink at human rights is remarkable. Comparatively speaking, the Iranian society is, for example, democratic in relation to Cuba. And in a key sense: Iran recognizes political pluralism, while Cuba does not. The sign of a regime that is politically obscurantist.

In fact, and despite this, in four specific articles of the Constitution, there is an explicit or implied reference to the term human rights. In section 8, this reference is implied in an interesting way, because the section boasts that the constitution has incorporated to and included in the whole legal system the rules of the international law that the State has adopted. On the other hand, section 16, subsection g), of Chapter II, regarding international relations, specifically provides that: «The Republic of Cuba […] shall defend and protect human rights and repudiate any form of racism or discrimination», which opens another key discussion in connection with the limits of sovereignty. Instead, section 17, of the same Chapter, regarding the right to political asylum, also impliedly mentions human rights when it alludes to «progressive activities» and «… democratic rights».

And, finally, section 41 is even more explicit. I will transcribe it in full. It reads as follows: The Cuban State recognizes

and guarantees all *individuals* their enjoyment and *inalienable, imprescriptible, indivisible, universal and interdependent* exercise of human rights in accordance with the principles of *progressiveness, equality and non-discrimination*. Respecting and guaranteeing them is *mandatory* for everyone»[17].

Many nations in the democratic spectrum would surely feel inspired to amend their sections on human rights after reading this beautiful constitutional piece, aesthetically presentable and technically comprehensive. Variable by variable.

This constitutional protection of the human rights sets the premise and the basis for a State policy and, consequently, for a foreign policy based on human rights. In this field, the main conflict is the tensions created by an unsustainable revolutionary regime in contradiction with the constitutional republic designed by it; but not fully suited for it. Hence the government's criticism of its own institutional State.

The current Cuban Constitution goes beyond the freedom of Modernists. Sections 52 (freedom of movement), 54 (freedom of thought, religion and speech), 55 (freedom of the press, which in a broader interpretation includes citizen journalism) and 56 (freedom of assembly, demonstration and association) group fundamental rights together, in a liberal sense, and protect them constitutionally. The challenge here is that civil society and citizens include them in their collective imagination and their everyday activities.

Other sections of the Constitution follow the same path. 40 of them, in addition to the constitutional guarantees, enable the

17 Highlighted by the author.

socialization of a human rights national identity and the inclusion of those rights in a foreign policy. If we add the ratification of the United Nations' covenants on civil, political, economic, social and cultural rights signed in 2008 by the Cuban government, and the execution of nine fundamental treaties of the International Human Rights Charter, the virtuous cycle is complete. Obviously, completing the circle depends on a democratic Cuba.

This democratic Cuba would, of course, be morally obliged to have a foreign policy based on human rights. And to lead them in the region. Reciprocity with those who for more than thirty years have clearly supported human rights defenders in the country and activists in general should be a highlight in any future foreign policy. We have not been prone to showing solidarity with the victims of human rights violations in other countries in the region or in the world, which has been and continues to be a moral deficit and a political mistake. To separate human rights from any ideological tendency or geopolitical consideration, we should be aligned with those who suffer violations in countries governed by other political groups. From Colombia to Chile. We should also understand that abuses take place in democracies too, whether or not they are consolidated. And that State violations (today we should call them government violations, behind the State's back) against our fundamental freedoms weigh on our bodies as victims with the same strength, or perhaps with more impact, than on the bodies of other victims that have run the risk of losing, or have already lost, their own lives.

This empathetic reciprocity in the same field of violations would have been key to take the human rights cause in Cuba in

a different direction. This absence should be compensated with a foreign policy that is aggressively committed to all human beings. To know, as Václav Havel has said, that there has always been someone out there worried about us compels the future Cuba to change.

But not only because of reciprocity. Also because of a social commitment to a charter of values and because of historical experience. A way of explaining our decline as a national project is through the progressive decline of human rights. Is there any verifiable relationship between the fact that Norway and Sweden are the ceiling of the world in terms of welfare and at the same time they are the good global Samaritans in terms of human rights? The thesis, proved with data, that we Cubans lost wellbeing, economic stability and technology as we gradually lost freedoms –human rights and national security are here mutually reinforced– should lead us to a proposal and a foreign policy that is centered on the protection of human rights, in the understanding that it is the best for other nations and for a safe environment in international relations.

In any case, we owe this leadership, that we should begin to build right now, to ourselves, in a time of decline in the global leadership of the universal values of democracy, human rights and cultural tolerance. We, Cubans, have been for more than half a century in the shoes of all victims in the world. Without exception. We know their pain. We must work to fight it on a global scale.

FREEDOM OF MOVEMENT AFTER COVID-19

Sybil Rhodes

INTRODUCTION. RESTRICTIONS ON THE RIGHT TO TRAVEL IN TIMES OF CRISIS

Freedom of movement is essential for the health and wellbeing of every human being, and for all economic, social and political activities. But, like all human rights, it is not absolute. States zealously guard their sovereignty over immigration and, consequently, the right to cross international borders is limited. That's the reason why there are refugee camps and detention centers full of international immigrants all over the world. In contrast, the right to travel freely within one's own country or leave it is set forth in the Universal Declaration of Human Rights and in the democratic constitutions of many countries. In normal times, restrictions on internal movement are one of the main factors that distinguish democracies from dictatorships.

However, it's quite common and it even seems natural that citizens should give up their civil liberties to their leaders during a crisis. It happens in times of threatened war (think of the United States after September 11, 2001), during natural disasters and, also, in epidemic and pandemic situations like the one we are facing today everywhere in the world, as people have accepted, and even

demanded, restrictive measures, at first hoping to «flatten the curve» and more recently waiting for a vaccine.

It is imperative that emergency measures be temporary. National and international institutions need to be capable of preventing authorities from getting used to the higher degree of power that they are granted during a crisis.

The measures that many governments and societies have implemented to face the Covid-19 pandemic have modified, curtailed and damaged the human right to freedom of movement, both in democratic and autocratic governments. New technological tools have been developed and used to observe and control the movement of people. In the period post-Covid19, it will be important to think carefully about the benefits and risks of technology, and work to restore, protect and improve the fundamental right to liberty of movement.

RESTRICTIONS ON THE FREEDOM OF INTERNATIONAL MOVEMENT

Throughout human history, during pandemics people have relied on their authorities to control borders. We can find historical examples of walls, roadblocks and fortresses used to keep pathogens outside of empires (for instance, between the Habsburg and Ottoman Empires), cities and towns. But in our globalized world, before 2020, there was a widespread agreement among public health professionals that international borders should remain open even in times of pandemic. It was believed that entry and exit controls were preferable to travel bans.

The World Health Organization (WHO) was following this idea when it specifically advised against restrictions on the freedom of movement when on January 30th it declared the coronavirus outbreak a global health emergency. However, shortly after, voices across the world criticized the instruction and many governments started to adopt strict measures. The repressive restrictions on mobility have become almost global on an unprecedented scale. Governments worldwide closed their borders, detained travelers and flagrantly blocked immigrants and refugees as well as students, businessmen and tourists.

The new restrictions have revealed inequalities regarding freedom of movement that existed in the world before 2020. People in developed countries who usually enjoyed high levels of what is sometimes referred to as a «passport privilege» were surprised on a number of occasions when faced with restrictive border measures in less developed areas. Citizens in developing countries were already used to strict border controls preventing them from entering privileged zones. At the same time, certain commentators have not shown much empathy for privileged people, stating that it was high time they should be given a taste of their own medicine. Others have expressed the same feeling of «well-deserved punishment» regarding a similar situation within national borders, when small towns tried to stop rich people from the cities from escaping the plague in the cities and retreating to their second homes.

Even if we make an (artificial) distinction between welfare costs and «economic costs», the human costs of travel bans are

huge. Thousands of people from different continents cannot go back to their countries. Parents are separated from their children, students from their teachers and the same happens with romantic relationships. Some people are trapped in places where they do not speak the language or know the culture. Hundreds of thousands of recent refugees and immigrants were the first to be laid off from their jobs and are now trying to return to countries they were desperate to leave.

INTERNAL MOBILITY

There are still differences between democracies and dictatorships, but they are fewer than we thought. Controls in China –which have been praised for their efficiency– involved people in lockdown away from their homes. Some countries in Europe have stopped issuing passports. The Argentine province of Formosa suspended entry into the province, and as a result until November 2020, 7500 people had not been able to return to their homes.

People stranded internally suffered cruelties similar to those experienced by internationally displaced people. Some cases have gone viral, such as that of the young Argentine father who drowned as he tried to cross the Bermejo river from the province of Chaco to see his daughter in Formosa.

Despite this suffering, a large majority of people support restrictions. In Italy and Spain, a small percentage of citizens surveyed said that they were worried about general travel restrictions. American people seemed similarly concerned about the suspension of constitutional freedoms, like Argentine people.

Fortunately, there are some signs that democratic institutions fulfil their role of protecting the rights and freedoms of individuals. The Argentine Supreme Court recently ruled against the government of Formosa ordering them to allow free movement of people with appropriate measures proportional to risks, to protect public health. There have been similar decisions in other countries.

THE ROLE OF TECHNOLOGY

Applications are a tool that certain governments have found useful to manage lockdowns and other restrictions. In authoritarian countries, some governments have forced citizens to use apps to be able to monitor and control them. In democratic countries, the use of these apps is usually voluntary. Examples of them are «COVIDSafe» in Australia and «Cuidar» in Argentina. However, the fact that these apps are not compulsory in theory does not mean that they are not compulsory in practice, because it would be practically impossible to lead a normal life without using them.

SOLUTIONS FOR THE FUTURE

Luckily, analysts have started to propose ideas on how to take Covid-19 and future pandemics seriously and still continue to have freedom of movement.

A popular idea among liberals and libertarians is that governments should supply information rather than coerce, so that people can make informed decisions themselves. If people are too afraid of travelling and also of other travelers, this idea might work as the society and the private sector would do something

to limit mobility. This happened in the United States when the main airlines suspended their flights with China before president Trump required them do so. In some places, stores and other business organizations started to check their customers' temperatures and, possibly, their details too. There is a potential risk that the final result of this type of measure, implemented by private actors, may also be a reduction in some freedoms, but this method would at least provide some experimentation.

Others have argued that politicians and media figures should stop using «military language» to exclude refugees and asylum seekers. They point at examples such as the Hungarian prime minister, Viktor Orban, who stated that: «We are fighting a two-front war. One front is called migration, and the other one belongs to the coronavirus. There is a logical connection between the two, as both spread with movement»[1]. Orban is using the crisis to continue political debates that were already controversial before the coronavirus virus. However, it was not the immigrants, but tourists and businessmen who spread the Chinese illness to Italy and the Americas. Excluding immigrants and refugees because of coronavirus, like the Trump administration has also done, means acting with cruelty for little or no benefit at all to the health. While these measures are temporary, they will have a long-term impact on families being separated and on lost job or educational opportunities. In the case of refugees, some of whom are stranded in dangerously overcrowded camps, sacrificing for

1 Sandro Mezzadra and Maurice Stierl, «What happens to the freedom of movement during Covid-19?», *Open Democracy,* March 25th 2020, https://www.opendemocracy.net/es/qu%C3%A9-pasa-con-la-libertad-de-movimiento-durante-el-covid-19/.

the common good means now more than ever before cooperative solutions instead of greater restrictions.

A third idea, which has been largely discussed in the world of technology, is that everyone accepts a tradeoff between bio-surveillance and travelling. Perhaps tourists will accept being tested, put in quarantine and electronically monitored. Perhaps they will all be required to show «immunity passports» in order to participate in economic or social activities. The Argentine approach that the public transportation system distinguishes between people exempt from quarantine requirements is a step in that direction. Technology offers great benefits, but requires sacrificing personal privacy. Therefore, we need to be extra careful about linking personal information with freedom of movement. It would be much better to use it to provide information to people so that the can take decisions for themselves.

None of these ideas is, alone, a panacea for our problems, but the combination of reliable government information, solidarity with desperate people and an intelligent use of technology would be, no doubt, an improvement over massive lockdowns in place in a large number of countries worldwide.

CONCLUSION. THE URGENCY TO PROTECT FREEDOM

In order to achieve this, we need freedom of movement to be promoted by people who have some credibility in the eyes of the rest of the society. Political polarization and extremism make this more difficult. For example, in the US state of Idaho, a man that once led an armed occupation of a wildlife reserve is the political

face of the claims in favor of the freedom of assembly. President Trump encouraged demonstrations against lockdowns and a number of demonstrators took guns. Their political opponents, understandably, pointed to these demonstrations as cynical political strategies that put public health at risk. However, the fact that everything is politicized should not be a reason to ignore violations of the human right to freedom of movement.

A possible group that we might try to convince is young people. We have learned from the Brexit experience that they value freedom of international movement more than older people. But in Buenos Aires, the «over 70» banged pots and pans in protest against a discriminatory local lockdown policy. People of all ages and all social backgrounds can agree that, as long as we have freedom of thought, we will long for freedom of movement.

ABOUT THE AUTHORS

ALEJANDRO ANAYA MUÑOZ

(Guadalajara, Mexico, 1970). Mr. Anaya Muñoz is professor of social, political and legal studies (SOJ) and coordinator of the master's degree program in human rights and peace at the ITESO (Western Institute of Technology and Higher Education) of the Jesuitical University of Guadalajara. He holds a doctoral degree in governance and a master's degree in theory and practice of human rights from the University of Essex, England. He is a member of the research committee of the Mexican Science and Technology Council (CONACYT) and the author of three books and several articles published in scholarly journals. Among his most recent works are *Human Rights Crisis in Mexico*, co-edited with Barbara Frey (Philadelphia, University of Pennsylvania Press, 2018) and *Human Rights in and from International Relations* (City of Mexico, Bureau of Economic Research and Education, 2014). In recent years, his research has focused on the dynamic transnational policies on human rights and the influence of the international human rights regime. Alejandro is also an academic consultant at CADAL.

JULIO MONTERO

(Buenos Aires, Argentina, 1979)**.** Mr. Montero holds a degree in philosophy from the University of Buenos Aires, a doctoral degree in political theory from University College London and a doctorate in philosophy from the National University of La Plata. He is professor at the University of Buenos Aires and researcher at the National Scientific and Technical Research Council (CONICET). He is also co-editor of the *Latin American Magazine of Philosophy*. Between 2007 and 2011, he was Executive Director at Amnesty International Argentina. Julio is the author of *Human Rights as Human Independence: A Constructive Interpretation*, University of Pennsylvania Press, and academic consultant at CADAL.

GÜNTER NOOKE

(Forts, Germany, 1959). Mr. Nooke is a German politician, a member of the CDU and a human rights activist. He studied Physics at the University of Leipzig and started his working life in the field of industrial medicine in Cottbus. Since 1987, he has been a member of an opposition religious group and involved in the growing pro-democracy movement of 1989. He was a member of East Germany's last and freely elected Volkskammer for the opposition alliance known as the Bündnis 90. Following the German reunification, he was a member of the parliament of Brandenburg and leader of the Bündnis 90 parliamentary bloc (1990-1994). In 1996, he joined the CDU with other civil rights activists of the former ADR. From 1998 to 2005, he was a member of the Federal Parliament, interim leader of the CDU party and spokesman for the "New States Issues" and "Culture and Media" parliamentary committees. In 2006, Mr. Nooke was appointed commissioner for human rights policy and humanitarian aid in the government of Chancellor Angela Merkel. Since 2010, he has served as the German Chancellor's representative for Africa at the Federal Department of Economic Cooperation and Development (BMZ).

YEVGENIY ZHOVTIS

(Almaty, Kazakhstan, 1955). Mr. Zhovtis is a renowned human rights lawyer and current director of the Kazakhstan's International Bureau for Human Rights and Rule of Law. He is also a member of the Panel of Experts on Freedom of Assembly at OSCE's Office for Democratic Institutions and Human Rights (ODIHR), and a member of the executive committee of the International Bar Association's Human Rights Institute. He holds a doctoral degree in mining economy but in the late 1980s and early 1990s he devoted himself to promoting democracy, the rule of law and human rights in Kazakhstan and the post-Soviet space. He graduated with honors from the Adilet School of Law in 1999 and has been openly critical of human rights violations in Kazakhstan over the last 30 years. Yevgeniy has received numerous human rights awards, including the European Union and US Democracy and Civil Society Award in 1999, the Friedrich Ebert Stiftung Human Rights Award in 2007 and the Andrei Sakharov Freedom Award by the Norwegian Helsinki Committee in 2010.

BRIAN SCHAPIRA

(Buenos Aires, Argentina, 1969). Mr. Schapira has a law degree from Buenos Aires University, a master's degree in international and comparative law from the Southern Methodist University Dedman School of Law, Dallas, Texas, United States, and a postgraduate degree in oil and gas law from Buenos Aires University. He worked as a trainee at the U.S. Department of Justice (Dallas, Texas) under the International Clerkship Program. He served as deputy secretary at the International Human Rights Protection and Link Office of the Argentine Department of Human Rights from December 2015 to December 2019. He was senior associate attorney at the law firm Bunge, Smith & Lucchia Puig, legal advisor at the Department of Justice and Security of the City of Buenos Aires, legal advisor at the Buenos Aires Legislature, responsible for the Legal Department of the Tzedaká Foundation and attorney at the Delegation of Argentine Jewish Associations (DAIA). Brian is now director of the Department of Institutional Relations at CADAL.

GABRIEL C. SALVIA

(Buenos Aires, Argentina, 1964). Mr. Salvia is an international human rights activist. Since 1992, he has served as director in civil society organizations and is a founding member of CADAL. As a journalist, he worked in radio, television and printed publications. He has compiled several books, including *Diplomacy and Human Rights in Cuba: From the Black Spring to the Release of Political Prisoners* (CADAL/KAS, 2011) and is the author of *Dancing for a Mirage: Notes on Politics, Economics and Diplomacy during the Cristina Fernandez de Kirchner Administration* (CADAL, 2016). Gabriel is a member of the executive committee of Forum 2000's Democratic Solidarity Project (Czech Republic) and general manager at CADAL.

MANUEL CUESTA MORÚA

(La Habana, Cuba, 1962). Mr. Cuesta Morúa graduated in History from the University of La Habana in 1986. Between 1986 and 1991, he worked at several official institutions. In 2002, he founded Arco Progresista, an organization that he is leading today that brings social democratic organiza-

tions together. He has been arrested on several occasions and also publicly shamed throughout his political life and as a human rights defender. He has written numerous essays and articles for several Cuban and foreign magazines. A selection of his works was published in the book *Essays on Progressive Ideas from Cuba* (CADAL. 2015). In December 2016, Manuel received the Ion Ratiu Award from the Woodrow Wilson Center.

SYBIL RHODES

(North Carolina, United States, 1969). Sybil Rhodes is Director of the Department of Political and Legal Sciences at UCEMA, where she is in charge of the Degree Program in International Relations, the Master's Degree Program in International Studies and the Foreign Policy Observatory. She previously served as assistant and associate professor of Political Science at Western Michigan University. Ms. Rhodes is an expert on the subject of international and comparative politics and is currently carrying out research on the topics of multilateral cooperation and human rights, especially freedom of movement, migration and citizenship. She is the author of *Social Movements and Free-Market Capitalism in Latin America* (SUNY Press) and has published several professional articles and book chapters. Sybil is Executive Director at CADAL.

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We cannot understand international politics today without taking into account human rights and the normative and institutional structure that has developed around them. But human rights, like rules and institutions, were created and designed to protect individuals; to safeguard their rights mainly from the power of the state, which despite the passing of time, continues to show its dark side over and over again: a tendency to abuse, oppression, intolerance and inequality.

States, on the other hand, continue to be the dominant players in the international relations and tend to view any intervention in their domestic affairs with concern and watch each other's backs. The «national interest» (or rather the interests of the elites in power in each State) is still the dominant force in the relations between nations and, consequently, in their foreign policy.

From different views and professional backgrounds (mainly activism and academia), the authors identify and analyze the obstacles and challenges faced by the human rights agenda and, together, they develop a series of ideas and arguments that lead us not only to confirm our belief in the value and merits of human rights but also, as Kathryn Sikkink recently highlighted, to substantiate our reasons for hope.

CADAL

KONRAD ADENAUER STIFTUNG

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