

The Development of Human Rights Diplomacy Since the Establishment of the UN

More Actors, More Efficiency?*

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Abstract

This study gives a comprehensive picture of the development of human rights diplomacy since the establishment of the UN, focusing on the dilemmas governments are facing regarding their human-rights-related decisions and demonstrating the changes that occurred during the post-Cold War period, both in respect of the tools and participants in this field. Special attention is given to the role of international organizations, and in particular to the UN in this process, and the new human rights challenges the international community must address in order to maintain the relevance of human rights diplomacy.

Keywords: human rights, diplomacy, international organizations, NGOs, corporate social responsibility.

1. Introduction, Theoretical Foundations

“Governments of countries that share a genuine commitment to human rights, non-governmental human rights organisations on the ground and in the global arena, regional and international human rights entities, and researchers in academic institutions all have a contribution to make in nurturing dialogue and action on human rights toward tolerant and open societies. These are demanding and exciting times for human rights diplomacy.”¹

Before the start of the Cold War we could not speak about an active human rights diplomacy. Its tools and the variety of players were much more limited at the time of the establishment of the UN than they are nowadays, when the question of human rights has become an integral part of our life. As Gábor Kardos put it, the

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1 Kang Kyung-wha, ‘Foreword’, in Michael O’Flaherty *et al.* (eds.), *Human Rights Diplomacy: Contemporary Perspectives*, Martius Nijhoff Publishers, 2011.

adoption of the Universal Declaration on Human Rights (UDHR) in 1948 posited the issue of human rights as a legitimate subject of international cooperation. Consequently, human rights became one of the legitimizing factors of foreign policy aims.² It also marked a significant shift from the conventional reciprocity principle of international law, as states are obliged to respect international human rights standards not just towards other states, but also towards the international community and the individuals living in their territory.³ It should be noted, however, that human rights issues became important elements of international relations despite the fact that they may negatively affect inter-state relations; but they are also necessary from a *Realpolitik* point of view, at least in the long run.⁴ Evidence indicates that human-rights-friendly states are usually more peaceful than repressive regimes.⁵ Consequently, a solid human rights situation has a positive effect on the security or stability of a given region. The rise of the notion of human rights resulted in a contest between the principle of state sovereignty and the doctrine of universal human rights.⁶ So far there is no clear winner in this struggle; however, the acceptance of human rights is much stronger now than it was at the time of the adoption of the UDHR.

Rein Müllerson defines human rights diplomacy as “the use of foreign policy instruments in order to promote human rights, as well as the use of human rights issues for the sake of other foreign policy aims.”⁷ According to other authors “human rights diplomacy aims at both persuading counterparts to introduce measures to advance the implementation of human rights and dissuading them from taking action that is contrary to human rights.”⁸ In this context, it is worth referring to Jack Donnelly who emphasizes that most international human rights initiatives have other purposes as well, so they cannot be evaluated only on the basis of the success of changing the human rights practice in the target country.⁹

Robert Archer, considering the main elements of the classical form of human rights diplomacy, noted that “two or more parties, usually states meet and exchange views or negotiate regarding human rights.” These talks take place on a voluntary basis and at least one of the parties is advocating for human rights, while “at least one party is presumed to be less comprehensively committed to (certain) human rights norms.” Given the nature of the talks, no specific outcome

2 Gábor Kardos, ‘Diplomácia és emberi jogok’, *Külgügyi Szemle*, 2002/3, p. 3.

3 George Ulrich, ‘Framework for the Analysis of Human Rights Diplomacy’, in O’Flaherty *et al.* (eds.) 2011, p. 21.

4 Rein Müllerson, *Human Rights Diplomacy*, Routledge, 1997, p. 5.

5 *Id.* p. 25.

6 R. J. Vincent, *Human Rights and International Relations*, Cambridge University Press, Cambridge, 1986, p. 131.

7 Müllerson 1997, p. 2.

8 Michael O’Flaherty *et al.*, ‘Introduction. Human Rights Diplomacy – Contemporary Perspectives’, in O’Flaherty *et al.* (eds.) 2011, p. 1.

9 Jack Donnelly, ‘An Overview’, in David P. Forsythe (ed.), *Human Rights and Comparative Foreign Policy: Foundations of Peace*, UN University, 2000, p. 12.

is expected, as human rights diplomacy is frequently “part of a larger process, involving larger state interests.”¹⁰

The notion of ‘bad’ human rights diplomacy or counter human rights diplomacy was used by Robert Archer to refer to those diplomatic measures which are aimed at undermining international human rights standards, minimizing criticism about the human rights record of a given state, or at the instrumentalization of human rights to achieve political goals which are not related to the promotion and protection of human rights.¹¹ Beginning in the mid-70s and then intensifying in the 80s, certain Western countries used their foreign policy and in particular, multilateral forums to condemn and exert pressure on human rights violating regimes. It was no coincidence that this period also marked the rise of Western power and the decline of Soviet power.¹²

The different categories of human rights have an important role in the human rights diplomacy of the different actors. Under first-generation human rights, we understand civil and political rights, which grew out of the Western liberal tradition of political thought.¹³ They include, *e.g.* the right to life, the right to freedom from torture or slavery, the right to freedom of thought and religion, the right to freedom of expression and opinion, and the right to freedom of assembly and association. Second-generation human rights focus on economic, social, and cultural issues, and include the right to work, to right to an education, and the right to an adequate standard of living. They are also called as socialist values. Third-generation rights, also known as collective or solidarity rights, include *e.g.* the right to self-determination and the right to development.¹⁴

It is important to see the interdependence between civil, political, economic, social, and cultural rights. It is clear that the denial of economic rights can lead to social unrest, which may provoke political repression from the government.¹⁵ A well-known argument from the South is that the implementation of economic and social rights is a prerequisite for civil and political rights.¹⁶ Often those developing states which emphasize economic, social, and cultural rights over civil and political rights, neglect both¹⁷ and the reference to second- or third-generation rights is simply a political manipulation to cover the human rights abuses committed by them.

There are rights which, according to Article 4 ICCPR may not be derogated from, even in the case of a state of emergency. These non-derogable rights include the right to life or the prohibition of torture. Peter R. Baehr and Monique

10 Robert Archer, ‘A Short Reflection on Human Rights Diplomacy’, in O’Flaherty *et al.* (eds.) 2011, p. 44.

11 O’Flaherty *et al.* 2011, pp. 1-2.

12 David Petrasek, ‘New Powers, New Approaches? Human Rights Diplomacy in the 21st Century’, *SUR – International Journal on Human Rights*, 2013, Issue 19, p. 9.

13 Kelly-Kate Pease, *Human Rights and Humanitarian Diplomacy*, Manchester University Press, 2016, p. 3.

14 *Id.* p. 3.

15 Müllerson 1997, p. 45.

16 Vincent 1986, p. 89.

17 Müllerson 1997, p. 46.

Castermans-Holleman also mention in their work the distinction between principal and other rights. The former are those (such as the right to freedom from slavery, servitude, torture, arbitrary arrest, and discrimination, or the right to life) which are necessary for a dignified human life and therefore require absolute protection.¹⁸

2. Human Rights Diplomacy During the Cold War Era

During the Cold War period, the East routinely claimed superiority regarding economic and social rights, such as the right to work, while the West stated that it was doing much better in individual freedoms, civil liberties, and all other factors related to the notion of an 'open society'.¹⁹ Meanwhile, as highlighted by Müllerson, the Soviet experience is a textbook case of how the lack of civil and political rights can lead to social and economic stagnation and consequently to the violation of economic and social rights, as well.²⁰

However, the hard political divisions and the ideological fight between the two camps seriously restricted Western states that frequently supported repressive regimes out of security or political interests. This support, plus the assistance given by the Soviet Union to other human-rights-violating developing states, compensated for the lack of legitimacy of these governments.²¹ Despite several discrediting human rights measures, Western human rights diplomacy played a positive role in several states in promoting pro-human-rights forces. This includes the broadcasting of information through radio channels like Radio Free Europe or Voice of America, or the publication of books about topics which were forbidden in the East (Solzhenitsyn's *The Gulag Archipelago*), or the asylum given to political dissidents. As part of the ideological struggle, the US condemned the Soviet Union and other members of the Communist Bloc for the violation of the civil and political rights of their citizens, while the US was criticized by the East for its unemployment and racial segregation.²²

In the 70s, the West was able to put the question of human rights on the agenda of international debates, through the adoption of the Helsinki Final Act in 1975. Principle VII of the Final Act concerned the respect of human rights and fundamental freedoms, besides other principles addressing security issues, such as the inviolability of frontiers or the territorial integrity of states. The process of decolonization also had a significant effect on the human rights discourse by advocating for the right to self-determination and for the prohibition of racial discrimination.²³ The notion of the right to development, which was first recognized in 1981 in Article 22 of the African Charter on Human and Peoples'

18 Peter R. Baehr & Monique Castermans-Holleman, *The Role of Human Rights in Foreign Policy*, Palgrave Macmillan, 2004, pp. 8-9.

19 Vincent 1986, p. 61.

20 Müllerson 1997, p. 47.

21 Id. p. 123.

22 Pease 2016, p. 5.

23 Baehr & Castermans-Holleman 2004, pp. 13-14.

Rights, enjoyed enthusiastic support in the Communist Bloc, as it fit with their collective fight against the Capitalist West.²⁴

In the 80s, new human rights instruments were adopted by the UN (Torture, Rights of the Child). The first special *rapporteurs* were nominated by the Commission on Human Rights (CHR) on both thematic issues and country situations. The human dimension of the work carried out by the Conference on Security and Cooperation in Europe (CSCE) was also intensified.²⁵

There was no real place for human rights in the Marxist-Leninist theory which posited that the proletariat had rights, but the *bourgeoisie* did not. Besides, as the rights in the socialist theory derived “from a fundamental economic relationship, from the place of the individual in a pattern of production”, economic and social rights were prioritized within the Communist Camp over civil and political rights.²⁶ The most serious obstacle preventing any kind of substantial agreement in the East-West human rights discussion was that any significant changes in the human rights situation of the East would have required substantial changes in the economic and political systems of the countries pertaining to the Communist Camp.²⁷

There were similar debates in the North-South relations, related to the conflict between individualism versus collectivism and civil and political rights versus economic and social rights. However, as put by Raymond John Vincent, the East-West debate took place between ‘have’ countries, while the North-South discussion was among ‘haves’ and ‘have-nots’.²⁸ Consequently, in the latter debate, one side wanted to gain something materially at the expense of the other side. In this discussion, the South emphasized that the right to self-determination imposed a duty on the colonial powers to provide independence and in parallel to stop the practice of discrimination and segregation. As a third element, the economic aspects of self-determination were highlighted.²⁹ The response of the West to the human rights violation of the South was much less coherent than in the case of the East. There was a clear distinction between the human rights violations committed by leftist or by rightist governments. The Reagan administration differentiated the so-called totalitarian states from the so-called authoritarian ones and the only difference between the two categories was that in the first, there was complete control over the economy, while in the second, some market freedom was allowed.³⁰

In a Cold War context, marked by irreconcilable ideological and political conflict, there was no substantial place for human rights, besides security and ideological concerns. Therefore, human rights were often used as a propaganda tool for achieving political aims which had nothing to do with human rights at

24 Miao-ling Hasenkamp, *Universalization of Human Rights? The Effectiveness of Western Human Rights Policies Towards Developing Countries After the Cold War*, Peter Lang GmbH, 2004, p. 149.

25 Baehr & Castermans-Holleman 2004, p. 14.

26 Vincent 1986, p. 63.

27 Müllerson 1997, pp. 107-108.

28 Vincent 1986, p. 76.

29 Id. p. 79.

30 Müllerson 1997, p. 110.

all.³¹ However, one should not forget the ways the West tried to keep the flame of pro-democracy movements alive, by providing moral and financial support.

3. Human Rights Diplomacy in the Post-Cold War Era

By the end of the Cold War, human rights issues were no longer subject to Soviet-American rivalry. The Second World Conference of Human Rights in Vienna (1993) had already affirmed human rights as a “legitimate concern of the international community”.³² Democratization and the increased respect for civil and political rights were observed in many countries in Central and Eastern Europe and Latin America. However, in other places of the world, the new freedom brought about the emergence of internal ethnic tensions or religious extremism. It was the time to start discussions about cultural relativism versus universalism or about the question of Asian values.³³

The end of the Cold War also resulted in the disappearance of the Socialist concept of human rights. However, this made the differences between Europe and the US and especially between the North and the South much more visible. Washington’s position on economic and social rights was and still is more negative than the European approach, while the right to freedom of expression is more widely defined in the US than in Europe.³⁴ Another important element that differentiated Washington from Europe was that the US is much more reluctant to open itself to international scrutiny and therefore, there are several important international human rights treaties which they have still not ratified.³⁵

Despite the mixed consequences of this new freedom, the collapse of communist dictatorships, the end of colonialism in Africa, and the end of the rivalry between the East and the West should be certainly considered as positive developments for humanity.³⁶ This new era also demonstrated that although the number of military divisions matter, there are other important factors, unrelated to nuclear deterrence or the balance of power, which have an important role in the foreign policy considerations of states. Human rights are one of them.³⁷

In our globalized world, where different political and economic forces have resulted in serious migration flows worldwide, the separation of different cultures is no longer an option, as it was in the Middle Ages. It is important to find functioning solutions to address the challenges of the coexistence of representatives of different cultures despite the presence of increasingly intolerant societies and a growing number of intercultural clashes. The misuse of cultural relativism by authoritarian regimes for justifying human rights violations

31 Id. p. 103.

32 *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para. 4, at www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf.

33 Baehr & Castermans-Holleman 2004, p. 16.

34 Kardos 2002, p. 4.

35 Donnelly 2000, p. 6.

36 Müllerson 1997, p. 71.

37 Id. p. 2.

in the name of cultural particularities should be strictly separated from legitimate claims based on traditional practices, supported by the given cultural community, and not contradicting basic human rights values. It is important to see that international human rights norms, by contributing to the gradual eradication of inhumane traditional practices, do not undermine the cultural foundations of Asian or African societies, but are making them more humane.

The social and political concerns of Africans are shaped mainly by the legacy of colonialism and the memory of post-Colonial era of instability. Together, these concerns are also shaped by the severe socio-economic challenges the continent faces, including massive international debt, the highest number of refugees in the world, and widespread starvation. In this context, many Africans still consider human rights as a Western-inspired imperialist notion, based on a doctrine focusing on the individual, while in Africa, the worth of the individual can only be understood in the context of the community. Therefore, Africans prioritize duties and obligations over rights. Despite certain reservations to human rights, the emerging African human rights system clearly indicates the political will of most African countries to establish a sound foundation guaranteeing the fundamental freedoms and rights of the people on the continent.³⁸

In Asia, we may witness a strong adherence to the principles of sovereignty and non-interference. This phenomenon, combined with nationalism and the decision by most Asian states to choose economic modernization without Westernization, has shaped Asia's human rights diplomacy. Asia has adopted, without reservation, the European concept of sovereignty without the human rights component. Asian leaders referring to 'Asian values' emphasize the primacy of economic development over the protection and promotion of human rights. In light of these developments, the reserved position of most Asian states towards international judicial fora, such as the International Criminal Court (ICC) or the ICJ, is not surprising, owing to the conservative understanding of the principles of non-interference and national sovereignty. Similar factors contribute to the fact, that presently Asia is the only continent without a regional human rights organization.

4. Actors of Human Rights Diplomacy

4.1. States

Despite all the changes that occurred in the last few decades, and the increasing number of actors involved in the shaping of human rights diplomacy, it is still mainly carried out by states.³⁹ Their representatives are the most influential players at multilateral conferences and other gatherings where the most important human-rights-related decisions are taken. In our contemporary world, even small states can play an important role in this field. Besides the well-known

38 István Lakatos, 'Implementing Universal Human Rights Standards in and by Sub-Saharan African States in the Shade of Local Traditions', *Human Rights Quarterly*, Vol. 42, Issue 1, 2020, p. 252.

39 Baehr & Castermans-Holleman 2004, p. 90.

disadvantages, they have the advantage that most of them are neutral or non-aligned; therefore, their credibility is higher in many instances than that of bigger states. Due to their size, their decision-making and organizational adaptability is very good and because of their more limited economic and foreign policy interests they can better prioritize human rights concerns within their foreign policy.⁴⁰ In many instances, small states are doing a lot for the credibility of the international human rights system. In 2011, it was Switzerland who initiated – unfortunately without any success – a special session in the UN HRC on peaceful protest rightly reflecting on developments in connection with the Arab Spring. Of the initiatives at the HRC during the last few years, many important ones were initiated by small states. Those on the safety of journalists or on minorities by Austria, those on business and human rights, and human rights defenders by Norway, the initiative on transitional justice by Switzerland, or the Hungarian initiative on reprisals are just a few examples.⁴¹

Since the Peace of Westphalia (1648), states have been the greatest protectors of, and the main threats to internationally recognized human rights.⁴² They conclude international human rights instruments and they violate them at the same time. They use both bilateral and multilateral channels to pursue their human rights diplomacy aims. Sometimes states choose to use bilateral diplomacy, but in other cases they find public condemnation a more efficient way to react to a deplorable human rights situation in another state. However, despite the important role of bilateral channels there is more and more cooperation among states at multilateral forums, such as the UN or regional organizations, to adequately address serious human rights violations. Multilateral human rights diplomacy has several advantages over bilateral steps. The decisions taken at multilateral forums have greater legitimacy and seem more impartial than unilateral measures. These decisions also have a less detrimental effect on bilateral relations. Finally, human rights violations should be a concern for the entire international community and not just for a few states only.⁴³

A relatively recent phenomenon of the post-Cold War era is that states are appointing human rights ambassadors as the face of their human rights diplomacy. This practice is especially popular among EU Member States (Austria, Denmark, Finland, France, Germany, Hungary, Netherlands, Spain, and Sweden), but there are also human rights ambassadors outside of the EU (Japan, US, Norway, and several Latin American states).⁴⁴ There are informal meetings among the human rights ambassadors of the EU and from time to time they carry out joint missions or visits to places of common interest. They played an

40 Éamonn Mac Aodha, 'Human Rights Diplomacy of Small States' in O'Flaherty *et al.* (eds.) 2011, pp. 71-75.

41 István Lakatos, 'The Potential Role of Small States and Their "Niche Diplomacy" at the UN and in the Field of Human Rights, With Special Attention to Montenegro', *Pécs Journal of International and European Law*, 2017/1, pp. 64-65.

42 Pease 2016, p. 8.

43 Müllerson 1997, pp. 133-137.

44 Silvia Escobar, 'The Role of Human Rights Ambassadors in Human Rights Diplomacy – Perspectives from Spain', in O'Flaherty *et al.* (eds.) 2011, p. 59.

important role within the framework of Asia-Europe Meetings (ASEM) or in the Community of Democracies initiative. Their legal status, functions or power is very distinct in the different countries, but usually human rights ambassadors can play an important role regarding cooperation with civil society actors, political coordination concerning human rights issues, such as preparing the given country for the Universal Periodic Review discussion. In the Hungarian practice, the human rights ambassador had a significant role in lobbying for the HRC membership of the country, or running special initiatives, such as the establishment of the Budapest Centre for Mass Atrocities Prevention.

The development of human rights diplomacy as a distinct part of national foreign policy resulted in the launching of organized training for human rights diplomats, which usually takes longer than for diplomats focusing on bilateral questions. Multilateral human rights diplomacy requires experts who are not just familiar with the rules of procedures of international organizations but are also knowledgeable about public international law and, in particular, human rights law. An efficient human rights diplomat needs to have an appropriate network of connections. They should be aware of the most important multilateral negotiating techniques and be familiar with the human rights diplomacy priorities of the most important states.⁴⁵ Given, the very special requirements regarding human rights diplomats, in many countries they are not rotated too often, unlike in the case of bilateral diplomacy.

The twenty-first century has brought significant changes in the field of international human rights diplomacy, and slightly reduced the “gap between the liberal legal framework on human rights that most states have formally endorsed, and the realist principles that they often follow in their foreign policies.”⁴⁶ Consequently, despite the inescapable tension that exists between human rights and foreign policy, states are obliged to pay attention to human rights whether they like them or not, as human rights have become one of the states’ legitimizing factors.⁴⁷

4.2. *International Organizations*

The question of human rights has played an important role in the life of the UN since its establishment. Although it was clear considering the devastating experiences of World War II that the notion of absolute sovereignty cannot be maintained, the seven provisions of the UN Charter with references to human rights were general and more promotion than protection oriented. The adoption of the UDHR in 1948 – despite its legally non-binding nature – represented a major step in the field of international human rights protection, and as noted in its preamble, as a “common standard of achievement for all peoples and all nations”.⁴⁸

45 István Lakatos, ‘A magyar emberi jogi diplomácia az ENSZ-ben, avagy sikerek és kudarcok a magyar EU-elnökség és az EJT-tagság alatt’, *Külgügyi Szemle*, 2013/4, pp. 48-49.

46 David P. Forsythe, *Human Rights in International Relations*, Cambridge University Press, Cambridge, 2006, p. 152.

47 Vincent 1986, pp. 129-130.

48 Baehr & Castermans-Holleman 2004, p. 101.

Kelly-Kate Pease suggests a useful approach to address the multilateral human rights diplomacy at the UN, by looking at the world organization as three interactive entities. The first UN is where multilateral diplomacy takes place with the participation of Member States; the second UN represents the policy-making work carried out by UN officials, independently of the Member States; and the third UN is where we can find the network of NGOs, independent experts, and other civil society actors. During the Cold War era, the first UN was marginalized and paralyzed due to the competition between the Superpowers, which focused exclusively on security concerns.⁴⁹

Of the three tasks of the UN related to human rights, during the Cold War era the first – concerning the development of international standards – was the dominant one. The second and third – concerning implementation/monitoring and education – met serious restrictions and constraints. The CHR became the UN's main human rights body and carried out remarkable standard-setting work in the course of the 60 years of its existence. Its essentially political job was complemented by the more legal activity carried out by treaty bodies responsible for the implementation of international human rights instruments.⁵⁰

UN Secretaries-General – who needed the consent of the P5 countries (China, France, Russia, UK, and the US) for their appointment – were not famous for their active human rights diplomacy. The only exception was Kofi Annan, who had strong and marked views about human rights. Although Bertrand G. Ramcharan, former acting High Commissioner for Human Rights, was of the view that Annan's support for humanitarian intervention should be considered as “the anti-thesis of human rights diplomacy”, the majority of UN Member States did not support this concept and therefore became suspicious about the responsibility to protect, which intended to replace the notion of humanitarian intervention.⁵¹ The current UN Secretary-General António Guterres also had to face serious criticisms from former UN officials, like Zeid Ra'ad Al Hussein, former UN High Commissioner for Human Rights; or Andrew Gilmour, former UN Assistant Secretary-General (ASG) for human rights concerning his human rights diplomacy, which was considered too low profile in many cases, regarding serious human rights violations. Guterres is certainly unfortunate as by now most of the “influential Member States were turning away from human rights” as Foreign Policy put it.⁵²

The most important political body of the UN, the Security Council, rarely addressed human rights questions during the first few decades of its existence. This was due to the fact that historically the dividing line between security and human rights questions was absolutely clear, although human rights issues were

49 Pease 2016, p. 67.

50 Baehr & Castermans-Holleman 2004, p. 101.

51 Bertrand G. Ramcharan, ‘The Human Rights Diplomacy of the UN Secretary-General’, in O’Flaherty *et al.* (eds.) 2011, p. 176.

52 Colum Lynch, ‘U.N. Chief Faces Internal Criticism Over Human Rights. Guterres Is Said to Back Down in the Face of Pressure From Powerful Member States’, *Foreign Policy*, 4 February 2020, at <https://foreignpolicy.com/2020/02/04/un-chief-antonio-guterres-internal-criticism-human-rights/>.

not completely absent from the Security Council's agenda even then. It is sufficient to refer to Security Council resolution 120 of 1956 on the situation of Hungary, calling an emergency session of the General Assembly.⁵³ One can also mention resolution on Congo (1961), on the Dominican Republic (1965), or on South Africa (from 1963 to the late 80s) where human rights considerations were present as well.⁵⁴ The end of the Cold War not only completely changed the political atmosphere the Security Council was operating in, but it also changed the nature of armed conflicts on the Council's agenda. Despite strong resistance by several Security Council members, these facts accelerated the gradual development of an approach that considered human rights to be an integral part of the maintenance of international peace and security. In 1992, the Security Council heard special *rapporteurs* of the CHR for the first time. The figures are also very telling, as in 1994 5% of resolutions and 7% of presidential statements mentioned human rights, while by 2000 these numbers were around 30% and in 2010 reached 51% and 53%, respectively.⁵⁵ These trends also indicate that security is no longer considered to mean just the security of the state, but also human security. Likewise, peace is not just understood as the absence of violence but in a positive sense, including the security of humans, which also means respect for their basic human rights.⁵⁶

The General Assembly is also an important forum for international human rights diplomacy, giving smaller states the chance to voice their human rights concerns. It also initiates studies and makes recommendations that contribute to the further development of international human rights law.⁵⁷ The work of the III. Committee of the GA should be mentioned in this context; it is responsible for the human rights work among the six committees of the General Assembly.

The creation of the post of UN High Commissioner for Human Rights in 1993, "much as a result of public human rights advocacy at the Vienna World Conference on Human Rights,"⁵⁸ opened a new chapter in the international protection and promotion of human rights. The first High Commissioner, José Ayala Lasso (Ecuador) did a lot for the development of inter-agency cooperation, but was often criticized for not being sufficiently confrontational. In 1997, Mary Robinson, former president of Ireland, was appointed as the second High Commissioner. She further expanded the UN's presence in many countries, but she had a confrontational relationship with Washington because of her criticism of the human rights violations that occurred in occupied Palestinian territories and the US War on Terror. Moscow and Beijing were also not very pleased with

53 UNSC Resolution 120(1956) [The Situation in Hungary], at www.refworld.org/docid/3b00f1dd64.html.

54 Joanna Weschler, 'Human Rights Diplomacy of the United Nations Security Council', in O'Flaherty *et al.* (eds.) 2011, pp. 191-192.

55 *Id.* p. 193.

56 Pease 2016, p. 75.

57 *Id.* p. 88.

58 Statement by Navanethem Pillay, UN High Commissioner for Human Rights, '*Human Rights Diplomacy: An Oxymoron?*', Cambridge, Massachusetts, 28 October 2009, at <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9569&LangID=e>.

her work as she criticized Russia's policy regarding Chechnya, and China's measures regarding the Muslim Uighurs in Xinjiang. Sérgio Vieira de Mello (Brazil) followed Mary Robinson. He had excellent diplomatic skills and managed to maintain good relations with Washington; he was killed in 2003 in Iraq by a suicide bomber. The acting High Commissioner Bertrand Ramcharan (Guyana) did a lot during his short tenure to raise the morale of the agency and keep human rights and humanitarian principles in the center in case of violent conflicts. In 2004, Louise Arbour (Canada), a former prosecutor of the International Criminal Tribunals for Yugoslavia and Rwanda, was appointed as a new High Commissioner. She became quite outspoken by the end of her mandate. This led to clashes with Washington over her criticism of US policy on arbitrary detention and interrogation techniques. Navi Pillay (South Africa) followed Arbour in 2008. A former judge of the International Tribunal for Rwanda, Pillay was very outspoken on LGBTI rights, but in other cases she used quiet diplomacy if deemed necessary. She was very supportive of civil society. The next High Commissioner was Prince Zeid Ra'ad Al Hussein (Jordan), a former diplomat who became a vocal and passionate human rights advocate. The current High Commissioner is Michelle Bachelet, former President of Chile, who succeeded Zeid Ra'ad Al Hussein of Jordan on 1 September 2018.⁵⁹ Her relationship with Washington also became hostile within a short period of time, as she was personally criticized by US Secretary of State Michael Pompeo for releasing a database of companies that are helping Israel to develop Jewish settlements in Palestine-occupied territory.⁶⁰

In 2006, the CHR was replaced by the UN HRC, which is "virtually a standing body"⁶¹ and therefore in a much better position than its predecessor to address human rights crises in a timely manner. The different mechanisms of the HRC, most importantly the special procedures (country and thematic special *rapporteurs*, working groups), the commission of inquiries, and the Universal Periodic Review (UPR) provide an incredibly valuable database, which is a *sine qua non* for efficient human rights diplomacy. This database is one of the most important sources of information for all actors, including states, international organizations, NGOs, and other civil society or corporate players to elaborate their human rights diplomacy. The establishment of the UPR process brought a new approach to the whole UN system, by providing human rights monitoring of all UN Member States in a cooperative manner, with an increasingly important technical assistance pillar for the implementation of UPR recommendations. However, the UPR process certainly did not render the adoption of country-specific resolutions redundant, although the naming and shaming should be done in a more strategic way, with better coordination within the UN system, by increasing the regional dimensions in the work of the world organization.

59 Pease 2016, pp. 102-112.

60 Barbara Crossette, 'New Tensions Sparking Between Trump and UN Rights Leader, Michelle Bachelet', *Passblue*, 9 March 2020, at www.passblue.com/2020/03/09/new-tensions-sparking-between-trump-and-un-rights-leader-michelle-bachelet/.

61 Ibrahim Salama, 'Human Rights Diplomacy from a UN Perspective: A Complement to Advocacy', in O'Flaherty *et al.* (eds.) 2011, p. 138.

Human rights conferences organized under the auspices of the UN offers space for divergent views to be aired and where, as a result of often time-consuming and intense debates, political agreements are achieved on important human rights topics.⁶² *E.g.* the Second World Conference of Human Rights (Vienna 1993) laid down among others, the interdependency of human rights, democracy and development, and initiated the establishment of the post of the UN High Commissioner for Human Rights.⁶³ However, the success of a conference is not guaranteed. As Zdzislaw Kedzia noted, a few important factors or preconditions – including a clear vision of the aims to be achieved, a well-structured and participatory preparatory process, a target-oriented agenda, a determined leadership, and an effective follow-up mechanism – are needed to achieve a successful outcome.⁶⁴

From an originally economic intergovernmental organization, the EU has become one of the most important human rights players. It is in possession of a great variety of tools to address internal and external human rights concerns. The Lisbon Treaty, by making the Charter of Fundamental Rights legally binding and providing the basis for the establishment of the European External Action Service, introduced a different quality into this development. The creation of the post of the High Representative for Foreign Affairs and Security Policy gave a face to the EU's foreign policy, while the establishment of the EU Special Representative for Human Rights provided a leader for the human rights diplomacy of the Union. The EU's human rights diplomacy, however, is a result of very complex teamwork, in which all the different actors have a role and their close cooperation is essential for success.

In this context, the oldest European and the most sophisticated regional human rights organization, the Council of Europe should be mentioned too, with the ECtHR which is to ensure the respect for the obligations contained in the ECHR. The political control is provided by the Committee of Ministers, which is the main decision-making body of the organization. Its Parliamentary Assembly elects the Secretary General, the Human Rights Commissioner, the judges of the ECtHR, and it provides a democratic forum for debate. It also monitors elections and its committees play an important role in examining current human rights issues.

4.3. NGOs

Human rights NGOs have a crucial role in the advocacy directed at governments, international organizations, or more and more frequently, at the corporate sector. Peggy Hicks distinguishes between six different types of roles NGOs have in this context. (i) The first one is the catalyst of action, by pushing for accountability. (ii) The second is the role of advocates, which is carried out through the provision of information, expertise, through the media, or by using

62 Zdzislaw Kedzia, 'Conference Diplomacy and Human Rights', in O'Flaherty *et al.* (eds.) 2011, p. 202.

63 *Id.* pp. 207-210.

64 *Id.* p. 215.

public support. (iii) The third role involves the shaping of debates, while (iv) the fourth is where NGOs act as partners of governments in policy-making. (v) The fifth role relates to the monitoring of governments engaged in human rights diplomacy and their efforts to enhance the consistency of their human rights diplomacy. (vi) The last role mentioned by Hicks is that of legitimizer and beneficiary. On the one hand, the fact that NGOs are pushing for action in a certain case gives a greater legitimacy to international efforts and on the other hand they are at the receiving end of human rights diplomacy, when it comes to the protection of human rights defenders.⁶⁵

Human rights NGOs differ very much in size, expertise, and their relationship to governments. Some NGOs receive no funding from governments so that they can preserve their independence, while others are fully funded from state budgets, and in many cases, they solely represent the interests of the financing governments. According to a definition by Laurie Wiseberg, human rights NGO is

“a private organization which devotes significant resources to the promotion and protection of human rights, which is independent of both governmental and political groups that seek direct political power, and which itself does not seek such power.”⁶⁶

As emphasized by experts, reliability and credibility are the most important assets of an NGO. Targeted governments often try to discredit human rights NGOs by questioning their motives, in order to discredit the criticism they have voiced.⁶⁷ The work of human rights NGOs can even contribute to the creation of new human rights standards and thereby to the development of human rights law. The reliable data collected by them is essential for governments to have a credible public policy. The human rights expertise of civil society representatives is often acknowledged by governments and international organizations and therefore these experts are increasingly invited to hold government or international organization positions.⁶⁸

But the work of NGOs also has certain negative impacts on human rights. Civil society organizations are frequently criticized because of the lack of transparency and accountability in their operations, which certainly undermines their legitimacy. In several countries they are replacing the states in providing certain services; this can have a negative effect on policy coordination or can lead to discriminatory practices as they do not have the obligation to guarantee rights on an equal basis to all.⁶⁹ NGOs may also lack the capacity to perform and

65 Peggy Hicks, 'Human Rights Diplomacy: The NGO Role', in O'Flaherty *et al.* (eds.) 2011, pp. 217-221.

66 Baehr & Castermans-Holleman 2004, pp. 116-117.

67 *Id.* p. 117.

68 Pease 2016, pp. 135-136.

69 Nicolas David *et al.*, *The Positive and Negative Human Rights Impacts of Non-State Actors*, Frame, Work Package No. 7 – Deliverable No. 1, 2014, pp. 87-88, at www.fp7-frame.eu/wp-content/uploads/2016/08/04-Deliverable-7.1.pdf.

therefore may address human rights issues in a short-term manner, dealing with only the effects and not the root cause of problems. Most NGOs are donor-driven. On many occasions, donors influence NGOs' agendas, which consequently are not always in harmony with the interests of human rights protection. It is also a frequent problem that rich northern NGOs dominate the agendas of local civil society organizations operating in the South, without understanding local needs.

4.4. *Corporate Social Responsibility*

Multinational companies have an increasingly important role in the international promotion and protection of human rights, as in many states with a poor human rights record, they are the most influential players in the field. Because of the size and importance of their investment, they have more leverage on the government concerned than others. Earlier, multinational corporations usually refused to get involved in politics when they were criticized about their role in a problematic country.⁷⁰ This attitude has certainly changed and as recent research demonstrates, there is a direct link between CHR/HRC resolutions and foreign direct investment (FDI). According to the research, countries condemned by the CHR/HRC were associated with roughly a 49% decline in FDI inflows.⁷¹ More and more companies recognize their responsibility in the area and a few of them are even involved in public relations campaigns in this field. This change in the mentality of the corporate sector is a result of the recognition that human rights violations often lead to instability and uncertainty in the investment climate. However, even in stable political situations, a public condemnation of serious human rights violations may have a positive effect on the corporate reputation of a multinational company.⁷²

4.5. *Multi-Stakeholder Diplomacy*

Multi-stakeholder diplomacy is becoming more and more relevant in our contemporary world. It is based upon a bottom-up approach, in contrast with the top-down perspective of traditional diplomacy. It is often referred to as 'human diplomacy', exhibiting certain overlaps with public diplomacy. Multi-stakeholder diplomacy also involves non-state/governmental actors, such as academics, civil society organizations, the media, and parliamentarians too.⁷³ The involvement of so many different actors certainly increases the legitimacy and the efficiency of measures. A good example for this approach is the Internet Governance Forum (IGF), which involves governments, international organizations, the business sector, the tech industry, NGOs, civil society, and academics too. One could also mention the EU-China human rights dialogue, which also involves NGOs and

70 Baehr & Castermans-Holleman 2004, p. 122.

71 Krishna Chaitanya Vadlamannati *et al.*, 'Human Rights Shaming and FDI: Effects of the UN Human Rights Commission and Council', *World Development*, Vol. 104, 2018, p. 229.

72 Baehr & Castermans-Holleman 2004, p. 123.

73 Wolfgang Benedek, 'The Relevance of the Multi-Stakeholder Approach and Multi-Track Diplomacy for Human Rights Diplomacy', in O'Flaherty *et al.* (eds.) 2011, p. 252.

academics besides government representatives.⁷⁴ A significant advantage of the multi-stakeholder approach is the better dissemination and communication of results and the increased legitimacy owing to the wide range of categories of participants.⁷⁵

5. Human Rights Policy Instruments

5.1. Diplomatic Means

Diplomatic measures represent the traditional, quiet diplomacy way of addressing human rights problems in another country. The first step can be a formal *démarche* expressing the concerns in a non-public manner to the representative of the government which is in violation of international human rights standards. If this approach is not sufficient, the government can issue a public statement. This can take place in parliament, or at a session of an international organization, or it can be sent to the press as a *communiqué*. These are often more for 'public consumption' than to change the policy of another state.⁷⁶

Another step can be the cancellation or postponement of ministerial visits or a more drastic measure is the recalling of ambassadors for consultation.⁷⁷ A rarely employed diplomatic solution is the use of inter-state complaint procedures which are available in the context of several international human rights instruments, like the ICCPR (Article 41). A more drastic diplomatic measure is the breaking off of diplomatic relations.⁷⁸ The example (2014) of Botswana may be mentioned here, who as a reaction to the grave and systematic human rights violations contained in the report prepared by the UN Commission of Inquiry on Human Rights in North Korea, decided to terminate diplomatic and consular relations with the democratic People's Republic of Korea.⁷⁹ The most recent example was the one of Guatemala (2020) who announced in January 2020 that it is breaking off diplomatic relations with Venezuela.⁸⁰ There are however, positive diplomatic measures as well, such as providing human rights training for judges, lawyers, public prosecutors, and for other state officials in a country that had committed human rights violations.⁸¹

5.2. Economic Means

States are usually not very eager to use economic sanctions against another state as they may end up harming themselves as well. An example mentioned by

74 Id. p. 254.

75 Id. p. 259.

76 Baehr & Castermans-Holleman 2004, p. 70.

77 Forsythe 2006, p. 156.

78 Baehr & Castermans-Holleman 2004, pp. 71-72.

79 Kwanwoo Jun, 'Botswana Cuts North Korea Ties', *The Wall Street Journal*, 20 February 2014, at <https://blogs.wsj.com/korearealtime/2014/02/20/botswana-cuts-north-korea-ties/>.

80 'Guatemala Breaks off Diplomatic Relations with Venezuela', *Al Jazeera*, 17 January 2020, at www.aljazeera.com/news/2020/01/guatemala-breaks-diplomatic-relations-venezuela-200117021125848.html.

81 Baehr & Castermans-Holleman 2004, p. 73

Forsythe is very telling in this respect. One of the reasons Switzerland did not want to join the UN for many years was that the economic sanctions issued by the League of Nations against Mussolini's Italy damaged the Swiss economy and were extremely unpopular among the Italian-speaking Swiss population.⁸² Within the UN system, the Security Council is the only body that can impose mandatory sanctions on a state. So far, we have had countries like Afghanistan, Angola, Cambodia, Eritrea, Ethiopia, Haiti, Iraq, Libya, Rhodesia, Rwanda, Sierra Leone, Somalia, South Africa, Sudan, and Yugoslavia that had to face economic sanctions by the UN.⁸³ These examples show that economic sanctions usually fail to change the policy of the targeted country and sometimes even hurt the innocent population. Therefore, the notion of 'smart sanctions' is gaining more and more traction, as they are geared towards hurting the government or certain state officials, rather than the civil population.⁸⁴

There are also positive economic means, such as granting most-favored nation status in trade relations, or loans and credits provided depending on human rights performance.⁸⁵ In this context, the EU enlargement process should be mentioned as the most effective form of providing financial means linked to the respect of human rights.

Countries are more willing to use development aid as a tool to influence the human rights diplomacy of another state, since this ensures that there will be no negative repercussions for themselves. There are positive and negative ways to use this instrument, but the positive measures seem to be more effective, than the cancellation or the suspension of development aid.⁸⁶

5.3. *Military Means*

The most dramatic measure available for states with stronger military establishments is military intervention. This step is usually taken to stop very serious human rights situations, where genocide, crimes against humanity, ethnic cleansing, or war crimes are going on.⁸⁷ There is one case when the use of force is acceptable under international law, namely, when the Security Council is acting under Articles 39-42 of the UN Charter, in order to stop human rights violations, which pose a threat to international peace and security.⁸⁸ There are also military options that may be classified as positive measures, namely NATO membership, which provides collective military support for all members. There are situations when a country, such as the US, used military assistance to help the human rights development started by a government, as was the case with Guatemala in 2005. Washington also used this tool in a negative way, by reducing military assistance to states supportive of the ICC.⁸⁹

82 Forsythe 2006, p. 157.

83 Baehr & Castermans-Holleman 2004, pp. 73-74.

84 Forsythe 2006, p. 158.

85 Baehr & Castermans-Holleman 2004, p. 76.

86 *Id.* p. 77.

87 Forsythe 2006, pp. 158-159.

88 Baehr & Castermans-Holleman, 2004, pp. 78-79.

89 Forsythe 2006, p. 160

As mentioned earlier, the right to humanitarian intervention is not supported by international law in the absence of Security Council approval, and state practice does not support it either. However, since 1990, a greater acceptance can be observed on behalf of the international community for humanitarian intervention in extreme cases, even without a Security Council resolution.⁹⁰ A 2001 report on the concept of the Responsibility to Protect (R2P) was prepared by the International Commission on Intervention and State Sovereignty and endorsed by the 2005 UN World Summit.⁹¹ After 2005, a long period of debate ensued about the meaning, scope, and limits of R2P. The 2009 report authored by the Secretary-General on R2P outlines a three-pillar strategy to realize R2P, which involves three distinct levels of responsibility. (i) The primary responsibility and one that is absolute, unconditional, and continuous – is that of the sovereign state itself not to perpetrate or allow atrocities on its own soil (Pillar I). (ii) The second level of responsibility is that of others in the international community, including other states and intergovernmental organizations such as the HRC, to assist states in discharging their primary responsibility (Pillar II). (iii) Finally, the third level of responsibility, which comes into play only in cases where prevention fails and the state is manifestly unable to protect its own people, is that of the international community to provide protection by every means foreseen under the UN Charter (Pillar III).⁹²

The R2P differs from humanitarian intervention in several aspects. It is first and foremost a preventive principle, which allows the implementation of coercive measures only if they are authorized by the UN Security Council, so it is in line with existing international law. R2P focuses only on the four mass atrocity crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. Finally, R2P focuses not on the right of states to intervene but on a responsibility to protect populations at risk.

6. Outlook – New Human Rights Challenges of the 21st Century

The last few decades have brought several completely new challenges for mankind, such as the impacts of climate change, environmental degradation, and biodiversity loss, and the development and use of digital technologies, artificial intelligence, and the phenomenon of transnational crime, targeted killings by drones, corruption, mass migration, the growing power of multinational corporations and global inequality. The World Wide Web and social media platforms such as Facebook, Twitter, and YouTube have substantially changed the lives of billions of people around the world, providing a more democratic Information Age, but also giving dictators and cynical governments the

90 *Humanitarian Intervention. Legal and Political Aspects*, Danish Institute of International Affairs, 1999, pp. 122-123.

91 Ramesh Thakur & William Maley, 'Introduction. Theorising Global Responsibilities', in Ramesh Thakur & William Maley (eds.), *Theorising the Responsibility to Protect*, Cambridge University Press, Cambridge, 2015, p. 3.

92 *What is R2P?*, Global Centre for the Responsibility to Protect, at www.globalr2p.org/what-is-r2p/.

opportunity to manipulate more people through massive disinformation. These technological developments have changed the meaning of freedom of speech and not surprisingly more and more governments are trying to regulate the internet and its content. The most important pro-human rights campaigns are carried out on the web and therefore the “fight for freedom of expression is being fought largely online as internet become a means of expression of choice for political dissidents, democracy activists, human rights defenders and independent journalists.”⁹³ Facebook’s monopoly also poses human rights problems, related to privacy issues. The negative consequences of the War on Terror are well-known; they have compromised important human rights because of security considerations.

7. Conclusion

Human rights diplomacy has gone through substantial changes since the end of the Cold War, not just in terms of its acceptance, but in respect of its methods and participants. Despite the permanent tension that exists between the principle of sovereignty and respect for human rights, human rights issues have become an integral part of states’ foreign policy. The obvious consequence of the collapse of the Berlin Wall was the replacement of the East-West confrontation by conflicts in North-South relations. The political changes at the end of the 80s made the differences between the European approach to human rights and that of the US more visible. In the post-Cold War period, although states remained the most important players in shaping the human rights diplomacy of the international community, new actors appeared, such as civil society and the business community. The role of international organizations has increased since the 90s, as for many states they proved to be much more suitable forums, for both political and economic reasons, to highlight human rights concerns regarding third countries. The establishment of the position of the UN High Commissioner for Human Rights provided a new quality in the international fight against human rights violations. Human rights NGOs have become one of the most important sources of information regarding the human rights situation in the world, while big multinational companies are more and more involved in human rights debates, realizing their corporate social responsibility in this field. The use of the different means of human rights diplomacy, starting with diplomatic steps, through economic sanctions to the use of military measures very much depends not only on the human rights problems of a given state, but on *realpolitik* considerations, such as the size, and the economic and military power of the given country, not forgetting bilateral diplomatic and trade relations either. Addressing the new human rights challenges of our globalized age is vital for international human rights diplomacy to remain relevant in the future.

93 Diane Rowland, “Virtual World, Real Rights?: Human Rights and the Internet”, in Marco Odello & Sofia Cavandoli (eds.), *Emerging Areas of Human Rights in the 21st Century*, Routledge, 2011, p. 20.

Despite all the controversies surrounding human rights diplomacy, it has become an important reference point in international relations and has a strong legitimizing power. Unsurprisingly, according to research based on data collected during the period between 1976 and 2002, regimes with a poor human rights record are signing and ratifying international human rights treaties at rates similar to pro human rights governments, giving the low-cost legitimizing power of ratification in the absence of an effective implementation and monitoring system.⁹⁴ Consequently, the international community should focus on strengthening these mechanisms in order to make human rights diplomacy more efficient. One possible solution could be the establishment of a World Court of Human Rights as an independent counterpart of the HRC.⁹⁵ The power of human rights is also well demonstrated by the fact that many governments are trying to manipulate international human rights diplomacy, by allowing their public to hear criticisms of them only from rival powers and not from neutral or friendly states or organizations.⁹⁶ As noted by Pease:

“Human rights and humanitarian diplomacy is not about reaching some Western European social ideal about the relationship of the state to its citizens, but rather constructing a home where everyone can comfortably live while preserving human dignity and respecting cultural differences.”⁹⁷

94 Emilie M. Hafner-Burton *et al.*, ‘International Human Rights Law and the Politics of Legitimation’, *International Sociology*, Vol. 23, Issue 1, 2008, p. 115.

95 Manfred Nowak, ‘The Need for a World Court of Human Rights’, *Human Rights Law Review*, Vol. 7, Issue 1, 2007, 251, p. 254.

96 Jamie J. Gruffydd-Jones, ‘Citizens and Condemnation: Strategic Uses of International Human Rights Pressure in Authoritarian States’, *Comparative Political Studies*, Vol. 52, Issue 4, 2019, p. 589.

97 Pease 2016, p. 180.