

v. 10 • n. 19 • Dec. 2013
Biannual
English Edition

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SUR - International Journal On Human Rights is a biannual journal published in English, Portuguese and Spanish by Conectas Human Rights. It is available on the Internet at <<http://www.surjournal.org>>

SUR is covered by the following abstracting and indexing services: IBSS (International Bibliography of the Social Sciences); ISN Zurich (International Relations and Security Network); DOAJ (Directory of Open Access Journals) and SSRN (Social Science Research Network). In addition, SUR is also available at the following commercial databases: EBSCO, HEINonline, ProQuest and Scopus. SUR has been rated A1 and B1, in Colombia and in Brazil (Qualis), respectively.

SUR. Revista Internacional de Direitos Humanos / Sur – Rede Universitária de Direitos Humanos – v.1, n.1, jan.2004 – São Paulo, 2004 - .

Semestral

ISSN 1806-6445

Edições em Inglês, Português e Espanhol.

1. Direitos Humanos 2. ONU I. Rede Universitária de Direitos Humanos

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PRESENTATION



Foreign Policy and Human Rights

The fields of human rights and foreign policy have coincided with increasing frequency in recent years. The convergence of these areas, however, has not been widely explored in academic circles of the Global South, and is often considered secondary by activists working at the national level. This issue of SUR, prepared in partnership with **Asian Forum for Human Rights and Development**, **CIVICUS: Worldwide Alliance for Citizen Participation** and **Commonwealth Human Rights Initiative**, proposes, on the one hand, to raise awareness about the different interfaces and interactions between the international activities of countries and the national *protection* of human rights, and, on the other, to examine contemporary international dynamics such as the emergence of a multipolar world and its impact on the global protection of human rights.

The thematic group of articles addresses the changes in the international system – primarily the more prominent role played by so-called emerging powers (Brazil, South Africa, India and China, among others) – and their impact on the global protection of human rights.

Reviewing the foreign policy of these countries and their impact on human rights includes, for example, analyzing their increased commitment to and engagement with regional and international human rights protection mechanisms. With respect to this point, the potential role of emerging powers in the field of human rights is examined by David Petrasek in **New Powers, New Approaches? Human Rights Diplomacy in the 21st Century**. In his article, Petrasek argues that, despite the reluctance of these new powers to adopt “traditional” tactics such as naming and shaming and the imposition of conditionalities in their bilateral relations, these countries play an important role in the international protection of human rights through standard-setting on specific human rights issues in multilateral forums.

In **Foreign Policy and Human Rights in Emerging Countries: Insights Based on the Work of an Organization from the Global South**, Camila Asano, coordinator of Foreign Policy and Human Rights at Conectas, examines the role of emerging countries,

with a focus on Brazil, in international and multi-lateral bodies. Based on the experience of Conectas, the article provides insights for other civil society organizations wishing to engage with the formulators and implementers of foreign policy to promote policies that are more respectful of human rights. SUR 19 also features a joint interview with Maja Daruwala, of the **Commonwealth Human Rights Initiative (India)**, and Susan Wilding, of **CIVICUS World Alliance for Citizen Participation (South Africa)**, two additional organizations that monitor how their countries’ activities abroad are affecting human rights. Both for Asano and for Daruwala and Wilding, the international performance of their countries leaves a lot to be desired in terms of consistency.

A subgroup of articles analyzes, more specifically, two topics of Brazilian foreign policy: health and international development cooperation. In **Public Health and Brazilian Foreign Policy**, Deisy Ventura addresses Brazilian diplomacy in the field of health – at a regional and international level – and analyzes how the human rights topic has been included in this agenda. In the article, Ventura demonstrates the solidarity that underpins Brazilian health diplomacy, but also warns of the proliferation of cross-cutting contradictions – both internal and external – that weaken, in the current context, the prevalence of human rights and the very effectiveness of Brazilian health cooperation. In **Brazil’s Development Cooperation with Africa: What Role for Democracy and Human Rights?**, Adriana Erthal Abdenur and Danilo Marcondes de Souza Neto revisit the role and presence of Brazil on the African continent, analyzing how and to what extent the “Brazilian model” of cooperation directly and indirectly impacts the dimensions of democracy and human rights on the African continent. The authors identify, despite the non-interventionist rhetoric of Brazilian foreign policy, a positive – albeit cautious – role of the country in its relationship with African nations. They point out, however, that Brazil could be a more active and decisive partner in the promotion of democracy and human rights on the continent.

This group also includes two articles on the national implementation of international norms, decisions and recommendations. These articles were

included with the aim of countering the normative analysis that usually underlies studies on this topic by including the political dimension that permeates the domestic incorporation of international instruments, given that, in the same one country, we find cases of active engagement, limited respect and even defiance of international norms. These dynamics interest us, since they have a considerable impact on the scope that victim protection systems will have in each specific context.

In this context, in **Incorporating International Human Rights Standards in the Wake of the 2011 Reform of the Mexican Constitution: Progress and Limitations**, Carlos Cerda Dueñas examines how the 2011 constitutional reform in Mexico established respect for human rights as a guiding principle of the country's foreign policy and what the impact of this has been on the incorporation of international norms by the country. Elisa Mara Coimbra, meanwhile, discusses the relationship between Brazil and the Inter-American System of Human Rights. In **Inter-American System of Human Rights: Challenges to Compliance with the Court's Decisions in Brazil**, the author comments on the implementation status of the decisions in five cases in which Brazil was condemned by the regional system.

Despite the variety of issues present in this edition, we should briefly mention the major research topics and agendas that emerged during the conception and production of this issue of SUR and that, for practical reasons, have not been fully addressed here. Prominent among them are, for example, the dynamics of transparency, accountability and citizen participation in foreign policy, and comparative studies of foreign policies of two or more countries from the Global South. As expected, and fortunately, the debate does not end with this issue, and SUR remains committed to continuing this dialogue.

Non-thematic articles

This issue of SUR includes four articles in addition to the dossier. The first, **Finding Freedom in China: Human Rights in the Political Economy**, written by David Kinley, addresses human rights in China from an economic policy perspective, proposing new ways of viewing the relationship between the Chinese

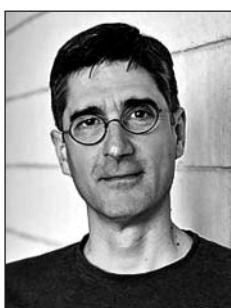
economic model and the realization of fundamental freedoms in the country.

Laura Betancur Restrepo, in **The Promotion and Protection of Human Rights through Legal Clinics and their Relationships with Social Movements: Achievements and Challenges in the Case of Conscientious Objection to Compulsory Military Service in Colombia**, presents an analysis of the work of the Constitutional Court of Colombia on the subject of conscientious objection in the specific case of mandatory military service. Based on discourse analysis, the author attempts to comprehend the legal translation of social demands and its direct and indirect impacts for social movements.

Finally, the issue contains two articles that tackle the issue of sexual and reproductive rights. The first, **Modern-day inquisition: A Report on Criminal Persecution, Exposure of Intimacy and Violation of Rights**, written by Alexandra Lopes da Costa, discusses the implications of the ban on abortion in Brazil, in a quasi-journalistic account of a case that occurred in the state of Mato Grosso do Sul.

The second, **Case Study on Colombia: Judicial Standards on Abortion to Advance the Agenda of the Cairo Programme of Action**, by Ana Cristina González Vélez and Viviana Bohórquez Monsalve, examines how Colombia and, more broadly, Latin America, have advanced in the implementation of the Cairo Programme of Action, which addresses access to abortion and the protection of other reproductive rights.

Finally, we would like to emphasize that this issue of the Sur Journal was made possible by the support of the Carlos Chagas Foundation (FCC). Conectas Human Rights is grateful for the collaboration of the partner organizations throughout the production of the thematic section of this issue. We also thank Amado Luiz Cervo, Bridget Conley-Zilkic, Celia Almeida, Daniela Riva Knauth, Deisy Ventura, Eduardo Pannunzio, Eloisa Machado de Almeida, Fernando Sciré, Gabriela Costa Chaves, Gilberto Marcos Antonio Rodrigues, Gonzalo Berrón, Guilherme Stolle Paixão e Casarões, Katia Taela, Jefferson Nascimento, Louis N. Brickford, Márcia Nina Bernardes, Renan Honório Quinalha, Renata Avelar Giannini, Salvador Tinajero Esquivel and Thomas Kellogg for reviewing the articles published in this issue.



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ABSTRACT

The extent to which emerging powers will pursue human rights issues in their foreign policy is more complex than commonly assumed. Although they may be less willing to pursue tactics such as public criticism and conditionality, they may embrace other tactics, including dialogue-driven approaches and thematic-specific standard-setting. As the impact of naming and shaming approaches is in any case contested, such a shift presents both risks and opportunities for the goal of maintaining and improving an effective international regime for the protection of human rights.

Original in English.

Received in October 2013. Accepted in November 2013.

KEYWORDS

United Nations – Foreign policy – International human rights standards – Human Rights Council – BRICS – Conditionality



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This paper is available in digital format at <www.surjournal.org>.

NEW POWERS, NEW APPROACHES? HUMAN RIGHTS DIPLOMACY IN THE 21ST CENTURY*

David Petrasek

How will the emerging powers deal with human rights in their foreign policy? The question arises for an obvious reason: the world is changing. Economic and political power is shifting from North and West to South and East; liberal democracies will increasingly share or cede global power to authoritarian regimes or emerging powers that appear to prioritize sovereignty and non-interference over raising concerns about respect for human rights in other countries. The approach to date, at least of international human rights advocates, is to simply insist that as new global powers emerge, they must – no less than existing powers – use their growing influence to pressure recalcitrant regimes to respect human rights.¹

However, a recent online forum devoted to the issue of emerging powers and human rights was indicative of a range of views as to whether such a strategy makes sense.² Some of the authors approved of it, arguing that new powers ought to raise concerns about human rights abuse in other countries.³ But a number of others explained why new powers would be unlikely to do so,⁴ and a few suggested that, even if they were willing and able to do so, new powers might be unwise to prioritize human rights in their foreign policy.⁵ Though apparently contradictory, all three positions are to some degree valid.

Why? Because there are numerous ways in which human rights can be promoted in a State's foreign policy. The most obvious and visible tactic is to make concern over human rights issues a key part of bilateral relationships, linking progress to improved trade and other relations, and, if necessary, voting in multilateral settings to express disapproval. This tactic – of public criticism

*An earlier version of this paper appeared as "New powers won't play by old rules". Available at: <<http://www.opendemocracy.net/openglobalrights/david-petrsek/new-powers-won't-play-by-old-rules>>. Last accessed on: Nov. 2013.

and conditionality – may be used *vis-à-vis* some States, whereas in regard to other human rights concerns, it may be dealt with in confidence, in an ongoing dialogue.

In addition to such country-specific approaches, however, States might also promote human rights globally by seeking international attention for specific human rights themes, for example in relation to certain categories of rights-holders (for example, women, migrants, the landless), or certain types of rights (for example, freedom of association, self-determination). This might result in diplomacy aimed at strengthening international legal rules or at recognizing new types of human rights (for example, a right to peace). Further, the approach taken to both country-specific and theme-specific tactics in the United Nations may differ from those deemed appropriate in regional intergovernmental organizations.

Emerging powers will embrace some of these tactics, and avoid others – sometimes for good reasons. Decisions to do so will be based both on the nature of the tactic proposed and on the State's relationship to the country whose human rights record is at issue. And in this regard, although it is likely that less attention will be given to country-specific tactics, the approach of the new powers to human rights in their foreign policy will, at least in some respects, resemble that of the old powers.

As argued elsewhere,⁶ even if it is sensible to demand that new powers prioritize human rights in their bilateral relations (and there are doubts on this point, see below), there are several reasons why such powers might decline to do so. The most obvious reason is that many emerging powers, for example, China and Russia, are themselves open to the charge of widespread human rights abuse, and thus can hardly be expected to wield it in good faith against others. Even the democracies among the rising powers, most prominently, Brazil, India and South Africa, have serious human rights problems, and this may undermine their ability to promote abroad values they claim to be committed to at home. For this reason, many commentators argue that unless they significantly improve their domestic human rights record, new powers will be unlikely (and in any case ineffective) defenders of human rights abroad.⁷

Yet, the apparent contradiction between a troubled domestic human rights record and the promotion of human rights abroad is hardly new. Western democracies like the United States, France and the United Kingdom have been outspoken critics of human rights abuse in other countries even as their domestic record was far from perfect. Further, countries like India, Brazil and South Africa have already been prepared to raise human rights concerns, at least *vis-à-vis* some countries. India, for example, has been critical of Sri Lanka and voted twice in the United Nations Human Rights Council to insist that Sri Lanka properly investigate human rights abuses that occurred in the context of the war with the Liberation Tigers of Tamil Eelam (LTTE),⁸ even though India itself stands accused of abuses in its wars against Kashmiri separatists and Maoist insurgents.⁹

The charge of hypocrisy is unlikely to prevent new powers from pointing fingers where they otherwise determine it is important to do so (much like the old powers). Whether they make that decision for their own political reasons, or out of a genuine concern for those whose rights are at risk, or some combination

of the two, is a separate discussion (but, again, one that is familiar as regards the old powers). Having said that, it is certainly true that new powers will increasingly seek to shape country-specific scrutiny, at least at the UN level, in ways that privilege a non-confrontational and dialogue-driven approach. There is already evidence for this in the UN Human Rights Council, where it is increasingly difficult to muster a majority for country-specific resolutions, and where many governments oppose in principle the use of name and shame resolutions. Similarly, pressure continues on the system of “special procedures” (the rapporteurs and working groups) to adopt less confrontational tactics, such as critical reporting, and to prioritise dialogue with States.

The more fundamental problem, however, with the idea that new powers should (or could) take up human rights concerns abroad is that it assumes that condemnation and pressure by any foreign government, acting via the UN or bilaterally, is or will remain an effective means for improving respect for human rights. The actual evidence on this point is inconclusive (HAFNER-BURTON, 2008). It would seem that such pressure only really works where the country under scrutiny has something to gain (or lose) from the country or countries applying pressure (FRANKLIN, 2008). This calculation may play out very differently in an increasingly multi-polar world.

Consider the record. The strategy to use foreign policy and multilateral forums to bring pressure on regimes abusing human rights found real traction for the first time in the mid-1970s and gathered pace in the 1980s, precisely at a time when Western power was ascending, and Soviet power was declining. The countries that faced this new pressure from abroad – South and Central American dictatorships, apartheid South Africa, the communist regimes of Eastern Europe – withstood this pressure, or changed their policies, as the case may be, largely based on the degree to which they needed the trade, military or aid relationships with Western powers that were applying the pressure. In the 1990s, with United States (US) (and Western) power largely unchallenged, and more countries thus dependent on such relationships, there was arguably much more scope to promote human rights through foreign policy and the UN. Hence, there was indeed a dramatic increase in both the number of countries that came under one form or another of UN scrutiny, and the available mechanisms for doing so.

Further, let us consider the cases where pressure from foreign governments has had the most tangible impact, and conversely those cases where it has been negligible. Post Cold War, the desire to join the European Union and/or North Atlantic Treaty Organization (NATO) has without doubt motivated the countries of Eastern, Central and South-eastern Europe to pay attention to human rights concerns raised by the existing members of those alliances. Similarly, small and mid-size countries heavily dependent on aid or trade and investment have in some cases improved respect for human rights under foreign pressure. But Western criticism of human rights abuse, has had a negligible impact on large powers like China or Russia, or medium and small powers who are not dependent on the west, for example, Iran and Sudan, or Sri Lanka and Zimbabwe. Many other examples could be cited.

The moral opprobrium attached to being singled out for criticism rarely, on its own, brings about change. It is the fear that criticism, whether bilateral or via UN resolutions, may signal repercussions in other areas that provide the leverage. On this point, emerging powers will likely differ from the old powers. Developing countries have been deeply hostile to such conditionality, and in a number of cases the BRICS (Brazil, Russia, India, China and South Africa) have fought attempts to link trade or aid relationships to human rights.¹⁰ Whatever the basis for this hostility, we are likely to see greater reluctance to apply human rights conditionality in the policies of global institutions – the UN, World Bank, International Monetary Fund (IMF) – as the voting weight and influence of the emerging powers increases in these organisations.

Again, this is not to suggest there will be no willingness among the new powers to adopt public and critical stances regarding the human rights situation in other countries, and in some cases to use political, economic and aid levers to back up that stance. While there is little evidence of this at the UN level, new powers may act differently in regional and sub-regional inter-governmental bodies. For example, repressive regimes might be denied membership in regional organisations. The African Union, for example, has sought to exclude the participation of governments that take power through *coup d'état* or unconstitutional means. The evidence on this point is mixed, however. In the Association of Southeast Asian Nations (ASEAN) some countries like Indonesia have, at least on occasion, championed stronger human rights criteria, whereas others have not. In the Organisation of American States (OAS), some South American countries have sought to weaken the role of the Inter-American Commission on Human Rights (IACHR).¹¹

The general reluctance of new powers to use country-specific approaches, usually dependent on forms of conditionality for their success, may not, however, signal the absence of human rights promotion in their foreign policies. Although the name and shame tactic may be the most visible, it is by no means the only way to promote human rights abroad. Much of the diplomatic work on human rights at both UN and regional levels focuses not on specific countries but on specific themes. This work may aim at identifying policy and practises to improve the protection of specific human rights, or seek to strengthen international standards to address a human rights problem. Of course, some of this work is of a bureaucratic nature, and given the many problems with the UN, it is not always very effective, timely or relevant. Nevertheless, one of the UN's greatest achievements in the human rights field has been the development of international standards, both hard law and soft law texts, and this process is far from complete. Even if major treaties are now adopted, the process of securing international agreement on their interpretation and the details of their implementation will continue. Just as domestic law reform in relation to rights is a continuous process, so too at the international level.

New powers often participate fully and with progressive positions in such standard-setting exercises. Latin American States, for example, were in the vanguard of efforts to adopt a new UN convention against enforced

disappearances, many taking positions that favoured stricter treaty protections than those of some western countries. African nations played a key role in securing the adoption of the Rome Statute establishing the International Criminal Court (although some of them now are very critical of the Court). The migrant rights convention is championed by countries like Mexico and the Philippines even as western countries refuse to sign or ratify it. South Africa has played a prominent role in securing greater attention to and protection of the rights of lesbian, gay, bisexual and transgendered people. There are many more examples that could be cited.

This work to develop international standards might appear less virtuous, and certainly attracts less attention, but in the long run it is no less impactful than country-specific lobbying. Indeed, it may even be more so. Studies have shown the important influence of international standards in altering state behaviour, especially in democratizing countries where the global standard can be used by local civil society to push for reform in domestic law and policy (SIMMONS, 2009). This may be much more impactful than condemnatory resolutions in UN bodies, or criticism from foreign governments.

Viewed this way, a more complex picture emerges regarding human rights in the foreign policy of emerging powers, one that suggests that even though there may be less of the 'old' tactics of public criticism and conditionality, other tactics, including dialogue-driven approaches and thematic-specific standard-setting may figure prominently. If true, this presents both risks and opportunities for the goal of maintaining and improving an effective international regime for the protection of human rights. A decline in country-specific attention may pose risks in situations where abuses are being committed on a mass scale and urgent enforcement action is required, including by the Security Council. On the other hand, the opportunities to secure human rights reforms through South-South dialogue or through a more effective Universal Periodic Review (UPR) process have barely been tested. The challenge might well be to focus narrowly on securing the support of new powers to take country-specific action in those extreme cases, and otherwise accepting that in a changed world the public criticism and conditionality approach has little future.

Finally, it must be pointed out that although it is important, the question of human rights diplomacy in a changed world order will hardly be determinative for the future of human rights. The rise of new powers is only one of the many momentous global shifts now underway. Dramatic gains in education, including at the secondary and post-secondary level, coupled with the exponential growth of urban populations and the diffusion of mobile access to the internet (to 5 billion people by 2020) all point to a newly empowered and growing middle-class in dozens of countries. Prominent among these will be the emerging powers: China and India, of course, but also Brazil, Indonesia, Mexico, Nigeria, South Africa, Turkey and others. This newly empowered middle-class will be a crucial engine for change, for good or ill. The approach this group takes to human rights is likely to be much more important to global human rights struggles than the foreign policy of their governments.

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NOTES

1. See for example Ken Roth and Peggy Hicks (2013) and Salil Shetty (2013).
2. The forum was hosted by the openGlobalRights website. Available at: <<http://www.opendemocracy.net/openglobalrights>>. Last accessed on: Nov. 2013.
3. See, for example, Meenakshi Ganguly (2013) and Nahla Valji and Dire Tladi (2013).
4. See, for example, Jeffrey Cason (2013).
5. See, for example, Ram Mashru (2013) and Aseem Prakash (2013).
6. See David Petrusek (2013).
7. See Camila Asano (2013) and Nukhet A. Sandal (2013).
8. The relevant resolutions are "Promoting reconciliation and accountability in Sri Lanka" (UNITED NATIONS, 2013; and "Promoting reconciliation and accountability in Sri Lanka" (UNITED NATIONS, 2012).
9. See for example, Human Rights Watch, *Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir*, September 2006; and Human Rights Watch, *Between Two Sets of Guns: Attacks on Civil Society Activists in India's Maoist Conflict*, July 2012.
10. For example, in international trade negotiations under World Trade Organization (WTO) auspices where the BRICS and many developing countries opposed any linkage between trade and labour rights, and many developing countries have also been hostile to strong human rights criteria being adopted by the United Nations Development Program (UNDP).
11. In a review process begun in 2011, Ecuador, Venezuela, Bolivia and Nicaragua lobbied for measures that would have weakened the IACHR's independence and oversight functions. Though these were not adopted, a compromise resolution adopted by the OAS in March 2013 keeps open the possibility of re-opening the debate. For further information see <<http://www.ijrcenter.org/2013/03/24/oas-concludes-formal-inter-american-human-rights-strengthening-process-but-dialogue-continues-on-contentious-reforms/>>. Last accessed on: Nov. 2013.

RESUMO

Determinar em que medida potências emergentes incorporarão questões de direitos humanos à sua política externa é mais complexo do que geralmente se supõe. Embora estas potências possam estar menos dispostas a adotar estratégias tais como criticar publicamente outros países ou condicionar a sua relação com outras nações ao seu grau de proteção aos direitos humanos, elas podem usar outras táticas, como a promoção do diálogo e a elaboração de normas internacionais ligadas a determinados temas. Como o impacto de estratégias de nomear certos países e constrangê-los publicamente por sua situação de direitos humanos tem sido contestado, esta mudança traz consigo riscos e oportunidades para a manutenção e melhoria de um regime internacional eficaz para a proteção de direitos humanos.

PALAVRAS-CHAVE

Nações Unidas – Política externa – Parâmetros internacionais de direitos humanos – Conselho de Direitos Humanos – BRICS – Condicionais

RESUMEN

La forma en que las potencias emergentes tratarán las cuestiones de derechos humanos en su política exterior no resulta tan simple como se cree. Aunque tengan menos tendencia a emplear tácticas tales como la crítica pública y la condicionalidad, pueden servirse de otras tácticas, como los enfoques basados en el diálogo y la creación de normas específicas en la materia. Ante la puesta en entredicho del impacto de los enfoques de denuncia pública y descrédito *naming and shaming*, ese cambio de estrategia presenta tanto riesgos como oportunidades para el objetivo de mantener y mejorar un régimen internacional eficaz para la protección de los derechos humanos.

PALABRAS CLAVE

Naciones Unidas – Política exterior – Normas internacionales de derechos humanos – Consejo de Derechos Humanos – BRICS – Condicionalidad

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