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Human rights diplomacy

Navigating an era of polarization

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Summary

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- The multilateral human rights system offers important resources for tackling the overlapping crises and threats facing the world. Despite US–China polarization and the disincentives that creates for less powerful countries to take initiative, new leadership and ideas for human rights are emerging – particularly from countries in the Global South. These ideas include a renewed focus on the legacies of colonialism and economic inequality. Some states are also testing the potential of the system to address climate change.
 - Demand for change is strong around the world, with many protest movements emerging over the past decade. But the appetite within these movements has not been matched by political will, particularly among the most powerful states.
 - Human rights diplomacy is a term that describes the interactions among states on human rights. It has existed in various forms for over 75 years – since human rights were inscribed in the 1945 UN Charter and articulated in the Universal Declaration of Human Rights in 1948. It takes multiple different forms, but this research paper focuses primarily on diplomacy within the UN human rights system.
 - The aim of this paper is to provide diplomats and human rights practitioners with an overview of significant current trends and challenges in human rights diplomacy, and to make recommendations on how to strengthen the efficacy of the multilateral system for the protection and fulfilment of human rights.
 - The dominant feature of human rights diplomacy today is the polarized context in which it takes place. The US and China overtly champion rival paradigms of human rights: the former and its allies tend to portray human rights almost as a subset of democracy; while the latter has sought to position itself as a leader of the Global South by laying claim to the old concept of the ‘right to development’. These opposing paradigms represent neither a holistic view of human rights nor a sustainable way forward.
 - China presents a systemic challenge, as it seeks to blunt the efficacy of the current system. This challenge is likely to be sustained. Countries concerned about China’s agenda should respond with a global strategy that appeals to China’s network of allies by engaging with their demands on issues such as economic inequality, rather than pursuing a narrow China-focused strategy.
 - The human rights system has long struggled to deliver accountability. In view of this, a growing number of wealthy countries are adopting targeted sanctions regimes. While there may be positives to this trend, and sanctions can be an important part of the policy toolkit, there are also risks around process and questions about the efficacy of such measures which need to be answered.

- To overcome the current challenges and reinvigorate multilateral human rights diplomacy, the most powerful states – including, but not limited to, those in the Global North – must engage in more diverse coalitions and support leadership by smaller states to advance new agendas arising from the Global South.
- The multilateral system itself also needs to be reinforced through more sustainable funding for the human rights pillar of the UN and an ongoing commitment by the UN leadership and member states to engage meaningfully with civil society organizations.

01

Introduction

The human rights system offers important tools and mechanisms to tackle major global threats. But amid the challenges of a polarized world, there is both a need and an opportunity for fresh human rights leadership to emerge.

The world is confronting a complex array of challenges and the interconnections between them are becoming ever clearer. Climate change and environmental degradation threaten to make parts of the planet uninhabitable and are likely to cause many people to migrate in search of a more sustainable existence. Global inequality continues to widen, while growing economic pressures threaten social and political instability in many countries. Russia's invasion of Ukraine and escalating rivalry between the US and China point to dangerous fissures in the current world order. Nuclear threats have loomed larger in the past year than any time since the height of the Cold War. Populism and autocracy, propelled partly by disinformation, are undermining democracies and international cooperation, with many negative implications for human rights. Most of the world's young people now live in countries historically impoverished by colonialism, and a discourse about the racial inequity encoded into international relations continues to grow.

The human rights system offers important resources for tackling this morass of challenges, even if it is beset with cynicism. Human rights have been carefully elaborated by states over decades, have intellectual depth and are now firmly embedded in the norms, laws and institutions of the multilateral system. No alternative framework boasts the same sophistication and longevity or has been subject to the same degree of elaboration and scrutiny.

However, the human rights framework functions within a web of international relationships in which the vulnerability of the framework to being politicized can counteract its strength. At a time when bold and proactive human rights diplomacy is needed, this research paper assesses the prospects for diplomacy in a context of changing global politics and multiple crises. Despite a troubling level of polarization between rival powers, there is an opportunity for a richer and more

diverse human rights agenda to emerge in the near term. However, the full potential in this new agenda may only be realized if the world's leading powers are prepared to change course.

What is human rights diplomacy?

This paper takes a broad view of human rights diplomacy as the interactions primarily among states on human rights, grounded in the normative and legal system of treaties and mechanisms that form the international human rights system. Human rights diplomacy takes multiple forms bilaterally and multilaterally, at many different levels, encompassing private discussions and public statements. The paper focuses mainly on diplomacy within the multilateral system, particularly the human rights institutions of the UN. The role of non-state actors, including businesses and sub-state entities, is also relevant but outside the scope of this paper.

Human rights diplomacy has existed in various forms for over 75 years, since human rights were inscribed in the 1945 UN Charter and then articulated in the Universal Declaration of Human Rights (UDHR) in 1948. It was diplomacy that enabled a series of treaties to be drafted and adopted during the second half of the 20th century and the early years of the 21st – in particular, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted in 1966. Together with the UDHR, these treaties form the International Bill of Rights.

However, human rights diplomacy is a slippery concept. Diplomatic engagement on human rights is inevitably secondary to broader considerations of national interest, and subject to shifting calculations of whether it is worth the political cost. It is also a paradox: while human rights are grounded in agreed norms that are not (in theory) open to renegotiation, diplomacy is pragmatic, fluid and responsive to the demands of *realpolitik*. The two are not easy companions.

In a 2011 book, the human rights scholar and practitioner Michael O'Flaherty defined human rights diplomacy as 'the utilisation of diplomatic negotiation and persuasion for the specific purpose of promoting and protecting human rights',¹ while George Ulrich characterized it as a set of activities aiming 'to enlarge the sphere in which human rights functions as the operative norm.'² Both definitions quite reasonably assume a good-faith engagement by states and other actors seeking to advance human rights. But human rights diplomacy can also be a way of deflecting criticism, constraining progress or instrumentalizing human rights for other purposes.³ In her preface to the same book, former UN deputy high commissioner for human rights Kang Kyung-wha sounded a sceptical note by asking: 'Is it diplomacy in the service of human rights, or is it human rights as a tool of diplomacy in pursuit of foreign policy goals?'⁴

1 O'Flaherty, M. et al. (2011), 'Introduction. Human Rights Diplomacy Contemporary Perspectives', in O'Flaherty, M. et al. (eds) (2011), *Human Rights Diplomacy: Contemporary Perspectives*, Leiden: Brill | Nijhoff, pp. 1–18.

2 Ulrich, G. (2011), 'Framework For The Analysis Of Human Rights Diplomacy', in O'Flaherty et al. (eds), *Human Rights Diplomacy*, pp. 19–42.

3 O'Flaherty and Ulrich both acknowledge this point.

4 Ulrich, G. (2011), 'Framework For The Analysis Of Human Rights Diplomacy'.

While human rights and diplomacy exist in a paradoxical relationship, that relationship is an inevitable and necessary one. By design, human rights belong within a multilateral architecture. They make a claim to be universal, and are articulated chiefly within a set of treaties agreed between states that establish a standard for acceptable behaviour. In the absence of supranational arbitration (for the most part), human rights compliance depends, at least partly, on a kind of voluntary mutual accountability between states, which takes place largely through the mechanisms and institutions of the multilateral system. In this imperfect system, diplomacy matters greatly – the ability to forge alliances; build consensus; bridge differences; engage inter-governmental organizations both global and regional; make choices about private and public interventions; establish norms and laws; and encourage compliance with them are all part of the task.

Time for renewal

As the world grapples with a set of profound and overlapping challenges, there are few signs of any grand vision for the future of human rights. Meanwhile, many of the most egregious and complex human rights crises in the world seem worryingly intractable. Human rights norms and tools offer ways to address each of these crises. But it remains in question whether, and how, human rights diplomacy can respond effectively.

Demand for human rights change remains strong, with many major protest movements emerging at the local, national and global levels over the past decade, until the COVID-19 pandemic quieted much of the world. But the appetite of these movements has not been matched by political will among the most powerful states. The role of civil society in the human rights system has also been diminished: the proliferation of monitoring organizations and a growing sophistication in their methodologies have supplied a wealth of information about human rights violations,⁵ but those organizations face increasing barriers to operating freely in many countries, as well as constraints within multilateral institutions including the UN.⁶

Human rights diplomacy has long been conditioned by the balance of power among the most influential states. With US–China rivalry still taking shape, that balance is in flux. In the US, commitment to multilateralism itself has become an increasingly partisan matter, and the durability of US commitment to the human rights system remains uncertain. China has become more active in attempting to reshape the human rights space to match its own vision for the future. These dynamics, together with the effects of Russia’s war on Ukraine, all set important parameters within which the human rights system has to operate. The normative framework continues

⁵ It is, however, important to acknowledge a lack of coordination and the risk of ‘over-documentation’. See Matelski, M., Dijkstra, R. and McGonigle Leyh, B. (2022), ‘Multi-Layered Civil Society Documentation of Human Rights Violations in Myanmar: The Potential for Accountability and Truth-Telling’, *Journal of Human Rights Practice*, 15 December 2022, <https://doi.org/10.1093/jhuman/huac031>.

⁶ The nature and extent of these challenges has been documented extensively by NGOs. For example, International Service for Human Rights (ISHR) has created a database on acts of intimidation and reprisals aimed at creating fear or blocking access to the UN of people who defend human rights. This resource is based on data from the office of the UN secretary-general, dating back to 2010. See International Service for Human Rights (undated), ‘ISHR #EndReprisals Database’, <https://endreprisals.ishr.ch/en> (accessed 8 Dec. 2022).

to expand, but the overriding concerns among many practitioners, including those interviewed for this paper, are simply to preserve and defend the system as it currently exists and prevent further setbacks.

But in a world where global power is becoming increasingly diffuse, and where there is no single dominant vision for human rights, there may also be opportunities for progress. Despite the pressures created by polarization between great powers, there is potential for human rights leadership to become more diverse than ever before. Taking initiative in this context is not easy: there are few obvious benefits and many risks, with the incentives stacked heavily against less powerful countries. Yet it is perhaps these countries and the alliances between them that can offer a way through the current impasse and provide the human rights system with new sources of inspiration.

About this paper

The aim of this paper is to provide diplomats and other practitioners with an overview of the most significant current trends and challenges in human rights diplomacy, and to make recommendations on how to strengthen the efficacy of the multilateral system for the protection and fulfilment of human rights.

The following chapters move from the past to the present and conclude with proposals for the future. Chapter 2 traces important historical currents that have shaped the present and places the subsequent chapters in context. Chapters 3 to 6 discuss four of the most significant dynamics in human rights diplomacy today: a crippling state of polarization between rival paradigms of human rights; a systemic challenge posed by China; a turn towards targeted economic sanctions by wealthy countries; and signs of a more diverse human rights agenda emerging – mainly from the Global South. Finally, Chapter 7 offers a set of propositions and recommendations for how diplomacy can play an important role in advancing human rights in future.

02

Historical currents in human rights diplomacy

Human rights have become deeply embedded in the multilateral system since the UDHR was adopted in 1948. This system has proved resilient, but it faces significant pressures.

Remaking the world

The origin story of human rights goes back much further, but the establishment of an international human rights architecture is often counted as part of the effort to remake the world after the devastation of the Second World War. In 1941, the Atlantic Charter and US president Franklin D. Roosevelt's 'Four Freedoms' speech both signalled that human rights should be a key part of the post-war order.⁷

But this simplified story obscures some of the important dynamics in the creation of the human rights framework, including the reticence and obstructiveness of colonial powers and the essential contributions made by countries in the Global South. Many different currents and agendas were involved in making the human rights system. It is worthwhile to recount certain elements to give context to the present.

The first attempt at a supranational expression of human rights came from Latin America, pre-dating the UDHR by eight months.⁸ This stood in contrast to the ambivalence of the great powers, manifested for instance in the reluctance of France,

⁷ Sikkink, K. (2017), *Evidence for Hope: Making Human Rights Work in the 21st Century*, Princeton, NJ: Princeton University Press, p. 65.

⁸ The American Declaration of the Rights and Duties of Man was also adopted in 1948.

the UK, the US and the USSR to discuss human rights during the Dumbarton Oaks Conference in 1944,⁹ or in the pledge by US secretary of state John Foster Dulles in 1953 not to ratify any human rights treaty.¹⁰ In terms of drafting the UDHR, the contribution of thinkers from states undergoing decolonization at that time – such as Hansa Mehta from India – is often under-acknowledged, as is the instrumental role of representatives of Global South countries such as Charles Malik from Lebanon and Hernán Santa Cruz from Chile.¹¹

The elaboration of the International Bill of Rights took place during what was simultaneously the era of decolonization and the Cold War. Both sides in the Cold War sought to shroud their own foreign policy with a sense of moral purpose. The US's 'Truman doctrine' effectively presented a binary choice between freedom and oppression, while the Soviet side pointed to imperialism, racial discrimination and the failure of the capitalist West to deliver on economic and social rights.¹² Notwithstanding the hypocrisy of both sides in the Cold War, the extent to which they emphasized human rights meant that the discourse became more entrenched in the multilateral system.¹³

But the bifurcation of human rights in the two principal treaties that eventually came into being in 1966, the ICCPR and the ICESCR, essentialized a distinction between two competing visions of human rights. What was one in the UDHR became two and that bifurcation haunts the human rights system to this day – as illustrated most vividly by the fact that the US has still not ratified the ICESCR.

For states in the non-aligned 'Third World', as it was then called, the bifurcation made little conceptual sense, as the questions they faced were different. Human rights were being embraced – at least within elite circles – as one of the ways to make a decisive break with the coercion and impunity of colonialism.¹⁴ Many newly decolonized states had incorporated human rights concepts in their new constitutions, sometimes borrowing directly from the language of the UDHR. One of the earliest to do so was India, which enumerated a detailed and impressive list of rights in its 1949 constitution.¹⁵ As growing numbers of newly independent states joined the UN, the principle of self-determination articulated in the UN Charter came to be framed as a right.¹⁶ This direction of thinking was already clear at the 1955 Asian-African Conference held in Bandung, Indonesia.¹⁷

The adoption of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965 established a precedent for human rights to be incorporated in international law and applied universally, after several years in which the human rights project had stagnated. ICERD was the first core

⁹ Sikkink (2017), *Evidence for Hope*, p. 67.

¹⁰ Foot, R. (2010), 'The Cold War and Human Rights', in Leffler, M. P. and Westad, O. A. (2010), *The Cambridge History of the Cold War: Volume 3: Endings*, Cambridge: Cambridge University Press, p. 449.

¹¹ Morsink, J. (1999), *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, Philadelphia, PA: University of Pennsylvania Press, pp. 30–1.

¹² Foot (2010), 'The Cold War and Human Rights', p. 448.

¹³ *Ibid.*, p. 446.

¹⁴ Burke, R. (2010), *Decolonization and the Evolution of International Human Rights*, Philadelphia, PA: University of Pennsylvania Press, p. 34.

¹⁵ Ministry of Law and Justice Legislative Department (2022), *The Constitution of India*, May 2022, https://legislative.gov.in/sites/default/files/COI_English.pdf.

¹⁶ Burke (2010), *Decolonization and the Evolution of International Human Rights*, pp. 39–44; Sikkink (2017), *Evidence for Hope*, p. 105.

¹⁷ Burke (2010), *Decolonization and the Evolution of International Human Rights*, p. 26.

international human rights treaty, predating the ICCPR and ICESCR, which had been years in the making but were yet to be completed. Steven Jensen has shown that the ICERD process was driven by countries from the Global South, while the US and USSR showed little appetite for establishing human rights in international law.¹⁸ As Jensen argued, many Global South states wanted to confront racism and the legacies of colonialism through UN diplomacy. Decolonization was the ‘source of energy’ that reinvigorated human rights in the 1960s.¹⁹

Many Global South states wanted to confront racism and the legacies of colonialism through UN diplomacy.

The wave of ICCPR and ICESCR ratifications in the 1970s and 1980s coincided roughly with the third ‘wave of democracy’, as newly decolonized states found their place in the emerging international system and began to establish their case for economic development.²⁰ The discourse articulating the aspirations of these states included the idea of a ‘right to development’,²¹ advanced by African states as a way to address article 28 of the UDHR, which stated that ‘everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.’²² The right to development was elaborated in a declaration adopted by the UN General Assembly (UNGA) in 1986,²³ with only the US voting against. The focus on economic inequality between states was (and remains) relevant, but it was an awkward conceptual fit for human rights, as the ‘right to development’ rests with the state instead of the individual, and there is otherwise no clarity on who the duty-bearer is.

In 1975, the Helsinki Final Act²⁴ that emerged from the Conference on Security and Co-operation in Europe marked an important turning point for human rights diplomacy, with the US and its allies starting to bring human rights considerations into their foreign policy. Although US secretary of state Henry Kissinger opposed and then downplayed the human rights element of the act, the extent to which this element was adopted and used by movements and organizations in Eastern Europe ultimately spurred US diplomacy on human rights under the presidency of Jimmy Carter from 1976 onwards. For the US, human rights became an important form of leverage against the USSR.²⁵

¹⁸ Jensen, S. L. B. (2016), *The Making of International Human Rights: The 1960s, Decolonization and the Reconstruction of Global Values*, Cambridge: Cambridge University Press, pp. 110 and 137.

¹⁹ Burke (2010), *Decolonization and the Evolution of International Human Rights*, pp. 106–8.

²⁰ Chatham House interview, April 2022.

²¹ Foot (2010), ‘The Cold War and Human Rights’, pp. 454–5.

²² United Nations (undated), ‘Universal Declaration of Human Rights’, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, art. 28.

²³ Office of the High Commissioner for Human Rights (1986), ‘Declaration on the Right to Development’, resolution, 4 December 1986, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development>.

²⁴ Organization for Security and Co-operation in Europe (1975), ‘Helsinki Final Act’, <https://www.osce.org/helsinki-final-act>.

²⁵ Snyder, S. B. (2011), *Human Rights Activism and the End of the Cold War: A Transnational History of the Helsinki Network*, New York: Cambridge University Press, pp. 28, 37 and 81.

By now, the institutional structures of human rights diplomacy were largely in place. The UN Commission on Human Rights (UHCHR), its main human rights body, had been established in 1946. Various regional human rights regimes were taking shape, including in Europe,²⁶ the Americas²⁷ and Africa.²⁸ An international human rights movement had also begun to emerge: NGOs such as Amnesty International (founded in 1961) played an important role in shaping new human rights norms and instruments, albeit initially only civil and political rights.²⁹ The number of NGOs would expand significantly in number during the next two decades.³⁰ The formation of the Moscow Helsinki Group in 1976 to monitor Soviet compliance with the human rights provisions of the Helsinki Final Act was followed in 1978 by the establishment of Helsinki Watch in the US. This was the first of several ‘Watch Committees’ around the world that eventually came together as Human Rights Watch (HRW) in 1988.

Towards the end of the Cold War, human rights became an instrument of power for the US, while popular disenchantment against the government grew in the USSR. As Mikhail Gorbachev would discover, the dissonance between the USSR’s international human rights rhetoric and the domestic experience of its citizens was one of the catalysts for the fall of Soviet rule. It was perhaps chiefly in this period that a firm association came to be made in the West between human rights, civic freedoms, and democracy. Human rights as defined by the West were folded up in a broader vision for a world order dominated by the US.

Freedom and democracy

Two moments in 1989 had an important effect on the course of human rights, one dramatic and the other more insidious.

The most consequential of these moments in the medium term was the fall of the Berlin Wall in November 1989. This ushered in an age of US hegemony and a period of relative optimism for civil and political rights. The faultlines, weaknesses and limits of the human rights regime were never out of view, but a series of significant developments throughout the 1990s would collectively offer the promise of a more co-operative international order, with a particular version of human rights at its centre.

The other significant moment was the Tiananmen Square massacre in June 1989. This had implications far beyond Beijing, firmly establishing China on the wrong side of the freedom and democracy agenda of the West. The long-term international reaction to the massacre, including sanctions and a succession of annual draft resolutions at the UNCHR, pushed China into a defensive position, taking

²⁶ The European Convention for the Protection of Human Rights and Fundamental Freedoms entered into force in 1953, handing judicial authority to the European Court of Human Rights, and in 1973, European governments agreed that entry into the European Community required a commitment to human rights. See Foot (2010), ‘The Cold War and Human Rights’, pp. 455–6.

²⁷ The Inter-American Commission on Human Rights (IACHR) was created in 1959, and the American Convention on Human Rights was adopted in 1969, which created the Inter-American Court of Human Rights.

²⁸ The process of developing the African Charter on Human and Peoples’ Rights began in the 1960s, although it was not adopted until 1981 and entered into force in 1986.

²⁹ Mutua, M. (2017), *Human Rights Standards: Hegemony, Law, and Politics*, Albany: State University of New York Press, pp. 84–94.

³⁰ Keck, M. E. and Sikkink, K. (1998), *Activists Beyond Borders: Advocacy Networks in International Politics*, Ithaca, NY: Cornell University Press, p. 89.

an increasingly dogmatic opposition to country-specific action in the UN human rights system. Though relatively mild, the first such resolution was, according to Rosemary Foot, ‘the first time a UN human rights institution had criticised a P5 member for its human rights violations’.³¹ China expended significant energy in countering the draft resolutions which followed each year and, with the help of allies, was able to ensure that all but one of them failed.³² It sought to portray the resolutions as confrontational and ‘anti-China’. According to one expert interviewed for this paper, China repeated this line so frequently that eventually it came to be used even by US diplomats.³³ Foot argued that Western states’ resolve gradually dwindled, as they were unwilling to match the intensity of China’s counter-lobbying efforts, unable to overcome the bloc-voting dynamic and sensitive to China’s growing economic appeal. China also removed some of the heat from the situation by making a few concessions.³⁴

China also began to strengthen its own vision and discourse around human rights. In Foot’s words, the experience ‘prompted Beijing to promote discursively the idea of a “dialogue,” as opposed to confrontation, on human rights between equal, sovereign, states’.³⁵ In 1990, a speech by Tian Jin, a member of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, emphasized what would subsequently become consistent themes: the historically contingent nature of rights; the precedence of collective rights over individual rights; the application of international standards only to issues of racism, colonialism and gross violations caused by foreign occupation and aggression; the principle of non-interference in all circumstances except for genocide and *apartheid*; and the idea of development as the key to achieving human rights.³⁶ In 1991, the Chinese Communist Party (CCP) produced its first official white paper on the subject of human rights, widely promoted inside China but also made available in several non-Chinese languages. The white paper stated that ‘China sternly opposes any countries using human rights issues to promote their own values, ideologies, political standards, and developmental models’.³⁷

In this context, the universalism of human rights became one of the principal sources of disagreement at the 1993 World Conference on Human Rights in Vienna, Austria – the largest ever international gathering dedicated to the subject of human rights. In the lead-up to the conference, 34 Asian states issued the Bangkok Declaration which echoed several elements of China’s discourse.³⁸ In particular, the declaration rejected the promotion of human rights through ‘confrontation and the imposition

³¹ Foot, R. (2020), *China, the UN, and Human Protection: Beliefs, Power, Image*, New York: Oxford University Press, p. 199. (‘P5’ is shorthand for the five permanent members of the UN Security Council.)

³² *Ibid.*, pp. 199–200.

³³ Chatham House interview, February 2022.

³⁴ Foot (2020), *China, the UN, and Human Protection*, p. 202.

³⁵ *Ibid.*, p. 200.

³⁶ *Ibid.*, pp. 200–1.

³⁷ Translation from Hsu, C. and Chen, T. C. (trans.), ‘The Evolution of the Chinese Vision on Human Rights’, in Ismail, D., van der Schaaf, K. and Deklerck, S. (eds) (2020), *Shifting Power and Human Rights Diplomacy: China*, pp. 29–36. Rana Siu Inboden notes that China had long presented international efforts to monitor its human rights practices as ‘a pretext for ulterior motives’. See Inboden, R. S. (2021), *China and the International Human Rights Regime, 1982–2017*, Cambridge: Cambridge University Press, pp. 48–9.

³⁸ UN Digital Library (1993), ‘Report of the Regional Meeting for Asia of the World Conference on Human Rights, Bangkok, 29 March–2 April 1993’, <https://digitallibrary.un.org/record/167021>.

of incompatible values'. The US had no sympathy for this position, and Secretary of State Warren Christopher proclaimed to the conference that 'we cannot let cultural relativism become the last refuge of repression'.³⁹

In 1993, the Paris Principles were adopted by UNGA, standardizing the responsibilities and operating methods of national human rights institutions. Then, in 1998, the Rome Statute was adopted, establishing the International Criminal Court (ICC) and building on the promise of an international system capable of delivering accountability beyond the national level. For the most powerful states, this tilted the balance too far from state sovereignty towards international accountability. Both the US and China voted against the Rome Statute. While the US and Russia did eventually sign the statute in 2000, both countries later signalled their intention not to ratify it.

Nevertheless, the 1990s cultivated a general sense that the eventual fulfilment of human rights, at least civil and political rights, could be within reach – despite horrific failures of the multilateral system in Rwanda and at Srebrenica. The idea was that progress would be achieved through the elucidation of human rights law and standards, with compliance supported and monitored by a growing number of institutions. The central weakness of the international human rights regime – the lack of any means of enforcement beyond the state – was mitigated somewhat by NGOs' 'naming and shaming' tactics, which sought to undermine the credibility of states that violated human rights. In a post-Helsinki world, where the US and many of its allies had integrated human rights and democracy promotion in their foreign policy infrastructures, the fear of political or economic consequences for non-compliance with civil and political rights was not an abstract concern.

With 9/11, a great deal changed again. In the subsequent 'war on terror', the US committed gross violations of human rights in the name of protecting freedom and democracy – core components of the American way of life perceived to be under attack.⁴⁰ US hypocrisy on human rights was now happening on a bigger stage, fortified with the rhetoric of moral purpose. The US became an innovator in perpetrating human rights abuses, with its creation of the Guantánamo Bay detention camp,⁴¹ its practice of extraordinary rendition,⁴² its drones programme⁴³ and its justification of highly controversial interrogation tactics⁴⁴ – all of which was underpinned by a resistance to accountability.

³⁹ Ottaway, D. B. (1993), 'Universality of Rights Is Defended by U.S.', *Washington Post*, 15 June 1993, <https://www.washingtonpost.com/archive/politics/1993/06/15/universality-of-rights-is-defended-by-us/8e51a48f-3f26-4925-ba67-54bc145f5bbc>.

⁴⁰ *Washington Post* (2001), 'Text: President Bush Addresses the Nation', transcript, 20 September 2001, https://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html.

⁴¹ Human Rights Watch (2002), 'U.S.: Geneva Conventions Apply to Guantanamo Detainees', press release, 11 January 2002, <http://www.hrw.org/news/2002/01/11/us-geneva-conventions-apply-guantanamo-detainees>.

⁴² Sadat, L. N. (2006), 'Ghost Prisoners and Black Sites: Extraordinary Rendition under International Law', *Case Western Reserve Journal of International Law*, 37(3), pp. 309–42, <https://scholarlycommons.law.case.edu/jil/vol37/iss2/9>.

⁴³ Amnesty International (2013), "Will I Be Next?" *US Drone Strikes in Pakistan*, report, <https://www.amnesty.org/en/documents/ASA33/013/2013/en>.

⁴⁴ Office of the US Assistant Attorney General (2002), *Memorandum for Alberto R. Gonzales, Counsel to the President, Re: Standards of Conduct for Interrogation under 18 U.S. C. §§ 2340-2340A*, 5 August 2002, <https://www.justice.gov/sites/default/files/olc/legacy/2010/08/05/memo-gonzales-aug2002.pdf>.

The conduct of the US and its close allies during the ‘war on terror’ dealt a severe blow to any claim they had to moral leadership in the world and demonstrated afresh how fragile the idea of universal rights was. As the old world order began to fracture, the idea of inevitable progress in realizing civil and political rights looked increasingly untenable.

A fragmented world

The war in Iraq, executed without UN Security Council (UNSC) backing, brought the frailty of the multilateral human rights system clearly into focus. The 2000s saw a shake-up of a system increasingly criticized as politicized, splintered and inadequate to the task of protecting and promoting human rights.

In 2003, UN secretary-general Kofi Annan scathingly addressed the UNCHR, saying:

This is a time when your mission to promote and protect human rights in the widest sense is more important than ever, your responsibility to act more urgent. And yet, divisions and disputes in recent months have made your voice not stronger, but weaker; your voice in the great debates about human rights more muffled, not clearer.⁴⁵

The UNCHR, which had no criteria for membership, in some ways epitomized the human rights vision of universal progressive improvement which was disintegrating.

There began a series of innovations to bring about reform. Annan was pushing for a human rights body with a higher status in the UN system. As he told the UNCHR in 2005:

My basic premise is that the main intergovernmental body concerned with human rights should have a status, authority and capability commensurate with the importance of its work.⁴⁶

The 2005 World Summit at the UN endorsed the ambitious concept of a Responsibility to Protect (R2P), a mandate for humanitarian intervention to prevent mass atrocity crimes, which reflected the prevailing emphasis at that time on human protection.⁴⁷ In 2006, UNGA passed a resolution to replace the UNCHR with a new, 47-member Human Rights Council (HRC), involving competitive elections which would take account of candidates’ performance on human rights.⁴⁸ The same resolution established the Universal Periodic Review (UPR) system of peer reviews on human rights (now in its fourth cycle, and still with a 100 per cent participation rate).

For China, the process of establishing the HRC was an opportunity to pursue a more innocuous state-to-state system. China opposed the introduction of membership criteria, the participation of NGOs and the use of binding

⁴⁵ UN (2003), ‘Secretary-General’s statement to the Commission on Human Rights [as Delivered]’, statement, 24 April 2003, <https://www.un.org/sg/en/content/sg/statement/2003-04-24/secretary-generals-statement-commission-human-rights-delivered>.

⁴⁶ UN (2005) ‘Secretary-General’s Address to the Commission on Human Rights’, statement, 7 April 2005, <https://www.un.org/sg/en/content/sg/statement/2005-04-07/secretary-generals-address-commission-human-rights>.

⁴⁷ Foot (2020), *China, the UN, and Human Protection*, p. 4. Foot references the ‘Two Concepts of Sovereignty’ speech by Kofi Annan in 1999, in which he argued that ‘[w]hen we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.’

⁴⁸ UN Digital Library (2006), ‘A/RES/60/251. Human Rights Council: resolution / adopted by the General Assembly 60th session’, 3 April 2006, <https://digitallibrary.un.org/record/571575>.

recommendations within the UPR system. It also sought to weaken the mandate of ‘special procedures’,⁴⁹ among other things.⁵⁰ China was an outlier in its strength of opposition to country resolutions, and came close to holding the entire process hostage to its demands, pulling back only at the last moment.⁵¹ In the end, it was not entirely successful in achieving its objectives, but the attempt left a mark. Traces can be found in the multiple references to dialogue and cooperation in the final resolution. The US was one of four countries to vote against the resolution,⁵² arguing that the HRC was not designed in a way that would enable the worst human rights offenders to be excluded and that the politicization of the UNCHR would continue.⁵³

In April 2022, UNGA passed a notable resolution creating a standing mandate for a debate whenever a veto is cast in the UNSC.

Worldwide upheaval in the following years had significant implications for human rights. Austerity measures implemented after the financial crash of 2008 delivered economic hardship around the world, but initially there was little pushback on human rights grounds. In 2010–11, the Arab Spring provided a brief celebration of ‘people power’ before expressions of international solidarity gave way to pragmatism. In the struggle between autocratic stability and sectarianism, the autocrats largely prevailed, often with US backing – although not in Libya, where UNSC resolution 1973 authorized an international military response to the unfolding civil war.⁵⁴ Civil war in Syria drew in regional and global powers and became intractable, with the UNSC deadlocked.⁵⁵ Multilateral efforts in Syria, and later in Yemen, were however limited to containment of the conflict and managing the resultant humanitarian crises.⁵⁶ In April 2022, UNGA passed a notable resolution creating a standing mandate for a debate whenever a veto is cast in the UNSC. This constituted an important and innovative rebuke to persistent UNSC failure and expressed the deep frustration of many states regarding the abuse of veto powers.⁵⁷

⁴⁹ ‘The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.’ UN Office of the High Commissioner for Human Rights (undated), ‘Special Procedures of the Human Rights Council’, <https://www.ohchr.org/en/special-procedures-human-rights-council>.

⁵⁰ Inboden (2021), *China and the International Human Rights Regime, 1982-2017*, pp. 133–4 and 137–8.

⁵¹ *Ibid.*, p. 156.

⁵² It was joined by Israel, Marshall Islands and Palau. Belarus, Iran and Venezuela abstained.

⁵³ China and Russia were voted onto the first HRC in 2006, an outcome widely seen as a vindication of US scepticism.

⁵⁴ UN Digital Library (2011), ‘Security Council resolution 1973 (2011) [on establishment of a ban on flights in the Libyan Arab Jamahiriya airspace]’, 17 March 2011, <https://digitallibrary.un.org/record/699777>.

⁵⁵ Within the UNSC, China and Russia used their vetoes in such a way that ‘the bigger crises are simply not getting addressed at all’ (Chatham House interview, March 2022). Since 2011, Russia has used its UNSC veto 17 times on Syria alone, as well as blocking any coordinated UN response to its invasion of Ukraine in 2022. This approach is consistent with Russia’s record over four terms as a member of the HRC, where it has reliably voted against almost all country resolutions (except those on Israel and the Palestinian Territories, which have a dynamic of their own).

⁵⁶ Gowan, R. (2021), *Major Power Rivalry and Multilateral Conflict Management*, discussion paper, New York: Council on Foreign Relations, December 2021, <https://www.cfr.org/report/major-power-rivalry-and-multilateral-conflict-management>.

⁵⁷ UN Digital Library (2022), ‘Standing mandate for a General Assembly debate when a veto is cast in the Security Council’, 20 April 2022, <https://digitallibrary.un.org/record/3969448>.

Accountability remained strikingly elusive. Afghanistan was an important example of this, where the lack of consideration for accountability in the 2001 Bonn Agreement (which laid the foundations for a post-Taliban Afghanistan) set a tone for the next two decades: without accountability, all the human rights gains were at risk of unravelling.⁵⁸ One interviewee recalled how hopes drained away from an ICC process dogged by delays and the refusal of the US to countenance any investigation of its military personnel.⁵⁹ Meanwhile, across Africa, the ICC continued to suffer a credibility deficit. In the words of Makau Mutua, it risked ‘turn[ing] justice into a tool of the West against the South, and especially Africa’.⁶⁰ As an interviewee put it, ‘Africans have given up on it as a serious body since it is capable of nothing more than holding the vanquished accountable.’⁶¹ Even in the HRC, Sri Lanka succeeded for years in evading censure for the conduct of government forces at the end of its civil war in 2009 – which involved the death of 40,000 civilians⁶² – let alone any serious effort at international justice. Today, Russia’s invasion of Ukraine is the subject of multiple investigations, including by the UN and the ICC, but it remains to be seen whether those investigations are able to deliver accountability. UN mechanisms on Ethiopia and Myanmar, among others, face the same question.

Where accountability has been lacking, there has been an attempt within the multilateral system to learn lessons, but even these efforts have been limited. UN failings in Sri Lanka were subjected to some scrutiny, and a damning report commissioned by secretary-general Ban Ki-moon condemned a ‘systemic failure’.⁶³ Ban responded with a new initiative, Rights Up Front (later known as Human Rights Up Front), to place human rights considerations at the heart of UN operations in any country. But this was regarded by some member states as an intrusion on sovereignty,⁶⁴ and was quietly dropped by Ban’s successor, António Guterres. In 2014, the trend of deadlock and inaction in the face of conflict without regard either for the UN Charter or for human rights was tested further by Russia’s annexation of Crimea. This met with an international response of little more than resignation in addition to some unilateral sanctions. Viewed from the perspective of 2023, following Russia’s full-scale invasion of Ukraine, this was a stark failure indeed.

Meanwhile, from 2013, China began to emerge as a more assertive power on the world stage under the leadership of Xi Jinping. At this stage, China’s foreign policy focused largely on its ambitious international investment programme now known as the Belt and Road Initiative (BRI). It included an ambition to project *huà yǔ quán* (usually translated as ‘discourse power’ or ‘the right to speak’), which, as Toni Friedman has explained, is ‘closely associated with Chinese government

⁵⁸ Reflecting on this failure, one interviewee from Afghanistan recalled (in translation) lines from a well-known poem: ‘If the builder lays the first brick askew / the wall will go up skewed all the way to the sky.’ Chatham House interview, April 2022.

⁵⁹ Chatham House interview, April 2022.

⁶⁰ Mutua, M. (2017), *Human Rights Standards*, p. 163.

⁶¹ Chatham House interview, April 2022. It is worth noting, however, that since the AU called on states to withdraw in 2017, only Burundi (itself under investigation) has done so. Moreover, research in Kenya has suggested that public attitudes towards the ICC may not be as universally negative as often imagined. Dancy, G. et al. (2019), ‘What Determines Perceptions of Bias toward the International Criminal Court? Evidence from Kenya’, *Journal of Conflict Resolution*, 64(7-8), December 2019, <https://doi.org/10.1177/0022002719893740>.

⁶² Petrie, C. (2012), *Report of the Secretary-General’s Internal Review Panel on United Nations Action in Sri Lanka*, report, Geneva: UN, November 2012, <https://digitallibrary.un.org/record/737299?ln=en>, p. 14.

⁶³ *Ibid.*, p. 28.

⁶⁴ UNA-UK (2019), ‘UN Briefings: Human Rights up Front’, 23 October 2019, <https://una.org.uk/news/un-briefings-human-rights-front>.

and media discourse about efforts to “tell China’s story well”.⁶⁵ Although there was little change in the substance of China’s position on human rights, it now began to take a more active role in disseminating ideas, including through efforts to position itself as a leader of the Global South. One of the ways it did so was by hosting the 2017 South–South Human Rights Forum. The resulting Beijing Declaration⁶⁶ echoed all the main themes of China’s human rights discourse, including an emphasis on differentiated ‘national conditions’, on the rights to subsistence and development as ‘the primary basic human rights’, and on the principle of ‘non-interference’. It echoed favoured CCP phrases such as ‘community of shared future for humankind’, ‘win-win cooperation’, and ‘the all-round development of human beings’.

If old assumptions persisted that the US would continue to underwrite the human rights system in some sense, it was becoming increasingly clear that such perceptions were unfounded. The evident hypocrisies of the US’s execution of the ‘war on terror’ had continued under President Barack Obama, such as with the increased use of drone strikes⁶⁷ and continued resistance to accountability for US forces. The same was true with the Arab Spring and the gap between initial supportive rhetoric and eventual action – while China used the moment to position itself as a leader of states asserting their authority to enforce public order.⁶⁸ The NATO-led intervention in Libya, which involved overriding African Union (AU) objections and rejecting the AU’s proposed mediation plan, contributed further to a sense among African countries that the multilateral system served largely as a vehicle for Global North interests. The absence of any African countries from the P5 perpetually underlines this point. As one interviewee explained:

[N]obody believes the West is a benevolent player and an upholder of liberal democratic standards. African countries look at Western self-portrayal as the good guys and it simply does not chime with their experience.⁶⁹

After the experience in Libya, the idea that the US might still intervene militarily on human rights or humanitarian grounds looked implausible. In tandem, the concept of R2P was rapidly looking anachronistic, and it was barely used after 2013.

While the US has long vacillated in its engagement with the human rights system,⁷⁰ it embarked on a particularly dramatic repudiation of human rights under the presidency of Donald Trump.⁷¹ In 2018, the US withdrew from the HRC, one day

⁶⁵ Friedman, T. (2022), ‘Lexicon: “Discourse Power” or the “Right to Speak” (话语权, Huàyǔ Quán)’, Stanford University *Digichina*, 17 March 2022, <https://digichina.stanford.edu/work/lexicon-discourse-power-or-the-right-to-speak-huayu-quan>.

⁶⁶ State Information Council Office of the People’s Republic of China (2017), ‘Full Text of Beijing Declaration Adopted by the First South-South Human Rights Forum’, 11 December 2017, http://english.scio.gov.cn/scionews/2017-12/11/content_50096884.htm.

⁶⁷ Zenko, M. (2016), ‘Obama’s Embrace of Drone Strikes Will Be a Lasting Legacy’, *New York Times*, 12 January 2016, <https://www.nytimes.com/roomfordebate/2016/01/12/reflecting-on-obamas-presidency-obamas-embrace-of-drone-strikes-will-be-a-lasting-legacy>.

⁶⁸ Sceats, S. and Breslin, S. (2012), *China and the International Human Rights System*, London: Royal Institute of International Affairs, pp. 29–30.

⁶⁹ Chatham House interview, April 2022.

⁷⁰ As Katharine Young has noted, the US tends to draw on a sense of moral exceptionalism about its uniquely profound encounter with human rights in order to justify the exemption of the United States from international human rights scrutiny’. What Young describes as ‘American exemptionism’ applies in a similar way to US engagement in the work of human rights diplomacy. See Young, K. G. (2022), ‘Human Rights Originalism’, *The Georgetown Law Journal*, 110(5), <https://www.law.georgetown.edu/georgetown-law-journal/in-print/volume-110/volume-110-issue-5-august-2022/human-rights-originalism>, pp. 1097–169 (p. 1121).

⁷¹ Signature domestic moves such as Executive Order 13769 (styled by its critics as a ‘Muslim ban’ for its suspension of immigration from seven Muslim-majority countries) sent shockwaves around the world and set a tone for the administration’s view of human rights.

after the UN high commissioner for human rights, Zeid Ra'ad Al Hussein, had criticized the Trump administration's policy of separating undocumented families at the border. The US promptly cut its funding for the UN by the amount that would normally flow to the human rights bodies.⁷² Although, under President Joe Biden, the US has since re-entered the HRC, multiple interviewees stressed that the pattern of disengagement and re-engagement has been very disruptive and has left the impression of the US as an unreliable partner on human rights.

It was not only in the US where the nexus of democracy and human rights was looking increasingly shaky. A growing number of countries were electing leaders willing to set themselves openly against universal human rights in words, actions or both. One of the most prominent examples was the serious human rights deterioration in India after the election of Narendra Modi as prime minister. Against this background, the human rights framework has been weakened by fresh efforts at redefining human rights. Indian home minister Amit Shah used a speech to the National Human Rights Commission in 2019 to call for 'redefining human rights violations with the Indian perspective'.⁷³ In a similar vein, the Trump administration in the US tasked a new Commission on Unalienable Rights from 2019–20 with preparing an advisory report 'grounded in our nation's founding principles and the 1948 Universal Declaration of Human Rights'⁷⁴ (although notably not the body of international human rights law). In Katharine Young's analysis, the commission effectively weaponized human rights against advocates of women's rights, LGBTIQ+ rights and social justice in general, through its selectivity and omissions.⁷⁵

Human rights in the UN system

Meanwhile, the political space for human rights within the UN system remains constricted. One aspect of this is the funding situation: although the human rights pillar is notionally equal to the other two pillars of the UN (peace and security, and development), states continue to allocate it less than 7 per cent of the UN's regular budget.⁷⁶ This pushes OHCHR, which receives only around 3 per cent of the UN budget, into an increasing dependence on voluntary contributions to support an ever-expanding set of mandates from the HRC, while also maintaining its core activities. More than 60 per cent of the OHCHR budget is now provided in additional contributions by member states and the private sector – which could leave OHCHR vulnerable to accusations of improper political influence.⁷⁷

⁷² *American Journal of International Law* (2018), 'United States Withdraws from the UN Human Rights Council, Shortly After Receiving Criticism About Its Border Policy', October 2018, 112(4), <https://doi.org/10.1017/ajil.2018.92>, pp. 745–51.

⁷³ Mint (2019), 'Redefine Human Rights in Indian Context, Says Amit Shah, Wants Electricity, Food to Be Added', 13 October 2019, <https://www.livemint.com/news/india/redefine-human-rights-in-indian-context-says-amit-shah-wants-electricity-food-to-be-added-11570934132285.html>.

⁷⁴ US Department of State (undated), 'Charter for the Commission on Unalienable Rights', <https://2017-2021.state.gov/charter-for-the-commission-on-unalienable-rights/index.html> (accessed 22 October 2022); US Department of State (2020), *Report of the Commission on Unalienable Rights*, report, <https://2017-2021.state.gov/wp-content/uploads/2020/08/Report-of-the-Commission-on-Unalienable-Rights.pdf> (accessed 22 October 2022).

⁷⁵ Young (2022), 'Human Rights Originalism', p. 1169.

⁷⁶ OHCHR (undated), 'OHCHR's Funding and Budget', <https://www.ohchr.org/en/about-us/funding-and-budget> (accessed 22 October 2022).

⁷⁷ Additional contributions rose from a total of \$111 million in 2011 to \$228 million in 2021. See OHCHR (2022), *Voluntary Contributions to OHCHR 2008-2021*, <https://www.ohchr.org/sites/default/files/2022-03/Voluntary-Contributions-to-OHCHR-2008-2021.pdf> (accessed 22 October 2022).

The signals on human rights from the most influential elements of the UN in New York have not been strong. In the UNSC, as one interviewee explained, China and Russia have shown greater willingness to raise objections to the use of human rights-related language and to contest human rights as a proper topic for discussion.⁷⁸ In 2021, Guterres published a vision paper, ‘Our Common Agenda’,⁷⁹ which presented human rights as one of several ‘blueprints for a better world’ alongside the Sustainable Development Goals (SDGs) and the Paris Agreement on climate change – both of which rely principally on voluntary action by states. Such comparisons undermine the standing of human rights, which is grounded in law rather than voluntary action, and diminish the credibility of the UN secretariat as a guardian of those rights. At a time when the human rights system is widely acknowledged to be under sustained assault, Guterres’s call for a ‘renewed social contract, anchored in a comprehensive approach to human rights’ does not constitute a strident defence.

⁷⁸ Chatham House interview, March 2022.

⁷⁹ UN (2021), *Our Common Agenda: Report of the Secretary-General*, New York: United Nations, https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf.

03 Polarizing pressures

In the context of US–China competition, there is growing polarization between their rival paradigms of human rights. It therefore becomes both more necessary and more difficult for less powerful states to make their voices heard.

The human rights system has long been conditioned to accept and work with polarization. The bifurcation of the International Bill of Rights locked competing paradigms of human rights into the system. These came to be championed by rival political blocs in the Cold War. The ideal that human rights are treated as indivisible has for a long time seemed remote.

Polarization is a matter of political choices, rather than a fixed state. In the context of growing US–China rivalry, it is worsening again. Diplomats and UN officials from numerous regions interviewed for this paper were united in describing the growing polarization in the field of human rights diplomacy, as the two major powers push their respective agendas, often leaving smaller and non-aligned states in a difficult position. From the perspective of one Global South diplomat, ‘the tensions are as old as human rights. We cannot get rid of them. But they are now becoming more and more difficult for us to balance.’⁸⁰

The division between civil and political rights on the one hand, and economic, social and cultural rights on the other, has arguably evolved into a new set of competing paradigms, which could be characterized as democracy vs development. Conceptually, each makes a reasonable pairing with at least part of the human rights framework, yet both are often presented by their main protagonists in a way that de-emphasizes the other. More importantly, the two paradigms threaten to subsume human rights into another agenda entirely: making human rights compliance a by-product of either democracy or economic development.

⁸⁰ Chatham House interview, April 2022.

In the US, following the turbulence of the Trump administration, Biden has restored democracy promotion as a foreign policy priority. The showpiece ‘Summit for Democracy’ held in December 2021 aspired to ‘set forth an affirmative agenda for democratic renewal and to tackle the greatest threats faced by democracies today through collective action.’⁸¹ Human rights were presented as one of the summit’s three pillars – a subset of the overarching task of promoting democracy.⁸² However, democracy neither captures the totality of human rights, nor is a democratic system a guarantee that human rights will be fulfilled. Meanwhile, Biden’s invocation of Franklin D. Roosevelt’s ‘arsenal of democracy’ in a May 2022 speech on military assistance to Ukraine (and the ‘ongoing battle in the world between autocracy and democracy’) underlined that the US quest to buttress democracy is in the end backed by military might.⁸³ But memories linger around the world of US-backed coups, of US support for the autocrats who emerged victorious from the Arab Spring, and of violations of human rights in both Afghanistan and Iraq.

European politicians have tended to use less bellicose language than the US, but have long framed ‘democracy and human rights’ almost as a single concept (despite a more nuanced presentation of human rights in the 1992 Treaty on European Union).⁸⁴ In the UK, then foreign secretary Liz Truss gave a speech at Chatham House in December 2021 entitled ‘Building the Network of Liberty’ as part of her effort to establish a doctrine for the UK’s post-Brexit role in the world. In that speech, Truss spoke of ‘standing up for freedom and democracy’ and pitted ‘the free world’ against ‘our adversaries’.⁸⁵ It is not difficult to infer the targets of such rhetoric, but which audience, asked one interviewee, is it designed to convince?⁸⁶

The answer is not to be found in the Global South, as numerous interviewees made clear. One described a widespread attitude among African countries that human rights continue to be ‘linked to perceptions of Western regime change’.⁸⁷ Meanwhile, a diplomat from Latin America saw the adversarial rhetoric from Global North countries as provocative and damaging, appealing for moderation:

The aim should not be to have a coup or change the government, but to enable the government to change.⁸⁸

Meanwhile, China has sought to position itself as a leader of the Global South by claiming and championing the old concept of the ‘right to development’. As with the protagonists of the ‘human rights and democracy’ framing in the West, this narrative seems to be underpinned by a measure of genuine conviction from China. But there is also no doubting how politically useful it is. According to one interviewee, it provides a way for China ‘to justify its achievement retrospectively’,

⁸¹ US Department of State (2021), ‘The Summit for Democracy’, <https://www.state.gov/summit-for-democracy>.

⁸² US Department of State (2021), ‘The Summit for Democracy’. (The other two pillars were: ‘Defending against authoritarianism’, and ‘Addressing and fighting corruption’.)

⁸³ The White House (2022), ‘Remarks by President Biden on the Security Assistance to Ukraine’, transcript, 3 May 2022, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/05/03/remarks-by-president-biden-on-the-security-assistance-to-ukraine>.

⁸⁴ EUR-Lex (1992), *Treaty on European Union, Document 11992M/TXT*, 7 February 1992, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11992M/TXT>.

⁸⁵ Foreign, Commonwealth & Development Office and the Rt Hon Elizabeth Truss MP (2021), ‘Building the Network of Liberty: Foreign Secretary’s Speech’, 8 December 2021, <https://www.gov.uk/government/speeches/foreign-secretary-liz-truss-building-the-network-of-liberty>.

⁸⁶ Chatham House interview, March 2022.

⁸⁷ Chatham House interview, April 2022.

⁸⁸ Chatham House interview, April 2022.

while also reframing human rights in a way that helps it evade the criticism it has faced on civil and political rights violations since 1989.⁸⁹ It emphasizes China's substantial economic offer to the world and revives an old narrative about inequality between states and the betrayals of the Global North. Conceptually, since the right to development rests with states rather than individuals, it resonates well with China's preference for a state-oriented human rights system in which individual rights and recourse are de-emphasized or removed altogether.

From the perspective of many countries in the Global South, it is impossible to disentangle human rights from issues of economic inequality and development.

As one interviewee explained, the right to development makes little sense as a formal right, but it has provided a relevant platform for the discussion of rights. Arguably the issues that it raises have become more evident in the wake of the COVID-19 pandemic.⁹⁰ Other interviewees described it as an idea that had simply stagnated. One said: 'the idea has lost momentum within Africa ... We own it, but it did not work out because the West blocked it.'⁹¹ But, while European countries including France and Germany once joined China as co-sponsors for a resolution on the right to development in the UNCHR,⁹² that agenda has become toxic to countries in the Global North, who now avoid the drafting group for HRC resolutions and vote against the resolutions. There is a perception now, expressed during a Chatham House roundtable on human rights diplomacy, that both proponents and opponents use the right to development concept to score political points against each other, with the result that 'the right to development framing immediately politicizes something which should be positive'.⁹³

Yet, from the perspective of many countries in the Global South, it is impossible to disentangle human rights from issues of economic inequality and development. One interviewee said, a civil and political rights agenda presented in terms of freedom and democracy is often dismissed by African governments as 'just another stick to beat them with'.⁹⁴ It is also a way for the Global North to sidestep the issues those governments want to talk about. One diplomat said that 'for most countries, we need to talk first about inequality'.⁹⁵ Another said, 'the world's economic and financial architecture is structured in a way that stacks up against developing countries', describing the G20 debt suspension plan in the wake of the COVID-19 pandemic as 'underwhelming'.⁹⁶

⁸⁹ Chatham House interview, March 2022.

⁹⁰ Chatham House interview, March 2022.

⁹¹ Chatham House interview, April 2022.

⁹² UN Digital Library (1996), 'E/CN.4/1996/L.23/Rev.1. The Right to Development: Revised Draft Resolution', 10 April 1996, <https://digitallibrary.un.org/record/235434>.

⁹³ Chatham House roundtable on human rights diplomacy, 17 March 2022. This is an inauspicious context in which the UN Working Group on the Right to Development seeks to oversee the drafting of a new, legally binding instrument on the right to development, as mandated by the HRC in September 2018. UN Digital Library (2018), 'A/HRC/RES/39/9. The Right to Development : resolution / adopted by the Human Rights Council on 27 September 2018', 27 September 2018, <https://digitallibrary.un.org/record/1650170>.

⁹⁴ Chatham House interview, April 2022.

⁹⁵ Chatham House interview, April 2022.

⁹⁶ Chatham House interview, March 2022.

As of now, there is too little space available for a non-politicized conversation about the relationship between human rights, development and inequality. This is not helped by the lack of engagement on human rights from international financial institutions such as the IMF.⁹⁷ In turn, as several human rights practitioners commented, a general lack of economic literacy within much of the human rights sector stands in the way of a more sophisticated, multi-stakeholder treatment of this issue.⁹⁸

As discussed in Chapter 2, the international human rights system has long been one of the arenas in which great power politics play out. However, the more entrenched the rival paradigms of democracy and development become in the context of US–China competition, the more difficult it is to negotiate the relationship between them. The promotion of vastly different conceptions of human rights in a context of wilful deafness to the other side is a serious problem. If positions continue to harden, depolarization becomes increasingly difficult to envisage. One Asian diplomat said, echoing counterparts from other regions: ‘Everyone sticks to their ideological position now, there really is no genuine dialogue.’⁹⁹

The impact of this is that the political risk (and potential cost) of engaging proactively in the human rights system is much higher for most countries in the Group of 77 (G77),¹⁰⁰ particularly smaller states that lack economic heft, political leverage or powerful patronage. The strongest and wealthiest countries are the most capable of instrumentalizing the system and the most likely to avoid consequences for their own violations. Meanwhile, pariah states such as North Korea have little more to lose and others, such as Myanmar, are accustomed to withstanding regular condemnation of their human rights conduct and have developed survival strategies. The countries most vulnerable to the system are those that wish to protect their reputations and, potentially, advance their own agendas through the UN system. The incentives are stacked against such countries playing a proactive role. As one diplomat said, ‘rich countries can withstand the pressure, but smaller countries will face consequences for their votes.’¹⁰¹ Another interviewee stressed that, for many African states, human rights diplomacy is so fraught with risks that it has become a matter of reputation management and little more.

One fear is that the political cost of taking a stand against a powerful state on human rights grounds, such as voting for a particular country resolution, would meet with harmful reciprocal action, such as a priority initiative or nomination being blocked elsewhere in the system. States in this position have good reason to submit to China’s antagonism towards country resolutions, for example, or may prefer to shift country-specific situations requiring the attention of the HRC from agenda item 4 (‘Human rights situations that require the Council’s attention’) to the more benign item 10 (‘Technical assistance and capacity-building’).¹⁰²

⁹⁷ Chatham House roundtable, 17 March 2022.

⁹⁸ Ibid.

⁹⁹ Chatham House interview, March 2022.

¹⁰⁰ ‘The Group of 77 is the largest intergovernmental organization of developing countries in the United Nations, which provides the means for the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development.’ The Group of 77 (undated), ‘About the Group of 77’, <https://www.g77.org/doc>.

¹⁰¹ Chatham House interview, April 2022.

¹⁰² Chatham House interview, March 2022.

As states are wooed and pressured for their HRC and UNGA votes, they risk becoming unintentionally and harmfully entangled in great power politics. One diplomat from a country often aligned with the US said it is becoming more and more difficult to reject texts produced by China, which are becoming increasingly subtle and sophisticated, and this created a difficult dynamic to manage.¹⁰³ Accordingly, for many states, abstention is often the safest course of action.

¹⁰³ Chatham House interview, April 2022.

04 China's systemic challenge

China seeks to recalibrate the human rights system to its interests, but does face constraints. Concerned states should respond not with a narrow focus on China itself but with an ambitious global strategy that engages with the priorities of China's allies.

China has worked hard for the influence it has accrued in the human rights system. One of the questions for the future of human rights diplomacy is what China intends to achieve with this influence in the long term. This is a subject of debate among analysts of Chinese foreign policy. The key question, as one academic reflected, is whether China's goal is 'to make the world safe for autocracy, or to make it no longer safe for democracy'.¹⁰⁴ In other words, is Beijing's objective to blunt the threat to its interests from the human rights system by rendering it as ineffective as possible? Or does it intend to remake the human rights machinery entirely, as part of an international system recalibrated to China's worldview?

The answer is tied to speculation about the future of the CCP and its leadership. As one observer of China explained, the history of the People's Republic is often interpreted as cycles of relative openness and repression, and the Xi Jinping era belongs to the latter.¹⁰⁵ But even the most optimistic reading of the long-term future would point towards growing pressures from China that progressively threaten to weaken the human rights system in significant ways.

In its overall engagement with the multilateral system, China has generally tended to position itself as a responsible actor. It is taking an ever more active approach. In line with its rapid economic growth, it has become the second-largest donor to the UN regular budget, at 15 per cent in 2022, well ahead of third-placed

¹⁰⁴ Chatham House interview, February 2022.

¹⁰⁵ Chatham House interview, March 2022.

Japan (8 per cent) and quickly catching up with the US (22 per cent, which is the upper limit).¹⁰⁶ China's best-known contribution is in the area of peacekeeping, where its contribution of personnel is more than double the combined total of the other P5 members, and its financial contribution is second only to that of the US.¹⁰⁷ Chinese nationals lead four of the 15 specialized UN agencies – one interviewee stressed that, in terms of committee posts, China 'leaves no position unfilled'.¹⁰⁸ There are 27 UN entities with a base in China (although OHCHR is not among them).¹⁰⁹ The Chinese government has regularly stated its commitment to the SDGs, while UN secretary-general Guterres has attempted to make a conceptual link between the SDGs and the BRI, notably at the Belt and Road Forum in May 2019.¹¹⁰

But there is a different tenor to China's engagement with the human rights system. The foundations of the system were put in place before the People's Republic of China joined the UN in 1971, replacing the Republic of China (Taiwan), and the CCP has always seen it as an unwelcome constraint.¹¹¹ It was not surprising, therefore, that 'Western freedom, democracy, and human rights' were enumerated as existential threats to the CCP in a leaked internal party communiqué from 2012, known as Document 9.¹¹²

China's influence in the human rights sphere is a function of its economic and political heft, both of which have grown substantially over the past two decades.

China's influence in the human rights sphere is a function of its economic and political heft, both of which have grown substantially over the past two decades. A combination of BRI investments and debt purchases have tied numerous countries financially to China. But there are also strong economic disincentives against standing up to Beijing's interests. China's withdrawal from trade talks with Norway after the Nobel Committee awarded its 2010 Peace Prize to Liu Xiaobo,¹¹³ its freezing of many Australian imports after the Australian government called for an independent inquiry into the origins of COVID-19 in 2020, and its economic and diplomatic ostracism of Lithuania after the latter invited the Taipei government to open a representative office under the name of Taiwan, all stand as warnings against countries less able to withstand such pressure.

¹⁰⁶ Blanchfield, L. (2022), *United Nations Issues: U.S. Funding to the U.N. System*, Congressional Research Service, <https://crsreports.congress.gov/product/pdf/IF/IF10354>. The US position has been complicated by Congressional reluctance: see Hyde, A. (2022), 'China's Emerging Financial Influence at the UN Poses a Challenge to the U.S.', The Stimson Center, 4 April 2022, <https://www.stimson.org/2022/chinas-emerging-financial-influence-at-the-un>.

¹⁰⁷ Gowan, R. (2020), 'China's Pragmatic Approach to UN Peacekeeping', Brookings Institution, 14 September 2020, <https://www.brookings.edu/articles/chinas-pragmatic-approach-to-un-peacekeeping>.

¹⁰⁸ Chatham House interview, March 2022.

¹⁰⁹ United Nations China (undated), 'UN Entities in China', <https://china.un.org/en/about/un-entities-in-country> (accessed 22 October 2022).

¹¹⁰ UN Department of Economic and Social Affairs (2017), 'At China's Belt and Road Forum, UN Chief Guterres Stresses Shared Development Goals', 14 May 2017, <https://www.un.org/development/desa/en/news/sustainable/belt-and-road-forum.html>.

¹¹¹ Chatham House interview, January 2022.

¹¹² ChinaFile (2013), 'Document 9: A ChinaFile Translation: How Much Is a Hardline Party Directive Shaping China's Current Political Climate?', 8 November 2013, <https://www.chinafile.com/document-9-chinafile-translation>.

¹¹³ Relations were only normalized six years later. See Chan, S. (2016), 'Norway and China Restore Ties, 6 Years After Nobel Prize Dispute', *New York Times*, 19 December 2016, <https://www.nytimes.com/2016/12/19/world/europe/china-norway-nobel-liu-xiaobo.html>.

However, these assertive responses to Global North countries are part of China's broader diplomatic positioning and its proposition to the Global South. China's economic investments in developing countries do not automatically translate into influence or uncritical support, but they do offer a welcome alternative to economic and political dependency on countries in the Global North,¹¹⁴ and there is genuine admiration for China's economic achievements and the political system which is perceived to have enabled them.¹¹⁵ The right to development narrative championed by China resonates with countries in the Global South, especially in Africa, for reasons of both principle and politics. Similarly, an interviewee from an Asian country said, 'if they bring jobs to our country, that is part of human rights too'. China has been successful in building a network: the Like-Minded Group of Developing Countries (LMDC) constitutes a bloc of sorts, on which it can count for support.¹¹⁶ As one interviewee stated, China's narrative about restoring multilateralism¹¹⁷ comes from a position of confidence that it has the necessary support. It is a way of saying to its opponents, 'count the votes'.¹¹⁸

The most basic task for Beijing in its human rights diplomacy is self-protection. It has proven adept at shielding itself from criticism with the aid of other countries. The annual resolutions on Tiananmen Square in the UNCHR were a regular embarrassment, but China developed a long record of defeating them with the use of 'no-action' resolutions proposed by its allies.¹¹⁹ It has been able to continue in much the same vein in the HRC. For example, Foot has shown how, during China's 2018 UPR, it was able to stack the floor with friendly comments and push NGOs aside.¹²⁰ This was consistent with its record as the most active country in obstructing NGO accreditations,¹²¹ and forcibly preventing individuals from testifying at the UN.¹²² China has used similar tactics in relation to alleged human rights violations in Xinjiang. Numerous statements of condemnation at the HRC and UNGA have been countered with statements defending China, which have a larger number of countries in support. That China's group of supporters has gradually dwindled in size, and that China received the fewest votes of those states elected at the most recent HRC election, led then executive director of HRW Ken Roth to speculate in 2021 that:

[T]he day may soon arrive when UN bodies can begin to adopt formal resolutions criticizing at least some aspects of Beijing's repression.¹²³

¹¹⁴ Chatham House interview, April 2022.

¹¹⁵ Chatham House roundtable on human rights diplomacy, 17 March 2022.

¹¹⁶ The Like-Minded Group of Developing Countries (LMDC) is a loose grouping of 20–24 countries which organize themselves as a bloc at UN and other multilateral negotiations.

¹¹⁷ See, for example: Ministry of Foreign Affairs of the People's Republic of China (2021), 'Unswervingly Hold High the Banner of Multilateralism: Ambassador Ren Yisheng on the 50th Anniversary of the Restoration of China's Legitimate Seat in the United Nations', 12 October 2021, https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zwjg_665342/zwbdt_665378/202110/t20211019_9594287.html.

¹¹⁸ Chatham House interview, January 2022.

¹¹⁹ Inboden (2021), *China and the International Human Rights Regime, 1982-2017*, p. 57.

¹²⁰ Foot (2020), *China, the UN, and Human Protection*, p. 204.

¹²¹ Inboden, R. S. (2021), 'China Is Choking Civil Society at the United Nations', *Foreign Policy*, 27 September 2021, <https://foreignpolicy.com/2021/09/27/china-is-choking-civil-society-at-the-united-nations>.

¹²² One emblematic and tragic case was that of Cao Shunli, who was prevented from travelling to Geneva to attend an NGO event at the HRC in September 2013. She was taken into custody, where her health deteriorated, and she died six months later. OHCHR (2019), 'China: UN Experts Renew Calls for Probe into Death of Cao Shunli', 14 March 2019, <https://www.ohchr.org/en/news/2019/03/china-un-experts-renew-calls-probe-death-cao-shunli>.

¹²³ Human Rights Watch (2021), *Human Rights Watch World Report 2021: Events of 2020*, https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf, p. 9.

That remains possible but has certainly yet to materialize. The visit of the UN high commissioner for human rights, Michelle Bachelet, to China in May 2022, was widely criticized as a public relations victory for China.¹²⁴ The long-awaited OHCHR report on the human rights situation in Xinjiang was released by Bachelet around nine minutes before her term expired on 31 August 2022.¹²⁵ The 46-page report was accompanied by a 122-page response from China. The report was hard-hitting and concluded that China's actions against the Uyghur population in Xinjiang 'may constitute international crimes, in particular crimes against humanity.' In the September 2022 HRC session, the US and others proposed a draft decision noting the report and calling for a debate at the next Council session. However, this proposal was narrowly defeated¹²⁶ – only the second time a resolution had ever failed a vote in the HRC. It remains to be seen whether appetite remains for a fresh attempt and, if so, which countries may be persuaded to change their position.

But while China has continued its success in avoiding censure, it also has a more proactive agenda. A Chatham House report published in 2012 concluded that:

[T]here is strong evidence that a newly confident China is experimenting with a more assertive style of diplomacy on international human rights issues generally.¹²⁷

This analysis has broadly been vindicated in the decade since.

The main elements of China's agenda for the human rights system have remained relatively consistent in the post-Tiananmen years: to constitute it as a system based on 'dialogue' and technical cooperation between states, with little or no place for criticism, and no meaningful role for civil society.¹²⁸

One important element of China's effort to undermine or neuter the system is the blandness and ambiguity of the language it uses on human rights. This deployment of 'discourse power' is supported by hundreds of Confucius Institutes located around the world, and the creation of around 15 human rights centres within Chinese universities.¹²⁹ This strategy can boast a measure of success. Since 2017, Xi Jinping has embraced the concept translated benignly into English as 'community of shared future for humankind'. This phrase captures the idea of a collective with a shared fate.¹³⁰ It has been summarized by Malin Oud as 'a vision for a world order that emphasises sovereignty, respect for different political systems, and "win-win cooperation" among states',¹³¹ in what amounts to a repudiation of an accountability-based system. In March 2017, the CCP noted its success in introducing the phrase into a resolution for the first time during the 34th session of the HRC.¹³²

¹²⁴ OHCHR (2022), 'Statement by UN High Commissioner for Human Rights Michelle Bachelet after Official Visit to China', 28 May 2022, <https://www.ohchr.org/en/statements/2022/05/statement-un-high-commissioner-r-human-rights-michelle-bachelet-after-official>.

¹²⁵ OHCHR (2022), 'OHCHR Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China', 31 August 2022, <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region>.

¹²⁶ UN Human Rights Council (2022), *A/HRC/51/L.6. Debate on the Situation of Human Rights in the Xinjiang Uyghur Autonomous Region, China: Result of the Vote*, 6 October 2022, https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/51/DL_Resolutions/A_HRC_51_L.6/Voting%20Results.pdf.

¹²⁷ Sceats and Breslin (2012), *China and the International Human Rights System*, p. 7.

¹²⁸ Chatham House interview, February 2022.

¹²⁹ Chatham House interview, March 2022.

¹³⁰ Chatham House interview, June 2022.

¹³¹ Oud, M. (undated), 'Decoding China: Human Rights / 人权', <https://decodingchina.eu/human-rights> (accessed 22 October 2022).

¹³² *China Daily* (2017), 'Shared Future for All a Win-Win Concept', opinion, 25 March 2017, https://www.chinadaily.com.cn/opinion/2017-03/25/content_28675525.htm.

In the following session, held in June 2017, the HRC adopted China's first solo-sponsored resolution – putting forth its discourse on the right to development¹³³ – which has since become a biennial resolution. In December 2017, the Beijing Declaration that emerged from the first South–South Human Rights Forum advanced several core ideas from China's human rights doctrine in the name of a wider group of developing countries. China also successfully sponsored a series of annual HRC resolutions on 'Promoting mutually beneficial cooperation in the field of human rights' in 2018, 2020 and 2021. In February 2021, Chinese foreign minister Wang Yi used his remarks to the HRC to call for a 'people-centered approach' to human rights, with a view to promoting 'all-round development of the people'.¹³⁴ The language is benign, denuded of accountability and plays to the CCP's own domestic source of legitimacy – namely, its economic record. On its own terms, China is de facto a human rights success story.

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There are also signs that the attack on country resolutions may be yielding success. Within the HRC, country resolutions are passing with narrower margins and higher levels of abstentions. In October 2020, the HRC saw a resolution defeated in a vote for the first time: a proposal by the Netherlands to extend the mandate of the Group of Eminent Experts on Yemen was defeated by 21 votes to 18, with seven countries abstaining. Although this result was mainly attributed to the efforts of Saudi Arabia, which was not on the Council, most votes against¹³⁵ came from the LMDC and countries which have become economically dependent on China, such as Burkina Faso,¹³⁶ Eritrea¹³⁷ and Gabon.¹³⁸ As one diplomat remarked, 'to understand the way countries vote, you have to look at market share'.¹³⁹

¹³³ UN Digital Library (2017), 'A/HRC/RES/35/21. The Contribution of Development to the Enjoyment of All Human Rights : resolution / adopted by the Human Rights Council on 22 June 2017', <https://digitallibrary.un.org/record/1302362>.

¹³⁴ Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland (2021), 'A People-centered Approach for Global Human Rights Progress: Remarks, Wang Yi, State Councilor and Foreign Minister of the People's Republic of China, High-Level Segment of the 46th Session of The United Nations Human Rights Council', 22 February 2021, http://geneva.china-mission.gov.cn/eng/dbdt/202102/t20210222_9899531.htm.

¹³⁵ UN Human Rights Council (2021), *A/HRC/48/L.11. Situation of Human Rights in Yemen: Result of the Vote*, 7 October 2021, https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/48session/DL_Resolutions/A_HRC_48_L.11/Result%20of%20the%20vote.pdf.

¹³⁶ Burcu, O. and Bertrand, E. (2019), 'Explaining China's Latest Catch in Africa', *The Diplomat*, 16 January 2019, <https://thediplomat.com/2019/01/explaining-chinas-latest-catch-in-africa>.

¹³⁷ Devonshire-Ellis, C. (2021), 'Eritrea Joins The Belt And Road Initiative', Silk Road Briefing, 28 November 2021, <https://www.silkroadbriefing.com/news/2021/11/28/eritrea-joins-the-belt-and-road-initiative>.

¹³⁸ Yuanyuan, X. (2020), 'Gabon Eyes Greater Chinese Investment as China-Africa Ties Expand', *Chinafrica*, 29 September 2020, http://www.chinafrica.cn/Homepage/202009/t20200929_800222398.html.

¹³⁹ Chatham House interview, February 2022.

Yet it is also important to acknowledge the constraints on China in its pursuit of this agenda for the human rights system. First, there are limits as to how far the countries China claims to represent are willing to accept its leadership. The October 2021 China-sponsored HRC resolution on the ‘Negative impact of the legacies of colonialism on the enjoyment of human rights’ was a case in point. Four African states abstained on this resolution, which was building on momentum that had been growing after the murder of George Floyd by a police officer in Minneapolis, US, in May 2020. The lack of unequivocal support from African states was arguably a rebuke to China,¹⁴⁰ giving the impression that China had jumped on an anti-American bandwagon where it lacked the credibility to lead. One interviewee highlighted that China’s conduct in Africa is itself sometimes seen in neo-colonialist terms, and many people in the continent had just cause to resent China’s attempt to co-opt an anti-colonialist agenda that rightfully belongs with them.¹⁴¹

Second, Chinese ‘discourse power’ is still limited in its impact. An interviewee noted that while the ‘shared future’ language from President Xi has been absorbed into several negotiated texts, it has not resonated widely.¹⁴² This is perhaps partly due to its vagueness (at least in English-language translation). One reading of this is that it reflects a structural weakness within the CCP: China has largely borrowed ideas from elsewhere in its critique of human rights, such as from the intellectual tradition of Third World Approaches to International Law,¹⁴³ and the linear, state-centric approaches that underlie the rights to subsistence and development – while consistent with Communist traditions – are now considered outdated.¹⁴⁴ China has been able to exploit long-standing tensions such as those around accountability or development,¹⁴⁵ but it has not been able to generate new ideas or risk engaging in detail in case this should lead to internal disagreements.¹⁴⁶ The superficiality and unoriginality of China’s human rights discourse may constrain how far it is able to spread.

Third, China is also open to charges of inconsistency that undermine its legitimacy. As Foot explains, the credibility of China’s overall proposition on human rights is compromised by its domestic record. It relies on:

Beijing’s ability to persuade others that its unwillingness to discuss its constant resort to repression as a means of maintaining domestic stability does not invalidate its overall approach.¹⁴⁷

This credibility deficit is especially problematic for China in its appeal to countries that place some value on civil and political rights or have other reasons to be concerned about human rights in China.¹⁴⁸ China’s vacillating support for

¹⁴⁰ UN Human Rights Council (2021), *A/HRC/48/L.8. Negative Impact of the Legacies of Colonialism on the Enjoyment of Human Rights: Result of the Vote*, 8 October 2021, https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/48session/DL_Resolutions/A_HRC_48_L.8/Result%20of%20the%20vote.pdf, p. 48.

¹⁴¹ Chatham House interview, April 2022.

¹⁴² Chatham House interview, March 2022.

¹⁴³ Third World Approaches to International Law (or TWAIL) is an academic discourse which regards international law as a mechanism of domination by the Global North.

¹⁴⁴ Chatham House roundtable on human rights diplomacy, 17 March 2022.

¹⁴⁵ Chatham House interview, February 2022.

¹⁴⁶ Chatham House interview, February 2022.

¹⁴⁷ Foot (2020), *China, the UN, and Human Protection*, p. 218.

¹⁴⁸ Notably, Muslim-majority Somalia was the one African country to vote against China on Xinjiang.

Russia since its February 2022 invasion of Ukraine has been another example of incoherence, as the invasion was an obvious violation of the normative basis for China's discourse on human rights – namely sovereignty and non-interference.

While China does not enjoy unfettered influence, it has nevertheless had some success in weakening the international human rights system. This is a challenge that should be answered by states interested in defending that system. But there are few options available for challenging China directly, as the failed Xinjiang vote in the HRC demonstrated. China has a long record of rebuffing direct criticism with the help of other states and has shown little vulnerability to 'name and shame' tactics. It has now begun to position itself as a leader on human rights rather than simply seeking to evade censure. As one interviewee said, China senses a shift of power away from the US-led bloc towards the rest of the world, which it sees itself as leading; and China now wants a multilateral system in which it is unconstrained by values-based ideology and can exercise maximum sovereign autonomy.¹⁴⁹

To counter this challenge, other states will need to do at least two things. The first is to make the case for the kind of multilateral engagement that the human rights system historically calls for. This means embracing the full spectrum of rights and upholding the legitimacy of supranational institutions that guard against the relativization or weakening of rights. The continued failure of the US to ratify the ICESCR and the UK government's threats to limit the jurisdiction of the European Court of Human Rights help China by validating a 'pick and choose' approach based on a hierarchy of rights, and by legitimizing the state sovereignty argument.

The second is for the major powers (especially, but not only, in the Global North) to recognize that they need a global strategy, rather than just a China strategy. The success of China's challenge to the human rights system rests on the strength of its appeal and its leverage over the countries it seeks to represent. If Global North countries want to counteract the influence of China in this regard, they need to understand how narrow their own agenda has become and develop an alternative proposition that responds to the priorities of China's constituency. A human rights discourse based exclusively on ideas of democracy and fundamental freedoms will not be sufficient. The new proposition should rather focus on the areas of inequality and economic development, and be rooted in strong commitments to economic, social and cultural rights and the SDGs. This would not be without precedent: Steven Jensen has noted that the US had been 'the strongest proponent of the most advanced implementation measures on economic, social and cultural rights' during the debates leading up to the ICESCR in 1966, with Italy in support.¹⁵⁰ This is a legacy to which the US and its allies should return.

¹⁴⁹ Chatham House interview, January 2022.

¹⁵⁰ Jensen (2016), *The Making of International Human Rights*, pp. 128–9. Notably, this took place amid President Lyndon Johnson's domestic 'war on poverty'.

05 Economic leverage and coercion

In a context where accountability is difficult to achieve through the multilateral system, wealthy states are increasingly turning to targeted sanctions. But there are unanswered questions about process and the efficacy of such measures.

Beyond the routine business of diplomacy, wealthier states have increasingly turned to economic pressure, either to incentivize progress on human rights or punish abuses. Although this practice is perhaps outside of a narrowly defined diplomacy, it has come to be used alongside diplomacy or in its absence, and therefore merits a brief treatment.

The trend towards economic pressure has been cautiously welcomed by many human rights advocates, on that basis that it demonstrates a harder edge and a more realist approach than diplomatic statements and dialogue. Supporters of this approach assert that it applies meaningful leverage and brings direct consequences to individuals accused of human rights violations in a context where accountability is a rarity. But the trend also raises several questions, including when such pressure crosses a line into coercion, whether it is consistent with a human rights-based approach and whether it is effective.

Economic pressure takes several forms. Several UN sanctions regimes with human rights objectives are currently in place, including in Afghanistan (from 2011), Central African Republic (from 2013), Democratic Republic of the Congo (from 2010), Libya (from 2014, in the current form), South Sudan (from 2015), and Yemen (from 2011), which include both individual and comprehensive elements. However, consistent with its wider deadlock, the UNSC has introduced only one new sanctions regime since 2015 – in Mali (an exceptional case involving government cooperation) – having introduced 22 such regimes during the preceding 24 years.

While multilateral UN sanctions have dwindled, there has been substantial recent growth in the imposition of unilateral sanctions. This has been particularly true of the ‘Magnitsky’ regime of targeted sanctions. This trend began with legislation enacted in the US in 2012 following the death in 2009 of Russian tax lawyer Sergei Magnitsky, who had exposed a large-scale tax fraud alleged to involve high-level government officials in Russia. This legislation authorized the imposition of travel bans and asset freezes on a list of Russian officials believed to have been responsible for human rights violations.¹⁵¹ In 2016, Congress built on this foundation to pass the Global Magnitsky Human Rights Accountability Act,¹⁵² which authorized the President to revoke US visas and to block property and assets of foreign individuals and entities involved in ‘gross violations of human rights’, as well as ‘acts of significant corruption’. In 2017, President Trump further expanded the scope of the law via Executive Order 13818 and reduced the threshold for action to ‘serious human rights abuse’ and ‘corruption’.¹⁵³ Similar laws have been introduced in Estonia (in 2016), Canada, Lithuania and the UK (all 2017), Latvia (2018), the EU (2019), Kosovo (2020) and Australia (2021), as well as in Gibraltar and Jersey (both 2018).

The recent expansion in Magnitsky legislation has rapidly pushed targeted individual sanctions towards becoming one of the most prominent tools of leverage on human rights.

The recent expansion in Magnitsky legislation has rapidly pushed targeted individual sanctions towards becoming one of the most prominent tools of leverage on human rights. But this trend has so far received relatively little serious scrutiny. In 2021, the US government issued 173 new designations,¹⁵⁴ compared with 103 in 2019.¹⁵⁵ Human rights were also part of the rationale for the imposition of massive co-ordinated sanctions on Russia by the US and G7 countries in 2022. Magnitsky sanctions are variously described by their proponents as a form of accountability (although it may be more accurate to call them a substitute for accountability), a deterrent and an incentive for governments to strengthen domestic human rights protections.¹⁵⁶

¹⁵¹ U.S. Government Federal Register (2012), *Sergei Magnitsky Rule of Law Accountability Act of 2012*, <https://www.govinfo.gov/content/pkg/PLAW-112publ208/pdf/PLAW-112publ208.pdf>.

¹⁵² US Treasury Department (2016), *Global Magnitsky Human Rights Accountability Act*, https://home.treasury.gov/system/files/126/glomag_pl_114-328.pdf.

¹⁵³ U.S. Government Federal Register (2017), *Executive Order 13818 of December 20, 2017: Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption*, <https://www.govinfo.gov/content/pkg/FR-2017-12-26/pdf/2017-27925.pdf>.

¹⁵⁴ Bartlett, J. and Bae, E. (2022), ‘Sanctions by the Numbers: 2021 Year in Review’, report, 13 January 2022, Washington, DC: Center for a New American Security, <https://www.cnas.org/publications/reports/sanctions-by-the-numbers-2021-year-in-review>.

¹⁵⁵ Imperiale, J. (2020), ‘Sanctions by the Numbers: U.S. Sanctions Designations and Delistings, 2009–2019’, report, Washington, DC: Center for a New American Security, <https://www.cnas.org/publications/reports/sanctions-by-the-numbers>.

¹⁵⁶ For example, Human Rights Watch (2017), ‘The US Global Magnitsky Act: Questions and Answers’, 13 September 2017, <https://www.hrw.org/news/2017/09/13/us-global-magnitsky-act>.

It is by no means clear that such sanctions are as effective as their proponents hope. Individual sanctions are by nature easier for their targets to sidestep than comprehensive sanctions, and as such they may only work if they are broad enough. But, as one expert interviewee explained, what is most difficult to know about sanctions is how they are experienced by their targets. In the absence of clarity on this, the primary value of individual sanctions is in signalling disapproval: in the words of one interviewee, ‘they are a feel-good measure’.¹⁵⁷ In terms of secondary impacts, such as for deterrence or shifting the incentives in a mediation process, timing is critical. Yet new sanctions are often announced as part of regular designations without consideration to how to optimize their timing for maximum effect.¹⁵⁸

Magnitsky designations also risk falling foul of human rights due process. Even where clear criteria are in place, it is almost inevitable that sanctions designations will involve political choices, and potentially therefore could be arbitrary and lacking in transparency or accountability.¹⁵⁹ States beholden to kleptocratic wealth are heavily compromised in this regard.¹⁶⁰ A wide range of factors other than pure human rights considerations could be at play, including the opportunity to pursue a vendetta or the fear of economic reprisals. Yet this aspect of the process is largely concealed from scrutiny.

At the very least, these questions expose Magnitsky sanctions regimes to accusations of being politically driven. But it is also possible that a lack of due process could risk violating an individual’s rights in the name of upholding human rights, which was the great folly of the ‘war on terror’ in the early 2000s. There is a clear risk that a designated individual is proclaimed guilty of an act which may or may not meet the threshold of an international crime, without having practical means to prove their innocence.¹⁶¹ Magnitsky sanctions regimes therefore risk feeding into existing narratives about Global North hypocrisy, as well as the tendency to prioritize certain rights above others.

In her first report in 2020, the current UN special rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Alena Douhan, noted ‘the selectivity and double standards that arise when such [Magnitsky] sanctions are introduced in the absence of any valid legal ground’.¹⁶² The mandate of the special rapporteur was established in 2014, but there has been a much longer history of condemnations from the Non-Aligned Movement (which included several sanctioned states) about ‘unilateral coercive measures’, including one or more annual resolutions at both the HRC and UNGA, which are typically voted against by Global North countries. The 1993 Vienna Declaration

¹⁵⁷ Chatham House interview, March 2022.

¹⁵⁸ Gaston, E. (2022), ‘Targeted Sanctions Are Trendy, but Not Very Effective’, *World Politics Review*, 7 February 2022, <https://www.worldpoliticsreview.com/articles/30303/magnitsky-sanctions-won-t-work-without-strategy>.

¹⁵⁹ For example, European Ombudsman (2022), ‘How the Council of the EU Ensures Transparency of the Decision Making Concerning Sanctions against Russia’, 3 June 2022, <https://www.ombudsman.europa.eu/en/case/en/61849>.

¹⁶⁰ For example, Heathershaw, J. et al. (2021), *The UK’s kleptocracy problem: How servicing post-Soviet elites weakens the rule of law*, Research Paper, London: Royal Institute of International Affairs, <https://www.chathamhouse.org/2021/12/uks-kleptocracy-problem>. In this paper, the authors recommend ‘[u]se of the new Global Anti-Corruption sanctions regime against kleptocrats and their associates residing in the UK’ (p. 49).

¹⁶¹ Chatham House interview, October 2022.

¹⁶² Douhan, A. (2020), ‘A/HRC/45/7. Negative Impact of Unilateral Coercive Measures: Priorities and Road Map : Report of the Special Rapporteur on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights’, UN Digital Library, 21 July 2020, <https://digitallibrary.un.org/record/3884722>.

and Programme of Action adopted by the World Conference called on states to ‘refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations’.¹⁶³ The declaration thereby established grounding in international law as the crucial test, and the special rapporteur indicated her intention to probe ‘the impact of various types of sanctions to all categories of human rights’, including a focus on ‘the legal grounds, the particularities and the legality of sanctions imposed on individuals and non-State entities, especially due to the proliferation of Magnitsky-like acts.’¹⁶⁴

On the economic incentives side, the best-known scheme is the EU’s GSP+ (one of three regimes under the broader Generalised Scheme of Preferences), which opens access to EU markets via substantial tariff reductions in exchange for the beneficiary ratifying and implementing 27 international conventions, including 15 on human rights. There are procedural criticisms about the quality and transparency of monitoring and implementation, and the EU has appeared to set an extremely high threshold for the withdrawal of benefits. Only Sri Lanka has ever been stripped of its status, on a temporary basis, following a European Commission inquiry into mass atrocity crimes committed by government forces against civilians.¹⁶⁵

However, perhaps the deeper question, as expressed by one interviewee, is whether the transactional nature of applying economic leverage for human rights improvements can ever be genuinely transformative.¹⁶⁶ For example, after an attack on a school in Peshawar in 2014,¹⁶⁷ Pakistan lifted an unofficial moratorium on the death penalty while benefiting from GSP+, thus demonstrating that domestic public opinion tends to prevail over passive compliance with international norms and obligations. Economic pressure from the EU has not translated into any public argument for the abolition of capital punishment in Pakistan. This remains a point of contention in discussions over the renewal of Pakistan’s GSP+ status, due in 2024.

It is not difficult to see how linking economic consequences to human rights outcomes could constitute an effective form of leverage, but it comes with potential for abuse. The economics of human rights diplomacy deserve a much fuller treatment than this paper can provide. Important issues in this area would benefit from further inquiry, including the legality and impact of unilateral sanctions; the relationship between targeted sanctions and accountability; the correlations between financial influence and voting records; the relative exposure of different states to economic pressure; and the impact of funding deficiencies within the UN human rights system. Moreover, the growing use of economic measures by wealthier states raises further questions about the financial balance of power in the multilateral human rights system at a time when parts of that system are applying fresh energy to issues such as climate, legacies of colonialism and inequality – all of which have significant economic dimensions.

¹⁶³ OHCHR (1993), ‘Vienna Declaration and Programme of Action’, 25 June 1993, <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>.

¹⁶⁴ Douhan (2020), ‘A/HRC/45/7. Negative Impact of Unilateral Coercive Measures’.

¹⁶⁵ European Commission (2010), ‘EU Regrets Silence of Sri Lanka Regarding Preferential Import Regime’, press release, 5 July 2010, https://ec.europa.eu/commission/presscorner/detail/es/IP_10_888.

¹⁶⁶ Chatham House interview, January 2022.

¹⁶⁷ Sardar, S. and Houreld, K. (2014), ‘Pakistan PM Lifts Moratorium on Death Penalty after School Attack’, Reuters, 17 December 2014, <https://www.reuters.com/article/pakistan-school-deathpenalty-idINKBN0JV0LJ20141217>.

06

Embracing diversified leadership and a richer agenda

Less powerful states – particularly those in the Global South – are pursuing a more diverse human rights agenda on issues including climate and the environment; the legacies of colonialism; and economic inequality. Embracing this presents a potential way out of the current impasse.

While great power politics set the overall framework for multilateralism, there are signs of fresh human rights leadership emerging from some countries in the Global South. A broader and more complex thematic agenda is taking shape as a result. Fresh impetus is being given to themes that had been somewhat suppressed by Global North domination of the international human rights agenda since the end of the Cold War. These themes include, among others, the legacies of colonialism and economic inequality.

This naturally raises broader questions about the future trajectory of human rights. If the post-Cold War agenda was substantially about promoting democracy, with an additional emphasis in the early 21st century on human protection,¹⁶⁸ the next phase could see an interweaving of human rights with grand global challenges

¹⁶⁸ Foot (2020), *China, the UN, and Human Protection*, p. 4.

such as climate and the environment. This could be said to constitute a more authentic representation of the diverse priorities of different peoples and states around the world.

The existing human rights regime therefore faces challenges from two sides: whether it can stretch far enough to incorporate this broader agenda; and whether it can claim ongoing relevance without applying itself to a wider set of global challenges. As one interviewee said, the question always remains, ‘where can human rights be decisive, where are they part of the picture, where are they irrelevant?’¹⁶⁹

Despite the faultlines within the human rights system, and attempts by the US and its allies and by China to galvanize support around their rival paradigms of democracy and development, the actual alliances that form are often more complex and sometimes belie the political risk involved. Recent years have seen some notable initiatives from Global South states to tackle country situations, albeit in a limited way. For example, in 2017, the Lima Group (comprising 11 Latin American states and Canada) came together to develop a ‘peaceful and negotiated solution’ to the political and economic crisis in Venezuela, and in October 2019 secured a Commission of Inquiry on Venezuela through the HRC.¹⁷⁰ However, the group has struggled to survive changes of government in Latin America, with several states announcing their withdrawal. In 2018, the Organisation of Islamic Cooperation (OIC) and the EU co-sponsored a resolution to establish the Independent Investigative Mechanism for Myanmar (IIMM) with a mandate ‘to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings’.¹⁷¹ The following year, OIC member The Gambia brought a case against Myanmar before the International Court of Justice (ICJ), alleging genocide against the Rohingya people.¹⁷² Beyond human rights (though closely related), in 2021 Ireland and Niger cooperated on a draft resolution at the UNSC that focused on the effects of climate change on peace and security, which secured widespread support but was eventually vetoed by Russia.¹⁷³

These developments show how the global human rights agenda is never a simple matter of polarized bloc-voting, despite the pressures on small and less powerful states to fall into line. Rather, some of the most innovative work of the international human rights system has recently come about through alliances that do not neatly conform to the major power blocs. The following three themes, which have gained recent prominence, exemplify this trend.

¹⁶⁹ Chatham House interview, March 2022.

¹⁷⁰ UN Digital Library (2019), ‘A/HRC/RES/42/25. Situation of Human Rights in the Bolivarian Republic of Venezuela : resolution / adopted by the Human Rights Council on 27 September 2019’, <https://digitallibrary.un.org/record/3840226>.

¹⁷¹ UN Digital Library (2018), ‘A/HRC/RES/39/2. Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar : resolution / adopted by the Human Rights Council on 27 September 2018’, <https://digitallibrary.un.org/record/1648572>.

¹⁷² International Court of Justice (undated), ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)’, <https://www.icj-cij.org/en/case/178> (accessed 22 October 2022).

¹⁷³ UN Digital Library (2021), ‘S/2021/990. Draft Resolution [on Security Implications of Climate Change]’, <https://digitallibrary.un.org/record/3951276>.

The first is a growing focus on climate and the environment and their connections with human rights. Interviewees in different parts of the Global South saw this as a natural tie-up.¹⁷⁴ For example, Africa has a long history of environmental litigation, including a March 2022 landmark ruling in South Africa affirming a constitutional right to clean air.¹⁷⁵ In October 2021, the HRC adopted a resolution co-sponsored by Costa Rica, the Maldives, Morocco, Slovenia and Switzerland, recognizing for the first time the ‘right to a clean, healthy, and sustainable environment as a human right that is important for the enjoyment of human rights’.¹⁷⁶ Significantly, this right was then affirmed by UNGA in July 2022, although it is not legally binding.¹⁷⁷ A diplomat involved in that process noted that it had been arduous to gain the support of some Global North countries, citing their anxieties about the precedent this process created – and, perhaps more importantly, the potential for litigation. Opponents of the initiative also focused their critique on the ambiguities within the right, whereby it was not clear what the individual could expect from the state.

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Those HRC and UNGA resolutions nonetheless constituted a significant statement that many states see value in a human rights-based approach to climate and the environment. During the same October 2021 session of the HRC, the EU cooperated with the Bahamas, Fiji, Marshall Islands, Panama, Paraguay and Sudan to sponsor a resolution that led to the creation of a new mandate of UN special rapporteur on the promotion and protection of human rights in the context of climate change.¹⁷⁸ The leadership of small island states in this area is also visible in other initiatives, such as Barbados prime minister Mia Mottley leading global advocacy on climate and development financing;¹⁷⁹ and Vanuatu leading a group of countries pushing for an advisory ruling on climate change at the ICJ.¹⁸⁰

The second burgeoning theme is a focus on racism, xenophobia and the legacies of colonialism, in which observers are expecting African states to play a growing role over time.¹⁸¹ This theme has deep historical roots in the strong African push

¹⁷⁴ Chatham House interview, April 2022.

¹⁷⁵ High Court of South Africa (2022), *Case No.: 39724/2019*, judgment, 18 March 2022, <https://cer.org.za/wp-content/uploads/2022/03/TRUSTEES-JUDGMENT-DATED-18-MARCH-2022-1.pdf>.

¹⁷⁶ UN Digital Library (2021) ‘A/HRC/RES/48/13. The Human Right to a Clean, Healthy and Sustainable Environment : resolution / adopted by the Human Rights Council on 8 October 2021’, <https://digitallibrary.un.org/record/3945636>. China, India, Japan and Russia abstained.

¹⁷⁷ UN Digital Library (2022), ‘A/RES/76/300. The Human Right to a Clean, Healthy and Sustainable Environment: resolution / adopted by the General Assembly’, <https://digitallibrary.un.org/record/3983329>.

¹⁷⁸ UN Digital Library (2021), ‘A/HRC/RES/48/14. Mandate of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change: resolution / adopted by the Human Rights Council on 8 October 2021’, <https://digitallibrary.un.org/record/3945637>.

¹⁷⁹ Ministry of Foreign Affairs and Foreign Trade Barbados (2022), ‘The 2022 Bridgetown Initiative’, 23 September 2022, <https://www.foreign.gov.bb/the-2022-barbados-agenda>.

¹⁸⁰ Vanuatu ICJ Initiative (undated), ‘The Republic of Vanuatu Pursuing an Advisory Opinion on Climate Change from the International Court of Justice’, <https://www.vanuatuicj.com/home>.

¹⁸¹ Chatham House interview, April 2022.

to create ICERD in 1965 but has been somewhat muted in the decades since. To some extent, the agenda returned to the fore as a result of the international reaction to the murder of George Floyd. One interviewee highlighted the sense of frustration across the African continent that it took an episode of racially motivated violence in the US to create political momentum on this issue, citing criticism that followed a statement on George Floyd from the AU commission chairperson, Moussa Faki Mahamat.¹⁸² Nevertheless, there was an effort to capitalize on the moment. In June 2020, the HRC held an urgent debate on ‘the current racially inspired human rights violations, systemic racism, police brutality against people of African descent and violence against peaceful protests’, leading to the establishment (by consensus) of a commission of inquiry into systemic racism in the context of law enforcement in the US and beyond.¹⁸³

A further HRC resolution in July 2021 – led by Cameroon on behalf of the African group of states, and also adopted by consensus – shifted from a focus on the US to a broader analysis of the legacies of colonialism and slavery. This resolution established an independent expert mechanism ‘to further transformative change for racial justice and equality in the context of law enforcement globally, especially where relating to the legacies of colonialism and the Transatlantic slave trade in enslaved Africans’.¹⁸⁴ It was against this background that the China-led HRC resolution on the legacy of colonialism (Chapter 4) passed without African unanimity during the next Council session – a strong indication that African states intended to lead on this issue rather than ceding it to China. As one interviewee said, from the African perspective, these issues ‘need to be at the centre of the future of human rights’, and we are still in the early days of an emerging agenda.¹⁸⁵

In another sign that a confident post-colonialist discourse on human rights violations is only likely to grow, Kenya’s permanent representative to the UN in New York, Martin Kimani, delivered a potent defence of Ukraine’s territorial integrity at a UNSC emergency meeting in February 2022, grounded in colonial experience. He stated that ‘[w]e must complete our recovery from the embers of dead empires in a way that does not plunge us back into new forms of domination and oppression’.¹⁸⁶

The third theme, spurred by the pandemic, is a renewed focus on inequality. One interviewee singled out the issue of vaccine inequality, saying that ‘it will be remembered [in the Global South] for a long time’.¹⁸⁷ In October 2020, South Africa and India led an initiative (co-sponsored by 58 and backed by more than

¹⁸² African Union (2020), ‘Statement of the Chairperson Following the Murder of George Floyd in the USA’, press release, 29 May 2020, <https://au.int/en/pressreleases/20200529/statement-chairperson-following-murder-george-floyd-usa>; Chatham House interview, April 2022.

¹⁸³ UN Digital Library (2020), ‘A/HRC/43/L.50. The Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Descent against Police Brutality and Other Violations of Human Rights: Draft Resolution / Burkina Faso, Iran (Islamic Republic of) and State of Palestine’, <https://digitallibrary.un.org/record/3865850>.

¹⁸⁴ UN Digital Library (2020), ‘A/HRC/RES/47/21. Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Descent against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers through Transformative Change for Racial Justice and Equality : resolution / adopted by the Human Rights Council on 13 July 2021’, <https://digitallibrary.un.org/record/3937802>.

¹⁸⁵ Chatham House interview, April 2022.

¹⁸⁶ Permanent Mission of the Republic of Kenya to the United Nations (2022), ‘Statement by Amb. Martin Kimani, during the Security Council Urgent Meeting on the Situation in Ukraine’, 21 February 2022, https://www.un.int/kenya/statements_speeches/statement-amb-martin-kimani-during-security-council-urgent-meeting-situation.

¹⁸⁷ Chatham House interview, April 2022.

100 mostly developing countries), urging the General Council of the World Trade Organization (WTO) to suspend international property rights related to COVID-19 medications and treatments in order to enable wider access to vaccines and treatment.¹⁸⁸ However, the push faced strong resistance from the EU, Switzerland and the UK in particular. While the US reversed its initial opposition in May 2021, the compromise agreement reached in June 2022 met with little enthusiasm. At the March 2022 session of the HRC, a group of mainly LMDC states introduced a resolution which made a similar call to the WTO initiative in human rights terms, expressing concern that the pandemic ‘has drastically exacerbated existing inequalities within and among States’.¹⁸⁹ This draft resolution was in addition to the regular annual resolution on foreign debt and economic and social rights, which also made reference to the impact of COVID-19 (and which had some overlapping sponsors and passed by a similar margin).¹⁹⁰ It seems likely that the inequalities agenda could develop further. As one participant in a Chatham House roundtable on human rights diplomacy said, ‘we need a new generation of diplomacy drawing on established normative instruments and advocacy to tackle global inequality’, focused on issues of debt, taxation, and extra-territorial obligations and jurisdiction among others.¹⁹¹

There is potential in future for each of these three major themes – climate and the environment; racism and the legacies of colonialism; and inequality – to grow as priorities within the human rights system. There is also potential for them to influence each other, given their interdependencies, and in the best case, to lead to both a richer analysis of human rights violations and better tools for addressing them. There is already a tradition of states or blocs taking ownership of specific human rights issues within the multilateral system: for example, South Africa has become the established leader on tackling racial discrimination; while EU’s record in regulating technology positions it well to lead on the human rights aspects of technology in multilateral spaces (as one interviewee asked, ‘has the EU finally found its issue?’)¹⁹² But there should be room for more states or blocs to take ownership of more themes. A broader agenda championed by a larger group of states may be the strongest bulwark against the pressures of polarization and may help to maintain a reasonable degree of integrity within the human rights system. This will not be easy. Numerous countries in the Global North remain resolutely focused on human rights through a democracy lens, while there is a risk (as with the colonialism resolution) that China’s attempt to claim leadership of Global South agendas will add to the politicization of already complex issues. But this is the nature of diplomacy.

¹⁸⁸ World Trade Organization (2020), *IP/C/W/669. Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19*, communication, 2 October 2020, https://pop-umbrella.s3.amazonaws.com/uploads/e9989bf5-7d26-4d4d-8336-8d37f1577529_W669.pdf.

¹⁸⁹ UN Digital Library (2022), ‘A/HRC/RES/49/19. Promoting and Protecting Economic, Social and Cultural Rights within the Context of Addressing Inequalities in the Recovery from the COVID-19 Pandemic : resolution / adopted by the Human Rights Council on 1 April 2022’, <https://digitallibrary.un.org/record/3969410>.

¹⁹⁰ UN Digital Library (2022), ‘A/HRC/RES/49/15. Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights : resolution / adopted by the Human Rights Council on 31 March 2022’, <https://digitallibrary.un.org/record/3975396>.

¹⁹¹ Chatham House roundtable on human rights diplomacy, 17 March 2022.

¹⁹² Chatham House interview, March 2022.

There is a question, however, about what more could be done to create greater room for manoeuvre for G77 and other less powerful countries. The answers are partly technical, with instruments such as the Small Island Developing States support fund enabling more states to be present in Geneva and engage in UN human rights mechanisms. In the case of smaller delegations, as one interviewee said, the level of engagement and even charisma from individual ambassadors is an important factor in determining their influence. The same interviewee also explained that provision for remote-working practices during the COVID-19 pandemic benefited those with lower capacity and smaller delegations, changing expectations for the future.¹⁹³

It is also important to bolster the status of economic, social and cultural rights within the human rights system, and to ensure they are not subsumed by a reductive narrative about the right to development. Mechanisms such as special procedures, the HRC and treaty bodies hold significant creative potential in this area, including by supporting litigation on chronic and systemic human rights issues through resolutions and reports – certain of these have already begun to have an impact in courtrooms.¹⁹⁴ Although one former UN special rapporteur with an economic, social and cultural rights mandate bemoaned the lack of interest in their work relative to those with civil and political rights mandates,¹⁹⁵ the former special rapporteur on extreme poverty and human rights Philip Alston made a series of politically bold country visits during his tenure to countries including China, the UK and the US, drawing significant media attention to issues of extreme inequality in some of the world's largest economies.

Ultimately, however, political will from Global North countries will be crucial in creating space for leadership from Global South countries and attention to their priorities. Several Global South diplomats contributing perspectives to this paper expressed frustration at what they perceived as Global North hypocrisy on a range of issues from climate finance to COVID-19 vaccine inequality. One interviewee argued forcefully that Global North states would be easier to work with if they were less self-congratulatory and more willing to acknowledge their imperfection and struggles.¹⁹⁶ This test may be relevant not only to the agenda of climate, racism and inequality, but increasingly also to civil and political rights in a period of democratic regression. Yet there are reasons for optimism in this regard. Recent creative partnerships between countries in the Global South and Global North, such as those leading the initiative on the right to a healthy environment, suggest that similar efforts may be possible in future.

¹⁹³ Chatham House interview, March 2022.

¹⁹⁴ 'Groundbreaking reports on this issue have been published by David Boyd and his predecessor John Knox, UN Special Rapporteurs on human rights and the environment. The reports are often cited in climate change litigation, most notably the Dutch Urgenda case. With the appointment of a dedicated rapporteur on this issue, it is likely more such reports, country visits and interventions will follow': Hamster, J. (2021), 'UN human rights bodies unequivocally confirm link between climate change, a healthy environment and human rights', 23 November 2021, <https://www.dlapiper.com/en/us/insights/publications/2021/11/link-between-climate-change-healthy-environment-human-rights>.

¹⁹⁵ Chatham House interview, April 2022.

¹⁹⁶ Chatham House interview, April 2022.

07

Conclusion and recommendations

In a highly polarized multilateral system, states seeking to preserve human rights gains – or even reinvigorate diplomacy as a force for progress – must increase their level of ambition and support diverse leadership if they are to address long-standing challenges.

For as long as there is a human rights framework and a functioning multilateral system, the field of human rights diplomacy will exist, and it will remain messy. Human rights diplomacy has the potential to continue developing norms and international law, and encouraging or incentivizing compliance and non-regression. States should continue to champion accountability despite the difficulty. Yet much of the task of human rights diplomacy is about keeping space open, protecting progress and negotiating conflicts along the way. At present, human rights exist in a paradoxical situation whereby they are deeply embedded in the multilateral system but enjoy little sustained major power support. This situation creates opportunity as well as vulnerability.

The world is grappling with serious, complex and mutually reinforcing challenges. Climate change and environmental degradation, widening global inequality and macroeconomic pressures, Russia's invasion of Ukraine and the growing rivalry between the US and China have all brought the world to a dangerous moment. Meanwhile, protest movements on issues of human rights have re-emerged in many places as the COVID-19 pandemic has subsided. This is a time when principled leadership and careful diplomacy are urgently needed, including in the human rights arena.

In this context, this chapter sets out a series of propositions – addressed mainly to states engaged in the multilateral human rights system – with a view to strengthening the prospects for diplomacy to make a more transformative impact on the state of human rights in the world.

China's systemic challenge should be met with a global strategy focused on economic development and addressing inequality

States concerned by the challenge that China poses to the norms and institutions of the human rights system should respond not only with direct criticism and pushback on China's domestic record, but by making an alternative proposition to countries within China's network of allies.

This approach must be rooted in an acknowledgment that China makes a convincing appeal to many Global South countries in particular – through its focus on state sovereignty and non-intervention, its emphasis on the right to development, and its model of economic success with no democratic accountability and limited respect for civil and political rights.

Other wealthy or influential states can rival China's appeal by listening and being responsive to the breadth of issues that Global South countries are seeking to raise via the multilateral system. A narrow focus on civil and political rights linked to democracy is insufficient. Instead, there needs to be widespread acceptance of a broader human rights agenda for the future – taking in issues of climate and the environment, the legacies of colonialism and inequality, and focusing on themes that cut across human rights and the SDGs.

Global North countries should therefore shift from a human rights discourse centred on civil and political rights and democracy towards a broader discourse encompassing economic, social and cultural rights and acknowledging the fundamental need for economic development. Backing up this shift with a combination of financial investment, development assistance, climate finance, and debt relief would demonstrate a serious commitment to reducing economic inequality. This shift must inform both its private diplomacy and public statements, including in processes such as the UPR. Within the UN human rights system, Global North countries should provide political and financial support for mandates focusing on economic, social and cultural rights.

Wealthy countries should also push for the IMF and other international financial institutions to acknowledge their role in the fulfilment of human rights and advocate for them to engage in relevant discussions, particularly where they are able to increase the available resources for poorer countries to fulfil economic rights.

Adopting such an approach does entail political risk for Global North countries, which will have to confront their own historic responsibilities in these areas. But it is essential if those countries wish to show that a system based on human rights (and democracy) can also deliver sustainable development and higher living standards – and ultimately a more equitable international order.

Polarization can be confronted, at least in part, through building and supporting diverse coalitions

In a context in which major power rivals espouse their own narrow version of human rights to the exclusion of the other, the concept of human rights as indivisible risks being lost. The essence of human rights lies neither in civil and political rights,

nor in economic, social and cultural rights, but rather in the interrelationship between them. To reduce human rights to democracy vs development is to lose that perspective. States must not therefore submit to the inevitability of polarization.

There are few mechanisms available to negotiate growing polarization, but it represents a serious challenge for the human rights system which states must address. It would take a deliberate effort from multiple states to make an impact in doing so. Global North states can achieve such impact by, where possible, seeking to support multilateral initiatives led by smaller states including those in the Global South. The LMDC cannot be left to advance the inequality agenda within the human rights system alone.

Diverse coalitions offer a potential way through the current polarization, but securing them will require states to take bold steps instead of retreating to safe territory. States on different sides must look beyond framing and signposting to find ways of engaging with the substance of each other's concerns, with an openness to evolving new concepts or proposals and building common positions. In doing so, states may need to use more discreet forums for discussion outside the spotlight of the formal processes of the UN.

In particular, fresh thinking about human rights as a pathway to economic development is needed. There is also a need for further good-faith engagement in relevant normative innovations addressing major global challenges, such as the elaboration of a right to a clean, healthy and sustainable environment.

States should acknowledge failures, develop consistency and uphold institutions

Diplomacy offers few incentives for states to embrace their own failure, but critical self-reflection ought to be part of the healthy functioning of a successful human rights system. However, self-aggrandizing narratives (for which Global North countries face criticism from Global South countries), and China's habit of flooding its UPRs with state delegations willing to make statements of praise, undermine the functioning of that system. States need to take responsibility for confronting their past abuses and failures with equanimity and set an example of how they would like to see other states engage with the system.

Moreover, a consistent approach to the many policy areas that human rights cut across would ensure that the human rights agenda in individual states' foreign policy is consistent with their domestic policy and practice. A concerted effort to confront the basis for accusations of hypocrisy would put Global North states in a stronger position to make human rights demands of others and allow them to deploy a greater range of tools in doing so. Proactive acknowledgements of past colonialism and its relationship to present inequality and climate change would be symbolically significant as a step towards more open discussion of these issues.

Resistance to accountability and institutional selectivity seriously undermine the credibility of states in seeking to make human rights-based criticisms of others. The US's failure to ratify the ICESCR or the Rome Statute and its resistance to accountability for abuses committed in the context of past military interventions are striking examples of this, which the US should take steps to address.

States wishing to maintain credibility in the multilateral human rights system also need to invest domestically in making the case for the international institutions to which they belong. By threatening to withdraw from specific human rights mechanisms, governments such as that in the UK weaken the credibility of the state as an actor in human rights diplomacy. Other states must remind such governments of this.

Standards for unilateral sanctions regimes must be strengthened and clarified

It should not be left solely to those states subject to sanctions (or those who fear sanctions) to push for the elaboration of tighter standards around sanctions regimes. Rather, sanctions-issuing states should show that their sanction designations are informed by robust, transparent processes and engage substantively with questions of legality and due process. They should also ensure that the criteria for lifting sanctions are articulated precisely and are based on human rights laws and norms.

There is currently no international process through which this could happen, as multilateral human rights-based discussions about unilateral sanctions largely take the form of sanctioned states and their allies pushing back against sanctions-issuing states. In this polarized context, legitimate critiques risk being lost. States with Magnitsky legislation should therefore consider establishing a forum in which they are able to discuss and agree collective standards around the human rights issues raised by unilateral sanctions.

New models are needed for the prevention of mass atrocity crimes

While the R2P doctrine and Human Rights Up Front agenda have floundered, the need for a rejuvenated system of conflict prevention and civilian protection grounded in human rights remains urgent. This needs to be informed by lessons from Russia's invasion of Ukraine, as well as civil conflict in Ethiopia and Myanmar, among others.

In the context of UNSC deadlock, UNGA can play an important role. The ongoing initiative to draft an international convention on crimes against humanity would further strengthen the normative framework around mass atrocity crimes. More broadly, proposals made by Pablo de Greiff and Adama Dieng in 2018 called for a 'comprehensive framework' encompassing a breadth of measures that would contribute to the prevention of atrocities.¹⁹⁷ Their proposals also revived certain elements of Human Rights Up Front, including holistic country-level analyses by the UN system on conflict vulnerability. This concept of a framework approach encompassing human rights needs to be championed by the UN secretary-general and carried forward by willing states.

¹⁹⁷ UN Digital Library (2018), 'A/HRC/37/65. Joint Study on the Contribution of Transitional Justice to the Prevention of Gross Violations and Abuses of Human Rights and Serious Violations of International Humanitarian Law, Including Genocide, War Crimes, Ethnic Cleansing and Crimes against Humanity, and Their Recurrence : Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide : Note / by the Secretariat', <https://digitallibrary.un.org/record/1637317?ln=en>.

The prevention agenda is strongly linked to accountability. In the context of Russia's war on Ukraine, multiple parallel investigative mechanisms aimed at delivering accountability need to deliver results. This is of high importance for the future credibility of the system, and will require sustained political will and co-operation among many states.

A better funding solution must be found for the UN human rights system

Lack of resourcing for the UN human rights system relative to other parts of the UN is a perennial problem that lingers unaddressed, and which seems to have been accepted as immutable. The growing reliance of OHCHR on voluntary contributions to fund its core work places it in an increasingly precarious position. Although the prospects for change in the near term seem remote, states need to champion this agenda and seek a more sustainable, long-term funding solution, rather than leaving OHCHR to fight its own corner indefinitely.

The important role of civil society needs to be upheld

Open engagement with civil society on the part of states would significantly enrich the prospects for fulfilling each of the previous proposals, and therefore the prospects for more effective human rights diplomacy in the future. Civil society organizations play a crucial role across the full spectrum of human rights work, from monitoring and reporting to service delivery and policy innovation. It is essential that their role is protected, including by facilitating access to multilateral institutions and strengthening recourse in the case of reprisals. The UN secretary-general must maintain a structured engagement with civil society organizations concerned with human rights, while also consistently and publicly condemning threats or attacks against civil society representatives to facilitate their fulsome engagement in human rights diplomacy.

Abbreviations and acronyms

AU	African Union
BRI	Belt and Road Initiative
CCP	Chinese Communist Party
EU	European Union
GSP	Generalised Scheme of Preferences
G7	Group of 7
G20	Group of 20
G77	Group of 77
HRC	Human Rights Council (of the United Nations)
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IIMM	Independent Investigative Mechanism for Myanmar
IMF	International Monetary Fund
LMDC	Like-Minded Group of Developing Countries
NGO(s)	non-governmental organization(s)
OHCHR	Office of the High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
P5	Permanent five (i.e. the permanent members of the United Nations Security Council)
R2P	Responsibility to Protect
SDG(s)	Sustainable Development Goal(s)
UDHR	Universal Declaration of Human Rights
UNCHR	United Nations Commission on Human Rights
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UPR	Universal Periodic Review
WTO	World Trade Organization

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Cover image: A panel discussion on children's rights and the digital environment takes place during the 52nd UN Human Rights Council in Geneva, Switzerland, to mark the annual 'Day of the Child', 10 March 2023.

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