



● **NEW POWER STRUGGLES IN THE OFFING**

Human Rights Against the Test of Emerging Countries

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Represented primarily by the BRICs (Brazil, Russia, India and China), emerging countries owe their common description to their economic achievements rather than their respect for human rights or their attachment to democracy. Certainly, China's and Russia's pathetic performance in these two fields cannot be compared to that of Brazil and India, which seems honourable enough. In fact, Brazil's and India's democracies not only figure among the most significant in terms of number of voters; they also ushered in the era of "poor democracies," today referred to as "emerging democracies".

And yet, in actual fact, this glowing report turns out to be deceptive. In both India and Brazil as well as in China and Russia, what lurks beneath the formal political and legal aspects is a disproportion between the scale of the economic upheavals underway and the inadequate penetration of supposedly universal values dear to Western societies. There is also an obvious gulf between the West's ambitious but dogmatic requirements with regard to human rights and the limited opportunities for disseminating them in environments in which the standards advanced for promoting equality, liberty and justice for victims of despotism past or present obviously exceed the actual possibilities of local governments. Everyone knows this. The priority for the inhabitants of emerging countries is a revolution in practical lifestyles and not one of human rights.





The Pinochet syndrome

The expression “Pinochet syndrome” usefully symbolizes the difficulties that crop up during the first phase in which emerging or pre-emerging countries face the challenges of democratic consolidation and the promotion of fundamental rights. For a long time it was often said in the West that not all societies were prepared for democracy and to respect the values of Enlightenment philosophy. These, more or less, only appeared as a belated cherry meant to decorate the cake of material development when nearly complete. Nevertheless, in view of the sudden political changes that occurred in Mediterranean Europe and Latin America between 1970 and 1985, it came to be admitted that the West basically had to recognize a capacity for unconditional democratization in countries whose leaders of all ilks acted with enough caution not to jeopardize the “transition” from dictatorship to freedom. Democracy was no longer the cherry on top of the development cake, but the product of political strategies applicable all the way down to economically handicapped states.

After the end of the dictatorships in Spain and Brazil, the country that best illustrates this evolution was Chile, an emerging country of medium importance rather than a giant like the BRICs. But as in other countries imitating the leaders of the Spanish and Brazilian democratization processes, those who led Chile’s transition were to choose, out of strategic caution, not to enforce justice on those responsible for the military dictatorship, so as not to provoke an army compromised by its criminal misdeeds. This strategic disregard for justice also took into account the ambivalence of a large swathe of the population made wary by the earlier experience of President Allende. In short, they applied the new recipe of “unconditional democratization”, based primarily on a clever handling of the calendar for political change and finally relying on a certain degree of connivance between relatively liberal sectors of the former authoritarian government and the more pragmatic elements of the former democratic opposition. In this general perspective, until General Pinochet was arrested in London in October 1998, the prevailing principle had basically involved preserving the political transitions underway since Spain’s exit from Franco’s dictatorship from the dangers involved in a “revengeful” attitude on the part of the “democrats” back in power. This principle recalled—though nobody realized it—that of King Henry IV’s Edict of Nantes (1598) which brought an end to the murderous conflict between Catholics and Protestants in France. “First,” the Edict stipulated, “that the recollection of everything done by one party or the other between March, 1585, and our accession to the crown, and during all the preceding period of troubles, remain obliterated and forgotten, as if no such things had ever happened.” The same idea prevailed with regard to the societies coming out of dictatorships. It was essential to make a clean break with the past, and the memory of it.



Table 7: Ratifications of main international treaties by emerging countries

	China	India	Brazil	Mexico	South Africa	Turkey	Russia
HUMAN RIGHTS							
International Covenant on Civil and Political Rights - 1966	Sig. subject to Ratification 1998	Accession 1979	Accession 1992	Accession 1981	Ratification 1998	Ratification 2003	Ratification 1973
Optional Protocol to the International Covenant on Civil and Political Rights - 1966	Not a party	Not a party	Not a party	Accession 2002	Accession 2002	Ratification 2006	Accession 1991
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty - 1989	Not a party	Not a party	Not a party	Accession 2007	Accession 2002	Ratification 2006	Not a party
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - 1984	Ratification 1988	Sig. subject to Ratification 1997	Ratification 1989	Ratification 1986	Ratification 1998	Ratification 1988	Ratification 1987
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - 2002	Not a party	Not a party	Ratification 2007	Ratification 2005	Sig. subject to Ratification 2006	Sig. subject to Ratification 2005	Not a party
Convention on the Rights of the Child - 1989	Ratification 1992	Accession 1992	Ratification 1990	Ratification 1990	Ratification 1995	Ratification 1995	Ratification 1990
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict - 2000	Sig. subject to Ratification 2001	Ratification 2005	Ratification 2004	Ratification 2004	Sig. subject to Ratification 2002	Ratification 2004	Sig. subject to Ratification 2001
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families - 1990	Not a party	Not a party	Not a party	Ratification 1999	Not a party	Ratification 2004	Not a party
WORKERS' RIGHTS							
Right to Organise and Collective Bargaining Convention - 1949	Not a party	Not a party	Ratification 1952	Not a party	Ratification 1996	Ratification 1952	Ratification 1956
Abolition of Forced Labour Convention - 1957	Not a party	Ratification 2000	Ratification 1965	Ratification 1959	Ratification 1997	Ratification 1961	Ratification 1998
Worst Forms of Child Labour Convention - 1999	Ratification 2002	Not a party	Ratification 2000	Ratification 2000	Ratification 2000	Ratification 2001	Ratification 2003

Note: "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. Source: compiled by Dorian Ryser from UN and ILO conventions and treaties



Already in 1976 in Spain, but even more openly in Chile from the 1990s, the aim was thus to place emphasis on the future rather than the past. Priority was given to guaranteeing consolidation of young reconciled democracies, without winners or losers, rather than to punishing ex-dictators and their henchmen. In this spirit, a sort of political “precautionary principle” seemed to justify paying for the triumph of liberty and rights for future generations by a painful lack of expiation of the crimes committed by the overturned despots, which also implied blotting out, at least on the surface, the suffering endured by the persecuted opponents of the past. This was virtually the rule for both the Spanish and the Chileans and beyond them for the Brazilians, Uruguayans and Argentineans freed from their military governments between 1983 and 1985. Until recent years, there was no real prosecution of putschist generals, torturers or child-kidnapping officers. Moreover, some consider that it made no sense to speak of either national or international justice as long as it applied only in certain circumstances, when Mengistu, Ulbricht or the Communist despots in general were exonerated from it much more than right-wing ex-dictators.

The “Pinochet affair” came at a time when this jurisprudence of shutting out the past as an ingredient for civil peace and a recipe for democratic transition was beginning to wear thin. Long after the precedents of the Nuremberg and Tokyo trials of Nazi and Japanese war criminals in 1945-48, the glory days of international criminal justice began in 1993-94 with the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) and its counterpart designed to try the crimes committed in Rwanda (ICTR). But the turning point really came about in the summer of 1996, when the magistrates of the Spanish *Audiencia Nacional* and lawyers for the deceased Chilean President Allende undertook to bring General Pinochet to trial; later they achieved his arrest in London in 1998, the very year when the statutes of the International Criminal Court (ICC) were approved in Rome. The prejudice that downgraded respect for the primordial right to justice and recognition of wrongs inflicted, for the sake of durable installation of democracy, was suddenly rejected. The strangest thing was that this reversal was the outcome of a peculiar rapprochement of two long antagonistic circles: on one hand young progressive jurists, for years devoted to doing away with reactionary tyrants; and on the other the real or rumoured Chicago Boys, heralds of neoliberalism and former inspirers of economic doctrines of the Latin American military regimes, suddenly won over to democracy. Consequently, the conditionality of respect for human rights as a prerequisite for approval of fledgling democracies came to take precedence over the priority previously given to unconditional democracy. It was no longer the advent of democracy that led to the gradual implementation of human rights, but the opposite: respect for human rights became the indispensable criterion for authenticating any democracy. The era of transitions governed by caution and modest initial ambitions was over.



Human rights meet the market

Legal specialists associated with NGOs geared to defending victims of dictatorships and bringing military torturers to trial, consequently discovered that they shared certain conceptions and interests with the Chicago Boys (in the literal or figurative sense—all did not necessarily graduate from the Chicago school of economics). Both aspire to the dawn of a world governed by law, the former out of a concern for justice in the strict sense, the latter in order to eradicate world poverty by the hoped-for prosperity of markets finally “regulated” by law instead of being subject to the corruption of a predatory state. In both parties’ minds, an overreaching body of law authenticating the democratic nature of states that is supposed to monitor the proper functioning of the market should replace states that set or twist the law as they see fit. The hour of “market democracy” wedded to “global jurocracy” had struck. But that wasn’t all. The gigantic scope of the political, economic, social and moral upheaval following the collapse of “democratic socialism” in Eastern Europe far exceeded the fairly circumscribed domains of government institutional change and recognition of political freedoms. Everything became subject to radical reform. And the transformation of communist commanded economies into market economies appeared straight away as the most decisive of these reforms, the democratization process being suddenly brought down a notch.

In the political sphere, two principles came to predominate in the course of the 1990s. For post-communist states in particular, the first was integration into the enlarged European Union as a solution to all democratic deficiencies, without any more thought given to the social, cultural or material preconditions formerly deemed essential to make democratization anything other than a façade. It was forgotten that in Spain, Portugal and Greece in 1974-75, political reform had been the essential task; in the East things had to be reformed from top to bottom. A second principle, applying more to the countries of the South in addition to the turbulent Balkan countries, was that the primary goal of the powers that be, international organizations and global NGOs, was less to extend the realm of democracy as a governmental regime than to enlarge the economic and legal space serving an objective of global organization that could make all sorts of international relations more predictable. It is this perspective that spread the ill-defined notion of good governance, meant for poor societies as a substitute for democracy. It also spawned the development of human rights diplomacy to the detriment of other forms of foreign policy.

In this changed context, which remains topical, reference, however emphatic, to human rights should not mislead. Today’s primary goal is to impose the hegemony of a re-thought version of the rule of law, mainly to guarantee a property regime and combat corruption. On the other hand, it is much less work toward expand-





ing political or moral freedoms. In short, this variety of rule of law is in some ways closer to the German *Rechtstaat* under Chancellor Bismarck than the classic Anglo-Saxon vision, in that it primarily outlines a sort of rule for globalization rather than obeying a liberal doctrine going back to respected and ancient sources. This could be seen in a particularly caricatural fashion in the spring of 1999 in Kosovo, when the American government leapt to the defence of human rights to demonstrate to its allies, as well as its designated adversaries, its determination and ability to strike who it wanted and where it wanted. This would have been an appropriate time to launch the slogan “Be democratic, otherwise I’ll bombard you”, to accompany the new doctrine under which, in fact, newly established young democracies boiled down to the holding of elections “monitored” by the UN with outcomes that met the expectations of powers and international bodies.

The most insulting constraint imposed on emerging countries is, however, something else. It flows from the pseudo-universalistic fundamentalism displayed by the most advanced states, NGOs and crusaders in stating their unrealistic and almost arrogant prescriptions as regards basic rights. This can be seen, for instance, in the spectacle of indignation by opponents of the death penalty in reaction to executions in Afghanistan. The UN protested via the head of its assistance mission in Kabul, urging Afghanistan “to continue working towards attaining highest human rights standards and ensuring that due process of law and the rights of all citizens are respected.” Perhaps this virtuous and perfectionist international civil servant should have been transferred to Switzerland or Denmark. Reality has to be looked in the face.

This reality is no more comforting at the UN level in general than at the level of its Human Rights Commission, which for years remained merely a “diplomatic showcase”. In September 2001, a few days before the attacks on the Twin Towers in New York, the Durban Conference on Racism, Racial Discrimination, Xenophobia and Intolerance turned into a forum for hate-filled anti-Israeli propaganda. Then came the scandal of 2003, sparked by Libya’s election to the chair of the United Nations Commission on Human Rights, for which 33 votes were cast in favour, compared with 17 abstentions and three No votes (Canada, the United States, Guatemala). Likewise, in 2005 Kofi Annan’s attempt to reform this commission came up against the difficulty of setting new conditions for admission to a renovated Council on Human Rights. Should only countries demonstrating “indisputable” merits, signatories to the UN pact on civil and political rights as well as the economic and social rights pact, be admitted? The problem would then have been that in this case, poor countries would not have been the only ones among the excluded. Besides being responsible for the despicable Guantánamo Bay prison, the United States also never ratified the second of these documents, while the very emerging China fully intends never to sign the first and Russia is sagging under the weight of its dismal record in Chechnya. In addition, in 2004-05 at the Security





Council the American government, consistent with its hostility on principle to the International Criminal Court, constantly opposed prosecuting the perpetrators of crimes in Darfur before that court.

In any case, human rights diplomacy is less a matter for diplomats or political leaders than for peripheral agents. It began as, and in many of its actions remains, a matter for non-governmental agencies such as Amnesty International, Human Rights Watch, emergency medical organizations or networks of militant and sometimes megalomaniac legal experts or magistrates. This probably explains why, for the G-7 countries in particular, rights have become those granted under a rule of law as defined above in its new meaning: elements of a regulatory framework of activities and situations falling primarily within the economic order or that of neutral administrative and political “management” requiring no particular designation as to whether the regime is democratic not.

From human rights to the ‘Beijing Consensus’

Under such conditions, it is not surprising that this rather particular variety of rule of law only incidentally pertains to civil rights falling within democratic values. This moreover became quite plain in June 2002 in the document that came out of the G-8 meeting held in Kananaskis. This document, entitled the G-8 Africa Action Plan, avoids speaking explicitly of democracy and political freedoms and rights when it explains that the meeting’s goal was to focus aid from the rich world “on countries that demonstrate a political and financial commitment to good governance and the rule of law, investing in their people, and pursuing policies that spur economic growth and alleviate poverty.” That was a verbatim expression of what was called the “Washington Consensus”, as a general framework for recommendations addressed by the World Bank to emerging countries and other developing nations.

But this stage has been passed, since the liberal “Washington Consensus” has run into competition in Asia and even Africa with what some have recently called the “Beijing Consensus”. What does this involve? The “Beijing Consensus”, which should be interpreted pending further information as a state of mind and not an explicit doctrine, is founded on the idea that the Chinese development model, based on a lopsided liberal logic confined to the economic apparatus and individual consumption but excluding any relaxing of the style of government according to democratic ideas, represents the most promising solution for the countries of East Asia or even sub-Saharan Africa. The method is supposed to have proved itself not only in China but also in Singapore, for instance, in a wholly different ideological and social context. Human rights can wait, they may even be counterproductive. Furthermore, old officially-recognized democracies themselves fear that an overly asserted concern for human rights might have a boomerang effect on themselves.





In this regard, just consider the Belgian law of universal jurisdiction, the lawsuit filed in Brussels against Ariel Sharon, even the possibility of judicial examination of American war crimes committed during the Vietnam war or, more worryingly, of an international court indicting GIs returning from Afghanistan or Iraq. Certainly, that does not mean that prosecution or belated action in the name of the right to justice will cease. But there is no doubt that a turnaround could already be detected in July 2002 at the behest of the main actor, with the US decision to veto the continuation of the UN mission in Bosnia-Herzegovina.

Recent indications of this change are proving to be more and more premonitory. In the early autumn of 2007, during the 17th Chinese Communist Party Congress, Hu Jintao, its secretary-general since 2002, argued loudly and clearly in favour of a “correct political orientation”—in other words a non-democratic orientation, declared in no uncertain terms. In the following days, as if to specify an official objective focused on a variety of rule of law oriented primarily towards economic achievement, the new leaders appointed in the same Congress were especially chosen from among legal experts and economists, instead of engineers and scientists from the preceding generation. Such signs are not only observed in Beijing. It is worth pointing out, for instance, that in October 2007 as well, the very irreproachable government of Seoul refrained from mentioning the problem of basic rights in the framework of its rapprochement with North Korea. Above and beyond this show of “tact”, the South Korean Foreign Minister Lee Jae-jung specified, before leaving for Pyongyang, that the question should be interpreted according to “each country’s circumstances and characteristics”. Actually, the page of Rights with a capital R has virtually been turned. Still in democratic South Korea, during the same period Kim Yun-tae, speaking for NKnet, a local human rights NGO, declared frankly that liberalizing economic activity in North Korea was more essential than doing away with the prison camps that the international community is supposedly so concerned about. “For most of the North Korean population,” Kim Yun-tae insisted, “rights is an abstract issue. What it wants is to be able to move freely, buy and sell. The 2002 economic reforms [concerning wages and prices] are not enough. It is this point that any policy of engagement should emphasize.”

Besides, do rights issues continue to matter really to rich countries? The question is worth pondering when one considers that the twin themes of the quest for security and the fear of risk, whether they are political or natural, have gained predominance as the major concerns of advanced democratic societies. Prompted by “oriental” terrorism combined with the influx of undesirable exotic immigrants to our still—but for how much longer? —temperate lands, have these very topical and substantial objectives not relegated the promotion of so-called universal rights to the back burner?





Chronology

- 1689:** Promulgation of the Bill of Rights in England
- 1789:** Declaration of the Rights of Man and the Citizen in France
- 1791:** Enactment of the Bill of Rights in the United States
- 1948:** Universal Declaration of Human Rights adopted in Paris by the 58 members of the United Nations
- 1950:** European Convention on Human Rights adopted by the members of the Council of Europe
- 1984:** UN Convention Against Torture
- 1990:** Universal Islamic Declaration of Human Rights adopted in Cairo by the member countries of the Organization of the Islamic Conference.

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