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Economic Diplomacy and Human Rights: In search of a Democratic Framework

Introduction

We already have a vaccine against injustice, poverty, inequality, conflict, underdevelopment, and environmental catastrophe. It is a vaccine made up of measures we developed after previous global shocks, including two World Wars, a pandemic, and financial crises. This vaccine is called human rights!

Friday, 16 July 2021 Closing ceremony of the Nelson Mandela World Human Rights Moot Court Competition Statement by United Nations High Commissioner for Human Rights, Michelle Bachelet

The traditional diplomacy of a sovereign and autonomous state, a product of conventional law and politics, and a myopic view where diplomatic functions derive from and are exercised and return to the sovereign organs of a state, has long undergone a major transformation, giving way to a pluralistic, flexible, and context-sensitive model with many shareholders: corporations, universities, NGOs, and civil society, not only influencing but also framing the conduct of foreign policy. And of course, this modern, multidimensional, and therefore complex reality affects all spheres of political, economic, and social order. The protection of human rights not only cannot be an exception but must inspire the actors of economic diplomacy: their goal, that is, should be to strengthen human rights protection, using, in fact, the modern “arsenal” of policies and programs, to address contemporary challenges more intelligently: from geopolitical crises to climate change, the food crisis and the social problems of technological progress and over-urbanization, with the sole focus on democracy. All parameters (demographic characteristics, economic size, sometimes traditions and cultural patterns) are subject to change except one: democracy and the functioning of its institutions, with transparency and accountability.

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In a speech delivered at the Economic Club of New York on October 14, 2011, Secretary of State Hillary Clinton presented a renewed focus on economic diplomacy: “Economic statecraft has two parts: first, how we harness the forces and use the tools of global economics to strengthen our diplomacy and presence abroad; and second, how we put that diplomacy and presence to work to strengthen our economy at home”.²

How, then, could the exercise of modern economic diplomacy (promoting exports and investment abroad, attracting FDIs, foreign aid and trade negotiations, and also strengthening the functioning of other civil society actors) not only help protect human rights but also be an opportunity for high strategic scope and great social value? This is because, in the foundations of economic diplomacy, competing interests are developing, dangerously, many times, for the protection of human rights.

The crucial question for society and governments about the exercise of modern economic diplomacy is neither in the formulation of the most popular strategy nor in the way of utilizing the appropriate “tools”. The big question is in the selection of the appropriate criteria, based on which we will draw up a strategy, utilizing what experience, technology, and conditions offer.

1. A New Planet

Attributed to Henry Kissinger, it is probably true that “the art of diplomacy is not to outsmart the other side but to convince them of either common interests or disadvantages”. In the traditional view of diplomacy – as state-to-state activity monopolized by professional, official diplomats³ “laws, policies, procedures, and mechanisms in place at the national level are key for the enjoyment of human rights in each country.”⁴ But if it is not the state that must safeguard human rights, given its continued setback, then which body, with democratic representation, must co-operate in its legal responsibility? In times of profound vicissitude in the realm of international relations, “and the continued rise of the non-state actor in the 21st century, international politics issues a potent challenge to state primacy in the area of diplomacy. Diplomacy’s statist tradition, once the bedrock organizing institution for pursuing international politics, is ceding influence to non-state actors...” as John Robert Kelley aptly pointed out in his article “The New Diplomacy: Evolution of a Revolution”⁵ outlining in a few words the historical development of the role of the state in international political and economic relations: “though

2 H. Clinton. *Economic Statecraft*. US Department of State, 2011.

3 S. Murray, S. Consolidating the Gains Made in Diplomacy Studies: A Taxonomy. *International Studies Perspectives*, 2008, 9(1): 22–39.

4 Council of Europe. *Legal Protection of Human Rights*, 2022.

5 J.R. Kelley. The New Diplomacy: Evolution of a Revolution. *Diplomacy & Statecraft*, 2010, 21(2): 286–305.

not itself an invention of the modern international system, it retains, however tenuous these days, a tradition fusing the Machiavellian urges of the state with the pragmatic rationalism borne of the Enlightenment". "The contemporary environment accommodates a wide range of human activities which owe little or nothing to geographical location, time of day and, most important of all, to government permission or regulation."⁶ Cryptocurrencies are an example of the state's inability to control international economic relations, since "bitcoin is a distributed system. The dilemma it poses to the legal systems is that it is hardly possible to regulate a distributed network in a centralized fashion, as decentralized cryptocurrencies are antithetical to the existing centralized structure of monetary and financial regulation."⁷

The growing economic interdependence of all actors and the state, the increasing competition, and revised trade regimes⁸ in the newly opened economies affect the practice of modern economic diplomacy. At the same time, as new global powers emerge, we are witnessing a new shift in economic and commercial power from North and West to South and East⁹ to countries with serious deficits in the functioning of democratic institutions and therefore greater risks to human rights.¹⁰ Some have even argued that new powers might be unwise to prioritize human rights in their foreign policy.¹¹

In addition, after the fall of communism, despite the decisive influence of the West in the countries of Central and Eastern Europe, the protection of human rights, not only has had a negligible impact on large powers (China and Russia), or medium and small powers who are not dependent on western economies (Iran and Sudan, Sri Lanka, and Zimbabwe), but also the other BRICS (Brazil, India, South Africa) have fought attempts to link trade or aid relationships to human rights¹² and many developing countries have also been

6 R. Langhorne. The Diplomacy of Non-State Actors. *Diplomacy & Statecraft*, 2005, 16(2): 331–339.

7 H. Nabilou, How to regulate bitcoin? Decentralized regulation for a decentralized cryptocurrency. *International Journal of Law and Information Technology*, 2019, 27(3): 266–291.

8 S. Swanson & C. Economides. Transatlantic Trade: the US and Europe. *National Law Review*, 2022, XII (171), 31 May, and World Trade Organization. *WTO members review UK-Turkey, UK-Singapore, and China-Mauritius trade agreements*, 2022, 22 March.

9 S. Lee. Power Shift, Power Diffusion, and Middle Power Diplomacy: MIKTA and Changes in Global Governance. In: Lee, S., Kim, S. (eds) *Korea's Middle Power Diplomacy. The Political Economy of the Asia Pacific*. Springer, Cham, 2022.

10 K. Roth & P. Hicks. *Encouraging stronger engagement by emerging powers on human rights*. *Open Democracy*. Open Global Rights, 2013, 20 June, and S. Shetty. *Challenges and opportunities in a changing world*. *Open Democracy*. Open Global Rights, 2013. 17 June.

11 R. Mashru. *A reformed role model – India, a reluctant rights promoter*. *Open Democracy*. Open Global Rights, 2013, 19 July, and A. Prakash. *Misplaced priorities? Global leadership and India's domestic neglect of human rights*. *Open Democracy*. Open Global Rights, 2013, 9 July.

12 Amnesty International India & Amnesty International South Africa. *BRICS: Nations must put human rights first*. Joint Statement Release, 10th BRICS Summit Johannesburg, 2018, 25 July.

hostile to strong human rights criteria being adopted by the United Nations Development Program (UNDP). How can these tendencies be reconciled with the growing pressure of civil society in democratic countries for reform in domestic law and policy? The characteristic example, the migrant rights convention is championed by countries like Mexico and the Philippines even as western countries refuse to sign or ratify it.¹³

In addition to the growing interdependence of actors and the shift of political and economic power, all states face an even more acute challenge: strengthening the protection of the human rights of certain categories of rights-holders (women, migrants, the landless) or certain types of rights (freedom of association, self-determination). And the problem becomes even more complicated due to the different speed but also diplomatic tactics, at the international, regional, and national levels.¹⁴

Finally, the rapid economic transformations, under the pressure of the demographic expansion, but also the rapid technological progress with the exponential growth of urban populations and the diffusion of mobile access to the Internet (to 5 billion people by 2020), and the strengthening of the role of the middle class mainly in emerging economies (BRICS) and not only – since Indonesia, Mexico, Nigeria, South Africa, but also Turkey show the same trends – reveal another dimension: a rapidly emerging middle class, with serious ambitions for change, in a positive or negative direction. “According to research conducted jointly by the SKOLKOVO Business School’s Institute for Emerging Market Studies with Ernst & Young, by 2030 the Asia-Pacific region will account for two-thirds of the world’s middle class, out of a global total of nearly 4.9 billion people in this income group, soon more than 3.2 billion will be residents of the Asia-Pacific, and the aggregate share for Europe and North America is likely to have fallen from 54% in 2009 to 21%.”¹⁵ Their view of the role of human rights is likely to outweigh the foreign policy of their states.

We are on a new “Planet” where the complexity of interconnections and their intelligent utilization can offer sustainable solutions to the great problems of the international community. And on this new “Planet” the concept of human rights is being redefined and enriched not only by states but also by other powerful stakeholders: corporate and non-governmental organizations.

13 B.A. Simmons. *Mobilizing for Human Rights: International Law in Domestic Politics*. Cambridge, New York: Cambridge University Press, 2009.

14 D. Petrasek. Human Rights Diplomacy in the 21st century: New Powers, New Approaches? *International Journal on Human Rights*, 2013, issue 19.

15 G. Gertz & H. Kharas. *The New Global Middle Class: A Cross-Over from West to East*. Brookings, 2010.

2. Protecting Human Rights: a sine qua non for Economic Security

Bertrand Ramcharan, Deputy and then Acting UN High Commissioner for Human Rights (2003–2004) described briefly but substantially, the direct relationship between human rights and economic security strategy: “you cannot have security without the protection of human rights. Development requires respect for human rights, and respect for human rights prevents conflicts.”¹⁶

From the traditional view of security as a condition for improving the economic and social prosperity of a country¹⁷ to the most modern where a country’s economy depends on extraterritorial economic interests and its concerns are not tied singly to its territory,¹⁸ financial security is emerging as a strategic factor of non-traditional security, where all stakeholders are engaged in governance.¹⁹ Globalization is at the heart of financial security: either positively, with the economic and business opportunities offered by the largest markets²⁰ or negatively, with the unpleasant experience of transmitting financial crises from country to country, which undermined political and economic stability²¹, opened the door to the painful process of brain drain and made it even more difficult to “escape” economies from technologically obsolete structures of the past. In her study, Rosario Turvey attempted to decode the relationship between economic diplomacy and economic security through a historical lens and conceptual orientations in the complex context of multidimensional diplomacy.²²

The complex process of globalization, the increasing internationalization of business, and the active involvement of non-state and civil society actors push for a different exercise of economic diplomacy. How independent can the economic diplomacy of developing states be?²³ Since financial security is a key

16 B. Ramcharan. Security and Human Rights, *Disarmament forum*, No. 1, 2004: [39]–47, *Forum du désarmement*, No 1, 2004: [41]–50.

17 C. Dent. Singapore’s foreign economic policy: the pursuit of economic security. *Contemporary Southeast Asia*, 2001, 23(1): 1–23.

18 A. Collins. *Security in Southeast Asia: Domestic, Regional and Global Issues*. Lynne Rienner, Boulder, 2003.

19 J. Manley. The future of North America: seeking a roadmap. *International Journal*, 2005, Spring, LX(2): 497–508.

20 United Nations. *Report of Committee for Development Policy*, M. on the First Session, UN Economic and Social Council, New York, 1999, 26–30 April, and F. Smith & Naim. *Altered States: Globalization, Sovereignty, and Governance*. International Development Research Center, IDRC, Ottawa, 2000.

21 N. Bayne. The economic diplomacy of sovereign debt crises: Latin America and the euro-zone compared. *International Journal of Diplomacy and Economy*, 2012, 1(1): 4–18.

22 R.A. Turvey. Economic diplomacy and security: linkages, trends, and changes. *International Journal of Diplomacy and Economy*, Inderscience Enterprises Ltd, 2014, 2(1/2): 4–22.

23 J.A. Tickner. ‘Revisioning security’, in K. Booth & S. Smith (Eds.) *International Relations Theory Today*, 1995, pp.175–197, Oxford University Press, Oxford.

parameter of economic well-being, peace, and human rights, responsibility is diffused (or at least should be diffused) to all stakeholders, not only the state but also transnational and global actors.²⁴ The link between democracy and energy security is called “energy justice”, a global energy system that fairly disseminates both the benefits and costs of energy services, that “contributes to more representative and impartial energy decision-making.”²⁵ Recently, the energy crisis across Europe, following the Russian military intervention in Ukraine, revealed another strategic dimension of economic diplomacy relations with the protection of human rights. And so, comes the debate on the also crucial issue of the relationship between sanctions (one of the “tools” of economic diplomacy) and the protection of human rights.

3. Economic Sanctions and Human Rights: Evaluation Criteria

Economic sanctions are aimed at restricting economic and trade relations with the country in which they were imposed²⁶.

At the UN level, economic sanctions (typically asset freezes, travel bans, and arms embargoes) are approved by a majority of the 15 members of the Security Council and without a veto by any of the five permanent members (US, UK, France, Russia, and China). UN sanctions regimes are usually managed by a special committee and a monitoring group. The problem is that the UN has no independent means of enforcement and relies on member states, many of which have limited resources and little political incentive to prosecute violations.²⁷

At the EU level, the lack of a common military force further reinforces economic sanctions, and their imposition requires the unanimous approval of member states in the Council of the European Union. In addition, individual EU states can also independently impose tougher sanctions within the scope of their national jurisdiction.²⁸

24 M. Kahler. Economic Security in an Era of Globalization, *The Pacific Review*, 2005, 17(4): 485–502; K. Mac Donald & S. Woolcock. ‘Non-state actors in economic diplomacy’, in N. Bayne & S. Woolcock (Eds.) *The New Economic Diplomacy: Decision-Making and Negotiation in International Economic Relations*, Ashgate, Aldershot, and Van Begeijk, 2007, 2nd ed., pp.63–76; P. & S. Moons. *Economic diplomacy and economic security. New Frontiers for Economic Diplomacy*, 2009, 37–54.

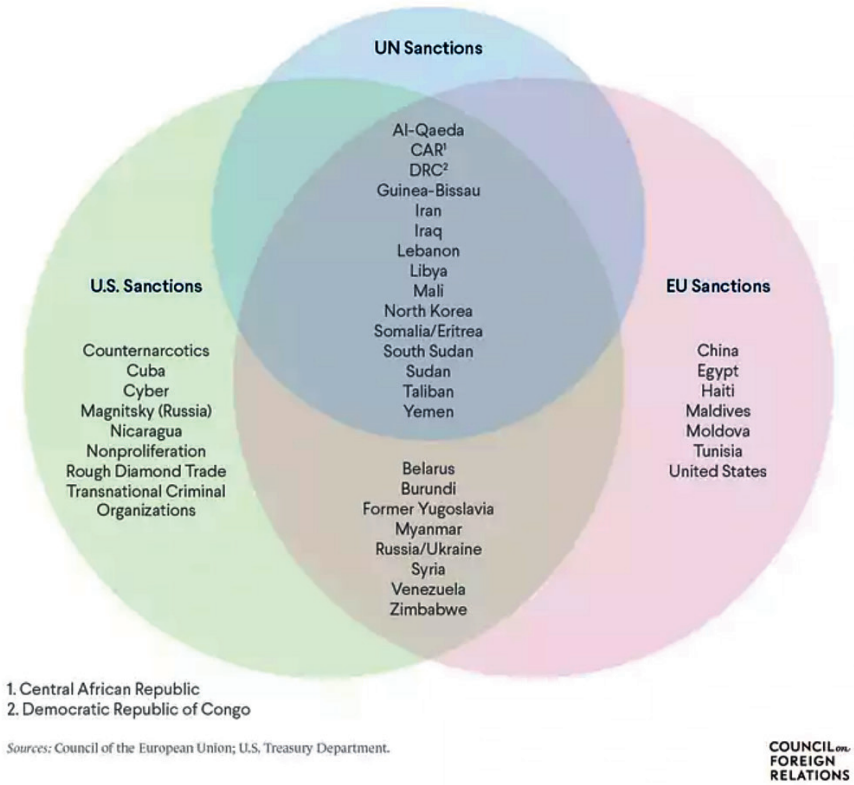
25 B. Sovacool et al. Energy Decisions Reframed as Justice and Ethical Concerns. *Nature Energy*, 2016: 1(4).

26 M. Doxey. International sanctions in theory and practice. *Case Western Reserve Journal of International Law*, 1983: 15, p. 273, and J. Masters. *What are economic sanctions?* Council on Foreign Relations, 2019, 12 August.

27 S.D. Bailey. *The UN Security Council and Human Rights*. New York: St. Martin’s Press, 1994.

28 C. Portela. *European Union Sanctions and Foreign Policy. When and Why do they Work?* Routledge, 2011.

Global Sanctions Regimes



The United States applies economic and financial sanctions more than any other country. Sanctions policy can have its origins in either the executive or the legislature. Presidents typically begin the process by issuing an Executive Order (EO) declaring a national emergency in response to an “unusual and extraordinary” foreign threat (e.g., “the proliferation of nuclear, biological, and chemical weapons” (EO 12938) or “the actions and policies of the Government of the Russian Federation concerning Ukraine” (EO 13661). Congress, for its part, can pass legislation imposing new sanctions or amending existing ones, which it has done in many cases. Sometimes the two branches clash in the sanctions policy.²⁹

In a study claiming a prominent place in contemporary academic research in international relations, entitled *Economic Sanctions Reconsidered*, published in 1985, Hufbauer, Schott & Elliott, examined more than two hundred cases of economic sanctions in the fight against terrorism, nuclear

²⁹ M. Alerassool. *Freezing Assets: The USA and the Most Effective Economic Sanction*. New York: St. Martin’s Press, 1993.

proliferation, and war, but also in foreign policy crises, concluding that “poor design and implementation of sanctions policies often mean that they fall short of their desired effects.”³⁰

The timing of sanctions is imposed for reasons directly related to the protection of human rights and arises both from the control of their enforcement (in the realm of theory) and from the assessment of their real effects (in practice). This is because the assumption that the imposition of sanctions presupposes pressure on the government loses its force in the case where governments are not periodically subjected to free and transparent elections, and therefore the population has no chance to penalize the leaders that pursue a policy resulting in sanctions imposed upon them. Therefore, economic sanctions should always be limited in time because they most seriously affect the innocent population, especially the most vulnerable, aggravate imbalances in income distribution, and generate illegal and unethical business practices. The picture in the Table below is indicative: most of the economic sanctions imposed by the US, from 1945 to 1990, did not have a positive effect.

Table 1. Effectiveness of Economic Sanctions as a Foreign Policy Tool

Number of successes		Number of failures	Success ratio (successes as a percentage of total)
All cases	40	75	35%
Cases involving the US as a sanctioner			
1945–90	26	52	33%
1945–70	16	14	53%
1970–90	10	38	21%
The unilateral US sanctions			
1945–90	16	39	29%
1945–70	11	5	69%
1970–90	5	34	13%

Source: Elliott, Kimberly Ann (1997). Evidence on the Costs and Benefits of Economic Sanctions. Peterson Institute for International Economics.

The problem of assessing financial and trade sanctions can be solved with the help of at least six criteria:

1. **International legality:** Are the sanctions imposed for valid reasons? Sanctions under the United Nations system must be imposed only when there is a threat of or actual breach of international peace and security. Sanctions should not be imposed for invalid political reasons and should not arise from

³⁰ G.C. Hufbauer, J.J. Schott & K.A. Elliott. *Economic Sanctions Reconsidered*, 3rd Edition (paper). Peterson Institute Press: All Books, Peterson Institute for International Economics, 2009, number 4129, October.

or produce an economic benefit for one State or group of States at the expense of the sanctioned State or other States.

2. **Proportionality:** Do the sanctions target the relevant parties? Sanctions should not target civilians who are not involved with the threat to peace or international security, nor should they target, or result in collateral damage to “third party” States or peoples.

3. **Humanitarian aid:** Do the sanctions target the relevant goods or objects? Sanctions should not interfere with the free flow of humanitarian goods, and they should not target required to ensure the basic subsistence of the civilian population, nor essential medical provisions or educational materials of any kind. The target must have a reasonable relationship to the threat of or actual breach of peace and international security.

4. **Time:** Are the sanctions reasonably time-limited? Legal sanctions may become illegal when they have been applied for too long without meaningful results. Sanctions that continue for too long can have a negative effect long after the wrongdoing ceases.

5. **Effectiveness:** Are the sanctions effective? Sanctions must be reasonably capable of achieving the desired result in terms of threat or actual breach of international peace and security. Sanctions that are targeted in ways that would not affect the wrongdoing, may be viewed as ineffective.

6. **Democracy:** how democratic economic sanctions can be?

The relationship of the above criteria is also crucial: no one can question the legality of sanctions imposed by the Security Council – unlike sanctions unilaterally imposed. However, what about the ineffectiveness of legal sanctions? In the negative case, are the consequences for the enjoyment of human rights even more important than the legitimacy itself? Otherwise, how could sanctions that have not proved effective be legitimized? In a recent article (28 May 2022) in *The Spectator*, entitled “Are sanctions making Russia richer?” Wolfgang Münchau dares to express taboo views: “It’s hard to find a German TV talk show that doesn’t feature a panelist arguing that Ukraine should capitulate to get Europe’s economy moving again. I guess Germany’s political establishment is playing for time, hoping that there will be a peace deal in Ukraine as part of which the sanctions will have to be loosened. Russia’s best strategic option is to play a long game. Putin might dial down his offensive for the moment, biding his time – and wait until he can fund the next stage of his military operations. The West should operate on the assumption that the ultimate goal of German politics is to find a way to re-establish trade links with Russia. The apparatus of corporate Germany depends on repairing relations, which Putin understood when he encouraged the Nord Stream energy supply links in the first place. Putin may be struggling in the military war. But I don’t think he is losing the economic one.”³¹

That’s why sanctions have to be smart: they affect political leaders directly and leave innocent civilians untouched. They can target the personal foreign

31 M. Münchau. Are sanctions making Russia richer? *The Spectator*, 2022, 28 May.

wealth and access to foreign financial markets of members of the government, the ruling elite, or the military. Assets of state-owned companies can be frozen and investments in these companies banned. The import of luxury goods may be banned. Lists of political and military leaders whose assets are frozen and who are subject to travel restrictions may be compiled.

Some examples clarify the landscape:

1. **The economic sanctions against Iraq** were imposed by the Security Council in its resolution 661 (1990) of 6 August 1990, followed by a comprehensive arms embargo imposed by its resolution 687 (1991). Over time, those sanctions have been criticized for inflicting huge suffering on the population, who after all – in the words of the UN Secretary-General himself were “not the intended targets of sanctions”. In his statement made at the Sub-Commission on 17 August 2000, the Observer of the United States of America called the part of the working paper relating to sanctions applied to Iraq “incorrect, biased and inflammatory”.³²

2. **The economic sanctions on Burundi** were imposed in August 1996 by the Governments of Tanzania, Kenya, Uganda, Ethiopia, Zaire, Rwanda, and Namibia. In 1998, the Special Rapporteur on the human rights situation in Burundi stated in his report to the Commission on Human Rights that the sanctions were having a disastrous effect on the general population in Burundi.³³ The sanctions were suspended on 23 January 1999.

3. **The economic sanctions on Cuba** were imposed by the United States of America in 1960 and were subsequently amended by the Cuban Democracy Act of 1992 and the Helms-Burton Act of 1996. These acts essentially ban all commercial ties between the United States and Cuba and severely impair the right of United States citizens to travel, communicate with, or carry out cultural exchanges with Cuba. Every year since 1992, the General Assembly has passed a resolution calling for an end to the embargo. The most recent resolution on this issue (A/67/4) was adopted on 13 November 2012 by 188 votes against 3, with 2 abstentions. Since the United States is the major regional economic power and the main source of new medicines and technologies, Cuba is subject to deprivations that impinge on its citizens’ human rights. Moreover, the US makes its foreign trade policy extraterritorial, through a system of secondary sanctions which force third-party countries also into imposing an embargo on Cuba.³⁴

32 United Nations. Economic and Social Council, Commission on Human Rights. *Comprehensive Examination of Thematic Issues relating to Racial Discrimination*, E/CN.4/Sub.2/2000/SR.25, § 37.

33 M. Bossuyt. *The Adverse Consequences of Economic Sanctions*. UN Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, 52nd Session, 2000, 21 June, E/CN.4/Sub.2/2000/33.

34 W.M. LeoGrande. A Policy Long Past Its Expiration Date: US Economic Sanctions Against Cuba. *Social Research: An International Quarterly*, 2015, 82(4): 939–966, and J. Nahrstedt. *US economic sanctions on Cuba: An analysis of the reasons for their*

4. The EU Common Position on arms exports. Arms exports to non-industrial nations are intensely discussed. Researchers have introduced contentions about both why arms export might be gainful and why it could be impeding the advancement of the getting nation, and experimental outcomes are uncertain. Existing literature has focused on a broad range of outcomes rather than solely on the developmental aspects of the receiving country. Therefore, a remarkable dispute and gap exist in the literature regarding the relationship between arms export and the receiving country's level of development.³⁵ On 15 December 2021, the European Parliament adopted a resolution on the challenges and prospects for multilateral weapons of mass destruction arms control and disarmament regimes. The resolution calls for the EU to play a strong role, and for member states to show continuous support, in all major disarmament treaties and non-proliferation regimes. The resolution states that renewed global arms control and disarmament efforts are essential to the EU's security, amid concerns that key arms control treaties have been weakened and dismantled due to current geopolitical tensions. The resolution uses examples such as China, which it says has substantially stepped up the development of its missile and nuclear capabilities and has shown a lack of transparency and a reluctance to engage in talks on its potential participation in multilateral nuclear arms control instruments. The resolution asks for the EU to coordinate with its like-minded partners to engage in diplomacy with China on this topic. The resolution reiterates the European Parliament's commitment to effective international arms control and disarmament and recalls its commitment to pursuing policies to bring the reduction of nuclear arsenals forward. Finally, it calls for EU delegations to put arms control high on the agenda for dialogue with non-EU countries and to play a strong role in reinforcing the global rules-based non-proliferation efforts and arms control and disarmament architecture.³⁶ According to the Stockholm International Peace Research Institute (SIPRI), from 2000–to 2020, the 27 current EU Member States exported about a quarter (24%) of the total global arms exports. In the period 2015–2019, EU Member States granted licenses to exports worth €138–196 billion annually, but only a fraction of the licenses granted led to actualized exports. Among the top 25 largest arms exporters in 2016–2020, there were eight EU countries: France (3rd), Germany (4th), Spain (7th), Italy (10th), the Netherlands (11th), Sweden (15th), Czechia (23rd) and Portugal (25th). Approximately 70% of the arms export licenses issued by EU countries are for destinations outside the EU.

maintenance. Working Paper No. 162/2021. Hochschule für Wirtschaft und Recht Berlin, Institute for International Political Economy (IPE), Berlin, 2021.

³⁵ L. Stulic. *Arms Export to Developing Countries: Making the Critical Appraisal: A qualitative comparative case study on the connection between arms export to developing countries and the level of development in the receiving country*. (Dissertation), 2022.

³⁶ European Parliament. *Resolution on the challenges and prospects for multilateral weapons of mass destruction arms control and disarmament regimes*, 2021, 15 December.

Approximately 25% of the arms trade is between the EU Member States and an additional 5% or so is to NATO partners outside Europe such as the US, Norway, Iceland, and Canada.³⁷ The Common Military List is a comprehensive list regulating what is considered ‘arms’ by the EU. The list has 22 categories covering weapons and ammunition, vehicles, vessels and aircraft, and other equipment designed for military use, including software and technology. This list is updated regularly by the European Council to reflect changes in the arms industry. The latest update was adopted in February 2020. The EU also has a list of dual-use goods, i.e. technology that can be used for both civilian and military purposes. These dual-use goods include, for example, nuclear material, sensors, lasers, computers, and computer programs. Many EU countries also control arms exported for civilian purposes, such as hunting and sports. Currently, the principles stated in the EU Common Position are not sufficiently applied. Arms are sold to countries with low human rights records and ongoing conflicts. This incoherence challenges the EU’s commitment to peace, stability, human rights, and European values, and the EU’s credibility as a foreign policy actor. Better European arms control could also lessen lower-level bureaucracy in European sales, while more clearly targeting problematic sales and exports. This would strengthen the internal market and the European defense sector. Moreover, the possible negative security implications of the European arms trade on Europe itself are increasing, such as creating instability in the European neighborhood. Illicit trade, organized crime, and terrorism are all concerns that a well-functioning arms control system can help to alleviate. These concerns are becoming more evident with the growth of the arms trade outside Europe to fewer stable countries. Action is needed now to ensure European competitiveness and adaptation to a more challenging security environment. At its core, more robust EU arms control is about joint processes and practices to support European security, our internal market, and our ability to be a credible actor through consistent action.

5. **The Swedish “Democracy Criterion” for arms exports (2017).** In December 2017, the Swedish Parliament voted on a government proposal to strengthen Swedish arms export controls, among other things by adding a “democracy criterion,” that would require a recipient state’s democratic status to be considered as a central factor when evaluating export license decisions. The proposed new law followed six years of discussions and a Parliamentary commission of inquiry, which was reported in June 2017. It had the support of the governing Social Democrat-Green coalition and the center-right opposition parties, so its passage was guaranteed. Sweden, as part of the European Union, was already bound by the EU Common Position on arms exports, which required an export license to be denied if, among other things, there is a clear risk that the equipment to be exported might

37 Stockholm International Peace Research Institute. *SIPRI Arms Transfers Database*, 2022.

be used for violations of human rights or international humanitarian law. However, this was always part of a case-by-case evaluation relating to the specific equipment being sold; the status of the recipient state as such plays no direct role in the criteria, except in the small number of cases where there is either a UN or an EU arms embargo. The democracy criterion was therefore significantly stricter than the EU Common Position – and indeed most if not all major arms exporters. The Swedish law already goes further than the common position in terms of considering the recipient's status regarding human rights violations, but the new law strengthens this. In particular, the law requires that the democratic status of the proposed host state – in terms of the existence of democratic institutions, freedom of expression, and respect for fundamental democratic principles – will be a “key condition” in evaluating applications for an export license and that serious deficiencies constitute an “obstacle” to their approval. Regarding human rights, where current law states that “serious and systematic” human rights violations constitute an obstacle to the approval of licenses, the bar is lowered to “serious and systematic” violations. The potential of a sale to offset sustainable development also needs to be considered, and there are other measures to improve transparency on arms sales. However, what the law does not prescribe is an absolute ban on the export of weapons to dictatorships or human rights abuses. Each export license application must still be assessed individually, based on an overall assessment that considers many factors, including those related to security and defense policy. Thus, arms sales to non-democratic states ought to nonetheless be authorized if the government (through the export control agency, ISP, the Inspectorate for Strategic Products) decides that protection commercial issues outweigh the recipient's lack of democracy. The law does now no longer specify precisely how those problems are to be weighed towards one another. This lack of a clear ban on arms exports to non-democratic regimes, even dictatorships, has brought about grievance from the peace movement, and in Parliament by the Left Party. Svenska Freds (Swedish Peace) had been particularly critical of the proposed law as leaving open too many loopholes to allow, essentially, business as usual. The proposal stated that lack of democracy will be an “obstacle” to license approval, but asks Svenska Freds Chairperson Agnes Hellström, “How high an obstacle”? Other parties, including the Green Party and the generally right-wing Christian Democrats, stated that they would have preferred a complete ban on arms sales to dictatorships, but accepted the cross-party proposal as a reasonable compromise. The two largest parties in the Swedish Parliament, the Social Democrats, and the center-right Moderates both have strong traditional ties to the arms industry (via the unions and the business community respectively), and the former were the architects of the post War policy of armed neutrality under which the Swedish arms industry – still remarkably advanced for a country of 10 million – was developed. Therefore, there are political limits that no one wants to violate.

The crucial question is whether the new legislation in Sweden will prevent the sale of weapons in non-democratic regimes or even better, will it ban the sale of weapons in dictatorships? Or is the new legislation just a more democratic wording, while continuing with business as usual? After all, how could the arms industry overcome strict domestic legislation if it did not boost its exports, even under dictatorial regimes? Sweden comes towards the lower end on measures of deliveries (2007–2016) and recent licenses (2012–2016), with similar levels to Spain, although Germany has a lower share of deliveries over the longer period of 2007. For licenses, the great bulk of Sweden's export licenses to dictatorships come from a single \$1.3 billion deal in 2016 to sell Saab Erieye Airborne Early Warning and Control systems to UAE – of particular concern given the UAE's role in the air war against Yemen, where such advanced sensor systems could play a significant role. Sweden also sold an earlier version of the Erieye to Saudi Arabia in 2010 (delivered in 2014). Other significant sales to “Not Free” countries include a 2012 sale of missiles and sensors to Algeria. One of the most controversial deals in Sweden in recent years, however, was the sale in 2008 and then 2010 of Gripen multi-role combat aircraft to Thailand. The deal was negotiated with Thailand's military dictatorship after the 2006 coup, but the delivery of arms took place when democracy was restored, with the December 2007 elections and, unfortunately, with the 2014 coup government. Nonetheless, the sale of such major equipment to a military establishment with a long history of coups, and where the return democracy was always highly fragile, was controversial. Sweden approved export licenses for delivery of around \$100 million worth of military equipment to Thailand—now firmly in the grip of military rule – in 2016. While exports to Saudi Arabia have been a major focus of concern, in fact since the Erieye deal, export license approvals to Saudi have been negligible; partly due to the breakdown in Swedish-Saudi relations following the nonrenewal by Sweden in 2015 of a military cooperation agreement (although this agreement had produced few if any tangible results), but very likely also in part due to the high sensitivity of such sales. Since 2014, license approvals to Saudi have amounted to only a few million crowns (much less than US\$1 million). Thus, at the same time as Sweden does sell arms to dictatorships and human rights abuses, the evidence suggests that, in comparison with most other significant European arms producers, concerns over human rights do lead to some degree of restraint on the part of Swedish authorities. The new rules certainly have loopholes that will allow the Swedish government to sell arms to dictatorships when it wants to, and there may be no practical change; however, it seems likely that the strong level of pressure for restraint from both civil society, media and elements within Parliament, and the expectations of such accompanying the new law, will lead to some greater degree of caution on the part of ISP. The truth is that any arms deal with Saudi Arabia will provoke an outcry from society, thus nullifying the reform effort. It remains to see in the next years if Sweden

create sufficient political will to make a more restrictive arms export policy a reality, in the face of strong defense industrial pressure to maintain exports.

6. The Export Controls and Human Rights Initiative (Summit for Democracy, December 2021). On February 24, 2021, in his statement, Antony J. Blinken, Secretary of State in the Biden administration, stated: “the United States is committed to a world in which human rights are protected, their defenders are celebrated, and those who commit human rights abuses are held accountable. Promoting respect for human rights is not something we can do alone but is best accomplished by working with our allies and partners across the globe. President Biden is committed to a foreign policy that unites our democratic values with our diplomatic leadership, and one that is centered on the defense of democracy and the protection of human rights.” Indeed, the Biden government has taken substantial measures to control technology that could be used for anti-democratic purposes. In 2021, at the Summit for Democracy, the United States, Australia, Denmark, and Norway announced the Export Controls and Human Rights Initiative to help stem the tide of authoritarian government misuse of technology and promote a positive vision for technologies anchored by democratic values. Too often, cyber intrusion, surveillance, and other dual-use technologies are misused to stifle dissent; harass human rights defenders; intimidate minority communities; discourage whistle-blowers; chill free expression; target political opponents, journalists, and lawyers; or interfere arbitrarily or unlawfully with privacy. The Export Controls and Human Rights Initiative (White House, 2021) will seek to address this challenge by:

- “Working to develop a voluntary written code of conduct intended to guide the application of human rights criteria to export licensing policy and practice.
- Building policy alignment with like-minded partners that leads to common action, and concrete and practical outcomes.
- Bringing together policymakers, technical experts, export control, and human rights practitioners to ensure that critical and emerging technologies work for, and not against, democratic societies.
- During the Summit for Democracy’s Year of Action, the US government shape this Initiative collaboratively with partners and explore how best to strengthen domestic legal frameworks; share information on threats and risks; share, develop and implement best practices; and improve others’ capacity to do the same (...) in further coordination with other governments and consult with industry and academia.”

The Statement also defined the international responsibility of the US: “the United States is also working with allies and partners to reinforce our democratic values and our democratic institutions in key emerging technology areas:

- Quad leaders launched a statement of principles on technology, along with new efforts that together will advance critical and emerging

technologies shaped by our shared democratic values and respect for human rights.

- Through the Trade and Technology Council, the United States and European Union determined shared principles and areas for export control cooperation, including capacity- building assistance to third countries to support multilateral export control regimes, prior consultations on current and upcoming legislative and regulatory developments, and developing convergent control approaches on sensitive dual-use technologies. An additional working group is addressing the misuse of technology threatening human rights.
- We've launched new bilateral cooperative partnerships on critical and emerging technologies with both Japan and the Republic of Korea."
- These efforts build on steps the United States has already taken to stem the misuse of technology to abuse human rights:
- In July 2021, the United States Government added to the Commerce Department's Entity List the entities located in the People's Republic of China (PRC) that have been enabling human rights abuses against Uyghurs, Kazakhs, and other members of Muslim minority groups in Xinjiang, where the PRC continues to commit genocide. This action prevents the entities from gaining access to U.S. technology.
- Similarly, following the coup in Burma (1 February 2021) the United States Government added companies and ministries controlled by the Burmese military to the Entity List.
- In mid-October 2021, the United States Government released an interim final rule establishing controls on the export, re-export, or transfer of certain items used for malicious cyber activities. The proposed rule will target custom-made hacking tools that have legitimate law enforcement and intelligence applications but have also been misused.
- In early November, the United States Government added four foreign companies to the Entity List to stem the proliferation and misuse of tools used for repression: NSO Group and Candiru of Israel were designated for their development and supply of spyware to foreign governments that used these tools to maliciously target government officials, journalists, businesspeople, activists, academics, and embassy workers. Additionally, Russia's Positive Technologies and Singapore's Computer Security Initiative Consultancy PTE (COSEINC) were designated for misusing and trafficking cyber tools that were used to gain unauthorized access to information systems in ways that are contrary to the national security or foreign policy of the United States and threatened the privacy and security of individuals and organizations worldwide.

Conclusion

The current challenges of economic diplomacy make even more urgent the need for strong human rights legislation, involving not only democratically elected governments but also non-state actors such as civil society, local authorities (mega cities outnumber many countries), businesses, and universities. The crucial issue that should concern societies in democracies is the establishment of criteria for evaluating the “tools” of economic diplomacy since “secret” diplomacy has no place in a democracy. It remains the will of the governments to formulate a relevant strategy utilizing what experience, technology, and conditions offer.

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Economic diplomacy and human rights: in search of a democratic framework

Abstract

Current challenges of economic diplomacy make even more urgent the need for strong human rights legislation, involving not only democratically elected governments but also non-state actors such as civil society, local authorities (mega cities outnumber many countries), businesses, and universities. The paper focuses on three problems of the delicate relationship of economic diplomacy with the protection of human rights:

- the new shift in economic and commercial power from the Northwestern developed countries to Southeastern emerging economies with serious deficits in the functioning of democratic institutions, but with a rapidly emerging middle class, with serious ambitions for change (in a positive or negative direction),
- the “energy security”, as the Russian military intervention in Ukraine, revealed,
- and economic sanctions, since poor design and implementation of sanctions policies often mean that they fall short of their desired effects, endangering human rights.

How, then, could the exercise of modern economic diplomacy (promoting exports and investment abroad, attracting FDIs, aid and trade negotiations, but also strengthening the functioning of other civil society actors), not only helps protect human rights but also be an opportunity for high strategic scope and great social value? Applying human rights’ evaluation criteria of economic diplomacy, with the help of policy experience and technology, should concern societies in democracies.

The research results can be taken into consideration by policymakers to create an appropriate economic diplomacy framework shaped by European democratic values and respect for human rights.

Keywords: Economic Diplomacy, Shift of Economic Power, Energy Security, Economic Sanctions, Human Rights

Dyplomacja ekonomiczna i prawa człowieka: w poszukiwaniu demokratycznych rozwiązań

Streszczenie

Obecne wyzwania dyplomacji ekonomicznej czynią jeszcze bardziej pilną potrzebę opracowania skutecznych regulacji w zakresie praw człowieka, angażujących nie tylko demokratycznie wybrane rządy, ale także podmioty spoza struktury organów państwa, takie jak społeczeństwo obywatelskie, władze lokalne (metropolie wyprzedzają w tym zakresie wiele państw), przedsiębiorstwa czy uczelnie. W artykule skupiono się na trzech problemach dotyczących wrażliwych związków dyplomacji gospodarczej z ochroną praw człowieka:

- nowym przesunięciu siły ekonomicznej i handlowej z północno-zachodnich krajów rozwiniętych na południowo-wschodnie gospodarki wschodzące, z poważnymi deficytami w funkcjonowaniu instytucji demokratycznych, ale z szybko powstającą klasą średnią, z poważnymi ambicjami do zmian (w pozytywnym i negatywnym kierunku),
- „bezpieczeństwie energetycznym”, co uwiarydociła rosyjska zbrojna interwencja na Ukrainie,
- sankcjach gospodarczych, niewłaściwe zaprojektowanie i wdrożenie polityki sankcji często bowiem oznacza, że nie przynoszą one pożądaných rezultatów, stwarzają natomiast zagrożenie dla praw człowieka.

Jak zatem prowadzenie nowoczesnej dyplomacji ekonomicznej (promowanie eksportu i inwestycji za granicą, pozyskiwanie BIZ, negocjacje pomocowe i handlowe, ale także wspieranie funkcjonowania innych podmiotów społeczeństwa obywatelskiego) może nie tylko pomóc w ochronie praw człowieka, ale także być szansą o dużym zasięgu strategicznym i wielkiej wartości społecznej? Zastosowanie kryteriów oceny praw człowieka w dyplomacji ekonomicznej, przy pomocy rozwiązań wynikających z doświadczeń polityki i technologii, powinno być przedmiotem zainteresowania społeczeństw w systemach demokratycznych.

Wyniki badań będą mogły być wzięte pod uwagę przez decydentów politycznych, dążących do stworzenia odpowiednich zasad dyplomacji ekonomicznej kształtowanych przez demokratyczne wartości europejskie i respektowanie praw człowieka.

Słowa kluczowe: dyplomacja ekonomiczna, zmiana władzy gospodarczej, bezpieczeństwo energetyczne, sankcje gospodarcze, prawa człowieka