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Comparative human rights diplomacy in the shadow of the cultural relativism versus universalism debate:

A case study of the UN Human Rights Council

PhD Thesis Booklet

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Introduction

The adoption of the United Nations (UN) Charter and the Universal Declaration of Human Rights (UDHR) brought quality changes to the international protection of human rights. The horrors of WWII and the Holocaust made it very clear that the policy of absolute sovereignty could not continue, and the cause of human rights could not remain the exclusive subject of domestic political considerations. During the Cold War period, a significant standards-setting process took place under the auspices of the UN Commission on Human Rights (CHR). In the past 70 years, we have witnessed not just the gradual development of national constitutional and legal protection systems regarding human rights and fundamental freedoms, but the establishment of universal and regional organizations, institutions, and mechanisms aimed at the promotion and protection of human rights. In parallel with the universalization of international human rights standards, there are tendencies, of altering intensity, to challenge this universality based on cultural differences. Radical cultural relativism may provide grounds for misusing the concept in the interests of veiling human rights violations; however, by totally neglecting cultural particularities in the implementation of international human rights standards, radical universalism is not serving the universal acceptance of human rights in the long run.

The accelerating process of globalization makes the comparative exploration of the question of cultural relativism even more necessary, to clarify several misconceptions regarding the topic, which are spreading in light of increasingly intense intercultural or cross-civilizational interactions. In our globalized world – due to increasing migration trends – people belonging to different cultures often live side by side and in many instances, this coexistence results in conflicts regarding the prevailing human rights norms to be implemented.

1. **The scope of analysis and the hypothesis**

The study intends to introduce the human rights diplomacy of the different regions, touching upon also the differences within the given groups, through the work of the most important human rights body of the United Nations, the UN Human Rights Council which replaced the Commission on Human Rights in 2006.

This study gives a comprehensive picture of the main priorities and characteristics of the human rights diplomacy of those regional/cultural/political groups, which are the major actors in our contemporary world in this field. The five groups [the European Union (EU), Latin American and Caribbean states, sub-Saharan African states, Asian states, and Muslim states,] chosen as the subject of this exploration are not identical to the regional groups working within the UN system [African Group, Asia-Pacific Group, Eastern-European Group (EEG), Group of Latin America and Caribbean (GRULAC), Western European and Others Group (WEOG)] as certain groups, such as the EEG, cannot be considered as an entity in this context. In addition, while the states belonging

to the Organisation of Islamic Cooperation (OIC) have many common elements in their human rights diplomacy, despite the fact that they can be found in three UN regional groups. As a result, sub-Saharan states are considered a separate grouping, while North African states are discussed as part of the group of Muslim states. The EU also forms a particular entity considering its active and sophisticated internal and external human rights diplomacy, even though its members belong to three regional groups within the UN system. The Asian-Pacific Group is where certain overlapping with the Muslim states could not be avoided as Asian Muslim states have certain features in their human rights diplomacy linking them to other Asian states, while others are similar to other Muslim states.

The study does not address the human rights diplomacy of great powers (USA, China, and Russia) given their particularities; this should be the subject of a different thesis. Because of the intellectual aims of this study, those Western states, and Eastern European states, which are not part of the EU, are not covered, as they do not have a separate group identity with special human rights priorities and characteristics. That said, some, such as the Canada, Australia, Switzerland, and Norway, are extremely important, influential actors in the human rights diplomacy of the international community. Neither WEOG nor the EEG has particular human rights diplomacy, comparable to that of the EU.

The most appropriate forum to demonstrate the main features of the human rights politics of the five regions selected is the most important universal human rights body of today, the UN Human Rights Council (HRC), which, in 2006, replaced the CHR established in 1946.

The foundation for this thesis rests on the assumption that the religious and cultural norms of all major civilizations/cultures/religions can be reconciled, within certain limits, with the international human rights standards. The reference to cultural/religious particularities or regional specificities – with a few acknowledged exceptions – usually serve the political/power interests of the leaders of a given state to avoid the acceptance of and respect for universal human rights norms which may endanger the status quo, and thereby their position. As already mentioned, neither radical universalism nor radical cultural relativism serves the cause of the universal acceptance of human rights. In this context, the academic world is already taking a far more nuanced position than state practice, which is usually found at one of the two radical positions.

2. Methodology

This work was inspired by a research gap identified. On reviewing the international academic literature, it became clear that there was no comparative work in this field; most of the research has focused on a single region or has made superficial comparisons between the human rights policy priorities of the different regions, without taking into consideration the relevant historical, religious, cultural, and political backgrounds.

Inevitably, a comprehensive picture of the human rights diplomacy of the five regional groups selected will contain certain generalizations, but without those, the research would be lost in the detail. However, I have been as accurate as possible and tried not to forget important nuances within the given regions.

The three 2017 sessions of the HRC are studied in detail; this was the last full year before the preparation of this work started and therefore all details were readily available. It was also the last year that the USA was still a member of the HRC. In 2018, on the decision of President Donald Trump, the US delegation resigned from the Council.

The applied research method has an interdisciplinary character, building on the most important and relevant findings of historical, religious, sociological, international relations, and of course international law studies. The work is mainly based on secondary sources, but the findings of the relevant international academic circles have been put into a new, comparative context, to prove that all civilizations contain the fundamental moral values, which provide the basis for international human rights standards. There are no cultural or civilizational differences that would prevent the national implementation of universal human rights norms anywhere in the word. The research also contains primary sources, such as universal or regional human rights instruments, UN resolutions, declarations, and relevant documents from the HRC. As a former human rights ambassador who served 10 years in Geneva and has been following developments in the CHR and the HRC since 1994, I bring more than two decades of multilateral human rights diplomacy experience to this thesis.

I am convinced that the achievement of the above-mentioned scientific aims, together with a studiously non-Eurocentric approach can contribute to the further development of the international literature aimed at strengthening the cross-cultural dialogue on human rights.

3. Main findings of the research

In Chapter 1, dealing with the **universalism vs. cultural relativism debate**, it was acknowledged that in our globalized world, where different political and economic forces have resulted in serious migration flows worldwide, the separation of different cultures is no longer an option, as it was in the Middle Ages. It is important to find functioning solutions to address the challenges of the coexistence of representatives of different cultures despite the presence of increasingly intolerant societies and a growing number of intercultural clashes. The misuse of cultural relativism by authoritarian regimes for justifying human rights violations in the name of cultural particularities should be strictly separated from legitimate claims based on traditional practices, supported by the given cultural community and not contradicting basic human rights values. It is important to see that international human rights norms, by contributing to the gradual eradication of inhuman traditional practices, are not undermining the

cultural foundations of Asian or African societies but making them more human. Radical universalism, by neglecting cultural particularities in the implementation of international human rights standards, is seen as a form of cultural imperialism by developing states, and therefore it is not serving the universal acceptance of human rights. On the contrary, this approach provokes strong resistance from most cultures outside of Europe, thereby undermining the whole international human rights system. Radical cultural relativism on the other hand, by stating that culture is the only source of validity of a moral right or rule, fundamentally undermines the universality of human rights and provides grounds for misusing the concept in the interests of veiling human rights violations.

There is an urgent need for further intercultural dialogue on the question of universalism vs. cultural relativism, which may trigger internal debates within cultures or societies where traditional practices prevail, practices that conflict with the international human rights obligations of the given state. The UN could play an important role in organizing this discussion, aiming at a cultural transformation that can contribute to the enhanced cultural acceptance of internationally recognized human rights norms and to the strengthening of the universality of global human rights standards. Cultures are not closed entities with rigid borders. They can be developed or changed as a result of interaction with external effects or influence. This is, however, a much longer process than amending a law, but by involving internal forces, an organic interculturalization process can happen in a given society making these cultural changes sustainable; it would be the result of internal discussions and not enforced by external forces.

In Chapter 2, we explored how **human rights diplomacy** has gone through substantial changes since the end of the Cold War, not just in acceptance, but in terms of both means and participants. Although the tension between the principle of sovereignty and respect for human rights still exists, human rights issues have become an integral part of the foreign policy of every state, whether they like it or not. The new human rights challenges of our globalized age – such as the impacts of climate change, environmental degradation, and biodiversity loss; the development and use of digital technologies, artificial intelligence, and the phenomenon of transnational crime; targeted killings by drones; corruption; mass migration; the growing power of multinational corporations; and global inequality – have substantially changed the priorities of the human rights diplomacy in the twenty-first century. Without addressing these new human rights challenges, international human rights diplomacy cannot remain relevant in the future. And we cannot speak about efficient human rights diplomacy in the absence of an effective implementation and monitoring system.

In Chapter 3, we discussed the legacy of the UN CHR and the changes brought by the establishment of the **HRC**, which replaced it in 2006. A political body like the CHR/HRC cannot do more than it is allowed to do by member states and cannot be blamed for being political. Therefore, it is not surprising that a new institutional framework could not cure the political deficiencies of the CHR or that the new body of

almost the same size, with the same players and similar political conditions could not bring about a breakthrough in the international fight against human rights violations. However, the establishment of the UPR process brought a new approach to the whole UN system, by providing human rights monitoring of all UN member states in a cooperative manner, with an increasingly important technical assistance pillar for the implementation of UPR recommendations. However, the UPR process certainly did not render the adoption of country-specific resolutions redundant, although the naming and shaming should be done in a more strategic way, with better coordination within the UN system, by increasing the regional dimensions in the work of the world organization.

The soft conditionality regarding HRC membership is completely neglected by most UN members. We have already reached the point where certain states are not even bothering to submit human rights pledges in connection with their candidacies. It would be politically unrealistic and probably counterproductive to dream about an HRC with members with perfect human rights record, but the pro-human-rights states should encourage the candidacy of countries with a positive political will regarding the promotion and protection of human rights. In many sensitive issues WEOG, the majority of the EEG, and GRULAC, together with human-rights-friendly African and Asian states have managed to build up a successful coalition within the HRC. The overall democratization process of the world – which is happening despite certain temporal backslides – will further strengthen these positive trends by ameliorating the composition of the Council, as more and more democratic states will run for a seat on the HRC.

Chapter 4 addressed the internal and external human rights diplomacy of the **EU** in detail. Within the world's most sophisticated economic and political integration, human rights cannot be considered an internal affair of any member state. There is even an intention by many member states to link the rule of law performance of members to access to structural funds. During the last decade, the question of human rights has been mainstreamed through all EU policies. The EU has already joined a UN human rights treaty, something that has never happened before in the case of an international organization. The EU has developed a significant toolbox to address human rights violations or problems within member states, although in the absence of a majority decision-making process in this field it cannot be as effective as its initiators intended it to be. There is an on-going discussion within the EU as to whether European integration will follow a federalist path, or whether the role of sovereign states will be strengthened.

Although the external human rights diplomacy of the EU only started to develop in the 90s, by the end of the Cold War it had reached remarkable sophistication in a few decades. Naturally the Lisbon Treaty, by making the Charter of Fundamental Rights legally binding and providing the ground for the establishment of the EEAS, brought a different quality to this development. The creation of the post of High Representative for Foreign Affairs and Security Policy gave a face to EU foreign policy, while the

establishment of the EU Special Representative for Human Rights provided a leader for the human rights diplomacy within the Union. The EU's human rights diplomacy is a result of very complex teamwork, in which all the different actors have a role and their close cooperation is essential for the success. At the multilateral human rights forums, the EU has managed to create a very efficient coordination mechanism making it possible for the Union to appear as an important player, with a detailed and coordinated human rights agenda. Research behind this chapter shows that the increasing efficiency of the Union is a result of its intensified outreach towards other regional groups. Most sensitive resolutions – originally run by single EU member states – are now tabled on behalf of cross-regional Core Groups, which can counterbalance the fact that the EU has only 8–9 votes from the HRC total of 47. The division lines among EU member states mirror the internal conflict within the Union. Middle East issues represent the Achilles heel of EU human rights diplomacy as there is no consensus among member states in most cases.

Chapter 5 discussed the human rights diplomacy of the **GRULAC** states. Based on the unique historical and geopolitical circumstances it is not surprising that Latin America and the Caribbean is probably the most open regional group in the UN system. Therefore, the cooperation with GRULAC is essential for the EU and other pro-human-rights states to have a majority within the UN in general and in the HRC in particular. GRULAC can play an important role in strengthening intercultural dialogue and cooperation because of Latin America's historical and political background. It is the only regional group with a strong regional human rights system, one that has cultural and political relations to Europe and at the same time belongs to the Global South and shares all the problems the developing world has to face in the twenty-first century. The strong commitment of the region to modernity should be converted to the strength and force needed for the task. The pro-human-rights countries of Latin America can work as the engine of the efforts to establish close and efficient cooperation among states of the South and the North to enhance the human rights situation worldwide, by avoiding the trap of cultural relativism or civilizational fights.

In Chapter 6, we addressed the implementation of universal human rights standards in and by **sub-Saharan African states**. The social and political concerns of Africans are shaped mainly by the legacy of colonialism and the memory of post-Colonial era instability. Together, these concerns are also shaped by the severe socio-economic challenges the continent faces, including huge international debt, the highest number of refugees in the world, and widespread starvation. In this context, many Africans still consider human rights as a Western-inspired imperialist notion, based on a doctrine focusing on the individual, while in Africa, the worth of the individual can be found only in the context of the community. Therefore, Africans prioritize duties and obligations over rights. Despite certain resistance to human rights, the emerging African human rights system clearly indicates the political will of most African countries to establish a sound foundation guaranteeing the fundamental freedoms and rights of the people on the continent.

Looking at the work of the HRC, we can detect a gradual opening up of several sub-Saharan African states, such as Rwanda, Botswana, Ghana, and Togo, that have started to get involved in broader initiatives within the HRC, representing global, rather than exclusively African, interests. The voting behaviour of the African Group in Geneva is becoming less and less uniform; they are voting in a block on a few issues only, like the right to development, which still represents the classical North–South division. The development of the protection and promotion of human rights in sub-Saharan Africa makes the region perfectly suitable for accepting and implementing universal human rights standards in the long run. The reference to local cultural traditions only serves the political aims of the elite, who try to avoid international scrutiny of the serious human rights violations committed in order to keep power and influence.

Chapter 7 covered the human rights diplomacy of **Asia Pacific states** in the shadow of the Asian values debate. In the largest, most populous, and probably the most diverse continent, there are no cultural, religious, or historical reasons why Asia could not accept internationally recognized human rights norms and standards. The fact that except for Thailand, China, and Japan, all countries of the region were colonies in a certain period of their history has resulted in a strong adherence to the principles of sovereignty and non-interference. This phenomenon, combined with nationalism and the decision by most Asian states to choose economic modernization without Westernization, has shaped Asia's human rights diplomacy. Careful examination of the three dominant religions of the region shows that the teachings of Confucianism, Buddhism, and Hinduism are also reconcilable with the notion of human rights. However, Asia has adopted, without reservation, the European concept of sovereignty without the human rights component. Asian leaders referring to "Asian values" emphasize the primacy of economic development over the protection and promotion of human rights. In light of these developments, the reserved position of most Asian states towards international judicial organs, such as the ICC or the ICJ, is not surprising, based on the conservative understanding of the principles of non-interference and national sovereignty. Similar factors contribute to the fact, that presently Asia is the only continent without a regional human rights organization.

On examining the voting behaviour of Asia-Pacific states in the HRC, it is clear that Japan, and a few decades later the Republic of Korea, decided to choose a path of economic development shaped by a Western-style political modernization that resulted in the adoption of a European human rights philosophy in most spheres of life. Although the other members of the Asia-Pacific Group voted in a quite predictable way concerning most of the resolutions, certain issues, such as the death penalty, or the protection of human rights defenders and reprisals against those cooperating with the UN, created divisions. These examples indicate that Asia is no longer a monolithic region from a human rights point of view and although it has a long way to go, there is a fair chance that in the medium term, many Asian states will follow a much more open and cooperative position towards the international protection and the promotion of human rights.

The intention behind Chapter 8 was to explore the human rights diplomacy of **Muslim states**. It is crucial to find proper answers to the question of the compatibility between Islam and the international human rights regime, which is vital for the lives of the 1.5 billion believers of the world's fastest-growing religion. The problem is even more complex as Islam has never treated religion and politics as two separate institutions. One of the conclusions reached in this chapter is that the most pressing human rights problems Muslim societies face today are related to serious human rights violations committed by their governments, who often refer to Islam to legitimize them. However, given the importance of religion in these societies, it is obvious that the acceptance of international human rights norms is more likely to happen if they are presented to the Muslim community as something consistent with their belief in Islam. This aim can be achieved using a dual approach: an internal discussion among Muslims and a cultural dialogue between Muslims and non-Muslims. The objective of the first process could be achieved by the reinterpretation of certain parts of the Shari'a , including that dealing with the status of women and freedom of religion. Without this enlightened interpretation, the human rights of 1.5 billion Muslims in the world will remain in the hands of autocratic regimes who use Islam for their political purposes.

Upon careful examination of the 13 OIC member states who were also members of the HRC, it appears that the OIC group is far from being united on many important issues. The first area of disagreement relates to certain country situations, such as Iran or Syria, where Muslim solidarity was overwritten by the traditional Sunni-Shiite rivalry and other regional security policy considerations. The second area concerns the protection of civil society and human rights defenders, where the main dividing line was between those governments which find this issue crucial for the interest of a sustainable democracy based on the rule of law (Togo, Cote d'Ivoire, Indonesia, Iraq) and those who consider the activity of NGOs as a threat to the sustainability of their power. The third area where OIC members are very much divided is over the question of the death penalty. Muslim solidarity is very strong in the HRC concerning the situation of the Palestinian people, which is not surprising, but for example, the mixed reactions from the Muslim world to China's Uyghur policy indicates the political limits of this solidarity. Although there is a long way to go, based on the present research there is a fair chance that in the medium term, several OIC states will follow a much more pro-human-rights approach towards the international protection and the promotion of human rights, provided that the misuse of Islamic thought can be prevented.

4. Conclusion

Based on the main findings of this research, - contained in Chapter 9 - we can safely state that the HRC did not become a platform for the clash of civilizations. It does not mean, however, that there are not issues that are sharply dividing the HRC membership and or that there are easy solutions to overcome these debates. Most of them are not civilizational issues but related to the existing economic, social, and political problems of the Global South, which are misused by several HRC member states to escalate tensions between the North and the South. If we look at these sensitive human rights

issues, like country situations, or the question of civil society space, or the prevention of reprisals against those who are cooperating with the UN in the field of human rights, we find that the division lines are not among civilizations. Instead, they are between those countries that consider the protection and promotion of human rights worldwide as an important political aim and those that are interested in the weakening of the international human rights monitoring system, making their human rights abusing policy sustainable, without any serious international consequences. Yet all of the main cultures and civilizations can be reconciled with the accepted international human rights standards and therefore most of the references to cultural particularities only serve the political purposes of the elite to justify their poor human rights records.

The answer to the question whether the HRC has become a platform for cross-regional cooperation, is much more positive and affirmative now than it was a few decades ago. Despite all temporal fallbacks, the development of international human rights standards is unstoppable. In parallel, the level of democratization is increasing at a global scale and consequently, the scope of acceptable traditions is also in a constant state of change. As Steven Pinker brilliantly demonstrated, our common civilization has achieved incredible progress in all aspects of our human wellbeing, but we still tend to focus on the negative developments in our world and neglect the remarkable achievements that mankind can show.

5. Publications on the topic of the thesis

In English

- **The development of human rights diplomacy since the establishment of the United Nations. More actors, more efficiency?** Hungarian Yearbook of International Law and European Law 2020 (8) 1, pp. 218-237.

- **External Human Rights Diplomacy of the European Union: Has the EU Become a Decisive Human Rights Actor in Multilateral Fora?** European Human Rights Law Review, 2020 Issue 1, pp. 49-66

- **Implementing universal human rights standards in and by Sub-Saharan African States in the shade of local traditions**. Human Rights Quarterly, 2020. Vol. 42 pp. 217-253

- **The Protection of National and Ethnic Minorities by and within the European Union**, European Human Rights Law Review, 2019 Issue 5, pp. 502-511

- **Thoughts on Universalism versus Cultural Relativism, with special attention to Women's Rights,** Pécs Journal of International and European Law 2018/1 pp. 6-25

- **The Potential Role of Small States and their „Niche Diplomacy" at the UN and in the Field of Human Rights, with Special Attention to Montenegro,** Pécs Journal of International and European Law 2017/1, pp. 58-68

In Hungarian

- **Az ENSZ Emberi Jogok Bizottságától az Emberi Jogi Tanácsig vezető út, avagy az emberi jogok nemzetközi védelmének rövid története a Második Világháborút követően.** In Csapó Zsuzsanna, (szerk.) Jubileumi tanulmánykötet az 1966. Évi emberi jogi egyezségokmányok elfogadásának 50. évfordulójára. (2019) Dialóg Campus Wolters Kluwer, pp.165-180

- **Az ENSZ Emberi Jogi Tanácsa - vágyak és realitások**, Fundamentum, 2007/1, pp. 87-97

- **Az ENSZ emberi jogi rendszerének átalakítása az Emberi Jogi Tanács megalakulásának fényében: reform vagy visszalépés?**) Acta Humana 3-4/2006 pp 120-149 (Forgó Ágnessel társszerzőségben)

- **Az ENSZ Emberi Jogok Bizottságának 61. ülésszaka** Acta Humana, 4/2005, pp. 94-117

- **Az ENSZ Emberi Jogok Bizottságának 60. ülésszaka** Acta Humana, 4/2004, pp. 89-117

- **Az ENSZ Emberi Jogok Bizottságának 59. ülésszaka** Acta Humana, 4/2003, pp. 79-104

- **Az ENSZ Emberi Jogok Bizottságának 58. ülésszaka** Acta Humana, 2002 No.49, pp. 33-62

- **Az emberi jogok kérdése az Európai Unióban** Acta Humana, 2002 No. 48, pp. 46-67