

FROM NEOLIBERAL TO VALUES-BASED FOREIGN AND TRADE POLICY – OPPORTUNITY OR THREAT FOR INTERNATIONAL POLITICS?

„All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.“

Vienna Declaration and Programme of Action (§ 5), World Conference on Human Rights, Vienna 1993

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INTRODUCTION

An increasing number of commentators from across both academia and the media have noted the end of neoliberal globalisation, that is to say, the economic model that has prevailed since the 1990s and that has been geared towards the unlimited expansion of trade and capital movements beyond national borders (cf. Horn 2022; Rodrik 2022). Against the background of increasing rivalry between the USA and China and the war in Ukraine, there have even been references to a new era of deglobalisation and a renaissance of geopolitics (Feroz 2022).

Unsurprisingly, China and Russia are held primarily responsible for this. In their irresponsible quest for great power, these authoritarian states are prepared to abuse the privileges granted to them by the liberal trade regime and use their increasing economic power for objectionable political purposes. As a result, the liberal West must now rethink its foreign economic relations strategy and its commitment to open markets.

In the area of foreign policy in general and trade policy in particular, leading representatives in the USA, such as US Treasury Secretary Janet Yellen (Yellen 2022), and in the European Union (EU), particularly German Foreign Minister Annalena Baerbock (tagesschau.de 2021), are therefore pushing to adopt a „values-based“ policy for the future. This approach demands both stronger political alliances and trade cooperation with „friendly“ states, namely liberal democracies and mar-

ket economies, as well as reduced trade links with and, in particular, reduced import dependencies on states whose political and economic constitutions differ from those in the liberal West. The group of „friends“ consists primarily of liberal-democratic states with a market economy.

With the support of generously funded programmes, the USA, in particular, is pushing for the relocation or rebuilding of production in the USA for sectors classified as strategically important, including high-tech products, such as microchips, that are central to the USA's technological leadership (The White House 2021). Currently, about 40 % of global microchip production takes place in Taiwan, which is under threat from China. These measures are intended to reduce dependence on a few, mostly Southeast Asian producers and to make it more difficult for strategic rivals like China to gain access to high technologies. This policy is complemented by pressure on US companies towards „ally-shoring“, i.e. increased productive linkages and cooperation with political allies (Dezenski/Austin 2021).

The political shift towards a trade policy that is explicitly subordinated to foreign and security policy goals against the backdrop of escalating geopolitical rivalries has far-reaching economic and political consequences, which merit thorough discussion and analysis.

This article focuses, therefore, on the opportunities and risks presented by such a value-based trade policy and, indeed, on the question of which values such a policy

should reasonably be based on. This is particularly important in seeking to gain the broadest possible acceptance within an international order, which, on the one hand, is increasingly configured as multipolar while at the same time demanding constructive cooperation in light of the dramatically escalating climate crisis and other existential threats of the 21st century.

Section 2, below, begins by exploring the underlying causes and motivations for this turn towards values-based politics. It argues that the decline of neoliberal globalisation is due less to global competition with China and rather more to the social and political dislocations produced by this paradigm in the major centres of capitalism themselves, especially in the USA. The increased recourse to liberal democratic values in shaping international relations, therefore, follows economic and political interests at least as much as it does the political commitment to certain values. Section 3 shows that an opaque coalescence of interests and values has historically led to questionable political results, especially on the part of the liberal hegemonic power, the USA, often to the detriment of democratic values and human rights. In addition, there is no basis in international law for exporting democracy and market economies. Section 4, therefore, argues that codified human rights are the only universally recognised basis of a values-based international policy. Concluding, section 5 ultimately argues that the central agenda of a values-based foreign and trade policy should be the promotion of human rights. At the same time, a values-based approach, on account of the manifold global interdependencies, leads time and time again to dilemmas, a bitter lesson most recently learned by EU policymakers with regard to the energy supply crisis resulting from the war in Ukraine. In light of pressing global crises, values-based approaches must not be allowed to bring about a rejection of multilateralism. On the contrary, it is precisely a human rights-based foreign and trade policy which needs to take the initiative for a solidaristic multilateralism of the 21st century.

CAUSES FOR THE FAILURE OF THE NEOLIBERAL GLOBAL ECONOMIC ORDER

Even if criticism of China and Russia is from a normative point of view justified, it falls short of fully explaining this geopolitical shift. The structural causes go deeper and have to do with the social distortions that

have been brought about by more than thirty years of „hyper-globalisation“ (Rodrik 2011) at the global level, but above all in the hegemonic power of the USA itself. While increasing levels of free trade may yield efficiency gains, these gains diminish as the degree of liberalisation increases relative to the associated negative distributional effects between rich and poor. Sharp increases in social and regional inequalities in the USA, as well as in similar forms in many other OECD countries, together with the inability or reluctance of democratic governments to make socio-political corrections, have led to a staggering increase in discontent among the general population (Raza 2018). The political consequence of this was not only the rise of right-wing populist forces but a general shift to the right of the political mainstream. Economic nationalist positions have gained broad acceptance and are being adopted ever-increasingly in the programmes of politically centrist forces. This is especially true of the USA, where the core of the Trump administration's policies, previously branded as reactionary-populist, have not only been adopted more or less unchanged by the Biden administration but are being carried forward through the new initiatives described above.

Ultimately, these changes also account for the crisis facing the multilateral trade order, with the World Trade Organisation (WTO) at its head. It was not the traditional scepticism of many countries of the Global South towards the WTO that led to the crisis becoming so acute, but rather its disavowal by the USA. The Trump administration's refusal to appoint new judges to fill vacant positions in the WTO's central dispute settlement mechanism is the culmination of increasingly poor relations. Marginalisation of the WTO has since continued under the Biden administration.

The last two years of the COVID-19 pandemic have finally awoken the US political establishment to the vulnerabilities of the US economy in light of global value chains, as well as to the threats posed by China, which over the last three decades, has succeeded in establishing itself as an economic and technological rival. Meanwhile, expectations that China's admission to the WTO in 2001 would transition it towards a liberal market economy based on democratic principles have failed to come to fruition. On the contrary, through strategic programmes such as the Belt and Road Initiative, the Chinese government is propagating, both domestically and internationally, its authoritarian-state capitalist model as

an alternative to liberal-democratic Western capitalism with the aim of establishing its own sphere of influence, especially in Asia, but also in parts of Africa and Latin America (cf. for example Lacher 2016; Hoering 2018).

This poses a serious threat to the USA of losing its political and economic supremacy within the world order, together with all the advantages that this entails. This includes, above all, the dominance of US businesses operating in the global financial system, with the US dollar as the global reserve currency and the „exorbitant privilege“ of the USA to borrow abroad in its own currency (cf. Eichengreen 2012).

The „unipolar moment“ (Krauthammer 1990) of unchallenged dominance in the world order that emerged with the collapse of the Soviet Union in 1991 led to an „imperial overstretch“ (Kennedy 1989), due in large part to expensive (and unlawful) military campaigns (Iraq, Afghanistan) and to the economic and social upheavals of the 2007/08 financial crisis. In terms of domestic politics, the USA is beset by extreme polarisation, culminating in the storming of the Capitol on 6 January 2021, in what can only be described as an attempted coup. In view of an extremely slim majority in Congress coupled with a disappointing economic and socio-political performance so far, the Biden administration is under enormous pressure to deliver. Largely blocked on the domestic front, Biden is trying to curry favour with voters by pursuing an aggressively offensive foreign (economic) policy.

Efforts to reorient US policy geopolitically are underpinned by the US project to create a democratic community of values that will unite liberal democracies in their efforts to curb the growing influence of authoritarian regimes. At the first „Summit for Democracy“, held on December 9-10, 2021, the USA gathered 111 countries with the aim of establishing such an alliance. While China, Russia, Turkey and Hungary were not invited to participate, countries such as Angola, Brazil, India and the Philippines, whose political systems or current governments have been described by independent observers as either unfree and/or responsible for serious human rights violations, were asked to join.¹

It is this combination of domestic political imbroglio, as described above, and the threats facing its position as a global hegemonic power that has led US policy to now turn to a „values-based“ foreign and trade policy.

LIBERAL-DEMOCRATIC VALUES AS THE FOUNDATION OF A VALUES-BASED TRADE POLICY?

EU foreign and trade policy is also moving towards geopolitical realignment, albeit at a much slower pace. While the Trump administration had already sparked irritation by calling into question NATO and the WTO, and the Corona pandemic cast doubt on the security of supply in the face of vulnerable value chains in the EU, the war in Ukraine, in particular, has led to an acceleration of geopolitical thinking also in the EU. At the same time, there remains a certain commitment on the part of the EU towards making an active contribution to advancing human rights and addressing multiple global crisis dynamics (the climate crisis, in particular). Current policy dossiers on, for example, the planned EU supply chain law (EC 2022b), the planned restrictions on the import of products manufactured with forced labour (EC 2022a), or the planned ban on the import of goods associated with deforestation (EC 2021) are of particular note here. The human rights clauses and sustainability provisions now contained in the bilateral trade agreements and the ongoing efforts to subject them to a binding sanctions mechanism should likewise be noted.

However, the expansion of such a values-based trade policy meets with scepticism in many countries of the Global South. The fear is of a policy where protectionist economic policy is pursued under the pretence of moral stewardship. This is not an accusation that should be casually dismissed but rather one to be taken seriously. Refuting it requires, primarily, two approaches: on the one hand, the West needs to define concretely what values are at stake. By all appearances, the current discussion is not only centred on human rights, but increasingly also on so-called „Western values“ such as democracy and, at least implicitly, on the liberal-capitalist market economy as its quasi-natural economic counterpart. On the other hand, there is a need for a generally recognised basis on which compliance with and implementation of the aforementioned values can be demanded irrespective of the interests of individual powerful states. Indeed, the EU has repeatedly emphasised its commitment to a rules-based international order. Despite well-known shortcomings, only international law, including codified human rights law, can ultimately provide the foundation for this.

What, then, does this mean for democracy and the market economy as values? Regardless of whether one subscribes to the *bon mot* attributed to Winston Churchill about democracy being the best of all bad forms of government, international law does not contain any norm that would require any state to implement a democratic order. On the contrary, the principles of sovereign equality and the right of peoples to self-determination leave it to the collective will of each people to decide freely and without external interference upon its form of government. The same applies to the question of economic organisation.² It is incumbent on each sovereign state to determine the most appropriate way to organise its economy. There are good historical and political arguments for the restraint embodied in these principles of international law. All too often in history, powerful states have exerted influence on the internal constitution of other societies, grossly disregarding human rights in the process. This was perhaps most blatant in the age of colonialism, where crude underlying material interests were often legitimised by the colonial powers, who would emphasise the associated civilising mission towards the local population (cf. Paech/Stuby 1994, esp. Chapter V).

In view of this practice by Western powers, which today is rightly regarded as racist and imperialist, the adoption of the UN Charter in 1945 represented a colossal, historic step forward, as it confirmed the right to national sovereignty and self-determination of the new states of the global South, which had, at great sacrifice, been liberated from the colonial yoke into nation-state independence.³

Ultimately, restraint is also warranted in view of a post-1945 history replete with examples of interventions, of a more or less brutal nature, in the internal affairs of sovereign states and societies. It was the USA, above all, that was actively involved in the overthrow of democratically legitimate governments during the Cold War for geopolitical reasons (e.g. Guatemala in 1954, Chile in 1973) or that openly supported authoritarian systems (e.g. Mobutu in the Congo from 1961).

HUMAN RIGHTS AS THE FOUNDATION OF A VALUES-BASED TRADE POLICY

Together with the Universal Declaration of Human Rights, the two UN Covenants (International Covenant on Civil

and Political Rights, International Covenant on Economic, Social and Cultural Rights) form the internationally recognised foundation for the protection of human rights. Ratified by more than 170 states, the covenants commit the signatory states to granting these fundamental rights to their citizens.^{4,5} Even if this legal claim exists only in respect of the country's own citizens, with no means of international enforcement, the Covenants form the multilateral framework on the basis of which a generally inclusive political process for the cooperative further development of human rights has developed over the past 50 years. The same can be said about the social standards developed within the framework of the International Labour Organization (ILO). Within this tripartite international forum, a collaborative approach to defining minimum standards in labour and social law issues has also emerged.⁶ Its core consists of eight conventions, the so-called ILO core labour standards, which have been ratified in their entirety by almost 140 countries. They regulate four central issues, namely (i) freedom of association and the right to collective bargaining; (ii) the elimination of forced labour; (iii) the abolition of child labour; and (iv) the prohibition of discrimination in respect of employment and occupation.⁷ Aside from certain environmental protection obligations that derive directly from human rights (e.g. the right to health), a body of law has also emerged in recent decades in the field of international environmental policy with over 250 multilateral environmental agreements that impose upon the community of states an array of obligations for the protection of ecosystems.

What is particularly noteworthy when considering the human rights discussion is the way in which, for decades now, broad sections of civil society in both the Global North and the Global South have been working together to strengthen human rights, workers' rights and environmental rights. Further development and effective implementation of human rights are driven from the bottom-up by the grassroots of society. Despite their many shortcomings and the fact that progress has been very slow, it is evident that human rights norms and their associated processes do, overall, enjoy widespread legitimacy in the international community. There are international consultation processes and monitoring mechanisms in place, governments can be taken to task for rights violations, and we can observe international and domestic courts applying human rights and developing relevant jurisprudence.

This leads, in turn, to further developments. Thus, in light of the recent legal policy discussion on extra-territorial

state obligations, there is an ever-consolidating legal basis for enabling governments to require individuals or legal entities at home to ensure respect for human rights in their business activities abroad through the exercise of certain due diligence obligations (cf. Krajewski 2020; Krebs 2020). This follows a controversial political process dating back to the 1970s, which for a long time was limited to using soft law instruments to encourage companies to comply with due diligence obligations with regard to the observance of minimum human rights standards. For example, the well-known OECD Guidelines for Multinational Enterprises, dating back to 1976, require member states to encourage companies established on their territory to comply with certain minimum standards in their international business activities. Companies are not, however, subject to any legal obligation in this regard, the basic principle being to encourage companies to fulfil their due diligence obligations voluntarily, at best supported by incentives or monitoring mechanisms. Given these identified shortcomings, the Guidelines were, slowly but gradually, developed further. Special instruments were introduced over time for sectors such as the extractive industry, where human rights violations are particularly rife. The corporate sector itself reacted in parallel to the emergence of international soft law instruments, and countless corporate social responsibility initiatives have set out to promote self-commitment to minimum human rights, social and environmental standards in business practices. This having been said, the successes of two decades of voluntary business-based initiatives have remained somewhat mixed (Linder/Steinkellner 2012).

The United Nations finally responded to civil society dissatisfaction by initiating the development of the UN Guiding Principles on Business and Human Rights (United Nations 2011). These were adopted by the UN Human Rights Council in 2011. They constitute a global instrument for preventing and remedying human rights violations in business contexts. Although the Guiding Principles are based on existing human rights obligations and amount, in practice, to little more than recommendations, they represent an important step forward in that they make clear that businesses are indeed subject to human rights due diligence obligations spanning their international supply chains. Their domestic implementation, for example, in the EU, has also provided an important impetus to the discussion on business and human rights over the last ten years. In view of serious and persistent human rights violations, sometimes with catastrophic consequences for employees and the environment, es-

pecially in the textile and clothing industry (e.g. Ali Enterprises 2012; Rana Plaza 2013) and in the mining sector (e.g. Brumadinho Dam Break 2019), the Guiding Principles marked an important milestone for the drafting of binding supply chain laws in various countries. These include France, Germany and the UK. Discussions are also ongoing with regard to a draft EU supply chain law. The fundamental aim of this process has been to impose human rights protection and due diligence obligations not only on states but also on businesses operating transnationally. These businesses – typically so-called lead firms – occupy an extremely powerful position in international economic relations and, therefore, the imposition of such obligations marks a significant step forward, even if there is still a considerable way to go before the obligations themselves can be implemented effectively.

Similar state protection and due diligence obligations can also be cited as justification for trade policy measures, such as import restrictions on goods produced using child labour or forced labour or on those responsible for harmful environmental impacts. It is crucial here that human rights or environmental goals are communicated transparently, that appropriate measures are taken to effectively achieve the goals, and that appropriate solutions are found for any negative impacts on third parties, especially on the countries of the Global South, in dialogue with those affected.

CONCLUSION: VALUES-BASED TRADE POLICY NEEDS A SENSE OF PROPORTION AND MUST NOT REPLACE COMMITMENT TO SOLIDARISTIC MULTILATERALISM

It is no coincidence that the call for a values-based trade policy is once more gaining momentum in the USA or that it is finding resonance in the EU. Behind this are tangible political and economic interests in the face of a changing international constellation. In its foreign policy practice, however, it is precisely the West, which regards itself as morally superior, that has long trampled upon the principles of democracy and human rights. A values-based foreign and trade policy must therefore be based at its core on human rights, which are binding under international law. The Viennese human rights expert Manfred Nowak rightly points out that these currently represent the only universally recognised value system. As can be seen in the opening quotation of this article from the 1993 Vienna Declaration,

states have committed themselves to deploy the necessary resources and implement the appropriate measures to achieve the realisation of political as well as social, economic and cultural human rights. (Nowak 2015: 170).

The system of human rights does not, of course, provide a basis for enforcing Western-model democracy and liberal market economics, but it certainly obliges even authoritarian states to implement human rights on their territory. A values-based trade policy that does not take this central differentiation into account risks further deepening the political divide with the countries of the Global South. In an increasingly multipolar international order, however, the recognition of different political forms of government and, above all, of diverse economic policy concepts is an important condition for addressing, cooperatively, the existential crises of the 21st century.

The energy supply crisis in the EU that emerged as a result of the war in Ukraine is also a textbook example of how a values-based foreign and trade policy can very quickly find itself facing dilemmas, for instance, between values-based policy and security of supply, for which there are only bad solutions, at least in the short term. The substitution of Russian natural gas with that from authoritarian Gulf states is a notable case in point. The EU will not be able to free itself from such import dependencies – whether for gas, minerals, rare earths, or others – for the foreseeable future. Of course, this does not necessarily mean a departure from a human rights-based trade policy; indeed, there are opportunities, particularly, for the further development of human rights-based due diligence obligations for companies operating in such sectors.

Ultimately, the single most serious mistake for a values-based foreign and trade policy would be to turn away from multilateral cooperation. In view of the worsening economic, social and above all ecological crisis situations – which cannot be solved by any one country alone nor any club of democratically like-minded market economies – the current need for stronger commitment to solidaristic multilateralism cannot be understated. The EU's existing commitment to the rules-based global economic order clearly falls short in this respect. It essentially remains committed to a status quo of global economic governance mechanisms, which resulted from the „new constitutionalism“ (Gill 1998) shaped over decades by neoliberalism, but which is no longer appropriate to the new realities. However, it is not in the persistence of essentially failing organisations such

as the WTO that we see a commitment to multilateralism, but rather in the recognition of inadequacies of the existing rules and regulations, criticism of which has been voiced, for years, from many different sides (see, for example, Rodrik 2011; Stiglitz 2002). In this respect, political will is needed to negotiate an international economic order for the 21st century, a „New Bretton Woods“ along the lines recently outlined by Kevin Gallagher and Richard Kozul-Wright (2022). This means the withdrawal or weakening of international rules in some areas (such as investment protection, protection of intellectual property rights, capital account liberalisation, and liberalised financial markets) and the establishment and expansion of global public goods, together with heightened cooperation in other areas (e.g. in macroeconomic stabilisation, corporate taxation, control of transnational corporations and market concentration, migration policy, health policy, or environmental policy). Policy space for effective state action must be enhanced, and burdens and responsibilities must be shared between states in a way that takes into account economic capacities and historical responsibilities. Existing international organisations and those to be created for the implementation of new tasks must be provided with additional resources and capacities, and, at the same time, political participation and decision-making mechanisms in these organisations should be made more balanced and transparent.

We face an ever-increasing number of crises, whether stemming from extreme weather events or political conflicts, which, in turn, disproportionately affect the Global South. This means that development cooperation and humanitarian aid will need to play a much more important role in the future. Investing in a significant upgrading of capacities and resources here should not only demonstrate a credible value orientation of EU policy but also correspond to the intrinsic interests of liberal democracies in social and political stability at the international level.

Even if the neoliberal form of globalisation is likely coming to an end, bringing with it a partial regionalisation of economic activity, we should not accept deglobalisation in the sense of a return to primarily national politics. On the contrary, it is essential that international cooperation be stepped up to deal with historically unprecedented global crises. A European foreign and trade policy that genuinely takes human rights seriously will have to show a much greater commitment to such solidaristic multilateralism in the 21st century.

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- 1 For more information, see https://de.wikipedia.org/wiki/Gipfel_f%C3%BCr_Demokratie (05.11.2022).
 - 2 The right of peoples to self-determination is one of the basic axioms of the United Nations Charter. It is mentioned in Articles 1, 2 and 55 and described as a basis of relations between states. A binding obligation to respect the right to self-determination emerges from the two United Nations human rights covenants. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights declare the right to self-determination to be binding on signatory states. Article 1 of both covenants states the same: „(1) All peoples have the right to self-determination. By virtue of this right they shall freely determine their political status and freely pursue their economic, social and cultural development“.
 - 3 It should be noted at this point that the practical application of the right to self-determination also poses serious problems in some cases, especially with regard to the question of the right of secession of peoples from existing states (or from a federation of states), and with regard to the often inadequately guaranteed protection of minorities (cf. critically Fisch 2010).
 - 4 For the original text, see <http://www.un-documents.net/a3r217a.htm> (03.11.2022).
 - 5 For the original texts, see <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>, as well as <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (03.11.2022).
 - 6 For the original texts, see <https://www.ilo.org/berlin/arbeits-und-standards/kernarbeitsnormen/lang--de/index.htm> (03.11.2022).
 - 7 While the EU states have ratified all eight core labour standards, the USA is among those lagging behind with only two ratifications (Convention No. 105 on forced labour, Convention No. 182 on child labour).