Democratic Emerging Powers and the International Human Rights System

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- Democratic Emerging Powers (DEPs) face complex challenges in addressing human rights issues in multilateral institutions, such as managing domestic political pressures; maintaining support among developing countries suspicious of new conceptions of state sovereignty; and ensuring that their national interests are shielded from potentially intrusive monitoring regimes.

- The UN Human Rights Council, although designed to promote member-state compliance with their international obligations, has proven a difficult context for DEP action in support of efforts to sanction systemic human rights violations. However, individual DEPs have used the HRC as a forum for advancing issues of particular significance.

- While the UN Security Council might seem the most challenging context for DEP engagement on human rights, because the Council is not seen as a »natural« arena for addressing such concerns, the desire of some DEPs to position themselves as future permanent members of a reformed Council has led their diplomats to approach human rights in a more constructive way than many might have predicted.

- As the role of DEPs as development assistance providers evolves, including through the forms of engagement that fall under the wider rubric of »South-South Development Cooperation«, their governments will face increasing pressures – from both domestic and international constituencies – to address human rights issues in the countries in which they provide assistance.

Dialogue on Globalization

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1. Introduction

In recent years, several of the world's emerging powers have begun to exercise increasing influence within institutions of global governance. These are countries whose strategic importance and considerable size have combined with enhanced economic clout to magnify their voices. The expanding role of the »BRICS« countries – Brazil, Russia, India, China, and South Africa – in international economic forums – including the IMF, the WTO and the G20 – has been much commented upon. Receiving far less analysis, and therefore much less well understood, is the part that these and other emerging powers play within international institutions and processes that address human rights, whether directly or indirectly.

One subset of these countries is of particular importance: large developing-country democracies with expanding and diversifying economies, influence within their regions (and in the global South more broadly) and aspirations to greater participation in global politics in general, and multilateral institutions in particular. For the purposes of this paper, these countries will be referred to as Democratic Emerging Powers (DEPs).

It is reasonable to hope that DEPs will use their presence in multilateral bodies to advocate forcefully for human rights. Like all countries seeking prestige on the international stage, India, Brazil and South Africa, each of which has developed innovative approaches to expanding and fulfilling rights domestically, have an incentive to boast of their achievements in this area. They might thus be inclined to use participation in multilateral institutions to argue for strengthening the international human rights system.

Indeed, a shared commitment to democratic development has led these three countries to form the IBSA (India, Brazil, South Africa) partnership forum. The IBSA countries are a kind of subcommittee of the democracies among the BRICS. Together, they represent the developing world's three major regions: Asia, Sub-Saharan Africa and Latin America. Each has a distinguished record of participation in international human rights debates, dating back to the UN's founding and to the drafting of the Universal Declaration of Human Rights.

The larger DEP category spreads well beyond the IBSA countries, of course. For the purpose of comparative analysis, one might also consider countries such as Turkey, Indonesia, Mexico, Nigeria, South Korea and Argentina, all of which have recently served on the UN Security Council. Adding such countries to the analytical frame also adds new regions and subregions: East and Southeast Asia, the Middle East/North Africa, the Sahel and the Southern Cone of South America. Turkey and Nigeria, it should be noted, fall into Freedom House's »partly free« category (making them semi-democracies), so the size of the DEP category of states depends on how stringent a definition one adheres to.

Few studies have systematically analyzed the nature and extent of DEP engagement on human rights issues in multilateral settings. Those that do have been relatively narrow in scope, focusing on voting records within one institution, for instance (Piccone 2001: 139–152). Most studies also tend to be preoccupied with deliberations on country-specific situations (for example, Syria, Iran, DRC) rather than with the evolution of new norms. This paper, which summarizes the findings of an ongoing research project, examines the role of DEPs across a broader canvas – that is, in three domains in which human rights issues are addressed: (1) the UN Human Rights Council (including its special procedures machinery); (2) the UN Security Council (where human rights enter the agenda through the assessment of country-specific situations and via »thematic« items such as Children and Armed Conflict); and (3) the international development community (mainly through the foreign assistance programs operated by each DEP, but also through multilateral agenda-setting forums).

To a significant degree, the inconsistencies observed in DEP behavior in multilateral settings reflect three inherent tensions between the ideal of human rights and the realities of international politics. The first is the perennial tradeoffs that must be negotiated between the sovereignty of states over their internal affairs and the idea that there exist individual rights no state can deny its citizens. The second concerns disagreements over the priority to be given to certain categories of rights – particularly regarding civil and political rights, on one hand, and economic and social rights, on the other – a divergence that is especially salient in debates between developing and developed countries. Thirdly, there are issues concerning the relevance of particular institutional settings for

protecting human rights, with the UN Security Council, for instance, traditionally regarded as an inappropriate forum for human rights issues, even as the link between protecting rights and international peacebuilding has continued to increase.

This paper examines DEP behavior along three dimensions of international human rights engagement:

1. the formulation and adoption of norms, including formal rules and informal understandings;

2. participation in and support for issue-specific institutional mechanisms that further elaborate normative frameworks; and

3. the application of norms to country- or context-specific crisis situations.

The paper's empirical focus will be the IBSA countries. Certain other DEPs – including some mentioned above – will be analyzed on an issue-by-issue basis where this may aid comparative reflection. However, we do not subject the positions, decisions and actions of these secondary cases to the same level of scrutiny.

2. The UN Human Rights Council

To obtain a balanced assessment of the HRC, it is necessary to examine the role of IBSA countries, and to a lesser extent other DEPs, with respect to both internally oriented and externally oriented dimensions of the institution's work. *Internally* oriented elements include each country's response to the Universal Periodic Review (UPR) process, a mechanism through which countries assess their own human rights performance. The UPR also provides an administrative procedure through which to take stock of each country's compliance with requests made by UN »special procedures« mandate-holders. *Externally* oriented elements include each country's responses to »emergency« situations in which gross human rights violations are brought before the HRC (or are sought to be placed on its agenda), as well as each country's signature initiative(s) to strengthen the UN human rights system, taken as a whole.

2.1 Background

The erstwhile UN Commission on Human Rights (CHR) was replaced in 2006 by the current HRC. Two features of the HRC must be noted. First, of the HRC's 47 members, Africa and Asia, with 13 seats each, constitute a majority. Latin America lost seats compared with the former Commission, as did both the Western and Eastern European groups.

Secondly, while the HRC is charged with responding to human rights emergencies, its mandate emphasizes the promotion rather than the protection of human rights. The General Assembly resolution establishing the Council calls for strategies of dialogue and cooperation to predominate. This is consistent with the stated priorities and demonstrated propensities of the IBSA countries, which remain reluctant to condemn other member states, particularly fellow southern states. The perception of the HRC as a primarily political, rather than legal, organ has profoundly influenced the approaches taken by the DEPs at (and around) the HRC.

India was a founding member of the former CHR. Its diplomats and experts played a key role in drafting the Universal Declaration of Human Rights (UDHR), although India has often been criticized by Pakistan and its allies for not fully extending the right to self-determination to the people of Kashmir.[1] Nevertheless, India's commitment to human rights is rooted in the provisions of its Constitution, adopted in 1950. India sees itself as playing an active and constructive role on all issues before the HRC.

Brazil, like India, was an important actor in the UN's early years, lending an air of inclusiveness to a European- and North American-dominated institution.[2] Both countries' representatives advocated strongly for the UN to work openly and vigorously to advance social justice. A prominent member of the Organization of American States, which developed its own human rights framework, Brazil was not hostile to the idea of subscribing to international commitments to promote and protect human rights, al-

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1. Islamabad claims that the people of Kashmir would vote overwhelmingly to merge with Pakistan if given the chance in a plebiscite that the UN Security Council (in Resolution 47, of 1948) called on India to hold.

2. India was not yet independent at the time of the UN's founding, but the United States pressed the United Kingdom hard to include an Indian delegation at the San Francisco conference.

though this was not interpreted as permitting outside actors to violate state sovereignty in the monitoring of human rights. During the 1960s, 1970s and early 1980s, Brazil experienced military coups and authoritarian governments, and was often under scrutiny at the CHR, including for the allegedly widespread use of torture. Like India, Brazil sees its constitution as a model for protecting rights. Unlike India, which has seen increasing inequality, Brazil's Gini Index fell from 0.59 in 1999, to 0.54 in 2009.[3] Brazil's government explicitly links its domestic rights agenda to its approach to global affairs: »The human rights perspective … is equally relevant beyond the nation's borders … [I]n a multi-polar world, human rights emerge as a fundamental pillar in the pursuit of lasting peace.«[4] Brazil has nevertheless seen recent protests emerge in opposition to what movement activists call corrupt and elite-biased governance.

South Africa, perhaps more than any other UN member state, benefited from the championing of human rights by the CHR, one of many institutional channels through which the international campaign to end *apartheid* was waged. Perhaps for this reason, the South African government is generally accepting of roles that regional and international human rights mechanisms play in complementing national efforts. Its officials see the practical enjoyment of human rights and fundamental freedoms as both a moral and a legal responsibility of the government. For instance, in 2009 South Africa »reaffirmed … its international obligations« and established a number of new departments, including a Department of Women, Children and People with Disabilities.[5]

2.2 The Universal Periodic Review Process

The Geneva-based human rights institutions, which include the secretariats for international conventions on human rights, comprise political as well as legal organs. The HRC is a political organ with a human rights mission, while the human rights treaty bodies are legal organs that cannot reasonably be expected to eschew all politics in the process of monitoring each state's compliance with the particular assortment of human rights conventions

whose provisions it has agreed to adhere to. The Office of the High Commissioner for Human Rights is an excellent example of a mixed entity, encompassing both legal and political dimensions. While contracting parties are expected to comply with their legal obligations when participating in UN organs – even political bodies – as well as when carrying out their treaty commitments, all governments nevertheless engage in political gymnastics, even those that claim a leadership role on human rights.

The Universal Periodic Review (UPR) process is, similarly, a hybrid institution. It is ostensibly promotional and inter-governmental, but this does not detract from the legal obligations to which governments have committed themselves through the resolutions that created the HRC, including the Council's authority to frame administrative rules to govern the operation of the UPR. The UPR provides an opportunity for governments to inform their peers of efforts to promote and protect human rights at home (including, where relevant, the results), and for other governments to offer their observations on these efforts – first in a Working Group of the HRC and then in the plenary. The UN Secretariat facilitates this process by consolidating recommendations provided by UN human rights entities and summarizing submissions made by the human rights institutions of countries that are undergoing review. NGOs participate by providing written materials relating to country performance, and are allotted time to make comments in the Council's plenary sessions. There are no binding consequences of this review process. But because each country's human rights performance will periodically be subjected to scrutiny by national and international actors, the UPR process provides governments an incentive to improve compliance with their international obligations.

All three IBSA countries have participated in both cycles of the UPR conducted thus far. The country reports under the second round of the UPR include the submissions of national human rights institutions in the case of India and South Africa; in the case of Brazil, which had yet to establish a human rights institution, inputs from other national institutions performed this function.

India, in its second UPR report, sought to identify various steps taken to realize fundamental rights, including enactment of the National Green Tribunal Act (2010), providing legal protection for the environment; the Right to Education Act (2010), recognizing the right of all chil-

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3. A/HRC/WG.6/13/BRA/1, paras. 5, 8.

4. National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution16/21: Brazil, UN doc A/HRC/WG.6/13/BRA/1 (7 March 2012), paras. 126–127.

5. A/HRC/WG.6/13/ZAF/1, paras. 2, 5.

dren to free education (and establishing the compulsory nature of education); and the Forest Rights Act (2006), protecting the rights of indigenous people; as well as establishing the National Commission for the Protection of Child Rights (2007). India stated that its judiciary had helped to ensure »that even if India has not signed or ratified any particular international instrument/protocol, cognizance of these is taken through its various judgments«. An Annex summarized judicial pronouncements that had advanced fundamental rights enumerated in India's Constitution.[6]

India's National Human Rights Commission (NHRC) reported to the HRC that no national action plan existed for human rights. There had been little progress in strengthening human rights education and few Indian states had prioritized education. The initially weak Prevention of Torture Bill (2010) had been strengthened through the work of a parliamentary committee. India's NHRC was concerned that little effort had been expended to amend the Special Marriage Act to ensure equal property rights over assets accumulated during marriage. The government continued to allow the NHRC to function independently, but the »State Human Rights Commissions are mostly moribund; and very few human rights courts have been set up«.[7] The NHRC added that disaggregated data were needed to understand patterns in crimes committed against women and children from the Scheduled Castes and Scheduled Tribes, violence (other than rape) against women, bonded labor, child labor, custodial violence, illegal detention, torture and other abuses. Further submissions recommended that India strengthen enforcement of existing legal prohibitions on discrimination and consider enacting comprehensive legislation prohibiting discrimination in employment, social security, housing, health care and education. The government was urged to accelerate efforts to remove obstacles faced by victims of discrimination when seeking redress through the courts. Police intimidation was said to play a role in deterring victims from filing cases.[8]

Brazil, in its second UPR report, said that it had demonstrated its commitment to protecting human rights by acceding to most international conventions. In 2009 the Convention on the Rights of Persons with Disabilities became the first international instrument enacted into domestic law with constitutional force. Achieving development with respect for human rights in a manner that ensures empowerment of individuals and groups was a priority for the government, as was reducing inequality and discrimination. Guided by these principles, Brazil claimed to have fulfilled the commitments it had undertaken before the UN and that it had met virtually all Millennium Development Goals before 2015. Moreover, the government had in recent years integrated social policies into economic growth strategies, fostering sustainable and inclusive development.

Domestic institutional reforms had also been undertaken following the first UPR cycle. The National Human Rights Program, created pursuant to the 1993 Vienna Declaration and Program of Action, was adapted to serve as a mechanism for ensuring that all recommendations of the UPR first cycle were addressed through government actions.[9] In 2010 an Inter-Ministerial Committee for Follow-Up and Monitoring of the Program had been established. In 2011, oversight of the program's execution was to be strengthened by widening participation in the committee.

In the absence of a national human rights institution in Brazil, several Brazilian civil society organizations (CSOs) made joint submissions. Amnesty International noted that legislation to create a national human rights commission had been pending since 1994, but that it »did not guarantee independence from the Executive«. The OHCHR report on civil society submissions on Brazil stated that »[s]everal organizations have discussed the impact of development projects … on public policy and the human rights situation«. One submission noted »that the budget for human rights has been reduced by 30 per cent compared with 2010«, to the detriment of Brazil's Program to Combat Sexual Violence, which led to increases in violence against children in northern parts of the country.[10]

South Africa stated in its second UPR report that its constitution was predicated on the principles of human dignity, the achievement of equality (including non-racialism and non-sexism) and the advancement of human rights

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6. A/HRC/WG.6/13/IND/1, paras. 9-11.

7. NHRC-India Submission to the UN Human Rights Council for India's Second Universal Periodic Review.

8. A/HRC/WG.6/13/IND/2, paras. 16, 35.

9. A/HRC/WG.6/13/BRA/1, paras. 5-11.

10. A/HRC/WG.6/13/BRA/3, paras. 6, 10.

and freedoms. The attainment of social cohesion was one of South Africa's key priorities. The South African Constitution had advanced recognition of the idea that economic, social and cultural rights were justiciable. The South African judiciary continued to discharge its constitutional mandate through rulings on landmark cases that have advanced the »progressive realization, in a balanced manner, of all human rights whose full enjoyment is subject to the availability of resources«.[11]

The submission of the South African Human Rights Commission (SAHRC) stated that, despite previous UPR recommendations, xenophobia remained a significant challenge and that measures taken to address it had failed. The SAHRC reported an increase in hate crimes perpetrated on grounds of race, nationality and sexual orientation, highlighting the urgent need to address hate crimes through legislation and to raise public awareness of these crimes. Practices that had violated the rights of women – concerning marriage, sexual violence and other matters – had received insufficient attention. The SAHRC highlighted the issue of widespread poverty, noting that maternal mortality was increasing, poverty remained a significant barrier to education and comprehensive monitoring to track progress and flag areas of concern was needed.[12]

2.3 Special Procedures

The HRC's Special Procedures are arguably the strongest protection actors among the Geneva-based bodies (Ramcharan 2010). When the HRC was founded, some member states sought – unsuccessfully – to abolish or curtail the special procedures system inherited from the CHR. In general, special procedures mandate-holders – essentially, human rights fact-finders – continue to function vibrantly.

All three IBSA countries cooperate in principle with the special procedures overseen by the HRC. India has extended a standing invitation to thematic human rights mandate-holders to visit the country. During the period covered by India's second UPR (2008–2012), it received visits by the special rapporteurs on health, food, violence against women, freedom of religion, toxic waste, human

rights defenders, arbitrary and summary executions, and the sale of children. It also agreed in principle to future visits from mandate-holders on adequate housing and arbitrary detention. It had yet to respond to requests for visits by special rapporteurs on torture (requested in 2010), racism (request renewed in 2008), indigenous people (requested in 2008), water and sanitation (requested in 2009), trafficking (requested in 2010), disappearances (request renewed in 2011), and the independence of judges and lawyers (requested in 2011).[13] During 2008–2012, India received 98 communications about human rights concerns from special procedures and replied to 76. In 2012, the Working Group on Disappearances noted that, since its establishment, it had transmitted 433 cases to India, and 68 cases had been clarified on the basis of information provided by the government. The government did not respond to a request for follow-up information on freedom of religion.

Brazil has extended a standing invitation to thematic special procedures mandate-holders to visit the country. During the four years covered by Brazil's second report under the UPR process, mandate-holders did not make any requests to visit the country. During the same period, however, they sent a combined total of 35 communications on concerns stemming from alleged violations. The Brazilian government replied to eight of these.[14]

South Africa has extended a standing invitation to special procedures mandate-holders to visit the country. During the four years covered by its second UPR report it received visits from the Working Group on Mercenaries, the special rapporteur on the human rights of migrants and the special rapporteur on the right to food. During the same period special procedures sent nine communications on issues of concern. The South African government replied to two of these.[15]

2.4 Responding to Human Rights Emergencies

Turning to externally oriented dimensions of the HRC's work, all three IBSA countries have been criticized by domestic and international human rights NGOs for not

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11. A/HRC/WG.6/13/ZAF/1, paras. 8, 10, 21, 22.

12. A/HRC/WG.6/13/ZAF 3, paras. 4, 7, 9-14.

13. A/HRC/WG.6/13/IND/2, para. 11.

14. A/HRC/WG.6/13/BRA/2, para. 7.

15. A/HRC/WG.6/13/ZAF/2, para. 1.

adopting stronger positions within the Council on cases of gross human rights abuses by other countries.

In June 2011, following India's re-election to the HRC, Human Rights Watch called on India's prime minister to provide leadership in the Council on human rights emergencies. In 2012, India demonstrated an unusual willingness to do so. After initially resisting, India eventually supported a resolution expressing concern about Sri Lanka's treatment of the country's Tamil minority during the concluding stages of the country's civil war, as well as certain post-war actions by the Sri Lankan government. This position was seen to have been taken largely under pressure from the coalition government's regional allies from the south Indian state of Tamil Nadu, on which the prime minister relied for his government's parliamentary majority.

Similarly, on the occasion of President Lula's visit to the HRC in 2009, Human Rights Watch issued a strongly worded statement, entitled »Brazil: Support Victims, Not Abusers«.[16] The communiqué charged Brazil with consistently using its vote in the HRC to protect countries with appalling human rights records. The Brazilian human rights NGO Conectas has also been critical of Brazil's record in the HRC on human rights abuses in specific countries. Brazil's performance had »been marked by ambiguities … [and] the recent cases of North Korea and Sri Lanka exemplify this paradox«. In a report on Brazil's HRC activities during 2011, however, Human Rights Watch noted improvements in the quality of Brazil's participation on the Council.

South Africa has been somewhat guarded in its response to human rights emergencies. After dismantling apartheid in 1994, South Africa provided inspiring leadership on the CHR. South Africa was later seen as having backed away from this role, increasingly preoccupied with what it saw as the disproportionately large share of African countries targeted for UN human rights inquiries. Human Rights Watch's 2011 report on HRC activities found South Africa's participation lacking. Another commentary noted that »[f]or a country that set out under Nelson Mandela to place freedom, democracy and human rights

at the center of its foreign policy, South Africa has championed some unlikely causes«,[17] particularly Zimbabwe.

By contrast, DEPs such as South Korea, Mexico and Turkey have shown themselves to be more forthright when it comes to taking action in the HRC against gross human rights violators. South Korea received positive comments in the 2011 Human Rights Watch report on this issue. Mexico has been generally supportive of action to deal with human rights emergencies. Turkey played a leadership role in favor of democracy, human rights, and the rule of law during the »Arab Spring«, particularly with regard to Syria.

2.5 Initiatives on the HRC

The HRC is also a forum in which norm development takes place, providing opportunities for member states to shape the emerging human rights agenda. The IBSA countries have all championed the right to development – initially in the CHR, and later in the HRC. An Indian national was the HRC's independent expert on this topic. All three countries have also sought in various ways to incorporate the idea of the right to development in their domestic legal frameworks. The Indian Human Rights Commission considers the right to development an inherent part of the Indian constitution's recognition of the rights to human dignity and to life. Article 10 of South Africa's Bill of Rights recognizes the right of citizens to have their dignity respected, while Article 11 recognizes the right to life.

Brazil has taken important initiatives on the HRC, including a resolution that members of the Council and UN members as a whole should undertake voluntary goals for establishing and implementing their human rights policies. Brazil has also sponsored resolutions on HIV/AIDS and human rights, malaria, tuberculosis and access to medicines, and on the incompatibility between racism and democracy.

South Africa has been active in promoting the idea that the world needs more explicit standards to combat racism to supplement the existing international convention on the elimination of racial discrimination. Indeed, South

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16. Retrieved 30 July 2013 from http://www.hrw.org/news/2009/06/15/brazil-support-victims-not-abusers.

17. See, further, *The Economist*, 20–26 October 2012, which carried the cover: »Cry the Beloved Country.«

Africa has been a leader in the international struggle against institutionalized racial discrimination, hosting the 2001 Durban conference on this topic. South Africa has also pushed for recognition of the rights of gays, lesbians and bisexuals, leading the campaign for the HRC to adopt its first-ever resolution on sexual orientation.

India's main initiative on the HRC has been to seek to build support for identifying the linkages between terrorism and human rights. As for other DEPs, Mexico was the first President of the HRC and played an important leadership role in shaping the Council during its first year. Korea and Turkey generally cooperate with the Council.

Contributions to the Office of the High Commissioner for Human Rights is another indicator of a country's willingness to strengthen the UN system's role in protecting human rights. Brazil and South Korea make substantial contributions to the extra-budgetary resources of OHCHR. India, South Africa, Mexico and Turkey give moral support through modest contributions.

2.6 Assessment

All three IBSA countries are confronted by daunting domestic economic and social problems. They face significant levels of corruption and poverty, as well as challenges to national cohesion. In India's case, caste discrimination is still rampant in the country, notwithstanding legislation designed to curtail this practice. Brazil has a massive slum problem and tensions with indigenous groups. In South Africa, nearly two decades after apartheid was abolished, physical insecurity and racial disparities remain huge.

All three countries have also experienced severe difficulties related to civil and political rights. All three countries face allegations of abuses by law-enforcement and security personnel, and must address issues related to the treatment of migrants within their countries. Sensitivities around these and other issues affect the nature of the IBSA countries' participation in HRC processes.

In the HRC, all three IBSA countries tend to avoid confrontation, instead favoring approaches that emphasize dialogue and cooperation. They are reluctant to criticize governments that commit gross human rights violations. Brazil provides some global leadership on international

human rights issues, but it would be hard to say the same of India and South Africa.

All three countries have led policy initiatives on particular issues in the HRC. South Africa has led on the issue of racial discrimination and discrimination against persons on the basis of sexual orientation. Brazil has led on the issue of countries making a national commitment to promote and protect human rights. India has been a prominent supporter of resolutions on the issue of terrorism and human rights. India's support for the resolution of the Council at its twentieth session on human rights issues in Sri Lanka is considered to have been ground-breaking because it allowed the Council to establish its authority to adopt country-specific resolutions in cases where gross human rights violations are suspected.

The aspiration by all three countries for permanent membership of the UN Security Council influences the positions they adopt at the HRC. Because they seek to expand international support for their candidacies, including from within their own regions, there is a strong temptation to avoid upsetting any country or group of countries by criticizing fellow member states or even supporting fact-finding missions in countries where systematic abuses have been alleged. It is unclear to what extent this cautious approach has undercut international support for the IBSA countries' inclusion as permanent Security Council members.

3. The United Nations Security Council

There are two ways in which human rights have seeped into the Security Council's work. The first is through the Council's concern with ensuring that the laws of war are respected. A second link to human rights is through the Council's role in conflict prevention: it addresses human rights insofar as these are a matter of developmental concern that affect the prospects for durable peace.

The direction in which the Security Council's engagement with human rights develops in coming years will largely be determined by the priorities and capacities of the Councils' five permanent members (the P5). But the attitudes of non-permanent members, elected for two-year terms through regional groupings, will be important as well. Because the P5 are intensely concerned with the perceived legitimacy of the Council's decisions, they find

comfort in the backing of non-permanent members. China and Russia tend to portray human rights as a preoccupation of Western member states, particularly the so-called P3 (the United States, France and the United Kingdom). Legal arguments can be deployed to counter these claims, and horse-trading on other issues sometimes wins Russian and Chinese acquiescence on human rights matters. But the ability of pro-human rights member states to win support from developing countries on and off the Security Council remains crucial.

The cases of India, Brazil and South Africa provide a useful frame of reference (if not a scientific sample) for analyzing the role of DEPs on human rights issues at the Security Council. All three have been Council members in recent years and all seek permanent membership. The role of DEPs on human rights issues is assessed with reference to three areas of the Council's work: (1) authorizing the use of force in response to crises involving mass-atrocity crimes; (2) monitoring and reporting on violations of international humanitarian law (IHL); and (3) determining the mandates of UN peace operations in conflict-affected countries.

3.1 Responding to Mass Atrocity Crimes

During 2009–2012 the Security Council was faced with a series of conflicts in which mass-atrocity crimes were strongly suspected, including the four grave violations covered by the Responsibility to Protect (RtoP) doctrine, adopted by heads of state and government in September 2005,[18] and further elaborated through UNSCR 1674 (2006), decisions of the General Assembly, and reports of the Secretary-General. These violations are ethnic cleansing, war crimes, crimes against humanity and genocide. The central principle of RtoP is that states bear the primary responsibility for protecting civilians from these violations, but that if they abandon this obligation, or lack the capacity to fulfill it, then the international community must assume the responsibility through various means available to it. DEPs have, from the outset, been skeptical about how the norm would be operationalized. Piccone and Alinkoff (2012) note that DEPs prefer »constructive engagement, mediation, quiet diplomacy and dialogue as tools of international intervention«, in contrast to West-

ern powers, which »are quicker to pursue condemnation, sanctions, and in extreme cases military action«. India has generally been more skeptical than other DEPs. India was said to have engaged in robust diplomacy during 2005 to dilute (or excise entirely) the relevant paragraphs of the World Summit Outcome. This is understandable given the degree of instability in India's neighborhood, and indeed within its own borders. Conflict, post-conflict or near-conflict situations exist in Afghanistan, Sri Lanka, Nepal, Burma, Pakistan and the Maldives.

During 2010, when all three IBSA countries were on the Council, it considered three RtoP-related cases: Libya, Syria and Côte D'Ivoire.[19] Libya was the most clear-cut case for invoking RtoP. The Libyan government was clearly »unwilling« to protect its civilians: it was in fact targeting any that voiced support for reform. All three IBSA countries voted for Resolution 1970 (2011), which referred the Libyan case to the International Criminal Court (ICC), imposed an arms embargo and provided for humanitarian access. The Council later passed Resolution 1973 authorizing the use of force to protect civilians. Among the IBSA countries, only South Africa voted in support of Resolution 1973. India and Brazil abstained. As the NATO-led military campaign unfolded, and coalition forces worked with rebel groups to attack Libyan military assets, the IBSA countries became increasingly critical of the intervention. All three – and many other member states – complained that the civilian-protection mandate of Resolution 1973 had evolved into a mission to dislodge Libyan leader Muammar al-Gaddafi.

There were, however, differences of emphasis among the IBSA countries. While all three complained vociferously in public, South Africa's voice was perhaps the most strident. This could partly be explained by South Africa's »yes« vote on Resolution 1973, which left it exposed to charges of having actively aided (not merely passively abetted) what many countries considered NATO's exploitation of the Council's authorization for the use of force.

India's UN ambassador was said to have privately complained to leading NATO powers that the Council's non-permanent members were not being sufficiently consulted on the escalation of military action in Libya. This was subsequently interpreted as meaning that if In-

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18. Paragraphs 138 and 139 of the Outcome Document of the 2005 World Summit (GA resolution 60/1).

19. For a comparative analysis of these three cases, see Bellamy and Williams (2011).

dia had been provided real-time information on military developments, it might have found the repositioning of the intervention – based on the claim that civilians could not be protected as long as the regime remained in place – less objectionable.

Brazil, while publicly critical of the Libya intervention, added a new wrinkle: it proposed that force authorized under RtoP should be subjected to what it termed »Responsibility While Protecting« (RWP). Brazil called for safeguards to protect civilians endangered by the intervention itself and for new procedures to ensure that any realignment of military or political objectives received fresh Council authorization.

As the Syrian situation began to intensify, the IBSA countries sought to demonstrate that dialogue and mediation, rather than threats and the use of force, were viable diplomatic options. In 2011, the three IBSA countries sent a delegation to Damascus to discuss methods of peacefully resolving the »dispute«. The mission produced no perceptible impact on the parties. During India's August 2011 Security Council presidency, a fairly anodyne Presidential Statement (PRST) calling for restraint from all sides was agreed. In October 2011, all three IBSA countries abstained on a draft resolution (S/2011/612) pressing for an internationally supervised political process, in part because it included a reference to possible economic sanctions and travel bans under Article 41 of the UN Charter. India explained its abstention by saying that all governments faced an »obligation to protect their citizens from armed groups and militants«, an interpretation that was highly sympathetic to the Syrian government's response to the anti-regime uprising. Brazil's explanation was less specific: »meaningful and inclusive national dialogue« was »the only way out of the current crisis in Syria«. South Africa was the most explicit, referencing mission creep in Libya: »this draft resolution [must] not be part of a hidden agenda aimed at once again instituting regime change«.

By early 2012, Brazil had left the Council, and India and South Africa supported a February 2012 draft resolution (S/2012/77) that omitted reference to external intervention. It was vetoed by China and Russia. India and South Africa supported Resolution 2042, which authorized an observer mission to monitor a peace plan negotiated by Kofi Annan, the joint UN-Arab League Special Envoy on the Syrian crisis. India nevertheless continued to call for

»due respect for Syria's sovereignty, unity and territorial integrity«. India and South Africa again voted yes on Resolution 2043, which established the United Nations Supervision Mission in Syria (UNSMIS). India repeated its »expectation that UNSMIS will implement its mandate impartially, objectively and fairly«. South Africa reiterated the need to »uphold and respect the sovereignty, independence, unity and territorial integrity of Syria«.

South Africa's rhetoric became sharper in response to a July 2012 draft resolution (S/2012/538), which threatened sanctions if the Annan plan was not complied with. The text was »unbalanced« because it »preferred one side over the other«. India, however, backed the draft resolution. South Africa and India thus reversed the positions they had held on Resolution 1973 on Libya (on which South Africa voted yes while India abstained).

India may have backed the July 2012 draft resolution on Syria because of its need to mend fences with the P3, whose conduct regarding Libya it had so harshly criticized. India's hard-line stance against Council efforts in Syria was also denting its image with countries such as Turkey, which had shared intelligence with India on the Assad regime's brutality and its blatant unwillingness to negotiate. Besides, India had already demonstrated its independence from the P3, in the eyes of Russia and China, whose vetoes would kill the draft resolution anyway.

For the remainder of 2012, India and South Africa continued to couch their reservations on Council action in Syria in terms of concerns about the selective application of the RtoP norm. In August 2012, South Africa cautioned »against this growing trend of deposing regimes that we do not favor in the name of protection of civilians and responsibility to protect«. A week later, India called for the UN's humanitarian doctrines to be »uniformly applied to all parties to a conflict«.[20]

There has been a remarkable degree of acceptance among observers of Security Council politics of the justifications provided by the IBSA countries for their unwillingness to support strong Council action to resolve the Syrian crisis. In an op-ed piece, one Human Rights Watch

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20. Remarks by Ambassador Hardeep Singh Puri, Permanent Representative of India to the United Nations at an informal interactive dialogue on the report of the Secretary General on the responsibility to protect: Timely and decisive action; 5 September 2012. Retrieved 30 July 2013 from www.un.int/india/2012/ind2058.pdf.

staffer uncritically repeated the claim that abuse of the RtoP doctrine by Western states in Libya accounted for developing country rejection of US, British and French proposals to ratchet up pressure on the Syrian regime (Bolopion 2011). However, it would be a mistake to take at face value the claim that, had the Libyan intervention not evolved toward regime-change, the IBSA countries would have been willing to support a more robust approach to Syria.

It is appropriate to regard the P3's motives on the Syrian case with a healthy dose of suspicion. But the motives of the P3's critics must be subjected to equally close scrutiny. This has not happened. India and South Africa have attributed US outrage at Assad's human rights abuses to America's desire to contain Iran and check Hezbollah. But surely India and South Africa are aware that Russia's support for the Syrian regime is motivated by strategic objectives as well. If so, why has this manifestation of realpolitik not received the same degree of scorn from India and South Africa? One possibility at least worth considering is that both countries are eager to shore up their credentials among members of the Non-Aligned Movement, where anti-America grandstanding remains *de rigueur*. For that matter, why did the IBSA countries not question the motives of the Russians and Chinese in agreeing to military action in Libya? Surely, the fact that neither Russia nor China had any further use for Gaddafi played a role in their acquiescence. And yet none of the IBSA countries spoke out against such cynical posturing.

Furthermore, if the IBSA countries were so keen on a strict interpretation of the Council's mandate, why did they vote yes to every resolution on the situation in Côte d'Ivoire? Resolution 1967, which authorized the redeployment of military aircraft from the UN's Liberia mission (UNMIL) to its Côte D'Ivoire mission (UNOCI), was passed within weeks of India and South Africa joining the Council in January 2011. Resolutions 1975 and 1980, which imposed sanctions on president Laurent Gbagbo, were passed (again, with the support of all three IBSA countries) in the months that followed. Quite why the IBSA countries were willing to support a new Council precedent – sanctioning a government that refused to honor an electoral verdict – is not clear. Resolutions 1992 and 2000 were passed during June and July 2011, respectively, at the very moment when the IBSA countries (and other DEPs) were engaged in unstinting criticism of the P3's role in effecting regime change in Libya. So why

was groundbreaking Council action in Côte D'Ivoire acceptable to the IBSA countries, while strong resolutions in response to equally grave abuses in Syria were considered a shocking breach of sovereignty? One explanation is that Russian and Chinese acquiescence to Council action in Côte D'Ivoire provided cover for the IBSA countries to follow suit, whereas backing the P3 in Syria would have alienated the Russians and Chinese, whose support all three IBSA countries crave. This explanation is at least as convincing as the claim that the IBSA countries were taking a principled stand against abuse of the RtoP doctrine.

3.2 Monitoring and Reporting on IHL Violations: CAAC and SVC

Security Council deliberations on the protection of civilians were not limited to RtoP cases. The Council also has on its agenda regular »thematic« agenda items related to specific violations of IHL. Among these are Children and Armed Conflict (CAAC) and Sexual Violence in Conflict (SVC).

The Security Council passed its first resolution on CAAC in 1999, and has continued to strengthen its regime on this issue in the intervening years. A key milestone was Resolution 1539 (2004), which identified the six grave violations that would, eventually, form the basis for Council attention: killing or maiming of children; recruitment or use of child soldiers; sexual violence against children; the abduction of children; attacks against schools or hospitals; and denial of humanitarian access to children. Resolution 1612 (2005) established a Monitoring and Reporting Mechanism (MRM), to be operationalized under the direction of the Special Representative of the Secretary-General (SRSG) for CAAC (an office mandated by a General Assembly resolution in 1996), and the creation of a Security Council Working Group on CAAC.

Data collection and analysis on alleged CAAC violations is carried out by a network of sources that work with UN-led country-level review processes. The SRSG on CAAC presents (through the Secretary-General) an annual report to the Security Council, which includes trend analysis, a discussion of country situations and two annexes listing parties to conflicts that have engaged in CAAC violations. »Annex A« covers violations alleged to have taken place in countries that are on the Security Council's agenda; »Annex B« includes other country situ-

ations. The Council considers the CAAC report during an annual open debate, which generally produces either a resolution or a PRST. The Security Council's Working Group on CAAC – which includes all 15 Council members – deliberates on the countries listed in Annex A. The Working Group negotiates »conclusions« related to each such country situation. These can range from referrals to sanctions committees, through supporting the development of national capacities to address the issues raised, to the transmission of letters to the concerned parties. The SRSG's office also engages with the parties to conflict to develop »action plans« designed to address the violations identified.

The Working Group's process of engagement with the CAAC agenda is the subject of much complaint among member state delegations, particularly among officials in developing country missions that lack the human or financial resources to engage fully on all aspects of the issue. Stakeholders familiar with the Working Group's deliberations indicate that there are no clear patterns in DEP engagement. Some countries are more intimately involved than others. Generally, P5 members dominate the proceedings. Among the IBSA countries, Brazil is seen as the most constructive participant in Working Group discussions, although its interventions are sometimes described as »legalistic«. As chair of the sanctions committee for the Democratic Republic of the Congo (DRC), Brazil organized the committee's first-ever briefing on CAAC, with the SRSG providing detailed analysis of the DRC case. South Africa, on the other hand, was described by more than one stakeholder as very »inconsistently« engaged, its positions varying widely depending on the level at which it was represented at Working Group meetings.

India took a more active interest in CAAC. India is discussed in the main body of the report (although not »listed« in the annexes). Maoist-inspired rebels (so-called »Naxalites«) in parts of India have attacked schools and engaged in forced recruitment of children. In 2010, before joining the Council, India's ambassador complained about its inclusion in the report, despite the government itself not having been identified as committing any violations. Because India's situation did not constitute an armed conflict under international law, he maintained, it was outside the scope of the CAAC SRSG. Heated complaints by Indian diplomats to the Secretary-General's office became an annual ritual in the years that followed.

The contrast between India's tirades and the forthright advocacy displayed by Mexico – another DEP – was noted by stakeholders. During its two-year term on the Council (2009-10), Mexico chaired the CAAC Working Group and was regarded by other members and NGO advocates as demonstrating considerable commitment to advancing the Working Group's agenda. Mexico's efforts to expand the criteria for listing CAAC violators was supported by Turkey, another DEP of note, during its time on the Council.

The Council's CAAC agenda is becoming steadily more contested. In September 2012, the disquiet that had emerged at the 2011 open debate on the CAAC annual report grew more serious. India worked with Pakistan and other countries concerned about mandate creep by the SRSG. India reiterated its position that the only »situations of concern« that should be discussed in the CAAC report should be those in which violations threaten international peace and security. Brazil, which by then was no longer on the Council, also expressed concern that non-conflict countries were mentioned in the report. Brazil also called for more cooperation between the SRSG and governments, echoing the complaints of countries such as Colombia, which complained that the SRSG's office was engaged in negotiations with Colombian rebel groups without the full involvement of the government. A resolution on measures to address »persistent perpetrators« of CAAC violations passed, but with four abstentions – China, Russia, Azerbaijan and Pakistan – making it the first non-unanimous CAAC resolution.

Similar issues have arisen in the Security Council's work on Sexual Violence in Conflict (SVC), a newer agenda item. Resolution 1820 (2008) identified sexual violence as a potential tactic of war – one which, if used in a widespread or systematic manner, could potentially amount to a war crime, a crime against humanity or an act contributing to genocide. Resolution 1888 (2009) specified mechanisms to prevent and respond to sexual violence in conflict situations, including the deployment of »women protection advisors« to UN missions – roughly equivalent to the »child protection advisors« who form the backbone of the information-gathering apparatus underlying the CAAC MRM. It also authorized the appointment of an SRSC on SVC. In December 2012, the new SRSG submitted the first report on SVC to the Council, which responded by passing Resolution 1960 (2010), calling for a report listing parties to conflict »credibly suspected« of

engaging in widespread or systematic sexual violence. This would be based on Monitoring and Reporting Arrangements (MARA) to be developed by the SRSG for SVC and implemented through the UN system.

The first report that included information on violators was submitted to the Council in January 2012. The February 2012 Security Council open debate generated many of the same issues that had fuelled controversy at CAAC debates. The need for accurate, verified information was frequently emphasized. As with the CAAC process, countries discussed in the body of the SVC report complained bitterly. Although no IBSA country was referenced, all three were privately critical of the reporting methodology. No country disputed the armed groups (in the Central African Republic, Côte d'Ivoire, the DRC and South Sudan) listed in the report's Annex. However, the reference to Egypt, mentioned in the report for abuses allegedly perpetrated by security forces against opposition protestors in 2011, prompted widespread complaint. Egypt's ambassador charged the SRSG's office with a serious case of mandate creep, on the grounds that Egypt was not a situation of armed conflict, but a country undergoing a political transition. The SVC report's inclusion of election-related »sexual violence« was also widely criticized. Some member states considered election-related violence in any country that was not a situation of armed conflict to be outside the Council's purview. The report's reference to situations of »political strife«, a further elaboration on the language found in Article 99 of the UN Charter relating to »situations of concern«, also led many countries – including those that were well disposed to the SRSG's office – to question the SRSG's approach.

There were also charges – alluded to in the open debate, but stated more directly in private discussions – that political bias had influenced the selection of countries discussed in the annual report. An earlier draft of the report allegedly included a reference to sexual violence by Israeli forces in the Palestinian territories. The United States and Israel allegedly pressured the SRSG's office to delete that reference. Questions were also raised as to why the report omitted references to allegations of sexual violence in Afghanistan and Iraq – omissions viewed as closely paralleling gaps in CAAC reporting. In private interviews, IBSA representatives voiced skepticism about the Council's expanding »humanitarian monitoring« function.

3.3 Mandating UN Peace Operations

The third area in which it is worth examining DEP approaches to human rights at the Security Council concerns the process of formulating the terms of reference for UN peace operations in conflict-affected countries. Rights-related provisions are found in many of the Security Council resolutions that define the mandates of peace operations. These provisions can become a source of leverage for human rights actors within the UN system who seek to influence staffing patterns and programmatic activities in field missions.

Between 2009 and 2012, a period during which there had been a relatively strong DEP presence on the Security Council, mission mandates have continued to incorporate human rights dimensions. None of the DEPs represented on the Council during this period – including Mexico, Turkey and the IBSA countries – has sought systematically to block the appointment of human rights specialists or the strengthening of transitional justice institutions. In fact, insider accounts of Council deliberations on mission mandates suggest that DEPs have in some cases proposed stronger human rights language.

For instance, India was reported to have participated constructively in negotiations over the September 2012 mandate-renewal for the UN mission in Sierra Leone. The resulting resolution directed the UN mission to engage in »strengthening human rights protection«. As a provider of technical assistance on electoral administration to the Sierra Leone government, India had an incentive to ensure that external actors working on rights issues received explicit backing in the Council's resolution. India's support for strong human rights provisions for UN mission mandates stems from its increasingly »inclusive« approach to peacebuilding. In July 2012, India's ambassador stated that post-conflict state-building »must include all stakeholders … in the governance process«.[21]

Brazil also reportedly played a more active role in the mandating of UN missions, particularly MINUSTAH, a »stabilization mission« in Haiti with a significant peacekeeping component. Because it provided MINUSTAH's force commander, Brazil was in a strong position (and

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21. Statement by Ambassador Hardeep Singh Puri, Permanent Representative of India to the United Nations, at a UN Security Council discussion on the role of Institution-Building in Post-Conflict Peacebuilding, 21 January 2011.

had ample incentive) to shape the mandate renewal. It used this influence to emphasized human rights. Resolution 1944 (2010) not only reaffirmed »the mission's human rights mandate«, but also called for »human rights training to the Haitian National Police and other relevant institutions, including the correctional services« (para. 16) and directed UN agencies to »protect the rights of women and children« and the rights of all citizens to campaign and vote in the country's forthcoming elections (para 14).

It is unclear whether there were any examples of South Africa contributing constructively to the mandating of UN field missions. MONUSCO, the UN's mission in the DRC, was the subject of several resolutions and PRSTs during South Africa's term on the Council during 2011 and 2012. Hoping to »position itself as the leading advocate for African issues in the international arena«, South Africa has taken a strong interest in DRC. But a South African opposition leader questioned whether »our government is turning a blind eye to electoral irregularities and human rights abuses in the DRC to protect the business interests of ANC allies«. South Africa's unwillingness to use its Council membership to challenge abuses in the DRC meant that »the bar for democracy and human rights in Africa will not be set particularly high« (Mubu 2012).

3.4 Assessment

Disappointment has been expressed about the DEPs' performance as non-permanent Security Council members. Complaints were voiced by permanent Council members, human rights NGOs, media and academic commentators, among others. In September 2011, Susan Rice, the US ambassador to the UN, criticized the IBSA countries – all were then serving as Council members – for acting in ways that were not »consistent with their own democratic institutions and stated values«. The world had been afforded »a very interesting opportunity to see how [India, Brazil, and South Africa] respond to the issues of the day«, Rice stated. »[W]e've learned a lot and, frankly, not all of it encouraging.«[22] Other observers were less harsh; some more so, particularly in private. Rice's

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22. »US Not Encouraged by India, South Africa, Brazil at UN,« *Businessweek,* 13 September 2011, retrieved 31 July 2013 from www.businessweek.com/news/2011-09-13/u-s-not-encouraged-by-india-south-africa-brazil-at-un.html.

statement was issued at a particularly tense moment – amidst the continuing disagreement over how to handle the Syria crisis.

It has nevertheless been generally understood that, despite certain similarities, India, Brazil and South Africa each approached human rights issues differently, and that each state was stronger on some issues than on others. Change over time made it even more hazardous to make sweeping statements concerning any one country or issue. To the extent that DEPs have been inconsistent in their approaches to human rights issues on the Council, they are not alone. The same could be said of the P3 and the mainly Western states that hold themselves up as the guardians of the international human rights system, but which selectively apply ostensibly universal standards. Such inconsistencies often reflect perceived national interests. To expect DEPs to be any less attuned to their own interests – financial, diplomatic, military – is to hold these countries to an unreasonably high, and patently unfair, standard.

By the same token, it is difficult to credit the principled explanations provided by the IBSA countries for their post-Libya approach to the Syrian crisis. While issues surrounding the response to mass atrocity crimes are, understandably, the focus of much of the scrutiny that DEPs have faced as Council members, other areas of human rights deliberation and action require assessment too. In one crucial domain – the mandating of UN peace operations – DEPs have demonstrated a willingness to place human rights at the center of peacebuilding. This is no small matter and should be a source of at least cautious optimism among human rights advocates.

As for the monitoring mechanisms that report to the Security Council on violations of international humanitarian law, the record is mixed. When individual DEPs are named or criticized, their UN delegations are inclined to contest vigorously what they regard as mandate creep, methodological shortcomings and »double standards«. When not directly implicated, these same countries are capable of lending passive support, and sometimes active engagement, to the advancement of agendas such as ending abuses of Children in Armed Conflict and preventing and responding to Sexual Violence in Conflict.

4. The International Development System

International development norms and institutions are currently in a period of tectonic shift, not least due to the increasing role played by so-called »non-traditional« donors (Chaturvedi et al. 2012; Mawdsley 2012). States that have in some cases been active providers of development assistance for decades have in the past few years become game-changers in international development. In addition to Brazil, China and India, a »second tier« of emerging donors includes Turkey, Indonesia, Malaysia, Chile and others (Schulz 2010; von Hau et al. 2012: 187–204). South Korea joined the OECD's Development Assistance Committee (DAC) in 2010, but positions itself as a bridge between the »traditional« donors (primarily North American and European) and »emerging« donors – or, to use a term more to their liking, practitioners of South-South Development Cooperation (SSDC).

As Kharas et al. put it, »[t]raditional donors that form the OECD-DAC can no longer claim to speak for the world's donor community« (2011: 38–39). Non-DAC donors are an increasingly assertive presence in negotiations on international development policy. The recent establishment of the Development Cooperation Forum under the auspices of the UN's Economic and Social Council (ECOSOC) is indicative of these shifts (Fues 2010).

In the 1990s the rights-based approach to development started to coalesce in its present form and most »mainstream« development actors continue to emphasize the centrality of human rights to »development«. Consequently, debates over the relationship between human rights, international development and foreign aid have focused on the »mainstream« bilateral and multilateral donors (Neumayer 2003). Particularly contentious issues include the nature and sequencing of civil and political rights, on one hand, and economic, social and cultural rights on the other, as well as the relationships between them. Another critical issue is whether human rights discourses represent specifically »Western« rather than universal principles, and whether they have been mobilized in ways that discipline non-Western societies and states.[23]

While the relationship between foreign aid and human rights has been extensively studied in relation to

the OECD-DAC bilateral donors, these studies usually focus on political rights, particularly as these relate to democratic governance. Critics contend that existing analysis underemphasizes »personal integrity rights«, such as freedom from forced disappearances, torture and extra-judicial killing (Poe and Sirirangsi 1993: 309–22). The Purdue Political Terror Scales is considered by some commentators to provide a more meaningful basis for analyzing foreign aid allocation and human rights in most recipient states (Neumayer 2003). Moreover, »second generation« economic and social rights are rarely studied with respect to aid allocations.

4.1 The (Re-)Emerging Development Partners

Some commentators criticize »rogue donors«, such as China, Iran, Saudi Arabia and Venezuela, for using »toxic aid« to promote their national interest at the expense of human rights in poor countries and in the international system generally (Collins 2007; Naim 2007). DEPs rarely receive the same level of attention in this regard, and for the most part are (belatedly) welcomed by the »mainstream« aid community for the expertise and resources they provide. Concerns remain, however, that DAC donors' progress toward good governance and poverty reduction will be undermined by the proliferation of new actors, their lower levels of transparency and their different approaches to development, including with regard to human rights (Manning 2006: 371–85; Davies 2008; Zimmermann and Smith 2011: 722–738). Others regard the fracturing of the Western-dominated aid cartel more positively: new donors offer recipient countries greater choice, while demonstrating alternative economic models that may prove more effective in increasing productivity, enhancing security and reducing poverty (Kondoh et al., 2010). Some SSDC practitioners are recognized innovators in social protection programs (for example, Brazil and India) even as they engage in trade and investment across much of the global South. But questions remain about how SSDC might impact inequality, environmental sustainability and human rights in target countries.

Governments, CSOs and people in aid-receiving countries frequently welcome the increasing role of SSDC practitioners. They reshape international development discourse, bring additional resources and are more respectful of national sovereignty (Mawdsley 2012). However, politicians, consumers, workers and CSOs within

23. See, for instance, M. Matua (2001: 201–45).

recipient countries also worry about rising prices, land grabs, environmental damage, labor conditions, corruption and the propping up of authoritarian regimes.

DEPs such as Brazil, India, Turkey, South Africa and South Korea have different historical trajectories, economic and demographic profiles, and regional and international agendas, identities and relations. All DEPs occasionally note the importance of human rights in official development cooperation policy statements. But human rights are not promoted as key objectives or principles, and rarely determine the allocation of development cooperation resources; national economic interests and historical ties are far more influential.

Against this backdrop, four observations are essential to understanding how DEPs' SSDC activities may affect human rights and the position of rights issues within international development frameworks.

4.2. Defining South-South Development Cooperation (SSDC)

SSDC is not synonymous with »foreign aid«, and differs considerably from conventional North-to-South development assistance. Most DEPs reject the term »aid«, referring instead to »development cooperation«, a term also favored by many European donors. Some DEP activities correspond to what the OECD-DAC calls Official Development Assistance (ODA), including grants, certain kinds of loans, technical assistance, debt relief, studentships and humanitarian assistance. DEPs and other non-DAC practitioners of SSDC often blend these activities with commercial loans and financial instruments designed to foster trade and investment, build diplomatic relationships and enhance the provider's soft power. These hybrid modalities tend to be poorly understood. Bräutigam has noted that policy analysts often conflate Chinese outward aid, trade, and investment flows, a category error that is frequently made with regard to DEPs as well (Bräutigam 2011).

The rapidly-growing economies among the non-traditional donors/development partners have embraced a growth-centered paradigm that positions corporations as increasingly legitimate and central development actors. The international activities of firms based in DEPs are strongly promoted by their home governments – through export credits and loan subsidies, as well as the contracting out of development initiatives. Compared to most OECD-DAC bilaterals, DEPs' international development cooperation includes a greater degree of engagement by public- and private-sector corporations, although this is now a growing trend among OECD-DAC bilaterals, too. Government officials working specifically on aid matters tend to have less direct managerial responsibility over programmatic activities. One implication of the enhanced role of business actors in SSDC is that human rights issues tend to take the form of concerns about labor conditions, consumer rights and the environmental and social responsibilities of firms.

Public- and private-sector corporations occupy a different position in relation to human rights responsibilities than do national development agencies. Government entities are obligated to comply with the human rights treaties to which they are signatories, whereas firms are only indirectly accountable for the human rights implications of their activities. But in addition to being accountable to national regulators, DEP firms also must answer to shareholders, workers and customers, and in many instances are monitored through corporate social responsibility frameworks, standards schemes, and so forth. Ensuring that DEP companies working under the umbrella of SSDC initiatives are promoting, or at least not undermining, host country human rights will require close attention to the relative efficacy of these multiple channels of accountability.

4.3 Framing »Virtue« within SSDC

The tension between human rights and sovereignty is familiar in almost every multilateral policy domain and international development cooperation is no exception. Understanding the challenges and opportunities for promoting a human rights agenda requires consideration of alternative constructions of »virtue« within the »development« field.

The discourse of SSDC is anchored in the Non-Aligned Movement (NAM), various post-socialist solidarities and attempts to foster stronger »Third World« diplomatic ties within the UN. In official communications on SSDC, DEPs frequently refer to shared experiences of colonial exploitation, post-colonial inequality, and contemporary vulnerability to neoliberal globalization. The shared identity

as »Third World« nations is cited to support DEP claims to expertise in appropriate development approaches and technologies; to reject hierarchical relations between providers and recipients (articulating a belief in mutual respect, sovereignty and non-interference); and to stress that South-South cooperation produces benefits for both sides.

The language of SSDC reflects an earlier set of ideological claims and geopolitical positions. Official Indian pronouncements, for instance, sometimes offer sanitized, or at least partial, accounts of the past in framing their current interests and agendas. Former minister Shashi Tharoor, during a visit to Mauritius in 2009, noted that India and Africa »have been neighbors and partners for thousands of years«, sharing »the pain of subjugation and the joys of freedom and liberation«. Gandhi, Tharoor reminded his audience, developed his non-violent techniques in Africa, while Nehru promoted »Afro-Asian solidarity«. Framing past relations and current shared interests in this way contrasts sharply with development discourses in Western societies, whose publics tend to conceive of aid as »charity« to the less fortunate.

Tacit assumptions about what constitutes »virtue« in relation to »aid« – and, by mistaken extension, to SSDC – are rife within the mainstream international development community. While DEPs in particular are increasingly recognized as effective and desirable development partners, the ethical frameworks of their aid programs are frequently criticized. They are portrayed as motivated by naked self-interest, rather than the »enlightened« form that most Western actors claim to be following. The positive results produced by DEP development assistance are seen as instrumental and incidental, rather than ethical. This is a culturally parochial reading of virtue in development relationships, which distorts our understanding of how DEPs might locate human rights in their approaches to development cooperation.

Most DEPs resist the terminology of »donor/recipient« relations, and some reject the idea of »foreign aid«, associating these terms with what are seen as the hegemonic ambitions and assumptions of Western-dominated development programs. Brazil refers to »horizontal cooperation«. South Africa articulates its role as »contributing to the African Renaissance«, locating itself as an organic part of the greater whole to which it contributes and from which it also expects benefits. Mutual opportunity

and reciprocity are common themes. India couches development cooperation in terms of what India gets as much as what its partner countries do. The benefits that India bestows upon its partners, it maintains, include an enhanced sense of national honor and international status – by-products of their newly harnessed capacity to offer resources and markets.

Despite the post-Washington Consensus era, Western aid is still largely linked to expectations of market-oriented policy change and respect for political and civil rights (through democracy and »good governance«). A defining characteristic of many southern donors, including DEPs, is the lack of policy conditions on the assistance they provide. Many commentators argue that this will undermine efforts by traditional donors to reduce corruption and promote human rights. Southern donors, it is claimed, are pursuing investment opportunities, natural resources and access to markets, while furthering diplomatic relations with political elites (Naim 2007). The response from these donors has been to highlight the core NAM commitment to state sovereignty, which they argue Western aid conditionalities have repeatedly breached.

However, SSDC framings of solidarity, respect and mutual benefit should not be seen as simply a veneer that masks the pursuit of strategic interests. DEPs and other non-traditional development actors frame contemporary SSDC as a continuance of what Nel calls »the unfinished struggle against disrespect and humiliation« (2010: 1). The post-colonial world has not been characterized merely by inequalities of wealth, power, and decision-making influence, but also by gradations of dignity and respect. Drawing on constructivist international relations theory, Nel argues that the rising powers seek not just redistribution of global wealth and power, but also *recognition*. One of the dominant narratives asserted by DEPs is that contemporary SSDC is a continuation of earlier (virtuous) attempts to contest the uneven distribution of global power. What has changed since the New International Economic Order (NIEO) of the 1970s is the economic and political muscle of the rising southern powers. The reality of SSDC certainly departs from these principles at times, and there is no question that this discourse projects a sanitized and highly selective account of interests, agendas and impacts. But SSDC is often constructed through a moral lens of Third World solidarity that has a real and deep purchase for many proponents of SSDC.

What are the implications of these conceptual reorientations for the place of human rights within the development cooperation agendas and strategies of DEPs? By stressing justice *between* states, SSDC often neglects justice *within* states. Assertions of »win–win« outcomes often stress the »national interest« of both partners, obscuring the contested and dislocating nature of »development« within societies. The vision of most DEPs is, ironically, highly modernist: industrialization begets economic growth, which generates development. But building roads, extracting raw materials and »modernizing« agriculture may impose serious burdens on indigenous peoples, small farmers and others (Prashad 2008; Rowden 2011). The discourse of »respect for sovereignty« fails to acknowledge that sovereign power does not necessarily empower citizens to hold their governments accountable.

At a major India-Africa investment conference in 2011, one speaker declared – to warm applause – that India had »solved its own food security problems and could help African partners do the same«. There was no acknowledgement that 40 per cent of Indian children below the age of five are malnourished (Sen 2011). For the moment at least, SSDC is certainly not promoting a rights-based development agenda, although there are some partial exceptions. Brazil, for instance, is one of the few Southern partners to observe the distributional impacts of growth within some of its SSDC strategies. Its own experiences, including support for small family farms through programs such as the More Food for Africa initiative, have filtered into its SSDC policies far more than has been the case for other DEPs.

4.4 Domestic and International Development Politics

In their domestic contexts, DEPs have experienced both human rights achievements and acute problems. Each has a mixed record with regard to different groups of rights, and in relation to specific issues. But to what extent do domestic pressures – from civil society and other actors – to improve a state's human rights record at home extend to demands for more human-rights-respecting forms of development cooperation abroad? Do foreign ministries and development cooperation bureaucracies internalize the human rights principles that prevail domestically? Piccone claims that within DEPS »domestic

advocacy groups are building international networks and learning how to pressure their governments to alter their behavior at the international level«. He predicts that »[a]s democracy deepens in these countries … we are likely to see more public debate on these issues and, ultimately, greater country-level scrutiny and intervention in support of universal norms of human rights and democracy« (2011: 151).

However, the outlook for effective human rights advocacy within DEPs regarding their governments' SSDC activities may be less encouraging than Piccone suggests. In most DEPs, foreign policy-making is relatively insulated from public opinion, media scrutiny, civic pressure, and even (in some cases) close political oversight. Several factors inhibit more active engagement by domestic advocacy groups in SSDC activities. First, some governments are cautious about revealing details of their programs: the existence of pervasive poverty at home makes governments fear the political backlash that might ensue if they are seen to be focusing on promoting development abroad. This appears to be the case in South Africa, for instance. Secondly, many civic groups in DEPs consider it impolitic to criticize their governments' actions abroad, or are overstretched by the magnitude of problems domestically. Thirdly, widespread elite and mass support for their country's growing global status inhibits some civil society organizations from criticizing government actions abroad that have been positioned as further enhancing national prestige and influence.

The external development engagements of DEP governments do not go unscrutinized, however. In Brazil, President Lula's championing of South-South solidarity was seen by some as a calculated appeal to the Brazilian left, much of which was disillusioned by his government's economically conservative policies at home. The Brazilian organization Conectas has sought to »strengthen regional and international protection of human rights by making … Brazil and other new emerging powers accountable for their foreign policy decisions that affect human rights«.[24] In India, civil society appears to be increasingly aware of the government's development cooperation programs. Civil society's roles as either developement programme contractors or critical observers (or in some cases both) is likely to grow – for example,

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24. Retrieved 8 December 2012 from http://www.conectas.org/en/foreign-policy.

in relation to India's activities in Afghanistan. Publics, too, are increasingly aware that their governments act as donors, not just recipients (Mawdsley et al. 2011). Regarding Brazil, Stuenkel (2010) notes that »due to Lula's more politicized foreign policy, international issues are increasingly visible in the domestic political debate, and there is a growing consciousness about Brazil's role in the world among the country's middle class«.

Engstrom observes that, as Brazil has emerged as a pivotal player in global governance, the engagement with international human rights by Brazilian foreign policy has increased (2012: 835–849). This shift has created the necessary policy conditions for a more active Brazilian role in the international human rights regimes, on one hand, and a more prominent role for human rights in Brazilian foreign policy more generally, on the other.

Again, Brazil is something of an outlier. But, like other DEPs, domestic pressures on the Brazilian government to improve human rights at home do not necessarily translate into similar demands concerning its international development activities.

4.5 Stronger Focus on Growth and Productivity

Beginning in the 1990s, many DAC donors and multilateral organizations began emphasizing social development and more participatory modes of governance. The share of social-sector funding in sector-allocable ODA to low-income countries rose from 29 per cent in the early 1990s to 52 per cent in the early 2000s, while the share of ODA directed towards infrastructure and production dropped from 59 per cent to 38 per cent. While this may be seen as a positive trend, some critics argue that it neglects the foundations of economic growth (Chang 2010). In contrast, DEPs and other (re-)emerging donors/development partners have tended to focus more strongly (although by no means exclusively) on the directly »productive« sectors of the economy. This includes the building of connective infrastructure, such as road and rail networks, and energy infrastructure, including dams, power plants, refineries and electricity-transmission networks. One reason for this orientation is that private and state-owned firms in the »donor« country can be contracted to supply technical expertise, materials and even labor. Kondoh et al. note that one reason

non-traditional donors regard »infrastructure construction as their priority« is that their firms are competitive in this sector (2010: 76). Beyond direct benefits, many (re-)emerging development partners have a strong interest in promoting regional integration and communication, partnerships, joint ventures and economic dynamism. Some of this is oriented toward promoting trade, investment, resource-extraction and market penetration. In other cases, security concerns loom large. Thailand, for example, has interests in mitigating the marked poverty of neighboring countries such as Burma, Cambodia and Laos. By encouraging stronger economic growth in these countries, Thailand hopes to lessen the potential spillover effects of disease, political instability and displacement.

The mainstream international development community may be moving in the same direction. Rampa and Bilal (2011) suggest that increasing pressures of commercial and national interest are driving donors away from their decade-long obsession with *aid* effectiveness and toward a »*development* effectiveness paradigm«. There is no agreement on what development effectiveness means, but it includes a renewed focus on economic growth, enhancing industrial productivity and wealth-creation (rather than poverty reduction per se). There is also increasing emphasis on greater integration between foreign aid and other policy areas, such as trade, investment and migration, and a more substantial (and visible) role for the private sector (Mawdsley et al. 2013).

How this trend might affect human rights is by no means a settled question. Indeed, a dispute between two perspectives was evident at the 2011 High Level Forum on Aid Effectiveness held in Busan, South Korea. Tensions could be felt between a sizable segment of CSOs, on one hand, and southern donors and the private sector, on the other. Many CSOs sought to project »development effectiveness« as a rights-based agenda. Better Aid, for example, argued that a new development cooperation system should be built upon »a focus on human rights, recognizing the centrality of poverty reduction, gender equality, social justice, decent work and environmental sustainability«.[25] A Ugandan CSO activist asserted that development effectiveness »is a concept that goes beyond harmonized planning frameworks efficient disbursement procedures (which is what aid effectiveness

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25. Better Aid, »CSOs on the Road to Busan: Key Messages and Proposals« (2011), retrieved 23 March 2012 from http://www.betteraid.org/en/about-us/fourth-high-level-forum-on-aid-effectiveness.html.

has largely been about) to focus on ensuring that human rights inform all aspects of how aid is delivered«. He was nevertheless aware that »a rights-based approach to aid delivery will certainly be a touchy issue, especially because the new emerging donors have little to show in terms of linking up their rapid economic development with the protection of human rights« (Ssewakiryanga 2011).

This rights-based interpretation of the development effectiveness agenda did not, however, reflect the prevailing tone of the meeting, which tended to see emerging donors as driving significant economic growth in many poorer countries – growth that, in turn, enhances economic rights for millions of people, even as the impacts on political and civil rights remain, at best, neutral. Chinese delegates at Busan questioned whether economic development required human rights and citizen empowerment. DEPs, too, have expressed reservations about the rights-based development agenda. The rights-based version of development effectiveness represented a minority view at Busan, one likely to be overshadowed by the growth-centered construction increasingly promoted by DAC and non-DAC states alike.

DEPs can credibly claim to have improved economic rights for many people in the countries where they have engaged in SSDC. However, there is little attention to the distributional implications of growth. The human rights of poor and marginalized people are rarely taken into account in the growth-led approach to development.

4.6 Assessment

SSDC is just one element of the foreign policy portfolios of DEPs. But because SSDC is of a much broader nature than ODA – encompassing trade and investment activities, including those pursued by state-owned enterprises – SSDC perhaps constitutes a more significant component of foreign policy than ODA does for DAC countries.

Human rights tend to be weakly and indirectly incorporated into DEP development cooperation policies. With certain exceptions, human rights are not explicitly pursued within SSDC. Among the reasons for this are the nature and modalities of SSDC; its roots in the post-colonial political discourse of respect for state sovereignty; constraints on domestic scrutiny of DEP development

cooperation; and the trend toward seeking growth and productivity as the indirect drivers of human rights improvements.

By stimulating jobs, investment and growth – the primary objectives of most SSDC – DEPs see themselves as promoting the economic rights of people in poor countries. However, with the partial exception of Brazil, which appears to have more actively engaged with the political economy of distribution, these economic rights are a by-product of the wider economic growth agenda. Economic justice within states, rather than just between them, is not on the SSDC agenda. Enhancing civil and political rights is not highlighted as a goal, although it does make an indirect appearance in the speeches and documentation of DEP officials engaged in SSDC activities.

Global development norms, governance, institutions and financing are currently in a state of flux. The future of the human rights agenda within international development appears vulnerable. This is more than just a reflection of the self-interest of (so-called) »new« donors. A better understanding of SSDC is essential to negotiating and advancing a more credible and legitimate human rights agenda within international development.

5. Conclusion

While it is difficult to draw firm conclusions on the basis of such a diverse array of countries and such a wide range of institutional settings, there are at least three general findings that emerge from research in this area.

The first is that – across countries, and across institutional and functional domains – DEPs (and the IBSA countries in particular) tend to behave in ways we have come to expect from great powers. They act in accordance with perceived national interests. Prioritizing pragmatism over principle, DEP governments have, in general, refrained from staking out bold new positions. DEPs have shied away from any suggestion that they represent the future of the international human rights system. In the field of development cooperation, DEPs contest the notion that foreign assistance can – or even should attempt to – directly advance civil and political rights. In the HRC, the one institutional domain in which human rights cannot be said to be of marginal importance, DEPs have been

hesitant to use even the moral power of peer pressure to urge rights-abusing states to honor their international obligations. In the Security Council, IBSA countries have been extremely cautious about setting precedents that might establish new normative frameworks. In the field of international development, DEPs have arguably turned the discourse away from a rights-based approach, and have certainly downplayed the importance of leveraging external resources to promote civil and political rights. As one observer has summarized the situation, »the emerging democratic powers of Brazil, India, Indonesia, South Africa, South Korea, and Turkey are inconsistent advocates for democracy and human rights on the international stage« (Piccone 2011: 151).

This may in fact be too generous an assessment. To some extent, our investigations have revealed a marked hostility toward efforts to further institutionalize human rights. In all three domains under examination, DEPs have taken issue with the methods and approaches that have increasingly taken root in the two decades or so since the end of the Cold War. In the HRC, all three countries have sought to impose a strict interpretation of the mandates of special procedures mechanisms – and have been reluctant to expand the range of issues covered or to extend the fact-finding function to country-specific situations. In the Security Council, the relevance of thematic agenda items to the Council's mandate to promote international peace and security have been called into question. In the international development field, the DEPs have signally resisted the idea of directly improving human rights through external »aid«, emphasizing instead that rights will follow industrialization, trade and economic growth – a position which, ironically, more conservative elements within Western aid circles once advocated, but over the past two decades have progressively abandoned.

Secondly, domestic public opinion and political pressure has exerted very little influence over DEP governments' approaches to human rights within multilateral settings. This is particularly noteworthy given the strong domestic constituencies that exist within countries such as India, Brazil and South Africa on human rights issues at home. Each of these three countries has a diverse and vibrant media landscape. Reporters, editorial writers and television personalities are unafraid of exposing lapses and inconsistencies in government decision-making, including on issues of foreign policy. And yet foreign policymaking remains startlingly insulated from these currents of me-

dia criticism, even when opposition political leaders echo these concerns. This may be explained partly by strong traditions of executive control over foreign policymaking in these countries, but it also stems from deep-seated mistrust of the international institutions through which human rights issues are addressed. In both respects, the legacy of colonialism casts a long shadow.

Thirdly, for all their similarities of approach, the three IBSA countries each face distinct constraints that influence its approaches to human rights on the global stage. India, unlike Brazil and South Africa, has massive security challenges. Internally, it must contend with insurgency in Kashmir, secessionist movements in the north-east, a Maoist-inspired rebellion in central and eastern India and a history of organized violence between Hindus and Muslims. India has also experienced repeated attacks from international terrorists and is vigilant on this topic. Indeed, in its submission for the UPR, India reported that terrorists and insurgents had taken advantage of its relatively open and democratic society to perpetrate violence and killings, which had a deleterious effect on the population and on their enjoyment of human rights.[26] Externally, the dangerous neighborhood in which India is situated shapes its thinking on rights issues. Conflict and/or severe state fragility have been experienced in recent years in Sri Lanka, Nepal, Afghanistan, Myanmar and Pakistan. Coups or states of emergency have occurred in the Maldives and Bangladesh, while India has disputed borders with Pakistan and China.

Brazil faces unique challenges of its own. Unlike either India or South Africa, Brazil operates within a substantial regional human rights architecture. This influences its approach to a variety of substantive issues – from its policies on indigenous people, to its decisions on the rights of criminal defendants to due process. While South Africa is a party to the African Charter of Human Rights, the regional institutions through which it operates are not nearly as constraining as the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights, which have been in place much longer and possess a more fully developed jurisprudence. India, for its part, faces no regional human rights architecture at all – and is only weakly associated with the South Asian Association for Regional Cooperation (SAARC), which possesses few of the characteristics of the African Un-

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26. A/HRC/WG.6/13/ZAF/1, para. 22.

ion. The net effect of regional human rights institutions on Brazil's behavior within the global system is difficult to gauge. In certain respects, the process of participating in such institutions has socialized Brazil into taking its international obligations seriously. Having observed relatively high regional standards, its government has little to fear from the less demanding commitments often found in global bodies. On the other hand, having been on the receiving end of adverse judgments by regional institutions has clearly heightened Brazil's sensitivities on the creation of new norms – thereby making it a more prickly and defensive actor in UN forums.

South Africa also finds itself in a situation that sets it apart from its two IBSA partners. Most notably, South Africa's history makes it vulnerable to charges of diplomatic double standards. The end of apartheid came about in large part through long years of political and legal struggle within its borders. But external pressure, and expressions of international solidarity from governments and civil society groups across Africa and throughout the world, played a major role as well. This history puts great moral pressure on South Africa to extend a similar degree of support to people suffering under human-rights-abusing regimes. When its government adopts a diplomatic position that might be regarded as predictably pragmatic for any other state, international opinion judges South Africa more harshly.

Further research will be needed to obtain a more precise understanding of the factors driving the positions taken by DEPs on human rights issues in multilateral settings. A wider range of country cases and a more diverse set of institutional environments will need to be assessed. A research agenda is slowly taking shape among scholars and practitioners addressing such issues as peacebuilding and statebuilding,[27] processes which, because they influence the nature of states rejoining the international community, will have a profound effect on the dynamics of international human rights diplomacy.

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27. See, for example, Richmond and Tellis (2013).

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