

# *Politicisation of human rights: current battlegrounds and sites of contestation*

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# POLITICISATION OF HUMAN RIGHTS: CURRENT BATTLEGROUND AND SITES OF CONTESTATION

ROSA FREEDMAN\*

*This article explores the form and substance of current debates on the universality of international human rights law. While theoretical discussions about universality have largely been resolved at the practical and professional level, albeit not by theorists and scholars, less attention has been paid to the tactics deployed by some states, groups and blocs that seek to undermine that universality in practice. This article first sets out a framework for considering different forms of politicisation of human rights. It then turns to current battlegrounds and sites of contestation at the UN Human Rights Council, using three case studies to explore how politicised discourse and tactics are used by different countries and alliances. It then turns to how those discourses and tactics are being advanced elsewhere, with particular focus on how human rights narratives are being subverted to undermine the human rights project itself. The article is based on research conducted by the author for a report to the European Parliament on countering opposing human rights narratives, and provides insights into how and why states inimical to human rights are adopting those discourses and tactics.*

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## I INTRODUCTION

Universality is at the heart of international human rights, with the central tenet being that all individuals have fundamental human rights by virtue of being born human. Yet, ever since the Universal Declaration of Human Rights was adopted in 1948, a sizeable number of states have tried to insist that human rights are not universal. Those states have attempted to undermine universality by using a range of discourses and tactics to challenge or undermine the international human rights project.

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For some decades leading up to the 1990s, conflicts on human rights issues were often presented as conflicts between states' values. Some states went as far as invoking 'Asian values' in opposition to the existence of a universal concept of human rights.<sup>1</sup> Other governments deploying cultural relativist discourses used cultural or religious values to justify limiting or undermining human rights.<sup>2</sup> Resolving such conflicts becomes politically sensitive, and compromise often appears unfeasible.<sup>3</sup> Invocations of cultural differences may be legitimate, for example when setting an educational curriculum, but usually only when they relate to uncontroversial human rights matters. Although cultural sensitivities can affect the way a fact is perceived, it is more likely that 'disagreement over the facts merely reflects wishful thinking or wilful deception, a hypocritical avoidance of the fundamental rules of international conduct by lying',<sup>4</sup> such as where claims about "cultural sensitivities" are used as an attempt to justify oppression of LGBT individuals.<sup>5</sup>

While these discourses are still advanced in some strands of academia or by some states, it is widely accepted by policymakers and practitioners that international human rights are – or at least should be – universal. The 1993 Vienna Declaration and Program of Action largely closed the door on these discussions, declaring in its first paragraph that "The universal nature of these rights and freedoms is beyond question."<sup>6</sup> Whilst it also, rather more ambiguously, said that 'the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind',<sup>7</sup> this should not be seen as deviating from the general orientation of universality. Rather, it indicates that the method of securing compliance is a matter for the State's internal legal system, and that it is the duty of States to promote and protect human rights.

Although the universality battleground has been comprehensively discussed from a theoretical perspective, there is less understanding of how states currently take forward cultural relativist approaches at intergovernmental bodies and through soft power. This article explores how states are trying to push back on human rights and undermine universality through the guise of human rights discourses and politicised tactics they deploy.

The article begins by exploring and explaining politicisation of human rights, how it can be understood, and the ways in which it manifests in intergovernmental bodies,

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<sup>1</sup> See for example, World Conference on Human Rights, [Report of the Regional Meeting for Asia. Bangkok, 29 March-2 April 1993](#), UN Document, A/CONF.157/ASRM/8, 7 April 1993.

<sup>2</sup> Kausikan, B., 'Asia's Different Standards', *Foreign Policy*, Vol. 92, 1993, 21-24.

<sup>3</sup> Rittberger, V. & Zangl, B., *International Organization: Polity, Politics and Policies*, Houndmills: Palgrave MacMillan, 2006, 193-208.

<sup>4</sup> Franck, T.M., 'Of Gnats and Camels: Is there a double standard at the United Nations?', *The American Journal of International Law*, Vol.78 (4), 1984, 831-832

<sup>5</sup> Heinze, E., 'Sexual Orientation and International Law: A Study in the Manufacture of Cross-Cultural Sensitivity', *Michigan Journal of International Law*, Vol. 22 (2), 2001, 283-309.

<sup>6</sup> Vienna Declaration and Programme of Action, adopted by World Conference on Human Rights, Vienna, 14-25 June 1993, UN Doc A/CONF.157/23, para 1.

<sup>7</sup> *Ibid*, para 5.

with a specific focus on those tactics within the UN Human Rights Council (HRC or “Council”). As such, three case studies are explored in Section 3 to understand the manifestation and impact of politicised tactics at the Council on the human rights project. The article then turns to some of other tactics deployed outside of intergovernmental bodies to undermine universal human rights. The concluding comments explore some of the motivations for states to follow these courses of conduct and some ways to counter these moves in order to protect and advance universal human rights. The article does not aim to provide a comprehensive study of all forms of attacks on international human rights law – to do so would require significantly more space and resources than possible within the constraints of one article – but rather to open discussions about the current tactics used to attack universal human rights.

## II POLITICISATION

‘Let me suggest that the word ‘politicization’ be retired from active service. Let me be frank, most of the people in this room work for governments or seek to effect the actions of governments: that is politics. For some people in this room to accuse others of being political is a bit like fish criticizing one another for being wet.’ Sergio Viera de Mello<sup>8</sup>

Politicisation of international organisations is a complex notion. The very nature of international organisations is political, and therefore some degree of politicisation will always exist. Politicisation can occur through discourse and through diplomatic tactics, which can be used for very different motives. It is important to understand how politicisation occurs, before turning to the motives which generate it, which I categorise as progressive, pernicious, retractionist, or regionalist.

Lyons *et al* focus on politicisation as discourse, defining politicisation as the introduction of unrelated controversial issues by countries seeking to further their own political objectives.<sup>9</sup> They use the term ‘politicisation’ to describe political discussions unrelated to the particular debate in an organisation or body. Heinze adds that politicisation does not just occur at the discursive level but also through state actions such as voting in blocs and selectivity regarding country-specific human rights situations, demonstrate politicisation in a body’s work.<sup>10</sup>

Whether there is politicisation is often based on the eye of the beholder. Brown asserts that ‘politicization seems to be something that states are quite willing to accuse

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<sup>8</sup> Commission’s Are Sound, Problems Can be Surmounted, High Commissioner Says as Main Human Rights Body Ends Session’, OHCHR Press Release, 25 April 2003.

<sup>9</sup> G.M. Lyons, D. A. Baldwin & D. W. McNemar, ‘The “Politicization” Issue in the UN Specialized Agencies’, *Proceedings of the Academy of Political Science*, Vol. 32 (4), 1977, 89.

<sup>10</sup> E. Heinze, ‘Even-handedness and the Politics of Human Rights’, *Harvard Human Rights Journal*, Vol. 21 (7), 2008, 41.

each other of doing but that they never seem to admit to doing themselves'.<sup>11</sup> States with common political aims will not view those aims as being furthered as politicisation, while countries with opposing interests will often cry foul.

"Politicization", according to Lyons, *et al*, 'can be viewed as an organizational defect to be corrected, an indicator to be understood, or a bargaining tactic to be dealt with'.<sup>12</sup> However, many scholars argue that it is naïve to view politicisation as an organisational defect, and instead insist that international organisations cannot be divorced from the political agendas of their members. Humphrey comments that human rights in particular cannot be divorced from politics, saying that '[I]n a sense nothing could be more political; and it would have been quite unreal had the great international debate on human rights not reflected the deep differences which divide nations and groups'.<sup>13</sup> Recognising that political agendas will always exist at multilateral organisations results in an acceptance, or tolerance, of some degree of politicisation as a natural consequence of international organisations, not a defect that can be 'corrected'.

Perceiving politicisation as an indicator emphasises that the advancement of objectives within an international organisation reflects trends in the international system. Politicisation directly mirrors current political, military, economic or cultural conflicts between states, groups and blocs. Elimination of highly sensitive conflicts would not address the underlying reasons for politicisation of international organisations. International political tensions, rather than individual situations, would have to be resolved before politicisation could cease. Politicisation may also be used as a form of protest. Proceedings in intergovernmental bodies demonstrate that weaker states engage in politicisation of proceedings to register their protest. Weaker states may also politicise a body to improve their bargaining power elsewhere. International organisations become arenas where sometimes unrelated or controversial issues are raised so weaker states have their policy aims heard by more powerful countries.

#### A *Politicisation and Regionalism*

A main way in which politicisation occurs is through regionalism. States tend to form alliances with other countries from the same region. At the UN there are five official regional groups (established in 1963): the African Group; the Asian Group; the Latin American and Caribbean Group (GRULAC); the Western European and Other Group (WEOG); and the Eastern European Group. Member states join the

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<sup>11</sup> B.S. Brown, *The United States and the Politicization of the World Bank: Issues of international law and policy*, Publication of the Graduate Institute on International Studies, New York; London: Kegan Paul International, 1992, p. 22.

<sup>12</sup> *Ibid.*, p. 86.

<sup>13</sup> J. P. Humphrey, *Human Rights and the United Nations: A Great Adventure*, New York: Transnational Publishers Inc, 1984, p. 25.

appropriate group based on their geographic location, and they are used to apportion seats or membership to UN bodies.<sup>14</sup>

Political coalitions at the UN have become as influential as the geographic groups<sup>15</sup>. Countries form subgroups within or across existing regional groups, asserting collective strength to pursue collective aims. Developing states have made more effective use than developed states of non-geographically based alliances, as they have a greater need for collective strength. The Non-Aligned Movement (NAM)<sup>16</sup> and the Group of 77 (G77) were the traditional Global South political blocs during the Cold War. They remain loosely allied but have largely given way to the Organisation of Islamic Cooperation (OIC), the G20+, the BRICS (Association of Brazil, Russia, India, China and South Africa) and the Like-Minded Group of Developing Countries (LMG). Of those groups, the OIC and the LMG have been the most active in terms of pernicious and retractionist politicization of UN human rights mechanisms.

The OIC was established in 1969 to unite Muslim countries. It has 57 member states spanning four of the five UN regional groups<sup>17</sup>. Many of its members are also influential within other blocs or alliances. As such, the OIC has far-reaching political power. Traditionally the OIC has agreed on collective group positions that advance the interests of its members, some of which are authoritarian or hybrid regimes with grave domestic human rights records. It largely operates as a bloc despite some fragmentation caused by the Arab Spring, the civil war in Syria, and the related fight against ISIS. The OIC frequently supports its members and allied states by blocking the scrutiny of domestic abuses, shifting the blame onto non-state actors, and/or keeping the spotlight on Israel.

The LMG is an informal alliance of approximately 20 to 25 states that purport to represent ideas from across the developing world. They too come from four of the five regional groups, which gives it considerable strength owing to its members' regional alliances. Many members have been heavily criticised the current international human rights regime<sup>18</sup> while simultaneously committing grave human rights abuses domestically. The LMG became particularly active at the HRC from 2011.<sup>19</sup> This was partly in response to many OIC, NAM and African Group members claiming that the

<sup>14</sup> See for example, R. Thakur, *What is Equitable Geographical Distribution in the 21<sup>st</sup> Century*, The United Nations University, New York, Report of a seminar, 1999.

<sup>15</sup> D. Nicol, 'Interregional Co-ordination Within the United Nations: The Role of the Commonwealth', in B. Andemicael (ed), *Regionalism and the United Nations*, Oceana Publications, Dobbs Ferry, 1979, p. 102.

<sup>16</sup> The NAM developed from the Asian-African Conference, a political gathering held in Bandung, Indonesia in April 1955. The conference was convened in part due to frustration by many newly independent countries unable to secure UN membership due to Cold War politics. The two then-superpowers refused to admit states seen as belonging to the other camp.

<sup>17</sup> 21 Sub-Saharan African, 12 Asian, 18 Middle Eastern and North African, three eastern European and Caucasian, two South American states and one Permanent Observer Mission. Find more information on the Organisation of the Islamic Conference, 'Links. Permanent Observer Missions', [webpage](#).

<sup>18</sup> UN Human Rights Council, *Non-Paper of the Like-Minded Group on the HUMAN RIGHTS COUNCIL*, *Human Rights Voices*, 2006.

<sup>19</sup> A. Essam, *'The Like Minded Group (LMG): Speaking truth to power'*, *Universal Rights Group*, Blog, 10 May 2016.

Council was being dominated by ‘Western ideology’ and heavily focusing on civil and political rights.

### B *Politicisation of Human Rights Bodies*

Given that the Human Rights Council is an intergovernmental body, and that politics is at the heart of how it operates, politicisation exists throughout its work. When exploring the manifestation and impact of politicisation at the Council, it is too simplistic to insist that only opponents of universality, or indeed of fundamental human rights, use politicised tactics to advance their positions at other intergovernmental UN bodies. Countries seeking to advance protection of human rights also use politicised tactics, rely on bloc voting, and use diplomacy as a vehicle for advancing their aims. Often those tactics are similar although having different motives. When exploring the manifestation and impact of politicisation on human rights, it is too simplistic to insist that only opponents of universality or of human rights altogether use politicised tactics. Countries seeking to develop human rights or advance their protection also similar strategies and tools to achieve their aims.

The following three-part model provides a way to understand politicisation within the UN human rights system:

***progressive politicisation*** – states use tactics within intergovernmental bodies to advance the development of human rights;

***pernicious politicisation*** – states use intergovernmental bodies to undermine the interpretation or implementation of particular fundamental rights and/or to justify the oppression of particular groups or individuals;

***retractionist politicisation*** – states seek to undermine the human rights project in its entirety.

Frequently the tactics deployed by states with different motives are similar to one another. The key element that separates the different types of politicisation is whether the strategies and tactics are used to advance human rights, undermine specific human rights, or derail the human rights project altogether. Dominguez-Redondo insists that politicisation provides a “blunt critique” of political processes. Her position has some merit when commentators do not explore the different ways in which politicisation manifests;<sup>20</sup> but she does not address the impact of pernicious or retractionist politicisation. It is only by exploring the different types of politicisation, often deployed at the same time by different groups of states, understand how politicisation impacts upon the human rights project and system.

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<sup>20</sup> E. Dominguez-Redondo, *In Defence of Politicization of Human Rights: The UN Special Procedures* (OUP, 2020), 1

### III POLITICISATION AND THE HRC: CURRENT SITES OF CONTESTATION

To understand how competing human rights narratives play out within the human rights matrix, particularly the use of pernicious and retractionist tactics, this section explores three sites of contestation. The case studies selected are ongoing battlegrounds involving many states and alliances. This enables broad and deep understanding of the tactics deployed both to advance or counter those agendas. That, in turn, provides foundations for understanding and analysing the current narratives and tactics deployed in other arenas (discussed in Section 4).

#### A SOGI Rights and Rights of 'The Family'

A main battleground on the universality of human rights has long been the protection, or lack thereof, of fundamental rights for Sexual Orientation and Gender Identity (SOGI) minorities. From the early negotiations on the 1993 Vienna Declaration and Programme of Action to the present day, this issue has been a site of contestation of human rights in which progressive tactics and agendas have been countered by pernicious tactics, sometimes with the additional aim of retractionism by those states seeking to undermine universality of human rights. As such, advances have been slow, at best, and each step towards non-discrimination has met with attempts to block or undermine those moves.

Initial attempts to propose language recognizing the SOGI minorities<sup>21</sup> were countered by proposals to delete the entire sentence about prohibited grounds of discrimination,<sup>22</sup> with the outcome being a simple statement condemning discrimination without listing any specifically prohibited grounds<sup>23</sup>. The final Declaration and Programme of Action devoted substantial attention to women's rights but made no mention of SOGI minorities.

It took until 2006 for SOGI to be placed into a UN human rights resolution (on extra-judicial, summary or arbitrary executions),<sup>24</sup> and until 2011 for a resolution specifically on the fundamental rights of SOGI minorities. Resolution 17/19<sup>25</sup> commissioned a study and convened a panel session on SOGI rights. Until 2011 discussions on SOGI rights had been blocked by the OIC and many African

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<sup>21</sup> The sentence in question was the first sentence of Principle 8 of the Secretariat-proposed text: 'Respect for human rights and for fundamental freedoms for all human beings without distinction as to sex, language, or religions is a fundamental rule of human rights law...'. The second sentence of the proposed paragraph referred to the need to eliminate 'all forms of racism and racism, xenophobia and related intolerance'. See M.D. Kirby, ['International Legal Notes: Second World Conference on Human Rights, Vienna, Austria'](#), *Australian Law Journal*, June 1993, p. 35.

<sup>22</sup> M.D. Kirby, ['International Legal Notes: Second World Conference on Human Rights, Vienna, Austria'](#), *Australian Law Journal*, June 1993, p. 35.

<sup>23</sup> D. Saunders, 'Human rights and sexual orientation in international law', *Ijga.org*, July 2005.

<sup>24</sup> UN Commission on Human Rights, ['Commission on Human Rights resolution 2000/31 Extrajudicial, summary or arbitrary executions'](#) UN Document, E/CN.4/RES/2000/31, 20 April 2000.

<sup>25</sup> HRC, ['17/19 Human rights, sexual orientation and gender identity'](#), UN Document, resolution 17/19, 17<sup>th</sup> Session, A/HRC/RES/17/19, 14 July 2011.



countries.<sup>26</sup> Resolution 17/19 was an anomaly enabled by internal rifts within the OIC during the ‘Arab Spring’ uprisings resulting in those states being absent from the negotiating process and therefore neither blocking nor diluting the resolution.

A year later, when the panel took place,<sup>27</sup> the OIC was almost fully reunified. As the then UN Secretary-General Ban Ki-Moon was delivering a video address opening the Panel, almost every delegate from OIC member states that were in attendance stood up and filed out of the Council Chamber, seemingly to undermine the panel’s legitimacy. South Africa, which had proposed the original resolution and which has SOGI rights enshrined in its national Constitution, caved to pressure from regional allies and announced that it would not table a further resolution on SOGI. South Africa’s *volte-face* was a sign of the growing momentum against SOGI rights. It took another five years for the Council to create a Special Procedures mandate on protecting SOGI persons from violence and discrimination.<sup>28</sup> The mandate’s creation stirred great protest first at the Council and then at the UN General Assembly,<sup>29</sup> but to date it continues to be renewed periodically.

More than 70 countries still criminalise LGBTI people and their actions, and still violate their fundamental rights.<sup>30</sup> Many of those same states have attempted to block the protection of SOGI minorities. One tactic they have deployed is seeking to advance ‘traditional values’ or rights of ‘the family’ as a way of countering moves to protect SOGI minorities.

In September 2009, the Russian Federation, Belarus, Bolivia, China, Singapore and Sri Lanka, amongst others, introduced a draft resolution at the HRC entitled ‘Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind’<sup>31</sup>. Some supporters of the resolution emphasised ‘the importance, among others, of traditional *family* values, which serve as a good and solid foundation in the strengthening of human rights principles and norms’<sup>32</sup>. Other states raised concerns that this approach could undermine women’s rights and the

<sup>26</sup> R. Freedman, ‘[The United Nations Human Rights Council’s Backwards Step on LGBT Rights](#)’, *IntLawGrrls*, 7 June 2013.

<sup>27</sup> S. Gray, ‘[“Milestone” LGBT discussion at UN Human Rights Council welcomed despite walkout](#)’, *Pink News*, 8 March 2012.

<sup>28</sup> HRC, ‘[Resolution adopted by the Human Rights Council on 30 June 2016 - 32/2. Protection against violence and discrimination based on sexual orientation and gender identity](#)’, UN Document, resolution 32/2, 32<sup>nd</sup> Session, A/HRC/RES/32/2, 15 July 2016.

<sup>29</sup> R. Freedman, ‘[Mandate Renewal of Independent Expert on Sexual Orientation and Gender Identity At Risk](#)’, *IPI Global Observatory*, 10 July 2019.

<sup>30</sup> See for example, Human Dignity Trust, ‘Map of Countries that Criminalise LGBT People’, [webpage](#), n.d.

<sup>31</sup> HRC, ‘[12/... Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind](#)’, UN Document, 12<sup>th</sup> Session, A/HRC/12/L.13/Rev.1, 30 September 2009.

<sup>32</sup> Emphasis added. Permanent Mission of the Republic of Indonesia, ‘Statement by H.E. Mr. Dian Triansyah Djani of Indonesia. Explanation of Vote on “Human Rights and Traditional Values”’, Human Rights Council 12<sup>th</sup> Session, 2 October 2009.

rights of other minorities, or indeed 'legitimise human rights abuses'<sup>33</sup>. The resolution was adopted by a vote of 26 to 15, with 6 abstentions<sup>34</sup>.

In 2011 and 2012 Russia tabled similar resolutions with the OIC, the Group of Arab States and the African Group as co-sponsors<sup>35</sup>. Traditional values was advanced both to counter protections of SOGI minorities and also, more broadly, to challenge universality of human rights. China, for example, insisted that 'the education of traditional values' was consistent with 'the right of each country to freely choose their mode for promoting human rights according to their natural historical, cultural or other backgrounds'<sup>36</sup>.

The HRC Advisory Committee 2012 study on traditional values underscored the primacy of universality of human rights where there are any conflicts with 'traditional values'<sup>37</sup>. An OHCHR report on the same topic noted that 'traditional values could be invoked [...] to undermine the rights of the most marginalized and disadvantaged groups'<sup>38</sup>. After that time, the Russian Federation and its allies moved away from the traditional values agenda and took up a related strategy in an attempt to counter increasing Council focus and action on SOGI rights.

In March 2013, Tunisia, Egypt, Russia, Bangladesh, Qatar, Uganda, Morocco, Mauritania and Zimbabwe proposed a draft resolution on 'protection of the family'<sup>39</sup>. Egypt introduced the resolution, stating that it was needed to counterbalance 'the excessive focus at the international level on individual rights at the expense of family

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<sup>33</sup> On the resolution 'Strengthening Respect for Human Rights'. D. Griffiths, '[Explanation of Vote by the United States on Traditional Values](#)', Human Rights Council, 12<sup>th</sup> Session, 1 October 2009.

<sup>34</sup> HRC, 'Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind : resolution / adopted by the Human Rights Council', UN Document, resolution 12/21, A/HRC/Res/12/21, 12 October 2009.

<sup>35</sup> See adopted by a vote of 24 to 14, with 7 abstentions, HRC, '[16/3 Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind](#)', UN Document, resolution, 16<sup>th</sup> Session, A/HRC/RES/16/3, 8 April 2011 and; adopted by a vote of 25 to 15, with 7 abstentions, HRC, '[21/3. Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind: best practices](#)', UN Document, resolution, 21<sup>st</sup> Session, A/HRC/RES/21/3, 9 October 2012.

<sup>36</sup> Remarks of China on draft resolution A/HRC/21/L.2 transcribed from UN webcast and translated in English at Human Rights Council, 21<sup>st</sup> regular session, 36<sup>th</sup> meeting, 26 September 2012. See HRC, '21<sup>st</sup> regular session of the Human Rights Council (10 - 28 September, 5 November 2012)', [webpage](#).

<sup>37</sup> HRC, '[Study of the Human Rights Council Advisory Committee on promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind](#)', UN Document, 22<sup>nd</sup> Session, A/HRC/22/71, 6 December 2012.

<sup>38</sup> HRC, 'Summary of information from States Members of the United Nations and other relevant stakeholders on best practices in the application of traditional values while promoting and protecting human rights and upholding human dignity', UN Document, resolution, 24<sup>th</sup> Session, A/HRC/24/22, 17 June 2013.

<sup>39</sup> Draft resolution introduction by the representatives of Egypt. HRC, '[Protection of the family : draft resolution / Bangladesh, Egypt, Jordan, Libya, Mauritania, Morocco, Qatar, Russian Federation, Saudi Arabia, Tunisia, United Arab Emirates, Uganda, Zimbabwe](#)', UN Document, draft resolution, 50<sup>th</sup> Meeting, A/HRC/22/L.25, 19 March 2013.

and collective rights<sup>40</sup>, but then -- noting the lack of support garnered -- immediately withdrew it for consideration at a later session<sup>41</sup>.

The following year 64 states co-sponsored a draft resolution<sup>42</sup> setting out the need for the family to be protected by the state<sup>43</sup>. A group of 32 states led by Ireland, Chile, Uruguay and France proposing an amendment to change the focus to ‘the protection of the family and all its members [...] bearing in mind that, in different cultural, political and social systems, various forms of the family exist’<sup>44</sup>. In response, Pakistan, Saudi Arabia and the United Arab Emirates proposed their own counter-amendment, which would have inserted new language clarifying that only men and women can marry<sup>45</sup>. A no-action motion blocked both proposals. The resolution was adopted by a vote of 26 in favour, 14 against and 6 abstaining. Notably, states’ positions on the ‘protection of the family resolution’ were nearly identical to those on the ‘traditional values’<sup>46</sup>.

The ‘core group’ of states supporting the ‘protection of the family’ initiative continued their efforts, for instance with a similar resolution in 2015<sup>47</sup>. However, as anti-SOGI messaging from those sponsoring ‘protection of the family’ resolutions became more vocal, more states and from across different regions opposed the agenda. The OHCHR 2016 report on the topic<sup>48</sup> made clear that such anti-SOGI messaging and intent was not compatible with universal human rights and that the *family* was not

<sup>40</sup> UN Web TV, ‘A/HRC/22/L.25 Vote Item:3 - 50th Meeting 22nd Regular Session Human Rights Council’, [video](#) (00:08:56) 21 March 2013.

<sup>41</sup> UN Web TV, ‘A/HRC/22/L.25 Vote Item:3 - 50th Meeting 22nd Regular Session Human Rights Council’, [video](#) (00:08:56) 21 March 2013.

<sup>42</sup> HRC, ‘[Protection of the Family](#)’, UN General Assembly, UN Document, draft resolution, 38<sup>th</sup> meeting, A/HRC/26/L.20/Rev.1, 25 June 2014.

<sup>43</sup> HRC, ‘[Draft resolution. 26/... Protection of the family](#)’, UN Document, 26<sup>th</sup> Session, A/HRC/26/L.20/Rev.1, 25 June 2014.

<sup>44</sup> Amendment to draft resolution A/HRC/26/L.20/Rev.1, UN Doc. A/HRC/26/L.37. See, HRC, ‘[Draft resolution. 26/... Protection of the family](#)’, UN Document, 26<sup>th</sup> Session, A/HRC/26/L.20/Rev.1, 25 June 2014; and HRC, ‘[Argentina, Austria, Chile, Colombia, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay: amendment to draft resolution A/HRC/26/L.20/Rev.1](#)’, UN Document, amendment, 26<sup>th</sup> Session, A/HRC/26/L.37, 24 June 2014.

<sup>45</sup> HRC, ‘Pakistan, Saudi Arabia, United Arab Emirates: amendment to draft resolution A/HRC/26/L.20/Rev.1. 26/... Protection of the family’ UN Document, 26<sup>th</sup> Session, A/HRC/26/L.38, 25 June 2014.

<sup>46</sup> HRC, ‘[Resolution adopted by the Human Rights Council. 26/11 Protection of the family](#)’, UN Document, resolution, 26<sup>th</sup> Session, A/HRC/RES/26/11, 16 July 2014.

<sup>47</sup> Draft Resolution L.25 proposed by Bangladesh, Belarus, China, Côte d’Ivoire, Egypt, El Salvador, Mauritania, Morocco, Qatar, Russian Federation, Saudi Arabia and Tunisia. HRC, ‘[Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development](#)’, UN Document, 29<sup>th</sup> Session, A/HRC/29/L.25, 1 July 2015.

<sup>48</sup> HRC, ‘[Protection of the family: contribution of the family to the realization of the right to an adequate standard of living for its members, particularly through its role in poverty eradication and achieving sustainable development](#)’, OHCHR report, UN Document, 31<sup>st</sup> Session, A/HRC/31/3, 29 January 2016.

a rights holder but rather the *individuals* within it hold human rights<sup>49</sup>. Since that time, no further attempts have been made to advance this agenda.

### B *Pushback on Fundamental Rights: 'Defamation of Religions'*

A main pernicious tactic seen at the HRC is the attempt to advance (non-human) entities as rights-holders in order to limit existing human rights. This tactic can be used to limit the rights of specific minorities (as has been seen regarding SOGI) and/or to limit specific fundamental rights. It is that latter objective that underpins the 'defamation of religions' agenda. States trying to position religions as rights-holders attempted to protect them from defamation as a way of undermining or limiting both the right to freedom of expression and the right to freedom of religion or belief. This is clearly pernicious politicisation; it is also retractionist insofar as it aims to weaken the system's very purpose of protecting *humans* as rights-holders.

Despite the Vienna Declaration making clear that human rights are universal, disputes over the implications of universality (particularly in the areas of women's rights and SOGI rights) continued to escalate. In 1999 the OIC moved from merely opposing initiatives to spearheading a conservative campaign aimed at protecting Islam from defamation.<sup>50</sup> Initially concerns were raised about the exclusive focus on Islam. In response to those concerns and a proposal to call it 'Stereotyping of Religions', Pakistan revised the resolution's title to 'Defamation of Religions', and it was adopted without a vote, although the EU stated that it did not attach any legal meaning to the word 'defamation'.<sup>51</sup>

The following year, Pakistan again tabled the 'Defamation of Religions' resolution on behalf of the OIC. Proposals were made to add language on the right to change one's religion and the right to profess no religion.<sup>52</sup> European countries voiced concerns about the suggestion that religions are protected by human rights law, and the implication that negative statements about religions are equivalent to racist hate speech and hence merit the same type of state response. Pakistan modified the text to remove references to 'xenophobia', and the resolution was adopted by consensus, with the EU insisting that the issue not be raised again.

<sup>49</sup> See, in particular, UN Document A/HRC/31/3, *ibid*, Part III.

<sup>50</sup> UN Document, E/CN.4/1999/SR.61, referring to the draft resolution in UN Document, E/CN.4/1999/L.40. See, UN Commission on Human Rights, 'Summary record of the 61st meeting', UN Document, 55<sup>th</sup> Session, E/CN.4/1999/SR.61, 19 October 1999 and; UN Economic and Social Council, 'Defamation of Islam', UN Commission on Human Rights, UN Document, E/CN.4/1999/L.40, 1999.

<sup>51</sup> Resolution 1999/82, on 'Defamation of religions'. UN Economic and Social Council, [Commission on Human Rights: report on the 55th session, 22 March-30 April 1999](#), E/CN.4/1999/167, 1999.

<sup>52</sup> Amendments proposed by Australia, Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom. UN Commission on Human Rights, 'Amendments to draft resolution E/CN.4/2000/L.6', UN Document, E/CN.4/2000/L.18, 2000.

Nevertheless, in 2001 Pakistan again tabled a defamation of religions resolution on behalf of the OIC. WEOG members called for a vote on the resolution.<sup>53</sup> They emphasized that religions cannot be rights-holders, and that only individuals – including adherents to a religion – are protected under human rights law.<sup>54</sup> The resolution was adopted by a vote of 28 in favour to 15 against, with 9 abstentions.<sup>55</sup> This pattern was repeated on several subsequent occasions. In 2002<sup>56</sup>, 2003<sup>57</sup>, 2004<sup>58</sup>, and 2005.<sup>59</sup>

In the autumn of 2005, following the publication of cartoons depicting the Prophet Mohammed in the Danish newspaper *Jyllands-Posten*, the OIC tabled a ‘Defamation of religions’ resolution at the UN General Assembly. The resolution was adopted by 88 in favour, 52 against, and 23 abstentions. However, the ‘whole-UN’ litmus test showed important regional and political dynamics. The vote showed that 16 African states who were not members of the OIC abstained on the resolution. Within the Asia-Pacific region, small island states opposed the resolution, with other Asia-Pacific states abstaining. Albania, which was the sole Eastern European Member State within the OIC, voted against the resolution.

After this time, Western and Eastern European states started to build an alliance to oppose the defamation of religions resolutions. The OIC, meanwhile, started to call for limitations to the right to freedom of expression to ensure ‘respect for religions and beliefs’.<sup>60</sup> This alienated many states, as it shifted the focus away from human rights and towards protecting institutions, symbols and ideas, as well as providing legitimacy for violating the rights of religious minorities.<sup>61</sup>

By 2010, there was far less support for the agenda despite the OIC changing the language to the ‘incitement to religious hatred’, which sounds more compatible with human rights. However, the OIC realised that the resolution would be defeated in 2011, so agreed to a compromise resolution: ‘Combating intolerance, negative

<sup>53</sup> Resolution 2001/4 adopted by vote of 28 to 15, with 9 abstentions. Commission on Human Rights, [‘Combating defamation of religions as a means to promote human rights, social harmony and religious and cultural diversity’](#), UN Document, 61<sup>st</sup> Meeting, 18 April 2001.

<sup>54</sup> UN Social and Economic Council, [‘Compte rendu analytique de la 61<sup>e</sup> séance’](#), 50<sup>th</sup> Session, E/CN.4/2001/Sr.61, 4 December 2001.

<sup>55</sup> Resolution 2000/4. Commission on Human Rights [‘Combating defamation of religions as a means to promote human rights, social harmony, and religious and cultural diversity’](#), UN Document, 61<sup>st</sup> Meeting, E/CN.4/RES/2001/4, 18 April 2001.

<sup>56</sup> Resolution 2002/9, adopted by 30 votes to 15, with 8 abstentions. Commission on Human Rights, [‘Combating defamation of religion’](#), UN Document, 39<sup>th</sup> Meeting, 15 April 2002.

<sup>57</sup> Resolution 2003/4, adopted by 32 votes to 14, with 7 abstentions. Commission on Human Rights, [‘Combating defamation of religions’](#), UN Document, 47<sup>th</sup> Meeting, 14 April 2003.

<sup>58</sup> Resolution 2004/6, adopted by 29 votes to 16, with 7 abstentions. Commission on Human Rights, [‘Combating defamation of religions’](#), UN Document, 45<sup>th</sup> Meeting, 13 April 2004.

<sup>59</sup> Resolution 2005/3, adopted by a recorded vote of 31 to 16, with 5 abstentions. Commission on Human Rights, [‘Combating defamation of religions’](#), UN Document, 44<sup>th</sup> Meeting, 12 April 2005.

<sup>60</sup> See, e.g., Resolution 61/164 adopted by the UNGA on 19 December 2006. UNGA, [‘61/164. Combating defamation of religions’](#), UN Document, resolution, 61<sup>st</sup> Session, A/RES/61/164, 21 February 2007, op 9.

<sup>61</sup> UNGA, [‘Summary record of the 46th meeting : 3rd Committee, held at Headquarters, New York, on Monday, 24 November 2008, General Assembly, 63rd session’](#), UN Document, A/C.3/63/SR.46, 24 November 2008.

stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief'.<sup>62</sup> That resolution substantially built upon work ongoing at OHCHR,<sup>63</sup> which was formalised in the Rabat Action Plan in 2012.<sup>64</sup> It recognises that persons, not religions, benefit from protections under human rights law and that denigration of persons based on their religions does not necessarily constitute an incitement to religious hatred. The resolution was adopted by consensus.

Over the last decade, the OIC's 'defamation' agenda has continued to be used to block efforts by 'Western' states to introduce progressive content into resolutions on the right to Freedom of Religion or Belief. More recently there has been concern that the agenda may be brought back, particularly given the 2020 update of the Article 21 of the OIC's Cairo Declaration on Human Rights to foreground defamation of religions over freedom of expression<sup>65</sup>. That move has been criticised by as undermining fundamental human rights.<sup>66</sup> In 2021 a group of UN independent experts<sup>67</sup> issued a statement condemning attempts to revive the agenda.<sup>68</sup> The concern is that some states are returning to the agenda to undermine existing human rights, appeal to domestic audiences, and/or justify discriminatory laws such as on blasphemy.

The June 2023 HRC session saw the most concerning challenge to the (increasingly fragile) consensus on this issue area. On 12 July 2023 the Human Rights Council adopted Resolution 53/1 on 'Countering religious hatred constituting incitement to discrimination, hostility or violence' as a direct response to the burning of the Quran in Sweden weeks earlier. The resolution was adopted by a vote of 28 to 7 with 12 abstentions. The resolution prioritises religions over individuals and

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<sup>62</sup> Resolution 16/18 adopted on 24 March 2011. HRC, '[16/18 Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief](#)', UN Document, resolution, 16<sup>th</sup> Session, A/HRC/RES/16/18, 12 April 2011.

<sup>63</sup> See, e.g., OHCHR, '[Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights \(ICCPR\): Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence](#)', October 2008; OHCHR, '[2011 Expert workshops on the prohibition of incitement to national, racial or religious hatred](#)', 2011.

<sup>64</sup> UNGA, 'Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred', UN Document, A/HRC/22/17/Add.4, 11 January 2013.

<sup>65</sup> OIC, '[The Cairo Declaration of the Organization of Islamic Cooperation on Human Rights](#)', 24 December 2020.

<sup>66</sup> HRC, 'Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief', UN Document, 46<sup>th</sup> Session, A/HRC/46/30, 13 April 2021; D. Kaye, '[Promotion and protection of the right to freedom of opinion and expression: note / by the Secretary-General](#)', UN Document, 75<sup>th</sup> Session, A/75/261, 28 July 2020.

<sup>67</sup> The experts Mr Ahmed Shaheed (Special Rapporteur on freedom of religion or belief), Ms Irene Khan (Special Rapporteur on the promotion and protection of freedom of opinion and expression), Mr Fernand de Varennes (Special Rapporteur on minority issues), Mr Clément Nyaletsossi Voule (Special Rapporteur on the right to peaceful assembly and of association) and Ms Fionnuala Ní Aoláin (Special Rapporteur on the promotion and protection of human rights while countering terrorism).

<sup>68</sup> OHCHR, '[Historic consensus on freedoms of religion and expression at risk, say UN experts](#)', Press Release, 23 March 2021.



effectively insists that States criminalise “the deliberate and public burning of the Holy Qur’an or any other holy book”. The argument is that such acts are incitement to discrimination, hostility or violence, which violates ICCPR Article 20(2). But that obligation relates to protecting individuals from such acts, not to protecting religions or other entities.

Burning the Quran is an offensive act targeting a religious symbol, but offensive acts alone do not meet the Article 20(2) ICCPR threshold of “advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence”. They are not prohibited by international human rights law. Conversely, calls for States to criminalise those acts are calls for States to violate human rights obligations. Resolution 53/1 goes beyond the Rabat Plan of Action, which makes clear that limitations under Article 20(2) ICCPR must also meet the three-part test under Article 19(3) of the ICCPR. That test requires that any limitations on freedom of expression are legally precise, pursue a legitimate aim, and are necessary and proportionate to that aim. Instead, this new resolution undermines those safeguards.

It is important to understand the politics involved in this vote. Council members from the OIC could be expected to vote in favour. They were joined by Argentina, Bolivia, Cameroon, China, Cuba, India, South Africa, Ukraine, and Vietnam. Countries voting against were: Belgium, Costa Rica, Czechia, Finland, France, Germany, Lithuania, Luxembourg, Montenegro, Romania, United Kingdom and United States. And Benin, Chile, Georgia, Honduras, Mexico, Nepal and Paraguay abstained. It would be crude at this stage to ascribe motives to states for voting for the resolution. Some may be motivated by pernicious or retractionist politicisation, others by political, regional or ideological alliances, and a further group may be motivated by viewing the resolution as benign rather than recognising the challenges it poses to universality and to fundamental human rights.

### C *The Right to Development*

Some states advancing Third Generation Rights do so for seemingly progressive purposes, but others do so for pernicious or retractionist reasons. Some governments advance those rights as a way to prioritise state sovereignty over human rights obligations. Others seek to create new rights that bring new issue areas or enabling environments into the human rights system, but even those are (mis-)used by countries seeking to weaken or undermine fundamental rights. One example is the right to development.

During the main period of decolonisation (1950-1980) some states (broadly speaking, NAM) were concerned about the individualism that underpins human rights. They wanted to address the lack of responsibility attributed to individuals *vis-à-vis* their communities, societies and states, and the lack of responsibility attributed to states – particularly former colonial powers – to assist other counties in implementing human

rights. On the one hand, many states advanced these issues as enabling environments for human rights; while others wanted to push back against what they considered to be ‘Western’ values. These political dynamics led to a new set of TGR emerging, starting with the right to development.

In 1986 the UN General Assembly adopted the Declaration on the Right to Development,<sup>69</sup> with only 1 vote against adoption and only 8 abstentions.<sup>70</sup> Since then, no other human rights issue has led to such mistrust, misunderstanding and often acrimony at the UN.<sup>71</sup> It has pitted against one another two groups of countries holding opposing ideological positions on human rights, namely WEOG and LMG. WEOG states have traditionally viewed human rights as existing to protect the weak individual from the powerful state. LMG members have traditionally expressed concern at human rights law to encroaching upon state sovereignty. LMG states prefer to advance a development-first agenda – which does not place legally binding obligations on states – instead of a (legally-binding) human rights-based agenda. A third group of countries supports advancing the right to development to create a foundational and enabling environment needed for the realisation of all human rights. They emphasise the need to remedy and redress historical injustices that resulted in colonial powers being economically wealthier and more developed, largely based on the resources and labour of their former colonial subjects. This third group is particularly concerned with advancing equity of development across the world.<sup>72</sup>

Some WEOG states insist that the Declaration is as an attempt to position states as rights-holders,<sup>73</sup> Article 2.1 focuses on individuals as rights-holders but this is juxtaposed with assertions on the rights and prerogatives of states<sup>74</sup>. Article 3.3 has consistently raised the most concern as it asserts that developing countries have the right to exist in a ‘new economic order’ based on sovereign equality and international cooperation.<sup>75</sup> Moreover, it sets out a duty for developed countries to facilitate developing countries to realise the right to development’ and to promote them to develop more quickly.<sup>76</sup>

<sup>69</sup> UNGA, [‘Declaration on the Right to Development: resolution / adopted by the General Assembly’](#), UN Document, 41<sup>st</sup> Session, A/RES/41/128, 4 December 1986.

<sup>70</sup> The Declaration on the Right to Development was passed by 146 votes to 1, with 8 abstentions. Against were the USA; abstentions were Denmark, Finland, the Federal Republic of Germany, Iceland, Israel, Japan, Sweden and the UK.

<sup>71</sup> See for example, A. Sengupta, [‘Right to development as a human right’](#), *Economic and Political Weekly*, Vol 36, No 27, 2001, pp. 2527-2536.

<sup>72</sup> See, e.g., A. Sengupta, [‘On the Theory and Practice of the Right to Development’](#), *Human Rights Quarterly*, by The Johns Hopkins University Press, Vol 24, No 4, 2002, pp. 837-889.

<sup>73</sup> See UNGA, [‘Declaration on the Right to Development: resolution / adopted by the General Assembly’](#), UN Document, 41<sup>st</sup> Session, A/RES/41/128, 4 December 1986 and; A., Sengupta, [‘Right to development as a human right’](#), *Economic and Political Weekly*, Vol 36, No 27, 2001, pp. 2527-2536.

<sup>74</sup> See, for example, the Preamble, Article 1.1, and Article 2.3. UNGA, [‘Declaration on the Right to Development’](#), UN Document, 4 December 1986.

<sup>75</sup> ‘States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States.’ Article 3.3, UNGA, [‘Declaration on the Right to Development’](#), UN Document, 4 December 1986.

<sup>76</sup> See Article 3.3, UNGA, [‘Declaration on the Right to Development’](#), UN Document, 4 December 1986.



There have been significant advances over recent years. On 20 January 2020, a first draft of the Convention on the Right to Development was published by the UN Working Group on the Right to Development.<sup>77</sup> The draft convention sets out that individuals and peoples are the rights holders.<sup>78</sup> The substantive paragraphs build upon the UDHR and the core human rights treaties.<sup>79</sup> This move away from previous formulations shows a clear shift towards development being taken forward as a human right. This change in political tactics can be viewed as progressive politicisation.

These three case studies demonstrate the types of tactics deployed by states and blocs to advance pernicious or retractionist objectives and agendas at the UN. Rather than those countries disengaging from or rejecting human rights, they seek to shift understandings and interpretations of human rights. While some governments seek to advance legitimate human rights agendas and concerns, others are attempting to derail the human rights project by changing the narrative on how human rights should be defined; when and where they apply; and who holds rights against whom.

#### IIV TACTICS AND VEHICLES FOR ADVANCING COMPETING HUMAN RIGHTS NARRATIVES

States that seek to push back on human rights use tactics to advance their agendas through the UN human rights bodies and other multilateral fora, together with bilateral agreements and arrangements. Most of those states do not explicitly reject human rights; rather, they appear to engage with the bodies and mechanisms, yet do so to dilute and undermine fundamental rights. This section explores the tactics and initiatives that they deploy.

State actors inimical to fundamental rights oppose them by advancing agendas that undermine existing protections. This often is manifested through advancing development over human rights, which includes attempts to make some states rights holder *vis-à-vis* other states through TGR on the right to development, international solidarity, or on an equitable and democratic order.<sup>80</sup> That tactic is also deployed to make non-humans rights-holders (e.g. religions or the family) in order to undermine fundamental rights, such as freedom of expression, or the rights of minority groups, such as SOGI individuals. In these ways, states advance retractionist or pernicious agendas to undermine human rights.

<sup>77</sup> HRC, [Draft Convention on the Right to Development, with commentaries\\*](#) UN Document, 21<sup>st</sup> Session, A/HRC/WG.2/21/2/Add.1, 20 January 2020.

<sup>78</sup> See Preamble, pp. 5-16. HRC, [Draft Convention on the Right to Development, with commentaries\\*](#) UN Document, 21<sup>st</sup> Session, A/HRC/WG.2/21/2/Add.1, 20 January 2020.

<sup>79</sup> For detailed analysis see N. Schrijver, [‘A new Convention on the human right to development: Putting the cart before the horse?’](#), *Netherlands Quarterly of Human Rights*, Vol 38, Issue 2, 2020, pp. 84-93 and; R. G. Teshome, [‘The Draft Convention on the Right to Development: A New Dawn to the Recognition of the Right to Development as a Human Right?’](#), *Human Rights Law Review*, Vol 22, Issue 2, June 2022.

<sup>80</sup> See, for example, Freedman, Rosa. "Third generation rights: Is there room for hybrid constructs within International Human Rights Law." *Cambridge Journal of International and Comparative Law*. 2 (2013): 935.

States also deploy a discourse emphasising socio-economic rights and development, seeking to prioritise them over other rights despite the Vienna consensus that all rights are indivisible, interdependent and interrelated. However, they select which ESCRs to prioritise, and avoid altogether the central principles of non-discrimination, minority rights, and accountability. That tactic, then, appears to be an effort to avoid human rights and to block scrutiny of domestic abuses rather than an ideological position on the substance of rights.

States advance those agendas by forming coalitions specifically to attack human rights, spearheaded by states that prioritise those narratives, and bolstered by countries who join for other reasons. Those groups then advance those agendas through joint statements, sponsoring resolutions, proposing new mandates and mechanisms as well as bloc voting. They often use language that mirrors human rights phrases yet undermine rights protection. Those tactics are deployed to advance what seem to be benign issues but are attempts to erode or destroy existing human rights. States using the language of state sovereignty and/or cultural relativism often do so as a justification, excuse or reason for eroding, undermining or avoiding human rights obligations. This usually involves discourse and language of post-colonialism or anti-‘Western’ rhetoric, or references to religion and culture.

While much is already known about soft power in international human rights bodies,<sup>81</sup> there are other initiatives that need more research and discussion. There are, for example, three main initiatives spearheaded by China, although other countries have joined. The first is rights-free development. The changing narratives from human rights to development are part of the shift from obligations on states and towards protecting state sovereignty. This has been advanced within human rights bodies and mechanisms, being complemented by development activities and initiatives, often financed by China, that explicitly do not require rights compliance or implementation. This is in direct contrast with development and aid from Global North countries and from multilateral institutions that centre and adopt human rights standards and safeguards.

China’s development banks and its BRI initiatives offer ‘no strings’ loans. BRI is a USD trillion infrastructure and investment programme that often finances projects in countries without access to alternative investors. This has secured China considerable goodwill among developing countries. BRI initiatives have the effect of bolstering authoritarianism because they ignore human rights and environmental standards,<sup>82</sup> leading to considerable human rights violations in some projects financed

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<sup>81</sup> J. S. Nye, ‘[Soft Power: The Means to Success in World Politics](#)’, *Public Affairs*, 2004; J. S. Nye, ‘[Soft power: the evolution of a concept](#)’, *Journal of Political Power*, Vol 14, No 1, 2021, pp. 196-208; C. Walker, ‘[The Authoritarian Threat: The Hijacking of "Soft Power"](#)’ *Journal of democracy*, Vol 27, No 1, 2016, pp. 49-63.

<sup>82</sup> S. Richardson and H. Williamson, ‘[China: One belt, one road, lots of obligations](#)’, *Human Rights Watch*, 12 May 2017.

and constructed by Chinese state-owned banks and companies.<sup>83</sup> In 2021 China took another step in its plan for global development by creating and promoting the Global Development Initiative.<sup>84</sup> This has been critiqued as not being “as innocent as it seems”,<sup>85</sup> and has been noted by some observers as being another attempt “to break Western hegemony over global human-rights governance.”<sup>86</sup>

In these ways, China has financial and political leverage for support – including votes – for its agendas in international organisations and multilateral institutions. Recipient states are silent or even supportive of China’s domestic human rights record, also supporting China’s pernicious and retractionist agendas on human rights. One clear example is Pakistan, a major BRI recipient that remains silent about China’s violations of Muslims in Xinjiang. China uses BRI to create coercive economic and political alliances, whilst at the same time advancing Chinese hegemony.

Another agenda led by China is called win-win/mutually beneficial cooperation. This was started by China in 2015.<sup>87</sup> China began to advance it visibly in human rights bodies in 2018. In 2020 the HRC adopted a resolution, proposed by China, on ‘mutually beneficial cooperation’<sup>88</sup> that heralded the culmination of China’s efforts at the Council to advance state sovereignty and undermine accountability for human rights violations. The 2018 resolution proposed a ‘win-win’ for states by replacing the idea of holding them accountable for violations and instead implementing a commitment to dialogue about human rights. Crucially, China also sought to remove civil society from Council proceedings and activities. The 2020 resolution went further. It repositions international human rights law as a matter of inter-state relations while ignoring states’ legal responsibilities to protect human rights. The resolution treats human rights as subject to negotiation and compromise. China claims that the initiative is intended to address human rights being used to interfere in other countries’ internal affairs, ‘poisoning the global atmosphere of human rights governance’.<sup>89</sup>

China’s initiatives aimed at undermining human rights also includes the South-South Forum on Human Rights. It was created in 2017 and builds on the development and economic initiative of South-South Cooperation. However, instead of seeking to

<sup>83</sup> See, for example, Human Rights Watch, [“We’re Leaving Everything Behind”: The Impact of Guinea’s Souapiti Dam on Displaced Communities](#), 16 April 2020; and also N. Deo and A. Bhandari, [“The intensifying backlash against BRI”](#), *Gateway House*, 31 May 31 2018.

<sup>84</sup> <https://www.lowyinstitute.org/the-interpreter/unpacking-china-s-global-development-initiative>

<sup>85</sup> <https://www.economist.com/china/2022/06/09/chinas-global-development-initiative-is-not-as-innocent-as-it-sounds>

<sup>86</sup> <https://www.atlanticcouncil.org/blogs/new-atlanticist/theres-more-to-chinas-new-global-development-initiative-than-meets-the-eye/>

<sup>87</sup> Ministry of Foreign Affairs of the People’s Republic of China, [‘Statement by H.E. Xi Jinping: Working Together to Forge a New Partnership of Win-win Cooperation and Create a Community of Shared Future for Mankind’](#), General Debate of the 70th Session of the UNGA, New York, 28 September 2015.

<sup>88</sup> HRC, ‘Promoting mutually beneficial cooperation in the field of human rights: resolution / adopted by the Human Rights Council on 22 June 2020’, UN Document, A/HRC/RES/43/21, 2 July 2020.

<sup>89</sup> OHCHR, [‘China’s Reply to the Questionnaire of the Human Rights Council Advisory Committee on the Role of Technical Assistance and Capacity Building in Fostering Mutually Beneficial Cooperation’](#), August 2019.

advance development, the South-South Forum seeks to undermine human rights. At the first of its bi-annual meetings, the Forum passed a Beijing Declaration on human rights, reflecting China's vision for human rights governance. China's foreign minister advocated diversity and localisation, claiming China had 'blazed an oriental pathway toward modernization'.<sup>90</sup> The 2021 meeting platformed a range of speakers that set out and championed the same positions that China has taken on human rights.<sup>91</sup>

China views human rights as separate from state obligations to protect individuals from abuse. This position was set out by Tom Zwart, a professor at Utrecht University who came under criticism for taking money from China to conduct human rights research and whose research was questioned in terms of its independence.<sup>92</sup> Zwart argued at the forum that human rights have been a 'liberal social engineering project'.<sup>93</sup> China also rejects universality of rights, instead insisting that they are government policies and that every country should be able to define and implement human rights in their own way. Speakers at the Forum reflected that position. They foregrounded economic development and welfare policies, insisted that collective rights are more important than individual ones, and argued that CPRs can be restricted for the collective interest.

There are broader initiatives that are used to achieve similar objectives. For example, some regional institutions are used to undermine universal rights by instead promoting state sovereignty, security, development, and diversity as more important than human rights. China and Russia have created and led such organisations. Unlike their liberal counterparts that advance cooperation amongst members, these institutions protect authoritarian regimes from domestic or external threats. There has been a significant rise in the number of these organisations since the end of the Cold War. In form, they appear like 'Western' organisations, but in substance they advance autocratic norms and objectives. They seemingly seek to challenge liberal institutions and frameworks by working in the same areas and on the same issues but using illiberal tactics and advancing illiberal agendas. The Collective Security Treaty Organization (2002) was founded to mimic and counter the North Atlantic Treaty Organization; the Eurasian Economic Union (2014) did the same regarding the EU; and the SCO (2001) has the mandate to counter 'Western' hegemony.<sup>94</sup> These organisations are used as a cover for undermining human rights and for justifying violations. The SCO claims to

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<sup>90</sup> H.E. Wang Yi, '[Advance the Global Human Rights Cause and Build a Community with a Shared Future for Mankind](#)', Speech at the opening ceremony of the first South–South rights forum, Beijing, 7 December 2017.

<sup>91</sup> For more on the specific talks given and the speakers' biographies, see L. Guangjin and Z. Wei, (eds.), *The South-South Dialogue on Human Rights, Chinese Perspectives on Human Rights and Good Governance*, Vol 6, Brill, Leiden, 2021.

<sup>92</sup> HOP and R. Agterberg, '[UU professor under fire after decision from Vrije Universiteit about China](#)', *DUB University of Utrecht*, 26 January 2022.

<sup>93</sup> EU Political Report, '[Counter China's Devious Human Rights Propaganda](#)', January 2022.

<sup>94</sup> See, for example, A. Cooley and D. Nexon, '[The Illiberal Tide: Why the International Order Is Tilting towards Autocracy](#)', *Foreign Affairs*, 26 March 2021.

be combatting the ‘three evils of terrorism, separatism and religious extremism’<sup>95</sup> and while doing so actively encourages human rights violations under the cover of its Anti-Terrorism Treaty. The Collective Security Treaty Organization has been used as an excuse for Russia to send troops to crack down on dissent in former Soviet Republics, including Kazakhstan in 2022.

A similar tactic used is the rise of sham Non-Governmental Organisations (NGOs), illiberal transnational networks and government-sponsored supposed-civil society actors, all of which are shells for states. Those organisations advance state objectives and also provide the illusion of a thriving civil society whilst in reality preventing legitimate associations from doing their work. Some of those states crackdown on civil society actors domestically, through legislation that restricts and monitors their activities at best or even labels them terrorists or criminals. Moreover, they have prevented their activities within international human rights bodies, sometimes by blocking the accreditation needed for UN participation<sup>96</sup> or even preventing human rights defenders from physically accessing those bodies.<sup>97</sup> China and Russia have led attempts to silence legitimate NGOs at UN human rights bodies,<sup>98</sup> and have used sham organisations to flood speakers lists at those bodies.<sup>99</sup>

Other tactics employed to advance competing narratives include the use of state-sponsored media and social media. States also use ‘sharp power’, an approach to international affairs that employs censorship or manipulative and subversive policies as a projection of state power, targeting think tanks, media, academia and other spheres in democratic countries.<sup>100</sup> In particular, there has been an increased interest in influencing research institutions, including universities, policy institutes and think tanks in ‘Western’ countries. Within academia there is increasingly reliance on student fees – particularly international student fees – to fund those institutions. States, such as China and Saudi Arabia, have increasingly provided scholarships for students. Those students receive legitimacy for their research and later work, which is particularly important as many of them may go on to work in their home country’s public or private sectors. It also allows states to direct the type and nature of research being undertaken within those universities, as many of the students writing dissertations will

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<sup>95</sup> S. Aris, [‘The Shanghai Cooperation Organisation: “Tackling the Three Evils”: A Regional Response to Non-Traditional Security Challenges or an Anti-Western Bloc?’](#), *Europe-Asia Studies*, Vol 61, No 3, 2009, pp. 457-482.

<sup>96</sup> See, e.g., R. S. Inboden, [‘China at the UN: Choking Civil Society’](#), *Journal of Democracy*, Vol 32, No 3, 2021, pp. 124-135; and e.g. R. Freedman and S. Gordon, [‘Civil Society and the UN Human Rights System’](#), in B. Ramcharan (ed.), *The Protection Roles of Human Rights NGOs*, International Studies in Human Rights, Vol 140, Brill, Leiden, 2022, pp.132-148.

<sup>97</sup> R. Freedman and R. Houghton, [‘Two Steps Forward, One Step Back: Politicisation of the Human Rights Council’](#), *Human Rights Law Review*, Vol 17, No 4, 2017, pp. 753-769.

<sup>98</sup> R. S. Inboden, [‘China at the UN: Choking Civil Society’](#), *Journal of Democracy*, Vol 32, No 3, 2021, pp. 124-135; Human Rights Watch, [The Costs of International Advocacy: China’s Interference in United Nations Human Rights Mechanisms](#), New York, 2017.

<sup>99</sup> R. Synovitz, [‘Attack of the GONGOS: Government Organized NGOs Attack Warsaw Meeting’](#), *Radio Free Europe/Radio Liberty*, Features, 30 September 2019.

<sup>100</sup> C. Walker, [‘What Is “Sharp Power”?’](#), *Journal of Democracy*, Vol 29, Issue 3, 2018, pp. 9-23.

focus on their home state. States may also provide capital funding for research centres or institutes, which influences the independence of their research and work. There has also been increased surveillance of students and academics at home and abroad, particularly from China but also from other repressive regimes.<sup>101</sup>

## V CONCLUDING OBSERVATIONS

It is one thing to understand and explore the tactics deployed but quite another to ascribe political or politicised motivations to those states. Of course, each state will have different motivations, even where some similarities exist, but it is important to note some clear themes and objectives. Some states engage in these tactics to block scrutiny of some or all of their human rights record. For some, this means advancing and engaging with specific types of rights or mechanisms in order to shield themselves from criticism for not engaging with other rights. For example, sponsoring and engaging with mandates and mechanisms on specific rights and using that to deflect attention away from their grave abuses of other rights.

Others deploy these discourses and actions as a method for avoiding scrutiny of human rights abuses altogether. This involves prioritising state sovereignty over human rights and thus using sovereignty as a method of avoiding legal obligations. This is particularly the case for those states that advance rights-free development (rather than development as a human right) as an alternative to human rights. Another motivation is to avoid specific human rights obligations, particularly toward minorities. Cultural relativist arguments are used in an attempt to justify or excuse human rights violations. Then there is the group of states seeking greater representation of their own human rights ideologies, particularly on TGR. Many of those states view TGR as a method to redress or remedy colonial harms. Those rights often are then taken up and used by other regimes as a cover or excuse for their domestic human rights failures.

Of course, some states may be seeking to appeal to domestic or regional audiences, particularly on issues relating to (neo)colonialism, history, culture and/or religion. However, other governments do so despite domestic populations opposing those positions. Within autocratic regimes, for example, domestic populations have limited opportunity to challenge the government's positions on human rights, and even more so when civil society is repressed or is simply a shell for the state.

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<sup>101</sup> For more information, see for example, S. Furstenberg, T. Prelec, J. Heathershaw, [‘The Internationalization of Universities and the Repression of Academic Freedom’](#), *Freedom House*, Special Report, 2020; International Center for Non-for-Profit Law, [‘Academic Freedom and the Freedom of Opinion and Expression’](#), 30 April 2020; Human Rights Watch, [‘China: Government threats to academic freedom abroad’](#), 21 March 2019; T. Swanston, [‘Drew Pavlou, critic of University of Queensland’s links to Chinese Government bodies, suspended for two years’](#), *ABC News (Australia)*, 29 May 2020; W. Knight, [‘MIT cuts ties with a Chinese AI firm amid human rights concerns’](#), *Wired*, 21 April 2020; S. Richardson, [‘The Chinese Government Cannot Be Allowed to Undermine Academic Freedom’](#), *Human Rights Watch*, 8 November 2019; Human Rights Watch, [‘Resisting Chinese Government Efforts to Undermine Academic Freedom Abroad: A Code of Conduct for Colleges, Universities, and Academic Institutions Worldwide’](#), 19 March 2021.

Furthermore, the realities of international relations and geopolitics means that these tactics are also advanced or supported by states that have political or economic alliances or ties with more powerful proponents of these discourses and actions. That support may be an overt or tacit condition of 'weaker' states having relationships with more 'powerful' countries.

The realities of the world within which human rights operate mean that it is crucial to understand the tactics deployed to undermine human rights in order to counter them and therefore to develop, promote and protect those rights. In general terms, human rights narratives are advanced through a pendulum movement. In other words, as progressive agendas move forward, competing retractionist or pernicious narratives are promoted to counter such progress. There are no 'magic bullets' available to counter these tactics, but there needs to be understanding of them in order to promote progressive objectives on human rights. A mixture of pragmatism and principle is required to progressively promote human rights and counter attempts to undermine the human rights project.