

The “broadening” of international human rights: the cases of the right to development and right to democracy

Alexandru Grigorescu¹ · Emily Komp¹

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Abstract Since the emergence of the international human rights regime, after the Second World War, governments appear to have moved toward accepting increasingly broad rights. The present study seeks to explain this important shift. It draws upon a theoretical framework focusing on actors’ strategic responses to normative pressures. We argue that government officials involved in normative bargaining over new human rights are more likely to adopt strategies of broadening norms than simply yielding, challenging or narrowing them. We seek to assess the plausibility of this argument by focusing on the history of the right to development and the right to democracy. We contrast the debates surrounding these rights in academic circles to those among practitioners, in the UN. We show how broadening strategies in the latter circles have led to the empowerment of these two rights and even to strong associations between them.

Keywords Norms · Human rights · Development · Democracy · Normative pressure · Normative bargaining

Introduction

It is generally recognized that all intergovernmental human rights agreements, starting with the Universal Declaration of Human Rights (UDHR), are purposefully vague when it comes to the understanding of rights (e.g., Brierly 1958, 61). This allows human rights to garner support among a greater number of states rather than become very effective tools in narrow instances and in only a handful of states (Legro 1997). Despite this well-known practice, the vast majority of rights

✉ Alexandru Grigorescu
Agrigor@luc.edu

¹ Department of Political Science, Loyola University Chicago, 1032 W. Sheridan Road, Coffey Hall, Chicago, IL 60660, USA



discussed throughout the first few decades after the adoption of the UDHR were relatively narrow ones, such as the right to not be tortured or the right to education. Debates surrounding such rights contrast with more recent ones on the right to development (starting in the 1970s) or the right to autonomy or to democracy (starting in the 1990s). Moreover, even such broad rights appear to be increasingly discussed *simultaneously* in international forums, such as the UN. What can explain this “broadening” trend?

The present study seeks to answer this question by drawing upon recent literature on norm contestation. We posit that normative bargaining between states debating new human rights rarely simply implies accepting such rights by “yielding” to the norms or “challenging” them in their entirety. Most often government representatives are willing to accept certain understandings of rights and their implementation through strategies of “narrowing,” or they seek to bring together multiple rights under the same umbrella by “broadening” norms (Grigorescu 2015). Moreover, due to increasing emphasis on the need to back human rights with unanimous or near-unanimous UN General Assembly (GA) resolutions, the broadening strategy is increasingly the default one of states.

We begin by expanding on the above argument and placing it in the broader norms literature. We then proceed to assess its plausibility by focusing on intergovernmental debates surrounding the human right to development and the human right to democracy. The study shows that even though academic debates also included arguments consistent with the challenging and narrowing strategies, governments supporting new human rights eventually preferred using broadening strategies in the UN setting. This has led to the empowerment of such broad rights as well as to their increasing association in UN resolutions and intergovernmental agreements.

The norms literature and strategies of defusing normative pressures

The focus on norms in the International Relations literature emerged toward the end of the Cold War, as scholars complemented realist power politics arguments with others emphasizing the importance of the perceived appropriateness of state actions. In the 1980s, both the English School and Regime Theory began discussing norms as important explanatory (or at least intervening) variables in International Relations. Yet, it was only with Constructivism in the 1990s, that norms and their effects became a truly essential area of research.

In time, the broad questions that the constructivist literature on norms asked have shifted, becoming increasingly refined. In the early-to-mid 1990s, this literature primarily sought to show that norms affected actors’ behavior and, implicitly, outcomes (e.g., Finnemore 1996; Katzenstein 1996). In the late 1990s, scholars began asking *when* norms are more likely to affect outcomes. This second-wave literature focused on the emergence, empowerment and eventual effects of norms (Finnemore and Sikkink 1998; Florini 1996). Implicitly, it emphasized the role of “norms entrepreneurs” involved in empowering norms. Yet, by doing so, it tended to gloss over the actions of what could be called “norms obstructionists,” actors who seek to reduce the effects of norms. Recently, the constructivist literature has



begun focusing more closely on the processes of norm contestation that pits actors against each other in dynamic processes of normative bargaining (e.g., Krebs and Jackson 2007; Wiener 2014).

The present study builds on this “third wave” constructivist literature to explain what states do when faced with increasingly powerful normative pressures to adopt new human rights. Moreover, we suggest that the reactions of such norm obstructionists are countered by yet other attempts to reshape norms by those promoting the new right. Traditional realist literature implies that actors faced with norms running counter to their interests simply withstand the pressures and continue taking actions deriving from their material interests. The constructivist literature, on the other hand, is strewn with examples of actors that simply yield to pressures and conform to changes in the normative environment.

Yet, we suggest that, in most cases, normative bargaining will involve other strategies beyond the simple ones of withstanding and yielding. Specifically, we posit that actors will either “challenge,” “narrow” or “broaden” the understanding of the norm or of its application. They engage in normative bargaining with each other (Grigorescu 2015).

The challenging strategy implies a *rejection* of the appropriateness of the norm or of the ability to apply it in that particular instance. It often involves invoking alternative (more “important”) norms that clash with the one being promoted. For instance, the application of many human rights has been challenged by arguments emphasizing the all-powerful state sovereignty norm. Additionally, actors can challenge the application of a norm arguing that it is not possible to put in practice, even though they claim to support the norm itself.

The narrowing strategy entails accepting either only *some* interpretations given to the norm or to the actions deriving from it. For instance, arguments used by the USA in the “war on terror,” claiming that methods that did not cause *severe* physical or mental pain could not be considered torture (U.S. Department of Justice 2002), implicitly narrowed the kinds of actions seen as objectionable under the anti-torture norm.

Broadening implies simultaneously promoting other norms or actions (presented as coming under a broader normative umbrella) *in addition* to the ones being promoted by other actors. The World Bank’s move in the 1990s from an emphasis solely on “development” to the broader one of “good governance” (that brings together the development norm promoted by “Global South” countries and the anti-corruption one promoted by those from the “Global North”) is an example of such a strategy (Doornbos 2003). As we show below, the emergence of the right to development and the right to democracy as well as the linkages between the two can be understood as examples of this latter strategy used both by states promoting the norms underlying these two rights and by those seeking to weaken them.

The human right to development

Recent literature has traced the first international debates surrounding the right to development to the early 1940s. The “freedom from want,” one of the main principles underlying Roosevelt’s New Deal, was projected to the international



realm as early as the 1941 Atlantic Charter. It later became a driving principle underlying the founding of the World Bank and was quickly linked to the notion of “development” that became so important for this new organization that it was included in its official name (the International Bank for Reconstruction and Development) (Helleiner 2014).

Freedom from want also emerged as an important principle mentioned by some in the process leading to the establishment of the United Nations (Meier 1984, 9). Not surprising, arguments supporting a right to development were expressed during the drafting of the Universal Declaration of Human Rights when Eleanor Roosevelt stated that “(W)e are writing a bill of rights for the world and [...] one of the most important rights is the opportunity for development” (cited in Sengupta 2001, 2527).

Yet, by the early 1950s, the USA and its Western allies, who had been among the original promoters of this right, already lost interest in development issues (Helleiner 2014, 3). The right to development did not receive much attention throughout the first half of the Cold War. That period was characterized by a well-documented split between Western and Soviet Bloc states regarding the relative importance of civil and political rights versus economic and social rights. These debates culminated with the separate adoption in 1966 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (in yet another example of the narrowing strategy discussed above). Throughout this period, the many new states that emerged from the decolonization process were somewhat split with regard to their support for one camp or the other, although the majority tended to prefer the latter set of rights.

Yet, as the Non-Aligned Movement grew both in numbers and coherence, by the 1970s the Third World began expressing interests that differed from those of the other two “worlds.” For such states, even more important than simply focusing on the obligations governments had to assure political or economic rights to citizens was the argument that the developed world (especially former colonial powers) had an obligation toward developing countries (almost entirely made up of former colonies). The promotion of the human right to development quickly spread across Third World countries.

The first substantive intergovernmental debates involving the right to development took place in 1972 in the context of “the New International Economic Order” (Uvin 2007, 598). At that time, there was very little discussion of the actual codification of the right within the UN system. Yet, only 5 years later, the UN Commission on Human Rights (UNCHR) recommended a study be undertaken to focus on “the international dimensions of the right to development as a human right.”¹ In 1979, the UNCHR adopted a resolution specifically recognizing the human right to development and mandating the UN Secretary-General to “study the conditions required for the effective enjoyment of the right by all individuals and peoples” (Ibhawoh 82). In 1981, the UNGA declared the right to development an “inalienable human right” (A/RES/36/133), and 5 years later, it adopted the

¹ See, United Nations, Commission on Human Rights. 1977. *Report on the Thirty-Third Session: Economic and Social Council, Official Record: Sixty-Second Session, Supplement No. 6, E/CN.4/1257.*



Declaration of the Right to Development (A/RES/41/128). The USA was the only country to vote against the latter resolution while eight other Western states abstained.

Around that time, as the end of the Cold War resulted in an increasing number of attempts to bring the Eastern and Western blocs closer to each other, the GA began debating the notion of the “indivisibility of human rights.” Although official UN documents had included the indivisibility argument as part of the broader approach to economic and social rights as far back as 1977, it only became sufficiently important to warrant a separate GA resolution in 1985 (A/RES/40/114). The GA adopted four more resolutions emphasizing such indivisibility in the following years (A/RES/41/117, A/RES/42/102, A/RES/43/113 and A/RES/44/130).

The indivisibility argument was primarily promoted by non-Western states as they sought to alter the still “second rate” status of economic and social rights (and implicitly, of the right to development) vis-à-vis the more powerful civil and political rights (Nickel 2008). The winding down of the Cold War made Western states increasingly more acceptant of this resolution and, by 1989, even the USA (the only country to have voted against the resolution in its first 4 years) eventually abstained. More importantly, the support for the indivisibility of rights resolution in the late 1980s should be interpreted as reflecting the fact that states that previously downplayed civil and political rights now were willing to accept them together with social, economic and cultural ones they had been promoting. Of course, the idea of indivisibility of rights also boosted the case for new “umbrella rights,” such as the right to development.

By the end of the Cold War, the right to development seemed to be firmly accepted by the vast majority of member states. The 1993 Vienna Declaration at the World Conference on Human Rights included a section specifically on this right reaffirming its “inalienable” character. Yet it also stipulated that lack of development cannot be used to justify the violation of other human rights.² The conciliatory tone of the declaration was boosted by the increasingly powerful indivisibility of rights argument. Indeed, as we will show, the Vienna Declaration represented a turning point in the promotion of yet another umbrella right: the right to democracy. Perhaps this conciliatory approach can explain the surprising fact that the USA accepted for the first time the right to development by supporting the Vienna declaration.

Yet, by the late 1990s, the apparent intergovernmental agreement on the right to development began eroding once more. In 1998, the Cuban proposal to have the right to development added to the Universal Declaration of Human Rights was not successful (UN Chronicle 1999). In 1999, a UNCHR draft resolution on the right to development introduced by South Africa also did not garner sufficient support.³

² See, UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.

³ See E/CN.4/1999/SR.59.



The human right to democracy

The linkage between democracy and human rights was discussed as far back as the debates surrounding the establishment of the UN (Franck 1992). At that time all founding members, including the Soviet Union, accepted the phrase “We the Peoples,” with all of its democratic connotations, in the Preamble of the UN Charter. Nevertheless, the Soviet Bloc was not ready to allow for more specific references to democracy in the Charter or in other official UN documents (Archibugi 1999). Indeed, as the Cold War set in, it became apparent that the UN could not serve as a forum for discussing democracy, whether as part of the broader human rights regime, or independent of human rights, because the issue was too controversial for the tense East–West relations. Several regional organizations that were not subjected internally to the same Cold War tensions, such as the Council of Europe or the Organization of American States, emphasized democracy in the preambles of their founding documents as well as in their promotion of human rights but did not claim the existence of a separate right to democracy (Rich 2001, 21).

More important for this study, multiple individual rights invoked in the UDHR spoke directly to democratic principles. Perhaps most significant, the third point of Article 21 of the UDHR stated that “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”⁴ Throughout the Cold War some of these rights were discussed in greater depth and even cited by UN institutions. For instance, a 1983 UNCHR resolution proclaimed “popular participation” to be a human right (1983/14). Yet, direct linkages between such narrower rights and democracy were not made in the UN until after the Cold War.

Most observers note that the turning point in the promotion of the human right to democracy is the UN was the 1993 Vienna World Conference on Human Rights (e.g., Rich 2001). In the spirit of compromise of the immediate post-Cold War era, the idea of indivisibility of rights (including the rights to development and democracy) appears to have been accepted by the vast majority of states. The final statement of the Vienna Conference proclaimed that “Democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.”⁵

Despite the opening that the Vienna Declaration offered for discussions of the linkage between human rights and democracy, such debates did not actually take place in the UN for another half decade. Instead, the promotion of democracy as an international collective effort began taking place outside the UN. Perhaps the most notable multilateral effort to promote the spread of democracy was the “New or Restored Democracy” movement. It began with an international conference in Manila in 1988 bringing together thirteen states that had recently begun their

⁴ See <http://www.un.org/en/documents/udhr/>.

⁵ See, UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.



transitions to democracy. The USA supported the beginnings of the movement, especially in helping organize the conference in Nicaragua, a country where it had important political interests and where it wanted to offer a model of successful democratic transition. Yet, in time, US interest in the conferences waned as it turned its attention toward other ways of promoting democracy.⁶

As the movement of new or restored democracies grew in membership at the conferences in Managua (1994), Bucharest (1997), Cotonou (2000), Ulaanbaatar (2003), and Doha (2006), so did the pressure to move some of the debates surrounding democracy promotion into the UN. In 1994, a number of participants in the Managua conference received sufficient support to pass a UNGA resolution (49/30) titled “Support by the United Nations system for the efforts of Governments to promote and consolidate new or restored democracies.” The bland wording of the resolution allowed it to pass without sparking any real debates. Perhaps the most important operative section of the resolution was the request for the Secretary-General “to study the ways and mechanisms in which the United Nations system could support the efforts of Governments to promote and consolidate new or restored democracies.”⁷

In the 1997 Bucharest conference, the new or restored democracies decided to transform their vague approach to the spread of democracy to other states into a more specific “Code of Conduct.” The conference called for the introduction of a resolution in the UNGA that would seek support for the code as “a basic set of norms of democratic conduct for Governments in the exercise of power.”⁸

Yet, even before the draft resolution was introduced in the UNGA in New York in the fall of 1999, events moved faster in Geneva, in the UNCHR. In April 1999, the USA introduced in the Commission a resolution titled “Promotion of the Right to Democracy.” Many understood the resolution as a signal that the USA now felt that the right had acquired sufficient international support. Just as important, if not more, the promotion of the right was seen as an attempt by the USA to seek greater legitimacy of NATO bombing of Yugoslavia that had taken place in March of that year and that had been presented by the Clinton Administration as supporting democratic principles.⁹

The debates in April 1999 surrounding this resolution were the most substantive ones in the UN on the human right to democracy. While most countries accepted the underlying principle of international democracy promotion, there was only lukewarm support for an actual human right to democracy. Most important, a number of member states (led by Cuba) were concerned about the possible implications of codifying such a right as they felt that the USA or other powerful states could later use it to legitimize

⁶ Interview with government official who participated in multiple conferences of new or restored democracies (January 2015). In order to discuss freely the debates surrounding the right to development and the right to democracy the interviewees preferred that their names not be made public.

⁷ See http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/49/30&Lang=E.

⁸ See A/54/178, Item 39 of the provisional agenda, “Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies—Letter dated 19 July 1999 from the Permanent Representative of Romania to the United Nations addressed to the Secretary-General”.

⁹ Interview with government official involved in negotiations of the 1999 resolution (January 2015).



interventions in other non-democratic states, beyond Yugoslavia. Countries such as India and Pakistan, situated somewhere between the positions of the USA and Cuba, sought to weaken the resolution by eliminating much of the specific wording regarding democracy (Rich 2001, 24). In the end, the resolution maintained its title invoking the human right to democracy but did not repeat or explain this concept anywhere else in the body of the text. With the exception of China and Cuba that abstained, all members of the UNCHR voted for the watered-down resolution. Implicitly, the resolution ended up being simply an acknowledgment of this right, but did not spell out what the right to democracy entails.

The purpose of the aforementioned attempt in July of that same year to introduce on the UNGA agenda a resolution on the right to democracy was to specify the implications of the right, especially through the new Code of Conduct adopted at the 1997 Conference of New or Restored Democracies. Although the draft resolution gained support of sixty states, a core group of other states (led once more by Cuba) vehemently opposed the resolution. While the resolution promoting the code of conduct indeed may have garnered a slim majority, it was withdrawn because the sponsors felt that such a resolution needed to be adopted by consensus or at least near-consensus.¹⁰

In the following (55th) GA session another, much weaker, resolution titled “Promoting and consolidating democracy” was eventually adopted. The resolution seemed to represent a counter-effort on the part of the countries that had not supported the 1999 resolution on the human right to democracy. In fact, it is noteworthy that the resolution of the GA’s 55th session did not even invoke the Commission’s 1999 resolution on “the human right to democracy.”

The UNGA and the UNCHR have since adopted a dozen more resolutions on democracy promotion that have not added much to the 55th session’s resolution wording. These were, yet again, the result of compromises between the two sides of the debate. Although virtually all such resolutions have invoked the 1999 UNCHR resolution on the human right to democracy, they did not use wording on “the right to democracy” anywhere else in the text and, of course, have not specified what the right entails. More importantly, the most recent ones almost always mention that economic and social rights (and often to the right to development) are strongly related to democracy.

Overall, the evolution of the rights to development and democracy seems to confirm the broadening trend mentioned in the introduction of this study and illustrated in Fig. 1. While the initial debates in the UN focused on fairly narrow, individual rights, starting in the 1970s states began promoting increasingly broad group rights. Over the past two decades, this broadening of rights took on an additional dimension as rights were increasingly connected to each other in the UN debates.

The academic arguments

Arguments for and against the rights to development and democracy have been spelled out in both academic and intergovernmental debates. As we will show, although such debates were intertwined, there were important differences with

¹⁰ Ibid.



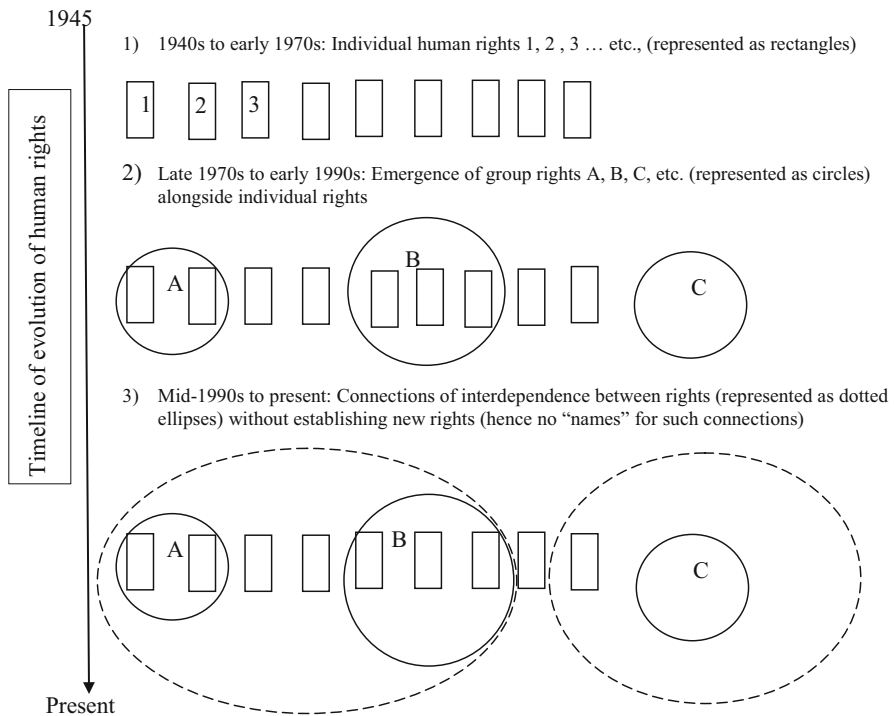


Fig. 1 Evolution of human rights promoted and accepted in the UN

regard to what was said and especially what was not said by academics and government officials.

Jack Donnelly has offered what are perhaps the most systematic arguments in academic literature opposing the right to development (e.g., Donnelly 1985, 1989). First, he, like others, has emphasized that the *collective* dimension of the right makes it incompatible with the regime of *individual* human rights. This argument is part of the broader contention that any type of collective right, including the right to development, is in opposition to the Universal Declaration of Human Rights which states that *human* rights are inherent to *humans*, not something that arises from social cooperation. This “narrowing” approach suggests that, even if development were indeed to be a right, it would not be part of the smaller set of rights that truly deserve the important status of being designated *human* rights.

Proponents of the right have, in turn, attempted to broaden its understanding by showing how development does not only apply to states but also to individuals. For instance, Arjun Sengupta argued that the right to development is based on individuals because “it is the individual human person who must be the active participant in and beneficiary of this right” (2001, 384).

A “challenging” argument used by Donnelly against the right emphasized that development policies rely on economic markets that often clash with human rights. More broadly, he suggested that the implementation of the right to development will



have a negative effect on achieving universal human rights as its codification “will at least marginally hinder the pursuit of human rights and certainly will provide still one more excuse for states to fail to implement human rights” (Donnelly 1999, 626). This runs counter to the “broadening” argument promoted by supporters of the right who claim that human rights, including the right to development, are interdependent and mutually reinforcing.

Beyond these academic debates focusing specifically on the right to development, there has been an important parallel and broader discussion of the “indivisibility of rights.” The general consensus from this literature is that indivisibility is too strong a word for the kinds of relationships between such rights (Nickel 2008) and, at most, we should understand the relations between rights as “linkages” (Gilbert 2010).

Yet another important critique of the right to development in academic literature focuses on problems in its implementation (due to its lack of “justiciability”). This argument does not challenge the norm underlying the right, rather the ability to apply it. The problem of justiciability had been mentioned with regard to virtually all economic and social rights considered to come together in the right to development (Sunstein 1993). The proponents of the right to development have countered this argument by suggesting that not all human rights are part of the narrower set of “legal rights,” yet that does not mean that they should not be promoted (Sengupta 2001, 2533).

Lastly, some critics of the right to development see it as the “aggregate of the social, economic and cultural rights” (Abi-Saab 1980) and, therefore, do not offer additional protections to the existing human rights regime. Moreover, a number of academics caution against the exaggerated proliferation of human rights, as this leads to a dilution of the more important, “basic,” rights (Alston 1984). Supporters of the right to development counter this argument by emphasizing that it is precisely the broad and comprehensive nature of the right that offers additional protections that separate individual rights cannot offer (e.g., Abi-Saab 1980).

Some of the above critiques of the right to development have also been reflected in the academic debates surrounding the right to democracy. A first such critique was launched by one of the most influential observers of democratic phenomena, Robert Dahl. Dahl discussed in great depth the tensions between democracy and rights arguing that the two do not always go hand in hand (1985, 22–31). Moreover, he suggested that *if* democracy was a right it would be based on a number of other already existing political rights. Joshua Cohen also argued that the right to democracy is simply a collection of existing rights (2006, 228). Implicit in this position is that the set of *actual* human rights should be narrowed only to those rights that add new elements to existing ones.

John Rawls, yet another highly prominent academic voice, took on in even greater detail the relationship between democracy and human rights and came out flatly against a human right to democracy. In an apparent nod toward the sovereignty norm (that clashed with the norm underlying the human right to democracy), he argued that states that adopt other, non-democratic, yet “reasonable” forms of ordering society are “above reproach” in international relations as long as they honor basic human rights (1999, 37–38). By emphasizing that



individuals should be allowed to choose the form of government they want, Rawls showed how norms underlying the right to democracy could be challenged by the more powerful sovereignty norm.

In the most direct response to critiques of the right to democracy, Pablo Gilabert defended the right by dismissing the sovereignty argument because “in the absence of democratic practices involving full freedom of political association and participation, how can we really know what the people of a country think just” (2010, 12). Through this argument, Gilabert connected the norms of sovereignty and democracy (through a broadening strategy).

Gilabert also disagreed with the idea that broader rights (such as the right to democracy) that already subsume narrower ones (such as political rights) are not useful. He argued that it is “only prudent to avoid risks and err on the side of keeping the list of rights generous” (2010, 23).

In yet a third instance of using the broadening argument, Gilabert disagreed with the notion that democracy and human rights are separable because, in his view, any non-democratic system establishes “second-class citizens” which implies disregard for individuals’ dignity, the essence of human rights. Lastly, he, like others, suggested that critics of the right downplayed the practical positive impact that democracy has on other important issues such as development and peace (Gilabert 2010, 23; Christiano 2011; Lister 2012).

The arguments in the UN debates

Some (but not all) of the aforementioned arguments from academic circles were picked up by states in intergovernmental forums. For instance, the USA, the most ardent opponent of the right to development, has made the following arguments in the UN: (1) development occurs thanks to economic liberties and private enterprise rather than on the basis of a human right; (2) the right to development is nothing more than a synthesis of existing rights without any additional content; (3) the right is too complex and large for the UNCHR to have jurisdiction over all aspects the right may entail (Marks 2004, 150).

The USA and other opponents of the right added to the above arguments some that had not been mentioned in academic debates. Most important, states opposing the right to development objected to the right on the basis of its ambiguity and lack of consensus to the definition of the right (UN Chronicle 1999, 56). Additionally, they mentioned that the right potentially diminishes the importance of civil and political rights (Marks 2004). This was, to some extent, a projection of the long-standing Western argument made throughout the Cold War that economic and social rights distract from the more important civil and political rights.

Supporters of the right to development have responded to the critique that the right is too vague by specifying in great detail what it entails. Moreover, they have argued that, with the exception of the USA, there is in fact much agreement among states with regard to the understanding of this right. They also responded to the critique involving the adverse effect of the right to development on civil and



political rights by invoking the indivisibility of rights argument (e.g., Sengupta 2001; Bedjaoui 1991; Abi-Saab 1980).

It is just as important to note the arguments that were *not* made in the UN to counter the right to development as it is to list the ones that were made. Indeed, one of the most important arguments made in the academic literature, that group rights should not be considered human rights, has not appeared in UN debates (for at least the past two decades).

The opponents to the right to democracy in UN debates also used some of the arguments that have been made in the academic literature, but not all. Some states (such as Cuba, India, Pakistan and Russia) emphasized its potential clash with the norm of sovereignty. They argued that democracy can take many forms and, more importantly, that a certain model should not be imposed from outside. The bombing of Belgrade led some to fear that the USA would use the new right to intervene elsewhere in the name of democracy. This fear was voiced publicly by Cuba, especially when the movement of new or restored democracies promoted the “Code of Democratic Conduct.”¹¹

It is also important to point out arguments from academic debates that were not used by critics of the right to democracy in the UN. For example, while the academic literature seriously questioned the notion of indivisibility of rights, states in the UN avoided being openly critical of this argument both in the context of development and democracy. In fact, virtually all states, including the USA, implicitly accepted the principle of indivisibility by endorsing the Vienna Declaration of 1993, an embodiment of consensus seeking and broadening of rights. The Declaration brought together, as never before, individual and group rights as well as economic and political rights and mentioned in the same breath both democracy and development.

Similarly, critics of the right to democracy in UN debates did not refer to the argument that such a right was simply the sum of already existing political and civil rights. It is noteworthy that, even though this argument was not used in the UN, the USA appears to have tried to preempt its use by stating in 1999, when introducing the resolution on the right to democracy in the UNCHR, that “democracy was itself a human right” and that it was “both a means to promoting human rights and an end itself” (Dumitriu 2005). The 1999 resolution also included references to the right to development, implying that group rights (such as the rights to democracy and development) can and should stand together on equal footing with other rights.

In time, as the immediate post-Cold War consensus appeared to erode, so did USA support for the indivisibility argument. Yet, over the past decade and a half it has not openly disagreed with UN resolutions bringing the right to democracy together with economic and social rights or with the human right to development. It would not have been difficult to argue against such practices, as critiques of indivisibility had been articulated by American academics. Overall, since 2000, it appears that UN members’ support for any resolution referring to democracy has

¹¹ Personal interview with government official involved in negotiations on right to democracy (November 2014).



become contingent on the inclusion of a reference to the indivisibility argument and the mention of economic and social rights and even of development.

Conclusion

The above arguments countering and supporting the rights to development and democracy are summarized in Table 1. What can we learn from the trends involving these two rights and the arguments used to promote or counter them?

First, as expected based on our initial arguments, opponents of the new rights neither simply withstood the pressures to establish the rights nor yielded to them, without attempting to reinterpret them. Similarly, the proponents of the rights rarely withstood or yielded to the counterarguments made by their opponents and almost always responded with additional arguments. The exception appears to be the tacit acceptance of bringing economic and social rights under the democracy umbrella in the UN.

Second, those opposing the two rights attempted either to narrow the interpretation of *human* rights (thus excluding the new rights from this important category) or outright challenge them as running counter to other norms or simply being impossible to implement. Only one argument against these two rights was of a broadening nature.

In contrast, promoters of these rights generally responded to such critiques by attempting to broaden the understanding of the human rights (in eight of ten cases in Table 1). They preferred such strategies because it was difficult to challenge the powerful norms (such as the sovereignty norm or those underlying existing individual rights) that were being used by opponents to limit the new rights. Therefore, they had to push for the new rights *in addition* to the existing norms and rights. This implied making arguments that linked, for example, democracy to sovereignty or the right to development to individual rights. The end result has been the empowerment of the two broad human rights by allowing them to “piggy-back” on existing, already powerful, narrower rights and norms. Moreover, government representatives have increasingly brought the two broad rights together in UN resolutions to empower each other.

Third, there are important differences between the kinds of arguments that were used in academic circles and in the UN. For example, academics, as expected, rarely (if ever) took up the question of the “lack of clarity” of these two rights. After all, UN debates cannot be expected to go into the detailed clarifications that characterize the academic literature. Also, in the academic literature the notion of indivisibility of rights appears to have been eroded. Yet, in the UN, indivisibility arguments are made often and accepted by virtually all states.¹²

This last observation, regarding states’ reticence to counter indivisibility arguments, is especially important for understanding dynamics in the UN. On the one hand, most states have been faced with instances where broadening tactics led

¹² See, United Nations, Commission on Human Rights. 1977. *Report on the Thirty-Third Session: Economic and Social Council, Official Record: Sixty-Second Session, Supplement No. 6, E/CN.4/1257.*



Table 1 Arguments against rights and counterarguments supporting them

Right	Academic (A) and/or UN debates	Argument against right	Type of argument	Counterargument supporting right	Type of argument
Development	A	Group rights are not human rights	Narrowing	Human rights include group rights as they too refer to individuals	Broadening
Development	A; UN	The right to development does not contribute to additional protections of rights; it already subsumes existing economic and social rights	Narrowing	The comprehensive nature of the right offers additional protections that individual rights cannot offer	Broadening
Development	A; UN	Development relies on markets and implicitly erodes some human rights	Challenging	Human rights are interdependent; right to development reinforces other rights	Broadening
Development	A; UN	Lack of justiciability (legal systems cannot contribute to implementation of the rights)	Challenging	Human rights are broader than legal rights and include rights that cannot be easily implemented	Broadening
Development	UN	There is too much ambiguity and lack of consensus among states regarding the definition of the right	Challenging	The right is clear, and there is sufficient support for it	Challenging
Development	UN	The right to development potentially diminishes the importance of civil and political rights	Challenging	Rights are interdependent	Broadening
Democracy	A	Democracy and human rights may clash	Challenging	Democracy and human rights reinforce each other	Broadening
Democracy	A	Right to democracy is not a new right; it simply subsumes other (political) rights	Narrowing	Right to democracy does not overlap completely with other rights; list of rights should be broad	Broadening
Democracy	A; UN	Right to democracy clashes with sovereignty norm.	Challenging	Sovereignty and democracy are connected; Democracy allows sovereign will of people to be articulated	Broadening
Democracy	UN	Right to democracy also includes economic and social elements	Broadening	NA	Yielding



to the empowerment of rights they do not support. On the other hand, they are not prepared to argue against this principle because they themselves may need it to boost rights they *do* support. For example, the USA was willing to accept wording regarding the right to development in the Vienna Declaration and later in UN resolutions, as long as the right to democracy was also included. Similarly, countries that wanted to avoid democratic rhetoric in the UN accepted it as long as the wording on democracy was accompanied by references to economic and social rights and, more important, to development.

The disappearance of the group versus individual rights debate in the UN is also a reflection of this trend. States are unlikely to argue against one such category of rights or another when each of them has at least some individual rights and some group rights it supports.

The acceptance of multiple rights simultaneously and of the emergence of broad umbrella rights and linkages in the UN system is also the result of institutional factors. Indeed, it has long been argued, that the power of human rights comes from their unanimous (or near-unanimous) acceptance in the UNGA (Alston 1984) and, therefore, such compromises are necessary for those introducing new rights. Just as in regular “material bargaining” situations where mutually acceptable solutions are more likely to be reached when multiple issues are bundled together in negotiations (e.g., Putnam 1988), “normative bargaining” is more likely to reach solutions when multiple norms (in this case human rights) are discussed simultaneously (Grigorescu 2015).

We can understand this trend toward broader rights even better if we take a micro-level view of UN debates. Indeed, GA resolutions are just as much reflections of bureaucratic interests of individual government representatives, as they are of the broader state interests. For example, American officials in the UNCHR were acting under instructions from the State Department to promote the new human right to democracy. In order to reach this goal, American diplomats accepted wording on development and other rights and even took out more controversial wording regarding the right to democracy. As long as they were able to have the resolution with a *title* mentioning the right to democracy, they could report that their goal was achieved. Similarly, officials from developing countries were able to report to their superiors back home that they fought for inclusion of the right to development in resolutions regarding democracy. In the end, the adoption of such consensus or near-consensus resolutions reflected acceptable solutions for those individuals involved in the negotiations.

We should point out that, while government officials may be successful in claiming that they have introduced wording promoting “their” right in official documents, such wording has very little impact on developments in the real world. In fact, there is a danger that such broad and bland UN resolutions and international agreements may erode the power of specific human rights and, more broadly, of the international human rights regime.



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