

# *Negotiating the UN Human Rights Council. Rising powers, established powers and NGOs*

Book or Report Section

Accepted Version

Binder, M. and Eisentraut, S. (2019) Negotiating the UN Human Rights Council. Rising powers, established powers and NGOs. In: Stephen, M. and Michael, Z. (eds.) *Rising Powers, Non-Governmental Organizations and the Politics of Authority Beyond the Nation-State*. Oxford University Press. Available at <http://centaur.reading.ac.uk/81071/>

It is advisable to refer to the publisher's version if you intend to cite from the work. See [Guidance on citing](#).

Publisher: Oxford University Press

All outputs in CentAUR are protected by Intellectual Property Rights law, including copyright law. Copyright and IPR is retained by the creators or other copyright holders. Terms and conditions for use of this material are defined in

the [End User Agreement](#).

[www.reading.ac.uk/centaur](http://www.reading.ac.uk/centaur)

## **CentAUR**

Central Archive at the University of Reading

Reading's research outputs online

# Negotiating the UN Human Rights Council. Rising powers, established powers and NGOs

Martin Binder and Sophie Eisentraut

## 1. Introduction<sup>1</sup>

On 15 March 2006, the United Nations (UN) Human Rights Commission was abolished and replaced by the UN Human Rights Council (UNHRC) as the central pillar of the global human rights architecture. The Commission had been widely perceived as deficient – suffering from politicization, selectivity and a lack of professionalism. The special report ‘In Larger Freedom’ presented by the then UN Secretary-General Kofi Annan in 2005 reflects this negative perception of the Commission. Annan criticized that states have sought membership of the Commission ‘not to strengthen human rights but to protect themselves against criticism or to criticize others.’ As a consequence, Annan wrote, ‘a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole.’ In light of these severe shortcomings, the Secretary-General suggested the creation of a new, higher-level human rights institution (Annan 2005).

A vast majority of UN member states endorsed his proposal in General Assembly Resolution 60/251 by which the UNHRC was formally established.<sup>2</sup> The resolution contained only a rough outline of the design and functions of the new institution. The details and precise workings of the UNHRC were negotiated subsequently. At the end of this highly controversial process, the UN member states agreed on an upgrade of the UNHRC within the UN system, on new election procedures, and on a mechanism for peer review (the Universal Periodic Review [UPR]) in order to monitor and assess the human rights performances of all UN member states. Furthermore, the Special Procedures (SPs), a core element of the Commission, were carried over to the Human Rights Council.<sup>3</sup>

The transition from the UN Human Rights Commission to the Human Rights Council provides us with an ideal opportunity to study the potential conflicts and controversies among established powers, rising powers and non-governmental organizations (NGOs) with respect to this key institution of the international human rights regime. International organization (IO) reform debates provide useful insights into the institutional design actors prefer (Kratochwil and Ruggie 1986, 773). Moments of IO creation offer an additional benefit: since the space of possible institutional outcomes is much broader than in the case of incremental IO reform, actors can assert their interests much more openly. As one

---

<sup>1</sup> Special thanks to Pavel Šatra for excellent research assistance.

<sup>2</sup> Resolution 60/251 was adopted with 170 votes. Four UN members – the United States, Israel, Marshall Islands and Palau – voted against it, three members abstained (Belarus, Venezuela and Iran).

<sup>3</sup> For an overview of the creation and working of the UNHRC see Alston 2006; Callejon 2008; Ghanea 2006; Gutter 2007; Redondo 2008; Terlingen 2007.

of the few very recent instances of institution establishment, the case of the UNHRC is instructive in another important regard: it allows us to shed light onto the processes of creating IOs under the conditions of a newly reorganized international distribution of power characterized by increasingly influential NGOs and assertive rising powers.

In this chapter, we examine the negotiation of the UNHCR's institutional design in order to systematically analyse and compare the preferences expressed by rising powers, established powers, and NGOs with respect to the norms, rules, and structures that govern the field of human rights promotion and protection. The aim of our analysis is to address the questions raised by Stephen and Zürn in the introductory chapter by identifying and mapping potential conflict lines that might run between 'old' powers, 'new' powers, and NGOs in the field of human rights. For the purpose of the analysis, we have collected new data that consists of more than 500 statements in which states and NGOs formulate their demands vis-à-vis the new human rights institutions. More specifically, we analyse actor preferences with regard to two key dimensions raised in the introductory chapter. These are the UNHRC's *liberal policy content* and its *authority structure*.

While the protection of human rights is in itself a liberal endeavour, different types of rights may be associated with either a more 'neo-liberal' or a more 'interventionist' agenda. As such, the 1<sup>st</sup> generation of basic civil and political rights relates to the core liberal idea of institutionalizing guarantees of the freedom of individuals. These rights are often termed 'negative rights' and are closely associated with what might be called a 'market-making' interpretation of individual rights. Human rights of the 2<sup>nd</sup> and 3<sup>rd</sup> generation, on the other hand, stress collective self-determination (positive rights) and emphasize the socio-economic and cultural determinants of human rights (Freedman 2013, 952). Their proponents aim at correcting the detrimental outcomes of a neo-liberal agenda in favour of greater solidarity and socio-economic welfare. As such, human rights of the 2<sup>nd</sup> and 3<sup>rd</sup> generation are more closely associated with the agenda of embedded liberalism (Rivlin 2008).

In addition to the UNHRC's policy content, we analyse and compare the preferences states and NGOs articulate with respect to authoritative structures of rule on a global level. Do these actors seek to establish an organization with the authority to actively promote and protect human rights, even against the will of individual member states, or do they instead prefer human rights protection to remain the prerogative of nation-states – with the Council merely occupying the role of a facilitator?

Our analysis focuses on three sets of actors. First, we examine the claims of the *rising powers*. These include Brazil, Russia, India, China, and South Africa, who had begun to institutionalize in various

groupings, such as BRICS and IBSA (India, Brazil, South Africa), around the same time the Council was created. Second, we look at the *established powers*. Specifically, we focus on the G7 members. The G7 is a meaningful benchmark as it brings together the world's foremost established powers. It was formed by the world's most powerful economies – all of them liberal democracies – in the mid-1970s to deal with systemic disturbances in the global economy (Volgy et al. 2008, 105).<sup>4</sup> Comparable to the rising powers (BRICS and IBSA), the G7 forms an informal institution or 'club', composed of a roughly equal number of members. Third and finally, we analyse the positions of *human rights NGOs*. NGOs are prominent actors within the international human rights regime and key norm entrepreneurs in the field of human rights governance (e.g., Risse, Ropp and Sikkink 1999). NGOs were not only actively involved in the work of the old Commission but also – and particularly relevant for this study – in the debate about the creation of the UNHRC. For the purpose of this study, we subdivide these actors into Western NGOs<sup>5</sup>, non-Western NGOs<sup>6</sup>, and NGOs with a global background.<sup>7</sup> This provides us with insights into the perspectives and demands of a broad array of non-state actors of different geographical origin.<sup>8</sup>

The remainder of this chapter is structured as follows. We first introduce the main topics of debate about the future UNHRC and how they relate to actors' preferences about the liberal policy content and authoritative design of the institution. We then describe the data and methods employed in our analysis. The subsequent empirical section presents our findings on actors' policy preferences and authority demands and how these differ between rising powers, established powers and NGOs. The chapter concludes by discussing the theoretical implications of our results.

---

<sup>4</sup> Since 2002, Russia has had full participation in the G7. The group has met as the G8 since then, 'though more restricted meetings of G7 finance ministers have continued in parallel' (Slaughter 2004: 37). While the G7 has been created as an informal device to coordinate the world economy, its tasks have been gradually extended to a variety of non-economic matters, including security and environmental issues (Volgy et al. 2008: 105).

<sup>5</sup> This distinction is based on the understanding of "West" and "non-West" proposed in the introductory chapter. The four Western NGOs that participated in the debate are the Lesbian & Gay Federation Germany, United Nations Watch, Reporters without Borders and Action Canada.

<sup>6</sup> These are the Asian Forum for Human Rights and Development, the Anti-Racism Information Service and the Indian Council of South America.

<sup>7</sup> 14 global NGOs participated in the debates. Ten of these have Western origins but now comprise a global membership. Global NGOs comprise the International Save the Children Alliance, the International Humanist and Ethical Union, the Asia-Pacific Forum, the World Organization against Torture, the International Federation for Human Rights (FIDH), the International Service for Human Rights, Human Rights Watch, the Coordinating Board of Jewish Organizations, CIVICUS, Pax Romana, Amnesty International and three NGO Networks.

<sup>8</sup> Our distinction is based on three criteria, namely the NGOs' founding context (who founded the NGO and whose concerns were the main focus of NGO activity), its founding location and its membership. Only if the NGO was founded in the non-West (West, respectively) to take up the concerns of non-Western parts of the world (Western parts, respectively) and its membership was exclusively non-Western (Western, respectively) did we categorize the NGO as non-Western (Western, respectively). Any combination of both Western and non-Western characteristics resulted in the NGO's classification as global – or as global with a Western rooting in the case of NGOs with a Western founding context and location.

For general demands about the UNHRC, we look at statements made on the agenda items 'Agenda and Framework for a Programme of work' and 'Methods of Work and Rules of Procedure', as they encompass more general assessments and reform proposals. Statements on the SPs are marked as such.

## 2. Negotiating the UN Human Rights Council: topics of debate

The UNHRC (or the now defunct UN Human Right Commission) appears different when compared to some of the other institutions considered in this volume. Unlike institutions such as the GATT/WTO, the IMF, or the World Bank, that were created after WWII and reflect to a large extent the interests and norms of powerful Western states, most notably those of the US (Ikenberry 2001), the UN Human Rights Commission has not been dominated by Western states. In the above mentioned organizations, powerful Western states enjoy various special privileges (both in terms of formal voting rights and informal influence) that help them secure the institutional status quo. In the Commission, by contrast, where the 'one state, one vote' principle was applied, Western states found themselves outnumbered and regularly outvoted.<sup>9</sup> Not surprisingly, many Western powers were deeply dissatisfied with the Commission.

At the same time, human rights and their protection is certainly a core of the liberal ideology identified with the West, and Western states used the Commission to advance a liberal vision of human rights and human rights protection. On various occasions, non-Western states, including China and Russia, have become targets of public naming and shaming in the Commission, which entailed charges of 'politicization' on the part of many non-Western powers.

Taken together, both Western and non-Western states were dissatisfied with the Human Rights Commission – albeit for different reasons – and sought to change it by creating the new Human Rights Council. However, many of these controversies were carried over into the new Council and into the very process of institution-building.

We contend that these controversies – and thus the preferences actors express with regard to the policy content and authority of the new human rights institution – may best be examined by focusing on the demands actors direct both towards the Council in general and towards one of the Council's core institutional features, namely, the Special Procedures (SPs). SPs, which already existed under the Commission on Human Rights, are the mechanisms used to examine violations of human rights either within a specific country or under a thematic framework (Jordaan 2014, 97). The SPs are widely conceived as the 'essential cornerstone' (Gutter 2007, 105) of the UN human rights regime and the 'backbone' (Alston 2006) of the UNHRC. These labels derive from the fact that SPs are the most authoritative feature available to the new Council's – and already to the old Commission's – effort to promote human rights and prevent their violation. The addition of SPs to the instruments of the former

---

<sup>9</sup> For instance, Western states were regularly outvoted on Resolutions on Israel. Also, Western member were unable to prevent notorious human rights violators, such as Sudan (during the Darfur crisis) or Libya (in 2003) from being elected to the Council.

Commission in 1967 was considered the first serious blow to the principle of sovereignty in the field of human rights (Yeboah 2008, 79). Thus, how actors assess and seek to reform the SPs provides us with particularly useful insights into their position on the transfer of authority in the direction of the international human rights regime.

We focus on four sets of issues that informed states' debate over the future design of the UNHRC and its SPs. Each of them is linked to an important dimension of the Council's authority and thus to a potential cleavage over the authority structure of the institution. More precisely, we analyse the preferences and demands actors express about 1) a set of general issues related to the UNHRC and the SPs, 2) the establishment of SPs mandates, 3) the exercise of SPs mandates, 4) and the follow up on human rights situations by the Council and the SPs. We will briefly specify the issues actors debated under each of these headlines.

1. *General issues.* We analyse states' and NGOs' demands vis-à-vis a number of 'general issues' pertaining to the UNHRC as an institution and to its SPs (country mandates and thematic mandates). Do states and NGOs demand that the Council and the system of SPs be maintained, strengthened or abolished? Do states and NGOs perceive of the Council primarily as a forum for cooperation and mutual (technical) assistance or should the Council also be a place where human rights violations can be criticized? We further assess whether member states and NGOs demand that human rights protection should primarily be a responsibility of governments, or whether international institutions and NGOs should be involved in this task.
2. *Establishment of SP mandates.* This concerns whether new mandates are to be established with relative ease. Do NGOs and member states demand that SP mandate holders be directly elected by the Council (ensuring direct involvement of governments), or should they be appointed by the President of the Council, the Office of the High Commissioner for Human Rights (OHCHR) or the UN Secretary-General? May mandate holders be members of a national government or staff member of an NGO or an advocacy group? Also, how independently from national governments should a new mandate be initiated? Do member states advocate strict criteria for the establishment of new mandates, or should there be flexibility to respond to urgent situations? Do states and NGOs demand or advocate 'standing invitations' for country visits, or should these invitations be extended on a case-by-case basis?
3. *Exercise of SP mandate.* Here we analyse claims pertaining to the competences of the SPs during the exercise of their mandates. Do states and NGOs demand that mandate holders be able to exercise their mandates flexibly, or should mandate holders be strictly bound to a formalized code of conduct that allows the control and discipline of mandate holders? Also,

do they demand that member states should be obliged to cooperate with the mandate holders, or should this cooperation be non-obligatory? Moreover, should the Council have the right to list member states that are not responsive to requests of the mandate holder? Do member states and NGOs allow mandate holders to consider various sources of information (including information from NGOs and treaty bodies) when filing a report, or should this information be restricted to specific sources determined by the respective government? Finally, should reports be transmitted to the governments under review prior to the report's publication – allowing member states to examine information prior to press statements, or even to reflect on observations made in the reports themselves?

4. *Follow up on human rights situations by the Council and the SPs.* Finally, we examine claims about the results of the work of the mandate holders. Do governments and NGOs demand that mandate holders have unlimited access to the Council, or should this access be confined to specific sessions and/or be possible only upon invitation? Should recommendations be considered binding, and state compliance even monitored (including by NGOs)? Do governments and NGOs demand the findings of the SPs be taken into account in the context of the UPR or the Complaint Procedure? Shall the SPs thus be linked to the treaty bodies or even to other organs of the UN system, including the Security Council?

Apart from the authority conflicts that may divide rising powers, established powers and NGOs, actors may also disagree on the policy content of the UNHRC. To examine their preferences for or against a more liberal orientation of the institution, we analyse actors' demands with regard to three generations of human rights (Vasek 1977):

1. The 1<sup>st</sup> generation of human rights refers to the Council's need to promote and protect civil and political rights as specified in the *International Covenant on Civil and Political Rights*.
2. The 2<sup>nd</sup> generation of human rights refers to the Council's activities in the field of economic, social, and cultural rights as codified in the *International Covenant on Economic, Social, and Cultural Rights*.
3. The 3<sup>rd</sup> generation of human rights refers to the Council's promotion or protection of collective rights as specified in Freedman (2013, 952), including the rights to "self-determination, permanent sovereignty over resources, and development, all of which may only be exercised by peoples."

As stated earlier, we associate statements in favour of the 1<sup>st</sup> generation of human rights with a preference for a more 'liberal' or 'market-making' interpretation of individualist rights. Statements in support of both the 2<sup>nd</sup> and 3<sup>rd</sup> generation of human rights, by contrast, suggest that states favour an



'interventionist' agenda, which focuses on socio-economic rights and welfare aims and thus seeks to correct the worst outcomes of liberalism.

### **3. Theoretical Expectations**

The aim of our analysis is to examine the controversies surrounding the establishment of the UNHRC and to systematically identify potential cleavages in the demands of rising powers, established powers and NGOs vis-à-vis the desired *policy content* (liberal vs. non-liberal) as well as the extent of *authority* to be transferred to the UNHCR in the process of institution-building (Stephen and Zürn, introductory chapter). We formulate a set of theoretical expectations as to how rising powers, established powers and NGOs will position themselves with respect to these issues.

When it comes to the support of different types (or generations) of human rights, we expect that the rising powers put a strong emphasis on social, economic, cultural rights and collective rights (2<sup>nd</sup> and 3<sup>rd</sup> generation) as opposed to civil and political rights (1<sup>st</sup> generation). This is because the rising powers belong to the global South (and to the former Communist bloc) that have traditionally championed collective rights – the right to self-determination, the right to development – over individualistic and universalistic conceptions inherent in the civil and political rights supported by Western countries (e.g., Vincent 2001, Ch. 4 and 5). Domestically, many of the rising powers are affected by substantial levels of poverty and inequality. From a southern doctrine of human rights, economic and social rights are seen as a precondition for the enjoyment of civil and political rights. Accordingly, states from the global South have long been arguing for 2<sup>nd</sup> and 3<sup>rd</sup> generation human rights to be given priority and for cultural factors as well as the level of economic development be taken directly into account when assessing a country's human rights situation. Unlike the established powers, we thus expect that the rising powers will put a stronger emphasis on social, economic and cultural rights in the debate regarding the UNHRC. In the same vein, we hypothesize that NGOs from the global South can be expected to advocate 2<sup>nd</sup> and 3<sup>rd</sup> generation human rights while Northern NGOs place a stronger emphasis on 1<sup>st</sup> generation human rights.

Turning to the willingness to transfer authority to the Council, we can formulate two competing theoretical expectations. From a liberal perspective, a state's preferences in the international arena are an expression of its domestic norms and institutions (Russett 1993, 33; Tallberg et al. 2016, 63). According to Grigorescu, for instance, democracies seek to transfer their domestic norms and institutions to the international level and "to the functioning of IGOs [intergovernmental organizations]" (2010, 875). This includes human rights and other institutions that "place important checks on political leaders" (Seligman 2011, 524). This literature leads us to expect that the demands

of the rising powers diverge in important ways. More specifically, the preferences of the democratic rising powers – India, Brazil, South Africa – should converge with those of the G7 members in that they share a commitment to a strong Council, which includes an intrusive mechanism of human rights protection such as the Special Procedures.<sup>10</sup>

Existing scholarship on rising powers, however, leads to an opposite expectation. Some observers have highlighted the commonalities among the new powers arguing they form a group of politically, economically and militarily capable countries that were never fully integrated into the liberal world order and now aspire to international leadership (e.g., Hurrell 2006). Others are sceptical as to whether the rising powers should be conceived of as a bloc in international politics. Nonetheless, they agree that these powers share a particularly strong commitment to the principles of sovereignty and non-intervention (e.g., Nel 2010, 968; Stephen and Zürn 2010; Laïdi 2012, 615; Kahler 2013, 716; Mansfield 2014, 440). If this is the case – and a ‘logic of rising power behaviour’ prevails over preferences that reflect domestic norms and institutions – we should observe that the new powers oppose any transfer of authority to the UNHRC. In particular, the rising powers should disagree with intrusive human rights mechanisms such as the Special Procedures. To this we can add that when compared to the established powers, most rising powers generally score far worse on their human rights records, thus making them the likely targets of ‘naming and shaming’ within the Council itself (Lebovic and Voeten 2006; Yeboah 2008, 94). Again, this leads us to expect that the rising powers will oppose substantial transfers of political authority to the UNHRC.

Finally, when it comes to NGOs, we expect that human rights NGOs prefer a strong UNHRC. This is not only because promoting and defending human rights is their *raison d’être* but also because the Human Rights Council (just as its predecessor the Human Rights Commission) offers NGOs important channels of influence (participation in the sessions, submission of written statement oral interventions etc.) As such, we expect that NGOs express a preference for a strong UNHRC.

#### **4. Data and Methods**

To test these claims, we examine the review process on the UNHRC that took place in the years after its creation in 2006. Immediately following its formal establishment, the Council began debating its institutional set-up within the framework of an ‘institution-building package’. The package encompassed all central UNHRC mechanisms and procedures, namely the UPR, the Advisory Committee, the Complaint Procedure and the SPs. Five years later, these mechanisms and the Council’s general functioning were subjected to its first comprehensive evaluation. For this purpose, an

---

<sup>10</sup> Also see Armijo (2007) on this issue.

intergovernmental working group was established that convened in 2010 and 2011. These extensive negotiations during the review of the newly established UNHRC provide an ideal opportunity for the systematic empirical analysis of the claims and preferences expressed by states and non-state actors with respect to the design and authority of the organization. This is mainly for three reasons.

First, as mentioned earlier, moments of institution-building constitute an excellent starting point for inquiries into actors' institutional preferences. In the debate following the creation of the Council in 2006, actors were called upon to explicitly state their requirements for the future Council and to engage in an active discussion on the matter. Yet, the UNHRC was not created from scratch but succeeded another organization, the UN Human Rights Commission. Thus, actors' claims do not only contain information on the requirements for the newly established institution; they also reveal the reasons for actors' discontent with the pre-2006 status quo.

Second, the entire review process was conducted in a very inclusive manner that involved all relevant stakeholders. Most importantly, the UNHRC is one of the few IOs in existence that allows far-ranging NGO access. Because non-state actors may participate in UNHRC debates, we do not only dispose of the statements made by a wide variety of countries but also of those of a multitude of NGOs. The fact that the claims made by both types of actors were issued in the same discursive context also ensures their comparability.

Third, the way the institution building and review process was organized resulted in a wealth of accessible novel data. More specifically, most participants in the process (state and non-state actors alike) submitted their demands in the form of written statements. For this reason, the contributions made in the course of the reform debate are well-documented and available for download from the UNHRC Extranet. More specifically, contributions that states and NGOs made during the 'Institution Building Working Group' debates from 2006 and 2007 were gathered by the Council in a series of outcome documents. These contain statements by all of the BRICS countries and G7 members (sometimes issued via state groupings), and by six NGOs and NGO networks. The documentation of the subsequent 'Intergovernmental Working Group Sessions on the Review' that took place in 2010 and 2011 provides us with 205 relevant documents, of which 157 were delivered by BRICS or G7 countries (individually or via state groupings) and 48 were delivered by 19 NGOs and NGO networks.

We analyse these statements and demands by means of claims analysis (Koopmans and Statham 1999). Koopmans and Statham define 'public acts of claims making [as] the strategic demands made by collective actors within a specific contested issue field' (1999, 206). While this comprises both

action, for instance in the form of violent or non-violent protest, and discourse, we are particularly interested in the latter. These ‘speech’ forms of claims making’ (Koopmans and Statham 1999, 216) are public statements primarily issued in the form of demands but also as proposals, or positive as well as negative evaluations. Our unit of analysis is thus claims made by an actor about 1) the different types (or generations) of human rights; and 2) the extent of UNHRC authority across the for dimensions discussed in section 2 of this chapter, namely general issues, the establishment and exercise of SP mandates, and follow up.<sup>11</sup>

For each *authority demand* made, we assign +1 if the actor advocates the transfer of authority and -1 if they oppose it. For example, with respect to the selection of mandate holders, some governments and NGOs argued that mandate holders should be appointed independently (+1), while others demanded their direct election by the member governments (-1). If an actor made the same demand more than once within the same document, we only assigned one code.

To evaluate actors’ claims about the *policy content* of the UNHRC, we code their demands in favour of each of the three generations of human rights.<sup>12</sup> In a second step, we account for the relative importance each of the three types of actors – rising powers, established powers, and NGOs – attribute to the 1<sup>st</sup> as opposed to the 2<sup>nd</sup> and 3<sup>rd</sup> generation of human rights. We do so by calculating the relative share of demands made in favour of each type of right.

All in all, the documents coded comprise 475 authority claims and a significantly smaller share of only 81 claims on the three generations of human rights. The authority claims comprise 350 claims made by states and 125 claims made by NGOs. On average, BRICS and G7 countries make the same amount of claims on the topic, 23 by each BRICS country and 24 by each of the G7 states. NGOs make considerably less claims than states, on average six per NGO. With regard to claims about different types of rights a clear imbalance exists between the number of claims issued by G7 and BRICS countries. The G7 make as little as five claims altogether. They all stem exclusively from two countries, namely the US and the UK. BRICS countries, in turn, account for 42 claims altogether – with all BRICS involved in the claims-making –, while the remaining 34 claims come from NGO representatives. Only half of the NGOs (11 altogether) involved in the debate raised their voice on the subject. It is important to note that our analysis is confined to a comparison of demands made by rising powers, established powers and NGOs. Given our research design, we cannot extend our findings to other UN member states.

---

<sup>11</sup> A detailed coding scheme is available upon request from the authors.

<sup>12</sup> Actors that referred to human right associated with one of the three generations only did so in a positive way. No actor argued that any of these rights deserve less attention.

## 5. Results

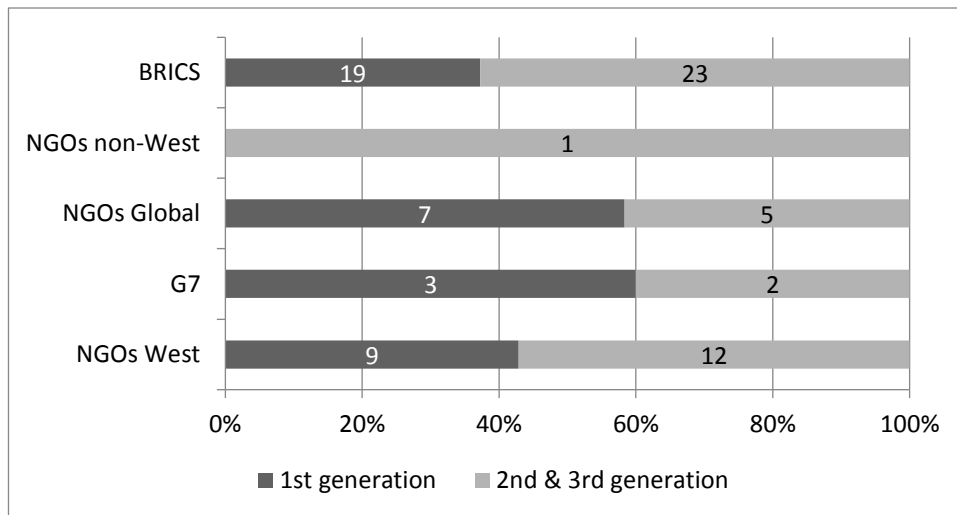
### **1.1 Policy Content and the Level of UNHRC Authority: aggregate findings**

The first important finding with regard to actors' debate over the different types of rights – the first potential cleavage between rising powers, established powers and NGOs, is the low level of importance that it is attributed in all actors' discourse. Actors pay little attention to the matter of policy content in their speeches. This lack of articulation of preferences on the topic is particularly strong among the G7 countries, five of which do not even bother to address it, and among non-Western NGOs, which make only one single claim. While both the rising powers and global and Western NGOs issue claims as to their preferred human rights focus, the amount of claims made by each individual actor is considerably low.

On an aggregate level, civil and political rights receive the same amount of claims as did social, economic, and cultural rights. The 3<sup>rd</sup> generation of human rights, on the contrary, is awarded little attention by the actors involved in the institution-building debate. Only ten claims were made on behalf of the Council's promotion of these types of rights, with actors' focus resting primarily on the right to development.

Our data shows that the demand for protection of each category of rights is highly balanced among G7 countries, BRICS as well as Western and global NGOs (see Figure 1). While civil and political rights feature somewhat more prominently among the G7 and global NGOs – bearing in mind the overall low number of claims made by the established powers – and socio-economic and developmental rights are slightly more frequent among BRICS and Western NGOs, these differences are minor. Moreover, while non-Western NGOs largely abstain from this debate, even Western NGOs do not strongly emphasize civil and political rights but take a balanced stance that emphasizes the equal importance of civil-political and, primarily, socio-economic rights.

**Figure 1:** Group preferences about different types of human rights

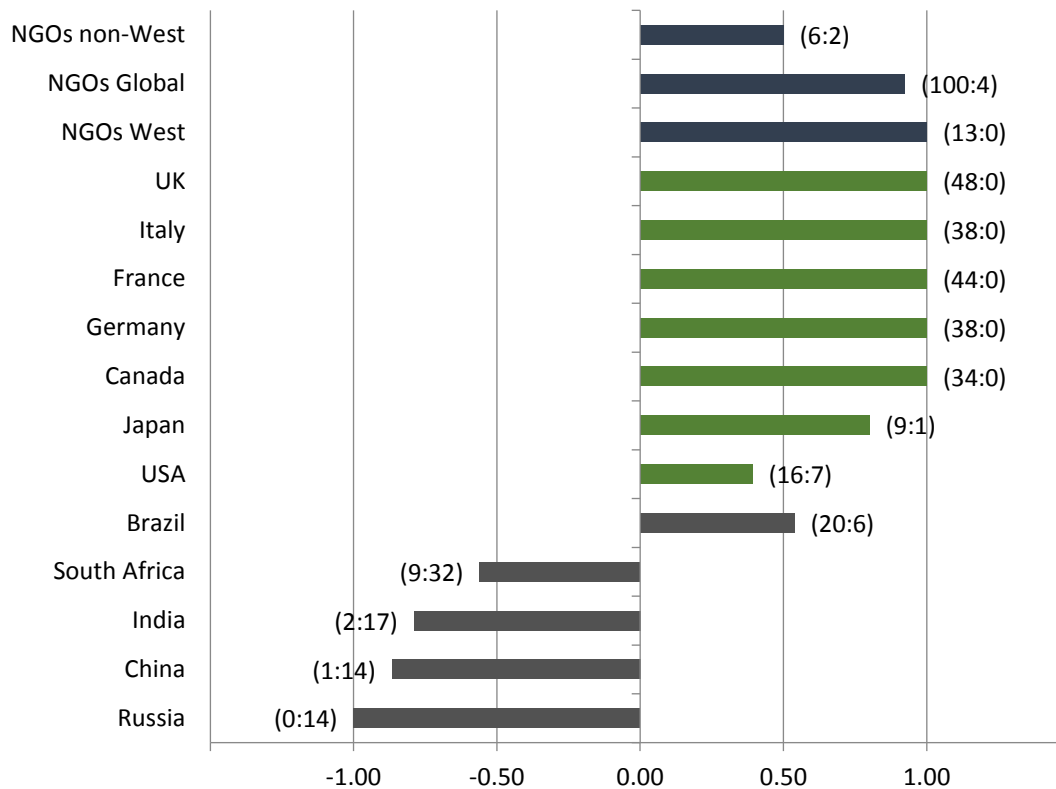


\*The numbers inside the bars indicate the absolute amount of claims dedicated to this generation of human rights by the respective group of actors.

Taken together, our findings suggest that policy content is neither a salient issue nor is there a cleavage between supporters of 1<sup>st</sup> and proponents of 2<sup>nd</sup> and 3<sup>rd</sup> generation human rights, at least when we consider the negation process of the UNHRC. This is surprising as it contradicts the scholarly literature that describes the debate over which generation of human rights the Council should focus on as a major conflict line in international politics. Scholars argue that this conflict line runs between Western states – and the United States in particular – on the one side, whose conception of human rights is dominated by a concern for civil and political rights (Rivlin 2008, 349; see also Hug 2014), and ‘Southern’ developing countries on the other side, who usually try “to shift the focus from civil and political towards economic rights” (Hug and Lukacs 2014, 86).

As pertains to the second potential cleavage, the level of UNHRC authority, we analysed which actors demand a transfer of competences to the Council, and which actors are opposed to this. Also, we examined whether actors within the three groups articulate similar demands. To shed light on these questions, we constructed an authority index based on the ratio of an actor’s claims favouring a stronger Council (‘yes’) and claims opposing this (‘no’), which was then divided by the number of overall claims made by the actor. The results are reported in Figure 2.

**Figure 2:** Authority scores\*



\*The numbers in parentheses indicate the ratio of claims made in favour of increasing the Council's authority (first number) to those opposing it (second number).

Aggregating demands in favour of and against a transfer of authority – across all issues – yields four main findings:

1. In comparison to the UNHRC's policy content – the different generations of human rights – actors clearly pay much more attention to the question of the Council's level of authority. As we will discuss in more detail below, the debate around the Council's authority gives rise to a much higher level of contestation and reveals major cleavages among the actors involved in this debate.
2. The established powers are clearly supportive of an authoritative Council. This applies to all G7 members. In the G7 camp, the UK, Italy, France, Germany, and Canada consistently favour a strong Council. As indicated by their lower authority scores, the US and Japan, however, are somewhat more reluctant with respect to the transfer of authority to the UNHRC. Overall, our findings suggest that the established powers form a coherent group with respect to their claims vis-à-vis the Council.
3. Human Rights NGOs, too, clearly support an authoritative UNHRC. While Western and global NGOs are strongly in favour of an authoritative Council, non-Western NGOs are somewhat more reluctant to demand authority for the Council. Still, they call for a stronger UNHRC more

often than not (which is why their index is positive), and they are clearly more inclined to support a strong Council than the US, for instance.

4. The rising powers, by contrast, prefer a less authoritative UNHRC. Russia, which takes the most critical position, but also China, India and South Africa are strongly opposed to the transfer of authority to the Council. The exception in the rising power group is Brazil. Brazil not only takes a position that lies outside the rising powers' camp. On average, Brazil is also more favourable of a strong, authoritative UNHRC than the US (but clearly less so than the other established powers).

### ***1.2 UNHCR Authority: support and opposition across the issues discussed***

In a second step, we disaggregate the authority cleavage to take a closer look at the specific issues in the debate. Clearly, not each and every reform issue that is linked to the transfer of authority raises serious conflict. In fact, on some of these matters states and NGOs are remarkably united. On others, however, they strongly disagree. A closer look at the content of the various demands helps us identify both the fault lines in the negotiations and the zones of agreement. To do so, we identify which aspects of the Council's authority are most contested, and also distinguish salient demands from claims that are rarely articulated during the negotiations. We define a topic as salient, if the number of coded demands made on the topic amounts to at least one third of the maximum number of coded demands issued on any topic. For a topic to count as contested, the number of demands made on behalf of one side of the argument (either in support or opposition of the Council's authorization) must amount to at least one third of the number of demands made in opposition to it. This leaves us with a 2 by 2 matrix (Figure 3). We look at each combination separately.



**Figure 3:** Authority issues in the UNHRC negotiations: level of contestation and salience

	HIGH SALIENCE	LOW SALIENCE
HIGH CONTESTATION	Selection of MH* Controlling MH Standing invitations Establishment of mandates	Information provision Purpose of UNHRC SP report
LOW CONTESTATION	Maintain/ strengthen UNHRC/SP Participation of NGO Obligation to cooperate w/ UNHRC Linking SP	Reaction to uncooperative states Access of MH to UNHCR Available sources of information Monitoring MH membership in nat. govt.

\*MH = mandate holder

***Negotiating the Council’s authority: Salient and contested issues***

We first look at those issues that raise strong authority conflicts among many of the actors involved in the debate. Four issues belong to this highly contested and intensively debated category of topics. In their great majority (three out of four) they address questions revolving around the establishment of SP mandates. Only one issue refers to the competences of SP during the exercise of their mandates.

As for the *selection process of mandate holders*, the line of disagreement is clear. Established powers and Western NGOs oppose rising powers and non-Western NGOs. While the former support a selection process that is characterized by greater independence from national governments, the latter clearly oppose it and defend governments’ control over the selection of mandate holders. There are two exceptions to this pattern. The first is Brazil, which takes an intermediate position. The second are the global NGOs, some of which side with the groups surrounding established powers and Western NGOs, while others take a common stance with the coalition of rising powers and non-Western NGOs. We look at each group of actors individually.

According to the pro-independence coalition, both the selection of candidates and the final appointment of mandate holders should be taken out of the (exclusive) control of the member states

of the UNHRC. Instead, independent experts, such as NGOs and representatives of the international human rights regime – among these most importantly the President of the Council and the High Commissioner for Human Rights – should exercise decisive influence over these steps of the selection process. As the group members emphasize, this is meant to ensure mandate holders' independence and thereby avoid politicization. Some actors, such as the International Service for Human Rights fervently emphasize the risks of leaving the selection process to states. They claim that 'nothing would politicize the system more thoroughly than this (...).'

Rising powers and non-Western NGOs, in turn, argue for the "primacy of the inter-governmental process' (India) and defend elections in the UNHRC as the central means to ensure governmental control over the selection process. In this spirit, China requests that mandate holders' 'selection should be based on the nomination by the States and [they] should be elected by the Council.' While rising powers claim that they 'find no incompatibility between the independence of mandate-holders (...) and their election by States' (African group), they seem to prioritize the concern for a transparent selection process – that is, transparent towards states – over the concern for mandate holders' independence. Some members of this actor coalition even go so far as to request the involvement of the subjects of human rights investigations in the selection of their own investigators, as does the Coordinating Board of Jewish Organizations. They claim that 'if this procedure were to be followed, the probability of securing cooperation from the country concerned would be greatly enhanced.' Thus, with the exception of Brazil, the established powers oppose the group of rising powers.

Western NGOs side with the established powers and non-Western NGOs ally with rising powers. Only the group of global NGOs is split. Both Brazil and global NGOs take a balanced position and suggest a selection process that is conducted in close consultation with national governments but leaves room for human rights experts.

The *modalities for establishing new mandates, new country mandates in particular*, is another contested topic in the reform debate on the UNHRC. A largely united front of rising powers – largely, because China does not make any claim at all –, supported by one global NGO, namely the Asia-Pacific Forum, confronts several established powers and global NGOs. On this issue, Brazil firmly sides with its fellow rising powers. Together, they argue for 'stringent criteria' (Brazil) and a clear 'procedure to evaluate the need for new [country] mandates' (Asia-Pacific Forum). Some actors even propose a consensus requirement for the establishment of such mandates (India). Together with others from the African Group South Africa goes the farthest: it suggests to 'establish country specific mandates only

with the cooperation of the country concerned' – that is, with the cooperation of the very country whose human rights record warrants a mandate in the first place.

Established powers and NGOs disagree. In fact, they emphasize the need for Special Procedures to 'be able to react quickly in order to alert States on grave human rights situations' (FIDH) and warn against the proposals of rising powers, which 'might have an unintended consequence of impeding a rapid response' (Amnesty International). However, one established power is split on the issue. Somewhat ambiguously, the US takes a stance both in support of rising power concerns when it claims to favour the 'exercise of caution before creating new thematic mandates,' while simultaneously arguing in favour of reacting to human rights violations 'as they occur anywhere in the world' – a position that is in line with the views of established powers and NGOs.

On the issue of *standing invitations*, countries and NGOs are split. In their opposition to any obligation for issuing standing invitations, four rising powers, namely China, India, Russia and South Africa, face a broad coalition of global and non-Western NGOs and established powers – which, however, excludes the US and Japan. The two countries do not make any claims. The four rising powers argue that standing invitations should be a matter of voluntary decision because, as China points out, 'if an invitation becomes a must, it is not an invitation anymore.' Proponents of permanent invitations, in turn, argue that they would strengthen states' cooperation with the SPs and may thus greatly increase the procedures' effectiveness.

*Should mandate holders be subjected to additional (and more stringent) mechanism of control and disciplining?* Again, rising powers are united on this question. The answer of all five countries, including Brazil, is 'yes'. In particular they propose the introduction of a new Code of Conduct that ensures greater 'accountability of mandate holders towards the Human Rights Council' (African group) – a code of conduct that goes beyond the existent manual of working methods, which mandate holders have set for themselves. This code might even allow for 'an earlier termination of their mandate' in case of a perceived over-stepping or 'inappropriate performance' (Russia).

While rising powers are not supported by a single NGO, two established powers join their ranks on this matter: the US and Japan. Both countries voice their support for a new code of conduct. Japan particularly emphasizes that new rules need to ensure that mandate holders do 'not deviate from their given mandates.'

This stance faces firm opposition not only from the remaining established powers but also from a very broad coalition of mainly global (and one Western) NGOs. This group argues that the existent manual is sufficient because 'special procedures mandates are in the best position to address the professional standards and working methods which guide their activities' (HRW). Additional control mechanisms are opposed because they impose an 'operational straight jacket on the Special Procedures' (Int. Service) and put their 'freedom of expression (...) at risk' (Reporters without borders). This, in turn, bears negative implications for the 'effective and independent functioning of the Special Procedures system' (EU) as a whole. According to Amnesty International, if anyone's behaviour needed regulation by a code of conduct, it was that of states.

In conclusion, the four most contested and vividly debated topics reflect the overall picture of state positions. Across all four topics, rising powers take a critical stance on transferring authority to the UNHRC, while established powers and NGOs endorse the organization's empowerment. However, a few interesting deviations exist – both among the rising and the established powers. Brazil in particular seems to be torn between the two groupings: together with established powers it supports standing invitations; on the question of selecting mandate holders it takes an intermediate position; and with regard to control mechanism and the initiation of new mandates it firmly sides with the other rising powers. The same is true for the United States (and Japan). Together with the rising powers, the US and Japan support a new code of conduct. Moreover, the US takes a balanced stance on the question of introducing new mandates, supporting both the claims of rising powers and those of fellow established powers. Lastly, while consistent with the overall picture rising powers receive very little NGO support, the group's stance on the question of selecting mandate holders can rely on some NGO endorsement – not only by non-Western but also by global NGOs.

#### ***Negotiating the Council's authority: Contested non-salient issues***

Among the less salient matters, only two are characterized by considerable disagreement. The first of these highly contested but scarcely discussed issues covers the fundamental question of the *purpose of the UNHRC*. Shall the organization engage in naming and shaming of human rights violations – and, more importantly, of human rights violators – or should it restrict itself to assistance and cooperation in the field of human rights protection?

The conflicts of interest involved in determining the overall purpose of the UNHRC mirror the general patterns of contestation in the Council. The rising powers confront a broader coalition of established powers, (global) NGOs and Brazil. China, South Africa, Russia and India are very clear about their vision of a UNHRC that protects human rights 'through dialogue and cooperation' (African Group). For some

rising powers this particularly concerns the interaction between the SP and the country under scrutiny. For others, the very idea of country mandates contradicts the principles of dialogue and cooperation. In their view, the SP's infringement on countries' domestic sovereignty is incompatible with a cooperative approach by the Council. At best, country specific mandates could be conducted 'with the cooperation of the country concerned' (African Group).

Although the established powers coalition disagrees with the rising power stance, it argues in a more balanced manner. It accepts cooperation 'as ideal' but underscores that the UNHRC 'needs teeth if this doesn't work' (US). This particularly concerns instances when the UNHRC's cooperative approach fails to induce states' cooperation. However, very few actors spell out what kind of 'teeth' they envision. Among states, Brazil is most explicit when it expresses its support for letters of allegations and public denunciations. The International Humanist and Ethical Union, a global NGO, likewise calls for a 'clear condemnation' in reaction to states' non-cooperation.

The second issue covers the topic of discretion. Shall the *information gathered by means of the SP be treated confidentially or shall it be made available to other human rights institutions, various stakeholders and even the public?* The established powers, again joined by Brazil and Western as well as global NGOs, demand freedom of speech for the SP. Mandate holders need to be able to publicize their findings from country missions. This includes making their reports available to all stakeholders and permitting mandate holders to 'make use of public statements and official press releases (...) without being subject to undue restrictions' (EU). Accordingly, it should be left for mandate holders 'to decide when and where they may speak to the press' (Reporters without borders). From the remaining rising powers, only South Africa expresses its preferences on the question of confidentiality of the SP. As part of the African Group, it takes the opposed position and seeks to restrict mandate holders' access to the media. According to the African Group, 'primacy must be given to the dialogue with the State concerned along with the Human Rights Council, on which it is incumbent to decide on the appropriateness of calling on the media.' The US takes a middle stance between these two opposing demands. It emphasizes both the need to support mandate holders in widely disseminating their findings, but also cautions against sidestepping the concerned state before going public – as this may 'undermine a constructive dialogue among stakeholders or hamper cooperation.'

The conflict surrounding these two contested but infrequently addressed issues is largely consistent with the overall divide among rising powers' opposition to a more authoritative Council and established powers' support for the Council's authorization, with the latter coalition being backed both by global and Western NGOs and by a rising power dissenter, namely Brazil. At the same time, the US

does not unambiguously support the other established powers but takes a middle position by backing both sides of the argument.

***Negotiating the Council's authority: Salient non-contested issues***

It is important to note that while rising powers, established powers and NGOs disagree over many issues related to the UNHRC, some questions are relatively uncontroversial in that there are relatively few counter-claims. We first turn to uncontroversial issues that figure prominently in the negotiations (salient issues), and then briefly address claims that are relatively rarely articulated.

Importantly, actors from all three categories widely agree that *the system of Special Procedures should be maintained and strengthened*. Together with others from the African Group, South Africa notes that it 'would like to commend the important role that Special Procedures have played in the promotion and protection of human rights,' while India considers the system of Special Procedures to be 'one of the main instruments available to the Human Rights Council for the promotion and protection of human rights.' Established powers and NGOs make very similar claims. However, rising and established powers disagree over the use of so-called 'country mandates,' which are part of the Special Procedures through which mandate holders monitor and publicly report on human rights situations in specific countries. Brazil and South Africa (as part of the African group) demand that country mandates should be subjected to stricter criteria. India, China, and Russia make the case for removing country mandates altogether. 'The indiscriminate manner in which such country mandates were established' India argues, are 'the main reason which affected the Commission's functioning'. However, while these claims are confined to the rising powers, they remain relatively rare.

Likewise, that *NGOs should play an important role in the Human Rights Council* is a largely uncontroversial claim. Actors from all three groups highlight that NGOs 'play a fundamental role in promoting and protecting human rights, and are key partners of the special procedures' (Canada) and should hence contribute to the Council's work. Some NGOs demand even more of a say for NGOs in the Council. China expresses its concern 'over the inadequate participation of the NGOs from the South.' South Africa (as part of the African Group) makes the same claim.

Moreover, actors from all three groups agree to a large extent that the *results of the SP should be taken into account in other procedures in the UNHRC* (e.g. UPR) or in other international institutions. According to Canada, the special procedures are 'a vital partner in the UPR'. Again, on a few occasions South Africa (as part of the African Group) disagrees: '(C)omplaints examined by the special procedures

of the Human Rights Council or its subsidiary bodies should not be examined as part of the mechanisms of other United Nations bodies.'

Finally, we find little controversy for the claim articulated by established powers and NGOs that UN member states should have an *obligation to cooperate with the UNHRC*. Only China argues that cooperation between states and the Human Rights Council should be 'voluntary' and based on 'good faith.' The remaining rising powers India, Brazil, Russia and South Africa do not express their preferences with respect to this issue. Interestingly, a similar claim is being made by the Anti-Racism Information Service (a Russian NGO), arguing that mandate holders can only make recommendations and that the final decision (implementation) lies with UN member states.

Taken together, this shows that rising powers, established powers and NGOs agree on a number of intensely discussed topics related to the design and competences of the UNHRC. However, on some of these topics rising powers did not actively articulate support but chose not to express their preferences at all. Likewise, on topics that raised a limited number of counter-claims, those were being made by the rising powers.

***Negotiating the Council's authority: Non-controversial, non-salient issues***

Finally, it is worth noting that a last set of claims is characterized by both low salience and little controversy, suggesting that the three groups of actors agree on (or at least do not actively oppose to) a number of issues that are not intensely debated among rising power, established powers and NGOs.

NGOs in particular but also established powers and Brazil demand that the Council should have the right to *react to uncooperative states*. FIDH demands that 'the non-cooperation with the special procedures or the obvious absence of implementation of their recommendations, must lead to the suspension and non-re-election of the Council,' while Japan suggests that the Council gives 'further thought to countermeasures when faced with persistent non-cooperation. Likewise, Brazil suggests that the Special Procedures 'could also have the right to make public denunciations' if states do not comply 'after a reasonable time'. Brazil is the only rising power that explicitly supports this position. The remaining rising powers do not articulate their position on this issue.

The same holds for the *sources of information mandate* holders may use. NGOs, such as CIVICUS, demand that '(s)pecial procedures should use country visits to engage not only with governments and civil society of the particular country but with larger civil society from the region, in particular civil

society from the neighboring countries.’ Established powers and, again, Brazil actively share this claim. No statement in this regard is being made by the remaining rising powers.

Whether mandate holders should be able to *access the Council* is also a rather non-salient issue in the various debates. NGOs and established powers demand unlimited access to the Council. The EU group argues that ‘Special Procedures should be free to report orally to the Council each time they deem necessary.’ India and Brazil, by contrast, claim that mandate holder access should depend on the prior approval of Council members.

Another demand concerns whether mandate holders should have the *right to monitor state compliance* with the recommendations made by mandate holders. NGOs and – somewhat surprisingly – Brazil and South Africa argue in favour of establishing monitoring mechanisms. According to Amnesty International, ‘(t)he council should put in place an internal system that would monitor compliance by council members with the special procedures, and take appropriate measures in response to non-compliance.’

Finally, rising powers (SA), established powers (USA, UK) and NGOs (AI) agree that ‘(m)andate-holders should be *independent* from the executive or administrative branch of government and must not be in, or appear to be in, a conflict of interest with the mandate in question.’

In sum, this shows that agreement among the three groups extends to non-salient issues. Again, Brazil often finds itself in the camps of the established powers and NGOs that actively support a more authoritative UNHRC. The remaining rising powers often did not express their preferences, yet they also rarely articulated claims running counter to the transfer of authority to the Council.

## **6. Conclusion**

In this chapter we have systematically examined the demands of rising powers, established powers and NGOs about the policy content and the institutional design of the UNHRC. We conclude by presenting our key findings and by discussing their main theoretical implications.

The first finding is that the policy content of the UNHRC – the question of whether to focus on more ‘liberal’ civil and political rights or on more ‘interventionist’ social, economic and cultural rights – not only attracts little attention in the debate, but is also largely uncontroversial among the actors involved in the negotiation. This is inconsistent with our theoretical expectation and the scholarly literature.



Both suggest that the debate about which type of rights should be given priority has been a major divide in the UN that separated Western countries on the one side and countries from the Soviet bloc and the global South on the other during much of the Cold War (Vincent 2001). What our results suggest instead, is a certain convergence of views in that G7 members acknowledge the importance of 2<sup>nd</sup> and 3<sup>rd</sup> generation human rights, while the rising powers have begun to subscribe to political and civil rights – at least when we examine their demands in the negotiations of the UNHRC.

With a view to overall levels of support for and opposition to an authoritative UNHRC, our results indicate that all three groups form largely coherent coalitions. Moreover, we find variation in the patterns of support between the three groups of actors that suggest contestation between ‘old’ powers and NGOs, on the one side, and rising powers, on the other. More precisely, while established powers and NGOs demand a transfer of authority to the UNHRC, rising powers oppose it. These findings support the theoretical expectation formulated at the beginning of the chapter according to which countries on the rise form a coherent group of actors with a strong commitment to the principle of sovereignty. This renders them particularly critical of authoritative international institutions. By contrast, the established powers are clearly more willing to accept the sovereignty costs imposed by a strong human rights regime. Of course, as these powers have a good human rights record, the sovereignty cost they incur will be (relatively) low.

Finally, as expected, NGOs live up to their commitment to promote human rights by attempting to empower the main international human rights institution. This is not only in line with their *raison d’être*; it also promises to provide them with new channels of influence. After all, those involved in the reform debate have closely linked the authority of the UNHRC to a more prominent role of NGOs and other advocacy groups.

At the same time, the patterns of contestation revealed by our analysis are more nuanced and thus require additional explanation. While we find established powers to support an authoritative Council, the US and Japan are somewhat more sceptical than the rest of the group. This is mirrored particularly on the level of highly contested issues, where in a few instances the two countries leave the ranks of supporters of an authoritative Council and instead join the opposition. This is particularly true for the US, to which the UNHRC poses a “foreign policy dilemma” (Rivlin 2008). On the one hand, the US generally supports human rights and the establishment of international human rights bodies (Hafner-Burton et al. 2015, 16); on the other, it is aware that its opponents may use the Council as “an opening to attack U.S. foreign policy politically” (Rivlin 2008, 366). The latter concern is amplified by the strong presence of human rights abusers on the Council – a situation which initially kept the US from running

for a seat in the organization. At the same time, the reluctance of the US to support a strong Council might be explained by the criticism its counter-terrorism practices, in particular the detention of terrorist suspects in Guantanamo and torture ('enhanced interrogation techniques'), raised in the Council and on the part of the Special Rapporteur who visited the US in May 2007 but was not allowed access to the detainees at Guantanamo Bay (Blanchfield 2009, 16).

Rising powers also show some interesting divergence in that they comprise a major outlier: Brazil articulates considerable support for an authoritative Council. On the aggregate level, this support even exceeds that of the US. This finding is consistent with the human rights literature that describes Brazil as "the emerging country that is most closely aligned with the EU on human rights" (Wouters and Meuwissen 2013, 20). But what explains Brazil's joining the established powers camp? It can hardly be accounted for by the country's domestic political system. While Brazil's status as a liberal democracy should render the country more willing to accept sovereignty costs, this should hold true also for two other democracies among the rising powers, namely South Africa and India (which have very similar Polity IV scores) (Marshall et al. 2016). Both countries, however, are almost as critical as their authoritarian colleagues on the rise, Russia and China. Brazil's position might best be explained by its human rights record (Cingranelli, Richards and Clay 2014), which is clearly better than China's, Russia's and India's. The fact that South Africa, whose human rights record is only slightly worse than that of Brazil, firmly sides with the rest of the rising powers to oppose an authoritative Council might be explained by that fact that South Africa regularly expresses its views together with the African Group. On average, African countries involved in this group exhibit a record of human rights compliance that is much poorer than that of South Africa. South Africa might take this into account by exercising more restraint in its support for an authoritative UNHRC than it would have done on its own.

Lastly, the NGO group also shows some interesting deviation. While, overall, these actors consistently fight alongside established powers for a more authoritative UNHRC, there are a few instances where both non-Western and global NGOs show some scepticism as regards the Council's authority, particularly with respect to the contested issue of selecting mandate holders. When seen in comparison to claims in favour of an authoritative Council, this scepticism is stronger among non-Western NGOs than among other NGO groupings. That the NGOs who issues the strongest demands for restricting Council authority is an NGO with close ties to Russia may provide some support for the assumption that NGOs with a rooting in illiberal countries or in countries with a bad human rights record should be more critical of transferring authority to the UNHRC. However, this is difficult to generalize since it is based on a single observation. Moreover, it does not explain the few instances of opposition shown by global NGOs.

Many international organizations clearly reflect the interests of established powers, suggesting that these countries have the greatest incentive to preserve these organizations and ensure their continued strength. This logic does not apply to the UNHRC, the successor of an utterly contested organization that not only failed to satisfy the contenders of established powers, but also the existing dominant powers themselves. Consequently, the preferences of actors on the rise and of established powers – and thus the patterns of contestation surrounding the UNHRC – were bound to be more complex and multifaceted. Yet, the dynamics revealed by this study are not only clear; they are also very much in line with the dynamics expected in the context of other organization, namely those that were established by Western powers. While all actors involved in the debate seek to change the organization in comparison to its predecessor, Western established powers (supported by NGOs) act as proponents of a strong organization that authoritatively governs the policy field of human rights, whereas rising powers use the reform debate to weaken the organization's most authoritative aspect, namely the Special Procedures, and to ensure that it does not acquire too much independent power.

What do these findings suggest about processes of creating international organizations in times of a power shift – a shift that has rendered NGOs increasingly influential and rising powers more and more assertive? Whose demands have won the day in the establishment of the world's main human rights institution and its 'backbone' (Alston 2006), the Special Procedures? Overall, the issues that raised the strongest authority conflicts among established powers and NGOs, on the one side, and rising powers on the other, have been resolved in a sort of compromise. Yet, this compromise is closer to the preferences of the rising powers than to those of the established powers. While the system whereby the President of the Council appoints mandate holders was retained, states are now 'more involved than they used to be' (Callejon 2008, 325). Put differently, countries may now exercise the sort of control that rising powers had fought for. And although it did not become the restrictive document the advocates of a more authoritative Council had feared, a Code of Conduct was adopted and now confines the work of mandate holders. Also, in line with rising powers demands, standing invitations did not become obligatory. But most importantly: while the practice of country mandates was carried over into the UNHRC, an 'atmosphere of strong hostility' (Abraham 2007, 44) towards them has made establishing new mandates utterly difficult. In fact, while only the mandates on Belarus and Cuba were discontinued in 2007, the number of existing country mandates has barely risen since then (Yeboah 2008, 92; Piccone and McMillen 2016). While this article has focused on Special Procedures and has not analysed demands about other features of the UNHRC, it is safe to argue that the pattern detected is a broader one: the new Council clearly forms a compromise, yet one in which those who sought to

avoid an interventionist body held sway over those who sought to establish one (Cox 2010). Established powers and NGOs had to settle for much less than originally aspired.

## 7. Bibliography

- Abraham, Meghna. 2007. "Building the New Human Rights Council: Outcome and analysis of the institution-building year." *Dialogue on Globalization* 33.
- Annan, Kofi A., 2005. *In Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005. New York: United Nations.
- Alston, Philip. 2006. "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council." *Melbourne Journal of International Law* 7: pp. 185-224.
- Armijo, Leslie E. 2007. "The BRICs Countries (Brazil, Russia, India, and China) as Analytical Category: Mirage or Insight?." *Asian Perspective* 31 (4): pp. 7-42.
- Blanchfield, Luisa 2009. *The United Nations Human Rights Council: Issues for Congress*, Congressional Research Service.
- Callejon, C. 2008. "Developments at the Human Rights Council in 2007: A Reflection of its Ambivalence." *Human Rights Law Review* 8: pp. 323-342.
- Cingranelli, David L., David L. Richards, and K. C. Clay. 2014. *The CIRI Human Rights Dataset*. <http://www.humanrightsdata.com>.
- Cox, Eric. 2010. "State Interests and the Creation and Functioning of the United Nations Human Rights Council." *Journal of International Law & International Relations* 6 (1): pp. 87-120.
- Freedman, Rosa. 2013. "'Third Generation' Rights: Is There Room for Hybrid Constructs within International Human Rights Law?." *Cambridge Journal of International and Comparative Law* 2: pp. 935-959.
- Ghanea, Nazila. 2006. "I. From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways?." *International & Comparative Law Quarterly* 55: pp. 695-705.
- Grigorescu, Alexandru. 2010. "The Spread of Bureaucratic Oversight Mechanisms across Intergovernmental Organizations." *International Studies Quarterly* 54 (3): pp. 871-86.

- Gutter, Jeroen. 2007. "Special Procedures and the Human Rights Council: Achievements and Challenges Ahead." *Human Rights Law Review* 7: pp. 93–107.
- Hafner-Burton, Emilie M., Edward D. Mansfield, and Jon C. Pevehouse. 2015. "Human Rights Institutions, Sovereignty Costs and Democratization." *British Journal of Political Science* 45: pp. 1–27.
- Hug, Simon. 2014. *Targets and Perpetrators: Resolutions and Voting in the UNCHR and UNHRC*. Paper prepared for presentation at the 55th ISA Annual Convention, Toronto, March 26-29, 2014.
- Hug, Simon, and Richard Lukács. 2014. "Preferences or Blocs? Voting in the United Nations Human Rights Council." *The Review of International Organizations* 9: pp. 83–106. doi: 10.1007/s11558-013-9172-2.
- Hurrell, Andrew. 2006. "Hegemony, liberalism and global order: what space for would-be great powers?" *International Affairs* 82 (1): pp. 1–19.
- Ikenberry, G. John. 2001. *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*. Princeton: Princeton University Press.
- Jordaan, Eduard. 2014. "South Africa and the United Nations Human Rights Council." *Human Rights Quarterly* 36 (1): pp. 90–122.
- Kahler, Miles. 2013. "Rising Powers and Global Governance: Negotiating Change in a Resilient Status Quo." *International Affairs* 89 (3): pp. 711–29.
- Koopmans, Ruud and Paul Statham. 1999. "Political Claims Analysis: Integrating Protest Event and Political Discourse Approaches." *Mobilization: An International Journal* 4 (1): pp. 203–21.
- Kratochwil, Friedrich V. and John G. Ruggie. 1986. "International Organization: A State of the Art on an Art of the State." *International Organization* 40 (4): pp. 753–75.
- Lebovic, James H., and Erik Voeten. 2006. "The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR." *International Studies Quarterly* 50: pp. 861–888.
- Làidi, Zaki. 2012. "BRICS: Sovereignty, Power and Weakness." *International Politics* 49 (5): pp. 614–632.
- Mansfield. 2014. Rising Powers in the Global Economy. *Review of International Studies* 16 (3): pp. 437–442
- Marshall, Monty G., Keith Jagers, and Ted R. Gurr. 2011. *Polity IV Project: Dataset Users' Manual*. Arlington: Center for Systemic Peace.
- Nel, Philip. 2010. "Redistribution and recognition: what emerging regional powers want." *Review of International Studies* 36 (4): pp. 951–74.
- Piccone, Ted, and Naomi McMillen. 2016. *Country-Specific Scrutiny at the United Nations Human Rights Council: More Than Meets the Eye*. Brookings Project on International Order and Strategy.
- Redondo, Elvira D. 2008. "The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session." *Chinese Journal of International Law* 7: pp. 721–734.
- Rivlin, Benjamin. 2008. "The United Nations Human Rights Council: A U.S. Foreign Policy Dilemma." *American Foreign Policy Interests* 30 (5): pp. 347–372.
- Risse, Thomas, Ropp C. Stephen, and Kathryn Sikkink, editors. 1999. *The Power of Human Rights. International Norms and Domestic Change*. Cambridge: Cambridge University Press.
- Russett, Bruce M. 1993. *Grasping the Democratic Peace*. Principles for a Post-Cold War World. New Jersey: Princeton University Press.
- Seligman, Steven. 2011. "Politics and Principle at the UN Human Rights Commission and Council (1992–2008)." *Israel Affairs* 17 (4): pp. 520–41.
- Slaughter, Anne-Marie. 2004. *A New World Order*, Princeton, NJ and Oxford: Princeton University Press.
- Stephen, Matthew and Michael Zürn. 2010. "The View of Old and New Powers on the Legitimacy of International Institutions." *Politics* 30 (s1): pp. 91 - 101
- Tallberg, Jonas, Thomas Sommerer, and Theresa Squatrito. 2016. "Democratic Memberships in International Organizations: Sources of Institutional Design." *Review of International Organizations* 11: pp. 59–87.

- Terlingen, Yvonne. 2007. "The Human Rights Council: A New Era in UN Human Rights Work?." *Ethics & International Affairs* 21: pp. 167–187.
- Vasek, Karel (1977). „Human Rights: A Thirty-Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights.“ *UNESCO Courier* 30: 11.
- Vincent, Raymond J. 2001. *Human Rights and International Relations*. Cambridge: Cambridge University Press.
- Volgy, Thomas J., Elizabeth Fausett, Keith A. Grant, and Stuart Rodgers. 2008. "Identifying Formal Intergovernmental Organizations." *Journal of Peace Research* 45 (6): pp. 849–862.
- Wouters, Jan and Katrien Meuwissen. 2013. "The European Union at the UN Human Rights Council. Multilateral Human Rights Protection Coming of Age?." Leuven Centre for Global Governance Studies 126.
- Yeboah, Nana. 2008. "The Establishment of the Human Rights Council." In *Managing Change at the United Nations*, edited by Estelle Perry, and Lydia Swart, pp. 79-96. New York: Center for UN Reform Education.