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# The BRICS and the Global Human Rights Regime: Is An Alternative Norms Regime in Our Future?

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# THE BRICS & THE GLOBAL HUMAN RIGHTS REGIME

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Is An Alternative Norms Regime in Our Future?

By

Lucas D. Rivers

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Submitted in partial fulfillment  
of the requirements for  
Honors in the Department of Political Science

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# ABSTRACT

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**RIVERS, LUCAS:** The BRICS and the Global Human Rights Regime: Is an Alternative Norms Regime in Our Future?

**ADVISOR:** Çiğdem Çıdam

Since the end of World War II, the ‘West’ has enjoyed economic and ideological dominance in the international arena due to institutions built around favorable multilateral agreements. This position has allowed the ‘West’ to craft an international system rooted within the individualistic norms of democracy and capitalism. However, the BRICS [Brazil, Russia, India, China, South Africa] – a global unit of states with increasing economic power – views this international system as unfair. Accordingly, these states have increased their cooperation to advocate for a developmental-multipolar world order. But what implications does this shared interest by the BRICS have on the existing global human rights regime? Will these countries’ strong emphasis on the “right to development” undermine prevailing human rights norms? Could the BRICS challenge the current norms regime with an alternative one focused on development? Concentrating on the existing labor regime, I will examine how China, the self-proclaimed leader of the developing states, employs the “right to development” as a means of circumventing fundamental labor rights in Chinese-owned companies in Africa. In the end, I seek to determine whether the BRICS’ newfound economic power and cooperation will allow these states to promote an alternative norms regime that exists concurrently with the prevailing one.

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# ABBREVIATIONS

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ACFTU	All-China Federation of Trade Unions
AERC	African Economic Research Consortium
ASEAN	Association of Southeast Asian Nations
BPA	Bui Power Authority
BRICS	Brazil, Russia, India, China, South Africa
CCS	Chambishi Copper Smelter
CNMC	China Non-Ferrous Metals Mining Corporation
CPR	Civil and Political Rights
CPRD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
DRD	Declaration on the Right to Development
ECHR	European Convention on Human Rights
EMDC	Economically More Developed Countries
ESCR	Economic, Social, and Cultural Rights
FDI	Foreign Direct Investment
FOCAC	Forum on China-Africa Cooperation
FPRW	Fundamental Principles and Rights at Work
HRC	Human Rights Council
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil & Political Rights
ICERD	Int'l Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social, & Cultural Rights
IHRC	International Human Rights Covenants
ILO	International Labor Organization
IMF	International Monetary Fund
KCM	Konkola Copper Mines
LRC	Labor Reform Camps
MUZ	Mineworkers Union of Zambia
NDB	New Development Bank
NUMAW	Zambian National Union of Miners and Allied Workers
OAS	Organization of American States
OHCHR	UN Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
RTD	Right to Development
SASAC	State-owned Assets Supervision and Administration Commission
SEZ	Special Economic Zone
SGC	Shanghai Construction Group
TUC	Ghana Trade Unions Congress
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNGA	United Nations General Assembly

# INTRODUCTION

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The twenty-first century will undoubtedly be characterized by the economic, philosophical, and geopolitical trends emanating from the rise of the global South. Accelerated achievements on many fronts have caused these trends to emerge as new issues and actors, permeating the existing international system and global landscape. Countries like Brazil, Russia, India, China, and South Africa – a group that has been coined by analysts as the ‘BRICS’ – have been at the forefront of these achievements, with unprecedented levels of growth and increased multilateral interactions.

G. John Ikenberry takes notice of the greater influences these emerging issues and actors have begun to have on the existing order by exclusively focusing on the rise of China. In his *Foreign Affairs* piece, “The Rise of China and the Future of the West: Can the Liberal System Survive?” Ikenberry depicts the East Asian giant’s extraordinary economic growth as “one of the great dramas of the twenty-first century” (Ikenberry 2008, 23). Referencing the possible decline of what he refers to as the “American era” in global politics, Ikenberry addresses the conventional belief that the reorientation of the world – from the existing Western-centered order to one focused on the East – is inevitable. In response to this seemingly inexorable global phenomenon, Ikenberry proposes the following question: “Will China overthrow the existing order or become a part of it?”

The existing order Ikenberry references finds its roots in the years following the conclusion of World War II, when the Western world – specifically the US – possessed a preponderance of economic power and influence within the international structure. Yet this newfound influence was not solely utilized for the establishment of the US as a leading world power, but also for the creation of universal institutions that reflected the “interests of a liberal world economy” (Cox, 1996: 222). As Ikenberry states, these universal institutions “not only invited global membership but also brought democracies and market societies closer together[;] [they] built an order that facilitated the participation and integration of both established great powers and newly independent states” (Ikenberry 2008, 24). Institutions like the United Nations (UN), the International Monetary Fund (IMF), and the World Bank embodied the desires and interests of the Western world and combined these with rules that would “facilitate the expansion of the dominant economic and social forces” (Cox 1996, 222). The intrinsic values and individualistic norms of democracy and capitalism found a platform in which they could be realized within the global context.

Embedded within these individualistic norms of the Western-centered world order is the global human rights regime. The Universal Declaration of Human Rights (UDHR)<sup>1</sup>, adopted in 1945 in response to the atrocities of the Holocaust, established the discourse for the human rights norms that pervade the existing international system. By virtue of the current world order, human rights are granted to all individuals for purposes of protection from the actions of the state. The contemporary human rights regime is a *mélange* of international treaties, multilateral agreements, strong domestic standards, and

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<sup>1</sup> The text of the Universal Declaration of Human Rights is reproduced in the appendix.

scholarly interpretation that has since become the theoretical cornerstone of international law.

Given this, Ikenberry's question – will China overthrow the existing order or become a part of it? – still remains unanswered. According to Ikenberry, there are two possible answers to this question: 1) China will overthrow the world order and associated institutions that have been created in recent decades; or 2) China will assimilate into the structures and institutions of the current Western-led order. But is Ikenberry's dichotomous approach truly appropriate for the multidimensional rise of China? Likewise, when contextualized with the remainder of the global South, is this binary approach accurate for the circumstances we see in today's international system? Perhaps China will not overthrow the norms regime of the existing world order nor assimilate to it. Instead, what if China – in cooperation and collaboration with the other BRICS nations – will offer an alternative to the contemporary norms regime of the international structure?

In this paper, I will argue that Ikenberry's dichotomous approach does not appropriately consider the existing world structure when characterizing the rise of the global South. While Ikenberry does engage with elements of power and institutions, his suggestion that China's rise will follow a path of either destruction or assimilation falls short, failing to engage with the importance of identities and norms in the international context. When these components are considered, I suggest that a third possibility arises: the rise of the global South – specifically the BRICS – signals the emergence of a new set of norms and, consequently, a new norms regime with concomitant institutions. This new ordering, I argue, has the potential to act as an alternative to the existing regime. In

contrast to the current norms regime, this alternative regime emphasizes the rights of the states over the rights of the individual by claiming that the “right to development” is the most fundamental human right.

The paper begins with an introduction and overview of the discourse surrounding the geopolitical association that is the BRICS. From their initial recognition as economic engines of growth in 2001 to their formalized institutionalization of power that exists today, these developing states have made transformative statements on the existing international structure. First, I will discuss why these states are considered as strong developing countries with the potential to impact the international system. I will then delve into the ways in which the BRICS have become an omnipresent political entity in the international system, particularly due to their multifaceted cooperation. Here, focus will be given to the role identities and interests play – if any – in these states’ cooperation. Chapter One will conclude with an account of the right to development (RTD), as it exists within these states. The RTD – what the BRICS countries see as the most fundamental human right – is the subject of controversy between states who emphasize individual rights – the West – and those who believe in state rights.

Chapter Two will engage with core international relations theories to contextualize the existing human discourse via three varying interpretations. First, this chapter will provide a much-needed definition of the contemporary understanding of human rights, particularly as they relate to the individual. This definition will then be applied to an understanding of the global human rights regime as an elaborate system of states and multilateral institutions that promotes human rights via a network of principles, rules, norms, and procedures. Finally, I will provide an overarching and extensive survey

of realism, liberalism, and constructivism and how their respective theoretical lenses interpret the existence and sustenance of the current norms regime. My argument is that a comprehensive image that brings together components of all three theories is necessary in not only understanding the existing human rights regime, but also in contextualizing the importance and relevance of the global rise of the BRICS.

Due to the BRICS states employing a majority of the world's workers in the coming century, labor conditions and the rights of workers will be at the forefront of much of these states' involvement in the human rights regime. Chapter Three will focus specifically on the existence of the global labor regime and discuss its interconnectedness with the existing norms regime and the RTD. After establishing the human rights discourse as inclusive of labor rights, an analysis of the labor regime will be provided that focuses on the International Labor Organization (ILO), its central ideas, and how these were established via UN and ILO documents. This chapter will primarily serve as a foundation for the final chapter by offering an extensive look into the existing labor regime and how the BRICS associate with it.

At the 2014 BRICS Summit in Fortaleza, Brazil, the BRICS states came together to affirm their commitment to “the purpose of mobilizing resources for infrastructure and sustainable development projects in BRICS and other emerging and developing economies” (Fortaleza Declaration 2014). For this reason, Chapter Four addresses the current circumstances surrounding this partnership between the largest developing state – China – and the largest community of developing states – Africa. Chapter Four will contextualize the BRICS' Fortaleza statement and commitment to the RTD with examples of what this entails when practiced within the international system. Chapter

Four will build upon Chapter Three's labor rights discussion by examining the ways in which core labor standards are circumvented for the pursuit of the RTD. With this in mind, I will explore the labor conditions and practices in Chinese-owned companies in both Ghana and Zambia. The Chinese managements' blatant disregard for core labor standards within Ghanaian infrastructure projects and Zambian copper mines will provide crucial evidence demonstrating not only how China manifests its RTD discourse, but also how the promotion of these norms by the BRICS will affect the current human rights regime. The labor violations that occur within the Ghanaian and Zambian sites demonstrate how the focus on the RTD comes at the expense of individual rights, thus undermining the existing human rights regime.

This paper seeks to elaborate on the global phenomenon that is the rise of the BRICS by exploring the possibility of whether or not these states' rise will impact the existing human rights regime and, if so, in what ways. The BRICS' cooperation with each other is not only a rare example of life-imitating research, but also a substantial shift within the existing international context that posits new interpretations of international politics. I claim that Ikenberry's dichotomous approach to China's rise is too stark, particularly when the BRICS countries are taken into consideration. This third possibility focuses on China's willingness to cooperate with other states – as the leader of the developing world and the guiding force in the institutionalization of the BRICS – to pursue its desires and establish a new norms regime centered on the notion of the RTD. This norms regime, by virtue of its focus on the RTD, emphasizes the right of the state over the individual, which contradicts and undermines the discourse present in the current regime. Due to the global rise and increased economic and political cooperation among

the BRICS states, there now exists the possibility for these new norms to be supported via international institutions – similar to the paradigm that followed the creation of the UN and the Bretton Woods institutions. On par with this example, this institutionalization of power among the BRICS has been made possible by these states' augmented economic capacity in recent years.

The RTD is inherently contradictory to the individualistic norms that are present within the existing human rights regime, and it becomes impossible to ignore this contradiction in light of China's abusive labor practices present in Africa today. That being said, the BRICS states have relied on and utilized the language of the existing human rights regime to substantiate and promote their claims regarding the RTD. The focus on the RTD by the BRICS states has received increased multilateral support from the developing world, largely because the institutionalization of the BRICS has been made possible due to these states' increased economic power. Given this, a claim can be made that the BRICS states could in fact create an alternative norms regime, focused on the RTD and the right of the state, that exists concurrently with the prevailing regime.

# 1 | THE BRICS

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## I. 'WHO' & 'WHAT' ARE THE BRICS?

The rise of the international economy as a principal influence on nations, governments, and people all around the world will inevitably trademark the politics of this century. O'Neill's 2001 article illustrates this phenomenon in a way that not only positions four key countries at the forefront of this global economic focus, but also as safe havens for investors in the upcoming century. The "BRICs" – as first imagined – were merely a forecast of "a healthier outlook in some of the larger emerging economies compared to the G7" (O'Neill 2001, 3). This transformative statement on the future of the international economy was concentrated on the idea that the "relative positions of key countries in the world are changing" (O'Neill 2001, 6) in so much that these countries are fated to become global leaders and engines of economic growth.

In historical context, the nineteenth century saw the inclusion of the United States, Germany, and Japan into the international economy in a way that drastically impacted global output. Likewise, the twenty-first century has thus far been widely characterized by a similar increased participation of developing states in the global economy. But in what ways is it appropriate to disregard the dozens of similar developing countries in the world to specifically focus on the BRICs? What constitutes this attention given to these four countries as sensible and necessary for imminent global economic and political environments?

The BRICs are, indubitably, the most important of the developing states in today's global arena. Such prominence is chiefly due to one particular characteristic of these four states – their *size*. When juxtaposed to the rest of the developing world, Brazil, Russia, India, and China demonstrate how their geographic, demographic, and economic size are tremendous advantages. Therefore, when attempting to contextualize the BRICs in the framework of global development and the international economy, it is important to discuss three particular features: 1) their geographic size and location; 2) their population; and 3) the size of their economy.

What is crucial in understanding the BRICS as a global phenomenon is to first understand each of the states' respective position as a regional power. And with the addition of South Africa in 2010 by the four original BRIC countries, the 'BRICS' now represent powerful state entities in all of the principal corners of the planet: Brazil in the Americas, Russia in Eurasia, India in South Asia, China in East Asia, and South Africa on the African continent. Moreover, each of these states – with the exception of South Africa – possess a preponderance of land within each of their respective regions. As Figure 1.0 illustrates, one of the BRICS' greatest assets is the share of the world's geographic area these countries each occupy. Considering every country in the world, the four of the five BRICS states are in the top ten geographically 'largest' – Russia (first), China (second), Brazil (fifth), and India (seventh). According to World Bank indicators, the BRICS' total land encompasses 26% of the world's geographical area (World Bank Data 2014). To be clear, discussing a country's geographical area in regard to its international capacity is not of superfluous nature. The land a country possesses is essential in understanding its economy, political system, culture, and history. For

example, the geographical area in which a state exists is widely dependent on the land's resources for economic reasons – Russia's oil supplies being the most obvious and perfect illustration among the BRICS.

**Figure 1.0**

<b>Country</b>	<b>Land Area (sq. km)</b>
Brazil	8,358,140.0
Russia	16,376,870.0
India	2,973,190.0
China	9,388,211.0
South Africa	1,213,090.0
<b>Total:</b>	<b>38,309,501.0</b>

\*Data as of December 2014 from World Bank Data

The second feature of the BRICS is the rather substantial populace they each boast, outlined per Figure 1.1's portrayal of the available 2014 World Bank Data. China and India each possess not only the BRICS' most substantial population size, but are also the first and second most populated countries in the world respectively. Together, the BRICS embody almost 43% of the world's population – a tremendous and overwhelming statistic that truly bespeaks to the importance and capacity of the BRICS countries (World Bank Data 2014). As per the previous discussion regarding geographical area, the greater human capital a country has at its disposal, the greater economic output it is likely to experience due to its sizeable labor force. Given this, it is appropriately suggested that the BRICS “will supply the majority of the world's new workers and consumers in the years ahead” (Mandelbaum 2014, 127). For that reason, this paper will discuss the existing labor regime and its relationship with the BRICS states in greater detail in Chapters Three and Four.

**Figure 1.1**

<b>Country</b>	<b>Population</b>
Brazil	202,034,000
Russia	141,049,000
India	1,267,402,000
China	1,369,811,000
South Africa	52,518,000
<b>Total:</b>	<b>3,032,814,000</b>

\*Data as of December 2014 from World Bank Data

The third – and certainly most definitive feature of the BRICS – is their economic size and involvement in the global economy. As a unit, the BRICS states each boast unique economic histories before their conversion to free markets. Russia and China, for example, boasted communist economic systems, whereas Brazil and India relied on import-substituting socialist economic policies. Nonetheless, as a present-day economic unit, the BRICS now possess similar capitalist systems, which is a critical component of their current cooperation – particularly given the fact that “each stood partly or entirely outside the globalized international economic order after World War II” (Mandelbaum 2014, 127). This specific point provides an accurate foundational approach to understanding the varying economic circumstances these states have recently endured.

In Jim O’Neill’s original conception, the BRICs states were emphasized in accordance with their economic size, most notably by measuring their real GDP growth in both 2001 and 2002. O’Neill additionally relied on claims that at the end of 2000, Brazil, Russia, India, and China’s combined GDP in US dollars on a PPP basis was approximately 23% of the world GDP (O’Neill 2001). Of course, the data presented by O’Neill’s original paper is predominantly outdated and reflective of only the beginning of the BRIC’s economic rise, but it nonetheless still provides an accurate portrayal of the

original circumstances that ultimately led to O'Neill's recognition and coining of the BRICs in 2001. Figures 1.2 and 1.3 both reflect the most recent data provided by the World Bank in regard to the BRICS' GDP in current US dollars and GDP annual growth, of which the aggregate GDP of the four original BRIC countries "quadrupled between 2001 and 2011" (Mandelbaum 2014, 127). As Figure 1.2 depicts, the BRICS share of world GDP in 2013 continued to increase and ultimately superseded \$15 trillion. This number, regardless of the apparent slowing of economic growth that has impacted these countries in recent years (though not a substantial amount), is, according to IMF estimates, "predicted to surpass the G7 in or around 2020" (Brütsch & Papa 2013, 300). More importantly, a 2011 prediction by economist Arvind Subramanian forecasts that by 2030, China, the United States, and India will be the three most economically dominant countries in the world, each boasting 18.0%, 10.1%, and 6.3% share of global economic power respectively (Subramanian 2011).

**Figure 1.2**

<b>Country</b>	<b>2013 GDP (current US dollars)</b>
Brazil	2,245,673,032,354
Russia	2,096,777,030,571
India	1,876,797,199,133
China	9,240,270,452,047
South Africa	350,630,133,297
<b>Total:</b>	<b>15,810,147,847,402</b>

\*Most recent data available as of December 2014 from World Bank Data

**Figure 1.3**

<b>Country</b>	<b>2013 GDP growth (annual %)</b>
Brazil	2.0%
Russia	1.0%
India	5.0%
China	8.0%
South Africa	2.0%

\*Most recent data available as of December 2014 from World Bank Data

In a 2011 *Foreign Affairs* piece, Subramanian states that, "...economic dominance is the ability of a state to use economic means to get other countries to do

what it wants or to prevent them from forcing to do what it does not want” (Subramanian, 2011: 2). In this regard, the BRICS have established themselves as a critical component of global politics – with increased economic capacity comes economic dominance, and with economic dominance comes the ability to impact global politics in a significant way. Because of this paradigm, O’Neill’s original conception of the BRICs as solely economic engines of growth has shifted into a political organization. Brazil, Russia, India, China, and South Africa have recognized that their cooperation isn’t exclusively based on economic patterns of GDP growth. Instead, these states have begun to realize the strong political implications of their collective economic power via institutionalization and cooperative organizations. Consequently, the BRICS have presented themselves in global politics as a robust and potentially omnipotent political reality with the potential of altering the existing international system and world order.

## II. THE BRICS AS A POLITICAL REALITY

The BRICS are substantively characterized and defined by economic power. For that reason, assuming that these states boast a significant amount of political influence may seem a bit troublesome – after all, economics and politics have fundamental differences in terms of objectives, outcomes, institutions, and actions. Michael Mandelbaum, in his most recent book *The Road to Global Prosperity*, provides an excellent account of the juxtaposition of economic and political power. Politics, he claims, is often viewed as a “zero-sum game:” one man’s gain is another man’s loss; whereas wealth, in comparison, is a “positive-sum game:” everyone involved can gain simultaneously. Additionally, politics is generally governmental, driven by institutions that are hierarchical,

concentrated, and forceful; economics is market-based, propelled by unrestricted and egalitarian free-markets. Competition and disputation dominates the political sphere, whereas cooperation and ‘healthy’ competition dominates the economic. All of these contribute to Mandelbaum’s claim that, “The heart of politics is power; the aim of economics is wealth” (Mandelbaum 2014, XVI). But does this statement veraciously illustrate the BRICS’ current role and objective in the international system? Can it not be argued that the economic power and wealth these specific developing states have garnered are ‘stepping stones’ for increased political participation and, as a result, augmented power within global politics?

On June 16, 2009, the original BRICs met in Yekaterinburg, Russia for the first of what would become an annual summit dedicated to the interests and cooperation of the four nations. Henceforth, the BRICs had personified O’Neill’s claims into an international organization with concrete annual summits surrounding policy efforts, national interests, and developmentalism. In a rare example of life imitating research, the original BRIC states went from “four countries destined to become global leaders in economic growth” (Mandelbaum 2014, 126), to a permanent organization bringing together the leaders of four – later five – rising economic giants.

The cooperation of these states in formalized summits has proven to be beneficial in the promotion of common interests and objectives. As per the 2014 summit in Fortaleza, Brazil, a joint announcement by the BRICS resulted in the establishment of a formal international organization funded and led by these states – the BRICS New Development Bank.

BRICS, as well as other EMDCs, continue to face significant financing constraints to address infrastructure

gaps and sustainable development needs. With this in mind, we are pleased to announce the signing of the Agreement establishing the New Development Bank (NDB), with the purpose of mobilizing resources for infrastructure and sustainable development projects in BRICS and other emerging and developing economies. We appreciate the work undertaken by our Finance Ministers. Based on sound banking principles, the NDB will strengthen the cooperation among our countries and will supplement the efforts of multilateral and regional financial institutions for global development, thus contributing to our collective commitments for achieving the goal of strong, sustainable and balanced growth (Fortaleza Declaration 2014).

Brought to fruition by the economic cooperation and the agendas of Brazil, Russia, India, China, and South Africa, this multilateral finance-based organization is posed to address and circumvent the disadvantages each country feels in regard to the existing structures of international trade and finance, while simultaneously pursuing a strong focus on development. Additionally, the “BRICS New Development Bank makes its intentions clear as far as the global economic architecture is concerned...[coming] together to provide collective humanitarian assistance<sup>2</sup> and fund infrastructural development in each other’s countries...and other countries from the developing world” (Thakur 2014, 2). In many respects, this Bank has been established as a tool and resource for the pursuit of the right to development in the international context. This cooperation has resulted in economic and political collaboration in the establishment of this Bank – China housing the Bank’s headquarters, India holding the first rotating Presidency followed by Brazil, Russia’s oil reserves augmenting the needs of China and India, and South Africa holding the first regional headquarters. In addition to the Bank, Brazil has further institutionalized the BRICS through the recent establishment of the BRICS Policy

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<sup>2</sup> In this context, what the BRICS mean by the term “humanitarian assistance” is rather unclear. It is inferred, however, that the use of this term implies the offering of aid to developing states for purposes of developmental projects.

Research Institute in Rio de Janeiro, welcoming researchers and scholars from all of the participating countries (Thakur 2014). Together, this international organization of developing states has demonstrated its intention to institutionalize their increased economic power in order to augment their global political power. Such a phenomenon is thus producing what could be referred to as a “soft balancing” of the BRICS nations to the Western-dominated international system.

This recent institutionalization of the BRICS has many international relations scholars puzzled. The current international system, wholly directed by the Western states through their creation of international institutions, was founded on the convergence of both interests and identities. In terms of the latter, a state’s identity as a liberal democracy was essential and of the utmost importance for full integration and influence within the international institutions. Yet the BRICS have engaged and cooperated with one another regardless of this previously crucial idea of political ‘identity.’ While these states do in fact relate to one another on the basis of a mutual identity as developing states and rising economic powers, a shared political system is not of primary concern. The BRICS, countries who boast both democratic and authoritarian political systems, have not, unlike their Western predecessors, focused on similar political identity as a prerequisite for cooperation in the international arena. As a result, questions regarding the capability of five countries with foundationally different political identities to merge into what appears to be an increasingly important political group have developed. How can states with fundamental variances in histories, cultures, and political systems converge into a united political entity?

Whereas Western states, upon their creation of the existing international system, focused on state mutual interests and identities, the BRICS' predominate focus lies in their combined and common *interests* as they relate to the current international system and the perceived unfairness of the current world order. This overarching set of interests in relation to the existing international system is “a shared view among the BRICS that has contributed to their emergence and consolidation” (Mielniczuk 2013, 1076) as an economic and political entity. This strong sentiment is exemplified in the statement that has been repeated at every BRICS summit since its formation: “We are committed to advance the reform of international financial institutions, so as to reflect changes in the global economy. The emerging and developing economies must have a greater voice and representation in international financial institutions” (Thakur 2014, 1).

In a recently published article, Fabiano Mielniczuk does an exceptional job in compiling recent United Nations speeches of representatives from each of the BRICS states to illustrate this common interest – what he refers to as a “developmental-multipolar set of social claims...that position development and multipolarity as the cornerstones of the BRICS initiative” (Mielniczuk 2013, 1088). The rhetoric used by the BRICS representatives that Mielniczuk references is worth recounting in this paper, particularly as it relates to the later discussion of human rights discourse. Additionally, it assists in presenting a portrayal of the BRICS' amalgamation for what they believe to be a fairer world order – a transition from a liberal-unilateral international system to one representative of the demands of developing countries and a stringent focus on the right to development as the most fundamental human right.

In the early 21<sup>st</sup> century, Brazilian President Luiz Inácio Lula da Silva gave his first speech at the United Nations General Assembly in which he formulated a blueprint for foreign policy initiatives and national projects that accentuated his developmental rhetoric. Lula also addressed the representation of developing states in the UN – more specifically within the Security Council – by buttressing the Brazilian candidacy for permanency. And in his 2008 UNGA address, President Lula endorsed an even stronger commitment and stance on development by unveiling a strong “assessment of the new world geopolitics” (Mielniczuk 2013, 1080), particularly as they relate to existing international relations. “Gradually, countries are moving beyond old conformist alignments with traditional centers...developing countries have stepped into new roles in designing a multipolar world” (Lula da Silva 2008).

Whereas Brazil emphasizes both development and multipolarity, Russian twenty-first century diplomacy is predominately characterized by the “denial of unipolarity and the affirmation of different poles” (Mielniczuk 2013, 1081). Unlike Lula, the leaders of Russia give little reference to development or developmentalism – though a “countries’ right to development” (Lavrov 2007) is mentioned in Minister of Foreign Affairs Sergey Lavrov’s 2007 speech to the UNGA. Instead, a very strong sentiment against the current injustices of global governance and the international economic order has subjugated Russian rhetoric. In the same 2007 speech, Lavrov states how “an essentially new geopolitical situation has been developing in the world, one that is primarily defined by emerging multipolarity,” and that the “international landscape is changing due to the newly emerging centers of global growth” (Lavrov 2007). The Minister further affirmed that today’s world community needs a “collective leadership of major states that should

represent the geographical and civilizational dimensions” (Lavrov 2007) of the emerging developing states.

More than a decade before these statements by both Brazil and Russia were made, India’s then Minister of External Affairs – and current President – Pranab Mukherjee stood before the General Assembly and asserted that development was “the single most important task for the international community” (Mukherjee 1995). In 1997, India’s Prime Minister and Minister of Foreign Affairs, Inder Kumar Gujral, also averred that development should be the priority of the UN, further reinforcing this Indian national interest. And while India certainly stresses development as crucial to its national interests and involvement within the international community, criticism of the unfair existing international system is also evident. Starting with Mukherjee’s claims that the UN represents the “privilege of a few rather than the interests of the many,” (Mukherjee 1995) Indian rhetoric has since been characterized by the need and desire for “collective multilateralism” (Vajpayee 2002) and a restructuring of the international system. And this joint emphasis on development and yearn to reorganize the international structure has been a cornerstone of Indian national interests and diplomacy in a way that affirms the belief that developing countries should have greater responsibility and capacity within international governance.

In 1993, China’s Foreign Minister, Qian Qichen, addressed the United Nations General Assembly with an insistence that the Security Council “should take due account of the principles of equitable geographical distribution [by accommodating] the interests of the developing countries which make up the overwhelming majority of the membership” (Qian 1993). Similar to India, we see China boasting a similar mentality in

regard to the international structure's unfair treatment and environment for like-minded developing states. An unfair economic order forbade the developing countries – like China – to “equal participation in world economic decision-making and the formulation of relevant rules” (Jiaxuan 1999). However, what is particularly important in regard to China's interests is its importance and rising power within the world community, especially among the developing states. Due to its immense geographic, population, and economic size, China has predominately identified itself as the leader among developing countries and subsequently correlated its interests with this duty. In doing so, China works to promote “the interest[s] of other developing countries in an international context marked by the transition to multipolarity” (Mielniczuk 2013, 1084). This leadership role will be revisited later in this section, as well as in chapter four, as it relates to China's leadership role within the BRICS.

Although it was not included in the BRICS until 2010, South Africa has demonstrated similar multilateral tendencies compared to its organizational counterparts in recent years. Under the presidency of Thabo Mbeki from 1999-2008, “the irreconcilability between the developed and developing world became the tone of South Africa's speeches at the UNGA” (Mielniczuk 2013, 1085). For example, in a speech given by Foreign Minister Dlamini-Zuma, the call for a reform of the Western-crafted Bretton Woods institutions was vividly apparent. “Decisions are taken outside the UN and other global structures by developed and rich countries when these decisions have a great impact on the poorer countries and directly affect the lives of billions of poor people” (Dlamini-Zuma 2000).

Thus, Mielniczuk's assertion that the BRICS possess a developmental-multipolar set of interests is certainly accurate. The BRICS, originally presented as merely an economic phenomenon in the international economy, has since transmuted into a political entity with mutual interests and paralleled intentions. These states have personified O'Neill's research into an international organization with enough political and economic clout to establish international institutions dedicated to these very interests and objectives. Similar to the ways in which the West – particularly the US – used its economic capacity after WWII to craft international organizations and governance in a way that reflected its interests, Brazil, Russia, India, China, and South Africa have begun to utilize *their* increased economic power by establishing an organizational entity that has started crafting institutions like the NDB that bolster their political power. But what effects – if any – does this have on the existing international structure?

As Former Brazilian Foreign Minister Celso Amorim stated in a 2010 interview with Al Jazeera, “We [BRICs] are not vis-à-vis the West or against the West, but what we have in common is the fact that somehow we question the established order in international relations” (Al Jazeera 2010). The BRICS, through their mutual interests of development and increased multipolarity, view the current world order as unfair and in need of desperate change. But the established order that Amorim references – and what the BRICS dispute – is one that encompasses all aspects of today's international structure – from global governance initiatives via the UN to international financial institutions such as the IMF.

One particular statement, made by China in the 46<sup>th</sup> session of the United Nations General Assembly in 1991, alludes to this paradigm regarding human rights norms and

developing states' national interests. Throughout his speech, Foreign Minister Qian Qichen continuously references the interests of developing states and their well-deserved position in a "new international order that will make our world a better one to live in" (Qian 1991), again echoing statements mentioned earlier in this section. But in terms of human rights norms, Qian offered a particularly interesting and significant statement on behalf of the world's developing states:

We [Chinese government] believe that in order to effectively guarantee and promote human rights and fundamental freedoms of all mankind, it is necessary to recognize the various countries' different features – their different political, economic and social systems and their different historical, religious, and cultural backgrounds. In this regard, all countries based on the principles of respect for each others' sovereignty and non-interference in each others' internal affairs, should strive to achieve mutual understanding, seek common ground while putting aside differences, and replace cold war with international cooperation... In the field of human rights, equal importance should be attached to civil and political rights, as well as to economic, social, cultural and developmental rights. *For the vast number of developing countries, the most fundamental human right is the right to subsistence and development* [italics added] (Qian 1991, 50-51).

Qian is interestingly utilizing the language of human rights to question the existing mechanisms and discourse surrounding international norms and offering an alternative put forth by the Chinese government. Concerning human rights standards, China believes that consideration should be given to a country's various circumstances or position and then applied appropriately – especially for developing states. But what is most intriguing is the belief advocated for by China that *subsistence* and *development* are the most fundamental human rights. While these rights, as previously mentioned, currently exist within the international human rights framework, developed states with a

preponderance of global economic and political power often disregard their importance and presence.

As mentioned in an earlier part of this section, China is the self-proclaimed leader among the developing states, which proves particularly important within the BRICS and their organizational desires to transform the international system. Because of this, the new institutionalization and political reality of the BRICS provides a new platform for Chinese interests to be entertained with greater authority and validation than traditional international forums – in particular, China’s aforementioned interpretations of international human rights standards. Therefore, we are presented with the following question: Will the economic and political rise of the BRICS, in addition to their institutionalization, utilize their mutual interests regarding the existing international structure to advocate for an alternative norms regime that is characterized by the unique interests of developing states? More specifically, how will the BRICS’ increased economic power and political cooperation promote a stronger emphasis on what they perceive as the fundamental right to development?

### **III. THE RIGHT TO DEVELOPMENT & THE BRICS**

The “right to development” [RTD] finds itself at the cornerstone of one of the more controversial debates on human rights in the existing international system. Despite its entrance into the human rights conversation almost thirty years ago, the notion of the “right to development” remains farfetched and neglected in many states around the globe – most notably those traditionally considered under the “Western” label. Established

within the 1986 Declaration on the Right to Development<sup>3</sup>, this contested right “is an inalienable human right by virtue of which every human person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized” (Art. 1, § 1). At its core, the RTD “emphasizes collective rights, the right of peoples to choose their own development model, and insists on international cooperation among countries” (Özden 2005, 2) in order to pursue a just world order where all rights are realized.

This section of the chapter will be divided into two subdivisions. The first section will elaborate on the existing discourse regarding the RTD via two United Nations documents. Once the foundations of the RTD are established, attention will then be given to the controversy surrounding it and the reasoning used by both those in favor of an established international RTD norm and those who are opposed.

#### A. ESTABLISHING THE RIGHT TO DEVELOPMENT DISCOURSE

Two critical documents exist within the existing international system that position the right to development within the human rights discourse – the 1986 Declaration on the Right to Development (DRD) and the 1993 Vienna Declaration and Programme of Action. Together, these two statements address the concerns of many members of the international community regarding “the existence of serious obstacles to development” (DRD Preamble, 1986) and declare that the RTD is a fundamental and inalienable human right “which aims at the constant improvement of the well-being of the entire population

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<sup>3</sup> The text of the Declaration on the Right to Development is reproduced in the appendix.

and of all individuals...[in] a social and international order in which the rights and freedoms set forth in [the UDHR] can be fully realized” (DRD Preamble 1986).

The Declaration on the Right to Development was adopted by the United Nations General Assembly on December 4, 1986, claiming that the RTD “entitles every human person and all persons to participate in, contribute to, and enjoy development, in which all human rights can be fully realized” (de Feyter 2013, 2). Although the RTD had surfaced in international political dialogue some thirty or forty years prior primarily by the global South, it was not until the 1986 Declaration that an official statement on its supposed inalienability was made (Kirchmeier 2006). That being said, the Declaration on the Right to Development provides one of the first – and the most concise – definitions of development within the United Nations system within the first two articles of the Declaration:

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.
2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. (Art. 1, § 1 & 2)

This definition, as established by the Declaration, is thus comprised of several elements: “the right to self-determination, the right to an international economic order, [and] the right to sovereignty over resources...” (Özden 2004, 8). But what is most important of the right to development is that both individuals and states have a prerogative and

responsibility to ensure that this very right is realized. Stated in the last line of the Declaration's Preamble, "...equality of opportunity for development is a prerogative both of nations and of individuals who make up nations" (DRD 1986, Preamble). Hence, the Declaration establishes that the individual is not only the subject and agent of the right to development, but its beneficiary as well (Art. 2, § 1). States, however, have the sole responsibility of creating favorable and justifiable conditions for the RTD's recognition (Art. 3, § 1).

Yet the DRD was met with distinct opposition. Although adopted by the United Nations with a vote of 146 member countries in favor, there were eight abstentions and one vote against – the United States. The abstentions comprised of countries conventionally considered under the umbrella of the "West" – Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden, and the UK. However, with the adoption of the Vienna Declaration and Programme of Action in 1993, some argue that a broader global consensus regarding the RTD has been reached, particularly due to its unanimous approval by member states despite its reference to the RTD. "The right to development," the Vienna Declaration reiterates, "requires effective development policies at the national level, as well as equitable economic relations and a favorable economic environment at the international level" (Art. 10). The motivation behind the RTD lies in the notion that within the unjust international economic system of today's global structure, people are prevented from working out their development policies, further perpetuating inequality and deteriorating any hopes of development on all levels (Özden 2005, 22). Nonetheless, it can be assumed that the states who previously opposed or abstained the DRD had simply adopted to the Vienna Declaration due to its overall advancement of UN efforts,

reinforcement of important international principles, and affirmation of the indivisibility and universality of all human rights. In a statement made on the 20<sup>th</sup> anniversary of the Vienna Declaration's adoption, the current UN Secretary-General Ban Ki-moon referred to it as an "important milestone in humanity's quest for universal human rights" (Vienna Declaration and Programme of Action: 20 Years Working for Your Rights 2013).

While the discourse surrounding the RTD is overwhelmingly present and important in both of these Declarations, an additional component of the right to development is referenced: the "right to subsistence." The "right to subsistence," conventionally interpreted as the right to a basic living standard and the ability to have access to basic means of existence (Tomalty 2012), is advocated for by developing countries. As discussed in the following subsection, China does in fact actively promote for this specific right's inclusion within existing human rights discourse, characteristically alongside the right to development. Within the Declaration on the Right to Development, Article 8 alludes to this right to subsistence with the following:

States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income (Art 8, § 1).

Moreover, we see this right reiterated in the International Covenant on Economic, Social, and Cultural Rights:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect

the essential importance of international cooperation based on free consent (Art. 11, § 1).

Throughout the remainder of this paper, the right to subsistence will be included under the umbrella of the RTD.

Due to the overarching nature of the Vienna Declaration on a multitude of issues facing the international community and the human rights regime, this document is widely affirmed by nations around the world. The DRD, however, is not. Instead, the Declaration is the target of fierce criticism from scholars, politicians, and governments – predominately from the United States and the West – regarding the validity and definition of the principles it gives voice to. Therefore, while the Declaration was adopted into the international human rights discourse, it has predominately remained at the outskirts of the human rights norms regime due to disagreements from the prevalent global players of the West regarding its implementation and necessity. The following section turns to this debate between Western powers and developing states surrounding this right to development with focus primarily given to the US and China.

## B. THE RIGHT TO DEVELOPMENT DEBATE

The Declaration on the Right to Development remains a document of general principle rather than legally binding obligations (Marks 2004). Over the years, critical and skeptical views have emerged from scholars and politicians regarding its content, definition, and legitimacy within international relations. Most notably, the United States has staunchly remained reluctant and opposed to the idea of recognizing development as an international human right. Statements by US ambassadors, presidential administrations, and UN delegations all suggest a strong disagreement with developing

states regarding their interpretation of what ‘the most fundamental human right’ is, while maintaining “consistently negative [policies] on the RTD in the political setting of the Commission on Human Rights and the General Assembly” (Marks 2004, 140). This section will be dedicated to the dialogue used between those states strongly in favor of the international recognition of the RTD within human rights discourse – namely China, with supporting evidence from India – and those strongly against – most notably the US.

Before delving into the discourse used by these states, however, it is crucial that the RTD debate is contextualized within existing human rights scholarship. “While a human rights approach to development refers to all human rights and thus emphasizes the interrelation and interdependence of human rights, it pays special attention to economic and social rights as special concerns of development policy” (Hamm 2001, 1006). Thus, within the existing international human rights understanding, there exists two classifications that has subsequently divided human rights scholarship: civil and political rights – the “first generation” – and economic, social, and cultural rights – the “second generation.” While these classifications were originally meant as a simple means of categorization, they have since been understood and utilized by many as a ranking, putting economic, social, and cultural rights after civil and political (Hamm 2001). Therefore, much of the debate surrounding the RTD is grounded within the idea that is most often promoted by Western states – that economic, social, and cultural rights do not necessarily deserve equal attention and emphasis as civil and political.

Yet this devise within the human rights discourse did not always exist within the international framework. In fact, during the crafting of the Universal Declaration of Human Rights, Eleanor Roosevelt, the head of the US delegation at that time, identified

the RTD as a cornerstone of international human rights. “We are writing a bill for the rights of the world, and...one of the most important rights is the opportunity for development” (Sengupta 2001, 2527). However, this unified consensus on the equal importance of civil and political rights with economic, social, and cultural rights was dismantled following the spread of the Cold War, during which the Soviet Union noted the “importance of basic rights and freedoms for international peace and security, but [emphasized] the role of the state” (Shaw 2008, 268). This focus placed on the state, as mentioned in Article 3 of the Declaration on the Right to Development, is the foundation for the RTD’s recognition. “States have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development” (Art. 3 § 1). Whereas the Western approach to human rights places emphasis on the individual, the RTD instead focuses solely on role of the state. This dichotomy between the centrality of the state and the individual gives rise to the competing notions of civil and political rights with economic, social, and cultural rights.

At its core, the RTD relies on a different approach to human rights norms than what currently dominates the global sphere. The individual rights that are primarily promoted within the Western-led international system are safeguards in place to protect citizens from oppression by the state. The RTD, however, requires a strong emphasis on the right of the collective and bestows this as a right of the state rather than the individual. Therefore, the RTD presents a strong philosophical contradiction to the individual human rights norms that dominate the existing rights framework.

This philosophical disagreement manifests itself as a political disagreement as well, most notably one utilized by global powers. China, the self-proclaimed leader of

the developing states, uses its Government White Papers to strongly assert its belief that the right to development and the right to subsistence go hand-in-hand as interrelated and interconnected fundamental human rights. “It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question” (“Human Rights in China” 1991). This belief on behalf of the People’s Republic of China is echoed in a statement made to the 46<sup>th</sup> session of the UN General Assembly in 1991 by then Foreign Minister Qian Qichen. In his speech, Qian continuously references the interests of developing states and their well-deserved position in a “new international order that will make our world a better one to live in” (Qian 1991), mimicking statements mentioned in the previous section. But in terms of the RTD and its place within existing human rights discourse, Qian offers a particularly interesting and significant statement on behalf of the world’s developing states:

We [Chinese government] believe that in order to effectively guarantee and promote human rights and fundamental freedoms of all mankind, it is necessary to recognize the various countries’ different features – their different political, economic and social systems and their different historical, religious, and cultural backgrounds. In this regard, all countries based on the principles of respect for each others’ sovereignty and non-interference in each others’ internal affairs, should strive to achieve mutual understanding, seek common ground while putting aside differences, and replace cold war with international cooperation... In the field of human rights, equal importance should be attached to civil and political rights, as well as to economic, social, cultural and developmental rights. *For the vast number of developing countries, the most fundamental human right is the right to subsistence and development* [italics added] (Qian 1991, 50-51).

Chinese national discourse, as it relates to norms surrounding human rights, positions the right to development and the right to subsistence at the forefront of the existing discourse. In a separate White Paper, China proclaims that its “basic [stance] on the development of human rights is: placing top priority on people’s right to subsistence and development, making development the principal task, and promoting political, economic, and social and cultural rights to achieve their all-round development” (China’s Efforts and Achievement in Promoting the Rule of Law 2008). India reflects similar sentiments toward the RTD in India’s Declaration and Recommendations Adopted at the Colloquium on Population Policy (2003). This Declaration recognizes that “policies ought to be a part of the overall sustainable development goals, which promote an enabling environment for attainment of human rights of all concerned” (Preamble).

The United States, however, wholly asserts that development is not deserving of the term “right.” Whereas developing countries often incite development as a right to be safeguarded by states and granted to individuals, the US and many Western counterparts strongly contest. Instead, the US delegation has often claimed that the RTD is used by the Third World and developing countries to disregard civil and political rights and “distort the issue of human rights by affirming the equal importance of economic, social and cultural rights” (Marks 2004, 146), a sentiment established during the Reagan Administration. This perspective is expressed in a statement made by the United States to the UN Commission on Human Rights in 2003:

In our estimation the right to development is not a “fundamental,” “basic,” or “essential” human right. The realization of economic, social and cultural rights is progressive and aspirational. We do not view them as entitlements that require correlated legal duties and obligations. States therefore have no obligation to provide

guarantees for implementation of any purposed “right to development” (Marks 2004, 147).

Whereas developing states urge the inclusion of development within human rights discourse due to its fundamentality and obligatory nature, the US has previously asserted that development is a consequence of “economic liberties and private enterprise” (Marks 2004, 144). The RTD, in terms of the US’ history and own experience, is explained in a statement to the UN Human Rights Commission by Dr. Michael Novak:

In 1881... no one spoke of a “right to development.” But our nation had an *opportunity* to develop, perhaps even a *responsibility* to develop. Our people knew that a responsibility to develop was imposed on them by their own capabilities and blessings, and by their new ideas about political economy (Marks 2004, 144).

It is thus the belief of the United States that development relies on the elements of capitalism as the economic model that drives development. Free enterprises and free trade internationally not only contribute to a country’s economic position, but to the level of development its citizens enjoy.

Economic liberty as a conduit for development, however, is not the only contention the US has with the RTD. Ambassador Nancy Rubin, a Clinton appointee, expressed the belief that development would only ensue when all necessary freedoms were guaranteed. In 1991, Rubin told the UN Commission on Human Rights that “her delegation believed that it would be useful to focus the debate on the role of individual freedom in fostering development and the role that transparency, good governance and the effective rule of law played in promoting natural growth and prosperity” (Marks 2004, 145). Ambassador George Moose echoed this belief advocated by Rubin in 2000 with:

...it was the protection of individual liberties which unleashed a people's creative and entrepreneurial spirit. Governments had an overriding responsibility to their citizens, and genuine and sustainable development was fostered primarily by expanding individual human rights (Marks, 2004: 145).

In the US' perspective, development requires the recognition and protection of favorable domestic environments through good governance and respect for fundamental civil and political rights. "We [US] cannot accept the view that before civil and political rights can be fully accorded to a people, an ideal economic order must first be established" (Marks 2004, 146).

The RTD remains contested within the existing human rights framework and international community. Although the right, via the Declaration on the Right to Development and the Vienna Declaration and Programme for Action, has been established within the existing human rights norms regime, the reluctance of the US and many Western states to recognize and legitimize this has caused it to lay on the outskirts of the existing norms regime. As mentioned in an earlier part of this chapter, China is the self-proclaimed leader among the developing states. This position of guidance and direction proves particularly important within the BRICS and their organizational desires to transform the international system, specifically in regard to the RTD and subsistence. Whereas China claims such rights to be the most fundamental and inalienable human right, the US firmly believes that "states...have no obligation to provide guarantees for implementation of any purported 'right to development'" (Marks 2004, 137).

For this reason, there exists a disagreement among the leader of the developed states – the US – and the leader of the developing – China. This sentiment by China is reiterated and reinforced by the institutionalization of the BRICS, especially through the

their joint interests in addressing the injustices of the Washington Consensus and the obstacles it presents to the realization of the RTD (Özden 2005). At the 2014 BRICS Summit, the nations made a joint statement in the Fortaleza Declaration regarding their perspective on the RTD in the face of the current international economic order:

We agree to continue to treat all human rights, including the right to development, in a fair and equal manner, on the same footing and with the same emphasis. We will foster dialogue and cooperation on the basis of equality and mutual respect in the field of human rights, both within BRICS and in multilateral fora – including the United Nations Human Rights Council where all BRICS serve as members in 2014 – taking into account the necessity to promote, protect and fulfill human rights in a non-selective, non-politicized and constructive manner, and without double standards (Art. 28).

#### **IV. CHAPTER CONCLUSION**

The new institutionalization and political reality of the BRICS provides a new platform for developing states' interests – especially China's – to be entertained with greater authority and validation than traditional international forums. This is especially witnessed through the aforementioned interpretations of the right to development and subsistence as a fundamental international human right. Therefore, we are presented with the following question: Will the BRICS' economic rise and increased political cooperation present an opportunity for an alternative norms regime to be created? Likewise, will their stringent focus on the RTD and subsistence – one that differs from the conventional views of the US and the West – draw on already existing ideas regarding this right within the outskirts of the current human rights regime and subsequently bring them to the forefront?

In order to address this question, we must first establish what the existing human rights discourse entails. The following chapter is dedicated to establishing three things: 1) a conventional definition of human rights that will be used throughout the remainder of the paper; 2) the foundation for which the existing global human rights regime exists; and 3) an assessment of the global human rights regime through the lens of each of the three core theories of international relations. In the end, a bona fide depiction of the current international structure's notion of human rights norms will be well-defined and helpful for supplementary chapters.

## **2 | THE EXISTING HUMAN RIGHTS REGIME**

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## I. WHAT ARE HUMAN RIGHTS?

Human rights, by their name and nature, are *rights* that one possesses simply because one is *human*. They are held equally by all human beings – blind to race, sex, language, place of residence, national origin, sexual orientation, and any other identity or status one may hold. Human rights are paramount moral rights recognized within international law that cannot be relinquished, forfeited, or destroyed, as they are an inalienable, interrelated, and interdependent component of our shared humanity.

Existing notions of human rights possess a sense of universality, in so much that *all* states in the existing international framework have agreed that the Universal Declaration of Human Rights, the International Human Rights Covenants, and a multitude of multilateral agreements establish a set of internationally recognized human rights norms (Donnelly 2013). Nonetheless, despite this universality, ambiguity still exists when establishing a comprehensive image of what human rights truly are. Hans Peter Schmitz and Kathryn Sikkink suggest, “human rights are a set of principled ideas about the treatment to which all individuals are entitled by virtue of being human” (Schmitz & Sikkink 2002, 515). Tony Evans derives his understanding of human rights norms from the tenets of natural rights and what it means to be human (Evans 2011). And Paul Gordon Lauren bases his understanding of human rights on the idea of mutual responsibility and the deserved compassion and respect for our “human brothers and sisters” (Lauren 2011).

Nevertheless, within the various circulating definitions of human rights, a general assumption can be made: human rights are, in their simplest form, “not what we need for survival but what we need for a life of dignity” (Donnelly 2013, 21). The Universal

Declaration of Human Rights, passed by the UN General Assembly in 1948, grounds this belief in “the inherent dignity...of all members of the human family [as] the foundation of freedom, justice, and peace in the world” (UDHR Preamble). Thus, this human rights discourse strays away from a discussion concerning the foundations of human rights and replaces it with an emphasis on the universal ethical principles of respect for life, human dignity, and justice (Viotti & Kauppi 2010). Simply put, at the core of human rights is the ability for all individuals to realize their self-worth.

While a consensus has been forming primarily within the last half of the twentieth century surrounding the conceptualization of human rights mentioned above, the origins remain contested. And while this debate is definitely important, this paper will not go into great detail regarding this particular dispute. That being said, it is important to recognize that the long progression in human rights discourse is “one of innovation and discovery – a continuous, if uneven, discourse of challenge and counterchallenge, of evolution, movement, and process, reflecting the dynamics of social, political, and economic change” (Evans 2011, 8).

## II. HUMAN RIGHTS IN THE GLOBAL CONTEXT

Since the introduction of human rights to global politics following the conclusion of World War II, this discourse has continued to grip the contemporary polis with increasing strength. This “grip” is what will henceforth be referred to as the *global human rights regime*. An ‘international regime’ is best defined as “rules, norms, principles, and procedures that focus expectations regarding international behavior” (Simmons & Martin 2002, 193) that states and other international actors accept as authoritative within a

certain context. The global human rights regime can therefore be best understood as an elaborate global system of states and multilateral institutions that promote this notion of human rights via a network of principles, rules, norms, and procedures.

## A. PRINCIPLE

Perhaps the most foundational component of the global human rights regime is the principle by which it exists. Originating from the relationship human rights create between the right holders and the obligated entities (Schmitz and Sikkink 2002), this notion of ‘principle’ provides an understanding of what human rights discourse is constructed from. Therefore, four correlated duties between an individual and a responsible party – most often the state – are employed: (1) the duty not to deprive; (2) the duty to protect from deprivation; (3) the duty to provide effective enjoyment; and (4) the duty to aid the deprived (Donnelly 2011). The first duty, the duty not to deprive, is held universally among all human beings and actors. Just as states do not have the right to deprive an individual of their fundamental human rights, human beings have no right in depriving a peer of his or her basic rights either. The last three duties, which logically can also be applied universally, are almost exclusively held by the state.<sup>4</sup> As Jack Donnelly articulates, “Everyone – *all* social actors – is obliged not to violate human rights. Only states, though, are obliged to implement and enforce human rights, and then only for their citizens (and others under their jurisdiction)” (Donnelly 2011, 24). Therefore, it is through this relationship between the individual and the obligated entity

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<sup>4</sup> A state’s duty to protect from deprivation, to provide effective enjoyment, and to aid the deprived should not be confused with the previous chapter’s discussion on the granting of the RTD to the state. In this context, the state has a duty to safeguard and uphold individual rights for the benefit of the citizenry. In the RTD debate, a “human right” is granted to the state and not necessarily the individual.

that we see a system the national implementation of human rights, a characteristic that is essential to the global human rights regime.

## B. RULES & NORMS

Together, the ‘rules’ and ‘norms’ of the global human rights regime provide the framework for its recognition within the international system. The doctrines for which this regime exists are grounded within principal documents and multilateral agreements such as the Universal Declaration of Human Rights (UDHR) and the International Human Rights Covenants (IHRC). Both the UDHR – adopted by the UN General Assembly on December 10, 1948 – and the IHRC – ratified in the late 1960s – receive global endorsement from countries on every single continent. Articles 2-27 of the UDHR establish our current understanding of international human rights with, as introduced in the previous chapter, comprehensive sets of both civil and political rights and economic, social, and cultural rights. The former recognizes and includes rights to life, liberty, and security of person, along with various legal protections and civil liberties, while the latter recognizes the right to an “adequate standard of living, social security, work, rest and leisure, family, education, and participation in the cultural life of the community” (Donnelly 2011, 6). Evidently, economic, social, and cultural rights closely relate to the previously discussed definition of the RTD, particularly as it relates to an individual’s right to an “adequate standard of living” (Donnelly 2011, 6).

The UDHR remains the most authoritative statement on the condition of international human rights norms in today’s international structure. However, it is not the only statement that exists or contributes to the regime’s framework. Multilateral treaties

and conventions contribute to the human rights norms established by the UDHR and the IHRC by oftentimes focusing on specific issues. In other words, treaties address specific areas of human rights – the rights of the child, for example – that subsequently create norms and rules regarding said areas.

International treaties become legally binding when they are formally and voluntarily accepted by the delegation and governing body of sovereign states. First, a state declares that the objective and contents of the treaty are both relevant and important enough for the state's approval. When this decision is made by the state, this state is then referred to as a "signatory" of the treaty or agreement. Afterwards, states are able to ratify the treaty (based on their respective constitutional procedures) to then be considered as "parties." Figure 2.0 provides the core international treaties that are integrated within the existing human rights discourse, as well as the associated number of states who are parties, signatories, and those who have taken no action, as reported by the US Office of High Commissioner for Human Rights.

It is important to note that Figure 2.0 is not an exhaustive list of the treaties that address human rights issues, as there exists more than one hundred. These are, however, the most important and overarching statements that currently exist in international law. Nonetheless, these treaties have provided a platform for norms and rules regarding different subsets and issue-areas of human rights to be created and discussed. While these treaties have contributed to the crafting of norms within the global regime, we must still recognize the shortcomings of these treaties. Such shortcomings predominately arise due to these treaties' reliance on states in order to interpret their meaning and implement such interpretations within their borders. The creation of norms through the UDHR and

associated treaties have thus led to an international law system based upon ‘national implementation of international human rights,’ which is discussed in the following section.

**Figure 2.0**

<b>Convention/Treaty</b>	<b>Parties to Treaty</b>	<b>Signatories to Treaty</b>	<b>No Action</b>	<b>Year Adopted</b>
International Convention on the Elimination of all Forms of Racial Discrimination	177	5	15	1965
International Covenant on Civil & Political Rights	168	7	22	1966
International Covenant on Economic, Social, & Cultural Rights	162	7	28	1966
Convention on the Elimination of all Forms of Discrimination Against Women	188	2	7	1979
Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment of Punishment	156	10	31	1984
Convention on the Rights of the Child	194	2	1	1989
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families	47	19	131	1990
Convention on the Rights of Persons with Disabilities	151	31	16	2006
International Convention for the Protection of all Persons from Enforced Disappearance	43	56	98	2006

\*Data as of November 2014 from the UN Office of High Commissioner for Human Rights

### C. PROCEDURE

The final component of the global human rights regime addresses the ways in which these rules and norms are administered and governed within the international community.

Comprised of various sub-regimes and multilateral mechanisms, the existing regime is contingent upon on the notion of national jurisdiction and full sovereign authority by the state. As Donnelly illustrates in one of his earliest works, “...national performance is subject to only minimal international supervision” (Donnelly 1986, 608). Dating back to the Treaty of Westphalia in 1648, the belief that states were sovereign and thus subject to no higher power has structured international relations for centuries, resulting in a legal premise of states having exclusive jurisdiction over their territory, people, and resources. Therefore, the creation of international standards and law has remained a struggle for the global human rights regime as it combats the prevailing international norm of state sovereignty.

However, in recent years we have witnessed a new conception of international legitimacy present itself within the existing human rights regime, specifically through the global scope of multilateral mechanisms. Amongst the UN and other like-minded bodies, a distinction has been made regarding the governing bodies of the human rights regime between those that are “Charter-based” and those that are “treaty-based.” “Charter-based” mechanisms derive their authority from the UN Charter, whereas “treaty-based” mechanisms, as the name implies, find their roots within specialized treaties like those mentioned in Figure 3.0. In addition to the two distinctions mentioned above, regional human rights regimes are also considered to be major multilateral actors, even though such regimes prove inconsistent or even nonexistent in many areas of the world.

The Human Rights Council (HRC) and the UN Office of the High Commissioner for Human Rights (OHCHR) represent the two most important Charter-based bodies of the existing regime. The HRC, created in 2006 in order to replace the Commission on

Human Rights, is comprised of states that are elected by the UN General Assembly, generally without regard to their respective human rights records (Donnelly 2011). As a result, the council often finds itself politicized and constrained by its composition. Nonetheless, it remains an overarching forum for the “consensual development of new international human rights norms” (Donnelly 2011, 77) and the promotion of internationally recognized human rights through limited monitoring. The HRC’s activities mimic an information-advocacy model of human rights implementation that circulates information on rights violations within the international community. This information regarding the state violations has the possibility of damaging the reputation of said states within the international community once the information was made public. Therefore, the council relies on the desire of the rights-violating state to keep their reputation intact as a motivation to improve their human rights practices and conditions (Donnelly 2011). This “public shaming” approach is also embodied within the OHCHR, an individual who has the same global reach as the HRC without the lengthy procedures and possibility for politicization. “The high commissioner may deal directly with governments to seek improved respect for internationally recognized human rights – but with the added advantage of an explicit mandate to deal with all government on all issues” (Donnelly 2011, 80). The current<sup>5</sup> OHCHR, Zeid Ra’ad Al Hussein of Jordan, provides administrative support, engages in original research, and provides necessary services to governments hoping to improve their practices. More importantly, the OHCHR assumes the prominent role of global advocate for all human rights (Donnelly 2011). It is important to note that both the HRC and the OHCHR are simply advisory

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<sup>5</sup> As of March 2015.

mechanisms that have no legal power over the states. Instead, these mechanisms are solely reliant on the possible damage inflicted on a rights-violating state's international reputation as their source of power.

“Treaty-based” bodies, like their “Charter-based” counterparts, are essential institutions in the overarching procedural component of the human rights regime. As previously mentioned, “treaty-based” bodies receive their authority from multilateral human rights treaties and are often created in order to ensure that signatories and parties are complying with the elements of the treaty. “When a state ratifies one of the international human rights treaties, it assumes a legal obligation to implement the rights recognized in that treaty” (Report on Indicators for Promoting and Monitoring the Implementation of Human Rights 2008). Thus the treaties referenced in Figure 3.0 establish the human rights rules and norms that serve as the foundations for their associated “treaty-based” body (i.e. Committee on Economic, Social, and Cultural Rights, Committee on the Rights of the Child, Committee Against Torture, etc.). Nonetheless, when speaking in terms of these “treaty-based” bodies’ objectives, it is recognized that their most important activity is “to review periodic reports on compliance that parties are required to submit, usually every four or five years” (Donnelly 2011, 81). Concerned with the certain domain of human rights that is indicated by its associated treaty (i.e. racial discrimination, inhumane punishment, etc.), these reports are used to publicly discuss a state's practices and engage in formal written exchanges. Due to their ability to address violations that may not be deemed severe enough for the HRC yet still require international attention, “treaty-based” bodies are an invaluable asset to the global

human rights regime. Additionally, these mechanisms provide a platform for general comments on international law and complaint procedures.

Before transitioning into the importance of regional human rights regimes, four other global multilateral actors are worth highlighting: the International Labor Organization (ILO); the United Nations Educational, Scientific, and Cultural Organization (UNESCO); the International Criminal Court (ICC); and the UN Security Council. Although each of these actors is focused around a main directive that is not necessarily human rights related, their work often overlaps and intersects with several aspects of the existing human rights regime.

One of the first multilateral human rights organizations to exist, the ILO was founded in 1919 with a mission to end social injustice in the workplace. Because of this forward-looking mission and its extensive history, the ILO has often served as a model for other international human rights reporting and procedural systems. Major ILO conventions deal with issues such as the freedom of association, forced labor, indigenous people, migrant workers, adequate living wages, hour regulation, and various other measures. The ILO and its role within the global human rights regime – specifically the global labor regime – will be discussed in much greater detail in the following chapter.

In 1945, twenty countries collaborated on an international level to create UNESCO, a global multilateral actors that has addressed multiple human rights issues since its establishment. The twenty founding states believed “in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge” (UNESCO Constitution Preamble 1945). This statement was a strong response to the atrocities of WWII, placing optimism in the

creation of the “defenses of peace” (UNESCO Constitution Preamble 1945). To this degree, UNESCO has done substantial work in the field of cultural rights, particularly as it relates to the preservation of heritages and languages in the increasingly globalized world (Donnelly 2011).

The ICC was created in 2002 as “a permanent tribunal that provides individual criminal liability for genocide, crimes against humanity, and war crimes” (Donnelly 2011, 87). The jurisdiction and functioning of the ICC is governed by the Rome Statute and is based in The Hague in the Netherlands (Rome Statute 1998). The cases undertaken by the ICC are of the gravest crimes, including – but not limited to – the ones committed in areas such as the Democratic Republic of Congo, Uganda, the Darfur region of Sudan, Libya, Côte d’Ivoire, and Kenya (Donnelly 2011). Charges and trials of national leaders in recent years speak to the growing significance and legitimacy of global actors like the ICC.

The UN Security Council, a “Charter-based body,” is one of the strongest and most comprehensive components of the UN. In other words, while the Security Council’s primary mission is not related to the global human rights regime, it does in fact find itself addressing such issues on a regular basis. This phenomenon is largely due to their association with general peacekeeping operations around the globe. Similar to the HRC, the Security Council often finds itself plagued by the ill effects of politicization. However, unlike many other multilateral actors associated with human rights, the Security Council has the ability to use force and coercion in times of necessity. This unique ability to use force is granted to the Security Council in Articles 41 and 42 of the UN Charter:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations (Art. 41)

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations (Art. 42).

A secondary aspect of multilateral actors is that of regional human rights regimes. Unlike the global actors previously discussed, regional regimes are established in a wide variety of contexts – from the highly systemized and judicially oriented European regime to the complete absence of any formalized regime in Asia. Such regional regimes are seen within organizations such as the European Court of Human Rights, the Inter-American Court of Human Rights, the African Commission, the Arab Human Rights Committee, and the ASEAN Intergovernmental Commission on Human Rights (Donnelly 2011).

The European regime is the most sophisticated and developed regional regime in the entire world. At its core is both the European Convention for the Protection of Human Rights and Fundamental Freedoms – covering mostly civil and political rights – and the European Social Charter – primarily addressing economic and social rights. Together, they help provide a platform for the fundamentals of the European Court of Human Rights, which “exercises binding jurisdiction with respect to the European

convention and whose decisions create binding legal obligations for states” (Donnelly, 2011: 95). While these are of particular importance to the regional regime, we do see European states also relying on mechanisms such as the Council of Europe, the Council of Europe Commissioner for Human Rights, the Organization for Security and Co-operation in Europe (OSCE), the European Union (EU), and the Court of Justice of the European Communities. What is essential to the European regime is that a wide variety of regional mechanisms are at each European states’ disposal, while simultaneously possessing the power and authority to not only encourage governments to abide by the regional covenants, but also make legally binding findings and decisions (Donnelly 2011). This component is widely counterintuitive to the traditional debate regarding national sovereignty and international human rights enforcement, as the European states are allowing a multilateral mechanism to make legally binding decisions that affect their domestic practices. As mentioned earlier in this section, such circumstances reflect a slight transition away from the conventional notion of strict national sovereignty that has existed since the 17<sup>th</sup> century. For this reason, the European regional regime remains the most intricate and well developed of any region in the world. As stated in the Convention for the Protection of Human Rights and Fundamental Freedoms, this sophistication is largely due to the “common heritage of political traditions, ideals, freedom and the rule of law” that allowed European states “to take the first steps for the collective enforcement of certain rights states in the Universal Declaration” (Convention for the Protection of Human Rights and Fundamental Freedoms 1950). Despite its complexity as a regional regime, it is important to emphasize that the European regime does not exist detached from the global regime established by the United Nations.

Instead, this regional regime acts as a sub-regime, working in tandem with the tenets and core beliefs of the UDHR and other multilateral agreements, even though the European regime possess certain enforcement mechanisms that do not exist on the international level.

The Inter-American system find its roots in the American Declaration of the Rights and Duties of Man, which was adopted by the General Assembly of the Organization of American States (OAS) in 1948. Similar to the UDHR, this declaration was not legally binding. However, in 1969, the American Convention on Human Rights was established in high hopes of challenging the relatively weak convention that previously existed for one that was, in fact, a legal instrument. Despite these hopes, only twenty-four of thirty-five states have ratified the Convention today. Of the twenty-four, this includes all Latin American states, but not the United States, Canada, and several Caribbean states (Donnelly 2011). Its weakness is indicated by the extremely small number of cases that are heard by the Inter-American Court that is based in San Jose, Cost Rica. Nevertheless, while the Inter-American regional regime possesses similar conventions to that of the global regime (i.e. conventions against torture, discrimination against women, etc.), it still lacks the legal clout, recognition, and legitimacy that is apparent in its European counterpart.

Finally, we have the remaining regional regimes in Africa, the Middle East, and Asia. The first two regions, Africa and the Middle East, do in fact operate a regional human rights regime. However, they are substantively weaker than both the European and American equivalents. While statements like the 1981 African Charter on Human and People's Rights and the 2005 Arab Charter of Human Rights are important for the

progress of the global human rights regime, the institutions necessary for the monitoring and enforcement of these statements are extremely weak and virtually nonexistent at times (Donnelly 2011). In Asia, the only “quasi-mechanism” that does exist is within the Association of Southeast Asian Nations (ASEAN). At first, the creation of the ASEAN Intergovernmental Commission on Human Rights in 2009 seemed to be monumental as the first Asian regional regime. Yet in the years since, the body remains inactive, suggesting a serious lack of interest in member states’ practices.

The procedural component of the global human rights regime is extensive, yet it remains a critically important aspect of the regime’s existence. Today, many believe this procedural component can be seen as a “struggle over balancing the competing claims of sovereignty and international human rights and the competing conceptions of legitimacy that they imply” (Donnelly 2011, 27). While that does vaunt substantial and somewhat truthful claims regarding the existing global regime, we do in fact see one example – the European regional regime – where the notion of sovereignty is forfeited for the legal obligations of multilateral mechanisms. However, in a world where sovereign states are at the heart of the organized international community, “implementing human rights rests on persuasive diplomacy, which itself rests considerably on the power of shame that lies at the heart of investigatory and reporting mechanisms” (Donnelly 2011, 111).

### **III. INTERNATIONAL RELATIONS THEORY & THE GLOBAL HUMAN RIGHTS REGIME**

The existing global human rights regime cannot be understood detached from the actors, agents, and norms that exist within the international structure. In order to contextualize these components of the international system within existing human rights discourse, we must rely on the interpretations offered by the three core images of international relations: realism, liberalism, and constructivism. It is essential that the core beliefs of these images be recognized and expounded on to understand the current human rights regime and the challenges that it faces. In what follows, I will demonstrate that we cannot rely on just one of these images to provide a comprehensive understanding of the existing human rights regime. Instead, it is necessary to bring together certain components of each of these theories to create an inclusive image that accounts for the equally significant roles played by economic power, institutions, and ideas. As Robert O. Keohane once stated, “No perspective has a monopoly on wisdom...contestation between different approaches can play a positive role in social science scholarship” (Keohane 2002, 164).

#### A. REALISM: THE IMPORTANCE OF ECONOMIC POWER

As an image of international relations, realism is based on four principal assumptions: 1) states are the most important actors in what realists consider an anarchical world; 2) the state is a unitary actor; 3) the state is essentially a rational actor; 4) national and international security is the single most important issue facing the state (Viotti & Kauppi 2011). The core of realist theory is the emphasis and the focus on power and power politics among states. This essence of power can be observed through the behavior in which states interact with one another, as well as their ability to influence the behavior of

other states. For many realists, the power capabilities among states is primarily determined by the material power it possesses, specifically in regards to economic prominence and military capacity.

Realism stresses the “primacy in all political life of power and security” (Donnelly 2011, 29). States are the sole actor in the international arena and are thus responsible for their own resources in the perpetual state of anarchy in which they exist. Neorealist John J. Mearsheimer views state activity in a relatively pessimistic light, claiming that states only look for opportunities to gain power at each other’s expense (Mearsheimer 2001). When interpreting international politics, it is the distribution of power that is essential and, truthfully, the only thing that matters. As a result, individuals, domestic politics, and ideology have little importance in realist theory (Mearsheimer 2001).

Because of this, realists do not recognize that norms such as human rights are significant or independent forces in the international arena (Schmitz & Sikkink 2002). Instead, they argue that “universal moral principles cannot be applied to the actions of states...[it] would not only be foolishly unsuccessful but also leave one’s country vulnerable to the power of self-interested states” (Donnelly 2011, 29). Since realists promote international and national security as the single most important issue facing the state, they consequently argue that national interests should be defined in terms of power. If states make the domestic conduct of other states a concern included within their own national interests, morality begins to conflict with the notion of power and the state is consequently weakened. Thus, human rights are seen as potential threats to the overall

stability of the international system, directly undermining the notion of state sovereignty as the central organizing principle of international relations (Schmitz & Sikkink 2002).

So where do human rights, in the realist image, originate? Moreover, if realists argue that the international system is in a perpetual state of anarchy, is it even possible for them to explain the international human rights regime we see today? First, like any international norms regime, realists believe that ideas such as human rights are promoted and diffused by a hegemon or a dominant group of states (Ikenberry & Kupchan 1990). Mearsheimer states that the livelihood of all states – big and small – is subjected to the decisions and actions of those with the greatest capability, which, (Mearsheimer 2001). Likewise, capability, by realist tradition, relies solely on one's material power. As Stephen D. Krasner argues, "the content of human rights issues that were at the forefront in various historical periods reflected the concerns of those states which possessed a preponderance of economic and military power" (Krasner 1993, 166). In essence, the more economic or military power a state possesses, the more likely this state is to impact and influence the international system in a way it considers necessary. Therefore, according to realism, the human rights norms we see in the international community today are byproducts of the distribution of material capacities. In other words, human rights were originated and imposed by a hegemon, evolved within hegemonic domination, and diffused by forcing less powerful states to adapt to the hegemony's practices and beliefs (Schmitz & Sikkink 2002).

Thus, when looking at the existing global human rights regime from the power-based lens of realism, we must do so from the 'current' hegemon's perspective. The theory of hegemonic stability, a key component of realism, argues that it is the

distribution of power among states that determines and characterizes the international economic system (Webb & Krasner 1989). Webb and Krasner are illustrating the importance and necessity of ‘power’ in order to depict an international system that is favorable to prolonging the state’s current and future success. This ‘power capability,’ arguably, emanates from a state’s economic status.

Therefore, we can take the fundamentals of the hegemonic stability theory – the ability of a dominant power to shape the character of a specific system it is involved in – and apply it to the existing human rights regime. According to the hegemonic stability theory, “norms are epiphenomenal to the distribution of material and military capabilities in the international system...prevalent norms change with the rise and fall of powerful states” (Schmitz & Sikkink 2002, 522). Thus, the human rights norms of the existing regime – under realist assumptions – were created by the economic prowess of the Western hegemony following World War II. Specifically, the United States rose to economic preeminence as Europe worked to recover from wartime destruction. This position within the international community – rooted within economic power – allowed the United States and its Western allies to shape the human rights regime under the interests of a liberal world economy and the individualistic norms of democracy and capitalism. Thus the human rights norms that exist in today’s international community are byproducts of the distribution of material capacities originally imposed by the West. And, as a result, an international system was formed that correlated with the economic and political interests of these states. Robert W. Cox explicates this phenomenon by drawing upon notions expressed by Gramsci’s political theory, particularly the idea that the movement towards hegemony is the diffusion of ideas by specific groups to the

“building of institutions and elaboration of ideas” (Cox 1996, 220). Cox’s unique interpretation of the international structure will be referenced in greater details later in this chapter.

This human rights regime has sustained itself within the existing international structure due to the strong economic power the West has held throughout the 20<sup>th</sup> and early 21<sup>st</sup> centuries. To this effect, this regime is often perceived to be an outcome of the West’s intentions for weaker countries to adopt the standards of liberal democracy and capitalism as political conditionalities for diplomatic and aid-related cooperation. Although realists believe that the international community is one that exists in a perpetual state of anarchy, human rights norms have been created and reinforced by the powerful states that enforce them, oftentimes via coercive practices and sanctions (Krasner 1993).

Power is an important component of international relations that cannot – and should not – be ignored. For that reason, realism provides an important focus on power that is needed when interpreting the existing global human rights regime. This allows, as mentioned above, the state to assume a significant role in the international community and craft a system that is favorable to their domestic interests and ideas, which, in realist terms, can be enforced using coercive practices and sanctions. However, Mearsheimer, Krasner, and various other realists often underplay or completely ignore the role of institutions in the international context. While realism is helpful in understanding world politics at the surface, its interpretation of international relations is far too limited in scope. Accordingly, one simply cannot rely on realism alone to provide a comprehensive theoretical approach to the existing global human rights regime. While economic power did in fact act as a precursor for the West in characterizing an international system that

reflected its interests, this economic power did not act in solitude. Using its economic capacity, the West created institutions that would reflect and advocate its interests to the broader global community. For this reason, we must turn to neoliberal institutionalism for a theoretical explanation as to how this economic power is channeled and perpetuated through international institutions.

## B. LIBERALISM: THE IMPORTANCE OF INSTITUTIONS

The liberal international relations image is multidimensional in nature, in so much that it is influenced by many theoretical approaches. Like realism, liberalism has four key assumptions: 1) states, as well as non-state, transnational actors are important in world politics; 2) the state is not always a unitary actor and instead joined by institutions and ideas operating transnationally across borders; 3) economic and other forms of interdependence or interconnectedness among both state and non-state actors have a moderating effect on state behavior; 4) state-society relation is critical to understanding international relations (Viotti & Kauppi 2011). Whereas realism places emphasis on the notion of power within a state's national interests, liberal international relations theory emphasizes the "domestic sources of state preferences as the determinant of outcomes in international politics" (Schmitz & Sikkink 2002, 521). Robert O. Keohane, a pioneer in neoliberal institutionalism, describes liberalism as "an approach to international relations [that] emphasizes individuals, seeks to understand collective decisions, promotes human rights and validates attempts to ameliorate the human condition" (Keohane 2002, 165). The liberal image is a unique one in that it does not seek to provide full explanations on global politics. Instead, each one of the different subsets of liberal theory explain some

things, but not others, in hopes of connecting them together to create a more general approach to international politics.

One of those sub-theories, neoliberal institutionalism, attempts to interpret the international system through rule-oriented institutions. Neoliberal institutionalism recognizes that “international institutions help to realize common interests in world politics...[and] are necessary...in order to achieve *state* purposes” (Keohane 1984, 245). In other words, international institutions are essential in helping provide a platform for the effective cooperation of states in the existing international structure.

As discussed in the previous subsection, realism believes that states are selfish and only pursue measures that will benefit their position within the hierarchical structure of the international community. Keohane’s institutionalism, however, believes that this belief is not always true. Instead, he challenges the realist assumption of competitive international anarchy by asserting that states do in fact possess complementary and sometimes mutual interests that can be realized through certain forms of potentially beneficial cooperation. “...Their [institutions] presence or absence determine whether governments can cooperate effectively for common ends” (Keohane 1984, 247). We can interpret this image of international relations by assuming that actors will rationally pursue their interests and utilize their resources at their disposal to seek a desirable objective. To do this, these actors must recognize the structure in which they exist and subsequently respond to it. Today, this role of ‘actor’ is often assumed by the states, and institutions are used as a means of responding to the existing international structure. In this regard, states recognize how these institutions affect their current beliefs and how

they can be utilized as instruments for the pursuit of their own objectives (Keohane 2002).

With this in mind, how does liberalism interpret human rights norms, their origins, and their diffusion within the international structure? As previously mentioned, liberalism heavily focuses on domestic politics. Accordingly, human rights institutions are established to “selectively delegate sovereignty to a supranational body” as a means of support and reinforcement in times of perceived domestic threats or concerns (Schmitz & Sikkink 2002, 522). To this degree, Keohane’s point regarding the importance of institutions as a platform for international cooperation is relevant. For example, in the aftermath of the Holocaust, the Western states needed a language in which human rights could be discussed and understood. Creating institutions as a platform for this language to exist helped establish an understanding within the international community that such horrific actions were legally and politically intolerable. These institutions, such as the United Nations, provided a global platform – albeit developed by a limited set of elites – where sets of issues could be discussed and where an international human rights agenda could be created. In contrast, realists would argue that such institutions lack legitimacy and efficacy due to the overwhelming notion of state sovereignty – when push comes the shove, every state’s primary concern is their own interest. Liberals, however, believe that “interdependence among human beings produces discord, which generates a need for institutions... [that] are essential for the good life” (Keohane 2002, 165 & 169). Simply put, for liberals, institutions provide a platform for necessary cooperation within the international community and between states.

Human rights norms, in the liberal perspective, are diffused through domestic structures with a limited independent role for international institutions. After all, these institutions are comprised of individual states cooperating with one another. Thus, the make-up of these individual states is crucial to understanding the international institutions they create and the discourse used within these institutions. Liberal theory emphasizes the domestic attitudes, political structures, and decision-making processes (Keohane 1984) while simultaneously assuming “that [the] success of norms diffusion is mainly determined by [their] compatibility with preexisting domestic structures” (Schmitz & Sikkink 2002, 523).

Therefore, when approaching the existing global human rights regime, liberalism believes that these norms originate via a voluntary agreement among state leaders (i.e. UDHR), evolve through supranational institutionalization, and are maintained through legal processes, domestic structures, and self-interest (Schmitz & Sikkink 2002). Liberals believe that the existence of international institutions allows for a universal platform where human rights norms and ideas can be safeguarded and discussed in a collaborative forum. But these human rights norms and ideas can only be advocated for via international institution if the domestic politics of a state are willing to recognize and abide by said norms. For example, the liberal democracies that dominate Western political systems tend to be more apt to accepting human rights norms. This is largely due to the inherent compatibility democratic principles have with these norms. On that same note, authoritarian states are less likely to view international human rights norms as legitimate due to their incongruity with the accepted doctrines of authoritarianism.

Ultimately, realists suggest that the noncompliance with international human rights norms emanates from a given state's interest in maintaining its national security and established position within the hierarchy of political power. Liberals suggest, however, that this defiance is instead a product of domestic political structures and systems that simply do not allow for such practices to be realized. Yet what both realism and liberalism fail to rationalize is the measures taken by authoritarian states like China and the former Soviet Union to become parties to human rights treaties and statements such as the UDHR. If the political structure of authoritarianism is inherently incompatible with human rights norms, why do such states agree to an international statement that contradicts its domestic beliefs and practices? While liberalism explains how and why institutions are essential in providing a platform for the advocacy, monitoring, and development of these norms in the international community, it lacks the capacity to justify why states with opposing domestic practices would include themselves in such institutions. Therefore, attention must be directed to the ways in which state identities are created in relation to the international system – seeing how the system induces behavior within states and how that behavior is then shaped outward – as an explanation for such seemingly contradictory involvement in these institutions. Although liberalism recognizes the value of institutions within the existing human rights regime, constructivism provides justification for why states with conflicting domestic political systems would even consider being involved in such institutions.

### C. CONSTRUCTIVISM: THE IMPORTANCE OF IDENTITIES AND INTERESTS

Like realism and liberalism, constructivism relies on four general assumptions when offering an interpretive approach to understanding international relations. The first assumption evokes debate regarding the existing agents within the international system. As previously stated, realism deems that states are the sole and unitary actor, whereas liberalism believes that both states and institutions have a critical role in the international community. Constructivism, however, relies on the subjective and intersubjective exchanges and actions taken by human beings as agents of these state and non-state entities. Given this, constructivists also claim that state identity and interests are social constructed through a state's relation with another. The second assumption addresses the international system as a whole – which realists would describe as anarchical and liberals as interdependent. Constructivists instead contend that the international structure is in fact a social structure pervaded with ideational factors that include norms, rules, and law. The third assumption opposes the restricted view of change by realists and liberals by instead interpreting the existing structure in a constant state of construction. Finally, the fourth assumption contradicts the objectivist views of both realism and liberalism with a belief that objectivity is near impossible due to the diverse experiences of all human beings (Viotti & Kauppi 2011; Muppidi 2004). In summation, realism focuses on power, liberalism relies on domestic politics, and constructivism emphasizes the independent role of norms and ideas in affecting both international and domestic policies. The central question for constructivists is not about how states choose to pursue their national interest, but rather how and why these interests were initially formed (Schmitz & Sikkink 2002). It is this emphasis on the independent role of norms that enables constructivism to

explain where realism and liberalism fail; only constructivism offers an answer to the question of why states with a preponderance of economic and military power would begin pursuing human rights policies and acting on notions of social purpose when doing so would not be within these states' national interests.

Emanuel Adler portrays constructivists as international relations theorists as those who “[see] the world as a project under construction, as becoming rather than being” (Adler 2002, 95). The world is permeated with norms, rules, interests, and identities that affect how we perceive ourselves and how we relate to the world around us. Together, these help form what constructivists call ‘agents.’ Whereas realism and liberalism portray states as the primary agents in the international system, constructivists believe that non-governmental organizations, social movements, corporations, advocacy groups, or classes can also be included as agents. Social structures can help encourage these agents to redefine their interests and identities (Viotti & Kauppi 2011). Thus, agents and structures mutually constitute one another – agents have the ability to change structures and vice versa.

For constructivists, human rights norms have intrinsic value and universalistic qualities. But how do human rights norms come to fruition under the constructivist image? John G. Ruggie questions the limited international or domestic scope of realists and liberals and instead focuses on the “content and consequences of particular regimes” (Schmitz & Sikkink 2002, 522). He argues that when we attempt to understand the international power structure by focusing on states, it only helps in understanding the form of order and not the content of that structure. Thus, when we strictly focus on states when examining human rights, we are disregarding the prevalent rights norms and ideas –

what Ruggie calls ‘social purpose’ – that aid in understanding the consequences and content of the rights regime (Schmitz & Sikkink, 2002).

Kathryn Sikkink disputes this strict focus on the state’s role in human rights norms creation by claiming that such norms require the participation of individuals. Sikkink does not discredit the important role other actors have played in the origins of human rights norms, mentioning that it is the “collaboration among norms entrepreneurs inside of governments, those within international organizations, and nongovernmental actors that leads to the emergence of human rights norms” (Sikkink 1998, 518-519). It is the successful conglomeration of all agents and actors in the international and domestic community that aims to develop norms that “[govern] the way states treat individuals, [and] how individuals treat each other” (Sikkink 1998, 518).

Human rights norms creation began with the combined efforts of individuals from many backgrounds – government, NGOs, and the private sector – in the crafting of the UDHR in 1948. This individual cooperation provided the framework for which human rights language could exist, yet required an extensive global network for its promotion and development. Sikkink asserts that in many examples of international norms, transnational campaigns are necessary “to persuade others of the importance and value of the new norms” (Sikkink 1998, 519). This global network must then rely on the support of powerful state actors who will accept and endorse these norms as part of their governmental agenda. This process is one of persuasion, relying on a strong argument by these nongovernmental actors to “redefine an activity as wrong, often through the power of their language, information, and symbolic activity” (Sikkink 1998, 519). In the end, the emergence of human rights norms is a fundamental shift in a state’s national interests

by the important measures taken by individuals, networks of nongovernmental actors, and governments.

The origin of the idea of human rights, as claimed by constructivists, is linked to one of two possibilities: 1) Western ideology; 2) basic ideas of human dignity that are shared in many cultures around the world (Schmitz & Sikkink 2002). No matter what the origins of human rights are, in order for these ideas to be recognized as important, there needs to be an opportunity where they can be introduced into societies. This often comes in the process mentioned above or in the form of revolutions, wars, and coups. As one can assume, both claims made above are responsible for the establishment of current human rights regime following World War II. As previously mentioned, the diffusion of human rights norms in today's global context has been in no small part due to the work of non-state organizations and the influence they exert on global circumstances.

Yet this idea of norms creation as being a process by which individuals, nongovernmental actors, and governments all work together still fails to address the following question: if authoritarian political structures are inherently incompatible with human rights norms, why do these states agree to international statements that contradict various domestic beliefs and practices? Such practices are rooted within a state's interests and identity, specifically as they relate to the structure of the international system. This concept was exemplified in the previous chapter regarding the BRICS increased political cooperation in relation to the Western-led international system, but it is now important to contextualize these claims within international relations theory.

Constructivism directly addresses the traditional realist belief that the uncertainty inherent in an anarchic international system leads to the selfish nature of states by

employing the concept of state identity as crucial in determining whether relations among states will be cooperative or conflictive. This conceptualization of state identity helps theorists better understand historical circumstances where identity and interests were closely related – the change in identity of the USSR, for example, which led to a transformation of its interests and the eventual change in the international structure (Mielniczuk 2013). In the 1990s, Alexander Wendt offered the dominant view of constructivism’s concern with the origin of identities by claiming they are, “given by the structure, understood as a ‘structure of role,’ [and] defined by the process of interaction (social practices) between the actors” (Mielniczuk 2013, 1077). These social structures are “defined, in part, by shared understandings, material resources, and practices” (Wendt 1995, 300). In principle, states interact with one another within the international system and, throughout this process, begin defining their social identity in juxtaposition with other states – friends, rivals, or enemies. This social identity then determines the states’ interests: what states ‘want’ in relation to what they ‘are’ in the international structure.

Wendt’s viewpoint and focus on structure has come under intense criticism for the causal relationship it employs between the identity of states and its interests. Not only does this constructivist perspective make it difficult to differentiate “between a change of identity and a change in the interests of actors” (Mielniczuk 2013, 1078), it claims that identities determine interests without acknowledging that the opposite is also plausible. For this reason, we must turn to Himadeep Muppidi’s theoretical approach that conceptualizing interests should be done through the interpretive concept of ‘social claims’ (Muppidi 2004).

Defined as individual demands, obligations, and self-understandings, social claims furnish analysts with a way to

conceptualize an agent's action as they relate to the actions of other units. When an agent demands something, expresses certain interests, sees herself as obligated in some ways, or understands herself, those demands, obligations, or understandings are necessarily, if implicitly, in relation to someone or something else. She is demanding something *of* someone, sees herself as obligated *to* someone, or understands herself in relation *to* someone else or something else (Muppidi 2004, 22).

Muppidi's theoretical interpretation is dependent on an agent's actions and the specific social relationship that agent shares with others. This social relationship finds meaning only when it is associated with another agent, entity, or object. The demands, obligations, and self-understandings that this individual agent makes on another agent, entity, or object are then seen as 'social claims' (Muppidi 2004). Yet these social claims can only be understood and made relevant when they are situated in the appropriate social context. In other words, understanding an individual agent's social claims requires an understanding of that agent's preferences, history, and social interactions, which results in a narrative of which this agent can define itself within the international context. "Only the field of social claims is productive of the identities and social powers of actors...[and] are constantly either transformed or reproduced through the actions of social actors" (Muppidi 2004, 25). In turn, these different narratives operate in different 'social imaginaries,' which Muppidi conceptualizes as "distinctive fields of meanings and social power" (Muppidi 2004, 25). These social imaginaries help give meaning to the "mutually constitutive relationship that exists between specific social claims and the distinctive social identities and inside/outside relations that they generate" (Muppidi 2004, 25).

Therefore, through this perspective, we are able to overcome the ideas that the international system is both materially- and structurally-based, which are the dominate interpretations within realism and liberalism. Instead, through constructivism, we are able to understand the international system as the projection of various social imaginaries. In other words, constructivism allows us to understand the international system as a system of normative and relational preferences among actors and their social interactions. Using this interpretation, we are also able to understand how and why state identities “change or remain the same independently of the actions of other states” (Mielniczuk 2013, 1078).

As discussed, in order for norms to be accepted by the international community, constructivists emphasizes the importance of cooperation among states, NGOs, governmental organizations, and other advocacy networks to assist in the evolution of rights norms within the international community. Thus, through the constructivist lens, the global human rights regime was created via a progression of domestic norms through the advocacy of transnational networks and acceptance of these norms by states. These norms, contributing to a state’s social imaginary, were then projected abroad in the form of social claims. By the constructivist approach, the international structure is a complex network of varying social imaginaries that are comprised of numerous identities and interests. Therefore, constructivism allows us “to accept that a state’s identities change or remain the same independently of the actions of other states” (Mielniczuk 2013, 1078). For that reason, there is not a single logic that can explain the phenomenon of state identities and interests, which assists in our understanding of the BRICS and their increased cooperation. As powerful developing states, these countries’ strong mutual

interest in the fundamentality of the RTD has subsequently brought them together under one common identity – the ‘BRICS.’ This identity, and even this strong mutual interest, has not always pervaded the international structure, but is a product of the social interactions and social claims that are currently being promoted.

#### D. A COMPREHENSIVE IMAGE: THE IMPORTANCE OF ECONOMIC POWER, INSTITUTIONS, AND IDENTITIES & INTERESTS

Despite the in-depth perspectives offered in the three previous subsections, it remains difficult to theoretically interpret the existing global human rights regime with just one of the three core images of international relations. If we wish to accurately depict the emergence and preservation of the existing human rights regime in today’s international system, we must employ components of each of the theoretical interpretations in order to create one comprehensive image. This inclusive image will prove important in contextualizing the BRICS’ global rise in relation to the existing human rights regime. Under what theoretical circumstances has their augmented economic power proven necessary for their political cooperation? Will this institutionalization of power be used as a platform for the dissemination of norms that more appropriately coincide with these states’ identities and interests? What are the BRICS states’ national interests and how were these interests created and formed?

As discussed in the subsection on realism, the material capacity of states is something that cannot be disregarded or downplayed by any means. It is accepted by realist tradition that the more economic or military power a state possesses, the more likely this state is to impact and influence the international system in a way it considers necessary. In other words, this material wealth allows the state to assume a significant

role within the international community and craft a system that is favorable to its domestic interests and ideas. In the comprehensive image advocated for here, economic power is of the utmost importance – of which the BRICS states have an increasing amount. In historical context, we have witnessed the importance of economic power with the hegemonic status the US held at the conclusion of World War II, thus allowing for the creation of an international system rooted and reinforced by democracy and capitalism.

This realist perspective, however, fails to incorporate the critical role international institutions play in reinforcing and disseminating this economic power. For this reason, we must rely on elements of neoliberal institutionalism and the emphasis it places on the cooperation apparent within international institutions. To this effect, international institutions are utilized as multilateral platforms for the safeguarding and discussion of norms and state interests – specifically those associated with human rights. Furthermore, institutions give states the ability to respond to the international structure they exist in and subsequently pursue their own motivations and intentions. At their core, “international institutions embody rules which facilitate the expansion of the dominant economic and social forces but which at the same time permit adjustments to be made by subordinated interests with a minimum of pain” (Cox 1996 222). We see the BRICS states utilize these institutions – in so much that they are pursuing the creation of a formalized institution through the New Development Bank – as means of increased economic and political cooperation. Even the BRICS annual summits – a less formalized international institution – has given these developing states a platform for their interests to be realized and their motivations to be pursued.

Like realism, liberalism has its shortcomings as well. This particular perspective fails in offering a worthy explanation of why states like China would become a party or member to institutions that are incompatible with their domestic political structures. With that in mind, we must turn to constructivism. This theoretical lens confronts this shortcoming by emphasizing the importance of state identities and interests within the international community. Individuals, nongovernmental actors, and state agents all play a crucial role in the realization and development of norms. Through these norms, states make individual demands, have certain obligations, and understand themselves in what is referred to as social claims – all influenced by preferences, history, and social interactions. These social claims are then extended outwards into the international structure and placed in relation to other states, resulting in the characterization and formation of said state's identities and interests. Utilizing their histories, preferences, and social interactions within the international structure, the BRICS have identified themselves as developing states with social claims that surround the RTD, equal opportunities for like-minded states, and a fair world order.

In sum, this comprehensive image can be described as utilizing economic power as means of creating international institutions that are centered on certain state interests and identities. Robert W. Cox employs a similarly comprehensive approach to the global human rights regime that appreciates the significance of ideas, identities, institutions, and economics. Cox recognizes that world hegemonic power is a “social structure, an economic structure, and a political structure...[that] cannot be simply one of these things but must be all three” (Cox 1996 222). The internal political and economic structures of the state in question begin to expand their increased energies beyond their borders and

onto weaker states. The economic and social institutions, culture, and technology all act as conduits for which these increased energies can be emulated abroad. These energies then influence the norms, behaviors, and elements of the international structure and other states (Cox 1996). World hegemony, as Cox puts it, is “expressed in universal norms, institutions, and mechanisms which lay down general rules of behavior for states and for those forces of civil society that act across national boundaries” (Cox 1996 222).

#### **IV. CHAPTER CONCLUSION**

This chapter has offered an inclusive overview of the existing human rights regime on many levels. First, a definition of human rights was established, claiming that, in their simplest form, they are “not what we need for survival but what we need for a life of dignity” (Donnelly 2013, 21). This, of course, is the definition given to the human rights discourse that was established and sustained by the Western powers following World War II because, as we have discussed, the RTD encompasses the “what we need for survival” component that is disregarded in Donnelly’s definition. The following section surveyed the existing regime by overviewing its principle, rule and norms, and procedural components. This particular section provided a much-needed framework for understanding what the current human rights regime entails, as established and governed by multilateral agreements and institutions. And finally, the last section relied on conventional international relations images to explicate a theoretical approach to what currently exists in the international structure. From this, we were able to extract certain components and create one comprehensive image that more accurately depicts the existing regime, while hypothesizing about the BRICS involvement.

The next chapter will build upon this discussion by focusing specifically on a sub-regime of the human rights regime – the global labor regime. With the increased economic power of the BRICS, a majority of this century's new workers, laborers, and consumers will be employed by these states. At the theoretical level, labor rights will be emphasized because of their strong association and relationship with the RTD. The right to work and the ability of individuals to be self-sufficient is a cornerstone of the RTD philosophy; work is a conduit for subsistence and development. Therefore, focusing on the global labor regime and labor rights in particular will assist offer a deeper understanding into whether or not the BRICS' rise will impact the global human rights regime as we currently understand it, and if so, in what ways.

### 3 | THE GLOBAL LABOR REGIME

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The BRICS' influence on the global economy continues to intensify and expand at unprecedented rates. Consequently, this economic proliferation will result in a majority of the forthcoming century's new workers, laborers, and consumers being employed by these states. For that reason, understanding the national interests, international actions, and domestic practices of the BRICS countries is imperative. To that degree, identifying the BRICS' discourse and practices surrounding labor rights and the global labor regime will provide the evidence needed to suggest similar situations in their future bilateral and multilateral interactions. Nonetheless, it is crucial that we first establish the framework within today's international structure for the current labor regime and its associated norms. This chapter will be dedicated to the establishment and formulation of labor rights as understood within the context of contemporary international relations. First, I will address the reoccurring debate within the existing rights discourse regarding the classification of labor rights as human rights. In the section following, I will offer a brief description of the International Labor Organization (ILO) and its work as the primary institution for the global governance and regulation of labor rights. The final section will be dedicated to statements by governments and international institutions – via international treaties, institutional declarations, and multilateral agreements – that provide the framework for the existing labor norms regime.

## I. ARE LABOR RIGHTS HUMAN RIGHTS?

Human rights, as previously discussed, are the rights one needs to pursue a life of dignity. In this sense, each and every human being is afforded these rights upon birth by the simple virtue of being human. These rights are indestructible and cannot be forfeited to any individual, state, or institution under any circumstances. Labor rights, unlike human rights, are only afforded to an individual by the virtue of their status as a worker or employee (Mantouvalou 2012). They are the entitlements and protections afforded to workers *while* pursuing a life of dignity.

Lawyers, academics, and activists alike have expressed doubt when confronted with the inclusion of labor rights within human rights discourse. For many of the skeptics, the foundation for which labor rights exists – the idea that they are only designated to those with a particular status of employment – signifies that they are not, like human rights, granted to every human being. Moreover, these skeptics have further claimed that human rights pertain to the relationship between the state and the individual, particularly as it relates to the limitation of the power of the state. Labor rights, however, are based within the relationship shared between private actors and workers as it relates to the limitation of the power of the employer (Kolben 2010).

That being said, there is sufficient evidence to suggest that labor rights are firmly embedded within the canon of human rights that exists in today's international structure. Virginia Mantouvalou examines this paradox in rights discourse by identifying three approaches that interpret labor rights as human rights: 1) the positivist approach; 2) the instrumental approach; and 3) the normative approach. Each of these approaches is valuable to the understanding of labor rights as human rights, though they must be

understood as separate from one another. For the sake of this discussion, a brief summary of Mantouvalou's argument regarding the three aforementioned approaches is necessary.

The positivist perspective on labor rights as human rights is perhaps the most forthright of the three approaches. At the core, the positivist approach uses the language in human rights documents and treaties as a foundation for the classification of labor rights as such. By this approach, if a particular labor right is included within the text of a human rights document, that particular right is included within the established rights discourse and is supported within the context of international human rights law (Mantouvalou 2012). With this particular approach, we can in fact determine that several labor rights are included in international human rights agreements and subsequently conclude that these labor rights are included within the existing human rights norms regime. For example, the UDHR – the most authoritative statement on international human rights norms today – gives mention to several labor rights within its text, most notably Article 23. This particular mention offers the most straightforward and comprehensive statement on the inclusion of labor rights in the international system, and does so by recognizing four essential subsections of workers' rights: 1) the right to work, free choice of employment, favorable conditions at work, and protection against unemployment; 2) equal pay for equal work; 3) favorable remuneration for an existence worthy of human dignity; and 4) the right to form and join trade unions (Art. 23). Therefore, by the mere mention of these rights within the UDHR, the positivist perspective would claim that these labor rights are within the existing rights discourse and can be appropriately classified as human rights. We will return to this particular

approach later in this chapter by examining current human rights documents and their contribution to the establishment of the labor regime.

Whereas the positivist approach is the most straightforward, the instrumental approach is in fact the most commonly utilized perspective in international law. Building upon the positivist approach's focus on human rights documents, the instrumental approach utilizes these texts as leverage in determining how "institutions and civil society organizations fare in protecting them..." (Mantouvalou 2012, 7). Therefore, the characterization of labor rights is determined based upon state and international institutions' (i.e. courts, trade unions, NGOs, etc.) decision to endorse such rights as human rights. Commonly utilized strategies often involve litigation and civil society action to promote certain workers' rights as synonymous with human rights (Mantouvalou 2012). For example, the case law of the European Court of Human Rights has recently been receptive of the rights of workers, forcing many scholars to consequently alter their position regarding labor rights as human rights. The European Court of Human Rights, through careful interpretation of the European Convention on Human Rights (ECHR), decides various cases regarding a multitude of labor rights that, by virtue of its jurisdiction, can decide whether or not to extend human rights principles to labor rights. Recent decisions made by the Court have in fact employed the institutional approach and extend much of the doctrines of the ECHR to include labor rights.

The third perspective on labor rights as human rights is the normative approach. Unlike the positivist and instrumental approaches previously illustrated, the normative approach engages in theoretical interpretations of labor rights based on matters of moral

truth (Mantouvalou 2012). Although this approach is the one least taken by scholars, recent literature has started to increasingly engage labor rights with this particular perspective. Most notably, human rights scholars have employed this approach when opposing the compelling claims against including labor rights in human rights discourse. Such claims, as emphasized by Hugh (2011), are the failure of labor rights to: 1) the failure of labor rights to represent the equivalence of urgency in moral claims that human rights do; 2) the failure of labor rights to be as universally applicable as human rights; 3) the failure of labor rights to embody strict standards; and 4) the failure of labor rights to exemplify a sense of timelessness and instead a sense of development (Hugh 2011). Engaging with the normative approach, Mantouvalou does a fantastic job in addressing each of these claims and strengthening the argument for the inclusivity of labor rights in human rights discourse.

Mantouvalou asserts that it is erroneous to avow that labor rights do not represent the same moral claims as human rights. Human rights, by their very existence, are claims that prohibit severe moral wrongdoings. Likewise, a number of labor rights exist for the same purpose – to prohibit employers, states, and institutions from committing degrading and humiliating acts to workers, which is impeccably represented in the right from forced labor. Second, sufficient criticism exists surrounding the idea that labor rights are not human rights due to their lack of universality. It would be fallacious to claim that a right conditional upon an individual's particular status is not a human right. Mantouvalou avows that, “what makes them universal human rights is that if and as soon as any person is found in this position – becomes a worker, a migrant, or imprisoned – that person will be entitled to be treated with the respect that universal human rights require”

(Mantouvalou 2012, 19). Third, Mantouvalou questions the assertion that labor rights differentiate from human rights because of their “non-strict” nature. For example, the right to a minimum pay varies among countries due to its dependency on both what one particular society can afford and its currency’s purchasing power. Therefore, certain labor rights are not stringent entitlements due to their dependency on the resources available. However, the fact that a particular society cannot afford or is incapable of complying with a particular labor right does not indicate that these rights are “non-strict.” Instead, the normative approach affirms the belief that there exists a moral standard that every society should strive to achieve (Mantouvalou 2012). This particular critique of labor rights is often invoked by developing states. And finally, the fourth claim states that labor rights are solely dependent on systems of production, forms of work, and the labor environment of a particular society, whereas human rights are timeless and interminable. Mantouvalou ascertains that labor rights do in fact possess a timeless nature – decent working conditions and freedom from slavery are both abstract claims that do not depend on a particular context (Mantouvalou 2012). In fact, “labor rights that attain the status of human rights do not have to be revised when the system of production changes [because]...they entail abstract principles that are always applicable, irrespective of the historic circumstances” (Mantouvalou 2012, 22).

To claim that labor rights should not be encompassed within human rights discourse is inaccurate. Although these three approaches surrounding this debate are quite distinctive, they each engage with important aspects of the human rights regime – documents, institutions, and theory/morality. With that in mind, attention will now be

given to the ways in which labor rights are institutionally safeguarded and established as human rights per the International Labor Organization (ILO).

## **II. THE INTERNATIONAL LABOR ORGANIZATION (ILO)**

The twentieth century saw a complete transformation in the world of work as the transition from agriculture to industry accelerated. Interconnectedness across borders began to characterize labor markets while political agendas became increasingly dominated by the essence of “work” (Rodgers, Lee, Swepston, & Van Daele 2009). Following the conclusion of World War I, the Paris Peace Conference resulted in the Treaty of Versailles, which, in specific sections, reflected this newfound societal focus on the concept of work. Using the content and statements within the Treaty as a foundation, the world witnessed the creation of the very first international institution in 1919 – the International Labor Organization (ILO). Henceforth, the realm of work and labor possessed a transnational forum in which multilateral discussion could ensue and workers’ rights could be recognized.

### **A. THE ILO’S CONCEPTION & CENTRAL IDEAS**

On the ILO, Franklin Delano Roosevelt is quoted in saying, “Who had ever heard of Governments getting together to raise the standards of labor on an international plane?... [The] ILO will be an invaluable instrument for peace... [an essential part] in building up a stable international system of social justice for all peoples everywhere” (Rodgers et al 2009, 2). As previously mentioned, the ILO was one of the first international institutions constructed and, to some extent, an unheard of political experiment at that time.

Although constructed in the early twentieth century, the origins of the ILO extend as far back as the nineteenth, as rapid industrialization began to transform the economy and society at macro levels. Such transformations produced a substantial political issue – industrialization’s social consequences of inequality and injustice managed (Rodger et al 2009). Drawing on aspects of European social democracy, Christian democracy, and social liberalism, the substantial post-WWI powers crafted a transnational institution that would address these very issues. As the ILO’s Fifth Director-General David Morse said in 1969, “the ILO, in short, offered the world an alternative to social strife; it provided it with the procedures and techniques of bargaining and negotiation to replace violent conflict as a mean of securing more human and dignified conditions of work” (Rodgers et al 2009, 15).

Moreover, in a century increasingly characterized by this concept of work, the ILO framers desired an avenue in which the inequalities and injustices of industrialization could be addressed via dialogue and cooperation among employers and employees. As a result, the institution’s founding was predominantly based on one principled belief – that social justice was an essential basis for peace. This belief is outwardly reflected within the Preamble of the ILO’s Constitution:

Whereas universal and lasting peace can be established only if it is based upon social justice; And whereas conditions of labor exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; And an improvement of those conditions is urgently required...(ILO Constitution Preamble 1919).

Thus, the ILO established, in the name of social justice, humane conditions of labor and the recognition of labor rights for citizens of every member country.

In a unique tripartite structure that will be discussed in detail later in this chapter, the ILO's establishment "promote[s] social progress [to] overcome social and economic conflicts of interest through dialogue and cooperation" (Rodgers et al 2009). By virtue of the ILO's existence, workers, employers, and governments alike have been endowed with equal power to discuss common rules, policies, and behaviors surrounding work in a non-confrontational manner. "The workers saw these efforts as coordinated international attempts to achieve better conditions of work and to control the adverse effects on labor market forces, [whereas] employers favored equalizing conditions of work in order to facilitate the expansion of trade and remove unequal conditions of international commercial competition" (Rodgers et al 2009, 5). Consequentially, a social framework was established for formal economic exchange between employers and employees that also provided the groundwork for an unbiased world trading system.

In their book, *The ILO and the Quest for Social Justice, 1919-2009*, Gerry Rodgers, Eddy Lee, Lee Swepston, and Jasmien Van Daele identify five core principles that are enshrined in the ILO's work and are essential to the mission of the institution:

- 1) Lasting peace cannot be achieved unless it is based on social justice, grounded in freedom, dignity, economic security and equal opportunity;
- 2) Labor should not be regarded as a mere commodity or an article of commerce;
- 3) There should be freedom of association, for both workers and employers, along with freedom of expression, and the right to collective bargaining;
- 4) These principles are fully applicable to all human beings, irrespective of race, creed, or sex;

- 5) Poverty anywhere constitutes a danger to prosperity everywhere, and must be addressed through both national and international action (Rodgers et al 2009, 7).

The policy concerns and work of the ILO strongly reflect these principles. The promotion of full employment, an adequate living wage, the regulation of work hours, the abolition of child labor, the rights of migrant workers, and the extension of social security measures are all embodied within the aforementioned framework of principles, guiding the ILO in its actions and duties. However, at the very core of the ILO's institutionalization of labor, is the quintessential concept of "decent work." This idea "synthesizes rights at work, employment, and social protection into an overall vision, pursued through social dialogue, [and] pays particular attention to the mutual reinforcement of action in different fields" (Rodgers et al 2009, 10). It is strongly reinforced and promoted by many of the ILO's declarations and documents. At the core of the ILO's founding was the desire to achieve the protection of workers' rights and the development of a global consensus on the need for social justice within the existing international structure, all in the pursuit of "decent work" (Rodríguez Garcia 2010).

## B. THE STRUCTURE & GOVERNANCE OF THE ILO

The ILO Constitution not only establishes the principled beliefs of the institution, but also provides the blueprints for its unique structure and governance. Rodgers, Lee, Swepston, and Van Daele identify four means of governance that are witnessed within the ILO:

- 1) *Tripartism* and the equal representation of workers, employers, and governments in free discussion and democratic decision-making;

- 2) Adoption of international conventions and recommendations to be submitted to national authorities for ratification or other action;
- 3) System of inspection and supervision that ensures enforcement of the laws and regulations;
- 4) Collaboration among other international bodies in order to ensure that all economic and financial policies contribute to social progress and well-being (Rodgers et al 2009, 9).

Apart from being the first international institution to exist, the ILO also boasts a unique system of governance – it is the only international intergovernmental institution where governments *do not* have exclusive power when establishing standards and policies. This allows, as one may suspect, the equal participation of workers, employers, and governments in ILO discussions, administration, and governance. Article 3 of the ILO Constitution states that “The...General Conference...shall be composed of four representatives of each of the Members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members” (ILO Constitution 1919). This structure, referred to as *tripartism*, allows for equitable discourse from all parties involved regarding the adoption, ratification, and supervision of labor standards. Through tripartism, collaboration among the actors involved is based on structured interests and “adds a connection with reality that cannot be reproduced in an organization where governments are the only spokespersons” (Rodgers et al 2009, 15). As the ILO website elaborates, this tripartite structure provides a “unique forum in which the governments and the social

partners of the economy and its [ILO's] 185 member states can freely and openly debate and elaborate labor standards and policies" ("Structure" 2015).

Perhaps the most important aspect of the ILO is its ability to create Conventions and Recommendations that establish standard expectations and labor rights for members. Although both assist in inaugurating universal labor standards for member states, there is a stark difference between an ILO Convention and an ILO Recommendation. The former is considered to be a "legally binding international treaty that *may* be ratified by member states," whereas the latter "serves as non-binding guidelines" (Rodríguez Garcia 2010, 462). According to Article 19 of the ILO Constitution, once a Convention or a Recommendation is brought forward and passed by the ILO General Conference, the member states have an obligation to return to their respective competent authorities for ratification – in the case of a Convention – or any legislative action – in the case of a Recommendation (ILO Constitution, Article 19). As of January 2015, 189 Conventions and 203 Recommendations had been adopted since 1919, all of which "cover virtually all aspects of labor law and labor relations" (Rodgers et al 2009, 20) and are widely accepted at the national level by most of the 185 member states.

Of particular importance to the effectiveness of the ILO's mission is the supervision and system of enforcement used concerning Conventions and Recommendations. As stated in a quote from Magaly Rodríguez Garcia's, "ILO's Impact on the World," the documents produced by the ILO "*may* be ratified by member states" (Rodríguez Garcia 2010, 462). Ratification and adherence to the Conventions and Recommendations is *not required* for membership in the ILO. To this degree, when members offend various agreed-upon components of labor standards, the only

repercussions are moral censures. The fact that the institutional statements made by the ILO are voluntary by member states is indicative of the fallacy and weakness of the global labor regime. Richard P. McIntyre addresses this paradox with the following overarching statement:

Ratification of ILO conventions alone does not guarantee the fair treatment of workers, nor does the lack of ratification mean that workers are being oppressed. A number of governments have ratified ILO conventions for show with no intention of enforcing them<sup>6</sup>; others have ratified conventions in good faith but lack the resources or technical expertise to implement their requirements; and still others seem to believe they are in compliance but have standards that vary widely from international norms. On the other hand, there are nations that have not ratified conventions for one reason or another – usually constitutional constraints or other legal technicalities – but, in general, provide protections for worker rights (McIntyre 2008, 104).

This statement seamlessly illustrates the weakness of the labor regime due to its inherent voluntarism.

When engaging this voluntarism with regime theory, Jack Donnelly positions the labor regime in what he refers to as a mixture of a ‘promotional’ and ‘implementation’ regime. Firstly, Donnelly suggests that when characterizing and identifying human rights regimes, there are four distinct possibilities: 1) declaratory regimes (which include norms but no specific decision-making procedures, except for developing norms); 2) promotional regimes (which encourage states to implement norms and disseminate information concerning state practices); 3) implementation regimes (which involved formal or informal powers to determine whether violations have occurred); and 4)

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<sup>6</sup> Regarding this lack of enforcement despite a member state’s ratification, we can turn to the constructivism section of the previous chapter for the explanation of state identities in relation to the international structure.

enforcement regimes (where multilateral bodies have at least some binding enforcement authority, usually judicially but possibly force) (Donnelly 2013, 104). The labor regime, as Donnelly claims, is a combination of both promotional and implementation regimes because while global labor standards are strong, they still possess exemptions. Moreover, while the ILO monitors the procedure behind the implementation of these standards, this regime still possesses characteristics associated with a promotional regime. Therefore, it is apparent that when the labor regime is contextualized within regime theory, it still exists among the weaker regimes. Yet due to its complex identity within both the promotional- and implementation-based regimes, there exists, as previously mentioned, a system of monitoring on behalf of the ILO.

The monitoring and supervisory system reinforced by the ILO wholly relies “on government papers and ad hoc supervision in response to complaints” (Rodríguez Garcia 2010, 463). Per Article 26 of the ILO Constitution, “Any of the Members shall have the right to file a complaint with the International Labor Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles” (Art. 26). In addition to members who have ratified the Convention in question, ILO delegates and employers’ or workers’ organizations also have the ability to file complaints regarding a member’s disregard for a Convention (Rodgers et al 2009). With this particular supervisory system, some countries aver that they are subjected to biased and harsh criticisms that apply “Western” values to their unique situations – for example, developing states and particular labor rights emphasized by the West. This phenomenon is very much the basis of debates

between developed and developing states regarding labor rights, which will be expanded upon later in this paper.

By virtue of labor rights inclusion within the human rights discourse, the ILO is automatically engaged and interconnected with other multilateral institutions. Perhaps most notable of these would be, of course, the UN. These relationships are a necessity for the ILO due to its substantial lack of “teeth” when addressing egregious violations of labor rights. Therefore, the ILO seeks assistance in the form of sanctions or forced implementation from other international organizations to help enforce its decision and associated discourse (Rodgers et al 2009). Additionally, the ILO worked jointly with the UN to safeguard workers rights by legitimizing human rights as a global concern. If we were to revisit the positivist approach, we would notice that the labor rights stressed by the ILO are included within – and reliant on – the doctrines of other multilateral institutions. Most notably, the international labor regime is deeply engrained within the global human rights regime due to its interrelation with the UN and their shared missions of social justice. The following section addresses this interconnection by first analyzing the UN human rights documents that contribute to the global labor regime, followed by a focused examination of the most important ILO Conventions that comprise the Fundamental Principles and Rights at Work (FPRW).

### **III. PRINCIPAL DOCUMENTS OF THE LABOR REGIME**

Work is a vital human institution, particularly for the means of aggregating societal wealth. At the core of human productivity and development lies the essence of labor rights. The previous section was dedicated to the institutionalization of labor rights via

the ILO and its responsibilities in fostering dialogue between governments and nongovernmental actors. Since its inception in 1919, the ILO has moored the concept of social and economic rights in the twentieth century human rights discourse, particularly as they associate with the foundations of labor rights (Rodgers et al 2009). Yet the standards and principles championed by the ILO find their origins within human rights discourse via treaties, conventions, and international agreements. The framework for which the ILO's labor rights colloquy endures is rooted within UN Covenants and ILO-sponsored multilateral declarations and agreements. This section of the chapter will be dedicated to unearthing the rudiments for which the ILO finds its central ideas and operation in the existing international structure.

#### A. THE CONSTRUCTION OF THE LABOR REGIME VIA UN DOCUMENTS

The ILO and the UN conjointly pursue aspects of the international rights discourse for purposes of social justice and peace. The UN, as the seat of global governance, provides overarching statements on several aspects of labor rights that consequently support and construct the responsibilities and central ideas of the ILO. Of the statements on human rights made by the UN in the form of covenants and declarations, seven mention the rights of workers in some respect: the Universal Declaration of Human Rights (1948), International Covenant on Economic, Social, and Cultural Rights (1966), International Covenant on Civil and Political Rights (1966), International Convention on the Elimination of all Forms of Racial Discrimination (1969), Convention on the Rights of the Child (1990), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), and the Convention on the Rights of

Persons with Disabilities (2006). For the establishment of the labor regime, the most crucial and overarching statements are the UDHR, the International Covenant for Civil and Political Rights (ICCPR), and the International Covenant for Economic, Social, and Cultural Rights (ICESCR) – with the latter being particularly critical.

As previously discussed, the UDHR gives particular reference to labor rights in Article 23 and 24. As the document that has established and wholly contributed to the construction of the existing international structure, the mere existence of labor rights in the text is imperative for the influence and weight of the labor regime. The right to work, favorable workplace conditions, equal pay for equal work, the right to join trade unions, and the limitation of working hours are all among the workers' rights guaranteed within the UDHR. As a result, general multilateral and UN support for the operation of the ILO is provided (Art. 23 & 24).

Although traditionally considered to be an economic and social right, “work” is still briefly highlighted within the ICCPR – particularly as it exists within political discourse. In pursuit of a world of freedom, justice, and peace, this Covenant was adopted to achieve universality regarding the conditions of civil and political rights that “derive from the inherent dignity of the human person” (ICCPR Preamble 1966). Encompassing items such as the death penalty, criminal proceedings, and freedom of thought, this statement also includes two particularly important and conventional labor rights that allow individuals to “pursue their economic, social, and cultural development...[without being] deprived of [their] own means of subsistence” (Art. 1). Article 8 addresses a particular labor right that is at the intersection of civil/political and

economic/social rights – the freedom from forced labor. Divided into three separate clauses, Article 8 states:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited;
2. No one shall be held in servitude;
3. (a) No one shall be required to perform forced or compulsory labor (Art. 8).

Additionally, Article 22 of the Covenant articulates the right to freedom of association that is granted to every individual:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests; (Art. 22, §1).

Thus, two of the Fundamental Principles and Rights at Work – the freedom from forced labor and the freedom of association – are buttressed by the United Nations through the text of the ICCPR.

Perhaps most important to the labor regime discourse is the International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR). Similar to the ICCPR, the ICESCR speaks to the dignity of the human person by recognizing that “all peoples have the right of self-determination... [and to] freely pursue their economic, social, and cultural development...[without being] deprived of [their] own means of subsistence” (Art. 1). Unlike the ICCPR, the ICESCR alludes to several aspects and components of the labor regime by including various workers’ rights – most of which exist within Part II of the document. Article 6, for example, speaks to the right of individuals to freely choose their own work; Article 7 provides the framework for favorable conditions at work with “fair wages and equal remuneration for work of equal value...safe and healthy working conditions...rest, leisure, and reasonable limitation of

working hours...” (Art. 7). Furthermore, the freedom of association is represented in Article 8, according to which everyone has a right “to form trade unions and join the trade union of his choice...for the promotion and protection of economic and social interests” (Art. 8, §1), followed by the right of social security. While certain mechanisms within the text certainly echo previously discussed documents such as the UDHR and ICCPR, the ICESCR provides a comprehensive outlook from a different lens and subsequently adds to the multilateral justification and formulation of labor rights.<sup>7</sup>

The remaining UN documents, although stringently focused on a specific rights topic, still include and refer to various characteristics of the labor rights regime. Most notably, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMW) provides a lengthy statement on the fair treatment and safeguarding of migrant workers – an entire document strictly dedicated to the issue of labor rights. Such rights include, but are certainly not limited to: freedom of thought, freedom from servitude, security of person, and protection from false imprisonment (ICPRMW 1990). Moreover, Article 32 of the Convention on the Rights of the Child (CRC) dictates that State Parties should:

1. Provide for a minimum age or minimum ages for admission to employment;

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<sup>7</sup> Although not considered to be within the labor rights regime, it is also worth mentioning, for sake of this paper, that the right to subsistence – what China and many developing states emphasize as the most important fundamental human right alongside the RTD – is included within Article 11 of the International Covenant on Economic, Social, and Cultural Rights:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent (Art. 11, § 1).

2. Provide for appropriate regulation of the hours and conditions of employment; (Art. 32, §1 & 2)

In Article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), a detailed outline of rights that should be enjoyed by members of all races is listed, which includes “the right to work...just and favorable conditions of work...equal pay for equal work... [and] the right to join and form trade unions” (Art. 5, Cause E). And finally, the Convention on the Rights of Persons with Disabilities (CRPD) illustrates, in Article 27, the right of individuals with disabilities for fair treatment in the world of work (Art. 27).

The incorporation of labor rights in the UN-reinforced human rights discourse permits the subsistence of the labor regime and the ILO. Nonetheless, documents specifically conceived by the ILO offer an even greater breadth of labor rights than those prescribed by the UN. The following section is dedicated to two specific ILO documents – one of which is supported by eight Conventions – that have firmly established the canon of labor rights as human rights: the Declaration of Philadelphia of 1944 and the Fundamental Principles and Rights of Work of 1998.

## B. THE CONSTRUCTION OF THE LABOR REGIME VIA ILO DOCUMENTS

The ILO’s central ideas, while reinforced by UN official statements, are heavily substantiated via institutional declarations and documents. Although members have the option of ratifying Conventions or approving Recommendations made by the ILO, these overarching statements are theoretically acknowledged by all member states. This is especially true for the Fundamental Principles and Rights at Work (FPRW).

## i. THE 1944 DECLARATION OF PHILADELPHIA

At the time of the Declaration of Philadelphia's<sup>8</sup> signing in 1944, the world faced a brutal and horrific Second World War. With that in mind, this Declaration aimed at reinforcing and expanding the principles of the comparatively new ideas of the ILO. In its entirety, the Declaration of Philadelphia expounded on the original Constitution with an adoptive "strong statement [on] the need for international and national action for universal social progress" (Rodgers et al 2009, 7). Upon its implementation, the Declaration of Philadelphia reiterated the commitments to decent work, personal well-being, social integration, democracy, equality, and the reduction of poverty, ultimately causing a tantamount shift in both the ILO and international labor rights discourse. More importantly, the passing of the Declaration launched the next phase of labor rights by:

...[laying] down the intellectual foundation of much of the subsequent human rights standard-setting in the UN...[and exercising] a major influence in setting a floor under workplace policies, and human rights more generally, in the emerging post-colonial world (Rodger et al 2009, 45).

The Declaration alludes to the existence of the ILO's fundamental beliefs including: the idea that labor is not a commodity, the understanding that the freedom of expression/association are essential for sustained progress, that poverty hinders prosperity, and that there ought to be equal representation of workers, employers, and governments in democratic discussion (Declaration of Philadelphia 1944). The Declaration of Philadelphia additionally provides the groundwork for the ten obligations of the ILO, all of which are imperative for the development of labor rights in nations around the world. These ten items include but are not limited to: raising standards of

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<sup>8</sup> The text of the Declaration of Philadelphia is reproduced in the appendix.

living, guaranteeing a minimum wage, protecting the right to collective bargaining, and ensuring the provision of child welfare (Declaration of Philadelphia 1944). Henceforth, the conceptualization of universal social rights was distinguished and further reinforced by the prevailing social objective of member states to implement appropriate economic policies. As Rodgers et al make explicitly clear, the Declaration of Philadelphia is crucial in understanding the full applicability of rights to all peoples, and is “the context in which the connection was made for the first time between economic and social development and basic human rights principles” (Rodger et al 2009, 44). Thus, one of the first statements was made in which development and human rights were amassed into official discourse via the endorsement of “true” development. This, of course, recognized that freedom from discrimination and forced labor, as well as the ability to represent one’s own interests through freedom of association, were well-defined – three of the four FPRW.

## ii. THE 1998 DECLARATION ON THE FUNDAMENTAL PRINCIPLES & RIGHTS AT WORK

In 1998, the ILO continued to advance its promotion of labor rights by declaring four core themes of the ILO’s human rights agenda via the Declaration on Fundamental Principles and Rights at Work (FPRW)<sup>9</sup>. These core themes were: the freedom of association, the freedom from forced labor, the freedom from child labor, and the freedom from discrimination. Such themes are, for the sake of this paper and for the general labor regime, the most important and fundamental labor rights in today’s international structure. They are the basic enabling rights one is guaranteed as a worker to “claim freely and on the basis of equality their fair share of the wealth which they have

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<sup>9</sup> The text of the Declaration on Fundamental Principles and Rights at Work is reproduced in the appendix.

helped generate, and to achieve fully their human potential...” (FPRW Preamble 1998). They are, as the Preamble continues, “...specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization” (FPRW Preamble 1998). It is believed that once these rights are recognized and safeguarded, they facilitate the pursuit and existence of other labor rights.

Spanning almost seventy years of ILO history, these four core rights are expressed in eight different Conventions – ranging from the Forced Labor Convention, 1930 (No. 29) to the Worst Forms of Child Labor Convention, 1999 (No. 182). Yet despite these rights’ existence in ILO discourse prior to their inclusion within FPRW, it was not until the post-Cold War dynamics of the world economy embarked with on the path of globalization that they were explicitly recognized as such (International Labor Conference 101<sup>st</sup> Session Report 2012). In this sense, the safeguarding of “basic workers’ rights” was seen as pertinent to achieving economic growth and sustainable development. Here, it is important to distinguish that the establishment of these four core rights was not to differentiate a “rights hierarchy” or disregard other labor standards, but merely to recognize that these rights are “instrumental in promoting international labor standards in general, as a key means of achieving all constitutional objectives of the Organization” (International Labor Conference, 101<sup>st</sup> Session Report 2012, 6).

Before delving into details regarding each of the four rights, it is important to mention that the FPRW are unlike many of the other ILO Conventions. As previously mentioned, the ratification of a Convention is not required by member states upon its adoption in the ILO. It is up to the discretion of the domestic governing authorities to determine whether their state will ratify a Convention or not. Nonetheless, the eight

Conventions included with the FPRW are universal among all members per the 1998 Declaration of Fundamental Rights and Principles at Work.

...all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in good accordance with the Constitution, the principles concerning the fundamental rights which are subject of those Conventions (FPRW 1998).

Therefore, by virtue of a state's membership in the ILO, it is ineluctably required to acknowledge the fundamentality of these four core rights, regardless of the opinions or actions of a state's domestic authority. This will be particularly important for leading the discussion in the following chapter.

#### a. THE FREEDOM OF ASSOCIATION & THE RIGHT TO COLLECTIVE BARGAINING

The freedom of association is best defined as the “right of all workers and employers to create and join organizations of their own choosing in order to freely defend their respective interests and to negotiate collectively” (International Labor Conference, 101<sup>st</sup> Session Report 2012, 20). In other words, the freedom of association and the right to collective bargaining translates to the ability of individuals to form trade unions and engage in free conversation with employers regarding work conditions. This fundamental right – what Rodgers et al consider “the most thoroughly examined human right in the international sphere” (Rodgers et al 2009, 49) – is deeply rooted and engrained within the functions of political democracy and “essential [for] sustained progress” (Declaration of Philadelphia 1944). Without freedom of association, political democracy is jeopardized.

The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) are the two Conventions related to this first principle. Figure 3.0 provides an analysis of which BRICS and G7 countries have officially ratified these two Conventions. Of particular interest is the failure of India, China, and the USA to ratify either of the Conventions regarding freedom of association and collective bargaining.

The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) establishes its principal ideas via Articles 2 through 5. Within these Articles, five specific rights are established: 1) the right to establish and join organizations of one's choosing; 2) the right to draw up constitutions and rules, elect representatives, and organization administration and activities for their programs; 3) the freedom from interference by public authorities; 4) the freedom from suspension by administrative authority; 5) the right to establish and join federations and confederations, and the right of those organizations to affiliate with international organizations of workers and employers (Art. 2-5). These rights, included within the Convention, all aim to reinforce the ILO Constitution and the Declaration of Philadelphia in the pursuit of establishing peace, improving conditions of labor, and promoting sustained progress (No. 87, 1948: Preamble).

The Right to Organize and Collective Bargaining Convention, 1949 (No. 98) boasts much of its significant content within the first two Articles. Similar to the Convention described above, Convention No. 98 states: 1) workers shall be protected from anti-union discrimination; 2) such protection shall bar employers from using one's status in a union as grounds for dismissal; 3) protection against any acts of interference

by workers' and employers' organizations; and 4) ability to establish appropriate machinery for the purpose of ensuring respect for the right to organize (Art. 1 – 2).

What Rodgers et al refer to as “probably the most thoroughly examined human right in the international system” (Rodger et al 2009, 49), the general right to associate is deeply rooted within – and essential for – the doctrines of political democracy. Therefore, this right has been of the utmost importance to ILO discourse as the leadership has been dominated by the Western states that contend liberal democratic ideals are essential within today's international structure. In the same sense, union leaders are often persecuted by repressive or authoritarian regimes that view such organizations as threats to governmental power, primarily due to union leaders' ability to enact and inspire political, social, and economic change. More importantly, however, is the importance of the right to association in regard to other fundamental rights. The ILO's *Freedom of Association: Digest of Decisions of the Committee on Freedom of Association of the Governing Body of the ILO* (2006) stated that: “A free trade union movement can develop only under a regime which guarantees fundamental rights...” (FADDCFA 2006, 31). Therefore, if a state refuses to recognize the freedom of association, the environment of that state forbids the existence of a very basic and fundamental human right. Consequentially, this state could be considered a repressive regime under the existing rights discourse.

Under this interpretation, the United States' failure to ratify both Nos. 87 and 98 could thus classify it as a repressive regime in regard to human and labor rights norms. As discussed later in this section, using the ratification status of states as the sole

indicator of their rights practices has many shortcomings. For this reason, we must look to their national discourse and domestic policies.

Returning to the statement previously made by Richard P. McIntyre regarding the structure and governance of the ILO, “there are nations that have not ratified conventions for one reason or another – usually constitutional constraints or other legal technicalities – but, in general, provide protections for worker rights” (McIntyre 2008, 104). The US, McIntyre claims, is among this group of states that, despite its failure to officially ratify Conventions regarding labor rights, still offers protections and appropriate working conditions within its borders. “It is has not ratified conventions due to legal constraints, but generally complies with the broad purposes – if not the details – of nearly all ILO conventions” (McIntyre 2008, 104). Specifically related to Nos. 87 and 98, the US gives three principal reasons for its non-ratification: 1) the federal system, due to states maintaining certain rights, makes ratification problematic, particularly due to the conventions affecting the employees of state, county, and municipal governments, as well as all those who fall outside federal labor statutes; 2) well-established national labor policy fulfills the broad purposes of the Conventions and should not be distressed to accommodate an international agency’s demands; 3) the US has a responsibility based on its membership in the ILO – regardless of its ratification or not – to uphold the Conventions included within the FPRW, making their ratification rather superfluous (McIntyre 2008, 105). These arguments, while specifically targeted to the freedom of association, are undoubtedly invoked by the US when confronted with its failure to ratify other FPRW as well.

**Figure 3.0**

<b>BRICS</b>			<b>G7</b>		
	<b>No. 87</b>	<b>No. 98</b>		<b>No. 87</b>	<b>No. 98</b>
<b>Brazil</b>	No	Yes	<b>Canada</b>	Yes	No
<b>Russia</b>	Yes	Yes	<b>France</b>	Yes	Yes
<b>India</b>	No	No	<b>Germany</b>	Yes	Yes
<b>China</b>	No	No	<b>Italy</b>	Yes	Yes
<b>S. Africa</b>	Yes	Yes	<b>Japan</b>	Yes	Yes
			<b>UK</b>	Yes	Yes
			<b>USA</b>	No	No

\* Data from the ILO Database as of January 2015

**b. THE ELIMINATION OF ALL FORMS OF FORCED  
OR COMPULSORY LABOR**

Forced or compulsory labor is defined by Convention No. 29 as “all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Art. 2). In 2005, the ILO estimated that at least 12.3 million men, women, and children were victims of forced labor (International Labor Conference, 101<sup>st</sup> Session Report 2012). And while that number has significantly decreased in terms of state-imposed forced labor, it is important to recognize that forced labor strongly perseveres within the private sector. Therefore, as the private sector becomes increasingly present in an era of globalization, the issue of forced labor is of considerable importance.

The oldest Convention of the eight included within the FPRW, and one of the earliest of the ILO, is in regard to forced labor. Convention No. 29, the Forced Labor

Convention (1930), offers an unusual account that is largely considered to be no longer applicable. Articles 3 to 24 in fact *allow* for the continuation of forced labor within the European colonies, but only for a transitional period of unspecified length and with the understanding that it was in the process of being abolished. For that reason, Convention No. 29 is particularly unimportant in today's human rights discourse and characterization of the labor rights regime. Instead, its sister Convention, the Abolition of Forced Labor Convention, 1957 (No. 105), serves as the predominant and moderately more important document when contextualizing the freedom from forced labor. Within Article 1 of No. 105, the ILO immediately establishes all definitions and circumstances in which forced labor could hypothetically be used, thus demanding that member states vow to not make use of any of the listed conditionalities:

- (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system;
- (b) as a method of mobilizing and using labor for purposes of economic development;
- (c) as a means of labor discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national, or religious discrimination (Art. 1).

Characteristically, No. 105 “finds its main application in situations [that] are in themselves beyond the ILO's immediate human rights mandate – such as the exercise of free speech...” (Rodgers et al 2009, 67). Nevertheless, Conventions Nos. 29 and 105 remain the most commonly ratified ILO standards in the world. Figure 3.1 provides an account of the BRICS and G7 countries that have ratified Nos. 29 and 105. It is important to acknowledge that China has failed to ratify either of the Conventions, which is primarily due to its reliance on forced labor within its penal system. Nonetheless, by

virtue of its membership in the ILO, China is still obligated to follow the guidelines of the said documents. This will be discussed in greater detail in a later chapter.

**Figure 3.1**

<b>BRICS</b>			<b>G7</b>		
	<b>No. 29</b>	<b>No. 105</b>		<b>No. 29</b>	<b>No. 105</b>
<b>Brazil</b>	Yes	Yes	<b>Canada</b>	Yes	Yes
<b>Russia</b>	Yes	Yes	<b>France</b>	Yes	Yes
<b>India</b>	Yes	Yes	<b>Germany</b>	Yes	Yes
<b>China</b>	No	No	<b>Italy</b>	Yes	Yes
<b>S. Africa</b>	Yes	Yes	<b>Japan</b>	Yes	No
			<b>UK</b>	Yes	Yes
			<b>USA</b>	No	Yes

\* Data from the ILO Database as of January 2015

### c. THE EFFECTIVE ABOLITION OF CHILD LABOR

It is first obligatory to disclose that not all work done by children is categorized under the label of “child labor.” It is legal, in some circumstances, for children under the age of eighteen to be employed in appropriate environments. With that in mind, the definition of child labor used here can be defined as the “work performed by children who are under the minimum age legally specified for *that kind [my italics]* of work, or work which, because of its detrimental nature or conditions, is considered unacceptable for children and is prohibited” (i.e. slavery, trafficking, debt bondage, etc.) (International Labor Conference, 101<sup>st</sup> Session Report 2012, 27). Simply put, this right allows a child to lead a life of dignity like their adult counterparts.

In 2008, the ILO reports that approximately 306 million children between the ages of five and seventeen were employed, of which 70 percent were estimated to be victims of child labor in some form (International Labor Conference, 101<sup>st</sup> Session Report 2012). And even though child labor is considered to be one of the earliest topics of discussion within human rights discourse, dating as far back as the nineteenth century in Great Britain, official standards were not created until the late twentieth century. The first child labor Convention to be considered within the FPRW was the Minimum Age Convention, 1973 (No. 138), followed by the well-received Worst Forms of Child Labor Convention, 1999 (No. 182). The former, as one could assume, worked to establish a minimum age in which children were permitted to become workers by raising “the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons” (Art. 1). In addition to a minimum age not less than fourteen (dependent on the type of work in question), the ILO representatives demanded limited hours of work and compulsory education. The Worst Forms of Child Labor Convention, 1999 (No. 182) is, comparatively, much more elaborate and specific in terms of the treatment of minors. Believing that child labor would effectively be eliminated with sustained economic growth that would then lead to social progress, No. 182 examines several approaches to the definition of child labor. Examples of servitude, prostitution, social integration, free education, and a stringent focus on the special situation of girls are all included within the Convention (Art. 5-7).

Figure 3.2 provides an overview of the BRICS and G7 countries that have ratified the Conventions on the freedom from child labor, of which India has not ratified either. Rodgers et al claims that the Indian government of the twentieth century claimed a

“principle of gradualness” approach to child labor. This particular perspective refers to the fact that India’s “developing industrialism should not be ‘stifled and hampered’ by regulations for entirely different conditions by countries that were competitors to India” (Rodgers et al 2009, 70). Unfortunately, this particular argument has in fact continued into the twenty-first century and is a substantial component to the right to development that was illustrated in previous chapters.

**Figure 3.2**

<b>BRICS</b>			<b>G7</b>		
	<b>No. 138</b>	<b>No. 182</b>		<b>No. 138</b>	<b>No. 182</b>
<b>Brazil</b>	Yes	Yes	<b>Canada</b>	No	No
<b>Russia</b>	Yes	Yes	<b>France</b>	Yes	Yes
<b>India</b>	No	No	<b>Germany</b>	Yes	Yes
<b>China</b>	Yes	Yes	<b>Italy</b>	Yes	Yes
<b>S. Africa</b>	Yes	Yes	<b>Japan</b>	Yes	Yes
			<b>UK</b>	Yes	Yes
			<b>USA</b>	No	Yes

\* Data from the ILO Database as of January 2015

#### c. THE ELIMINATION OF DISCRIMINATION IN RESPECT OF EMPLOYMENT & OCCUPATION

Pursuant to the Declaration of Philadelphia’s affirmation that all human beings, regardless of any particular status, have the right to work, the fourth fundamental principle reinforces such by offering circumstances in which discrimination is intolerable.

Discrimination within the world of work is defined as:

...any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national

extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation (No. 111, Art. 1).

Therefore, within the discourse that currently exists, several “statuses” are included and hence protected. Of these, discrimination of employment most commonly occurs on the basis of gender – with women receiving the brunt of ambivalent and antiquated attitudes within the workforce – followed by racial/ethnic discrimination and discrimination based on migrant status/national origin. Interestingly enough, states have indicated a new trend in recent years dedicated to the expansion of these “statuses” protected from discrimination mentioned within No. 111 to include: HIV status, sexual orientation, age, employment status, and disability (International Labor Conference, 101<sup>st</sup> Session Report 2012). Such expansions have no specified timeline within the ILO and still remain debated among member states.

Conventions Nos. 100 and 111 are closely associated with the elimination of discrimination within employment. The Equal Remuneration Convention, 1951 (No. 100) targets the gender inequality plaguing the workforce manifested in the idea of equal pay for equal work. Article 2 of No. 100 orders the promotion of the equal remuneration principle and its application by means of: 1) national laws or regulations; 2) legally established or recognized machinery for wage discrimination; 3) collective agreements between employers and workers; or 4) a combination of these various forms (Art. 2). The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) primarily addresses the conventional ideas of discrimination within the workforce by not only targeting the particular aforementioned “statuses,” but by proposing methods that member states could assume for the demise of workplace discrimination. Such methods

include: formation of workers' and employers' organizations, educational programs, and the removal of inconsistent policies for the promotion of respectful ones (Art. 3).

Figure 3.3 depicts which of the BRICS and G7 countries have and have not ratified both Conventions on discrimination. Particularly interesting is the fact that the US has not ratified either of the Conventions in question, whereas every other country has – except Japan and No. 111. Despite this, the US is still considered by many actors within the international structure as a leader in the pursuit of fair labor rights. If we return to the argument used within the freedom of association section, one could assume that the US' failure to ratify Nos. 100 and 111 could be due to its automatic adherence to said Conventions by virtue of its ILO membership, making ratification superfluous. That being said, it is no secret that the US does struggle with issues of discrimination at work, particularly as it relates to equal remuneration. This could insinuate that the failure of one of a leader to completely adhere to global labor standards is an indication of Donnelly's designation of the labor regime as a weak one.

**Figure 3.3**

<b>BRICS</b>			<b>G7</b>		
	<b>No. 100</b>	<b>No. 111</b>		<b>No. 100</b>	<b>No. 111</b>
<b>Brazil</b>	Yes	Yes	<b>Canada</b>	Yes	Yes
<b>Russia</b>	Yes	Yes	<b>France</b>	Yes	Yes
<b>India</b>	Yes	Yes	<b>Germany</b>	Yes	Yes
<b>China</b>	Yes	Yes	<b>Italy</b>	Yes	Yes
<b>S. Africa</b>	Yes	Yes	<b>Japan</b>	Yes	No
			<b>UK</b>	Yes	Yes
			<b>USA</b>	No	No

## IV. CHAPTER CONCLUSION

The classification of labor rights as human rights is at the center of the existing international structure's global labor regime. And while debate persists regarding the inclusion of labor rights in human rights discourse, it is imperative to recognize that document texts, legal institutions, and theoretical approaches all provide sufficient evidence otherwise. Together, they assist in comprising the labor regime as one that is longstanding, yet in constant flux. In this chapter, we examined this debate in detail by utilizing Virginia Mantouvalou's argument for the inclusion of labor rights within existing rights discourse. This provided the foundations for the discussion on the ILO and the examination of the UN and ILO documents that supported the existing labor rights regime.

This chapter, while purposed for laying the framework for which the existing labor regime subsists, has also led one to believe that the very labor regime in question is in fact a weak one. By the mere existence of a debate surrounding the incorporation of labor rights within the human rights discourse, we are faced with the contradictory policies of skeptics and critics. And when trying to establish the labor regime's incorporation within the existing rights discourse, the lack of universality and agreement immediately weakens the foundations of the labor regime within the international structure, classifying it as both promotional and implementation in nature – strong standards but weak monitoring mechanisms. This is further reinforced by the inherent weakness of the ILO and its lack of authority and influence in properly enforcing its discourse. Furthermore, of the Conventions and Recommendations produced by the ILO, the ratifications and acknowledgement of their content by states is merely voluntary.

When referencing the four charts in the previous sections regarding the FPRW, it is undoubtedly apparent that even some of the leading and largest developed states within the international system have failed to ratify these *fundamental* rights. Granted, by virtue of a state's membership within the ILO, it is obligated to recognize and safeguard these FPRW, yet the absence of ratifications by states suggests an intrinsic weakness within its national authority.

With the forthcoming century's workers being primarily supplied by the BRICS and other developing countries, it is crucial that attention is given to the labor rights within these states. Therefore, the following chapter will be dedicated to the analysis and study of labor rights as demonstrated by China's involvement in international politics and diplomacy by virtue of China's increased presence in Africa. As the self-proclaimed leader of the developing world and the proposed largest world economy by 2030, China's amplified role on the African continent is of the greatest importance. Through specific Ghanaian and Zambian case studies, the BRICS' emphasis on the RTD will be contextualized with China's role in the evasion of labor rights per a developmental agenda.

## 4 | CHINA IN AFRICA

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The BRICS have, by way of their increased cooperation with one another, increased their presence within the economic and political elements of the developing world. For example, much of the African continent, home to the world's highest number of developing states, currently possesses a strong relationship in regard to the BRICS states. As one recent Reuters article claims, the "BRICS are now Africa's largest trading partners and its biggest new group of investors" (*Reuters* 2013). As the self-proclaimed leader of the BRICS, China has subsequently reinforced its role as the guiding force in the multilateral cooperation of the developing world. In 2011, a senior Chinese official claimed that, "the BRICS countries are not only committed to their own development, but also to the development of all of the countries and the whole world" (FOCAC "Exchanges & Dialogue" 2011). Retrospectively, this statement foreshadowed the 2013 announcement regarding the creation of the BRICS New Development Bank. With this, we see the institutionalization of the BRICS' economic and political power for the support of the RTD and "the purpose of mobilizing resources for infrastructure and sustainable development projects in BRICS and other emerging and developing economies" (Fortaleza Declaration 2014). Given this, we see the pursuit of development become the cornerstone of the BRICS' cooperation and multilateral discourse within the developing world. But how do the BRICS states demonstrate their focus on the developing world and the RTD in relation to the existing international structure? In other

words, how is this focus on the RTD manifested within contemporary international politics, and what, if any, are the implications of these practices on the developing world and existing human rights norms?

This final chapter will seek to address this phenomenon by focusing on China's leadership and economic role within the developing African states. In what follows, I will explore how the RTD discourse is used by China in justifying its economic ventures on the African continent and examine the impact China's involvement in African states has had on labor practices and conditions. The first section will provide a brief summary of the current status of labor rights in China in order to contextualize its multilateral actions that are discussed in the sections that follow. The proceeding section will be dedicated to the historical, economic, and political aspects of China's involvement in Africa, with a strong focus on the development discourse used by Chinese officials. The nature of China's diplomatic relations with African states will be examined as well, specifically as they relate to China's failure to require any human rights-based conditionalities on their investments. And finally, this chapter will conclude with case studies on the labor conditions reported within Chinese-owned companies in Ghana and Zambia. The abusive labor practices present within two recent Ghanaian infrastructure projects and one influential copper mining corporation in Zambia will provide evidence that the focus on the RTD promoted by the BRICS undermines the importance of individual rights.

## I. THE SITUATION OF LABOR RIGHTS IN CHINA

Before delving into the labor practices of the Chinese-owned businesses in Ghana and Zambia, it is important to first contextualize these practices with a brief background on

the labor conditions within China. To demonstrate such, it will be necessary to first expose the varying perceptions that exist within China regarding human rights.

Chinese authorities have often asserted that civil and political rights (CPR) should not be prioritized over economic, social, and cultural rights (ESCR). In this regard, China has claimed that “ESCR are achieved through economic development and investment, and deviations from an economic growth path for the sake of CPR are not justifiable” (Condon 2012, 7-8). The RTD debate discussed in the first chapter is illustrative of the Chinese authorities’ perceived hierarchy within the existing rights discourse by prioritizing ESCR over CPR. Given these sentiments, China has correspondingly expressed “a strong conviction of the non-universality of human rights” (Condon 2012, 8), or what it claims as a close alignment with the “Asian values” thesis promulgated by former Singaporean Prime Minister, Lee Kuan Yew (Elgin 2010). This “Asian model,” expounded on by the former Prime Minister in a 1994 interview with Fareed Zakaria, claims that “Eastern societies<sup>10</sup> believe that the individual exists in the context of the family. He is not separate or pristine. The family is part of the extended family, and then friends and wider society” (Zakaria 1994, 113). In other words, the “Asian values” argument claims that differences exist between the principles deemed important by the East Asian region and those emphasized by the Western world. As rationalized by Lee Kuan Yew, East Asian states place focus on the community and family, while Western states emphasize the individual – a belief that has been ingrained within the international structure as the cornerstone of the human rights regime. Therefore, because of these sentiments, China claims that it “do[es] not require

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<sup>10</sup> Lee Kuan Yew averred that the term “Eastern societies” only encompasses Korea, Japan, China, and Vietnam. The Southeast Asian region does not possess the same “Asian model,” though does share some similarities.

international human rights guarantees that emphasize individual civil and political rights” (Brown & Sriram 2008, 252). From this argument, two assumptions can be made: 1) since China places more emphasis on ESCR, the RTD is perceived as more important than CPR; and 2) the “Asian values” emphasis on the community over the individual contextualizes China’s emphasis on the RTD, which places the right of the state over the right of the individual. Yet how does this “Asian values” system impact the realization of human rights within the borders of China? In other words, with the right to work being included within Articles 6 and 7 of the ICESCR and thus classified as an ESCR, in what ways does China recognize the existence and importance of labor rights?

Due to the labor regime’s inclusion within the framework of the ESCR discourse, China hypothetically should, by association, recognize labor rights as vital to its community. That being said, domestic circumstances and labor conditions tend to suggest otherwise, as core international labor standards are often flouted and disputed by Chinese authorities and management. With China’s first labor law enacted in 1994, it is evident that the existence of labor rights within Chinese borders has not been of the utmost importance. It was not until this 1994 law that basic labor rights such as employment contracts, rest days, wages, dismissals, layoffs, working hours, health and safety were finally stipulated and recognized by Chinese authorities (Yaw Baah & Jauch 2009).<sup>11</sup> In 2008, the new Labor Contract Law and the Labor Disputes Conciliation and Arbitration Law, intended to update the 1994 statement by ensuring that “every employee should have a contract that stipulates all the workers’ rights and entitlement, failure of

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<sup>11</sup> Chinese authorities have since updated the 1994 labor law by instituting the Labor Contract Law and the Labor Disputes Conciliation and Arbitration Law in 2008.

which will compel the employer to pay twice the compensation to the workers” (Yaw Baah & Jauch 2009, 57).

In terms of China’s domestic labor discourse, it is important to first contextualize these circumstances by referencing China’s involvement within the global labor regime. Regarding the core global labor standards outlined by ILO Conventions, China has ratified only 25 of the total 189, whereas highly developed countries such as France and the UK have ratified 125 and 87 respectively. That being said, we cannot solely rely on the number of Conventions a state has ratified to unequivocally demonstrate its adherence – or lack thereof – to global labor standards. To that effect, it should be noted that the US has ratified only 14 of the 189 Conventions, a significantly less amount than almost every other nation in the world. As explained in chapter three, the US often claims that its failure to ratify many Conventions is due to its federal system, well-established national policies, and membership within the ILO. Nevertheless, in regard to China’s position within the global labor regime, of the eight core Conventions of the FPRW outlined in chapter three, China has failed to ratify four – the two forced labor and the two freedom of association Conventions (Nos. 87, 98, 29, and 105).

Like the US, China also offers explanations – though quite different – as to why it has failed to ratify many of the ILO Conventions, specifically those related to forced labor and freedom of association. In regard to the former, China’s decision to not ratify the two Conventions on forced labor is chiefly due to their inherent incompatibility with China’s prison labor and penal system (Yaw Baah & Jauch 2009). Known as Labor Reform Camps (LRC), this extensive network within the Chinese penal system addresses and involves forced labor as a means of reformation for criminals and political dissidents

(Koehn 2010). What originally began as system for removing political opposition while simultaneously contributing to the country's economic performance, these camps subject criminals to at least twelve hours of intensive laborious work every single day. Regardless of whether or not these criminals have performed a petty crime or have intently shared political dissidence, these camps require the use of forced labor as a means of punishment, which is a direct violation of Article 1 of ILO Convention No. 105. Forced or compulsory labor should not be used "as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system" (Art. 1). And while Chinese authorities have recently made strides to improve the conditions surrounding these camps, they still remain opposed to ratifying the two core forced labor Conventions.

In terms of freedom of association, China has rejected the two Conventions due to China having only one legal trade union – the government-recognized All-China Federation of Trade Unions (ACFTU). With the largest membership of any trade union in the world, the ACFTU was formed in 1925 as a close partner with the Chinese Communist Party and the Communist Red International. Since then, ACFTU as continued identifying itself with the government as a "bridge and bond linking the Party and the masses of the workers and staff members, an important pillar of the state power of the country, and the representative of the interests of the trade union members and workers and staff members (ACFTU Constitution 1998). Yet while the ACFTU claims that its objectives are defending workers' rights, educating workers, promoting a socialist market economy, and participating in public affairs, many Chinese citizens see it merely

as an extension of the government. In fact, many agree that ACFTU “plays no supportive role in the direct action of workers” (Yaw Baah & Jauch 2009, 63). For this reason, the two core Conventions on the freedom of association will not be ratified by China in the foreseeable future.

China’s failure to ratify four of the eight core Conventions, however, does not mean that China remains outside the existing human rights regime. China is a signatory to many critical multilateral statements that encompass discourse regarding human rights, and especially those inclusive of labor rights – the UDHR, the ICESCR (ratified in 2001 with an exemption on the freedom of association), and the ICCPR (China is a signatory, but the People’s Congress has not officially ratified it due to the emphasis it places on the importance of CPR). Given this context, focus will now be given to the historical, economic, and political circumstances for China’s involvement in Africa.

## II. THE HISTORY, ECONOMICS, & POLITICS OF CHINA IN AFRICA

Though China’s involvement in Africa is a phenomenon that has only recently received widespread international attention, modern Chinese-African interactions date as far back as 1956, when China and Egypt first began diplomatic relations. Contemporary Chinese-African diplomacy, however, began in 2000, with Beijing’s invitation to African ministers to establish the first Forum on China-Africa Cooperation (FOCAC) (Chidaushe 2007). This multilateral platform, created for the collective and pragmatic cooperation among African states and the East Asian giant, is meant “to further strengthen the friendly cooperation between China and Africa under the new circumstances, to jointly meet the challenge of economic globalization, and to promote common development”

(Jansson 2009). At its inaugural meeting in Beijing, a framework was created for the mutual benefit and common developmental interests that would soon be embedded within Chinese-African diplomatic relations.

At the 2006 FOCAC summit, government personnel and state leaders from China and 48 African countries established a number of detailed commitments that would further enhance their bilateral relations. These commitments included: the doubling of China's development aid to Africa; the establishment of a \$5 billion China-Africa development fund; non-tariff treatment of over 440 African exports; building of 30 hospitals and schools; doubling the number of scholarships for Africans by 2009; and a number of obligations dedicated to the overall development of the African continent (Jansson 2009). In essence, the FOCAC characterized Chinese-African relations with two overarching objectives: 1) to strengthen consultation and expand cooperation with relevant African states; and 2) to promote political dialogue and economic cooperation and trade with African countries in order to achieve mutual reinforcement and common development" (Ampiah & Naidu 2008, 7).

Since its inception, the FOCAC has become the "main vehicle for shaping and managing China's cooperation framework with Africa across a range of technical, economic, and political platforms" (le Pere 2008). Yet the success this multilateral platform has had in establishing diplomatic relations between Africa and China has not acted alone. The actions and sentiments of the FOCAC have been firmly reinforced by the 2006 "China's African Policy." By first addressing the ever-changing global landscape, this government document establishes the foundations for the many components of Chinese-African relations, particularly in regard to the promotion of

development as a pivotal characteristic of their bilateral cooperation. We see this commitment to development within the text, claiming that “safeguarding peace, promoting development, and enhancing cooperation” are among the common desires of all people in today’s world community (China’s Africa Policy 2006). Through this text, China recognizes itself as the “largest developing country in the world” and juxtaposes the African continent as the home to the “largest number of developing countries” (China’s Africa Policy 2006). It is for this reason, Chinese authorities claim, that the mutual development of both regions is necessary as a conduit for “world peace and development” and thus the cornerstone of Chinese-African diplomacy (China’s Africa Policy 2006). Therefore, a coherent policy on China’s involvement in Africa is further articulated as a strategic partnership and mutual commitment that has resulted in, as previously mentioned, high-level exchange visits, consultation for trade and investment, resources, infrastructure, debt relief, science and technology (Chidaushe 2007).

“China’s Africa Policy” components further enhance the interaction among African states and China by way of focusing on the principles of the RTD. These notions are manifested in mutually beneficial economic and diplomatic interests among states considered within the developing world.

The Chinese government encourages and supports competent Chinese companies to cooperate with African nations in various ways on the *principles of mutual benefit and common development* [my italics], to develop and exploit rationally their natural resources, with a view to helping African nations to translate their advantages in resources to competitive strength, and realize sustainable development in their own countries and continent as a whole (China’s Africa Policy 2006).

The statement above notes that Chinese-owned companies have recognized the opportunities this partnership presents within African states and has capitalized on the availability of natural resources and cheap labor via foreign direct investment (FDI). Thus we see this mutually beneficial cooperation manifested within China's exploitation of Africa's natural resources, and, on behalf of Africa, increased utilization of its own resources for the realization of sustainable *development*.

Purposing China-Africa relations for development purposes has been reiterated in a later statement by the FOCAC: "China and Africa match one another for development and offer each other important opportunities for deepening mutually beneficial cooperation" (FOCAC News 2015). But in what ways is this notion of mutually beneficial cooperation significant to Chinese-African relations? Furthermore, how are these bilateral relations pursuing and supporting this notion of the RTD? Some profess that the concept of "mutually beneficial cooperation" is simply a preemptive argument by China in order to combat Western state' claims that the East Asian giant is engaging in "imperialistic-like" ventures in the African continent. Chinese and African authorities, however, approach this cooperation as a conduit for the realization of the RTD via a partnership between the largest developing state (China) and the largest community of developing states (Africa).

As previously mentioned, this realization of the RTD is the cornerstone of the BRICS' joint statement within the Fortaleza Declaration, claiming that they share a joint "purpose of mobilizing resources for infrastructure and sustainable development projects in BRICS and other emerging and developing economies" (Fortaleza Declaration 2014). And this objective has certainly been demonstrated within Chinese-African relations. In

recent years, this cooperation between developing states has manifested itself within China's pursuit of valuable resources – necessary for the subsistence of its massive population – and the influx of Chinese FDI into African states – necessary for economic and infrastructural improvements. A convincing example of this phenomenon would be the newly erected, 100 meter high African Union (AU) Headquarters in Addis Ababa, Ethiopia – a \$200 million project that was entirely funded by the Chinese government as a gift to the AU. The impressive infrastructural feat is symbolic of “China's determination to boost its trade with Africa and increase its influence right across the continent” (*BBC News* 2012). Upon its completion, Jia Qinglin, China's most senior political advisor, claimed that, “The towering complex speaks volumes about our friendship to the African people, and testifies to our strong resolve to support African development” (*BBC News* 2012). Simply put, the foundation of Chinese-African relations involves China receiving invaluable African natural resources in exchange for investment that promotes the realization of sustainable development.

In a February 2015 FOCAC press release on the 24<sup>th</sup> African Union (AU) Summit, Zhang Ming, Vice-Minister of Foreign Affairs and Special Envoy of the Chinese government, references this sentiment and its role within Chinese-African bilateral relations by stating that the “China-Africa cooperation is presenting stronger momentum and [that] the two sides can move ahead together for development” (FOCAC News 2015). This statement holds especially true when contextualized with recent economic circumstances. In 2013, the Chinese government published an update to the 2006 White Paper entitled the “China-Africa Economic and Trade Cooperation,” in which the changing global landscape, the recent rapid economic growth, and the latest

developmental advances between China and Africa were reflected upon. “Africa, a continent full of hope and thirsty for development, has become one of the world’s fastest growing regions, while China, the world’s largest developing country, has maintained forward momentum in its development” (China-Africa Economic and Trade Cooperation 2013). Amidst the economic recession that had plagued the global economy, China-Africa trade development continued on a track of rapid momentum and expansion.

In 2009, China became Africa's No. 1 trade partner. In the following two years, the scale of China-Africa trade expanded rapidly. In 2012, the total volume of China-Africa trade reached US\$198.49 billion, a year-on-year growth of 19.3%. Of this, US\$85.319 billion consisted of China's exports to Africa, up 16.7%, and US\$113.171 billion was contributed by China's imports from Africa, up 21.4%. Total China-Africa trade volume, China's export volume to Africa[,] and China's import volume from Africa [have] all reached new highs (China-Africa Economic and Trade Cooperation 2013).

As imagine, this mutually beneficial cooperation has been met with strong support and by both the Chinese and African governments. The influx of Chinese companies into the Africa addresses the infrastructural problems that plague the continent while simultaneously promoting sustainable development. China, in return, is receiving necessary natural resources for the sustenance of its population and boosting trade across the developing world. That being said, these strong sentiments of support are n universal within the international system. Instead, these actions have been met with strong opposition by Western states and unwavering disapproval by human rights networks, for the China’s activity in Africa has challenged the “Western aid status-quo” by employing a “little or no strings attached” approach to investment and aid (Condon 2012, 5).

Embedded within the notion of mutually beneficial cooperation, the Chinese development approach in Africa has been a “long-held theoretical [debate] in the human rights community” (Condon 2012, 5). Conventionally, the Western approach to loans and aid generally imposes conditions related to the promotion of democracy, corruption reduction, and a respectable human rights record. However, China has established its bilateral cooperation with Africa on the principles of nonintervention and respect for national sovereignty. Chinese authorities claim that their development approach

...respects African countries’ choice in political system and development path suited to their own national conditions, does not interfere in internal affairs of African countries, and supports them in their just struggles for safeguarding independence, sovereignty, and territorial integrity (Condon 2012, 6).

These beliefs, strongly advocated for by China, are rooted within the Five Principles of Peaceful Coexistence, a 1954 treaty between India and China that understood diplomatic relations as the following: 1) mutual respect for each other’s territorial integrity and sovereignty; 2) mutual non-aggression; 3) mutual non-interference in each other’s internal affairs; 4) equality and mutual benefit; and 5) peaceful coexistence (Ampiah & Naidu, 2008). Of these, principles one, three, and four are particularly relevant when contextualized with Chinese-African diplomacy.

On the basis of principles one and three – “mutual respect for each other’s territorial integrity and sovereignty” and “mutual non-interference in each other’s internal affairs” – China advocates for a “no-strings attached” based assistance to the African continent. This specific approach “circumvents the conditions upon which assistance from the West and international financial institutions is predicated” (Brown & Sriram 2008, 251) by advocating for a “horizontal rather than a top-bottom approach”

(Chidaushe 2007, 108). In other words, while the West sees itself in a paternal role with Africa, China instead views itself as a business partner. The West emphasizes “liberalization, privatization, structural adjustment, and good governance” as preconditionalities, whereas China only requires one thing – the recognition of Taiwan as a part of China. In a statement by the FOCAC, China “fully respects African countries’ rights in choosing their own political systems and road of development independently, and never imposes its will on them” (China’s Assistance to Africa: Irreproachable 2011). In other words, China’s diplomatic and economic relations with an African nation are blind to any and all internal situations that may be occurring – particularly human rights abuses – based on the principle that another country should not involve itself within the internal affairs of another. Furthermore, China promotes the belief that every state has the ability to pursue development in the way it deems necessary and appropriate for its social, historical, economic, political, and cultural context.

As one can assume, this has posed significant problems for the existing international human rights regime. By not requiring conditionalities surrounding measures of good governance, China has in fact precipitated notorious abuse and violations that undermine the norms of the existing human rights regime. China’s investment in Africa focuses on the economic development of that African state, and, by nature, emphasizes the right of the state over the individual. As a result, Western states have offered a large amount of criticism towards China by calling it a “rogue” state by not only failing to comply with international law, but disregarding the importance of democracy, anti-corruption campaigns, and respect for the established human rights

norms (Ampiah & Naidu 2008, 3). In response to this increased criticism, China has offered a lengthy rebuttal on the FOCAC website:

...China's "no-string attached" assistance to Africa in recent years has been frequently subjected to criticism from some Western politicians, media and NGOs, who maintain such a principle is de facto support to "rogue" or "failed" states and impedes Western efforts promoting democracy, human rights and fighting autocracy and corruption. Although such criticism sounds somewhat plausible at first, when dug deeper, one would find it quite far-fetched. A country's development mainly depends on its own efforts. More importantly, "democracy", "human rights" and "good governance" are not mirages hanging over a beach, nor can they be realized in a short span of time with high-sounding slogans and propagandizing. They must be built on the basis of economic development, better education level and increased legal and democratic awareness. Therefore, China is in fact consolidating the economic and human foundation for Africa to achieve democracy and good governance through vigorous efforts of boosting the trade (China-Africa trade alone contributed to 20% of Africa's economic growth in recent years), helping African countries develop infrastructure, improving the living standard of African people, reducing poverty, and offering human resources training to Africa on a large-scale. After all, nonetheless, Africa's development road is up to the choice of the African people (China's Assistance to Africa: Irreproachable 2011).

Therefore, China rebuts the Western criticism by claiming the importance of the RTD. China argues that requiring African nations to comply with human rights norms and democratic political systems in order to receive aid fails to recognize the fundamentality of the RTD. In essence, China claims that pursuing the RTD will allow the realization of democracy, good governance, and other human rights, which is the primary reasoning behind not only China's belief in the fundamentality of the RTD, but the other BRICS states' as well.

Given this, the following section will be dedicated to examining the realization of this RTD via Chinese-owned businesses in Ghanaian infrastructure projects and Zambian copper mines. The labor conditions that are exposed by workers and related personnel will demonstrate how the RTD emphasizes the right of the state over the individual. As a result, the existence of new norms will be made present within Chinese-African relations.

### III. PURSUING THE RTD IN AFRICA

As previously discussed, according to China's official policy, its involvement in Africa is based on mutual cooperation, equality, and respect for the internal affairs and sovereignty of the host country. As a result, investment opportunities are presented with no conditionalities and a complete disregard for the host country's political or economic environment. Consequently, abusive regimes with deplorable human rights records receive investment opportunities that further perpetuate their unacceptable practices. As Patrick J. Keenan makes clear, "unconditioned wealth, whether it comes in the form of unencumbered investment from China or from discovery of a valuable natural resource, can create or exacerbate incentives that increase the prospect of human rights abuses" (Keenan 2009, 6). Although Keenan emphasizes the abusive practices of African states that have resulted from investments and aid without conditionalities, such abuse is not exclusive to African nations. China's complete disregard for political conditionalities such as human rights has also permeated into the operations and labor conditions of Chinese-owned businesses in Africa. This paradigm exists to such an extent that "the Chinese companies operating in Africa do not adhere to the ILO Conventions and basic national laws governing labor and industrial relations... [causing] Chinese firms [to] flout

basic labor laws...” (Yaw Baah & Jauch 2009, 44). While China may claim that its relationship with Africa is based on mutual cooperation, equality, and respect for sovereignty – which, to some degree, does carry a small amount of truth – the overwhelming characteristic of Chinese-owned businesses in Africa is their poor working conditions and flagrant disregard for the rights established within the global labor regime.

All across the African continent, Chinese employers routinely violate the ILO Conventions that comprise the core labor standards outlined by the FPRW. “Studies in many African countries consistently show that there is a very high tendency for Chinese companies to ignore internationally-recognized ILO labor standards, including those that have been ratified by the country in which they operate” (Yaw Baah & Jauch 2009, 72). Workers’ abilities to join trade unions, to bargain collectively, to be protected from discrimination, and to be free from instances of compulsory labor have been mostly ignored by Chinese managers. There are workers who recount times when they were “locked-in” their factory, forcing them to work and stripping them of their basic right to freedom. Union-bashing strategies and the suppression of collective bargaining are commonplace at most Chinese companies, hindering the right of workers to organize and express concern regarding their own working conditions. Discrimination ensues as female workers often find their employment terminated once the management discovers they are pregnant. And managers pay Africans workers substantially less than their Chinese counterparts (Yaw Baah & Jauch 2009).

At the root of much of this labor rights abuse is a common feature of working conditions in Chinese-owned businesses – the use of “casual workers.” Casual workers, or Africans who do not have contracts or any record of their employment, provide

Chinese management the ability to sidestep much of the labor standards and expectations due to the lack of evidence that such workers even exist. As a result, these workers are subjected to arbitrary determination of their wages and innumerable grave working conditions. Unfortunately, due to their status as “casual workers,” these individuals have no union representation and no ability to fight for their rights. In fact, due to their lack of contractual agreements, many of these workers are not even aware that they possess certain labor rights. Without a legitimate contract there exists no protection under the existing labor laws (Yaw Baah & Jauch, 2009).

This section will be dedicated to two case studies on labor conditions in Chinese-owned companies in Africa. The first case study will look at two specific projects in Ghana that were completed with the help of Chinese funds – the Bui Hydroelectric Power Project (Bui Dam Complex) and the Essipon Stadium Project. These projects not only received massive amounts of funds from Chinese companies to aid in their full completion, but were also under the management and supervision of Chinese-owned companies. This specific case study will heavily rely on a 2009 report and associated field interviews conducted by Anthony Yaw Baah, Kwabena Nyarko Otoo, and Edward Fokuoh Ampratwurm. The second case study will be focused on the copper-mining industry in Zambia, specifically those under the management of the China Non-Ferrous Metals Mining Corporation (CNMC). This specific case study will depend on the field interviews and observations included within the 2011 Human Rights Watch report “You’ll Be Fired if You Refuse.”

Together, these case studies on Ghana and Zambia will illustrate how China has utilized its investments in African states to pursue the RTD and consequently disregard

well-established global labor standards. This phenomenon can be witnessed with China's decision to not impose conditionalities regarding human rights practices and the subsequent abusive practices that ensue within Chinese-owned companies in Africa.

### A. GHANA

China-Ghana relations extend as far back as 1960, immediately following Ghana's independence from Britain (Yaw Baah, Otoo, & Ampratwurm 2009). Since then, China and Ghana have maintained political and economic diplomatic endeavors that have continued to strengthen in recent years (Tsikata, Fenny, & Aryeety 2008). First and foremost, the diplomatic cooperation between the East Asian giant and the West African gulf state is wholly based on respect for each other's territory and sovereignty, a previously discussed key principle of Chinese diplomacy. Additionally, a critical component of Chinese-Ghanaian diplomatic cooperation is Ghana's adherence to the "One China Policy" – a bilateral agreement that Taiwan is an inalienable part of the People's Republic of China (Tsikata et al 2008). This diplomatic prerequisite is not unique to Ghana, however, as China refuses to engage with any country that recognizes Taiwan as a sovereign state. In Africa, only four states officially recognize Taipei and thus have no diplomatic relations with China – Swaziland, Burkina Faso, São Tomé and Príncipe, and Gambia, though Gambia began severing diplomatic ties with Taiwan in 2013 for what many believe to be a strive for Chinese-Gambian relations (Al Jazeera 2013).

Another component of Chinese-Ghanaian relations is that of aid and debt relief, which in recent years has been a substantial part of these two countries' cooperation.

Being an integral developmental partner to Ghana, China has offered an increased amount of “aid comprising loans, grants, and technical assistance” (Tsikata 2008, 6) to such an extent that China even agreed to absolve \$25 million of Ghana’s debt in 2007. Most of this aid given to Ghana is intended for the funding of wide scale infrastructure projects.

In terms of economic cooperation, China is one of the world’s leading investors in the Ghanaian state, causing trade between the two countries to skyrocket in recent years (Yaw Baah et al 2009). More specifically, the areas of agriculture and infrastructure have witnessed a recent surge in investment and activity among Chinese-owned business. And, as mentioned in the previous paragraph, infrastructure is arguably the area of greatest cooperation between China and Ghana with a multitude of construction projects having been completed, in the process of being completed, or are planned to be completed (Tsikata et al 2008). Appropriately enough, the two Ghanaian projects analyzed in this subsection are considered enormous infrastructure investments and undertakings that have been made possible only by China-Ghana cooperation. Yet while these points just made suggest a fruitful relationship between China and Ghana, there exists a “general perception in Ghana that Chinese employers do not respect labor rights” (Yaw Baah et al 2009, 97). The discourse used by workers regarding labor conditions during the construction of the Bui Dam Complex and the Essipon Stadium Project will be expounded on in the next two subsections.

### i. THE BUI DAM COMPLEX

Nestled in the Bui Gorge of the Black Volta River, the Bui Hydroelectric Power Project (henceforth referred to as the Bui Dam Complex) is a 400-megawatt hydroelectric project constructed with hopes of propelling the Ghanaian economy to middle income status by 2015 (Yaw Baah et al 2009). This project, considered to be the single largest Chinese-funded project in Ghana, is under the management of the Chinese state-owned SinoHydro Corporation Limited, with additional supervision offered by the Ghanaian Bui Power Authority (BPA) – a group whose purpose is to ensure that the construction process correlates with the pre-established contract (Yaw Baah et al 2009). Although the Bui Dam Complex was completed in 2013 and construction has since ceased, the labor conditions and abuses that emanated during the construction process cannot be disregarded, particularly as they relate to the cooperation between the Ghanaian government and SinoHydro.

All field interviews, as indicated by Yaw Baah et al, were conducted with officials at the Chinese embassy, SinoHydro headquarters, and the BPA. More importantly, numerous interviews were conducted with Ghanaian workers, of which almost all were “casual workers.” In this regard, almost all Ghanaians working on the Bui Dam Complex did not have a contract of employment and were thus considered to be only temporary – once these workers had completed the work they were assigned, they were to be dismissed from their duties. Unfortunately, many workers were not informed that this was the nature of their employment (Yaw Baah et al 2009). Therefore, when discussing the labor conditions of the Bui Dam Complex workers, it is important to understand that most workers could not rely on the enforcement of labor laws for their

protection as they did not have contracts, record of employment, or strong union representation to substantiate their claims. Even though Ghanaian law requires that employers “regularize the employment of casual workers after six months of continuous employment” (Yaw Baah et al 2009, 100), Chinese management made no effort to abide by it. Instead, the Chinese employers relished in deliberately not signing contracts with their workers, thus allowing them to fire workers at their choosing and preventing them from joining or forming any trade unions. In response, the “the resident engineers of the [BPA] attempted to fill the void created by the absence of union by taking up concerns of the workers with the Management of SinoHydro” (Yaw Baah 2009, 104), yet were immediately met with orders by Chinese superiors to cease all interventions.

The concept of freedom of association and the right to collectively bargain is often a farfetched idea in Chinese-owned companies. During the field interviews at the Bui Dam Complex in July 2008, workers still had not formed or joined a trade union even though the construction process was more than two years old. According to Yaw Baah et al, many workers recount their initial attempts to join a trade union and were only met with “open intimidation and victimization” by their Chinese managers (Yaw Baah et al 2009, 104). In fact, when BPA attempted to address this issue as part of their primary duties, the Chinese responded that such actions were “unnecessary and interfering in the affairs of the Chinese” (Yaw Baah et al 2009, 104). The violation of the Ghanaian workers’ rights to associate themselves and bargain collectively for their opinions left these workers without any channel through which their concerns could be recognized. As a result, SinoHydro’s brazen violations of labor rights continued. Ghanaian workers were quoted in saying:

We know that forming the union will help us. Please Ghana Trade Unions Congress (TUC), what has happened to the collective bargaining certificate? We need it so that we can negotiate with the Chinese (Yaw Baah et al 2009, 105)

I have been telling my colleagues to be patient and wait for TUC, once they come in the Chinese can no longer cheat us (Yaw Baah et al 2009, 105)

Finally, due to the inability of SinoHydro to handle the increased agitation of the workers the corporation allowed minimal union representation by the workers.

The right to freedom of association and collective bargaining is a fundamental enabling right by which all other labor rights can be realized. Therefore, the SinoHydro management's flagrant disregard for the right to freedom of association throughout the construction process insinuates that other fundamental labor rights were also violated. For example, Ghanaian law requires that normal working hours consist of eight hours a day, forty hours a week – what is considered a conventional work week in most of the world. If, for any reason, overtime is needed, workers must, by Ghanaian law, volunteer their time, though an exception exists if “the nature of the work requires compulsory overtime work in order to be profitable” (Yaw Baah et al 2009, 100). That being said, very rarely did SinoHydro workers only work eight hours a day. In fact, SinoHydro itself reported that all workers were required to work *at least* nine hours a day and that overtime was compulsory on the weekends and public holidays. Furthermore, the security guards of the Complex were in fact required to work twelve hours shifts, seven days a week, and were not paid for the extra hours that would normally be considered overtime. Workers in all aspects of the Bui Dam construction process often complained that they were in fact being compelled to work – a direct violation of the fundamental right to be free from forced labor. If workers were to refuse overtime work, miss work

for any reason whatsoever, or ask for sick leave due to a serious illness, they could expect their wages to be reduced or their employment completely terminated altogether. A Ghanaian worker is quoted in saying:

If, for some reason, you are not able to come to work on Saturday or Sunday, then you have to be prepared for your dismissal on Monday (Yaw Baah et al 2009, 101)

Along with the long hours of work and lack of collective representation, Yaw Baah et al discovered that perhaps the most egregious of labor violations within the Bui Dam Complex was the unsatisfactory pay level of the workers. Although it was not below the national Ghanaian minimum wage, when contextualized with the expectations and environment in which these workers were placed, as well as the rise in the cost of living, the pay grade was exceptionally low and unreasonable. In the same vein, Bui Dam site workers reported that workers across the board were receiving different wages for the same work, all based upon their relationship with the management and whether or not they were Chinese or African (Yaw Baah et al 2009). Such practices are in direct violation of ILO Convention 111 – of which China and Ghana are both signatories to – that states any distinctions made between workers based on “race, color, sex, religion, political opinion, national extraction, or social origin” are unacceptable (No. 111, Preamble).

## ii. THE ESSIPON STADIUM PROJECT

Essipon Stadium is one of Ghana’s finest sport facilities, primarily used for soccer matches and the home field of Sekondi Hasaacas FC. Located in the western region of Ghana at Sekondi-Takoradi, the Essipon Stadium is one of two stadiums that were funded

by the Chinese construction company, Shanghai Construction Group (SGC) (Yaw Baah et al 2009). Like the Bui Dam Complex, this stadium's construction has been completed (2007) and was a joint cooperation between China (SGC) and Ghana (Bank of Ghana Limited), with Chinese funding comprising approximately 10% of the final project. Nonetheless, despite China's comparably small investment, the SGC was the responsible entity for its construction and the employment of workers, who, as one could imagine, were all casual workers with no company contracts (Yaw Baah et al 2009).

Per the previous section, casual workers were, in the eyes of the Chinese, employable due to the temporary and short-term nature of their employment. If, for any reason, a problem with a worker emerged, SGC could easily dismiss the worker and find an immediate replacement. Like SinoHydro, this casual worker phenomenon gave way to a work environment that was hostile towards trade unions and collective representation. On the Essipon site, no trade union existed and many workers were unaware of its meaning and significance. Those who did know what a trade union was, however, said that "they could not have thought of joining or forming one because of fear of victimization and possible dismissal" (Yaw Baah et al 2009, 109), a sentiment also shared with many workers of the Bui Dam Complex.

Without union representation, the working conditions on the Essipon Stadium construction site were not only poor, but in direct violation of several core ILO standards. In fact, conditions were so poor that when Yaw Baah et al asked workers to compare their current conditions at SGC with those of previous workplaces, the workers "unanimously agreed that conditions in their previous companies were better than those at Shanghai Group" (Yaw Baah et al 2009, 108). For example, 73% of those interviewed

said that they worked at least 56 hours a week instead of the “legal” 40. Each worker also claimed that they were never forced into working overtime, despite the fact that working 56 hours a week indicates otherwise. In reality, these workers did not believe they were involved in overtime work simply because, as casual workers, they were not made aware of the fact nor compensated for it. Instead, these workers were under the assumption that a normal workweek consisted of 56 hours rather than 40. This practice disregards Article 4 of ILO Convention 29 on the Abolition of Forced Labor – of which China is *not* a signatory and Ghana is – that states forced or compulsory labor shall not be used for “the benefit of private individuals, companies, or associations” (Article 4, § 1), which includes the SGC. Moreover, an element of discrimination existed on the Essipon Stadium Project site as the SGC preferred to hire Chinese migrants to the native Ghanaians – of the 230 total employees working on the Project, 150 (65%) were Chinese (Yaw Baah et al 2009).

Yaw Baah et al make an extensive claim that, based on their findings, “the Chinese management [is] taking advantage of the ignorance of their mostly illiterate and unskilled workforce. The employment of a large proportion of unskilled workers in their workforce may therefore be deliberate” (Yaw Baah et al 2009, 114). There is a blatant disregard for established ILO Conventions regarding the freedom of association and collective bargaining, freedom from forced labor, and the freedom from discrimination in recent Chinese-funded infrastructure projects in Ghana. Of these labor rights abuses, almost all are deeply rooted in the casualization of workers, thus excluding them from nearly all forms of worker protection. Generally speaking, without allusion to any particular Chinese-owned company, there is a strong inclination amongst Chinese

management against the concept of worker unionization and collective bargaining. The General Secretary of the construction union in Ghana is quoted in saying that “they [the Chinese]...prefer to deal with individual workers” (Yaw Baah et al 2009, 116). With regard to working conditions, wages, discrimination, and forced labor, this construction union contends that, “the Chinese appear to have the notion that they can operate in Ghana with whatever system of labor relations [that exists] in China. They are therefore very reluctant to adhere to existing labor relations practices in the country” (Yaw Baah et al 2009, 116). More importantly, Chinese-owned companies are not only in violation of local Ghanaian labor laws, they are in fact in violation of a number of core ILO Conventions included within the FPRW.<sup>12</sup> Whereas Chinese involvement in Ghanaian infrastructure projects has certainly increased the economic output of the African state, there has certainly been a trade-off with respect to the adherence of established ILO labor standards and rights.

## B. ZAMBIA

China-Zambia relations originated during the African liberation wars of the 1960s and 1980s. Zambia, formally known as the British protectorate of Northern Rhodesia, partnered with China for purposes of the training and arming of liberation movements (Ndulo 2008), as well as strong financial assistance (Mwanawina 2008). In the decades since, China has remained fervently committed to the economic development of Zambia – one of the least underdeveloped states in the world – despite its rich mineral wealth (Mwanawina 2008). In a study commissioned by the African Economic Research

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<sup>12</sup> All of the ILO core standards were violated, to some degree, in African nations receiving Chinese investment and in Chinese-owned businesses except the two core Conventions on child labor. In all case studies that I came across, there were never any findings of underage workers or child labor abuse. China is a signatory and has ratified both child labor Conventions.

Consortium (AERC) in 2008, Inyambo Mwanawina makes the claim that Chinese-Zambian relations can be divided into three historical periods: 1) independence struggle (1949-1979); 2) Chinese-African reforms (1979-1999); and 3) the promotion of development goals (1999-present).

From 1949-1979, China's involvement with Zambia began as a support system during the struggle for independence and liberation from the European colonial powers. This support was provided in the form of economic and reconstruction aid, as well as consolidation of national independence. Perhaps one of the most well known cooperative projects between China and Zambia was the construction and completion of the Tanzania-Zambia Railway in 1976. When Zambia failed to receive the necessary Western support for the construction of the line, China stepped-in with an agreement to build the railway. Though there were many doubts from the Western states regarding China's ability to complete such an overwhelming project, the railway was completed in a timely manner, silencing the Western skeptics surrounding China's capability (Ndulo 2008). Like most of China's diplomatic endeavors, the establishment of Chinese-Zambia relations was not without mutual benefit and cooperation. For China, Zambia offered diplomatic missions and support within the international system as the East Asian giant began its global rise (Mwanawina 2008).

The second period, from 1979-1999, is characterized by the political and economic reforms that plagued both China and Africa. In China, the Cultural Revolution ended, bringing profound economic crises and social disarray to most of the population. Deng Xiaoping's economic reforms of the 1980s, known as the "Open Door Policy," emphasized the importance of economic development as an integral part of national

policy. In Africa, IMF- and World Bank-sponsored liberalization programs ran rampant all over the continent, reinforced by intense pressure for the adoption of multi-party democratic systems. In China, chaos and crises arose from the aftermath of the Cultural Revolution, forcing China to adopt an “Open Door” policy that placed economic development at the center of its policies. Then, in 1991, China’s “Going Out” policy targeted Africa as an area of extreme policy concern. Thus, both China and Africa’s circumstances during this period forced a strengthening of the China-Africa relationship. In particular, China-Zambia relations were targeted as a possibility for increased economic and political cooperation (Mwanawina 2008).

Finally, the third and current period (1999-present) is characterized by the pursuit of development on behalf of both China and Zambia. China’s unprecedented rise to global economic preeminence has been necessary and valuable for the promotion of economic development on the African continent. A focus on the Millennium Development Goals, wealth creation, poverty reduction, and peace and stability promotion currently characterize the diplomatic relationship between China and Zambia. In 2007, Zambia became the first African site for China’s special economic zones (SEZ), which later became formally known as the Zambia-China Economic and Trade Cooperation Zone (ZCCZ) (HRW Report 2011). Like the SEZs that exist in China, the SEZs established in Africa are designed to provide “a combination of world-class infrastructure, expedited customs and administrative procedures, and (usually) fiscal incentives that overcome barriers to investment in the wider economy” (HRW Report 2011, 21).

Like many of China's African partners, Zambia's foreign policy and engagement with China is focused on issues related to the many aspects of development. In this sense while China's involvement in Ghana was related to funding infrastructure projects, its involvement in Zambia is in reference to the most important sector of the Zambian economy – copper mining (Ndulo 2008). In general, Zambian development, like elsewhere in Africa, is widely affected by the unavailability and poor quality of human capital (Ndulo 2008). And, as of the 2013 United Nations' Development Program's Human Development Index, Zambia ranked 141 out of 187 countries for levels of human development, which is measured considering the populations' longevity, education, and income (UNDP Human Development Report 2014). Human capital is, as Muna Ndulo makes clear, one of the principle factors affecting development in Africa, and specifically Zambia.

Economic development is achieved through the productive employment of labor and the full utilization of natural resources. The productive employment of labor requires capital and presupposes an increase in the general level of education and the acquisition of technical skills, as well as the formation of a body of capable administrators and entrepreneurs (Ndulo 2008, 141)

Despite the lack of valuable human capital, China's involvement within Zambia is largely due to its mineral-rich land and valuable natural resources. As a result, China has become one of Zambia's top investors with intentions of mutual cooperation, natural resource exploitation, and Zambia economic and human development. Hundreds of Chinese companies have since set up businesses in Zambia, ranging from mining, textile, construction, and agriculture, to service-based industries like restaurants, banking, and medical clinics (Ndulo 2008).

Yet despite Zambia's multiparty democracy and practical environment for investment opportunities (Ndulo 2008), Chinese companies were, according to the Human Rights Watch (HRW) report, the "biggest violator of workers' rights" (HRW Report 2011), particularly in Zambia's copper industry. This section will examine this labor rights abuse and poor working conditions by specifically focusing on the China Non-Ferrous Metals Mining Corporation (CNMC) and its extensive control over daily operations in Zambia's copper industry, as "Chinese-run companies are generally the worst on issues involving health and safety, hours of work, and the right to organize" (HRW Report 2011, 97).

#### i. CHINA NON-FERROUS METALS MINING CORPORATION (CNMC)

Like Ghana's infrastructure and construction industry, the use of casual workers by Chinese companies is also commonplace in Zambia's copper-mining industry. Because of the low level of human development throughout Zambia, Chinese companies like CNMC have "found it easy to fill a number of positions with short-term hires who are generally paid less and not provided the benefits and allowances that regular employees receive" (HRW Report 2011, 45). Yet the labor conditions of CNMC's subsidiaries are often in contradiction with the established labor standards within the FPRW and other ILO Conventions. For example, in April 2005, 46 Zambian workers were killed in an explosion at a CNMC-owned factory that manufactured cheap mining explosives (HRW Report 2011). This tragedy, making international headlines, exposed the unacceptable

and egregious violations of international labor standards that existed – and still exist – within Africa’s Chinese-owned companies<sup>13</sup>.

CNMC’s involvement within the Zambian copper-mining sector began in 1998, with official operations beginning five years later in 2003 (HRW Report, 2011). Like other Chinese-owned businesses in Africa, CNMC is under the management of the State-owned Assets Supervision and Administration Commission (SASAC) of the State Council. The State Council of China is the “highest executive organ of State power, as well as the highest organ of State administration” (HRW Report 2011, 13). Given this, the actions of CNMC can also be considered as a representation of the Chinese government – though it is important to note that not *all* Chinese investment is malignant as some does boast certain potential for “improving economic conditions in Africa” (HRW Report 2011, 14).

The foremost concern regarding labor conditions in CNMC-owned copper mines is regarding unfair and inappropriate wages for workers. This specific concern emanates from the fact that the CNMC base salary is “one-fourth of their competitors’ for the same work” (HRW Report 2011, 24). It should be noted that CNMC does in fact pay their workers more than the monthly Zambian minimum wage (419,000 Kwacha/US\$87 as of 2011). That being said, this pay grade is “insufficient to meet their [workers’] basic needs” and general standard of living (HRW Report 2011, 30). This is especially disconcerting, as across Zambia’s Copperbelt and throughout CNMC-owned mines,

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<sup>13</sup> This section will depend on a widely cited and reviewed 2011 Human Rights Watch report in which HRW gathered extensive information via field interviews and research missions in November 2010 and July 2011. The majority of the report – and the substance of what is used in this section – is based on field interviews conducted with 143 miners at the four CNMC locations, as well as management officials from the Chinese-run mines, the Zambian national trade unions for miners, Zambian government officials, and national and international aid organizations. It is also important to note that while most of the interviews held were of workers within Chinese-owned mines, a small amount of interviews were also conducted in non-Chinese copper mining facilities to provide an appropriate cross-comparison.

workers are required to work under extreme conditions for a long duration of time. “At one extreme, some miners at Sino Metals [a subsidiary of CNMC] described working a 78-hour week, while others described working 365 days a year without a day off” (HRW Report 2011, 75). Evidently, the wages offered by CNMC are not appropriate for the intense working conditions it imposed on its workers.

Not only are CNMC’s wages insufficient for workers’ basic needs and incomparable with those of non-Chinese owned mines, but, as just mentioned, the lengthy hours and extreme conditions the workers are subjected to are irrational. To this effect, miners at CNMC subsidiaries are exposed to harmful chemicals, fumes, and dust for periods of time that far surpass the “normal” 48-hour Zambian workweek. A high-ranking union official for the Zambian National Union of Miners and Allied Workers (NUMAW) is quoted in saying:

Some workers in Chinese mines are forced to work 12 hours or more a day for six days a week...The Chinese want people to work seven days a week and longer hours. It’s one of the most common complaints we receive, but the Chinese refuse to change (HRW Report 2011, 75).

A Zambian worker told HRW researchers about his experience at the CNMC mines:

It gets very tiring, I never see my family. We don’t understand why we can’t have normal hours like the other companies on the Copperbelt... If you’re absent for even one day, because you’re tired, because you have other responsibilities to your family, they deduct from your basic pay. Far more than what one-day’s pay should be... (HRW Report 2011, 76)

According to Zambian law, compensation for overtime work should be one and one half of the hourly wage and double the hourly wage on public holidays and Sundays. HRW

researchers discovered that overtime work was almost never compensated for at CNMC subsidiaries, and workers were often required to work beyond the standard hours.

Last month, I received less than 200,000 Kwacha (US\$42) for overtime. Yet I put in 30 hours of overtime every week! They don't tell us how they calculate this, they refuse... Our hours are too long for the pay we receive (HRW Report 2011, 77).

The experience recounted by these miners is in direct violation of Article 7 of the ICESCR – of which both China and Zambia are signatories – which states that workers have a right to “rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays” (ICESCR, Art. 7, § 4).

When confronted with the accusations of long workdays and inappropriate wages, SinoMetals denies that, “departments force workers to work 365 days without a off day” (HRW Report 2011, 77). Considering the recent union agreements, SinoMetals has affirmed that it is instead “in agreement that shift lengths [should] be implemented in line with its workers’ wishes” (HRW Report 2011, 77). Chambishi Copper Smelter (CCS), another CNMC subsidiary, defended the 12-hour shifts as necessary for the operation of the mine. “The 12-hour shift will continue, as it’s required for our smelter’s operations [that] need to be maintained for 12 hours... The labor law says 48 hours, but production is continuous” (HRW Report 2011, 78). CCS miners are not duly compensated for their work nor receive sufficient rest periods. As one worker puts it:

Normally, our hours are considered to be eight hours a day, six days a week. But I often work ten hours a day, six days a week, without overtime. The Chinese are very reluctant to pay overtime... And some days, there may be a breakdown at 3:30 p.m., right as I’m knocking off. If the next person on shift isn’t there, I’m told to go repair it, even though it’s time to knock off. The Chinese boss will say, “You’ll lose your job if you don’t go.” So what choice do I

have? I'm still not paid overtime even when this happens...  
(HRW Report 2011, 82)

Although this worker specifically focuses on remuneration, he alludes to yet another matter regarding labor standards in CNMC mines: forced and compulsory labor.

China has not ratified either of the ILO Conventions that eradicate forced or compulsory labor, which, according to the Chinese government, is due to their use of forced labor in their penal system. Nonetheless, it is important to recall that by virtue of China's membership in the ILO, it has a duty to recognize and uphold the eight core Conventions included within the FPRW, including the one that bans the use of forced labor. HRW researchers encountered several instances in which miners claimed the Chinese management repeatedly forced them to work in unsafe environments and despite injury, health problem, or illness (HRW Report 2011).

They force us to work in unsafe places. As the person-in-charge, I will say, "This is unsafe, we should not go ahead." But the Chinese boss will say, "No, go work," and threaten to dismiss me. If you don't go along, you don't keep your job (HRW Report 2011, 55).

Another worker recounts the conditions his Chinese boss forced him to work in:

After a blast, it takes an hour for the dust, gases, and fumes to move out of the area. We're supposed to wait to go in. But with the Chinese, they say, "Go, go, rush right away!" And if you don't, they'll terminate your contract [that is, of course, if the worker has a contract at all] (HRW Report 2011, 56).

One worker details the experiences workers have when forced to work while ill and not granted sick leave by the Chinese management:

When you're sick, the Chinese will sometimes refuse to give you leave. Sometimes it doesn't matter what the doctor says. Once, I was very sick and told to stay home by the SinoZam doctor. I had a sick note. The Chinese boss

said he'd give me two days. And then that same night he called and said, "Report tomorrow." I had malaria, but it didn't matter to him. All that mattered is that they were short on drivers to get the amount of copper they wanted that day (HRW Report 2011, 57).

When safety hazards are circumvented for the purpose of continued efficiency, the Chinese bosses of CNMC act in such a way that is closely related to the notions of forced labor. These unsafe working conditions were commented in detail by two miners:

We work underground and there are problems with the dust and the noise. The Chinese don't give me a respirator or earpieces. At KCM<sup>14</sup>, I received both for the same work... The lack of respirator causes lots of lung problems. I cough all the time and have started feeling sharp pains in my chest after long hours underground... NFCA [CNMC subsidiary] only gives earpieces to those who work directly with jackhammers, while KCM would give them if you were anywhere near one. They also gave us routine ear exams...The union and the safety department have said they'll talk to the Chinese, but nothing happens. We are voiceless – if you push, you can be fired (HRW Report 2011, 41).

For those on the surface, we are given attire for a year – that's the timeframe. For boots, belt, hardhat, overalls, we get one for a full year. It's supposed to be six months, which is what it is for the underground workers. And then if there is a premature defect, you can't get a new one. No matter how bad, no matter if it happened during work use only, they won't give you a new one. Your salary is deducted... so many people continue working with the damaged [equipment] (HRW Report 2011, 40).

Not only are these unsafe working conditions in violation of the previously discussed Convention 29, but also completely disregarding the work safety discourse used within the ICESCR and the UDHR. Article 23, Section 1 of the UDHR makes it clear that workers have the right "to just and favorable working conditions" (Art. 23, § 1), which is

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<sup>14</sup> Konkola Copper Mines [KCM] is an international mining conglomerate based in Mumbai, India and London, UK and is Zambia's largest integrated copper producer (KCM Website).

further reinforced by the right to “safe and healthy working conditions” (Art. 7, § 2) in Article 7 of the ICESCR.

Despite CNMC’s blatant neglect in preventing forced labor and providing safe and healthy working conditions, in many circumstances, Zambian workers still find themselves voiceless. When workers do challenge the Chinese management they immediately find themselves suffering penalties such as docked pay, written notices, or even loss of employment. A worker recalls his termination when refusing to work near a fire with no fire safety equipment:

I asked, “What have I done wrong?” and [the supervisor] replied, “Don’t you know you’re not supposed to talk, you’re a slave.” [My boss] and his supervisor spoke in Chinese for several minutes, and then he said I was fired (HRW Report 2011, 59).

A circumstance similar to the miner’s mentioned above requires the support of trade unions and collective bargaining. There are two trade unions in Zambia that are solely meant for to give representation and voices to mineworkers: the Mineworkers Union of Zambia (MUZ) and the National Union of Miners and Allied Workers (NUMAW). While branches of both unions exist at every non-Chinese copper mine in Zambia, CNMC mines have hindered workers from joining MUZ, despite a clear indication that many workers would in fact prefer to be represented by MUZ over NUMAW (HRW Report 2011). MUZ, established in 1948 before Zambian independence, is often presumed by many Zambians to have greater access to resources and thus allow for stronger representation of members’ rights than the newly created (2003) NUMAW.

We have two main unions here in Zambia, MUZ and NUMAW... The Chinese know that MUZ is considered

pro-[Sata<sup>15</sup>], and also that it has more power. It's older and stronger. MUZ tried to establish a branch here at CCS, with NUMAW already here. The chief executive of CCH kept them out though. The management wants to make sure and keep us from being able to join them, even though many of us want to... The majority of workers in fact think that NUMAW is weak, but we cannot join MUZ (HRW Report 2011. 88).

Right now, we only have NUMAW; the management won't allow MUZ to come in, because they know it's stronger. They say if we bring MUZ, MUZ will cause too much problems advocating for [our rights] (HRW Report 2011, 88).

The limitation placed on workers and their right to freedom of association at CNMC mines is a violation of ILO Convention 87 on the Freedom of Association and Protection of the Right to Organize – of which Zambia is a signatory and China is *not* – due to the existence of the All-China Federation of Trade Unions (ACFTU). Yet, as previously mentioned, China is required to uphold the doctrines of this core labor standard because of its ILO membership. Article 2 of Convention No. 87 gives workers and employers the right to “establish and...join organizations of their own choosing without previous authorization” (Art. 2, § 1). Despite this international standard, Chinese bosses have still threatened to immediately dismiss any worker who attempts to establish an MUZ branch at any CNMC location. In the case of CCS, the Chinese management has addressed this issue with the belief that “one union suffices” (HRW Report 2011, 88) for a company with less than 1,000 workers. To the management, the mere existence of a union on the grounds of CNMC indicates that the workers’ opinions are being acknowledged and that their free will is respected.

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<sup>15</sup> Michael Sata was the fifth President of Zambia from 2011-2014. He ran an election campaign that vowed to clean up the labor conditions in Chinese-owned companies and was consequently perceived as anti-Chinese. For this reason, he was strongly opposed by Chinese investors.

HRW researchers, however, encountered workers and union officials at CNMC sites with different opinions than those advocated for by CNMC. A union representative at SinoMetals described his interactions with CNMC and union activities:

The Chinese don't understand the concept of a union. They intimidate those that lead or are part of a union. If they know you're a representative, you'll encounter problems; they'll try to frustrate you until you leave the job. For me, before I was working in the [omitted to protect anonymity] department. But they transferred me to the crusher department because I'm a representative. We all know why these transfers happen, as it always touches the same people, [union representatives]... Basically, if you're in the union, they're going to try to frustrate you. If you don't ever talk, if you don't ever complain, then the Chinese will like you (HRW Report 2011, 90).

A union representative at CCS told HRW researchers:

They don't understand unions at all. To go to a union meeting, you need to get a note from HR, who takes it to the Chinese. We do this, but the Chinese still cause us problems. I get bad performance assessments that say, "Always going to meetings." So they allow us to go, they don't expressly bar us from going, but they view us as bad workers for taking care of our union responsibilities. And the problem is that when it comes time for renewing contracts – because we're all just on one- or two-year contracts – they won't renew you because of your bad performance reviews... We are all worried that our contracts will not be renewed, so we can't strike, we can't complain, we can't do anything to show our displeasure with the conditions (HRW Report 2011, 92).

This union representative's experience illustrates how workers are unable to bargain and withstand anti-union pressure in order to maintain their job security. Of course, the intimidation and discrimination Chinese managers exhibit towards CNMC workers who are involved with unions violates ILO Convention 98, the Right to Organize and Collective Bargaining – of which Zambia is a signatory and China is not. This

Convention provides protection to workers from anti-union discrimination and forbids the “dismissal of or otherwise prejudice [of] a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours” (Art. 1, § 1).

Despite the interviews that indicated labor violations regarding unsuitable wages, long working hours, forced labor unsafe conditions, and anti-union pressure, CNMC officials claimed, “its companies had harmonious relations with the unions” (HRW Report 2011, 92). At this point, it is important to note a follow-up report was published by HRW in 2013 with updates on CNMC working conditions following the 2011 publishing of “You’ll Be Fired if You Refuse.” In this follow-up report, HRW notes that subsequent to the 2011 report and the election of Michael Sata as Zambian President, “CNMC’s subsidiaries made some notable improvements on reducing work hours and respecting freedom of association, but the miners continued to face poor health and safety conditions and threats by managers if they tried to assert their rights” (Zambia: Safety Gaps Threaten Copper Mines 2013). Additionally, the Zambian government appears to be making a greater commitment to labor rights and standards. While improvements are indeed respectable, the original conditions of these mines and dozens of other Chinese-owned companies cannot be forgotten.

#### IV. CHAPTER CONCLUSION

There exists a common Western misconception and stereotype regarding Africa. Through years of conditioned aid, Westerners have developed and been exposed to ideas that Africa is a “global backwater plagued by poverty, disease, ethnicity, conflict, and

corruption” (Ndulo 2008, 139). As a result, Western-African diplomatic relations are characterized by paternalism and essences of cultural superiority. China, on the other hand, has approached African states in a different light, one that focuses on the essence of partnership – seeking out business deals and investments that are mutually beneficial to both parties involved. The question that emerges is whether or not this partnership is in fact beneficial to Africa.

In this chapter, the BRICS’ commitment to the RTD was exemplified using the increased investment and diplomatic endeavors present within Chinese-African bilateral relations. In doing such, China’s role as the self-proclaimed leader of the developing world was analyzed, specifically as it relates to the Fortaleza Declaration’s commitment to developing states. Before doing such, there was a brief discussion related to the historical, economical, and political elements of China’s presence in Africa. However, the primary purpose of this chapter was to demonstrate the ways in which China’s promotion of the RTD in Africa circumvented core labor standards and thus undermined the individualistic norms of the prevailing human rights regime. In this regard, it is important to note the discourse used by China to justify this evasion for the pursuit of the RTD.

In a case study done on China’s involvement in Namibian labor relations, a Chinese Embassy official in the role of economic and commercial counselor advised Namibian officials to:

Sacrifice a little bit of labor protection. The labor cost is too high. Namibia does not have production. In China, if you have N\$1,000 you are rich, but in Namibia, you cannot buy anything with it because you import everything. If you sacrifice on labor costs now for future generations, then Namibia will develop. Let people be paid lower wages now

and attract more FDI and set up manufacturing so that the future generation will reap the benefits of the sacrifices (Jauch & Sakaria 2009, 218).

In this statement, a Chinese government official is *encouraging* the evasion of labor practices – minimum wage, for example – for the purpose of Namibian development. This Chinese government official is advocating certain rights be paralleled to the level of a country’s development and that citizens should “sacrifice a little bit of labor protection” for the pursuit of the RTD. In other words, Chinese authorities are in fact advocating for the violation of conventional labor standards in order to pursue the RTD.

This discourse is further reiterated in the 2011 HRW Report with a Chinese government official making the following statement on behalf of Zambia:

The laws are really “too sound” – the standard of the legal system is a little too ahead of its time... It is necessary to have *some* [my italics] in the early stages of development; equality gets sacrificed. Inequalities are a reality at every stage of development. They [Zambians] should learn to accept this (HRW Report 2011, 24).

In this discussion, China is reinforcing its RTD belief that was alluded to in chapter one. China’s “basic [stance] on the development of human rights is: placing top priority on people’s right to subsistence and development, making development the principal task, and promoting political, economic, and social and cultural rights to achieve their all-round development” (Legal Systems of Respecting and Safeguarding Human Rights 2008).

Yet the decision to place the RTD above all other rights has, as indicated by the case studies above, resulted in the egregious violations of core labor standards. The freedom of association, freedom from forced labor, and freedom from discrimination, all considered under the FPRW, have been circumvented or disregarded by Chinese-owned

companies for purposes of increase developmental output. Despite evidence that dictates the evasion of labor rights for purposes of economic development are not acceptable – Article 1 of ILO Convention 105 stating forced labor cannot be used “for purposes of economic development” (Art. 1, § 1) – the actions and practices of Chinese companies suggests otherwise. In this regard, the RTD comes at the expense of individual rights, and thus undermines the existing human rights regime.

# CONCLUSION

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In recent years, the BRICS – Brazil, Russia, India, China, and South Africa – have experienced unprecedented growth and accelerated achievements that have caused the emergence of new economic, philosophical, and geopolitical trends. The introduction of these new trends into the existing international structure has been met with speculation and curiosity, specifically regarding the influence these new ideas and actors will have on the current world order. The BRICS' cooperation with each other represents a substantial shift within the existing international context that posits new interpretations of international politics. Thus we are presented with questions similar to Ikenberry's: Will the existing order be overthrown by these rising powers or will they simply become a part of it? More specifically, is there a possibility that the rise of the BRICS will impact the global human rights regime that is firmly embedded within today's international structure?

This paper has addressed these questions by offering the following answer: The institutionalization of the BRICS – led by China – will allow these states to pursue their desires and establish a new norms regime centered on the notion of the right to development. This alternative norms regime will focus on the rights of the state over the rights of the individual and contradict the discourse that currently exists within the current human rights regime. Due to the global rise and increased economic and political

cooperation among the BRICS states, there now exists the possibility for these new norms to be supported via international institutions like the New Development Bank. Therefore, Ikenberry's dichotomous approach to the future of the existing world order does not appropriately characterize the global rise of the BRICS.

This paper began with an overview of the discourse surrounding the BRICS' geopolitical association. Since O'Neill's initial recognition of these states as economic engines of growth, these states have institutionalized their augmented economic power into a cooperative political entity. First, I discussed why these states have been considered strong developing countries with the potential to impact the existing international system, followed by a detailed synopsis of the ways in which these states have made their presence known. Here, the creation of the BRICS New Development Bank was highlighted as the formal institutionalization of their economic and political power and a platform for the pursuit of their specific interests. The notion of interests and identities among the referenced states was also emphasized. Finally, Chapter One concluded with an important conceptualization of the right to development and the debate regarding its fundamentality between developed and developing states. With this, it was established that the RTD – what the BRICS have deemed the most fundamental human right – is a right given to the state rather than the individual.

Chapter Two was dedicated to engaging the core international relations theories with the prevailing human rights discourse. In doing such, this chapter provided a theoretical foundation for contextualizing the potential impact the BRICS' rise could have on the existing human rights framework. First, a definition of human rights was offered as, “not what we need for survival but what we need for a life of dignity”

(Donnelly 2013, 21). This definition speaks to the individualistic norms that characterize the prevailing norms regime, whereas the RTD and the right to subsistence are in fact firmly based in the notion of “what we need for survival.” This definition was used to understand the global human rights regime as an elaborate system of states and multilateral institutions that promote human rights via a network of principles, rules, norms, and procedures. Finally, Chapter Two provided an overarching and extensive survey of realism, liberalism, and constructivism, and how their respective theoretical lenses interpret the existence and sustenance of the current norms regime. Given that, I claimed that a comprehensive image is necessary for not only understanding the existing human rights regime, but also for understanding the importance of the global rise of the BRICS. In essence, interests and identities require international institutions for their realization, which, in turn, require increased economic capacity to be created in the first place.

Due to the BRICS states employing a majority of the world’s workers in the coming century, labor conditions and the rights of workers were the focus of Chapter Three. Specifically, this chapter expounded on the existence of the global labor regime and discussed its interconnectedness both with the prevailing norms regime and the RTD. Furthermore, an analysis on the many components of the labor regime was offered, specifically related to the labor regime’s central ideas, how these were created, and in what ways they are administered (i.e. International Labor Organization). This chapter’s primary purpose was to serve as a foundation for the final chapter by offering an extensive look into the global labor regime and how the BRICS states are theoretically incorporated.

At the 2014 BRICS Summit in Fortaleza, Brazil, the BRICS states came together to affirm their commitment to “the purpose of mobilizing resources for infrastructure and sustainable development projects in BRICS and other emerging and developing economies” (Fortaleza Declaration 2014). For this reason, Chapter Four addressed the current circumstances surrounding the partnership between the largest developing state – China – and the largest community of developing states – Africa. Chapter Four contextualized the BRICS’ Fortaleza statement and commitment to the RTD with examples of what this commitment entails when manifested within the international system. Building upon Chapter Three’s labor rights discussion, this chapter explored the labor conditions and practices in Chinese-owned companies in Ghana and Zambia. The Chinese managements’ flagrant disregard for core labor standards within Ghanaian infrastructure projects and Zambian copper mines provided crucial evidence as to how China manifests its RTD discourse. Moreover, this evasion of core labor standards for purposes of economic development illustrated how the BRICS’ promotion of these new norms will affect the prevailing norms regime. This labor abuse demonstrates how the focus on the RTD comes at the expense of individual rights, thus undermining the foundations of the existing human rights discourse.

Since their recognition in 2001, the BRICS states have stringently been viewed and analyzed from an economic perspective. However, in light of recent cooperative efforts and their formalized institutionalization of power, the BRICS are becoming an increasingly omnipresent political entity in the international system. For this reason, it is crucial that future scholarship views the BRICS as an economic *and* political entity with the capability of altering the prevailing norms of the existing international structure.

In summary, the institutionalization of the BRICS has bestowed upon these states the opportunity to establish a new norms regime centered on the right to development. As seen in China's involvement in Ghana and Zambia, this alternative norms regime focuses on the right of the state over the right of the individual. Due to the global rise and increased economic and political cooperation among the BRICS states, there now exists the possibility for these new norms to be supported via international institutions like the New Development Bank. As a result, the prevailing norms of the existing global human rights regime will continue to be ignored and undermined.

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# APPENDIX

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## UNIVERSAL DECLARATION OF HUMAN RIGHTS

[1945]

### PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

**Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2.**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3.**

Everyone has the right to life, liberty and security of person.

**Article 4.**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5.**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6.**

Everyone has the right to recognition everywhere as a person before the law.

**Article 7.**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8.**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9.**

No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10.**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11.**

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12.**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13.**

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14.**

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15.**

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16.**

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17.**

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

**Article 18.**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19.**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20.**

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

**Article 21.**

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) 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.

**Article 22.**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23.**

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24.**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25.**

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26.**

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27.**

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28.**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29.**

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30.**

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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## **DECLARATION ON THE RIGHT TO DEVELOPMENT**

**[1986]**

The General Assembly,

Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

Considering that under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized,

Recalling the provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights,

Recalling further the relevant agreements, conventions, resolutions, recommendations and other instruments of the United Nations and its specialized agencies concerning the integral development of the human being, economic and social progress and development of all peoples, including those instruments concerning decolonization, the prevention of discrimination, respect for and observance of, human rights and fundamental freedoms, the maintenance of international peace and security and the further promotion of friendly relations and co-operation among States in accordance with the Charter,

Recalling the right of peoples to self-determination, by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Recalling also the right of peoples to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources,

Mindful of the obligation of States under the Charter to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Considering that the elimination of the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neo-colonialism, apartheid, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind,

Concerned at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, inter alia, by the denial of civil, political, economic, social and cultural rights, and considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms,

Considering that international peace and security are essential elements for the realization of the right to development,

Reaffirming that there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries,

Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development,

Recognizing that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States,

Aware that efforts at the international level to promote and protect human rights should be accompanied by efforts to establish a new international economic order,

Confirming that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations, Proclaims the following Declaration on the Right to Development:

#### **Article 1**

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

#### **Article 2**

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.
2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.
3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

#### **Article 3**

1. States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.
2. The realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.
3. States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

#### **Article 4**

1. States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.
2. Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

#### **Article 5**

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

#### **Article 6**

1. All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

2. All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.
3. States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights.

#### **Article 7**

All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.

#### **Article 8**

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.
2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

#### **Article 9**

1. All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.
2. Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

#### **Article 10**

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

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## **DECLARATION OF PHILADELPHIA**

**[1944]**

The General Conference of the International Labour Organization, meeting in its Twenty-sixth Session in Philadelphia, hereby adopts, this tenth day of May in the year nineteen hundred and forty-four, the present Declaration of the aims and purposes of the International Labour Organization and of the principles which should inspire the policy of its Members.

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### ***I***

The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that:

- (a) labour is not a commodity;
- (b) freedom of expression and of association are essential to sustained progress;
- (c) poverty anywhere constitutes a danger to prosperity everywhere;
- (d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

## II

Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organisation that lasting peace can be established only if it is based on social justice, the Conference affirms that:

- (a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;
- (b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- (c) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;
- (d) it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;
- (e) in discharging the tasks entrusted to it the International Labour Organization, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate.

## III

The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:

- (a) full employment and the raising of standards of living;
- (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;
- (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;
- (d) policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;
- (e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;
- (f) the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
- (g) adequate protection for the life and health of workers in all occupations;

- (h) provision for child welfare and maternity protection;
- (i) the provision of adequate nutrition, housing and facilities for recreation and culture;
- (j) the assurance of equality of educational and vocational opportunity.

#### *IV*

Confident that the fuller and broader utilization of the world's productive resources necessary for the achievement of the objectives set forth in this Declaration can be secured by effective international and national action, including measures to expand production and consumption, to avoid severe economic fluctuations to promote the economic and social advancement of the less developed regions of the world, to assure greater stability in world prices of primary products, and to promote a high and steady volume of international trade, the Conference pledges the full cooperation of the International Labour Organization with such international bodies as may be entrusted with a share of the responsibility for this great task and for the promotion of the health, education and well-being of all peoples.

#### *V*

The conference affirms that the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilized world.

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## DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

[1998]

Whereas the ILO was founded in the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons

concerned, to claim freely and on the basis of equality of opportunity, their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting Fundamental Rights at Work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

## **THE INTERNATIONAL LABOUR CONFERENCE**

### **1. Recalls:**

**(a)** that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resources and fully in line with their specific circumstances;

**(b)** that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.

**2. Declares** that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

**(a)** freedom of association and the effective recognition of the right to collective bargaining;

**(b)** the elimination of all forms of forced or compulsory labour;

**(c)** the effective abolition of child labour; and

**(d)** the elimination of discrimination in respect of employment and occupation.

**3. Recognizes** the obligation on the Organization to assist its Members, in response to their established and expressed needs, in order to attain these objectives by making full use of its constitutional, operational and budgetary resources, including, by the mobilization of external resources and support, as well as by encouraging other international organizations with which the ILO has established relations, pursuant to article 12 of its Constitution, to support these efforts:

**(a)** by offering technical cooperation and advisory services to promote the ratification and implementation of the fundamental Conventions;

**(b)** by assisting those Members not yet in a position to ratify some or all of these Conventions in their efforts to respect, to promote and to realize the principles concerning fundamental rights which are the subject of these Conventions; and

**(c)** by helping the Members in their efforts to create a climate for economic and social development.

**4. Decides** that, to give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented in accordance with the measures specified in the annex hereto, which shall be considered as an integral part of this Declaration.

**5. Stresses** that labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

## **Annex (Revised) Follow-up to the Declaration**

### **I. OVERALL PURPOSE**

1. The aim of the follow-up described below is to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights enshrined in the Constitution of the ILO and the Declaration of Philadelphia and reaffirmed in this Declaration.

2. In line with this objective, which is of a strictly promotional nature, this follow up will allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights. It is not a substitute for the established supervisory mechanisms, nor shall it impede their functioning; consequently, specific situations within the purview of those mechanisms shall not be examined or re-examined within the framework of this follow-up.

3. The two aspects of this follow-up, described below, are based on existing procedures: the annual follow-up concerning non-ratified fundamental Conventions will entail merely some adaptation of the present modalities of application of article 19, paragraph 5(e), of the Constitution; and the Global Report on the effect given to the promotion of the fundamental principles and rights at work that will serve to inform the recurrent discussion at the Conference on the needs of the Members, the ILO action undertaken, and the results achieved in the promotion of the fundamental principles and rights at work.

## **II. ANNUAL FOLLOW-UP CONCERNING NON-RATIFIED FUNDAMENTAL CONVENTIONS**

### *A. Purpose and scope*

1. The purpose is to provide an opportunity to review each year, by means of simplified procedures, the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions.

2. The follow-up will cover the four categories of fundamental principles and rights specified in the Declaration.

### *B. Modalities*

1. The follow-up will be based on reports requested from Members under article 19, paragraph 5(e), of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice.

2. These reports, as compiled by the Office, will be reviewed by the Governing Body.

3. Adjustments to the Governing Body's existing procedures should be examined to allow Members which are not represented on the Governing Body to provide, in the most appropriate way, clarifications which might prove necessary or useful during Governing Body discussions to supplement the information contained in their reports.

## **III. GLOBAL REPORT ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK**

### *A. Purpose and scope*

1. The purpose of the Global Report is to provide a dynamic global picture relating to the four categories of fundamental principles and rights at work noted during the preceding period, and to serve as a basis for assessing the effectiveness of the assistance provided by the Organization, and for determining priorities for the following period, including in the form of action plans for technical cooperation designed in particular to mobilize the internal and external resources necessary to carry them out.

### *B. Modalities*

1. The report will be drawn up under the responsibility of the Director-General on the basis of official information, or information gathered and assessed in accordance with established procedures. In the case of States which have not ratified the fundamental Conventions, it will be based in particular on the findings of

the aforementioned annual follow-up. In the case of Members which have ratified the Conventions concerned, the report will be based in particular on reports as dealt with pursuant to article 22 of the Constitution. It will also refer to the experience gained from technical cooperation and other relevant activities of the ILO.

2. This report will be submitted to the Conference for a recurrent discussion on the strategic objective of fundamental principles and rights at work based on the modalities agreed by the Governing Body. It will then be for the Conference to draw conclusions from this discussion on all available ILO means of action, including the priorities and plans of action for technical cooperation to be implemented for the following period, and to guide the Governing Body and the Office in their responsibilities.

#### **IV. IT IS UNDERSTOOD THAT:**

1. The Conference shall, in due course, review the operation of this follow-up in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose articulated in Part I.