

PANACEA OR FALSE HOPE? FROM THE COMMISSION ON HUMAN RIGHTS TO THE  
HUMAN RIGHTS COUNCIL

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## ABSTRACT

In April 2005, Kofi Annan, then Secretary-General of the United Nations, declares that, “... we have reached a point at which the Commission [on Human Rights]’s declining credibility has cast a shadow on the reputation of the United Nations system as a whole, and where piecemeal reforms will not be enough.” One year later, the UN General Assembly replaces the Commission with the Human Rights Council. The Council is mandated to be the premier human rights standard setting and protection institution of the United Nations. It is the hope of all stakeholders, that key issues that plagued the Commission will not plague the Council; instead, the transition from the Commission to the Council would breathe new life into the UN’s human rights system and would not be a new false hope.

This dissertation examines how the transition from the Commission to the Council has affected perceived significant issues such as selectivity, membership, resolution proliferation, and regional bloc voting by examining how Member States vote on country and thematic resolutions. The project examines voting patterns using multiple methodological approaches, including the creation of novel datasets on both country and thematic resolution votes. The datasets cover over 450 votes. The project uses a case study analysis of all sessions of the Council, from its inaugural session in 2006 through 2012. Finally, this dissertation uses process tracing in order to better understand why voting decisions were made and why the Council’s behavior changes in 2009.

This dissertation finds that structural changes, regional bloc voting, or the level of democratic membership do not significantly influence outcomes. Instead, the best explanatory variable is *who* sits on the Council. Specifically, the presence of the US on has the most impact on outcomes. The Council embodies neither a new era of effectiveness nor the dawn of false hope. Rather, like the UN itself, the Council is what its Member States make of it.

This project may be useful for scholars and practitioners of international relations, international law, and the United Nations because it is a first academic cut at understanding the full spectrum of Council voting outcomes.



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Ellie, my dear wife, without you, I would never have finished this undertaking. You have given me strength, patience, inspiration, and perhaps most important, levity. Everything I do, I do with love and admiration for you.

For both the champions of human rights and the victims of injustice

May the fight for human rights protection wage on, in all places, both big and small.

May the victims of injustice receive both protection and equal opportunity before the law.

# Chapter 1

## Introduction

In April 2005, Kofi Annan, then Secretary-General of the United Nations, declared that, “... we have reached a point at which the Commission’s declining credibility has cast a shadow on the reputation of the United Nations system as a whole, and where piecemeal reforms will not be enough.”<sup>1</sup> Annan’s strongly worded statement to the Commission on Human Rights, then the premier institution for human rights standard setting and protection at the United Nations, came after numerous debacles at the turn of the century.<sup>2</sup>

In less than one year (or light-speed by UN standards), the Commission on Human Rights was laid to rest and on 15 March 2006, the UN General Assembly passed Resolution 60/251, establishing the Human Rights Council.<sup>3</sup> For many human rights advocates and UN watchers, the overwhelming passage of Resolution 60/251 indicated a significant change in how business would be conducted at the UN, at least as far as human rights are

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<sup>1</sup> Annan K (2005) Secretary-General outlines major proposals to reform UN human rights machinery, in address to Geneva Human Rights Commission. 7 April 2005. SG/SM/9808-HR/CN/1108.

<sup>2</sup> Chapter 4 will more concretely explain why the Commission on Human Rights was discredited. However, briefly, many states, particularly Western states, were angry human rights violators were consistently being elected to the Commission and in some cases were being elected to leadership positions while Western states, like the USA were not elected.

<sup>3</sup> UN General Assembly (2006) *Human Rights Council*. 3 April 2006. A/RES/60/251.

concerned. Their hope was that a new institution would not succumb to the same deficiencies as its predecessor.

The purpose or mandate of the Council is not significantly different from the Commission. The Council is a political-parliamentary body tasked with two primary goals – standard setting and protection.<sup>4</sup> Standard setting responsibilities include initiating new studies on human rights, locating trends in human rights, and passing resolutions that in essence “create” new human rights benchmarks. The Council’s mandate to protect includes both creating studies on human rights situations and passing resolutions on situations within states.

## Purpose, Scope, and Limitations

This dissertation seeks to evaluate the Human Rights Council by examining whether or not the transition from the Commission to the Council has actually made a significant difference for human rights standard setting and protection, or alternatively, does the null hypothesis, which states that the transition has had little or no impact on the practice of the UN’s ability to standard set or protect human rights, hold.

The scope of this project is limited to the Council’s voting outcomes on country situations and thematic issues. The project excludes examining what many believe are the two most significant tools of the Human Rights Council, namely the Special Procedures and the Universal Periodic Review. It excludes Special Procedures because other new

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<sup>4</sup> Ibid, Resolution 60/251. UN Human Rights Council (2007) *Institution-building of the United Nations Human Rights Council*. 18 June 2007. A/HRC/RES/5/1.

studies already examine the work of this mechanism.<sup>5</sup> This work excludes the Universal Periodic Review because this mechanism is still in its infancy.<sup>6</sup> This project also excludes a significant focus on the other subsidiary bodies of the Council because very few individuals take these bodies seriously.<sup>7</sup> Finally, it is important to note that this work does not make the claim that voting outcomes actually affect the human rights situations within countries or across thematic issues.

So why examine only voting outcomes? Voting outcomes are perceived as one of the primary reasons the Commission on Human Rights lost its credibility.<sup>8</sup> Voting outcomes are linked directly to the perceived chronic problems of selectivity, regional bloc voting, and the proliferation of resolutions, particularly thematic resolutions. By examining

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<sup>5</sup> Piccone T (2012) *Catalysts for Change: How the UN's Independent Experts Promote Human Rights*. Washington D.C.: Brookings Institution Press. See also Subedi S.P. et al. (2011) The role of the special rapporteurs of the United Nations Human Rights Council in the development and promotion of international human rights norms. *The International Journal of Human Rights* 15 (2): 155, Subedi S.P. (2011). Protection of Human Rights through the Mechanism of UN Special Rapporteurs. *Human Rights Quarterly* 33(1): 201, and Gutter J (2007) Special Procedures and the Human Rights Council: Achievements and Challenges Ahead. *Human Rights Law Review* 7(1): 93.

<sup>6</sup> The UPR will be discussed further in chapter four. However, the reason that it is excluded here is because most of the recommendations (up to 70% according to the OHCHR) require parliamentary procedures to become active. The first cycle of the UPR began in 2008 and lasted for four years. Therefore, enough time has not passed to tell the effect the UPR has on human rights. Nevertheless, some interesting preliminary work which examines the acceptance rate of recommendations has been undertaken, primarily by Ned McMahon, for example see: McMahon E and Ascherio M (2012) A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council. *Global Governance: A Review of Multilateralism and International Organizations* 18(2): 231. For more information on the UPR mechanism, please see Chauville R (2013) UPR-INFO. Available at: <http://www.upr-info.org/> [10 July 2013].

<sup>7</sup> This is the general feeling in Geneva that I received from essentially every interview. For example, when asked if they wanted to discuss the Advisory Committee, one diplomat laughed and said, "Is it worth the breath?" Another diplomat stated that, "they are not relevant. They are not making a difference. They are there to appease some interests but no added value." A NGO said that it was "a failure." Interviews with WEOG4, EE1, and NGO3. The problem with the subsidiary bodies it appears is that the Council is not actually taking into consideration the outcomes of meetings within the subsidiary bodies.

<sup>8</sup> The other reason generally given is that human rights violators only join the Commission to protect themselves from condemnation. See for example: Edwards M et al (2008) Sins of Commission? Understanding Membership Patterns on the United Nations Human Rights Commission. *Political Research Quarterly* 61(3): 390.

voting outcomes, this project will be able to see if the structural changes introduced by the transition from the Commission to the Council have made a difference on the problems listed above. For the purpose of this study, voting outcomes are coded as either thematic or country-specific.<sup>9</sup>

This project may be useful for scholars and practitioners of international relations, international law, and the United Nations because it is a first academic cut at understanding the full spectrum of Council standard setting and protection voting outcomes. Heretofore, there has been a dearth of academic work focusing on the Council's voting outcomes.<sup>10</sup> Thus, this work will fill an important gap in the literature. The Council has been in operation for over six years. Now is the time to switch from focusing only on the institutional structure of the Council compared to the Commission to actual outcomes.<sup>11</sup>

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<sup>9</sup> This dissertation excludes procedural votes because they are neither thematic nor country-specific. Some procedural votes do give interesting information about how states interact with the Council, for example, Cuba's push to limit the OHCHR's power, but that is outside the scope of this narrowly defined research project.

<sup>10</sup> Hug S and Lukacs R (2011) Preferences or blocks? Voting in the United Nations Human Rights Council. Unpublished - For the 4th Conference on the Political Economy of International Organizations and Freedman R (2013) *The United Nations Human Rights Council: A Critique and Early Assessment*. New York: Routledge

<sup>11</sup> For works that thoroughly cover the structure of the Council, please see, M (2006) A New Chapter for Human Rights: A Handbook on Issues of Transition from the Commission on Human Rights to the Human Rights Council. Geneva. International Service for Human Rights. Available at <http://www.ishr.ch/guides-to-the-un-system/handbook> [15 June 2013], Abraham M (2007) Building the New Human Rights Council: Outcome and analysis of the institution-building year. Geneva. Friedrich Ebert Stiftung. Available online at: <http://library.fes.de/pdf-files/bueros/genf/04769.pdf> [16 June 2013], Alston P (2006) Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council. Melbourne Journal of International Law (7): 185, Bassiouni C and Schabas W (2011) New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures? Montreal: Intersentia, Ghanea N (2006) From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways? *The International and Comparative Law Quarterly* 55(3): 695, Gerber P (2007) Hitch Hiker's Guide to the New United Nations Human Rights Council, *The Flinders Journal of Law Reform* 10: 241, Lauren P.G. (2007) To Preserve and Build on its Achievements and to Redress its Shortcomings: The Journey from the Commission on Human Rights to the



## Methods

In order to explain how the transition from the Commission to the Council has affected voting outcomes, this project will use three different methodological approaches. The first is process tracing. Interviews with members of the UN secretariat, Non-Governmental Organizations (NGOs), Permanent Missions to the United Nations and scholars were conducted in Geneva, Switzerland and Washington D.C. In total, 50 interviews were conducted. Every attempt possible was made to conduct interviews with an equitable geographic distribution of actors.<sup>12</sup> The purpose of the interviews was to better understand why voting decisions were made and why the Council's behavior appears to change in 2009.

A comprehensive content analysis of publications and working papers by NGOs and statements by Permanent Missions is the second approach used in this study. The purpose of this approach is to monitor how stakeholders perceive each session of the UN Human Rights Council. For example, do NGOs believe that the session was a positive session for the Council or a step backwards? The insight of NGOs, particularly those located in Geneva is a valuable resource since they consistently monitor the work of the Council.<sup>13</sup>

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Human Rights Council. *Human Rights Quarterly* 29(2): 307, and Terlingen Y (2007) The Human Rights Council: A New Era in UN Human Rights Work? *Ethics & International Affairs* 21(2): 167.

<sup>12</sup> However, the total number of members from the Asia group is less than the ideal point of five. This is not due to a lack of trying. I reached out to numerous NGOs and Missions in the Asia group but as a group, they were less responsive to my requests for interviews.

<sup>13</sup> It should be noted that many of these NGOs have a perceived, if not actual, Western bias. For example, Human Rights Watch. Nevertheless, these NGOs do monitor outcomes at the HRC and offer a unique perspective on Council behavior that is exceptionally valuable to researchers who are not located in Geneva.

This dissertation project also uses a case study analyses to better understand the UN Human Rights Council over time. The project examines all regular sessions of the Council from 2006 until 2012.<sup>14</sup> In total, there are 21 regular sessions. In addition, the analysis includes 19 special or ad-hoc sessions, which brings the total to 40 sessions. There are two different units of analysis. The first considers each session as an individual case. The second is comprised of election cycles, which are generally three sessions.<sup>15</sup> As part of the case study analysis, the project creates two datasets, one which covers all thematic resolutions and another that includes country resolutions; in total, there are 352 thematic resolutions and 118 country resolutions or 470 different observations.

These datasets are a significant contribution to the field. The country-resolution dataset includes measurements for Freedom House and Polity IV scores, all country resolutions by vote outcomes (in favor, in opposition, or abstaining) and agenda item,<sup>16</sup> including by regional affiliation, and matched with the Western Group and Others (WEOG) as well as US voting records.

The thematic resolution dataset also includes measurements for Freedom House and Polity IV scores of members and is broken down by both session and year as well as

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<sup>14</sup> I've excluded the two most recent sessions in 2013 because I will not be able to include the final 2013 session since the dissertation will be defended in July 2013. I believe it is important to take into account the entire election cycle to better understand outcomes.

<sup>15</sup> Although election cycle one includes five sessions and election cycle six includes four sessions. Election cycle one consists of five sessions over one year. The Council met numerous times during the first year of its existence to create its institution-building package. The final election cycle has four sessions because the Council switched to having new members take over in January instead of after the summer session and thusly needed one more session (autumn session) in order to start with the calendar cycles.

<sup>16</sup> More info on what Agenda Items are and how they work can be found in chapter five. However, briefly, there are ten agenda items, some just on thematic issues, some on country situations, and others on procedural matters. See Resolution 5/1 for more detail, 4.

voting outcome. In addition, each vote is broken down by which “generation” of human rights the resolution belongs. Finally, like the country resolution dataset, the votes are matched with WEOG and US votes.

The datasets enable readers to better understand how the UN Human Rights Council has performed over time. It allows readers to examine the shifts in selectivity of the Council, the proliferation (or absence of proliferation) of resolutions, and how regional bloc voting affects voting at the Council.

In addition to being an important descriptive component of the dissertation, the datasets are an important contribution to the literature because scholars may use the information included in the datasets with larger datasets in order to do more quantitative work. It is my hope that scholars will take the foundation that is created here to reengage with the UN human rights system.

## Overview

The following work is divided into two major sections. Section one, which consists of chapters two, three, and four, introduces the readers to the UN human rights system. The purpose of each chapter is to describe the institutional structure of the system. Chapter two looks at the UN human rights treaty system. The UN treaty system is peripheral to this study but it is important to understand how the UN structure works and excluding the treaty-based mechanisms would leave readers unable to fully grasp how human rights are protected and promoted at the UN. The treaty system is the legal side of the UN human

rights system. The International Covenants on Civil and Political Rights<sup>17</sup> and Economic, Social, and Cultural Rights<sup>18</sup> as well as the International Convention to Eliminate All Forms of Discrimination against Women<sup>19</sup> and International Convention on the Rights of the Child,<sup>20</sup> to name only a few, are part of the treaty system.

Chapter three describes the second part of the UN human rights system – the Charter mechanisms. This includes the UN General Assembly, the Economic and Social Council along with its subsidiary bodies, the Secretariat, which includes the Secretary-General of the UN, and the Office of the High Commissioner for Human Rights. Generally speaking, the Charter bodies can be differentiated from the treaty bodies because of the political nature of the former compared to the legal nature of the latter.<sup>21</sup>

The final chapter in section one is dedicated to the transition from the Commission on Human Rights to the Human Rights Council. Although both are Charter mechanisms, the transition is kept separate from chapter three. Chapter four describes in detail how the Commission on Human Rights fell out of favor with both diplomats and activists, then describes how the transition from the Commission to the Council occurred, and finally focuses on the Council's institutional structure. Taken as a whole, the first three principal chapters of this dissertation helps readers who are unfamiliar with the UN human rights

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<sup>17</sup> UN General Assembly (1966) International Covenant on Civil and Political Rights. 16 December. A/RES/2200A (XXI) (hereafter ICCPR).

<sup>18</sup> UN General Assembly (1966) *International Covenant on Economic, Social and Cultural Rights*. 16 December 1966. A/RES/2200A (XXI) (hereafter ICESCR).

<sup>19</sup> UN General Assembly (1979) Convention on the Elimination of All Forms of Discrimination against Women. 18 December 1979. A/RES/34/180.

<sup>20</sup> UN General Assembly (1989) *Convention on the Rights of the Child*. 20 November 1989. A/RES/44/25.

<sup>21</sup> This is of course not a perfect description. The Secretariat for example is supposed to be a-political.

milieu gain a better understanding of how the system works (or is often the case, does not work).

The second major section of the dissertation, which consists of chapters five, six, and seven, consists of the case studies. Chapter five thoroughly describes the development of country-specific resolutions in the Council from 2006-2012. Voting outcomes on country resolutions and which states come under scrutiny were two hotly contested issues in the Commission on Human Rights. Most votes during the Commission were cast based on which regional bloc affiliation. In addition, states in opposing blocs selectively engaged in the condemnation of their geopolitical rivals.<sup>22</sup> According to activists, this is problematic because member states vote based on geopolitical interests in lieu of the merits of each case.<sup>23</sup> Chapter five finds that there is a significant shift in how states on the Council vote on country situations during this time period, which is significant change from the voting patterns of the Commission. In addition, chapter five also shows that there is a shift in the selectivity of states that fall under the Council's attention. Finally, chapter five ends by positing that the way scholars and practitioners explain voting outcomes in the Council is outdated. The Council is not the Commission, at least in regards to how it responds to country situations.

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<sup>22</sup> Seligman S (2011) Politics and principle at the UN Human Rights Commission and Council (1992–2008). *Israel Affairs* 17(4): 520. Although for a counter argument, please see: Lebovic J and Voeten E (2006) The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR. *International Studies Quarterly* 50(4): 861.

<sup>23</sup> Cox E (2010) State Interests and the Creation and Functioning of the United Nations Human Rights Council. *Journal of International Law and International Relations* (6): 87

Chapter six looks at country resolutions in a different way. Part of the Council's mandate is to protect human rights and one could argue that protecting human rights requires using the latest protection mechanisms offered by the international community. Chapter six examines how often the Responsibility to Protect (R2P) and the International Criminal Court (ICC) are used in country resolutions. The assumption is that if both norms are embedded, or at the very least emerging, then HRC will include references to these norms in country resolutions. If on the other hand, mentions of the R2P or the ICC are absent, it indicates that these norms are not as embedded or emerging as activists had hoped. An absence of these norms would also indicate that the HRC might be failing in its mandate to protect human rights. Chapter six finds that on the whole, both the Responsibility to Protect and the International Criminal Court are absent in country resolutions. This is best explained by the indifference to both norms by both the United States and its geopolitical rivals.

The final substantive chapter focuses on thematic resolutions from 2006 to 2012.

Thematic resolutions are at the center of the UN's standard setting practices. However, under the Commission, the practice of creating thematic resolutions came under intense scrutiny for two reasons. First, according to many skeptics, there existed a proliferation of thematic resolutions, which hampered the Commission's ability to fulfill its mandate.<sup>24</sup> Second, like many of the country resolutions, regional bloc voting dictated thematic outcomes. For many, the Commission on Human Rights was a warzone, pitting different ideological blocs against each other for supremacy of their human rights preferences.

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<sup>24</sup> Alston P (1984) Conjuring Up New Human Rights: A Proposal for Quality Control. *American Journal of International Law* (78): 607

Chapter seven finds that there is little to no variation in thematic resolution voting outcomes across time. This is important because it suggests that whatever factors shifted country resolutions are unable to shift thematic voting patterns.

Taken together, chapters five through seven illustrate how the Human Rights Council has both surpassed expectations in some areas while simultaneously failing to live up to expectations in other areas.

The final chapter discusses key conclusions and the implications of this study for understanding how the Human Rights Council has operated since its inception in 2006. The findings, like diplomacy are messy. Classic theories of international relations and international law are unable to adequately explain the variation in outcomes across both country and thematic resolutions. The story of the Council's first six years is not a story of power, interests, norms, or domestic preferences alone. In the end, the transition from the Commission to the Council has made an unequal difference in voting outcomes and the purpose of the work that follows is to help explain why this uneven difference has occurred while also creating new and interesting questions for future projects on the Human Rights Council.

## Chapter 2

# The United Nations Human Rights Treaties System

The purpose of chapter two is to introduce readers who may be unfamiliar with the UN human rights treaty system to the individual treaties, the bodies who oversee the treaties, and the successes and failures of the treaty system. Although as stated in the introduction, even though the treaty body system appears *prima facie* peripheral to understanding the Human Rights Council, the two systems do have important linkages. After the general overview of the system, the concluding observations will discuss the relevance of the treaty system to the Human Rights Council.

Treaties are “an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”<sup>25</sup> Treaties may be formed between two states (bilateral) or between any numbers of states (multilateral).<sup>26</sup>

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<sup>25</sup> Vienna Convention on the Law of Treaties Article 2 (a), 1155 U.N.T.S. 331, 8 I.L.M. 679 Vienna Convention on the Law of Treaties of May 23, 1969 (hereafter VCLT). The Convention entered into force January 27, 1980. See also Klabbers J (1996) *The Concept of Treaty in International Law*. Boston: Kluwer Law International.

<sup>26</sup> Ibid. See also, Gowlland-Debbas V, Hadj-Sahraoui H and Hayashi, N (2000) *Multilateral Treaty-making: The Current Status of Challenges to and Reforms Needed in the International Legislative Process* : Papers



UN human rights treaties are, by nature, multilateral. Treaties are significantly different from Charter protections because states willingly chose to commit and then comply with standards set forth within each treaty.<sup>27</sup> In other words, unlike the Charter, participation in a treaty regime is entirely optional. The optional character of treaties is one of the reasons Louis Henkin argues, “almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.”<sup>28</sup> Treaties are instruments of standard setting and implementation.<sup>29</sup> Treaties are standard setting because new benchmarks are created when treaties come into force. However, the contrast-space of treaties is in implementing their specified rights. Treaties require at a minimum, that states respect, protect, and fulfill their treaty obligations.<sup>30</sup> The level of respect, protection, and fulfillment generally depends on a states ability to be both willing and able to protect rights.<sup>31</sup>

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Presented at the Forum Geneva Held in Geneva, Switzerland, May 16, 1998, Leiden: Martinus Nijhoff Publishers.

<sup>27</sup> There exists a significant body of work on both reasons for state commitment to human rights treaties and for states compliance (or lack thereof). There are many great works on the subject but one should start with Hathaway O (2007) *Why Do Countries Commit to Human Rights Treaties?* *Journal of Conflict Resolution* 51(4): 588 or for a more recent take, see: Smith-Cannoy H (2012). *Insincere Commitments: Human Rights Treaties, Abusive States, and Citizen Activism*. Washington D.C.: Georgetown University Press.

<sup>28</sup> Louis Henkin, 1968, as cited in Slaughter A-M, Tulumello, AS and Wood S (1998). *International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship*. *The American Journal of International Law* 92(3), p. 371.

<sup>29</sup> Eide A (1989) *The Realization of Social and Economic Rights and the Minimum Threshold Approach*, *Human Rights Law Journal* 10(1-2): 35-51 and Alston P and Crawford J (2000) *The Future of U.N. Treaty Monitoring*, Cambridge: Cambridge University Press.

<sup>30</sup> Eide argues that the obligation of respect entails, “refraining from doing anything that violates the integrity of the individual or infringes upon her or his freedom. Eide states that the obligation to protect, “requires the state and thereby all its organs and agents, to abstain from doing anything that violates the integrity of the individual or infringes upon his freedom,” and the obligation to fulfill means that “the state to must take measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those need recognized in the human rights instruments, which cannot be secured by personal efforts.” *Ibid*, p. 37.

<sup>31</sup> For more information, please see: UN Commission on Human Rights (1987) *Note verbale dated 86/12/05 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights ("Limburg Principles")*. 8 January 1987. E/CN.4/1987/17 and UN Committee on Economic, Social and Cultural Rights (1992) *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*. 14 December 1990. E/1991/23.

The following section shall introduce each of the nine core human rights treaties,<sup>32</sup> including an overview of their mandates, a sample of the rights protected in each treaty, the methods of protection employed, the structure of their monitoring bodies, rules of procedures, and conclude with successes and failures as they relate to human rights overall and specifically the Human Rights Council.

The nine core international human rights instruments, listed below in Figure 2.1, are, in order of entry into force: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), and the International Convention on the Rights of Persons with Disabilities (CPRD). The ICCPR and ICESCR, along with the Universal Declaration of Human Rights (UDHR) comprise the International Bill of Human Rights.

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<sup>32</sup> There are numerous UN declarations, conventions, and treaties relating to human rights. The core treaties are those that have an independent monitoring body. Office of the High Commissioner for Human Rights (2013) *International Human Rights Law*. Available at <http://www2.ohchr.org/english/law/>. [10 June 2013]

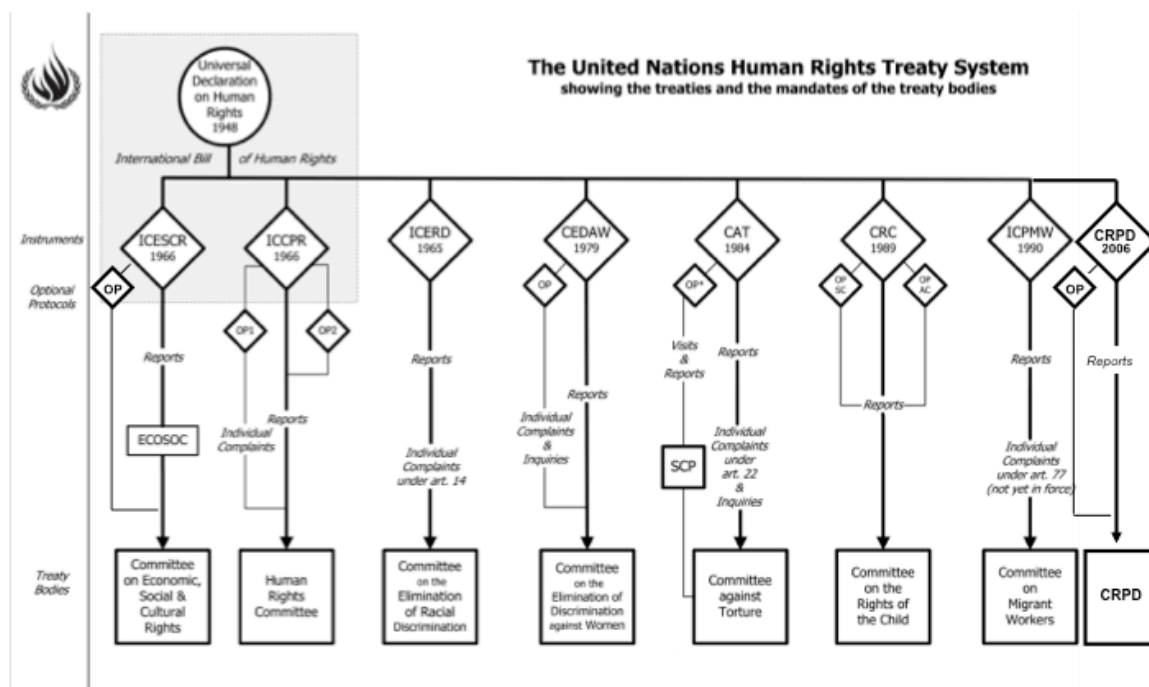


Figure 2.1: The UN Human Rights Treaty System<sup>33</sup>

In addition to the core instruments, The ICCPR<sup>34</sup> and the CRC<sup>35</sup> each have two additional optional protocols, while the ICESCR,<sup>36</sup> CEDAW,<sup>37</sup> CAT,<sup>38</sup> and CRPD<sup>39</sup> each have one additional optional protocol.

<sup>33</sup> Office of the High Commissioner for Human Rights (2012) *Fact Sheet 30/Rev.1, The United Nations Human Rights Treaty System*. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet30Rev1.pdf>. [10 June 2013], p. 4.

<sup>34</sup> ICCPR, 17. UN General Assembly (1966) *Optional Protocol to the International Covenant on Civil and Political Rights*. 19 December 1966. A/RES/2200A (XXI) and UN General Assembly (1989) *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty*. 15 December 1989. A/RES/44/128.

<sup>35</sup> UN General Assembly (1989), 20, UN General Assembly (2000) *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*. 25 May 2000. A/RES/54/263 and UN General Assembly (2000) *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*. 25 May 2000. A/RES/54/263

<sup>36</sup> ICESCR, 18. UN General Assembly (2009) *Optional Protocol to the International Covenant on Economic, Social and Cultural*. 5 March 2009. A/RES/63/117.

<sup>37</sup> UN General Assembly (1979), 19. UN General Assembly (1999) *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*. 15 October 1999. A/RES/54/4.

<sup>38</sup> UN General Assembly (1984) *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. 10 December 1984. A/RES/39 (XXVI), UN General Assembly (2003) *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*. 9 January 2003. A/RES/57/199.

## Sample of Rights Protected

Human rights treaties may be divided into two categories, those that define rights broadly, such as the ICCPR and the ICESCR, and those with a more specific scope.<sup>40</sup> The following section will illustrate the types of rights protected in each treaty.

The ICCPR and ICESCR cover a large swath of rights. The primary difference between these two sister covenants compared to their counterparts is that the original Covenants were created in order to codify rights enumerated in the UDHR, whereas, the rest of the UN human rights treaties were created in order to further codify rights protected in the International Bill of Rights or to protect rights omitted from the International Bill of Rights.

The ICCPR protects “negative<sup>41</sup>” rights, or rights that states should refrain from abusing, such as the right to life,<sup>42</sup> freedom from torture,<sup>43</sup> slavery or servitude,<sup>44</sup> arbitrary arrest or detention,<sup>45</sup> and freedom of movement,<sup>46</sup> to name only a few. Historically, these rights are those rights championed most by the West.<sup>47</sup>

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<sup>39</sup> UN General Assembly (2006) Convention on the Rights of Persons with Disabilities, Annex I. 13 December 2006. A/RES/61/106 and UN General Assembly (2006) Optional Protocol to the Convention on the Rights of Persons with Disabilities, Annex II. 13 December 2006. A/RES/61/106.

<sup>40</sup> Alston P and Crawford J (2000), 29, p. 1.

<sup>41</sup> This is not a perfect scheme but I use it here because this is the human rights scheme that most people follow.

<sup>42</sup> ICCPR, Article 6, 17.

<sup>43</sup> ICCPR Article 7, 17.

<sup>44</sup> ICCPR Article 8 (1) and 8 (2), 17.

<sup>45</sup> ICCPR Article 9, 17.

<sup>46</sup> ICCPR Article 12, 17.

<sup>47</sup> For a general overview see: Donnelly J (2002) *Universal human rights in theory and practice*, Ithaca: Cornell University Press

The ICESCR promotes and protects “positive<sup>48</sup>” rights, or rights that State Parties must actively protect. ICESCR rights are different from ICCPR rights because the fulfillment of obligations under protection in the ICESCR arguably takes more resources than civil and political rights. Thus, the Article 2 (1) of the ICESCR states that, “Each State Party to the present Covenant undertakes to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant.”<sup>49</sup> Such rights included, the right to work,<sup>50</sup> and just and favorable conditions of work,<sup>51</sup> the right to social security,<sup>52</sup> the right to special protections for mothers before and after birth, such leave with an adequate benefits,<sup>53</sup> and to the right to an education.<sup>54</sup> Historically, economic, cultural, and social rights were most ardently defended by the Soviet Union and other non-Western states.<sup>55</sup>

Although the ICCPR and ICESCR cover rights that are historically advocated by different ideological regimes, both covenants have an identical Article 1, which protects the right to self-determination.<sup>56</sup>

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<sup>48</sup> Ibid.

<sup>49</sup> ICESCR Article 2 (1). This by no means is a method for states to avoid protecting and promoting their obligations in the ICESCR. See General Comment 3, 31.

<sup>50</sup> ICESCR Article 6 (1), 18.

<sup>51</sup> ICESCR Article 7, 18.

<sup>52</sup> ICESCR Article 9, 18.

<sup>53</sup> ICESCR Article 10 (2), 18.

<sup>54</sup> ICESCR Article 13 (1), 18.

<sup>55</sup> Donnelly J (2002), 47.

<sup>56</sup> ICCPR Article 1, 17 and ICESCR Article 1, 18.

The purpose of specific-scoped treaties is to first adequately define the group (s) under protection and then enumerate specific rights for each group in areas of particular concern.<sup>57</sup> For example, ICERD begins by defining racial discrimination as,

Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.<sup>58</sup>

CEDAW defines discrimination against women as,

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>59</sup>

After scope and definitions are delineated, each treaty then sets forth the rights that shall be protected. Examples of specific rights protected in the CRC include, the right to life and development,<sup>60</sup> the right of the child to preserve its identity,<sup>61</sup> and to protect children from illicit trafficking.<sup>62</sup> Examples of the rights of migrant workers include, the freedom of movement,<sup>63</sup> protection from torture,<sup>64</sup> freedom of thought, conscience and religion,<sup>65</sup> and the right of equality of nationals.<sup>66</sup>

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<sup>57</sup> ICERD, CEDAW, CAT, CRC all place scope and definitions under Article 1. The newer treaties, ICRMW, CPED, and CRPD place scope and definitions under Article 2.

<sup>58</sup> ICERD Article 1, UN General Assembly (1965) *International Convention on the Elimination of All Forms of Racial Discrimination*. 21 December 1965. A/RES/2106 (XX).

<sup>59</sup> CEDAW Article 1, 19.

<sup>60</sup> CRC Article 6 (1) and (2), 20

<sup>61</sup> Ibid, Article 8.

<sup>62</sup> Ibid, Article 11.

<sup>63</sup> ICRMW Article 8, UN General Assembly (1990) *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*. 18 December 1990. A/RES/45/158.

<sup>64</sup> Ibid, Article 10.

<sup>65</sup> Ibid Article 12 (1).

<sup>66</sup> Ibid Article 18 (1).

The purpose of the narrow treaties is to protect civil, political, economic, cultural, and social rights of narrow groups and to give these groups an additional mechanism for protection. However, as will be discussed later, this can be problematic.

Both broad and specific treaties follow a basic structure, after a preamble or introduction, including previous agreements on the subject, scope and definitions are listed, then articles listing specific rights and duties of States Parties, and finally, how each treaty will be administered and the structure of their corresponding monitoring bodies.<sup>67</sup> The following section will briefly outline each monitoring body and the mechanisms that they are afforded to monitor and implement the obligations of each treaty.

## Monitoring Bodies of the UN Human Rights Treaties

Each of the nine core human rights treaties have monitoring bodies that are designed to oversee the implementation of their respective treaties. The following section will briefly detail the composition of each body and important aspects of their rules of procedure. Afterwards, a substantive section will list each of the monitoring bodies mandated mechanisms of monitoring and enforcement.

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<sup>67</sup> Sachleben M (2006) Human Rights Treaties: Considering Patterns of Participation, 1948-2000. New York: Routledge, p. 1.

<b>Committee</b>	<b>Mandate</b>	<b>Number of Members</b>
Committee on the Elimination of Racial Discrimination (CERD)	Article 8	18
Human Rights Committee (HRC)	Article 28	18
Committee on Economic, Cultural and Social Rights (CESCR)	E/RES/1985/17	18
Committee on the Elimination of Discrimination Against Women (CEDAW)	Article 17	23
Committee Against Torture (CAT)	Article 17	10
Committee on the Rights of the Child (CRC)	Article 43	18
Committee on the Protection of all Migrant Workers (CRMW)	Article 72	14
Committee on Enforced Disappearances (CPD)	Article 26	10
Committee on the Rights of Persons with Disabilities (CRPD)	Article 34	18

Table 2.1: Overview of UN Treaty Body Committees

All monitoring bodies except the CESCR receive their mandates from the their respective treaties.<sup>68</sup> Although each body has a different mandate, some general selection-criteria exist. For example, each member shall have a high moral character and shall serve as an

<sup>68</sup> The International Covenant on Economic, Social and Cultural Rights is the only convention / covenant thus far to not include an article establishing a monitoring body. The ESOCOC later created a monitoring body from E/RES1985/17; the body now works much like the ICCPR. Economic and Social Council (1985) *Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights*. 28 May 1985. E/RES/1985/17.



independent expert, acting in his or her own personal capacity.<sup>69</sup> This point should not be understated. This is one of the principal reasons why treaty bodies are different from Charter bodies. However, treaty bodies are not entirely free from “politics.” Election to treaty bodies is similar to elections in Charter bodies. Generally, the Secretary-General prepares a list of nominees, made by States Parties to the treaty, and then an election occurs.<sup>70</sup> The key here is that election occurs in a political body. Thus, many of the potential deficiencies of the Charter system may also apply to the treaty system.<sup>71</sup> It should also be noted that elections are based on equitable geographic distribution.<sup>72</sup> Each term lasts for four years with a possibility of reelection.<sup>73</sup>

Each committee meets approximately twice per year for sessions that last three weeks. In addition, most committees may hold pre-sessional meetings, special sessions, and may use working groups for investigative purposes and communications.<sup>74</sup> Meetings are generally scheduled in consultation with the Secretary-General and States Parties.<sup>75</sup>

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<sup>69</sup> Mertus J (2005) *The United Nations And Human Rights: A Guide For A New Era*, New York: Routledge, p. 81.

<sup>70</sup> Opsahl T (1992) *The Human Rights Committee*, in Alston P 1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, p. 340.

<sup>71</sup> Ibid. See Also Alston P and Crawford J (2000), 29, p. 9.

<sup>72</sup> Opsahl T (1992), 70, p. 341. See also Newman F and Weissbrodt D (1996) *International Human Rights: Law, Policy, and Process*. Cincinnati: Anderson Publishing, p. 73.

<sup>73</sup> CERD Article 8 (5) (a), ICCPR Article 32 (1), E/RES/1985/17 (c ) (i), CEDAW Article 17 (5), CAT Article 17 (5), CRC Article 43 (6), CRMW Article 72 (5) (a), CPD Article 26 (4), and CRPD Article 34 (7).

<sup>74</sup> For example, Office of the High Commissioner for Human Rights (2013) *Committee on the Elimination of Racial Discrimination – Working Methods*. Available from: <http://www2.ohchr.org/english/bodies/cerd/workingmethods.htm>. [10 June 2013].

<sup>75</sup> For example see Office of the High Commissioner for Human Rights (1989) *Rules of Procedure of the Committee on the Elimination of Racial Discrimination*. 1 January 1989. CERD/C/35/Rev.3 Human Rights Committee (2012) *Rules of Procedure of the Human Rights Committee*. 11 January 2012. CCPR/C/3/Rev.10, Economic and Social Council (1993) *Rules of Procedure of the Committee*. 1 September 1993. E/C.12/1990/4/Rev.1, UN General Assembly (2007) *Rules of Procedure of the Committee on the Elimination of Discrimination Against Women*, A/56/38 (SUPP), as amended by A/62/38, (SUPP) Chapter V. For additional information, please refer to each Committees’ Rules of Procedure. Office of the High Commissioner for Human Rights (2013), 32.

<b>Committee</b>	<b>NGO / NHRI Usage</b>
CERD	Informally
HRC	Formally
CESCR	Formally
CEDAW	Formally
CAT	Formally
CRC	Formally
CRMW	Formally
CPED	Formally
CRPD	Formally

Table 2.2: UN Treaty Body Committees and NGO / NHRI Participation<sup>76</sup>

NGO participation in the working methods of monitoring bodies is very active and is encouraged by most bodies.<sup>77</sup> The only exception is CERD, where NGO participation is accepted only in informal settings. In all other cases, NGO participation occurs in informal settings, working group settings, and in plenary meetings.<sup>78</sup> Information obtained by NGOs is used in creating state reports and in reviewing reports and communications.<sup>79</sup>

## Monitoring and Implementation Mechanisms

<sup>76</sup> Information from the working methods of each Committee was used to create this table. Information may be found at Office of the High Commissioner for Human Rights (2013), 32.

<sup>77</sup> Ibid

<sup>78</sup> Usually, NGOs are invited to give oral presentations on written testimony at the beginning of plenary sessions. Ibid

<sup>79</sup> For example, see: Alston P and Crawford J (2000), 29, pp. 23, 162, and 181-182. The use of “shadow” reports by NGOs is also a common practice. Shadow reports are reports created by NGOs, which focus on the actual reports of States Parties. The purpose of these reports is to keep states honest in the reporting phase. See Mertus J (2005), 69, p. 84-88.

<b>Treaty Name</b>	<b>State Reports</b>	<b>Individual Complaints</b>	<b>Interstate Complaints</b>	<b>Inquiries</b>	<b>General Comments</b>
CERD	Yes	No	Yes	No	Yes
HRC	Yes	Yes	Yes	No	Yes
CESCR	Yes	No	No	No	Yes
CEDAW	Yes	Yes	No	Yes	Yes
CAT	Yes	Yes	Yes	Yes	Yes
CRC	Yes	Yes	No	No	Yes
CRMW	Yes	Yes	Yes	No	Yes
CRPD	Yes	No	No	No	Yes
CPED	Yes	No	No	No	Yes

Table 2.3: UN Treaty Bodies and Implementation Procedures<sup>80</sup>

Each committee has numerous mechanisms for the purpose of monitoring and implementation. Table 2.3 above lists each of these mechanisms. The following section will survey each mechanism.

The submission of reports to the relevant treaty body by States Parties is the first step in the implementation process. At the initial phase, reporting is important because it help states “take stock” of human rights as they relate to a specific treaty; if done correctly, reports should help states prioritize areas of need.<sup>81</sup>

<sup>80</sup> Information for this table may be found in the text of each treaty or the relevant optional protocol, or more simply by referring to Factsheet 30. Office of the High Commissioner for Human Rights (2012), 33.

<sup>81</sup> Office of the High Commissioner for Human Rights *Factsheet 26: The Working Group on Arbitrary Detention*, Available online at: <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>. [June 10, 2013].

States are required to submit initial reports usually within one year of ratification with periodic reports due between two and five years later.<sup>82</sup> Table 2.4 below summarizes reporting obligations.

<b>Treaty</b>	<b>Initial report within</b>	<b>Periodic reports every</b>
CERD	1 year	2 years <sup>83</sup>
HRC	2 years	5 years <sup>84</sup>
CESCR	1 year	4 years <sup>85</sup>
CEDAW	1 year	4 years
CAT	1 year	4 years
CRC	1 year	5 years
CRMW	1 year	5 years
CRC-Op 1	2 years	5 years or with next CRC
CRC-Op 2	2 years	5 years or with next CRC
CPED	2 years	Additional information as requested by CED Article 29 (4)
CRPD	2 years	4 years

Table 2.4: Reporting Periodicities under the Treaties<sup>86</sup>

Figure 2.2 below summarizes the human rights treaty reporting cycle. Simply put, states submit reports, the relevant committee hears the report, a cooperative dialogue occurs

<sup>82</sup> For a great overview, see O’Flaherty M and Tsai P (2011) *Periodic Reporting: The Backbone of the UN Treaty Body Review Procedures* in Bassiouni C and Schabas W (2011) *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* Montreal: Intersentia.

<sup>83</sup> With a two year periodicity specified in the treaty, ICERD allows for merging two reports in one (i.e. de facto periodicity of four years). Office of the High Commissioner for Human Rights (2011) *State parties’ reporting procedures under international human rights treaties: Requirements and implications of the ongoing growth of the treaty body system on the periodic reporting procedures, documentation and meeting time*. Available at <http://www2.ohchr.org/english/bodies/HRTD/docs/ReportingUnderTreatyBodies.pdf> [10 June 2013, page 3 (hereafter Reporting Under the Treaty Bodies (2011)).

<sup>84</sup> Article 17 of the Covenant does not establish a reporting periodicity, but gives ECOSOC discretion to establish its own reporting programme. Ibid.

<sup>85</sup> Article 41 of the Covenant gives the Human Rights Committee discretion to decide when periodic reports shall be submitted. In general, these are required every four years. Ibid.

<sup>86</sup> Ibid.

between the committee and States Parties and then concluding observations (not rulings) are made; the final step is follow-up.

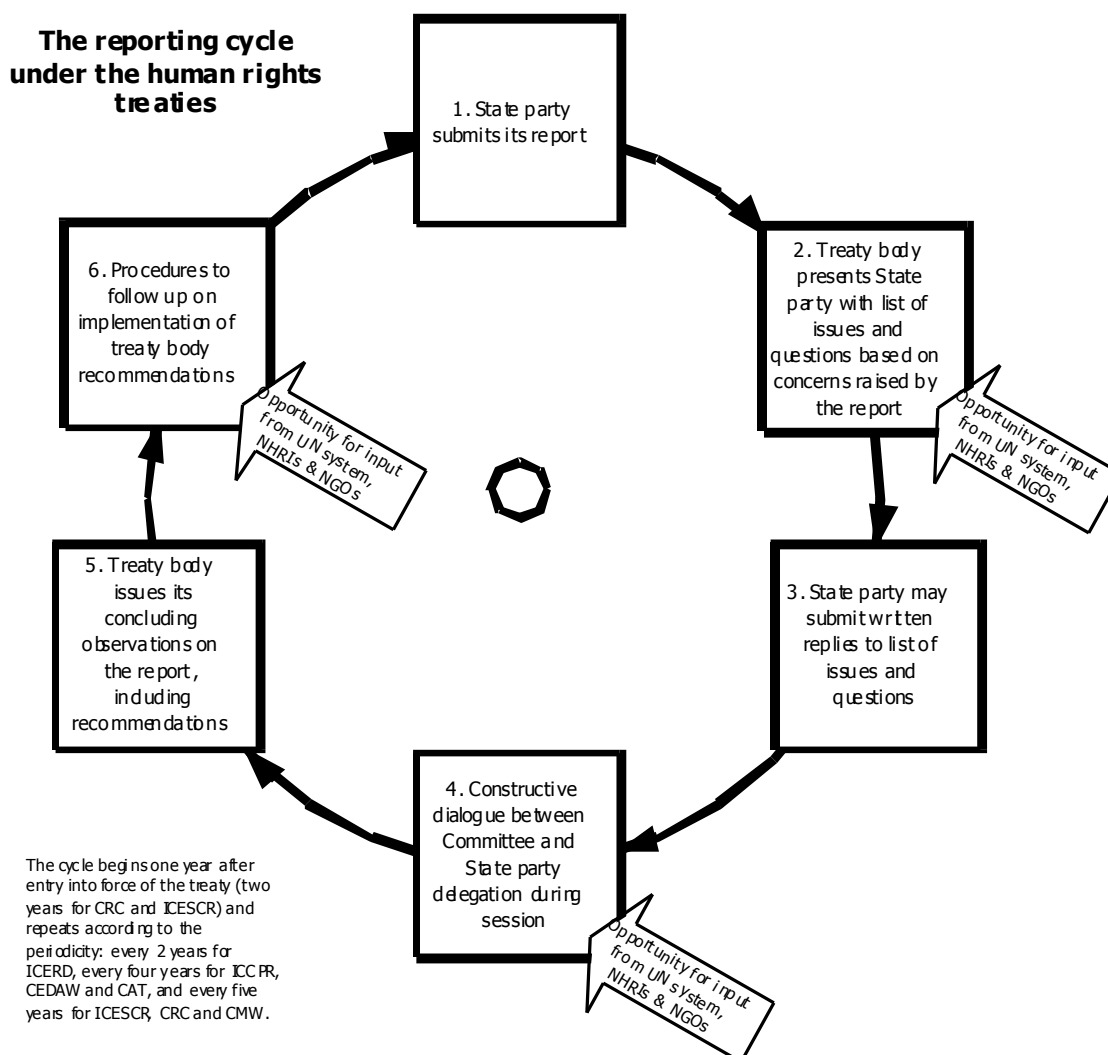


Figure 2.2: The Reporting Cycle under the Human Rights Treaties<sup>87</sup>

The completion of the initial report is an important, relative costly signal for States Parties to indicate that they are committed to protecting obligations set forth in the relevant treaty. However, the reporting process has some significant problems, which will be addressed towards the end of this section.

<sup>87</sup> Factsheet 30, 33, p. 20.

Individual complaints or communications may be investigated by four, and soon to be five treaty-monitoring bodies.<sup>88</sup> Treaty bodies may hear communications as long as the “exhaustion requirement” has been met.<sup>89</sup> The exhaustion requirement requires that all domestic remedies have been exhausted, that the complaint is not being heard under another international procedure (for example, the European Court of Human Rights, another treaty body or a Charter body), and finally, the communication may not be anonymous.<sup>90</sup>

The ability to give individuals the right of redress to an international body is an important step in implementing rights domestically. However, thus far, the individual complaints procedure has not worked out as planned. The number of communications are limited and even a limited number of complaints is causing a backlog.<sup>91</sup> In addition, as Alston points out, “there is no correlation between the general level of complaints (or their absence) and the state of human rights compliance in a given country.”<sup>92</sup>

Four states may hear interstate complaints, a process by which a State Parties to the relevant treaty makes a formal complaint against another Member State to the same treaty. Interstate complaints must also meet the exhaustion requirement. Although this

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<sup>88</sup> NGOs or a third party may also submit individual complaints as long as they are acting on behalf of the individual. Mertus J (2005), 69, p. 89.

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Alston P and Crawford J (2000), 29, p. 33.

<sup>92</sup> Ibid, p. 8

mechanism is available, heretofore, interstate complaints have never been used in the treaty monitoring process.<sup>93</sup>

The Women's Convention and the Convention against Torture allow their relevant bodies to initiate procedures of inquiry. Inquiries may occur when either committee receives reliable information concerning "grave and systematic violations" by a States Party as long as they have acquiesced to the required articles.<sup>94</sup> Inquiries are cooperative in nature and confidential.<sup>95</sup> Although the process is confidential, if States Parties agree to have the findings listed in reports, the committee in question may do so. For CAT, inquiries have been made for Brazil, Serbia and Montenegro, Mexico, Sri Lanka, Peru, Egypt, and Turkey.<sup>96</sup> CEDAW completed its first inquiry concerning violations in Mexico in 2004.<sup>97</sup>

Besides reviewing reports, General Comments are the most readily used (and perhaps, most important) mechanism used by each committee. General Comments are act as interpretations of human rights provisions, recommendations on how States Parties

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<sup>93</sup> The common argument here is that States Parties refrain from using the interstate complaint mechanism because most states do not have a clean record of respecting every obligation set forth in *any* relevant treaty. In addition, it is also diplomatic practice. See for example, Mertus J (2005), 69, p. 89. See also Leckie S (1988) The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking? *Human Rights Quarterly* 10(2): 249.

<sup>94</sup> Mertus J (2005), 69, p. 92, Factsheet 30, 33, p. 35. The relevant articles are CAT Article 20, and CEDAW OP Article 10.

<sup>95</sup> By cooperative, I mean that the relevant Committee may "invite" the State Party to submit its observations on the matter and that a potential visit to the State Party for further inquiry is based on the consent of the State Party. Mertus J (2005), 69, p. 93 and Factsheet 30, 33, p. 35.

<sup>96</sup> From Office of the High Commissioner for Human Rights (2013) *Confidential Inquiries under Article 20 of the Convention against Torture*. Available at: [http://www2.ohchr.org/english/bodies/cat/confidential\\_art20.htm](http://www2.ohchr.org/english/bodies/cat/confidential_art20.htm). [10 June 2013].

<sup>97</sup> Committee on the Elimination of Discrimination Against Women (2005) Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico. 27 January 2005. CEDAW/C/2005/OP.8/MEXICO. Available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw32/CEDAW-C-2005-OP.8-MEXICO-E.pdf> [June 10, 2013].

should report, and recommendations on implementation for States Parties.<sup>98</sup> In addition, General Comments may address new topics that were not originally envisioned in the drafting process of treaties.<sup>99</sup> In sum, General Comments “influence the progressive development of human rights treaty obligations.”<sup>100</sup>

## The Successes of the Treaty System

Although the UN human rights treaty system is much maligned. The system has had significant accomplishments; The UN system has seen successes in ratification, standard setting, and forays into domestic implementation.

Ratification of UN human rights treaties is high.<sup>101</sup> In fact, it is near universal ratification, especially for treaties that have been *in force* for some time.<sup>102</sup>

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<sup>98</sup> Perhaps the most famous example is CESCR General Comment 3, which lays out the nature of States Parties obligations. See General Comment 3, 31 and Mertus J (2005), 69, p. 93.

<sup>99</sup> Ibid

<sup>100</sup> Ibid

<sup>101</sup> Of course, there is an entire literature devoted to examining if ratification actually has an affect on human rights conditions within states but nevertheless, ratification is high.

<sup>102</sup> In 2011, the total number of ratifications numbered over 1,500. Reporting Under the Treaty Bodies, (2011) 83, p. 2



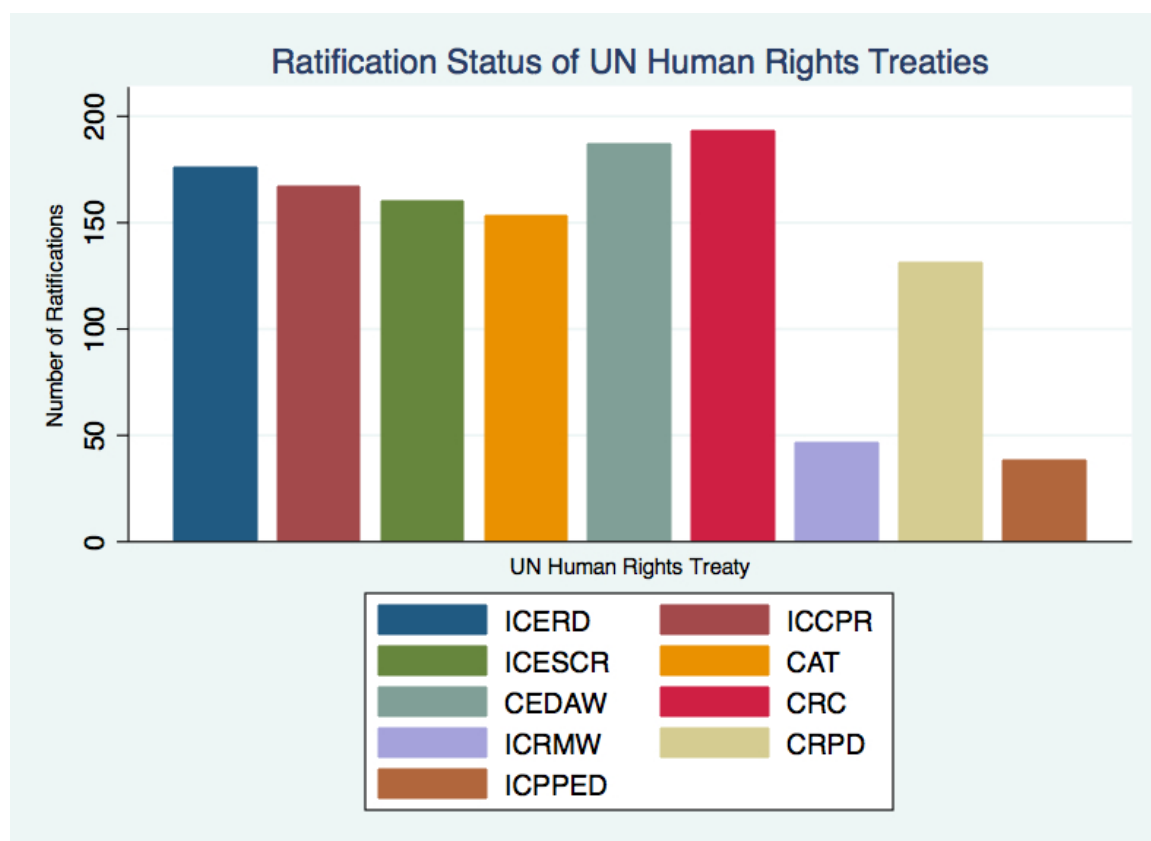


Figure 2.3: Ratification Status of UN Human Rights Treaties in 2013<sup>103</sup>

Treaties are the culmination of a standard-setting process started in the Charter-based bodies. The number of rights protected by UN human rights treaties has increased significantly since the 1960s, with each new decade seeing at least one human rights treaty. The monitoring bodies have also created a substantial amount of work, which includes precedence, notes on clarification and implementation, and elaboration of rights, all of which are standard-setting in nature.<sup>104</sup>

<sup>103</sup> Original idea for this graph is from Reporting Under the Treaty Bodies, Ibid. However, updated information on ratification status may be found online. United Nations (2013) *United Nations Treaty Collection*. Available online at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> [ June 10, 2013].

<sup>104</sup> Mertus J (2005), 69, p. 113.

The implementation mechanisms of human rights treaties has also witnessed an increased ability of monitoring bodies to actively engage with States Parties in order to verify implementation is occurring or to intercede in potential or present violations. State reports, individual complaints, and inquiries are all making a contribution to protecting human rights.<sup>105</sup> Perhaps the newest culmination in domestic implementation is the creation of The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).<sup>106</sup> The SPT is proactive. The SPT's mandate is to, "visit all places of detention in States parties, [in addition, the SPT is to act] as an advisory function which provides assistance and advice to both States parties and National Preventive Mechanisms ("NPM").<sup>107</sup> Further, the SPT has a mandate of "unrestricted access to all places of detention, their installations and facilities and to all relevant information."<sup>108</sup> The SPT began its work in February of 2007 so it is too early to get a firm idea of how States Parties are treating the monitoring body. However, as of 2012, the SPT has visited over 15 States Parties.<sup>109</sup>

## Shortcomings of the Treaty System

The deficiencies of the UN human rights treaty system are numerous. The most important problems of the system include the use of reservations, understandings, and declarations

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<sup>105</sup> As Mertus points out, each of these mechanisms create "promises of good behavior" from states. However, I argue that each of these mechanism also create opportunities for the UN to trust through verification. Mertus J (2005), 69, p. 113.

<sup>106</sup> UN General Assembly (2003), 38.

<sup>107</sup> Office of the High Commissioner for Human Rights (2013) *Optional Protocol to the Convention against Torture (OPCAT) Subcommittee on Prevention of Torture*. Available at: <http://www2.ohchr.org/english/bodies/cat/opcat/index.htm> [June 10 2013].

<sup>108</sup> Ibid

<sup>109</sup> Office of the High Commissioner for Human Rights (2013) *Optional Protocol to the Convention against Torture (OPCAT) Subcommittee on Prevention of Torture: SPT Visits*. Available at: [http://www2.ohchr.org/english/bodies/cat/opcat/spt\\_visits.htm](http://www2.ohchr.org/english/bodies/cat/opcat/spt_visits.htm) [10 June 2013].

(RUDs) to alter obligations, the effects of backlogs in treaty reporting and delays in hearing reports or communications, and resource constraints.

RUDs are a means for states to modify or exclude their legal obligations.<sup>110</sup> The problem of RUDs manifests itself in UN human rights treaties because of the desire of the UN to obtain universal ratification.<sup>111</sup> In order for RUDs to be legal, they must not obstruct the object and purpose of the treaty.<sup>112</sup> Although the practice of RUDs by the United States or by Islamic states concerning CEDAW receive most of the attention of scholars, the use of RUDs is common among most states.<sup>113</sup> It should be noted that the use of RUDs by states as a way to circumvent rights is not necessarily unambiguous. The most basic division of the RUDs debate places lawyers into two camps. The first camp argues that RUDs are detrimental to the international legal system because the use of RUDs circumvents states' obligations.<sup>114</sup> The second camp posits that RUDs are used

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<sup>110</sup> The VCLT Article 2 (1) d) defines a reservation as, "a reservation means a unilateral statement, however, phrased or named, made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."<sup>110</sup> VCLT 2 (1) (d). Curtis Bradley and Jack Goldsmith argue that there are in essence five types of RUDs, 1) substantive RUDs, 2) interpretative conditions, 3) non-self executing declarations, 4) federalism understandings, and finally 5) ICJ reservations. Bradley C and Goldsmith J (2000) *Treaties, Human Rights, and Conditional Consent*. *University of Pennsylvania Law Review* 149(2): 399.

<sup>111</sup> Lijnzaad describes this problem perfectly, "given the desirability of universal adherence to human rights treaties and given the fact that the situation in the countries differs a great deal, reservations may provide for a mechanism to modify the obligations in the treaty." Lijnzaad L (1995) *Reservations to Un-Human Rights Treaties: Ratify and Ruin?* London: Kluwer Law International, p. 75

<sup>112</sup> VCLT Article 19, 25.

<sup>113</sup> See for example Neumayer E (2007) Qualified Ratification: Explaining Reservations to International Human Rights Treaties. *The Journal of Legal Studies* 36(2): 397.

<sup>114</sup> Louis Henkin's remarks concerning U.S. RUDs policy is perhaps the best known. Henkin argues, "[the practice of attaching RUDs to U.S. Ratifications] has evoked criticism abroad and dismayed supporters of ratification in the United States. As a result, those qualifications of its adherence, U.S. ratification has been described as 'specious, meretricious, and hypocritical.'" Henkin L (1995) U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker. *The American Journal of International Law* 89(2), p. 341. See also Schabas W (1995) Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States still a Party? *Brooklyn Journal of International Law*, (21): 277, Bradley C and

predominately by states that take international obligations seriously and therefore use RUDs minimally in order to converge international and domestic practice.<sup>115</sup>

The effect of backlogs in treaty reporting is a significant issue for almost all committees.<sup>116</sup> According to the UN, “As at 3 May 2011, there were 263 reports pending consideration under the nine treaty bodies.”<sup>117</sup> Further, the OHCHR suggests that it would take over two years to eliminate the current backlog.<sup>118</sup> This of course does not take into account new reports that would come under review nor individual communications. Figure 2.4 below illustrates the problem.

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Goldsmith J (2000), *110* and Hafner-Burton E and Tsutsui K (2005) Human rights in a globalizing world: The paradox of empty promises. *American Journal of Sociology* 110(5): 1373.

<sup>115</sup> Perhaps the best argument for the use of RUDs in HRTL is from Bradley and Goldsmith. The authors argue, “The RUDs...reflect a sensible accommodation of competing domestic and international considerations. Among other things, they help bridge the political divide between isolationists who want to preserve the United States’ sovereign prerogatives, and internationalists who want the United States to increase its involvement in international institutions Bradley C and Goldsmith J (2000), *11*, p. 402 and Goldsmith J (2005) The Unexceptional U.S. Human Rights RUDs. *University of St. Thomas Law Journal* (3): 311.

<sup>116</sup> Only CED does not have a serious backlog. Reporting Under the Treaty Bodies (2011), 83, p. 9.

<sup>117</sup> Ibid

<sup>118</sup> Ibid

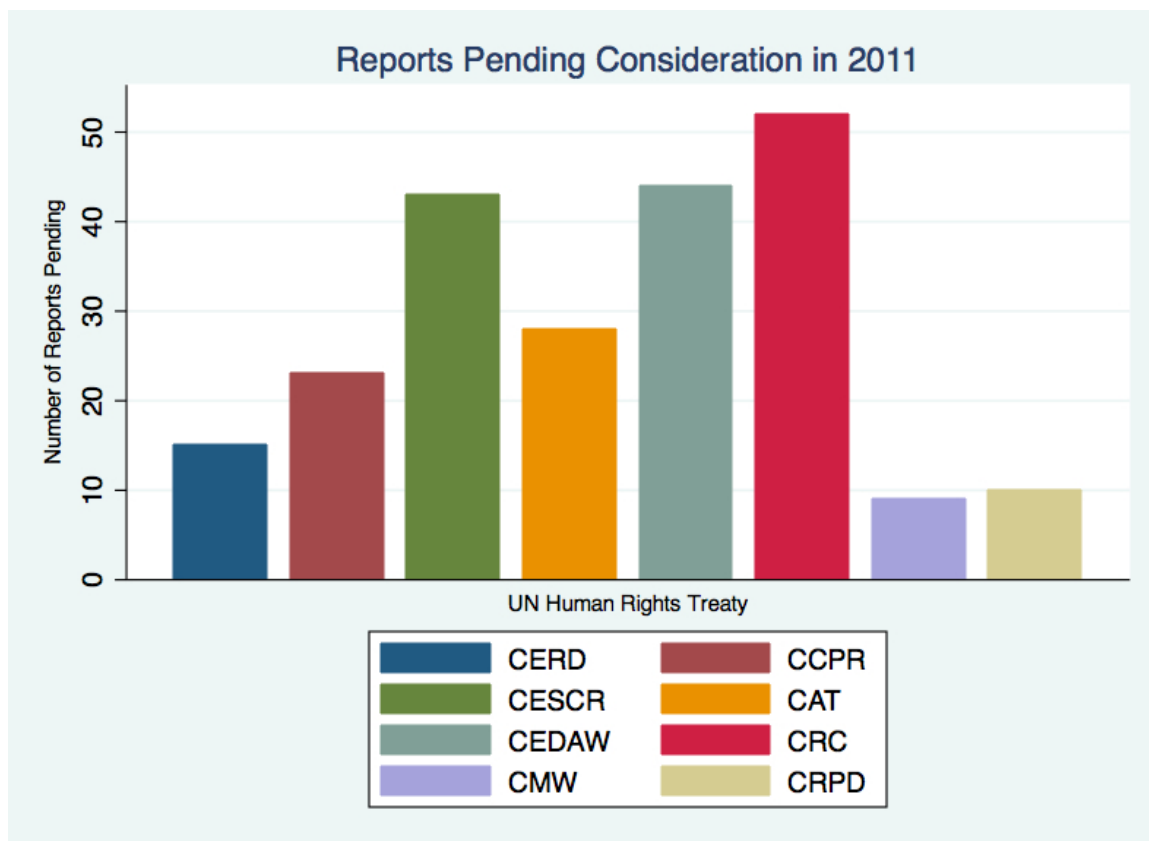


Figure 2.4 Reports Pending Consideration in 2011<sup>119</sup>

The success of the treaty body system is the primary cause of the backlog. As Figure 2 shows below, the number of pages submitted to the Committees has increased dramatically over the last ten years.

<sup>119</sup> Ibid, p. 9

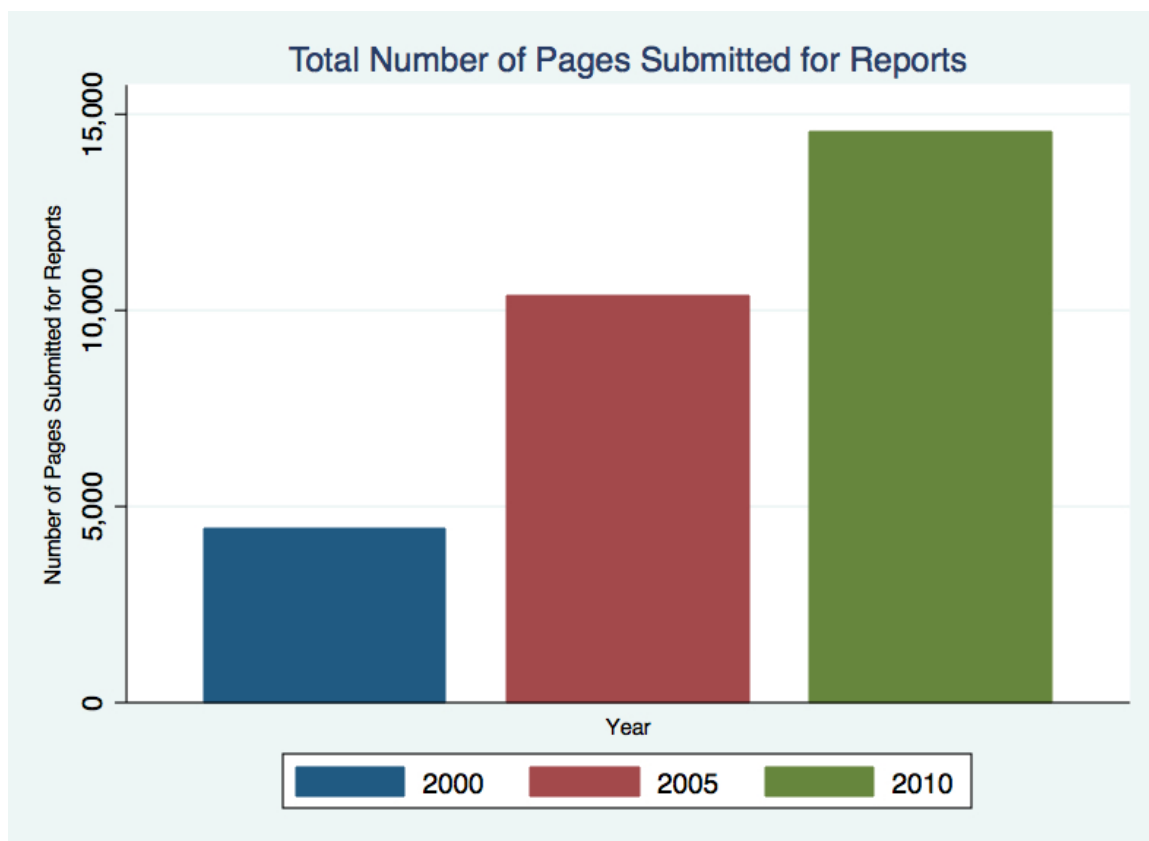


Figure 2.5 Number of Pages Submitted for Reports<sup>120</sup>

In 2000, Alston et al. summed up the problem succinctly, “it is not too much to say that the system, established to oversee state compliance, depends on its continued functioning on a high level of state default.”<sup>121</sup> However, efforts to reform the system are underway.<sup>122</sup>

<sup>120</sup> Ibid, p. 11

<sup>121</sup> Alston P and Crawford J (2000), *II*, p. 6.

<sup>122</sup> Office of the High Commissioner for Human Rights (2013) *Treaty Body Strengthening*. Available at: <http://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx> [June 10, 2013].

Finally, the treaty bodies, like much of the UN face an increasingly difficult problem of resource constraints.<sup>123</sup> Generally, committee secretariats (and the OHCHR) are understaffed and underpowered.<sup>124</sup> Technology resources are also a problem. Technology constraints are problematic for the UN (under resourced) but also for some States Parties.

## Concluding Observations

The United Nations human rights treaty system has developed considerably over the last fifty years. The system is set apart from the Charter system because of its use of independent experts, and law, both domestic and international, to set standards and implement human rights provisions codified in international law.

Over the last decade or so, the system has been under increasing fire for its backlogs and procedural inefficiencies.<sup>125</sup> However, this is a significant difference from the Charter bodies, which are increasingly under fire for “playing politics.” Procedural deficiencies may be fixed, albeit with an incredible amount of time and politicking.<sup>126</sup> In 2002, Kofi Annan suggested potential ways to modernize the treaty system.<sup>127</sup> Key areas to

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<sup>123</sup> See for example Bayefsky A (2001) *United Nations Human Rights Treaty System: Universality at the Crossroads*. Leiden: Martinus Nijhoff and more recently Pillay N (2012) *Strengthening the United Nations human rights treaty system: A report of the High Commissioner for Human Rights*. Available at <http://www2.ohchr.org/english/bodies/HRTD/docs/HCReportTBStrengthening.pdf>. [June 10, 2013].

<sup>124</sup> Alston P and Crawford J (2000), *II*, p. 7.

<sup>125</sup> *Ibid.*

<sup>126</sup> After all, altering treaties is a political problem.

<sup>127</sup> UN General Assembly (2003) *Strengthening of the United Nations: an agenda for further change: Resolution adopted by the General Assembly. 7 February 2003. A/RES/57/300*, UN General Assembly (2005) *In larger freedom: towards development, security and human rights for all: report of the Secretary-General. 21 March 2005. A/59/2005*.

modernize include coordination of treaty bodies,<sup>128</sup> standardized reporting requirements, and the introduction of a single report or core document.<sup>129</sup> In 2009, High Commissioner for Human Rights Navi Pillay called on all relevant stakeholders to work through both formal and informal channels to improve the human rights treaty system and in June 2012 released a comprehensive report on strengthening the treaty bodies.<sup>130</sup> Key findings of the report include focusing on a simplified reporting procedure (SRP), a stricter adherence to page limits, and “enhancing the visibility and accessibility of the treaty bodies,” while also ensuring that expertise on the treaty bodies remained high.<sup>131</sup>

The UN human rights structure is a tightly connected system with both legal and political mechanisms interacting with and in many ways determining the future of the other. One of the primary reasons the UN created the Human Rights Council is because the treaty system is more difficult to reform.<sup>132</sup> In turn, the mechanisms of the Council may end up having a profound impact on its legal counterparts, especially with regards to

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<sup>128</sup> Office of the High Commissioner for Human Rights (2013) *Enhancing the Human Rights Treaty Body System: A coordinated approach: streamlining working methods of the treaty bodies*. Available at: <http://www2.ohchr.org/english/bodies/treaty/workingmethods.htm>. [10 June 2013].

<sup>129</sup> Office of the High Commissioner for Human Rights (2013) *Enhancing the Human Rights Treaty Body System: A coordinated approach: Harmonized guidelines on reporting to the treaty bodies*. Available at: <http://www2.ohchr.org/english/bodies/treaty/CCD.htm>. [10 June 2013]. For a complete list of documents, see: Office of the High Commissioner for Human Rights (2013) *Effective implementation of international human rights instruments: Development of the human rights treaty system*. Available at: <http://www2.ohchr.org/english/bodies/icm-mc/documents-system.htm> [10 June 2013]

<sup>130</sup> See Pillay 2012, 123. See also: Office of the High Commissioner for Human Rights (2013), 122.

<sup>131</sup> Pillay 2012, 123.

<sup>132</sup> Any serious reform of the treaty system would require new treaties and treaties are notoriously difficult to create in the UN.



reporting.<sup>133</sup> For the health of the UN human rights system, it is important for the two systems to work together.<sup>134</sup>

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<sup>133</sup> The primary concern is that states may neglect their reporting obligations for the human rights treaties in lieu of the UPR reporting mechanisms. Although the treaty system and the UPR reporting mechanism are supposed to be cooperative, a tension does exist between the two. Interview with Scholar2 and NGO4.

<sup>134</sup> Interview with Scholar2.

## Chapter 3

### The Charter Bodies and Human Rights

The purpose of this chapter is to introduce readers to the primary human rights mechanisms based on the Charter of the United Nations.<sup>135</sup> The purpose of this chapter is not to add a substantially new contribution to the study of the United Nations Charter system but is instead meant as an overview for international relations scholars who may not be familiar with the principal human rights instruments contained in the Charter of the United Nations.<sup>136</sup>

### The United Nations Charter and Human Rights

The treaty establishing the Charter of the United Nations and the International Court of Justice was signed in San Francisco on June 6, 1945 and went into force on 24 October

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<sup>135</sup> The following chapter will deal exclusively with the transition from the Commission on Human Rights to the Human Rights Council and its infrastructure. As such, both are excluded from this chapter, even though they are both Charter bodies.

<sup>136</sup> For a good overview of Charter-based human rights provisions, see: Alston P (1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press. However, a new edition will be coming soon (For a thorough analysis of treaty mechanisms see: Keller H (2012) *UN human rights treaty bodies: law and legitimacy*. Cambridge: Cambridge University Press.

1945 after a majority of the signatories ratified the treaty.<sup>137</sup> Although technically a treaty, Charter based protections are considered separate from treaty based mechanisms because the latter are individual treaties, focusing on a specific set of rights that states choose willingly to commit and comply, while the former is a single treaty that contains numerous bodies which are relevant for both human rights and the UN.<sup>138</sup>

## On the Charter

Although the United Nations is known primarily as an institution that focuses on security and international stability,<sup>139</sup> and “references to human rights are scattered, terse, even cryptic,”<sup>140</sup> the Charter does contain numerous important human rights provisions.<sup>141</sup>

Paragraph two of the Preamble of the Charter states, “[We the peoples of the United Nations determined] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”<sup>142</sup> Further, in Chapter One, the Charter states, “[The purposes and principles of the UN are] to achieve international co-operation in solving international problems of

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<sup>137</sup> United Nations (1945) Charter of the United Nations. 24 October 1945. 1 UNTS XVI. For an overview of the United Nations Conference on International Organization, please see United Nations (2013) *History of the United Nations*. Available at: <http://www.un.org/en/aboutun/history/> [13 June 2013].

See also: Meisler S (2011) *United Nations: a history*, New York: Grove Press.

<sup>138</sup> For a good discussion of analytical classifications of UN human rights mechanisms, see: Alston P (1992) Critical Appraisal of the UN Human Rights Regime, in Alston P (1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, pp. 3-4.

<sup>139</sup> For example, in the Preamble of the Charter, paragraph one states, “We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.” In addition, Article 2 (4) states that, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” Charter of the United Nations, 137 and Meisler 2011, 137.

<sup>140</sup> Steiner J, Alston P, and Goodman R (2008). *International human rights in context: law, politics, morals : text and materials*. Oxford: Oxford University Press, p. 135.

<sup>141</sup> See Jhabvala, F (1997) The Drafting of the Human Rights Provisions of the UN Charter. *Netherlands International Law Review* 44(01): 1.

<sup>142</sup> UN Charter, paragraph 2 of the preamble, 137.

an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>143</sup>

In addition to the general articles noted above, Chapter IV gives the General Assembly the power to “initiate studies and make recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms...”<sup>144</sup> Article 55 of Chapter IX focuses on the issues surrounding the “creation of conditions of stability and well-being...based on respect for the principle of equal rights and self-determination of peoples”<sup>145</sup> as it relates to the economic and social cooperation of member states of the United Nations.

Although implicit, the Charter does contain some provisions relating to human rights under Chapter V, which creates the Security Council. These provisions include, Article 24 (1), which states that “in order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”<sup>146</sup> In addition, Article 34 gives the Security Council the right to “investigate any dispute, or any situation which

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<sup>143</sup> Ibid, UN Charter Article 1(3).

<sup>144</sup> Ibid, Chapter IV, Article 13 (1)(b).

<sup>145</sup> Chapter IX, Article 55 states the UN shall promote: “higher standards of living, full employment, and conditions of economic and social progress and development, and promote solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and [promote] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, Ibid.

<sup>146</sup> Ibid, Chapter V, Article 24 (1).

might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.”<sup>147</sup>

Chapter X, which establishes the Economic and Social Council (ECOSOC) gives the Council the ability to “make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly to the Members of the United Nations, and to the specialized agencies concerned.”<sup>148</sup> Further, Chapter X gives the ECOSOC the capacity to “make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all,<sup>149</sup> draft conventions,<sup>150</sup> and to hold conferences<sup>151</sup> on matters that fall within the competence of the Council. Finally, and most importantly, Article 68 states that the ECOSOC, “shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.”<sup>152</sup>

## On Sovereignty

Of course, any discussion of the United Nations’ Charter and human rights must also point out the now (in)famous Chapter I, Article 2 (7) clause which states that, “nothing

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<sup>147</sup> Ibid, Chapter V, Article 34.

<sup>148</sup> Ibid, Chapter X, Article 62 (1).

<sup>149</sup> Ibid, Chapter X, Article 62 (2).

<sup>150</sup> Ibid, Chapter X, Article 62 (3).

<sup>151</sup> Ibid, Chapter X, Article 62 (4).

<sup>152</sup> Ibid, Chapter X, Article 68.

contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”<sup>153</sup> The issue surrounding the potentially conflicting nature of protecting state sovereignty and protecting and promoting human rights is not new,<sup>154</sup> and will inform much of this current work. The next subsection will give a quick overview of the issue and leave much of the detailed arguments to particular sections.

At its most fundamental level, there are two competing camps in the sovereignty debate. One group argues that sovereignty is of paramount importance and no other legal or political concept shall reign supreme; the idea of sovereignty is omnipotent and non-mutable. The other group argues that sovereignty is becoming increasingly relative, based on how states treat their citizens and as such, is mutable.<sup>155</sup> For the non-mutable camp, whatever happens within the boundaries of a state is the sole business of the leviathan.<sup>156</sup> Simply put, the mechanisms of the United Nations that focus on human rights may only promote human rights but may not try to implement (investigate, create

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<sup>153</sup> Ibid, Chapter 1, Article 2 (7).

<sup>154</sup> For classic examples, see: Wright Q (1957) The Legality of Intervention Under the United Nations Charter. *Proceedings of the American Society of International Law at its Annual Meeting (1921-1969)* (51): 79 and Fonteyne J.P.L. (1973) Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the U.N. Charter, *The California Western International Law Journal* (4): 203.

<sup>155</sup> For an overview see; Weiss T et al. (2010) *The United Nations and changing world politics*. Boulder: Westview Press, Hoffmann S (2002) Clash of Globalizations. *Foreign Affairs* 81(4): 104, Slaughter A-M (2005) Security, Solidarity, and Sovereignty: The Grand Themes of UN Reform. *The American Journal of International Law* 99(3): 619, and Weiss T and Daws S (2008) World Politics: Continuity and Change since 1945, in Weiss, T.G. & Daws, S., 2008. *The Oxford handbook on the United Nations*, Oxford: University Press.

<sup>156</sup> Louis Henkin argues that one of the traditional assumptions of sovereignty is that, “the international system and international law do not (may not) address what goes on within a state; in particular how a state treats its own inhabitants is no one else’s business.” Henkin L (1995) Sibley Lecture: Human Rights and State Sovereignty. *The Georgia Journal of International and Comparative Law* (25), p. 32.

recommendations, or pass resolutions) human rights domestically. Although the mutable camp agrees with the basic premise that states are the primary actors in international relations and international law, they argue that the idea of sovereignty is shifting the focus of international law to a state's responsibility to protect its citizens.<sup>157</sup> Professor Louis Henkin argues that, "an international law of human rights has penetrated the one-impermeable state entity and now addresses the condition of human rights within every state."<sup>158</sup> As will be shown later, there exists a deep divide between the two sides that has had important effects on the United Nations human rights system.

The previous section introduced the relevant United Nations Charter provisions as they relate to human rights. The following sections will introduce each of the principal organs of the UN that relate to human rights and some of their most important contributions.

## The Principal Organs

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<sup>157</sup> See for example: Thakur R (2006) *The United Nations, peace and security: from collective security to the responsibility to protect*. Cambridge: Cambridge University Press, Evans G (2009) *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*. Washington D.C.: Brookings Institution Press, and Arbour L (2008) The responsibility to protect as a duty of care in international law and practice. *Review of International Studies* 34(03): 445.

<sup>158</sup> Henkin H (1995), 156, p. 33.

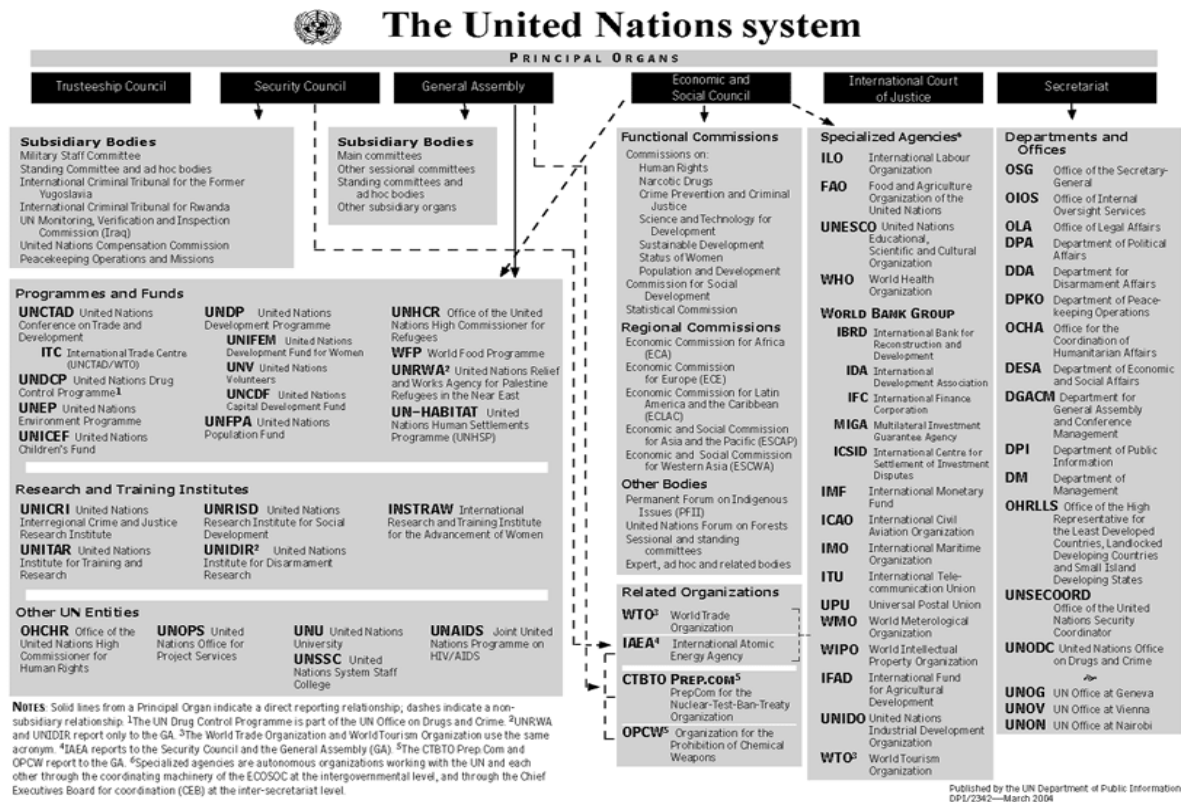


Figure 3.1: An Organizational Chart of the United Nations in 2004.<sup>159</sup>

For many non-specialists, the United Nations is an enigma. Figure 3.1 illustrates the point perfectly. There are in total six principal organs of the United Nations, most of which contain numerous subsidiary bodies, which also happen to contain numerous subsidiary bodies. The six principal organs are the Trusteeship Council, the Security Council, the General Assembly, the Economic and Social Council, the International Court of Justice (ICJ) and finally the Secretariat. The majority of the remainder of this section will be

<sup>159</sup> United Nations (2004) *United Nations System: Principal Organs*, Published by the UN Department of Public Information, DPI/2342 – March 2004. Available online at [http://ec.europa.eu/dgs/translation/rei/documenti/gruppi/organigramma\\_onu\\_en.pdf](http://ec.europa.eu/dgs/translation/rei/documenti/gruppi/organigramma_onu_en.pdf). [13 June 2013].



devoted to the General Assembly, ECOSOC, the Secretariat and the Security Council, and their various human rights mechanisms.<sup>160</sup>

## The General Assembly

The mandate of the United Nations General Assembly (UNGA) to promote and implement human rights is limited compared to other Charter bodies. According to Philip Alston, “the tasks entrusted to the UNGA boil down to discussion, exhortation, and the drafting of treaties.”<sup>161</sup> Specifically, the UNGA is mandated to do the following:

1. “Initiate studies and make recommendations to promote international political cooperation, the development and codification of international law, the realization of human rights and fundamental freedoms, and international collaboration in the economic, social, humanitarian, cultural, educational and health fields.”<sup>162</sup>
2. “Consider and make recommendations on general principles of cooperation....”<sup>163</sup>
3. “Discuss any question relating to international peace and security as long as it is not being simultaneously discussed by the Security Council,<sup>164</sup> and as long as it respected Article 2 (7).”<sup>165</sup>
4. Maintain the “power of the purse.”<sup>166</sup>
5. Draft international conventions for the protection and promotion of human rights.<sup>167</sup>

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<sup>160</sup> Due to constraints on space and relevance to the overall dissertation, this work will not cover all subsidiary bodies but only focus on the most important mechanisms involved in human rights. The Trusteeship Council, which until 1994 oversaw UN trust territories, is excluded because for all intents and purposes, the Council no longer plays an active role in the UN. Trusteeship Council (1994) *Rules of Procedure*. 25 May 1994. T/RES/2200. The ICJ may play a subtle role in human rights but is nevertheless excluded. For more information on the ICJ’s role see: Higgins R (2007) Human Rights in the International Court of Justice. *Leiden Journal of International Law* 20(04): 745 and Simma B (2012) Mainstreaming Human Rights: The Contribution of the International Court of Justice. *Journal of International Dispute Settlement* 3(1): 7.

<sup>161</sup> Cassese A (1992) The General Assembly: Historical Perspective 1945 – 1989, in Alston P (1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, p. 27.

<sup>162</sup> United Nations (2013) *General Assembly of the United Nations*. Available at: <http://www.un.org/en/ga/about/background.shtml> [13 June 2013].

<sup>163</sup> Charter Article 13 (1) (b), 137.

<sup>164</sup> Cassese A (1992), 161, p. 27

<sup>165</sup> Ibid.

<sup>166</sup> Ibid. See also, Opsahl T (1989) Instruments of Implementation of Human Rights. *Human Rights Law Journal* 10(1-2): 16.

6. Create subsidiary organs.<sup>168</sup>
7. Finally, the GA is mandated to receive and review reports from most UN organs.

The General Assembly is a political-diplomatic body representing most states in the world and all members of the United Nations.<sup>169</sup> The body is political-diplomatic because high-level diplomats who do not act in their individual capacity but instead act under the supervision of their respected governments sit in membership. Like any legislative body, the whims of the UNGA shift in accordance with membership and the priorities of particularly strong representatives or member-states at any given time.<sup>170</sup>

Alston divides General Assembly practice into three distinct temporal phases, the first, from 1945 to the late 1950s, the second, from roughly 1955 until the mid 1970s and the final stage from the 1970s until the early 1990s.<sup>171</sup> Finally, a fourth stage should be added, from 2001 until present.

The formative years of the General Assembly were concerned predominantly with understanding and implementing the Charter as well as the adoption of the Universal Declaration of Human Rights.<sup>172</sup> In its earliest years, the General Assembly wrestled with

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<sup>167</sup> Charter Article 62 (3), 137. See also: Alston argues that the General Assembly has the right based on the United Nations Charter Article 13. Alston P (1984), 24, p. 609.

<sup>168</sup> Charter Article 22, 137.

<sup>169</sup> Charter Article 9 (1), 137. Currently, there are 193 members. As of April 1, 2012, South Sudan is the newest member of the organization. South Sudan joined on July 14, 2011. United Nations (2013) *Member States of the United Nations*. Available at: <http://www.un.org/en/members/> [13 June 2013].

<sup>170</sup> According to Alston, “in actual fact, the views of the Assembly’ are those injected into its resolutions by the various groups of states prevailing at any specific time.” Alston (1992), 70, p. 29.

<sup>171</sup> This writer believes Alston’s final stage would extend until the late 1990s. Ibid, p. 29.

<sup>172</sup> The Universal Declaration of Human Rights will be discussed later, under the section on the Commission on Human Rights. United Nations (1948) The Universal Declaration of Human Rights 10 December 1948. A/RES/217 (III).

two parts of its *raison d'être*, promoting and protecting human rights while respecting the domestic jurisdiction of its member states. In the end, a compromise occurred. For the most part, the General Assembly did not actively supervise state behavior in areas of human rights and instead shifted the burden to subsidiary bodies. The primary exception to the rule was when human rights violations appeared to be large-scale in nature and a threat to the peace of the international community.<sup>173</sup>

The second stage of human rights development at the General Assembly focused on the elaboration and codification of international rights. Alston argues that the fundamental shift between the first and second phases was the admission of “more socialist countries into the UN and the gradual ending of the Cold War,”<sup>174</sup> thereby shifting both the narrative and the numerical balance of power in the UN. This is most obvious in the creation of two separate covenants on human rights, the International Covenant on Civil and Political Rights,<sup>175</sup> a western-centric document and the International Covenant on Economic, Social, and Cultural Rights,<sup>176</sup> a largely socialist enterprise. Of course, other important treaties were drafted during this time period as well, including the Convention on the Elimination of All Forms of Discrimination<sup>177</sup> and the Convention on the Suppression and Punishment of the Crime of Apartheid.<sup>178</sup> As Alston points out, many of these documents received a less than enthusiastic response by the Western community.<sup>179</sup>

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<sup>173</sup> Cassese A (1992) *161*, pp. 32-35.

<sup>174</sup> *Ibid*, p. 35.

<sup>175</sup> ICCPR, 17.

<sup>176</sup> ICESR, 18.

<sup>177</sup> ICERD, 58.

<sup>178</sup> UN General Assembly (1973) International Convention on the Suppression and Punishment of the Crime of Apartheid. 30 November 1973. A/RES/3068(XXVIII).

<sup>179</sup> Cassese A (1992) *161*, p. 37.

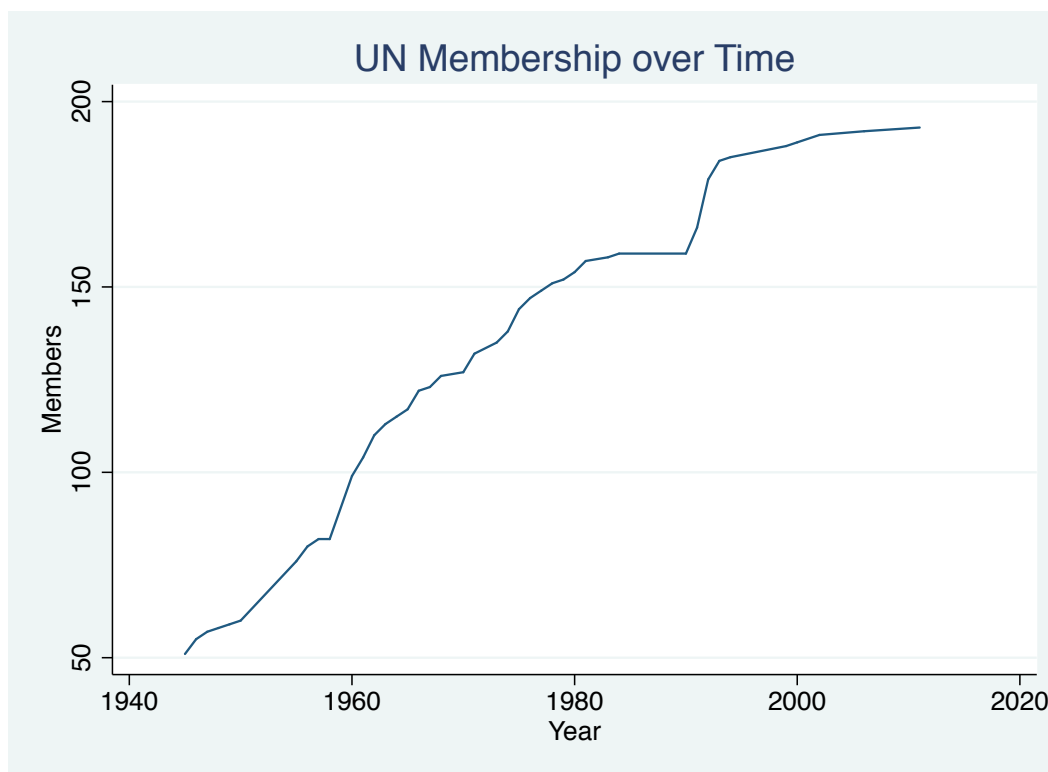


Figure 3.2: UN Membership over Time<sup>180</sup>

Finally, Alston argues that the second formative phase of the General Assembly helped codify its position on the right of states to claim sole responsibility of actions that happen within their domestic jurisdiction vis-à-vis South Africa and its use of apartheid.<sup>181</sup>

The General Assembly also increased its ability to monitor the domestic implementation of human rights during the 1960s. Alston argues that the General Assembly increased their implementation powers through three mechanisms, first, through monitoring devices set up in the mandates of the international treaties, secondly, through the use of fact-finding bodies (a practice that will proliferate in the coming years), and finally, through

<sup>180</sup> United Nations (2013) *United Nations member States - Growth in United Nations membership, 1945-present*. Available at: <http://www.un.org/en/members/growth.shtml> [13 June 2013].

<sup>181</sup> Cassese A (1992) *161*, p. 38.

the creation of special procedures to deal with systematic and individual complaints as they relate to gross violations of human rights.<sup>182</sup>

The third phase is characterized by the advent of developing world states after the end of colonialism in Africa and elsewhere (see Figure 3.2). Thus, the General Assembly switched its focus to issues of importance to the “global south” such as the right to development,<sup>183</sup> and other similar economic, cultural, and social rights. The official end of the Cold War dramatically increased the significance that the General Assembly placed on the rights of developing states, culminating in the creation of the UN’s Millennium Declaration,<sup>184</sup> which seeks to “spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty,”<sup>185</sup> among other issues of importance and the Millennium Development Goals.<sup>186</sup>

The final phase of General Assembly development began abruptly on September 11, 2001 with the terrorist attacks on the World Trade Center in New York and the attempted attack on Washington D.C., which caused the focus of the General Assembly to shift back to security and terrorism, despite no significant change in membership. However,

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<sup>182</sup> Cassese A (1992) *161*, p. 38-40. A discussion on treaty monitoring may be found in the previous chapter. The *1235* and *1503* procedures will be discussed more thoroughly in following chapter.

<sup>183</sup> Ibid, p. 42. See also: Kim S.Y. and Russett B (1996) The new politics of voting alignments in the United Nations General Assembly. *International Organization*, 50(04): 629.

<sup>184</sup> UN General Assembly (2000) *United Nations Millennium Declaration*. 18 September 2000. A/RES/55/2.

<sup>185</sup> Ibid, Part II (8).

<sup>186</sup> The Millennium Development Goals are: “To end poverty and hunger, to focus on universal education, to improve gender equality, child health, maternal health, to combat HIV/AIDS, to increase environmental sustainability, and create global partnerships. For more, see: United Nations (2013) *United Nations Millennium Development Goals*. Available at: <http://www.un.org/millenniumgoals/bkgd.shtml> [13 June 2013].

human rights, especially the Millennium Development Goals have maintained some steam in the General Assembly since 2001, despite having much of the early part of the decade centering on the US's response to the 9/11 attacks and the subsequent invasion of Afghanistan and Iraq.<sup>187</sup> In addition, recent focus has been on the development, codification, and attempted implementation of the Responsibility to Protect.<sup>188</sup>

## Subsidiary Bodies of the General Assembly

There are numerous subsidiary bodies of the General Assembly.<sup>189</sup> However, the primary human rights body is the Third Committee, officially titled the Social, Humanitarian and Cultural Committee.<sup>190</sup> Membership is universal.<sup>191</sup> The primary purpose of the Third Committee is the discussion and drafting of new standards for the promotion of human rights and the creation of proposals for human rights resolutions for the General Assembly.<sup>192</sup> The Third Committee discusses and drafts resolutions on a plethora of events.<sup>193</sup> For example, in 2011, the Third Committee adopted resolutions on the

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<sup>187</sup> Dhanapala J (2005) The United Nations' Response to 9/11. *Terrorism and Political Violence* 17(1-2): 17

<sup>188</sup> See readings accompanying note 157 and chapter 6.

<sup>189</sup> United Nations (2013) *Subsidiary Organs of the General Assembly of the United Nations*. Available at: <http://www.un.org/en/ga/about/subsidiary/index.shtml> [13 June 2013].

<sup>190</sup> In total, there are six main committees which are subsidiary organs of the General Assembly, they are: The Disarmament and Security Committee (1<sup>st</sup>), Economic and Financial Committee (2<sup>nd</sup>), Special Political and Decolonization Committee (4<sup>th</sup>), Administrative and Budgetary Committee (5<sup>th</sup>) and the Legal Committee (6<sup>th</sup>). Ibid.

<sup>191</sup> UN News Centre (2012) *Feature: The UN General Assembly's Third Committee-Social, Humanitarian and Cultural Issues* Available at: [http://www.un.org/apps/news/story.asp?NewsID=43858#Ubof-\\_Y5575](http://www.un.org/apps/news/story.asp?NewsID=43858#Ubof-_Y5575) [13 June 2013].

<sup>192</sup> Two recent examples include a draft resolution on the situation of human rights in Iran and the draft resolution on the situation of human rights in Myanmar. Third Committee (2011) *Draft Proposal L.56, on the Situation of human rights in Myanmar*. 27 October 2011. A/C.3/66/L.56, Third Committee (2011) *Draft Proposal L.55, Situation of human rights in the Islamic Republic of Iran*. 16 November 2011 A/C.3/66/L.55/Rev.1

<sup>193</sup> For a complete list, see: United Nations (2013) *UN General Assembly - Third Committee - Social, Humanitarian & Cultural - Documentation*. Available at: <http://www.un.org/en/ga/third/66/proposalstatus.shtml> [13 June 2013].

following issues: violence against women migrant workers,<sup>194</sup> strengthening of the coordination of the United Nations system on child protection,<sup>195</sup> World Down Syndrome Day<sup>196</sup> and the protection of and assistance to internally displaced persons.<sup>197</sup>

The Third Committee, like its parent body is a political-diplomatic body. As such, it faces from some of the same difficulties as the General Assembly. Individual members, particularly members of powerful states generally hold sway over the institution.<sup>198</sup> In addition, bloc voting is the modus operandi of the Third Committee.<sup>199</sup> However, one should not overlook the importance of the Committee when discussing human rights standard-setting at the United Nations. The Committee, although similar to its parent body, is significantly less formal and as such, is more open to creating new norms of protection.<sup>200</sup>

### The Economic and Social Council

The Economic and Social Council, like the General Assembly is a principal organ of the UN, it was established under Chapter X of the Charter.<sup>201</sup> The ECOSOC consists of 54

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<sup>194</sup> Third Committee (2011) *Draft Proposal L.18, Violence against Women Migrant Workers*. 17 November 2011. A/C.3/66/L.18.7.

<sup>195</sup> Third Committee (2011) *Draft Proposal L.22, Strengthening of the Coordination of the United Nations System on Child Protection*. 21 November 2011. A/C.3/66/L.22.

<sup>196</sup> Third Committee (2011) *Draft Proposal L.27, World Down Syndrome Day*. 10 November 2011. A/C.3/66/L.27

<sup>197</sup> Third Committee (2011) *Draft Proposal L.45, Protection of and assistance to internally displaced persons*. 18 November 2011. A/C.3/66/L.45.

<sup>198</sup> Quinn J (1992) The General Assembly into the 1990s in Alston P (1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, p. 63.

<sup>199</sup> Ibid, 64.

<sup>200</sup> Ibid, pp. 75+.

<sup>201</sup> Charter Chapter X, 137.

members,<sup>202</sup> significantly less than the 193 members found in the General Assembly and its Third Committee.<sup>203</sup> Council members are elected and no provisions are included for permanent seats.<sup>204</sup> However, elections are the subject of increasing controversy. First, although elections are held by the General Assembly and are open to any Member States of the UN, generally, elections are not competitive. This is the case for two reasons: First, because of the ECOSOC's declining influence in the UN, many states choose not to run for election.<sup>205</sup> Those states that do chose to run for election due so in order to "influence the elections of the subsidiary bodies and major associated bodies."<sup>206</sup> Second, because elections are based on an equitable geographic distribution (like most UN institutions),<sup>207</sup> many regional blocs nominate members based on rotation and not merit<sup>208</sup> thus eliminating competition. In theory, elections are supposed to place states that respect human rights on the Council. In practice, this is not the case.<sup>209</sup>

The ECOSOC, like the General Assembly is a political-diplomatic body. The primary functions of the Council are found in Article 62. They include initiating studies, making recommendations, holding conferences, and drafting conventions.<sup>210</sup> The Council may also "set up commissions in economic and social fields and for the promotion of human

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<sup>202</sup> Membership has increased as needed since its inception. See O'Donovan D (1992) *The Economic and Social Council*, in Alston P (1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, p. 108.

<sup>203</sup> Charter Article 61, 137.

<sup>204</sup> Ibid, Charter Article 61 (3).

<sup>205</sup> O'Donovan D (1992), 202, p. 109.

<sup>206</sup> Ibid

<sup>207</sup> Africa (14), Asia (11), Eastern Europe (6), Latin America and the Caribbean (10), and Western Europe and other States (13). See: United Nations (2013) *UN Economic and Social Council Membership*. Available at: <http://www.un.org/en/ecosoc/about/members.shtml> [13 June 2013].

<sup>208</sup> Ibid

<sup>209</sup> For example, current members of ECOSOC include: Belarus, Cuba, Egypt, Ethiopia, Iraq, Pakistan, the Russian Federation, and Zambia. Ibid.

<sup>210</sup> Charter Article 62, 137.



rights.”<sup>211</sup> In addition, as of the 2005 World Summit,<sup>212</sup> ECOSOC received a mandate to hold Annual Ministerial Reviews (AMR) and biennial Development Cooperation Forum (DCF).<sup>213</sup> The purpose of the AMR is to “assess progress in achieving internationally agreed development goals (IADGs) arising out of the major conferences and summits.”<sup>214</sup> The AMR is implemented through an annual thematic review and member states’ presentations.<sup>215</sup> The DCF was created to coordinate and foster cooperation amongst groups that are involved in international development.<sup>216</sup>

Unlike the General Assembly, the ECOSOC allows consultations by non-governmental organizations (NGOs). Currently, over 3,500 NGOs have some form of consultancy status with ECOSOC.<sup>217</sup> Consultancy status is tiered.<sup>218</sup> In order for NGOs to participate in ECOSOC mechanisms, they must apply for consultation status through the Committee on NGOs, a subsidiary body of ECOSOC.<sup>219</sup> Although NGOs are allowed to participate, consultancy status is not permanent, and if a Member State of ECOSOC disagrees

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<sup>211</sup> Ibid, Charter Article 68. ECOSOC may also create ad-hoc working groups, such Ad Hoc Advisory Groups on African Countries emerging from conflict and Ad Hoc Advisory Group on Haiti. For more information please see: Economic and Social Council (2013) *Ad Hoc Advisory Groups on African Countries Emerging from Conflict*. Available at: <http://www.un.org/en/ecosoc/adhocmech/conflict.shtml> [13 June 2013] and Economic and Social Council (2013) *Ad Hoc Advisory Group on Haiti*. Available at: <http://www.un.org/en/ecosoc/adhocmech/haiti.shtml> [13 June 2013].

<sup>212</sup> UN General Assembly (2005) *World Summit Outcome*. 24 October 2005. A/RES/60/1.

<sup>213</sup> UN General Assembly (2007) Strengthening of the Economic and Social Council: resolution adopted by the General Assembly. 9 January 2007. A/RES/61/16.

<sup>214</sup> Ibid and United Nations (2013) *Economic and Social Council: Annual Ministerial Review*. Available at: <http://www.un.org/en/ecosoc/amr/index.shtml> [13 June 2013].

<sup>215</sup> Ibid

<sup>216</sup> See: United Nations (2013) *Development Cooperation Forum: Economic and Social Council*. Available at: <http://www.un.org/en/ecosoc/dcf/index.shtml> [13 June 2013].

<sup>217</sup> Nearly 400 new NGOs apply for consultancy status yearly with an estimated 125 receiving consultancy status. See: United Nations (2013) *NGO Branch*. Available at: <http://csonet.org> [13 June 2013].

<sup>218</sup> Category I is for the largest, most diverse NGOs. Category II is for NGOs who specialize in specific areas of ECOSOC’s work. Finally, Category III NGOs or “the roster” consists all NGOs with narrow interests or a non-proven record. See: O’Donovan D (1992), 202, p. 110.

<sup>219</sup> ECOSOC NGO Branch, 217.

strongly with a position adopted by an NGO, consultancy status may be revoked.<sup>220</sup> In other words, NGOs must balance carefully their own mandates with the delicate sensitivities of Member States.

Much like the General Assembly, the ECOSOC has evolved to meet the needs of an expanding membership in the UN. However, ECOSOC expansion has not come with increased powers or resources.<sup>221</sup> Even so, the ECOSOC still acts as a gateway to its subsidiary bodies through elections and consultancy status and may, if needed, eliminate the mandates of its subsidiary bodies.<sup>222</sup>

Although the ECOSOC has a standard setting and implementation mandate, the Economic and Social Council is best known for its functional commissions. The next section will discuss the Commission on the Status of Women. The first section of the next chapter will give a detailed overview of the Commission on Human Rights.

### *The Commission on the Status of Women*

The Commission on the Status of Women (CSW) is a functional commission of ECOSOC.<sup>223</sup> The CSW is a political-diplomatic body, originally consisting of 15

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<sup>220</sup> O'Donovan D (1992), 202, p. 111.

<sup>221</sup> The ECOSOC has decreased substantive sessions from two yearly to only one as of 1991. O'Donovan D (1992), 202, p. 112.

<sup>222</sup> Ibid, p. 124.

<sup>223</sup> The CSW was established by the ECOSOC under the authority of Charter Article 68. Economic and Social Council (1946) *Establishing the Commission on the Status of Women*. 21 June 1946, E/RES/11(II).

members; the CSW membership now numbers 45 with<sup>224</sup> membership composition based on equitable geographic weighting.<sup>225</sup>

ECOSOC initially envisioned the CSW to be the primary body in the UN for women's rights.<sup>226</sup> The original mandate gives the CSW the power to "prepare recommendations and reports to ECOSOC on promoting women's rights and to make recommendations to ECOSOC on issues of urgent concern."<sup>227</sup> Over the years, the CSW's mandate has expanded to include standard setting, review of communications, and "reviewing and appraising progress made at the national, sub-regional, regional and global levels."<sup>228</sup> In 1996, the CSW's mandate further expanded to include, "identify emerging issues, trends and new approaches to issues affecting the situation of women...and to make substantive recommendations thereon, and to "assist the ECOSOC in monitoring, reviewing and appraising progress achieved and problems encountered in the implementation of the Beijing Declaration and Platform for Action at all levels."<sup>229</sup>

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<sup>224</sup> Reanda L (1992) *The Commission on the Status of Women*, in Alston P (1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, p. 268. See also: United Nations (2013) *Commission on the Status of Women*. Available at: <http://www.un.org/womenwatch/daw/csw/> [13 June 2013].

<sup>225</sup> Equitable geographic distribution gives thirteen members to Africa; eleven to Asia; nine to Latin America and Caribbean; four to Eastern European countries and finally, eight to Western Europe and other States. Ibid.

<sup>226</sup> Ibid

<sup>227</sup> Reanda L (1992), 224, p. 272.

<sup>228</sup> Ibid, See also: Economic and Social Council (1987) *Measures to strengthen the role and functions of the Commission on the Status of Women*. 26 May 1987. E/RES/1987/22.

<sup>229</sup> Economic and Social Council (1996) *Follow-up to the Fourth World Conference on Women*. 22 July 1996. E/RES/1996/6. See also: United Nations (2010) *Beijing at 15: Gender Equality, Development and Peace*. Available at: [http://www.un.org/womenwatch/daw/beijing15/media/Beijing15\\_Backgrounder\\_FINAL.pdf](http://www.un.org/womenwatch/daw/beijing15/media/Beijing15_Backgrounder_FINAL.pdf) [13 June 2013].

The CSW, unlike the CHR, does not actively use special procedures with the only exception being the creation of ad-hoc sessional working groups to review communications or to make drafts for resolutions.<sup>230</sup> However, the CSW actively engages with NGOs, even during annual meetings.<sup>231</sup>

According to Philip Alston, the CSW has had roughly three phases of development.<sup>232</sup> Phase one lasted from approximately 1946 until the early 1970s, the focus of which was to “achieve equal recognition for women’s rights through standard-setting, legal studies and promotional activities.”<sup>233</sup> The second phase lasted from 1975 until 1985 or the Decade of Women, the focus of the CSW during this decade was on development (as was the case in most of the UN),<sup>234</sup> the final phase which began in the early nineties and is ongoing through the 2000s is focused on mainstreaming women’s rights and continued standard-setting,<sup>235</sup> including a shifting focus to gender studies and the rights of rural women.<sup>236</sup>

Although initially hamstrung by politics in the ECOSOC,<sup>237</sup> the CSW has won some successes for women’s rights; they include the UN’s Decade of Women, from 1975-1985,<sup>238</sup> Fourth World Conference on Women and its outcome work, the Beijing Plan of

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<sup>230</sup> Reanda L (1992), 224, p. 270.

<sup>231</sup> United Nations (2013) *NGO Participation in the Commission on the Status of Women*. Available at: <http://www.un.org/womenwatch/daw/csw/NGO.html> [13 June 2013].

<sup>232</sup> Reanda L (1992), 224, pp. 275-300.

<sup>233</sup> Ibid, p. 275.

<sup>234</sup> Ibid

<sup>235</sup> Reanda L (1992), 224 and Commission on the Status of Women, 95.

<sup>236</sup> United Nations (2013) *Commission on the Status of Women: How We Work*. Available at: <http://www.unwomen.org/how-we-work/csw/> [13 June 2013].

<sup>237</sup> Reanda L (1992), 224, p. 271.

<sup>238</sup> Ibid, pp. 291 – 292.

Action in 1995,<sup>239</sup> and most importantly, the drafting of the International Convention on the Elimination of All Forms of Discrimination Against Women.<sup>240</sup>

## The Security Council

The United Nations' Security Council (UNSC) is one of the six principal organs of the United Nations.<sup>241</sup> The Charter of the United Nations does not contain a strict hierarchy, however, the Security Council is the *de facto* head of the UN and as such, “[General Assembly] members confer on the Security Council primary responsibility for the maintenance of international peace and security.”<sup>242</sup> The Security Council’s powers to oversee international peace and security are found in Chapter VI and Chapter VII of the Charter. Chapter VI powers are those which focus on the pacific settlement of disputes.<sup>243</sup> These powers include investigating conflicts which may “lead to international friction,”<sup>244</sup> and to make recommendations to parties for the pacific settlement of their disputes.<sup>245</sup> Chapter VII gives the UNSC extended powers in situations that contain “threats to the peace, breaches of the peace, or acts of aggression.”<sup>246</sup> Chapter VII gives give the Security Council the power to make recommendations,<sup>247</sup> apply sanctions and sever diplomatic ties,<sup>248</sup> or apply military force.<sup>249</sup>

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<sup>239</sup> United Nations (2013), 224 and United Nations (2013), 229.

<sup>240</sup> The Women’s Convention will be discussed more fully in a later section of this chapter.

<sup>241</sup> UN Charter Article 7, 137.

<sup>242</sup> Ibid, Charter Article 24 (1).

<sup>243</sup> Ibid, Charter Article 33 – 38.

<sup>244</sup> Ibid, Charter Article 34.

<sup>245</sup> Ibid, Charter Article 38.

<sup>246</sup> Ibid, Charter Chapter VII, Articles 39 – 51.

<sup>247</sup> Ibid, Charter Article 39.

<sup>248</sup> Ibid, Charter Article 41.

<sup>249</sup> Ibid, Charter Article 42.

The Security Council was not originally envisioned to be an important actor in human rights promotion and protection;<sup>250</sup> instead, its mandate was specifically focused on maintaining international stability.<sup>251</sup> However, The Security Council's mandate and actions have shifted significantly since 1945 and especially since the end of the Cold War.<sup>252</sup> Although, as will be discussed shortly, human rights concerns are still generally framed as concerns over international peace and security.<sup>253</sup>

Membership of the Security Council shall consist of five permanent members with ten additional members of the United Nations serving as non-permanent members.<sup>254</sup> Non-permanent members serve two-year, non-renewing terms.<sup>255</sup> Membership is based on equitable geographic distribution.<sup>256</sup>

Substantive decisions of the Security Council must pass by at least nine votes with all permanent members voting in the affirmative.<sup>257</sup> The power of the veto conferred upon the permanent members of the Security Council is a controversial topic and one with

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<sup>250</sup> Partsch KJ (1992) The Committee on the Elimination of Racial Discrimination, in Alston P (1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, p. 305.

<sup>251</sup> Charter Article 24 (1), 137.

<sup>252</sup> Weiss T et al. (2010), 155, pp. 178 – 179.

<sup>253</sup> Ibid

<sup>254</sup> The five permanent members of the Security Council are The United States of America, the Russian Federation, The Republic of China, France, and the United Kingdom of Great Britain and Northern Ireland. Originally, the number of non-permanent members was six. However, this was increased to 10 in 1965 Charter Article 23 (1), 137.

<sup>255</sup> Members are elected by two-thirds vote of the General Assembly. United Nations (2013) *UN Elections: Security Council*. Available at: <http://www.unelections.org/?q=node/33> [ 13 June 2013].

<sup>256</sup> Distribution is set as follows: Five from Africa and Asia states, one from the Eastern European Group, and two each from the GRULAC and WEOG groups. See Rule 142 of the Rules of Procedure of the General Assembly. UN General Assembly (2007) Rules of Procedure of the General Assembly. September 2011. A/520/Rev.17.

<sup>257</sup> Procedural votes need only nine votes with the possibly veto of the permanent members. Article 27 (2), 137.

important implications for the role of the Security Council in human rights.<sup>258</sup> This issue will be discussed further below.

Article 29 of the Charter gives the Security Council the mandate to create subsidiary bodies.<sup>259</sup> Although this mandate is not as extensively used as it is with the ECOSOC, the Security Council has used its mandate to establish a few subsidiary bodies that cover human rights.<sup>260</sup> The United Nations Peacebuilding Commission (PBC) is mandated to coordinate agencies and actors in situations of peace-building after conflict, “focus on reconstruction and institution-building efforts,” and to marshal resources to help affected areas.<sup>261</sup> Countries currently on the agenda of the PBC include, Burundi, Sierra Leone, Guinea, Guinea-Bissau, Liberia and the Central African Republic.<sup>262</sup> A second subsidiary body is the Security Council Working Group on Children and Armed Conflict.<sup>263</sup> The working group on Children and Armed Conflict is mandated to monitor abuses, review reports, and make recommendations to the Security Council.<sup>264</sup> As of 2012, the Working Group had reviewed reports on 30 countries, including states in the Middle East, Africa, and Latin America.<sup>265</sup>

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<sup>258</sup> Partsch KJ (1992), 250, p. 324, Mertus J (2005), 69, pp. 132-134, Glennon J (2003) Why the Security Council Failed. *Foreign Affairs*. Available at: <http://www.foreignaffairs.com/articles/58972/michael-j-glennon/why-the-security-council-failed> [13 June 2013], and Henkin L (1999) Kosovo and the Law of “Humanitarian Intervention.” *The American Journal of International Law* 93(4), p. 824.

<sup>259</sup> Charter Article 29, 137.

<sup>260</sup> United Nations (2013) *Subsidiary Bodies of the United Nations Security Council*. Available at: <http://www.un.org/en/sc/subsidiary/> [13 June 2013].

<sup>261</sup> UN Security Council (2005) *Post-conflict peacebuilding*. 20 December 2005. S/RES/1645 and UN General Assembly (2005) *The Peacebuilding Commission*. 30 December 2005. A/RES/60/180.

<sup>262</sup> United Nations (2013) *United Nations Peacebuilding Commission*. Available at: <http://www.un.org/en/peacebuilding/> [13 June 2013].

<sup>263</sup> UN Security Council (2005) *Children and armed conflict*. 26 July 2005. S/RES/1612.

<sup>264</sup> Ibid and United Nations (2013) *Children and Armed Conflict*. Available at <http://www.un.org/children/conflict/english/securitycouncilwg.html> [13 June 2013].

<sup>265</sup> Ibid. See also: UN General Assembly (2011). *Children and Armed Conflict*. 23 April 2011. A/65/280-S/2011/250.

The two most well known subsidiary bodies of the Security Council are the criminal tribunals for the Former Yugoslavia<sup>266</sup> and Rwanda.<sup>267</sup> Both were created as a response to mass atrocities, including war crimes, crimes against humanity, and in the case of Rwanda and Srebrenica, genocide. Despite early problems, both are also considered success stories. Since 1993, the ICTY has indicted 161 persons and have concluded proceedings for 126 of those accused<sup>268</sup> while the ICTR has completed 75 total cases.<sup>269</sup> Finally, both have helped pave the way for the establishment of the International Criminal Court<sup>270</sup> and other ad-hoc tribunals, like the Special Court for Sierra Leone.<sup>271</sup>

The establishment of the ICTY and ICTR in the early 1990s is part of an expanded use of its mandate by the Security Council as it relates to human rights. However, the establishment of the Tribunals came partly as a response by the Security Council to its inactions in the early 1990s in humanitarian crises situations such as Haiti, the Former Yugoslavia, and especially the genocide in Rwanda, all due largely to a lack of political

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<sup>266</sup> The International Criminal Tribunal for the Former Yugoslavia (ICTY) was established UN Security Council (1993) *Tribunal for the Former Yugoslavia*. 25 May 1993. S/RES/827. See also: United Nations (2009) *Statute of the Tribunal for the Former Yugoslavia*. Available at: <http://www.icty.org/sid/135> [13 June 2013].

<sup>267</sup> The International Criminal Tribunal for Rwanda was established by UN Security Council (1994) *Statute of the International Tribunal for Rwanda*. 8 November 1994. S/RES/955.

<sup>268</sup> Currently, there are 35 proceedings ongoing. United Nations (2013) *ICTY – TPIY: The Cases*. Available at: <http://www.icty.org/sections/TheCases/KeyFigures> [13 June 2013].

<sup>269</sup> United Nations (2013) *ICTR: Status of Cases*. Available at <http://www.unictr.org/Cases/tabid/204/Default.aspx> [13 June 2013].

<sup>270</sup> See for example: Schabas W (2001) *An Introduction to the International Criminal Court*. Cambridge: Cambridge University Press.

<sup>271</sup> UN Security Council (2000) *Establishment of a Special Court for Sierra Leone*. 14 August 2000. S/RES/1315 and Evans G and Sahnoun M (2002). *The Responsibility to protect*. *Foreign Affairs*. Available at:



will in the Security Council,<sup>272</sup> especially after the disastrous adventures of the UN in Somalia.<sup>273</sup>

The inability of the Security Council to act in the face of the gross and systemic humanitarian disasters of 1990s lead to shift in the Security Council's understanding of peacekeeping from observance and mediation to enforcement through intervention<sup>274</sup> and to perhaps the creation of a new norm, from the notion of absolute state sovereignty, to a responsibility to protect.<sup>275</sup>

In 1999, Secretary-General Kofi Annan challenged the international community to create response mechanism to systemic violations of human rights.<sup>276</sup> In 2001, The International Commission on Intervention and State Sovereignty (ICISS) responded and The Responsibility to Protect (R2P) was born.<sup>277</sup> R2P gained significant steam with human rights activists and UN bureaucrats through the middle of the decade.<sup>278</sup>

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Available at: <http://www.foreignaffairs.com/articles/58437/gareth-evans-and-mohamed-sahnoun/the-responsibility-to-protect> [13 June 2013]. See also Lillich R (1995) The Role of the UN Security Council in Protecting Human Rights in Crisis Situations: UN Humanitarian Intervention in the Post-Cold War World. *Tulane Journal of International and Comparative Law* 3(1): 1, and Steiner J et al. (2008), 140, p. 837.

<sup>273</sup> Clarke W and Herbst J (1996) Somalia and the Future of Humanitarian Intervention. *Foreign Affairs*. Available at: <http://www.foreignaffairs.com/articles/51844/walter-clarke-and-jeffrey-herbst/somalia-and-the-future-of-humanitarian-intervention> [13 June 2013] and Weiss T et al. (2010), 155, pp.181-182.

<sup>274</sup> Weiss et al. (2010), 155, pp.184 – 185.

<sup>275</sup> See specifically chapter six.

<sup>276</sup> UN General Assembly (1999) Report of the Secretary-General on the work of the Organization, resolution adopted by the General Assembly. 4 October 1999. A/54/11, p. 48.

<sup>277</sup> International Commission on Intervention and State Sovereignty (2001) *The responsibility to protect report of the International Commission on Intervention and State Sovereignty*. Ottawa: International Development Research Centre.

<sup>278</sup> See: Annan K (2004) A more secure world: our shared responsibility: report of High-level Panel on Threats, Challenges and Change. New York: United Nations, UN General Assembly (2005), 127. See also UN General Assembly (2005), 212.

Practically, R2P also appears to be making significant contributions to the protection of human rights. For example, in 2006, The Security Council reaffirmed the responsibility of states to protect civilians in times of war.<sup>279</sup> In 2011, R2P consistently appeared with reference to Libya and Muammar Al-Qadhaf's brutal repression of his own civilians,<sup>280</sup> although five states abstained from voting on resolution 1973.<sup>281</sup> In fact, it appeared that R2P was also making headway into foreign policy circles and the media.<sup>282</sup>

However, as the Security Council sits idly by, paralyzed by an inability to muster the political will to act in other countries facing uprisings and civilian massacres during the "Arab Spring," NGOs, states, and others began to question the relevance of R2P.<sup>283</sup> In addition, the inability of the Security Council to cure the "selectivity problem"<sup>284</sup> has also increased skepticism of R2P. Specifically, the inability of the Security Council to act

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<sup>279</sup> In paragraph four of resolution 1674, the Security Council "Reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity." UN Security Council (2006) *Protection of civilians in armed conflict*. 28 April 2006. S/RES/1674

<sup>280</sup> UN Security Council (2011) *Situation in the Libyan Arab Jamahiriya Republic*. 26 February 2011. S/RES/1970 and UN Security Council (2011) *Situation in the Libyan Arab Jamahiriya Republic*. 17 March 2011. S/RES/1973.

<sup>281</sup> Brazil, China, Germany, India, and Russia abstained. Ibid

<sup>282</sup> For example: Bellamy A and Williams P.D. (2011) The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect. *International Affairs* 87(4): 825, Patrick S (2011) Libya and the Future of Humanitarian Intervention. *Foreign Affairs*. Available at:

<http://www.foreignaffairs.com/articles/68233/stewart-patrick/libya-and-the-future-of-humanitarian-intervention?page=show> [13 June 2013], Bajoria J (2011) Libya and the Responsibility to Protect. *Council on Foreign Relations*. Available at: <http://www.cfr.org/libya/libya-responsibility-protect/p24480> [13 June 2013], Claes J (2011) Libya and the "Responsibility to Protect." Washington D.C.: *United States Institute of Peace*. Available at: <http://www.usip.org/publications/libya-and-the-responsibility-protect> [13 June 2013], Adams S (2011) R2P and the Libya mission. *Los Angeles Times*. Available at:

<http://articles.latimes.com/2011/sep/28/opinion/la-oe-adams-r2p-20110928> [13 June 2013], Dougherty M 2011 The "Responsibility to Protect Doctrine After Libya." *PBS*. Available at: <http://www.pbs.org/wnet/need-to-know/opinion/the-responsibility-to-protect-doctrine-after-libya/11753/> [13 June 2013], and The Economist (2011). *Responsibility to protect: The lessons of Libya*. Available at: <http://www.economist.com/node/18709571> [13 June 2013].

<sup>283</sup> Rieff D (2011) R2P, R.I.P. *The New York Times*. Available at: <http://www.nytimes.com/2011/11/08/opinion/r2p-rip.html> [13 June 2013].

<sup>284</sup> See for example: Bellamy A (2009) Realizing the Responsibility to Protect. *International Studies Perspectives* 10(2): 111 and C.G. and Bergholm L (2009) The Responsibility To Protect and the Conflict in Darfur: The Big Let-Down. *Security Dialogue* 40(3): 287

decisively in Darfur, Sudan (with the exception of referring the situation to the International Criminal Court<sup>285</sup>) and the unwillingness of the Security Council to “stop bickering and vote for human rights” in Syria<sup>286</sup> is decreasing the credibility of the norm of R2P and the Security Council.<sup>287</sup>

The Security Council is a powerful institution with a renewed focus on their mandate to protect human rights. However, the inability of the Council to act efficiently, perhaps hastily, because of the veto power of the permanent five members of the Council is decreasing the credibility of the institution.<sup>288</sup>

Yet, the Security Council has made some important contributions to human rights and peacekeeping. For example, the Security Council has passed resolutions mandating

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<sup>285</sup> UN Security Council (2005) *Darfur referral to the International Criminal Court*. 31 March 2005. S/RES/1593. See also, Amnesty International (2009). International Community Fails to Protect Darfur. Available at: <http://www.amnesty.org/en/news-and-updates/report/international-community-fails-protect-darfur-20090217> [13 June 2013].

<sup>286</sup> Koettl C (2011) UN Security Council: Stop Bickering and Vote for Human Rights in Syria. *Amnesty International*. Available at: <http://blog.amnestyusa.org/iar/un-security-council-stop-bickering-and-vote-for-human-rights-in-syria/> [13 June 2013].

<sup>287</sup> On October 4, 2011 and February 4, 2012, Russia and China vetoed a draft resolutions condemning violence in Syria. Macfarquhar N (2011) Russia and China Block United Nations Resolution on Syria. *The New York Times*. Available at: <http://www.nytimes.com/2011/10/05/world/middleeast/russia-and-china-block-united-nations-resolution-on-syria.html> [13 June 2013] and Gladstone R (2012) Russia and China Veto U.N. Sanctions Against Syria. *The New York Times*. Available at: <http://www.nytimes.com/2012/07/20/world/middleeast/russia-and-china-veto-un-sanctions-against-syria.html> [17 March 2013].

<sup>288</sup> UN News Centre (2011) *Without Security Council reform, UN will lose credibility – General Assembly chief*. Available at: <http://www.un.org/apps/news/story.asp?NewsID=38390#Ubo0aPY5574> [13 June 2013], Glennon J (2003), 258, Weiss T and Young K (2005) Compromise and Credibility: Security Council Reform? *Security Dialogue* 36(2): 131, and Annan 2004, 278. See also: Caron D (1993) The Legitimacy of the Collective Authority of the Security Council. *The American Journal of International Law* 87(4): 552 and Alvarez J.E. (1996) Judging the Security Council. *The American Journal of International Law* 90(1): 1.

numerous peacekeeping operations, including 16 active operations in the Caribbean, Southern Europe, The Middle East, Africa, and in Timor-Leste.<sup>289</sup>

The Security Council is a political-diplomatic institution, at the forefront of global security, human rights, and development. Unless major reform occurs or a significant shift in preferences of member states, one must assume the institution will continue to act in an ad-hoc manner depending significantly on the whims and preferences of the permanent members of the Council.

## The Secretariat

The Secretariat is a principal organ of the United Nations.<sup>290</sup> Although the Secretariat is not explicitly mandated to promote and protect human rights,<sup>291</sup> much has been accomplished recently in the field of human rights through the Secretariat, especially since the end of the Cold War.<sup>292</sup> Employees of the Secretariat work for the United Nations, in their individual capacity, as civil servants and as such, should not work the interests of their home governments.<sup>293</sup>

The Secretariat, like the other principal organs, is an umbrella institution comprising numerous bodies, including, the Office of Legal Affairs (OLA), the Department of Political Affairs (DPA), Department of Peacekeeping Operations (DPKO), and the

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<sup>289</sup> United Nations (2013) *United Nations Peacekeeping: Current Peacekeeping Operations*. Available at: <http://www.un.org/en/peacekeeping/operations/current.shtml> [13 June 2013] and Mertus J (2005), 69.

<sup>290</sup> Charter Article 7, 137.

<sup>291</sup> Ibid, Charter Chapter XV, Articles 97-101.

<sup>292</sup> Hannum H (2006) Human Rights in Conflict Resolution: The Role of the Office of the High Commissioner for Human Rights in UN Peacemaking and Peacebuilding. *Human Rights Quarterly* 28(1): 1

<sup>293</sup> Charter Article 100, 137.

Department of Economic and Social Affairs (DESA), to name only a few.<sup>294</sup> However, the Secretariat is best known for its civil service division (the “secretariat”), the Secretary-General, who is the head of the Secretariat, and the Office of the High Commissioner for Human Rights (OHCHR).

The civil service division is responsible for servicing the needs of the other principal organs of the UN, including ECOSOC and its myriad subsidiary bodies and the Security Council,<sup>295</sup> in New York, Geneva, and other field offices of the UN. In 2010, over 44,000 people were in the employment of the Secretariat from 187 Member States.<sup>296</sup> The primary issue facing the Secretariat directly, and human rights indirectly, is the lack of resources available to the UN to carry out its duties. This lack of resources is hindering UN bodies from completing work in an efficient and professional manner. However, despite resource scarcity, the Secretariat has had an impact on human rights.<sup>297</sup>

## The Secretary – General

Historically, human rights have not been a priority for the Secretary-General.<sup>298</sup>

However, in the last decade and a half, a shift in priorities has gradually placed human

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<sup>294</sup> United Nations (2013) *United Nations Secretariat*. Available at: <http://www.un.org/en/mainbodies/secretariat/> [13 June 2013].

<sup>295</sup> Charter Article 98, 137.

<sup>296</sup> UN General Assembly (2010) Composition of the Secretariat: gratis personnel, retirees, and consultants. 15 September 2010. A/65/350.

<sup>297</sup> Van Boven T (1992) The Role of the United Nations Secretariat in Alston P (ed) 1992. *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press.

<sup>298</sup> Van Boven argues that Secretaries-General from Gladwyn Jebb through Dag Hammarskjöld did not prioritize human rights. Understandably, according to Van Boven, this is because the UN was in its formative years and had to focus more on institution building and balance an increasing hostility between Cold War powers. Ibid, pp. 556 – 559. See also: Ramcharan B (1982) *The Good Offices of the United*

rights at the forefront of the Secretary-General's interests.<sup>299</sup> The following section will briefly describe selected efforts by Secretary-Generals Kofi Annan and Ban Ki-moon. Kofi Annan, more than any other Secretary-General, shifted the focus of his office to incorporate the idea that the promotion and protection of human rights is an indivisible aspect of international peace and security.<sup>300</sup> Annan's seminal work, *In Larger Freedom*, encapsulates the connectedness of human security and human rights best. According to Annan, "...development, security and human rights go hand in hand...they reinforce each other."<sup>301</sup>

Additional selected examples from his tenure, which lasted from 1997 until 2006, include the creation of the Millennium Development Goals<sup>302</sup> and its related summits, the creation of a "High-Level Panel on Threats, Challenges, and Change,"<sup>303</sup> the 2005 World Summit,<sup>304</sup> and *In Larger Freedom*.<sup>305</sup> In addition, as mentioned earlier, Annan was also a proponent of, and precipitated the discussion of, the idea of a responsibility to protect. Finally, and most relevant for this dissertation, Annan's dissatisfaction with what he viewed as the decreased credibility of the Commission on Human Rights led to the creation of the Human Rights Council in 2006.<sup>306</sup>

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Nations Secretary-General in the Field of Human Rights. *The American Journal of International Law* 76(1): 130.

<sup>299</sup> Human rights have increasingly become a priority for Secretary-General's starting with Javier Pérez de Cuéllar and especially Boutros Boutros-Ghali and Kofi Annan. *Ibid.*

<sup>300</sup> UN General Assembly (2005), 127.

<sup>301</sup> *Ibid.* Section I, Paragraph B 14 and B 16.

<sup>302</sup> See Millennium Development Goals, 186.

<sup>303</sup> UN General Assembly (2004) *Follow-up to the Outcome of the Millennium Summit*. 2 December 2004. A/59/565.

<sup>304</sup> UN General Assembly (2005), 212.

<sup>305</sup> UN General Assembly (2005), 127.

<sup>306</sup> Annan's reform efforts and the creation of the Human Rights Council is the subject of the following chapter.

Annan's predecessor, Secretary-General Ban Ki-moon of South Korea has a heretofore mixed, though incomplete record of human rights promotion and protection.<sup>307</sup> However human rights issues are an implicit concern for Secretary-General Ban Ki-moon, at least indirectly through key priorities of the office, which include "sustainable development, a safer, more secure world, developing best practices for country transitions, conflict prevention, and the needs of women and children."<sup>308</sup> Ban Ki-moon has been active in giving speeches with human rights themes, on numerous topics, such as human trafficking, women's rights, and the rights of the LGBT community.<sup>309</sup> Additionally, Secretary-General Ki-Moon has played an active role in trying to lead the UN in efforts to find solutions in Sudan, Libya, and Syria.

The Secretary-General is a powerful civil service post. Increasingly, Secretary-Generals are placing the promotion and protection of human rights near the forefront of their agenda, especially in relation to UN reform and peace and security. However, success or failure appears to depend more on international circumstances than the agency of the Secretary-General to act.

## The Office of the High Commissioner for Human Rights

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<sup>307</sup> The beginning of his tenure must of course be situated in the wider geopolitical context and as such, was quite disappointing. However, recently he has made an effort to protect and promote human rights, particularly of LGBTI and other minority communities. See for example: BBC (2011) UN rejects rights "coward" claim. Available at: <http://www.bbc.co.uk/news/world-europe-12272800> [14 June 2013] and Human Rights Watch (2012) *UN: Ban Ki-Moon Condemns Homophobic Laws*. Available at: <http://www.hrw.org/news/2012/12/17/un-ban-ki-moon-condemns-homophobic-laws> [14 June 2013].

<sup>308</sup> United Nations (2013) *United Nations Secretary-General Ban Ki-moon*. Available at: <http://www.un.org/sg/index.asp> [13 June 2013].

<sup>309</sup> UN News Centre (2013), *Ban Ki-Moon's speeches*. Available at: [http://www.un.org/apps/news/infocus/speeches/browse\\_results.asp](http://www.un.org/apps/news/infocus/speeches/browse_results.asp) [12 July 2013].

In 1993, 171 states and numerous activists convened in Vienna, Austria for the World Conference on Human Rights in order to “carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights,”<sup>310</sup> after the conclusion of the Cold War in the hopes of evaluating and producing novel solutions to apparent failures of the international community to protect human rights.<sup>311</sup> From this conference and its outcome document, the Vienna Declaration and Programme of Action, the Office of the Higher Commissioner for Human Rights (OHCHR or High Commissioner) was born.<sup>312</sup>

The High Commissioner serves at the rank of Under-Secretary-General of the United Nations and reports to the Secretary-General.<sup>313</sup> The High Commissioner should be a person of high moral character and an expert in human rights related field.<sup>314</sup> The High Commissioner is appointed by the Secretary - General with the approval of the General Assembly, based on the principle of equitable geographic rotation for a period of four years with the possibility of one renewal for an additional four years.<sup>315</sup>

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<sup>310</sup> UN General Assembly (1993) *Vienna Declaration and Programme of Action*. 12 July 1993. A/CONF.157/23.

<sup>311</sup> Mertus J (2005), 69, pp. 8 and 11 as well as Boyle K (1995) *Stock-taking on Human Rights: The World Conference on Human Rights, Vienna 1993* in Beetham D (1995) *Politics and human rights*. Oxford: Wiley-Blackwell.

<sup>312</sup> Six months later, the General Assembly adopted two resolutions, on the World Conference. The latter created the OHCHR. UN General Assembly (1993) *World Conference on Human Rights*. 20 December 1993. A/RES/48/121 and UN General Assembly (1993) *High Commissioner for the promotion and protection of all human rights*. 20 December 1993. A/RES/48/141. Interestingly, Secretary-General Boutros Boutros-Ghali suggested that the creation of another bureaucratic office would not be the best solution. Boutros-Ghali stated, [the creation of a new bureaucracy] may only arouse discontent and resistance at a time when liberality and leeway are called for.” Mertus J (2005), 69, p.12.

<sup>313</sup> Ibid, A/RES/48/141 2 (c); Article 4.

<sup>314</sup> Ibid, Article 2 (a)

<sup>315</sup> Ibid, Article 2 (b)



Since 1993, there have been six High Commissioners. The first two High Commissioners, José Ayala-Lasso from Ecuador (1994-1997) and Mary Robinson, from Ireland (1997-2002) had difficulties in their appointments,<sup>316</sup> primarily due to institution building but also because of internal politics in the United Nations.<sup>317</sup> The third and fourth High Commissioners were less successful.<sup>318</sup> The fifth High Commissioner, Louise Arbour (2004-2008) had more success in her tenure as OHCHR, especially in mainstreaming human rights.<sup>319</sup> However, Arbour decided to not seek reelection for a second term, due mainly to the dissatisfaction of the George W. Bush administration to her criticisms of their detention and interrogation policies related to the war on terrorism.<sup>320</sup> Navanethem (Navi) Pillay (2008 – Present), the sixth person appointed to OHCHR has thus far an improved record of mainstreaming human rights and raising the profile of the office.

The primary responsibilities of the OHCHR are standard setting, monitoring, implementation (primarily through assistance), coordination, and mainstreaming human

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<sup>316</sup> Steiner J, et al. (2008), 140, p. 827. However, both were able to create numerous field offices (more on this in the next subsection). Weiss T et al. (2010), 155, pp. 195 – 196.

<sup>317</sup> According to Steiner, et al, “Boutros-Ghali did not want an independent high commissioner and kept the post weak and ineffective.” Ibid, 828.

<sup>318</sup> Tragically, Sérgio Vieira de Mello was killed in the line of duty in Iraq on August 19, 2003. See: Barringer F (2003) After the War: United Nations; Questions About Role of World Agencies in Hot Spots. *New York Times*. Available at: <http://www.nytimes.com/2003/08/20/world/after-the-war-united-nations-questions-about-role-of-world-agencies-in-hot-spots.html?ref=sergiovieirademello> [13 June 2013]. Bertrand Ramcharan of Guyana was appointed interim High Commissioner but had little time to shape the office. For more info on the OHCHR and Ramcharan’s time there, please see: Ramcharan B (2005) *A UN high commissioner in defence of human rights: no license to kill or torture*. Leiden: Martinus Nijhoff.

<sup>319</sup> Simons M (2008) *Departing Rights Official Raised Volume on Issues*. *The New York Times*. Available at: <http://www.nytimes.com/2008/07/06/world/europe/06arbour.html> [13 June 2013].

<sup>320</sup> Ibid, Weiss et al. (2010), 155, pp. 196-197.

rights.<sup>321</sup> In other words, The High Commissioner should serve as the face of human rights of the United Nations.<sup>322</sup>

The OHCHR's primary contributions to the promotion and protection of human rights are technical assistance and the creation of field offices. The creation of the OHCHR "streamlined the process for requesting and receiving technical assistance in the field of human rights."<sup>323</sup> Technical assistance includes numerous activities such as human rights and judicial training, the training of states' militaries in human rights law and also humanitarian law, adversary services in the drafting and implementation of laws, treaty reporting, and assistance to NGOs, and the development of human rights education and training.<sup>324</sup>

The creation of field offices by the OHCHR in countries of need is a novel way to implement its mandate. Field offices help the OHCHR monitor human rights situations on the ground, including potential hot spots,<sup>325</sup> assist states with implementation, and assist National Human Rights Institutions (NHRI) in their work.<sup>326</sup>

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<sup>321</sup> General Assembly Resolution (2005), 31/2, Article 4 (a) – (k).

<sup>322</sup> Ibid. See also, Office of the High Commissioner for Human Rights (2013) *What We Do*. Available at: <http://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx> [13 June 2013] and Weiss et al. (2010), 155, p. 194

<sup>323</sup> Mertus J (2005), 69, p.16

<sup>324</sup> Ibid, pp. 17 – 18. For an in-depth overview of OHCHR's contribution to technical assistance and human rights, please see: Flinterman C and Zwamborn M (2003) From Development of Human Rights to Managing Human Rights Development: Global Review of the OHCHR Technical Cooperation Programme: Synthesis Report. Available at: <http://www.ohchr.org/Documents/Countries/global-reviewsynthesis.pdf> [13 June 2013].

<sup>325</sup> Mertus J (2005), 69, pp. 19-26 and Office of the High Commissioner for Human Rights (2013) *OHCHR in the World: Making Human Rights a Reality on the Ground*. Available at: <http://www.ohchr.org/EN/Countries/Pages/WorkInField.aspx> [13 June 2013].

<sup>326</sup> Mertus J (2005), 69, pp. 27-33. See also Ramcharan B (2005), 318.

As of April 2012, the OHCHR maintains field offices in 24 countries, 12 are stand-alone offices and the other half are regional offices and centers. In addition, the OHCHR has a significant presence in 14 UN peace missions.<sup>327</sup>

So far, the record of the OHCHR is mixed. The OHCHR started slowly, due mainly to internal politics at the United Nations. However, according to Mertus, the OHCHR also suffers from “unplanned expansion of its activities, ad-hoc growth of the office, and inconsistent management.”<sup>328</sup> Yet, according to Mertus, “there is no doubt that the OHCHR’s efforts have helped the UN move beyond human rights standard-setting.”<sup>329</sup> The Office is approaching its 20<sup>th</sup> anniversary. Certainly, a 20<sup>th</sup> year review would help in re-orienting the office’s mandate and finding ways to best use the OHCHR’s comparative advantage.<sup>330</sup>

## Programmes and Funds of the General Assembly

In addition to the numerous organs and subsidiary bodies mentioned above, there exists additional programmes and funds of the General Assembly that have an impact on human rights, usually of a specialized group, which are worth noting. Three of the most well known are described below.

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<sup>327</sup> Office of the High Commissioner for Human Rights (2013), 325.

<sup>328</sup> Mertus J (2005), 69, p. 42.

<sup>329</sup> Ibid, p. 42, and Hannum H (2006), 292.

<sup>330</sup> See Mertus J (2005), 69 and Hannum H (2006), 292.

The United Nations International Children's Emergency Fund (UNICEF) was established in 1946 and made permanent in 1954.<sup>331</sup> UNICEF is the head of the United Nations effort to protect children. UNICEF's focus is multifaceted, including issues such as child survival and development, child protection, equality, education and HIV/AIDs.<sup>332</sup> UNICEF is active in over 190 countries.

The Office of United Nations High Commissioner for Refugees (UNHCR) was established by the General Assembly in 1950.<sup>333</sup> The primary responsibilities of the UNHCR are to "lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide."<sup>334</sup> The UNHCR staffs nearly 8,000 people in 125 countries and helps over 33 million refugees.<sup>335</sup>

The United Nations Development Programme (UNDP) operates in some capacity in 177 countries.<sup>336</sup> The UNDP focuses on democratic governance, poverty reduction, crisis prevention, environmental sustainability, and HIV/AIDs, in addition to helping states

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<sup>331</sup> UN General Assembly (1946) *Establishment of an International Children's Emergency Fund*. 11 December 1946. A/57(I). See also: United Nations Children's Fund (2006) *1946-2006: Sixty Years for Children*. Available at: [http://www.unicef.org/publications/files/1946-2006\\_Sixty\\_Years\\_for\\_Children.pdf](http://www.unicef.org/publications/files/1946-2006_Sixty_Years_for_Children.pdf) [14 June 2013].

<sup>332</sup> United Nations Children's Fund (2013) *What we do*. Available at: <http://www.unicef.org/whatwedo/index.html> [13 June 2013].

<sup>333</sup> UN General Assembly (1949) *Refugees and Stateless Persons*. 3 December 1949. A/RES/319. Interestingly, the UNHCR was originally created to last for only three years. However, by the following year, its mandate was made continuous. UNHCR (2013) *A Global Humanitarian Organization of Humble Origins*. Available at: <http://www.unhcr.org/pages/49c3646cbc.html> [13 June 2013].

<sup>334</sup> Ibid

<sup>335</sup> UNHCR (2013) *Office of the United Nations High Commissioner for Refugees*. Available at: <http://www.unhcr.org/pages/49c3646c2.html> [13 June 2013].

<sup>336</sup> UN Development Programme (2013) *A World of Development Experience*. Available at: [http://www.undp.org/content/undp/en/home/operations/about\\_us.html](http://www.undp.org/content/undp/en/home/operations/about_us.html) [13 June 2013].

reach their millennium development goals.<sup>337</sup> The UNDP, in its basic form has been active since 1965.<sup>338</sup>

The UN's Programmes and Funds are generally non-political and non-diplomatic in nature, instead they focus on relief and assistance, and given their small area of expertise, have had considerable success.

## Conclusions

The United Nations Charter-based framework for the promotion and protection of human rights is complex and vast,<sup>339</sup> making an evaluation of these bodies, as a whole a difficult, if not Herculean task.

Twenty years ago, Philip Alston suggested evaluating the Charter using a three-part framework, one part for standards, the second for promotion, and the final part for establishing accountability.<sup>340</sup> Since then, no one has taken up the task of a complete evaluation of the Charter. Nor shall I. The purpose of this chapter is to help readers understand the context within which the Human Rights Council works. In order to do that, one must treat the entire Charter-based rights as inseparable.<sup>341</sup>

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<sup>337</sup> Ibid

<sup>338</sup> In 1965, the Expanded Programme of Technical Assistance and the United Nations Special Fund merged in order to reduce redundancy. See Murphy C (2006) *The United Nations Development Programme: a better way?*, Cambridge: Cambridge University Press, pp.51-66.

<sup>339</sup> If one needs reminding, please refer back to figure 3.1 above.

<sup>340</sup> Alston P (1992), 138, p. 21.

<sup>341</sup> In fact, the Charter and Treaty bodies should be treated as two parts of the same "integrated program." Ibid.

Although not all Charter bodies are political by design, political warfare occurs in nearly every body.<sup>342</sup> When discussing the Charter bodies of the United Nations, it is imperative to remember that most bodies are set up as political-diplomatic entities. Members of these bodies are not acting in their own personal capacity but are instead acting as delegates appointed by, and for the whims, of their home state.<sup>343</sup> Nevertheless, human rights successes have occurred in all of the Charter-based bodies.

Indeed, Human rights are at the forefront of the United Nations. For example, “in the annual United Nations Yearbook, more pages are usually devoted to human rights, by far, than any other subject.”<sup>344</sup> Increasingly, human rights, security, and development are linked as inseparable issues.<sup>345</sup>

However, even though the issue of human rights is permeating almost every facet of the work of the UN, states, NGOs, people, and especially victims are not satisfied (and rightly so). Increasingly, it seems that the UN is losing credibility because of its inability to act rapidly in the face of potential or active human rights violations in places such as Rwanda in 1994, Sudan for the last ten years, or currently in Syria.<sup>346</sup> The primary culprit is “politics.” States interests are different and often mutually exclusive from each other.

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<sup>342</sup> Flood argues that one of the primary functions of the CHR is to “wage political warfare.” Flood PJ (1998) *Effectiveness of United Nations Human Rights Institutions*, Westport: Greenwood Publishing Group, p. 39.

<sup>343</sup> Ibid

<sup>344</sup> Weiss et al. 2010, 155, p. 227.

<sup>345</sup> See for example work related to the Human Development Report. UN Development Programme (2013) *Human Development Report*. Available at: <http://hdr.undp.org/en/> [14 June 2013].

<sup>346</sup> See for example: Jolly D (2013) Death Toll in Syrian Civil War Near 93,000, U.N. Says. *The New York Times*. Available at: <http://www.nytimes.com/2013/06/14/world/middleeast/un-syria-death-toll.html> [14 June 2013]. The main issue is that the death toll continues to rise rapidly but because of vetoes in the Security Council, the UN is unable to act. Of course, the UN is trying to organize a summit in Geneva but many are cynical that it summit may change anything. See: BBC (2013) Syria confirms role in Geneva talks. Available at: <http://www.bbc.co.uk/news/world-middle-east-22672715> [14 June 2013].

This increasing frustration and perception that the UN is losing credibility has led to UN reforms, including retiring the Commission on Human Rights.

The key, it seems, is for Charter-based bodies to successfully uphold their differing mandates is to avoid direct confrontation with Member States of the United Nations and instead focus on cooperation and inclusion.<sup>347</sup> However, this approach is not an appealing compromise for activists, NGOs, and especially victims who desire a more immediate response from the United Nations.

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<sup>347</sup> Mertus J (2005), 69, p. 79.

## Chapter 4

### From the Commission on Human Rights to the Human Rights Council

Chapter four, like chapters two and three, are background chapters. However, it is best for any reader unfamiliar with the Commission on Human Rights or the Human Rights Council to read this chapter in full since it details specifically the transition from Commission to Council. The chapter is divided into two large parts – one that focuses on the Commission and another, which looks at the Council. The Chapter begins by introducing readers to the Commission; it's institutional architecture, its powers or functions, and its subsidiary bodies, all while giving a brief history of the Commission. Then, the chapter shifts to analyzing the transition from the Commission to the Council. The second half of the chapter follows the same format as the first; the Council's mandate, institutional structure, major functions and subsidiary bodies are examined.

### The Commission on Human Rights



The Economic and Social Council created the Commission on Human Rights (CHR) on December 10, 1946<sup>348</sup> with a two-fold mandate of standard setting and implementation (protection). Specifically, the CHR's mandate is to "submit proposals, recommendations, and reports to the ECOSOC, concerning an international bill of rights, international declarations or conventions on civil liberties, the status of women, freedom of information, and similar matters, the protection of minorities, the prevention of discrimination, and any other matters not covered above."<sup>349</sup> Simply, the Commission was authorized by the ECOSOC to be the primary human rights body of the United Nations.

Membership in the CHR was originally set at 18, with membership based on the principle of equitable geographic distribution. However, as the United Nations expanded, the CHR grew as well.<sup>350</sup> By the mid 2000s, membership of the Commission peaked at 53.<sup>351</sup>

From the very start, the Commission argued, "that it has no power to take any action in regard to any complaints concerning human rights."<sup>352</sup> Instead, the CHR shifted its focus to standard setting, which would remain the primary focus of the CHR until 1966.<sup>353</sup>

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<sup>348</sup> A/HRC/RES/5/1, 4.

<sup>349</sup> Gutter J (2006) Thematic Procedures of the United Nations Commission on Human Rights and International Law: In Search of a Sense of Community. Leiden: Intersentia, p. 17. See also Alston P (1992) The Commission on Human Rights, in Alston P (1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, p. 127.

<sup>350</sup> Final geographical distribution is: African States (15), Asian States (12), Eastern European States (5), Latin American & Caribbean States (11), Western Europe & Other States (10)." Office of the High Commissioner for Human Rights (2007) *Commission on Human Rights: Membership*. Available at: <http://www2.ohchr.org/english/bodies/chr/membership.htm>. [15 June 2013].

<sup>351</sup> Mertus J (2005), 69, p. 48.

<sup>352</sup> The Commission adopted Resolution 75 (V) at its first session in 1947. See also Gutter J (2006), 349, p. 42. Interestingly, Secretary-General Trygve Lie wanted both ECOSOC and the CHR to reconsider Resolution 75 (V). According to Lie, "the restrictive stance taken by the CHR and ECOSOC would

The first significant human rights instrument to come out of the CHR was the Universal Declaration of Human Rights (UDHR).<sup>354</sup> The road to what most now consider the backbone of the United Nations human rights system was difficult.<sup>355</sup> First, The drafters had to consider and eventually acquiesce to Soviet Union and United States demands that a non-binding declaration take the place of legally binding treaties on human rights.<sup>356</sup> Second, the drafters had to consider which rights to include and which to exclude, all the while, trying to maintain a sense of universalism.<sup>357</sup> However, despite increasing Cold War rhetoric and concerns over universalism, the Declaration was adopted by the General Assembly on 10 December 1948. The two other major accomplishments of the CHR from 1947 until 1966 were the drafting of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.<sup>358</sup> Interestingly, Alston notes that because the CHR spent so much time deliberating the two Covenants and the UDHR, it failed to take an active role in the creation of other important standard setting documents, such as the Convention on the

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undermine the prestige and authority of the United Nations as a whole.” Gutter J (2006), 349, p. 45. See also Alston P (1992), 349, pp. 130-131.

<sup>353</sup> Alston P (1992), 349, pp. 131, Gutter J (2006), 349, p. 39.

<sup>354</sup> Universal Declaration of Human Rights, 172.

<sup>355</sup> For an historical account of the entire drafting process see: Morsink J (2000) *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, Philadelphia: University of Pennsylvania Press.

<sup>356</sup> Normand R and Zaidi S (2008) *Human Rights at the Un: The Political History of Universal Justice*. Bloomington: Indiana University Press, pp. 15, and 197.

<sup>357</sup> In the end, eight nations abstained. Six were communist. The other two were South Africa and Saudi Arabia. Ibid, p. 21

<sup>358</sup> The Covenants were discussed in chapter three. However, for an overview of the drafting history of the Covenants, please see: Ibid, pp. 197-243.

Prevention and Punishment of the Crime of Genocide as well as conventions on the rights of women, slavery, and human trafficking.<sup>359</sup>

After the successful completion of the Covenants and the UDHR, known collectively as the International Bill of Human Rights, the CHR went into a period where “its principal contribution was to act as a technical advisory body to the General Assembly on a limited range of issues,”<sup>360</sup> primarily because it lacked the political will to resolve tough political questions in the drafting process.<sup>361</sup> However, according to Alston, as the 1980s neared, the CHR began playing a more active role in the adoption of new standards, namely with the Convention against Torture and the Convention on the Rights of the Child,<sup>362</sup> and has continued to do so through the 1990s and into the early 2000s.

Many scholars believe that the CHR’s standard setting mandate is how the institution will best be remembered.<sup>363</sup> However, the Commission, starting in 1967, began to seriously consider its responsibility to actively ensure the domestic implementation of human rights. Like most political-diplomatic bodies in the UN, The Commission also underwent a dramatic change in membership due to the arrival of post-colonial states to the UN in the 1960s.<sup>364</sup> This sea change in demographics of the CHR, along with the desire for

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<sup>359</sup> According to Alston, “during most of its first decade, the Commission had neither the time, nor the political will, nor the responsibility of co-ordination, to be involved in many standard-setting activities. Alston P (1992), 349, p. 132.

<sup>360</sup> Ibid, p. 134.

<sup>361</sup> Ibid, p. 135.

<sup>362</sup> Ibid, p. 136.

<sup>363</sup> Interview with NGO7. See also: Short K (2008) *From Commission to Council: has the United Nations succeeded in creating a credible human rights body?* Available at: [http://www.surjournal.org/eng/conteudos/getArtigo9.php?artigo=9,artigo\\_short.htm](http://www.surjournal.org/eng/conteudos/getArtigo9.php?artigo=9,artigo_short.htm) [30 June 2013].

<sup>364</sup> O’Donovan D (1992), 202, p. 109. For numerous theories on why states started to focus more on implementing human rights, see Alston P (1992) 349, pp. 140-144.

many of the newly independent states to actively protect human rights in neighboring countries like South Africa led them to push for new and innovative ways to implement human rights in troubled states.<sup>365</sup>

## The Functions (powers) of the Commission

### The 1235 and 1503 Procedures

The first of these mechanisms was adopted by the ECOSOC with resolution 1235 of 6 June 1967 (XLII) (hereafter 1235 procedure).<sup>366</sup> The 1235 procedure gave the CHR (and its Sub-Commission) the right to:

Examine information relevant to gross violations of human rights and fundamental freedoms as exemplified by the policy of apartheid as practiced by the Republic of South Africa... and to racial discrimination as practiced notably in Southern Rhodesia, contained in the communications listed pursuant to resolution 728f.<sup>367</sup>

Of course, as is well known, issues other than those described in the original resolution were soon being investigated under the 1235 procedure,<sup>368</sup> and through 2005 numerous states have been investigated, including 18 African states, 13 Asian States, 10 Latin American states, 9 Eastern European States, and 3 from WEOG.<sup>369</sup>

The second new mechanism for investigating human rights violations was passed by the ECOSOC resolution 1503 (XLVIII) on 27 May 1970.<sup>370</sup> The 1503 procedure, unlike the 1235 procedure is a confidential mechanism until the CHR passes a recommendation to

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<sup>365</sup> Ibid, p. 143.

<sup>366</sup> For a more detailed analysis, see: Gutter J (2006), 349, pp. 55-60. Economic and Social Council (1967) *Establishing the 1235 Procedure*. 6 June 1967. E/RES/1235 (XLII).

<sup>367</sup> Ibid.

<sup>368</sup> The most famous early examples were Greece and Haiti. Gutter J (2006), 349, p. 59.

<sup>369</sup> Abraham M (2006), 11, annex 5.1.

<sup>370</sup> Economic and Social Council (1970) *Establishing the 1503 Procedure*. 27 May 1970. E/RES//1503.

the ECOSOC.<sup>371</sup> In order for a complaint to be heard by the ECOSOC, it must go through a four-stage process.<sup>372</sup> In addition, all domestic remedies must be exhausted and the situation must not be under review by other mechanisms of the CHR.<sup>373</sup> The 1503 procedure is important because, “it gives individuals and other private groups with a view to identifying those that appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission.”<sup>374</sup>

Although the 1503 procedure gave the CHR a new mechanism for protecting human rights, it suffered from important procedural problems. For example, during any of the four-stage process for hearing a complaint, a Member State who is sitting on one of the committees or working groups may decide that it is not worth pursuing. If this occurs, the complaint is dead.<sup>375</sup> According to Gutter, one of the chief side effects of the 1503 procedure was the increasingly politicized nature of a formally *de facto* independent body – the Sub-Commission.<sup>376</sup>

In addition to increasing the politicization of the Sub-Commission, according to Gutter, during the second half of the 1970s and on, the 1503 procedure increasingly became a place where complaints would go to languish due to the slow nature of the process,<sup>377</sup> and

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<sup>371</sup> Ibid, paragraph 8.

<sup>372</sup> The four-stage process consists of a working-group of the Sub-Commission, the full Sub-Commission, the Working Group on Communications of the CHR and finally the CHR.

<sup>373</sup> Economic and Social Council (1970), 370, article 6 (b).

<sup>374</sup> Buergenthal T, Shelton D and Stewart D.P. (2002). *International human rights in a nutshell*, St. Paul: West Group, p. 114.

<sup>375</sup> Gutter J (2006), 349, p. 64.

<sup>376</sup> Ibid.

<sup>377</sup> Ibid, 65. See also, Alston P (1992), 349, pp. 149.

this was no accident.<sup>378</sup> From 1970 until 2005, the *1503* procedure examined cases involving numerous countries, these included: 27 African states, 27 Asian states, 16 Latin American states, 10 states from Eastern Europe, and six states from Western Europe.<sup>379</sup>

However, according to numerous scholars, the *1503* procedure secured the way for two of the more innovative and helpful CHR mechanisms,<sup>380</sup> - thematic and country rapporteurs, collectively known as “special procedures.”<sup>381</sup>

## Special Procedures of the Commission on Human Rights

After 1980, the Commission on Human Rights actively began setting up both thematic and country special procedures.<sup>382</sup> According to Gutter, the *1235* procedure as well as the *1503* procedure and UN practice in general gave the CHR the competency to declare individual mandates to respective special procedures.<sup>383</sup>

Although given their mandates by the CHR, special rapporteurs are required to act within their individual capacity and not as political representatives of their particular governments.<sup>384</sup> However, as noted by Alston, the appointment process is highly political<sup>385</sup> and often, the nominees are diplomats instead of experts in the particular area

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<sup>378</sup> See *Ibid*, pp. 149 on how Uganda avoided public scrutiny for nearly half a decade by using the *1503* procedure.

<sup>379</sup> Abraham M (2006), *11*, Annex 5.1.

<sup>380</sup> By way of the *1235* procedure. See Gutter J (2006), *349*, pp. 75-193 and Alston P (1992), *349*, p. 155.

<sup>381</sup> Alston P (1992), *349*, p. 155, and Gutter 2007, *349*, p. 75-193.

<sup>382</sup> These are usually called, special Rapporteurs, experts, or when more than one person is appointed, working groups. Alston P (1992), *349*, p. 165.

<sup>383</sup> Gutter 2007, *349*, p. 75-78.

<sup>384</sup> Alston P (1992), *349*, p. 165.

<sup>385</sup> *Ibid*.

they are required to study.<sup>386</sup> Mandates for special procedures are ad-hoc, and generally, renewal must occur within one to three years from the start of their work.<sup>387</sup> In addition, concern has been raised (and with the Human Rights Council addressed) over the lack of transparency in working methods of Rapporteurs.<sup>388</sup>

### Country-Specific Special Rapporteurs

Since the introduction of country-specific rapporteurs, numerous countries have been the subjects of inquiry. Examples include, but are not limited to, Afghanistan, Bolivia, Chile, the Democratic People's Republic of Korea, Haiti, the Palestinian Territories occupied since 1967, Poland, and Somalia.<sup>389</sup> Countries chosen for special procedures are predominately from Africa and South America.<sup>390</sup> This is the case, according to Alston, because these countries were not lucky enough to fall under the protection of either the Soviet Union or the US during the Cold War.<sup>391</sup> For the most recent cases, Alston assertion appears to hold true.<sup>392</sup>

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<sup>386</sup> Ibid, p. 167.

<sup>387</sup> Buergethal et al. (2002), 374, p. 98.

<sup>388</sup> States were generally concerned that Special Rapporteurs may be loose cannons with vendettas. NGOs were concerned that Rapporteurs may be too indebted to countries under investigation. Ibid, p. 170.

<sup>389</sup> See Alston P (1992), 349, pp. 160 – 162 and Office of the High Commissioner for Human Rights (2013) *Country Mandates*. Available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx> [15 June 2013].

<sup>390</sup> Ibid.

<sup>391</sup> Ibid, p. 163.

<sup>392</sup> The Human Rights Council has passed mandates for Cote D'Ivoire, Sudan, and the Islamic Republic of Iran, just to name a few. The following chapter will elaborate.

Country-specific rapporteurs usually work through appeals to the government for more information, including fact-finding missions and through communications to the government under investigation.<sup>393</sup>

The purpose of fact-finding missions is to record and report on situations on the ground as part of a report to the CHR and other relevant bodies.<sup>394</sup> In addition, the special rapporteur may be mandated with finding possible pathways to reconciliation.<sup>395</sup> One obvious obstacle that rapporteurs may face in fulfilling their mandate is not only an uncooperative state but also an outright hostile state.<sup>396</sup>

The use of communications is another important tool of the rapporteurs. Communications are divided into two separate categories – urgent and standard.<sup>397</sup> Urgent appeals are sent to states when there appears to be an imminent risk of serious harm to an individual within the domestic jurisdiction of the state being examined. While standard communications occur periodically and contain case summaries of allegations.<sup>398</sup>

As part of their mandate, country-specific rapporteurs must create reports for the CHR and other relevant bodies to examine; these reports include facts as well as recommendations on possible solutions. Although the reports and the procedure in general open up the possibility for an interactive discussion with numerous stakeholders,

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<sup>393</sup> Mertus J (2005), 69, p. 62.

<sup>394</sup> Alston P (1992), 349, p.167.

<sup>395</sup> Ibid, p. 168.

<sup>396</sup> Ibid, p. 168.

<sup>397</sup> Mertus J (2005), 69, p. 62.

<sup>398</sup> Ibid.



including NGOs, according to Alston, because of the political nature of the CHR and the Charter bodies in general, debates on the reports are usually not very effective.<sup>399</sup>

Although country-specific mandates are not as numerous as their counterpart, Julie Mertus argues that they may have more of an immediate effect. According to Mertus, countries are more willing to respond to allegations of abuse that are directed specifically at their government instead of thematic mandates which are more broad by nature.<sup>400</sup> Intuitively, this makes sense. After all, with thematic inquiries, countries may be able to more easily shift focus away from their own faults to the wrongs of other states.

### Thematic Special Procedures

Special procedures of a thematic nature examine human rights issues that generally cut-across states and regions.<sup>401</sup> For example, the first such special procedure was the Working Group on Enforced or Involuntary Disappearances in 1980;<sup>402</sup> the second was on Summary or Arbitrary Executions.<sup>403</sup> Since the early 1980s, the CHR has given mandates for over 22 thematic procedures.<sup>404</sup> Recent examples include: the Independent expert on the promotion of a democratic and equitable international order, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the

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<sup>399</sup> Alston P (1992), 349, p. 172.

<sup>400</sup> Mertus J (2005), 69, p. 60.

<sup>401</sup> For a detailed history and explanation of thematic special procedures, see Gutter J (2007), 5.

<sup>402</sup> Alston P (1992), 349, p. 174.

<sup>403</sup> Ibid.

<sup>404</sup> Mertus J (2005), 69, p. 60.

Special Rapporteur on contemporary forms of slavery, including its causes and consequences.<sup>405</sup>

Although thematic special procedures are not unique in the information that they may use, their nature opens them up to a wider breadth of available information and at larger quantities. For example, NGOs, both local and global, play an important part in information gathering and fact finding for thematic mandate-holders.<sup>406</sup> In addition to NGO information, thematic procedure mandate holders may also make fact-finding missions to states allegedly involved in abuses covered by their mandate.<sup>407</sup>

According to Professor Alston, thematic mandate holders have five means of pressuring governments. These include, “routine requests for information, urgent action requests, country visits, prompt interventions, and finally, Commission reports.”<sup>408</sup>

Although the thematic procedures may not see as immediate effects as their counterparts, the country-specific procedures,<sup>409</sup> Alston argues that thematic mandates have been effective in accomplishing their mandates. Specifically, thematic mandates have been very effective in the realm of public relations.<sup>410</sup>

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<sup>405</sup> For a full list, please see: Office of the High Commissioner for Human Rights (2013) *Special Procedures assumed by the Human Rights Council*. Available at: <http://www2.ohchr.org/english/bodies/chr/special/themes.htm> [June 15, 2013].

<sup>406</sup> Alston P (1992) 349, p. 177.

<sup>407</sup> Ibid.

<sup>408</sup> Ibid, pp. 177-181.

<sup>409</sup> Ibid, p. 181.

<sup>410</sup> Ibid, p. 180.

Although the CHR and the Charter bodies have been much maligned, it is important to note that the CHR's special procedures "have been celebrated as 'one of the Commission's major achievements and constitute an essential cornerstone of United Nations efforts to promote and protect internationally recognized human rights and contribute to the prevention of their violation.'"<sup>411</sup>

## The Sub-Commission on the Promotion and Protection of Human Rights<sup>412</sup>

The Economic and Social Council established the Sub-Commission as a subsidiary body of the Commission on Human Rights on 21 June 1946.<sup>413</sup> It held its first meeting in 1947.<sup>414</sup> Unlike the ECOSOC and the CHR, the Sub-Commission was composed of individuals acting in their personal capacity<sup>415</sup> for the purpose of acting as a "think-tank" or standard-setting body for the CHR and the ECOSOC on matters relating to discrimination and the protection of minorities.<sup>416</sup> However, as will be discussed below, the Sub-Commissions' mandate rapidly evolved.

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<sup>411</sup> See Economic and Social Council (1998). *Rationalisation of the Work of the Commission*. 23 December 1998. E/CN.4/1999/104 in Gutter J (2006), 349, p. 3

<sup>412</sup> The Sub-Commission on Prevention of Discrimination and Protection of Minorities was the official name of the convention until ECOSOC resolution 1999/256 of 27 July 1999. Economic and Social Council (1999). *Rationalization of the work of the Commission on Human Rights*. 27 July 1999. E/RES/1999/256

<sup>413</sup> Economic and Social Council (1946) *Establishing the Commission on Human Rights*. 21 June 1946. E/RES/9(II)

<sup>414</sup> Eide A (1992) The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in Alston P (1992) *The United Nations and Human Rights: A Critical Appraisal*. Oxford: Oxford University Press, p. 211.

<sup>415</sup> ECOSOC Resolution 9(II), 413.

<sup>416</sup> Ibid, Eide A (1992), 414, p. 211; see also Abraham M (2006), 11, page. 52.

The Sub-Commission was originally composed of 12 members, based on equitable geographic distribution. However, by 2006, the Sub-Commission had 26 members.<sup>417</sup> Ideally, members were to be experts of high moral character.<sup>418</sup> Like the other Charter bodies, the Sub-Commission's *raison d'être* shifted as membership in the United Nations changed. For example, from the late 1940s until the mid-1960s, "Western powers were lukewarm at best to the prevention of discrimination and outright hostile to the protection of minorities,"<sup>419</sup> thus making life difficult for the independent experts serving on the Sub-Commission. However, the 1960s saw a shift in the mandate of the Sub-Commission. First, it was tasked with reviewing periodic reports on the status of human rights under a voluntary reporting system set up by the ECOSOC in the mid-1950s.<sup>420</sup> Second, and more importantly, the Sub-Commission was mandated to gather "information from all available sources on violations of human rights" for the *I235* procedure.<sup>421</sup> Finally, the Sub-Commission increased its activities in standard setting, especially as it relates to discrimination.<sup>422</sup>

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<sup>417</sup> The distribution was: Africa (7), Asia (5), Latin America (5), Eastern Europe (3) Western European and other States (6). Office of the High Commissioner for Human Rights (2007) *Sub-Commission on the Promotion and Protection of Human Rights*. Available at: <http://www2.ohchr.org/english/bodies/subcom/index.htm> [15 June 2013].

<sup>418</sup> Eide A (1992), 314, p. 253.

<sup>419</sup> Ibid, pp. 213 - 215.

<sup>420</sup> Ibid, p. 223. Economic and Social Council (1956) *Requiring States Reports*. 1 August 1956. E/RES/624B (XXII).

<sup>421</sup> Ibid, p. 224.

<sup>422</sup> The Sub-Commission was responsible for the International Convention on the Elimination of All Forms of Racial Discrimination. UN General Assembly (1965) *International Convention on the Elimination of All Forms of Racial Discrimination*. 21 December 1965. A/RES/2106(XX), as well as its preceding Declaration. UN General Assembly (1963) *United Nations Declaration on the Elimination of all forms of Racial Discrimination*. 20 November 1963. A/RES/1904(XVIII). See Eide A (1992), 414, p. 243.

The Sub-Commission also had the ability to create semi-permanent working groups and its own rapporteurs;<sup>423</sup> examples include working groups on “contemporary forms of slavery, rights of detainees, and on the possibility of encouraging states to ratify human rights treaties, and of course, the working group on communications”<sup>424</sup> For much of its life, the Sub-Commission had the ability to discuss country situations and thematic issues. However, the Sub-Commission all but lost this privilege after years of strained relations with its parent body, the CHR.<sup>425</sup>

The Sub-Commission’s relationship with the ECOSOC and the CHR has had a rocky history.<sup>426</sup> This is expected of course, since the former is composed of members working in their own capacity while the latter two institutions serve at the behest of their governments.<sup>427</sup> As Alston points out, the Sub-Commission does not have to worry about the political dynamics of the UN as much as its parent bodies. Thus, it often acts in haste, especially compared to its parent bodies.<sup>428</sup> In addition, the Sub-Commission often relied on information from NGOs to compile information on states or issues under examination or for potential draft resolutions<sup>429</sup> and as stated previously, many Member States of the CHR and ECOSOC were weary of NGO participation.

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<sup>423</sup> Abraham M (2006), 11, p. 54

<sup>424</sup> Eide A (1992), 414, pp. 225 and 245. For a complete list, See Abraham M (2006), 11, appendix 4.1. The Working Group on Communications was phase one of the four-stage process of the 1503 procedure.

<sup>425</sup> The CHR passed resolutions 2000/109 and 2003/59, thereby limiting the Sub-Commission’s ability to discuss or examine situations that may be under examination by the CHR. Abraham M (2006), 11, p. 53. Commission on Human Rights (2000) *Approving the outcome of the Working Group on enhancing the effectiveness of the mechanisms of the Commission*. 26 April 2000. E/CN.4/2000/109 and Commission on Human Rights (2003) *The work of the Sub-Commission on the Promotion and Protection of Human Rights*. 25 April 2003. E/CN.4/2003/59.

<sup>426</sup> The most famous example of this antagonism occurred in 1986 when the Sub-Commissions annual substantive meeting was cancelled. Eide A (1992), 414, p. 211.

<sup>427</sup> Ibid, p. 255.

<sup>428</sup> Ibid. See also Alston P (1984), 24.

<sup>429</sup> Ibid, p. 259.

The Sub-Commission is a unique and important body in the UN's' canon of human rights protection. Its main contributions are "in highlighting new and emerging areas of human rights concerns and finding other gaps in the system of human rights protection, and provided guidance on the interpretation and implementation of human rights standards."<sup>430</sup> However, the Sub-Commission was not a perfect body. According to scholars, the Sub-Commission's membership was not always "independent" of politics or particularly adept at issues of human rights,<sup>431</sup> the informal setting gave way to a proliferation of observers,<sup>432</sup> and, as stated before, the work of the Sub-Commission increasingly became politicized. Nevertheless, the Sub-Commission, although decommissioned in 2006 paved the way for the Human Rights Council's Advisory Committee, so, in many ways its work lives on, albeit at a significantly decreased capacity.<sup>433</sup>

## Transitioning from the CHR to the HRC

The transition from the CHR to the HRC must be examined in light of two related issues, the first is the overall need for reform in the UN but specifically, reform of the UN human rights mechanisms, and secondly, the specific reasons why the CHR was targeted in lieu of other UN bodies. The following section will examine the transition from the Commission to the Council. Afterwards, the remainder of this chapter will focus on the

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<sup>430</sup> Abraham M (2006), *II*, p. 54.

<sup>431</sup> Ibid, p. 55

<sup>432</sup> Eide A (1992), *414*, p. 259.

<sup>433</sup> The Advisory Committee will be covered in more detailed later in this chapter. However, it is important to note that a significant number of Council watchers believe that "there was a move to take away power from the Sub-Commission" during the transition negotiations. Interview with Scholar2.

HRC's mandate, institutional architecture, and powers of the HRC, its subsidiary bodies, and the HRC's relationship with other UN human rights bodies.

As discussed in previous chapters, many of the UN principal organs and human rights bodies, including the treaty monitoring bodies have seen calls for major reform. Although calls for the reform of the Commission are not new,<sup>434</sup> inaction by the Commission (and the UN as a whole) during the turbulent 1990s and into the 2000s only increased the desire for change.<sup>435</sup>

By the early 2000s, the writing appeared to be on the wall for the CHR, “for different reasons, sometimes for totally opposing reasons, nearly all States demanded the end of the Commission.”<sup>436</sup> In 2001, the United States failed to gain reelection to the Commission, which was only the second time that one of the permanent members failed in their reelection bid. The loss of the US's bid to the Commission was particularly disturbing since Sudan won a seat on the Commission during the same election.<sup>437</sup>

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<sup>434</sup> See for example, J.M. Bertrand, *La Commission des droits de l'ONU*, Paris, Pedone, 1975, p. 320, cited in Chetail V (2010) *The Human Rights Council and the Challenges of the United Nations System on Human Rights: Towards a Cultural Revolution?* in Boission de Chazournes L and Kohen M (eds) (2010) *International Law and the Quest for its Implementation*. Liber Amicorum Prof. Vera Gowlland Boston/Leiden: Brill. See also notes 94 and 95 in Boyle K (2009) *The United Nations Human Rights Council: Origins, Antecedents, and Prospects* in Boyle K (ed) (2009) *New institutions for human rights protection*, Oxford: Oxford University Press, p. 28.

<sup>435</sup> See generally: United Nations (2013) *Strengthening the UN*. Available at: <http://www.un.org/en/strengtheningtheun/> [15 June 2013] and Frouville O (2011) *Building a Universal System for the Protection of Human Rights: The Way Forward*, in Bassiouni C and Schabas W (eds) (2011) *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* Leiden: Intersentia, p. 243.

<sup>436</sup> *Ibid*, p. 242.

<sup>437</sup> Blanchfield L (2010) *United Nations Human Rights Council: Issues for Congress*. Washington D.C.: DIANE Publishing, p. 2

In 2003, Reporters without Borders published a damning report, titled, “UN Commission on Human Rights Loses All Credibility.”<sup>438</sup> In the report, Reporters without Borders cite numerous reasons for reform, including, the fact that states were both judges and defendants;<sup>439</sup> specifically the report criticized the election of Libya as Chair of the Commission.<sup>440</sup> In addition, the Report criticizes the use of alliances pitting “dictators against democracies,”<sup>441</sup> as a means to avoid “debating anything scandalous in the last 25 years.”<sup>442</sup> In 2004, the High-Level Panel on Threats, Challenges, and Change released their report, which sums up the issue succinctly,

We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.<sup>443</sup>

In May of the same year, Sudan was reelected to the Commission, which led to the U.S. storming out of the meeting and further calling for reform.<sup>444</sup> Finally, in 2005, following the UN World Summit,<sup>445</sup> the UN voted to retire the Commission on Human Rights and create the Human Rights Council.<sup>446</sup>

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<sup>438</sup> Buhrer J.C. (2003) UN Commission on Human Rights Loses All Credibility: Wheeling and dealing, incompetence and “non-action.” *Reporters without Borders*. Available at: [http://www.rsf.org/IMG/pdf/Report\\_UNU\\_gb.pdf](http://www.rsf.org/IMG/pdf/Report_UNU_gb.pdf) [15 June 2013].

<sup>439</sup> Ibid, p. 2-3.

<sup>440</sup> Ibid, pp. 4 – 5.

<sup>441</sup> Ibid, p. 7.

<sup>442</sup> Quoting former High Commissioner for Human Rights, Sergio Vieira de Mello in Ibid, p. 7. See also section three in the report on the use of the procedural “non-action” motion. Ibid. 8.

<sup>443</sup> Annan K (2004), 278, paragraph 283.

<sup>444</sup> Blanchfield L (2010), 347, p. 4 and Chetail V (2010), 434, p. 206.

<sup>445</sup> UN General Assembly (2005), 212.

<sup>446</sup> The final vote was 174-4-3. General Assembly Resolution 60/251, 3. For more on voting see: Upton H (2007) The Human Rights Council: First Impressions and Future Challenges, *Human Rights Law Review* 7(1), p. 30. Boyle says this shift is something of a surprise, Boyle K (2009), 434, p. 28.



Much ink has been spilled concerning the demise of the CHR. The general consensus is that the Commission was chosen for reform because of the increased politicization of the body, which includes the problem of selectivity and membership selection.<sup>447</sup> In addition, another reason is that the Commission was simply easier to reform than any other UN mechanism.<sup>448</sup>

The politicization of the body is natural.<sup>449</sup> However, as Chetail notes, “one should distinguish between the political nature of the organization and the misuse this characteristic can cause in its functioning.”<sup>450</sup> In other words, even though a body may be political by design, member states should not use infrastructural design as an excuse to avoid fulfilling its mandate.<sup>451</sup> Of course, the problem is that states were using the infrastructural design of the Commission to “criticize others while hiding more or less effectively their own ulterior motives.”<sup>452</sup>

Further, states were selective in how they voted on recommendations and resolutions. Generally, states voted primarily by regional blocs,<sup>453</sup> which only increased the politicization of the Commission.<sup>454</sup> According to the High Level Panel on Threats, Challenges, and Change,

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<sup>447</sup> For a good overview of the issue, see Chetail V (2010), 434.

<sup>448</sup> Hampson F (2007) An Overview of the Reform of the UN Human Rights Machinery, *Human Rights Law Review* 7(1), p. 9.

<sup>449</sup> Ibid, p. 8.

<sup>450</sup> Chetail V (2010), 434, p. 196, Chetail also poignantly notes that “such intergovernmental bodies are nothing more, nothing less, than what their member states make of them.” Ibid.

<sup>451</sup> Abraham M (2006), 11, p. 11

<sup>452</sup> Chetail V (2010), 434, p. 203.

<sup>453</sup> See chapter five.

<sup>454</sup> See generally Chetail V (2010), 434.

The Commission's capacity to perform has been undermined by eroding credibility and professionalism. Standard setting to reinforce human rights cannot be performed by States that lack a demonstrated commitment to their promotion and protection. ... The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.<sup>455</sup>

Finally, there was great concern over elections to, and membership in, the CHR. As mentioned above, since 2001, the United States and much of Western Europe has taken exception to the perceived notion that states "sought membership to shield themselves from accountability."<sup>456</sup> And perhaps rightly so, in the final year of the Commission, membership included states such as Azerbaijan, China, Congo, Egypt, Eritrea, Pakistan, Russia, Sudan, and Zimbabwe.<sup>457</sup>

The perceived need to curb the increased politicization of the Commission precipitated numerous reform proposals by both Member States and the Secretary-General.<sup>458</sup> The premise that membership selection would decrease the politicization of the new body was a key in each proposal.

The United States proposed keeping membership in the new body to only "real democracies," this proposal was rejected by many, and vehemently by the African Group, who argued that, "to follow the US proposal would be to turn the CHR into a private club

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<sup>455</sup> Anan K (2004), 278, paragraph 283.

<sup>456</sup> Boyle K (2009), 434, p. 27. Interestingly, Boyle notes that although this is the general argument, there exists little proof to prove this proposition correct. Ibid. Nevertheless, it is clear that states with subpar human rights records were on the Commission for much of its existence.

<sup>457</sup> Although this list is not exhaustive, each state mentioned received a "not free" score from Freedom House's 2006 Freedom in the World Report. Freedom House (2007) *Freedom in the World 2007*. Available at: <http://www.freedomhouse.org/report/freedom-world/freedom-world-2007> [15 June 2013].

<sup>458</sup> See notes in Chetail V (2010), 434, p. 204.

of purists.”<sup>459</sup> The OHCHR and the High-Level Panel on Threats, Challenges and Change posited that membership should be universal.<sup>460</sup> Universal membership, according to Chetail, would decrease the politicization of membership and increase legitimacy.<sup>461</sup> Of course, if the body had universal membership, that does not guarantee the reversal of other problems plaguing the Commission, such as bloc voting. Finally, Annan argued for a smaller (but not a “private club”) in order to facilitate more focused debate.<sup>462</sup> The General Assembly came to a compromise between the three groups.<sup>463</sup> The chapter now turns its attention to the membership compromise and the remainder of the mandate of the Human Rights Council.

## The Human Rights Council

On 7 April 2005, in a now famous address to the CHR, Secretary-General Kofi Annan stated that,

The Commission’s ability to perform its tasks has been overtaken by new needs undermined by the politicization of its sessions and the selectivity of its work. We have reached a point at which the Commission’s declining credibility has cast a shadow on the reputation of the United Nations system as a whole, and where piecemeal reforms will not be enough.<sup>464</sup>

## Resolution 60/251 – The Mandate of the HRC

On March 15, 2006, the General Assembly voted overwhelmingly for resolution 60/251, which establishes the Human Rights Council as a subsidiary organ of the UNGA (Figure

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<sup>459</sup> Ibid, pp. 211 – 212.

<sup>460</sup> Annan K (2004), 278, paragraph 285. See also Weiss et al. 2010, 155, p. 201.

<sup>461</sup> Chetail V (2010), 434, p. 212.

<sup>462</sup> Ibid and see: note 69 in Chetail V (2010), 434, p. 212.

<sup>463</sup> For a detailed overview of the controversy surrounding membership in the Council, please see: Alston P (2006), 11, p. 185.

<sup>464</sup> Annan K (2005), 1.

4.1). In total, 170 states voted for the resolution. There were four “nays” and three abstentions. Notably, the United States and Israel voted against the resolution.<sup>465</sup> The following section will highlight important components of Resolution 60/251, including membership and the guiding principles of the Council. Then, the following sections will describe the rules of procedure of the Council before moving on to the Council’s mandated powers.

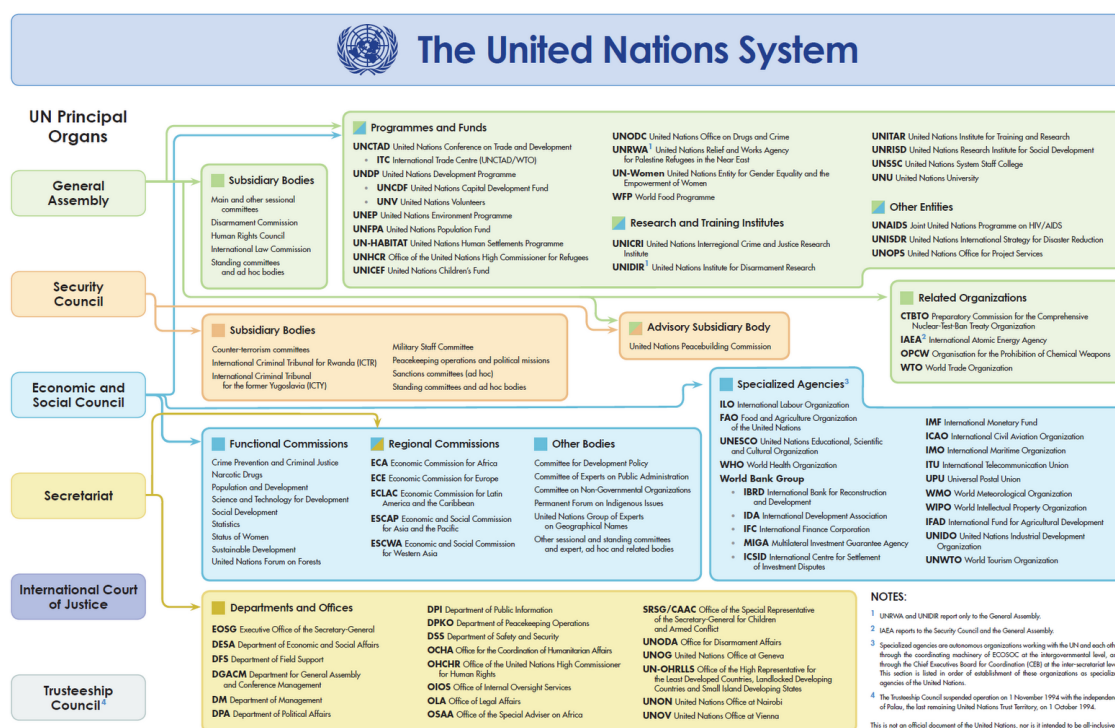


Figure 4.1: The UN System in 2006

<sup>465</sup> See Upton H (2007), 446, p. 30 and Weiss, et al. (2010), 155, p. 31. The other nays were Palau and the Marshall Islands. The abstentions were Belarus, Iran, and Venezuela.

## Membership

Resolution 60/251 sets membership in the Council at 47,<sup>466</sup> which is not significantly less than 54. Membership is based on equitable geographic distribution.<sup>467</sup> Significantly, the Western European and Latin American groups lost six seats, giving the African and Asian States 55% of the total membership, up four percentage points from the Commission (see Table 4.1).<sup>468</sup> Members are elected to serve for three years with the possibility of one immediate reelection.<sup>469</sup> Although in theory, this is an interesting change in membership selection since it acquits the Council of having “permanent” members, in practice, Member States may run again after only one year’s absence.<sup>470</sup>

	Commission on Human Rights	Human Rights Council
Africa	15 (28%)	13 (28%)
Asia	12 (23%)	13 (28%)
Eastern Europe	5 (9%)	6 (13%)
GRULAC	11 (21%)	8 (17%)
WEOG	10 (19%)	7 (15%)
Total	53 (100%)	47 (100%)

Table 4.1: Comparing Commission Membership to Council Membership<sup>471</sup>

<sup>466</sup> General Assembly Resolution 60/251, 3, paragraph 7.

<sup>467</sup> The new distribution is: Group of African States (13), Group of Asian States (13), Group of Eastern European States (6), Group of Latin American and Caribbean States (8) and finally, the Group of Western European and other States (7). Resolution 60/251, 3, paragraph 7.

<sup>468</sup> Chetail goes so far as to say the redistribution is “detrimental” to the Western European States. Chetail V (2010), 434, p. 213.

<sup>469</sup> Resolution 60/251, 3, article 7.

<sup>470</sup> Ibid

<sup>471</sup> Original idea from Schrijver N (2007) The UN Human Rights Council: A New ‘Society of the Committed’ or Just Old Wine in New Bottles? *Leiden Journal of International Law* (20), p. 815.

The practice of “clean slates” is addressed by resolution 60/251.<sup>472</sup> The majority of the Member States of the General Assembly will elect states individually, by “direct and secret ballot.”<sup>473</sup> In theory, according to Alston, this measure is meant to increase competition for seats;<sup>474</sup> the implication of this of course is that increased competition should lead to states with poor human rights records to not be elected.<sup>475</sup>

Resolution 60/251 establishes qualifications for membership in the Council. Accordingly, “Council Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto.”<sup>476</sup> Although for many, the discussion of including qualifications for membership was a positive step, the final outcome, displeased many NGOs and civil society groups.<sup>477</sup> The problem is that Member States only have to “take into account...” the human rights record of candidate states,<sup>478</sup> and that pledges are voluntary (read, not required).<sup>479</sup> However, “all candidates in the first election process made voluntary

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<sup>472</sup> Clean Slates, according to Amnesty International, is “the practice of nominating the same number of candidates from the region as there are seats to be filled.” IE, ensuring that the nominated state is elected without contestation. Quoting Amnesty International in Alston P and Crawford J (2000), 29, p. 199.

<sup>473</sup> Resolution 60/251, 3, paragraph 7. The total number of votes needed to be elected is 97 since South Sudan has joined the UN.

<sup>474</sup> Alston P (2006), 11, p. 199.

<sup>475</sup> However, in practice, clean slates are still a major problem. See: United Nations (2013) *Election of the Human Rights Council*. Available at: <http://www.un.org/en/ga/67/meetings/elections/hrc.shtml> [6 July 2013].

<sup>476</sup> Resolution 60/251, 3, paragraph 8.

<sup>477</sup> Upton H (2007), 446, p. 32.

<sup>478</sup> Upton H (2007), 446, p. 32.

<sup>479</sup> Alston P (2006), 11, p. 200.

pledges.”<sup>480</sup> Member States must also have their human rights records reviewed upon membership.<sup>481</sup>

Another novel contribution of Resolution 60/251 is the attempt of the UN to safeguard the institution from states that commit “gross and systemic violations of human rights.”<sup>482</sup> If Member States believe that a state is not upholding their human rights obligations, membership may be suspended, as long as two-thirds of Member States present and voting vote in the affirmative.<sup>483</sup> However, the suspension mechanism has its detractors.<sup>484</sup>

## Guiding Principles

The guiding principles of the Council are explicitly laid out in two paragraphs of Resolution 60/251. Paragraph two states, “that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.”<sup>485</sup> Paragraph four states,

The work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and

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<sup>480</sup> Upton H (2007), 446, p. 32.

<sup>481</sup> Resolution 60/251, paragraph. 9 states that, “Member States shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership.” Resolution 60/251, 3.

<sup>482</sup> Ibid, Resolution 60/251, paragraph 8.

<sup>483</sup> Ibid. Significantly, Libya’s membership was suspended at the suggestion of the UN Human Rights Council. See: UN General Assembly (2011) *2011 Libya Civil War and UN Human Rights Council Membership*. 1 March 2011. A/RES/65/265 and Office of the High Commissioner for Human Rights (2011) *UN Human Rights Council Recommends Suspension of Libya*. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/HRCSpecialSessionLibya.aspx> [16 June 2013].

<sup>484</sup> Alston argues that, “in practice the provision is unlikely to be applied very often, especially given that one of the main motivations on the part of many countries that voted to terminate the Commission was to move away from all the country-specific measures.” Alston P (2006), 11, p. 202.

<sup>485</sup> Resolution 60/251, 3, paragraph 2.

protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.<sup>486</sup>

It is clear that the framers of Resolution 60/251 kept the failings of the former Commission close at heart. It is important to note carefully the language of paragraph four above. First, paragraph four explicitly mandates the Council to focus on international dialogue and cooperation in lieu of finger pointing.<sup>487</sup> Secondly, special emphasis is given to the right to development.

## The Institutional Architecture of the Council

The framers of Resolution 60/251 were not satisfied with simply increasing the guiding principles for, and altering the selection criteria of, Council membership. The remainder of the rules of procedure of the Commission was altered considerably as well.

### Meetings

Resolution 60/251 more or less keeps the Council in session year-round.<sup>488</sup> Unlike the CHR, the Council shall meet, “no fewer than three sessions per year, including a main session, for no fewer than ten weeks.”<sup>489</sup> Generally, meetings are held in March, June, and September.<sup>490</sup> This is a significant increase in meeting time compared to the

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<sup>486</sup> Ibid, paragraph 4.

<sup>487</sup> Chetail V (2010), 434, p. 222.

<sup>488</sup> Many NGOs and Missions lauded this move during interviews. Interview with EE1, NGO3 and NGO4, for example.

<sup>489</sup> Resolution 60/251, 3, paragraph 10.

<sup>490</sup> Upton suggests this is to not overlap with the Third Committee, which holds meetings in October and November in New York, Upton H (2007), 446, p. 34. The main session occurs in March Ramcharan B (2011) *The UN Human Rights Council*. New York: Routledge, p. 38. For a list of sessions, please see: Office of the High Commissioner for Human Rights (2013) United Nations Human Rights Council: Sessions. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Sessions.aspx> [June 15, 2013].



Commissions' annual meeting of six weeks.<sup>491</sup> In addition, with an affirmative vote by one-third of the Member States of the Council, special sessions may be held.<sup>492</sup> Like the former Commission, meetings are held in Geneva, Switzerland.<sup>493</sup>

## Working Methods

The primary working methods of the Council was hastily and “sketchily” set out in paragraphs 11 and 12 of resolution 60/251.<sup>494</sup> This is the case, assumedly so that the Council may adapt or change its working methods more organically,<sup>495</sup> which the Council did with its “institution building year” and subsequent outcome resolution.<sup>496</sup> Paragraph 11 stipulates that the Council “shall apply the rules of procedure established for committees of the General Assembly.”<sup>497</sup> Importantly, the OHCHR has compiled a list of relevant documents concerning the working methods of the CHR for the Council,<sup>498</sup> which, along with the General Assembly’s committees’ rules may “provide the basis for the [start] of the Council’s work.”<sup>499</sup> These methods are further codified in resolution 5/1.<sup>500</sup>

Paragraph 12 sets forth principles for the Council to follow in its working methods.

Paragraph 12, stipulates that,

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<sup>491</sup> Upton H (2007), 446, p. 38.

<sup>492</sup> Resolution 60/251, 3, paragraph 10.

<sup>493</sup> Ibid, paragraph 1.

<sup>494</sup> Upton H (2007), 446, p. 35.

<sup>495</sup> Ibid, p. 35.

<sup>496</sup> For more information on the institution building year, please see: Abraham M (2007), 11.

<sup>497</sup> Resolution 60/251, 3, paragraph 11.

<sup>498</sup> Upton H (2007), 446, p. 35.

<sup>499</sup> Ibid.

<sup>500</sup> Resolution 5/1 essentially restates Resolution 60/251 but places special emphasis on “Economic and Social Council resolution 1996/31 of 25 July 1996, and CHR resolution 2005/74 of 20 April 2005. A/HRC/RES/5/1, 4, Rule 7, paragraphs A and B.

The methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms.<sup>501</sup>

Resolution 5/1 further codifies the working methods and rules of procedure for the Council.<sup>502</sup>

## Agenda

The agenda of the Council, which was established by Resolution 5/1, is significantly different from that of the Commission, in that, it has less items and the items are consistent across sessions.<sup>503</sup> The agenda of the Council is based on thirteen core principles.<sup>504</sup> In general, these focus on the need for universality, impartiality, constructive dialogue, transparency, and gender perspective. The agenda consists of ten items, they are:

- Item 1. Organizational and procedural matters
- Item 2. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General
- Item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural, rights, including the right to development
- Item 4. Human rights situations that require the Council's attention
- Item 5. Human rights bodies and mechanisms
- Item 6. Universal Periodic Review
- Item 7. Human rights situation in Palestine and other occupied Arab territories
- Item 8. Follow-up and implementation of the Vienna Declaration and Programme of Action
- Item 9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and

<sup>501</sup> Resolution 60/251, 3, paragraph 12.

<sup>502</sup> See specifically Section VI on methods of work and section VII on rules of procedure in Resolution 5/1. A/HRC/RES/5/1, 4

<sup>503</sup> Abraham M (2007), *II*, p. 12

<sup>504</sup> These are: universality, impartiality, objectivity, non-selectiveness, constructive dialogue and cooperation, predictability, flexibility, transparency, accountability, balance, inclusive / comprehensive, gender perspective, and finally, implementation and follow-up decisions. Resolution 5/1, 4, Section V (A).

Programme of Action  
Item 10. Technical assistance and capacity-building<sup>505</sup>

Immediately, for scholars of the Commission, agenda item 7 should stand out in stark contrast to many of the principles enumerated both in resolutions 60/251 and 5/1.

Although this item will be discussed in greater detail in later chapters, it is important to note that it singles out a particular country situation and is the only country situation singled out.<sup>506</sup>

Now, our attention shall turn to the primary powers mandated by Resolution 60/251 and shall then describe in more detail how the mandated powers work in practice as set out in Resolution 5/1.

## The Primary Functions (powers) of the Council

Articles 2 through 5 of Resolution 60/251 set out the powers of the Council. Article 2 mandates the Council the responsibility for “promoting universal respect for the protection of all human rights and fundamental freedoms.”<sup>507</sup> Article 3 has multiple purposes; these include “addressing situations of violations of human rights,” creating recommendations concerning such violations, and “promoting the effective coordination and the mainstreaming of human rights within the United Nations system.”<sup>508</sup> Article 4, which sets forth the principles of the Council, also mandated the Council to (rather redundantly) enhance the promotion and protection of all human rights, including the

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<sup>505</sup> Ibid, Resolution 5/1, V (B).

<sup>506</sup> There is no doubt that the Israeli- Palestinian conflict has serious human rights violations on each side. However, the issue here, in brief, is that it is the only situation on the permanent agenda.

<sup>507</sup> Resolution 60/251, 3, Article 2.

<sup>508</sup> Ibid, Article 3.

right to development.<sup>509</sup>

Article 5 sets forth the lion's share of functions of the Council. Article 5 "decides that the Council shall, inter alia:

- (a) Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned;
- (b) Serve as a forum for dialogue on thematic issues on all human rights;
- (c) Make recommendations to the General Assembly for the further development of international law in the field of human rights;
- (d) Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits;
- (e) Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;
- (f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;
- (g) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993;
- (h) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society;
- (i) Make recommendations with regard to the promotion and protection of human rights;
- (j) Submit an annual report to the General Assembly."<sup>510</sup>

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<sup>509</sup> Ibid, Article 4.

<sup>510</sup> Ibid, Article 5 (a) – (j).

The Council inherited many of these functions from the Commission. However, as is now well known, the most significant and perhaps only truly novel increase in powers of the Council is the Universal Periodic Review.<sup>511</sup>

## The Universal Periodic Review (UPR)<sup>512</sup>

The Human Rights Council viewed the UPR significantly enough to place it at the beginning of Resolution 5/1.

The objectives of the UPR are six-fold. They are:

- (a) The improvement of the human rights situation on the ground;
- (b) The fulfillment of the State's human rights obligations and commitments and assessment of positive developments and challenges by the State;
- (c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;
- (d) The sharing of best practice among States and other stakeholders
- (e) Support for cooperation in the promotion and protection of human rights;
- (f) The encouragement of full cooperation and engagement with the Council, other human rights bodies, and the Office of the United Nations High Commissioner for Human Rights.<sup>513</sup>

It should be clear that the UN is placing a lot of hope in not only promoting human rights situations globally but also affecting the condition of human rights on the ground of all Member States of the UN.<sup>514</sup>

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<sup>511</sup> Of course, the UPR was in essence attempted before. Bernaz N (2009) Reforming the UN Human Rights Protection Procedures: A Legal Perspective on the Establishment of the Universal Periodic Review Mechanism, in Boyle, K (ed) (2009). *New institutions for human rights protection*, Oxford: Oxford University Press and all the notes in Abraham M (2007), *II*, p. 34.

<sup>512</sup> De la Vega C and Lewis T (2011) Peer Review in the Mix: How the UPR Transforms Human Rights Discourse, in Bassiouni C and Schabas W (eds) (2011) *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* Montreal: Intersentia, p. 353.

<sup>513</sup> A/HRC/RES/5/1, 4, Section 2 (4) (a) – (f).

<sup>514</sup> This is at least the sentiment coming from Geneva.

There was significant debate concerning which areas of law or practice should make up the foundations or basis of the UPR review.<sup>515</sup> In the end, the Council decided that the basis of review would be based on four key areas. The first and second bases for review are more or less non-controversial. They are the Charter of the United Nations and the Universal Declaration of Human Rights.<sup>516</sup> The third consists of *only* the human rights instruments to which the State is a party.<sup>517</sup> In other words, if a Member State were not a party to the CRC, no part of the review could use the CRC as part of the review. Though, of course, the Member State in question could be urged to ratify the CRC. The fourth basis of review are the “voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council.”<sup>518</sup> Interestingly and quite controversially, the UPR may also take into account applicable international humanitarian law.<sup>519</sup>

The principles of the UPR are essentially the same values that direct the Council’s work.<sup>520</sup> However, it is important to note that the UPR should “complement and not duplicate other human rights mechanisms, thus representing an added value,”<sup>521</sup> “not be

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<sup>515</sup> Bernaz (2009), 512.

<sup>516</sup> Resolution 5/1 Section I (A) (1) (a) and (b). A/HRC/RES/5/1, 4.

<sup>517</sup> Ibid, A (1) (c).

<sup>518</sup> Ibid, A (1) (d).

<sup>519</sup> Ibid, (A) (2). Humanitarian law is the Law of War.

<sup>520</sup> For an entire list of principles, please see section Resolution 5/1 (B) (1) (3) (a) – (m). Ibid.

<sup>521</sup> Ibid, (f). There is some concern in Geneva that states may use the UPR in lieu of reporting under the treaties.

overly burdensome,”<sup>522</sup> and “take into account the level of development and specificities of countries.”<sup>523</sup>

As a consequence of principles listed above, the information provided for the UPR is minimal. All information should be contained in no more than 40 pages. 20 pages are dedicated to a report prepared by the Member State under review, preferably in consultation with all relevant national stakeholders.<sup>524</sup> 10 pages shall be “a compilation submitted by the OHCHR, which contains the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents.”<sup>525</sup> The final 10 pages shall be a summary, provided by the OHCHR of all “credible and reliable information provided by other relevant stakeholders to the universal periodic review.”<sup>526</sup>

The periodicity and order of review of the UPR mechanism is laid out in Section I (C) of Resolution 5/1. Highlights include requiring the Council to “establish as soon as possible the order of the review to allow States to prepare adequately,”<sup>527</sup> requiring all Members States of the Council to be reviewed during their tenure,<sup>528</sup> and allowing for equitable

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<sup>522</sup> Ibid, (h) – (j). The point of this is to make sure the reporting mechanism does not become overly complicated and long, like reports to treaty bodies. See previous chapter section on treaty bodies.

<sup>523</sup> Ibid, (l) The assumption here, like those of the treaty bodies is that some states are more able to interact with the UPR than other states. In order to have universal and equitable participation, the UPR should take into account this very real situation.

<sup>524</sup> Ibid, D (1) (a).

<sup>525</sup> Ibid, (b).

<sup>526</sup> Ibid, (c). The OHCHR has published a guideline for relevant stakeholders.

Office of the High Commissioner for Human Rights (2008) *Information and Guidelines for Relevant Stakeholders on the Universal Periodic Review*. Available at:

<http://www.ohchr.org/EN/HRBodies/UPR/Documents/TechnicalGuideEN.pdf> [15 June 2013].

See also Chauville R (2013), 6.

<sup>527</sup> Ibid, I (C) (7).

<sup>528</sup> Ibid, (8).

geographic distribution of states in the review process.<sup>529</sup> According to Resolution 5/1, the “review cycles should be reasonable so as to take into account the capacity of States to prepare for, and the capacity of other stakeholders to respond to, the requests arising from the review”<sup>530</sup> Further, Resolution 5/1 mandates that the first cycle shall last four years,<sup>531</sup> with 48 states being reviewed annually.<sup>532</sup> All states are reviewed every cycle.

The review or “interactive dialogue” is conducted in a plenary session and is headed by the President of the Council.<sup>533</sup> A “troika” facilitates each review.<sup>534</sup> Importantly, the Member State under review may request that one of the three rapporteurs that make up the *troika* be from its own regional grouping.<sup>535</sup> In addition, on only one occasion, the Member State may request the replacement of a rapporteur.<sup>536</sup>

The entire dialogue lasts only a brief amount of time. Each country receives three hours for its review in the working group.<sup>537</sup> Additionally, one hour may be given for consideration of the report in the plenary session.<sup>538</sup> Finally, one half hour may be

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<sup>529</sup> Ibid, (11).

<sup>530</sup> Ibid, (14).

<sup>531</sup> For an overview of the cycles, please see: Office of the High Commissioner for Human Rights (2013) *The Universal Periodic Review*. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> [June 16, 2013]. See also Chauville R (2013), 6.

<sup>532</sup> Ibid, I (C) (14).

<sup>533</sup> Ibid, I (D) (2) (18) (a).

<sup>534</sup> The *troika* consists of three rapporteurs from Member States of the Council, selected from different regional groupings. As part of the responsibilities of the *troika*, they must also help in preparing the final reports. The OHCHR may also help in preparing the reports. Ibid (d). For a list of *troikas*, please see: Office of the High Commissioner for Human Rights (2013) *UPR Sessions*. Available at: <http://www.ohchr.org/en/hrbodies/upr/pages/UPRSessions.aspx> [June 16, 2013].

<sup>535</sup> Ibid, I (D) (2) (19).

<sup>536</sup> Ibid. Subsection 5/1 I (D) (2) (20) also allow the rapporteurs to recuse themselves from a specific review.

<sup>537</sup> Ibid, I (D) (2) (22).

<sup>538</sup> Ibid.



allocated for the adoption of the report.<sup>539</sup> Although the process appears to go by rather quickly, at least for some NGOs, the process must be succinct or else become potentially burdensome for all involved<sup>540</sup> and must not “diminish the capacity of the Council to respond to urgent human rights situations.”<sup>541</sup> NGOs may attend but do not formally participate during the plenary session. However, typically, “parallel meetings often occur during the formal sessions,<sup>542</sup> in addition, NGOs may participate during the consideration of the outcome report.<sup>543</sup>

The outcome of the review process is a report, “consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned.”<sup>544</sup> According to Resolution 5/1, the final report should be cooperative in nature<sup>545</sup> and should include the participation of the state under review at all points.<sup>546</sup> This includes *inter alia*, giving the State under review the right of reply.<sup>547</sup> However, other stakeholders may also express their views or concerns with the report before the report is adopted by the plenary.<sup>548</sup>

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<sup>539</sup> Ibid.

<sup>540</sup> Even still, it requires at least 192 hours for one year of reports to be considered in the review.

<sup>541</sup> Abraham M (2007), *II*, p. 36

<sup>542</sup> Boyle K (2009), *434*, p. 41.

<sup>543</sup> Ibid, p. 35.

<sup>544</sup> Including recommendations both accepted and rejected by the Member State under review. Ibid, I (E) and I (D) (32).

<sup>545</sup> Recalling the principles of 60/251 and 5/1 and 5/1 I (D) (27).

<sup>546</sup> Resolution 5/1 I (D) (28).

<sup>547</sup> Ibid, I (D) (29).

<sup>548</sup> Ibid, I (D) (30) and (31).

Follow-up to the review shall take place during the next cycle of reviews<sup>549</sup> and should remain a cooperative endeavour of the state involved and all relevant stakeholders.<sup>550</sup> As of 2012, Follow-ups to the initial reviews are underway.<sup>551</sup>

The UPR was designed as “the only logical answer” of the UN to temper critiques of selectivity and double standards and it does so by requiring each state be reviewed in a transparent and equal manner.<sup>552</sup> However, because “the UPR was the most tangible innovation of the reform process that created the Council, it carries the burden of delivering on the promise of reform.”<sup>553</sup> Indeed, “it has for better or worse, become the marker for the failure or success of the Council.”<sup>554</sup> Although the UPR is the most “hyped” mechanism available to the Human Rights Council, other important tools are at the disposal of the Council. The next two sections will give describe changes to the special procedures of the Council and to the complaints procedure.

## Special Procedures of the Council

The Council inherited the most effective mechanism of the Commission, the Special Procedures system.<sup>555</sup> Resolution 60/251 directs the Council to “assume, review and,

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<sup>549</sup> Ibid, I (D) (34).

<sup>550</sup> Ibid, I (D) (33), (36).

<sup>551</sup> Boyle K (2009), 434, p. 35.

<sup>552</sup> Quoting Louise Arbour when she was OHCHR in Terlingen Y (2007), 11.

<sup>553</sup> Abraham M (2007), 11, p. 35.

<sup>554</sup> Ibid.

<sup>555</sup> On the Special Procedures being the most effective mechanism for human rights protection in the Commission, please see: Kemileva K, Lee B, Mahon C and Sidoti C (2010) Expertise in the Human Rights Council: A policy paper prepared under the auspices of the Geneva Academy of International Humanitarian Law and Human Rights, available at: <http://www.geneva-academy.ch/docs/expertise.pdf> [16 June 2013], p. 19, Gutter J (2007), 5, p. 95, and Subedi S (2011), 5, and Nifosi-Sutton I (2011) The System of the UN Special Procedures: Some Proposals for Change, in Bassiouni C and Schabas W (2011) *New Challenges*

where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights.”<sup>556</sup> The Council is to undertake this task within its first year of existence.<sup>557</sup> Resolution 60/251 gave the Council a great opportunity to improve upon an already important tool for the protection of human rights. The following section will detail changes made to the Special Procedures and conclude with some initial thoughts.

The thematic and country rapporteurs of the Commission and Council are an important mechanism for the Commission and now Council because they are active, very active, in a broad swath of human rights issues. In 2006, there were 41 special procedures (28 thematic and 13 country).<sup>558</sup> In 2007, there were 38.<sup>559</sup> In 2010, the number of mandates was 41, with 33 thematic mandates and 8 country mandates.<sup>560</sup> As of December 2012, the number of mandates is 49 with 36 thematic mandates and 13 country mandates.<sup>561</sup> Each mandate holder (or working group) may undertake country visits, send communications, and give reports or recommendations to the GA and the HRC.<sup>562</sup>

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*for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* Montreal: Intersentia.

<sup>556</sup> Resolution 60/251, 3, paragraph 6.

<sup>557</sup> Ibid.

<sup>558</sup> Office of the High Commissioner for Human Rights (2007) *United Nations Special Procedures: Facts and Figures: 2006*. Available at: <http://www.ohchr.org/Documents/HRBodies/SP/factsfigures2006.pdf> [16 June 2013], p. 1.

<sup>559</sup> Office of the High Commissioner for Human Rights (2008) *United Nations Special Procedures: Facts and Figures: 2007*. Available at: <http://www.ohchr.org/Documents/HRBodies/SP/FactsFigures2007.pdf> [16 June 2013], p. 2.

<sup>560</sup> Office of the High Commissioner for Human Rights (2011) *United Nations Special Procedures: Facts and Figures 2010*. Available at: [http://www.ohchr.org/Documents/HRBodies/SP/Facts\\_Figures2010.pdf](http://www.ohchr.org/Documents/HRBodies/SP/Facts_Figures2010.pdf) [16 June 2013], p. 1.

<sup>561</sup> Office of the High Commissioner for Human Rights (2013) *Special Procedures of the Human Rights Council*. Available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx> [June 15, 2013].

<sup>562</sup> Ibid.

Of course, not all Member States were pleased with the system of Special Procedures.<sup>563</sup> Country mandates were particularly disliked among a large group of states.<sup>564</sup> States often argued that such mandates were selectively chosen to target states in the global south and were in principle, a violation of Article 2 (7) in the Charter. Moreover, some states argued that there was not enough control over the special rapporteurs.<sup>565</sup> Finally, some confusion existed concerning the jurisdiction between different monitoring bodies and overlap of work amongst rapporteurs and monitoring bodies.<sup>566</sup> This in part led to the order in Resolution 60/251 to review each mandate.<sup>567</sup>

Overall, the review of the Special Procedures, which took place during the first year of the Council's work, was not very productive.<sup>568</sup> Although some states had been calling for the termination of country mandates, when the opportunity arose to discuss possible terminations, "no state was willing or perhaps prepared to carry out this exercise."<sup>569</sup> As for thematic mandates, reviews were delayed until discussions of the continuation of the relevant mandates were undertaken.<sup>570</sup> However, notably, the country mandates for Cuba and Belarus were terminated.<sup>571</sup> Although major revisions to the mandates of the Special

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<sup>563</sup> Abraham helpfully differentiates the demand for reform of the Special Procedures by dividing groups into "negative reform agenda (groups)" and "positive reform agenda (groups)." The former wants to "limit the independence of the special procedures," while the latter desires a strengthening of the current system through reform." Abraham M (2007), *II*, p. 24.

<sup>564</sup> Hannum H (2006), 292, p. 74.

<sup>565</sup> This is one reason why Resolution 5/2 is passed. The argument by some, predominately non-Western states is that special procedures are used to criticize countries for political reasons.

<sup>566</sup> Hampson F (2007), 448, p. 19.

<sup>567</sup> Generally, see: Ibid and Gutter J (2007), 5, 102-105.

<sup>568</sup> Abraham M (2007), *II*, p. 27.

<sup>569</sup> Ibid.

<sup>570</sup> Ibid.

<sup>571</sup> According to Abraham, the President of the Council (XXX) left Cuba and Belarus off the list of country mandates to be review, "without explanation." Abraham suggests that the termination of mandates relating to Cuba and Belarus was a compromise to keep the other country mandates safe. Abraham M (2007), *II*, p. 28 – 29. See also Appendix 1 in Abraham (2007) and Resolution 5/1 (II) (B) (61), 4.

Procedures were not undertaken before Resolution 5/1, the institution-building package nevertheless lays out appointment criteria for rapporteurs and working groups and general principles to guide the special procedures.<sup>572</sup> In addition, a code of conduct was agreed upon. The next two subsections examine both in turn.

### Resolution 5/1 and Special Procedures

Resolution 5/1 sets out in detail the desired selection criteria for rapporteurs. Rapporteurs should be independent experts with experience in the relevant field, with personal integrity and should act objectively.<sup>573</sup> In addition, selection should take into account gender, equitable geographic distributions and differing legal systems.<sup>574</sup> The principle of non-accumulation of human rights functions shall be respected.<sup>575</sup> Additionally, individuals who may have a conflict of interest based on holding a position of decision-making within a government shall be excluded.<sup>576</sup>

Numerous groups may nominate individuals as special rapporteurs.<sup>577</sup> The OHCHR is responsible for maintaining a list of possible candidates.<sup>578</sup> The Consultative Group, consisting of one member of each regional group, shall consider candidates on the OHCHR's list.<sup>579</sup> In addition, the Consultative Group may nominate someone who is not

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<sup>572</sup> Abraham M (2007), *II*, pp. 24-32.

<sup>573</sup> Resolution 5/1 (II) (A) (39). 5/1 (II) (A) (41) directs the Council approve technical and objective requirements by its sixth session.

<sup>574</sup> Ibid (II) (A) (40).

<sup>575</sup> Ibid, (II) (A) (44).

<sup>576</sup> Ibid, (II) (A) (46).

<sup>577</sup> Groups include Governments, Regional Groups within the UN, international organizations (specifically the OHCHR), NGOs and NHRIs, other human rights bodies, and individual nominations. Ibid, (II) (A) (42).

<sup>578</sup> Ibid, (II) (A) (43).

<sup>579</sup> Ibid, (II) (A) (49); see also Abraham M (2007), *II*, p. 26.

on the current list, as long as they have equal or greater qualifications for the post.<sup>580</sup> The President of the Council, taking into account the recommendations of the Consultative group and other broad consultations, shall then identify an appropriate candidate for each particular post, at least two weeks prior to the session in which candidates will be chosen.<sup>581</sup> The terms of each mandate-holder shall be limited to no more than six years.<sup>582</sup> The goal of the entire process is to increase transparency in the nomination and selection process, compared to that of the Commission.<sup>583</sup>

Besides setting guidelines for rapporteur selection, Resolution 5/1 also lays out some key issues and principles concerning the review, rationalization, and improvement of the Special Procedures. First and foremost, the key principles guiding the creation of the Council are reiterated for the review of, and creation of, new Special Procedures mandates.<sup>584</sup>

Importantly, the “review, rationalization, and improvement” of each mandate is required during the “negotiations of the relevant resolutions [to continue the mandate].”<sup>585</sup> Assessment may also take place during the interactive dialogue process between the Council and the relevant mandate-holder.<sup>586</sup>

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<sup>580</sup> Ibid, (II) (A) (50).

<sup>581</sup> Ibid, (II) (A) (52).

<sup>582</sup> Ibid, (II) (A) (45). Of course, thematic mandates last three years and country mandates for one year. One should not confuse the mandate-holder with the mandate of the position. 5/1 (II) (B) (60).

<sup>583</sup> Abraham M (2007), *II*, p. 25.

<sup>584</sup> These are of course, “universality, impartiality, objectivity, and non-selectivity, as well as constructive international dialogue and cooperation....” Resolution 5/1 (II) (B) (54).

<sup>585</sup> Ibid, (II) (B) (55).

<sup>586</sup> Ibid.

According to Resolution 5/1, the review of each mandate should “focus on the relevance, scope and contents of the mandates, having as a framework the internationally recognized human rights standards, the system of special procedures and General Assembly resolution 60/251.”<sup>587</sup> The purpose of the review should be guided by the “need for improvement of the enjoyment and protection of human rights.”<sup>588</sup> The principles laid out in 5/1 (II) (B) (58) were controversial from the beginning.<sup>589</sup>

The final relevant decisions of Resolution 5/1 consider country rapporteurs. First, regarding the decision of the Council to renew, review or eliminate country mandates, the principles of cooperation and genuine dialogue are reiterated.<sup>590</sup> Second, in situations of non-cooperation with the Council, Resolution 5/1 reminds states to follow the principles of “objectivity, non-selectivity, and the elimination of double-standards and politicization.”<sup>591</sup>

Resolution 5/1 curtails many of the freedoms of the Special Procedures of the Council. The Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council curtails their agency even further.<sup>592</sup>

## Resolution 5/2 – Special Procedures Code of Conduct

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<sup>587</sup> Ibid, (II) (B) (56).

<sup>588</sup> Ibid, (II) (B) (57). For a specific list of improvements, see 5/1 (II) (B) (58).

<sup>589</sup> The principles were controversial because on the one hand, Western states wanted a less cooperative Council while many Non-Western states wanted the Council to be only a cooperative body.

<sup>590</sup> Resolution 5/1 (II) (B) (63).

<sup>591</sup> Ibid, (II) (B) (64).

<sup>592</sup> UN Human Rights Council (2007) *Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council*. 18 June 2007. A/HRC/RES/5/2. See Abraham M (2007), 11, pp. 29 – 32.

The debate over the creation of a code of conduct for mandate holders was controversial.<sup>593</sup> The stated purpose of the Code is to “enhance the effectiveness of the system of special procedures by defining standards of ethical behavior and professional conduct... of the mandate-holders.”<sup>594</sup>

Article 3 reminds mandate-holders that they must act impartially; through in their individual capacity without interference from any outside party<sup>595</sup> and should act through “dialogue and cooperation.”<sup>596</sup> Additionally, Article 3 requires that mandate-holders exercise their functions as laid out in the relevant mandate (and not go above and beyond their mandate),<sup>597</sup> not seek personal gain from their office,<sup>598</sup> and “maintain and reinforce the trust” of all stakeholders.<sup>599</sup>

Article 4 reminds stakeholders that mandate-holders are entitled to immunities and privileges as laid out in international law but also reminding mandate-holders must respect local laws.<sup>600</sup>

Articles 5, 6, and 7 establish the “Solemn Declaration” of mandate holders,<sup>601</sup> prerogatives of the mandate-holders,<sup>602</sup> and the observance of the terms of the mandate.<sup>603</sup> Article 8

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<sup>593</sup> Generally, Western States believed that it was redundant. Most other states wanted a new code of conduct, arguably to restrict the freedoms of the mandate-holders. Abraham M (2007), *II*, pp. 29-30.

<sup>594</sup> Resolution 5/2, 592, Article 1.

<sup>595</sup> Ibid, Article 3 (a).

<sup>596</sup> Ibid, Article 3 (b).

<sup>597</sup> Ibid, Article 3 (d).

<sup>598</sup> Ibid, Article 3 (i).

<sup>599</sup> Ibid, Article 3 (h).

<sup>600</sup> Ibid, Article 4 (2) and 4 (3).

<sup>601</sup> Ibid, Article 5.

<sup>602</sup> Ibid, Article 6.



lists the sources of information for mandate-holders. Articles 9, 10, and 11 cover letters of allegation, urgent appeals, and country visits.

Article 12 reminds mandate-holders that their private opinions should not harm the very public nature of their mandates.<sup>604</sup> Article 13 requires mandate-holders to be objective in their recommendations and conclusions. For example, mandate-holders should indicate the responses of the concerned governments when expressing their views.<sup>605</sup> Additionally, mandate-holders must “ensure that the concerned government authorities are the first recipients of their conclusions and recommendations and then given adequate time to respond.”<sup>606</sup> Finally, all communications with Governments must go through diplomatic channels, unless a previous agreed was established.<sup>607</sup>

Conspicuously, the Code of Conduct for Mandate-Holders only addresses the responsibilities of the mandate-holders vis-à-vis the State (s) under investigation.<sup>608</sup>

### Initial Thoughts

The most important mechanism for the protection of human rights of the Commission averted a potential disaster during the Council’s first year. Unfortunately for states in the “positive agenda,” the Special Procedures system appears to have been weakened.<sup>609</sup>

Notably, the responsibility of states in the process was not satisfactorily addressed,

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<sup>603</sup> Ibid, Article 7.

<sup>604</sup> Ibid, Article 12 (b) advises mandate-holders to show restraint in order to not undermine the mandate.

<sup>605</sup> Ibid, Article 13 (a).

<sup>606</sup> Ibid, Article 13 (c)

<sup>607</sup> Ibid, Article 14.

<sup>608</sup> Abraham M (2007), *II*, p. 32.

<sup>609</sup> The reform process does not alleviate any of the potential problems listed by Gutter J (2007), 5, pp. 102-106.

thereby shifting the burden of protection to the mandate-holders<sup>610</sup> and the existence of country mandates appears to be in trouble.<sup>611</sup> However, the review process has increased the potential for more coordination across mandate-holders.<sup>612</sup>

## The Complaint Procedure

Like the Special Procedures mechanism, Resolution 60/251 directed the Council to review the complaints procedures of the Commission in order to improve and rationalize their performance.<sup>613</sup> The Working Group on Review of Mechanisms and Mandates conducted the review, and from nearly the beginning, a general consensus emerged that a minor facelift to the old *1503* procedure was preferable to creating a wholly new procedure.<sup>614</sup>

The institution-building resolution notes that, “a complaint procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.”<sup>615</sup> The scope of the new procedure has changed slightly, thereby allowing the new procedure to address violations in “any part of the world and under any

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<sup>610</sup> Abraham rightly points out that the creation of a code of conduct has the potential for misuse by states and that the relative hostility to country-mandates will make it difficult for new mandates to be created. Abraham M (2007), *11*, pp. 32 – 33.

<sup>611</sup> Subedi S (2011), *5*, p. 220.

<sup>612</sup> Abraham M (2007), *11*, p. 33.

<sup>613</sup> Resolution 60/251, 3, Article 6.

<sup>614</sup> Abraham states that, “it became evident very early in the process that States were unwilling to even explore the possibility of creating a new complaint procedure and instead preferred to use the *1503* procedure as the basis for discussions. Abraham, points out rightly that in so doing, the Council lost a great opportunity to bring the complaints procedure into the 21<sup>st</sup> century. Abraham M (2007), *11*, p. 20. Resolution 5/1 states that, “Economic and Social Council resolution *1503* (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000 served as a working basis and was improved where necessary, so as to ensure that the complaint procedure is impartial, objective, efficient, victims-oriented and conducted in a timely manner.” A/HRC/RES/5/1 IV (A) (86), 4.

<sup>615</sup> Ibid, IV (A) (85).

circumstances.”<sup>616</sup> The procedure will “retain its confidential nature, with a view to enhancing cooperation with the State concerned.”<sup>617</sup>

Resolution 5/1 also codifies the admissibility criteria of the new complaints procedure.<sup>618</sup>

Generally, many of the criteria for admissibility of complaints in the *1503* procedure remain. However, a few important deviations should be noted. First, the “quasi-judicial” NHRI’s “may serve as effective means of addressing human rights violations.”<sup>619</sup> The inclusion of NHRIs serves to increase the admissibility threshold for complaints to the Council.<sup>620</sup> However, Resolution 5/1 omitted the old Commission admissibility criteria that excluded complaints based on the possibility that a complaint may be heard by a similar monitoring body.<sup>621</sup>

Two working groups were created by Resolution 5/1 in order to review new complaints.<sup>622</sup>

When possible, the working groups shall operate on consensus.<sup>623</sup> The first working group is the Working Group on Communications (WGC). The WGC will consist of five members, with one from each regional grouping, and be appointed by the Advisory Committee (see the next section).<sup>624</sup> They shall serve terms of three years with the possibility of one renewal.<sup>625</sup> The chairperson of the WGC holds primary responsibility,

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<sup>616</sup> Abraham notes that the scope of the complaints procedure was amended so that “situations of occupations and extra-territorial action” may be reviewed. Abraham M (2007), *11*, p. 20.

<sup>617</sup> Resolution 5/1 IV (A) (86), 4.

<sup>618</sup> Ibid, IV (B) (87) – (88).

<sup>619</sup> Ibid, IV (B) (88).

<sup>620</sup> Abraham M (2007), 11, p. 21.

<sup>621</sup> Ibid.

<sup>622</sup> Resolution 5/1 (IV) (C) (89), 4.

<sup>623</sup> However, if consensus is not possible, then majority vote wins. Ibid, (IV) (C) (90).

<sup>624</sup> Ibid, (91).

<sup>625</sup> Ibid, (93).

along with the secretariat, for screening new complaints. Importantly, Resolution 5/1, in an attempt to increase transparency now requires a list of rejected complaints to be submitted to all remaining members of the working group with adequate reasons for refusal.<sup>626</sup> If a complaint is not screened out, it is then sent to the state concerned for their views on the allegations therein.<sup>627</sup> The WGC is also responsible for supplying the Working Group on Situations (the other working group) with a file that contains all admissible communications along with recommendations.<sup>628</sup>

The Working Group on Situations (WGS) consists of one representative from each regional grouping of the Council with due consideration of gender balance.<sup>629</sup> Unlike the WGC, members of the WGS are elected for only one year with the possibility of one renewal.<sup>630</sup> Members are required to serve in their individual capacity.<sup>631</sup> The primary purpose of the WGS is to submit to the Council a report on consistent patterns of human rights violations, received mainly from the information and recommendations of the WGC, along with recommendations (normally draft resolutions).<sup>632</sup>

Both working groups are required to meet twice per year for five days per session for a total of 10 working days per annum. The purpose of the increased meeting time from the Commission is to conduct reviews in a timely manner in order to be more victim-

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<sup>626</sup> Ibid, (94).

<sup>627</sup> Ibid, (94).

<sup>628</sup> Ibid, (95).

<sup>629</sup> Ibid, (96).

<sup>630</sup> Ibid.

<sup>631</sup> Ibid, (97).

<sup>632</sup> Ibid, (98).

oriented.<sup>633</sup> Once reports are sent to the state concerned, the state is asked to reply within three months.<sup>634</sup> The total process should not take more than two years.<sup>635</sup>

Resolution 5/1 directs the Council to review reports from the WGS as needed but at a minimum, once per year.<sup>636</sup> Generally, the review process is confidential. However, the WBS has the ability to request that the review take place in public.<sup>637</sup> Importantly, and unlike the old *I503* procedure, the complainant will now be informed of the proceedings at every stage.<sup>638</sup>

After the review process has been conducted, there are five possible outcomes. These are: (1) to discontinue reviewing the situation, (2) to keep the situation under review and request further information, (3) to keep the situation under review and create a special procedure for the situation, (4) shift from a confidential review to a public review, and (5) to send the situation to the OHCHR with recommendations for technical cooperation, capacity-building, or advisory services.<sup>639</sup>

### Initial Thoughts

The new complaints procedure is a mixed bag and one cannot help but wonder why the Working Group during the initial review, or the Council later, did not do more to change

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<sup>633</sup> Ibid, (100).

<sup>634</sup> Ibid, (101).

<sup>635</sup> Ibid, (105). Though, there is some concern about the length of two-years as “timely.” See Abraham M (2007), *II*, p. 22.

<sup>636</sup> Ibid, (103).

<sup>637</sup> Ibid, (104). Public hearings may be used as a tool to apply pressure to states that are otherwise unwilling cooperate with the Council.

<sup>638</sup> Ibid, (106) – (108). See notes on the old process above in chapter x or section x. See also Abraham M (2007), *II*, p. 22.

<sup>639</sup> Ibid, (109).

and update the complaints procedure.<sup>640</sup> As Abraham points out, “the Council lost the opportunity to truly review the complaint procedure.”<sup>641</sup> And this it seems was the *modus operandi* for the Council during much of its first year of existence.

## The Advisory Committee

Resolution 60/251 did not spare the Sub-Commission on the Promotion and Protection of Human Rights from review.<sup>642</sup> However, unlike the Special Procedures or Complaints Mechanism, the Sub-Commission’s review significantly altered the work of the body.<sup>643</sup> This is not surprising however, since the Sub-Commission increasingly acted, not based on the needs of the Commission, but based instead, on what it perceived to be gaps in coverage or major problems in human rights protection, which in turn lead the CHR to tighten its grip on the subsidiary body.<sup>644</sup> Additionally, the work of the Sub-Commission was increasingly viewed as redundant in many circles in Geneva.<sup>645</sup> These beliefs lead to the restriction of the new body’s size and mandate.<sup>646</sup>

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<sup>640</sup> Abraham M (2007), *II*, p. 20.

<sup>641</sup> Callejon C (2008) Developments at the Human Rights Council in 2007: A Reflection on its Ambivalence. *Human Rights Law Review* 8(2), p. 333

<sup>642</sup> Resolution 60/251 Article 6, 4.

<sup>643</sup> See for example, Sweeney G and Saito Y (2009) An NGO Assessment of the New Mechanisms of the United Nations Human Rights Council. *Human Rights Law Review* 9(2): 203, Callejon C (2008), *641*, pp. 328 – 331, and Abraham M (2007), *II*, pp. 16-19.

<sup>644</sup> Abraham M (2007), *II*, p. 16, and Hannum H (2006) 292, p. 89.

<sup>645</sup> Hannum H (2006), 292, pp. 88-89.

<sup>646</sup> Callejon C (2008), *641*, p. 329.

Resolution 5/1 created the Human Rights Council Advisory Committee (Advisory Committee) for the purpose of serving as a “think-tank” for the Council, at the discretion of the Council.<sup>647</sup>

The Committee shall consist of 18 experts, each serving in their individual capacity.<sup>648</sup> Notably, all members of the UN may “propose or endorse candidates from their regions.”<sup>649</sup> Standard UN technical and objective requirements should be met for potential candidates.<sup>650</sup> The Council through secret ballots shall elect candidates,<sup>651</sup> with due consideration to gender balance and differing legal systems and “civilizations.”<sup>652</sup> Members shall be elected for a term of three years with the possibility of one renewal.<sup>653</sup> Membership is based on equal geographic distribution.<sup>654</sup>

The functions of the Advisory Committee are significantly curtailed compared to those of the Commission. The Advisory Committee is primarily charged with “providing expertise to the Council in the manner and form *requested* by the

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<sup>647</sup> Resolution 5/1 Article 65, 4. For an overview of the debate concerning the creation of the Advisory Committee, please see Abraham M (2007), 11, pp. 16-17.

<sup>648</sup> Ibid, Resolution 5/1 Article 65. For more on expertise recommendations for the Advisory Committee, please see: Kemileva, et al. (2010), 555, pp. 24-28.

<sup>649</sup> Resolution 5/1 Article 66 also suggests that States should consult relevant civil society organizations for their input on potential candidates. Regrettably, a proposal to allow all relevant stakeholders to nominate candidates was omitted. See Ibid, Resolution 5/1 Article 66 and Abraham M (2007), 11, p. 17.

<sup>650</sup> Ibid, Resolution 5/1 Articles 67-69.

<sup>651</sup> Ibid, Article 70. Callejon argues this is not a significant difference from the Commission’s procedures. Callejon C (2008), 641, pp. 329 – 330.

<sup>652</sup> Ibid, Resolution 5/1 Article 72.

<sup>653</sup> Ibid, Article 74.

<sup>654</sup> Resolution 5/1 breaks the geographic distribution of the Advisory Committee as follows: African States (5), Asian States (5), Eastern European States (2), Latin America and Caribbean States (3), and Western European and other States (3). Ibid, Article 73.

Council, focusing mainly on studies and research-based advice.”<sup>655</sup> The Advisory Committee’s work should be “implementation-oriented” and focus only on thematic issues, not country issues.<sup>656</sup> Resolution 5/1 prohibits the Advisory Committee from adopting resolutions or decisions.<sup>657</sup> It should be clear that the Council, through resolution 5/1 significantly limited the agency or “power of initiative” of the Advisory Committee.<sup>658</sup>

The Advisory Committee is allotted a maximum of 10 days per annum for its work but may schedule additional sessions with approval of the Council.<sup>659</sup> The first session of the Advisory Committee was held from August 4 – 15, 2008. As of 2011, the first session of the Committee must take place immediately before the main session of the Council, in March.<sup>660</sup> The second session shall take place in August.<sup>661</sup> According to resolution 16/21, the Advisory Committee’s schedule is set up thusly in order to facilitate better interaction between the two bodies.<sup>662</sup>

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<sup>655</sup> Article 75 further says, “such expertise shall be rendered only upon the latter’s request in compliance with its resolutions and under its guidance.” Ibid.

<sup>656</sup> Ibid, Article 76.

<sup>657</sup> Ibid, Article 77.

<sup>658</sup> Callejon C (2008), 641, p. 330.

<sup>659</sup> Resolution 5/1 Article 79, 4.

<sup>660</sup> UN Human Rights Council (2011) *Review of the work and functioning of the Human Rights Council*. 12 April 2011. A/HRC/RES/16/21.

<sup>661</sup> Ibid.

<sup>662</sup> Ibid. Office of the High Commissioner for Human Rights (2013) Human Rights Council Advisory Committee: Background Information on the Advisory Committee. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/AboutAC.aspx> [15 June 2013].



The creation of subsidiary bodies, a practice that was used quite frequently and efficiently by the Sub-Commission may only be undertaken with approval by the Council.<sup>663</sup>

NGOs, NHRI's and other relevant stakeholders may participate in the work of the Advisory Committee.<sup>664</sup>

### Initial Thoughts

From the start, there are serious concerns over the Advisory Committee's mandate and size, and rightly so, the Advisory Committee is "virtually stripped of the power to initiate studies, which raises serious questions about how effective it will be in drawing the attention of the Council's attention to series gaps in the system of standard-setting and emerging areas."<sup>665</sup> The restricted meeting time of the Committee is another concern as is, the potential problem of having smaller states finding membership on the Advisory Committee.<sup>666</sup> Unfortunately, it seems clear that the Advisory Committee must balance two conflicting priorities, on the one hand, making substantive contributions to the promotion and protection of human rights, and on the other hand, balancing studies that are "acceptable to the Council."<sup>667</sup>

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<sup>663</sup> Resolution 5/1 Article 81, 4.

<sup>664</sup> Ibid, Article 83.

<sup>665</sup> Abraham M (2007), *11*, p. 17 and Callejon C (2008), *641*, pp. 330-331.

<sup>666</sup> Callejon C (2008), *641*, p. 331.

<sup>667</sup> Sweeney G and Saito Y (2009), *643*, p. 223.

## Other Subsidiary Bodies

Heretofore, the Council has established three subsidiary bodies, all of which focus on a different thematic issue. The first is the Expert Mechanism on the Rights of Indigenous Peoples, which was established in 2007.<sup>668</sup> The primary purpose of the Expert Mechanism is to create studies and research-based advice for the Council.<sup>669</sup> The Expert Mechanism consists of five independent experts, normally from an indigenous population with due regard to geographic and gender balance.<sup>670</sup> The Expert Mechanism meets once per year for five days.<sup>671</sup> Participation of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, the Permanent Forum, and all relevant stakeholders, especially those of indigenous peoples are strongly encouraged.<sup>672</sup> As of May 2012, the Expert Mechanism had conducted two studies for the Council.<sup>673</sup>

The second subsidiary body is the Forum on Minority Issues, which was also established in 2007.<sup>674</sup> The purpose of the Minority forum is to provide thematic advice on “promoting dialogue and cooperation” on minority issues to the Special

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<sup>668</sup> UN Human Rights Council (2007) *Expert mechanism on the rights of indigenous peoples*. 14 December 2007. A/HRC/RES/6/36.

<sup>669</sup> Ibid, Article 1 (b).

<sup>670</sup> Ibid Articles 3 and 4. Members are elected to three-year terms with the possibility of one renewal. Ibid, Article 6.

<sup>671</sup> Ibid Article 8.

<sup>672</sup> Ibid Articles 5 and 9.

<sup>673</sup> The first study concerned the right to education of indigenous peoples (The Expert Mechanism Advice No. 1 (2009) (annexed to A/HRC/12/33) and the second study concerned the right to decision making (A/HRC/18/42 of August 17, 2011). In addition, the Expert Mechanism is actively pursuing numerous other issues that concern indigenous populations. Please see: Office of the High Commissioner for Human Rights (2013) *The Expert Mechanism on the Rights of Indigenous Peoples*. Available at: <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx> [15 June 2013].

<sup>674</sup> UN Human Rights Council (2007) *Forum on Minority Issues*. 28 September 2007. A/HRC/RES/6/15.

Rapporteur on Minority Issues.<sup>675</sup> The Forum meets annually for two working days.<sup>676</sup> The Chairperson of the Council is responsible for appointing an expert to serve as chairperson of the forum. The individual should be an expert and appointment is to be based on regional rotation.<sup>677</sup> Thus far, the forum has discussed topics covering the right to education,<sup>678</sup> political participation,<sup>679</sup> participation in economic life,<sup>680</sup> and protecting the rights of minority women.<sup>681</sup>

The final subsidiary body is the Social Forum.<sup>682</sup> The primary responsibility of the Social Forum is to serve as “a unique space for an interactive dialogue between the United Nations and various stakeholders, particularly grassroots organizations and those from marginalized groups,” focusing primarily on issues surrounding poverty and globalization.<sup>683</sup> The Social Forum meets annually for three days, with each day focusing on a particular dimension of poverty, globalization, and human rights.<sup>684</sup> The Chairperson of the Council is responsible

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<sup>675</sup> Ibid, Article 1. Specifically, Article 1 states, “for promoting dialogue and cooperation on issues pertaining to persons belonging to national or ethnic, religious and linguistic minorities, which shall provide thematic contributions and expertise to the work of the independent expert on minority issues.”

<sup>676</sup> Ibid Article 3.

<sup>677</sup> Ibid Article 2.

<sup>678</sup> UN Human Rights Council (2009) *Promotion and protection of all human rights, civil, political, economic, social, and cultural rights, including the right to development*. 27 February 2009. A/HRC/10/11.Add2.

<sup>679</sup> UN Human Rights Council (2009) *Recommendations of the second session of the Forum on Minority Issues on minorities and effective political participation*. 2 February 2010. A/HRC/13/25.

<sup>680</sup> UN Human Rights Council (2011) *Recommendations of the Forum on Minority Issues at its third session, on minorities and effective participation in economic life*. 31 January 2011. A/HRC/16/46.

<sup>681</sup> UN Human Rights Council (2012) *Recommendations of the Forum on Minority Issues at its fourth session: guaranteeing the rights of minority women and girls*. 3 January 2012. A/HRC/19/71.

<sup>682</sup> The Social Forum was originally a subsidiary body of the Sub-Commission (Resolution 2001/24) but was renewed with minor tweaks by the Council in resolution 6/13. UN Human Rights Council (2007) *The Social Forum*. 28 September 2007. A/HRC/RES/6/13.

<sup>683</sup> Ibid, Articles 3 and 10. See also: Office of the High Commissioner for Human Rights (2013) *The Social Forum – Background*. Available at: <http://www.ohchr.org/EN/Issues/Poverty/SForum/Pages/Background.aspx> [June 15, 2013].

<sup>684</sup> Ibid, Article 5.

for appointing an expert to serve as chairperson of the Social Forum.<sup>685</sup> The Social forum has thus far discussed numerous issues, some examples include: “the social dimensions of the globalization process,”<sup>686</sup> “negative impacts of economic and financial crises on efforts to combat poverty,”<sup>687</sup> “The adverse effects of climate change on the full enjoyment of human rights,”<sup>688</sup> and “The promotion and effective realization of the right to development.”<sup>689</sup>

Taken together, the subsidiary bodies act as a forum for numerous groups to discuss and provide advice on significant human rights concerns that affect a large number of at-risk people in the world.

## The Five-Year Review of the Council

As part of the Council’s mandate in resolution 60/251, the General Assembly is required to review the Council within five years of its existence.<sup>690</sup> The review took place in 2011.<sup>691</sup> On the whole, the review did little to address the primary problems plaguing the Council, such as membership standards and selectivity.<sup>692</sup> Nevertheless, an outcome

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<sup>685</sup> Ibid, Article 6.

<sup>686</sup> UN Human Rights Council (2010) *Report of the Social Forum*. 16 January 2009. A/HRC/10/65.

<sup>687</sup> UN Human Rights Council (2009) *Report of the Social Forum*. 25 November 2009. A/HRC/13/51.

<sup>688</sup> UN Human Rights Council (2011) *Report of the Social Forum*. 4 February 2011. A/HRC/16/62.

<sup>689</sup> UN Human Rights Council (2012) *Report of the Social Forum*. 26 December 2011. A/HRC/19/70.

<sup>690</sup> Resolution 60/251, 3, articles 1.

<sup>691</sup> For an overview of the review from the Office of the High Commissioner for Human Rights (2012) *Human Rights Council Review*. Available at:

<http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCReview.aspx> [17 June 2013]. For an NGO perspective, please see: International Service for Human Rights (2013) *Review of the Council*. Available at: <http://www.ishr.ch/review-of-the-council> [17 June 2013].

<sup>692</sup> For a good overview of the US’s position, see: Blanchfield, L, 2013. *United Nations Human Rights Council: Issues for Congress*. Washington D.C.: DIANE Publishing, p. 10. The key problem appears to be a lack of desire to change to improve the Council’s functioning.

document was passed in July 2011.<sup>693</sup> The decisions in the outcome document are relatively minor but a few are worth noting. First, the GA decides that the Council shall remain a subsidiary body to the GA instead of being promoted to a principal body.<sup>694</sup> Second, the election cycle is shifted to align with the Western calendar, which moves elections to the fall instead of the spring.<sup>695</sup> Overall though, it is no surprise that many diplomats and activists viewed the outcome as a wasted opportunity for real change.

## Looking Ahead

As table 4.2 illustrates, the transition from the Commission to the Council includes some important changes for the way the primary human rights political body in the UN works. Of particular importance is the focus on the role of membership in the Council and the increased agency of NGOs.

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- Subsidiary organ of the UNGA rather than of ECOSOC
  - Membership: reduced from 53 to 47
  - Election by absolute majority of all members: 97 out of 192 instead of 28 out of 54
  - At least three sessions totaling no less than ten weeks instead of one single six-week annual session
  - Possibility of special sessions in urgent cases
  - No permanent members (two consecutive terms at most)
  - Suspension of membership by two-thirds majority of General Assembly
  - Universal periodic review
  - Right of NGOs to speak
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Table 4.2: Features of the Human Rights Council compared with Commission<sup>696</sup>

<sup>693</sup> UN General Assembly (2011) *Review of the Human Rights Council*. 20 July 2011. A/RES/65/281.

<sup>694</sup> Ibid, Article 3.

<sup>695</sup> Blanchfield L (2013), 692, p. 10.

<sup>696</sup> This table is reprinted from Schrijver N (2007), 471, p. 817.

Charges of politicization, selectivity, and double standards lead the way to the Commission becoming a discredited institution.<sup>697</sup> After six years of activity, scholars are beginning to ask in earnest, if the Council, with its novel mechanisms, is a genuine solution for the problems that plagued the Commission or just “old wine in a new bottle.”<sup>698</sup>

The Human Rights Council, like its predecessor, the Commission on Human Rights, has many functions, including human rights legislation, promotional and educational roles, preventive, fact-finding, and protection roles,<sup>699</sup> all of which are comprise important aspects of its mandate and that may be used to evaluate its effectiveness as an institution and how it compares to its predecessor.

The dissertation will now shift focus from the institutional structure of the Human Rights Council to outcomes. Specifically, chapter five will examine voting on country resolutions, chapter six will look at how the Council is incorporating two of the most lauded norms and institutions in recent history, the ICC and R2P, and the final substantive chapter will survey votes on thematic resolutions. Taken together, all three chapters should give the readers a better understanding of how the Council is performing in its mandate to promote and protect human rights.

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<sup>697</sup> Frouville O (2001) 435, p. 242.

<sup>698</sup> Ibid, pp., 255- 260.

<sup>699</sup> See Ramcharan B (2011), 490.

## Chapter 5

### Council Membership, Country Voting Outcomes, and the US.

Human rights advocates argue that regional bloc voting and the quality of membership of the United Nations Human Rights Council are having a deleterious effect on the ability of the institution to fulfill its mandate of protecting and promoting human rights.<sup>700</sup> This chapter will examine the role that both factors have on UN HRC outcomes by asking, which of the two variables, bloc voting or the relative numerical balance of power between democracies and non-democracies, offers the most explanatory power. This work will attempt to shed light on the role of regional bloc voting and membership by examining country resolution votes in the Council from the HRC's inception in 2006 through the end of 2012. This chapter will examine 21 regular sessions through six different election cycles. Over the past six years, the Council has voted on 118 different

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<sup>700</sup> Roth K (2009) *Taking Back the Initiative from the Human Rights Spoilers*. Human Rights Watch. Available at <http://www.hrw.org/world-report-2009/taking-back-initiative-human-rights-spoilers> [10 July 2013], Vriens L (2009) *Troubles Plague UN Human Rights Council*. Council on Foreign Relations. Available at <http://www.cfr.org/un/troubles-plague-un-human-rights-council/p9991> [10 July 2013], Democracy Coalition Project (2013) *The UN Human Rights Council*. Available at [http://www.demcoalition.org/2005\\_html/un-human-rights-council.html](http://www.demcoalition.org/2005_html/un-human-rights-council.html) [10 July 2013], Trister S (2013) *Assessing the 2012 UN Human Rights Council Elections: One-Third of Candidates Unqualified for Membership*. Freedom House. Available at <http://www.freedomhouse.org/article/assessing-2012-un-human-rights-council-elections-one-third-candidates-unqualified-membership> [1 July 2013], EYE on the UN (2013) *UN Human Rights Council Elections: How Human Rights Abusers Become Members*. Available at <http://www.eyeontheun.org/> [10 July 2013].

country resolutions. Of these 118 resolutions, 43 votes were contested. This chapter will focus primarily on the 43 contested votes since resolutions adopted, “without a vote” or by consensus tell us very little about the role regional bloc voting has on outcomes.

The following work will be divided into six parts. Part one will examine regional blocs in the Council and the role that regional bloc voting has historically played in Council votes. Part two will give an overview of country resolutions in the United Nations Human Rights Council and why country resolutions are an important mechanism for the Council. Part three will look at uncontested votes over time and by election cycle. Part four will examine the special role that votes on Israel plays in the Council, part five will explain and examine the role of special sessions on countries in the UN HRC, and part six will describe the role that membership plays in the Council, and then conclude with an alternative hypothesis and policy implications.

## Regional Blocs

As mentioned in the previous chapter, membership in the United Nations Human Rights Council is equitably divided into five regions. The groups are Africa, Asia (including the Middle East), Latin America and the Caribbean (GRULAC), Eastern Europe, and the Western European and Others Group (WEOG). During the transition from the Commission on Human Rights to the Council, the relative balance of all groups but Africa shifted significantly.



<b>Region</b>	<b>Commission on Human Rights</b>	<b>Human Rights Council</b>
Africa	15 (28%)	13 (28%)
Asia	12 (23%)	13 (28%)
Eastern Europe	5 (9%)	6 (13%)
GRULAC	11 (21%)	8 (17%)
WEOG	10 (19%)	7 (15%)
<b>TOTAL</b>	<b>53 (100%)</b>	<b>47 (100%)</b>

Table 5.1: Membership by Region in the UN HRC compared to CHR<sup>701</sup>

As table 5.1 indicates, the Asian and Eastern European groups gained a significant numerical advantage while the WEOG and GRULAC groups lost ground relative to the others. This is significant for a few reasons. First, the norm of consensus is important in the Council and whenever possible, states prefer to adopt resolutions “without a vote.”<sup>702</sup> Secondly, when consensus is not the case, states try to pass resolutions with a majority (24 votes) in order to appear legitimate. For the West, Eastern Europe or GRULAC, a significant coalition must be formed to reach 24 votes, whereas Africa and Asia need only align together.

## The Significance of Regional Bloc Voting

Heretofore, a wanting amount of scholarly attention is being paid to the role of regional bloc voting on the Council by academics. However, Simon Hug and Richard Lukacs use an item-response theory model to look at regular sessions one through thirteen (June 2006 through March 2010). The authors find that geographic regional bloc voting is not a primary determinant of voting outcomes in the Council. Instead, the authors find that the

<sup>701</sup> This table is reprinted from Schrijver N (2007), 471, p. 817.

<sup>702</sup> A/HRC/RES/5/1, 4.

level of a democracy of the country is more important. Free States tend to vote together while partly free and non-free states align in their voting patterns.<sup>703</sup>

Although there is a moderately robust amount of scholarship on regional bloc voting patterns in the United Nations General Assembly,<sup>704</sup> much of the literature fails to explain why regional bloc voting occurs. For example, do states vote in regional blocs because their domestic structure is similar to that of their neighbors?<sup>705</sup> Is it because a regional hegemon dictates outcomes to their less powerful alliance partners?<sup>706</sup> Or is it because regional affiliation shapes norms?<sup>707</sup> Despite the dearth of theoretical works on voting in the United Nations, general preferences may be discerned. There are two general patterns. First, states within a region prefer to not pass resolutions against their neighbors. Nevertheless, if a resolution is going to be passed, states prefer technical assistance

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<sup>703</sup> Hug S and Lukacs R (2011), *10*, p. 13.

<sup>704</sup> See Ibid for a short literature review. See specifically, Lebovic J and Voeten E (2006), 22.

<sup>705</sup> See generally theories of liberalism in IR. See for example, Moravcsik A (1997) Taking Preferences Seriously: A Liberal Theory of International Politics. *International Organization* 51(4): 513, Putnam R (1988) Diplomacy and Domestic Politics: The Logic of Two-Level Games. *International Organization* 42(3): 427, Mesquita B et al. (2005) Thinking Inside the Box: A Closer Look at Democracy and Human Rights. *International Studies Quarterly* 49 (3): 439, Dai X (2005) Why Comply? The Domestic Constituency Mechanism. *International Organization*: 59(2): 363, and Cortell A and Davis J (1996) How Do International Institutions Matter? The Domestic Impact of International Rules and Norms. *International Studies Quarterly*: 40(4): 451

<sup>706</sup> See generally theories of realism in IR. For example, Fearon J (1997) Signaling Foreign Policy Interests: Tying Hands versus Sinking Costs. *The Journal of Conflict Resolution* 41(1): 68, Kahn P (2000) American Hegemony and International Law: Speaking Law to Power: Popular Sovereignty, Human Rights, and the New International Order. *Chicago Journal of International Law* (1): 1.

<sup>707</sup> See generally theories of constructivism in IR: Goodman R and Jinks D (2004) How to Influence States: Socialization and International Human Rights Law. *Duke law journal*, 54(3): 1, Brysk A (2000) *From Tribal Village to Global Village: Indian Rights and International Relations in Latin America*. Stanford: Stanford University Press Hafner-Burton E and Tsutsui K (2005), 116, Keck M and Sikkink K (1998) *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca: Cornell University Press, Waltz S (2001) Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights. *Human Rights Quarterly*, 23(1): 44, and Wotipka, C.M. and Tsutsui K (2008). Global Human Rights and State Sovereignty: State Ratification of International Human Rights Treaties, 1965-2001. *Sociological Forum*, 23(4): 724.

resolutions; States within a region do not pass “shaming” resolutions against their neighbors.

Based on historical preferences and because regional alliances often overlap with ideological groupings, we can also predict which types of resolutions regional blocs will try to pass, if any.

<b>Region</b>	<b>Types of Resolutions Preferred</b>
<b>Africa</b>	Resolutions against Israel (via OIC) Technical assistance resolutions with Country support Non-interference
<b>Asia</b>	Resolutions against Israel (via OIC) Non-interference
<b>GRULAC</b>	Non-interference
<b>Eastern Europe</b>	Non-interference
<b>WEOG</b>	Shaming resolutions against geopolitical rivals. Technical assistance resolutions with Country support

Table 5.2: Historical Preferences by Region in the UN HRC

In total, table 5.2 indicates that there are four major types of country resolutions. First, there are technical assistance and capacity building resolutions, second, there are shaming resolutions, third, there are resolutions devoted specifically to Israel, and finally, there is a practice abstaining or voting against country resolutions based on deference to Article 2 (7) of the United Nations Charter.<sup>708</sup>

<sup>708</sup> Article 2 (7) of the Charter is the non-interference clause of the Charter. It states, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII,” See: United Nations Charter, 137.

Human rights activists and NGOs posit that when blocs vote in conformity instead of by the merits of an issue, regional bloc voting becomes detrimental to the Council's ability to function, like it was for the Commission.<sup>709</sup> According to most people knowledgeable with the Commission, bloc voting, along with membership are two of the primary reasons that the Commission lost its credibility, and given the historical preferences of the Commission, and the structure of membership in the Council, this is a serious concern for human rights advocates.<sup>710</sup>

## Understanding Country Outcomes

The UN HRC is mandated by the United Nations General Assembly (UNGA) to protect and promote human rights. The Council does so through a number of procedures broadly defined as standard-setting mechanisms, which include thematic resolutions, such as the right to water or the right to peace, and work done by a host of subsidiary bodies<sup>711</sup> or through country-specific mechanisms, which include the new Universal Periodic Review (UPR) and resolutions relating to Member States of the United Nations.

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<sup>709</sup> See notes accompanying footnote 2 and also: Evans R (2009) World NGOs seek end to blocs in U.N. rights council. *Reuters*. Available at <http://www.reuters.com/article/2009/08/17/us-un-rights-council-idUSTRE57G4E420090817> [10 July 2013].

<sup>710</sup> On April 7, 2005, Kofi Annan, the Secretary-General of the United Nations told the foremost institution on human rights in the United Nations, the Commission on Human Rights, that, "We have reached a point at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system." Increasingly after the Cold War, the Commission faced rising controversies surrounding an increasing politicization of the institution as well as the inability of the institution to keep blatant human rights violators out of the Commission. Annan K (2005) *United Nations Needs New Human Rights Body: Transcript of UN Secretary General Kofi Annan address before the 61st Session of the UN Human Rights Commission*. Available at <http://www.unpo.org/article/2287> [10 July 2013]. In addition, roughly 95% of the people I interviewed stated this argument.

<sup>711</sup> Subsidiary bodies in the UN HRC include the Universal Periodic Review, the Advisory Committee, the Special Procedures, the Expert Mechanism on the Rights of Indigenous Peoples, the Forum on Minority Issues, the Social Forum, and the new Forum on Business and Human Rights. See General Assembly Resolution 60/251, 3 and A/HRC/5/1, 4. See also: United Nations (2013) *Other Subsidiary Bodies*. Available at <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OtherSubBodies.aspx> [13 June 2013].

Thematic and country resolutions are the most political of the Council's mechanisms.

Unlike the UPR, which is non-selective, thematic and country resolutions must be voted upon in plenary; It is important to note that all of the Council's work, especially including the thematic and country resolutions are supposed to follow 13 principles, whose primary object is to ensure that the Council does not become discredited, like the Commission on Human Rights.<sup>712</sup>

Since the transition from the Commission to the Council, the lion's share of attention is being directed toward the Council's new mechanism, the Universal Periodic Review.<sup>713</sup>

The UPR is enticing to both diplomats and advocates because it promises to be non-selective. It is non selective because every member of the United Nations must go through the process every four years.<sup>714</sup> However, despite the promise of the UPR, country resolutions remain the strongest mechanism the UN human rights system has in protecting and promoting human rights.<sup>715</sup> Country resolutions are powerful because the resolutions name and shame perpetrators of human rights abuse in the hopes of affecting state level behavior. Even if one believes that naming and shaming has no long-term

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<sup>712</sup> The Council's Guiding Principles are laid down in A/HRC/5/1. They are: Universality, impartiality, objectivity, non-selectiveness, constructive dialogue and cooperation, predictability, flexibility, transparency, accountability, balance, inclusive/comprehensiveness, and gender perspective. See Ibid at note 3. A/HRC/RES/5/1, 4.

<sup>713</sup> See Gaer F.D. (2007) A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System. *Human Rights Law Review* 7(1): 109, McMahon E (2010) Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council. Available online at: [http://www.upr-info.org/IMG/pdf/McMahon\\_Herding\\_Cats\\_and\\_Sheeps\\_July\\_2010.pdf](http://www.upr-info.org/IMG/pdf/McMahon_Herding_Cats_and_Sheeps_July_2010.pdf) [11 July 2013], Abebe A.M. (2009). Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council. *Human Rights Law Review* 9(1).

<sup>714</sup> A/HRC/60/251, 3. See also: Chauville R (2013), 6.

<sup>715</sup> See: Gutter J (2007), 5, Abebe A.M. (2009), 713, Ghana N (2006), 11, Piccone T (2011) The contribution of the UN's special procedures to national level implementation of human rights norms. *The International Journal of Human Rights*, 15(2): 206, and Piccone T (2012), 5.

effect, elites still avoid having these resolutions passed against their state and vehemently refute the resolutions once they are adopted. In addition, country specific resolutions may also help states with capacity building and technical assistance and act in essence as an “early warning system” for potential future abuses.<sup>716</sup> Finally, country resolutions are important because of the immediacy inherent in the mechanism; after all, they would not be adopted unless a significant change is needed within the targeted state.

There are primarily three places in the Council’s agenda where country resolutions may be introduced.<sup>717</sup> Agenda Item 4 resolutions consist of, “situations that require the Council’s attention.”<sup>718</sup> In common parlance, Agenda Item 4 resolutions are used for shaming human rights violators into complying with universal human rights standards. Item 4 resolutions are for the “worst” human rights offenders. Contrary to Agenda Item 4, Agenda Item 10 resolutions are for “technical assistance and capacity building.”<sup>719</sup> Agenda Item 10 resolutions are for states that have serious human rights concerns but are on the whole considered to be making good faith efforts in promoting and protecting human rights. Agenda Item 4 resolutions are conflictive in nature while Agenda Item 10 outcomes are cooperative. Agenda Item 4 and 10 resolutions are for all states in the UN system.

Agenda Item 7 resolutions are also a country specific mechanism. However, unlike Items

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<sup>716</sup> Interview with NGO5.

<sup>717</sup> States may introduce resolutions under other agenda items, for example Agenda Item 1 or 2. The best example of this is the United States introducing a resolution on Sri Lanka under Agenda Item 2, UN Human Rights Council (2012) *Promoting reconciliation and accountability in Sri Lanka*. 22 March 2012. A/HRC/RES/19/2. However, this is rare and excluded in this study.

<sup>718</sup> A/HRC/RES/5/1, 4.

<sup>719</sup> Ibid

4 and 10, Agenda Item 7 is solely for the examination of the “human rights situation in Palestine and other occupied Arab territories.”<sup>720</sup> Agenda Item 7 is exceptionally controversial,<sup>721</sup> for this reason, it will be covered in comparison with Items 4 and 10 but will also receive its own section.<sup>722</sup>

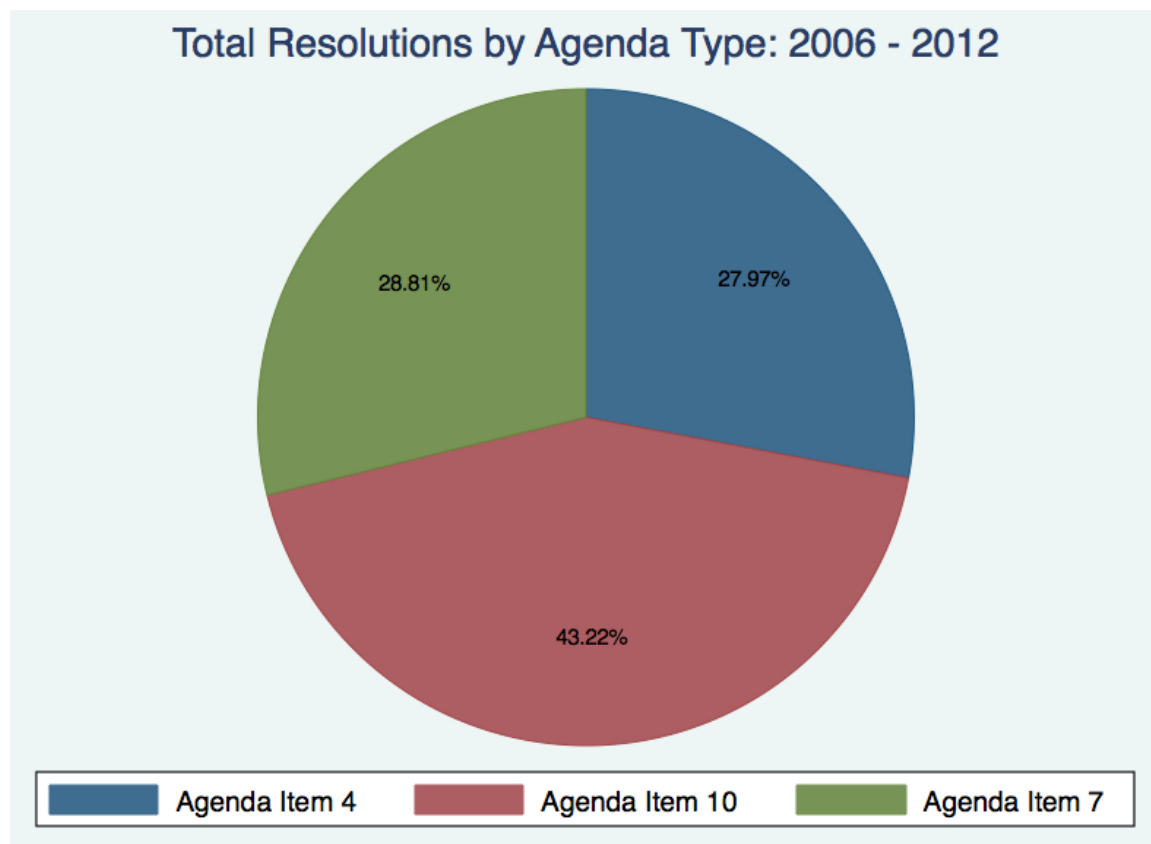


Figure 5.1: Total Resolutions by Agenda Type in the UN HRC from 2006 – 2012

As figure 5.1 above indicates, as a percentage of the total type of Agenda resolutions passed, the Council significantly favors capacity building resolutions over shaming resolutions. In fact, if Item 7 resolutions are excluded, the percentages shift to 61% -

<sup>720</sup> Ibid

<sup>721</sup> See for example, Rivero J et al. (2011) *Curing the Selectivity Syndrome: The 2011 Review of the Human Rights Council*. Human Rights Watch. Available at: <http://www.hrw.org/sites/default/files/reports/hrc0610webwcover.pdf>

<sup>722</sup> It seems fitting after all, that this chapter selectively examines resolutions on Israel in light of practices in the Human Rights Council.

39%. Given the historical preferences of regional blocs, it should not be surprising that Item 10 resolutions significantly outnumber the use of Item 4 decisions.

What is more interesting is the yearly distribution of the resolutions. As figure 2 indicates below, there is a noteworthy shift away from resolutions on Israel compared to other country specific mechanisms at the Council. Also noteworthy is the significant increase in the use of Agenda Item 10 resolutions beginning in 2009-2010.

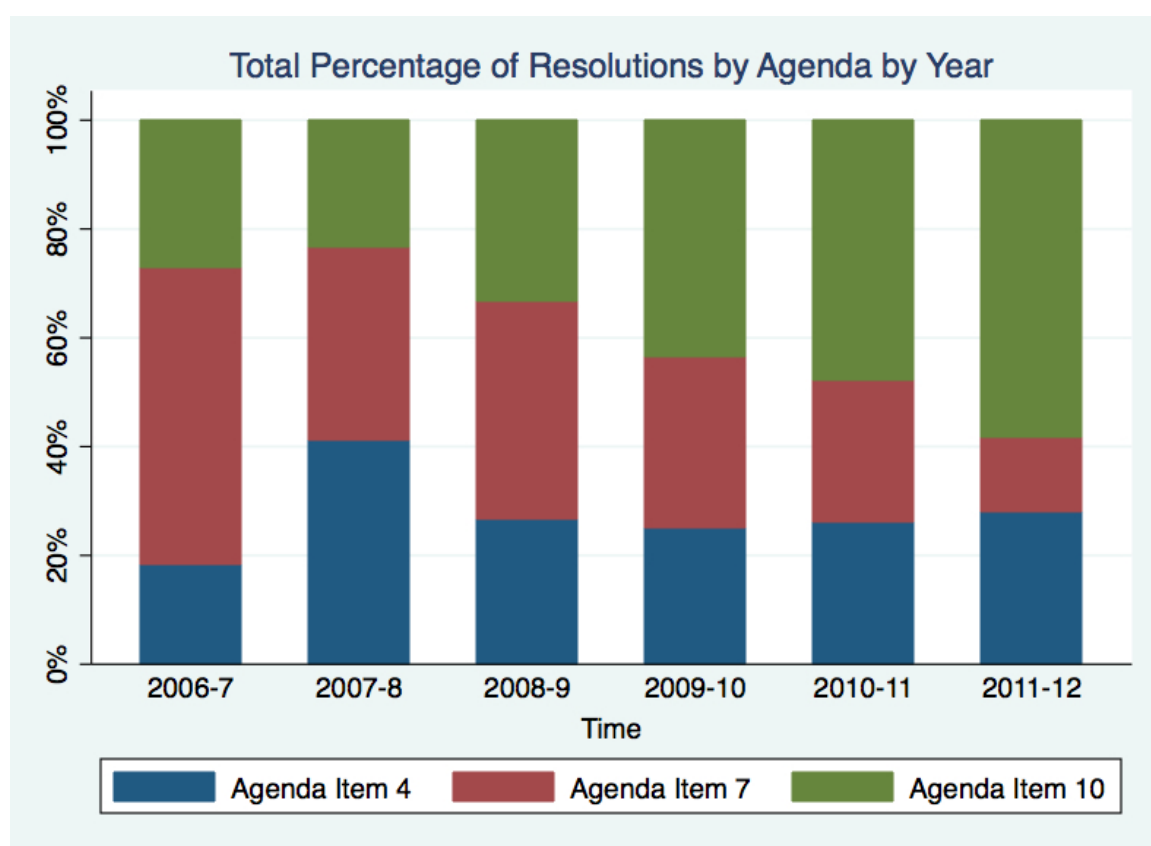


Figure 5.2: Total Percentage of Resolutions by Agenda in the UN HRC by Year

Given our historical assumptions on preferences, these findings are contradictory. On the one hand, it suggests that the non-Western regional blocs have increased in power because of the increase in Item 10 resolutions compared to item 4, yet, as a percentage,



Israel is receiving less attention, especially in Special Sessions, though on average, the number of resolutions devoted to Israel remains the same at roughly 5.6 per year.

Finally, it is important to note the total increase in resolutions over time. As figure 3 below illustrates, beginning in 2010-2011, the amount of Agenda Item 4 and 10 resolutions introduced increases significantly.

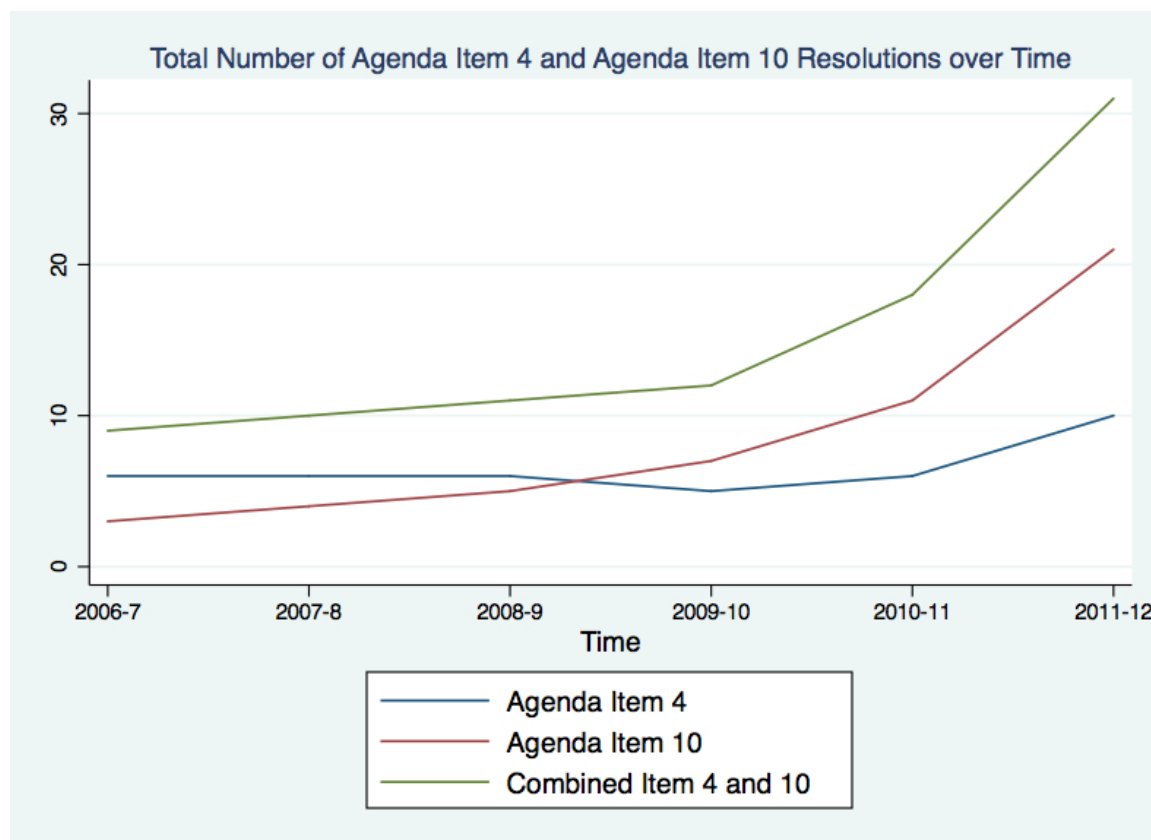


Figure 5.3: Total Number of Agenda Item 4 and Agenda Item 10 Resolutions over Time

## The Targets

In total the 118 country resolutions passed by the Human Rights Council through Agenda Items 4, 7, and 10, since 2006 have targeted 25 different member states. As figure 4 below shows, over 50% of the resolutions are related to countries in Africa, thus giving

ammunition to critiques and skeptics who believe the UN unfairly targets African countries for selectivity.<sup>723</sup> Of course, since Africa and Asia rank fairly low on levels of measurements that correlate with human rights, such as Freedom House<sup>724</sup> and Polity IV,<sup>725</sup> and development indices, this is perhaps unsurprising.

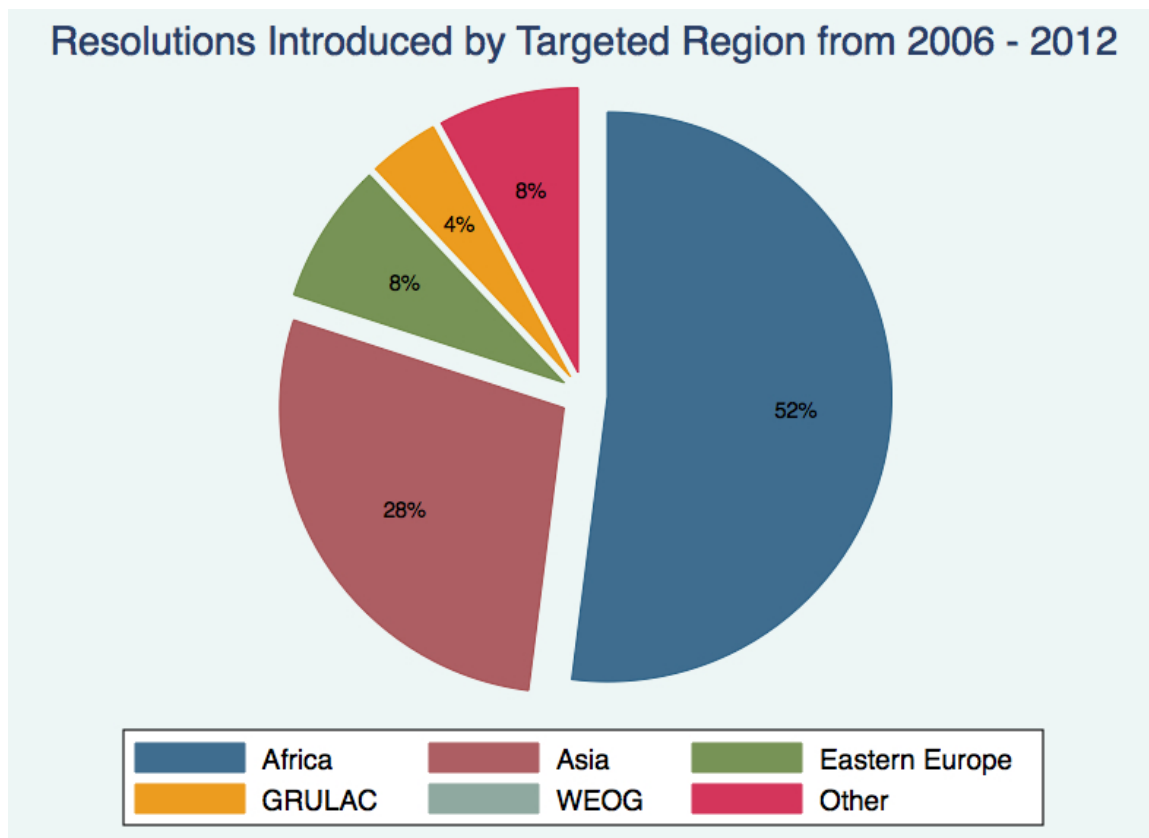


Figure 5.4: Total Resolutions Introduced by Targeted Region

<sup>723</sup> Frouville O (2001), 435.

<sup>724</sup> Freedom House (2013) *Freedom in the World*. Available at <http://www.freedomhouse.org/> [15 June 2013].

<sup>725</sup> Marshall M et al (2013) *Polity IV: Center for Systemic Peace*. Available at <http://www.systemicpeace.org/polity/polity4.htm> [17 June 2013].

The “other” in Figure 4 is Israel and four residual resolutions that are adopted under Item 10 but do not relate to any one particular member state.<sup>726</sup> Israel is an “other” because the state does not formally belong to the WEOG, which it would most closely associate with ideologically or the Asia group, where its neighbors are located in the UN regional grouping scheme.<sup>727</sup>

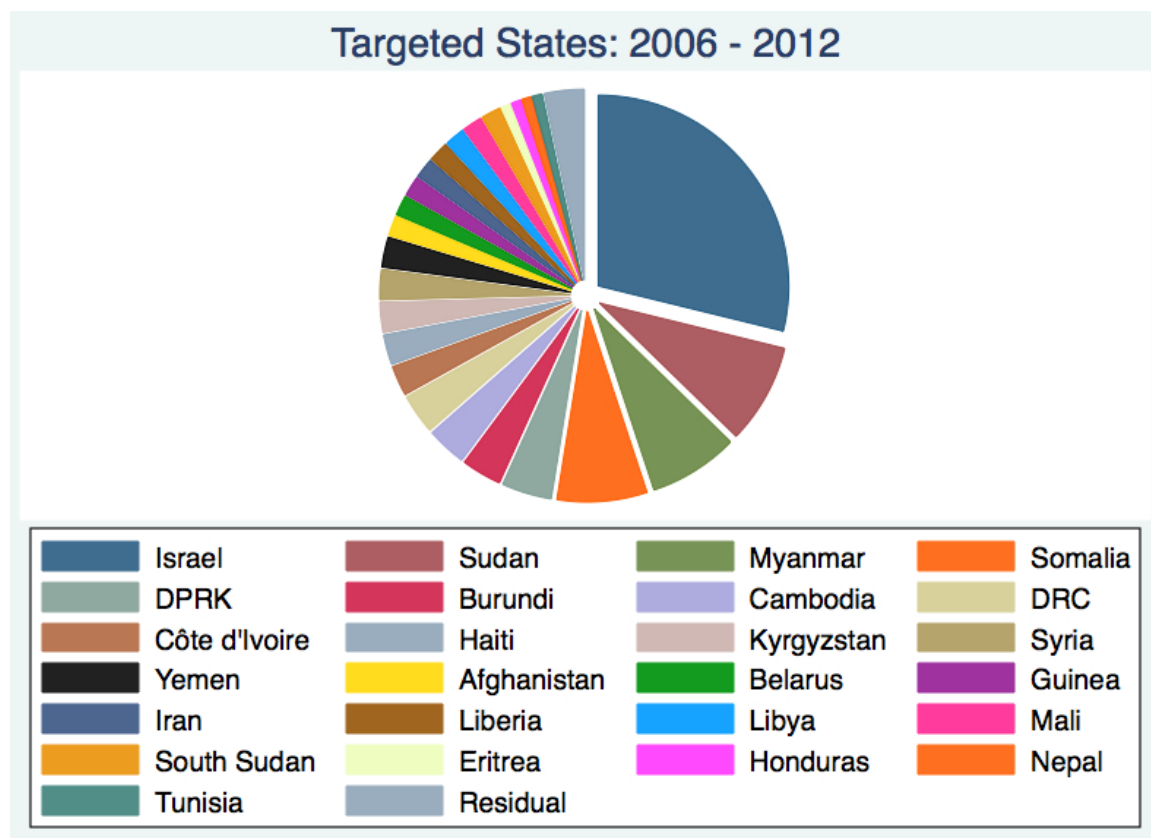


Figure 5.5: Targeted States by Agenda Items 4, 7, and 10 from 2006-2012

<sup>726</sup> The four non-state Agenda Item 10 resolutions are UN Human Rights Council (2010) *Addressing attacks on school children in Afghanistan*. 18 June 2010. A/HRC/RES/14/8, UN Human Rights Council (2011) *Enhancement of technical cooperation and capacity-building in the field of human rights*. 17 October 2011. A/HRC/RES/18/18, UN Human Rights Council (2012) *Voluntary Trust Fund for Least Developed Countries and Small Island Developing States*. 23 March 2012. A/HRC/RES/19/26, and UN Human Rights Council (2012) *Enhancement of technical cooperation and capacity-building in the field of human rights*. 17 October 2012. A/HRC/RES/21/21.

<sup>727</sup> See EYE on the UN for an overview of membership in regional groups. EYE on the UN (2013). *Political Alliances within the UN*. Available at <http://www.eyeontheun.org/view.asp?p=55&l=11> [ 10 July 2013].

The most targeted states in the Council are Israel (34), Sudan (10), Myanmar (9), Somalia (9), and then trailing significantly behind are Burundi, The Democratic Republic of the Congo, and Cambodia, each with four. Sudan, Myanmar, and the Congo have almost exclusively received shaming resolutions while Somalia, Burundi, and Cambodia's resolutions have been for technical assistance and capacity building. The primary recipients of Agenda Item 4 resolutions besides Sudan and Myanmar are the Congo (3), Syria (3), and Mali, Belarus, and Iran with two each.

Of course, as many human rights advocates point out, there are significant exclusions from the list of targeted states. For example, China, Cuba, Russia, Kazakhstan, Uganda, Kenya, Egypt, Bahrain, and the United States, to name only a few, have avoided country resolutions of any type. While the purpose of this work is not to make normative claims about which states should receive resolutions, it is nonetheless important to note that the process is not exhaustive, may well be selective, and avoids pressing global and regional powers on human rights issues.

What affect does regional bloc voting have on Human Rights Council outcomes? This thorough overview of country resolutions in the Council from 2006-2012 indicates that there does not appear to be a strong correlation between regional bloc voting and outcomes. What is happening in the Human Rights Council? The descriptive stats in part two indicate a few important issues, which all begin in 2010-2011. First, as a percentage of resolutions, the Human Rights Council is increasingly passing technical assistance and capacity building resolutions. However, since the total number of resolutions is

increasing, so too are Agenda Item 4 resolutions. Second, despite the increase in resolutions, there is a decreased focus on Israel or to put it another way, the focus on Israel is numerically static across time.

Finally, and importantly, according to numerous NGOs and scholars that examine the Human Rights Council, the Council's performance, measured qualitatively, has significantly improved since 2010-2011.<sup>728</sup>

Part III will try to shed more light on the role regional bloc voting plays in the Human Rights Council by examining contested votes. Contested votes on resolutions are a better indicator of how regional blocs affect outcomes because it allows researchers to see who, which state or regions, comes out on top when preferences conflict.

## Contested Resolutions

Although the norm of consensus is customary in the Council, at times, it is not possible to reach agreement among the 47 member states. Of the 118 country votes taken in the Council, disagreement has occurred 43 times or roughly 36% of the time. However, as Figure 5.6 shows below, excluding votes on Israel, disagreement over votes has only occurred 17% of the time or a total of 14 times across six years. Part III will take a close

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<sup>728</sup> I argue this by doing a content analysis comparing Council yearly and sessional updates from Human Rights Watch and particularly the International Service for Human Rights. See specifically International Service for Human Rights (2012) *Human Rights Monitor Quarterly* (2). Available at <http://www.ishr.ch/quarterly> [21 June 2013]. Of course, these groups are not arguing that everything about the Council is improving. Indeed, there is a significant problem with protecting human rights defenders, for example. However, on average the Council is improving.

look at the 14 votes that have been adopted in the Council with a vote. Part IV will examine votes on Israel in more detail.

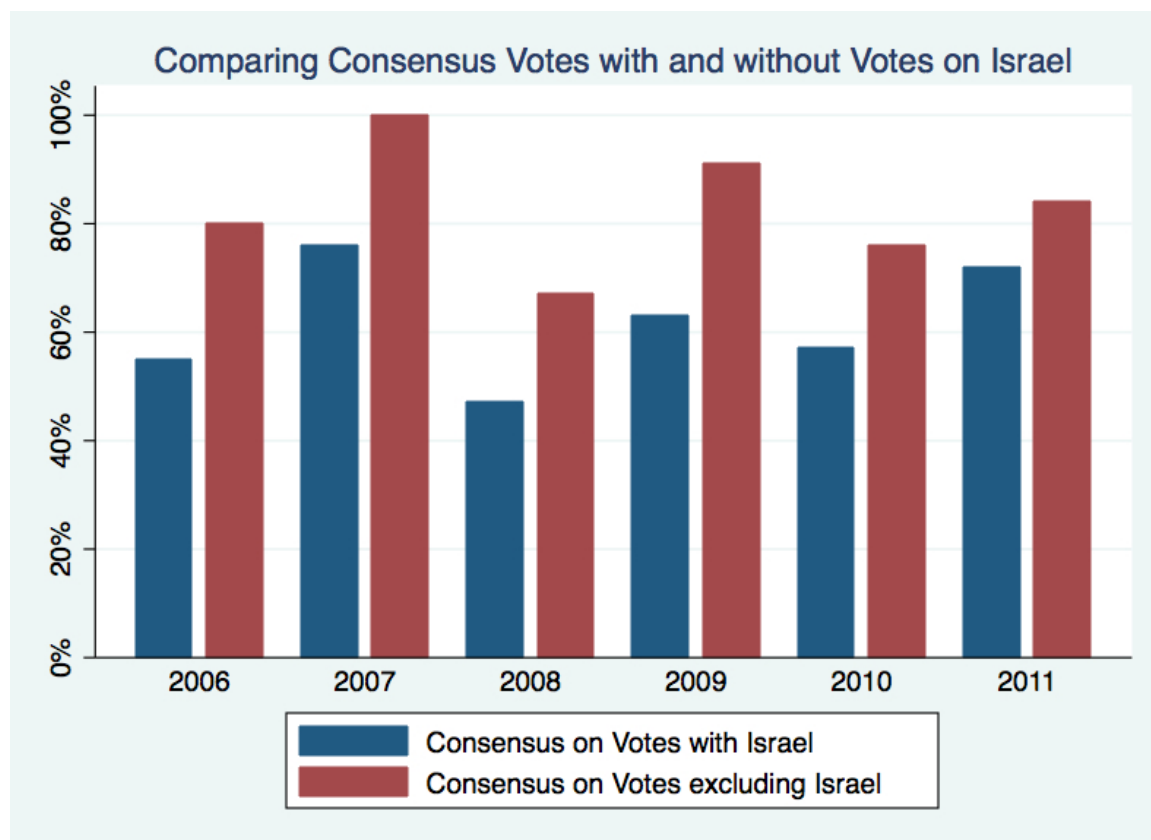


Figure 5.6: Comparing Consensus Resolutions in the UN HRC with and without Israel

## The 14 Votes: An Overview

Figure 5.7 shows the total number of resolutions on Agenda Items 4 and 10 compared with the total votes on those resolutions. Two things should become immediately clear. First, the total number of non-consensus votes matches the total number of resolutions on countries beginning in 2010-2011 and second, all but one of the non-consensus votes in the Council are on Agenda Item 4 resolutions.

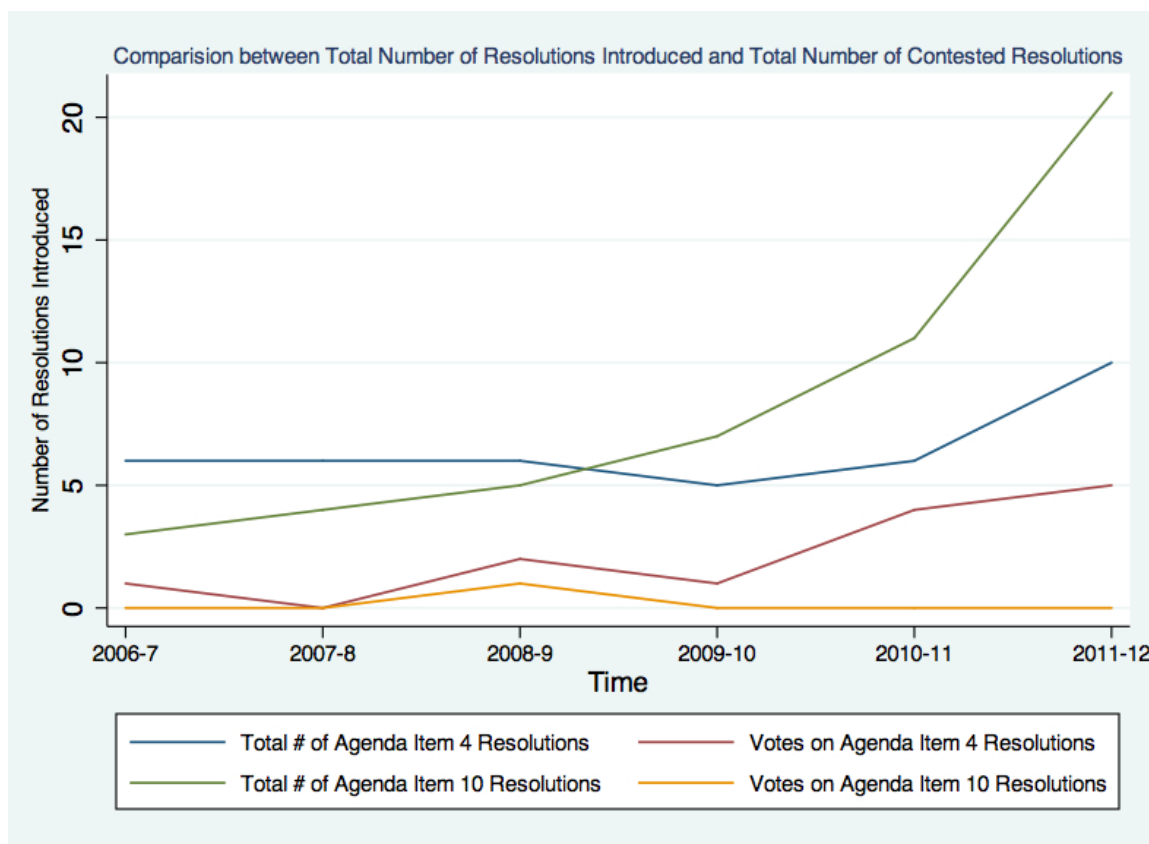


Figure 5.7: Comparison of Total Resolutions and Contested Resolutions over Time

As figure 8 below illustrates, the 14 contested resolutions in the Human Rights Council are divided amongst six different states, which represent three geographic areas. The only contested Agenda Item 10 resolution belongs to the Democratic Republic of the Congo.<sup>729</sup>

<sup>729</sup> Resolution 10/33 is introduced by Egypt and is adopted by a vote of 30-15-2. UN Human Rights Council (2009) *Situation of human rights in the Democratic Republic of the Congo and the strengthening of technical cooperation and consultative services*. 27 March 2009. A/HRC/RES/10/33.

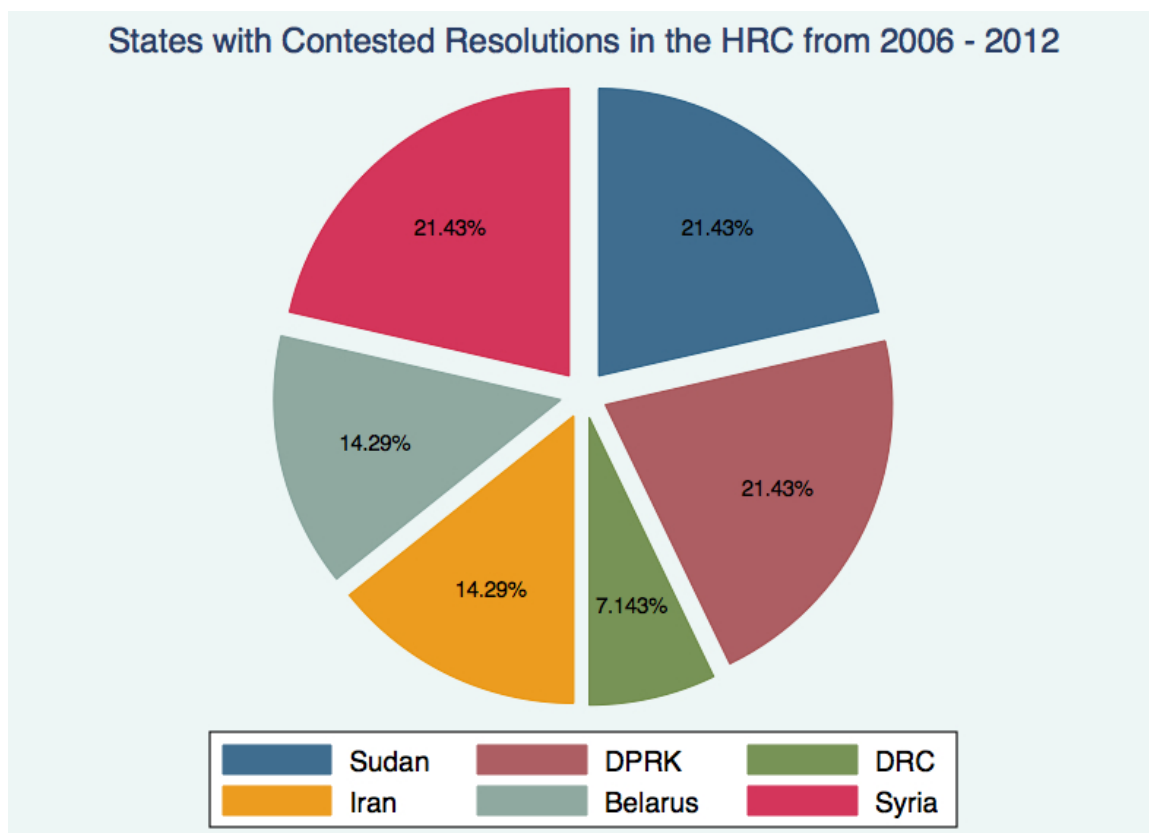


Figure 5.8: Targeted States by Total Percentage of Contested Resolutions in the UN HRC

## The 14 Votes: The Specifics by Election Cycle

### Election Cycle 1: 2006 – 2007

During election cycle 1, from 2006 – 2007, only one non-Israel related vote is adopted without consensus. During session two, Algeria, on behalf of the OIC, introduces a resolution on Sudan (Darfur), which focuses on the Darfur Peace Agreement.<sup>730</sup> The final vote is 25 – 11 – 10. The WEOG votes as a bloc against the resolution with four states

<sup>730</sup> UN Human Rights Council (2007) *Darfur*. 9 January 2007. A/HRC/DEC/2/115.



from the Eastern European Group.<sup>731</sup> The 10 abstentions are spread out amongst the other groups, which means no region votes as a bloc in favor of the resolution.<sup>732</sup>

The Darfur resolution marks the only time during election cycle one that Argentina, Ecuador, Paraguay, and Uruguay vote with the West. Interestingly, it is Cameroon, which votes with the West 60% of the time from 2006-2007, which votes for the Resolution. During this time period, Japan and South Korea vote with the WEOG group 100% and 80% of the time respectively.

### Election Cycle 3: 2008 – 2009

Three contested votes are adopted during election cycle three. During session 10, contested resolutions are adopted on North Korea<sup>733</sup> and the Congo.<sup>734</sup> The Czech Republic introduces the North Korea resolution, which is adopted by a vote of 26-6-15. The purpose of the resolution is two-fold. First, it shames the North Korea government for its human rights abuses and secondly, it continues the mandate of the Special Rapporteur for North Korea.<sup>735</sup> The WEOG group votes as bloc in favor of the resolution. Notable “no” votes are cast by Egypt, China, Indonesia, Cuba, and Russia. Notable abstaining states are given by South Africa, India, Pakistan, and Brazil.

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<sup>731</sup> The Czech Republic, Poland, Romania, and the Ukraine voted against A/HRC/DEC/2/115.

<sup>732</sup> The Africa group had three abstentions: Ghana, Mauritius, and Zambia, The Asia group had two abstentions: Japan and South Korea. The GRULAC five abstentions: Argentina, Ecuador, Guatemala, Peru, and Uruguay. Ibid

<sup>733</sup> UN Human Rights Council (2009) *Situation of human rights in the Democratic People's Republic of Korea*. 26 March 2009. A/HRC/RES/10/16.

<sup>734</sup> A/HRC/RES/10/33, 729.

<sup>735</sup> A/HRC/RES/10/16, at 733.

Egypt introduces the resolution on the Democratic Republic of the Congo. This resolution is the only Agenda Item 10 resolution that is adopted without consensus in the Council and is adopted by a vote of 30 to 15 to 2. There are two voting blocs, Africa votes in favor and the WEOG votes against. The other votes against are Japan and South Korea, who vote predominately with the West again, and Bosnia-Herzegovina, Slovakia, Slovenia, and the Ukraine, all of who vote with the West 88% of the time.<sup>736</sup>

Egypt also introduces the contested resolution on Sudan.<sup>737</sup> The Egyptian resolution is up to this point, the most controversial in the Council. Egypt introduces the resolution but the West amends it and calls for a Special Rapporteur to study Sudan.<sup>738</sup> The final resolution is adopted by a vote of 20-18-9. The West votes as a bloc, along with its typical allies, Bosnia-Herzegovina, Slovakia, Slovenia, and the Ukraine, Japan and South Korea. However, notably absent is Cameroon. Important votes against mirror those in the DPRK resolution from session 10.

By the end of 2009, it is apparent that the Council is divided, almost in half, on how it votes on shaming resolutions. What is clear is that the West, along with six or seven consistent allies, are in favor of Item 4 resolutions. While, on the other hand, Russia, China, Egypt, South Africa, India, and Cuba are in strict opposition.

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<sup>736</sup> In fact, the four Eastern European states vote with the West all but once. Slovakia votes in favor of resolution 10/19. UN Human Rights Council (2009) *Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory*. 26 March 2009. A/HRC/RES/10/19. More on this in Part IV.

<sup>737</sup> UN Human Rights Council (2009) *Situation of human rights in the Sudan*. 18 June 2009. A/HRC/RES/11/10.

<sup>738</sup> See also: UN Human Rights Council (2009) *Report of the Human Rights Council on its eleventh session*. 16 October 2009. A/HRC/RES/11/37.

### Election Cycle 4: 2009 – 2010

The only contested resolution adopted from September 2009 until June 2010 is a resolution introduced by Japan and Spain on North Korea.<sup>739</sup> The object and purpose of the resolution is to extend the mandate of the Special Rapporteur in North Korea for one more year. The resolution is adopted with a vote of 28-5-13. The West votes as a bloc and gains one vote from Eastern Europe because Azerbaijan is no longer on the Council. In addition, Brazil and Djibouti switch to “yah,” while Cameroon votes “Nah.”<sup>740</sup>

Voting outcomes in the Council during election years one through four indicate that the Council is in stasis. The West and allies again vote for Item 4 resolutions while the pro-sovereigntist continue voting against resolutions that shame states.

### Election Cycle 5: 2010 – 2011

According to the descriptive stats in Part III and the beginning of Part IV, along with NGOs and Council watchers, the Council begins improving (aligning more with the object and purpose of its original mandate) during the fifth election cycle. Does this hold true for contested resolutions?

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<sup>739</sup> UN Human Rights Council (2010) *Situation of human rights in the Democratic People's Republic of Korea*. 25 March 2010. A/HRC/RES/13/14.

<sup>740</sup> Ibid

There are four contested resolutions during this period. The states examined are Sudan, North Korea, Iran, and Belarus. The latter two are resolutions on states that have not previously been examined under the Council.<sup>741</sup>

During session 15, Nigeria introduces the Sudanese resolution, which is adopted by a vote of 25-19-3 and extends the mandate of the Special Rapporteur for one year.<sup>742</sup>

WEOG votes as a bloc, and with the exception of one state each (Russia and Cuba), Eastern Europe and GRULAC votes in favor. A significant majority of African and Asia states vote against, including Cameroon.<sup>743</sup>

During the Council's main session in March, resolutions are introduced and adopted on North Korea<sup>744</sup> and Iran.<sup>745</sup> Hungary introduces the yearly North Korea resolution, which is adopted by a vote of 30-3-11.<sup>746</sup> China, Cuba, and Russia vote against the resolution, while only Ecuador abstains from the GRULAC. Importantly, a majority of member states from every region votes in favor of extending the mandate.

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<sup>741</sup> The Belorussia resolution is particularly important since its original mandate from the Commission is cancelled (along with Cuba's) during the transition from the Commission to the Council. See: International Service for Human Rights (2011) *Belarus criticises politicisation of the Council during interactive dialogue on the country*. Available at: <http://www.ishr.ch/council/376-council/1150-belarus-criticises-politicisation-of-the-council-during-interactive-dialogue-on-the-country> [21 June 2013].

<sup>742</sup> UN Human Rights Council (2010) *Situation of human rights in the Sudan*. 1 October 2010. A/HRC/RES/15/27.

<sup>743</sup> The affirmative African votes are cast by Uganda, Zambia. The Asian "yah" votes cast by: Japan and South Korea, and Maldives. Ibid.

<sup>744</sup> UN Human Rights Council (2011) *Situation of human rights in the Democratic People's Republic of Korea*. 8 April 2011. A/HRC/RES/16/8.

<sup>745</sup> UN Human Rights Council (2011) *Situation of human rights in the Islamic Republic of Iran*. 8 April 2011. A/HRC/RES/16/9.

<sup>746</sup> A/HRC/RES/16/8, 744.

The Iranian resolution is more controversial. Sweden introduces the resolution on Iran, with the help of the United States, in order to appoint a Special Rapporteur for the country. The resolution is adopted by a vote of 22-7-14. However, notably, a majority of member states on the Council do not vote in favor. Similarly to the Korea resolution, WEOG votes as a bloc with substantial help from Eastern Europe, except Russia, and the GRULAC states, with the exception of Cuba and Ecuador, who vote against and Uruguay, which abstains. Only three African states and two Asia states support the measure.<sup>747</sup>

Finally, during session 17, Hungary introduces a resolution on Belarus.<sup>748</sup> The Belarusian resolution is also quite controversial and does not muster enough votes to be adopted by a majority. In the end, 21 states vote in favor while 5 vote against the measure and 19 abstain.<sup>749</sup> The resolution on Belarus does not create a Special Rapporteur but instead sets the foundation for future resolutions. Again, WEOG votes as a bloc. However, Moldova, Guatemala, and Mexico abstain. Gabon, Mauritius, and Jordan join regular country mandate supporters the Maldives, Zambia, Japan, and South Korea as affirmative voters.<sup>750</sup>

Election year 2010-2011 stands out for a two reasons. First, a few more states switch their votes to the affirmative on resolutions relating to North Korea and Sudan. However,

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<sup>747</sup> “Yahs from Africa include Senegal and Uganda while positive votes from Asia include Japan and Korea, and Maldives. Ibid.

<sup>748</sup> UN Human Rights Council (2011) *Situation of human rights in Belarus*. 14 July 2011. A/HRC/RES/17/24.

<sup>749</sup> Ibid.

<sup>750</sup> Interestingly, Uruguay, who abstained during the resolution on Iran votes in favor while Mexico, who votes in favor of Iran, abstains on the Belarus vote. Ibid.

more importantly, new resolutions are created for Iran and Belarus. Yet, neither passes the 24 votes mark.

### Election Cycle 6: 2011 – 2012

Iran, Belarus, and Syria are targeted for resolutions during election cycle six.<sup>751</sup> Sudan's special rapporteur is extended in 2011<sup>752</sup> and 2012.<sup>753</sup> However, the extension of the independent expert is no longer contested because it is now under Agenda Item 10.<sup>754</sup> North Korea's resolution is extended under Item 4 but for the first time goes uncontested and is due for renewal in March 2013.<sup>755</sup>

Iran's resolution, which is introduced again by Sweden, is adopted by a vote of 22-20-5.<sup>756</sup> This is the most significant change of any vote on the Council to date. Again, WEOG votes as a bloc, with all but one state from Eastern Europe (Russia), and all but three states from GRULAC (Cuba, Ecuador, and Uruguay vote against the resolution again). The Africa and Asia group vote overwhelmingly against the resolution.<sup>757</sup>

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<sup>751</sup> However, it is important to note that the Council also adopts an uncontested resolution on Eritrea during this session. Djibouti introduces the resolution 20/20. UN Human Rights Council (2012) *Situation of human rights in the Eritrea*. 17 July 2012. A/HRC/RES/20/20.

<sup>752</sup> UN Human Rights Council (2011) *Technical assistance to the Sudan in the field of human rights*. 29 September 2011. A/HRC/RES/18/16.

<sup>753</sup> UN Human Rights Council (2012) *Technical assistance for the Sudan in the field of human rights*. 28 September 2012. A/HRC/RES/21/27.

<sup>754</sup> A/HRC/RES/18/16, 752. However, the NGO community is not pleased with the transition away from Agenda Item 4. See for example, International Service for Human Rights (2012) *Human Rights Monitor Quarterly* (4). Available at <http://www.ishr.ch/quarterly> [21 June 2013].

<sup>755</sup> UN Human Rights Council (2012) *Composition of staff of the Office of the United Nations High Commissioner for Human Rights*. 3 April 2012. A/HRC/RES/19/3.

<sup>756</sup> UN Human Rights Council (2012) *Situation of human rights in the Islamic Republic of Iran*. 3 April 2012. A/HRC/RES/19/12.

<sup>757</sup> However, Africa votes in the affirmative are cast by Benin, Botswana, Mauritania, and Senegal. The Asia group, which lacks Japan and South Korea during this period, only has one "Yah" which is cast by Maldives. Ibid

Cyprus, on behalf of the European Union, introduces a resolution on Belarus during the summer session of the Council.<sup>758</sup> This resolution, according to numerous experts, is important because it establishes a new special rapporteur to investigate human rights abuses within the state.<sup>759</sup> The final resolution is adopted with a vote of 22-5-20. Russia, Cuba, Ecuador, China, and India vote against the measure. WEOG votes as a bloc with significant help from Eastern Europe but not GRULAC.<sup>760</sup>

Syria, which is facing an increasing revolt and violence during this period, has resolutions introduced against it in sessions 19, 20, and 21.<sup>761</sup> Denmark introduces the first,<sup>762</sup> Turkey and USA,<sup>763</sup> the second, and Morocco, introduces the final resolution.<sup>764</sup> China, Cuba, and Russia vote against each resolution.<sup>765</sup> There are some minor shifts in abstentions. Ecuador abstains in session 19 but votes affirmative in subsequent sessions. India and the Philippines vote affirmative in session 19 but abstain in session 20 and 21. Uganda abstains all three times, which means the West is the only region that votes as a bloc. Each resolution is almost identical.

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<sup>758</sup> UN Human Rights Council (2012) *Situation of human rights in Belarus*. 5 July 2012. A/HRC/RES/20/13.

<sup>759</sup> Human Rights Watch (2012) *UN Human Rights Council: Eritrea, Belarus Told to End Abuses*. Available at <http://www.hrw.org/news/2012/07/06/un-human-rights-council-eritrea-belarus-told-end-abuses> [14 June 2013].

<sup>760</sup> Only three GRULAC states vote in favor. They are: Chile, Costa Rica, and Peru. See UN Human Rights Council (2012), 758.

<sup>761</sup> Only three Item 4 or Item 10 resolutions. There are other resolutions introduced during this time as well. The vote count against / abstaining remain more or less the same. See for example, A/HRC/RES/19/1. UN Human Rights Council (2012) *The escalating grave human rights violations and the deteriorating humanitarian situation in the Syrian Arab Republic*. 1 March 2012. A/HRC/RES/19/1.

<sup>762</sup> UN Human Rights Council (2012) *Human rights situation in the Syrian Arab Republic*. 23 March 2012. A/HRC/RES/19/22.

<sup>763</sup> UN Human Rights Council (2012) *Situation of human rights in the Syrian Arab Republic*. 6 July 2012. A/HRC/RES/20/22.

<sup>764</sup> UN Human Rights Council (2012) *Situation of human rights in the Syrian Arab Republic*. 28 September 2012. A/HRC/RES/21/26.

<sup>765</sup> A/HRC/RES/19/22, 762, A/HRC/RES/20/22, 763, and A/HRC/RES/21/26, 764.

Election cycle six is defined by two issues, first, it is apparent that shaming resolutions still divide the Council, at least when significant mass atrocities crimes are not ongoing or imminent.<sup>766</sup> Second, the Council, with the exception of a small handful of states, is able to unify when mass atrocities crimes are occurring or imminently occurring, at least in the case of Syria.

### The Introducers and the Targeted

There are clearly discernable patterns on which states are introducing resolutions and which states are the targets of resolutions over time in the Human Rights Council. As Figure 5.9 below indicates, African states are only targeted by the Africa group (with one exception, Morocco) and the Africa group does not target non-group members. Though in the case of Morocco, the country targets another member of the OIC.

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<sup>766</sup> Mass atrocities crimes are war crimes, crimes against humanity, genocide. See for example, Evans G (2009), 157.



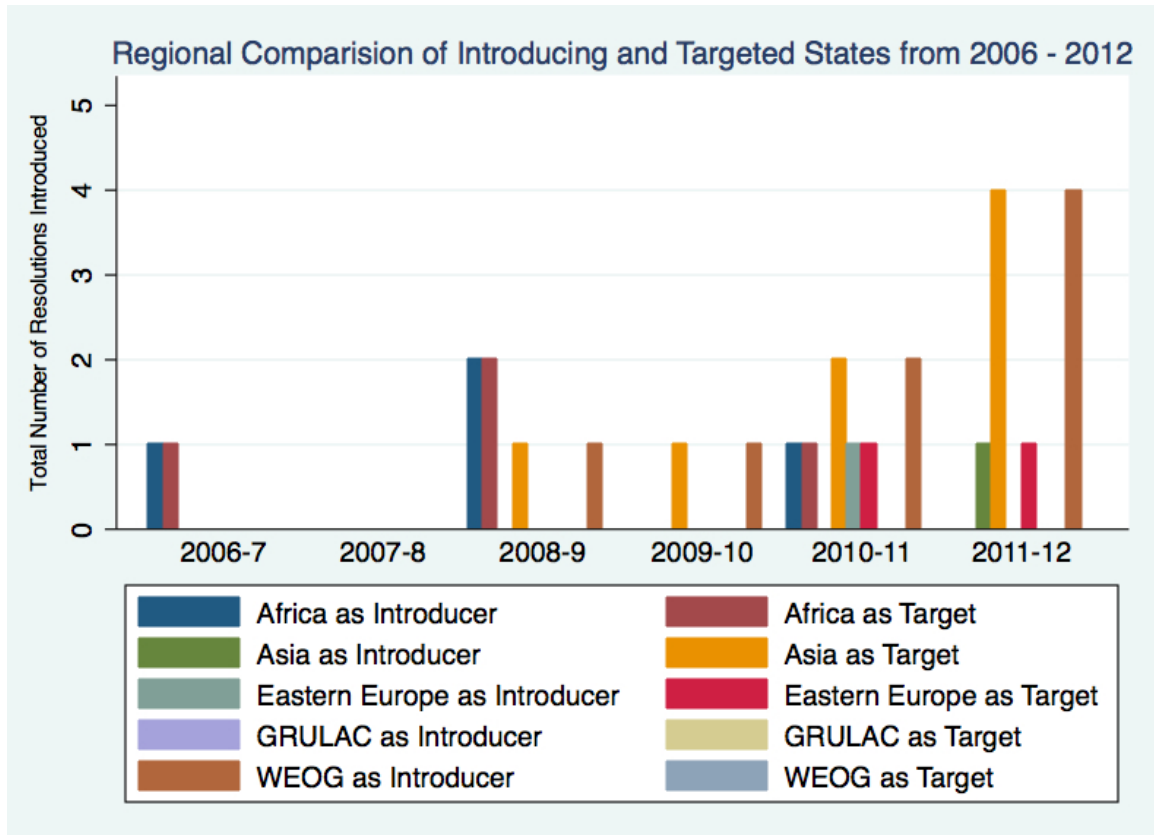


Figure 5.9: Comparison of Introducing States and Targeted States by Region over Time

In addition, Eastern Europe, with the exception of Hungary (who introduces the first resolution against Belarus), GRULAC, and Asia are not active introducers of country resolutions. Indeed, excluding cases related to Belarus, Eastern Europe is not active at all.

The most significant finding is that the WEOG is the only region that actively introduces country resolutions against states that are not members of its own group; Asia is the target in every case except one.

<b>Targeted State</b>	<b>2006-2007</b>	<b>2007-2008</b>	<b>2008-2009</b>	<b>2009-2010</b>	<b>2010-2011</b>	<b>2011-2012</b>
<b>Sudan</b>	25-11-10	/	20-18-9	/	25-19-3	/
<b>DPKR</b>	/	/	26-6-15	28-5-13	30-3-11	/
<b>Belarus</b>	/	/	/	/	21-5-19	22-5-20
<b>Iran</b>	/	/	/	/	22-7-14	22-20-5
<b>Syria</b>	/	/	/	/	/	41-3-2, 41-3-3, 41-3-3

Table 5.3: Comparison of Contested Votes by State

The timing of the resolutions appears to not make a significant difference in outcomes.

According to Table 5.3, above, the only significant change involves the Iranian resolution. However, if one codes abstention as a no vote, then there is no significant change.<sup>767</sup>

### Frequency and Importance of Regional Bloc Voting on Contested Resolutions

How often do member states of the Council vote as a region? The answer is surprising. If votes on Israel are excluded, Africa votes as a bloc 14% of the time or just once in 14 votes. The WEOG group votes as a group 100% of the time while all other groups have never voted as a unified regional grouping.<sup>768</sup> Of course one of the reasons that no other region votes as an entire bloc is because there are states within each region that vote consistently with either the West or Non-Aligned Movement.

<sup>767</sup> Although obviously if abstains are coded as “yes” then there is a significant change from 36 yes votes in election cycle five to only 22 in cycle six.

<sup>768</sup> See: Smith K.E. (2006) Speaking with One Voice? European Union Co-ordination on Human Rights Issues at the United Nations. *JCMS: Journal of Common Market Studies* 44(1): 113 and also Smith K.E. (2010) The European Union at the Human Rights Council: speaking with one voice but having little influence. *Journal of European Public Policy* 17(2): 224

One way of examining how states vote regionally is to look at how regions vote in comparison to the West. If one assumes that the West and the Non-Aligned Movement / OIC have conflicting preferences then we can look at the total number of votes that align with the West and measure how divided the regions are ideologically. It is no surprise that Africa and Asia are ideologically divided, given the variation in domestic political structures in each region. However what is surprising is the shift in ideological positions from 2006-2012.

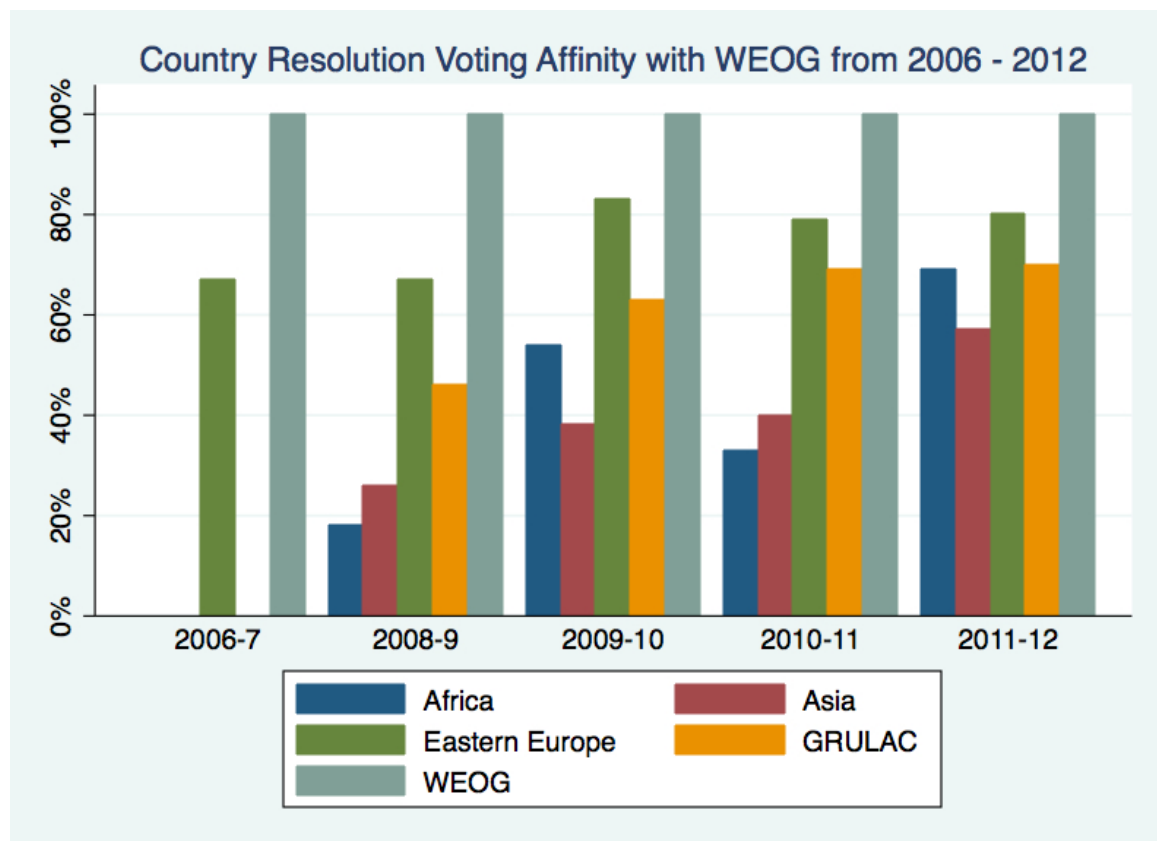


Figure 5.10: Country Resolution Voting Affinity with WEOG

Figure 5.10 above shows the reader a few noteworthy points. First, as the resolutions in the Council switch from Africa to Asia, the African states vote more favorably with the West. More interestingly, recalling Figure 5.9, the Asia group also begins to vote favorably with the West, despite the fact that resolutions are not directed toward the Asia group with increased frequency. The GRULAC group and Eastern European group also vote with the West in significant numbers.<sup>769</sup> It appears that 2009-2010 marks the beginning of a shift in Council behavior.

Part III reveals mixed qualitative results on the importance of regional bloc voting. On the one hand, ideologically aligned blocs of states, such as the Non-Aligned Movement, including China and Russia vote against the West. On the other hand, the Human Rights Council, starting in 2009-2010, begins shifting ideologically toward the West. This is an interesting puzzle, which will be examined further in part V.

## Israel and Contested Votes

Part IV examines regional bloc voting as it relates to Israel and the Israel-Palestine conflict. Of 118 country votes, 34 focus on Israel in some capacity and only five resolutions are adopted by consensus.<sup>770</sup> There are just over five votes per year on Israel

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<sup>769</sup> Of course, these numbers would be even higher if Cuba and Russia were not voting on the Council during this time.

<sup>770</sup> The five consensus resolutions on Israel are: A/HRC/RES/3/3 on Military Operations in Lebanon, A/HRC/RES/4/2, following up on S/1-1 and S/3-1, A/HRC/RES/6/18, following up on S/1/-1 and S-3/1, A/HRC/RES/7/17, on the right of self-determination of the Palestinian peoples, and A/HRC/RES/10/20, also on the right of self-determination. Each of these resolutions occurred before the United States reengaged with the Council. UN Human Rights Council (2007) *Report of the Commission of Inquiry on Lebanon*. 23 April 2007. A/HRC/RES/3/3, UN Human Rights Council (2007) *Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolutions S-1/1 and S 3/1*. 30 April 2007. A/HRC/RES/4/2, UN Human Rights Council (2007) *Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolutions S-1/1 and S-3/1*. 5 October 2007.

in the Human Rights Council, almost all of these occur during the main session in March when Agenda Item 7 is examined in detail.

The Israel-Palestine issue is a significant point of disagreement in the UN Human Rights Council. As noted in Part III, excluding votes on Israel, the WEOG votes as a bloc 100% of the time while all other regions combined have only voted as a bloc once on contested resolutions. Yet, as Figure 5.11 shows below, when taking votes on Israel into consideration, a significant change in the Council occurs. All regions except WEOG increase in bloc voting significantly while the WEOG drops on average to below 50%!

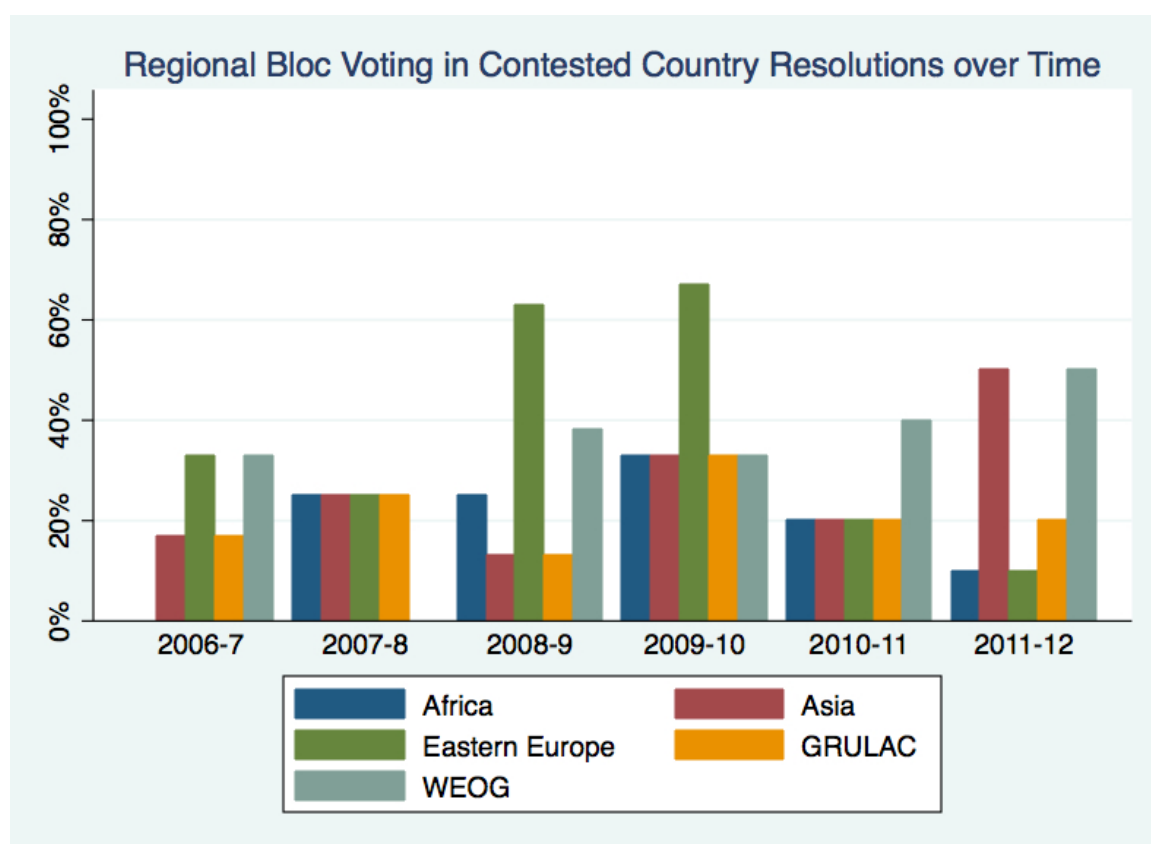


Figure 5.11: Regional Bloc Voting in the UN HRC over Time

A/HRC/RES/6/18, UN Human Rights Council (2008) *Right of the Palestinian people to self-determination*. 27 April 2008. A/HRC/RES/7/17, and UN Human Rights Council (2009). *Right of the Palestinian people to self-determination*. 26 March 2009. A/HRC/RES/10/20.

So, under what conditions are states voting with their regional blocs? First, let us take a look at the types of resolutions being adopted against Israel. There are, excluding extreme circumstances, like the “flotilla incident,”<sup>771</sup> roughly three different resolutions that are being examined each year, the resolutions are concerned with settlements, with Palestinian self-determination, or with human rights abuses committed only by the Israelis.<sup>772</sup>

Although WEOG appears to be in significant disagreement over issues relating to Israel, when votes given by the United States or Canada are excluded, the group reaches consensus all but seven times.<sup>773</sup> The United States votes against every resolution devoted to Israel and Canada votes against most, and as such, both oftentimes vote contrary to the rest of the WEOG, especially on the issue of settlements.

Overall, consensus exists on issues surrounding the self-determination of Palestinians and the continued use and expansion of settlements by Israel into areas of Palestine. On average, 46 states vote in favor of the right of the Palestinians to self-determination and

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<sup>771</sup> UN Human Rights Council (2011) *Follow-up to the report of the independent international fact-finding mission on the incident of the humanitarian flotilla*. 25 March 2011. A/HRC/RES/16/20. This resolution is adopted under Agenda Item 1.

<sup>772</sup> The resolutions do not target abuses committed by Palestinians during the ongoing conflict. This is one of the primary critiques by Israel, its allies, and NGOs. If the resolutions were really concerned with human rights, all sides would face scrutiny.

<sup>773</sup> Switzerland votes in favor of A/HRC/7/1 on attacks upon the Gaza Strip, on resolution A/HRC/RES/10/19, Switzerland votes in favor, France and the UK abstain, and the others vote against. On A/HRC/RES/13/9, Italy, the Netherlands, and the US vote against, while the others abstain. UN Human Rights Council (2008) *Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip*. 27 March 2008. A/HRC/RES/7/1. A/HRC/RES/10/19, 736. UN Human Rights Council (2010) *Follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict*. 14 April 2010. A/HRC/RES/13/9.

until the 19<sup>th</sup> session of the Council, an equally high number of votes accompanied resolutions on the settlements issue. However, the most recent resolution, which calls for an independent fact-finding mission into Israel, received 10 abstentions.<sup>774</sup>

In situations where resolutions are passed on specific incidents relating to Israeli actions in the Middle East, which almost always call for investigation or condemnation, there is more disagreement. In instances of condemnation, resolutions on Israel follow a similar pattern to Agenda Item 4 resolutions. In these cases, the West and its allies in Eastern Europe and Asian, with the exception of the USA and Canada, abstain from voting, whereas, China, Russia, Cuba, and members of the OIC and GAS, vote in favor. In addition, there are a few states, namely Cameroon, Burkina Faso, Guatemala, and increasingly Mexico who nearly always abstain from resolutions on condemning Israel.

Regional bloc voting on cases relating to Israel is significantly higher than contested resolutions excluding Israel. This is due to the high number of affirmative votes that issues concerning settlements and self-determination receive. On other votes relating to Israel, the Council is more ideologically divided.

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<sup>774</sup> Resolution A/HRC/RES/19/17 was adopted by a vote of 36-1-10 with Cameroon, Costa Rica, the Czech Republic, Guatemala, Hungary, Italy, Poland, Moldova, Romania, and Spain abstaining. This resolution is the source of controversy in the Council and has lead Israel to denounce the UN HRC, including the UPR. If Israel fails to attend its UPR session in February 2012, it will mark the first time a country has not participated. Source. UN Human Rights Council (2012) *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*. 10 April 2012. A/HRC/RES/19/17.

## Special Sessions

Under extraordinary circumstances, the Council may call for an ad-hoc or special session, which occurs outside of normally scheduled meeting times, to investigate thematic or country situations. The use of Special Sessions by the Council has, to date, been quite controversial; four out of the first six sessions are dedicated to Israel. This selectivity on the Israeli-Palestine conflict is damaging to the credibility of the Council during the first two election cycles<sup>775</sup> and arguably goes against the founding principles of the institution.

<b>Prior to January 2010</b>	<b>After January 2010</b>
Occupied Palestinian Territories	Haiti
Lebanon (Israeli Violations)	Cote D'Ivoire
Beit Hanoun	Libya
Darfur	Syria
Myanmar	Syria
Occupied Palestinian Territories	Syria
Food	Syria
Democratic Republic of the Congo	
Occupied Palestinian Territories	
Financial Crisis	
Sri Lanka	
Occupied Palestinian Territories	

Table 5.4: Comparison of Special Sessions in the UN HRC pre and post January 2010

Through June 2009, the Council instigates a total of five sessions on Israel, two thematic sessions, and a catastrophic session on Sri Lanka.<sup>776</sup> The majority of sessions are called at

<sup>775</sup> See for example: Rivero J et al. (2011), 721. Interviews corroborate this sentiment. For example, almost all interviewees site the selectivity of Israel as a problem. Again, this is not to say that Israel is not at fault. The problem is that so many resources of the Council are devoted solely to Israel and as one neutral NGO pointed out, "the HRC hasn't played a positive role in the Israel conflict [because] there is no political will for real solutions." Interview with NGO4.

<sup>776</sup> Traub J (2012) *UN Human Rights Council Condemns Actual Human Rights Abusers!* Foreign Policy, Available at: [http://www.foreignpolicy.com/articles/2012/06/01/not\\_just\\_for\\_israel\\_anymore](http://www.foreignpolicy.com/articles/2012/06/01/not_just_for_israel_anymore) [10 July



the request of members of the Non-Aligned Movement and / or the OIC. Voting during each session reflects votes taken during regular sessions.

The quantity and focus of special sessions shifts beginning in 2010. First, the special sessions occurring after 2010 are called solely by the West or, like in the case of the last session on Syria, in conjunction with the West. Secondly, each special session is called because of an on-going and immediate emergency. The special session on Haiti<sup>777</sup> is called in response to the earthquake that devastates the country in 2010, the Côte d'Ivoire<sup>778</sup> session is called in response to election violence and the Libyan<sup>779</sup> and Syrian sessions<sup>780</sup> are called in response to the increasing violence in the each country during the “Arab Spring.” In other words, a clear qualitative change in the use of the Special Sessions mechanism is occurring in the Council.<sup>781</sup>

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2013] and Human Rights Watch (2009) Sri Lanka: UN Rights Council Fails Victims. Available at <http://www.hrw.org/news/2009/05/27/sri-lanka-un-rights-council-fails-victims> [14 June 2013]

<sup>777</sup> UN Human Rights Council (2010) *Final Report of the 13<sup>th</sup> Special Session*. 27 January 2010. A/HRC/S/-13/2.

<sup>778</sup> UN Human Rights Council (2010) *Final Report of the 14<sup>th</sup> Special Session*. 19 January 2010. A/HRC/S/-14/1.

<sup>779</sup> U.N. Human Rights Council (2012) Report of the COI to investigate all alleged violations of international human rights law in Libya. A/HRC/19/68. 8 March 2012.

<sup>780</sup> A/HRC/RES/S-16/1, A/HRC/RES/S-17/2, A/HRC/RES/S-18/2, and A/HRC/S-19/2. UN Human Rights Council (2011) *The current human rights situation in the Syrian Arab Republic in the context of recent events*. 29 April 2011. A/HRC/RES/S-16/1, UN Human Rights Council (2011) *The Human Rights Situation in the Syrian Arab Republic*. 2 December 2011. A/HRC/RES/S-18/1, UN Human Rights Council (2011) *Situation of human rights in the Syrian Arab Republic*. 22 August 2011, A/HRC/RES/S-17/1, and U.N. Human Rights Council, and UN Human Rights Council (2012) *The deteriorating human rights situation in the Syrian Arab Republic and the recent killings in El-Houleh*. 1 June 2012. A/HRC/RES/S-19/2.

<sup>781</sup> The argument is not being made that the human rights violations are not occurring in Israel, the Congo, and the DPRK. Violations are occurring but the violations are not an immediate issue that needs to be considered outside of normal meetings (IE, the violations in these countries are of the ‘slow burn’ variety).

## One Last Look at Regional Bloc Voting

Human rights advocates devote substantial attention to regional blocs and membership on the Human Rights Council,<sup>782</sup> because, according to their accounts, regional bloc voting hinders the Council's ability to promote and protect human rights. Membership on the Council is important because normatively, having human rights abusers on the Human Rights Council decreases its legitimacy and because practically there is a fear that abusers will try to undermine the Council's work, by aligning with similar abusers and creating a barrier of protection from scrutiny, much like the Commission on Human Rights.<sup>783</sup>

This chapter finds that geographic regional bloc voting is a rarity and should be dismissed as a concern.<sup>784</sup> What about ideological bloc voting? Do democracies vote as a bloc? Does the OIC and NAM vote as a bloc? If so, should advocates be concerned?

One way to measure ideological bloc voting is by measuring the level of "freeness" or democracy in the Human Rights Council and seeing if it changes outcomes. If the Council fluctuates in terms of the level of democracy and this correlates with a shift in

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<sup>782</sup> Amnesty International (2012). 2012 Elections to the Human Rights Council. Available at: <http://www.amnesty.org/en/united-nations/human-rights-council/human-rights-council-elections> [1 July 2013] and Trister S (2012) *Assessing the 2012 UN Human Rights Council Elections: One-Third of Candidates Unqualified for Membership*. Freedom House. Available at: <http://www.freedomhouse.org/article/assessing-2012-un-human-rights-council-elections-one-third-candidates-unqualified-membership> [1 July 2013].

<sup>783</sup> The real problem here is the use of clean slates. Clean slates do not allow the HRC to have a "club of the best" as one diplomat pointed out. As long as clean slates occur, the HRC will have a problem with countries like Sudan and Ethiopia running for the HRC. Interview with WEOG6.

<sup>784</sup> As show in Parts III and IV, WEOG votes as a group but this does not seem detrimental to the Council's work since often, they do so in cases were there are significant human rights violations. GRULAC, especially, but other the other regional groups vote as a bloc or nearly as a bloc, including the WEOG, on settlement issues with Israel and on cases of Palestinian self-determination. However, in these cases, there's nearly a global consensus (absent the USA and Canada), so, this does not seem to be a significant issue.

outcomes, then, at least as a preliminary possibility, ideological bloc voting may be a better explanatory variable.

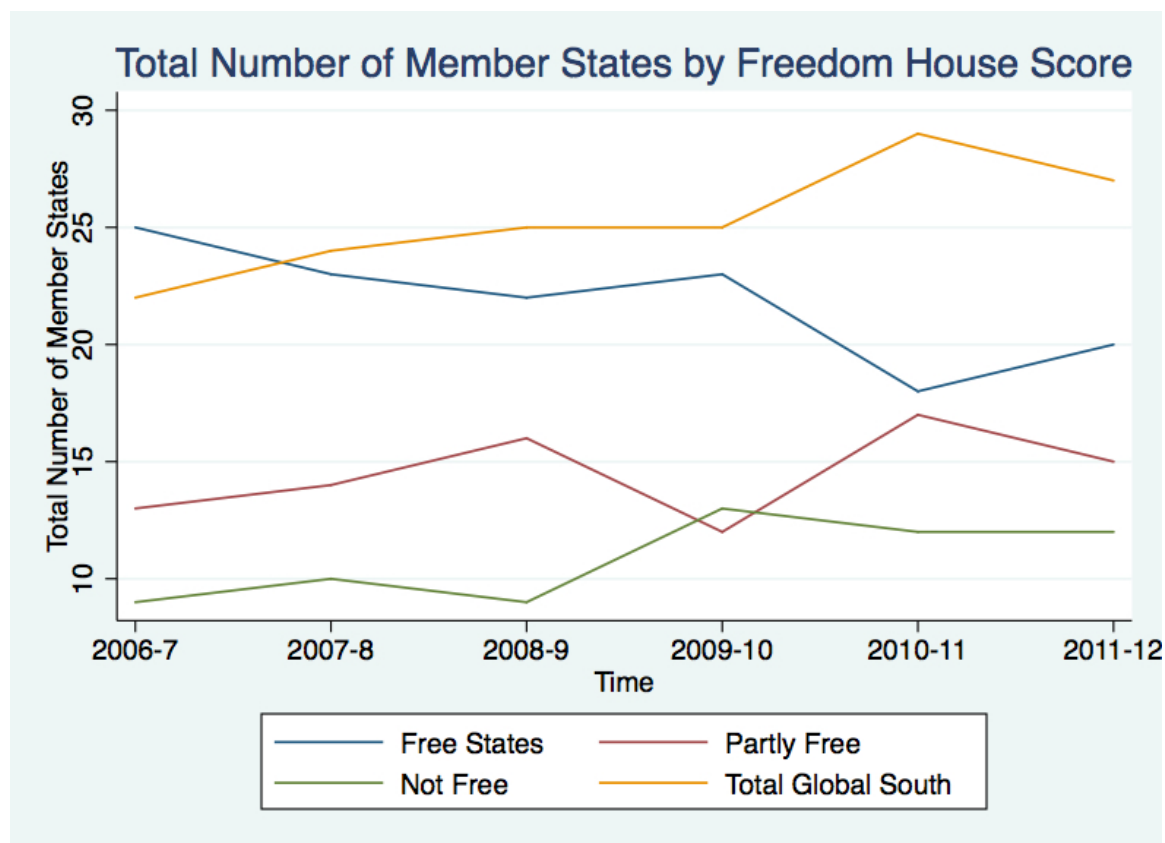


Figure 5.12: Relative Distribution of States by Freedom House Type

In order to measure the relative strength of democracy on the Council, this chapter will look at membership patterns of the UN HRC measured by both Freedom House and Polity IV.<sup>785</sup>

<sup>785</sup> The author uses both scores in order to approximate the Non-Aligned Movement and the West. Although this is not clear-cut, Partly Free and Not Free measures from Freedom House and Anocracy and Authoritarian measures from Polity IV are the best approximation of measuring the relative balance of power between groups on a purely numerical scale.

Freedom House's measurements are based on political rights and civil liberties.<sup>786</sup> Scores range from one to seven with one being the best possible score in any given category.

This project will use Freedom House because it is used by many policymakers despite the accusation that Freedom House is biased against geopolitical rivals of the United States.<sup>787</sup> This project will also use Freedom House because it covers a number of rights and liberties that are codified in international law.

According to Figure 5.12, the only year when no coalition of Member States consisting of mixed types is needed to pass a resolution is 2006, the inaugural year of the Council.

After 2006, a coalition of mixed types is needed to pass any resolution. 2010 is the worst year for free membership in the Council with only 18 free states. Therefore, if the relative balance of power theory holds, outcomes in the Human Rights Council should shift from a stricter adherence to the object and purpose of the Council to a compromise between the two competing camps.

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<sup>786</sup> There are also a number of subcategories. Please see: Freedom House (2013) *Methodology*. Available at: <http://www.freedomhouse.org/report/freedom-world-2013/methodology> [12 July 2013].

<sup>787</sup> For example, see: Steiner N (2012) Testing for a Political Bias in Freedom House Democracy Scores: Are U.S. Friendly States Judged To Be More Democratic? Available at SSRN: <http://ssrn.com/abstract=1919870> [15 June 2013].

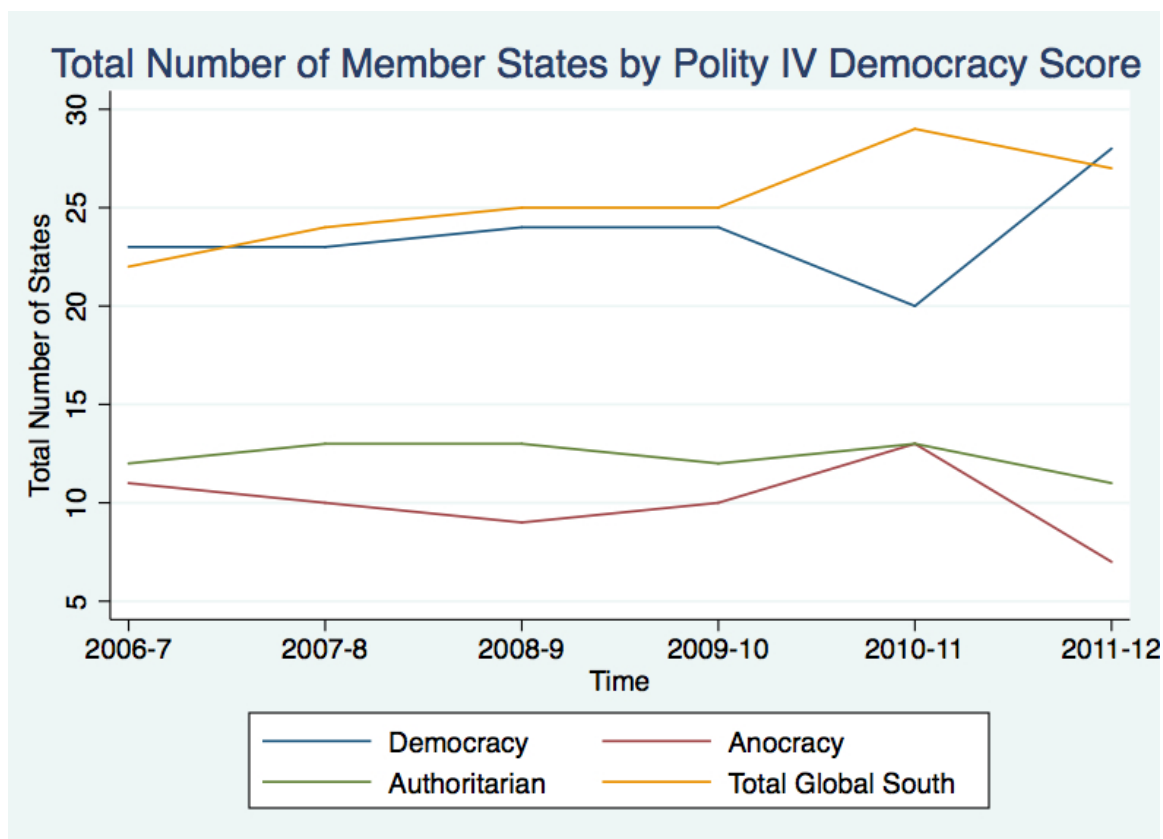


Figure 5.13: Relative Distribution of States in the UN HRC by Polity IV Scores

Polity IV measures “concomitant qualities of democratic and autocratic authority.”<sup>788</sup>

Polity IV measurements range from -10 to 10 where unlike Freedom House; a higher number indicates a higher level of democracy. Polity IV is useful for this study because it is a more academic take on the factors that are highly correlated with authoritarianism and democracy.

According to Figure 5.13, the Council more or less maintained enough democratic states to give a mandate to the West to pass whatever types of resolutions match best with their preferences. Only in 2006, 2007, and 2010 did the West have to form a coalition to pass

<sup>788</sup> Marshall, M. et al (2013), 725.

resolutions. In 2006 and 2007, only one state was needed to reach 24. Remarkable, in 2012, there were 28 democratic states on the Council according to Polity IV's measurements. Therefore, if a strict numerical interpretation of the balance of power holds, we should see outcomes approximating a Western agenda through the entirety of the Council's existence.

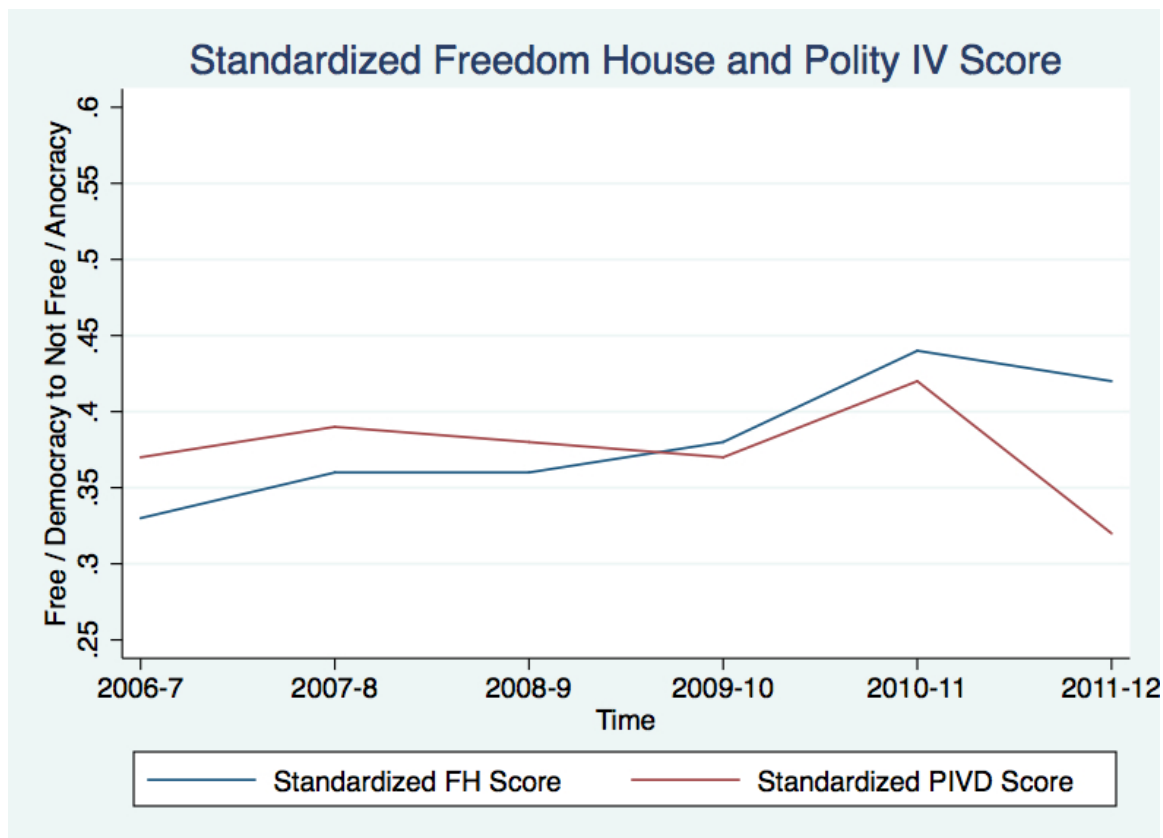


Figure 5.14: Standardized Freedom House and Polity IV Measurements

Figure 14 standardizes the Freedom House and Polity IV scores using a simple scale where 0 indicates that the country is either Free or a Democracy, 0.5 indicates that it is Partly free or an anocracy, and finally, 1 indicates that the state in question is not free or an authoritarian regime. The lower the number of Figure 5.14, the better. As you can see, when measured this way, there is not significant movement year in and year out, except

after 2009 when the Council shifts dramatically upwards toward anocracy and then drops quickly toward democracy. In the end, Figure 5.14 shows what Figures 5.12 and 5.13 show. Therefore, if a numerical – ideological relative balance of power matters, the West has a mandate to act in every year *except* 2010-2011.

The overall level of democracy in the Council does not explain outcomes. In all counts, except for votes on Agenda Item 7, which remains static, the Council appears to be improving or more closely aligning with the original its intent. This is occurring, despite a decreasing level of democracy.

## Alternative Hypotheses?

Regional bloc voting of any type does not appear to significantly alter outcomes.

Membership, measured in the level of democracy or free states on the Council also does not have a major impact on outcomes, measured by votes or by types of resolutions introduced.

Instead, the Council's shift in outcomes may best be explained by two events. The first is the reengagement of the United States on the Council, which officially begins in session 12.<sup>789</sup> Once the US joins the Council, each regions' votes begin to more closely align with WEOG, Israel is targeted only once in a Special Session, which occurs in October 2009, and the number of country resolutions, including previously difficult resolutions to

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<sup>789</sup> The US is voted into the Council on 12 May 2009 and officially begins its term on 19 June 2009. However, the first meeting begins on 14 September 2009.

pass like Sri Lanka and Belarus occur.<sup>790</sup> The US's policy as it enters the Council is to use soft power to decrease the entrenchment of regional-ideological blocs and it has done so, especially with thematic resolutions.<sup>791</sup> According to one source in a prominent Permanent Mission to the UN, "the US has a specific strategy. It is ambitious. However, they [the US] are trying to build bridges. There is a balance of power in the UN HRC. The US is looking for a core group of 7 or 8 states from each region for cooperation."<sup>792</sup> Another NGO source claims that the, "US changes voting behavior."<sup>793</sup> Another says the "US gives the Council political will to pass difficult resolutions."<sup>794</sup> A third argues, "The US is still the first power in the international community. How can you deal with human rights in the UN without talking to the US?"<sup>795</sup> Nearly every source interviewed gave similar responses. Thus, it is not surprising that NGOs and diplomats are positive about the US's reengagement with the Council. After all, as one person pointed out, "it's good to have big powers on the HRC because if you pass something they do not approve of, then it won't become a reality."<sup>796</sup>

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<sup>790</sup> See also: US Department of State (2011) *US Accomplishments at the UN Human Rights Council's 17th Session*. Available at <http://www.state.gov/r/pa/prs/ps/2011/06/166475.htm> [10 July 2013] and US Mission to the UN (2012) *Key US Outcomes at the UN Human Rights Council 20th Session*. Available at <http://geneva.usmission.gov/2012/07/07/key-u-s-outcomes-at-the-un-human-rights-council-20th-session/> [10 July 2013].

<sup>791</sup> Nossel S (2012) Advancing Human Rights in the UN System. *Council for Foreign Relations*. Available at: <http://www.cfr.org/international-organizations-and-alliances/advancing-human-rights-un-system/p28414> [2 July 2013] and Schriefer P (2012) *State's Schriefer on Achievements of U.N. Human Rights Council*. IIP Digital, Available at <http://iipdigital.usembassy.gov/st/english/texttrans/2012/07/201207128920.html#axzz2KEm7QWTJ> [10 July 2013], and Interview with Scholar2.

<sup>792</sup> Interviews with WEOG6, NGO6, and WEOG4.

<sup>793</sup> Interview with NGO2.

<sup>794</sup> Interview with WEOG1.

<sup>795</sup> Interview with GRULAC2.

<sup>796</sup> Interview with EE1.



However, power alone cannot explain all outcomes. For example, the US, which goes against an international consensus on Israel, has heretofore failed to make a significant difference on Agenda Item 7. This is a structural process that must be changed (if desired) during a general review of the Council.<sup>797</sup> In addition, there is a small group of states that continue to vote against most country resolutions, including two democracies, the states are, South Africa, India, China, Cuba, and Russia.

Finally, it should be noted that although nearly every one interviewed argues that the US has made a significant impact on the Council, many are annoyed with the US's selectivity. For example, the inability of the Council to pass a resolution on Bahrain because of the US's opposition is frustrating many Permanent Missions and NGOs, as is the selectivity on Iran over other more dire situations.

The second significant change is external to the Council. The Arab Spring is an external shock to numerous previously believed to be untouchable anocracies or authoritarian states, many of who are active in the Council. The Council in order to remain legitimate has shifted priorities from Sub-Saharan Africa and Israel to the MENA region in order to combat crisis after crisis. According to many sources, the key change in the Council starts with the reaction to Qaddafi's brutal crackdown on protestors in Libya. Libya is a member of the Council during the revolution and is expelled by the Council because of

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<sup>797</sup> According to Resolution 60/251, the Council is to be reviewed every five years. For more information, please see: UN General Assembly of the United Nations (2013) *Review of the Human Rights Council*. Available at <http://www.un.org/en/ga/president/65/issues/hrcouncil.shtml> [13 June 2013].

Qaddafi's behavior.<sup>798</sup> This is unique because heretofore, arguably no one believes that a country may actually be expelled for poor human rights performance.<sup>799</sup> According to one prominent Permanent Mission, "Libya was a game changer."<sup>800</sup> The exodus of Libya for its human rights record arguably awakens Member States to their own human rights situations.

## Conclusions

There are normative reasons for protesting membership bids by human rights abusers and few people would argue that the Council is worse off without Sudan, Sri Lanka, Azerbaijan, or Ethiopia. However, the overall level of democracy on the Council has little real affect on outcomes.<sup>801</sup> Regional bloc voting also has little significant affect on outcomes.<sup>802</sup> Certainly, votes may shift a fraction, but the distribution of votes is more or less entrenched.<sup>803</sup>

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<sup>798</sup> UN General Assembly (2011) Suspension of the rights of membership of the Libyan Arab Jamahiriya in the Human Rights Council. A/65/L.60. 25 February 2011.

<sup>799</sup> During the transition from the Commission to the Council, The UNGA creates a mechanism in resolution A/HRC/RES/60/251 that allows for the expulsion of members of the Council by the UNGA if their human rights records decrease significantly. According to most interviewees, states believed this was just hopeful wording that would never actually be acted upon because of political dynamics in the Council. See: UN General Assembly (2011) *General Assembly Suspends Libya from Human Rights Council*. Available at <http://www.un.org/News/Press/docs/2011/ga11050.doc.htm> [11 July 2013] and Dacey J (2011) Human Rights Council "sends signal" to Gaddafi. *SwissInfo.Ch*. Available at [http://www.swissinfo.ch/eng/specials/the\\_arab\\_spring/Human\\_Rights\\_Council\\_sends\\_signal\\_to\\_Gaddafi.html?cid=29631534](http://www.swissinfo.ch/eng/specials/the_arab_spring/Human_Rights_Council_sends_signal_to_Gaddafi.html?cid=29631534) [10 July 2013].

<sup>800</sup> Interview with WEOG4. A prominent NGO said that Libya is important because "[it showed] the Council can do things no one ever expected. Interview with NGO7. Of course numerous interviewees pointed out the obvious – Libya was easy because many in the region disliked Gaddafi. Interviews with Africal and GRULAC5.

<sup>801</sup> Although clearly if every member had identical ideological preferences then it would have a significant effect. Nevertheless, this cannot happen because of the structure of the Council.

<sup>802</sup> And, as one diplomat pointed out, why should the West try to stop regional bloc voting when the EU votes as a bloc? Interview with NGO4.

<sup>803</sup> In fact, even the US has failed to make a significant difference on actual votes on country resolutions. What the US has done is either kept votes from occurring or made votes happens.

New research needs to examine the role that the US plays on the Council and the role of the Arab Spring in shifting preferences. It will hard to disentangle the two because of close proximity in timing of the two events. However, this does not mean that the research should not be conducted. Process tracing and qualitative approaches are perhaps the best way to start. In addition, research should be conducted on how and why each region votes. For example, why does the Asia group refrain from Item 4 resolutions? In addition, hypothesis testing of midrange theories should also occur.<sup>804</sup>

The Human Rights Council is the United Nation's next best hope in protecting and promoting human rights and studies on the Council are vitally important. Unfortunately, many scholars and policy-makers are prematurely dismissing the work of the Council. It is pivotal for studies of the Council to better incorporate theory into existing frameworks. Heretofore, work of this nature has been practically non-existent and as such, evaluations and expectations are seeing considerable flux, which is confusing policymakers, practitioners, and scholars and disheartening activists and leaving victims increasingly vulnerable. Scholars of international relations, legislative bodies, and international law, should turn their attention to the Council.

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<sup>804</sup> Which is not coincidentally, part of my next project.

## Chapter 6

### The Human Rights Council, the Responsibility to Protect, and the International Criminal Court: A Convergence of Human Rights Protection or Empty Promises for the 21<sup>st</sup> Century?

The “end of history” preceded a brutal decade. The 1990s saw conflict and mass atrocity crimes erupt in the countries of the former Yugoslavia, Somalia, and Rwanda, just to name a few. Yet, out of the ashes of these crimes, a remarkable transformation occurred. By 2006, three new international human rights institutions were codified and despite an international “war on terror,” a bullish outlook on the direction of human rights protections marked the beginning of the 21st century.<sup>805</sup>

The outlook of the international community was optimistic because each institution, the International Criminal Court (ICC or the Court), the norm of the responsibility to protect (R2P), and the United Nations Human Rights Council all created new or improved ways

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<sup>805</sup> Of course, the war on terror complicated the outlook of human rights protections. However, I still argue that the creation of these three institutions is a significant step. For critiques, see: Gearty CA (2006) *Can Human Rights Survive?* Cambridge: Cambridge University Press and Welch, M (2004) Trampling Human Rights in the War on Terror: Implications to the Sociology of Denial. *Critical Criminology* (12): 1.

of promoting and protecting human rights by holding states responsible for their citizens well-being.

The purpose of this chapter is twofold. First, this chapter will examine the salience of the Court and the Responsibility to Protect by measuring how often the two international institutions are evoked in the United Nation's primary human rights body, the Human Rights Council. Secondly, since numerous scholars argue that the ICC and R2P are the carriers of emerging norms of human rights protection,<sup>806</sup> this measurement will provide a new way of evaluating the Human Rights Council. The assumption is that if the UN HRC is fulfilling its mandate of promoting and protecting human rights,<sup>807</sup> then it should include due consideration for the ICC and the norm of R2P. If, on the other hand, the ICC and R2P are missing from the Council's resolutions, it will become apparent that either the norms of international criminal justice and the responsibility to protect are not as embedded as people believe or, alternatively, the Human Rights Council is failing its mandate.

This chapter will measure the relative salience of the International Criminal Court and the Responsibility to Protect in the United Nations Human Rights Council by doing a simple

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<sup>806</sup> White J.G. (1999) Nowhere to Run, Nowhere to Hide: Augusto Pinochet, Universal Jurisdiction, the ICC, and a Wake-Up Call for Former Heads of State. *Case Western Reserve Law Review* (50): 127, Struett M (2005) Transformation of State Sovereign Rights and Responsibilities under the Rome Statute for the International Criminal Court. *The Chapman Law Review* (8): 179, Scheffer D (2007) Atrocity Crimes Framing the Responsibility to Protect. *Case Western Reserve Journal of International Law* (40): 111, and Heinze E (2011) The evolution of international law in light of the "global War on Terror." *Review of International Studies* 37(03): 1069. See Badescu C.G. and Weiss, T (2010) Misrepresenting R2P and Advancing Norms: An Alternative Spiral? *International Studies Perspectives* 11(4): 354 and for a critique, see, Stahn C (2007) Responsibility to Protect: Political Rhetoric or Emerging Legal Norm? *The American Journal of International Law* 101 (1): 99.

<sup>807</sup> UN General Assembly Resolution 60/251, 3.

content analysis of the country resolutions adopted by the Council. Included in this content analysis are 21 regular sessions and 19 special sessions, dating from the beginning of the Council in 2006 until the end of 2012. In total, there are 123 country resolutions. Of these resolutions, 45 are contested<sup>808</sup>. If contested resolutions include due consideration for the ICC or R2P, then, the resolutions will show which states contest these “emerging” norms.

This paper will be divided into two major sections. Section I will give a brief overview of the Council, the International Criminal Court, and the Responsibility to Protect, including how the latter two have emerged to be at the forefront of human rights protections. Section II will then provide the content analysis of resolutions while also providing contextual background on a few of the most prominent human rights situations that the Council has considered, including Darfur, Libya, and Syria. Then, the paper will conclude with important implications.

## A Brief Overview of the Institutions

Heretofore, studies incorporating the ICC and R2P have, for the most part, been rare<sup>809</sup> and studies examining the interplay between the ICC, R2P, and the UN HRC have been

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<sup>808</sup> These numbers are different from chapter five because two states have resolutions adopted concerning them via non-traditional means. Sri Lanka has two contested resolutions passed via Agenda Item 2 and Haiti has three resolutions adopted by Presidential Statements.

<sup>809</sup> Alexander J.F (2008/2009) The International Criminal Court and the Prevention of Atrocities: Predicting the Court's Impact. *Villanova Law Review* 54: 1, Contarino M and Lucent S (2009) Stopping the Killing: The International Criminal Court and Juridical Determination of the Responsibility to Protect. *Global Responsibility to Protect* 1(4): 560, Jessberger F and Geneuss J (2012) The Many Faces of the International Criminal Court. *Journal of International Criminal Justice*. Available at: <http://jicj.oxfordjournals.org/content/early/2012/11/06/jicj.mqs070> [17 March 2013], Scheffer D (2007) 806, and Pendergrast J and Rogoff L (2008) *R2P, the ICC, and Stopping Atrocities in the Real World*.

nonexistent.<sup>810</sup> This is strange since all three institutions make wonderful bedfellows.

Each is a relatively new institution, tasked with protecting human rights; each has come under intense criticism, both for their far-reaching powers to intervene into the domestic affairs of states, but also for their selectivity and politicization, yet, despite intense criticism, all three are considered important emerging institutions.

This section will very briefly discuss the formation and jurisdiction of each institution, cases under consideration, and why each is important for the promotion and protection of human rights.

## The Human Rights Council

The Human Rights Council began in 2006, replacing the discredited former Commission on Human Rights.<sup>811</sup> The United Nations General Assembly mandated the Council to promote and protect human rights.<sup>812</sup> Since the Council is tasked with promoting and protecting human rights globally, the Council's "jurisdiction" covers a wide umbrella of issues relating to human rights. Therefore, as we shall see when we examine the jurisdictions of the ICC and R2P, both fall under the purview of the Council.

The Council's primary mechanism for promoting human rights is thematic resolutions, which focus on general themes relating to human rights while the Council's primary

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Available at: <http://www.enoughproject.org/publications/r2p-icc-and-stopping-atrocities-real-world> [17 March 2013].

<sup>810</sup> Kantareva S.D. (2011) Responsibility to Protect: Issues of Legal Formulation and Practical Application, *The Interdisciplinary Journal of Human Rights Law* (6): 1.

<sup>811</sup> Resolution 60/251, 3.

<sup>812</sup> Ibid, Article 2 and 3.

mechanism for protecting human rights is country resolutions, which examine the human rights situations of targeted states. Generally, there are three types of country resolutions, Agenda Item 4 resolutions, which “require the Council’s action,” Agenda Item 7 resolutions, which focus specifically on the “human rights situation in Palestine and other occupied Arab territories,” and Agenda Item 10 resolutions which provide “technical assistance and capacity building,” to states in need.<sup>813</sup> Agenda Item 10 resolutions are “friendlier” resolutions, often times working in cooperation with the targeted states, while Agenda Item 4 resolutions are condemnatory. The Human Rights Council is a political-legislative body.<sup>814</sup> Therefore, outcomes of the Council do not have legal force. However, in theory, outcomes should have political and moral force.

The Human Rights Council has adopted country resolutions on 27 different states; 12 states from the Africa group, 11 states from the Asia group, two states from both the Latin American and Caribbean Group (GRULAC) and the Eastern Europe Group, and one from the Western European and Others Group (WEOG).<sup>815</sup>

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<sup>813</sup> I say generally because at times, states may be examined under Agenda Item 2. This is very rare and will be included in this paper. A/HRC/RES/5/1, 4.

<sup>814</sup> The membership of the Council consists of 47 member states that are elected to serve three-year terms with the possibility of one consecutive renewal. Membership is allocated based on the principle of equitable geographic distribution. A/RES/60/251, 3.

<sup>815</sup> This is different from the previous chapter because I add in resolutions passed in non-traditional ways, via presidential statements and through Agenda Item 2. This adds Haiti and Sri Lanka to the list of states.



<b>Africa</b>	<b>Asia</b>	<b>GRULAC</b>	<b>Eastern Europe</b>	<b>WEOG</b>
Burundi	Afghanistan	Haiti	Belarus	Israel
Côte d'Ivoire	Cambodia	Honduras		
Darfur	Democratic			
Democratic	People's			
Republic of the	Republic of			
Congo (DRC)	Korea (DPRK)			
Guinea	Iran			
Liberia	Kyrgyzstan			
Libya	Myanmar			
Mali	Nepal			
South Sudan	Sri Lanka			
Somalia	Syria			
Sudan	Yemen			
Tunisia				

Table 6.1: Targeted States in the UN HRC from 2006-2012

The Human Rights Council has struggled to maintain legitimacy, especially in its first few years, from 2006-2009.<sup>816</sup> This is due to several reasons. First, the Council's formative years focused disproportionately on Israel. Second, the Council failed to bring adequate attention to emerging human rights situations or often times adopted resolutions praising human rights abusing states. Third, the Non-Aligned Movement and the Organization for Islamic Cooperation, dominated the Council's proceedings while the Western Group was more or less absent; this was exacerbated by the George W. Bush administration's refusal to participate on the Council. Finally, the Council continued to elect non-democratic members.<sup>817</sup>

<sup>816</sup> Alston P (2005) Richard Lillich Memorial Lecture: Promoting the Accountability of Members of the New UN Human Rights Council. *Journal of Transnational Law & Policy* (15): p. 49 and Human Rights Watch (2010) Curing the Selectivity Syndrome: The 2011 Review of the Human Rights Council. Available at: <http://www.hrw.org/reports/2010/06/24/curing-selectivity-syndrome-0> [16 March 2013].

<sup>817</sup> Human Rights Watch (2012) *UN: Noncompetitive Elections Weaken Rights Council: Newly Elected Countries Should Do More to Respect Rights*. Available at: <http://www.hrw.org/news/2012/11/12/un-noncompetitive-elections-weaken-rights-council> [17 March 2013]

However, increasingly positive reviews by civil society have marked the last few years of the Council.<sup>818</sup> The US has engaged with the HRC, there are less resolutions on Israel and selectivity has decreased on average, and the Council is responding more to emerging human rights situations, even going so far as asking for Libya's removal from the Council in 2011. The last few years have given activists and diplomats alike, hope that the Council may begin fulfilling its mandate in earnest.

## The International Criminal Court

The idea of an international criminal court to try those responsible for mass atrocities crimes is not a new idea. In fact, as early as the 1920s, international trials were considered for war crimes and as early as the late 1930s, legal scholars were debating the creation of an international court.<sup>819</sup> The famous Nuremberg and Tokyo tribunals following World War II also laid much of the groundwork for a future court, yet, the political realities of the Cold War soon put to rest any real attempt at establishing an international court.<sup>820</sup> However, near the end of the Cold War, with the instigation of Trinidad and Tobago, the United Nations began to rethink the necessity for an international court.<sup>821</sup> However, as is well known, the 1990s erupted in conflict and in response to mass atrocity crimes in the former Yugoslavia and Rwanda, the United Nations established two ad-hoc tribunals to try perpetrators.<sup>822</sup> The ad-hoc tribunals

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<sup>818</sup> See generally reports by Human Rights Watch, Quaker International, and especially International Service for Human Rights. International Service for Human Rights (2013) *Human Rights Quarterly*. Available at: <http://www.ishr.ch/quarterly> [2 July 2013].

<sup>819</sup> Schabas W (2001), 270, p. 4-5.

<sup>820</sup> Ibid, p. 5.

<sup>821</sup> Neumayer E (2009) A New Moral Hazard? Military Intervention, Peacekeeping and Ratification of the International Criminal Court. *Journal of Peace Research* 46(5), p. 660.

<sup>822</sup> Schabas W (2001), 270, p. 10.

would set the stage for an international criminal court by “providing a reassuring model of what an international criminal court might look like.”<sup>823</sup>

Even though the idea of an international criminal court is not new, the signing of the Rome Statute on 17 July 1998 creating the International Criminal Court<sup>824</sup> and the Statute’s subsequent entry into force on 1 July 2002, after the required 60 ratifications<sup>825</sup> marked a watershed moment in the history of international criminal law and human rights protection. For human rights activists and international criminal lawyers the establishment of the Court marked a change in international norms.<sup>826</sup> No longer would sovereignty dictate immunity for mass atrocity crimes. Instead, criminals would now have to face an a-political justice.<sup>827</sup>

International legal scholars also celebrated the Court’s creation, since it should, in principal, act as a deterrent for future mass atrocity crimes since potential perpetrators would fear being indicted by the Court. In addition, activists believed that the Court would also “serve as a tool for global moral education that helps shape the norms of combatants and state leaders.”<sup>828</sup> Given the large reach of the Court, both in crimes

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<sup>823</sup> Schabas W (2001), 270, p. 13.

<sup>824</sup> UN General Assembly (1998) Rome Statute of the International Criminal Court (last amended 2010). 17 July 1998.

<sup>825</sup> International Criminal Court (2012) *10 Years Fighting Impunity*. Available at <http://www.icc-cpi.int/iccdocs/PIDS/publications/ICCAtAGlanceEng.pdf>. [16 March 2013].

<sup>826</sup> See accompanying works at *II*.

<sup>827</sup> Greenawalt A (2007) Justice without politics? Prosecutorial discretion and the International Criminal Court. *NYU Journal of International Law and Politics* (39): 583.

<sup>828</sup> Alexander, James F., The International Criminal Court and the Prevention of Atrocities: Predicting the Court’s Impact (August 7, 2008). Villanova Law Review, Vol. 54, 2008/09. Available at SSRN: <http://ssrn.com/abstract=1211603>, p. 9.

covered and number of signatories, which is currently 139,<sup>829</sup> it is unsurprising that many commentators believed it to be a significant change, both practically and normatively.

However, it is essential to note that a few significant states have not ratified the Rome Statute, including Russia, China, India, and the US.<sup>830</sup> The United States' practice regarding the ICC is of particular importance. The US, in an attempt to insulate itself from the ICC, has created a practice of signing bilateral treaties with states, which dictate that the US will not be brought before the ICC under any circumstances.<sup>831</sup> This is important because norm development may require the participation of, or at least acquiescence of, world powers.<sup>832</sup>

Crimes under the jurisdiction of the ICC include, "the most serious crimes of concern to the international community as a whole," which include genocide, crimes against humanity, war crimes, and the crime of aggression.<sup>833</sup> The Court's jurisdiction includes crimes that were committed only after the entry into force of the Rome Statute and crimes where the offense either occurs inside the territory of a Member State to the Statute or by a person who is a citizen of a ratifying state.<sup>834</sup> The Court may exercise its jurisdiction

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<sup>829</sup> International Criminal Court (2013) *States Parties to the International Criminal Court*. Available at: [http://www.icc-cpi.int/en\\_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx](http://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx) [16 March 2013].

<sup>830</sup> Ibid.

<sup>831</sup> See for example, see Scheffer D (2005) Article 98(2) of the Rome Statute: America's Original Intent. *Journal of International Criminal Justice* 3(2): 333 and Zappalà S (2003) The Reaction of the US to the Entry into Force of the ICC Statute: Comments on UN SC Resolution 1422 (2002) and Article 98 Agreements. *Journal of International Criminal Justice* 1(1): 114.

<sup>832</sup> Hossain K (2005) The Concept of Jus Cogens and the Obligation Under The U.N. Charter. *Santa Clara Journal of International Law* 3(1): 72.

<sup>833</sup> Rome Statute Article 5, 824.

<sup>834</sup> Ibid, Rome Statute, Article 12.

under three circumstances.<sup>835</sup> The first is by state referral.<sup>836</sup> The second is by Security Council referral under Chapter VII.<sup>837</sup> The final is by *proprio motu*, which means the Prosecutor of the ICC takes it upon herself to investigate a situation.<sup>838</sup>

The Court's jurisdiction is also limited by the principle of complementarity.

Complementarity means that the ICC acts as a court of last resort and therefore may not deem a case admissible if, for example, the case is under investigation or being prosecuted in a state that claims jurisdiction or the person has already been tried for the crime previously.<sup>839</sup> However, the Court may claim jurisdiction if the original state is unwilling or unable to investigate or prosecute.<sup>840</sup> However, defining what unwilling or unable means has been quite difficult.<sup>841</sup>

Given the Court's strict admissibility criteria, the ICC is more limited than R2P in its ability to be implemented into resolutions by the Council, although the Council may still call on states to ratify the Rome Statute.

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<sup>835</sup> Ibid, Rome Statute, Article 13.

<sup>836</sup> Ibid, Rome Statute, Article 14.

<sup>837</sup> Ibid, Rome Statute, Article 13 (b).

<sup>838</sup> Ibid, Rome Statute, Article 15,

<sup>839</sup> Ibid, Rome Statute, Article 17.

<sup>840</sup> Ibid.

<sup>841</sup> Arsanjani M.H. and Reisman W.M. (2005) The Law-in-Action of the International Criminal Court. *The American Journal of International Law* 99(2): 385.

Since 2002, a total of 18 cases in eight situations have been brought before the ICC.<sup>842</sup> Of these eight cases, States Parties to the ICC have referred four cases while two each have been referred by the UNSC and by *proprio motu*.

<b>Situation</b>	<b>Referral</b>	<b>Number of Cases</b>	<b>Decision to Open Investigation</b>
The Democratic Republic of the Congo	By DRC	Six	23 June 2004
Uganda	By Uganda	Five	29 July 2004
Central African Republic	By Central African Republic	One	22 May 2007
Darfur, Sudan	By the UNSC	Seven	6 June 2005
Kenya	By <i>proprio moto</i>	Six	TBD; Authorization on 31 March 2010
Libya	By the UNSC	Three	TBD; Referral on 26 February 2011
Côte d'Ivoire	By <i>proprio moto</i>	Two	3 October 2011
Mali	By Mali	TBD	TBD

Table 6.2: Situations before the International Criminal Court

Although hopes were high for the Court, its start has been notoriously slow.<sup>843</sup> In fact, the first verdict was reached nearly ten years after the Rome Statute entered into force<sup>844</sup> and

<sup>842</sup>International Criminal Court (2013) *Cases before the International Criminal Court*. Available at: [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx) [16 March 2013].

<sup>843</sup>Human Rights Watch (2008) *Courting History: The Landmark International Criminal Court's First Years*. Available at: <http://www.hrw.org/reports/2008/07/11/courting-history> [14 June 2013].

<sup>844</sup>See: BBC (2012) Congo's Lubanga trial verdict due. Available from: <http://www.bbc.co.uk/news/world-africa-17356339> [16 March 2013] and International Criminal Court (2012) *The Prosecutor v. Thomas*

in total, only three verdicts have been delivered while four cases have been dismissed, one person has died while on trial, and 10 remain fugitives.<sup>845</sup>

In addition, since all eight situations before the Court are in sub-Saharan Africa, the Court is consistently criticized for its perceived selectivity.<sup>846</sup> This of course is no different from criticism often levied against other international institutions. However, to further complicate matters because of the Court's finite resources, it is likely only key figures will be targeted for prosecution instead of small actors.<sup>847</sup> Because of this tactic, the Court has had to go up against political realities, which often make the Court look weak. For example, despite an ICC indictment, Omar al-Bashir, the President of Sudan, continues to travel amongst allies with little fear of capture<sup>848</sup> and Kenya recently elected an individual who is accused of crimes against humanity by the ICC.<sup>849</sup>

Nevertheless, Human rights activists, criminal lawyers, and diplomats are continually pushing for an increased role for the Court in the hopes that the ICC will offer justice to victims and prevent mass atrocity crimes. These scholars argue that the Court is legitimate despite its slow start and that real progress has been made. Further, advocates

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*Lubanga Dyillo, ICC-01/04-01/06.* Available at: [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/Pages/democratic%20republic%20of%20the%20congo.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/Pages/democratic%20republic%20of%20the%20congo.aspx) [16 March 2013]

<sup>845</sup> The International Criminal Court (2013), 842.

<sup>846</sup> Eberechi I (2011) Rounding Up the Usual Suspects: Exclusion, Selectivity, and Impunity in the Enforcement of International Criminal Justice and the African Unions Emerging Resistance. *African Journal of Legal Studies* 4(1): 51.

<sup>847</sup> Punyasena, W (2006) Conflict Prevention and the International Criminal Court: Deterrence in a Changing World. *Michigan Journal of International Law* (14), pp. 49-50.

<sup>848</sup> McCormick T (2012) The World's Most Mobile Accused War Criminal. *Foreign Policy Blog*, available at: [http://blog.foreignpolicy.com/posts/2012/09/17/the\\_worlds\\_most\\_mobile\\_war\\_criminal](http://blog.foreignpolicy.com/posts/2012/09/17/the_worlds_most_mobile_war_criminal) [17 March 2013] and Barnes G.P. (2010) International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir, The. *Fordham International Law Journal*, (34): 1584.

<sup>849</sup> BBC (2013) Kenyatta and the ICC. Available at: <http://www.bbc.co.uk/news/world-africa-21739347> [17 March 2013].

of the Court point out that one cannot measure the success or failure of the Court by indictments alone. So far, according to Human Rights Watch, the ICC has been successful. HRW argues that the Court has:

Against many odds and in the face of innumerable difficulties, the Registry has established field offices in sometimes unstable environments in relation to all four country situations under investigation to maintain ongoing contact with victims, witnesses, and affected communities.... Witnesses have stepped forward to provide evidence, some of them so enabled because of the court's capacity to protect them from the threats that they face in doing so. Victims from Darfur, Uganda, and Congo have applied and have been accepted to participate in ICC proceeding.<sup>850</sup>

And, as former chief prosecutor Louis Moreno-Ocampo argues, “the Court is, after all, most successful when national jurisdictions are able to try perpetrators.”<sup>851</sup>

## The Responsibility to Protect

Humanitarian intervention, like the International Criminal Court and the Human Rights Council is not a completely new idea.<sup>852</sup> However, the Responsibility to Protect, like the other two institutions, does mark an important development in the protection of human rights. The emerging<sup>853</sup> norm of R2P is novel because it claims that sovereignty is no longer sacrosanct.<sup>854</sup> Instead, if a state is unwilling or unable to protect its citizen, “the principle of non-intervention yields to the international responsibility to protect.”<sup>855</sup>

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<sup>850</sup> Human Rights Watch (2008), 843.

<sup>851</sup> Jessberger F and J Geneuss (2012), 809, pp. 1082-1083.

<sup>852</sup> Bellamy A (2009), 157.

<sup>853</sup> See Stahn C (2007), 806 for a critique of the idea that R2P is an “emerging” norm. Stahn argues that not all facets of R2P are emerging. Indeed, some may be embedded. See also Badescu C.G. and Weiss T (2010), 806.

<sup>854</sup> ICISS (2001), 277.

<sup>855</sup> Ibid.



Therefore, the focus of intervention should now be on victims instead of the rights of states.

The responsibility to protect is not just about military intervention however. In fact, the primary focus of R2P should, in theory, be prevention.<sup>856</sup> Additionally, states should be responsible for helping rebuild war-torn countries as well.<sup>857</sup>

R2P is also significant contribution to human rights promotion and protection, because, as Cristinia Badescu and Thomas Weiss note, “it removed the “H” adjective from humanitarian intervention...For anyone familiar with the number of sins justified by the use of that adjective during the colonial period, the change was more than semantic.”<sup>858</sup> In other words, like the ICC, the founders of R2P attempted to alleviate colonial fears from international justice.

The jurisdiction of crimes covered under R2P has developed over time. The 2001 ICISS report posited that, “To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur,” this included, “large scale loss of life” or “large scale ethnic cleansing.”<sup>859</sup> By 2005, the crimes specifically listed were, “genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>860</sup> The Security Council, under Chapter VII of the UN Charter should make the final decision regarding

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<sup>856</sup> Ibid, paragraph 4 (a).

<sup>857</sup> Ibid, paragraph 3 (c).

<sup>858</sup> Badescu C.G. and Weiss T (2010), 806, p. 356.

<sup>859</sup> This is ICISS’s Just Cause Threshold. ICISS (2001), 277.

<sup>860</sup> UN General Assembly (2005), 212, paragraphs 138-139.

implementation of R2P to actual cases.<sup>861</sup>

The Security Council has incorporated the Responsibility to Protect into six situations since the United Nations World Summit.<sup>862</sup> The first was resolution 1706 on the situation in Darfur, which was adopted in 2006.<sup>863</sup> Since the beginning of 2011, the Security Council has more actively included the responsibility to protect in key resolutions, including resolutions on Libya (twice),<sup>864</sup> Côte d'Ivoire,<sup>865</sup> Yemen,<sup>866</sup> South Sudan,<sup>867</sup> Mali,<sup>868</sup> and most recently in 2012, the UNSC tried to adopt a resolution on Syria but failed due to vetoes by Russia and China.<sup>869</sup> In addition, the Security Council has referenced R2P in two thematic resolutions concerning the protection of civilians in armed conflict.<sup>870</sup>

The Responsibility to Protect is a significant development in the protection of human

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<sup>861</sup> Ibid. However, the original ICISS document laid out an alternative pathway to legitimate authorization. Accordingly, if the UNSC could not reach agreement, the UNGA may consider the matter under the Uniting for Peace procedure. See ICISS, Right Authority section E. The UN of course moved away from this position in subsequent documents. ICISS (2001), 277.

<sup>862</sup> For more information, please see: United Nations Department of Public Information (2012) *Outreach Programme on the Rwanda Genocide and the United Nations*. Available at: <http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml> [16 March 2013] and the International Coalition for the Responsibility to Protect (2013) *Core Documents: Understanding RtoP*. Available at: <http://www.responsibilitytoprotect.org/index.php/publications/core-rtop-documents> [16 March 2013].

<sup>863</sup> UN Security Council (2006) *Reports of the Secretary-General on the Sudan*. 31 August 2006. S/RES/1706, Section 12 (a).

<sup>864</sup> S/RES/1970 (2011), 280.

<sup>865</sup> UN Security Council (2011) On targeted sanctions against individuals meeting the criteria set out in resolution 1572 (2004) on arms embargo against Côte d'Ivoire. 30 March 2011. S/RES/1975.

<sup>866</sup> UN Security Council, *Security Council resolution 2014 (2011) [on the situation in Yemen]*, 21 October 2011, S/RES/2014(2011), available at: <http://www.unhcr.org/refworld/docid/4ec4e9742.html> [16 March 2013].

<sup>867</sup> UN Security Council (2011) *The situation in South Sudan*. 8 July 2011. S/RES/1996.

<sup>868</sup> UN Security Council (2012) On authorization of the deployment of an African-led International Support Mission in Mali (AFISMA) for an initial period of one year. 20 December 2012. S/RES/2085 and UN Security Council (2012) On the situation in Mali. 12 October 2012. S/RES/2071.

<sup>869</sup> Gladstone R (2012) Russia and China Veto U.N. Sanctions Against Syria. *The New York Times*. Available at: <http://www.nytimes.com/2012/07/20/world/middleeast/russia-and-china-veto-un-sanctions-against-syria.html> [17 March 2013].

<sup>870</sup> S/RES/1674, 279 and UN Security Council (2009) *On the protection of civilians in armed conflict*. 11 November 2009. S/RES/1894.

rights. However, R2P is not without a substantial amount of criticism, and like the ICC, criticisms are coming from multiple directions. On the one hand, a non-insignificant number of states from the Global South and scholars remain concerned about the intentions behind the R2P, especially regarding the use of military force.<sup>871</sup> This is exacerbated since R2P has heretofore only been cited in cases involving Africa or Asia. Yet, on the other hand, human rights advocates are disappointed by the inability of states to act in situations where mass atrocity crimes are occurring, like Darfur and Syria, despite, the attention given to the idea of a responsibility to protect by the United Nations.<sup>872</sup> Advocates, like skeptics, are also concerned with the selectivity of cases.<sup>873</sup>

Nevertheless, “R2P has moved from the prose and passion of an international commission toward being a mainstay of international public policy.”<sup>874</sup> R2P is everywhere and laypersons are buying into the idea that sovereignty is no longer sacred. As Gareth Evans points out,

Since its adoption, RtoP boasts a Global Centre and a network of regional affiliates dedicated to advocacy and research, an international coalition of nongovernmental organizations (NGOs), a journal and book series, and a research fund sponsored by the Australian government.<sup>875</sup>

On top of the areas listed above, R2P is firmly on the agenda of both former Secretary

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<sup>871</sup> Brown C (2010) On Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*. *Global Responsibility to Protect* 2(3): 310 and Mani R and Weiss T (2011) *Responsibility to Protect: Cultural Perspectives in the Global South*, New York: Routledge. In fact, according to Badescu and Weiss, “buyers remorse” occurred almost immediately and states from the Global South have been trying to weaken language on R2P. See Badescu C.G. and Weiss T (2010), 806, p. 357.

<sup>872</sup> Badescu C.G. and Bergholm L (2009) *The Responsibility To Protect and the Conflict in Darfur: The Big Let-Down*. *Security Dialogue* 40(3): 287.

<sup>873</sup> Bahrain is just one example. See: Human Rights Watch (2012) *UN Human Rights Council: Strong Message on Bahrain Abuses*. Available at: <http://www.hrw.org/news/2012/06/28/un-human-rights-council-strong-message-bahrain-abuses> [17 March 2013].

<sup>874</sup> Badescu C.G., and Weiss T (2010), 806, p. 356.

<sup>875</sup> Bellamy A (2010) *The Responsibility to Protect - Five Years On*. *Ethics & International Affairs* 24(2), p. 144.

General Kofi Annan<sup>876</sup> and current Secretary General Ban Ki Moon<sup>877</sup> as well as the UNGA.<sup>878</sup>

## Why Jointly Examine the UN HRC, the ICC, and R2P?

The International Criminal Court and the Responsibility to Protect are two emerging mechanisms for protecting human rights and both are complements to the other.<sup>879</sup> As one leading NGO / advocacy group posits,

RtoP employs the judicial authority of the ICC both as a reactionary tool invoked in response to instances of these crimes, as well as, a means of deterrence so as to prevent these crimes from occurring. In turn, the RtoP norm reinforces the complementarity principle of the ICC, in which primary responsibility falls upon sovereign states; as such the RtoP norm aids the ICC's quest to end impunity by advocating for states to assume judicial responsibilities.<sup>880</sup>

Although the ICC's jurisdiction is more limited because of the Rome Statute, in many cases where an appeal to the R2P occurs, so too should an appeal to the ICC, even if it is only a call for ratification of the Rome Statute.

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<sup>876</sup> For example, In Larger Freedom. UN General Assembly (2005), 127.

<sup>877</sup> For example, see: International Coalition for the Responsibility to Protect (2013), 862.

<sup>878</sup> For example, the four general debates on R2P. See: International Coalition for the Responsibility to Protect (2013) *Key Developments on the Responsibility to Protect at the United Nations: 2005-2012*. Available at: <http://www.responsibilitytoprotect.org/index.php/about-rtop/the-un-and-rtop> [16 March 2013].

<sup>879</sup> See for example: International Coalition for the Responsibility to Protect (2013) *The International Criminal Court and the Responsibility to Protect (RtoP)*. Available at: <http://www.responsibilitytoprotect.org/index.php/about-rtop/related-themes/2416-icc-and-rtop> [16 March 2013].

<sup>880</sup> Ibid.

The United Nations Human Rights Council is also a complementary to both the ICC and R2P. The Council is tasked with promoting and protecting human rights. Therefore, the ICC and R2P should be central to the work that the Council performs.

The following major section will look at the “frequency, nature of usage, and application” of both concepts in the Council in order to measure salience or normative impact of the ICC and R2P in the UN HRC.<sup>881</sup> This analysis will also, of course, help shed light on the performance of the Council. The Human Rights Council is of particular importance to the topic. First, it is of course billed as the central human rights body in the UN. However, secondly, it should be viewed, more or less, as an intermediate body between the UNSC and the General Assembly. The Council’s membership lies somewhere in the middle, between the other two bodies, but the Council is also tasked with examining many of the same issues as its other UN counterparts.

## Understanding Normative Impact through HRC Cases

The purpose of section II is to examine country resolutions adopted by the United Nations Human Rights Council. Special attention will be given to four situations since these cases include at least one resolution by the HRC, at least a preliminary investigation by the ICC, and also includes at least one resolution by the UNSC where the Responsibility to Protect was mentioned. The four cases are Côte d’Ivoire, Darfur, Libya,

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<sup>881</sup> This idea owes a great deal to Silva Kantarev. In Kantarev’s 2011 piece, the author argues that, “a useful starting point [to measure the normative impact of R2P] would be to track the frequency and nature of the usage and application of this concept in international discourse and, more specifically, within the United Nations General Assembly and Security Council, the latter having been officially charged with the responsibility to protect, particularly insofar as coercive action is involved.” Kantareva, 2011, 810, p. 2. This paper essentially takes the approach but applies it to the Human Rights Council.

and Mali. As table 6.3 indicates below, there are a few instances where two thirds of institutions examined a case. An interesting future project would include an investigation over why some cases are examined under some of the bodies but not others. Particularly interesting is the Central Africa Republic, which has only been looked at under the ICC.

<b>State</b>	<b>HRC</b>	<b>R2P</b>	<b>ICC</b>
Afghanistan	✓		
Belarus	✓		
Burundi	✓		
Cambodia	✓		
CAR			✓
Côte d'Ivoire	✓	✓	✓
Darfur	✓	✓	✓
DPRK	✓		
DRC	✓		✓
Guinea	✓		
Haiti	✓		
Honduras	✓		
Iran	✓		
Israel	✓		
Kenya			✓
Kyrgyzstan	✓		
Liberia	✓		
Libya	✓	✓	✓
Mali	✓	✓	✓
Myanmar	✓		
Nepal	✓		
Sri Lanka	✓		
South Sudan	✓	✓	
Somalia	✓		
Sudan	✓		
Syria	✓	✓ *	
Tunisia	✓		
Uganda			✓
Yemen	✓	✓	

Table 6.3: An Overview of Cases

This section will first briefly describe the four cases mentioned above in light of resolutions adopted by the Human Rights Council. Then, this section will follow with an examination of all other resolutions adopted by the Council.

## Darfur / Sudan

The situation in Darfur, Sudan, has been ongoing since early 2003 and as such, predates the creation of the Human Rights Council.<sup>882</sup> By most accounts, the mass atrocities occurring in Darfur, which is in the western part of Sudan, are the worst the world has seen since 1994. According to UNICEF, somewhere between 200,000 and 300,000 people have died in Darfur since the beginning of the conflict.<sup>883</sup> Further, roughly 4.7 million people in the country are affected in some way by the conflict, with millions displaced.<sup>884</sup> In June 2005, then President of the United States, George W. Bush called the situation in Darfur genocide.<sup>885</sup> Mass atrocity crimes in Darfur have also galvanized significant public attention.<sup>886</sup> Nevertheless, according to many activists, Darfur may well be the single greatest failure of the UN in terms of human rights.<sup>887</sup>

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<sup>882</sup> For a timeline see: United Nations (2012) *The UN Responds to the Crisis in Darfur: A Timeline*. Available [http://www.un.org/News/dh/dev/scripts/darfur\\_formatted.htm](http://www.un.org/News/dh/dev/scripts/darfur_formatted.htm) [16 March 2013].

Darfur was examined under the Commission on Human Rights.

<sup>883</sup> United Nations Children's Fund (2013) *Darfur: An Overview*. Available at [http://www.unicef.org/infobycountry/sudan\\_darfuroverview.html](http://www.unicef.org/infobycountry/sudan_darfuroverview.html) [16 March 2013].

<sup>884</sup> Ibid.

<sup>885</sup> Previously, then Secretary of State Colin Powell had used the term "acts of genocide." VandeHei J (2005) In Break With UN, Bush Calls Sudan Killings Genocide. *The Washington Post*. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/01/AR2005060101725.html> [16 March 2013].

<sup>886</sup> Cooperman A (2006) Groups Plan Rally on Mall To Protest Darfur Violence. *The Washington Post*. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/26/AR2006042602182.html> [16 March 2013]. See also: SaveDarfur.org (2013) *Past Initiatives*. Available at: [http://www.savedarfur.org/pages/previous\\_initiatives](http://www.savedarfur.org/pages/previous_initiatives) [16 March 2013].

<sup>887</sup> Grono N (2006) Briefing — Darfur: The international community's failure to protect. *African Affairs* 105(421): 621.

The UN HRC has adopted numerous resolutions on Darfur and Sudan including one special session. The first resolution related to Darfur came almost immediately. During the 2<sup>nd</sup> session of the Council, a decision was adopted to congratulate participants in the country on signing the Abuja peace agreement, asks those who have not signed the treaty to do so, and reminds the international community of its financial pledges to Sudan.<sup>888</sup> This decision was adopted with a vote of 25-11-10, with mostly Western states voting against.<sup>889</sup>

Due to space constraints, this paper will summarize the remaining resolutions. In total, there are ten resolutions on Darfur and Sudan, excluding resolutions on South Sudan. Over time, the resolutions shift from shaming to technical assistance and capacity building. The change begins approximately with session 15 of the Council, which occurs during the autumn of 2010. This change in behavior also coincides with Sudan's presidential elections.<sup>890</sup>

Prior to session 15, the Council's resolutions on Sudan emphasized the on-going violence within the Country. Beginning during the 7<sup>th</sup> session, resolutions indirectly cited the Responsibility to Protect. For example, Resolution 7/16 and 7/17 notes that, "the primary responsibility of the Government of the Sudan is to protect all its citizens, including all

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<sup>888</sup> A/HRC/DEC/2/115, 730. In essence, this is an agenda item 10 resolution. However, these terms were also incorporated after session 5 of the council.

<sup>889</sup> Ibid.

<sup>890</sup> Notably, of course, Sudan reelected Omar al-Bashir, who is also indicted by the ICC.



vulnerable groups.”<sup>891</sup> In addition, the Council frequently notes its concern regarding impunity for the preparation of mass atrocity crimes. For instance, The Council,

Expresses particular concern at the fact that perpetrators of past and ongoing serious violations of human rights and international humanitarian law in Darfur have not yet been held accountable for their crimes and urges the Government of the Sudan to address urgently this question, by thoroughly investigating all allegations of human rights and international humanitarian law violations, promptly bringing to justice the perpetrators of those violations.<sup>892</sup>

Moreover, during session nine, the Council “expresses its deep concern at the serious violations of human rights law and international humanitarian law in Darfur.”<sup>893</sup>

However, the Council never directly mentions the International Criminal Court. In each session the Council examined Sudan, the mandate of the special rapporteur on Sudan was extended.<sup>894</sup>

Beginning during the 15<sup>th</sup> session, the Council’s tone changes significantly. Resolution 15/27, “congratulates the Government and the people of the Sudan for organizing and for widely participating in the April 2010 elections, which, despite logistical and organizational gaps, took place in a peaceful and orderly manner.”<sup>895</sup> The resolution also notes the importance of the referendum on South Sudan, which would give independent sovereignty to the region. Of special note, the resolution also weakens the already

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<sup>891</sup> UN Human Rights Council (2008) *Situation of human rights in the Sudan*. 27 March 2008. A/HRC/RES/7/16, paragraph 10, and A/HRC/RES/11/10, 737.

<sup>892</sup> Ibid, paragraph 13.

<sup>893</sup> UN Human Rights Council (2008) *Situation of human rights in the Sudan*. 18 September 2008. A/HRC/RES/9/17, paragraph 8.

<sup>894</sup> For more information on the work of the special rapporteur on Sudan, please see: Office of the United Nations High Commissioner for Human Rights (2013) *Independent Expert on the situation of human rights in Sudan*. Available at: <http://www2.ohchr.org/english/countries/sd/mandate/index.htm> [16 March 2013]

<sup>895</sup> A/HRC/RES/15/27, 742, paragraph 5.

indirect language on the Responsibility to Protect. The Council moves the language on protection from the resolution proper and places it in the preamble. Resolution 15/27 only, “recognizes the developments taking place in the Sudan, and the efforts of the Government of the Sudan in the promotion and protection of human rights.”<sup>896</sup>

Resolutions adopted during sessions 18<sup>897</sup> and 21<sup>898</sup> are notable because they switch the Agenda Item from 4 to 10, which means, officially, the focus of the situation on the ground is on technical assistance and capacity building. The mandate of the special rapporteur has been extended every year.

The Council’s special session on Darfur occurred on March 9<sup>th</sup>, 2007, just prior to the start of the 4<sup>th</sup> regular session of the HRC. The outcome document creates a high level mission to look into the situation of human rights in Sudan. The report of the High level Mission explicitly contextualizes the violence in Sudan with the Responsibility to Protect.<sup>899</sup> However, this language, as noted above, does not reappear in adopted resolutions on Sudan or Darfur.

The UNSC has adopted over 25 resolutions on Sudan / Darfur since 2006.<sup>900</sup> Prior to 2006, the UNSC adopted resolutions imposing sanctions on the Government of Sudan.<sup>901</sup>

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<sup>896</sup> Ibid.

<sup>897</sup> A/HRC/RES/18/16, 752.

<sup>898</sup> A/HRC/RES/21/27, 753.

<sup>899</sup> UN Human Rights Council (2007) *Follow-up to decision S-4/101 of 13 December 2006 adopted by the Human Rights Council at its fourth special session entitled "Situation of human rights in Darfur*. 30 April 2007. A/HRC/RES/4/8.

<sup>900</sup> For a complete list, see: UN News Centre (2013) *News Focus: Sudan*. Available at: <http://www.un.org/apps/news/docs.asp?Topic=Sudan&Type=Resolution> [16 March 2013].

<sup>901</sup> For example, see UN Security Council (2005) *Sudan*. 29 March 2005. S/RES/1591.

The Security Council indirectly invokes R2P in many of its resolutions related to Sudan.

For example, in UNSC's 2012 resolution, extending the of UNAMID,

Recalling also its previous resolutions 1674 (2006) and 1894 (2009) on the protection of civilians in armed conflict, which reaffirm, inter alia, the relevant provisions of the United Nations World Summit outcome document; 1612 (2005), 1882 (2009), and 1998 (2011) on children and armed conflict; 1502 (2003) on the protection of humanitarian and United Nations personnel; and 1325 (2000) and associated resolutions on women, peace and security and children and armed conflict.<sup>902</sup>

In 2005, prior the creation of the Human Rights Council, the UNSC referred the situation in Darfur to the International Criminal Court, with a temporal jurisdiction beginning on 1 July 2002.<sup>903</sup> Of special note, this was the first instance of referral to the ICC by the UNSC. Also of note, Resolution 1593 was adopted with a vote of 11-0-4, with abstentions from China and the US, along with Algeria and Brazil.<sup>904</sup> As of 12 March 2013, the ICC has indicted seven individuals, including the sitting president of Sudan.

According to the new Chief Prosecutor of the ICC, Fatou Bensouda, "crimes are still being committed against civilians in Darfur...while there is a lack of progress towards arresting those already indicted for alleged crimes."<sup>905</sup> Human Rights Watch argues that

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<sup>902</sup> UN Security Council (2012) On extension of the mandate of the AU/UN Hybrid Operation in Darfur (UNAMID) until 31 July 2013. 31 July 2012. S/RES/2063.

<sup>903</sup> UN Security Council (2005) *Darfur referral to the International Criminal Court*. 31 March 2005. S/RES/1593.

<sup>904</sup> Ibid.

<sup>905</sup> UN News Centre (2012) *ICC indictees remain at large and Darfur crimes continue, Security Council told*. Available at: [http://www.un.org/apps/news/story.asp?NewsID=43764&Cr=darfur&Cr1=criminal+court#.UUS\\_qls545h](http://www.un.org/apps/news/story.asp?NewsID=43764&Cr=darfur&Cr1=criminal+court#.UUS_qls545h) [16 March 2013].

political crackdowns are continuing on opposition groups,<sup>906</sup> Amnesty International is concerned about new weapons continuing the conflict in the region,<sup>907</sup> and the UNSC continues to renew the mandate of UNAMID,<sup>908</sup> yet the Human Rights Council has been reluctant to focus specific attention on an increasingly unstable situation, instead, noting the need for technical assistance and capacity building. The Council has also failed to specifically mention the role of the International Criminal Court in the conflict, despite, UNSC referral prior to the creation of the Council. This has led some Council watchers to be disappointed in the Council's performance as it relates to Sudan, especially as the Sudanese government has increasingly failed to cooperate with the UN HRC's special rapporteur.<sup>909</sup>

## Côte d'Ivoire

In late November 2010, after a five-year delay, Ivoirians went to the polls to elect a president. According to most observers, Alassane Quattara defeated incumbent Laurent Gbagbo.<sup>910</sup> However, Gbagbo proclaimed the election was fraudulent and shortly

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<sup>906</sup> Human Rights Watch (2013) *Sudan: Crackdown on Political Opposition: Respect Rights of Detainees, Reform Security Laws*. Available at: <http://www.hrw.org/news/2013/02/26/sudan-crackdown-political-opposition> [16 March 2013].

<sup>907</sup> Amnesty International (2012). Darfur: New weapons from China and Russia fuelling conflict." Available at: <http://www.amnesty.org/en/news/darfur-new-weapons-china-and-russia-fuelling-conflict-2012-02-08> [16 March 2013].

<sup>908</sup> S/RES/2063 (2012), 902.

<sup>909</sup> FIDH (2012) Sudan: *UN Human Rights Council should adopt a stronger resolution to prevent further human rights violations*. Available at <http://www.fidh.org/Sudan-UN-Human-Rights-Council-12220> [16 March 2013].

<sup>910</sup> Human Rights Watch (2011) *They killed them like it was nothing: The Need for Justice for Côte d'Ivoire's Post-Election Crimes*. Available at [http://www.hrw.org/sites/default/files/reports/cdi1011webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/cdi1011webwcover_0.pdf) [16 March 2013] and also Nossiter A (2010) Ouattara Victory Disputed in Ivory Coast. *The New York Times*. Available at: <http://www.nytimes.com/2010/12/03/world/africa/03ivory.html> [16 March 2013].

thereafter, the Ivorian military stated that it would back Gbagbo.<sup>911</sup> Then the violence began. According to Human Rights Watch,

The post-election crisis then evolved from a targeted campaign of violence by Gbagbo forces to an armed conflict in which armed forces from both sides committed grave crimes. Six months later, at least 3,000 civilians were killed and more than 150 women were raped in a conflict that was often waged along political, ethnic, and religious lines.<sup>912</sup>

Intense violence permeated much of Côte d'Ivoire from the end of 2010 until 11 April 2011, when Gbagbo was arrested.<sup>913</sup>

The Human Rights Council was quick to respond to the election violence. Less than a month after the disputed election, the Council held an ad-hoc Special Session to discuss the situation of human rights in Côte d'Ivoire since the elections.<sup>914</sup>

The Special Session of the Council did not result in a specific call for the Responsibility to Protect to be upheld nor did it call for an investigation by the ICC. However, the Council adopted a resolution without a vote, which stated,

That the legitimate Government of Côte d'Ivoire has the primary responsibility to make every effort to strengthen the protection of

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<sup>911</sup> Voice of America News, *Ivory Coast Army Backs Controversial Gbagbo's Re-election*. Available at: <http://www.voanews.com/content/ivory-coast-army-backs-controversial-gbagbos-re-election-111314649/131778.html> [16 March 2013].

<sup>912</sup> Human Rights Watch (2011) *910*, p. 4.

<sup>913</sup> Baldauf S (2011) Ivory Coast's Gbagbo arrested, ending months-long standoff. *Christian Science Monitor*. Available at: <http://www.csmonitor.com/World/Africa/2011/0411/Ivory-Coast-s-Gbagbo-arrested-ending-months-long-standoff> [16 March 2013].

<sup>914</sup> For more information see: UN Human Rights Council (2010) *The situation of human rights in Cote d'Ivoire since the elections on 28 November 2010*. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/14/index.htm> 16 March 2013. [12 July 2013].

the civilian population and to investigate and bring to justice perpetrators of violations of human rights and of international humanitarian law, and calls upon the international community to support the Government of Côte d'Ivoire in stabilizing the situation in the country.<sup>915</sup>

The Council has passed three resolutions during regular sessions on Côte d'Ivoire. The first occurred during the 16<sup>th</sup> session of the Council. On the 25<sup>th</sup> of March 2011, the Council adopted a resolution calling for a Commission of Inquiry (COI) into the situation in Côte d'Ivoire. This resolution was adopted without a vote under Agenda Item 4, which, is often contested. However, the resolution does not mention international criminal law or the Responsibility to Protect.<sup>916</sup>

Between the 16<sup>th</sup> and 17<sup>th</sup> sessions of the Council, the UNSC adopted resolution 1975, which mentions the ICC directly<sup>917</sup> and the Responsibility to Protect indirectly through resolutions 1674 and 1894.<sup>918</sup> Then, on May 11<sup>th</sup>, the OTP of the ICC stated that it would

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<sup>915</sup> UN Human Rights Council (2010) *Situation of human rights in Côte d'Ivoire in relation to the conclusion of the 2010 presidential election*. 23 December 2010. A/HRC/RES/S-14/1, p. 8. This resolution was adopted without a vote.

<sup>916</sup> UN Human Rights Council (2011) *Situation of human rights in Cote d'Ivoire*. 25 March 2011. A/HRC/RES/16/25.

<sup>917</sup> Resolution 1975 states, "Considering that the attacks currently taking place in Côte d'Ivoire against the civilian population could amount to crimes against humanity and that perpetrators of such crimes must be held accountable under international law and noting that the International Criminal Court may decide on its jurisdiction over the situation in Côte d'Ivoire on the basis of article 12, paragraph 3 of the Rome Statute." S/RES/1975, paragraph. 4, 865.

<sup>918</sup> The full text is: Condemning the serious abuses and violations of international law in Côte d'Ivoire, including humanitarian, human rights and refugee law, reaffirming the primary responsibility of each State to protect civilians and reiterating that parties to armed conflicts bear the primary responsibility to take all feasible steps to ensure the protection of civilians and facilitate the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel, recalling its resolutions 1325 (2000), 1820 (2008), 1888 (2009) and 1889 (2009) on women, peace and security, its resolution 1612 (2005) and 1882 (2009) on children and armed conflict and its resolution 1674 (2006) and 1894 (2009) on the protection of civilians in armed conflicts. Ibid.

seek permission to open an investigation into election violence since November 28<sup>th</sup>, 2010.<sup>919</sup> This was the second instance the OTP has used its *proprio moto* powers.<sup>920</sup>

On 10 June 2011, during the 17<sup>th</sup> session of the Council, an agenda Item 10 resolution is adopted concerning Côte d'Ivoire.<sup>921</sup> This resolution is more cooperative in nature and mentions the ICC only in regards to the COI's recommendations. The resolution is adopted without direct or indirect reference to the Responsibility to Protect. However, of note, the resolution does create a special rapporteur to study the situation for one year.

The most recent HRC resolution on Côte d'Ivoire was adopted without a vote on July 6<sup>th</sup>, 2012 during the Council's 20<sup>th</sup> session. The resolution continued the mandate of the special rapporteur. In addition, it condemned the killing of civilians and UN personnel in the country. The resolution also notes that Côte d'Ivoire has created a truth and reconciliation commission. However, there is no further mention of the ICC or the Responsibility to Protect.

The appointment of a commission of inquiry to study the human rights situation in Côte d'Ivoire illustrates that the situation is of importance to Council members. However, the Council fails to explicitly note that Côte d'Ivoire has a responsibility to protect its citizens and also fails to mention the situation is under investigation in the ICC.

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<sup>919</sup> International Criminal Court (2011). *Situation in the Republic of Côte d'Ivoire*. ICC-02/11. 3 October 2011.

<sup>920</sup> Though Ouattara asked for an ICC investigation. See for example: Coalition for the International Criminal Court (2011) Côte d'Ivoire: President Ouattara Wants ICC Investigation: OTP to Seek Pre-Trial Chamber Authorization. Available at: <http://iccnow.org/?mod=newsdetail&news=4476> [16 March 2013].

<sup>921</sup> UN Human Rights Council (2012) *Assistance technique à la Côte d'Ivoire dans le domaine des droits de l'homme*. 6 July 2012. A/HRC/RES/20/19.

## Libya

Violence in Libya began in earnest on 15 February 2011, after Colonel Muammar Gaddafi's forces fired on protestors in the Libyan city of Benghazi.<sup>922</sup> Gaddafi's response was brutal and rapid and within days, it was apparent that mass atrocity crimes would be committed in high numbers within Libya.<sup>923</sup> Even more worrisome for the international community was Gaddafi's rhetoric, which was reminiscent of the rhetoric used in conflicts passed, where the international community did not act quickly enough. For example, in one speech, the Colonel declared that he would, "cleanse Libya house by house" and called the protestors, "cockroaches."<sup>924</sup> The international community responded swiftly.

The Human Rights Council was the first UN institution to examine the violence in Libya. On 25 February 2011, one day before the first UNSC resolution,<sup>925</sup> the Council held a Special Session on the "situation of human rights in the Libya Arab Jamahiriya."<sup>926</sup> The outcome document is quite remarkable. In the resolution, the Council threatens to

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<sup>922</sup> See Reuters (2011) *Timeline: Libya's civil war*. *The Guardian*. Available at: <http://www.guardian.co.uk/world/2011/nov/19/timeline-libya-civil-war> [16 March 2013]. See also: Human Rights Watch (2011) *Libya: Security Forces Fire on 'Day of Anger' Demonstrations*. Available at: <http://www.hrw.org/news/2011/02/17/libya-security-forces-fire-day-anger-demonstrations> [16 March 2013].

<sup>923</sup> BBC (2011) Defiant Gaddafi refuses to quit. Available at: <http://www.bbc.co.uk/news/world-middle-east-12544624> [16 March 2013].

<sup>924</sup> Ibid. Famously, the Tutsi in Rwanda were called cockroaches as part of the campaign to incite violence in the region. BBC (2003) The impact of hate media in Rwanda. Available at: <http://news.bbc.co.uk/2/hi/africa/3257748.stm> [16 March 2013].

<sup>925</sup> S/RES/1970 (2011), 280.

<sup>926</sup> UN Human Rights Council (2011) *15<sup>th</sup> special session: Situation of human rights in the Libyan Arab Jamahiriya*. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/15/index.htm> 16 March 2013 [12 July 2013].



suspend Libya from the Human Rights Council,<sup>927</sup> explicitly, “strongly calls upon the Libyan Government to meet its responsibility to protect its population,”<sup>928</sup> indirectly references the ICC,<sup>929</sup> and establishes a COI to investigate crimes in the country.<sup>930</sup> Importantly, the resolution was adopted without a vote.

During the 17<sup>th</sup> session of the Council, in June 2011, The Council passed a resolution on Libya, which extended the mandate of the COI, took note of steps taken by the ICC, and “urgently reiterates its call on the Government of Libya...to immediately cease all violations of human rights [and] to meet its responsibility to protect its population....”<sup>931</sup> Also of important note, prior to the 17<sup>th</sup> session of the Council, the UNGA, at the request of the Council, suspended Libya’s membership.<sup>932</sup> This action is monumentally significant. During the transition from the Commission to the Council, it was negotiated that if member states of the Council decreased their human rights protections significantly after election, they may be suspended.<sup>933</sup> No one actually believed that a state would be suspended. Yet, remarkably, Libya was suspended. This move, by the Council, arguably revitalized the work of the Council and is considered by many in

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<sup>927</sup> UN Human Rights Council (2011) *Situation of human rights in the Libyan Arab Jamahiriya*. 25 February 2011. A/HRC/RES/S-15/1, preamble.

<sup>928</sup> Ibid paragraph 2.

<sup>929</sup> Ibid, paragraphs 7 and 11.

<sup>930</sup> Ibid, paragraph 11.

<sup>931</sup> UN Human Rights Council (2011) *Human rights situation in the Libyan Arab Jamahiriya*. 17 June 2011. A/HRC/RES/17/17, paragraph 3.

<sup>932</sup> UN General Assembly (2011) *2011 Libya Civil War and UN Human Rights Council Membership*. 1 March 2011. A/RES/65/265.

<sup>933</sup> A/RES/60/251, 3, paragraph 8.

Geneva to be the single most important action the Council has taken to date.<sup>934</sup> As one person argued, “it was that rare moment when the UN is at its best.”<sup>935</sup>

In the autumn of 2011, during the 18<sup>th</sup> session of the Council, Libya’s membership rights were restored.<sup>936</sup> The COI also presented an oral briefing during the 18<sup>th</sup> session. During the main yearly meeting of the Council in March (the 19<sup>th</sup> session of the Council), the COI presented findings related to human rights in Libya and the Council adopted its most recent resolution on Libya.<sup>937</sup> Resolution 19/39 focused on technical assistance and capacity building. In particular, the resolution is concerned with the transition from Gaddafi’s old regime to a new regime in Libya. The Council reaffirmed Libya’s responsibility to protect.<sup>938</sup> However, resolution 19/39 does not mention international law or the ICC.

Between the first Special Session on Libya and the 19<sup>th</sup> session of the Council, the UNSC passed six resolutions relating to the violence in Libya.<sup>939</sup> The first, resolution 1970

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<sup>934</sup> Ibid.

<sup>935</sup> Interview with NGO6.

<sup>936</sup> UN Human Rights Council (2011). *The resumption of Libya’s membership in the Human Rights Council*. 29 September 2011. A/HRC/RES/18/9.

<sup>937</sup> UN Human Rights Council (2012) *Assistance for Libya in the field of human rights*. 19 April 2012. A/HRC/RES/19/39, preamble.

<sup>938</sup> Ibid.

<sup>939</sup> S/RES/1970, 280, S/RES/1973, 280, UN Security Council (2011) *On the establishment of the UN Support Mission in Libya (UNSMIL)*. 16 September 2011. S/RES/2009, UN Security Council (2011) On termination of the provisions of paragraphs 4, 5 and 6 to 12 of resolution 1973 (2011) concerning Libya. 27 October 2011. S/RES/2016, UN Security Council (2011) On measures to prevent the proliferation of all arms and related materiel of all types in Libya. 31 October 2011. S/RES/2017, UN Security Council (2011) On extension of the mandate of the UN Support Mission in Libya (UNSMIL) until 16 Mar. 2012. 2 December 2011. S/RES/2022, UN Security Council (2012) On extension of the mandate of the UN Support Mission in Libya (UNSMIL) for a further period of 12 months. 12 March 2012. S/RES/2040.

referred the situation in Libya to the International Criminal Court.<sup>940</sup> The second, resolution 1973, declared a no-fly zone over Libya and authorized “all necessary measures” under Chapter VII to protect civilians.<sup>941</sup> Importantly, the final vote was 10-0-5, including an abstention from Germany.<sup>942</sup> Two days after resolution 1973, a military intervention begins. The intervention lasted until the death of Gaddafi on 20 October 2011.<sup>943</sup>

In comparison to Darfur / Sudan and Côte d’Ivoire, the Council’s response to the situation in Libya is quite extraordinary. The Council noted that Libya has a responsibility to protect its citizens before the UNSC. According to some Council watchers, the HRC’s rapid action in Libya helped propel at reluctant UNSC into action. The Libya situation is unique, however. First, Libyan diplomats in Geneva and New York defected almost immediately.<sup>944</sup> Second, as is well documented, Gaddafi had few allies.<sup>945</sup> Therefore, the political will to adopt resolutions citing R2P as well as indirectly citing the ICC was, in hindsight, quite easy to muster.

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<sup>940</sup> S/RES/1970, 280. This is one of two referrals by the UNSC to the ICC.

<sup>941</sup> S/RES/1973, 280.

<sup>942</sup> Bellamy A and Williams P.D. (2011), 282, p.844. The other abstentions are less surprising. They include Brazil, China, India, and Russia. Ibid.

<sup>943</sup> Officially the intervention ended on the 31<sup>st</sup> of October 2011. Gladstone R (2011) U.N. Votes to End Libya Intervention on Monday. *The New York Times*. Available at: <http://www.nytimes.com/2011/10/28/world/middleeast/security-council-ends-libya-intervention-mandate.html> [17 March 2013].

<sup>944</sup> See for example: Aljazeera, (2011) Libyan diplomats defect en masse. *Aljazeera*. Available at <http://www.aljazeera.com/news/africa/2011/02/201122275739377867.html> [16 March 2013].

<sup>945</sup> Naim M (2011) Why Libya, But Not Syria. *Carnegie Endowment for International Peace*. Available at: <http://carnegieendowment.org/2011/05/18/why-libya-but-not-syria/1gr> [17 March 2013].

## Mali

Beginning in early 2012, conflagration erupted in Northern Mali, by March a military coup occurred in the capital Bamako in response to a perceived weak response to separationist claims and Islamic insurgents, taking advantage of an influx of arms into the region and instability in Mali, took over the northern Taureg area.<sup>946</sup> By April, there were serious concerns not only about an increase in forced Shari'a law into the country but also war crimes, including, "numerous war crimes, including rape, use of child soldiers, and pillaging of hospitals, schools, aid agencies, and government buildings."<sup>947</sup> According to reports, all sides in the conflict were responsible for the crimes.

On the 6 July 2012, the Human Rights Council has adopted two resolutions on the situation in Mali.<sup>948</sup> The first resolution condemned the violence in Mali,

In particular by the rebels, terrorist groups and other organized transnational crime networks, including the violence perpetrated against women and children, the killings, hostage-takings, pillaging, theft and destruction of religious and cultural sites, as well as the recruitment of child soldiers, and calls for the perpetrators of these acts to be brought to justice.<sup>949</sup>

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<sup>946</sup> See for example: BBC (2013) Mali country profile. Available at: <http://www.bbc.co.uk/news/world-africa-13881370> [16 March 2013].

<sup>947</sup> Human Rights Watch (2012) *Mali: War Crimes by Northern Rebels: Armed Groups Commit Rape, Use Child Soldiers*. Available from: <http://www.hrw.org/news/2012/04/30/mali-war-crimes-northern-rebels> [16 March 2013].

<sup>948</sup> Although Mali will certainly see more resolutions adopted since the conflict is ongoing. The resolutions were adopted under Agenda Item 4. UN Human Rights Council (2012) *Situations des droits de l'homme en République du Mali*. 6 July 2012. A/HRC/RES/20/17 and UN Human Rights Council (2012) *Suivi de la situation des droits de l'homme en République du Mali*. 28 September 2012. A/HRC/RES/21/25. See also: PBS NewsHour (2012) *Refugees Flee Mali to Escape Sharia Law Under Islamic Militants*. Available at: [http://www.pbs.org/newshour/bb/world/july-dec12/mali\\_08-22.html](http://www.pbs.org/newshour/bb/world/july-dec12/mali_08-22.html) [March 16, 2013] and CNN, Broken limbs, torn lives in northern Mali. *CNN*. Available at: <http://www.cnn.com/2013/01/24/world/africa/mali-victims-speak-out/index.html> [March 16, 2013].

<sup>949</sup> Ibid.

However, neither resolution 20/17 or 21/25 calls for an investigation by the International Criminal Court nor do they suggest the Mali or the international community has a responsibility to protect citizens in the West African state.

On 18 July, Mali requested the Court look into abuses in the country since January 2012.<sup>950</sup> The investigation is ongoing and currently, no indictments have been filed.

The Security Council has, so far, adopted three resolutions concerning Mali. The first was on 5 July 2012, which called for a “roadmap for restitution of constitutional order in Mali.”<sup>951</sup> The resolution explicitly references the International Criminal Court, specifically because of recent attacks on historical and religious buildings in Timbuktu.<sup>952</sup> Resolution 2056 does not explicitly invoke the Responsibility to Protect. However, it does recall its resolution on the protection of civilians in armed conflicts, among others.<sup>953</sup>

The second resolution, adopted on October 12<sup>th</sup>, 2012 indirectly refers to R2P. In the preamble, the UNSC stresses that,

The primary responsibility of the Malian authorities for ensuring the security and unity in its territory and protecting its civilians

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<sup>950</sup> See for example: Amnesty International (2012) Mali: ICC urged to investigate possible war crimes. Available at <http://www.amnesty.org/en/news/icc-urged-make-prompt-decision-investigating-mali-war-crimes-2012-07-19> [16 March 2013] and International Criminal Court (2013) *Mali*. Available at [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/mali/Pages/index.aspx](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/mali/Pages/index.aspx) [16 March 2013].

<sup>951</sup> UN Security Council (2012) *On the situation in Mali*. 5 July 2012. S/RES/2056.

<sup>952</sup> Ibid. The Telegraph (2012). *Timbuktu shrine destruction “a war crime.”* Available at: <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/mali/9369271/Timbuktu-shrine-destruction-a-war-crime.html> [March 16, 2013].

<sup>953</sup> Ibid.

with respect for international humanitarian law, the rule of law and human rights and emphasizing that any sustainable solution to the crisis in Mali should be Malian-led.<sup>954</sup>

The preamble also recognizes that the situation in Mali has been referred to the ICC and “condemns the abuses of human rights committed in the north of Mali by armed rebels, terrorist and other extremist groups.”<sup>955</sup> Importantly, this resolution excludes alleged crimes committed by government forces.<sup>956</sup>

The final UNSC resolution of 2012 authorized military intervention into Mali.<sup>957</sup>

Importantly, resolution 2085 mentions the responsibility to protect twice. First, Resolution 2085 authorized the deployment of African-led International Support Mission in Mali (AFISMA) “to support the Malian authorities in their primary responsibility to protect the population.”<sup>958</sup> Second, under human rights concerns, Resolution 2085, “Emphasizes that the Malian authorities have primary responsibility to protect civilians in Mali.”<sup>959</sup> The wording related to the ICC is essentially identical to the October resolution.

The Council’s reaction to the crisis in Mali is more in align with previous actions by the UN body. A COI has been deployed to study the situation in Mali and report back to the OHCHR and UN HRC. However, the Council’s resolutions lack any mention of the ICC or the responsibility of Mali to protect its citizens.

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<sup>954</sup> S/RES/2071 (2012), 868.

<sup>955</sup> Ibid.

<sup>956</sup> See for example: Human Rights Watch (2012) *Mali: Security Forces ‘Disappear’ 20, Torture Others: Crackdown on People Linked to Counter-Coup, Journalists*. Available at: <http://www.hrw.org/news/2012/07/25/mali-security-forces-disappear-20-torture-others> [16 March 2013].

<sup>957</sup> Resolution 2085 (2012), 868.

<sup>958</sup> Ibid, paragraph 9 (d).

<sup>959</sup> Ibid, paragraph 17.

## Additional Cases: A Brief Survey

This section will briefly analyze how the Human Rights Council has implemented the ICC and R2P into resolutions relating to the other states in which the Council has adopted a resolution. In lieu of a close reading of the resolutions, this section will do a content analysis of key words from the annual Report of the Human Rights Council to the General Assembly.<sup>960</sup>

As is perhaps expected, there is an uneven distribution of the use of the Responsibility to Protect across cases. Some states, for example, Belarus, Eritrea, Iran, and Sri Lanka, have no mention of the “responsibility” or “protect” in their resolutions. While other states, like Israel, Burundi, Liberia, and Cambodia, for example, have general indirect references to the Responsibility to Protect of all states in their resolutions, most often, in the preamble.<sup>961</sup> Other states, have similar passages in their resolutions, the only difference is that the Council added the specific state to the statement, instead of the general, “Member States.” For example, the United Nations Human Rights Council,

Reaffirms that it is the responsibility of the Government of Myanmar to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population, as stated in the Charter, the Universal Declaration of Human Rights and other applicable human rights instruments.<sup>962</sup>

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<sup>960</sup> Key words include: “the responsibility to protect,” “responsibility,” “protect,” “protection,” “civilians,” “international criminal court,” “humanitarian,” “criminal,” and “law.”

<sup>961</sup> For example from a resolution adopted on Cambodia, “*Reaffirming* that all Member States have an obligation to promote and protect human rights and fundamental freedoms as enshrined in the Charter of the United Nations, as reaffirmed in the Universal Declaration of Human Rights, and in accordance with their respective obligations under the International Covenants on Human Rights and other applicable human rights instruments.” UN Human Rights Council (2008) *Advisory services and technical assistance for Cambodia*. 18 September 2008. A/HRC/RES/9/15.

<sup>962</sup> UN Human Rights Council (2009) *Situation of human rights in Myanmar*. 27 March 2009. A/HRC/RES/10/27.

Only in exceptionally few circumstances<sup>963</sup> does the Council's wording on adopted resolutions increase in explicitness relating to R2P and all circumstances occur after the 13<sup>th</sup> session of the Council, which is held in March 2010. One such example of increased explicitness in reference to R2P in resolutions adopted by the Council is found in the Somalia resolution of the 15<sup>th</sup> session of the Council. In the resolution, the HRC "stresses the primary responsibility of Somali authorities for the protection and promotion of human rights."<sup>964</sup> In another instance, the Council "recalled that it is the primary responsibility of Guinea to protect its civilian population and to conduct inquiries into violations of human rights and international humanitarian law, and bring perpetrators to justice."<sup>965</sup>

Syria, however, is in a case by itself. The Council's resolutions on the crisis in Syria are explicit and forceful. Beginning in Session 19 and continuing through Session 21, the Council explicitly "Demands that the Syrian authorities meet their responsibility to protect their population."<sup>966</sup> Further, the Council, "Deplores also the escalation of violence that has led to a grave and ongoing human rights crisis and increased human suffering, and the fact that the Syrian authorities have manifestly failed in their responsibility to protect the Syrian population."<sup>967</sup>

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<sup>963</sup> There are four instances. The countries are Guinea, Afghanistan, Somalia, and Syria.

<sup>964</sup> UN Human Rights Council (2010) *Assistance to Somalia in the field of human rights*. 1 October 2010. A/HRC/RES/15/28.

<sup>965</sup> UN Human Rights Council (2011) *Strengthening of technical cooperation and consultative services in Guinea*. 25 March 2011. A/HRC/RES/16/36.

<sup>966</sup> A/HRC/RES/19/22, 762, A/HRC/RES/20/22, 763, and A/HRC/RES/21/26, 764.

<sup>967</sup> Ibid.



The Council has also actively noted the role that the International Criminal Court may play in providing justice to Syrians. Resolution 19/22 states,

Acknowledges and is deeply troubled by the commission of inquiry's finding that there is a reliable body of evidence that provides reasonable grounds to believe that particular individuals, including commanding officers and officials at the highest levels of Government, bear responsibility for crimes against humanity and other gross human rights violations.<sup>968</sup>

The March 2012 resolution also notes the High Commissioner for Human Rights has “encouraged the Security Council to refer the situation in Syria to the International Criminal Court.”<sup>969</sup>

As table 5.3 above notes, Syria has heretofore not been referred to the International Criminal Court nor has it officially had the responsibility to protect invoked in the UNSC. Russia and China, after all, have consistently vetoed resolutions in the Security Council. Russia and China as well as very few allies have also voted against the four resolutions adopted by the Human Rights Council in regular session and the four outcome documents of the Special Sessions relating to Syria.

Although the Human Rights Council has actively noted that the OHCHR has asked for the situation in Syria to be referred to the Council, the HRC has not officially suggested Syria be investigated. This has some NGOs disappointed in the Council's actions regarding the conflict in Syria.<sup>970</sup>

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<sup>968</sup> Ibid.

<sup>969</sup> Ibid.

<sup>970</sup> Human Rights First (2012) *Human Rights Council Pressed to Refer Syria to ICC*. Available at: <http://www.humanrightsfirst.org/2012/09/14/human-rights-council-pressed-to-refer-syria-to-icc/> [16 March 2013].

The Council's indirect referral of Syria to the ICC should not be used as an indication that the HRC actively supports referrals to the ICC. Indeed, the Council has only mentioned the ICC in a total of three cases: Mali, Côte d'Ivoire, and Syria. In call cases, it notes that either the situation has been referred to the ICC or the OHCHR suggests the case be referred. In five cases, which have been examined by both the ICC and HRC, the Council has failed to note the ICC's role.<sup>971</sup>

The Council's response to Syria appears to be an outlier, similar to Libya, than standard practice. Nevertheless, the HRC's response to Syria is important to note. The Council has adopted four resolutions on Syria as well as four special sessions and created a Commission of Inquiry. The HRC has essentially done everything in its mandate to curb violence in the region.

## Conclusions

The Human Rights Council has adopted resolutions on 27 different states. However, of these 27 potential cases, the Council has never suggested that a state ratify the treaty to accede to the International Criminal Court, nor has the Council suggested the Court examine a situation. Of the three cases in which the Council mentions the ICC, each resolution notes that some other body, for example, the UNSC or the OHCHR have

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<sup>971</sup> The cases are: Darfur, the DRC, Kenya, Libya and Uganda

suggested a situation be referred to the Court or that the Court is currently investigating a case.

The Court has opened investigations into eight situations. Of these eight situations, the Council has heretofore failed to note this in resolutions pertaining to three cases, which include Darfur, the Democratic Republic of the Congo, and Mali. Of perhaps more significance, in three situations before the ICC, the Council has not adopted a single resolution on the state in question. This is the case for the Central African Republic, Kenya, and Uganda. The selectivity of the Court, and the Commission before it, is well known.<sup>972</sup> However, if a case is significant enough to warrant the attention of the International Criminal Court, it seems only appropriate that other bodies in the UN should also investigate the human rights violations occurring within ICC-targeted states. Since the mandate of the Council is to promote and protect human rights, a resolution by the Council seems to be an appropriate course of action.

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<sup>972</sup> Human Rights Watch (2010), 816.

<b>Country</b>	<b>Does HRC refer situation to ICC?</b>	<b>Does the HRC Mention the ICC?</b>	<b>Does the HRC Mention R2P?</b>	<b>Comparing UNSC and HRC mentions of R2P</b>
Darfur /Sudan	No	No	Indirectly	UNSC only
Côte d'Ivoire	No	No	Indirectly	UNSC only
Libya	No	Indirectly	Yes	Both (UN HRC one day prior to UNSC)
Mali	No	No	No	UNSC only
Syria	No	Yes	Yes	HRC only (UNSC resolutions are being vetoed)

Table 6.4: Summary of Main Cases

Of the 26 cases examined by the Council, the HRC has explicitly referenced the Responsibility to Protect in five cases or roughly 19% of the time. The cases are Afghanistan, Guinea, Libya, Somalia, and Syria. Unlike the ICC, the Responsibility to Protect, since it is an emerging norm and covers a wide range of issues, is appropriate to invoke in most, if not all, resolutions before the Council. Of course, this is not a politically viable strategy. After all, many states are now stepping back from the rhetoric of R2P for multiple reasons.<sup>973</sup> Nevertheless, it appears that the Council is failing to adhere to standards set by the UNSC, UNSG, and even the UNGA. The United Nations is bullish on R2P, yet the main human rights body is reluctant to apply the language of R2P.

<sup>973</sup> Badescu C.G. and Weiss T (2010), 285.

This is not to suggest that the Council is a failure. Indeed, as indicated above, in some specific situations, like Libya and Syria, the Council is quite resolute in a state's responsibility to protect its citizens. Nevertheless, these resolutions appear to be outliers.

The salience of the ICC and R2P is significantly lower in the Council compared to the UNSC. This is a problematic for the ICC and R2P but also for the HRC. The lack of attention to the ICC in the Council may have no direct effect on the Court's ability to apprehend and place perpetrators on trial in The Hague. This is a study for a different time. However, by failing to suggest states ratify the ICC or that the ICC investigate situations, the Council may be damaging the legitimacy of the ICC.

The Council's actions may have little direct effect on the implementation of R2P as well. The UNSC is the final arbiter of peace and security in the United Nations system. However, if the UNSC refers to the Responsibility to Protect, the Council should follow. The Council, after all, may adopt resolutions without fear of a veto. The Council should also help direct the UNSC's actions by being a first responder institution. In this case, the HRC should also explicitly cite that states have a responsibility to protect its citizens.<sup>974</sup>

So why does the HRC avoid referring situations to the Court or use the language of R2P directly? In essence, there are two reasons. First, global powers from both sides of the ideological divide in the HRC are generally cool to both the ICC and R2P. Thus, even if some states in Europe, for example, wanted to pass a resolution referring a situation to

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<sup>974</sup> As noted above, the HRC does do this implicitly but does so unevenly. The Council should apply this non-selectively.

the ICC, it would be difficult since the US, China, Russia, Cuba, India, and others are not signatories to the Rome Statute. The same issue is present for R2P – the states most likely to implement an intervention do not carelessly use the language of R2P. Thus, without a significant coalition of powerful states backing these norms, they are unable to gain significant momentum in the Council. The second reason is normative. Generally, the Council is non-interventionist and calls for states to be investigated by the ICC or to follow through with their responsibility to protect would most certainly fall under Agenda Item 4. Libya of course was the exception, not the rule.

The Human Rights Council should do more to promote the role of the International Criminal Court in protecting human rights and providing justice to victims of mass atrocity crimes. The Council should also do more to legitimize the Responsibility to Protect. All three are nascent human rights protection mechanisms. All three should grow together by building off the work of each other and the work of the UN system as a whole. If this does not occur, the legitimacy of the ICC, the HRC, and R2P may be damaged, at least in the eyes of the West. The UN system of human rights protections requires states to believe the system is legitimate or it falls apart. The Council need not look farther than its own past and the Commission on Human Rights to witness what may happen when a paucity of legitimacy exists.

## Chapter 7

### Regional Bloc Voting, Membership, and Rights Proliferation in Thematic Voting Outcomes

Chapter five found that neither regional bloc voting nor the relative distribution of democracies significantly impact votes on country situations in the UN Human Rights Council. This chapter will examine the role of regional blocs and membership on thematic resolutions. This chapter examines the first 21 sessions of the Council. In total, there are 343 thematic resolutions introduced during this period, a significant number more than country resolutions. This work will be divided into six sections. Section one will define thematic resolutions, describe why thematic resolutions are important to the UN human rights system, and layout further the operationalization of thematic resolutions in the dataset. Section two will describe the broad picture of thematic resolutions in the HRC by offering a comprehensive overview of uncontested resolutions in the HRC by year. Section three will look specifically at contested resolutions, section four will examine regional bloc voting, section five will examine the role that membership may have on voting outcomes, and finally, section six will offer an alternative hypothesis, conclusions, and implications. This chapter will not revisit the definition of regional bloc

voting or the perceived significant of bloc voting in the Council since this task was undertaken in the chapter five.

## What are Thematic Resolutions?

Thematic resolutions are resolutions in the UN HRC system that are not country specific.<sup>975</sup> For example, resolutions, which focus on the right to food, a clean climate, and human trafficking, are thematic resolutions. Although the division is not necessarily perfect, thematic resolutions are on the promotional side of the HRC's mandate while country resolutions cover the spectrum of protecting human rights.<sup>976</sup>

Thematic resolutions and the process behind creating, negotiating, and implementing these resolutions are important to the UN human rights system because this is, for the most part, how new human rights are created.<sup>977</sup> This process is of course not faultless and critiques abound about the nature of rights introduced in the Commission on Human Rights and now the HRC,<sup>978</sup> however, most scholars would agree that the UN's ability to introduce these resolutions has a profound impact upon the international human rights system. After all, international legal instruments, such as the core UN human rights treaties are born from the fires of the political process inside the charter bodies of the UN.

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<sup>975</sup> I exclude purely procedural resolutions from the dichotomy of country and thematic resolutions or resolutions that do not easily fit into either category, for example resolutions which focus on the OHCHR staff. UN Human Rights Council (2008) *Composition of the staff of the Office of the United Nations High Commissioner for Human Rights*. 27 March 2008. A/HRC/RES/7/2.

<sup>976</sup> This is not a perfect dichotomy. In practice, thematic resolutions are supposed to promote human rights while also protecting human rights. After all, this is one of the classic, if not the classic, purpose of human rights. Country resolutions, especially those under Agenda Item 10 also promote human rights. However, I use this differentiation because country resolutions would not exist if there were not some history of recent violations.

<sup>977</sup> See Alston P (1984), 24 and Bob C (ed) (2008) *The International Struggle for New Human Rights*, Philadelphia: University of Pennsylvania Press.

<sup>978</sup> Alston P (1984), 24. Ibid.



For the purposes of this chapter, thematic resolutions are taken from Resolution 5/1 and include Agenda Items 2, 8, 9, and especially Agenda Item 3, which covers the “promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.”<sup>979</sup>

## Operationalizing Thematic Resolutions

This chapter divides thematic resolutions into four broad categories based on the classic “generations of rights” scheme.<sup>980</sup> The first generation of rights consist of civil and political rights or rights within the International Covenant on Civil and Political Rights.<sup>981</sup> This includes rights such as the right to life,<sup>982</sup> the right to be free from torture,<sup>983</sup> slavery,<sup>984</sup> and the right to a fair and competent judicial system,<sup>985</sup> just to name a few. Second generation rights include economic, social, and cultural rights, which have been codified most extensively in the International Covenant on Economic, Social, and Cultural Rights.<sup>986</sup> Second generation rights include, for example, the right to work,<sup>987</sup> the right to “highest attainable standard of physical and mental health,”<sup>988</sup> and the right to an

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<sup>979</sup> Resolution 5/1, 4, Section B.

<sup>980</sup> Alston P and Goodman R (2012) *International Human Rights*. Oxford: Oxford University Press. Although I find the generations of human rights scheme to be unsatisfactory, I am using it for two reasons. First, this is what most people think of when they are asked about conceptualizing human rights into categories. Second, as part of a larger project, my goal here is to show that generations of rights is not an appropriate way to think about human rights anymore.

<sup>981</sup> ICCPR 17.

<sup>982</sup> Ibid, Article 6 (1).

<sup>983</sup> Ibid, Article 7.

<sup>984</sup> Ibid, Article 8 (1).

<sup>985</sup> Ibid, Article 14-17.

<sup>986</sup> ICESCR, 18.

<sup>987</sup> Ibid, Article 6.

<sup>988</sup> Ibid, Article 11.

education.<sup>989</sup> The first two generations of rights are the best known and the most codified in international human rights law and practice. The third and fourth generations of human rights are significantly trickier to pin down, define, and codify.

Third generation rights are those rights whose primary focus is “solidarity.” For example, “the right to development, the right to peace, the right to a healthy environment, the right to communicate...the right to benefit from the common heritage of mankind....”<sup>990</sup>

Because third generation rights are not widely codified in international law, they are more difficult to code. For the purposes of this chapter, third generation rights are those rights listed above and those rights, which cover self-determination prior to the creation of the UN Human Rights Council in 2006. Thus for example, if the right in question was on the international agenda prior to 2006, it may be coded as a third generation right. If it is a new right post 2006, it is coded as a fourth generation right.

So, what are fourth generation rights? In this chapter, fourth generation rights are considered those rights which have come to the Council’s attention since 2006 or in other words, new rights. In essence, the fourth generation category is here to show readers what new rights are getting the attention of the Council. Examples of fourth generation rights include, issues surrounding truth,<sup>991</sup> an equitable democratic order,<sup>992</sup> traditional

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<sup>989</sup> Ibid, Article 13.

<sup>990</sup> Alston P (1984), 24, p. 610. See also: Meron T (1986) On a Hierarchy of International Human Rights. *American Journal of International Law* (80): 1.

<sup>991</sup> UN Human Rights Council (2007) *Right to truth*. 9 January 2007. A/HRC/DEC/2/105.

<sup>992</sup> UN Human Rights Council (2008) *Promotion of a democratic and equitable international order*. 18 June 2008. A/HRC/RES/8/5.

values,<sup>993</sup> and sexual orientation and gender identity.<sup>994</sup> As we shall see further in the chapter, in many cases, it is debatable whether some of these rights (along with third generation rights) are actually human rights at all.

## An Overview of Thematic Resolutions

The following section will present a comprehensive overview of thematic resolutions in the HRC from 2006-2012. The data will be presented in three ways. Section I will look at thematic resolutions by generation over time. Section two will compare generations of rights by region. The final section will look at generations of rights by region over time. This major section as well as the third major section will consist of a large amount of descriptive data. However, this is important because it will give readers a sense as to what is happening in the UN HRC as it relates to all thematic resolutions.

## Thematic Resolutions over Time

With the exclusion of election cycle one, which covers five sessions and election cycle six, which covers four sessions, the total number and types of resolutions the Council adopts remains more or less consistent across time. It is important to remember that the total number of resolutions introduced in the first five sessions of the Council is so low because the focus of the Council during this period is on institution building.

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<sup>993</sup> UN Human Rights Council (2009) *Promoting human rights and fundamental freedom through a better understanding of traditional values of humankind*. 2 October 2009. A/HRC/RES/12/21.

<sup>994</sup> UN Human Rights Council (2011) *Human rights, sexual orientation and gender identity*. 17 June 2011. A/HRC/RES/17/19.

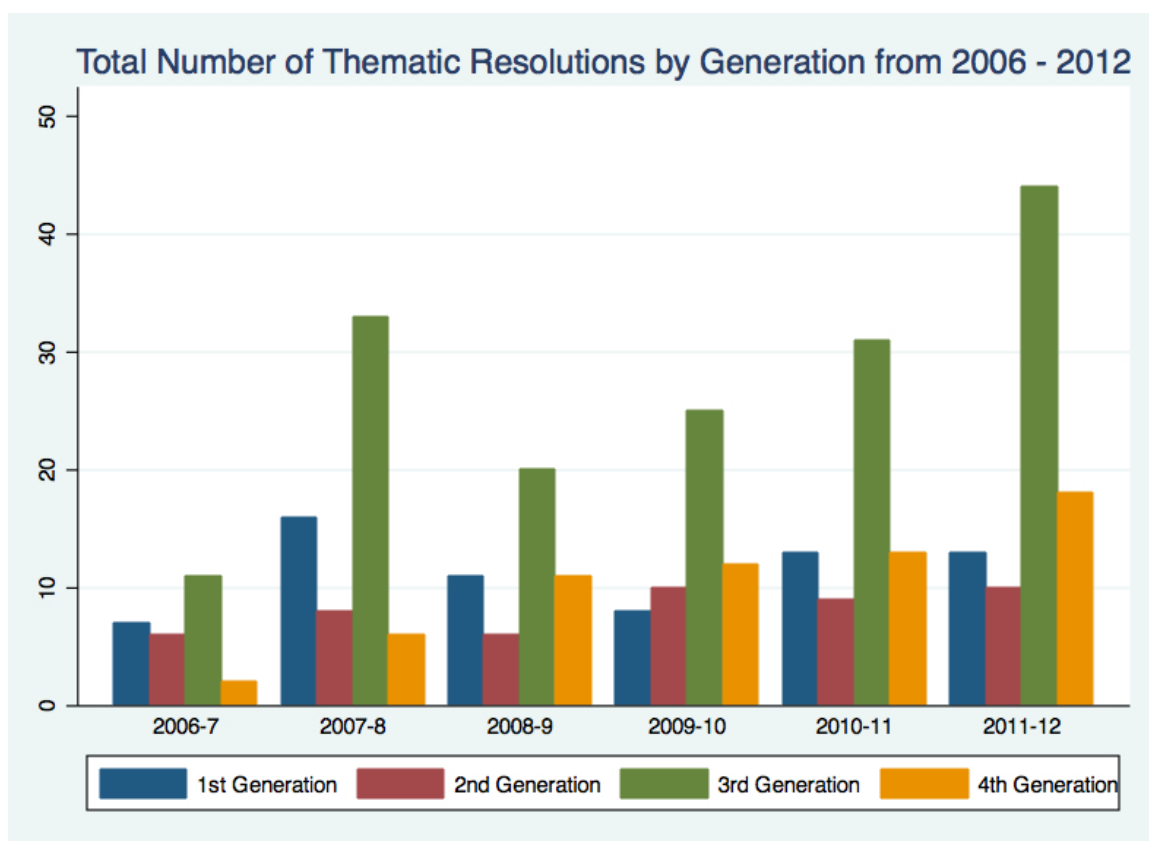


Figure 7.1: Total Number of Thematic Resolutions by Generation from 2006 – 2012

As figure 7.1 above indicates there is a remarkable consistency of Council outcomes measured in thematic votes. This finding is significant, especially when compared to the shift in country outcomes, which occurred beginning in 2009. At least *prima facie*, this means that the potential explanations for the Council's behavior as it relates to country resolutions cannot explain thematic resolutions. It also indicates that the shift from the Commission to the Council may have had little impact on fixing many of the Commissions perceived deficiencies.<sup>995</sup>

<sup>995</sup> For an overview of Commission deficiencies, please see chapter four.

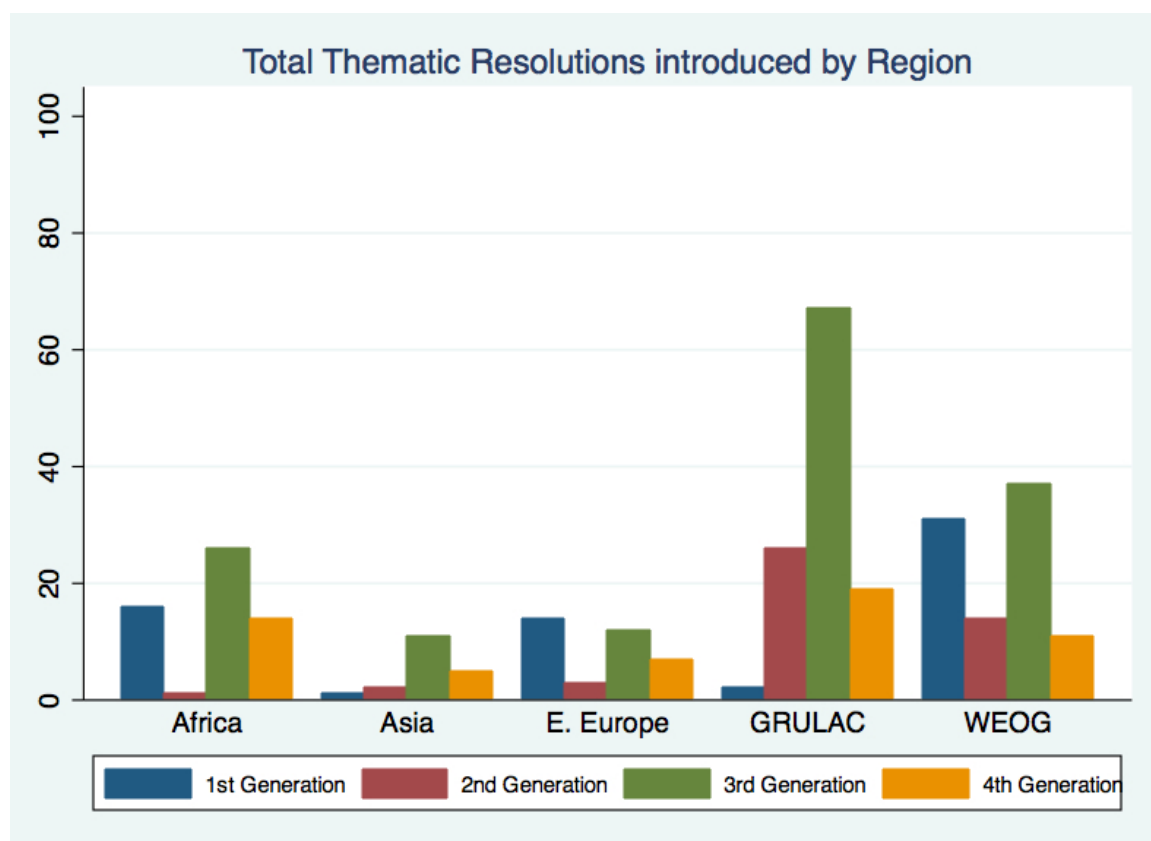


Figure 7.2: Total Thematic Resolutions introduced by Region

Even though there are a substantial number of thematic resolutions being introduced in the Council, not all regions participate in the Council equally (figure 7.2). This should come as no surprise to followers of the UN.<sup>996</sup> However, despite varying levels of participation in the Council, when regions do participate, there are generally easily observable patterns.

African states on average pass resolutions that immediately affect states within their sphere of influence. The vast majority of resolutions introduced by the region deal with

<sup>996</sup> There are significant discrepancies in the amount of resources available across regions and because some regions are generally more hostile to the UN than others.

the many problems of racism<sup>997</sup> and racial discrimination,<sup>998</sup> including resolutions, which focus on the Durban Review Conference.<sup>999</sup> The other set of resolutions introduced by Africa are generally introduced by Egypt in lieu of Cuba. For instance, at times, Egypt introduces resolutions on coercive measures<sup>1000</sup> and development.<sup>1001</sup> Increasingly, however, Africa is passing environmentally oriented resolutions such as the resolution the role of toxic waste and the environment.<sup>1002</sup> In total, Africa introduced 57 thematic resolutions from 2006-2012.

The total amount of thematic resolutions introduced by African states over time is listed in Figure 7.3. Africa, as a group, becomes more active beginning in 2008-2009. This is explained best by the general shift in focus of the Council from institution building to substantive human rights since the most active members in Africa, like South Africa and Egypt are members of the Council both prior to and after 2008-2009.

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<sup>997</sup> UN Human Rights Council (2007) Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the effective implementation of the Durban Declaration and Programme of Action. 23 April 2007. A/HRC/DEC/3/103.

<sup>998</sup> UN Human Rights Council (2007) *Elaboration of international complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination*. 28 September 2007. A/HRC/RES/6/21.

<sup>999</sup> UN Human Rights Council (2006) *Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action*. 13 November 2006. A/HRC/RES/1/5.

<sup>1000</sup> For example, UN Human Rights Council (2010) *Human rights and unilateral coercive measures*. 1 October 2010. A/HRC/RES/15/24.

<sup>1001</sup> For example, UN Human Rights Council (2010) *The right to development*. 1 October 2010. A/HRC/RES/15/25.

<sup>1002</sup> UN Human Rights Council (2008) *Mandate of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*. 9 September 2008. A/HRC/RES/9/1.

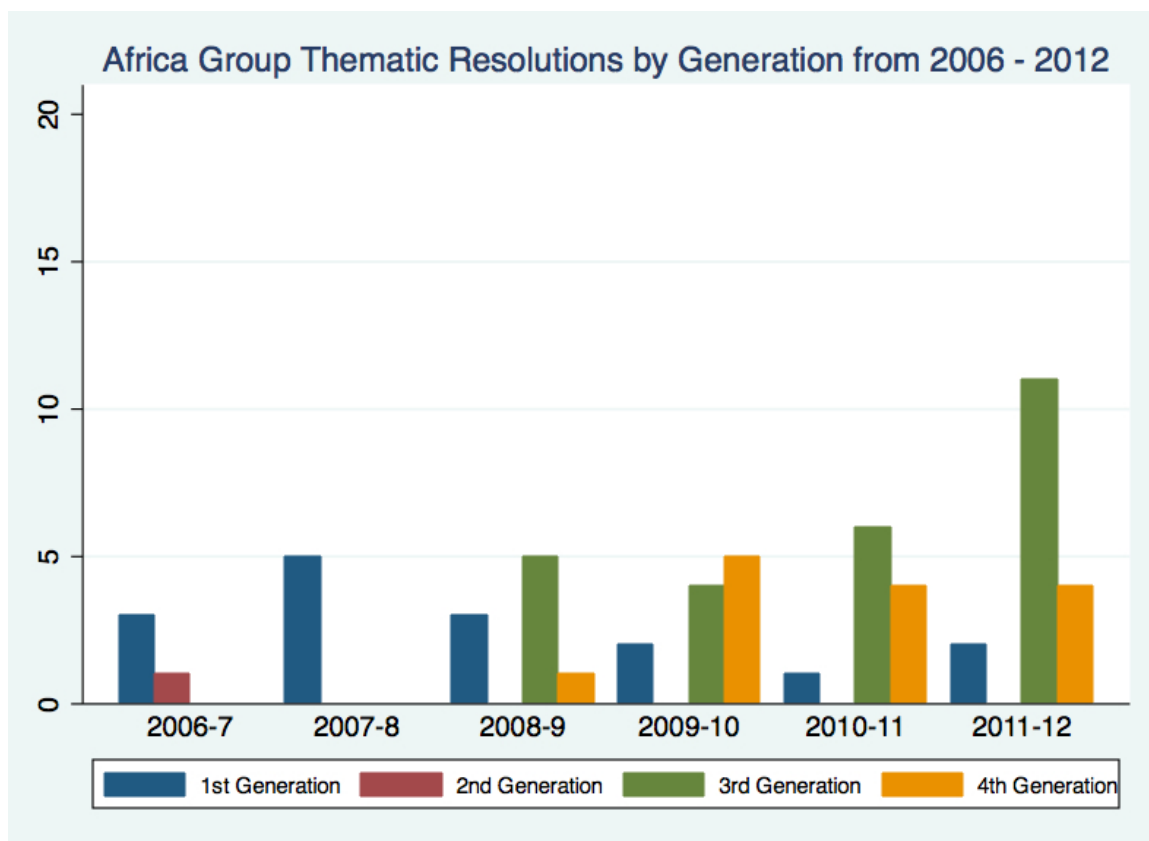


Figure 7.3: Africa Group Thematic Resolutions by Generation from 2006 - 2012

The Asia group is the least involved of all regions. Resolutions introduced by the Asia group are more often than not, part of one of three countries' initiatives. Japan has been working on a resolution to protect people with leprosy from discrimination,<sup>1003</sup> Pakistan, at least until 2010, pressed for a contentious resolution on the "defamation of religion,"<sup>1004</sup> and more recently, the Maldives is introducing resolutions on climate

<sup>1003</sup> UN Human Rights Council (2008) *Elimination of discrimination against persons affected by leprosy and their family members*. 18 June 2008. A/HRC/RES/8/13.

<sup>1004</sup> UN Human Rights Council (2007) *Combating defamation of religions*. 30 April 2007. A/HRC/RES/4/9 and Evans R (2011) Islamic bloc drops 12-year U.N. drive to ban defamation of religion. *Reuters Blogs - FaithWorld*. Available at: <http://blogs.reuters.com/faithworld/2011/03/24/islamic-bloc-drops-12-year-u-n-drive-to-ban-defamation-of-religion/> [21 June 2013].

change.<sup>1005</sup> China has heretofore, only introduced one resolution in the UN HRC on thematic issues.<sup>1006</sup>

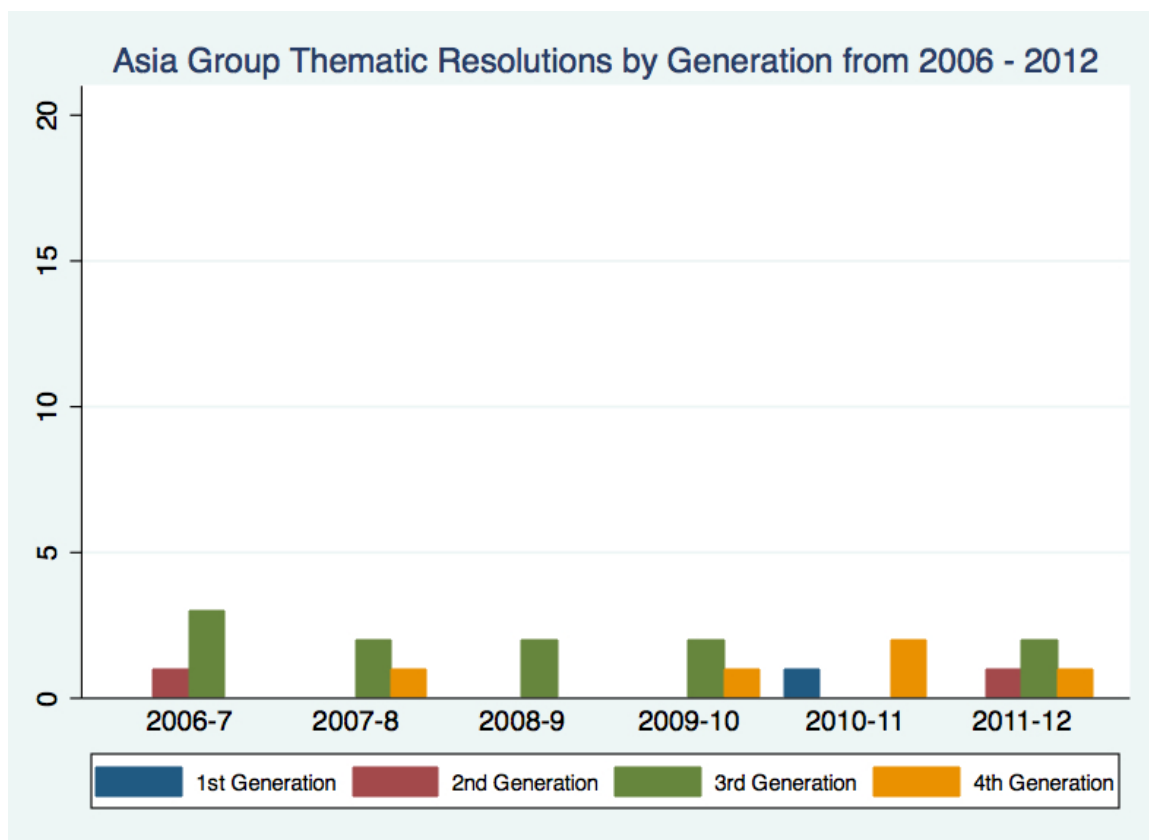


Figure 7.4: Asia Group Thematic Resolutions by Generation from 2006 – 2012

Resolutions introduced by Asian states over time remain more or less consistent (Figure 7.4). This is not surprising given the general disinterest of the Asia Group in the Human Rights Council. From 2006-2012, the Asia group introduces only 19 thematic resolutions.

<sup>1005</sup> UN Human Rights Council (2008) *Human rights and climate change*. 28 March 2008. A/HRC/RES/7/23.

<sup>1006</sup> UN Human Rights Council (2007) *Globalization and its impact on the full enjoyment of all human rights*. 30 April 2007. A/HRC/RES/4/5.



Eastern Europe is the most divided region.<sup>1007</sup> On the one hand, Russia and at times, former satellite states like Azerbaijan,<sup>1008</sup> introduce resolutions on the protection of cultural rights,<sup>1009</sup> nationality,<sup>1010</sup> and the increasingly controversial traditional values.<sup>1011</sup> While on the other hand, the Eastern European states, who are more ideologically and geographically closer to the European Union, pass resolutions that are more aligned with civil and political rights. For example, resolutions on the role of good governance and human rights,<sup>1012</sup> the role of an independent judiciary on human rights,<sup>1013</sup> and an expansion of children's rights via an optional protocol for the Childs' Rights Convention.<sup>1014</sup>

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<sup>1007</sup> This issue will be covered more in section 5, on regional bloc voting.

<sup>1008</sup> Though Azerbaijan also introduces its own resolutions on missing persons. UN Human Rights Council (2008) *Missing persons*. 28 March 2008. A/HRC/RES/7/28.

<sup>1009</sup> UN Human Rights Council (2007) *Protection of cultural rights and property in situations of armed conflict*. 27 September 2007. A/HRC/RES/6/1.

<sup>1010</sup> UN Human Rights Council (2007) *Human rights and arbitrary deprivation of nationality*. 9 January 2007. A/HRC/DEC/2/111.

<sup>1011</sup> UN Human Rights Council (2009) *Promoting human rights and fundamental freedom through a better understanding of traditional values of humankind*. 2 October 2009. A/HRC/RES/12/21 and International Service for Human Rights (2012) Council Adopts Resolution on Traditional Values without Considering Expert Input. Available at: <http://www.ishr.ch/council/376-council/1365-council-adopts-resolution-on-traditional-values-without-considering-expert-input> [21 June 2013] as well as ARC International (2012) *Traditional Values: Fact Sheet*. Available at: <http://arc-international.net/global-advocacy/human-rights-council/hrc12/tv-fact-sheet> [21 June 2013].

<sup>1012</sup> UN Human Rights Council (2008) *The role of good governance in the promotion and protection of human rights*. 27 March 2008. A/HRC/RES/7/11.

<sup>1013</sup> UN Human Rights Council (2009) *Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers*. 1 October 2009. A/HRC/RES/12/3.

<sup>1014</sup> UN Human Rights Council (2009) *Implementation of the Convention on the Rights of the Child and the Optional Protocols thereto*. 26 March 2009. A/HRC/RES/10/14.

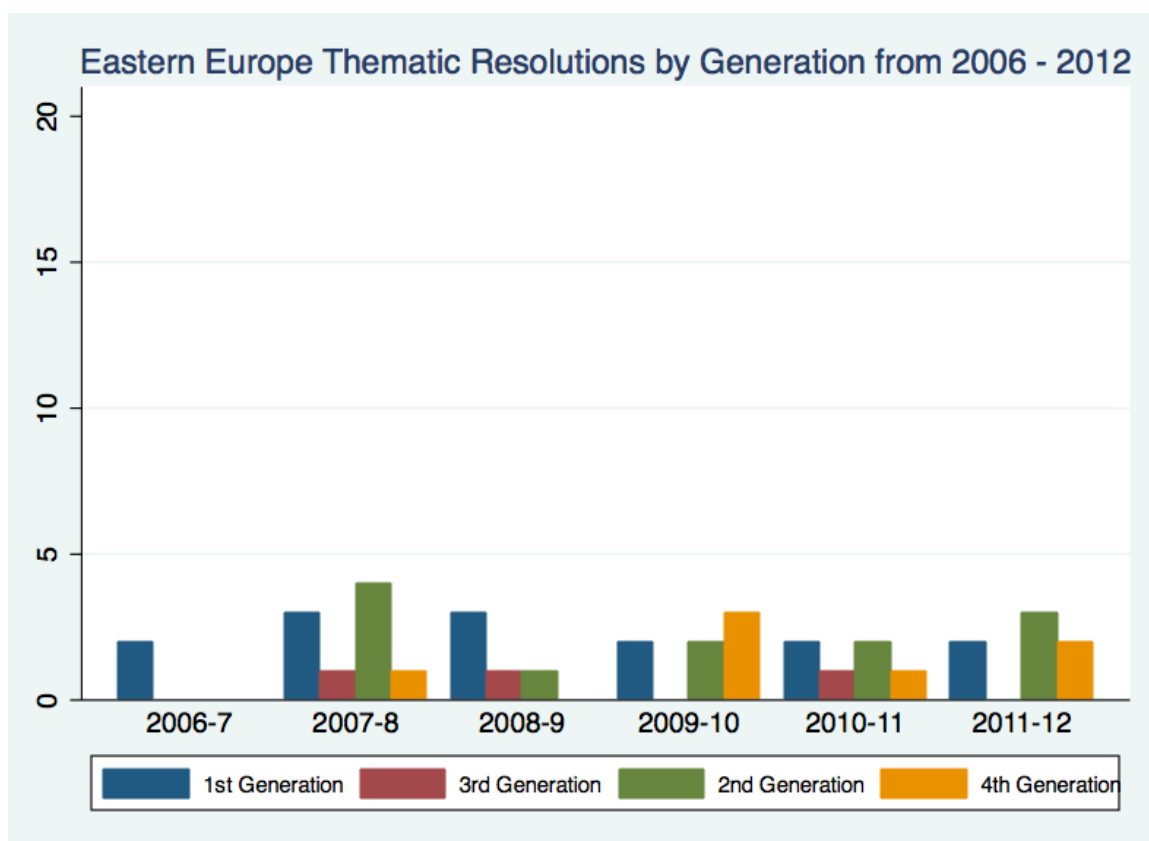


Figure 7.5: Eastern Europe Thematic Resolutions by Generation from 2006 – 2012

As with Africa and Asia, the Eastern Europe group shows little variation as a group from 2006-2012 (Figure 7.5). The variance in resolution type is minimal. This is because the most active European Union-leaning states pass similar resolutions while Russia and its former satellites also pass similar resolutions.

The Latin American and Caribbean Group is dominated by Cuba; the country has through 2012, introduced 46% of all resolutions by GRULAC. Cuba's policy of introducing thematic resolutions is interesting and a point of serious contention. Cuba's resolutions, many of which will be discussed further under contested resolutions, are on the periphery of "human rights" broadly defined. This has lead many Western states to claim that

Cuba's actions in the HRC are meant to undermine the institution by depleting of needed resources.<sup>1015</sup> On the other hand, there could be many other reasons for Cuba's strategy in the HRC. For example, Cuba's audience may be more domestic than international.<sup>1016</sup> Or alternatively, perhaps Cuba is a legitimate norm entrepreneur and these resolutions are what it believes should be human rights. Nevertheless, Cuba introduces doves of fourth generation resolutions into the Council.

Brazil, Mexico, and Argentina are also very active members of the Council. Brazil has introduced 20 resolutions while Mexico has introduced 19 and Argentina has introduced 10 resolutions. The majority of Brazil's resolutions focus on health, including the access to medications and HIV.<sup>1017</sup> Mexico's resolutions focus predominately on issues surrounding migrants.<sup>1018</sup> However, Mexico has also pressed for resolutions focusing on human rights and counter-terrorism.<sup>1019</sup> Argentina, for the most part, has introduced resolutions on the right to "truth"<sup>1020</sup> and enforced disappearances,<sup>1021</sup> both of which deal with Argentina's recent past. GRULAC is a split region when it comes introducing resolutions in the UN HRC. On the one hand, Cuba is introducing resolutions which are on the periphery of human rights while on the other hand, many of the other states of

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<sup>1015</sup> Interview with WEOG4, WEOG6, and NGO5. However, consensus does not exist on the issue, especially if one asks states and NGOs outside of WEOG. For example two diplomats from a GRULAC state said that they "doubt Cuba's moves are a plot to take resources." Interviews with GRULAC2, GRULAC3.

<sup>1016</sup> See for example: Tomz M (2007) Domestic Audience Costs in International Relations: An Experimental Approach. *International Organization* 61(04): 821.

<sup>1017</sup> UN Human Rights Council (2009) *The protection of human rights in the context of immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)*. 2 October 2009. A/HRC/RES/12/27.

<sup>1018</sup> UN Human Rights Council (2008) *Human rights of Migrants: Mandate of the Special Rapporteur on the Human Rights of Migrants*. 18 June 2008. A/HRC/RES/8/10.

<sup>1019</sup> UN Human Rights Council (2007) *Persons deprived of liberty in the contest of counter-terrorism measures*. 9 January 2007. A/HRC/DEC/2/112.

<sup>1020</sup> A/HRC/DEC/2/105, 991.

<sup>1021</sup> UN Human Rights Council (2011). *Enforced and involuntary disappearances*. 24 March 2011. A/HRC/RES/16/16.

GRULAC, including Brazil, Mexico, Argentina, and even Costa Rica, are introducing more “typical” human rights resolutions.

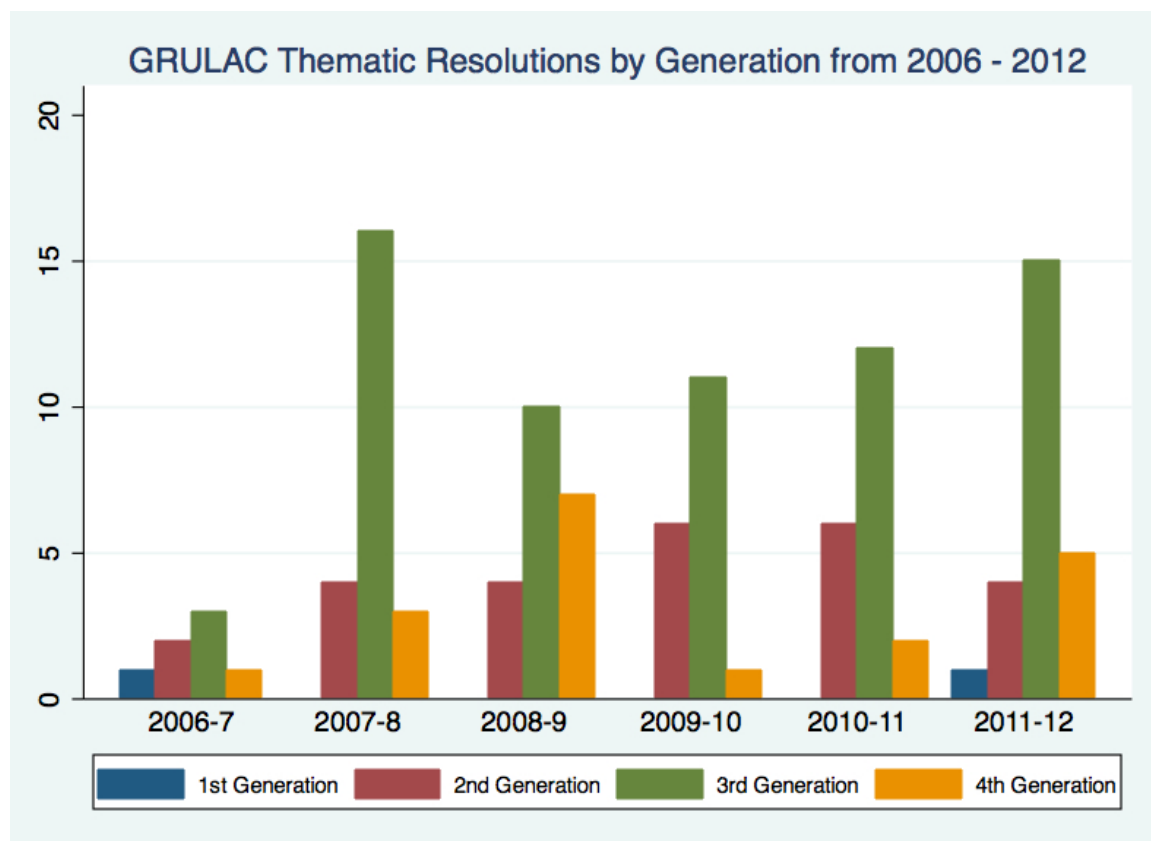


Figure 7.6: GRULAC Thematic Resolutions by Generation from 2006 – 2012

GRULAC, despite introducing the most resolutions in the Council also sees little variation over time (Figure 7.6). The only apparent significant difference is in 2009-2010, where there is a significant decrease in fourth generation rights and a slight increase in second-generation rights. However, this occurs mostly because Cuba is less active and Brazil is more active during this time frame. Membership, at least with key players, remains constant.

The Western and Others Group is the most balanced of the regions, despite the historical notion that the Western states oppose rights that are not either easily codified or of the civil and political variety.<sup>1022</sup> France, Germany, Spain, Austria, and Portugal have all introduced over 10 resolutions each. Canada and Switzerland are also very active. In addition to these states, many WEOG members, including the UK and US have introduced a few resolutions but less than five total through 2012.

The focus of France at the Council has been three-fold with resolutions being introduced on extreme poverty,<sup>1023</sup> arbitrary detention,<sup>1024</sup> and enforced disappearances.<sup>1025</sup>

Germany, more than any other WEOG state has attempted to introduce resolutions with multiple partners. For example, the two most introduced resolutions by Germany are with Spain on the right to water<sup>1026</sup> and the Philippines on human trafficking.<sup>1027</sup> Austria's primary interest at the Council has been on the rights of minorities<sup>1028</sup> and the rights of internally displaced persons<sup>1029</sup> while Portugal is introducing resolutions on education<sup>1030</sup> and economic, social, and cultural rights.<sup>1031</sup> The WEOG group, unlike the rest of the regions, except for perhaps Cuba, has for the most part, introduced resolutions, which do

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<sup>1022</sup> Donnelly J (2002), 47.

<sup>1023</sup> UN Human Rights Council (2007) *Human rights and extreme poverty*. 9 January 2007. A/HRC/RES/2/2.

<sup>1024</sup> UN Human Rights Council (2007) *Arbitrary detention*. 28 September 2007. A/HRC/RES/6/4.

<sup>1025</sup> UN Human Rights Council (2006) *International Convention for the Protection of All Persons from Enforced Disappearance*. 13 November 2006. A/HRC/RES/1/1.

<sup>1026</sup> UN Human Rights Council (2007) *Human rights and access to water*. 9 January 2007. A/HRC/DEC/2/104.

<sup>1027</sup> UN Human Rights Council (2008) *Special Rapporteur on trafficking in persons, especially women and children*. 18 June 2008. A/HRC/RES/8/12.

<sup>1028</sup> UN Human Rights Council (2010) *Rights of persons belonging to a national or ethnic, religious, and linguistic minorities*. 25 March 2010. A/HRC/RES/13/12.

<sup>1029</sup> UN Human Rights Council (2007) *Mandate of the Representative of the Secretary-General on the human rights of internally displaced persons*. 14 December 2007. A/HRC/RES/6/32.

<sup>1030</sup> UN Human Rights Council (2008) *The right to education*. 18 June 2008. A/HRC/RES/8/4.

<sup>1031</sup> UN Human Rights Council (2007) *Question of the realization in all countries of economic, social, and cultural rights*. 30 April 2007. A/HRC/RES/4/1.

not predominantly directly affect their own citizens. This of course is not surprising since, for the most part WEOG states have significant human rights protections. Although certainly many human rights advocates are disappointed with the absence of state-centric resolutions by WEOG members.

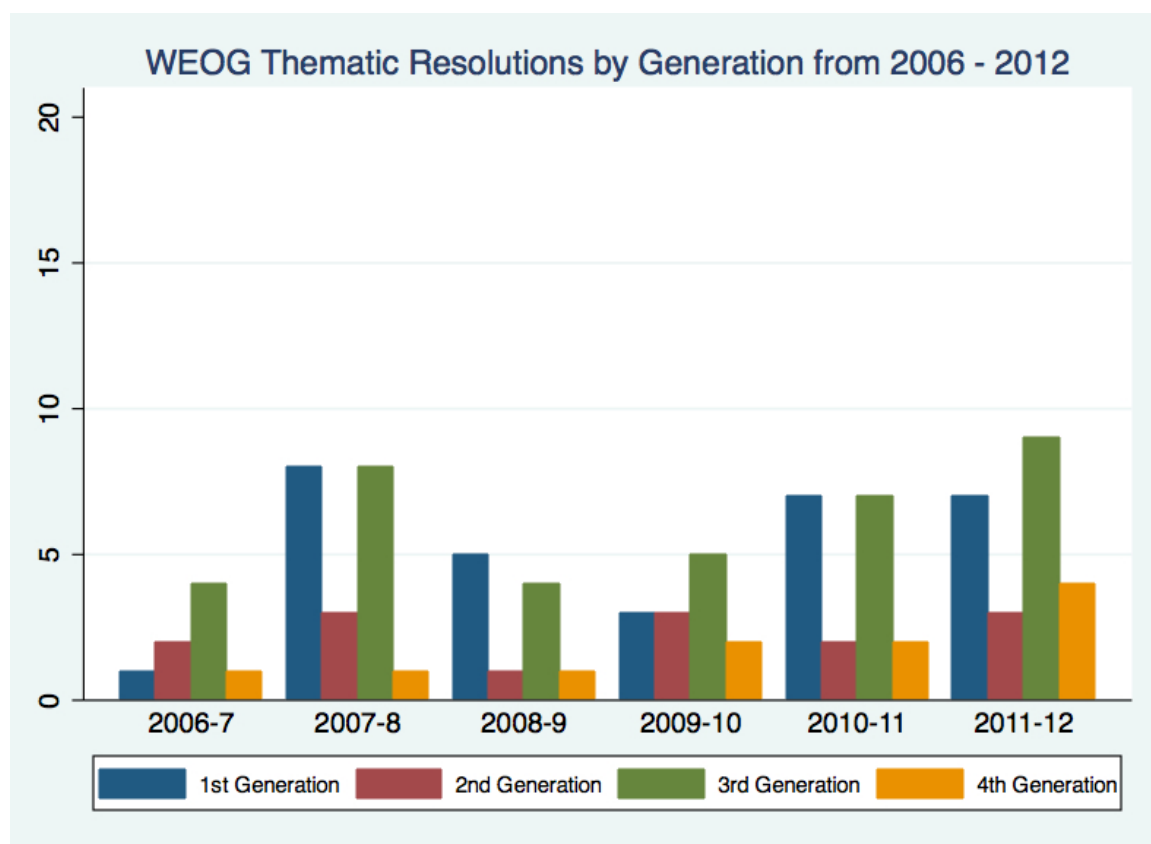


Figure 7.7: WEOG Thematic Resolutions by Generation from 2006-2012

The most significant change in the WEOG group can best be explained by the presence of particular states on the Council, particularly during 2008-2009. The third election cycle consisted of the normal “heavy hitters,” Canada, France, Germany and Switzerland but also consisted of states who have barely passed any resolutions, for example, Italy,

the Netherlands, and the United Kingdom.<sup>1032</sup> With the exception of a dip from 2008 until 2010, the WEOG group remains consistent. Perhaps what is most surprising is the number of second, third and at times, fourth generation rights the WEOG group is introducing. This of course runs counter to the idea that Western states are interested in solely passing first generation rights.

## Preferred Resolutions?

Another way to think about thematic resolutions is to examine the total number of resolutions introduced by each region as Figure 7.8 does below.

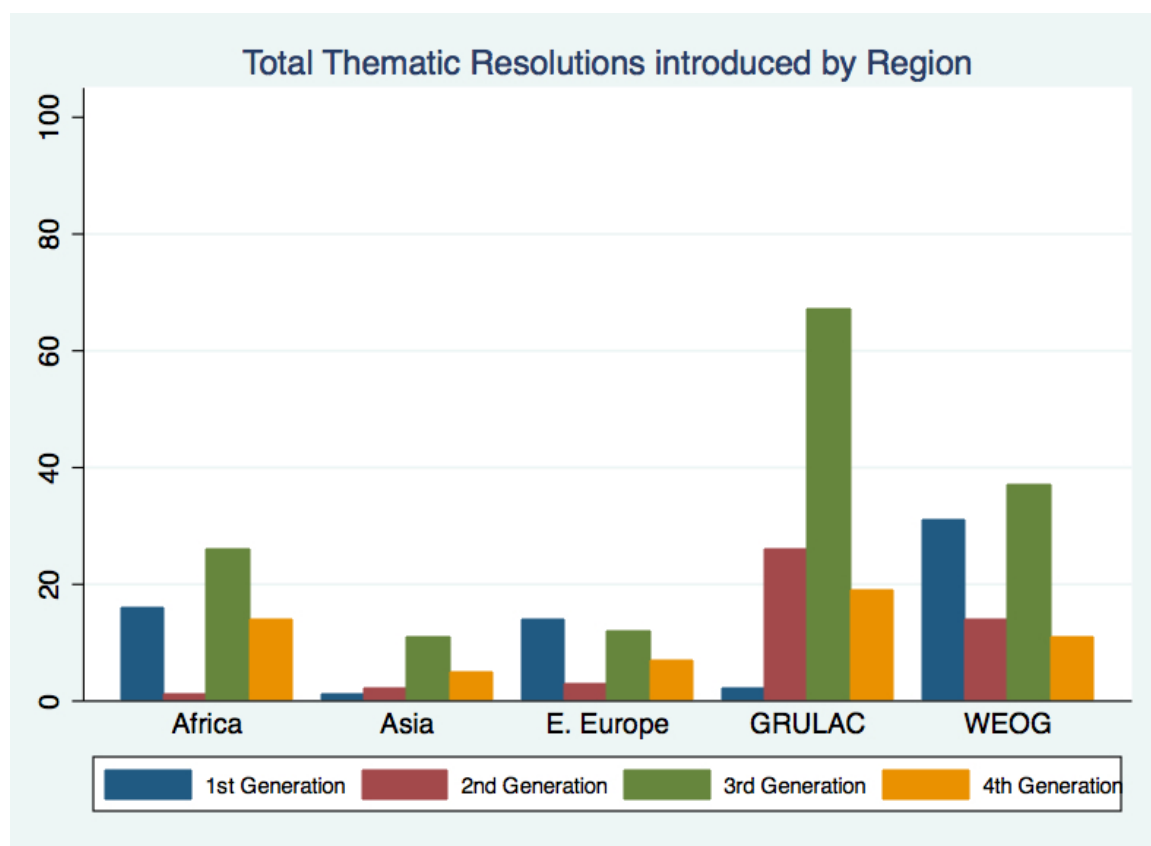


Figure 7.8: Total Thematic Resolutions introduced by Region

<sup>1032</sup> Office of the High Commissioner for Human Rights (2013) *Membership of the Human Rights Council 19 June 2008 – 18 June 2009*. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Group20082009.aspx> [21 June 2013].

Here, it appears that both Africa and Asia are “punching below their weight.” What this means is that given the total number of members per region (13) compared to all other regions, both groups are producing significantly fewer resolutions than their counterparts. On the other hand, it appears that Eastern Europe and WEOG, which only have six and seven members respectively, are “punching” right at their weight class. GRULAC, in juxtaposition, has introduced a large number of resolutions compared to its member size (8).

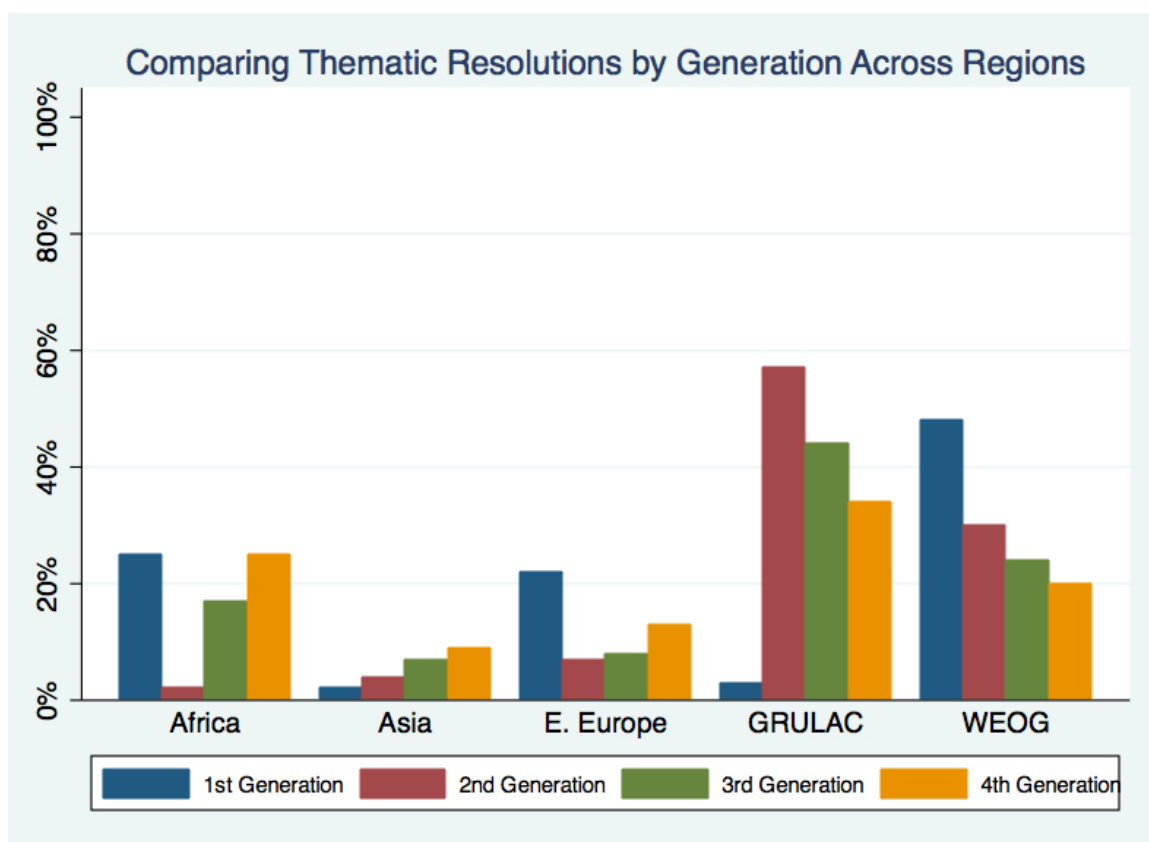


Figure 7.9: Comparing Thematic Resolutions by Generation across Regions



However, if one looks at participation differently, it appears that Africa, Asia, and Eastern Europe are all introducing a significant number of resolutions. Figure 7.9 above shows the total number of resolution type introduced by region across all thematic resolutions. What this means, for example, is that Africa, as a group, introduced 25% of all first generation resolutions and nearly 20% of all third and fourth generation rights. Asia introduces just over 20% of all third generation rights while Eastern Europe also contributes just over 20% of all first generation rights. Perhaps what is most interesting about Figure 7.9 is that GRULAC and WEOG, despite being in disagreement on many resolutions (something which will be discussed in the next section), introduce a combined 86.6% of all second-generation rights. In addition, WEOG introduces a significant number of all third generation rights. In essence, Figure 7.9 illustrates that the types of rights regions prefer to focus on is changing from historical notions.

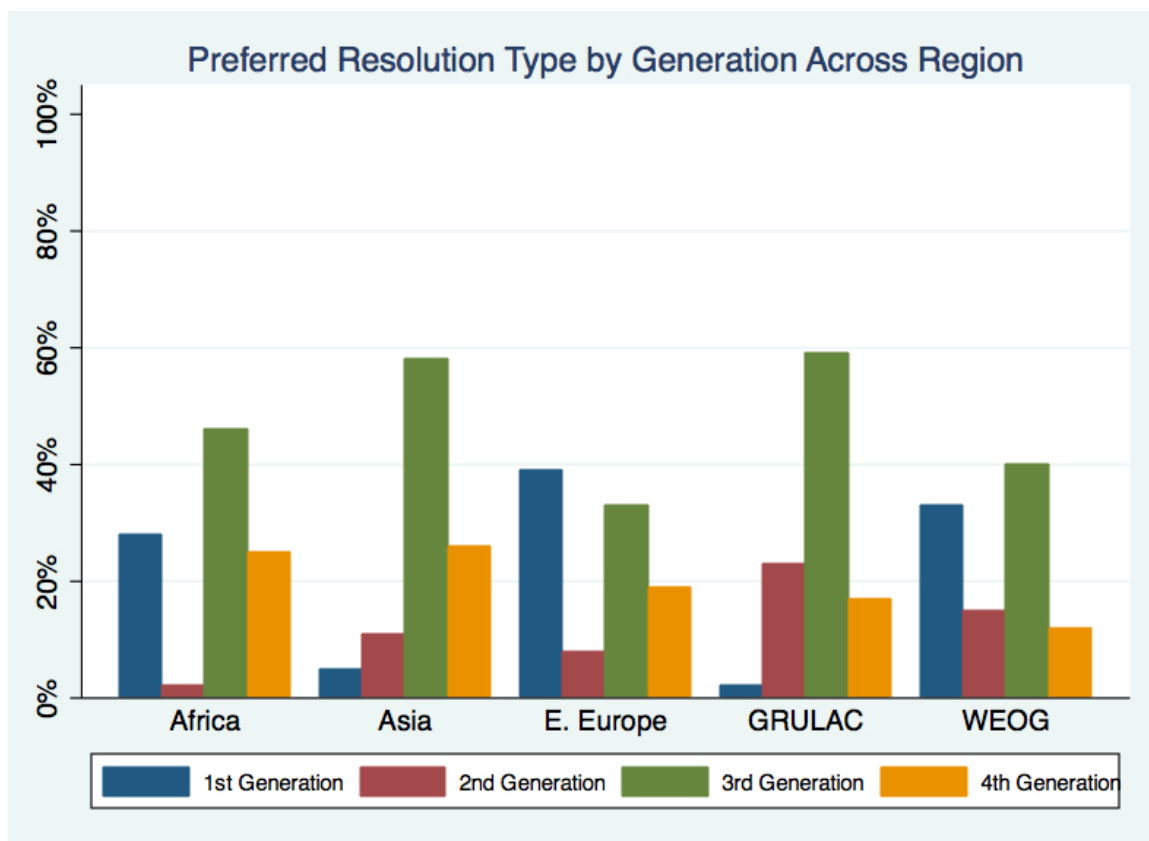


Figure 7.10: Preferred Resolution Type by Generation Across Region

Figure 7.10 above shows yet another way to examine how states are introducing resolutions in the Council. This figure looks at how each generation of rights compares to the other generations within regions. What it shows is that all regions are quite diverse. This is again a finding that goes against the common assumption that regions have narrowly focused rights.

## Unique Resolutions

Although there are 343 total observations, most resolutions account for multiple observations. The actual total for unique observations is much less but still quite large;

from 2006-2012, an estimated 72 unique resolutions have been introduced in the UN Human Rights Council.<sup>1033</sup>

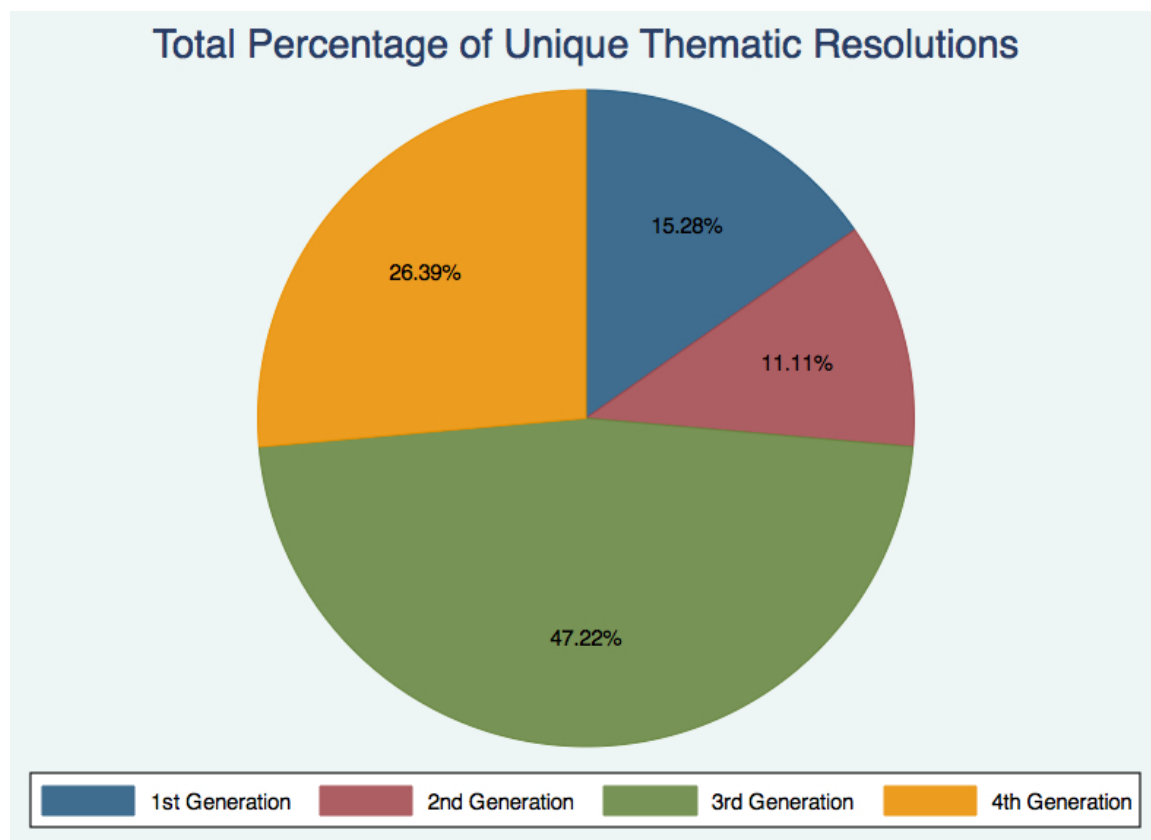


Figure 7.11: Total Percentage of Unique Thematic Resolutions

As Figure 7.11 illustrates, a substantial number of unique resolutions are third and fourth generation rights. This indicates that the UN Human Rights Council as a whole is shifting its focus away from traditional rights and toward newer rights.

<sup>1033</sup> Please see the thematic voting dataset in the appendix for a list of unique resolutions.

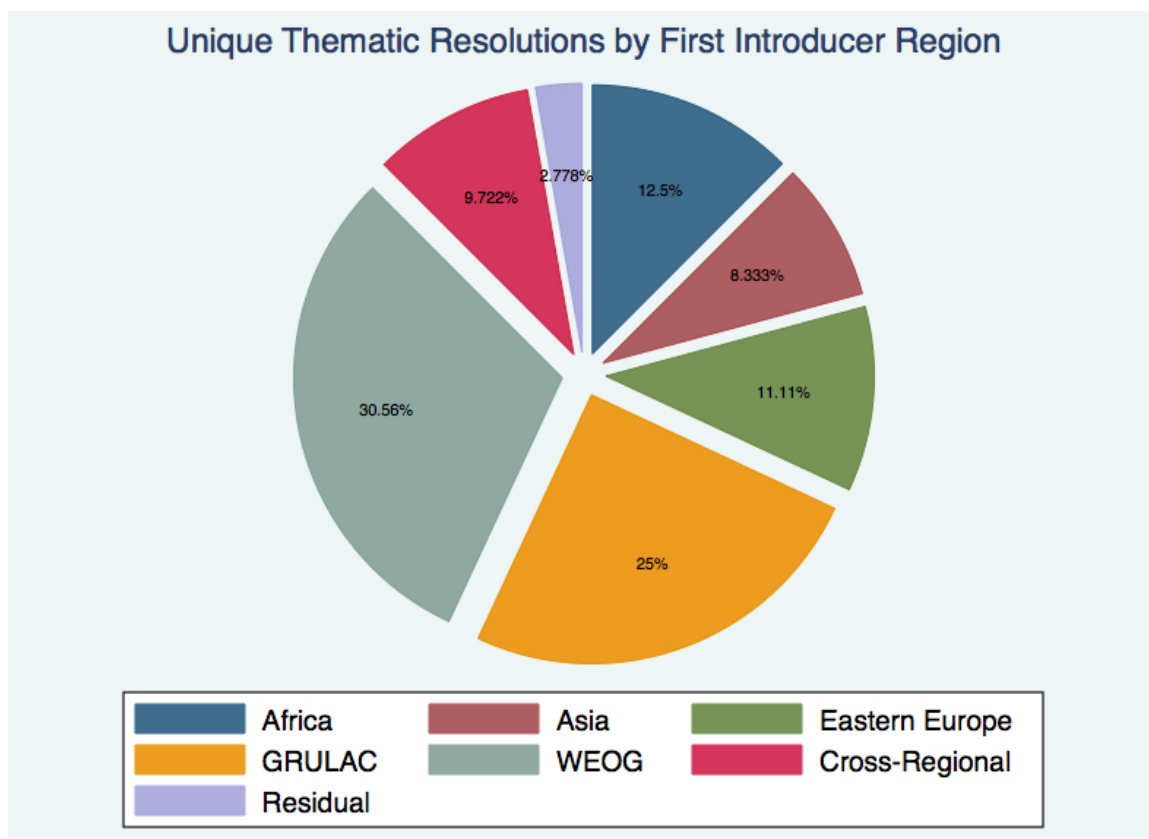


Figure 7.12: Unique Thematic Resolutions by First Introducer Region

It is unsurprising that WEOG and GRULAC lead all regions in introducing unique rights, after all, together, the regions combine for a total of 207 resolutions of a possible 343. However, arguably what is surprising is that WEOG has introduced 22 unique resolutions compared to GRULAC's 18. This is surprising since, as noted in several places above, and as will be noted in the next section, GRULAC is known for introducing multiple types of rights, whereas, WEOG is generally conservative.

A holistic look at all thematic resolutions adopted by the UN human Rights Council suggests *prima facie* that the transition from the Commission to the Council has little real impact on outcomes. The Council, like the Commission before it, is still dominated by

GRULAC and WEOG. Thus far, there is little the Council can do to control either the quality or quantity of resolutions.

The next section will examine the issue further by looking at contested resolutions over time to see which types of resolutions are being contested and which states are contesters.

## Contested Resolutions

The number of contested resolutions on thematic issues is comparable to country situations. As Figure 7.13 demonstrates, the vast majority of thematic resolutions are adopted without a vote. Of the 343 thematic resolutions introduced in the Council, only 70 or 20% are contested.

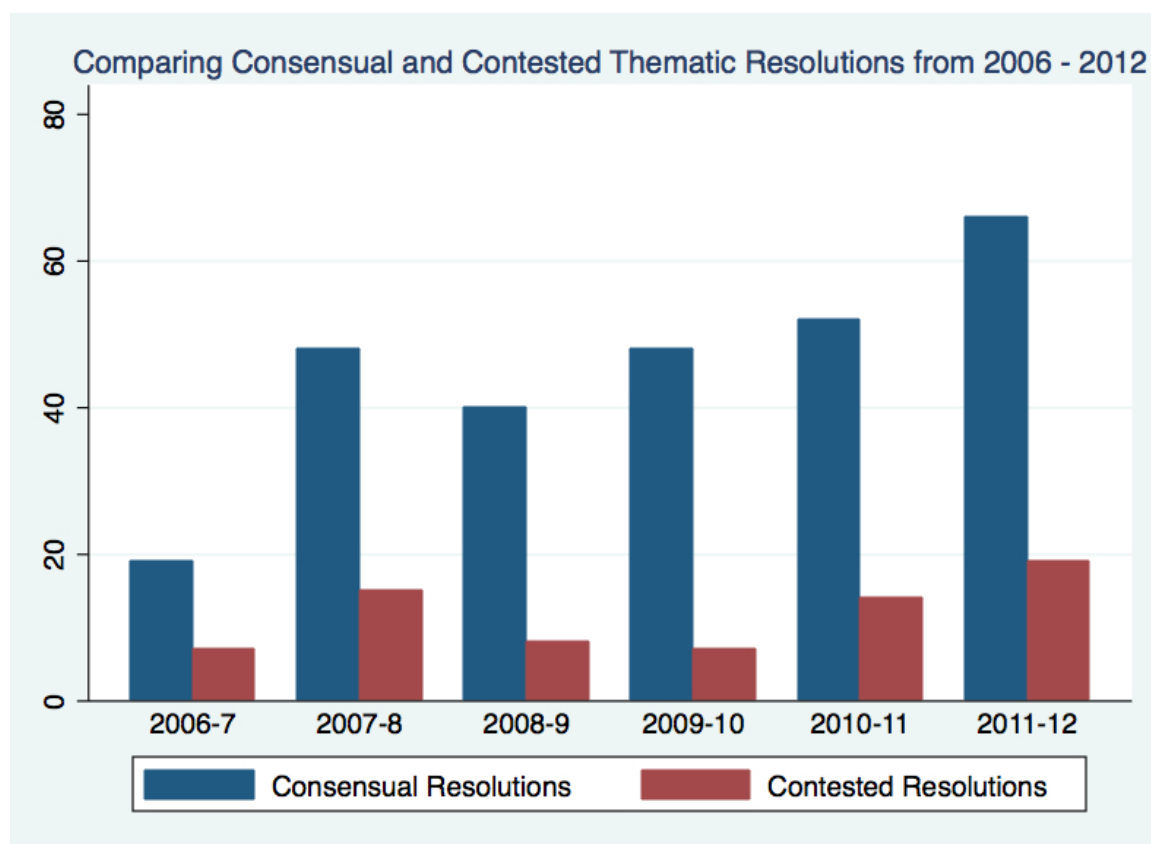


Figure 7.13 Comparing Consensual and Contested Thematic Resolutions

GRULAC and Africa account for nearly 80% of all contested resolutions introduced into the Council (Figure 7.14) while Western states average only 3% of contested resolutions. These figures give credibility to the argument by diplomats that WEOG normally introduces resolutions only once consensus has been made behind the scenes.<sup>1034</sup>

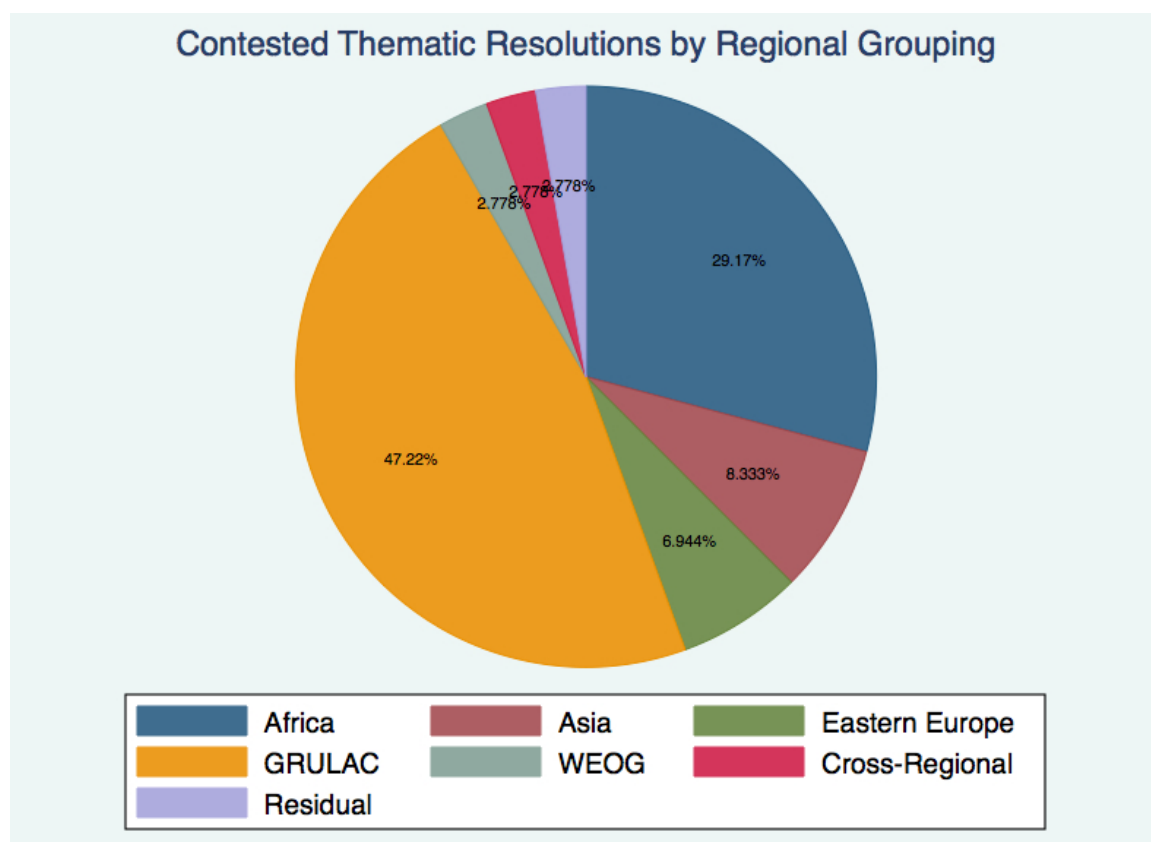


Figure 7.14: Contested Thematic Resolutions by Regional Grouping

As figure 7.15 shows below, nearly 75% of all contested thematic resolutions are introduced by three states; 47% of all Cuban resolutions are contested while 20% of all

<sup>1034</sup> For example, during an interview with NGO, they argued that the reason the EU is unable to play a leadership role on the Council is their desire to achieve consensus. Interview with NGO7.

Egyptian resolutions and 6% of all Pakistani resolutions are contested. This of course, is not surprising, given the types of resolutions these three countries are introducing.

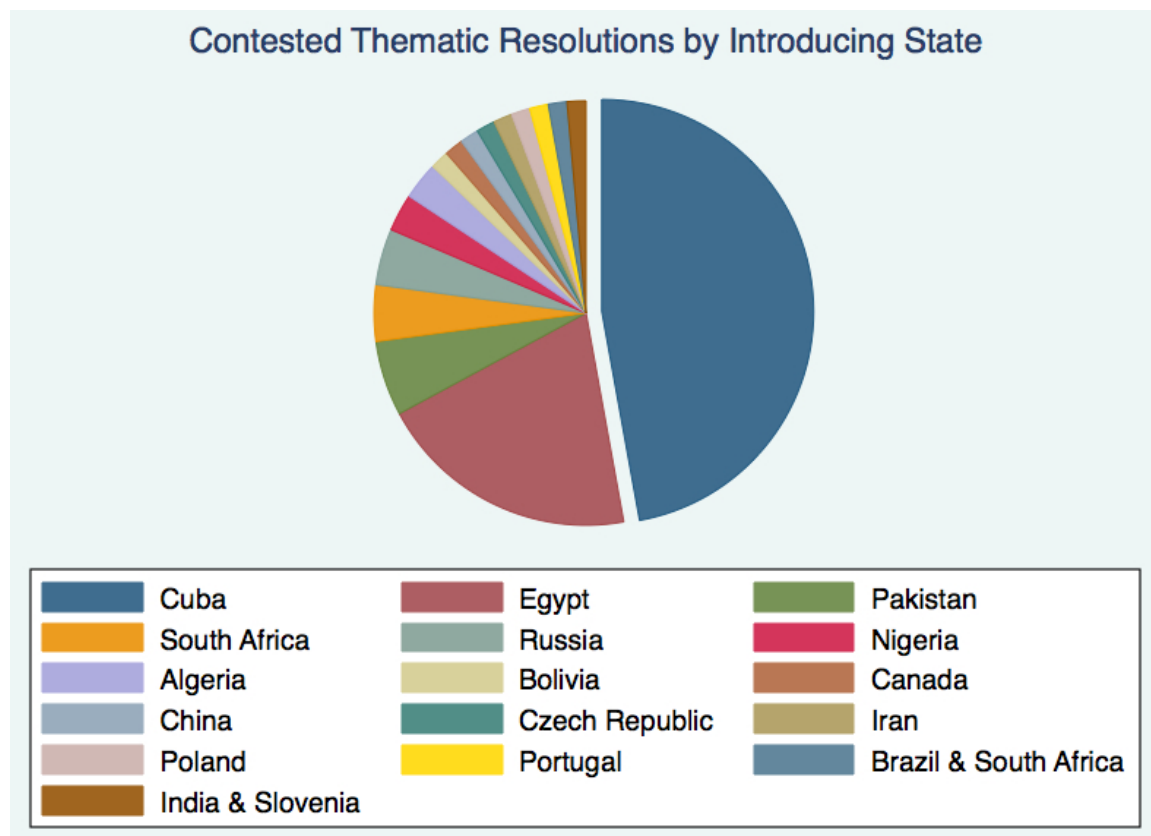


Figure 7.15: Contested Thematic Resolutions by Introducing State

As mentioned earlier, Cuba has a pattern of introducing resolutions that introduce new types of “human rights” into the system. In addition, Cuba has little real fear of introducing resolutions that will be contested, unlike many other states in the UN HRC, which prefer consensus. The high rate of contestation of Egyptian resolutions exists because many of Egypt’s resolutions are also resolutions introduced previously by Cuba, while Pakistan’s resolutions are almost solely an effect of their drive to pass a defamation of religions resolution.

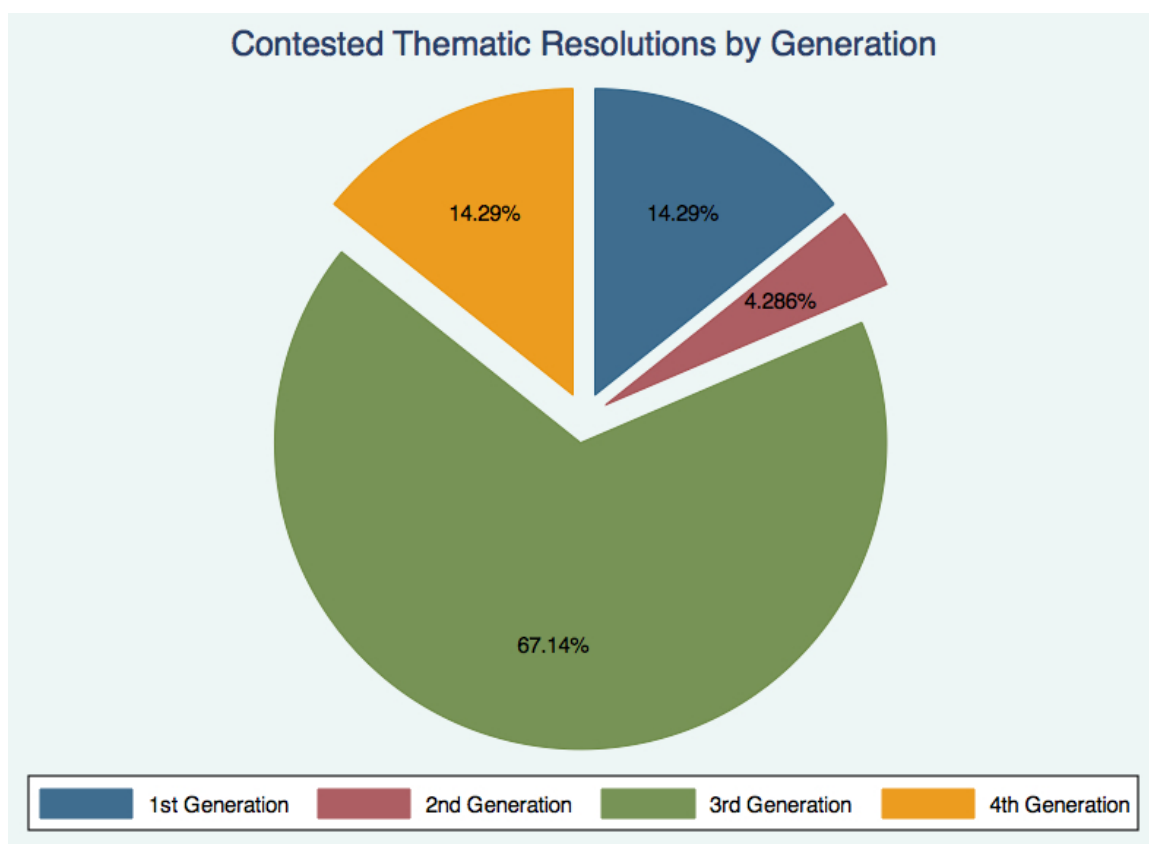


Figure 7.16: Contested Thematic Resolutions by Generation

The lion's share of contested resolutions are third generation rights. This is expected since human rights issues, which are currently on the periphery of international agendas, will face contestation more often than rights, which are already codified elsewhere. This in part explains why there are so few votes on first and second-generation rights, and to an extent, some older third generation rights.<sup>1035</sup>

## Contested Resolutions in-depth

<sup>1035</sup> However, it is important to note the very small percentage of contested votes, which occur on second-generation rights. Certainly, this is surprising for commentators that still believe that the world is divided amongst the rights that states prefer.



Although there are 70 total contested thematic resolutions, many of these observations occur because of subsequent introductions in sessions. There are, as Table 7.1 below shows, really only 16 unique groupings of contested resolutions. Of these 16 groupings, 10 are contested during every vote.

<b>Resolution Theme</b>	<b>Times Contested</b>	<b>Times Voted Upon</b>
Racism	10	13
International Solidarity	9	9
Debt	7	8
Coercive Measures	7	7
Religion	7	12
Development	6	9
Mercenaries	5	6
Peace	5	5
Equitable Order	3	3
Traditional Values	3	3
Migrants (Non-typical Migrant resolution)	2	2
Non-Repatriation	2	2
Gender	1	1
Globalization	1	1
Good Governance	1	2
Opinion	1	1

Table 7.1: Contested Thematic Resolutions in the HRC from 2006 – 2012

The following subsections will discuss each grouping, including variance in voting over time. The subsections will also briefly describe the content of the resolutions to see if a shift in content may explain any difference in voting.

## Racism

The Commission on Human Rights and now the Council have both consistently prioritized the role of racism in human rights.<sup>1036</sup> In fact, the Council has a dedicated Agenda Item to examine issues surrounding racism.<sup>1037</sup> Most of the contested resolutions are concerned in some way or another with the Durban Review Conference.<sup>1038</sup>

Generally, the resolutions, “urge Governments that have not done so to issue formal apologies to the victims of past and historic injustices and to take all necessary measures to achieve the healing and reconciliation of and the restoration of dignity to those victims...”<sup>1039</sup> while also, “Deploing the surge and sharp increases in xenophobic and racial tendencies in certain regions of the world, particularly towards those categories of victims already identified in the Durban Declaration and Programme of Action such as migrants, refugees, asylum-seekers, people of African descent, people of Asian descent and national and ethnic minorities.”<sup>1040</sup> In theory, this should not be a problem. However, in practice, Western states are cold to potential ramifications of following through with recommendations in the Durban Review.

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<sup>1036</sup> This is evident from the issue of racism receiving its own Agenda Item (9) in Resolution 5/1.

<sup>1037</sup> Agenda Item 9, A/HRC/RES/5/1, 4.

<sup>1038</sup> For more information on the Durban Review Conference, please see: United Nations (2009) *Durban Review Conference*. Available at: <http://www.un.org/en/durbanreview2009/> [21 June 2013].

<sup>1039</sup> UN Human Rights Council (2008) *From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia, and related intolerance*. 28 March 2008. A/HRC/RES/7/33, paragraph 3.

<sup>1040</sup> UN Human Rights Council (2007) *From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia, and related intolerance*. 28 September 2007. A/HRC/RES/6/22.

<b>Resolution Theme</b>	<b>Resolution Number</b>	<b>Voting Record</b>
Racism (From Rhetoric to Reality)	DEC/3/103	33-12-1
Racism (From Rhetoric to Reality)	RES/6/22	28-13-5
Racism (From Rhetoric to Reality)	RES/7/33	34-0-13
Racism (From Rhetoric to Reality)	RES/18/27	35-1-10
Racism (From Rhetoric to Reality)	RES/21/33	37-1-9
Durban Review	RES/3/2	34-12-1
Durban Review	RES/6/23	33-10-3
Complementary Standards (racism)	RES/6/21	32-10-4
Complementary Standards (racism)	RES/10/30	34-13
Panel (Xenophobia)	RS/18/20	37-1-8

Table 7.2: Racism in the UN Human Rights Council

As Table 7.2 above indicates, there is some variation in voting but the shift is primarily from voting no to abstaining from the resolution in question. The positive votes reach a nadir of 28 during the second election cycle in 2007 and reach an apex of 37 votes during the first session of the six voting cycle at the end of 2011.

In the case of Racism and the UN Human Rights Council, the division of votes is fairly consistent. Western states are almost uniformly opposed while Africa, Asia, and GRULAC are almost always in favor of these resolutions.<sup>1041</sup>

## International Solidarity

Creating a right to “international solidarity” is one of Cuba’s primary goals at the Council. International solidarity is essentially another development resolution. For example, the resolutions on international solidarity argues that, “the fundamental value of solidarity to international relations in the twenty-first century, in stating that global

<sup>1041</sup> I will explain this further under the next major section on regional bloc voting.

challenges must be managed in a way that distributes costs and burdens fairly, in accordance with basic principles of equity and social justice, and that those who suffer, or who benefit least, deserve help from those who.”<sup>1042</sup> The resolution further “urges the international community to consider urgently concrete measures to promote and consolidate international assistance to developing countries in their endeavors for development and for the promotion of conditions that make possible the full realization of all human rights.”<sup>1043</sup>

<b>Resolution Theme</b>	<b>Resolution Number</b>	<b>Voting Record</b>
International Solidarity	RES/6/3	34-12-1
International Solidarity	RES/7/5	34-13
International Solidarity	RES/9/2	33-13-0
International Solidarity	RES/12/9	33-14
International Solidarity	RES/15/13	32-14-0
International Solidarity	DEC/16/118	32-14-0
International Solidarity	RES/17/6	32-14-0
International Solidarity	RES/18/5	33-12-1
International Solidarity	RES/21/10	35-12-0

Table 7.3: International Solidarity in the Human Rights Council

The variance in voting outcomes, either in the affirmative or opposing the right to international solidarity is minimal. Again, Africa, Asia, and GRULAC states vote predominately for the resolution while WEOG and a small number of Eastern European states, along with Japan and Korea, vote in opposition. This is of course not surprising given the nature of the resolutions.

<sup>1042</sup> UN Human Rights Council (2007) *Human rights and international solidarity*. 27 September 2007. A/HRC/RES/6/3.

<sup>1043</sup> Ibid, p. 3.

## Foreign Debt and International Financial Obligations

Another priority for the Cuban diplomatic corps in Geneva is introducing resolutions on the role of the burden of repaying foreign debt on the human rights of developing states. According to Council resolution 11/5, “debt burden further complicates the numerous problems facing developing countries, contributes to extreme poverty, and is an obstacle to sustainable human development, and is thus a serious impediment to the realization of all human rights.”<sup>1044</sup> Principally, the “debt” resolutions are concerned not only with the role of debt repayment in promoting human rights but also the role of enforced structural programs implemented by the International Monetary Fund as a condition for loans. For instance, Resolution 11/5 states, “that every State has the primary responsibility to promote the economic, “social and cultural development of its people, and, to that end, has the right and responsibility to choose its means and goals of development and should not be subject to external specific prescriptions for economic policy.”<sup>1045</sup> In the end, the resolutions call for an increased role in alleviating constraints on in-debt states.

Resolution Theme	Resolution Number	Voting Record
Debt	DEC/2/109	33-13-1
Debt (special rapporteur)	RES/7/4	34-13
Debt	RES/11/5	31-13-2
Debt	RES/14/4	31-13-3
Debt (special rapporteur)	RES/16/14	29-13-4
Debt	RES/17/7	30-13-3
Debt	RES/20/10	31-11-5

Table 7.4: Foreign Debt in the Human Rights Council

<sup>1044</sup> UN Human Rights Council (2009) *The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*. 17 June 2009. A/HRC/RES/11/5.

<sup>1045</sup> Ibid, paragraph 4.

The voting outcomes on the debt resolutions, much like the resolutions on international solidarity, do not vary significantly. Again, WEOG and a small alliance of Eastern Europe and Asian states vote against the resolutions while Africa, Asia, and GRULAC states vote in favor.

## Human Rights and Coercive Measures

Coercive measures, like the previous two resolutions are also predominately introduced by Cuba, although Egypt has been the most recent introducer. However, unlike the previous two resolutions, coercive measures do not directly relate to the role of development in human rights. Instead, the resolution is concerned primarily with restricting the, “continued unilateral application and enforcement by certain Powers of such measures as tools of political or economic pressure against any country, particularly against developing countries, with a view to preventing these countries from exercising their right to decide, of their own free will, their own political, economic and social systems.”<sup>1046</sup> However, the resolutions are also concerned with the right of self-determination, particularly with economic, social, and cultural rights<sup>1047</sup> as well as arguing that states should not use “food and medicines as tools for political coercion.”<sup>1048</sup> In other words, the resolution is a non-interference resolution, directed particularly against Western powers.

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<sup>1046</sup> UN Human Rights Council (2007) *Human rights and unilateral coercive measures*. 28 September 2007. A/HRC/RES/6/7, paragraph 3.

<sup>1047</sup> Ibid, paragraph 5.

<sup>1048</sup> Ibid, paragraph 7.

<b>Resolution Theme</b>	<b>Resolution Number</b>	<b>Voting Record</b>
Coercive Measures	DEC/4/103	32-12-1
Coercive Measures	RES/6/7	34-11-2
Coercive Measures	RES/9/4	33-11-2
Coercive Measures	RES/12/22	32-14-0
Coercive Measures	RES/15/24	32-14-0
Coercive Measures	DEC/18/120	34-12-0
Coercive Measures	RES/19/32	35-12-0

Table 7.5: Human Rights and Coercive Measures in the Human Rights Council

Again, like the previous resolutions introduced by Cuba, voting does break down, more or less, along regional lines with the West opposing the resolutions while the trifecta of Africa, Asia, and Latin America serving as backers to the resolution.

## Religion

Along with racism, the role of religion in human rights has dominated the agenda of the Commission and Council. The primary division revolves around Pakistan, on behalf of the OIC, to implement a defamation of religions resolution, while Western states want to include a more inclusive resolution, which does not simultaneously place citizens at risk of abuse by their governments.<sup>1049</sup>

Combating the defamation of religion resolutions are above all, resolutions focused on the non-discrimination of Muslims. For example, Resolution 10/22 of the Council,

<sup>1049</sup> See for example: Blitt R.C. (2011). Should New Bills of Rights Address Emerging International Human Rights Norms? The Challenge of “Defamation of Religion. Social Science Research Network. Available at: <http://papers.ssrn.com/abstract=1538297> [21 June 2013], Foster J (2009) Prophets, Cartoons, and Legal Norms: Rethinking the United Nations Defamation of Religion Provisions. *Journal of Catholic Legal Studies* (48): 19, and Dobras R.J. (2008) Is the United Nations Endorsing Human Rights Violations: An Analysis of the United Nations’ Combating Defamation of Religions Resolutions and Pakistan’s Blasphemy Laws. *Georgia Journal of International and Comparative Law* (37): 339.

Noting with deep concern the instances of intolerance, discrimination and acts of violence against followers of certain faiths occurring in many parts of the world...specifically discriminate against and target persons with certain ethnic and religious backgrounds, particularly Muslim minorities following the events of 11 September 2001, and that threaten to impede their full enjoyment of human rights and fundamental freedoms.<sup>1050</sup>

On the other hand, the West frames its resolution in both first and second-generation rights. The resolution, “stresses, that the right to freedom of thought, conscience and religion applies equal to all people, regardless of their religion or beliefs, and without any discrimination as to their equal protection by the law”<sup>1051</sup> as well as, “emphasizing that discrimination based on religion or belief often has an adverse impact on the enjoyment of economic, social and cultural rights, particularly with regard to persons belonging to religious minorities and other persons in vulnerable situations.”<sup>1052</sup>

<b>Resolution Theme</b>	<b>Resolution Number</b>	<b>Voting Record</b>
Religious Hatred	DEC 1/107	33-12-1
Defamation of Religion	RES/4/9	24-14-9
Defamation of Religion	RES/7/19	21-10-14
Defamation of Religion	RES/10/22	23-11-13
Defamation of Religion	RES/13/16	20-17-8
Intolerance and discrimination of Religion	RES/6/37	29-0-18
Discrimination based on religion	RES/10/25	21-1-24

Table 7.6: Religion and Defamation of Religion in the Human Rights Council

<sup>1050</sup> UN Human Rights Council (2009). *Combating defamation of religions*. 26 March 2009. A/HRC/RES/10/22.

<sup>1051</sup> UN Human Rights Council (2009) *Discrimination based on religion or belief and its impact on the enjoyment of economic, social, and cultural rights*. 27 March 2009. A/HRC/RES/10/25, paragraph 2.

<sup>1052</sup> Ibid, paragraph 4.



Voting outcomes on the two resolutions mirror each other. The defamation of religions resolutions still has a majority of Africa and Asia states voting favorably. However, interestingly, and breaking from the pattern of previous resolutions, many GRULAC states, such as Brazil, Ecuador, Peru, Uruguay, Guatemala, and Mexico, all either vote against or abstain from the resolution. Western introduced resolutions include WEOG, Eastern Europe, and most GRULAC states as supporters, while many Africa and Asia group states, abstaining, though South Africa votes against the resolution.

## Development

The right to development is one of the more contentious issues in the United Nations.<sup>1053</sup>

However, interestingly, compared to the other contested resolutions, the voting record is not particularly combative.

Resolution Theme	Resolution Number	Voting Record
Development	RES/1/4	WOV
Development	RES/4/4	WOV
Development	RES/9/3	WOV
Development	RES/12/23	33-0-14
Development	RES/15/25	45-0-1
Development	DEC/16/117	45-0-1
Development	RES/18/26	45-0-1
Development	RES/19/34	46-0-1
Development	RES/21/32	46-0-1

Table 7.7: Development in the Human Rights Council

<sup>1053</sup> See for example: Sengupta A (2002) On the Theory and Practice of the Right to Development. *Human Rights Quarterly* 24(4): 837, Marks S (2004) Human Right to Development: Between Rhetoric and Reality, *The Harvard Human Rights Journal* (17): 137.

Each resolution introduced on the right to development, primarily by Egypt but also Cuba, Iran, and Malaysia, extends the working group on the right to development. Unlike previous resolutions discussed, this is more of a procedural move instead of a substantive resolution. The resolutions become contentious when the United States reengages with the Council. Resolution 12/23 occurs during the US's first session on the Council and to some extent can explain the shift of WEOG and its constant allies<sup>1054</sup> After late 2009, every resolution passes with only the United States abstaining.

## Mercenaries

The Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination is another project promulgated by Cuba. Similarly, to Human Rights and Coercive Measures, this is a non-intervention resolution,<sup>1055</sup> the purpose of which is to promote self-determination of states by noting the destabilizing role that mercenaries play, particularly in the developing world.<sup>1056</sup>

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<sup>1054</sup> The allies include Japan and South Korea from Asia and Bosnia-Herzegovina, Hungary, Slovakia, Slovenia and the Ukraine from Eastern Europe. UN Human Rights Council (2009) *Human rights and indigenous peoples*. 1 October 2009. A/HRC/RES/12/13.

<sup>1055</sup> The resolutions, "Reaffirm the purposes and principles enshrined in the Charter of the United Nations concerning the strict observance of the principles of sovereign equality, political independence, the territorial integrity of States, the self-determination of peoples, the non-use of force or threat of use of force in international relations and non-interference in affairs within the domestic jurisdiction of States. A/HRC/RES/10/22, 80.

<sup>1056</sup> Ibid.

<b>Resolution Theme</b>	<b>Resolution Number</b>	<b>Voting Record</b>
Working Group (Mercenaries)	RES/7/21	32-11-2
Mercenaries	RES/10/11	32-12-3
Mercenaries	RES/15/12	31-13-2
Mercenaries	RES/18/4	31-11-4
Mercenaries	RES/21/8	34-12-1

Table 7.8: Mercenaries in the Human Rights Council

The voting record, like most of Cuba's resolutions, includes Africa, Asia, and GRULAC voting in favor, while the majority of Eastern European and WEOG states vote against. However, of particular note, Switzerland abstains from voting on the resolution, which marks one of the few times that the WEOG group does not vote together on a thematic resolution.

## Peace

The resolution on the Promotion of the Right to Peoples to Peace is another Cuban lead initiative and is quite similar to Cuba's other resolutions. For example, the Right to Peace reiterates the right of self-determination of peoples,<sup>1057</sup> notes the "deep fault line" between developing and developed states,<sup>1058</sup> and reiterates the role of sovereignty and non-interference in domestic affairs.<sup>1059</sup> Interestingly however, unlike many of Cuba's other contested resolutions, a significant portion of NGOs are backing the peace initiative.<sup>1060</sup>

<sup>1057</sup> UN Human Rights Council (2010) *Promotion of the right of peoples to peace*. 17 June 2010. A/HRC/RES/14/3.

<sup>1058</sup> Ibid, paragraph 4.

<sup>1059</sup> Ibid.

<sup>1060</sup> Interview with NGO7.

Resolution Theme	Resolution Number	Voting Record
Right of Peoples to Peace	RES/8/9	32-13-2
Right of Peoples to Peace	RES/11/4	32-13-1
Right of Peoples to Peace	RES/14/3	31-14-3
Right of Peoples to Peace	RES/17/16	32-14-0
Right of Peoples to Peace	RES/20/15	34-1-12

Table 7.9: Peace in the Human Rights Council

Despite the backing of some NGOS, including Western groups in Geneva, the resolution on the right to peace maintains a very similar voting record to Cuba's other resolutions.

The only major deviation from the pattern occurs during the summer session in 2012.

Resolution 20/15, calls for the creation of an independent working group to study the right to peace. The WEOG and select allies vote for resolution 20/15 shifts from voting no, with the exception of the USA, to abstaining.<sup>1061</sup>

## Democratic and Equitable International Order

The right to a Democratic and Equitable International Order (Equitable Order) is another Cuban-backed resolution at the UN HRC. Similarly to the resolutions on the Right to Peace, the Equitable Order resolution is a potpourri of claims previously introduced in other resolutions. According to the resolutions, an Equitable Order entails, the right to self-determination,<sup>1062</sup> a non-intervention clause,<sup>1063</sup> the right to development,<sup>1064</sup> the right to peace,<sup>1065</sup> the right to solidarity,<sup>1066</sup> and a redistribution of wealth,<sup>1067</sup> among

<sup>1061</sup> UN Human Rights Council (2012) *Promotion of the right to peace*. 5 July 2012. A/HRC/RES/20/15.

<sup>1062</sup> A/HRC/RES/8/5, 992, paragraph 3 (a).

<sup>1063</sup> Ibid, paragraph 3 (b).

<sup>1064</sup> Ibid, paragraph 3 (c).

<sup>1065</sup> Ibid, paragraph 3 (d).

<sup>1066</sup> Ibid, paragraph 3 (f).

<sup>1067</sup> Ibid, paragraph 3 (n).

other claims. Additionally, the resolution calls for disarmament<sup>1068</sup> and rejects unilateral force.<sup>1069</sup>

Resolution Theme	Resolution Number	Voting Record
Equitable Order	RES/8/5	32-13-2
Equitable Order	RES/18/6	29_12_5
Equitable Order	RES/21/9	31_12_4

Table 7.10: Democratic and Equitable Order in the Human Rights Council

Cuba's initiative on an Equitable Order receives on average, three less affirmative votes than its other projects in Geneva. Resolution 8/5 losses one vote each, from Africa (Ghana) and GRULAC (Mexico), while resolutions 18/6 and 21/9 lose on average four states from GRULAC, including Chile, Costa Rica, Mexico and Peru.

## Traditional Values

The resolution on Promoting Human Rights and Fundamental Freedoms through a better Understanding of Traditional Values of Humankind is the primary project of the Russian Federation at the Council. It is also perhaps the most controversial set of thematic resolutions the Council has seen since its inception.<sup>1070</sup> This is for a few reasons. First, Russia has rushed the negotiation process, often times rejecting interpretations of the Advisory Committee.<sup>1071</sup> Secondly, Western states and NGOs are concerned that the resolution is fundamentally opposed to the universalism agenda, which the UN human

<sup>1068</sup> Ibid, paragraph 6.

<sup>1069</sup> Ibid, paragraph 7.

<sup>1070</sup> See accompanying references at 1011.

<sup>1071</sup> International Service for Human Rights (2012), 754.

rights system is based.<sup>1072</sup> However, the Russian Federation argues, in the resolutions and elsewhere, that the right to traditional values should not “be invoked to justify harmful practices violating universal human rights norms and standards.”<sup>1073</sup>

The resolutions are heretofore vague. They, “note that a better understanding and appreciation of traditional values of dignity, freedom and responsibility can contribute to the promotion and protection of human rights.”<sup>1074</sup> Further, the resolutions,

Recall the important role of family, community, society and educational institutions in upholding and transmitting these values, which contributes to promoting respect for human rights and increasing their acceptance at the grass roots, and calls upon all States to strengthen this role through appropriate positive measures.<sup>1075</sup>

However, this is the extent to which the resolutions define what traditional values consist of and how they may promote and protect human rights.

<b>Resolution Theme</b>	<b>Resolution Number</b>	<b>Voting Record</b>
Traditional Values	RES/12/21	26-15-6
Traditional Values	RES/16/3	24-14-7
Traditional Values	RES/21/3	25-15-7

Table 7.11: Traditional Values in the Human Rights Council

On average, the resolutions on Traditional Values are near the bottom of contested resolutions in terms of affirmative votes and no region votes as a bloc for any of the

<sup>1072</sup> See accompanying references at 1011.

<sup>1073</sup> UN Human Rights Council (2011) *Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind*. 24 March 2011. A/HRC/RES/16/3.

<sup>1074</sup> UN Human Rights Council (2012) *Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind: best practices*. 27 September 2012. A/HRC/RES/21/3, paragraph 5.

<sup>1075</sup> Ibid, paragraph 2.

resolutions. However, Africa and Asia vote considerably more favorably, with the exceptions of Mauritius and Botswana who vote against the resolution and Ghana, Benin and Nigeria abstaining. For Asia, Japan and Korea vote against. Chile, Costa Rica, and Mexico vote against the resolution while Argentina, Brazil, Guatemala, Peru, and Uruguay all abstain at some point in the voting process.

## All the Others

The remaining six resolutions will be briefly covered because there are not enough introductions to properly examine variation in outcomes and a number of the resolutions appear to be one-offs (IE, presented and adopted once but have since disappeared from the agenda of the sponsoring state). This section will start with the perceived one-offs and then move to votes that will likely be raised again.<sup>1076</sup> The resolutions are in order: globalization, opinion, migrants from North Africa, peasants, non-repatriation, good governance, and gender.

There are two contested one-off resolutions currently at the UN HRC. The first is the China introduced resolution on Globalization and its Impact on the Full Enjoyment of all Human Rights.<sup>1077</sup> This resolution, adopted during the 4<sup>th</sup> session of the Council, is essentially a development resolution.<sup>1078</sup> The recorded vote is 34 to 13 with the WEOG and its normal allies in Asia and GRULAC voting in opposition.

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<sup>1076</sup> I determine a resolution to be a “one-off” if it has not been raised again in six sessions. Typically, resolutions are raised yearly and almost certainly by the second election cycle. This means that any resolution that has been introduced since session 16 will be considered a potential future issue.

<sup>1077</sup> A/HRC/RES/4/5, 1006.

<sup>1078</sup> For example, the resolution states that, “while globalization offers great opportunities for sustained economic growth and development of the world economy and offers new perspectives for the integration of

The second, the right of opinion, first introduced by Canada during the seventh session but co-opted by the Non-Aligned movement during the voting process, has evolved into the right of freedom of expression and has henceforth passed without a vote.<sup>1079</sup>

There are two unique, non-traditional migrant related resolutions, which have been voted on recently at the Council. The first, which was introduced in the 17<sup>th</sup> session by Nigeria looks at the right of migrants and asylum seekers from North Africa, with particular emphasis on events relating to destabilization in the region and the Arab Spring.<sup>1080</sup> The resolution is particularly concerned with the treatment of migrants who have reached states [European states] and are then treated deplorably.<sup>1081</sup> The WEOG group, along with its normal allies vote in opposition.

The second “migrant” resolution examines the rights of peasants and is introduced by Bolivia in the fall of 2012. The purpose of the resolution is to create a special procedure to continue to examine the situation of peasants. The Council adopts the resolution with only 23 votes in favor. Substantial abstentions come from the Africa and Asia group. The WEOG group is “divided” with five states voting in against but two states, Norway and Switzerland abstain.

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developing countries into the world economy, at present its benefits are very unevenly shared and costs unevenly distributed.” Ibid

<sup>1079</sup> UN Human Rights Council (2008) *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. 28 March 2008. A/HRC/RES/7/36.

<sup>1080</sup> UN Human Rights Council (2011) *Migrants and asylum seekers fleeing from events in North Africa*. 17 June 2011. A/HRC/RES/17/22.

<sup>1081</sup> For example, the resolution, “expresses its alarm at the fact that, after having been compelled to make dangerous journeys, including in crowded and unsafe boats, the above-mentioned migrants are subjected to life-threatening exclusion, detention, rejection and xenophobia.” Ibid



The resolutions on the negative impact of the non-repatriation of funds...on human rights are introduced by two different states from the Africa group. Nigeria introduces the resolution during the last session of election cycle five and Egypt later introduces the resolution during the 19<sup>th</sup> session of the Council. The resolutions focus on the role of corruption and the negative effect this has on human rights and “asserts the urgent need to repatriate illicit funds to the countries of origin without conditionalities.”<sup>1082</sup> The majority of the WEOG group and on average, four states from Eastern Europe abstain from the resolution. The US is the principle opponent to the resolution.

During the March 2008 meeting of the Council, Poland introduces a resolution on the role of good governance in the promotion of human rights. The purpose of the resolution is to focus on the role of corruption in governance and economic growth.<sup>1083</sup> The resolution is adopted overwhelming with only Bolivia, China, Cuba, Nicaragua, the Russian Federation and Sri Lanka voting in opposition. Four years later, during the 19<sup>th</sup> session, the resolution is reintroduced by Poland with little change and passes without a vote.<sup>1084</sup>

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<sup>1082</sup> UN Human Rights Council (2012) *The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights*. 23 March 2012. A/HRC/RES/19/38, paragraph 3.

<sup>1083</sup> A/HRC/RES/7/11, 1012.

<sup>1084</sup> UN Human Rights Council (2012). *The role of good governance in the promotion and protection of human rights*. 23 March 2012. A/HRC/RES/19/20.

The final resolution is one of the most groundbreaking resolutions adopted by the UN HRC.<sup>1085</sup> The resolution on Human Rights, Sexual Orientation and Gender Identity is introduced during the 17<sup>th</sup> session by South Africa and Brazil. The resolution is groundbreaking but also the most contested resolution the Council has passed. In fact, during the vote, the entire OIC delegation storms out in protest.<sup>1086</sup> The resolution is actually mostly a procedural resolution. Although it does, “express grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity,”<sup>1087</sup> the primary purpose is to request a study by the OHCHR on the issue.<sup>1088</sup> However, given the reaction of many diplomats, there is little doubt that future resolutions will continue to be hotly contested. The final vote is 23-19-3. Importantly, GRULAC and WEOG vote as a regional bloc in favor of the resolution (along with the normal Western allies) while Africa and Asia vote overwhelmingly against the measure.

## Seeing the Forest for the Trees

The total number of contested resolutions is 70, however, once grouped together, the number is significantly smaller, with only 16 unique groupings. The vast majority of thematic resolutions in the UN HRC are passed by consensus. This is especially true of

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<sup>1085</sup> A/HRC/RES/17/19, 994 and Human Rights Watch (2011) *Landmark UN Vote on Sexual Orientation*. Available at: <http://www.hrw.org/news/2011/06/17/landmark-un-vote-sexual-orientation> [21 June 2013].

<sup>1086</sup> International Service for Human Rights (2012) *A Reinvigorated Human Rights Council ends its 19<sup>th</sup> session*. Available at: <http://www.ishr.ch/archive-council/1283-a-reinvigorated-human-rights-council-ends-its-19th-session> [21 June 2013].

<sup>1087</sup> A/HRC/RES/17/19, 994.

<sup>1088</sup> Specifically, the resolution, “Requests the United Nations High Commissioner for Human Rights to commission a study, to be finalized by December 2011, documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, in all regions of the world, and how international human rights law can be used to end violence and related human rights violations based on sexual orientation and gender identity. Ibid, p. 1.

resolutions introduced by the WEOG group, however, the number of resolutions introduced by other regions, particularly GRULAC face substantial opposition. Cuba is responsible for a large number of contested resolutions, most of which focus on the role of development and the principle of non-intervention. It also appears from this section that regional bloc voting can in fact explain thematic voting outcomes. It also appears that the transition from the Commission to the Council has little impact on voting behavior or the ability of the Council to control for quality. The following major section will explicitly examine the role of regional bloc voting on Council outcomes.

## Regional Bloc Voting

The previous chapter found that regional bloc voting, as pure regional blocs or as ideological regional bloc voting had little effect on Council country voting outcomes.

## Regional Bloc Voting in Contested Thematic Resolutions

Regional bloc voting in thematic resolutions occurs significantly more often than in resolutions which focus on country situations. As Figure 7.17 shows below, three different regions, Africa, GRULAC, and WEOG vote together as a region over 60% of the time in contested resolutions. Asia and Eastern Europe are significantly lower, with an average rate of 26% and 9% respectively. However, this is due to outlier states. In Asia, Japan and South Korea almost always vote with the WEOG group. In Eastern Europe, Russia and a few of its satellite states, like Azerbaijan vote against the majority.

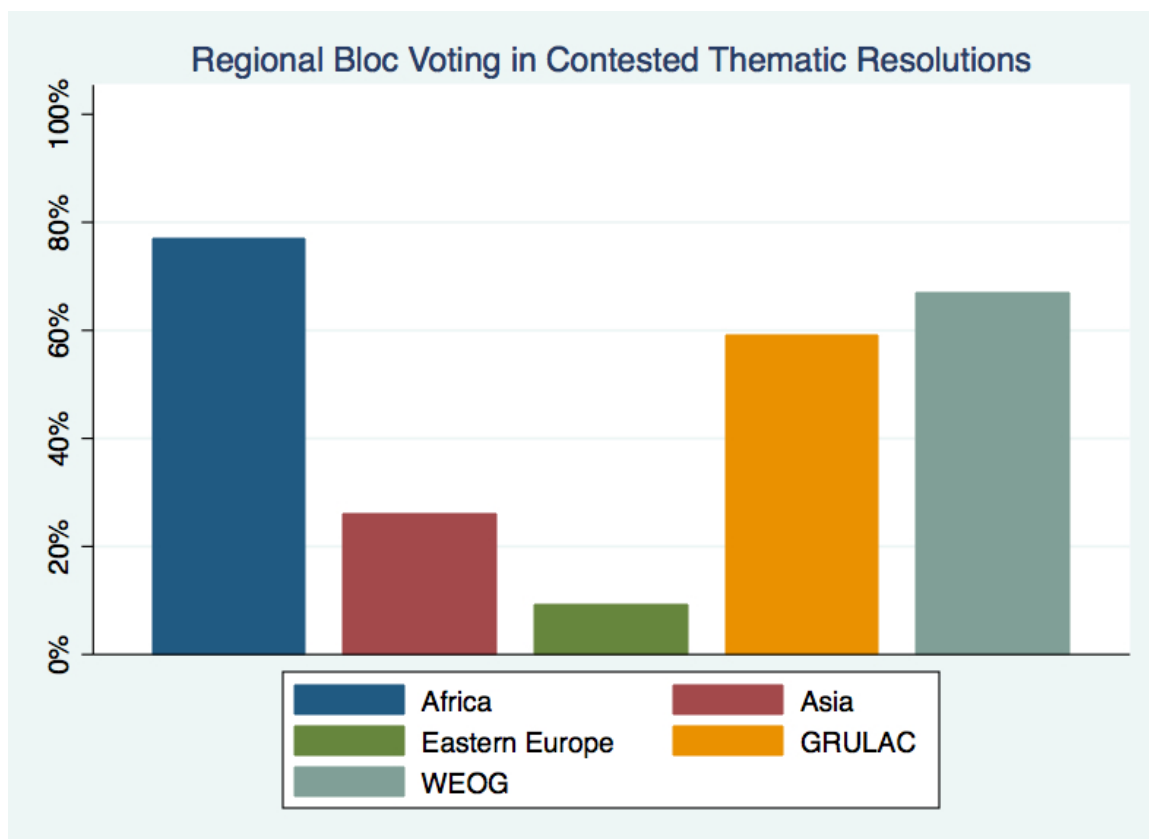


Figure 7.17: Regional Bloc Voting in Contested Thematic Resolutions

The numbers are even more pronounced when abstentions are counted as no votes.

According to Figure 7.18 below, this raises the regional bloc voting records of groups significantly. Africa and GRULAC now vote over 80% of the time together as a group while WEOG votes as a regional bloc 97% of the time! Asia and Eastern Europe still remain the most divided regions.

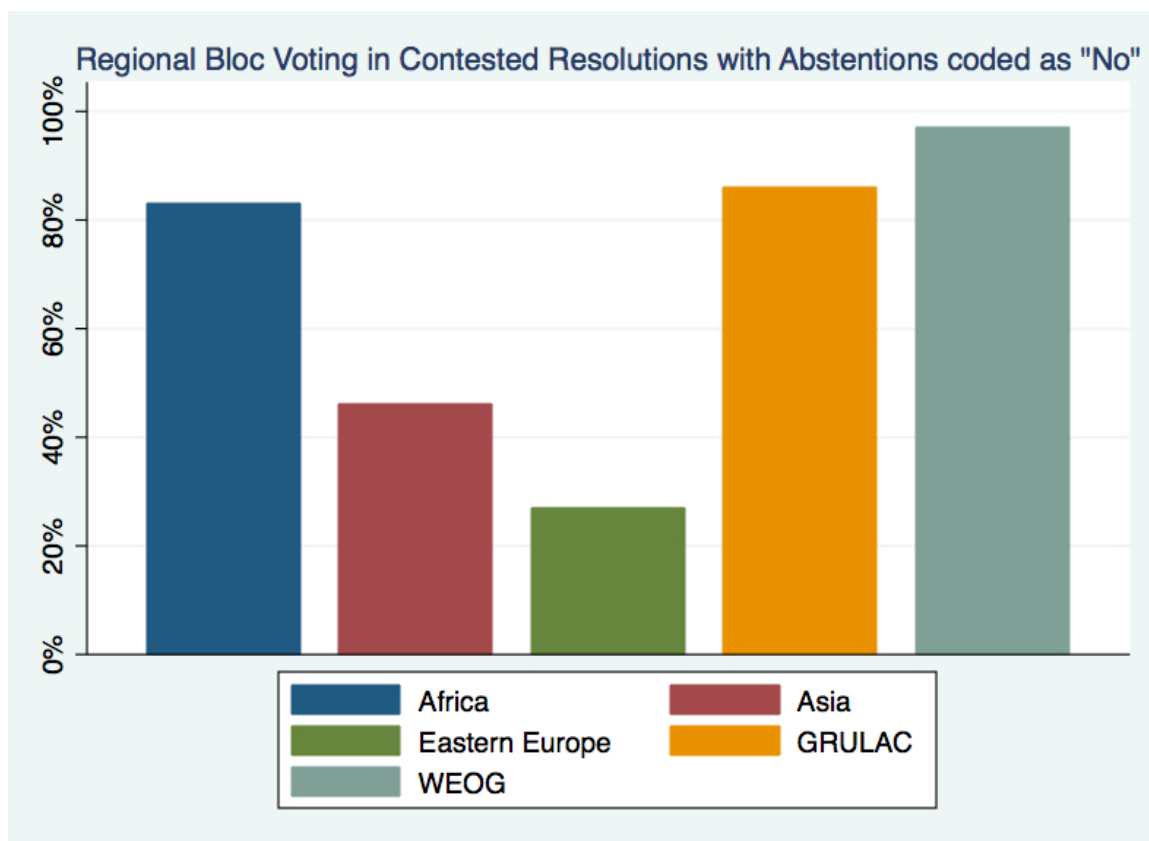


Figure 7.18: Regional Bloc Voting in Contested Resolutions with Abstentions as “no.”

## Regional Bloc Voting in all Thematic Resolutions

Given the high number of regional bloc voting in contested resolutions, the number across all thematic resolutions will obviously be even higher.

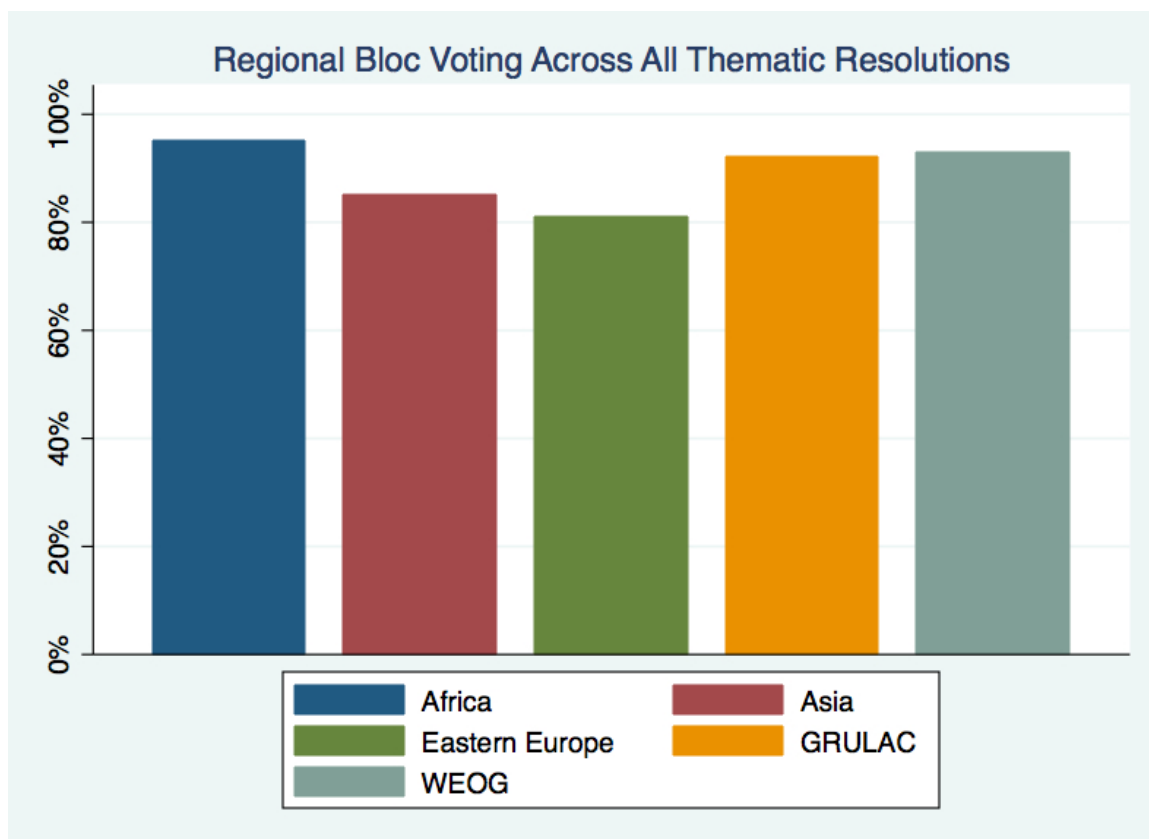


Figure 7.19: Regional Bloc Voting Across all Thematic Resolutions

As Figure 7.19 above shows, all regions, including Asia and Eastern Europe vote as a region over 80% of the time. Africa (95%), WEOG (93%) and GRULAC (92%) all vote with each other overwhelmingly. This of course gives ammunition to opponents of regional bloc voting, who claim that states are not voting based on the merits of the issues but instead voting based on their geographical positions.

## The Role of Membership on Thematic Resolutions

The Council has been remarkably consistent across time with thematic resolution voting outcomes. This suggests that the level of membership, according to Polity IV and Freedom House, has little impact on outcomes.

In the previous chapters, this work has argued that the reemergence of the United States has had a significant effect on the way that states vote. This is not the case with thematic resolutions.

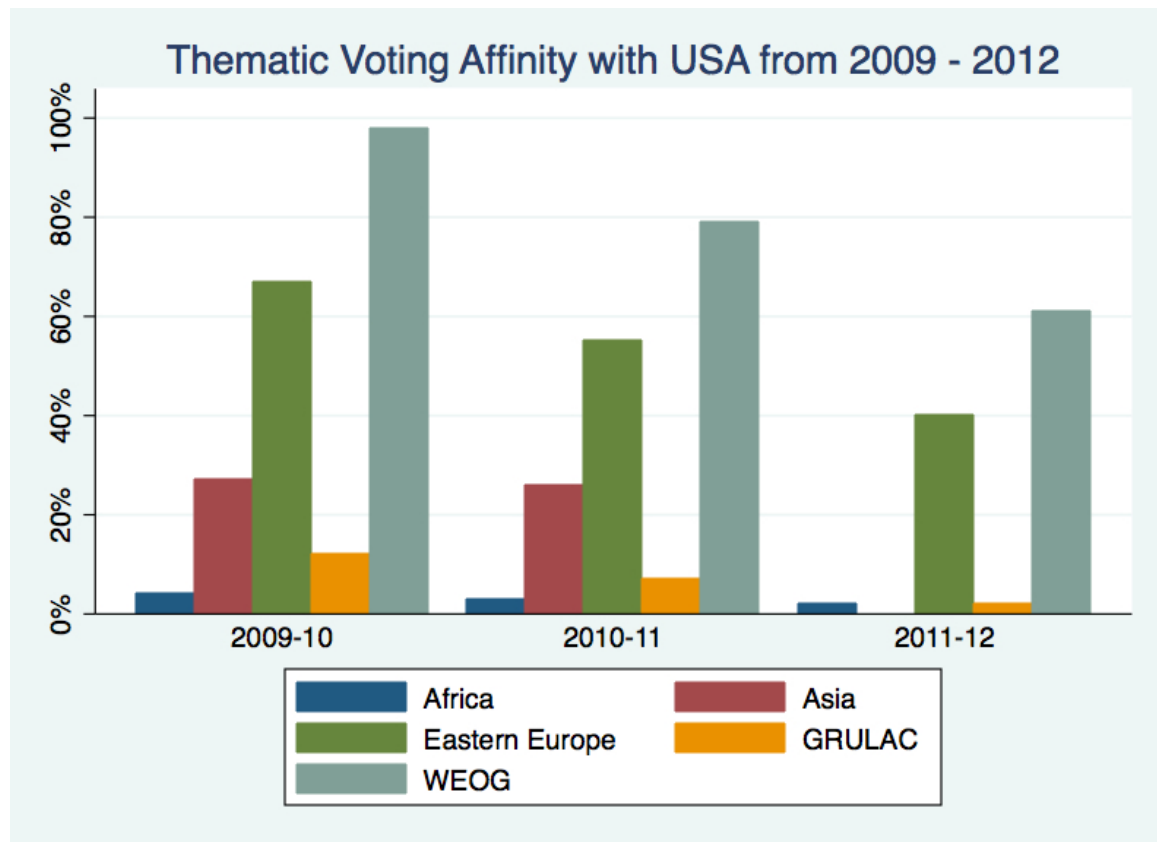


Figure 7.20: Thematic Voting Affinity with USA from 2009 – 2012

The opposite is occurring. As Figure 7.20 illustrates above, all regions, including WEOG have moved away from the US's position in the Council, at least after the second year of the US's involvement.<sup>1089</sup>

<sup>1089</sup> Remember that the US was not involved in the Council from 2006-July 2009. Thus, the percentages will reach near 100%. It does not reach 100% because Switzerland abstains from a few votes.

The implications of Figure 7.20 are important, it suggests that the US's diplomacy is not winning the battle for thematic mandates. It further indicates that the US's position is further away from the median vote on the Council. This of course is not an indication that the US's team in Geneva is failing. After all, countries cannot in theory block thematic resolutions.<sup>1090</sup> However, what the US is not doing is winning the hearts and minds of potential thematic allies, including, at times, long-term allies.<sup>1091</sup>

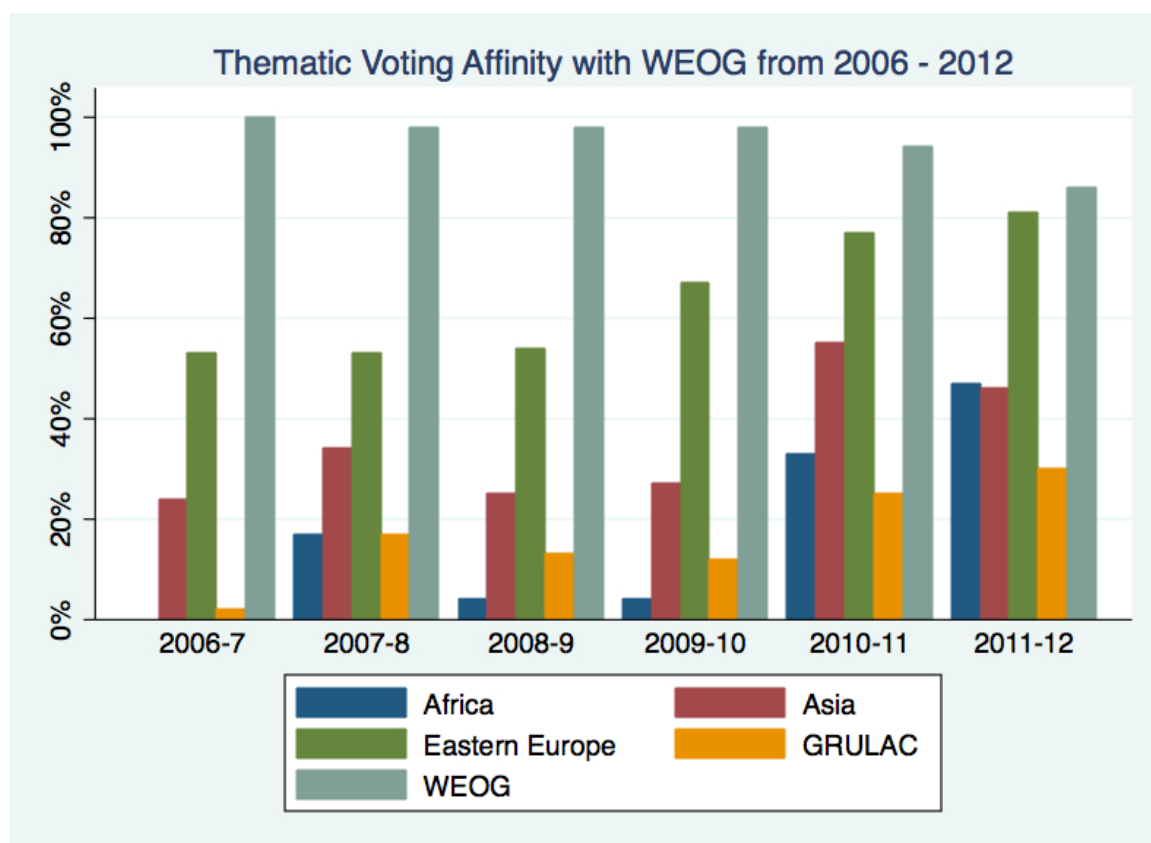


Figure 7.21: Thematic Voting Affinity with WEOG from 2006 – 2012

<sup>1090</sup> This point was reiterated multiple times in an interview with NGO5.

<sup>1091</sup> For example, one Western diplomat argued in an interview that the US thematic position is not as benign as it appears. For example, this diplomat argued that the US's staunch defense of Internet freedom is a tool against ideological rivals of the US. Interview with WEOG2.



Figure 7.21 shows that the US's position may actually be moving further from the median position of the Council. Figure 7.21 shows affinity votes with WEOG, excluding the U.S. It is important to note that unlike Figure 7.20, all regions are increasingly aligning with the WEOG position. This suggests that Europe, not the US may have more caché in the Council. Of course, it is important to put these figures in context. The high point for vote alignment with Europe in each region, except Eastern Europe is still rather low; The Africa group never reaches 50%, with a high of 47% in 2011-12, Asia reaches an apex in 2010-11 with only 55%, and GRULAC's high is only 30% in 2012.

## Conclusions

The transition from the Commission on Human Rights to the Human Rights Council does not significantly affect thematic resolution practices in Geneva. Since the formative years of the Council, a dichotomy of practices has existed on the Council. On the one hand, the introduction of a large number of resolutions, often times with overlapping rights claims, characterizes the practice of many states in the Non-Aligned Movement. These resolutions, often times lead by Cuba, have little to do with human rights but appear to be maneuvers meant at best to annoy the West and at worst, to take away from the limited resources of the Council in order to weaken the Council's special procedures.<sup>1092</sup> On the other hand, the West, has heretofore, been relatively focused on the resolutions that they

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<sup>1092</sup> See note 1015. One NGO argued that the problem is that “things [thematic resolutions] are created but never end [studies continue, almost in perpetuity].” Interview with NGO7.

introduce, often times desiring consensus. However, the consensual approach of the West means that resolutions often reflect the least common denominator.<sup>1093</sup>

In addition, the West, including the United States has been unable to keep the number of resolutions introduced to a manageable level. The United States is able to greatly impact the country specific focus of the Council because it is a priority while maintaining quality control or creating a thematic program of their own lags considerably behind.

The United States is also losing the hearts and minds of the Council, at least on the thematic front. The United States continues to vote against the Council, including the WEOG group on some resolutions, including the right to development. In the meantime, the regional groups are more closely aligning with the remainder of WEOG. This opens up the possibility for Western European states to take an initiative that they have, for the most part, ignored.

What should be now be clear is that the Council is a battleground for competing ideologies and the outcome is a proliferation of thematic resolutions. As one Permanent Mission pointed out, “thematic mandates are simply competition based on which rights states prefer and their strategy of using limited resources.”<sup>1094</sup> The problem, according to many stakeholders is of quality control and resources. Quality control is a problem because the Council is losing sight of human rights. For example, one NGO argued that it is a “disservice to human rights when things may not be human rights [but are brought to

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<sup>1093</sup> Interview with NGO3 and WEOG4.

<sup>1094</sup> Interview with WEOG6.

the attention of the Council].<sup>1095</sup> They continued to state that, “this makes it difficult to understand human rights;” the implication of course is that all the debate surrounding new rights takes away from protecting human rights on the ground.<sup>1096</sup> Another argued that, “[all of these] resolutions are disruptive.”<sup>1097</sup>

Of course, as was pointed out by a diplomat from Eastern Europe, “many of these thematic resolutions are supported by numerous states.”<sup>1098</sup> They continued, “and...in many cases, there are others we’d rather not have but cannot do anything about like foreign debt, mercenaries.”<sup>1099</sup> Perhaps what is most interesting about the thematic resolution conundrum is that there is little political will to fix the problem, even from the West. For example, when asked if it should be harder to set up thematic resolutions, one Western diplomat simply said, “no.”<sup>1100</sup> The logic here is that making it more difficult to set up resolutions runs counter to the mission of the Council.

In the end, thematically, despite the adoption of important resolutions, like the sexual orientation and gender identity, the Council resembles the Commission. This should not be surprising though. Structurally, the UN HRC lets states run roughshod over each other in an attempt to legitimize their human rights preferences. Cooperation and compromise are supposed to frame the debate at the UN HRC, but thus far, it has failed to do so.<sup>1101</sup>

Human Rights Watch correctly argues that, “political problems, not institutional

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<sup>1095</sup> Interview with NGO7.

<sup>1096</sup> Interview with NGO7. Another NGO asked, not rhetorically, “what are human rights?” It is clear that there is some frustration in Geneva regarding this subject. Interview with NGO5.

<sup>1097</sup> Interview with NGO5.

<sup>1098</sup> Interview with EE1.

<sup>1099</sup> Ibid.

<sup>1100</sup> Interview with WEOG4.

<sup>1101</sup> A/HRC/RES/5/1, 4.

problems are the key to the UN HRC's success.<sup>1102</sup> Political problems are important.

However, the Council was created to fix institutional problems. Yet, as far as thematic resolutions are concerned, 2012, in many ways, may as well be 2002, 1992, or 1982.

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<sup>1102</sup> Human Rights Watch (2007) *New Human Rights Council Requires Greater Political and Diplomatic Effort to Realize Its Potential*, Human Rights Watch. Available at: <http://www.hrw.org/news/2007/12/10/new-human-rights-council-requires-greater-political-and-diplomatic-effort-realize-it> [2 July 2013].

## Chapter 8

### Conclusion

The United Nations Human Rights Council is mandated by the General Assembly to promote and protect human rights, a task, which at the end of its life, the Commission on Human Rights was increasingly unable to perform adequately. Member States of the UN along with the Secretariat, including then Secretary-General Kofi Annan argued that “piecemeal reforms will not be enough” to save the Commission.<sup>1103</sup> In order to “save” the UN’s primary Charter-based human rights body, most stakeholders believed that large structural reforms, which would mitigate the increased politicization and increasingly despotic membership of the Commission, must occur. In 2006, large reforms did occur and the Human Rights Council was created.

This dissertation examined how large-scale structural reform has affected voting outcomes in the Council. Or to put it another way, did the creation of the Human Rights Council make a difference regarding politicization and membership? Or is the Council a new false hope for the protection and promotion of human rights in the UN?

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<sup>1103</sup> Anan K (2005), *I*.

## Significance

I believe this dissertation is the first large-scale study of voting outcomes in the Human Rights Council. For human rights researchers, this research should serve as the basis for new studies focusing on how human rights are crafted within the United Nations. The creation of the Council is an important watershed moment for human rights norms. For scholars of international law and international relations, the research included in this dissertation, especially the datasets on country and thematic outcomes should create the foundation of future theoretically oriented work. For example, which theories of international relations or international law best explain this study's findings? Grand theories of international relations are clearly unable to easily explain the variation in country resolutions compared to thematic resolutions. How is it possible for the United States to drive country resolutions in such a dramatic manner yet be ineffectual in altering thematic resolutions? If human rights norms matter, why then does the Council systematically exclude reference to two of the most prominent human rights norms of the 21<sup>st</sup> century? If interest alone explains outcomes, why do the United States and other members of WEOG vote in favor of resolutions that run contrary to their interests, for example resolutions on migrant workers and business and human rights? These are just a few of the interesting puzzles this study raises.

## Findings

The empirical findings of this project show that there is great variation between country and thematic voting outcomes. The Human Rights Council has shifted significantly in

how it votes on country resolutions. The primary pivot point is late 2009, which corresponds with the reengagement of the United States in Geneva. The United States' strategy of engaging with diplomats from other states in a conciliatory manner has had a profound impact on country situations. In addition, the US's strategy of engaging with key states from different regional groupings has shifted the dynamic of the Human Rights Council.<sup>1104</sup> By breaking voting blocs down, the U.S. has been able to pass key resolutions, such as the resolution on Sri Lanka in 2012. However, perhaps more importantly for the Council, other Member States are actively passing resolutions against human rights violators, such as Eritrea and Belarus. The focus on passing difficult country resolutions has given many human rights activists hope.<sup>1105</sup>

Of course, the U.S.'s reengagement has not been able to change every aspect of voting on country situations. The U.S. was unable to remove Agenda Item 7, the special agenda item on Israel, from the HRC's agenda during the Council's five-year review. The Council's continued (though diminished on the whole) selectivity on Israel illustrates that some situations have not changed from the Commission to the Council.<sup>1106</sup> Nevertheless, since late 2009, there has been only one special session on Israel, compared to five prior to the US's election.

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<sup>1104</sup> For more on the US's strategy, please see: Nossel S (2012), 791.

<sup>1105</sup> For example, two NGOS laud the ability of southern democracies to pass resolutions against states. Additionally, they argue that the shift in Latin America from not passing country resolutions to voting in favor of some resolutions is key. Interview with NGO5 and NGO4. Another diplomat said that they were surprised that some NAM countries would support country mandates but that it is occurring. Interview with WEOG3. See generally International Service for Human Rights (2013), 818.

<sup>1106</sup> See note 775.

The Council's inability or unwillingness (or perhaps both) to include reference to the International Criminal Court and the Responsibility to Protect illustrate that the Council's focus on country situations may be outdated. This is especially true in those cases where the Security Council, which may of course avoid overly political resolutions by use of the veto power, has passed resolutions using the language of R2P or referred country situations to the ICC, or where a case is being examined by the ICC but has not been examined by the Council. For example, why have the Central African Republic, Kenya, and Uganda, all of which are under investigation by the ICC, never had a resolution adopted concerning them in the Council? This is a missed opportunity for the Council.

Of course, the Council is not a complete failure regarding the ICC and R2P. The Council's fast action on Libya, including requesting that its membership on the Council be revoked, may have had an effect on states in New York.<sup>1107</sup> In addition, the Council has held four special sessions on the situation in Syria, though the outcome documents do fail to refer the situation in Syria to the ICC or use R2P language. Nevertheless, these recent "Arab Spring" cases illustrate that the Council, when willing, may act quickly on important country situations. Unfortunately, however, the Council does not act fast enough or uniformly enough in most cases. It may be that the failure of the Council to include reference to the International Criminal Court or the Responsibility to Protect lies in the fact that neither side, the West, especially the US, or the "supra" non-aligned Movement, lead by Cuba and Russia, are significant proponents of either institution.

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<sup>1107</sup> This was a fairly common sentiment in Geneva. Interview with WEOG4.



Thematically, at least, quantitatively, the Council has not changed appreciably from the Commission. There is a proliferation of thematic mandates in the Council and the number of resolutions passed on thematic issues continues to increase. This is a problem. With the cost of thematic discussions ranging from tens of thousands to millions of dollars, The Council simply does not have the resources to keep up with the proliferation of thematic resolutions.<sup>1108</sup> The US's strategy on thematic resolutions is very focused. As such, highly politicalized resolutions have been passed, such as resolutions on the freedom of expression and religion,<sup>1109</sup> on the rights of the LGBT community,<sup>1110</sup> and Internet freedom.<sup>1111</sup> However, US diplomatic power has had little effect on other states passing resolutions. Cuba, Pakistan, and Egypt continue to pass thematic resolutions on a number of controversial issues. In addition, the US has been unable to slow down Russia's progress on traditional values.

Unlike country resolutions, as seen in Figure 5.10, the US is unable to shift votes in its favor on thematic issues. For example, comparing Figures 7.21 and 7.20, it is evident that more states align with Western Europe than the US. The proliferation of thematic issues is a structural issue. It is not hard to pass thematic resolutions in the Council. However, the shift in the US's position away from the mean of the Council suggests a larger issue. It suggests the US is either unwilling or unable to change voting outcomes on thematic issues.

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<sup>1108</sup> UN Watch (2013) *Financial Implications of Recent HRC Resolutions by Type of Mandate*. Available at: <http://blog.unwatch.org/wp-content/uploads/HRC-PBI-cost-examples.pdf> [2 July 2013].

<sup>1109</sup> Nossel S (2012) 791, p. 15.

<sup>1110</sup> Ibid, p. 17.

<sup>1111</sup> UN Human Rights Council (2012) *The promotion, protection and enjoyment of human rights on the Internet*. 5 July 2012. A/HRC/RES/20/8.

The empirical findings suggest that regional bloc voting, particularly “ideological” regional bloc voting is a mixed bag. On country situations, most regions vote as a bloc less than 30% of the time, though the number trends significantly higher if one excludes votes on Israel. Thematically, regional bloc voting varies significantly. Africa, GRULAC, and WEOG vote as a region over 60% of the time on contested resolutions. This indicates a semi-united front. However, more interestingly, on contested resolutions, Asia votes as a region less than 30% of the time and Eastern Europe votes as a region only 9% of the time. This is of course indicative of a split in ideologies within each region. Asian votes are split because of the presence of two outliers, Japan and South Korea. Eastern Europe is a broken bloc because of Russia and its smaller satellite states. And on some issues, there are of course some principled states, such as India and Switzerland, who do not vote on country situations. What this suggests is that regional bloc voting is not as significant, at least on country situations, as advocates believe.

Empirically, the role of membership is also mixed. First, it is important to note that in numerous cases, human rights abusers such as Sudan, Ethiopia, and Syria, have been kept out of the Council, a practice that would not have happened in the Commission. Secondly, as show in chapter five, the relative level of democracy or non-democracy on the Council has little impact on outcomes. What appears to matter most is *who* is on the Council. Or to put it differently, having the US on the Council impacts outcomes more than any other factor. However, thematic resolutions have seen little variation over time, which suggests that membership may not affect voting outcomes on thematic issues. The

Council will not be able to exclude all human rights abusers, and arguably, perhaps the Council should not try since that would not be a representative sample of world states.<sup>1112</sup>

## Implications

The purpose of this study is not to advance a new theory of international law or international relations. Therefore, The theoretical implications are modest. Instead, one of the purposes of this dissertation is to create new and interesting questions. The empirical findings have accomplished this narrow goal. However, what is evident is that regional bloc voting needs to be conceptually reconsidered. Obviously pure regional bloc voting is not an explanation but neither is pure ideological voting, as suggested by Hug and Lukacs.<sup>1113</sup>

Another important implication is that the conceptualization of human rights may need to be reexamined. What are human rights? From looking at the resolutions adopted by the Council, it is difficult to decipher what is and *isn't* a human right. The issue here is that states conceptualize human rights differently. This is nothing new or shocking. However, in practice, this is an interesting problem. Few Western scholars would argue against the rights of the LGBT community; however, if traditional values are human rights, then the two conflict. Is the right to peace a human right? Is the right to a democratic and equitable order a human right? Are some parts of these resolutions human rights while

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<sup>1112</sup> Schrieffer P (2013) *Why the United States Should Continue to Engage the UN Human Rights Council*. Available at: <http://www.freedomhouse.org/article/why-united-states-should-continue-engage-un-human-rights-council> [23 June 2013].

<sup>1113</sup> Hug S and Lukacs R (2011), 10.

others are not? What about the right to an environment clean of toxic wastes? Is the right of a state to be free from foreign debt a human right? How about the right to good governance? These questions are important because the Council in essence “creates” human rights, at least in the UN-legal sense. Future studies may need to reexamine what the term human rights means.

There are a number of important policy implications brought to light by this study. First, it appears that the US and its diplomatic resources are able to alter country outcomes. However, practically, if the US wants to avoid the Council following the same fate as the Commission, it should increase its focus on thematic issues. The US should focus not only on passing thematic resolutions that are in its interest but it should build a cross regional coalition to combat the proliferation of resolutions introduced by Cuba. Simultaneously, the US should not oppose all resolutions introduced by Cuba and its allies but should weigh each resolution on the merits of the resolutions.

The US should also not selectively engage with the Council. Although numerous recent country resolutions are being passed because of the work of the US diplomatic mission in Geneva, the absence of resolutions on some states, particularly Bahrain, a key ally of the US, is noticeable.<sup>1114</sup> This selectivity undermines many of the positive resolutions adopted with the help of the US since late 2009.

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<sup>1114</sup> See: Human Rights Watch (2012), 873. Many interviewees expressed disappointment with the situation of Bahrain and the lack of political will on the Council to act. One Western diplomat said that it was “disappointing but [understood the] strategic importance [of Bahrain to the US]. Interview with WEOG2. One NGO was less coy with their assessment. They argued that the US is blocking action on Bahrain and that the situation is a “dismal failure.” Interview with NGO7.

The US should also remain engaged with the Council, despite the calls, particularly from the conservative party in the US to cut ties and run.<sup>1115</sup> The most important takeaway point from this study is that the US is making a key difference in outcomes.

26 different states have been targeted in the Council from 2006 until 2012. Of these 26 states, 22 are from either Africa (12) or Asia (11). The other four states are Haiti, Honduras, Belarus, and Israel. The Council should focus more on issues involving states in other regions besides Africa and Asia. Admittedly, Africa and Asia are home to many states that do have significant human rights problems but the Council should muster the political will to show that it can also pass resolutions against states in other regions to avoid the cry of neo-colonialism, which now plagues the ICC.<sup>1116</sup>

Member States on the Council should decrease the number of thematic resolutions passed each session. As noted before, there is a significant resource problem in the UN and on the Council. Although the Advisory Committee has been much maligned, one option is to shift the focus of reporting from special rapporteurs to the Advisory Committee. The Advisory Committee is underused. Member States should forget the past and their fears of an agenda-setting Sub-Commission and should instead actively engage with the

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<sup>1115</sup> See for example: Schaefer B (2011) The U.S. Should Pursue an Alternative to the U.N. Human Rights Council. *The Heritage Foundation*. Available at: <http://www.heritage.org/research/reports/2011/06/the-us-should-pursue-an-alternative-to-the-un-human-rights-council> [23 June 2013] and Schaefer B (2012) The U.N. Human Rights Council Does Not Deserve U.S. Support. *The Heritage Foundation*. Available at: <http://www.heritage.org/research/reports/2012/09/the-un-human-rights-council-does-not-deserve-us-support> [23 June 2013].

<sup>1116</sup> See for example: Branch A (2007) Uganda's Civil War and the Politics of ICC Intervention. *Ethics & International Affairs* 21(2): 179, Eberechi I (2011), 846, and Kersten M (2012) *Is the ICC Racist?* Available at: <http://justiceinconflict.org/2012/02/22/is-the-icc-racist/> [23 June 2013].

Advisory Committee in order to make it relevant again and most importantly, to let the Committee adequately fulfill its mandate.<sup>1117</sup>

According to the findings in this dissertation, Non-governmental organizations have heretofore focused a disproportionate amount of attention on membership. As noted above, this may not be particularly helpful. Instead, NGOs should shift their limited resources to lobbying anocracies. These states are pivot points in the Council. Of course keeping the most repressive regimes like Sudan, Syria, and Eritrea off the Council is important but so too is capturing the attention of states that *are willing to* shift how their vote in the Council.

Member States of the UN and other relevant stakeholders should take the next evaluation of the Human Rights Council more seriously. Particularly, despite the human rights situation in Israel, the Council should consider removing Agenda Item 7 and instead examine Israel like all other states in the UN. The selectivity on Israel is one of the greatest threats facing the Council's reputation.<sup>1118</sup> Other potential reforms of note may include promoting the Council to equal footing with the General Assembly and other principal organs of the UN and figuring out a novel way to deal with the problem of clean slates.

## Future Research

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<sup>1117</sup> Of course, a precursor to this is electing adequate members to the Advisory Committee.

<sup>1118</sup> Interview with NGO6

More research is needed to better understand how the transition from the Commission on Human Rights to the Human Rights Council has affected outcomes. This research project's narrow focus on voting outcomes is only one part of the puzzle. Future research should be conducted on decision-making within the Human Rights Council. For example, why and how do states negotiate and vote on controversial resolutions like sexual orientation and gender identity, the right of peoples to peace, and the role of traditional values. This research will culminate in a book project, which also includes much of this dissertation project. In addition to focusing on decision making in the UN HRC, this book project will add an additional layer of theoretical grounding.

As part of the voting outcomes project, it is important to maintain and expand the datasets and to include more quantitatively focused research in order to test potential hypotheses. For example, research should be conducted on regional bloc voting and voting affinity within the UN, which must combine datasets created for this project with already existing datasets.

Original research should focus on foreign policymaking in the United Nations Human Rights Council. The US is of course an obvious case study but so are other important stakeholders including Cuba, Pakistan, and Europe or international coalitions like the Non-Aligned Movement, the Organization for Islamic Cooperation or even the loosely defined "rising democracies." A more in-depth analysis how these states and groups operate within the Human Rights Council should be an important contribution to both human rights diplomacy and international relations.

Additional research could also examine the role that the Arab Spring is playing in Council outcomes. According to numerous interviewees, the sudden onslaught of revolts in what many believed to be a stable region has shifted the priorities of Member States.<sup>1119</sup>

Finally, added research should examine the subsidiary bodies and how their outcomes affect human rights domestically. Specifically, future research should be conducted on the Universal Periodic Review. This research should examine how the UPR process affects NHRIs, NGOs, and government agencies. For example, are these stakeholders including outcomes in the UPR process or are the outcome documents being ignored domestically. According to interviews in Geneva, the UPR process is important for the UN HRC, not because of outcome documents but because of the process.<sup>1120</sup> The process, according to both academics and activists, is what internalizes international human rights norms.

Although the scope of this dissertation is quite limited, this is a conscious decision. This project is meant to be a springboard for more research, both theoretical and empirical, on the Council, its subsidiary bodies, and how states interact and create human rights centered foreign policy in the United Nations.

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<sup>1119</sup> This was a general consensus in Geneva. One interviewee argued that the Arab Spring, not necessarily the US's reengagement with the Council, "broke down the group dynamic which had quickly established itself with the OIC, Africa Group and Arab Group." Interview with NGO7. Another NGO stated the Arab Spring had a "very positive impact" in Geneva. Interview with NGO4. Diplomats generally agreed as well. For example, one from South America argued that the "logic was the same from the CHR to HRC. However, the Arab Spring opened up new opportunities and alliances." Interview with GRULAC 3.

<sup>1120</sup> This idea was originally given in an interview with Scholar1. However, once brought up on interviews, many other interviewees suggested that this was probably the case.



## Final Thoughts

During the summer of 2012, in total, nearly 50 diplomats, representatives of NGOS, and members of the UN secretariat were asked about perceived expectations and performance of the UN Human Rights Council.<sup>1121</sup> Each respondent answered that the Human Rights Council has performed above expectations. Although consensus was also reached that had the question been asked just a few years earlier, the answer would have been “significantly below expectations.” Across the board, interviewers argued that the US is playing a crucial role in the transformation of the Council. US diplomatic power is able to achieve outcomes that other states simply cannot acquire.

Has the transition from the Commission to the Council made a difference? Yes... and no. The structure of the Council, including the shift in membership and votes from the West to the “rest” appears to have succeeded. After all, the Council is performing above expectations. However, the Council’s improved performance correlates with US reengagement. Absent US engagement, the Council floundered. WEOG states were less than engaged and Cuba’s agenda was passed without fervent opposition. In the end, how is this different from the Commission? The Commission succeeded when the US was most engaged and struggled not because of its structure but because of state practice within the Commission. What this suggests is that state practice, not structure, will dictate whether or not the Council is a success or a failure in the future.<sup>1122</sup> In other words, the

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<sup>1121</sup> Specifically, the question was, “Has the Human Rights Council performed significantly below expectations, below expectations, on par with expectations, above expectations, or significantly above expectations?”

<sup>1122</sup> As one NGO stated towards the end of our interview, “the political nature is greatest strength and weakness of HRC....” Interview with NGO22.

Council embodies neither a new era of effectiveness nor the dawn of false hope. Rather, like the UN itself, the Council is what its Member States make of it.

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NB! This section Resolution	NB! This section only i \ Session	Item #	Africa (13)	Asia (13)	E. Europe (6)	GRULAC (8)	WEOG (7)
Palestine Dec 1/1		1 N/A	3 Abstain (CM, GH, NI)	1 Against (JP) 1 Abstain (SK)	4 Against (CZ, PO, RO, UK)	1 Abstain (GT)	X Against
Syrian Golan		2 N/A	1 Abstain (CM)	2 Abstain (JP, SK)	4 Abstain (CZ, PO, RO, UK)	1 Abstain (GT)	1 Against (Canada) 6 Abstain
OPT		2 N/A	1 Abstain (CM)	X	X	X	1 Against (Canada)
Darfur		2 N/A	3 Abstain (GH, MAUR, ZM)	2 Abstain (JP, SK)	4 Against (CZ, PO, RO, UK)	5 Abstain (ARG, ECD, GT, PR, URG)	X Against
OPT (s-1/1)		3 N/A	1 Abstain (CM)	1 Abstain (JP)	4 Abstain (CZ, PO, RO, UK)	X	1 Against (CA) 6 Abstain
END OF EY1 OPT (REL RIGHTS)		6	7 2 Abstain (CM, MAD)	2 Abstain (JP, SK)	4 Abstain (BH, RO, SLO, UK)	1 Abstain (GT)	1 Against (CA) 6 Abstain
Gaza Strip Attack		7	7 1 Abstain (CM)	2 Abstain (JP, SK)	4 Abstain (BH, RO, SLO, UK)	1 Abstain (GT)	1 Against (CA) 5 Abstain (Switzerland votes for)
OPT		7	7 X	X	X	X	1 Against (CA)
Syrian Golan		7	7 1 Abstain (CM)	2 Abstain (JP, SK)	4 Abstain (BH, RO, SLO, UK)	1 Abstain (GT)	1 Against (CA) 6 Abstain
END OF EY 2 Beit Hanoun (S-3		9	7 1 Abstain (CM)	1 Against (JP)	2 Against (SLOV, SLAV) 2 Abstain (BH, UK)	X	6 Against 1 Abstain (SWZ)
DPRK (Item 4)		10	4 2 Against (EGY, NIG) 5 Abstain (ANG, DJB, GAB, SEN, SA)	2 Against (CH, INDO) 6 Abstain (BANG, India, MAI)	1 Against (RUS) 1 Abstain (AZB)	1 Against (CBA) 3 Abstain (BOL, BRZ, NIC)	X
Syrian Golan		10	7 1 Abstain (CM)	2 Abstain (JP, SK)	4 Abstain (BH, SLAV, SLOV, X)		1 Against (CA) 6 Abstain
OPT		10	7 X	X	X	X	1 Against (CA)
OPT Military		10	7 1 Abstain (CM)	2 Abstain (JP, SK)	3 Abstain (BH, SLO, UK)	X	4 Against (CA, GER, IT, NL) 2 Abstain (FR, UK)
OPT S-9/1		10	7 1 Abstain (CM)	2 Abstain (JP, SK)	4 Abstain (BH, SLAV, SLO, U X)		1 Against (CA) 6 Abstain
DRC (Item 10)		10	10 X	2 Against (JP, SK)	4 Against (BH, SLAV, SLO, U	2 Against (CHILE, URG) 2 Abstain (ARG, MEX)	X Against
Sudan (Item 4)		11	4 6 Against (CM, DJB, EGY, JOR, NIG, SA) 6 Abstain (ANG, BF, GAB, GHN, MAD, 1	9 Against (BAH, BANG, CH, 1 Abstain (INDIA)	2 Against (AZB, RUS)	1 Against (CUB) 2 Abstain (BOL, NIC)	X
END OF EY3 DPRK (Item 4)		13	4 1 Against (EGY) 5 Abstain (ANG, CM, NIG, SEN, SA)	2 Against (CH, INDO) 6 Abstain (BANG, INDIA, PAK, PHIL, QAT, KRZ)	1 Against (RUS)	1 Against (CUB) 2 Abstain (BOL, NIC)	X
Syrian Golan		13	7 2 Abstain (CM, GAB)	2 Abstain (JP, SK)	5 Abstain (BH, HUN, SLOV, 'X)		1 (USA) 6 Abstain
PAL Self Determi		13	7 X	X	X	X	1 (USA)
PAL Settlements		13	7 X	X	X	X	1 (USA)
OPT		13	7 2 Abstain (BF, CM)	2 Abstain (JP, SK)	2 Against (HUN, SLAV) 3 Abstain (BH, SLOV, UK)	X	X
Gaza Strip Attack		13	7 2 Abstain (BF, CM)	2 Abstain (JP, SK)	3 Against (HUN, SLAV, UK)	2 Abstains (CH, MEX)	3 Against (IT, NL, USA) 4 Abstain
END OF EY4 Sudan (Item 4)		15	4 9 Against (ANG, BF, CM, DJI, GHA, LIB 1 Abstain (MAURIT)	8 Against (BAH, BANG, CHN 2 Abstain (THAI, KRZ)	1 Against (RUS)	1 Against (CUB)	X
IHL (Israel)		15	7 3 Abstain (BF, CM, ZAM)	(2 Abstain JP, SK)	5 Abstain (HUN, POL, MOLC	3 Abstain (CH, GT, MEX)	1 Against (USA) 6 Abstain
DPRK (Item 4)		16	4 6 Abstain (ANG, CM, MAURT, NIG, SE	1 Against (CH) 4 Abstain (BANG, MAL, PAK, QAT)	1 Against (RUS)	1 Against (CUB) 1 Abstain (ECUAD)	X
Iran (Item 4)		16	4 1 Against (MAUR) 8 Abstain (BF, CM, DJI, GAB, GHAN, h	3 Against (BANG, CH, PAK) 5 Abstain (BAH, JOR, MAL, THAI, SARAB)	1 Against (RUS)	2 Against (CUB, ECUAD) 1 Abstain (URUG)	X
Syrian Golan		16	7 2 Abstain (CM, GAB)	2 Abstain (JP, SK)	5 Abstain (HUN, POL, MOLC	1 Abstain (GT)	1 Against (USA) 6 Abstain

OPT	16	7 2 Abstain (CM, ZAM)	2 Abstain (JP, SK)	5 Abstain (HUN, POL, MOLC 1 Abstain (GT)	1 Against (USA) 5 Abstain (not SWISS)
PAL Self Determi	16	7 X	X	X X	1 Against (USA)
PAL Settlements	16	7 X	X	X X	1 Against (USA)
Gaza Strip Attack	16	7 2 Abstain (BF, CM, ZAM)	2 Abstain (JP; SK)	1 Against (SLAV) 4 Abstain (HUN, POL, MOLC 1 Abstain (GT, MEX)	2 Against (USA, UK) 5 Abstain
Belarus (Item 4)	17	4 1 Against (NIG) 9 Abstain (ANG, BAH, BF, CM, DJI, GH	1 Against (CH) 7 Abstain (BAH, BANG, MAI 1 Abstain (MOLD)	1 Against (RUS) 2 Against (CUB, ECUAD) 2 Abstain (GT, MEX)	X
END OF EY5 Iran (Item 4)	19	4 9 Abstain (ANG, BF, CM, CON, DJI, LIE	3 Against (BANG, CH, QAT) 9 Abstain (INDIA, INDO, JOR, KUJW, MAL, PHIL, SARAB, T2 Abstain (ECAUD, URUG))	1 Against (RUS) 1 Against (CUB)	X
Syrian Golan	19	7 1 Abstain (CM)	X	5 Abstain (CZ REP, HUN, PO 1 Abstain (GT)	1 Against (USA) 6 Abstain
PAL Self Determi	19	7 X	X	X X	1 Against (USA)
OPT	19	7 1 Abstain (CAM)	X	X 1 Abstain (GT)	1 Against (USA)
PAL Settlements	19	7 1 Abstain (CAM)	X	5 Abstain (CZ REP, HUN, PO 2 Abstain (CR, GT)	1 Against (USA) 2 Abstain (IT, SP)
Gaza Strip Attack	19	7 2 Abstain (BF, CAM)	X	5 Abstain (CZ REP, HUN, PO 4 Abstain (CR, GT, MEX, UR 6 Abstain	1 Against (USA)
Syria	19	4 1 Abstain (UGAN)	1 Against (CH)	1 Against (RUS) 1 Against (CUB) 1 Abstain (ECUAD)	X
Belarus	20	4 8 Abstain (ANG, CM, DJI, LIB, MAURIT	2 Against (CH, INDIA) 8 Abstain (BANG, INDO, KU 1 Abstain (MOLD)	1 Against (RUS) 2 Against (CUB, ECAUD) 3 Abstain (GT, MEX, URUG)	X
Syria (Item 4)	20	4 1 Abstain (UGAN)	1 Against (CH) 2 Abstain (INDIA, PHIL)	1 Against (RUS) 1 Against (CUB)	X
Syria (Item 4)	21	4 1 Abstain (UGAN)	1 Against (CH) 2 Abstain (INDIA, PHIL)	1 Against (RUS) 1 Against (CUB)	X

This examines consensual votes, contested votes, and total votes on resolutions

Year	Without a Vote	Votes on Resolutions	Total #	
2006 - 2007		6	5	11
2007 - 2008	13		4	17
2008 - 2009	7		8	15
2009 - 2010	10		6	16
2010 - 2011	13		10	23
2011 - 2012	26		10	36

This examines the same as above but looks specifically at votes on Israel

Year	Without a Vote Israel	Votes on Resolutions Israel	Total #	
2006 - 2007		2	4	6
2007 - 2008		2	4	6
2008 - 2009		1	5	6
2009 - 2010		0	5	6
2010 - 2011		0	6	6
2011 - 2012		0	5	5

#### Total Resolutions By Country

Israel	34		
Sudan	10		
Myanmar	9		
Somalia	9		
DPRK	5		
Burundi	4		
Cambodia	4		
DRC	4		
Côte d'Ivoire	3		
haiti	3		
Kyrgyzstan	3		
Syria	3		
Yemen	3		
Afghanistan	2		
Belarus	2		
Guinea	2		
Iran	2		
Liberia	2		
Libya	2		
Mali	2		
South Sudan	2		
Eritrea	1		
Honduras	1		
Nepal	1		
Tunisia	1		
Residual	4		

#### Total Resolutions By Country / By Type

Country	Agenda Item 4	Agenda Item 10	Agenda Item 7	Total Resolutions
Israel	0	0	34	34
Sudan	7	3	0	10
Myanmar	9	0	0	9
Somalia	0	9	0	9
DPRK	5	0	0	5
Burundi	0	4	0	4
DRC	3	1	0	4
Cambodia	0	4	0	4
Residual	0	4	0	4
Côte d'Ivoire	0	3	0	3
Haiti	0	3	0	3
Kyrgyzstan	0	3	0	3
Syria	3	0	0	3
Yemen	0	3	0	3
Afghanistan	0	2	0	2
Belarus	2	0	0	2
Guinea	0	2	0	2
Iran	2	0	0	2
Liberia	0	2	0	2
Libya	0	2	0	2
Mali	2	0	0	2
South Sudan	0	2	0	2
Eritrea	1	0	0	1
Honduras	1	0	0	1
Nepal	0	1	0	1
Tunisia	0	1	0	1

#### Total Resolutions by Agenda Type

Year	Agenda Item 4		
2006-2007	2	6	3
2007-2008	7	6	4
2008-2009	4	6	5
2009-2010	4	5	7
2010-2011	6	6	11
2011-2012	10	5	21
Total	33	34	51

#### Total Contested Resolutions by Agenda Type

	Contested Agenda Item 4	Contested Agenda Item 10	Contested Agenda Item 7
2006-2007	1	0	4
2007-2008	0	0	4
2008-2009	2	1	5
2009-2010	1	0	5
2010-2011	4	0	6
2011-2012	5	0	5
Total	13	1	29

#### Bloc Voting as a number in contested resolutions (see previous tab for info)

	African Group	Asian Group	GRULAC
2006-2007	0	1	
2007-2008	1	1	
2008-2009	2	1	
2009-2010	2	2	
2010-2011	2	2	
2011-2012	1	5	

#### BLOC Voting as a Percentage in contested resolutions (see previous tab for info)

	African Group	Asian Group	GRULAC	Eastern Euroq WEOG
2006-2007	0%	17%	33%	17%
2007-2008	25%	25%	25%	0%
2008-2009	25%	13%	63%	13%
2009-2010	33%	33%	67%	33%
2010-2011	20%	20%	20%	40%
2011-2012	10%	50%	10%	20%

#### State Number of Contested Votes

Sudan	3
DPKR	3
DRC	1
Iran	2
Belarus	2
Syria	3

#### This table looks at introducers and targets

Time	Africa Introducer	Africa Target	Asia Introducer	Asia Target	Eastern Europe Intrc	Eastern Europe Tar	GRULAC Introducer	GRULAC Target	WEOG Introduct	WEOG Target
2006	1		1	0	0	0	0	0	0	0
2007	0		0	0	0	0	0	0	0	0
2008	2		2	0	1	0	0	0	1	0
2009	0		0	0	1	0	0	0	1	0
2010	1		1	0	2	1	1	0	2	0
2011	0		0	1	4	0	1	0	4	0

#### This table looks at special sessions

Year	Total Sessions
2006-2007	5
2007-2008	3
2008-2009	4

2009-2010	2
2010-2011	3
2011-2012	3

NB! These numbers exclude contested votes on Israel. In other words, the n = 14.

2006-2007	Regional Group With WEOG	Against WEOG	Abstain	
	Africa (13)	0	77	23
	Asia (13)	0	85	15
	GRULAC (8)	0	38	63
	E. Europe (6)	67	33	0
	WEOG (7)	100	0	0

2007-2008	Africa (13)			
	Asia (13)			
	GRULAC (8)			
	E. Europe (6)			
	WEOG (7)			

2008-2009	Africa (39)	18	54	28
	Asia (39)	26	56	18
	GRULAC (24)	46	25	29
	E. Europe (18)	67	28	6
	WEOG (21)	100	0	0

2009-2010	Africa (13)	54	8	38
	Asia (13)	38	15	46
	GRULAC (8)	63	13	25
	E. Europe (6)	83	17	0
	WEOG (7)	100	0	0

2010-2011	Africa (52)	33	21	46
	Asia (52)	40	25	34
	GRULAC (32)	69	19	13
	E. Europe (24)	79	17	4
	WEOG (28)	100	0	0

2011-2012					Excluding Syria			
	Africa (65)	69	0	31	Africa (26)	35	0	65
	Asia (65)	57	12	32	Asia (26)	19	19	65
	GRULAC (40)	70	15	15	GRULAC (16)	50	19	31
	E. Europe (30)	80	17	3	E. Europe (12)	75	17	8
	WEOG (35)	100	0	0	WEOG (14)	14	0	0

How often are States agreeing with the West?

	Africa	Asia	GRULAC	Eastern Europe	WEOG
2006-2007	0	0	0	67	100
2008-2009	18	26	46	67	100
2009-2010	54	38	63	83	100
2010-2011	33	40	69	79	100
2011-2012	69	57	70	80	100

Excluding Syria

	Africa	Asia	GRULAC	Eastern Europe	WEOG
2006-2007	0	0	0	67	100
2008-2009	18	26	46	67	100
2009-2010	54	38	63	83	100
2010-2011	33	40	69	79	100
2011-2012	35	19	50	75	100

The following tables are including votes on Israel

WEOG as Percentage

Year	Africa	Asia	Eastern Europe	GRULAC	WEOG
2006	31	31	73	38	97
2007	33	37	75	34	93
2008	23	29	69	33	96
2009	50	47	89	81	95
2010	40	42	85	51	97
2011	65	69	87	50	93

USA as Percentage						
Year	Africa	Asia	Eastern Euro	GRULAC	USA	
2009		28	26	44	31	57
2010		20	22	65	31	83
2011		39	39	60	28	77

Raw numbers						
WEOG						
2006-2007	Africa	Asia	EE	GRULAC	WEOG	
		31	31	73	38	97
2007-2008	Africa	Asia	EE	GRULAC	WEOG	
		33	37	75	34	93
2008-2009	Africa	Asia	EE	GRULAC	WEOG	
		23	29	69	33	96
2009-2010	Africa	Asia	EE	GRULAC	WEOG	
		50	47	89	81	95
2010-2011	Africa	Asia	EE	GRULAC	WEOG	
		40	42	85	51	97
2011-2012	Africa	Asia	EE	GRULAC	WEOG	
		65	69	87	50	93

USA						
2009-2010	Africa	Asia	EE	GRULAC	WEOG	
		28	26	44	31	57
2010-2011	Africa	Asia	EE	GRULAC	WEOG	
		20	22	65	31	83
2011-2012	Africa	Asia	EE	GRULAC	WEOG	
		39	39	60	28	77

Assigned Numbers												
Data Series						democracy	autocracy	authoritarian				
2006 - 2007	2007 - 2008	2008 - 2009	2009 - 2010	2010 - 2011	2011 - 2012	23	11	12				
23	23	26	26	26	26	23	10	11				
11	10	9	10	11	7	24	8	11				
12	13	13	12	13	11	24	10	12				
						20	13	11				
						26	7	11				
Ex Series						dem	an	ATN	percentages			
25	21	22	21	18	20	69	21	23	99			
13	14	16	12	17	15	69	21	26	98			
9	10	9	13	12	12	11	19	28	98			
						14	21	26	98			
						13	18	28	100			

Freedom House Scores

Regional Grouping		Local Name		FOL HP LID	Score	Regional Group		State Name	FOL HP LID	Score	Regional Group		State Name	FOL HP LID	Score	Regional Group		State Name	FOL HP LID	Score					
Africa		Algeria	1	1.0		2007-2008	African	Angola	1	0.5	2008-2009	African	Angola	1	0.5	2009-2010	African	Angola	1	0.5	2010-2011	African	Angola	1	0.5
		Benin	1	1				Benin	1	1			Benin	1	1			Benin	1	1					
		Burkina Faso	0.5	1				Burkina Faso	0.5	1			Burkina Faso	0.5	1			Burkina Faso	0.5	1					
		Burundi	0	1				Burundi	0	1			Burundi	0	1			Burundi	0	1					
		Cote d'Ivoire	0.5	1				Cote d'Ivoire	0.5	1			Cote d'Ivoire	0.5	1			Cote d'Ivoire	0.5	1					
		Egypt	0	1				Egypt	0	1			Egypt	0	1			Egypt	0	1					
		Ethiopia	0	1				Ethiopia	0	1			Ethiopia	0	1			Ethiopia	0	1					
		Ghana	0	1				Ghana	0	1			Ghana	0	1			Ghana	0	1					
		Guinea	0	1				Guinea	0	1			Guinea	0	1			Guinea	0	1					
		Kenya	0.5	1				Kenya	0.5	1			Kenya	0.5	1			Kenya	0.5	1					
		Madagascar	0	1				Madagascar	0	1			Madagascar	0	1			Madagascar	0	1					
		Mali	0	1				Mali	0	1			Mali	0	1			Mali	0	1					
		Morocco	0.5	1				Morocco	0.5	1			Morocco	0.5	1			Morocco	0.5	1					
		Niger	0	1				Niger	0	1			Niger	0	1			Niger	0	1					
LACS		Nigeria	0	1		2007-2008	LACS	Nigeria	0	1	2008-2009	LACS	Nigeria	0	1	2009-2010	LACS	Nigeria	0	1	2010-2011	LACS	Nigeria	0	1
		Romania	0.5	1				Romania	0.5	1			Romania	0.5	1			Romania	0.5	1			Romania	0.5	1
		Russia	0	1				Russia	0	1			Russia	0	1			Russia	0	1			Russia	0	1
		Ukraine	0	1				Ukraine	0	1			Ukraine	0	1			Ukraine	0	1			Ukraine	0	1
		Yemen	0	1				Yemen	0	1			Yemen	0	1			Yemen	0	1			Yemen	0	1
		Zambia	0.5	1				Zambia	0.5	1			Zambia	0.5	1			Zambia	0.5	1			Zambia	0.5	1
		Argentina	0	2				Argentina	0	2			Argentina	0	2			Argentina	0	2			Argentina	0	2
		Brazil	0	2				Brazil	0	2			Brazil	0	2			Brazil	0	2			Brazil	0	2
		Canada	1	7				Canada	1	7			Canada	1	7			Canada	1	7			Canada	1	7
		Chile	0.5	1				Chile	0.5	1			Chile	0.5	1			Chile	0.5	1			Chile	0.5	1
		Colombia	0.5	1				Colombia	0.5	1			Colombia	0.5	1			Colombia	0.5	1			Colombia	0.5	1
		Costa Rica	0	1				Costa Rica	0	1			Costa Rica	0	1			Costa Rica	0	1			Costa Rica	0	1
		Cuba	0	1				Cuba	0	1			Cuba	0	1			Cuba	0	1			Cuba	0	1
		Guatemala	0.5	1				Guatemala	0.5	1			Guatemala	0.5	1			Guatemala	0.5	1			Guatemala	0.5	1
Honduras	0	1		Honduras	0	1	Honduras	0	1	Honduras	0	1	Honduras	0	1										
Asian		Peru	0	1		2007-2008	Asian	Peru	0	1	2008-2009	Asian	Peru	0	1	2009-2010	Asian	Peru	0	1	2010-2011	Asian	Peru	0	1
		Uruguay	0	1				Uruguay	0	1			Uruguay	0	1			Uruguay	0	1			Uruguay	0	1
		Bahrain	0.5	1				Bahrain	0.5	1			Bahrain	0.5	1			Bahrain	0.5	1			Bahrain	0.5	1
		Bangladesh	0.5	1				Bangladesh	0.5	1			Bangladesh	0.5	1			Bangladesh	0.5	1			Bangladesh	0.5	1
		China	1	1				China	1	1			China	1	1			China	1	1			China	1	1
		India	0.5	1				India	0.5	1			India	0.5	1			India	0.5	1			India	0.5	1
		Indonesia	0	1				Indonesia	0	1			Indonesia	0	1			Indonesia	0	1			Indonesia	0	1
		Japan	0	1				Japan	0	1			Japan	0	1			Japan	0	1			Japan	0	1
		Korea	0.5	1				Korea	0.5	1			Korea	0.5	1			Korea	0.5	1			Korea	0.5	1
		Malaysia	0.5	1				Malaysia	0.5	1			Malaysia	0.5	1			Malaysia	0.5	1			Malaysia	0.5	1
		Philippines	0	1				Philippines	0	1			Philippines	0	1			Philippines	0	1			Philippines	0	1
		Singapore	0.5	1				Singapore	0.5	1			Singapore	0.5	1			Singapore	0.5	1			Singapore	0.5	1
		Taiwan	0.5	1				Taiwan	0.5	1			Taiwan	0.5	1			Taiwan	0.5	1			Taiwan	0.5	1
		Thailand	0	1				Thailand	0	1			Thailand	0	1			Thailand	0	1			Thailand	0	1
WEOG		United States	0.5	1		2007-2008	WEOG	United States	0.5	1	2008-2009	WEOG	United States	0.5	1	2009-2010	WEOG	United States	0.5	1	2010-2011	WEOG	United States	0.5	1
		Canada	0	1				Canada	0	1			Canada	0	1			Canada	0	1			Canada	0	1
		France	0	1				France	0	1			France	0	1			France	0	1			France	0	1
		Germany	0	1				Germany	0	1			Germany	0	1			Germany	0	1			Germany	0	1
		Italy	0	1				Italy	0	1			Italy	0	1			Italy	0	1			Italy	0	1
		Netherlands	0	1				Netherlands	0	1			Netherlands	0	1			Netherlands	0	1			Netherlands	0	1
		Spain	0	1				Spain	0	1			Spain	0	1			Spain	0	1			Spain	0	1
		Sweden	0	1				Sweden	0	1			Sweden	0	1			Sweden	0	1			Sweden	0	1
		UK	0	1				UK	0	1			UK	0	1			UK	0	1			UK	0	1
		Australia	1	1				Australia	1	1			Australia	1	1			Australia	1	1			Australia	1	1
		Canada	0	1				Canada	0	1			Canada	0	1			Canada	0	1			Canada	0	1
		France	0	1				France	0	1			France	0	1			France	0	1			France	0	1
		Germany	0	1				Germany	0	1			Germany	0	1			Germany	0	1			Germany	0	1
		Italy	0	1				Italy	0	1			Italy	0	1			Italy	0	1			Italy	0	1
East Europe		Netherlands	0	1		2007-2008	East Europe	Netherlands	0	1	2008-2009	East Europe	Netherlands	0	1	2009-2010	East Europe	Netherlands	0	1	2010-2011	East Europe	Netherlands	0	1
		Spain	0	1				Spain	0	1			Spain	0	1			Spain	0	1			Spain	0	1
		Sweden	0	1				Sweden	0	1			Sweden	0	1			Sweden	0	1			Sweden	0	1
		UK	0	1				UK	0	1			UK	0	1	UK	0	1	UK	0	1				



NB! This tab looks at thematic votes by election cycle. Election cycles are \

This table examines thematic votes by generation of rights. 4th generatio \					This table looks at consensual, contested, and total thematic resolutions introduces \			
Year	1st Generatic	2nd Generati	3rd Generatic	4th Generation	WGV	Contested Resol	Total Resolutions	
2006-2007	7	6	11	2	19	7	26	
2007-2008	16	8	33	6	48	15	63	
2008-2009	11	6	20	11	40	8	48	
2009-2010	8	10	25	12	48	7	55	
2010-2011	13	9	31	13	52	14	66	
2011-2012	13	10	44	18	66	19	85	
totals	68	49	164	62	273	70	343	

This is the same info as above but broken down by election year.

	1st Generatio	2nd Generation	3rd Generation	4th Generation
2006-2007				
Africa	3	0	0	0
Asia	0	1	3	0
East Europe	2	0	0	0
GRULAC	1	2	3	1
WEOG	1	2	4	1
Cross	0	0	0	0
Residual	0	0	1	0
2007-2008				
Africa	5	0	0	0
Asia	0	0	2	1
East Europe	3	1	4	1
GRULAC	0	4	16	3
WEOG	8	3	8	1
Cross	0	0	3	0
Residual	0	0	0	0
2008-2009				
Africa	3	0	5	1
Asia	0	0	2	0
East Europe	3	1	1	0
GRULAC	0	4	10	7
WEOG	5	1	4	1
Cross	0	0	0	0
Residual	0	0	0	0
2009-2010				
Africa	2	0	4	5
Asia	0	0	2	1
East Europe	2	0	1	4
GRULAC	0	6	11	1
WEOG	3	3	6	1
Cross	1	1	1	0
Residual	0	0	0	0
2010-2011				
Africa	1	0	6	4
Asia	1	0	0	2
East Europe	2	1	2	1
GRULAC	0	6	12	2
WEOG	7	2	7	2
Cross	2	0	4	2
Residual	0	0	0	0
2011-2012				
Africa	2	0	12	3
Asia	0	1	2	1
East Europe	2	0	3	2
GRULAC	1	4	15	5
WEOG	7	3	9	4
Cross	1	2	2	3
Residual	0	0	1	0
	68	49	166	60

This table gives the same info but broken down by Region

By Region	1st Generatic	2nd Generati	3rd Generatic	4th Generation
Africa (1)				
2006-2007	3	1	0	0
2007-2008	5	0	0	0
2008-2009	3	0	5	1
2009-2010	2	0	4	5
2010-2011	1	0	6	4
2011-2012	2	0	11	4
Asia (2)				
2006-2007	0	1	3	0
2007-2008	0	0	2	1
2008-2009	0	0	2	0
2009-2010	0	0	2	1
2010-2011	1	0	0	2
2011-2012	0	1	2	1
E. Europe (3)				
2006-2007	2	0	0	0
2007-2008	3	1	4	1
2008-2009	3	1	1	0
2009-2010	2	0	2	3
2010-2011	2	1	2	1
2011-2012	2	0	3	2
GRULAC (4)				
2006-2007	1	2	3	1
2007-2008	0	4	16	3
2008-2009	0	4	10	7
2009-2010	0	6	11	1
2010-2011	0	6	12	2
2011-2012	1	4	15	5
WEOG (5)				
2006-2007	1	2	4	1
2007-2008	8	3	8	1
2008-2009	5	1	4	1
2009-2010	3	3	5	2
2010-2011	7	2	7	2
2011-2012	7	3	9	4

This section (next three tables) intreprets data in three different ways

By Region Total Resolutions Introduced (N = 328 (Total Resolutions - 24 for Cross Regional + Residual))	GEN 1	GEN 2	GEN 3	GEN 4	Sums	By Region as a percentage of total (rounded)	GEN 1	GEN 2	GEN 3	GEN 4
Africa	16	1	26	14	57	Africa	25	2	17	25
Asia	1	2	11	5	19	Asia	2	4	7	9
E. Europe	14	3	12	7	36	E. Europe	22	7	8	13
GRULAC	2	26	67	19	114	GRULAC	3	57	44	34
WEOG	31	14	37	11	93	WEOG	48	30	24	20
	64	46	153	56	319					

For example (Gen 1 / Total Resolutions introduced for all regions for Gen 1 rights)

Regional Percentages - Resolutions Introduced Across Generations of Rights

	GEN 1	GEN 2	GEN 3	GEN 4
Africa	28	2	46	25
Asia	5	11	58	26
E. Europe	39	8	33	19
GRULAC	2	23	59	17
WEOG	33	15	40	12

For example (Gen 1 Africa / total Sum of Africa Res)

This section looks at all < /

Resolution	Resolution #	Generational	Introducer	Regional Gro	Vote	Africa (13)	Asia (13)	E. Europe (6)	GRULAC (8)	WEOG (7)
Religious Hatred	DEC/1/107	2	Pakistan	2	33-12-1		1 against (IAF 4 against (CZ . 1 abstain (KOR)		X	Against
						X				
Debt	DEC/2/109	3	Cuba	4	33-13-1		2 against (IAF 4 against (CZ . 1 abstain (PERU)		X	Against
						X				
Racism	DEC/3/103	1	Algeria	1	33-12-1		2 against (IAF 3 against (CZ . 1 abstain (UK)		X	Against
						X				
Durban Review	RES/3/2	1	Algeria	1	34-12-1		2 against (IAF 3 against (CZ . 1 abstain (UK)		X	Against
						X				
Globalization	RES/4/5	3	China	2	34-13-0		2 against (IAF 4 against (CZ . 1 abstain (UK)		X	Against
						X				
Defamation of Religion	RES/4/9	3	Pakistan	2	24-14-9		2 against (IAF 4 against (CZ . 1 abstain (UK)	1 against (GT . 5 against (A)	X	Against
						3 abstains (G . 1 abstain (Inc .				
Coercive Measures	DEC/4/103	3	Cuba	4	32-12-1		1 against (IAF 4 against (CZ . 1 abstain (KOR)		X	Against
						X				
END OF ELECTION CYCLE 1										
Solidarity	RES/6/3	3	Cuba	4	34-12-1		2 against (IAF 4 against (BO . 1 abstain (SWISS)	6 against (A)		Against
						X				
Coercive Measures	RES/6/7	3	Cuba	4	34-11-2		1 against (IAF 3 against (BO . 1 abstain (KC 1 abstain (UK)		X	Against
						X				
Racial Discrimination	RES/6/21	1	Egypt	1	32-10-4		3 against (BO X against (UA 1 abstain (Uf . 1 abstain (Uf .			Against
						X				
Racism	RES/6/22	1	Egypt	1	28-13-5		2 against (IAF 4 against (BO . 5 abstains (B .		X	Against
						X				
Intolerance of Religion	RES/6/37	2	Portugal	5	29-0-18		8 abstains (C . 9 abstains (Br 1 abstain (AZ .		X	Against
Durban Review	RES/6/23	1	Egypt	1	33-10-3		3 against (BO . 2 abstains (JA 1 abstain (UK)		X	Against
						X				
Debt (SP)	RES/7/4	3	Cuba	4	34-13		2 against (IAF 4 against (BO .		X	Against
						X				
Solidarity (SP)	RES/7/5	3	Cuba	4	34-13		2 against (IAF 4 against (BO .		X	Against
						X				
Good Governance	RES/7/11	3	Poland	5	41-0-6		2 abstains (CI 1 abstain (RU 3 abstains (B .		X	Against
						X				
Defamation of Religion	RES/7/19	3	India + Slove /	21	10-14		3 against (RO . 5 abstains (G 3 abstains (JA .		X	Against
Racism	RES/7/33	1	Egypt	1	34-0-13		2 abstains (JA 4 abstains (B .		X	Against
						X				
Opinion (SP)	RES/7/36	1	Canada	5	32-0-15		3 abstains (JA 4 abstains (B 1 abstain (GT X abstain			Against
						X				
Working Group (Mercen	RES/7/21	3	Cuba	4	32-11-2		2 against (IAF 3 against (BO . 1 abstain (UK)	6 against (A 1 abstain (SWISS)		Against
						X				
Equitable Order	RES/8/5	4	Cuba	4	32-13-2		2 against (IAF 4 against (BO . 1 abstain (GHN)		X	Against
Peace	RES/8/9	3	Cuba	4	32-13-2		2 against (IAF 4 against (BO . 1 abstain (INDIA)		X	Against
						X				
END OF ELECTION CYCLE 2										
Solidarity	RES/9/2	3	Cuba	4	33-13-0		2 against (IAF 4 against (BO .		X	Against
						X				
Coercive Measures	RES/9/4	3	Cuba	4	33-11-2		1 against (IAF 3 against (BO . 1 abstain (KC 1 abstain (BOS)		X	Against
						X				
Mercenaries	RES/10/11	3	Cuba	4	32-12-3		2 against (IAF 4 against (BO .	6 against (A 2 abstain (Ch 1 abstain (SWISS)		Against
						X				
Defamation of Religion	RES/10/22	3	Pakistan	2	23-11-13		3 against (SU 1 against (CH X against (B 3 abstains (In 1 abstain (BC 4 abstains (A .			Against
Religion	RES/10/25	2	Czech Rep	3	21-1-24		1 against (So . 10 abstains (I 10 abstains (I 2 abstains (A 2 abstains (B .		X	Against
Complementary Standar	RES/10/30	4	South Africa	1	34-13		2 against (IAF 4 against (BO .		X	Against
						X				
Peace	RES/11/4	3	Cuba	4	32-13-1		2 against (IAF 4 against (BO . 1 abstain (India)		X	Against
						X				
Debt	RES/11/5	3	Cuba	4	31-13-2		2 against (IAF 4 against (BO . 2 abstains (CH, MEX)		X	Against
						X				
END OF ELECTION CYCLE 3										
Solidarity	RES/12/9	3	Cuba	4	33-14		2 against (IAF 5 against (BO .		X	Against
						X				
Traditional Values	RES/12/21	4	Russia	3	26-15-6		1 against (Me 2 against (IAF 3 against (HU 2 against (CH X against (Gp .	2 abstain (BC 3 abstains (A .		Against
Coercive Measures	RES/12/22	4	Cuba	4	32-14-0		2 against (IAF 5 against (BO .		X	Against
						X				
Development	RES/12/23	3	Egypt	1	33-0-14		2 abstains (JA 5 abstains (B .		X	Against
						X				
Defamation of Religion	RES/13/16	3	Pakistan	2	20-17-8		1 against (ZA 1 against (KO 4 against (HU 4 against (AR X against (C 2 abstains (In 1 abstain (BC 1 abstain (BR .			Against
Peace	RES/14/3	3	Cuba	4	31-14-3		2 against (IAF 5 against (BO .		X	Against

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Overlapping Resolutions	Resolution	Resolution N	Vote	Notes	Theme	Number of C	Country	Region	Regional Gro	Number of Contested
1 Religious Hat	DEC 1/107	33-12-1				2	33 Cuba	4	Africa	21
2 Defamation +	RES/4/9	24-14-9				3	14 Egypt	1	Asia	6
3 Defamation +	RES/7/19	21 10 14				3	4 Pakistan	2	E. Europe	5
4 Defamation +	RES/10/22	23 11 13				3	1 South Africa	1	GRULAC	34
5 Defamation +	RES/13/16	20-17-8				3	3 Russia	3	WEOG	2
6 Debt	DEC/2/109	33-13-1				3	2 Nigeria	1	Residual	2
7 Debt (SP)	RES/7/4	34-13-0				3	2 Algeria	1		70
8 Debt	RES/11/5	31-13-2				3	1 Bolivia	4		
9 Debt	RES/14/4	31-13-3				3	1 Canada	5		
10 Debt (SP)	RES/16/24	29-13-4				3	1 China	2		
11 Debt	RES/17/7	30-13-3				3	1 Czech Repub	3		
12 Debt	RES/20/10	31-11-5				3	1 Iran	2		
13 Racism	DEC/3/103	33-12-1				1	1 Portugal	5		
14 Racism	RES/6/22	28-13-5				1	1 Brazil + South /			
15 Racism	RES/7/33	34-0-13				1	1 India + Slove /			
16 Racism	RES/18/27	35-1-10				1	70			
17 Racism	RES/21/33	37-1-9				1				
18 Durban Revie	RES/3/2	34-12-1		Racism		1	As a percents	Country	Percent (rounded)	Regional Gro
19 Durban Revie	RES/6/23	33-10-3		Racism		1	Cuba	47	30	Africa
20 Globalization	RES/4/5	34-13-0				3	Egypt	20	9	Asia
21 Coercive Mei	DEC/4/103	32-12-1				3	Pakistan	6	7	E. Europe
22 Coercive Mei	RES/6/7	34-13-2				3	South Africa	4	49	GRULAC
23 Coercive Mei	RES/9/4	33-11-2				3	Russia	4	3	WEOG
24 Coercive Mei	RES/12/22	32-14-0				3	Nigeria	3	3	Residual
25 Coercive Mei	RES/15/24	32-14-0				3	Algeria	3		
26 Coercive Mei	DEC/18/120	34-12-0				3	Bolivia	1		
27 Coercive Mei	RES/19/32	35-12-0				3	Canada	1		
28 Solidarity	RES/6/3	34-12-1				3	China	1		
29 Solidarity	RES/7/5	34-13				3	Czech Repub	1		
30 Solidarity	RES/12/9	33-14				3	Iran	1		
31 Solidarity	RES/12/9	33-14				3	Poland	1		
32 Solidarity	RES/13/13	32-14-0				3	Portugal	1		
33 Solidarity	DEC/16/118	32-14-0				3	Brazil + South	1		
34 Solidarity	RES/17/6	32-14-0				3	India + Slove	1		
35 Solidarity	RES/18/5	33-12-1				3				
36 Solidarity	RES/21/10	35-12-0				3				
37 Racial Discrimin	RES/6/21	32-10-4		Racism		1	Generation 1	Generation 2	Generation 3	Generation 4
38 Intolerance of	RES/6/37	29-0-18		Religion		2	10	3	47	10
39 Good Govern	RES/7/11	41-0-6				3				
40 Opinion (SP)	RES/7/36	32-0-15				1				
41 Working Gro	RES/7/21	32-11-2				3				
42 Mercenaries	RES/10/11	32-12-3				3				
43 Mercenaries	RES/13/12	31-13-2				3				
44 Mercenaries	RES/13/6	31-11-4				3				
45 Mercenaries	RES/21/8	34-12-1				3				
46 Equitable On	RES/8/5	22-13-2				4				
47 Equitable On	RES/16/6	29 12 5				4				
48 Equitable On	RES/21/9	31 12 4				4				
49 Peace	RES/8/9	32-13-2				3				
50 Peace	RES/11/4	32-13-1				3				
51 Peace	RES/14/3	31-14-3				3				
52 Peace	RES/17/16	32-14-0				3				
53 Peace	RES/20/15	34-1-12				3				
54 Religion	RES/10/25	21 1 24		Religion		2				
55 Complement	RES/10/30	34-13		Racism		4				
56 Traditional V	RES/12/21	26-15-6				4				
57 Traditional V	RES/16/3	24-14-7				4				
58 Traditional V	RES/21/3	25-15-7				4				
59 Developmen	RES/12/23	33-0-14				3				
60 Developmen	RES/15/25	45-0-1				3				
61 Developmen	DEC/16/117	45-0-1				3				
62 Developmen	RES/18/26	45-0-1				3				
63 Developmen	RES/19/34	46-0-1				3				
64 Developmen	RES/21/32	46-0-1				3				
65 Gender	RES/17/19	23-13-3				4				
66 Migrants fro	RES/17/22	32-14-0		Migrants		3				
67 Non-Repatri	RES/17/23	32-2-12	??			4				
68 Non-Repatri	RES/19/38	35-1-11	??			4				
69 Panel (Xenop	RES/18/20	37-1-8		Racism		1				
70 HR and Peas	RES/21/19	23 9 15		Migrants		3				

				X	1 abstain (India)	X	
Debt	RES/14/4	3 Cuba	4 31-13-3	2 against (IAF 5 against (BO .	2 abstains (C	6 against	1 abstain (NGOR)
			X				
END OF ELECTION CYCLE 4							
Mercenaries	RES/15/12	3 Cuba	4 31-13-2	2 against (IAF 5 against (HU .	1 abstain (Maldives)	6 against	1 abstain (SWISS)
			X			X	
Solidarity	RES/15/13	3 Cuba	4 32-14-0	2 against (IAF 5 against (HU .		X against	
			X			X	
Coercive Measures	RES/15/24	3 Egypt	1 32-14-0	2 against (IAF 5 against (HU .		X against	
			X			X	
Development	RES/15/25	3 Egypt	1 45-0-1				1 abstain (USA)
			X	X	X	X	
Traditional Values	RES/16/3	4 Russia	3 24-14-7	1 against (Mi 2 against (IAF 3 against (HU 1 against (Mi X against	2 abstains (M 5 abstains (A .		
Debt (SP)	RES/16/14	3 Cuba	4 29-13-4	2 against (IAF 5 against (HU .	1 abstain (GAB)	2 abstain (Ch	6 against
							1 abstain (NGOR)
Development	DEC/16/117	3 Egypt	1 45-0-1				1 abstain (USA)
			X	X	X	X	
Solidarity	DEC/16/118	3 Cuba	4 32-14-0	2 against (IAF 5 against (HU .		X against	
			X			X	
Solidarity (SP)	RES/17/6	3 Cuba	4 32-14-0	2 against (IAF 5 against (HU .		X against	
			X			X	
Debt	RES/17/7	3 Cuba	4 30-13-3	2 against (IAF 5 against (HU .	1 abstain (GAB)	2 abstain (Ch	6 against
							1 abstain (NGOR)
Peace	RES/17/16	3 Cuba	4 32-14-0	2 against (IAF 5 against (HU .		X against	
			X				
Gender	RES/17/19	4 South Africa /	23-19-3	9 against (AN 8 against (BA .	2 abstain (BF 1 abstain (CH)	2 against (Mi .	
						X	X
Migrants from N. Africa	RES/17/22	4 Nigeria	1 32-14-0	2 against (IAF 5 against (HU .		X against	
			X				
Non-Repatriation	RES/17/23	4 Nigeria	1 32-2-12	1 against (IAP)	1 abstain (KO 5 abstain (HL .	1 against (USA)	6 abstain
			X			X	
END OF ELECTION CYCLE 5							
Mercenaries	RES/18/4	3 Cuba	4 31-11-4	5 against (CZ .	1 abstain (MI	6 against	1 abstain (SWISS)
				1 abstain (Mi 1 abstain (MU .			
Solidarity	RES/18/5	3 Cuba	4 33-12-1	5 against (CZ .		X against	
			X	1 abstain (Mi .			
Equitable Order	RES/18/6	4 Cuba	4 29 12 5	5 against (CZ .	4 abstain (Ch .	X against	
			1 abstain (Mi .				
Panel (Xenophobia)	RES/18/20	4 Egypt	1 37-1-8	5 abstains (C .		1 against (USA)	3 abstain (ASTR, BEL, IT, SP, SWISS)
			X	X	X		
Development	RES/18/26	3 Egypt	1 45-0-1			1 against (USA)	
			X	X	X	X	
Racism	RES/18/27	1 South Africa	1 35-1-10	5 abstains (C .	X	1 against (USA)	5 abstain (ASTR, BEL, IT, SP, SWISS)
			X	X		1 for (Norway)	
Coercive Measures	DEC/18/120	3 Egypt	1 34-12-0	5 against (CZ .		X against	
			X	X		X	
Coercive Measures	RES/19/32	3 Egypt	1 35-12-0	5 against (CZ .		X against	
			X	X		X	
Development	RES/19/34	3 Egypt	1 46-0-1			1 against (USA)	
			X	X	X	X	
Non-Repatriation	RES/19/38	4 Egypt	1 35-1-11	5 abstains (C .	X	1 against (USA)	6 abstain
			X	X			
Debt	RES/20/10	3 Cuba	4 31-11-5	5 against (CZ .	4 abstain (Ch	6 against	1 abstain (NGOR)
			X	X			
Peace	RES/20/15	3 Cuba	4 34-1-12	1 abstain (Inc 5 abstains (C .		1 against (USA)	6 abstain
			X		X		
Traditional Values	RES/21/3	4 Russia	3 25-15-7	2 against (Bo .	4 against (CZ, 2 against (CH	X against	1 abstain (IM 4 abstain (Ch .
				2 abstain (BE .			
Mercenaries	RES/21/8	3 Cuba	4 34-12-1	5 against (CZ .	1 abstain (Mi .	X against	
			X	X			
Equitable Order	RES/21/9	4 Cuba	4 31 12 4	5 against (CZ .	4 abstain (Ch .	X against	
			X	X			
Solidarity	RES/21/10	3 Cuba	4 35-12-0	5 against (CZ .		X against	
			X	X		X	
HR and Peasants	RES/21/19	4 Bolivia	4 23 9 15	4 against (CZ .	1 abstain (IM 1 abstain (Mi	5 against	2 abstain (NGOR, SWISS)
				6 abstain (BC 5 abstain (JO			
Development	RES/21/32	3 Iran	2 46-0-1			1 against (USA)	
			X	X	X	X	
Racism	RES/21/33	1 South Africa	1 37-1-9	5 abstains (C .	X	1 against (USA)	4 abstain (ASTR, BEL, IT, SP)
			X	X		2 for (NGOR, SWISS)	

N = 70 Contested Votes

\	Only counting Against	Counting Abstain as Against
Africa	54/70	64/70
	77%	83%
Asia	18/70	32/70
	26%	46%
Eastern Europe	6/70	19/70
	8.60%	27%
GRULAC	41/70	60/70
	59%	86%
WEOG	47/70	68/70
	67%	97%

343-70 + X (X = number of times they've voted as a bloc)

343-70 = 273

	Only counting Against	Counting Abstain as Against
Africa	327	337
	95%	98%
Asia	291	305
	85%	89%
E. Europe	279	292
	81%	85%
GRULAC	314	333
	92%	97%
WEOG	320	341
	93%	99%

This tab looks at how votes align with WEOG, not with the USA .

	Africa	Asia	E. Europe	GRULAC	WEOG
2006-2007	0	12	26	1	49 of a possible 49
2007-2008	18	35	56	17	103 of a possible 105
2008-2009	2	14	30	7	55 of a possible 56
2009-2010	2	13	32	6	48 of a possible 49
2010-2011	30	51	71	23	92 of a possible 98
2011-2012	54	53	93	34	114 of a possible 133

Total Count as Percentages

	Africa	Asia	E. Europe	GRULAC	WEOG
EY 1	0	24	53	2	100
EY 2	17	34	53	17	98
EY 3	4	25	54	13	98
EY 4	4	27	67	12	98
EY 5	33	55	77	25	94
EY 6	47	46	81	30	86

Comparing Votes to USA (not WEOG)

	Africa	Asia	E. Europe	GRULAC	WEOG
2006-2007	0	12	26	1	49 of a possible 49
2007-2008	18	35	56	17	103 of a possible 105
2008-2009	2	14	30	7	55 of a possible 56
2009-2010	2	13	32	6	48 of a possible 49
2010-2011	3	25	54	7	77 of a possible 98
2011-2012	2	0	53	2	81 of a possible 133

Total Count as Percentages

	Africa	Asia	E. Europe	GRULAC	WEOG
EY 1	0	24	53	2	100
EY 2	17	34	53	17	98
EY 3	4	25	54	13	98
EY 4	4	27	67	12	98
EY 5	3	26	55	7	79
EY 6	2	0	40	2	61

This tab looks at how votes in the UN HRC align with votes cast by the USA  
NB! First three election cycles are matched to WEOG (2006-2009)

[illegible]

This tab looks at unique resolutions (IE, grouped by categories since many resolutions overlap and should be placed into groups)

Resolution Name	Resolution Th	First Introduced	# of Resolutions	
Enforced Disappearance	1	5	7	
Development	3	2	9	
Religious Hatred (alsod defamation)	2	2	6 ?	
Durban + Racism + Voluntary Goals	1	1	23 4+11+2	complementary standards? +3
Poverty	3	5	7	
International Instruments	4	5	2	check on this... what is this?
Water	3	5	8	
Truth	4	4	5	
Access to Meds + Health	2	4	7 1+5+1	
Debt	3	4	8	
Judicial System (Judges and Lawyers)	1	3	7	plus 1 from Administration of Justice
Nationality	1	3	6	
Counter-Terrorism	3	5	11	
Indigenous Peoples	3 /		10	HRC introduces
ESC Rights + Cultural Rights	2	5	11	3+8
Food	2	4	8	
Solidarity	3	4	9	
Arbitrary Detention	1	5	4	
Religion (Intolerance)	2	5	6	combine with other religion?
Globalization	3	2	1	
Transitional Justice	3	5	5	
Coercive Measures	3	4	7	
Human Rights Education + World Progi	3 /		15	Morocco + Spain
Slavery	1	5	2	
Housing	2	5	3	
Women (broadly defined)	3	4	10	
IDPs	3	5	3	
Genocide	3	3	2	
Alliance of Civilizations	4	5	1	Turkey votes WEOG
International Cooperation	4	4	7	
Minority Issues	3	5	4	
Defenders	3	5	3	
Disabilities	3 /		5	Mexico + NZ
Good Governance	3	3	3	
Children	3	4	12	
Climate	3	2	3	
Missing Persons	1	3	4	
Opinion	1	5	3	
Mercenaries	3	4	6	
Arbitrary Execution	1	5	2	
Equitable Order	4	4	3	
Business	3	2	3	
Torture	1	5	4	
Peace	3	4	5	
Migrants	3	4	9	
Trafficking	3 /		6	Germany + Philipines
Leprosy	4	2	3	
toxic waste	3	1	3	
Armed Conflict	3	1	2	
African Descent	3	1	2	
Genetics	4	4	2	
Maternal Mortality	2	4	4	
Regional Arrangements	4	5	2	
Traditional Values	4	3	3	
Economic Crisis	2 /		1	
Journalists	4	1	2	
Prevention	4	3	2	
Peaceful Assembly	1	1	4	
Military Activities	4	1	1	
environment	3 /		3	Costa Rica + Maldives
NHRIs	3	5	2	
Gender	4 /		1	S. Africa + Brazil
Non-Repatriation	4	1	2	
Human Rights and Sports	4 /		1	Brazil + UK
Internet Freedom	4	5	2	
Birth Registration	4	4	1	
Technology	4 /		1	President
Conscientious Objection	3	3	1	
Corruption	3	1	1	
HR and Peasants	3	4	1	
Vienna Decl	4	5	1	
Older Persons	4	4	1	

This tab looks at procedural votes. Some of these will be moved back into thematic votes. Others are strictly procedural. I have decided if I'm going to include strictly procedural votes in the dataset.

Resolution	Resolution N Vote		Agenda Item By Theme	Country	Type (West c	Regional Gro	Notes
Session 1							
Working Group 49/214	RES/1/2	WOV		Peru	1	4	
Working Group OPT PRO ICESCR	RES/1/3	WOV	ESCR	Portugal	0	5	
Working Group Durban	RES/1/5	WOV	9 Race	Algeria	1	1	1 moved to dataset
Session 2							
Session 3							
Durban Review Conference	RES/3/2	34-12-1	9 Race	Algeria	1	1	1 moved to dataset
Session 4							
Stregthening of the OHCHR	RES/4/6	35-0-12	2	China	1	2	
Enhancement of Cooperation	DEC/4/104	WOV	3	Cuba	1	4	
Session 5							
End of Election Cycle 1							
Session 6							
Public Information	RES/6/9	WOV	3	Italy	0	5	
The Social Forum	RES/6/13	WOV	5	Cuba	1	4	
Forum on Minority Issues	RES/6/15	WOV	5	Austria	0	5	
WG Indigenous Peoples	RES/6/16	WOV	5	Bolivia	1	3	3 moved to dataset
Durban Review Conference	RES/6/23	33-10-3	9	Egypt	/	1	1 moved to dataset
World Programme for Human Rights E	RES/6/24	WOV	10	Costa Rica	1	4	4 moved to dataset
Voluntary Goals	RES/6/26	WOV	3	Brazil	1	4	4 moved to dataset
Expert Mechanism Indigenous People: RES/6/36	WOV		5	Bolivia	1	4	4 moved to dataset
Session 7							
OHCHR Staff	RES/7/2	34-10-3	2	Cuba	1	4	
Working Group Mercenaries	RES/7/21	32-11-2	3	Cuba	1	4	4 moved to dataset
Session 8							
End of Election Cycle 2							
Session 9							
Working Group on African Descent	RES/9/14	WOV	9	South Africa	1	1	1 moved to dataset
Session 10							
World Programme for Human Rights E	RES/10/3	WOV	3	Costa Rica	1	4	4 moved to dataset
OHCHR Staff	RES/10/5	33-12-2	2	Cuba	1	4	
UN DECL - Human Rights Education	RES/10/28	WOV	5	Morocco	1	1	1 moved to dataset
Social Forum	RES/10/29	WOV	5	Cuba	1	4	
Session 11							
Working Group - OPT PRO Child	RES/11/1	WOV	3	Slovakia	1	3	3 moved to dataset
Working Group - Durban	RES/11/12	WOV	9	Nigeria	1	1	1 moved to dataset
End of Election Cycle 3							
Session 12							
Cooperation with UN Mechanisms	RES/12/2	WOV	2	Hungary	1	3	3 moved to dataset
World Programme	RES/12/4	WOV	3	Costa Rica	1	4	4 moved to dataset
Missing Persons	DEC/12/117	WOV	5	Azerbaijan	1	3	3 moved to dataset
Human Rights Education	DEC/12/118	WOV	5	Morocco	1	1	1 moved to dataset
Session 13							
OHCHR Staff	RES/13/1	31_12_3	2	Cuba	1	4	
Working Group - OPT PRO Child	RES/13/3	WOV	3	Thailand	1	2	2 moved to dataset
Human Rights Education	RES/13/15	WOV	5	Morocco	1	1	1 moved to dataset
Social Forum	RES/13/17	WOV	5	Cuba	1	4	
Session 14							
Missing Persons	DEC/14/118	WOV	5	Azerbaijan	1	3	3 moved to dataset
END OF ELECTION CYCLE 4							
Session 15							
World Programme	RES/15/11	WOV	3	Costa Rica	1		moved to dataset



Working Group - Military Activities	RES/15/26	32-12-3	3	Nigeria	1	moved to dataset
Session 16						
OHCHR Staff	RES/16/10	31-13-2	2	Cuba	1	
Social Forum	RES/16/26	WOV	5	Cuba	1	
Session 17						
Peaceful Protests	DEC/17/120	WOV	3	Switzerland	0	moved to dataset
END OF ELECTION CYCLE 5						
Session 18						
Working Group - African Descent	RES/18/28	WOV	9	South Africa	1	moved to dataset
Session 19			2			
OHCHR Staff	RES/19/3	33-12-2	5	Cuba	1	
Forum Minority Issues	RES/19/23	15-18-12	5	Austria	0	
Social Forum	RES/19/24	WOV		Cuba	1	
Session 21						
WG - Mercenaries	RES/21/29	WOV	3	South Africa	1	moved to dataset

## Interview List

Below is a regional affiliation of interviewees.

I exclude specific affiliation because of confidentiality issues.

However, I am happy to discuss any issues further.

Affiliation	Total Number
Africa	1
Asia	3
Eastern Euro	1
GRULAC	4
WEOG	7
NGO	21
Scholars	4
UN Secretari	5