

THE UNITED NATIONS HUMAN RIGHTS COUNCIL: MORE OF THE SAME?

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ABSTRACT:

The United Nations Human Rights Council was established in 2006 following the disbanding of its predecessor, the Commission on Human Rights. One of the main criticisms leveled against the Commission was the perceived politicisation, selectivity and bias the took place at the body during its final years. The Council's mandate and founding principles were designed, in theory, to overcome the Commission's flaws. In practice, however, the new body greatly resembles its predecessor. Politicisation, selectivity and bias remain endemic at the UN's principal human rights body. Those issues are most clearly illustrated by reference to the Council's relationship with Israel. During the Council's first six years the body disproportionately focused on Israel and lacked even-handedness in its treatment of that country. In May 2012, Israel announced that it would no longer engage with the Council or its mechanisms, including refusing to attend the Universal Periodic Review. Although Israel reversed that position within 18 months – attending its rescheduled review session in October 2013 – its disengagement demonstrates the degree to which the Council had isolated and ostracised that country. This article explores the Council's treatment of Israel, from the outset, exploring the extent to which the body has adhered to its mandate and founding principles in relation to that country.

Introduction	209
I. Politicisation	210
A. Regionalism.....	212
B. Overt Politicisation	215

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<i>Vol. 31, No. 2</i>	<i>UN Human Rights Council</i>	209
C. The Commission's "Country-Specific" Politicisation		220
II. The Council's Mandate		223
III. Politicisation Regarding Israel		226
A. The Council's Permanent Agenda		228
B. Country-Specific Mandates		233
C. Council Proceedings		238
D. The Council's Work		243
Conclusion.....		248

INTRODUCTION

Contrary to the idealistic promises of international human rights, protecting and promoting human rights at the universal level is often a zero-sum game. Time and resources are limited and choices must be made about allocating them in an even-handed manner. Attention to one problem inevitably means time or resources diverted from another. Human rights mechanisms that devote vastly disproportionate attention to gross and systemic violations within one country often fail adequately to protect and promote rights within other, similar situations. Lack of even-handedness usually results from states and groups using human rights bodies to pursue national or regional interests. Politicisation can undermine the work of international bodies, sometimes subsuming an institution to the extent that it becomes unable to fulfil its mandate. The United Nations Commission on Human Rights was disbanded in 2006. Its demise was due largely to the selectivity, bias, and partiality that increasingly dominated its proceedings. As a result of that politicisation, the Commission failed to address many gross and systemic country-specific human rights violations, whilst simultaneously devoting vastly disproportionate attention to other situations. For example, during the Commission's sixty years, one quarter of its country-specific resolutions focused on Israel while not one resolution dealt with human rights abuses in China.

Prior to its creation, there existed an expectation that the Human Rights Council ("HRC"), which replaced the Commission, would overcome its predecessor's failings. Reform proposals sought to alter radically the principal UN human rights body. Many of the more radical reforms, however, were not implemented. The new body greatly resembles its failed predecessor, particularly with regards to the body's composition and the "soft" membership criteria that do not impose

formal requirements for compliance with human rights obligations. The similarities between the Commission and Council have resulted in the same tactics occurring at the new body as had overwhelmed its predecessor. As in the Commission, as well as other bodies, powerful groups and blocs in the Council have used tactics to block action being taken against their allies. Similarly, regional and political alliances have used collective influence to ensure the Council devotes disproportionate attention to particular countries.

Part I of this article examines the concept of politicisation, using examples from the Council, the Commission, and across the UN. Part II explores General Assembly Resolution 60/251,¹ the Council's constituent instrument, in order to identify the body's mandate and the principles upon which it was founded. Lastly, Part III explores politicisation at the Council, using the body's treatment of Israel to demonstrate that it is inadequately discharging its mandate. Exposition of the partial and selective treatment of Israel will identify the significant need for improvement in order for the Council adequately to discharge its mandate.

I. POLITICISATION

Politicisation of international organisations is a difficult concept. Many states accused of violations, however justifiably, complain of being victimised by a "politicised" process. Gene Lyons, David Baldwin and Donald McNemar define politicisation of international organisations as the introduction of unrelated controversial issues by countries seeking to further their political objectives.² The term "politicisation" is used where political discussions unrelated to the particular debate occur at an organisation or body. Eric Heinze adds that politicisation does not just occur at the discursive level, although that level may make the politicisation more overt.³ State actions, such as bloc voting and selectivity regarding country-specific human rights situations often demonstrate politicisation.⁴ Politicisation affects all intergovernmental organisations. Acceptance that domestic agendas are always present

¹ Human Rights Council, G.A. Res. 60/251, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

² See Gene M. Lyons et al., *The "Politicization" Issue in the UN Specialized Agencies*, 32 PROCEEDINGS OF THE ACADEMY OF POLITICAL SCIENCE, no. 4, 1977, at 81.

³ See, e.g., Eric Heinze, *Even-handedness and the Politics of Human Rights*, 21 HARV. HUM. RTS. J. 7, 41 (2008).

⁴ See *id.*

within an institution differs from tolerating political conflicts that wholly subsume a body.

Alongside human rights bodies, such politicisation can occur within, for example, non-governmental organizations (“NGOs”)⁵ and the media.⁶ Heinze notes that the concept of even-handedness has not adequately been explored.⁷ He provides a three-part test to identify lack of even-handedness.⁸ Under the third prong of his test, selection of human rights violators becomes illegitimate when motivated by a “political, social or cultural conflict” unrelated to the content of the human rights at issue.⁹ Even-handedness does not require equal attention to be devoted to all states, but rather that the level of condemnation should be “roughly proportionate to actual levels of abuse.”¹⁰

Politicisation of human rights bodies arguably results from human rights and politics’ interlinked nature. Conor Gearty criticises what he terms the false dichotomy between these fields in which politics becomes subordinate to law.¹¹ He deems it crucial to view human rights as part of, rather than superior to, politics.¹² That claim nevertheless contradicts the Universal Declaration on Human Rights and subsequent human rights instruments, which demonstrate that human rights are *law*. The UN sought to prioritise human rights as separate and superior to politics, giving them a higher-order status to competing political interests. It is that superiority which dictates that those rights be upheld universally. Gearty’s assertion focuses on the everyday practice, rather than the fundamental significance, of human rights.¹³ Human rights compliance admittedly relies on politics, and conversely, violations are often able to occur because of political factors. Yogesh Tyagi, moreover, recalls that the legal formulations of human rights are themselves products of political, and politicised, processes.¹⁴ Even after such

⁵ See, e.g., *id.*

⁶ Cf. Eric Heinze, *The Reality and Hyperreality of Human Rights: Public Consciousness and the Mass Media*, in EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS: THE END OF AN ERA? 193, 198 (Rob Dickinson et al. eds., 2011); Eric Heinze & Rosa Freedman, *Public Awareness of Human Rights: Distortions in the Mass Media*, 14 INT’L J. HUM. RTS. 491, 491 (2010).

⁷ Heinze, *supra* note 3, at 8.

⁸ *Id.* at 21–22.

⁹ *Id.* at 31.

¹⁰ Heinze & Freedman, *supra* note 6, at 498.

¹¹ CONOR GEARTY, CAN HUMAN RIGHTS SURVIVE? 75 (2006).

¹² See *id.* at 74–75.

¹³ See *id.*

¹⁴ YOGESH TYAGI, THE UN HUMAN RIGHTS COMMITTEE: PRACTICE AND PROCEDURE 6 (2011).

processes, regional or political groupings often take different, sometimes competing, stances on human rights based on cultural norms and political agendas. Politics does, then, play an integral role in human rights with the two fields not easily divorced from one another. Those observations do not, however, mean that human rights, as a normative matter, altogether dissolve into partisan politics.

The UN Human Rights Council is a universal body consisting of members from all UN regional and political groups.¹⁵ Many attitudes toward human rights are represented. Comprised of government delegates, the very nature of the body's membership is political. In bodies consisting of political appointees, they remain accountable to their national governments.¹⁶ Gerd Oberleitner remarks that it is unsurprising and somewhat inevitable that an intergovernmental body comprised of state representatives acts along political lines.¹⁷ Assessment of the Council's relationship with Israel, therefore, must focus on instances of gross politicisation, beyond the ordinary and inevitable instances such as those.

A. REGIONALISM

Politicisation can occur in various ways. The most important kind, warranting particular explanation for the purposes of understanding the HRC, is regionalism. Regionalism is useful for understanding groups' power and influence at the Council.¹⁸ The UN's membership is often divided into five regional groupings that are used, at times formally, quasi-formally, or informally, for the purposes of apportioning membership to the Organisation's bodies.¹⁹ Geographic regional groups are not the only form of alliances at the UN. Political blocs and alliances play a fundamental role. Regional alliances do allow a larger number of states' views to be represented through collective voices, providing an

¹⁵ G.A. Res. 60/251, *supra* note 1, ¶ 7.

¹⁶ JOHN S. GIBSON, INTERNATIONAL ORGANIZATIONS, CONSTITUTIONAL LAW AND HUMAN RIGHTS 107 (1991).

¹⁷ GERD OBERLEITNER, GLOBAL HUMAN RIGHTS INSTITUTIONS 47 (2007).

¹⁸ *See, e.g.*, COURTNEY B. SMITH, POLITICS AND PROCESS AND THE UNITED NATIONS: THE GLOBAL DANCE 54 (2006).

¹⁹ The five regional groups were established in 1963 and are used by the UN to ensure proportionate geographic representation when apportioning seats or membership to UN bodies. *See, e.g.*, RAMESH THAKUR, WHAT IS EQUITABLE GEOGRAPHICAL DISTRIBUTION IN THE 21ST CENTURY? 11 (1999).

alternative to powerful states dominating Council proceedings.²⁰ Thomas Weiss argues, however, that groups and alliances have continued to obstruct the UN's work throughout the organisation's existence, with the current North-South divide impeding a "sensible regrouping of the majority of voices, which should change from issue to issue."²¹

The Council's composition contributes to its politicisation. Paragraph 7 of Resolution 60/251, the Council's constituent instrument, dictates that membership be "based on equitable geographical distribution."²² Developing states have strong representation at the HRC. The African Group holds thirteen seats, Eastern European countries received six seats, Latin American and Caribbean ("GRULAC") eight, Asia thirteen, and Western European and Others seven.²³ Peter Maurer comments that the impression is given that "certain EU members realised only relatively late what the loss in terms of geographic distribution would mean for the group of Western states in a smaller Council."²⁴ The Global South controls the Council, with Western states marginalised despite close ties with countries, such as Japan, from other regional groups.²⁵

The Council's composition is based on regional groupings. It does not take into account cross-regional blocs that occur when states forge alliances through groups, ensuring power as a collective despite being individually weak.²⁶ Developing states have formed stronger political alliances than developed nations, owing to their greater need for collective strength.²⁷ The UN was designed by colonial powers and strong states. With increasing independence of former colonies, states needed political alliances to represent collectively their interests. Strong

²⁰ E.g. Allehone Mulugeta Abebe, Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council, 9 HUM. RTS. L. REV. 1, 2 (2009).

²¹ THOMAS G. WEISS, WHAT'S WRONG WITH THE UNITED NATIONS AND HOW TO FIX IT 51–52 (2008).

²² G.A. Res. 60/251, *supra* note 1, ¶ 7.

²³ *Id.*

²⁴ Peter Maurer, *About the Negotiation Process in New York (from 2005 until 2006): Of Ants, Caterpillars and Butterflies*, in THE FIRST 365 DAYS OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL 35, 35 (Lars Müller ed., 2007).

²⁵ Kevin Boyle, *The United Nations Human Rights Council: Power, Politics and Human Rights*, 60 N. IR. L. Q. 121, 122 (2009); ROSA FREEDMAN, THE UNITED NATIONS HUMAN RIGHTS COUNCIL: A CRITIQUE AND EARLY ASSESSMENT 91 (2013).

²⁶ Boyle, *supra* note 25, at 129.

²⁷ Joseph S. Nye, *UNCTAD: Poor Nations' Pressure Group*, in THE ANATOMY OF INFLUENCE: DECISION MAKING IN INTERNATIONAL ORGANIZATION 334, 334–35 (Robert W. Cox & Harold K. Jacobson eds., 1973).

alliances between developing countries allowed them to challenge the world economic order as set out by industrialised nations and to secure methods for trade, development, and economic growth.²⁸ The two most powerful alliances are the Non-Aligned Movement (“NAM”) and the Organisation of Islamic Cooperation (“OIC”).

As its name suggests, NAM was comprised of states not immediately involved in the Cold War - that is not aligned to either the US or the Soviet Union.²⁹ Of course, despite their claims, “most nationalist movements and Third World regimes had diplomatic, economic, and military relations with one or both of the superpowers.”³⁰ NAM developed from the Asian-African Conference, a political gathering held in Bandung, Indonesia, in April 1955.³¹ The conference was convened in part owing to frustration by many newly independent countries unable to secure UN membership due to Cold War politics.³² The two then-superpowers refused to admit states seen as belonging to the other camp; indeed no new members were admitted between 1950 and 1954.³³

The Organisation of Islamic Cooperation was established in 1969 to unite Muslim countries after the Six-Day War, in which Israel established control of Jerusalem.³⁴ The OIC, with fifty-seven member states, is the largest alliance of states within the UN.³⁵ Many of its members are influential within other groups or alliances. As such, the OIC has far-reaching political power. For example, at the Council’s creation seventeen of the forty-seven Council member states were OIC

²⁸ *Id.* at 335.

²⁹ Cf. GEIR LUNDESTAD, EAST, WEST, NORTH, SOUTH: MAJOR DEVELOPMENTS ON INTERNATIONAL POLITICS SINCE 1945, at 242 (5th ed. 1999); PETER WORSLEY, THE THIRD WORLD 254 (2d ed. 1964).

³⁰ Mark T. Berger, *After the Third World? History, Destiny and the Fate of Third Worldism*, 25 THIRD WORLD Q. 9, 13 (2004).

³¹ AMITAV AMCHARYA, BANDUNG REVISITED: THE LEGACY OF THE 1955 ASIAN-AFRICAN CONFERENCE FOR INTERNATIONAL ORDER 111–13 (See Seng Tan & Amitav Acharya eds., 2008).

³² *Id.* at 27–28, 19–48.

³³ WEISS *supra* note 21, at 51.

³⁴ JAVAID REHMAN, ISLAMIC STATE PRACTICES, INTERNATIONAL LAW AND THE THREAT FROM TERRORISM: A CRITIQUE OF THE ‘CLASH OF CIVILIZATIONS’ IN THE NEW WORLD ORDER 27–28 (2005).

³⁵ 21 Sub-Saharan African, 12 Asian, 18 Middle Eastern and North African States, 3 Eastern European and Caucasian, 2 South American, and 1 Permanent Observer Mission. See *Member States*, ORGANISATION OF THE ISLAMIC CONFERENCE, <http://www.oicun.org/3/28> (last visited Oct. 16, 2012).

members. Three OIC members, Algeria, Saudi Arabia, and Azerbaijan, chaired the regional groups for Africa, Asia, and Eastern Europe.

States holding membership of more than one group, especially those with large membership, may have more allies. Alliances between groups often result in what Nico Schrijver identifies as “the Rest against the West.”³⁶ The North-South divide is particularly apparent at the HRC owing to the large number of developing nations and the natural alliances formed between such states.³⁷ The dominant group at the Council is the OIC. This political bloc is comprised of developing or weaker nations as members, and it has a large number of allies from other political alliances. The OIC exerts great power and influence over Council proceedings, ensuring that the political agendas of its members and allies remain at the fore within the HRC.³⁸ Politicisation has been apparent through the advancement of political objectives, groups shielding their allies from Council scrutiny, and politically motivated attacks on certain states which have obstructed the HRC from taking action in other needed areas.

B. OVERT POLITICISATION

Overt politicisation occurs where groups or blocs of states seek to further a common political aim through the use of group tactics within a UN body or organ.³⁹ This can only occur where a sufficient number of member states either hold a common aim or support allied states in furtherance of their political aim. Where groups or blocs ally together to form a majority within a body, they are able to dominate proceedings and overtly politicise the body by voting en masse for political resolutions often unrelated to or going beyond the body’s mandate. In the case of Israel, and as will be demonstrated, excessive politicisation occurs at the HRC through a number of ways: raising the human rights situation in Israel during both related and unrelated debates; tabling disproportionate resolutions about Israel; subjecting Israel to excessive scrutiny; and using Council mechanisms and procedures to retain a spotlight on Israel.

Similar tactics were used at other bodies regarding South Africa during apartheid. Indeed, there are many similarities between the UN’s

³⁶ Nico Schrijver, *The UN Human Rights Council: A New ‘Society of the Committed’ or Just Old Wine in New Bottles*, 20 LEIDEN J. INT’L L. 809, 812 (2007).

³⁷ See WEISS, *supra* note 21, at 49–50.

³⁸ FREEDMAN, *supra* note 25, at 172.

³⁹ *Id.* at 175.

treatment of both human rights situations. Miguel Bosch insists that the Israel-Palestine conflict and South African apartheid have caused the most problems within the UN.⁴⁰ That assertion relates to the manner in which Israel and apartheid South Africa have been dealt with at the UN, rather than comparing the actual situations. There are similarities between the violations in South Africa and those in Israel and the Occupied Palestinian Territories (“OPT”). Such similarities may also be found in other countries where gross and systemic violations occur.⁴¹ Comparisons between Israel and South Africa are controversial and frequently fail to acknowledge the many fundamental differences between those situations.⁴² Exploring the weaknesses within those comparisons goes beyond the scope of this work but nevertheless must be acknowledged.⁴³ Bosch nonetheless stresses the “negative influence” that both situations have had on the UN.⁴⁴ In particular, they “polarized” the General Assembly, undermining its work and “producing the most heated debates and the most drawn out procedural discussions, and were the object of repeated (and repetitive) resolutions.”⁴⁵

The treatment of South Africa can be used to demonstrate some of the failings of overt politicisation and how such action undermines bodies’ attempts to fulfill their mandates. The UN’s approach to apartheid in South Africa is perhaps the clearest example of overt politicisation resulting in an ostensible “success story.” That ostensible “success story” occurs where failures are masked behind a success story that is used to deflect attention away from inaction elsewhere. UN action alongside diplomatic and political pressure was indeed key to South Africa ending its policy of apartheid in the 1990s. The UN was able to focus on South Africa because both the Western and Soviet blocs agreed, or tacitly accepted, that action be taken on that situation.⁴⁶ Developing

⁴⁰ MIGUEL MARÍN BOSCH, VOTES IN THE UN GENERAL ASSEMBLY 43, 46 (1998).

⁴¹ For example, Tibet, Kashmir, and Kurdish areas of Iraq, Iran, Syria and Turkey.

⁴² E.g. AMNEH DAOUD BADRAN, ZIONIST ISRAEL AND APARTHEID SOUTH AFRICA: CIVIL SOCIETY AND PEACE BUILDING IN ETHNIC-NATIONAL STATES 3–4 (2009); MARWAN BISHARAH, PALESTINE/ISRAEL: PEACE OR APARTHEID: OCCUPATION, TERRORISM AND THE FUTURE 19–20 (2002); URI DAVIS, ISRAEL, AN APARTHEID STATE 25–26 (1987); ILAN PAPPÉ, PEOPLES APART: ISRAEL, SOUTH AFRICA AND THE APARTHEID QUESTION (2011).

⁴³ See, e.g., Joseph Lelyveld, *Jimmy Carter and Apartheid*, NEW YORK REVIEW OF BOOKS, Mar. 29, 2007, <http://www.nybooks.com/articles/archives/2007/mar/29/jimmy-carter-and-apartheid>.

⁴⁴ FREEDMAN, *supra* note 25, at 128.

⁴⁵ *Id.*

⁴⁶ DAVID BIRMINGHAM, THE DE-COLONIZATION OF AFRICA 28–39, 51–61 (1995); RICHARD H. SHULTZ, THE SOVIET UNION AND REVOLUTIONARY WARFARE: PRINCIPLES, PRACTICE AND REGIONAL COMPARISONS *passim* (1988).

states, therefore, did not have to choose sides between the United States and the USSR. This allowed them to promote their own national and regional political objectives. Many decolonised states sought to highlight ongoing imperialist practices which flagrantly violated human rights in a similar vein to recent historical abuses, using South Africa “to channel emotional anti-Western feelings into lasting political gains.”⁴⁷ Moses Moskowitz points out that “the vast majority of those who called for freedom, human rights and racial equality in South Africa hardly conceded them to their own peoples.”⁴⁸ He argues that many abuser states denounced South Africa in order to deflect attention away from their own human rights records.⁴⁹

The UN was unable to take action on other egregious violations owing to a lack of agreement by one or both of the Western and Soviet blocs. That lack of agreement often was based on political objectives that were unrelated to human rights. Those groups frequently shielded allied states from scrutiny, even where violations were gross and systemic.⁵⁰ Indeed, many other grave violations occurring elsewhere at that time resulted from similar policies adopted by other states to discriminate against indigenous populations. The USSR was shielded from scrutiny of its discriminatory human rights abuses despite, as Heinze notes, the Soviet Union having “crushed vast numbers of minority and ethnic groups.”⁵¹ Heinze names the “Chechens, Ingush, Balkars, Baltic peoples, Roma, Jews, Muslims, Romanian ethnic Hungarians, Tibetans or Uighurs” as just a few of the groups that were repressed by the Soviet Union’s policies.⁵² The USSR’s strength at the UN, owing more broadly to Cold War politics, enabled it to avoid scrutiny of almost all such human rights situation. The United States also committed discriminatory human rights violations against its indigenous population, which the General Assembly altogether failed to address during the time that focus was on South Africa. It is clear from these examples that international relations and political objectives dictated which apartheid-type situations were and were not discussed. Similarly, China has occupied Tibet since

⁴⁷ MOSES MOSKOWITZ, *THE ROOTS AND REACHES OF UNITED NATIONS ACTIONS AND DECISIONS* 49 (1980).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ DAVID MATAS, *NO MORE: THE BATTLE AGAINST HUMAN RIGHTS VIOLATIONS* 211 (1994).

⁵¹ Eric Heinze, *Truth and Myth in Critical Race Theory and LatCrit: Human Rights and the Ethnocentrism of Anti-Ethnocentrism*, 20 NAT’L BLACK L.J. 107, 123 (2007).

⁵² *Id.* at 123–24.

1949, since when China has committed egregious violations in that territory.⁵³ Discrimination and abuses in Tibet have been described as “apartheid” policies.⁵⁴ China, owing to its powerful position at the UN, its leadership of political alliances between developing states, and its links to the USSR, was able effectively to ensure little scrutiny of those abuses.

One example of the overt politicisation against South Africa is the number of resolutions passed regarding the gross and systemic violation committed by the apartheid regime in comparison with those passed regarding other abuses occurring within similar situations at that time. The General Assembly produced more resolutions on apartheid than any other single item between 1952 (when it first appeared on the GA agenda) and 1994 (when the policy was ended).⁵⁵ Apartheid in South Africa provided a unifying issue on which developing countries spoke with one voice in much the same way as decolonisation and self-determination had done previously. The sheer number of decolonised and developing states seeking action against South Africa, and the many Soviet and Western states who supported them, ensured ample backing for any tabled resolutions. That support resulted in a disproportionate number of resolutions on South Africa as compared with other similar, gross and systemic violations. Other situations attracted little attention or, more often, were ignored altogether.

The UN’s focus on South Africa was “successful”; South Africa eventually withdrew from Namibia, ended the apartheid policy, and ceased to be a pariah state. Beyond the success story and, indeed, the opportunity for weaker and newer states to use a collective voice, South Africa also afforded protection for other abuser states by deflecting attention away from ongoing gross and systemic violations elsewhere.

⁵³ ROBERT MCCORQUODALE & NICHOLAS OROSZ, *TIBET, THE POSITION IN INTERNATIONAL LAW* 11–14 (1994); DINESH LAL, *INDO-TIBET-CHINA CONFLICT* 131–35 (2008); ASIA WATCH, *HUMAN RIGHTS IN TIBET* 65 (1988).

⁵⁴ *See, e.g.*, DALAI LAMA, *THE SPIRIT OF TIBET, UNIVERSAL HERITAGE: SELECTED SPEECHES AND WRITINGS OF HH THE DALAI LAMA XIV*, at 161 (1995); BHOLA NATH MULLIK, *THE CHINESE BETRAYAL: MY YEARS WITH NEHRU* 603 (1971); M.G. CHITKARA, *TOXIC TIBET UNDER NUCLEAR CHINA* 110 (1996).

⁵⁵ Between 1946 and 1992 the GA adopted by recorded vote 569 resolutions on Southern Africa, totalling approximately one fifth of the total recorded votes. On average, the General Assembly passed between five and ten resolutions annually on apartheid policies. By contrast, during that time the Assembly passed five resolutions on China’s abuses against indigenous peoples: three on Tibet and two on Burma. Four resolutions were passed regarding grave abuses committed by the USSR. Violations against Native Americans were ignored altogether, as were similar practices and policies against the Aborigines in Australia and the Maoris in New Zealand.

Similarly, excessive focus on Israel is used not only to achieve success in relation to the grave abuses committed by that state, but also to divert attention away from other situations of gross and systemic violations.

Comparisons can be drawn between the treatment of South Africa and of Israel, and indeed of the politicisation of the approaches taken. Michael Dennis notes that

Israel remains the only country that is subjected to multiple resolutions and for which a rapporteur has an open-ended mandate (all the other mandates are for one year). It is also the only UN member that remains barred from a seat on any UN body except the General Assembly since it is not a member of a regional group.⁵⁶

Israel has been denied membership of the Asian Group by Arab members of that group. Although Israel was afforded temporary membership of the Western European and Others Group in 2000, conditions of that membership include not seeking membership of key rotating seats at bodies, including ECOSOC and the Human Rights Council. Therefore, despite known abusers having the opportunity to sit on the Security Council, hold membership of other UN bodies, and generally participate in international affairs, Israel is effectively excluded from those bodies where membership is proportionately distributed amongst the regional groups. As a result, Israel is regularly reproached in international institutions, especially through bodies – such as the Commission and the Council – where it is effectively barred from membership.

Many UN bodies and organs have been overtly politicised regarding Israel throughout the Organisation's existence. In particular, the Council has adopted the most politicised tactics on Israel that have shielded other states from scrutiny for highly politicised objectives. The General Assembly – with universal membership where each state has equal rights and voting powers – provides a forum where overt politicisation occurs. By contrast, the Security Council has a small membership, including five permanent members holding veto rights, which allows for a very different form of politicisation, whereby those states are able unilaterally to advance political objectives by blocking action. The HRC, although with limited membership, is an arena similar to the General Assembly, whereby weaker states are afforded the same opportunity to exert influence as states that are economically, militarily,

⁵⁶ Michael J. Dennis, *Human Rights in 2002: The Annual Sessions of the UN Commission on Human Rights and the Economic and Social Council*, 97 AM. J. INT'L L. 364, 384 (2003).

or politically more powerful. Political aims of groups or blocs gain more attention at bodies such as the HRC, where member states enjoy sovereign equality and geographic groups are proportionately represented. The Council is particularly vulnerable to overt politicisation in this regard due to the strength and dominance of the African Group and the OIC. Both of these groups rely heavily on tactics such as group voting, repetition of statements, and shielding allies.

Many Western states might have supported more candid criticism of Israel within the context of broader, even-handed scrutiny of human rights throughout the whole of the Middle East. However, the obstinate singling out of Israel, which would recur in a host of institutional contexts well into the Twenty-First Century, became symptomatic of the sheer manipulation of human rights for power-political ends. To be sure, the Palestinians' predicament raised grave questions about human rights and about people's rights to self-determination. Yet dictatorial regimes in both the Arab and Soviet blocs raised equally serious questions about whether human rights, or indeed any serious form of self-determination through political participation exercised directly by the people, existed in most of the states that supported the resolution. Only decades later, first with the fall of the Soviet bloc, then with the Arab Spring of 2011, would some sense of people asserting real rights of self-determination through open participation begin to emerge within the states that had so long opposed Israel. Although international attention to longstanding abuses within Arab states has heightened since the uprisings, consequences—in the form of more even-handed treatment of Israel and her neighbours in the Council—are yet to be seen.

C. THE COMMISSION'S "COUNTRY-SPECIFIC" POLITICISATION

One central criticism of the Commission is that, during its final years, country-specific resolutions increasingly were used for politicised aims. Country-specific discussions were introduced to allow the Commission to deal with specific human rights situations. Such discussions and resolutions allowed the Commission to focus on gross and systemic situations and generally poor human rights practices within one state. Despite heavy criticism, that practice led to human rights improvements within some states. The Working Group on Chile, for example, resulted in greater protection from human rights abuses such as enforced disappearances. However, successes tended to occur where a

state sought assistance, as was the case with Chile, or where a state was politically isolated and had few allies to shield it from scrutiny, as occurred with South Africa. Since the Commission's demise, some observers have continued to express support for the country-specific mechanisms.⁵⁷ A recent study by James Lebovic and Erik Voeten seeks to defend this mechanism. The study examines which states were the targets of country-specific resolutions in the years following the Cold War.⁵⁸ Lebovic and Voeten conclude that country-specific resolutions resulted from Commission members seeking governmental accountability regarding human rights norms.⁵⁹ The problem with their argument is that many Commission members did not themselves uphold the norms and standards that they officially sought to promote through country-specific resolutions. Indeed, Lebovic and Voeten's argument becomes untenable when examining the human rights records of some member states.

Lebovic and Voeten argue that country-specific resolutions were not used primarily to pursue political objectives, but that the Commission targeted states due to their human rights practices rather than according to national political motivations.⁶⁰ Of course, states targeted under this mechanism can be shown to have committed human rights abuses, but so had many other countries that were not subject to such scrutiny. Delegates articulated valid human rights reasons for targeting specific states, but it is naïve to take at face value the rationales put forward by governments, especially those which altogether ignored other similar or graver situations. Governments' official positions for seeking country-specific resolutions must be read alongside their national policies and objectives. Moreover, even where the Commission did target known abusers that does not entail the conclusion that all, or even most, abusers were targeted.

The authors argue that a country's record for repression directly impacted upon whether it was punished by the Commission.⁶¹ However, they fail to deal with those countries that were not targeted at all, choosing only to look at the ones who were raised at the Commission's

⁵⁷ Patrizia Scannella & Peter Splinter, *The United Nations Human Rights Council: A Promise to be Fulfilled*, 7 HUM. RTS. L. REV. 41, 50 (2007).

⁵⁸ James H. Lebovic, & Erik Voeten, *The Politics of Shame: The Condemnation of Country Human Rights Practices in UNCHR*, 50 INT'L STUD. Q. 861, 861–88 (2006).

⁵⁹ *Id.* at 882.

⁶⁰ *Id.* at 861.

⁶¹ *Id.* at 876.

sessions. Therefore, the authors do not deal with the biased motives for selecting certain states for country-specific resolutions yet simultaneously ignoring other similar, grave situations. Similarly, they recognise that the Commission failed to deal with human rights abuses in known abuser states, but defend it by arguing that the country-specific mechanisms were used against some known abusers.⁶² This argument misses the point that use of the mechanisms was politicised and selective, as only a small number of known abuser states were targeted. “In practice the Human Rights Commission [*sic*] advanced only with studied caution beyond Southern Africa and the territories occupied by Israel.”⁶³ The Commission’s selection of a few states was inadequate as the body altogether ignored so many other human rights abusers.

Support for country-specific resolutions was not widespread;⁶⁴ it has widely been accepted that states did indeed often misuse that procedure to attack countries for political purposes. Two main criticisms of that mechanism led to two very different approaches about its contribution to the Commission’s demise. One argument, proposed mainly by Western states, NGOs, and observers, is that this mechanism was used for political purposes to take a disproportionate amount of action against politically isolated states. The other argument, put forward by China and its allies in the Like Minded Group, an alliance of developing nations led by China, criticised this mechanism as a neo-colonial tool used against developing nations.⁶⁵ As will later be explored, that argument was later relied upon by developing states at the Council during discussions on whether to retain country-specific mandates at the new body.

Jack Donnelly echoes other writers in observing that “certain countries are singled out, for partisan purposes, to the exclusion of other,

⁶² *Id.* at 865–66.

⁶³ Tom J. Farer & Felice D. Gaer, *The UN and Human Rights: At the End of the Beginning*, in UNITED NATIONS, DIVIDED WORLD: THE UN’S ROLE IN INTERNATIONAL RELATIONS 240, 276 (Adam Roberts & Benedict Kingsbury eds., 2d ed. 1993).

⁶⁴ See, e.g., Jack Donnelly, *Human Rights at the United Nations 1955-85: The Question of Bias*, 32 INT’L STUD. Q. 275, 288 (1988); Thomas M. Franck, *Of Gnats and Camels: Is there a Double Standard at the United Nations?*, 78 AM. J. INT’L L. 811, *passim* (1984); Farer & Gaer, *supra* note 63, at 286.

⁶⁵ E.g. Philip Alston, *Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council*, 7 MELB. J. INT’L L. 185, 203–06 (2006); Ron Wheeler, *The United Nations Commission on Human Rights, 1982-1997: A Study of “Targeted” Resolutions*, 32 CAN. J. POL. SCI. 75, 88, 99 (1999); HENRY J. STEINER ET AL., INTERNATIONAL HUMAN RIGHTS IN CONTEXT 791–92 (3d ed. 2008).

no less reprehensible regimes.”⁶⁶ Use of country-specific discussions and resolutions to attack particular states was exemplified through their use against Israel. Although most observers recognise serious human rights problems in the Israeli Occupied Territories, politicisation in this regard occurred to emphasise strength of feeling against that country. In particular, many states favoured the return of occupied territories to Syria and the creation of a Palestinian state. The disproportionate focus on Israel ensured that the Commission spent time focusing on that one state, which shielded other countries from scrutiny owing to time constraints at that body’s sessions.

Ghanea argues that the only countries targeted under country-specific resolutions were those sufficiently removed from global and regional alliances as to allow the international community to take a strong position against them without serious repercussions in interstate relations.⁶⁷ Power and influence was used to focus the Commission’s attention disproportionately on one state, whilst deflecting attention away from other abusers. Misuse in this manner was heavily criticised by observers; Scannella and Splinter, for example, argue that politicisation and selectivity, two of the Commission’s main flaws, were at the heart of country-specific discussions.⁶⁸ These characteristics took precedence over human rights issues during country-specific considerations.

II. THE COUNCIL’S MANDATE

Resolution 60/251, which created the Council, sets out the body’s mandate to protect and promote human rights.⁶⁹ The founding resolution also sets out the principles upon which the Council must operate.⁷⁰ The two broad mandates and the founding principles are explained and elaborated upon throughout the resolution.

Paragraph 3 sets out the Council’s protection mandate. It directs that the body “should address situations of violations of human rights, including gross and systematic violations, and make recommendations

⁶⁶ Jack Donnelly, *Human Rights at the United Nations 1955-85: The Question of Bias*, 32 INT’L STUD. Q. 275, 288 (1988).

⁶⁷ Nazila Ghanea, *From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways?*, 55 INT’L & COMP. L. Q. 695, 697 (2006).

⁶⁸ Scannella & Splinter, *supra* note 57, at 45.

⁶⁹ G.A. Res. 60/251, *supra* note 1, ¶¶ 1–2.

⁷⁰ *Id.* ¶ 4.

thereon”.⁷¹ The word “should” creates an affirmative duty to address those situations. The Council’s mandate to deal with human rights situations is imperative for the body to protect individuals from abuses. The protection mandate is primarily aimed at situations or ongoing violations within a particular state. Protection ideally includes a swift, strong, and short-term response to violations. The Council’s protection activities are typically unlikely to be invited, or indeed cooperated with, by the country concerned. In order to fulfil the directive to address these situations, time and resources must be allocated to all such situations occurring at any given time. One mechanism that enables such protection is the Council’s ability to convene Special Sessions to discuss grave or crisis situations. Special Sessions provide a new mechanism that allows the body to provide a quick and focused response to grave situations without using time and resources that had been allocated for other human rights matters.

Paragraph 4 directs that the Council “shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation”.⁷² These founding principles underscore that the Council must fulfil its mandate in a fair manner across all UN member states. Universality reiterates that all states must comply with their human rights obligations, and that the body must strive to hold any state accountable for non-compliance. Emphasis on impartiality, objectivity, and non-selectivity seeks to ensure that the Council will overcome the levels of politicisation that had contributed to the Commission’s failing. The Council’s founding principles impose legal requirements. They divide into two broad categories: principles that guide its work on human rights and principles that guide its relationship to individual states. The principles concerning human rights work seek to ensure that the work is even-handed and non-selective. The principles aimed at the Council’s relationship with states seek to ensure that the body is able effectively to fulfill its mandate. Repetition of these principles throughout the Resolution⁷³ underscores that they apply to all aspects of the body’s mechanisms, proceedings, and work.⁷⁴

⁷¹ *Id.* ¶ 3.

⁷² *Id.* ¶ 4.

⁷³ *Id.* ¶¶ 2, 4, 5(e), 12.

⁷⁴ WALTER KÄLIN ET AL., THE HUMAN RIGHTS COUNCIL AND COUNTRY SITUATIONS: FRAMEWORK, CHALLENGES AND MODELS 16 (2006), available at http://www.uio.no/studier/emner/jus/jus/JUR5710/h06/JUR_5710_lecture_2_kaelin_study.pdf.

Preambular paragraph 9 stresses “the importance of ensuring universality, objectivity and non-selectivity . . . and the elimination of double standards and politicization”.⁷⁵ Despite emphasising universality, Resolution 60/251 is silent on the concept of even-handedness when universally applying human rights. Although some countries may be judged against each other’s standards, this is not always the case because states often have different capabilities for implementing human rights. Sweden, for example, cannot be compared with Somalia. The second founding principle calls for objectivity within the Council’s work, which requires the Council to adopt a neutral approach to human rights, particularly country-specific situations. It seeks to ensure that the body’s work is guided by human rights rather than by states or groups’ agendas. Non-selectivity requires the Council to protect and promote human rights in an even-handed manner, allocating proportionate time and resources dependant on an individual state’s needs, without the Commission’s culture of blame. Repeated focus on a state’s human rights record, or the singling out of a state for constant resolutions, to the detriment of examining other similar or worse abusers, would violate this principle. The Council is required to eliminate politicisation and double-standards. Patrizia Scanella and Peter Splinter assert that the founding principles “are valuable reminders of how the promotion and protection of human rights should be approached in the United Nations.”⁷⁶ Assessing the Council’s adherence to these principles poses certain difficulties. The principles are open-ended and somewhat ethereal, indicating that they are guidelines rather than precise requirements. Neither the body nor other actors have interpreted their meanings. No method has been created to determine whether the body has complied with these principles. This article will adopt a simple methodology to identify whether the Council has adhered to these principles in its dealings with Israel. A lack of universality results in a lack of even-handedness and proportionality. Selectivity can be measured through disproportionate focus on a state for political aims, or indeed shielding known abusers for similarly political motivations. Partiality impacts upon the body’s work and proceedings when certain states or thematic rights are favoured over others. Using this methodology, Part III will explore whether the Council’s methodology has contravened these principles and, if so, the impact on the body fulfilling its mandate.

⁷⁵ G.A. Res. 60/251, *supra* note 1, ¶ 9.

⁷⁶ Scannella & Splinter, *supra* note 57, at 49–51.

III. POLITICISATION REGARDING ISRAEL

The Council's work and proceedings demonstrate some member states' eagerness to continue the excessive focus on Israel. Throughout the Council's early sessions, various states, the High Commissioner for Human Rights, and indeed the Secretary-General, called on the Council to devote attention and resources to grave situations other than the Occupied Palestinian Territories.⁷⁷ These calls were a response to the Council's repeated focus on Israel to the detriment of other serious situations in, for example, the Democratic People's Republic of Korea ("North Korea"), the Democratic Republic of Congo ("Congo"), Myanmar ("Burma"), Sri Lanka, and Zimbabwe, amongst others. Observers, and indeed states themselves, drew comparisons between the Commission and the Council's treatment of Israel.⁷⁸

Despite warnings about selectivity, bias, double standards, and loss of credibility, from the outset Council discussions were dominated by states seeking to vilify Israel and to keep the spotlight on that region. A large number of OIC states were able to express, and use their votes to achieve, collective positions. The OIC sought to retain focus on the OPT as part of national and regional foreign policies including political, religious, cultural, and regional ties with the Palestinians and with affected neighbouring states. OIC states also used the situation to divert attention away from other gross and systemic violations within the Middle East or within influential OIC Council members such as Pakistan, Algeria, and Egypt.

A further political motivation, particularly for states allied with but not members of the OIC, was Israel's ties with the United States. Israel is seen as the United States' foothold in the Middle East. International relations theorists would argue, for different reasons, that this relationship encouraged anti-US states, such as Cuba, China, Venezuela, and Russia, to use the situation in the OPT to attack US hegemony and interference. Realists view states' struggle for power as

⁷⁷ E.g. Kofi Annan, U.N. Secretary-General, U.N. Human Rights Council 2nd Session (Sept. 18, 2006) ("You [the Council] were rightly concerned with the situation in the Middle East, I feel confident that you will draw the same attention to other situations. At this time, I feel I must draw your attention on issue on Darfur."). For archived video of Council sessions, see U.N. Human Rights Council, *Live Webcast*, <http://www.un.org/webcast/unhrc/> (follow "Archived Video" hyperlink; then follow "Select by session" hyperlink and select desired session) (hereinafter *Archived Video*).

⁷⁸ Francoise J. Hampson, *An Overview of the Reform of the UN Human Rights Machinery*, 7 HUM. RTS L. REV. 7, 15 (2007); Scannella & Splinter, *supra* note 57, at 70.

the focal point of all international relations.⁷⁹ International politics, therefore, becomes a game whereby states seek sufficient power in order to be protected from other countries.⁸⁰ From that perspective, this group of states allied themselves with the OIC to attack a more powerful country through attacking its allies. Institutionalists offer a separate theory of state behaviour by giving credence to international rules, norms, principles, and decision-making procedures.⁸¹ They assert that these mechanisms enable states to pursue common aims.⁸² Insitutionalists, therefore, might counter that instead this is an example of a group of states seeking to further a common interest; the interest here being the Palestinian cause. Israel is also viewed by some observers as a remnant of colonialism, particularly in terms of its treatment of the Palestinians. Neo-Marxists⁸³ or Third World theorists⁸⁴ perhaps view Israel as a remnant of colonialism because it occupies Palestinian lands and is widely seen to have racist and discriminatory practices towards the indigenous people. Developing states identified with the Palestinian plight, seeking to use the Council to eliminate similar violations as had been perpetrated in colonial countries.

Scannella and Splinter argue that bias, selectivity, and politicisation have “been most evident in the Council’s handling of situations involving Israel.”⁸⁵ The situation in Israel and the OPT is one of gross and systemic human rights violations. The Council’s attention ought to be drawn to that situation, and indeed to Israeli violations in Lebanon and the Occupied Syrian Golan. However, the Council’s excessive focus on Israel, which frequently results in other gross and systemic situations being ignored altogether, occurs owing to gross politicisation of the Council. Politicisation of the body’s mechanisms and proceedings are often exemplified by the Council’s treatment of Israel.

⁷⁹ E.g. HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* *passim* (1993).

⁸⁰ Anne-Marie Slaughter, *International Law and International Relations*, in *HAGUE ACADEMY OF INTERNATIONAL LAW*, VOL. 285, at 32 (2001).

⁸¹ Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, in *INTERNATIONAL REGIMES* 1, 2 (Stephen D. Krasner ed., 1983).

⁸² MORGENTHAU, *supra* note 79, at 35–36.

⁸³ Marie-Benedicte Dembour, *Critiques*, in *INTERNATIONAL HUMAN RIGHTS LAW* 64, 72–85 (Daniel Moeckli et al. eds., 2010).

⁸⁴ E.g. EDWARD SAID, *ORIENTALISM* 1–5, 15 (1978); THOMAS M. FRANCK, *HUMAN RIGHTS IN THIRD WORLD PERSPECTIVE*, at xiii, xxiv–xxvii (1982); HOMI K. BHABHA, *THE LOCATION OF CULTURE* 90, 94–97 (1994); ANTONY ANGHIE, *IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW* 1–6 (2004).

⁸⁵ Scannella & Splinter *supra* note 57, at 61.

The Council has excessively focused on Israel during related and unrelated discussions, during Special Sessions, and through reports by various thematic mandate holders. To illustrate the overt and excessive politicisation of the HRC regarding Israel, this section will explore four aspects of the Council's work and proceedings: (1) the Council's Permanent Agenda; (2) country-specific mandates; (3) the Council's proceedings; and (4) the Council's work.

A. THE COUNCIL'S PERMANENT AGENDA

One significant manifestation of the politicisation at the Commission was the placing of Israel on that body's permanent agenda. At the Council, despite significant efforts to ensure non-selectivity, Israel was once again placed on the body's permanent agenda, the only country-specific mandate to be treated in that way.⁸⁶ The decision to place Israel and the OPT on the Council's permanent agenda was taken during negotiations on the body's Institution Building Package ("IBP"). The IBP was finalised at the Council's Fifth Session, after months of consultations, and was adopted on 18 June 2007. The Chairperson sought to achieve consensus on the IBP, but areas of disagreement remained even during the final negotiations.⁸⁷ In contrast to Resolution 60/251, which sets out the Council's general mandate and functions,⁸⁸ the IBP details the modalities of the Council's mechanisms and instruments, as well as enshrining a general agenda for future sessions.

The Council's permanent agenda is followed at each regular session. The permanent agenda aims to ensure that the Council is given the time to deal adequately with all human rights matters. Agenda Items 3 and 4 provide broad banners under which member states may raise any issues relating to protecting or promoting thematic (Item 3) or country-specific human rights (Item 4). Alongside providing a broad basis for discussions, the agenda focuses Council attention on specific human rights areas which directly correlate to various aspects of Resolution 60/251. Item 10 reflects the body's duty to promote human rights through technical assistance and capacity-building. Agenda Items 2, 5

⁸⁶ Human Rights Council Res. 5/1, Institution-Building of the United Nations Human Rights Council, 5th Sess., June 11–18, 2007, 9th Meeting, U.N. Doc. A/HRC/RES/5/1, at 18 (June 18, 2007).

⁸⁷ Schrijver, *supra* note 36, at 818.

⁸⁸ *See supra* Part II.

and 8 reflect the body's duties to interact with wider UN machinery and non-state actors. Item 6 solely focuses on the UPR.⁸⁹

Two agenda items, however, directly contradict the Council's founding principles of non-selectivity and universality. One country-specific situation is singled out, under Agenda Item 7, to be discussed at every regular Council session. To focus permanent attention solely on the human rights situation in "Palestine and other occupied Arab territories" is clearly selective, particularly given the persistence of other long-standing crisis situations, many of which have claimed far greater numbers of victims.⁹⁰ Moreover, one thematic right is also singled out and placed on the permanent agenda. Item 9 mandates the Council to discuss "racism, racial discrimination, xenophobia and related forms of intolerance" at every regular session.⁹¹ Both of these agenda items were proposed and supported by Organisation of Islamic Cooperation ("OIC") members and their allies. That bloc's dominance at the Council enabled it to place on the agenda items clearly related to its political objectives. Negotiations culminating in this outcome will be examined to ascertain positions taken by states and groups and to demonstrate the overt politicisation that occurred.

Negotiations on the IBP began in earnest at the Third Session. Various states argued that the "conflict between Israel and OPT should be a prominent topic in the agenda."⁹² Syria went further, calling for a "separate agenda item for the situation in the Occupied Palestinian Territories, the Golan and East Jerusalem."⁹³ The Permanent Observer Mission of Palestine,⁹⁴ an entity granted observer status at the Council, supported these and similar positions, stressing the "need to have a distinct agenda item on the Occupied Territories in Palestine."⁹⁵ Israel's statement urged the Council to remember its founding principles: "We

⁸⁹ H.R.C. Res. 5/1, *supra* note 86, at 18.

⁹⁰ On the role of mandate holders, see HRC Res 5/1, *supra* note 86, at 17.

⁹¹ *Id.*

⁹² Iranian delegate, U.N. Human Rights Council, 3rd Sess. (Nov. 30 2006) (during Discussions on Methods of Work, Agenda, and Rules of Procedure). See *Archived Video*, *supra* note 77.

⁹³ Syrian delegate, U.N. Human Rights Council, 3rd Sess. (Nov. 30 2006). See *Archived Video*, *supra* note 77.

⁹⁴ Since 1948, 17 non-member states have been granted permanent observer status at the U.N. National liberation movements as well as other entities, such as the I.C.R.C., have also been granted observer status. In 1974, the Palestine Liberation Organization (PLO) was granted observer status by G.A. Res. 3237 (XXIX), Nov. 22, 1974, which invited the PLO to participate at the GA, international conferences, and other UN organs, as an observer.

⁹⁵ Palestinian delegate, U.N. Human Rights Council, 3rd Sess. (Nov. 30 2006). See *Archived Video*, *supra* note 77.

caution the Council not to follow in the politicised footsteps of the Commission. There should be no selectively singling out of one country-specific issue alone. There should be no fixed item on the agenda on a single country, as this is selectivity.”⁹⁶ However, selective proposals continued during later discussions, with Russia, Cuba, and Iran arguing that the OPT situation “has a different nature” to country mandates.⁹⁷ The OIC group statement called for all thematic mandates to focus on Palestine and the issue of occupation.⁹⁸

Calls to place Israel on the IBP were repeated by certain groups and states throughout negotiations on the text. At the Fifth Session’s discussions on the permanent agenda, the OIC, NAM, the African Group, and the Asian Group all argued that there should be a separate agenda item on the OPT.⁹⁹ The Permanent Observer Mission of Palestine stated that it “oppose[d] any manoeuvre or tactics to delay that further. It should be crystal clear, and it should be unthinkable, and it should be a mockery of this Council, if the Israel occupation of Palestine and other Arab territories is not reflected. It should be in the agenda on your paper.”¹⁰⁰

The language used reflects the Permanent Observer Mission of Palestine’s understandable political agenda *vis-à-vis* the OPT mandate. However, that observer has not criticised, nor even referred to, gross abuses in any OIC or allied state. Moreover, the Palestinian delegate’s focus solely on Israeli violations has frequently used emotive and polemic language in statements to the Council. The delegate has used Council sessions to read his own poetry about the occupation, for example:

Mr Jail-man, don’t you understand,
Scars of concentration camps mark your hand,
Negotiations commence today, I understand,

⁹⁶ Israeli delegate, U.N. Human Rights Council, 3rd Sess. (Nov. 30 2006). *See Archived Video*, *supra* note 77.

⁹⁷ Iranian delegate, U.N. Human Rights Council 3rd Sess. (Dec. 5, 2006) (informal meeting). *See Archived Video*, *supra* note 77.

⁹⁸ OIC delegate, U.N. Human Rights Council 3rd Sess. (Dec. 5, 2006) (informal meeting). *See Archived Video*, *supra* note 77.

⁹⁹ U.N. Human Rights Council, 5th Session, (June 8 2007) (informal meeting). *See Archived Video*, *supra* note 77.

¹⁰⁰ Palestinian delegate, U.N. Human Rights Council, 5th Session, (June 8 2007) (informal meeting). *See Archived Video*, *supra* note 77.

Leave our mountains, valleys, sea, air and land,
Draw your lesson from France and Deutschland,
Our will is strong, see the drawing lines in the sand,
Washington, Mandela and Arafat stand so grand,
Though called terrorists by occupiers in command,
Mr Jail-man, you do not want to understand,
You gave occupation a new attire with Semitic brand.¹⁰¹

Similar language and style is rarely used at the Council, with the occasional exception of Venezuela, Cuba, and Iran on sensitive issues usually related to the United States or Israel.

The West, with particularly strong statements from Canada, some EU members, the United States, and Australia, asserted that it would not support a separate item on OPT. States arguing against inclusion of a separate OPT agenda item emphasised that the Council should not repeat the Commission's mistakes regarding politicisation, selectivity, and double-standards. Japan stressed the need "to convince the outside world that the Council is an improvement in fortifying and not weakening the Commission."¹⁰² Canada called for the Council to "break with the double standards" that it argued were clear regarding the OPT mandate at the Commission.¹⁰³ Australia took a similar position in asking for all human rights issues to be treated equally and for there to be "no separate standing issue on the Occupied Palestinian Territories."¹⁰⁴ The United States commented that it "opposes an agenda item on the Occupied Palestinian Territories. Instead there should simply be an item on human rights. All mandates must be handled in the same manner and reviewed in the same manner."¹⁰⁵

Before adopting the IBP, and with the Chairperson's encouragement that consensus should be reached, the Fifth Session's final discussions continued to focus on whether the OPT should have a

¹⁰¹ Palestinian delegate, U.N. Human Rights Council, 6th Sess. (Dec. 12, 2007). *See Archived Video, supra* note 77.

¹⁰² Japanese delegate, U.N. Human Rights Council, 3rd Sess. (Dec. 5, 2006) (informal meeting). *See Archived Video, supra* note 77.

¹⁰³ Canadian delegate, U.N. Human Rights Council, 3rd Sess. (Dec. 5, 2006) (informal meeting). *See Archived Video, supra* note 77.

¹⁰⁴ Australian delegate, U.N. Human Rights Council, 3rd Sess. (Dec. 5, 2006) (informal meeting). *See Archived Video, supra* note 77.

¹⁰⁵ *Id.*

separate agenda item. The OIC emphasised that it “attaches great importance to Item 7 [on the OPT] of the Commission on Human Rights.”¹⁰⁶ It is interesting to note that despite its loss of credibility and clear failings, OIC members spoke about the Commission’s work on Israel as though it was a success. The Commission’s approach to the OPT situation did reflect the OIC’s political objectives, but the body’s selectivity and double-standards in this regard was also one of the main reasons for that its demise. Saudi Arabia raised the issue of the Commission’s position towards the OPT, noting that it was “always discussed . . . as a standing item,” and thanking the Council “for keeping that item in the agenda.” It emphasised the convening of a Special Session on the OPT, arguing that it “is a sign of the extent of the suffering of the Palestinian people.”¹⁰⁷ Saudi Arabia’s human rights record at that time was described by Amnesty as “dire.” Indeed, that NGO noted human rights abuses including, amongst others, detention without charge, political prisoners and prisoners of conscience, discrimination against women, torture and ill-treatment of detainees, flogging, amputation, and at least 158 executions including a child offender.¹⁰⁸ The Saudi Arabian delegate’s reminder that the Council had already used new mechanisms was meant to demonstrate that the situation is special and different, but in fact underscored the selectivity and politicisation that occurred from the outset regarding Israel.

These positions continued at the informal meeting immediately preceding the IBP’s adoption. Venezuela, Malaysia, Egypt, Indonesia, Iran, Philippines, Morocco, Tunisia, Sudan, Syria, and Bahrain all called for the OPT to have a separate agenda item and to remain indefinitely until the end of the occupation.¹⁰⁹ The United States reminded the Council that singling out the OPT mandate “makes the system politicised and non-universal.”¹¹⁰ Israel went further, reminding the Council of the

¹⁰⁶ *Id.*

¹⁰⁷ Saudi Arabian delegate, U.N. Human Rights Council, 3rd Sess. (Dec. 5, 2006) (informal meeting). *See Archived Video*, *supra* note 77.

¹⁰⁸ Amnesty Int’l, *Annual Report 2008: The State of the World’s Human Rights*, 255–58, AI Index: POL 10/001/2008 (2008), available at <http://report2008.amnesty.org/document/101.pdf>.

¹⁰⁹ U.N. Human Rights Council, 5th Session, (June 15, 2007) (informal meeting). *See Archived Video*, *supra* note 77.

¹¹⁰ American delegate, U.N. Human Rights Council, 5th Session, (June 15, 2007) (informal meeting). *See Archived Video*, *supra* note 77.

Commission's failures and urging the new body not to allow Israel to "monopolise attention to the detriment of other human right issues."¹¹¹

B. COUNTRY-SPECIFIC MANDATES

Council discussions about the country-specific mandate on Israel and the OPT demonstrate selectivity, bias, and politicisation. During the Council's formative years, discussions about retaining country-specific mandates saw divergence between, on the one hand, Western and developed nations, and on the other, the OIC and developing states. This mirrored similar divisions throughout other Council proceedings.

States that had been critical of country resolutions at the Commission remained committed to that position at the Council. Those states tended to be decolonised states, members of NAM, and OIC members. The reasons varied, including allegations of double-standards, bias, and selectivity, all of which contravened the Council's founding principles. China had led criticisms of these mandates at the Commission, and this continued during Council discussions. From the outset, African, Asian, and OIC states, alongside some from NAM and the Like-Minded Group, asserted that the Council should abolish country-specific mandates. States said that human rights situations could be adequately dealt with through other mechanisms, such as the complaints procedure, Special Sessions, and the Universal Periodic Review. Yet, despite vehemently opposing country-specific mandates in general, states seeking to abolish country-specific mandates almost invariably asserted, usually at the end of their statement, that the OPT mandate was different to other mandates. Those countries either argued that the OPT mandate was thematic because it dealt with the "theme" of foreign occupation, or simply said that the mandate was "special" and should therefore be retained.

Conversely, some Western and other allied states expressed support for country-specific mandates during debates on the review of mandates as well as discussions with individual mandate holders. Country-specific mandates, according to these states, enabled protection and promotion of human rights. To fulfil its mandate, it was argued that the Council must provide in-depth analysis alongside practical assistance to countries with gross and systemic violations. Scannella and Splinter

¹¹¹ Israeli delegate, U.N. Human Rights Council, 5th Session, (June 15, 2007) (informal meeting). See *Archived Video*, *supra* note 77.

note that some states and NGOs argued that “the ability of the Council to address country situations, including through country resolutions, is central to the authority and credibility of the new Council.”¹¹² However, those same states repeatedly called for the mandate on Israel to be withdrawn, arguing that it existed solely for political reasons.

Discussions during the Second Session illustrate the fundamental divergence of opinion along a North-South divide. At that session, the Special Rapporteur on Cuba, Christine Chanet, presented her report, during which she noted that the Commission had annually renewed the mandate.¹¹³ Chanet implied that the mandate’s continuance was unnecessary as the new body had other monitoring mechanisms.¹¹⁴ Many states and groups took a similar position on Cuba’s mandate, albeit for different reasons. Some states called for the mandate’s end because the Commission had created it for political motivations. States argued that the mandate represented bias and selectivity instigated by the United States and its allies as a foreign policy objective against Cuba,¹¹⁵ a longstanding enemy of the United States.

Russia, supporting calls to abolish the mandate on Cuba, commented that “despite all the statements to depoliticise the United Nations, the Commission and now the Council has to come back again to this issue. We have to establish cooperation. Russia has spoken about [country-specific mandates]—they are politicised, counter-productive and confrontational.”¹¹⁶ Iran, supporting China’s statement, asserted that “country mandates . . . are the main cause of politicisation. They undermined the work of the Commission. They should be removed by the Council. We will have the Universal Periodic Review to review states in a non-selective manner. The Special Rapporteur on Cuba is an example of double-standards.”¹¹⁷ Algeria (African Group) also spoke of country mandates being politicised, and that the UPR would suffice to evaluate all countries. In contrast to these positions, the EU and the United States, amongst others, chose to discuss aspects of the report rather than whether the mandate should be extended.

¹¹² Scannella & Splinter, *supra* note 57, at 63.

¹¹³ Christine Chanet, U.N. Human Rights Council, 2nd Sess. (Sept. 26 2006). *See Archived Video, supra* note 77.

¹¹⁴ *Id.*

¹¹⁵ For example, Algeria, Belarus, China, DPRK (North Korea), Russia, Zimbabwe.

¹¹⁶ Russian delegate, U.N. Human Rights Council, 2nd Sess. (Sept. 26 2006). *See Archived Video, supra* note 77.

¹¹⁷ Iranian delegate, U.N. Human Rights Council, 2nd Sess. (Sept. 26 2006). *See Archived Video, supra* note 77.

Discussions on Chanet's report illustrate the divide between those states seeking to abolish country mandates altogether and those which sought retention to enable protection and promotion of human rights by identifying and discussing human rights issues within the country concerned. Cuba's supporters in these discussions reflected countries within the South that Cuba identified as its allies or those states with post-Marxist "Third World" theories on international organisations. Many states seeking abolition had their own political agendas. This group included states themselves subject to country mandates and those states, such as China, which had long advocated removal of country mandates. Cuba provided a strong example for supporters of abolition. The mandate's creation and history displayed clear politicisation by the United States as part of longstanding tensions between those two states. Furthermore, Chanet, the mandate holder, herself impliedly recommended the mandate's abolition, or at least did not indicate the need for it to continue.

The Second Session also heard the report of John Dugard, Special Rapporteur on the Occupied Palestinian Territories.¹¹⁸ States critical of country mandates during other discussions not only supported the OPT mandate and called for its continuance, but moreover argued that the mandate should not be time limited and should exist until the end of Israeli occupation of Palestinian lands.¹¹⁹ Justification for that position was that the OPT mandate was thematic rather than country-specific, based on it being an issue of foreign occupation. Western and other states that did support country-specific mandates reversed their position in terms of the OPT mandate. They argued that this country-specific mandate was biased, selective, demonstrated double-standards, and contradicted the Council's founding principles.

China (Like Minded Group), during the Second Session's discussions on Special Procedures, argued that "country mandates have proven a dysfunctional controversy, and because of that the Commission was discreditedFalse The Working Group must review all country mandates as matter of priority and remove them."¹²⁰ However, despite clearly opposing all country-specific mandates, China provided a caveat that the OPT mandate could not be regarded as country-specific because

¹¹⁸ John Dugard, Special Rapporteur, U.N. Human Rights Council, 2nd Sess. (Sept. 26 2006). See *Archived Video*, *supra* note 77.

¹¹⁹ For example, Malaysia, Algeria, Bangladesh, Cuba, and Iran.

¹²⁰ Chinese delegate, U.N. Human Rights Council, 2nd Sess. (Oct 3, 2006). See *Archived Video*, *supra* note 77.

it dealt with the thematic issue of foreign occupation. China's comments about the thematic issue of foreign occupation is interesting given its position regarding its occupation of Tibet. Despite widespread criticism of human rights violations in Tibet,¹²¹ China frequently blocked the Commission from discussing and taking action regarding Tibet.¹²²

China's statement was followed by laughter from delegations,¹²³ many of whom supported this notion and seemed relieved that China provided a caveat regarding the OPT. China's remarks on the OPT and foreign occupation allowed states to oppose country-specific mandates yet retain focus on the OPT. Many states calling for the abolition of country-specific mandates had regional or political ties with the OPT and the Palestinian people. China's position that the OPT mandate was thematic was repeated by various states and regional groups. Invariably those states were either regional or political allies of the Palestinian people, or had ties to those allies, thus providing political motivations to retain the OPT mandate whilst calling for the abolition of mandates on other grave country-specific situations. At the Third Session, the OIC agreed with China's position, arguing that all thematic mandates should include a focus on Palestine and the issue of occupation.

Interestingly, Cuba, which had long been subject to a country-specific mandate, sought to abolish country mandates yet also to retain the OPT mandate. Similarly, Sudan also sought to retain the OPT mandate while vehemently opposing all country-specific mandates, especially its own. These, and other, states seeking to retain the OPT mandate argued that it was thematic rather than country-specific. Steiner, Alston and Goodman note that the Council does not examine human rights violations in Israel, but rather violations committed by Israel in the Occupied Palestinian Territories.¹²⁴ That supports the argument that the OPT is a thematic mandate. However, thematic mandates do not solely focus on one country, which clearly the OPT mandate does. For the OPT

¹²¹ See, e.g., U.N. Committee Against Torture [CAT], *Concluding Observations of the Committee Against Torture*, ¶¶ 22–24, 28, U.N. Doc. CAT/C/CHN/CO/4 (Dec. 12, 2008); U.N. Committee on Economic, Social and Cultural Rights [CESCR], *Concluding Observations: People's Republic of China (Including Hong Kong and Macao)*, ¶¶ 31, 38, U.N. Doc. E/C.12/1/Add.107 (May 13, 2005).

¹²² For example, in 2001 a “no action” motion by China, to keep the US-sponsored resolution off the commission's agenda, was adopted on April 18 by a vote of 22 to 18, with twelve abstentions and one delegation absent. The “no-action” motion was used from 1992 to 1996 to block all draft resolutions that mentioned Tibet.

¹²³ Author's own observations.

¹²⁴ HENRY J. STEINER, PHILIP ALSTON & RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 814 (3d ed. 2008).

mandate to be thematic, it should arguably encompass other issues of foreign occupation in, for example, Northern Cyprus and Tibet. States arguing that the OPT is a thematic mandate were silent on other issues of foreign occupation within any other region. That silence suggests the argument was based on political, rather than technical, motives. Ultimately, country-specific mandates were not abolished. However, states' tactics resulted in Israel being singled out in every discussion on country-specific mandates, thus keeping the spotlight on Israel to the detriment of other country-specific situations.

Country-specific mandates were retained at the Council. The IBP sets out that such mandates exist for renewable one-year periods. However, the mandate on the OPT has been treated differently than all other country-specific mandates; the mandate is expressed to last for the duration of Israel's occupation of the Palestinian Territories. Before adopting the IBP, and with the Chairperson's encouragement that consensus should be reached, the Fifth Session's final discussions centred on the OPT mandate. Pakistan (OIC) reiterated its position that "the mandate on the Occupied Palestinian Territories is a thematic mandate and must remain until the end of occupation."¹²⁵ The OIC asserted that "[t]he Special Rapporteur mandate on the Occupied Palestinian Territories is until the end of the Israeli occupation as per the Commission on Human Rights resolution. These must be reflected in the text."¹²⁶

That selective treatment can be contrasted with the mandate on Sudan, which at that time was committing gross and systemic violations in Darfur, and yet was treated like all other country-specific mandates in terms of its duration. Lack of even-handedness can also be seen in the complete failure to enact any mandates on other situations of occupation—such as Tibet or the Turkish Republic of Northern Cyprus—let alone ones that would last until the end of those occupations. The United States expressed reservations about the singling out of Israel and the Occupied Territories in this manner, asserting that it "makes the system politicised and non-universal"¹²⁷ and advocating that

¹²⁵ Pakistani delegate, U.N. Human Rights Council, 5th Sess. (June 14, 2007) (informal meeting). See *Archived Video*, *supra* note 77.

¹²⁶ *Id.*

¹²⁷ *Id.*

the Occupied Palestinian Territories' mandate "be subject to modification in the normal procedure."¹²⁸

Cuba explicitly expressed the reason for this selectivity, saying "[t]he Occupied Palestinian Territories is extraordinary and exceptional. It needs extraordinary treatment. The Special Rapporteur should continue until the end of occupation. We will not give an inch on this."¹²⁹ That statement encapsulates the sentiment that Israeli violations in the OPT, like South African apartheid, is an unparalleled situation which requires selective treatment. That sentiment undermines the Council's constituent instrument and is wholly untrue owing to other similar situations occurring at that time. However, it went unchallenged during that discussion. Indeed many states supported Cuba's statement, including China, which asserted that the OPT mandate "should be valid until the termination of illegal occupation."¹³⁰

C. COUNCIL PROCEEDINGS

One reason that the EU did not strenuously object to a separate agenda item on Israel and the OPT was the expectation that this item would contain all discussion about Israel, thus ensuring that other discussions under the agenda items would be able to focus on other countries and regions. That hope has yet to come true. Israel is constantly raised during Council discussions on any, and sometimes all, agenda items irrespective of whether the subject matter being debated is related or unrelated to that conflict.

During the Council's first two years, a number of country-specific situations were discussed within regular sessions. Those situations were either ongoing or dire, requiring country-specific mandate holders to report on them. The raising of specific situations depended on considerations such as the gravity of the crisis as well as the political motives of Council members. The impact of regional ties was particularly strong. OIC members, for political reasons, ensured that the Council's attention remained on Israel whilst the body ignored situations in, for example, Libya, Syria, and Saudi Arabia, and that action on

¹²⁸ American delegate, U.N. Human Rights Council, 4th Sess. (Mar. 23, 2007) (during discussion on country-specific mandates). *See Archived Video*, *supra* note 77.

¹²⁹ Cuban delegate, U.N. Human Rights Council, 4th Sess. (Mar. 23, 2007). *See Archived Video*, *supra* note 77.

¹³⁰ Chinese delegate, U.N. Human Rights Council, 4th Sess. (Mar. 23, 2007). *See Archived Video*, *supra* note 77.

Darfur was blocked. Regionalism in this context resulted in the Council not focusing solely on the gravest situations, but also on those countries that fell foul of prominent groups and blocs. The United States, with its own problems regarding disproportionate scrutiny at the Council, had much to say about the body's excessive focus on Israel during the HRC's formative years.¹³¹ The United States was not only highly critical of the Council's selective and partial treatment of its human rights record, but also constantly raised the issue of the body's non-adherence to its founding principles in its treatment of Israel. Indeed, the Council's selectivity and bias were stronger in relation to Israel than any other state, including the United States. The United States swiftly noted that throughout the Council's formative years, the body's discussions, mechanisms, and work were being used for those same biased ends. Despite regular statements and assertions to that effect, the body ignored the United States' calls for the founding principles to be adhered to in relation to Israel, and certain states flagrantly violated these principles throughout all aspects of the body's work and proceedings.

The Council hears reports from thematic and country-specific mandate holders. Overt politicisation regarding Israel can again be demonstrated through the use of reports at the Council. During the first seven sessions, Israel was brought to the Council's attention through reports on various aspects of the human rights situations pertaining to the Occupied Territories, the conflict between Israel and the Occupied Palestinian Territories, and the situation following the Lebanese war in the summer of 2006. Notably, Israel's allies did not defend Israeli violations; the United States did, however, note abuses committed on the Palestinian¹³² and Lebanese¹³³ sides. The United States' approach emphasised the need for balance and impartiality, a position not taken frequently by any country other than Canada.¹³⁴ During discussions on Israel, the United States and Canada were often alone in highlighting the

¹³¹ Rosa Freedman, *The United States and the Human Rights Council: An Early Assessment*, 23 ST. THOMAS L. REV. 89, 94–96, 98–100 (2010).

¹³² E.g. United States delegate, U.N. Human Rights Council, 7th Sess. (Mar. 6, 2008) (stating that "Palestinian rocket attacks must stop, and terrorist attacks that target civilians must stop," in response to the UNHCHR report on resolutions concerning the Israel/Palestine conflict). See *Archived Video*, *supra* note 77.

¹³³ For example, the American delegate condemned the Hezbollah attack on Israel and the kidnapping of two Israeli soldiers which directly preceded the war, in response to UN Doc. A/HRC/2/7 (2006). American delegate, U.N. Human Rights Council, 2nd Sess. (Oct. 4, 2006). See *Archived Video*, *supra* note 77.

¹³⁴ Canada is the only member of the Human Rights Council to have voted against every resolution critical of Israel, where a vote was called.

human rights abuses on both sides and calling for the Council to act to ensure that all sides cease violations.¹³⁵ The United States reminded the Council of the underlying principles that established the body, stating that “the unbalanced focus on Israel”¹³⁶ was inconsistent with them:

The Council must be more balanced The Human Rights Council can express concern about Israel’s human rights violations, but it should be equally concerned with Palestinian terrorism and other human rights violations in the world.¹³⁷

The United States repeatedly berated the Council’s anti-Israel bias, but such concerns were largely dismissed owing to the close relationship between these two countries. Cheryl Rubenberg claims that unconditional United States support for Israel “goes beyond any traditional relationship between states in the international system.”¹³⁸ Unsurprisingly, that relationship affects perception of the United States’ comments about Israel, even when those positions are valid. The only state that generally supported the United States’ position was Canada. Other Western and democratic states, with the occasional exception of Australia and Japan, perhaps fearing the same impact of regional alliances as dominated Commission proceedings, took neutral positions during most of these discussions. The EU regularly made neutral comments during discussions regarding Israel. The EU’s reluctance to take sides could be due to that bloc’s need to internally negotiate a collective position, and the varied stances of its members on the Israel-Palestine situation. The EU and its dominant state members also tended to seek a mediating role. The EU’s neutrality is, however, more likely to have resulted from the power and influence held by the large bloc of OIC member states sitting at the Council. The size and geographical diversity of its membership gave the OIC significant weight in the Council, and

¹³⁵ American delegate, U.N. Human Rights Council, 2nd Sess. (Sept. 29, 2006) (stating that “Israel must dismantle those settlements built since March 2001, and the Palestinians must prevent terrorist activities. We . . . call on parties to fulfil their obligations. . . . We call on Israel to take into account the humanitarian impact . . . [of the] wall and avoid action that could prejudice issues that should be determined by negotiations. We urge everyone not to consider this situation as a one-sided context,” in response to SR on the Occupied Palestinian Territories, John Dugard).

¹³⁶ American delegate, U.N. Human Rights Council, 2nd Sess. (Oct. 4, 2006). See *Archived Video*, *supra* note 77.

¹³⁷ *Id.*

¹³⁸ CHERYL RUBENBERG, ISRAEL AND THE AMERICAN NATIONAL INTEREST: A CRITICAL EXAMINATION 330 (1986).

that influence was often deployed to ostracise those countries that disagreed with the OIC's collective stance.¹³⁹

Alongside regular sessions, the Council is mandated "to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council."¹⁴⁰ Requiring one third of Council members' support empowers dominant groups and alliances to use this mechanism to achieve political aims because the larger the group, the more easily the one third threshold can be achieved. Once again, this has manifested itself in the mechanism's use to keep the spotlight on Israel by ensuring vastly disproportionate attention is given to Israel through the convening of special sessions about that country's violations.

One third of all Special Sessions have been convened about Israel. During that same time, powerful states from the Global South, including China and Zimbabwe, as well as the South's allies, such as Russia and Venezuela, were protected from scrutiny of their gross and systemic human rights violations. Indeed, until the "Arab Spring," Sudan had been the sole OIC state to receive scrutiny under this mechanism, and even then only one session was convened about the gross and systemic abuses occurring within Darfur.

Of the Council's first eighteen Special Sessions, sixteen were country-specific and two thematic. Arguably, there are more country-specific than thematic crises situations. Developing states typically called for country-specific Special Sessions despite the South's general position against country-specific focus. Of these sessions, six were convened on Israel, three on Syria, two were thematic, and one each dealt with Darfur, the Democratic Republic of Congo, Haiti, Libya, Myanmar, and Sri Lanka.

Schrijver insists that when the Palestinian plight is considered, Western observations that the Council excessively focuses on Israel is questionable.¹⁴¹ However, owing to similar, if not worse, abuses ongoing elsewhere, Gaer argues that convening three Special Sessions on Israel in the Council's first six months raised serious concerns about the new body and its members.¹⁴² Indeed, then-Secretary-General Kofi Annan

¹³⁹ Rosa Freedman, *Improvement on the Commission?: The UN Human Rights Council's Inaction on Darfur*, 16 U.C. DAVIS J. INT'L L. & POL'Y 81, 86–87 (2009).

¹⁴⁰ G.A. Res. 60/251, *supra* note 1, ¶ 10; H.R.C. Res. 5/1, *supra* note 86, ¶¶ 121–28.

¹⁴¹ Schrijver, *supra* note 36, at 820.

¹⁴² Felice D. Gaer, *A Voice Not an Echo: Universal Periodic Review and the U.N. Treaty Body System*, 7 HUM. RTS. L. REV. 109, 135–36 (2007).

voiced his concerns at the Council's treatment of Israel in light of its silence on other grave situations.¹⁴³

During the Council's first three years, many gross and systemic human rights violations occurred that were not dealt with by this mechanism, or indeed at all by the Council. The violent repression of protests following Iran's 2009 Presidential elections was ignored by the Council despite well-documented human rights violations.¹⁴⁴ Similarly, grave violations occurring in China, particularly surrounding the Beijing Olympics in 2008, did not merit the convening of a Special Session despite widespread coverage of the human rights abuses. Situations in these, and other, countries were not dealt with by the Council for political reasons. OIC members, including known grave abusers such as Iran, were protected by their political and regional allies. Powerful states from the Global South, including China and Zimbabwe, as well as the South's allies, such as Russia and Venezuela, were also protected from scrutiny of their gross and systemic human rights violations. The Council increasingly used this mechanism to respond to crises in 2010 and 2011, with sessions on Haiti, Ivory Coast, Libya, and Syria (with three consecutive sessions convened on that country). Those situations, as with the one in Sri Lanka, reached absolute crisis point before the body addressed them. Israel's human rights violations, on the other hand, were scrutinised regardless of whether they were an ongoing or crisis situation. Were this mechanism to be zero-sum, with all grave and other situations able to be examined and to have time and resources devoted to them, then undoubtedly the six sessions on Israel would be justified and necessary. However, in practice, the Council has time and resources to allocate even-handedly according to need.

¹⁴³ See, e.g., Press Release, Secretary General in Message to Human Rights Council Cautions against Focusing on Middle East at expense of Darfur, Other Grave Crises, U.N. Press Release SG/SM/10769-HR/4907 (Nov. 29, 2006). See also, Kofi Annan, Address to Mark International Human Rights Day in New York City (Dec. 8, 2006), in Press Release, Secretary-General Urges Human Rights Activists to 'Fill Leadership Vacuum', Hold World Leaders to Account, in Address to International Day Event, U.N. Press Release SG/SM/10788-HR/4909-OBV/601 (Dec. 8, 2006) ("[W]e must realize the promise of the Human Rights Council which so far has clearly not justified the hopes that so many of us placed in it.").

¹⁴⁴ See, e.g., Amnesty Int'l, *Amnesty International Report 2009: The State of the World's Human Rights*, 172-76, AI Index POL 10/001/2009 (2009), available at <http://report2009.amnesty.org/sites/report2009.amnesty.org/files/documents/air09-en.pdf>.

D. THE COUNCIL'S WORK

Resolutions are a main method through which the Council protects human rights. As had occurred at the Commission, the number of resolutions about Israel demonstrates excessive politicisation at the Council. Resolutions on Israel either have focused generally on Israeli violations,¹⁴⁵ abuses in the OPT,¹⁴⁶ Gaza,¹⁴⁷ or the Occupied Syrian Golan,¹⁴⁸ or have been about specific incidents such as the Gaza Flotilla,¹⁴⁹ incursions into Lebanon,¹⁵⁰ or grave abuses in Beit Hanoun.¹⁵¹ Often, resolutions on Israeli violations have either been the sole country-specific resolutions adopted at a specific Council session¹⁵² or have collectively amounted to more than all other country-specific resolutions adopted within a particular session.¹⁵³ This demonstrates the grossly disproportionate scrutiny of Israel not only in terms of the discussions on that country but also the use of Council powers and mechanisms to deal with that state.

The uprisings across the Arab world have enabled the Council's better to fulfil its protection mandate. The OIC's collective strength has diminished insofar as that group no longer holds a unified, collective stance on human rights within the Middle East. OIC members increasingly became concerned with internal and regional matters unrelated to Israel, particularly those states which were most affected by the Arab Spring. While not all states supported scrutiny of, for example,

¹⁴⁵ Human Rights Council Dec. 1/106, Human Rights Situation in Palestine and Other Occupied Arab Territories, 24th Sess., U.N. Doc. A/HRC/DEC/1/106 (June 30, 2006).

¹⁴⁶ Human Rights Council Res. S-1/1, Human Rights Situation in the Occupied Palestinian Territory, U.N. Doc. A/HRC/RES/S-1/1 (July 6, 2006).

¹⁴⁷ Human Rights Council Res. 7/1, Human Rights Violations Emanating from Israeli Military Attacks and Incursions in the Occupied Palestinian Territory, Particularly the Recent ones in the Occupied Gaza Strip, U.N. Doc. A/HRC/RES/7/1 (Mar. 6, 2008).

¹⁴⁸ Human Rights Council Res. 2/3, Human Rights in the Occupied Syrian Golan, U.N. Doc. A/HRC/RES/2/3 (Nov. 27, 2006).

¹⁴⁹ Human Rights Council Res. 14/1, The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy, U.N. Doc. A/HRC/RES/2/3 (June 23, 2010).

¹⁵⁰ Human Rights Council Res. S-2/1, The Grave Situation of Human Rights in Lebanon Caused by Israeli Military Operations, U.N. Doc. A/HRC/RES/S-2/1 (Aug. 11, 2006).

¹⁵¹ Human Rights Council Res. S-3/1, Human Rights Violations Emanating from Israeli Military Incursions in the Occupied Territory, Including the Recent one in Northern Gaza and the Assault on Beit Hanoun, U.N. Doc. A/HRC/RES/S-3/1 (Nov. 15, 2006).

¹⁵² U.N. Human Rights Council, 7th Sess. (Mar. 3, 2008); Human Rights Council, 14th Sess. (May 31, 2010). *See Archived Video, supra* note 77.

¹⁵³ U.N. Human Rights Council 10th Sess. (Mar. 2, 2009); Human Rights Council, 13th Sess. (Mar. 26, 2010). *See Archived Video, supra* note 77.

Libya and Syria, the loss of a single, unified approach at Council sessions enabled the body to discuss and pass resolutions on grave abusers from that political bloc. At the Sixteenth Session, the Council passed its first resolution on the human rights situation in Iran.¹⁵⁴ That session also passed resolutions on Tunisia,¹⁵⁵ an OIC member and known abuser of human rights. Despite the Council's increased ability to focus on human rights violations within the Middle East other than in the OPT, the disproportionate and excessive scrutiny of Israel continued. At the Sixteenth Session, five resolutions were passed about Israel, some of which dealt with violations that had long-ceased occurring.

Another aspect of the Council's work is undertaken in conjunction with the Special Procedures system. That system is another mechanism utilised by the Council, and indeed the UN human rights machinery, to protect and promote human rights. Most mandate holders are exemplary, holding high levels of expertise and standards of behaviour. However, there have been controversial mandate holders who undermine the body's credibility despite the efforts to reform the UN human rights body, particularly regarding problems of credibility. In particular, certain controversial appointments have resulted in accusations of bias, lack of credibility, and lack of independence.

Controversies regarding mandate holders can broadly be divided into two categories: mandate holders rejected by countries affected by the mandate, and mandate holders whose controversial aspects were more widely recognised either by states, organisations, or other interested parties. States subject to country-specific mandates or who were investigated by thematic mandate holders would, at times, refuse access to mandate holders or obstruct investigations. States often justified such actions by claiming that the mandate holder was biased, partial, selective, lacked credibility, or held political agendas against the country concerned.

Sudan, for example, refused entry to former Acting and Deputy UN High Commissioner for Human Rights, Bertrand Ramcharan, as part of the High Level Mission mandated by the Council in December 2006. Sudan claimed that Ramcharan lacked impartiality regarding events in Sudan, accusing him of bias against the Sudanese government. Sudan asserted that Ramcharan was "a zealous, outspoken person against the

¹⁵⁴ Human Rights Council Res. 16/9, Situation of Human Rights in the Islamic Republic of Iran, U.N. Doc. A/HRC/RES/16/9 (Apr. 8, 2011).

¹⁵⁵ Human Rights Council Res. 16/19, Cooperation Between Tunisia and the Office of the United Nations High Commissioner for Human Rights, 16th Sess., A/HRC/RES/16/19 (Apr. 13, 2011).

government of Sudan,” citing examples of his bias.¹⁵⁶ Sudan’s action was supported by its African and OIC allies at the Council. Israel took a similar approach, for example, to the appointment of Richard Falk as a mandate holder at the Seventh Session. It expressed concern in part due to his controversial comparison of Israeli treatment of Palestinians with Nazi crimes against humanity. Israel declared that it would deny Falk an entry visa to Israel and the Palestinian Territories. Unlike Sudan, Israel received no support for its right to object to an appointment of a mandate holder. Moreover, it appears that more controversial appointments have been made in relation to the OPT mandate than any other. Accusations of partiality and bias have been featured regularly in relation to individuals linked to the mandate on OPT. Allegations have been based on previous outspoken views, conflict of interest, academic or political work, or links to parties within the region, with regards to independent experts, members of working groups, or mandate holders themselves.¹⁵⁷

Even where mandates do not directly relate to the OPT, controversial mandate holders have used their position to ensure disproportionate and selective attention is focused on Israel at the expense of other situations. Jean Ziegler provides a clear example of a mandate holder’s overt politicisation regarding Israel. Indeed, Ziegler has been criticised as a controversial and political appointment. A former Professor of sociology, and a member of the Swiss federal parliament, Ziegler was appointed by the Commission as the Special Rapporteur on the Right to Food in 2000,¹⁵⁸ and that mandate was carried over to the Council. Ziegler’s appointment can be criticised on the grounds that, as a sociologist, he holds no special expertise on food or agriculture. Ziegler has attracted widespread and constant criticism from states, UN staff, NGOs, and the media for his ties to repressive regimes.¹⁵⁹ Links with

¹⁵⁶ For expansion on Sudan’s reasoning, see Letter from the Permanent Mission of the Republic of the Sudan, to the Office of the High Commissioner for Human Rights (Mar. 7, 2011), *available at* http://www.responsibilitytoprotect.org/files/Sudan_CommunicationOnDarfurMissionFailure_28_march07.pdf.

¹⁵⁷ For example, Christine Chinkin, John Dugard, Richard Falk, Christian Tomuschat and Desmond Tutu.

¹⁵⁸ See Commission on Human Rights Res. 2000/10, The Right to Food, Apr. 17, 2000, U.N. Doc. E/CN.4/RES/2000/10 (Apr. 17, 2000).

¹⁵⁹ See, e.g., Hillel Neuer, *Ziegler’s Follies*, UN WATCH, AZURE (Mar. 26, 2008), <http://www.unwatch.org/site/c.bdKKISNqEmG/b.1289203/apps/s/content.asp?ct=5320717> (citing Michel Jeanneret, *United Nations: Jean Ziegler at the Heart of a New Polemic*, LE MATIN [French], Apr. 24, 2006); Patrick Goodenough, *UN Rights Expert Has Controversial Track Record*, CNSNEWS.COM (July 7, 2008), <http://cnsnews.com/node/17573>.

such regimes extend beyond engagement in dialogue with states in order to fulfil his mandate. Arguably, these ties have affected his independence in the human rights arena, as well as specifically in relation to the right to food. Ziegler is alleged to have worked for the Ethiopian dictator General Megistu in an advisory role,¹⁶⁰ has previously defended Robert Mugabe,¹⁶¹ and Kim Il Sung,¹⁶² and was a long-time friend of Muammar Gaddafi.¹⁶³ All of those regimes have been heavily criticised for their poor human rights records, and none of those ties is compatible with Ziegler's role as an independent human rights expert.

Alongside ties to repressive regimes, criticisms have also focused on, amongst other things, Ziegler's bias against Israel, both in his personal capacity and as a mandate holder. A striking example occurred in 2005 when Ziegler told demonstrators in Geneva that Gaza was "an immense concentration camp" and that it was a good thing that the "guards" were about to leave.¹⁶⁴ Human Rights Watch reported¹⁶⁵ that, as a result of those comments, Ziegler became the only UN expert to have been publicly denounced by both the Secretary-General (Kofi Annan)¹⁶⁶ and the High Commissioner for Human Rights (Louise Arbour).¹⁶⁷ Yet, despite these comments, Ziegler retained his position within the Special Procedures system.

Constant attacks on Israel coupled with the failure to criticise other gross violators undermine any claim that Ziegler is impartial. Ziegler instead used his position to express opinions regarding a state with comparatively few urgent issues relating to food. Lack of impartiality is alleged in Ziegler's treatment of Israel. Reports on the right to food have tended to raise issues with tenuous, if any, links to the

¹⁶⁰ See, e.g., Alan Johnson, *Appointment With Farce*, THE GUARDIAN, (Apr. 5, 2008, 5:00 PM), <http://www.guardian.co.uk/commentisfree/2008/apr/05/appointmentwithfarce>.

¹⁶¹ See, e.g., Neuer, *supra* note 159 (citing Philippe Barraud, *Mugabe Has History and Morality with Him*, L'HEBDO [French], Aug. 22, 2002); Neuer, *supra* note 159 (citing JEAN ZIEGLER, L'EMPIRE DE LA HONTE [THE EMPIRE OF SHAME] (2005)).

¹⁶² See, e.g., Neuer, *supra* note 159 (citing Jean-Claude Buhrer, *Jean Ziegler Before the Bar*, LE MONDE [French], July 26, 1993).

¹⁶³ See, e.g., Joshua Muravchik, *Qaddafi's Good Friend at the U.N.*, THE WEEKLY STANDARD, May 15, 2005, at 14, 15, available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/012/198ikivt.asp>.

¹⁶⁴ Neuer, *supra* note 159 (citing *Jean Ziegler Compares Gaza Strip to Concentration Camp*, SDA—SCHWEIZERISCHE DEPESCHENAGENTUR AG [Swiss], May 21, 2004).

¹⁶⁵ Marc Perelman, *U.N. Official Slammed for Criticism of Israel*, THE FORWARD, Dec. 9, 2005, at 8, available at <http://www.forward.com/articles/1729>.

¹⁶⁶ Neuer, *supra* note 159 (citing *Annan slams UN official*, JTA, July 8, 2005).

¹⁶⁷ Neuer, *supra* note 159 (citing *Gaza Comments by Rights Expert Irresponsible—UN*, REUTERS, July 7, 2005).

mandate. The Second Session heard a joint report on the human rights situation in Lebanon resulting from the Israeli incursion into Lebanon in 2006.¹⁶⁸ Ziegler was one of four experts to give the report. Going beyond his mandate, as there had been no specific allegations of a breach of the right to food, Ziegler called for an ICC investigation, alleging “massacres of civilian populations and use of anti-personnel mines [that are] prohibited according to Rome Statute.”¹⁶⁹ Itzhak Levanon, Israel’s ambassador to the UN responded: “In all of his reports Mr Ziegler always transgresses the limits of his mandate. The latest report—which touches upon several external issues—is no exception.” The Israeli delegate further asked the Council why Ziegler was selected for the mission when several newspapers reported Ziegler’s view that kidnapping Israeli soldiers was understandable. Levanon called on the Council “to judge how relevant it is to give a mandate to a man that advocates activities of Hezbollah.”¹⁷⁰

Although the Council cannot be held responsible for the behaviour of Special Procedures, the body was seemingly unconcerned with Ziegler’s bias and partiality, as well as his links with known human rights abusers. Evidence has previously been sent to the Council and its member states regarding Ziegler’s lack of independence based in no small part on his role in founding, and his ongoing relationship with, the Muammar Gaddafi Human Rights Prize.¹⁷¹ That evidence seemingly had

¹⁶⁸ Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston; the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt; the Representative of the Secretary-General on Human Rights of Internally Displaced Persons, Walter Kälin; and the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari: Mission to Lebanon and Israel, Human Rights Commission, 2d Sess., Sept. 7–14, 2006, U.N. Doc. A/HRC 2/7 (Oct. 2, 2006).

¹⁶⁹ Oral intervention of Jean Ziegler during discussion of the Joint Report on Lebanon. Human Rights Council, 2d Sess. (Oct. 4, 2006). *See Archived Video, supra* note 77.

¹⁷⁰ Israeli delegate, U.N. Human Rights Council, 2d Sess. (Oct. 4, 2006). *See Archived Video, supra* note 77.

¹⁷¹ Ziegler has also been criticised for lack of independence. The UN Charter specifically refers to independence as does the IBP and the Manual of Operations of the Special Procedures of the Human Rights Council, which states that the “independent status of the mandate-holders is crucial in order to enable them to fulfil their functions in all impartiality.” Special Procedures of the Human Rights Council, Manual of Operations of the Special Procedures of the Human Rights Council, at 7, June 2008, available at http://www.ohchr.org/Documents/HRBodies/SP/Manual_Operations2008.pdf. Ziegler’s role in founding, and his ongoing relationship with, the Muammar Gaddafi Human Rights Prize has been uncovered and documented by the NGO UN Watch. *Switzerland’s Nominee to the UN Human Rights Council and the Moammar Khaddafi Human Rights Prize*, UN WATCH (June 20, 2006), <http://www.unwatch.org> (search “Switzerland’s Nominee,” then follow hyperlink to title). Although that NGO’s credibility has been questioned due to its close ties with US Republican

no impact on the Council; Ziegler retained his mandate until April 2008¹⁷² when he was subsequently elected to the Human Rights Council Advisory Committee,¹⁷³ receiving forty out of forty-seven of the votes and gaining the support of all non-democratic Council members.¹⁷⁴

CONCLUSION

The Human Rights Council was created in a reformist atmosphere. Participants in that process sought both to underscore the importance of human rights as the “third pillar” of the United Nations and to ensure that the new body overcame the problems that had beset its predecessor. The Council’s constituent instrument emphasised that the body must protect and promote human rights and provided clear principles for the fulfilment of those mandates. However, politicisation of the Council occurred from the outset. The body’s treatment of Israel provides a clear example of the way in which overt politicisation has undermined the Council’s protection mandate and has contravened its founding principles.

Founding Principles: The Council’s founding principles, including non-selectivity, impartiality, and a lack of bias, have repeatedly

and Jewish American lobby groups, the primary sources it uses appear solid. Cf. Bruce Palling, *Gaddafi Funds Peace Prize*, THE INDEPENDENT, Apr. 25, 1989, available at <http://www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/Sources%20for%20Ziegler-Khaddafi%20Prize%20Report.pdf>; Pierre Huguenin, *Le Nobel de Kadhafi* [Kadhafi’s Nobel], L’HEBDO, Apr. 27, 1989, available at <http://www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/Sources%20for%20Ziegler-Khaddafi%20Prize%20Report.pdf>. UN Watch demonstrates Ziegler’s close involvement with the Prize that has been awarded to known human rights violators, including Fidel Castro, Louis Farrakhan, and Hugo Chavez. Ziegler announced the first award of the Ghaddafi Human Rights Prize in April 1989. The UN Watch report establishes Ziegler’s continuing involvement with awarding the prize through his presidency over North-South 21, the NGO and inter-connecting agencies that administer the award (Cf. Andrew Loudon, *Gaddafi Human Rights Prize for two Dock Strike Wives*, DAILY MAIL, Sept. 4, 1997, at 27), as well as running a centre in Geneva funded by the Libyan regime. Ziegler has failed to disclose these connections in his biographical data supporting his Sub-Commission candidacy, official university CV, or the biography on his right to food website, despite the clear implications they may have regarding his independence as a mandate holder. Impartiality is a crucial requirement for mandate holders and of the utmost importance for purposes of state selection and fact-finding.

¹⁷² Mr. Olivier de Schutter (Belgium) assumed the mandate in May 2008. See UNITED NATIONS SPECIAL PROCEDURES FACTS AND FIGURES 2008, at 3, available at <http://www.ohchr.org/Documents/HRBodies/SP/factsfigures2008.pdf>.

¹⁷³ Rep. of the Advisory Committee on its Third Session, Human Rights Council Advisory Committee, 3d Sess., Aug. 3–7, 2009, Part II.B.(4), U.N. Doc. A/HRC/AC/3/2 (Oct. 9, 2009).

¹⁷⁴ For a critical assessment of this appointment, see Johnson, *supra* note 160.

been ignored in the body's dealings with Israel. Those principles sought to ensure an even-handed and non-politicised approach to the protection of human rights. Selectivity by states, groups, mandate holders, and NGOs has resulted in disproportionate focus on Israel throughout the Council's work, proceedings, and mechanisms. Contravention of these principles occurred from the outset, with the convening of three special sessions on Israel within months of the body's creation. Placing Israel as the sole country-specific item on the Council's permanent agenda, alongside the mandate on the OPT being the only one of open-ended duration, demonstrates the partiality that occurred during the body's formative years. The Special Procedures system, which operates alongside the Council, has been criticised for some mandate holders being biased and partial against Israel. While some accusations about individuals' credibility will always occur, the evidence demonstrating the partiality of even a few mandate holders undermines the system.

Protection Mandate: General Assembly Resolution 60/251 sets out the Council's mandates to protect and promote human rights. The protection mandate, expanded upon and reiterated throughout the body's constituent instrument and Institutional Building Package, explicitly requires the Council to address, amongst others, situations of gross and systemic human rights violations. Grave human rights abuses occur in various states and regions at any given time. For the Council adequately to protect victims from violations, the body must address such situations in an even-handed manner. Disproportionate focus on Israel has impeded the Council's finite time and resources being proportionately allocated to all situations occurring across the world. Reports, resolutions, decisions, and resources have time and again been used to divert attention onto Israel and deflect it away from other ongoing abuses. Israel frequently is raised during Council discussions on any, and sometimes all, agenda items. Consequently, gross and systemic violations in, for example, Chechnya, Zimbabwe, and China, have altogether been ignored, while grave situations in, for example, the DRC, Iran, and the DPRK have received very little attention at the Council.

Politicisation: Overt politicisation occurred, primarily, because the Council's composition enabled one political bloc, namely the Organisation of Islamic Cooperation, to dominate proceedings. That group, which has members in three regional groups and is allied with two others owing to its ties with developing states, ensured that Israel remained at the fore during all Council work and proceedings. Dominance extended not only to discussions but also to votes on the

Institutional Building Package, convening special sessions, and tabling and passing resolutions. The Council's composition, with relatively few seats for Western states, allowed the Global South to dominate proceedings and to further political objectives. Although the United States and Canada, and at times Australia, New Zealand, and Japan, called for the politicisation on Israel to cease, those voices were few and far between. Passivity from the EU, owing in no small part to its own internal political divisions on achieving a common position regarding Israel, enabled OIC members to dominate discussions about Israel. The OIC's collective foreign policy objectives, coupled with the national political aims of many of its members, sought to ensure that the Council remained focused on Israeli violations. The OIC and its allies have used overtly politicised tactics to retain focus on the Palestinian cause. They have also sought to divert attention away from other grave human rights situations, within that region or in its members' territories, by using Council time and resources to focus on Israel, thus shielding other states in the region from scrutiny.

Events during and subsequent to the Arab Spring have thus far had little impact on the Council's disproportionate scrutiny of Israel. The Council remains a forum overtly politicised regarding Israel and the Occupied Palestinian Territories. Consequently, victims have been wholly ignored in other regions, and the Council's credibility has suffered from the outset. Although Special Sessions in 2011 focused almost exclusively on the situations in Libya and Syria, other uprisings have been ignored, including the events in Egypt and Tunisia. As of this writing, one third of special sessions have been convened to scrutinise Israeli violations, and it seems likely that this will continue, particularly with the spotlight moving away from events across the rest of the Middle East.

The Council's credibility has already been called into question by states, observers, and scholars of international law and international relations. The United States withdrew from the body for over a year soon after the Council's creation, in no small part owing to politicisation undermining the body throughout its formative years. Disproportionate scrutiny of Israel has already been cited as evidence that the Council is, at best, repeating its predecessor's mistakes or, at worst, fast moving toward the Commission's fate. In order to combat these criticisms and, ultimately, to retain credibility, the Council must focus on discharging its protection mandate by addressing all situations of gross and systemic violations. The body must adhere to its founding principles in all of its

work and proceedings. Ultimately, in order to succeed in discharging its mandate and overcoming its predecessor's failings, the Council must strive to deal with Israel in a proportionate and even-handed manner.