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The United States and the U.N. Human Rights Council: An Early Assessment

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THE UNITED STATES AND THE U.N. HUMAN RIGHTS COUNCIL: AN EARLY ASSESSMENT

ROSA FREEDMAN¹

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I. INTRODUCTION

The United States' election to the U.N. Human Rights Council ("Council") in 2009 displays a shift in foreign policy under President Barack Obama.² The Obama administration's decision to engage with the Council by seeking membership, for the first time since the Council's creation, reverses the approach taken under George W. Bush. During General Assembly discussions aimed at establishing the Council in 2005–06, the Bush administration had objected to key provisions. The United States argued that the proposed Council would fail to overcome the shortcomings of the Commission on Human Rights ("CHR"), the Council's predecessor.³

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2. See Press Release, General Assembly, United States Elected to Human Rights Council for First Time, with Belgium, Hungary, Kyrgyzstan, Norway, as 18 Seats Filled in Single Round of Voting, U.N. Press Release G.A./10826 (May 12, 2009).

3. See Press Release, General Assembly, General Assembly Establishes New Human Rights Council by Vote of 170 in Favour, U.N. Press Release G.A./10449 (Mar. 15, 2006) [hereinafter New Human Rights Council].

When the Council was established in 2006,⁴ the United States did not stand for election to one of the body's 47 seats.⁵ It instead opted for permanent observer status, which entitles a state to participate in all sessions. In 2008, the United States withdrew its mission, disenchanted by the tone and progress of Council proceedings.⁶ Despite widespread hope that the Obama administration will revitalize America's relationship with the U.N., the 2008 withdrawal is no aberration. It remains a pivotal action in U.S. policy towards the U.N., as Bush era policies have not been altogether abandoned.

In this article, an analysis of events leading up to the 2008 withdrawal will shed light not only upon America's likely positions in the years to come, but, more importantly, on the overall performance of the Council since its creation. Two broad factors are relevant to the United States' withdrawal. First, I shall examine America's historical stance towards the Council, tracing its positions before, during, and after the General Assembly vote on the Council's establishment.⁷ Second, I shall turn to the Council's scrutiny of human rights in the United States and the American response.⁸

Although recent U.S. policy has done much to inflame international relations, I shall argue that the Council's "Special Procedures" mandate holders⁹ drew excessive attention to the United States, often to the neglect

4. See G.A. Res. 60/251, ¶ 1, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

5. See *id.* at ¶ 7 (stating that the Council's membership of forty-seven states consists of the following number of countries per regional group: thirteen African States, thirteen Asian States, six Eastern European States, eight Latin American and Caribbean States, seven Western European and Other States).

6. See Claire Doole, *US Quits Human Rights Council?*, HUMAN RIGHTS TRIBUNE, June 6, 2008, <http://www.droitshumains-geneve.info/spip.php?article3184>.

7. See *infra* Parts 1–3.

8. See *infra* Part 4.

9. See The Vice-President and Rapporteur, *Report to the General Assembly on the Fifth Session of the Council*, ¶ I.A.1 & ¶ 39–64, U.N. Doc. A/HRC/5/21 (Aug. 7, 2007) [hereinafter *Report to the General Assembly*] (discussing the role of mandate holders and delivered to the Human Rights Council and General Assembly); see also Office of the United Nations High Commissioner for Human Rights, *Special Procedures of the Human Rights Council in 2007 and 2008*, <http://www2.ohchr.org/english/bodies/chr/special/index.htm> (last visited Aug. 6, 2010). The document stated:

"Special procedures" is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world . . . Special procedures are either an individual (called "Special Rapporteur," "Special Representative of the Secretary-General," "Representative of the Secretary-General" or "Independent Expert") or a working group usually composed of five members (one from each region). The mandates of the special procedures are established and defined by the resolution creating them. Mandate-holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. The independent status of the mandate-holders is crucial

of far more serious human rights situations elsewhere in the world. After examining those two factors, I shall conclude with preliminary prognoses of America's new membership under the Obama administration.¹⁰

II. THE UNITED STATES' VOTE AGAINST ESTABLISHMENT OF THE COUNCIL

News that the United States had withdrawn its observer mission was first reported in the *Human Rights Tribune* in June 2008, between the Seventh and Eighth Sessions.¹¹ That move effectively ended U.S. involvement with the Council, as the United States ceased giving input into the body's discussions and activities. The United States neither officially confirmed nor denied the news. However, it announced at its daily State Department briefing that it would only participate in Council discussions where "absolutely necessary."¹²

Although the Bush administration had no further involvement after the Seventh Session, which ended in 2008, the United States announced a new decision to stand for election to the Council early in Obama's Presidency.¹³ In order to secure U.S. membership, New Zealand withdrew its candidacy,¹⁴ thus allowing the United States to gain an unopposed seat in the Western European and Other States' group.

Those are only recent chapters of a turbulent history. In the original discussions on establishing the Council, the United States had focused on membership issues in objections to the draft resolution establishing the Council. The Secretary-General at that time, Kofi Annan, had proposed the Council be elected by a two-thirds majority of the General Assembly, thus making it more difficult for countries to obtain membership unless they were known to be committed to the protection and promotion of human rights.¹⁵ The United States pushed for additional criteria in order to ensure

in order to be able to fulfill their functions in all impartiality.

Id.

10. See *infra* Part 5.

11. See Doole, *supra* note 6.

12. See Human Rights Watch, *US: Leaving UN Rights Council Fails Victims of Abuse*, <http://www.hrw.org/en/news/2008/06/05/us-leaving-un-rights-council-fails-victims-abuse> (last visited Aug. 6, 2010).

13. See U.S. Department of State, *Announcement on U.S. Seat on U.N. Human Rights Council*, <http://www.america.gov/st/texttrans-english/2009/April/20090401120727eafas4.264468e-02.html> (statement of Gordon Duguid, acting deputy spokesman) (last visited Aug. 6, 2010).

14. See Vaclav Havel, *A Table for Tyrants*, N.Y. TIMES, May 11, 2008, at A23, available at <http://www.nytimes.com/2009/05/11/opinion/11havel.html>.

15. See New Human Rights Council, *supra* note 3.

that “gross and systemic” violators could not be elected.¹⁶ Annan had deemed the Commission’s lack of credibility to be crucial to its demise,¹⁷ along with the number and prominence of members with poor human rights records.¹⁸

The United States echoed Annan’s hope that the Council would eradicate the Commission’s problems, especially regarding credibility of membership. Despite some states’ support for these aspirations, the final resolution simply required that “when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto.”¹⁹ U.S. Ambassador, John Bolton, insisted the resolution go further in excluding countries with the worst human rights records from gaining membership.²⁰ The lack of assurance of a credible membership would, he argued, result in the Council being no better than the Commission.²¹ The test would be whether countries such as “Cuba, the Sudan, Zimbabwe, Iran, Belarus and Burma” acquired membership.²²

Unsurprisingly, Bolton’s views won little sympathy from member states he had previously criticized. In 1994, Bolton had claimed, “[t]here is no such thing as the United Nations. There is only the international community, which can only be led by the only remaining superpower, which is the United States.”²³ Bolton also famously declared, “[i]f the UN Secretariat building in New York lost ten stories, it wouldn’t make a bit of difference.”²⁴ Bolton’s opinions on CHR membership carried little weight among the countries increasingly suspicious of the Bush administration.

16. *Id.*

17. See U.N. Secretary-General, *Report of the Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All*, U.N. Doc A/59/2005 (Mar. 21, 2005) [hereinafter *Report of the Secretary-General*]; see also Eric Heinze, *Even-handedness and the Politics of Human Rights*, 21 HARV. HUM. RTS. J. 7, 7–46 (2008) (discussing problems of credibility of inter-governmental and non-governmental organizations).

18. See United Nations Member States, *Member States of the United Nations*, <http://www.un.org/en/members/> (last visited Aug. 6, 2010) (stating that, for example, in its later years states such as Sudan and Saudi Arabia held membership); see also *Libya Takes Human Rights Role*, BBC NEWS, Jan. 20, 2003, <http://news.bbc.co.uk/2/hi/africa/2672029.stm> (discussing Libya’s election as chair of the Commission in 2003).

19. See G.A. Res. 60/251, ¶ 8, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

20. See New Human Rights Council, *supra* note 3 (illustrating the oral intervention of the United States Ambassador John Bolton, in the General Assembly debate on the establishment of the Human Rights Council).

21. See *id.*

22. *Id.*

23. Roland Watson, *Bush Deploys Hawk as New UN Envoy*, THE TIMES, Mar. 8, 2005, http://www.timesonline.co.uk/tol/news/world/us_and_americas/article421888.ece (reporting comments made by Bolton twelve years earlier at the 1994 Global Structures Convocation).

24. *Id.*

Although Bolton made serious points about the Council, his standing at the U.N., and the general standing of the Bush administration, guaranteed his opinions would garner little support. Bolton's backing for the invasion of Iraq further undermined his ability to steer the U.N. on human rights. Bolton advised the General Assembly never to "settle for good enough, for a compromise" in the promotion and protection of human rights.²⁵

Nevertheless, on March, 15 2006, at the General Assembly's 72nd meeting, the draft resolution to create the Council²⁶ passed by a landslide, with 170 states in favor, four (4) against,²⁷ and three (3) abstentions.²⁸ The vote was called by the United States to the chagrin of those who had hoped the text would pass unanimously (a vote is only called for when there are countries that oppose the draft resolution in question).²⁹ Before the vote, Cuba accused the United States of taking a "punitive and sanctioning" approach.³⁰ The Cubans alleged America and its allies had exerted "strong pressure and resorted to their traditional blackmail" in pursuing its preferred outcome.³¹

After the vote, Bolton reminded the General Assembly that the United States had counted historically among the strongest voices for the global protection and promotion of human rights, since the founding of the U.N.³² Bolton pointed out that the U.N. "can, and should, do more. We had an historic opportunity to create a primary human rights organ in the United Nations, poised to help those most in need."³³ Bolton nevertheless went on to pledge U.S. assistance in strengthening the Council.³⁴ The United States declined to stand for membership, leaving its status formally peripheral, in comparison to its earlier, full-fledged membership of the CHR.³⁵

The Council retained the CHR rules regarding observer states and bodies³⁶ allowing the American delegation to energetically participate in Council sessions and activities as a permanent observer until the end of the

25. See New Human Rights Council, *supra* note 3.

26. See *Draft Resolution Submitted by the President of the General Assembly*, ¶ 1, U.N. Doc A/60/L.48 (Feb. 24, 2006).

27. See New Human Rights Council, *supra* note 3 (including Israel, Marshall Islands, Palau, United States).

28. *Id.* (including Belarus, Iran, Venezuela).

29. *Id.*

30. *Id.*

31. *Id.*

32. See *id.*

33. New Human Rights Council, *supra* note 3 (including Israel, Marshall Islands, Palau, United States).

34. See *id.*

35. See *id.*

36. See *Report to the General Assembly*, *supra* note 9, at Rule 7.

Seventh Session. Observer status entitled the United States to be present at all Council sessions and to participate in all discussions. The United States vigorously exercised that prerogative, as we shall now see from the many and varied discussions in which it participated.

III. THE UNITED STATES' VIEWS ON THE COUNCIL'S ACTIVITIES

The United States scarcely changed its views on the Council's activities during the seven sessions in which it participated. Its initial fears that the Council would be biased and opaque were repeated in its comments on working methods. Furthermore, the Council's inaction on grave human rights situations³⁷ was a source of U.S. consternation, echoing those initial fears that the Council would not go far enough in protecting and promoting human rights.

The United States expressed strong opinions about the Council's working methods, often stating they were not conducive to the effective protection and promotion of human rights. The United States faced further frustration in its appeals for constructive working methods.³⁸ From the outset, the United States stressed the need for dialogue, as opposed to confrontation, and the importance of involving NGOs, national observers, and all other stakeholders.³⁹ The American insistence on such tactics arguably arose from its fear that the body would fail unless the Council radically departed from the failings of the Council's predecessor.

The United States emphasized "the need to have clarity and transparency," arguing that the Council "must follow clear and predictable guidelines."⁴⁰ The United States seemed particularly concerned that the Council should avoid the CHR's earlier opacity, by supporting open, formal procedures over closed, informal and unreported meetings.⁴¹ While the United States may be criticized for its own secrecy on the Security Council, a feature shared by permanent members, such insistence on transparency at the Council cannot be deemed hypocritical, as security issues require different approaches than human rights. The protection and promotion of human rights are rarely, if ever, placed at risk by transparent

37. See, e.g., Brett Schaefer, *The United Nations Human Rights Council: A Disastrous First Year*, THE HERITAGE FOUNDATION, June 1, 2007, <http://www.heritage.org/Research/Reports/2007/06/The-United-Nations-Human-Rights-Council-A-Disastrous-First-Year>.

38. See *infra* notes 42–67 and accompanying text.

39. U.N. Webcast: Human Rights Council (Third Session, Nov. 30 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=061130> (follow "United States of America, Ms. Jan Levin").

40. *Id.*

41. See *id.*

procedures, particularly outside declared states of emergency.⁴² Unfortunately, thus far, those calls have gone unheeded at the Council. Major decisions are still being taken within closed, informal, unreported meetings. Voting tactics are discussed in closed regional group meetings, shrouding the Council in secrecy.

The United States repeated the need for transparency in discussions on Universal Periodic Review (“UPR”). UPR is an innovative human rights mechanism, requiring peer review of all U.N. member states during a four-year cycle, with Council members being reviewed during their term of membership.⁴³ The United States emphasized that UPR success would “lie in its openness”⁴⁴ and that UPR, and other working methods, should not supplant certain established procedures.⁴⁵ For example, they stressed that the Council should be able to continue to consider country-specific situations on its own initiative and at any time.⁴⁶ The United States also rehashed its earlier fears about politicization, reminding the Council, for example, that there should be no double standards⁴⁷ when using UPR.

The theme of impartiality and non-politicization in the Council’s working methods continued in the United States’ comments about country-specific mandates. While the United States advocated the continuation of such mandates as a strong tool for keeping “the spotlight on human rights abuse,”⁴⁸ it expressed reservations about the singling out of Israel and the

42. See International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976. ICCPR, for example, states:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

Id.

43. See UPR Process, UPR-INFO.ORG, <http://www.upr-info.org/-UPR-Process-.html> (last visited Aug. 6, 2010).

44. Press Release, Human Rights Council, Human Rights Council Discusses Modalities of its Universal Periodic Review Mechanism, U.N. Press Release HR/HRC/05/55 (Oct. 2, 2006) [hereinafter *Modalities*].

45. U.N. Webcast: Human Rights Council (Third Session, Dec. 4 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=061204> (follow “United States of America, Mr. Patrick Smeller”).

46. *Id.*

47. See *Modalities*, *supra* note 44.

48. U.N. Webcast: Human Rights Council (Fourth Session, Mar. 23, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070323> (follow “United States of America, Mr. Warren W. Tichenor”).

Occupied Territories by the Council under the guise of these mandates.⁴⁹ The United States asserted that such focus “makes the system politicised and non-universal”⁵⁰ and advocated that the Occupied Palestinian Territories’ mandate “be subject to modification in the normal procedure.”⁵¹

The United States repeated its general position on Council working methods during both formal and informal debates. It regularly used discussions on working methods to air concerns about the Council’s effectiveness, reminding the body of the need for “independent, impartial experts in order to maintain credibility.”⁵² It also insistently reminded the Council of the need to implement its resolutions.⁵³ American delegates repeatedly recalled the need to improve human rights mechanisms at the U.N., reminding the Council of the Secretary-General’s report,⁵⁴ especially the strong criticisms contained therein, that had acted as a catalyst for the body’s creation.

Despite U.S. insistence at the Council’s formation that it would not become a member of the body, the United States sought to play an active role in shaping it from the outset. Its opinions on the various working methods reflected its initial fears the body would not be significantly different to the Council’s predecessor, nor would the body go far enough in protection and promotion of human rights. The United States insisted upon clear and concise working methods, transparency, and that all mechanisms reflect the principles of non-selectivity and impartiality.⁵⁵

These themes, albeit facially uncontroversial, were not always reflected in the Council’s actions, which arguably contributed to the United States’ decision to withdraw. The Council’s primary objective of protecting and promoting human rights was frequently repeated by the United States during both general discussions and those regarding specific activities. The United States reminded the Council of its founding principles of “universality, objectivity, and non-selectivity”⁵⁶ before

49. *Id.*

50. *Id.*

51. *Id.*

52. U.N. Webcast: Human Rights Council (Third Session, Dec. 5, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=061205> (follow “United States of America, Ms. Jan Levin”).

53. See U.N. Webcast: Human Rights Council (Third Session, Dec. 7, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=061207> (follow “United States of America, Ms. Jan Levin”) [hereinafter Levin].

54. See *Report of the Secretary-General*, *supra* note 17.

55. See Levin, *supra* note 53 and accompanying text.

56. See U.N. Webcast: Human Rights Council (Second Session, Oct. 6, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=061006> (follow “United States of America,

declaring that the “Council has fallen short in fulfilling these principles.”⁵⁷

During the sessions, the United States had also criticized the Council’s lack of action on specific human rights situations. The United States singled out serious and ongoing violations in Sudan,⁵⁸ Myanmar,⁵⁹ North Korea,⁶⁰ and Zimbabwe⁶¹ as requiring immediate attention and action. Moreover, the United States urged the Council to act on a number of occasions, mentioning the ongoing atrocities, and for immediate action. The United States stressed its support for, amongst others, the Special Session on Darfur,⁶² extra resources for the Office of the High Commissioner for Human Rights on the ground in these aforementioned regions,⁶³ and the continuation of reports and recommendations from mandate holders.⁶⁴ The United States again condemned politicization of the Council, criticizing the incessant focus on Israel as compared with states committing equal or worse levels of abuse.⁶⁵

IV. UNITED STATES OBJECTIONS TO THE COUNCIL’S WORK

Throughout the first seven sessions, the United States voiced strong objections to the work undertaken by the Council, as expressed both in (a)

H.E. Mr. Warren W. Tichenor”).

57. *Id.*

58. See, U.N. Webcast: Human Rights Council (Second Session, Sept. 18, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060918> (follow “United States of America, Ms. Warren W. Tichenor”); see also Warren Hoge, *On Mideast Trip, U.N. Chief Sought to Expand New Role*, N.Y. TIMES, Apr. 3, 2007, <http://www.nytimes.com/2007/04/03/world/middleeast/03nations.html>.

59. See U.N. Webcast: Human Rights Council (Fourth Session, Mar. 15, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070315> (follow “United States of America, Mr. Warren W. Tichenor”).

60. See U.N. Webcast: Human Rights Council (Fourth Session, Mar. 23, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070323> (follow “United States of America, Ms. Veila de Pirro”).

61. See U.N. Webcast: Human Rights Council (Fourth Session, Mar. 15, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070315> (follow “United States of America, Mr. Warren W. Tichenor”).

62. See U.N. Webcast: Human Rights Council (Third Session, Nov. 29, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=061129> (follow “United States of America, H.E. Mr. Warren W. Tichenor”).

63. See U.N. Webcast: Human Rights Council (Second Session, Sept. 18, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060918> (follow “United States of America, Ms. Warren W. Tichenor”).

64. See U.N. Webcast: Human Rights Council (Fifth Session, June 11, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070611> (follow “United States of America, Ms. Veila de Pirro”).

65. See Ambassador Warren W. Tichenor, U.S. Permanent Representative to the United Nations in Geneva, Closing Statement By Ambassador Tichenor at the Human Rights Council 7th Session (Apr. 1, 2008), available at <http://geneva.usmission.gov/2008/04/01/tichenor-hrc-apr2008/>.

country-specific, and (b) thematic debates. Whereas country-specific debates focus on many rights within one state,⁶⁶ thematic debates examine one right across several states.⁶⁷

A. COUNTRY-SPECIFIC DEBATES

The United States commented on a number of the country-specific human rights situations that were brought to the Council's attention during its first two years. The situations discussed at the Council were either ongoing or dire, within specified countries, requiring country-specific mandate holders to report on them. The raising of certain country-specific situations depended on considerations such as the gravity of the situation as well as political motivations of Council members.⁶⁸ The political agenda of states members of the Organisation of the Islamic Conference ("OIC")⁶⁹ ensured the Council's attention remained on Israel while situations in, for example, Libya, Syria and Saudi Arabia, were ignored, and action on Darfur blocked.⁷⁰ The Council did not, therefore, focus solely on the gravest situations, but also on those countries that fell afoul of prominent groups of member states.

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 these two entities, and the situation following the Lebanese war in the summer of 2006.⁷¹ Notably, the United States did not defend Israeli violations; it did,

66. See Hurst Hannum, *Reforming the Special Procedures and Mechanisms of the Commission on Human Rights*, 7 HUM. RTS. L. REV. 73, 81 (2007).

67. See *id.* at 84.

68. See, e.g., Patrizia Scannella & Peter Splinter, *The United Nations Human Rights Council: A Promise to be Fulfilled*, 7 HUM. RTS. L. REV. 41, 61–62 (2007).

69. See *OIC List of Member States*, ORGANIZATION OF THE ISLAMIC CONFERENCE, <http://www.oicun.org/3/28/> (last visited Aug. 6, 2010). The OIC is the largest alliance of States within the UN with fifty-seven members in 2008: twenty-one Sub-Saharan African States, twelve Asian States, eighteen Middle Eastern and North African States, three Eastern European and Caucasian States, two South American States, and one Permanent Observer Mission. *Id.* In 2006, seventeen Council States were OIC members. *Id.* Three of the states, Algeria, Saudi Arabia and Azerbaijan, respectively, chaired the regional groups for Africa, Asia, and Eastern Europe. *Id.*

70. See Judith Piazza, *UN Rights Representative in New York Compares Israel to Iran*, NEWS BLAZE, Sept. 18, 2006, <http://newsblaze.com/story/20060918123609tsop.nb/topstory.html> (summarizing the OIC position on Darfur).

71. See, e.g., Press Release, Badil Resource Center for Palestinian Residency and Refugee Rights, Ongoing population transfer resulting from institutional discrimination in the OPT and Israel: Badil Statement to the 4th Session of the Human Rights Council, (Mar. 8, 2007), available at <http://www.badil.org/en/press-releases/60-press-releases-2007/1678-press-437-07>; United Nations, *UN Probe Finds 'Significant' Human Rights Violations in Beit Hanoun Attack*, UN NEWS CENTRE, June 13, 2007,

however, note abuses committed on the Palestinian⁷² and Lebanese⁷³ sides. The United States' approach emphasized the need for balance and impartiality, a position not taken by any country other than Canada.⁷⁴ During discussions on Israel, the United States highlighted the human rights abuses on both sides and called for the Council to act to ensure all sides cease violations.⁷⁵ The United States reminded the Council of the underlying principles that established the body,⁷⁶ stating "the unbalanced focus on Israel"⁷⁷ was inconsistent with such principles and "the Council must be more balanced . . . [t]he 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."⁷⁸ Similarly, at the same session, the United States spoke of "the human suffering on both sides" during the Israel-Lebanon war 2006.⁷⁹ In another intervention, the United States indeed called for "Israel to take

<http://www.un.org/apps/news/story.asp?NewsID=22900&Cr=rights&Cr1=council>.

72. See U.N. Webcast: Human Rights Council (Seventh Session, Mar. 6, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=080306> (follow "United States of America, Mr. Warren Tichenor") ("Palestinian rocket attacks must stop, and terrorist attacks that target civilians must stop.").

73. See U.N. Webcast: Human Rights Council (Sixth Session, Oct. 4, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=061004> (follow "United States of America, H.E. Mr. Warren W. Tichenor") (condemning the Hezbollah attack on Israel and the kidnapping of two Israeli soldiers which directly preceded the war).

74. See Canada-Israel Committee Voting Record 2006–09, <http://www.cicweb.ca/voteatun/humanrights.cfm> (follow "2009" hyperlink; then follow "2008" hyperlink; then follow "2007" hyperlink; then follow "2006" hyperlink). Canada is the only member of the Human Rights Council to have voted against every resolution passed about Israel where a vote was called. *Id.*

75. U.N. Webcast: Human Rights Council (Second Session, Sept. 29, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060929> (follow "United States of America, H.E. Mr. Warren W. Tichenor") [hereinafter Tichenor]. During the Sept. Session, it was declared that:

Israel must dismantle those settlements built since March 2001, and the Palestinians must prevent terrorist activities. We join with the quartet partners to call on parties to fulfill 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, that in the long term compromises the rights of Palestinian and Israeli peoples.

Id.

76. See GA Res. 60/251 ¶ 4, U.N. Doc. A/RES/60/251 (Apr. 3, 2006) (stating "the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.").

77. See Tichenor, *supra* note 75.

78. *Id.*

79. See U.N. Webcast: Human Rights Council (Second Session, Oct. 4, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=061004> (follow "United States of America, H.E. Mr. Warren W. Tichenor").

into account the humanitarian impact” of the security wall.⁸⁰

The United States regularly repeated its commitment to a two-state solution.⁸¹ American delegates attempted to steer Council discussions towards addressing solutions, contrary to the frequent criticism leveled against Israel through decisions, resolutions,⁸² and the calling of Special Sessions (four of the Council’s seven Special Sessions during its first two years were convened in regards to Israel).⁸³ At the Sixth Session,⁸⁴ the United States again urged that “addressing the Israel-Palestine conflict requires a balanced and forward-looking approach,” insisting “the Arab states should stop the incitement of hatred in the media and should cease their refusal to recognize the existence of Israel.”⁸⁵

The United States repeatedly berated the Council’s anti-Israel bias, but such concerns were largely dismissed due to the close relationship between the two countries.⁸⁶ The only state that generally supported the United States’ position was Canada.⁸⁷ The European Union (“EU”), regularly abstained during votes and made neutral comments during

80. See U.N. Webcast: Human Rights Council (Second Session, Sept. 26, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060926> (follow “United States of America, H.E. Mr. Warren W. Tichenor”).

81. See *id.*; see also U.N. Webcast: Human Rights Council (Sixth Session, Sept. 20, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070920> (follow “United States of America, H.E. Mr. Michael S. Klecheski”); U.N. Webcast: Human Rights Council (Seventh Session, Mar. 6, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=080306> (follow “United States of America, Mr. Warren Tichenor”).

82. See UNWATCH.ORG, *Anti-Israel Resolutions at the HRC*, <http://www.unwatch.org/site/c.bdKKISNqEmG/b.3820041/> (last visited Aug. 6, 2010). There were nineteen resolutions passed regarding Israel between 2006–08. See *id.*

83. See Vice President and Rapporteur, *Report on the First Special Session of the Human Rights Council*, U.N. Doc. A/HRC/S-1/3 (July 18, 2006) (by Musa Burayzat); see also Vice President and Rapporteur, *Report of the Human Rights Council on its Second Special Session*, U.N. Doc. A/HRC/S-2/2 (Aug. 17, 2006) (by Musa Burayzat); Vice President and Rapporteur, *Report of the Human Rights Council on its Third Special Session*, U.N. Doc. A/HRC/S-3/2 (Nov. 20, 2006) (by Musa Burayzat); Vice President and Rapporteur, *Report of the Human Rights Council on its Sixth Special Session*, U.N. Doc. A/HRC/S-6/2 (Mar. 31, 2008) (by Musa Burayzat).

84. See Vice President and Rapporteur, *Report of the Human Rights Council on its Sixth Session*, U.N. Doc. A/HRC/6/22 (Apr. 14, 2008) (by Alejandro Artucio).

85. Press Release, U.N. Dept. of Public Information, *Although Different In Name, Human Rights Commission, Council the Same, Third Committee Told*, U.N. Press Release GA/SHC/3901 (Nov. 6, 2007).

86. See George W. Bush, President of the United States, *Speech Addressing The United Nations General Assembly* (Sept. 25, 2007), *available at* <http://www.un.org/webcast/ga/62/2007/pdfs/usa-eng.pdf>.

87. See, e.g., Lisa Zilberpriver, *FM Livni, Canadian Ambassador Slam UNHRC’s Stance on Israel*, HAARETZ.COM, <http://www.haaretz.com/hasen/spages/spaces/876168.html>, (June 28, 2007).

discussions regarding Israel.⁸⁸ The EU's reluctance to take sides arguably resulted from the power and influence held by the large block of OIC member states sitting at the Council.⁸⁹

The size and geographical diversity of the OIC's membership gave it significant weight in the Council, and that influence was often deployed to ostracize those countries that disagreed with the OIC's collective stance.⁹⁰ The repercussions for a state taking a stand against the OIC can be seen in the subsequent treatment of that country by the OIC and the African Group.⁹¹ That deterrent undoubtedly played a role in the weakening of the Council's Resolutions and Decisions.

One example of the OIC's ability to flex its collective muscle occurred during the resumed Second Session.⁹² Canada had been the sole opposing vote against the OIC's Resolutions on Israel,⁹³ with many Western states choosing to abstain. Ignoring the reasons given for Canada's *no* votes,⁹⁴ the OIC showed its displeasure by using its collective weight to pass a last-minute motion postponing three non-controversial Canadian Draft Resolutions.⁹⁵ The OIC's leverage, bolstered by its usual supporters,⁹⁶ sent a clear message to the Council.

Throughout the sessions, the United States repeated its hope that the

88. See, e.g., Jackson Diehl, *A Shadow on the Human Rights Movement*, WASHINGTON POST, June 25, 2007, at A19.

89. See *id.*

90. See *id.*; see also Ibn Warraq & Michael Weiss, *Inhuman Rights*, 19 CITY J. 88 (2009).

91. See Ronan Farrow, *The U.N.'s Human-Rights Sham*, THE WALL STREET JOURNAL, Jan. 29, 2008, at A16.

92. See Vice President and Rapporteur, *Report to the General Assembly on the Second Session of the Human Rights Council*, U.N. Doc. A/HRC/2/9 (Mar. 22, 2007) (by Musa Burayzat).

93. See Human Rights in the Occupied Syrian Golan, H.R.C. Res. 2/3, U.N. Doc. A/HRC/RES/2/3 (Nov. 27, 2006); see also Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and in the Occupied Syrian Golan, H.R.C. Res. 2/4, U.N. Doc. A/HRC/RES/2/4 (Nov. 27, 2006).

94. See G.A. Res. 60/251, ¶ 4, U.N. Doc. A/HRC/60/251. Canada's reasons included the fact that the resolutions were biased and only addressed the human rights violations of Israel, which contradicted the Council's principles of non-selectivity, universality and equality. See *id.*

95. See Effective Implementation of International Instruments on Human Rights, H.R.C. Res. 2/5, U.N. Doc. A/HRC/RES/2/5 (Nov. 28, 2006). One of which, *Effective Implementation of International Instruments on Human Rights*, A/HRC/RES/2/5 (Nov. 25, 2006), was later negotiated to be presented the following day, and passed by consensus. *Id.* The other two, Resolution on Freedom of Expression and Opinion and Resolution on Impunity, were presented at a different Council Session. See Freedom of Opinion and Expression, U.N. Doc. A/HRC/2/L.42/Rev.1 (Nov. 17, 2006); see also Resolution on Impunity, U.N. Doc. A/HRC/2/L.38/Rev.1 (Nov. 17, 2006).

96. See Robert Evans, *U.N. Chief Tells Rights Body Drop Rhetoric*, BLOCS, REUTERS, Dec. 12, 2008, <http://www.reuters.com/assets/print?aid=USTRE4BB67820081212>. These usual supporters include Cuba, China and Russia. See *id.*

Council would devote proportionate attention to other regions and situations.⁹⁷ For example, during debates on the review of mandates, the United States stated that “the singling out of Israel and the Occupied Palestinian Territories makes the system [of special procedures and mandates] politicised and non-universal.”⁹⁸ The United States’ comments in this regard reflected its displeasure with the politicization of the body, which it viewed as a return to the practices of the Commission.⁹⁹

Sudan was of particular interest throughout the period of the Bush administration.¹⁰⁰ The United States in general, and particularly under the Bush administration, has repeatedly spoken out against the genocide in Darfur, and was often alone in calling for, and taking, constant action to improve the situation.¹⁰¹ The United States behaved in a similar manner at the Council, despite the seeming indifference of many members towards the escalating crisis.¹⁰² Although Sudan was constantly brought to the Council’s attention due to the ongoing situation in Darfur, no meaningful action was taken by the body.¹⁰³

Reports on Sudan were presented by the Special Rapporteur and the Group of Experts, as well as by the High Commissioner and others.¹⁰⁴ These reports provided the basis for Council discussions on Sudan.¹⁰⁵

97. See Patrick Worsnip, *U.N.’s Ban Faults Rights Council Over Israel*, REUTERS, June 21, 2007, <http://www.reuters.com/assets/print?aid=USN2030978520070621>.

98. *Id.*

99. See U.N. Webcast: Human Rights Council (Seventh Session, Mar. 6, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=061006> (follow “United States of America, H.E. Mr. Warren Tichenor”). For example, “[The Council was] established on the principles of universality, objectivity, non-selectivity, yet the Council has fallen short in fulfilling these principles . . .” *Id.*

100. See Editorial, *Towards Hope in Darfur*, ST. PETERSBURG TIMES, May 11, 2006, at 12A; Editorial, *Darfur Remedies Bush is Right to Press For Resolution on the Genocide in Sudan*, NEWSDAY, May 8, 2006, at A36. *Contra* John Donnelly, *Specialists Urge Us to Focus on Somali Strife*, THE BOSTON GLOBE, Sept. 28, 2006, at A3 (criticizing the Bush administration for focusing too much attention on Darfur).

101. See, e.g., Caren Bohan, *Bush Says Won’t Send U.S. Troops to Darfur Alone*, REUTERS, July 19, 2007, http://www.reuters.com/assets/print?aid=USN19242174.CH_2400.

102. See Press Release, Human Rights Council, 2007–2008 Marked ‘Institutional Renewal’ of United Nations Human Rights Machinery, Third Committee Told, As It Takes Up Human Rights Council Report, U.N. Press Release GA/SHC/3932 (Oct. 31, 2008).

103. See generally 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 (2009).

104. See Richard Waddington, *Sudan Orchestrated Darfur Crimes*, U.N. Mission Says, REUTERS, Mar. 12, 2007, <http://www.reuters.com/assets/print?aid=USL12300471>.

105. See Press Release, Human Rights Council, Speakers Express Initial Agreement on Need to Send an Assessment Mission to Darfur, Though Composition and Mandate Still Open to Discussion, (Dec. 12, 2006), <http://www.unhchr.ch/hurricane.nsf/view01/7C90218F29D0D30FC12572420071A774?openDocument>.

Throughout the discussions, the United States maintained its strong condemnation of the escalating humanitarian crisis, calling for steps to be taken to ensure a resolution to the conflict.¹⁰⁶ At the Second Session, the United States asked the Special Rapporteur on Sudan¹⁰⁷ to provide further information on human rights violations occurring in Sudan¹⁰⁸ due to the gravity of the situation.

As the situation escalated, the United States insisted that “the council cannot ignore the ongoing crisis in Sudan,”¹⁰⁹ repeating “that in the Darfur region, gross violations of human rights continue to be perpetrated.”¹¹⁰ The United States maintained the reports given to the Council left “no further doubt . . . the situation demands actions”¹¹¹ Throughout these Sessions, the United States asserted that the “Council . . . has yet to adequately address the ongoing human rights violations in Sudan,”¹¹² repeating that it “remain[ed] very concerned” and “call[ing] on the government of Sudan to end its obstructionist behaviour”¹¹³

The United States spoke about possible methods, including sanctions, to encourage such a resolution of the conflict.¹¹⁴ American delegates asked why the Council was so slow to take action to end the atrocities in Darfur.

106. *See id.*

107. *See* Note by the Secretariat on the Report of the Special Rapporteur on the Situation of Human Rights in Sudan, A/HRC/5/4 (June 6, 2007). The UN-appointed Special Rapporteur on Sudan was Sima Samar. *Id.*

108. *See* U.N. Webcast: Human Rights Council (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow “United States of America, Ms. Veila de Pirro”).

109. U.N. Webcast: Human Rights Council (Sixth Session, Dec. 14, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=071214> (follow “United States of America, Mr. Warren Tichenor”); *see also* Richard Waddington, *China, Russia Seek to Block U.N. Report on Darfur*, REUTERS, Mar. 16, 2007, <http://www.reuters.com/assets/print?aid=USL168247920070316> (describing joint effort by China, Russia, Arab, and Muslim states urging the Council to ignore a report from a mission to Darfur that blamed Sudan for continuing car crimes against civilians there).

110. U.N. Webcast: Human Rights Council (Seventh Session, Mar. 12, 2010), <http://www.un.org/webcast/unhrc/archive.asp?go=100317> (follow “United States of America, Mr. Warren Tichenor”).

111. U.N. Webcast: Human Rights Council (Fourth Session, Mar. 16, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070316> (follow “United States of America, Mr. H.E. Warren W. Tichenor”).

112. U.N. Webcast: Human Rights Council (Fifth Session, June 11, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070613> (follow “United States of America, Mr. Doug Rohn”).

113. U.N. Webcast: Human Rights Council (Seventh Session, Mar. 17, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=080317> (follow “United States of America, Mr. Michael S. Klecheski”).

114. U.N. Webcast: Human Rights Council (Fifth Session, June 11, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070613> (follow “United States of America, Mr. Doug Rohn”).

Having secured sanctions against Sudan through the Security Council, the United States encouraged the Human Rights Council to take such decisive action as was within the body's power, and for member states to follow the United States' lead in this regard.¹¹⁵ The United States encouraged the Council to act swiftly rather than spend the upcoming months and years awaiting reports from mandate holders and fact-finding missions, or passing passive resolutions calling for change without condemning the parties responsible for the atrocities.¹¹⁶

However, other Council members stressed the need to follow the Council's procedures in decision-making regarding this, and other, human rights situations.¹¹⁷ The Council declared that the U.S. desire to rip up the rule book and take swift, decisive action in crisis situations such as Darfur lacked credibility due to the United States having taken similar steps before the invasion of Iraq and the subsequent international condemnation of that action.¹¹⁸ The United States was not only concerned with the OIC tactics of blocking action on humanitarian crises occurring within Muslim states, such as Sudan, but also with the Council's disregard for other similar situations across the world.¹¹⁹

Various factors affected the Council's inaction regarding these states, most notably the lack of will to interfere with repressive regimes that afforded little access to the international community, and the lack of interest in the states that afforded no political gains for individual members of the Council.¹²⁰ For example, the United States expressed concern about what it termed "one of the most repressive countries in the world," Myanmar, throughout Council discussions.¹²¹

The "lack of meaningful and genuine dialogue with all stakeholders"¹²² was emphasized as being a fundamental obstacle to the protection of human rights through national reconciliation.¹²³ Despite the

115. *See id.*

116. *See id.*

117. *See, e.g.*, U.N. Webcast: Human Rights Council (Sixth Session, Dec. 14, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=071214> (follow "Russian Federation, Mr. Yuri Boichenko").

118. *See, e.g., id.* (follow "Cuba, Mr. Juan Antonio Fernandez Palacios").

119. *See supra* notes 56–67 and accompanying text.

120. *See infra* notes 130–148 and accompanying text.

121. U.N. Webcast: Human Rights Council (Fourth Session, Mar. 12, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070323> (follow "United States of America, Mr. Warren W. Tichenor").

122. U.N. Webcast: Human Rights Council (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow "United States of America, H.E. Mr. Warren W. Tichenor").

123. *See id.*

lack of access to, or information from, Myanmar, the United States emphasized the ongoing human rights violations, including the large numbers of refugees,¹²⁴ detention of political prisoners,¹²⁵ police brutality,¹²⁶ and restrictions on the activities of NGOs and other such parties.¹²⁷

The United States urged the Council, the international community, and Myanmar to protect the “Burmese people whose rights are being violated.”¹²⁸ Thus, “continued international awareness of . . . human rights abuses in [Myanmar]”¹²⁹ was called for, in order to ensure the cooperation of the government in the implementation of Human Rights Council recommendations.¹³⁰ The U.S. condemnation of the regime was echoed by other western states and was repeated throughout all Sessions.¹³¹ However, the situation in Myanmar was of little domestic interest for many of the Council members, as opposed to, for example, the situation in Israel.¹³² Therefore, attention was given to the Israel-Palestine conflict at the expense of the ongoing crisis in Myanmar.

The United States raised other similar country-specific situations such as Belarus,¹³³ Burundi,¹³⁴ Cambodia,¹³⁵ Cuba,¹³⁶ Liberia,¹³⁷ North Korea,¹³⁸

124. *See id.* (“Hundreds of thousands of Burmese refugees have escaped conflict and persecution in the last two decades”).

125. *See id.* (asking the Special Rapporteur on Myanmar, “What do you think it will take to support the release of all political prisoners . . . ?”); *see also* U.N. Webcast: Human Rights Council (Seventh Session, Mar. 13, 2008),

<http://www.un.org/webcast/unhrc/archive.asp?go=080313> (follow “United States of America, Mr. Warren Tichenor”) (“[T]he Chen Shui regime continues to arrest pro-democracy activists . . .”).

126. U.N. Webcast: Human Rights Council (Sixth Session, Dec. 12, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=071212> (follow “United States of America, Mr. Warren Tichenor”) (reiterating the Special Rapporteur’s notes on how “excessive force against peaceful demonstrators has led to the numerous . . . killings, detentions, and severe injuries.”).

127. U.N. Webcast: Human Rights Council (Fourth Session, Mar. 23, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070323> (follow “United States of America, Mr. Warren W. Tichenor”) (“[T]he International Committee of the Red Cross was forced to halt most of its activities . . .”).

128. U.N. Webcast: Human Rights Council (Seventh Session, Mar. 17, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=080317> (follow “United States of America, Mr. Michael S. Klecheski”).

129. *Id.*

130. *Id.*

131. *See, e.g.*, U.N. H.R.C., Sixth Sess., 29th mtg., U.N. Doc. A/HRC/6/SR.29 (Jan. 16, 2008).

132. *See infra* notes 298–307 and accompanying text.

133. *See, e.g.*, U.N. Webcast: Human Rights Council (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow “United States of America, Ms. Veila de Pirro”).

134. *See, e.g., id.* (follow “United States of America, H.E. Mr. Warren W. Tichenor”); U.N. Webcast: Human Rights Council (Fourth Session, Mar. 23, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070323> (follow “United States of America, Mr.

and Somalia,¹³⁹ amongst others.¹⁴⁰

The U.S. focus on these repressive regimes, and their ongoing human rights abuses, followed the same pattern regardless of the countries involved.¹⁴¹ It condemned regimes for not cooperating with the Council or other U.N. bodies;¹⁴² called for increased international action to ensure protection and promotion of human rights;¹⁴³ and commended and supported the efforts of U.N. mandate holders in these regions.¹⁴⁴ These positions exemplify the United States' response to human rights situations

Warren W. Tichenor”).

135. *See, e.g.*, U.N. Webcast: Human Rights Council (Second Session, Sept. 26, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=080317> (follow “United States of America, Mr. Michael S. Klecheski”).

136. *See, e.g.*, U.N. Webcast: Human Rights Council (Second Session, Sept. 26, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060926> (follow “United States of America, H.E. Mr. Warren W. Tichenor”); U.N. Webcast: Human Rights Council (Fifth Session, June 12, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070612> (follow “United States of America, Ms. Judith A. Chammas”).

137. *See, e.g.*, U.N. Webcast: Human Rights Council (Second Session, Sept. 29, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060929> (follow “Report of Independent Expert on advisory services and technical cooperation in Liberia, Ms. Charlotte Abaka”); U.N. Webcast: Human Rights Council (Fourth Session, Mar. 23, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070323> (follow “The Independent expert on technical cooperation and advisory services in Liberia, Ms. Charlotte Abaka”).

138. *See, e.g.*, U.N. Webcast: Human Rights Council (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow “Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, Mr. Vitit Muntarbhorn”); U.N. Webcast: Human Rights Council (Fourth Session, Mar. 23, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070323> (follow “Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, Mr. Vitit Muntarbhorn”); U.N. Webcast: Human Rights Council (Seventh Session, Mar. 13, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=080313> (follow “Special Rapporteur on the situation of Human Rights in the Democratic People’s Republic of Korea, Mr. Vitit Muntarbhorn”).

139. *See, e.g.*, U.N. Webcast: Human Rights Council (Second Session, Sept. 26, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060926> (follow “Report of the Independent Expert on the situation of human rights in Somalia, Mr. Ghanim Alnajjar”); U.N. Webcast: Human Rights Council (Fifth Session, June 12, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070612> (follow “Report of the independent expert appointed by the Secretary-General on the situation of human rights in Somalia, Mr. Ghanim Alnajjar”).

140. *See* U.N. Webcast: Human Rights Council (Fifth Special Session on the Situation of Human Rights in Myanmar, Oct. 2, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=015> (follow “Mr. Paulo Sergio Pinheiro the Special Rapporteur on the situation of human rights in Myanmar” and “Portugal on behalf of the European Union Mr. Francisco X. Esteves”).

141. *See id.* (follow “United States of America, Mr. Warren W. Tichenor”) (commenting on how to deal with ongoing human rights in Burma).

142. *See id.*

143. *See id.*

144. *See id.*

regardless of where they occur. Unlike the OIC, whose political motivations drove its responses to human rights abuses,¹⁴⁵ the United States was consistent in its approach toward all humanitarian situations. The belief that international aid and intervention could most appropriately assist such areas was emphasized by the United States' calls for such action to be taken.¹⁴⁶

The United States demanded action and expressed frustration over the Council's dragging of heels when dealing with crisis situations.¹⁴⁷ The United State's initial fears that the Council would become biased and politicized¹⁴⁸ was arguably realized when viewed in light of the Council's selective focus on certain human rights situations and inaction in others. The sheer frustration this caused was evident from the American interventions during all seven sessions in which it participated before its withdrawal.¹⁴⁹

B. THEMATIC DEBATES

The United States constantly emphasized the need to deal with crisis situations as well as with specific human rights in order to ensure adequate protection and promotion for the latter.¹⁵⁰ The United States called for stronger support for certain Council mandates, expressing the need for greater cooperation and transparency in order to protect and promote specific human rights.¹⁵¹

145. See U.N. Webcast: Human Rights Council (Seventh Session, Mar. 28, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=080328> (follow "Pakistan (on behalf of OIC), Mr. Marghoob Saleem Butt") (commenting on the OIC's support of taking action to prevent violence against women).

146. See Statement by Mr. Jan Egeland, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Fourth Special Session of the Human Rights Council on the Human Rights Situation in Darfur (Dec. 12, 2006), *available at* <http://www.un.org/webcast/unhrc/statements/Egelandsmdarfur061212.pdf> (calling for urgent action to prevent disaster in Darfur).

147. See *id.*

148. See *id.* (suggesting the crisis in Darfur was an early test of credibility and political divisions should be set aside).

149. See *Washington to Limit Contacts with UN Rights Council*, AFP, June 6, 2008, http://afp.google.com/article/ALEqM5hgpsBLTUnkb_JOew-ILqYNzL94KA (expressing the United States intent to withdrawal from the U.N. Human Rights Council and belief the Council has a "rather pathetic record").

150. See U.N. Webcast: Human Rights Council (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow "United States of America, Mr. Gianni Paz") (requesting support for elections in Haiti because the United States believes that creating a strong country foundation is the only way to prevent long-term human rights problems).

151. See U.N. Webcast: Human Rights Council (Sixth Session, Dec. 13, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=071213> (follow "United States of America, Mr.

In addition, the United States constantly reiterated the importance of international support in order for Council mandates to be fulfilled.¹⁵² The United States singled out topics such as the protection of women and children from violence and trafficking, freedoms of religion and expression,¹⁵³ and the protection of human rights defenders, as being of particular concern.¹⁵⁴

For example, the position that “violence against women is indefensible”¹⁵⁵ was repeated in the context of abuses against, the trafficking of, and sexual tourism involving both women and children.¹⁵⁶ The United States identified Sudan and Myanmar as the two countries where it believed these groups were particularly vulnerable.¹⁵⁷ The United States also argued that such “human rights abuses [were being] used to terrorise people”¹⁵⁸ in these two states due to the ongoing situations and the government involvement in all manner of human rights violations.¹⁵⁹

Moreover, the United States discussed the need to promote freedom of religion,¹⁶⁰ calling for all countries to “ensure that freedom of religion is respected for all religions. . .[and] the freedom to not affiliate with any

Michael S. Klecheski”) (commenting on how Council mandates have improved the situation in Liberia).

152. See U.N. Webcast: Human Rights Council (Second Session, Oct. 6, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=061006> (follow “United States of America, H. E. Mr. Warren W. Tichenor”) (discussing that, since 1945, the United States has suggested mandates will not work without international support).

153. See U.N. Webcast: Human Rights Council (Second Session, Sept. 22, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060922> (follow “Answers by the Special Rapporteur on freedom of religion or belief on the joint report on the incitement to racial and religious hatred and the promotion of tolerance, Ms. Asma Jahangir”) (“There is often an overlap between freedom of religion and freedom of expression.”).

154. *Id.*

155. See U.N. Webcast: Human Rights Council (Fourth Session, Mar. 21, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070321> (follow “Answers by the Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Ertürk”) [hereinafter Ertürk].

156. See, e.g., U.N. Webcast: Human Rights Council (Second Session, Sept. 22, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060922> (follow “Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mr. Juan Miguel Petit”); U.N. Webcast: Human Rights Council (Second Session, Sept. 20, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060920> (follow “The Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Ertürk”).

157. See Ertürk, *supra* note 155.

158. *Id.*

159. *Id.*

160. See U.N. Webcast: Human Rights Council (Second Session, Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060921> (follow “Report of the Special Rapporteur on freedom of religion or belief” and then click the hyperlink for “Ms. Asma Jahangir”).

religion at all, or to change religion must also be respected,”¹⁶¹ due to the essentiality of this right for people across the world.¹⁶² Similarly, when discussing freedom of expression, the United States stressed that “the right is a cornerstone in the protection of human rights,”¹⁶³ and argued that ongoing support of “the mandate is urgently needed.”¹⁶⁴

The strength of U.S. support for these two freedoms was not solely based on its traditional domestic regard for these rights,¹⁶⁵ but also on the juxtaposition between the freedoms of religion and expression and the OIC demand that defamation of religion be afforded equal protection.¹⁶⁶ The United States’ interventions on certain rights and freedoms showed its desire to promote those typically Western values that underpinned the Universal Declaration of Human Right, thus ensuring they remained prevalent within the human rights system. That showdown of cultural values echoed the old U.S.-Soviet controversies that once politicized the CHR and other human rights work at the U.N.¹⁶⁷

The Council was strongly reminded of the absolute imperative of protecting human rights defenders during discussions of various reports given by the Secretary-General’s Special Representative on Human Rights Defenders.¹⁶⁸ The United States noted that “some governments feel restricted by [human rights defenders] and attempt to restrict them,”¹⁶⁹ and

161. See U.N. Webcast: Human Rights Council (Second Session, Sept. 22, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060922> (follow “Answers by the Special Rapporteur on freedom of religion or belief on the joint report on the incitement to racial and religious hatred and the promotion of tolerance” and then click hyperlink for “Ms. Asma Jahangir”).

162. See *id.*

163. See U.N. Webcast: Human Rights Council (Fourth Session, Mar. 14, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=080314> (follow “Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression” and then click the hyperlink for “Mr. Ambeyi Ligabo”).

164. *Id.*

165. See U.S. CONST. amend. I.

166. See, e.g., Durban Review Conference, 2nd Session, *Reports of Preparatory Meetings and Activities at the International, Regional and National Levels*, 2–3, 6, U.N. Doc. A/CONF.211/PC.3/10 (Oct. 3, 2008), available at http://www.un.org/durbanreview2009/pdf/REPORTS_OF_PREPARATORY_MEETINGS_AND_ACTIVITIES_AT_THE_INTERNATIONAL_REGIONAL_AND_NATIONAL_LEVELS.pdf.

167. See generally Bilahari Kausikan, *Asia’s Different Standard*, 92 FOREIGN POL’Y 24 (1993) (discussing the impact of cultural sensitivities on human rights).

168. See, e.g., U.N. Economic & Social Council [ECOSOC], Commission on Human Rights., *Promotion and Protection of Human Rights: Human Rights Defenders*, ¶¶ 14, 17, 87–88, 92, U.N. Doc. E/CN.4/2006/95 (Jan. 23, 2006) (submitted by Hina Jilani), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/103/68/PDF/G0610368.pdf?OpenElement>.

169. Warren W. Tichenor, United States Delegate, U.N. Hum. Rts. Council, Oral Intervention at the 10th Plenary Meeting, 2nd Session, Geneva, Switz. (Sept. 22, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060922>.

criticized this “obviously political” motivation.¹⁷⁰ The United States was disturbed by the violations perpetrated against many of the defenders, particularly in regards to the harassment, detention, and attacks against them.¹⁷¹ It called for the Council to join it in “standing with courageous defenders” and to “call into account those governments that seek to undermine their liberties.”¹⁷² The United States wished to ensure that “individuals and groups . . . be able to fight for human rights”¹⁷³ and asked for support in this regard.¹⁷⁴

The support that the United States expressed for human rights defenders could also have been a critique on those regimes that did not allow open and easy access for such people. Many of the states that attacked the United States at the Council could be accused of repressive laws and actions against human rights defenders, especially those members of the OIC. The strenuous positions taken by the United States in related discussions was reflected by its deteriorating relations with such countries. Throughout the Council sessions, the United States repeatedly spoke out against regimes committing the worst human rights abuses. General debates were used to flag the atrocities in specific states such as Zimbabwe,¹⁷⁵ China,¹⁷⁶ and Uzbekistan.¹⁷⁷

The United States noted violations of specific rights, as well as the overall culture of violations prevalent within these countries. The United States also used broad discussions to encourage the Council to focus on implementation of human rights, and on providing “relevant and practical advice” without politicization.¹⁷⁸ This tied in with its initial fears that the

170. *Id.*

171. See Warren W. Tichener, United States Delegate, U.N. Hum. Rts. Council, Oral Intervention at the 28th Plenary Meeting, 4th Session, Geneva, Switz. (Mar. 28, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070328>.

172. *Id.*

173. Michael S. Klechelski, Council Member, U.N. Hum. Rts. Council, Oral Intervention at the 26th Plenary Meeting, 7th Session, Geneva Switz. (Mar. 14, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=080314>.

174. *See id.*

175. See Warren W. Tichener, United States Delegate, U.N. Hum. Rts. Council, Oral Intervention at the 29th Plenary Meeting during the Related Debate, 4th Session, Geneva Switz. (Mar. 29, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070329>.

176. See Warren W. Tichener, United States Delegate, U.N. Hum. Rts. Council, Oral Intervention during General Debate of Agenda Item 8: Follow-Up and Implementation of the Vienna Declaration and Programme of Action at the 36th Plenary Meeting, 7th Session, Geneva Switz. (Mar. 25, 2008), <http://www.un.org/webcast/unhrc/archive.asp?go=080325#15>.

177. See Warren W. Tichener, United States Delegate, U.N. Hum. Rts. Council, Oral Intervention during General Debate of Agenda Item 4: Human Rights Situations that require the Council's Attention at the 14th Plenary Meeting, 6th Session, Geneva, Switz. (Sept. 24, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070924>.

178. See Rachel Leatham, United States Delegate, U.N. Hum. Rts. Council, Interactive

Council would be selective and biased in terms of which rights it chose to protect and promote. The realization of these fears was apparent in the vociferousness of the United States' interventions, and was arguably the main reason for its temporary disengagement with the body.

V. THE UNITED STATES HUMAN RIGHTS RECORD

Towards the end of the CHR's existence, the body had become known for protecting its own members from having their human rights records examined.¹⁷⁹ A number of states became members in order to avoid scrutiny, allowing abuses to continue within their own borders.¹⁸⁰ At the Council's creation, a number of safeguards were adopted to combat its predecessor's reputation.¹⁸¹ The rules of the new body insisted that all members be subjected to peer review during their term of membership,¹⁸² and that they be more intensely scrutinized than other non-member or observer states.¹⁸³

It could be argued that the United States, under George W. Bush's administration, decided not to stand for election to the Council due to its fear that its own record would be scrutinized more harshly as a member than as an observer. The desire to deflect attention from its human rights record may be traced to the repeated criticisms, often heard at the UN, of

Dialogue on the Reports of the Subcomm'n on the Promotion and Protection of Hum. Rts. at the 18th Plenary Meeting, 2nd Session, Geneva, Switz. (Sept. 27, 2006) (responding to Marc Bossuyt, Chairperson, Subcomm'n on the Promotion and Protection of Hum. Rts.), <http://www.un.org/webcast/unhrc/archive.asp?go=060927>.

179. See The Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶ 182, delivered to the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005) [hereinafter *In Larger Freedom*] (claiming that Member States of the U.N. are protected from criticism more than non-Member States), available at <http://www.un.org/ga/president/62/issues/resolutions/a-59-2005.pdf>.

180. See *id.* It was found that:

Yet the Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole.

Id.

181. See, e.g., G.A. Res. 60/251, ¶ 5(d), U.N. Doc A/Res/60/251 (Apr. 3, 2006) (requiring the newly created Council to follow up with the goals and commitments geared toward protection of human rights discussed at each U.N. conference and summit, and to promote the full implementation of human rights obligations undertaken by the Member States).

182. See *id.* ¶ 9 (implementing a requirement that members elected to the Council would be reviewed under a periodic review).

183. See *id.* ¶¶ 8–9 (permitting the majority of members to suspend the rights of membership in the Council of a member that commits violations of human rights and demanding that the members uphold the highest standards of human rights).

the Bush administration's post-9/11 tactics.¹⁸⁴

Another view, however, is that the United States' decision not to stand for election resulted from its fear of an embarrassing defeat.¹⁸⁵ The United States had stood for election to the now-defunct CHR in May 2001.¹⁸⁶ It suffered its first defeat since the CHR's creation in 1947.¹⁸⁷ During discussions leading to the creation of the Council, Washington backed a proposal, under which the permanent members of the Security Council would also be "permanent members," which was rejected by an overwhelming majority of states.¹⁸⁸

A. THE UNITED STATES DOMESTIC HUMAN RIGHTS RECORD

The United States' domestic human rights record was raised at the Council by various mandate holders, which led to the question of whether the United States was being unfairly singled out. The United States' concern that it was being treated more harshly than other states was reflected in its responses to being the only Western state repeatedly raised in reports to the Council.¹⁸⁹ The U.S. reaction must be examined not only with respect to the possibly disproportionate focus on it but also with respect to legitimate concerns about U.S. domestic human rights.

The Council included the United States in reports and discussions on domestic human rights issues, including contemporary forms of racism¹⁹⁰ and extreme poverty.¹⁹¹ The latter mandate, on extreme poverty, will be

184. See, e.g., Press Release, Disarmament Comm'n, World Order Based on Effective Arms Control, Rejection of Unilateral Use of Force Called For in Disarmament Comm'n, U.N. Doc. DC/2860 (Jan. 4, 2003). During a meeting of the Disarmament Commission, the Russian delegate asserted the war in Iraq was a "serious political mistake." *Id.* The North Korean delegate characterized the U.S. actions of going to war with Iraq as "arrogant and outrageous," and claimed that such "typical State terrorism" should never be tolerated. *Id.*

185. See Thalif Deen, *Politics: With Defeat Likely, U.S. Won't Run For U.N. Rights Council*, INTER PRESS SERV., Apr. 6, 2006 (discussing the humiliating defeat of the United States in the 2001 elections for the U.N. Human Rights Commission and the possibility that the United States would not get elected to the Human Rights Council).

186. See Colum Lynch, *U.S. Loses Seat on U.N. Rights Body; Defeat Laid to Irritation At White House Policies*, WASH. POST., May 4, 2001, at A1 (reporting the secret vote of the U.N. Economic and Social Council).

187. See *id.*

188. Deen, *supra* note 185.

189. See *infra* notes 191–255.

190. See U.N. H.R.C., 4th Sess., 27th mtg. at 17, U.N. Doc. A/HRC/SR.27 (Mar. 28, 2007); U.N. Webcast- H.R.C. (Fourth Session, Mar. 28, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070328> (follow "Doudou Diène, Answers by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance").

191. See U.N. Webcast: H.R.C. (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow "Arjun Sengupta, Report of the

used as an example due to it being typical of the way in which the U.S. domestic human rights record was examined. The United States officially welcomed visits and recommendations by such mandate holders, but it also questioned what was being done to improve far worse situations in other countries.¹⁹²

While this stance can be argued to have missed the point of the reports, the U.S. position was legitimate. The inclusion of the United States in these reports resulted in other states not being discussed at the Council, despite other ongoing, dire situations across the world.¹⁹³ This was not an issue that went unnoticed by other states at the Council, for example, during discussions on extreme poverty.¹⁹⁴ Despite Arjun Sengupta, the Special Rapporteur on Extreme Poverty, saying that “most of the problems I saw in the United States need to go a long way before there is a solution,”¹⁹⁵ a number of developing countries expressed disappointment that the United States had been the sole focus of the report.¹⁹⁶

Mali questioned why the Special Rapporteur visited “one of the richest countries in the world” rather than “a poor country,” stating that “the living conditions in Africa cannot be the same as in the United States.”¹⁹⁷ The time and resources spent on scrutinizing the U.S. human rights record came at the expense of other states, and impacted those countries wishing to utilize mandate holders’ expertise to improve the rights within their own, or neighboring, territory the most.¹⁹⁸

Although mandate holders used their reports to provide neutral and facilitative advice to almost all states concerned, the manner in which the United States was dealt with was somewhat different. For example, the Special Rapporteur on Extreme Poverty’s report on the United States at the Second Session did not include any constructive recommendations that

Independent Expert on the Question of Human Rights and Extreme Poverty”) [hereinafter Sengupta].

192. *See id.* (follow “Steven Hill, United States of America”).

193. *See id.*

194. *See generally* U.N. Webcast: H.R.C. (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow links for “Report of the Independent Expert on the Question of Human Rights and Extreme Poverty, Interactive Dialogue”) (offering each countries’ response to the report, and noting the specific focus on the United States).

195. Sengupta, *supra* note 191.

196. *See, e.g.*, U.N. Webcast: H.R.C. (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow “Fatoumata Diall, Mali”).

197. *Id.*

198. *See id.*

could be applied to the United States or to other countries.¹⁹⁹ Instead, the Special Rapporteur noted various problems within the United States and criticized various practices without providing alternatives or solutions.²⁰⁰

As a result, a number of states, including Brazil, Cameroon, Philippines, and Senegal, asked the Special Rapporteur for concrete proposals, or a list of best practices, for states dealing with extreme poverty.²⁰¹ The unhelpful report and subsequent discussion can be contrasted with the useful and facilitative report given by the same Special Rapporteur's report at the Fifth Session.²⁰² The Fifth Session's report dedicated separate chapters to outlining neutral and constructive proposals for dealing with extreme poverty across Africa, Asia, and even, to some extents, the EU.²⁰³ The manner in which the United States was dealt with, in terms of extreme poverty, can be argued to have been politically motivated rather than being an effort to offer constructive exercise in facilitating human rights.

The inclusion of the United States as the sole Western state, and sometimes even the sole country, in reports on various topics indicated that it was being unfairly singled out at the Council. Furthermore, its inclusion in reports alongside grave abusers indicated selectivity by mandate holders. One might suspect that mandate holders assumed they could ensure support for their reports and recommendations by singling out and criticizing the United States. This was apparent from the response to the Special Rapporteur on Extreme Poverty from countries such as China, Cuba, Ecuador, Indonesia, Morocco, and Saudi Arabia.²⁰⁴

All of these countries, as well as other states who had tense relations with the United States, congratulated the Special Rapporteur for focusing on the United States,²⁰⁵ although their reasons for doing so were not always apparent. Some mandate holders argued that the United States was widely

199. See Sengupta, *supra* note 191.

200. See *id.*

201. See U.N. Webcast: H.R.C. (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow "Sergio Abru E Lima Florencio, Brazil; Jesus Enrique Garcia, Philippines; Mme Odette Melono, Cameroon; Abdoul Wahab Haidara, Senegal").

202. See U.N. Human Rights Council, *Report of the Independent Expert on the Question of Human Rights and Extreme Poverty*, U.N. Doc. A/HRC/5/3 (May 31, 2007) (*prepared by Arjun Sengupta*); see also Sengupta, *supra* note 191.

203. See Sengupta, *supra* note 191.

204. See U.N. Webcast: H.R.C. (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow "Dede Rifai, Indonesia; Galo Larenas Serrano, Ecuador, Driss Isbayene, Morocco, Abdul Aziz Al-Hunaidi, Saudi Arabia, Zhang Yi, China").

205. See *id.*

reported on in order to uphold the principles of impartiality and non-bias, thus ensuring that all states be subjected to scrutiny rather than focusing solely on poor or developing nations.²⁰⁶ For example, the Special Rapporteur on Extreme Poverty, Arjun Sengupta, expressed this position by stating:

The reason that I chose the United States is not because I do not think that developing countries have no problems. I wanted to point out that it is not a problem of *per capita* income, but a problem of society, so I chose the richest country in the world. I wanted to focus on basic problems of people in U.S. with the intention to show that human rights are a basic issue of empowerment and dignity, which is not accepted by all the countries.²⁰⁷

Despite that and other similar explanations, it is clear that the United States was being used as an example in reports on such human rights issues where, arguably, resources should have been spent dealing with grave situations in other countries. In terms of having its own human rights record examined, the main issue appeared to be whether the United States was being singled out for criticism or whether it was having proportionate attention devoted to it according to its available resources for dealing with human rights issues.²⁰⁸

The United States was prepared to accept some of the extra focus that its standing in the world entailed.²⁰⁹ However, as will be shown, it is clear from the United States' response to mandate holders on human rights issues relating to counter-terrorism that it viewed the attention on these issues as grossly disproportionate and lacking in even-handedness.²¹⁰ The mandate holders discussed the United States in terms of counter-terrorism, torture, enforced disappearances and rights of detainees.²¹¹

The discussions focused on Guantanamo Bay and the United States' tactics employed in the "war on terror."²¹² Despite its support for many Council mandates, one notable exception the United States disagreed with

206. See Sengupta, *supra* note 191.

207. *Id.*

208. U.N. Webcast: H.R.C. (Second Session, Sept. 27, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060927> (follow "Arjun Sengupta, Answers by the Independent Expert on the Question of Human Rights and Extreme Poverty").

209. See *id.*

210. See U.N. Webcast: H.R.C. (Second Session, Sept. 25, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060925> (follow "Judith Chammas, United States of America") [hereinafter Chammas].

211. See *id.* (follow "Martin Scheinin, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism") [hereinafter Scheinin, Sept. Report].

212. *Id.*

was the Special Rapporteur on Protection and Promotion of Human Rights While Countering Terrorism.²¹³ At the Second Session, the mandate holder signaled his intention to look at various state and institutional trends in this area, in order to set out best practices regarding issues such as racial profiling, secret detentions and extraordinary renditions.²¹⁴

The Special Rapporteur, having not mentioned the United States in his report, was nonetheless criticized by that country.²¹⁵ For example, the United States said “we wonder whether certain areas of the Special Rapporteur’s work are sufficiently necessary and effective.”²¹⁶ At the Second Session, the Special Rapporteur accused unspecified countries of abusing the notion of terrorism.²¹⁷ He spoke of trends by states to stigmatize movements, and ethnic groups they simply do not like, and fight against terrorism while not defining the term “terrorism.”²¹⁸

The U.S. response cited the Special Rapporteur’s calls for research which aimed towards developing a single definition of terrorism, stressed that there had already been “thousands” of such debates, and questioned the utility of such an exercise.²¹⁹ This intervention missed the point of the mandate itself because the Special Rapporteur’s concern with defining terrorism was in relation to human rights issues raised during states combating terrorism.²²⁰ The United States’ obtuseness in this regard was arguably motivated by its sensitivity to having its anti-terrorism tactics scrutinized by the mandate holder or the Council. This hostility was reflected in the United States’ position towards other similar mandates, especially when they discussed the United States in their reports.

The Special Rapporteur on the Protection and Promotion of Human

213. See Chammas, *supra* note 210; see also Office of the United Nations High Commissioner for Human Rights: Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, <http://www2.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm> [hereinafter Promotion and Protection of Human Rights] (last visited Aug. 6, 2010). Martin Scheinin (Finland) was appointed in Apr. 2005 by the Commission on Human Rights as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. See *id.* This mandate was assumed by the Human Rights Council, and extended for one year. *Id.* In December of 2007, the Council decided to extend the mandate for three years. *Id.*

214. Scheinin, Sept. Report, *supra* note 211.

215. See Chammas, *supra* note 210.

216. *Id.*

217. See U.N. Webcast: Human Rights Council (Second Session, Sept. 25, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060925> (follow “Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism”).

218. *Id.*

219. *Id.*

220. See *id.*

Rights While Countering Terrorism expressed grave concerns regarding detainees at Guantanamo Bay and other prisoners suspected of terrorism, as well as interrogation techniques, extraordinary renditions, and degrading treatment by the CIA.²²¹ The United States was “disappointed by the report” due to its “unfair and oversimplified criticisms.”²²² For example, the report alleged that detainees were denied the right to a fair trial and criticized various administrative processes.²²³

The United States noted the lack of acknowledgement of the complexity of the situation by the Special Rapporteur, especially with regard to his rejection of the status of detainees as “unlawful enemy combatants.”²²⁴ The United States also argued that the classification of the detainees was required in terms of the rights that they were afforded under international law.²²⁵ The Special Rapporteur’s insistence that the detainees be treated as prisoners of war, or as criminal suspects ignored the complexity of the situation. The United States alleged that selectivity and politicization were apparent not only in what was reported, but also in that the report was prefaced with biased remarks such as, the United States is a world leader and has a responsibility to ensure respect for human rights and international humanitarian law.²²⁶

The aforementioned stance, that the United States should be held to a higher standard than less-developed countries, was explicitly, and implicitly, repeated in the reports of other mandate holders regarding issues relating to the “war on terror.” The position was especially apparent in reports where the United States was the sole Western state raised alongside countries known to commit grave and systematic abuses.

While such remarks could be argued to be non-controversial in terms of the standards that other Western nations were held to by mandate holders, the repeated focus on the United States alone, despite other countries such as the UK being complicit in similar abuses, indicated a lack

221. See Promotion and Protection of Human Rights, *supra* note 213, at ¶ 44.

222. U.N. Webcast: Human Rights Council (Second Session, Sept. 25, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=071212> (follow “United States of America as a Concerned County, Ms. Melanie J. Khanna”) [hereinafter Khanna, Sept. Report].

223. U.N. Econ. & Soc. Council, Sub-Comm’n on Human Rights Council, *Mission to the United States*, ¶ 12, U.N. Doc. A/HRC/6/17/Add.3 (Nov. 22, 2007) [hereinafter *Mission to the United States*] (prepared by Martin Scheinin).

224. See Khanna, Sept. Report, *supra* note 222; see also *Mission to the United States*, *supra* note 223, at ¶ 11.

225. See Khanna, Sept. Report, *supra* note 222.

226. See *id.*; see also U.N. Webcast: Human Rights Council (Sixth Session, Dec. 12 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=071212> (follow “The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Mr. Martin Scheinin”) [hereinafter Scheinin, Dec. Report].

of even-handedness in the way that the United States was treated at this body. The United States' desire not to have its human rights record scrutinized was arguably a factor in its response to various mandate holders' reports, but the obvious politicization through disproportionate attention devoted to the United States gave weight to its reaction.

The report at the Second Session on enforced disappearances²²⁷ discussed countries such as Guinea, Burundi, and Colombia, before identifying the United States as being one of the four main areas of concern because of its anti-terrorist activities, which the labeling of such was used as an excuse for not applying international obligations.²²⁸ Extraordinary rendition is essentially an issue of torture,²²⁹ and its inclusion within the report was arguably a political ploy to attract attention and support for the mandate. The Special Rapporteur gave constructive and neutral advice to countries that had been visited, including Sri Lanka and Colombia, but solely criticized the United States rather than providing any other comments.²³⁰

During the subsequent discussion, a number of countries requested further advice, such as a listing of best practices, from the Special Rapporteur on issues as disparate as enforced disappearances of political opponents or hostage-taking by non-state actors.²³¹ Other than the U.S. response, there was no subsequent discussion of extraordinary rendition, arguably due to its anomalous inclusion within the report. The United States expressed respect for its international obligations.²³² The United States also expressed recognition that the international community has not always agreed with the U.S. position, but that in respect to extraordinary rendition, bringing suspects to other countries was not inherently unlawful.²³³

227. U.N. Webcast: Human Rights Council (Second Session, Sept. 19, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060919> (follow "The Chairperson – Rapporteur of the Working Group on Enforced or Involuntary Disappearances").

228. *See id.*

229. *See id.*; *see also* David Akerson & Natalie Knowlton, *President Obama and the International Criminal Law of Successor Liability*, 37 DENV. J. INT'L L. & POL'Y 615, 634 (2009) (stating that extraordinary rendition violates Article 3 of the Torture Convention).

230. *See* Scheinin, Dec. Report, *supra* note 226.

231. *See, e.g.*, U.N. Webcast: Human Rights Council (Second Session, Sept. 19, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060919> (follow "Costa Rica, H.E. Mr. Luis Alberto Varela Quiros").

232. *See* U.N. Webcast: Human Rights Council (Second Session, Sept. 19, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060919> (follow "United States of America, Ms. Paula Barton").

233. *See id.*

However, its comments during subsequent discussions on domestic human rights issues, at this and other sessions,²³⁴ indicated a waning patience with being singled out for criticism, while known abusers and critical situations were seemingly ignored by mandate holders and the Council itself. Mandate holders continued to identify the United States alongside states known as human rights abusers, during general reports on issues pertaining to the treatment of detainees.²³⁵ The U.S. response not only disagreed with assertions made in some reports,²³⁶ but further accused some of misrepresenting facts, as well as the situation itself.²³⁷ The United States criticized the Special Rapporteurs that made up the Working Group on the Situation of Detainees²³⁸ for not accepting its open invitation to visit Guantanamo Bay, which subsequently led to their report being based on second and third hand information.²³⁹

The mandate holders had originally accepted the United States' invitation for only three of the five Special Rapporteurs to visit Guantanamo Bay as well as other terms set out by the United States.²⁴⁰

234. See, e.g., U.N. Webcast: Human Rights Council (Second Session, Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060919> (follow "United States of America, H.E. Mr. Warren W. Tichenor") [hereinafter Tichenor]; U.N. Webcast: Human Rights Council (Fourth Session, Mar. 27, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070327> (follow "United States of America, H.E. Mr. Warren W. Tichenor").

235. See, e.g., U.N. Webcast: Human Rights Council (Fourth Session, Mar. 27, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070327> (follow "Answers by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism") (discussing the United States in conjunction with India, South Africa, and Iran).

236. See, e.g., U.N. Webcast: Human Rights Council (Fourth Session, Mar. 27, 2007), <http://www.un.org/webcast/unhrc/archive.asp?go=070327> (follow "United States of America, Ms. Velia de Pirro").

237. *Id.*

238. See Tichenor, *supra* note 234. The Joint Report was a compilation of reports by Manfred Novak, Special Rapporteur on Torture, Leandro Despouy, Special Rapporteur on the Independence of Judges and Lawyers, Paul Hunt, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Leila Zerrougui, Special Rapporteur on Arbitrary Detention, and Asma Jahangir, Special Rapporteur on Freedom of Religion or Belief. See U.N. Webcast: Human Rights Council (Second Session, Sept. 21 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060921> (follow "Joint Report on the Situation of Detainees at Guantanamo Bay").

239. See Tichenor, *supra* note 234.

240. See U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm'n on Human Rights, *Situation of Detainees at Guantanamo Bay*, ¶ 3, U.N. Doc. E/CN.4/2006/120 (Feb. 27, 2006) (prepared by Leila Zerrougui, Leandro Despouy, Manfred Nowack, Asma Jahangir, & Paul Hunt). By letter dated October, 28 2005, the Government of the United States of America extended an invitation for a one-day visit to three of the five mandate holders, inviting them "to visit the Department of Defense's detention facilities [of Guantánamo Bay]." See *id.* The invitation stipulated that "the visit will not include private interviews or visits with detainees." *Id.* In their response to the

The reason that the Working Group decided to refuse the invitation was due to the United States indicating that they would not be granted private interviews with detainees.²⁴¹ Despite all this being contained within their report, the Working Group's oral statement to the Council asserted they had declined the invitation to visit Guantanamo Bay because of the extension of the invitation to only part of the group, as well as the refusal to grant unhindered access to detainees, and a lack of standard terms for the visit.²⁴²

As such, the Working Group stated they regretted that there was no point in visiting Guantanamo Bay.²⁴³ The United States declared the "need to work together to move forward" and its "regret [regarding] the approach . . . [by the Working Group and] that they did not accept our invitation."²⁴⁴ The United States defended against accusations regarding breaches of international law and violations of human rights as unfounded and incorrect.²⁴⁵ These comments and assertions were supported by members such as China, Cuba, and Venezuela, as well as observers, such as Iran and North Korea, all of whom also criticized the United States.²⁴⁶

Government dated Oct. 31, 2005, the mandate holders accepted the invitation, including the short duration of the visit and the fact that only three of them were permitted access, and informed the United States Government that the visit was to be carried out on Dec. 6, 2005. *See id.* However, they did not accept the exclusion of private interviews with detainees, as that would contravene the terms of reference for fact-finding missions by special procedures and undermine the purpose of an objective and fair assessment of the situation of detainees held in Guantánamo Bay. *See id.* In the absence of assurances from the Government that it would comply with the terms of reference, the mandate holders decided on Nov. 18, 2005, to cancel the visit. *See id.*

241. *See id.*

242. U.N. Webcast: Human Rights Council (Second Session, Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp?go=060921> (follow "Joint Report on the Situation of Detainees at Guantanamo Bay").

243. *See id.*

244. Oral intervention of American delegate, Second Session, in response to Leila Zerrougui, Working Group on the Situation of Detainees (Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Second Session" from drop down menu; then click "21" hyperlink under Sept.; then click "English" hyperlink under United States of America) [hereinafter Oral Intervention of American delegate].

245. *See id.*

246. *See* Oral intervention of China delegate, Second Session, in response to Leila Zerrougui, Working Group on the Situation of Detainees (Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Second Session" from drop down menu; then click "21" hyperlink under Sept.; then click "English" hyperlink under China); *see also* Oral intervention of Cuba delegate, Second Session, in response to Leila Zerrougui, Working Group on the Situation of Detainees (Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Second Session" from drop down menu; then click "21" hyperlink under Sept.; then click "English" hyperlink under Cuba); Oral intervention of Venezuela delegate, Second Session, in response to Leila Zerrougui, Working Group on the Situation of Detainees (Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Second Session" from drop down menu; then click "21" hyperlink under Sept.; then click "English" hyperlink under Venezuela).

The United States was perplexed by states which it deemed as known abusers of human rights, taking strident positions regarding the United States' treatment of detainees, despite the lack of first hand evidence available in the report.²⁴⁷ Iran accused the United States of lying to the Council,²⁴⁸ while Venezuela asserted that the United States was committing "flagrant violations of human rights."²⁴⁹

These positions were not echoed by Western states, most of whom were more concerned with asking questions of the Special Rapporteurs, rather than making sweeping criticisms of the United States. However, even Western states known as allies of the United States, joined in the discussions on these issues. Finland, on behalf of the EU, emphasized that while they were "committed to the fight against terrorism, human rights law has to be respected."²⁵⁰ Switzerland criticized the rendition of detainees to countries where torture was not prohibited.

More specifically, Switzerland questioned the United States' employment of such tactics.²⁵¹ The United States did not respond directly to Western interventions or questions on these issues, but instead preferred to deal solely with comments made by countries such as Iran and Venezuela.²⁵² The United States' belief that it should not be held to such an excessively high level of scrutiny arguably ignored the fact that the Council encouraged each state to constantly strive to improve its own human rights record.

Therefore, countries such as Switzerland were necessarily held to higher standards than, for example, Somalia, because each state was judged with reference to its available resources and abilities and not against a

247. See Oral intervention of American delegate, *supra* note 244.

248. See Oral intervention of Iranian delegate, Second Session, in response to Leila Zerrougui, Working Group on the Situation of Detainees (Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Second Session" from drop down menu; then click "21" hyperlink under Sept.; then click "English" hyperlink under Iran).

249. See Oral intervention of Venezuelan delegate, Second Session, in response to Leila Zerrougui, Working Group on the Situation of Detainees (Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Second Session" from drop down menu; then click "21" hyperlink under Sept.; then click "English" hyperlink under Venezuela).

250. See Oral intervention of Finnish delegate, Second Session, in response to Leila Zerrougui, Working Group on Situation of Detainees (Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Second Session" from drop down menu; then click "21" hyperlink under Sept.; then click "English" hyperlink under Finland) [hereinafter Oral intervention of Finnish delegate].

251. See Oral intervention of Swiss delegate, Second Session, in response to Leila Zerrougui, Working Group on the Situation of Detainees, <http://www.un.org/webcast/unhrc/archive.asp> (follow "Second Session" from drop down menu; then click "21" hyperlink under Sept.; then click "English" hyperlink under Switzerland) [hereinafter Oral Intervention of Swiss delegate].

252. See Oral intervention of American delegate, *supra* note 244.

common standard.²⁵³ Although this concept does not appear too controversial, the United States was the sole Western state to constantly condemn the scrutiny necessitated by such a process, probably due to the amount of time spent discussing the United States as compared with other Western states. The United States' complaints gave strength to those who argued that the United States feared examination of its own human rights record.

However, the Council and its members placed the United States under far more scrutiny than any other Western state, bar Israel, and thus legitimized its complaints about selectivity and bias at the body. The scrutiny it was subjected to could be due to the United States being prepared to place its head above the parapet, as well as the ongoing political struggles between the United States and the major powers at the Council, namely the OIC.

B. THE UNITED STATES INTERNATIONAL HUMAN RIGHTS RECORD

The Council was repeatedly used by states wishing to attack the United States regardless of whether a relevant discussion was occurring. Certain countries, such as Iran, had obvious political motivations for behaving in such a manner, but, as I shall now suggest, the behavior of other states could not be explained as easily. Furthermore, the fact that such comments were allowed despite their nature or their irrelevance to proceedings, was a significant cause of the United States' withdrawal from the Council. While these attacks may be partially explained by incidents occurring around the time they were made, the vehemence and regularity of interventions made by a range of states must have contributed to the United States' decision to withdraw.

Unsurprisingly, Cuba most often used the Council to criticize the United States.²⁵⁴ Cuba's comments rarely related to topics under discussion at the body,²⁵⁵ and these assertions were supported only by

253. *See id.*

254. *See* Oral intervention of Cuban delegate, Fourth Session, in response to Manfred Novak, Special Rapporteur on Torture (Mar. 27, 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Fourth Session" from drop down menu; then click "27" hyperlink under Mar.; then click "English" hyperlink under Cuba) [hereinafter Cuban response to Manfred Novak]; *see also* Oral intervention of Cuban delegate, Fourth Session, during the 'related debate' (Mar. 29, 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Fourth Session" from drop down menu; then click "29" hyperlink under Mar.; then click "English" hyperlink under Cuba) (commenting on the Cuban conspiracy theory that the U.S. is in control of the Human Rights Council).

255. *See* Cuban response to Manfred Novak, *supra* note 254 (intervening comments of Cuban delegate speaking of a terrorist plot by the US against Cuba, instead of the topic of the debate, torture); Oral intervention of Cuban delegate, Fourth Session, in response to John Dugard, Special

Cuba's allies or states maintaining equally strained relations with the United States.²⁵⁶

During a discussion on torture, for example, Cuba alleged, without drawing any link to issues of torture, and without evidence, that the CIA was training and developing terrorist groups to attack Latin American countries, and that it was involved in plots to kill the Cuban head of state.²⁵⁷ Venezuela, also out of context and without evidence, expressed similar allegations against the United States, stressing that "we denounce those that protect and foster terrorism, specifically our neighbour to the north – America."²⁵⁸ These countries both have a history of bad relations with the United States,²⁵⁹ and this was by no means the first time either country had attacked the United States within U.N. bodies.²⁶⁰

Again offering no evidence, Cuba accused the United States of "coordinating diplomatic campaigns . . . in the Human Rights Council," alleging that NGOs with accreditation to the body were under American control.²⁶¹ Cuba further attacked the United States through allegations that

Rapporteur on the Occupied Palestinian Territories (Mar. 22, 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Fourth Session" from drop down menu; then click "22" hyperlink under Mar.; then click "English" hyperlink under Cuba) (speaking about the US being the main sponsor of the Palestinian occupation).

256. See Oral intervention of Syrian delegate, Fifth Session, in response to Christine Chanet, Special Rapporteur on Cuba (June 12, 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Fifth Session" from drop down menu; then click "12" hyperlink under June; then click "English" hyperlink under Syria) (stating that the United States is using coercive measures in their violations of Human Rights); Oral intervention of DPRK delegate, Fourth Session in response to Vitit Muntarbhorn, Special Rapporteur on DPRK (Mar. 23, 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Fourth Session" from drop down menu; then click "23" hyperlink under Mar.; then click "English" hyperlink under Democratic People's Republic of Korea) (stating that the US is trying to destroy the Korean socialist system).

257. See Cuban response to Manfred Novak, *supra* note 254.

258. See Oral intervention of Venezuelan delegate, Seventh Session, during general discussions (Mar. 6, 2008), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Seventh Session" from drop down menu; then click "6" hyperlink under Mar.; then click "English" hyperlink under Venezuela).

259. See generally Juan Pablo Lupi & Leonardo Vivas, *(Mis)Understanding Chavez and Venezuela in Times of Revolution*, 29 FLETCHER F. WORLD AFF. 81 (2005) (stating that the Chavez regime might be in response to the United States trying to impose its domination over the country); Marlene Hammock, *U.S. Prohibitions on Cuban Trade: Are they Effective?*, 1 FLA. INT'L L.J. 61, 61 (1986) (showing the prohibitions of the trade embargo with Cuba go back decades).

260. See Cuban response to Manfred Novak, *supra* note 254; see also Oral intervention of Venezuelan delegate, Second Session, in response to Leila Zerrougui, Working Group on the Situation of Detainees (Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp> (follow "Second Session" from drop down menu; then click "21" hyperlink under Sept.; then click "English" hyperlink under Venezuela) (stating that the United States is committing flagrant violations of human rights).

261. Oral intervention of Cuban delegate, Fourth Session, during the "related debate" (Mar.

it was undermining the Council, by saying, for example, “to those who attack, namely the United States, the Council, they must show humility. Those who make the Council fail will be criticized by history.”²⁶²

Cuba’s remarks during non-U.S. related discussions included, for example, calling it the “main sponsor of the brutal regime of [Israeli] occupation.”²⁶³ It also used similar tactics to allege that the UK was an American puppet, saying that British remarks were “prepared by Washington.”²⁶⁴ While such remarks were, presumably, afforded little weight by other countries at the Council, the constant repetition and vociferous nature of these comments made them difficult for anyone, the United States especially, to ignore.

Syria supported Cuba’s attacks on a number of occasions and alleged that the country-specific mandate on Cuba was politically motivated due to the U.S. position towards Cuba.²⁶⁵ Again, the alliance between these two countries in this regard is akin to the old adage of “my enemy’s enemy is my friend.”²⁶⁶ Cuba accused the United States of ongoing human rights violations against it, stating that “the policy of hostility maintained by the U.S.A. has used coercive measures as a fundamental tool and has had a serious impact on Cuba. Humanitarian damage has occurred especially in areas of public health and education.”²⁶⁷

DPRK (North Korea) also attacked the United States during Council

29, 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow “Fourth Session” from drop down menu; then click “29” hyperlink under Mar.; then click “English” hyperlink under Cuba).

262. Oral intervention of Cuban MFA of Cuba Felipe Perez Roque, Seventh Session, during the High Level Segment (Mar. 3, 2008), <http://www.un.org/webcast/unhrc/archive.asp> (follow “Seventh Session” from drop down menu; then click “3” hyperlink under Mar.; then click “English” hyperlink under Cuba).

263. Oral intervention of Cuban delegate, Fourth Session, in response to John Dugard, Special Rapporteur on the Occupied Palestinian Territories (Mar. 22, 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow “Fourth Session” from drop down menu; then click “22” hyperlink under Mar.; then click “English” hyperlink under Cuba).

264. Oral intervention of Cuban delegate, Second Session, in response to Asma Jahangir, Special Rapporteur on Freedom of Religion (Sept. 21, 2006), <http://www.un.org/webcast/unhrc/archive.asp> (follow “Second Session” from drop down menu; then click “21” hyperlink under Sept.; then click “English” hyperlink under Cuba).

265. See Oral intervention of Syrian delegate, Fifth Session, in response to Christine Chanet, Special Rapporteur on Cuba (June 12, 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow “Fifth Session” from drop down menu; then click “12” hyperlink under June; then click “English” hyperlink under Syria).

266. Exodus 23:22 (stating “If you listen carefully to what he says and do all that I say, *I will be an enemy to your enemies* and will oppose those who oppose you”) (emphasis added).

267. Oral intervention of Cuban delegate, Sixth Session, during discussion on Agenda Item 3 ‘Protection and Promotion of All Rights’ (Sept. 17, 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow “Sixth Session” from drop down menu; then click “17” hyperlink under Sept.; then click “English” hyperlink under Cuba).

discussions. It alleged that the United States sought to “destroy” its “socialist system” through “hostile policies” and “conspiracies with the EU and Japan.”²⁶⁸ DPRK accused the United States of human rights abuses, asserting that “it is a well-known fact that the U.S. is the worst human rights violator in the world,”²⁶⁹ asking a Special Rapporteur be “placed in the U.S.”²⁷⁰ The Palestinian delegate made similar comments, asserting that the United States itself was a grave abuser of human rights, dubiously echoing Churchill, in exclaiming, “Americans will always only do the right thing after they have exhausted all other alternatives.”²⁷¹

Just as interesting were the comments made by allies of, or countries with a more neutral position towards, the United States. The positions taken towards the United States by such countries, especially those bordering on attacks, must have played a part in its decision to quit the Council. The United States may have become used to being one of the few dissenting voices during Council debates, often joined only by Canada and at times Australia and New Zealand, while other Western states equivocated.²⁷² However, being criticized or attacked by its allies, especially regarding such issues they failed to criticize other known abusers about, could have been the final straw for the United States in terms of its engagement at that time with the Council.

The EU abstained from many votes on controversial issues,²⁷³ and often maintained a neutral position during related Council discussions.²⁷⁴ However, this Western regional alliance did, at times, criticize the United

268. Oral intervention of DPRK delegate, Fourth Session in response to Vitit Muntarbhorn, Special Rapporteur on DPRK (Mar. 23 2007), <http://www.un.org/webcast/unhrc/archive.asp> (follow “Fourth Session” from drop down menu; then click “23” hyperlink under Mar.; then click “English” hyperlink under Democratic People’s Republic of Korea).

269. Oral intervention of DPRK delegate, Seventh Session, during general discussions (Mar. 6, 2008), <http://www.un.org/webcast/unhrc/archive.asp> (follow “Seventh Session” from drop down menu; then click “6” hyperlink under Mar.; then click “English” hyperlink under Democratic People’s Republic of Korea).

270. *Id.*

271. U.N. Human Rights Council, Fourth Session, <http://www.un.org/webcast/unhrc/archive.asp?go=070322> (follow “Palestine as a concerned country” hyperlink under “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and Situation of human rights in the occupied Palestinian territory”) (Mar. 22, 2007) (responding to John Dugard, Special Rapporteur on the Occupied Palestinian Territories).

272. *See, e.g.*, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 1007); G.A. Res. 62/270, U.N. Doc. A/RES/62/270 (June 30, 2008).

273. *See, e.g.*, G.A. Res. 62/270, U.N. Doc. A/RES/62/270 (June 30, 2008).

274. *See, e.g.*, U.N. Human Rights Council, Eighth Session, <http://www.un.org/webcast/unhrc/archive.asp?go=080611>, (follow “Slovenia (on behalf of the European Union)” hyperlink) (June 3, 2008).

States on topics where it may have been expected to ally itself with,²⁷⁵ or at least refrain from attacking, the United States. The EU's prevailing attitude towards the mandate "Protection of Human Rights Whilst Countering Terrorism" was critical of U.S. tactics, such as extraordinary rendition and detention without trial.²⁷⁶ The EU did not attack the United States *per se*, but rather used discussions with Special Rapporteurs, or other related debates, to highlight its concerns in this regard. The EU's stance during such debates at the Council was rather ironic considering the role of some of its members, including the UK, in the counter-terrorism tactics being discussed.

The EU's interventions were typically placid, which neutralized its obvious disagreement with certain U.S. practices. On one occasion, Finland—on behalf of the EU—stressed its commitment to fighting terrorism, before expressing the absolute requirement that "human rights law has to respected" whilst doing so.²⁷⁷ The Finnish intervention on this occasion continued by highlighting those findings of the Working Group on the Situation of Detainees' report that related to the United States.²⁷⁸ The EU emphasized that "the U.S. should refrain from bringing [detainees] to other countries," before suggesting that international tribunals be used in order to ensure such detainees' rights.²⁷⁹

Switzerland was also critical of the United States, especially in terms of its 'war on terror,' but followed the EU in the manner of its criticisms rather than attacking the United States,²⁸⁰ as Cuba and others chose to do. Switzerland condemned the transfer of detainees to countries that practice torture, as well as other forms of cruel and degrading treatment.²⁸¹ It criticized the use of such tactics whilst countering terrorism, coupling its comments on these issues with criticism of the holding of detainees at Guantanamo Bay.²⁸² Switzerland's comments were less reserved than those of EU countries, and it often posed pointed questions to mandate holders and experts that made clear its position towards the U.S.

275. See, e.g., U.N. Human Rights Council, Sixth Session, <http://www.un.org/webcast/unhrc/archive.asp?go=071213> (follow "Portugal on behalf of the European Union" hyperlink under "Answer and final remark by Mr. Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism") (Dec. 13, 2007).

276. *Id.*

277. Oral intervention of Finnish delegate, *supra* note 250.

278. *Id.*

279. *Id.*

280. See Oral intervention of Swiss delegate, *supra* note 251.

281. See *id.*

282. See *id.*

international human rights record.²⁸³

Russia and China may both have a history of difficult relations with the United States, but their interactions at the Council have, on the whole, remained far friendlier than with other U.N. bodies. While China was conspicuous in its failure to criticize the United States, possibly due to its fear of having its own human rights record scrutinized, Russia did, at times, condemn the United States during discussions of certain issues. On one such occasion, Russia accused a U.S. delegate of “arrogance . . . in the way he talked about human rights situations,” alleging that “the U.S. ignore[d] the United Nations human rights mechanisms, and even stop[ped] financing them.”²⁸⁴

The Russian attack on this occasion, which included references to Guantanamo Bay and extraordinary rendition,²⁸⁵ suggested political motivations, not least due to Russia’s desire to maintain favorable relations with OIC members. The impact of such outbursts could have been to further alienate the United States at the Council. In many ways, the Western states’ criticisms arguably had a greater impact on the United States’ decision to remove itself from the Council than other countries’ comments. The United States must have become used to venomous and vociferous attacks at U.N. bodies from countries such as Cuba and Iran. However, criticism from its allies, or at least those states it has good relations with, must have stung the United States considerably. Whether these comments struck a raw nerve in terms of its own human rights record, or whether the United States was merely reacting to selectivity and bias against it, such interventions presumably played a large role in its decision to withdraw from the body.

In order to understand why these comments may have encouraged the United States to disengage from the Council due to alienation rather than fear of scrutiny, the regularity and nature of these attacks must be examined. One example of a particularly venomous attack on the United States occurred at the Fourth Session in response to the High Commissioner for Human Rights’ report.²⁸⁶ Iran, during its right to reply,

283. *See id.*

284. U.N. Human Rights Council, Sixth Session, <http://www.un.org/webcast/unhrc/archive.asp?go=070924> (follow “Russian Federation” hyperlink) (Sept. 24, 2007) (intervening in general discussion on Agenda Item 4).

285. *Id.*

286. *See* U.N. Human Rights Council, Fourth Session, <http://www.un.org/webcast/unhrc/archive.asp?go=070315> (follow “Islamic Republic of Iran” under “Comments by the United Nations High Commissioner for Human Rights”) (Mar. 15, 2007) [hereinafter Response to Louise Arbour] (responding to Louise Arbour, High Commissioner for Human Rights); *see also* High Commissioner for Human Rights, *Report of the*

launched into the following diatribe:

Iran wants to draw the Council's attention to the most phenomenal irony of our era. The United States has been condemned as the most notorious violator of human rights by peoples of the world. The occupation and unilateral invasion of Iraq in 2003 was an unlawful and illegitimate invasion and has not only led to the violation and killing of innocent people. The United States is not referring to the very bitter cases of the rape of innocent women The American action had led to violations of the right to life, killings, it has caused misery and destruction . . . referring to raping Iraqi girls and killing of their family. The invasion is an arrogant adventure . . . the United Nations is now not as credible any more The barbaric treatment of prisoners in Guantanamo, which is by human rights criteria perfectly beyond description . . . in Prisons in Iraq the United States resorts to the same approach, although it has failed. The situation in Iraq shocks the world. It has not tried to remedy the victims . . . the operation transferring prisoners to force them to confess under pressure and torture has the most ridiculous justification as a 'war on terror'.²⁸⁷

This excerpt, alongside the fact it was not controversial at the Council for such comments to be made, emphasize the anti-U.S. sentiment that had become commonplace during the Council's first two years. The strength of feeling against the United States may have reflected the general mood at the UN, but only served to isolate and ostracize the country at this body.

VI. CONCLUSION

The United States cannot boast a flawless human rights record. During the two years of the Council's existence before its withdrawal, the United States committed serious abuses both domestically and internationally. For example, the Amnesty International Annual Report 2006²⁸⁸ highlighted the following categories of serious human rights abuses by the United States during 2006: renditions and secret detentions; detention without charge in Afghanistan and Iraq; torture and other abuses at Guantanamo Bay; unlawful killings by U.S. forces outside the U.S.A.; detention of enemy combatants in the U.S.A.; tortures; ill-treatment in jails and police custody; ill-treatment of female prisoners; and the use of the death penalty on people with serious mental illness.²⁸⁹ These, and other, issues of serious concern were justifiably looked into by national and international human rights institutions, as well as NGOs. The United States

United Nations High Commissioner for Human Rights and follow-up to the World Conference for Human Rights, delivered to the Human Rights Council, U.N. Doc. A/HRC/4/49 (Mar. 2, 2007).

287. Response to Louise Arbour, *supra* note 286.

288. Amnesty Int'l, *Amnesty International Report 2006*, 272–75, AI Index POL 10/001/2006, May 22, 2006.

289. *See id.*

accepted such attention, despite the scrutiny and criticisms that it entailed.

The United States' displeasure with the Council for scrutinizing its human rights record was arguably due to the selectivity and bias displayed in the singling out of the country for political, or other, motivations. Perhaps the United States would have tolerated mildly disproportionate emphasis on its human rights record had the Council proceeded more strongly on other grave situations such as Darfur, Burma, or Zimbabwe.

Instead, the Council spent little time discussing grave situations such as these. The Council's failure to discuss, let alone take action against, repressive regimes that systematically violated human rights, such as Libya or Saudi Arabia, only emphasized the disproportionate attention devoted to the United States. Unlike organizations such as Amnesty International, the Council's credibility as an impartial body was severely lacking, resulting in U.S. withdrawal when it became apparent that the disproportionate focus on its human rights record would be allowed to continue indefinitely.

The Human Rights Council was created amid much promise and expectation that it would significantly depart from those practices of its predecessor, the Commission, which had undermined the credibility of the UN human rights mechanisms.²⁹⁰ During its first two years, however, the Council proved to be biased and selective, with members blocking meaningful debate about grave situations due to regional alliances,²⁹¹ as well as failing to adequately deal with many of the issues brought to its attention. Furthermore, there were human rights situations that dominated the Council's discussions to the detriment of worse abuses elsewhere.

While it is, at times, necessary to scrutinize some countries more than others, especially where a crisis or ongoing human rights situation occurs, the disproportionate focus given by the Council to certain states such as the United States was due to political rather than humanitarian motivations. Similarly, while it may be acceptable to hold different nations to different standards in view of their respective levels of available resources, the Council determined standards according to political rather than humanitarian motivations. The significant politicization of the Council in these, and other, regards played a considerable role in the United States' decision to withdraw.

From the outset, the United States never fully supported the Human Rights Council in the form finally agreed and declined to stand for

290. See *In Larger Freedom*, *supra* note 179.

291. See generally 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 (2009); Secretary-General, Office of the Spokesperson, <http://www.un.org/apps/sg/sgstats.asp?nid=2626> (June 20, 2007).

membership.²⁹² However, it did participate in the first seven sessions as a permanent observer, expressing views on almost all issues raised during discussions and debates.²⁹³ The United States arguably played as important a role as member states in the shaping of the new body; its opinions and interventions were often more extensive than many members of the Council, although the United States did not have the power to vote on resolutions put forward at the body.²⁹⁴ Its interventions followed the same pattern throughout all seven sessions.

The United States has repeatedly called for adherence to the Council's founding principles of non-selectivity, impartiality and lack of bias.²⁹⁵ The United States stressed the importance of these principles during all discussions, including debates about Council working methods, country-specific human rights situations, and individual rights and responsibilities.²⁹⁶ Its fears that the body would repeat the mistakes of its predecessor, the CHR, were reflected in its efforts to steer the Council away from such pitfalls.

The United States' involvement at the Council was not limited to expressing opinions and making interventions. The United States itself, and its own human rights record, became the focus of various Council discussions and of individual states' comments during debates.²⁹⁷ There were a number of states that used this forum to criticize the United States, alleging the commission of domestic and international human rights violations.²⁹⁸ The comments made by those countries that have bad

292. See Press Release, General Assembly, General Assembly Establishes new Human Rights Council by Vote of 170 in Favour to 4 Against, With 3 Abstentions, U.N. Doc. GA/10449 (Mar. 15, 2006).

293. See, e.g., U.N. Human Rights Council, Second Session, <http://www.un.org/webcast/unhrc/archive.asp?go=002> (Sept. 18, 2006); U.N. Human Rights Council, Seventh Session, <http://www.un.org/webcast/unhrc/archive.asp?go=080305> (Mar. 5, 2008).

294. See Rules of Procedure of the General Assembly, U.N. Doc. A/520/Rev.17 (Sept. 2007).

295. See, e.g., U.N. Human Rights Council, Fourth Session, <http://www.un.org/webcast/unhrc/archive.asp?go=070314> (Follow "United States" hyperlink) (June 21, 2006); U.N. Human Rights Council, Fourth Session, <http://www.un.org/webcast/unhrc/archive.asp?go=070315> (follow "United States" hyperlink under "Report of the High Commissioner for Human Rights - Interactive Dialogue") (Mar. 15, 2007) [hereinafter Report of the High Commissioner].

296. See, e.g., U.N. Human Rights Council, Fourth session, <http://www.un.org/webcast/unhrc/archive.asp?go=070314> (Follow "United States" hyperlink) (June 21, 2006); Report of the High Commissioner, *supra* note 295.

297. See Special Rapporteur, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 4, 13, delivered to the Human Rights Council and the General Assembly, U.N. Doc. A/HRC/10/3 (Feb. 4, 2009).

298. See U.N. Webcast: Hum. Rights Council (Second Session, Sept. 21, 2006). <http://www.un.org/webcast/unhrc/archive.asp?go=060921> (follow "Joint Report On The Situation

relations with the United States had less impact than the criticisms of Western states and other U.S. allies despite the latter groups' comments being more constructive and less vociferous than the former. The Western states' interventions that condemned the United States mainly focused on the human rights violations occurring during the so-called "war on terror."²⁹⁹ The United States failed to adequately respond to allegations and questions regarding extraordinary renditions, torture, arbitrary detention, and other tactics used in countering terrorism. Instead the United States reacted defensively to any criticism of its human rights record, without addressing the concerns raised.

Had the Council fulfilled early expectations and followed its own guiding principles of non-selectivity, impartiality and non-bias, the United States would not have faced the predicament that led to its withdrawal. The United States might have tolerated closer scrutiny of its human rights record had the Council been even-handed in its approach towards other states and their national records. However, the disproportionate focus on the United States, as compared both with other Western states as well as with known grave human rights abusers, undoubtedly played a large role in its decision to cease its participation at the body.

The general positions that have been set out in this article, regarding the United States' withdrawal from the Human Rights Council, can be roughly separated as being either pro- or anti-America. Those wishing to support the United States' stance towards the Council have strong arguments to back the assertion that its disengagement from the body was due to the actualization of initial fears that the body would be as bias and politicized as its predecessor.

Supporters of the United States may point to the focus on Israel and the United States, as well as the lack of action regarding Darfur and other such situations, as being strong evidence for contentions of the body's selectivity and partiality. Those wishing to undermine U.S. credibility in terms of human rights may be able to argue that it was the country's fear of having its own record scrutinized that caused it to quit the Council. In order to do so, they will be able to use the reticence of the United States to allow its own human rights record to be examined as an indicator in this regard.

Ultimately, the resolution of such a debate will not be forthcoming, and neither will it matter unless the United States, having recently been elected a member of the Council, again withdraws its involvement from the

Of Detainees at Guantanamo Bay").

299. *See id.*

body. The criticisms and reservations held by the United States remain relevant to its relationship with the body until such time as those specific issues with the Council have significantly improved. However, the *true* motivations for its withdrawal have become less relevant since its decision to reengage with the Council.

The election of President Obama inspired hope that the change in the United States' administration would bring a new attitude to the Council. Eric Sottas, Director of the International Organisation Against Torture, argued the withdrawal was actually a political gesture.³⁰⁰ Sotta stated:

The U.S. has always clearly shown its opposition to the Council. This is a slightly more public way of putting pressure on it in order to raise the stakes It reminds me of the time when the Nixon administration, which backed Pinochet in Chile, chastized [sic] the UN for criticizing the Chilean dictator. But when Carter was elected in 1977, the American government took the floor at the Human Rights Commission to ask forgiveness. After a presidency like that of Bush, you can expect some important changes in U.S. policy on human right.³⁰¹

Director Sottas' opinion was reinforced by the recent election of the United States to the Council in May 2009, which the State Department spoke of as "in keeping with the Obama Administration's 'new era of engagement' with other nations."³⁰² After the Presidential elections, a bipartisan group of over thirty senior foreign policy figures called for President-elect Barack Obama to strengthen relations with the United Nations, specifically urging Washington to re-engage and to become a member of the Human Rights Council.³⁰³ One article observed that the position held by the State Department:

[U]rges Washington to join the Geneva-based HRC, an agency that has been singled out for scorn by Bolton and other hawks in and outside

300. See Juan Gasparini and Carole Vann, *US Quits Hum. Rights Council?*, HUM. RIGHTS TRIB., June 8, 2008, available at <http://www.infosud.org/US-quits-Human-Rights-Council,3184>.

301. *Id.* (emphasis added).

302. Press Release by Gordon Duguid, Acting Deputy Spokesmen, U.S. Dep't of State, U.S. To Run For Election To The Hum. Rights Council, <http://www.america.gov/st/texttrans-english/2009/April/20090401120727eafas4.264468e-02.html> (Mar. 31, 2009).

303. See, e.g., Press Release, Partnership for A Secure America & United Nations Found., Bipartisan U.S. Foreign Policy Leaders Urge Obama Admin. To Revitalize U.S.-U.N. Relationship, Leaders Outline Policy Priorities for Strengthening UN, Addressing Global Challenges, www.psaonline.org/downloads/UN%20Statement%20Press%20Release%20FINAL.pdf (Nov. 19, 2008). The statement's signatories included three former National Security Advisors, former secretaries of state Madeleine Albright and Warren Christopher, and former defense secretaries Harold Brown and William Perry, a range of Republicans, and three former UN ambassadors. See *id.* The statement was published in a full-page advertisement carried by the New York Times on Nov. 20, 2008. See *id.*

the Bush administration, since it replaced the U.N. Human Rights Commission in 2006 due to the presence there of governments accused of serious human rights abuses. Like its western allies, the statement said Washington should “work to influence [the HRC] from within. The HRC has drawn a tremendous amount of fire, and the fact that you’ve got all these people coming together and saying that the best way to effect change in the institution is to have a seat at the table is very powerful,” said PSA director Matthew Rojansky, who helped draft the statement.³⁰⁴

Another article stated that although “[t]he Bush administration has distanced itself from the U.N. Human Rights Council . . . the experts sugges[t] the United States should now actively seek a seat on the ‘faltering’ council and work to influence the body from within.”³⁰⁵ During the Presidential campaign, Obama’s views were mixed:

With new leadership in Washington committed to human rights standards in deed as well as in word, the United States will again have the moral authority to lead the world on human rights issues. The United States should seek to reform the UN Human Rights Council and help set it right. If the Council is to be made effective and credible, governments must make it such. We need our voice to be heard loud and clear to shine a light on the world’s most repressive regimes, end the unfair obsession with Israel, and improve human rights policies around the globe.³⁰⁶

However, the President has also criticized the Council, not least for passing “eight resolutions condemning Israel, a democracy with higher standards of human rights than its accusers”³⁰⁷ He further asserted that the body, “only with difficulty[,] adopted resolutions pressing Sudan and Myanmar . . . [and] has dropped investigations into Belarus and Cuba for political reasons, and its method of reporting on human rights allows the Council’s members to shield themselves from scrutiny.”³⁰⁸ The likelihood is that the new administration, under President Obama, may not be prepared to backtrack on all of the Bush administration’s attitudes and positions regarding the U.N.

Hillary Clinton’s appointment as Secretary of State demonstrates the

304. Jim Lobe, *U.S.: Obama Urged to Strengthen Ties with UN*, INTER PRESS SERVICES, Nov. 20, 2008, <http://ipsnews.net/news.asp?idnews=44780>.

305. Sue Fleming, *U.S. Foreign Policy Experts Give Obama U.N. Advice*, REUTERS, Nov. 19, 2008, <http://www.reuters.com/article/idUSTRE4A17WX20081120>.

306. BetterWorldCampaign.org, United Nations Ass’n of the USA (UNA-USA) 2008 Presidential Candidate Questionnaire On US-UN Relations, http://www.globalproblems-globalsolutions-files.org/bwc_website/candidate_questionnaires/Obama-Response.pdf (last visited Aug. 6, 2010).

307. *See id.*

308. *Id.*

new administration's desire for re-engagement with the Council. Commentators point to Clinton's support for the U.N., and her practice of usually reserving her criticisms for individual member states, saying that she has made clear her disapproval of the "Bush administration's policy of 'standing aside and not fully engaging,'" the Council.³⁰⁹ Clinton has expressed strong opinions regarding the United States standing for election to the Council, saying:

Human rights are an essential element of American global foreign policy . . . [w]ith others, we will engage in the work of improving the UN human rights system to advance the vision of the UN Declaration of Human Rights. The United States helped to found the United Nations and retains a vital stake in advancing that organization's genuine commitment to the human rights values that we share with other member nations. We believe every nation must live by and help shape global rules that ensure people enjoy the right to live freely and participate fully in their societies.³¹⁰

Despite the change in administration and thus the change in policy towards the Human Rights Council, change must occur at the body in order for the United States to continue to engage with and support the body. The United States' decision to work towards such change from the inside does not negate its positions regarding the Council's flaws and weaknesses. The impact of its withdrawal on the Council's credibility was significant and parallels can, and will, be drawn with the demise of the body's predecessor. The CHR failed due to politicization and bias, as well as the undermining of its credibility due to its membership and action taken by the body. The Council has already attracted criticism for its politicization, and the disengagement of the United States only served to strengthen the arguments of the body's critics.

It will be crucial to the United States, that during its term of membership, the Council make significant changes, especially regarding adherence to its own founding principles of non-selectivity and non-bias. This will only occur if the Council takes the necessary steps towards ensuring that its politicization is reversed, and that the body is used solely to deal even-handedly with human rights abuses across the world.

309. Alan Avery, *Hillary Clinton and the UN: How She Might Approach the Role of Secretary of State*, UNITED NATIONS ASS'N OF THE UNITED STATES OF AMERICA AND THE BUSINESS COUNCIL FOR THE UNITED NATIONS, Dec. 2, 2008, <http://www.unausa.org/Page.aspx?pid=923>.

310. See Duguid, *supra* note 302.