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Expanding or Diluting Human Rights?:

The proliferation of United Nations Special Procedures mandates.

Rosa Freedmanⁱ and Jacob Mchangamaⁱⁱ

Abstract

The United Nations Special Procedures system was described by former UN Secretary General Kofi Annan as ‘the crown jewel’ of the UN Human Rights Machinery. Yet, in recent years the system has expanded rapidly, driven by states creating new mandates frequently on topics not traditionally viewed as human rights. This article explores the connection between forms of governance and the states voting for and promoting these newer mandates. We explore states’ potential motivations for expanding the system and the impact on international human rights law. The article forms an important part of discussions about Special Procedures and about rights proliferation.

Keywords

United Nations; Special Procedures; human rights; politicization; state governance.

1 Introduction

In recent years the issue of ‘human rights proliferation’ has emerged as a topic of discussion among human rights academics, diplomats and activists. Human rights proliferation refers to the increasing number of treaties, resolutions, bodies and institutions that focus on human rights. The United Nation’s Human Rights Council’s adoption of ever more Special

Procedure mandates significantly contributes to these developments. The Special Procedures system has existed for nearly five decades, and at the time the Human Rights Council was created in 2006 there were 41 mandates. As of August 2014 an additional 10 mandates have been adopted. As Ted Piccone and Marc Limon have noted, if the current trajectory of the adoption of Special Procedure mandates is upheld there will be 100 mandates in 2030.ⁱⁱⁱ The proliferation of Special Procedure mandates raises questions of whether they strengthen human rights protection and promotion through increasing awareness and widening the scope of topics to be included under the umbrella of human rights, or whether expansion weakens the system by diluting core rights, reducing resources available to mandate holders, and providing a smokescreen for states seeking to avoid scrutiny of their record on fundamental human rights.

One way of answering those questions is to investigate the voting records on Special Procedures to determine whether they reveal a pattern on how states vote on and advance different categories of thematic mandates. The purpose of our research is to explore whether forms of governance and states' human rights ideologies are linked to the types of rights that they have promoted or supported through the vehicle of Special Procedures mandates. Empirical research on states' voting records is used to analyse the broader issues and patterns that are ongoing across the UN Human Rights Machinery. Finally, we use the research findings to support analysis of states' potential motivations for their strategies vis-à-vis the type of rights they promote when voting for Special Procedures. The research that we have undertaken on this one specific part of the UN Human Rights Machinery is part of broader ongoing debates about how best to address the potential problems and pitfalls of rights inflation.

2 Background: Human Rights Categories and Ideologies

In order to investigate whether there is a link between the countries at the fore of rights proliferation and state governance, and to understand the impact this has on the international human rights law system, it is crucial to understand the three categories of human rights. Vasak talks about three generations of rights based on the French principles of *liberté*, *égalité* and *fraternité*.^{iv} He links CPRs to liberty; ESCRs are connected to equality through social justice; and TGRs, also known as solidarity or collective rights, embody the idea of fraternity.^v The first two categories of rights are well explored, although the categories are not always water tight: Civil and Political Rights^{vi} focus on fundamental freedoms and civil liberties of the individual and were historically linked with liberal democracies and the rule of law. Economic, Social and Cultural Rights^{vii} often focus on states' positive obligations to provide, or to provide access to, certain services or standards. TGRs^{viii} are the newest, and therefore least established, set of rights that generally involve a collective element and benefit for society but have yet to be codified into legally binding treaties.

It is somewhat crude to categorise every human right according to these three generations, but the categories provide a useful tool for understanding the ideologies underpinning different types of rights. Different forms of governance and governmental ideologies^{ix} affect the development of rights. Indeed, the Universal Declaration was subsequently codified into two conventions split between CPRs^x and ESCRs^{xi}, owing, inter alia, to resistance to one or other category by countries ideologically opposed to those types of rights.^{xii} That relationship between types of governments and human rights has continued despite many states formally committing to the principle of the interdependence, interrelatedness and indivisibility of all rights.^{xiii}

The UN's official position is that the sets of rights are equal, overlap and are interdependent and indivisible – that is, they cannot exist without each other.^{xiv} Since the Vienna Declaration and Programme of Action at the 1993 World Conference on human rights, the 'indivisibility' of all human rights has been a cornerstone of the international human rights movement. The concept of indivisibility highlights that all rights are interwoven within a general framework of international human rights law, and that one category of rights cannot fully be realized without the implementation of the other set.^{xv} However, it is not clear from state practice at the national level or indeed from voting records at the HRC that the concept of indivisibility is an accurate reflection of how states actually view and approach human rights. As we shall see there is a significant difference in how regional groups and political blocs support or place greater emphasis on different categories of rights.

Countries such as China and the US make clear their human rights ideologies through their ratification of human rights treaties. China, on the one hand, is not party to the ICCPR^{xvi} while the US is not party to the ICESCR. Other countries have adopted a more intermediate position, with an increase in states including ESCRs in their constitutions as well as a greater willingness of judiciaries to enforce such rights. However, the majority of states – including many liberal democracies – do not have ESCRs in national constitutions^{xvii}, and those that do often differentiate between the status that they afford to ESCRs and CPRs^{xviii}. Regional human rights such as the European Convention on Human Rights and the Inter-American focus overwhelmingly on CPRs.^{xix} Although ESCRs have more recently been added into the EU Charter on Fundamental Rights, the Charter offers a more robust protection of CPRs than ESCRs. The differences between the legal status of CPRs and ESCRs are significant, but they are far less pronounced than the differences between those two categories of rights and TGRs. Unlike CPRs and ESCRs, TGRs have yet to be codified in a legally binding treaty and are unclear in terms of normative content. This is demonstrated by the difficulties faced by

the UN Human Rights Committee and regional organisations when addressing alleged violations of such rights. Indeed, relatively few states have sought to enshrine and uphold such rights, and when they have the rights have been framed within national constitutions as individual as opposed to collective rights, as is the case with the right to peace in Costa Rica.^{xx}

International human rights law is developed, promoted and protected at the universal level through the UN Human Rights Machinery. From an idealist perspective, as a universal organisation the UN is best placed to develop, monitor and protect rights across all regions and countries. That machinery includes a universal body – the Human Rights Council – treaty-based bodies, Special Procedures mandate holders and the Office of the High Commissioner for Human Rights. Although the scope and jurisdiction of each body varies, the interrelationship between them enables effective monitoring, fact-finding, recommendations and technical assistance for states in relation to different human rights obligations. In order to examine the expansion of international human rights standards, we focus on one aspect of that machinery - the Special Procedures system.

Special Procedures is a system of independent experts appointed for fixed terms to examine either human rights generally within a specific country or one thematic right across the world. Mandates are almost exclusively created by states members of the Human Rights Council^{xxi}, which means that such processes are shaped as much, if not more, by political than by legal objectives. Mandate holders are independent both of the United Nations and of their sending states and, at least in theory and in the majority of cases, are experts either on human rights generally or on a specific aspect of IHRL. Mandate holders promote human rights through monitoring, fact-finding reporting and providing recommendations. They undertake country visits and engage with non-state actors, national human rights institutions and victims of violations. Although countries choose whether or not to allow mandate holders

into their territories, the role of Special Procedures is an intrusive one as they very publicly present their findings as to weaknesses in states' compliance with human rights.

3 Methodology

When examining countries' voting records, a number of factors are relevant including membership of regional groups, state alliances, vote trading and foreign policy considerations. While it is difficult to assess how much each factor contributes to a given vote in the Human Rights Council it is clear that state alliances in particular play a crucial role in the UN human rights machinery, often providing strong vehicles for collectively promoting human rights ideologies. Alliances are based on regional and political connections. States with similar forms of governance are frequently allied through regional groups, political blocs or both. The Latin American and Caribbean Group (GRULAC) regional group largely consists of states with weaker democracies often owing to a recent history of military rule within many of those countries. The Organisation of Islamic Cooperation (OIC), a political bloc, has many members with dictatorial or autocratic regimes or countries that only very recently, since the beginning of the 'Arab Spring' in 2011, have seen public uprisings and movement towards democracy. The Western European and Others Group consists of liberal democracies and there is a significant overlap between membership of that regional group and membership of the European Union political bloc. Forms of government and their ideologies play a crucial role in the political alliances between states. The growth in number and power of states from the Global South has resulted in a significant shift in world politics with the result that those countries, groups and blocs are now able to dominate proceedings within most international institutions. That ability to dominate means that those countries are able to promote and impose their own political ideologies and objectives within those fora.

The impact of regional groups and political blocs has been documented by legal scholars^{xxii} and political scientists^{xxiii} and those alliances have used various tactics to promote their own objectives on human rights.^{xxiv} The current composition of the Human Rights Council, with proportionate geographic representation, results in the African and Asian Groups together holding an overall majority^{xxv}, and the political alliances of developing states through the Non-Aligned Movement^{xxvi} and Islamic countries through the OIC^{xxvii} dominate proceedings. The predominant forms of governance within, and types of national interests typically pursued by, states members of those groups and blocs necessarily impact upon the emphasis that the Council places on particular types of rights. This has been demonstrated in particular through the Council's creation and renewal of Special Procedures mandates and the manner in which there has been a shift away from focusing on CPRs owing to the proliferation of ESCR and TGR mandates over the past two decades. What we are concerned with, however, is the form of governance within each state supporting or promoting each type of right.

3.1 Categorising States' Governance

In order to assess the impact of ideologies on the thematic rights that Special Procedures mandates are created to promote and protect, it is necessary to identify different forms of governance within states. It is therefore necessary to look at various methods for categorising individual states. One method, adopted by Lebovic and Voeten^{xxviii}, is to use Political Terror Scale values issued by the State Department of the United States^{xxix}. Although those scores carry significant weight when ranking countries, they are of greater interest to a US, rather than a global, audience. Similarly, using European Union assessments of individual states might limit the applicability of, or at least interest in, this study. We deemed it most appropriate to use a generally-accepted ranking system created and deployed by an established NGO.

Freedom House^{xxx} has long provided rankings based on states' governance^{xxxii}, which is directly applicable to this research. Although some criticism has been levelled against that organisation^{xxxiii}, it is widely-esteemed and oft-cited. Freedom House divides all states into categories of 'Free', 'Partly Free' and 'Not Free' based on observance of civil and political rights. Obviously this categorisation is based on liberal democratic ideology, which places emphasis on that particular category of rights. As will be shown, countries classified as Free (F) are, at least nominally, liberal democracies from across the world; Partly Free (PF) countries include a broad range from near fully-fledged to emerging democracies; while Not Free (NF) states are governed by autocratic, dictatorial and repressive regimes.

Freedom House conducts annual 'comparative assessments of global political rights and civil liberties'^{xxxiii} and determines country rankings based on scores collectively grouped into those three categories. Countries are evaluated on both political rights and civil liberties, with scores given out of 7. The combined scores for free countries are between 1 - 2.5; partly free countries score between 3 - 5; and not free countries score between 5.5 - 7. A country's ranking is not necessarily static; several countries have had their rankings changed over the years, depending on the prevailing political climate at any given time. Similar categorisation has occurred from other institutions, such as The World Bank^{xxxiv}, which also seek to break down state institutions according to governmental indicators (including human rights compliance) in order to compare, measure and classify forms of governance. Using those categorisations, we can loosely term these states 'liberal democracies' (F), 'emerging democracies' (PF) and 'autocratic or repressive regimes' (NF).

Human rights ideologies are intrinsically linked to the national government and form of governance. There are political as well as governance reasons for countries' human rights ideologies. Not Free and Partly Free governments are less likely to adhere to CPRs than Free states. The form of governance of NF states itself often is maintained by violating CPRs such

as the freedoms of assembly, association and expression and in particularly oppressive countries, violations will also include systematic torture and deprivation of the right to life. Our aim is to explore how those different forms of governance impact upon the development of human rights at the international level. Our methodology does not allow us to establish causality in patterns between type of governance and voting record, yet any correlation can be indicative of a significant relationship especially if supported by other factors pointing in that direction.

3.2 Categorising The Mandates

As previously discussed, Special Procedures is comprised of individual mandates that focus either on a specific country or on a thematic right. Although thematic mandates may cover different human rights obligations, they largely can be divided according to the three categories of rights^{xxxv}: Civil and Political Rights (CPRs); Economic, Social and Cultural Rights (ESCRs); and Third Generation Rights (TGRs). Those categories of rights are useful for exploring the expansion of Special Procedures over the past twenty years and for understanding the potential motivations of states for creating newer mandates.

When categorising the mandates we look first at whether the specific mandate relates to a right in an existing human rights treaty covering a particular category. Thus for instance freedom of expression and opinion is protected by Article 19 ICCPR and the Special Procedure Mandate relating thereto should therefore clearly be categorized as CPR, whereas the right to ‘the enjoyment of the highest attainable standard of physical and mental health’ can be found in Article 12 ICESCR and the SPR mandate thereon should therefore be labelled as an ESCR one. Certain other thematic mandates are more difficult to categorize especially since TGRs are not defined and have yet to be codified in international law. It

should also be noted that certain mandates might take into account both aspects of CPRs and ESCRs.^{xxxvi}

3.3 Mapping the Data

Empirical research on states' voting records regarding Special Procedures mandates enables us to determine which states are promoting CPR, ESCR and TGR mandates respectively. The research focuses on voting records for Special Procedures thematic mandates created under the former Commission on Human Rights and its successor body the Human Rights Council. Each mandate has at least one resolution creating the mandate and all but the newest ones, such as Freedom of Assembly^{xxxvii} and a Democratic and Equitable International Order^{xxxviii}, or those that have been discontinued^{xxxix} have resolutions renewing the mandates. Generally, thematic mandates are renewed every three years, although some have a shorter period of duration specified in the original resolution creating the mandate. The Council considered all mandates as part of its Review, Rationalisation and Improvement process^{xl}, and therefore renewed the mandates as part of the transition from Commission to Council regardless of whether a mandate's term of duration had expired.

It must be noted that the original resolution creating a mandate is often more contentious, in terms of the debates surrounding the resolution and the vote, than occurs for subsequent renewing resolutions. This may be a case of countries not wishing subsequently to revisit previous discussions and debates. Occasionally a renewing mandate is contentious in terms of discussions and votes but this often occurs where countries, groups or blocs seek to alter the mandate, as occurred with the 2008 renewing resolution on Freedom of Expression.^{xli} That mandate was created in 1993^{xlii} and had been in existence between then and 2008. In that year, Canada proposed the renewing mandate. The OIC tabled an

amendment that called for an additional operative paragraph requiring the mandate holder to examine instances where ‘the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination’.^{xliii} This was clearly targeted at an ongoing objective of creating a new right for people not to have their religion defamed.^{xliv} That issue had been raised elsewhere including at conferences and within UN bodies. Canada, in light of the broader context in which the amendment was tabled as well as the fundamental impact that it would have on the right to freedom of expression, raised considerable objections to the amendment.^{xlv} It insisted that the amendment would fundamentally change the mandate holder’s role from promoting to policing the exercise of freedom of expression.^{xlvi} Countries like Slovenia, Brazil and India, alongside the usual Western states, asserted that this amendment would restrict the very right that the mandate sought to protect and promote.^{xlvii} The mandate was adopted with the amendment despite the debate surrounding that renewing resolution.^{xlviii} By 2011 and the mandate’s next renewal^{xlix}, the countries that opposed the amendment did not seek to repeat the 2008 discussions, which demonstrates the inference that states choose not to re-engage in previous battles once they have clearly been lost.

In order to determine which states promote and support different type of mandates we examine voting records on the mandates. That analysis includes which countries sponsored resolutions owing to that being an indicator of promoting rather than just supporting. The mandate on Toxic Dumping, for example, had a significant number of sponsors (thirty-nine) that included twenty-nine African countries. It is fairly clear why African states promoted this mandate, as that region is the one most affected by toxic dumping.¹ The mandate on countering terrorism, on the other hand, was sponsored by sixty-eight countries most of whom were not affected by the issue. However, countering terrorism was a significant political issue. Countries from the EU, GRULAC and some additional ones from WEOG were the main promoters of this mandate. Perhaps more interestingly, Egypt and Russia also

sponsored the resolution. Both of those countries had their own internal political objectives regarding terrorism alongside foreign policy objectives based on US involvement with violations of CPRs while countering terrorism.

Although any country may sponsor a resolution, only members of the Human Rights Council may vote. It is important to note that a country may not be involved in a resolution if it is neither a Council member nor a sponsor, and that a lack of involvement does not in and of itself lead to any conclusions about that state's stance on the mandate. Not all resolutions are adopted by vote – where there is consensus there is no voting record per se, but it is clear that no state felt strongly enough to call for a vote in which they could register their abstention or disagreement with the mandate. Often such mandates are on issues that are universally recognised as crucial human rights, even if countries systematically violate those rights within their own territories. Examples include the mandates on the Sale of Children, Child Prostitution and Child Pornography^{li}, Arbitrary Detention,^{lii} Violence Against Women,^{liii} and Contemporary Forms of Slavery.^{liv}

Countries may abstain from the vote, which in itself can be quite telling. Abstentions are a method of registering non-acceptance of a particular provision or of the need for a mandate even if a country agrees with the right itself. That occurred during the vote on the 2008 renewal resolution for the mandate on freedom of expression and opinion; countries that supported the right but not the alteration of the mandate abstained during the vote in order neither to undermine the mandate nor to support the tabled amendment.^{lv}

When looking at votes and sponsors we used Freedom House's categorisation of F, PF and NF for the particular year of the resolution. We identified how many F, PF or NF states voted for, against or abstained in the vote on each resolution. States such as Brazil, India, Indonesia and Ukraine saw their classification change over time and this then alters the

numbers of F, NF and PF states on the Commission/Council. Also it must be noted that with elections every year, a third of the Council's members change and therefore there is always a difference in terms of the numbers of members with different types of governance sitting on the body. Geographic proportionate representation at the Council means that thus far there has almost always been a majority of NF and PF combined, but there is not always a majority of any one category of governance.

3.4 Research Findings

Special Procedures focused almost exclusively on CPRs until 1995 when the Commission on Human Rights created a TGR mandate on Toxic Dumping.^{lvi} Since then, there has been a movement towards expanding the system to include ESCRs and TGRs adding some 12 ESCR mandates^{lvii} and 4 TGR mandates.^{lviii} It is important to note that these figures do not so-called hybrid mandates introduced since 1995, namely Human Rights of Migrants, Minority Issues, and Discrimination of Women in Law and in Practice. Mapping the data enables us to assess the extent to which forms of governance impacts upon states' approaches to the expansion of the system.

The first two ESCR mandates were on Poverty^{lix} and Education^{lx}, both created in 1998. Between 1995 and 2013, 5 TGR mandates and 12 ESCR mandates have been adopted. In that time there have been 4 new CPRs as traditionally understood^{lxi}, starting with Impunity in 2004^{lxii}. There have also been 8 mandates^{lxiii}, starting with Migrants in 1999^{lxiv}, where the resolution largely seeks to promote and protect CPRs but only in relation to a specific group of people. The types of mandates have changed and expanded rapidly over almost 20 years. The purpose of our empirical research is to explore whether the system's expansion has been impacted by the type of governance within states that have been at the fore of promoting or

supporting new mandates. The impact of those newer mandates will be explored in Section 5. Various reasons and motivations might be inferred from those actions, as will be explored in Section 6.

3.5 Empirical Data on Voting Records

The data we have used is from 1980 to the end of 2013. Of the 19 CPR mandates^{lxv}, 4 resolutions creating the mandates were adopted by a vote^{lxvi}. On average 20 F countries, 9 PF and 5 NF voted for the resolutions; 0 F countries, 0 PF and 2 NF voted against; and < 1 F countries, 2 PF and 6 NF abstained^{lxvii}. As a percentage of the vote, on average 58 percent F countries, 15 percent PF and 27 percent NF voted for the resolutions; and 7 percent F countries, 26 percent PF and 67 percent NF abstained. No PF states voted against a CPR mandate^{lxviii}. Of the remaining 15 mandates adopted without a vote, on average 24 F countries, 9 PF and 4 NF sponsored the introduction of the resolutions. It is clear from this data that F countries are far more likely to promote or support CPR mandates than both PF and NF states.

For the 12 ESCR mandates^{lxix}, 6 resolutions creating or renewing the mandates were adopted by a vote^{lxx}. On average 16 F countries, 13 PF and 12 NF voted for the resolutions; 7 F countries, 0 PF and 0 NF voted against; and 2 F countries, 2 PF and < 1 NF abstained^{lxxi}. As a percentage of the vote, on average 35 percent F countries, 33 percent PF and 32 percent NF voted for the resolutions. No PF or NF countries have ever voted against the creation of an ESCR mandate. Of the remaining 5 mandates adopted without a vote, on average 20 F countries, 8 PF and 5 NF sponsored the introduction of the resolutions. Thus while F states have been marginally more likely to support ESCR mandates than PF and NF states they have also been by far the most likely to oppose and vote against such mandates. This suggests

that F states' attitude towards ESCR is mixed and very much dependent on the specific nature of the right in question, whereas PF and NF states seem to view all ESCRs as priority. The difference in data between CPR and ESCR mandates is clear; NF and PF states are far more likely to promote or support ESCR than CPR mandates. F countries are often supportive of ESCR mandates but are also more likely to vote against or abstain on ESCR than CPR mandates.

For the 5 TGR mandates,^{lxxii} 3 resolutions creating the mandates were adopted by a vote.^{lxxiii} On average 7 F countries, 14 PF and 12 NF voted for the resolutions; 13 F countries, < 1 PF and < 1 NF voted against; and 2 F countries, 2 PF and < 1 NF abstained. As a percentage of the vote, on average 21 percent F countries, 43 percent PF and 36 percent NF voted for the resolutions; 93 percent F countries, 5 percent PF and 2 percent NF voted against; and 31 percent F countries, 29 percent PF and 40 percent NF abstained. The data again shows ideological divisions between forms of governance and types of mandates that states promote or support. NF and PF states are more likely to push for TGR mandates whereas F states overwhelmingly register dissent through voting against the resolutions.

4. Analysis

Our research findings^{lxxiv} show that Free states will almost always support and almost never vote against CPR mandates, whereas their record on ESCRs is more mixed and the record on TGRs shows that F states are decidedly skeptical about this new generation of rights.^{lxxv} Not Free states are most inclined to vote for TGRs and, to a lesser extent sponsor ESCR mandates, but rarely promote CPRs even though they do at times vote for those mandates. Partly Free states are most inclined towards TGRs but also do promote and support ESCRs. Although it is not appropriate here to explore all of the relevant mandates and voting records,

it is interesting to demonstrate these findings with reference to particular resolutions and to the countries that promoted or sought to undermine different mandates. This will inform and illustrate our analysis^{lxxvi} of these research findings.

The 2000 resolution on the CPR mandate of Human Rights Defenders^{lxxvii} was adopted by 50 votes in favour,^{lxxviii} 0 against and 3 abstentions - China, Cuba and Rwanda, all three NF states with poor records of implementing rights for Human Rights Defenders.^{lxxix} Unsurprisingly, given its own record of harassing and imprisoning human rights defenders, China asserted that the mandate was unnecessary, claiming that Human Rights Defenders were adequately protected by other mandates thus rendering the new mechanism obsolete.^{lxxx} The Cuban delegate went further, insisting that the mandate was not necessary owing to:

‘[T]he guise of “human rights defender” was often assumed by those who were bent on subversion. In Cuba, the United States subcontracted so-called human rights defenders to channel extensive funding to subversives.’^{lxxxi}

The CPR mandate on Freedom of Association was adopted in 2010^{lxxxii} without a vote. What is interesting about this mandate is that there were 63 co-sponsors: 47 F^{lxxxiii}, 15 PF^{lxxxiv} and 1 NF^{lxxxv}. During discussions about the resolution statements made by NF states demonstrated their strength of feeling against the mandate. During discussions, a number of NF countries that did not sponsor the resolution made statements that sought to undermine the mandate. China asserted that the right contained non-absolute obligations and that the mandate should take into account differing opinions, particularly of developing countries.^{lxxxvi} Russia, Libya and Pakistan all insisted that mechanisms such as CERD^{lxxxvii} and the International Labour Organisation already adequately addressed the substantive issues covered by the mandate.^{lxxxviii} They argued that the new mandate would simply further reduce funding and resources for Special Procedures and the Council.^{lxxxix} This is an interesting point to note

owing to the ongoing discussion about whether TGRs and some ESCRs mandates were being created simply to dilute rather than enhance the Special Procedures system.^{xc} Cuba, mirroring its stance on the mandate on human rights defenders, expressed its opposition to the mandate by arguing that some of the co-sponsors

‘criminalise the movements of national liberation that fought against colonialism and apartheid [and funded] activities in other countries that are unconstitutional . . . some of the co-sponsors have xenophobic parties who are racist in nature . . . who have organisations that fight against the dignity of other human beings.’^{xc1}

The ESCR mandate on Extreme Poverty was created in 1998^{xc2} and adopted with 51 votes in favor and 1 against. The votes in favor demonstrate participation across the board, with 25 F^{xc3}, 16 PF^{xc4} and 10 NF^{xc5}. The US was the only country to vote against this mandate, citing ‘budgetary concerns’ as its reason for not supporting the mandate.^{xc6} That vote can be interpreted in light of the US approach to ESCRs; the vote may be viewed as ideological, particularly owing to this being the first ESCR mandate and therefore the first opportunity for the US to promote its ideology within the Special Procedures system. Opposition to the mandate can also be understood in light of the mandate’s substance not falling directly within the prism of human rights. Indeed, the mandate holder’s reports and activities have largely focused on financial institutions and programs at the national, regional and international levels.

The ESCR mandate on Foreign Debt created in 2000^{xc7} proved more contentious than the one on Extreme Poverty. 30 countries voted for the mandate^{xc8}, 15 against^{xc9} and 7 abstained.^c 6 F^{ci}, 14 PF^{cii} and 10 NF^{ciii} voted for the mandate, while all 15 countries opposing the countries were F and came from the EU and its regional allies in WEOG. The same bloc voting occurred in the renewal resolutions in 2008^{civ} and 2011^{cv}; a North-South^{cvi} divide is

clear regarding this mandate. During discussions on the 2008 resolution, the EU expressed unease with the mandate claiming ‘pontification of minimum standards’.^{cvii} In 2011 the US asserted that the Council is ‘technically incompetent’ to address issues like foreign debt, and that ‘rules other than human rights laws are more relevant’.^{cviii} These comments are crucial for understanding opposition both to this mandate and to the more general expansion of Special Procedures to include so-called rights that focus on other areas than ones traditionally associated with human rights and that often lack support in binding treaties. The concern was also raised that such a mandate would shift focus and funds away from other more pressing and serious human rights violations.^{cix}

The TGR mandate on International Solidarity was created in 2005.^{cx} The preamble to mandate sets out that it:

‘Recognizes that the so-called “third-generation rights” closely interrelated to the fundamental value of solidarity need further progressive development within the United Nations human rights machinery in order to be able to respond to the increasing challenges of international cooperation in this field.’^{cxii}

Cuba introduced the resolution by saying that it is ‘aimed at promoting the recent development of the rights of the third generation, such as the right to peace, the right to development and the right to a healthy environment.’^{cxiii} The voting patterns on the resolution creating the mandate and the two renewal resolutions^{cxiiii} show clear bloc voting. WEOG consistently voted against these resolutions^{cxiv}, while GRULAC, which has a significant representation of PF states^{cxv}, voted in favor^{cxvi}. The EU insisted that Special Procedures ought to focus on the duties of states to their citizens rather than of states to other states.^{cxvii} During discussions on the 2011 resolution, the EU argued that the moral nature of the concept of international solidarity makes it difficult to transform it into a legally valuable and binding

human right.^{cxviii} It argued that the lack of clear definition of the entitlements of the right-holders and responsibilities of the duty-bearers means that the so-called right risks being redundant.^{cxix}

The TGR mandate on a Democratic and Equitable International Order was created in 2011^{cxx}. It was adopted by 29 votes in favor^{cxxi}, 12 against^{cxxii} and 5 abstentions^{cxxiii}. The abstentions largely came from Latin America^{cxxiv} while EU and WEOG once again voted against this mandate. PF^{cxxv} and NF^{cxxvi} states account for 23 of the 29 votes in favor. During discussions on the resolution, Cuba introduced the mandate as based on a need for international cooperation for realization of ‘economic and social advancement of all peoples’^{cxxvii}. The EU asked for an amendment that also focused on democracy at a national level and plurality of political parties, as well as insisting that the mandate should focus on freedom of expression.^{cxxviii} The EU insisted that such amendments would at least make a contribution to human rights^{cxxix}, echoing previous concerns that such mandates are far-removed from the human rights matrix.^{cxxx} Cuba responded by accusing the EU of bad faith, politicization and double standards.^{cxxxi} Similarly, when the US voiced concerns about the mandate^{cxxxi}, Cuba responded by accusing the US of genocide of indigenous people^{cxxxi} as opposed to addressing the substance of the issues raised.

Alongside analyzing votes on the mandates, the research charts the voting records of individual states. Although this analysis goes beyond the scope of this particular article, there are interesting differences between voting patterns of states with the same category of governance. Within the Free category, Canada uses its vote to take a demonstrative stance supported by ideological comments during discussions. Brazil takes a different approach, generally voting in favor of all rights. Canada is strongly allied with WEOG countries and has been known to take a liberal ideological stance at the Human Rights Council.^{cxxxi} To a large extent, Brazil is the F representative of the Global South and its voting record can be

understood accordingly. Within the PF category, Nigeria can be contrasted with Mexico. The two countries' regional^{cxxxv} and political^{cxxxvi} alliances arguably have influenced their voting records, with Mexico abstaining on several occasions^{cxxxvii} on issues more likely to impact upon Nigeria and/or its allies^{cxxxviii}. In the NF category, Cuba and Russia have taken different approaches to Special Procedures despite supposed similarities between their political ideologies.^{cxxxix} Cuba has been at the fore in terms of championing TGRs and fits well within the general analysis on NF states. Russia tends instead to vote with its political allies but has voted with WEOG on mandates such as Toxic Waste and Human Rights Defenders, which implies that there are broader political objectives underlying its voting record.

Impact of mandate proliferation

The research findings set out above demonstrate that some countries with poor human rights records, and which are classified as PF or NF, are among the active drivers behind the proliferation of rights expanding the focus of mandates from a more narrow focus on CPRs to ESCRs and also TGRs.

Many ESCR mandates undoubtedly were introduced and voted for out of genuine concern about the very real and pressing problems of international concern such as global poverty, inequality, food crisis and the stark differences in living standards between developed and developing countries. However, the significant differences in voting patterns between F, PF and NF as well as the examples of how specific PF and NF states have utilized ESCR and TGR mandates (explored in more detail below), suggest that a minority of active states have more mixed or outright nefarious agendas when it comes to mandate proliferation. By inflating the number and scope of human rights addressed by mandate holders the focus of Special Rapporteurs will often be less critical and violations oriented.

Despite the formal UN wide agreement on the ‘indivisibility’ of all human rights, the nature of ESCRs and in particular TGR mandates is often very different from CPR ones. CPR mandates tend to have a more narrow focus and deal with rights whose normative content are relatively well-established, where gross and systematic violations are immediately apparent and identifiable and closely associated with authoritarianism and thus much more likely to cause embarrassment, scrutiny and condemnation. Despite detailed general comments, an increase in national constitutions with justiciable ESCRs and the adoption of an optional protocol to the ICESCR, ESCRs tend to be more abstract and identification of individual violations are often less clear cut than when it comes to systematic violations of CPRs. In the words of Emilie M. Hafner-Burton ‘there is no consensus on how exactly to measure these violations [of ESCRs]’^{cx1}.

Outside of situations where governments forcibly withhold food^{cxli}, engage in systematic discrimination or adopt policies of large scale forced evictions, it is often much more difficult to determine when ESCRs have been violated and what government policy or (in)action caused poverty, housing crises or food shortages. Moreover, governments accused of violating ESCRs will often be able to argue that resource constraints hinder them from fulfilling these rights, and because most states do in fact spend resources on education, health and housing, governments will often be able to point to accomplishments that can be used to demonstrate commitment to ESCRs and which in turn invites praise from both Special Procedures and other states.

TGRs differ from both CPRs and ESCRs in often placing states or peoples rather than individuals as right holders as well as being drafted in a very vague and unclear manner with no immediately clear normative content and thus little opportunity for Special Rapporteurs to identify and expose gross and systematic violations. This development also means that mandate holders are required to address matters falling outside of the human rights matrix

and thus beyond their expertise. Secondly, mandate holders face difficulties in assessing compliance with the substantive rights. There is no method for assessing whether a state complies with the right to international solidarity or just international order – those rights are not enshrined in existing legally binding conventions nor are they properly defined. Accordingly there seems to be little substantive merit to these types of TGR mandates. CPR mandates, on the other hand, focus on rights such as freedom of expression, religion, assembly, and association, which are more easily definable and therefore it is often more clear when states violate them in a systematic fashion.

The mandate on Foreign Debt is one example of the contrast between TGR and other mandates. The Foreign Debt mandate holders have undertaken fifteen country visits during the thirteen-year duration of the mandate.^{cxlii} Almost all CPR mandate holders undertake at least three if not more country visits per year. Indeed, prior to the creation of the Council, some mandate holders conducted many more visits. Country visits enable fact-finding, monitoring and dialogues with national human rights activists and victims of violations. With the expansion of Special Procedures and the dilution of available resources, the number of country visits has been reduced for all mandate holders. Despite this, a ratio of 0.6 visits per year is significantly lower than almost all other mandates. The mandate holder on Foreign Debt struggled to convince states of the need, or even ability, to monitor and fact-find within their territories. The vague and broad provisions within the mandate, coupled with the lack of tangible victims owing to ill-defined so-called ‘rights’, made both country visits and reports more or less meaningless and devoid of impact. This demonstrates the extent to which the mandate on Foreign Debt is misplaced, at best, or even redundant within the human rights matrix. Yet the mandate draws logistical, research and other support from OHCHR and requires time to be devoted to it during Human Rights Council sessions. Moreover, it shifts

the focus away from tangible victims of tangible rights, and therefore it is clear why such a mandate is attractive for states seeking to dilute or undermine the system.

It is important to explore not only the increasing numbers of mandates and which states support or promote mandates on different types of rights, but also how states then use those mandates to pursue their own political objectives. Once created, these newer mandates have significant impact not only in terms of changing the nature of what constitutes a right but also in terms of enabling states to avoid their obligations to uphold traditional rights.

In order to understand the practicalities of this broader impact we shall explore how mandate holders on certain CPRs, ESCRs and TGRs have been received by the state that exemplifies the politicized motives for the proliferation of mandates. As previously discussed, Cuba is responsible for introducing six new thematic mandates, all of which address ESCRs or TGRs. From the outset, this activity could be interpreted as evidence of a deeply held Cuban commitment to human rights and their effective protection through the UN system. Yet, as we have seen in terms of Cuba's approach to the mandate on human rights defenders and as we shall explore further, Cuba's approach to and relationship with Special Procedures is a lot more complicated than suggested by the number of mandates it has introduced.

In the 1990s Cuba allowed the visits of the Special Rapporteurs on Mercenaries and Violence against Women, but ignored a request and two subsequent reminders from the Special Rapporteur on Independence of Judges and Lawyers. In 2002 The Secretary General appointed a Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba. Yet Cuba never recognized the mandate nor did Cuba allow the representative access to the country. In 2007 a majority of the HRC decided to discontinue the country specific mandate on Cuba. In 2006 Cuba ignored a request from the

Special Rapporteur on freedom of religion and in 2011 it ignored a request from the Special Rapporteur on freedom of association and assembly. In 2009 Cuba agreed to a visit by the Special Rapporteur on Torture yet the Special Rapporteur had to send a reminder in 2013 and the visit is yet to be carried out. Yet in 2007 for the first time in 8 years Cuba accepted a request from a Special Procedures mandate holder, namely the Special Rapporteur on the Right to Food,^{cxliii} a mandate created through the sponsorship of Cuba. That Rapporteur held several meetings with high level members of the Cuban government and issued a report to the HRC which generally praised Cuba's human rights record on the right to food and refrained from mentioning or criticizing the Cuban government's systematic violations of civil and political rights^{cxliv}.

Accordingly, while Cuba has been supportive of and willing to cooperate with mandate holders on ESCRs and TGRs it has often voted against CPR mandates and systematically refused cooperation with Special Rapporteurs on CPRs^{cxlv}. There is also some evidence of rights proliferation creating 'cross-fertilization' between SPRs and the Universal Periodic Review. Thus in 2013 the Democratic People's Republic of Korea encouraged Cuba to '[p]romote the development of third generation rights, in particular the value of international solidarity.'^{cxlvi} Of course the mandate on International Solidarity was introduced by Cuba.

It is not just Cuba that uses ESCR and TGR mandates for political objectives unrelated to or that undermine human rights. There are countries that commit egregious violations of CPRs but use ESCR and TGR mandates as a smokescreen to divert attention away from those gross and systemic violations. Such states welcome in ESCR and TGR mandate holders and then point to positive reports as 'evidence' of their human rights 'commitment'. Syria provides a clear example of such behavior. In the summer and fall of

2010, less than a year before the uprisings against Bashar Al-Assad that would set off the current bloody civil war in Syria, the Special Rapporteurs on the right to food^{cxlvii} and health respectively were invited to visit Syria. These mandate holders met with several members of the Syrian government and issued report that were generally praising the human rights records of Syria but were silent on the repressive nature of the regime^{cxlviii}. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stated that:

‘Syria’s commendable work in the last three decades to improve the health system as a whole, and its commitment to ensure access to healthcare for all’ with regard to concerns the Special Rapporteur ‘noted with dismay that smoking is still highly prevalent in Syria’.^{cxlix}

Prior to the visit of the Special Rapporteur on the Right to Food the Special Rapporteur on Torture had three requests for visits in 2005, 2007 and 2010 ignored, whereas the Special Rapporteur on human rights defenders had two requests in 2008 and 2010 ignored. Syria has also ignored requests from the Working Group on arbitrary detention and the Working Group on enforced disappearances, whereas agreements were made with the Special Rapporteurs on summary executions and Internally Displaced persons as well as with the Working Group on Mercenaries yet none of these agreements have been honored.

The significant differences in voting and sponsorship between F, PF and NF states suggest that Special Procedures mandates are no longer being used solely to protect and promote human rights. Instead, that system has become yet another political and ideological battleground upon which F, NF and PF countries seek to further their own objectives. The constant enlargement of the subject matter of thematic mandates, particularly TGR ones, has shifted the focus from protecting tangible rights of tangible victims of abuses and onto using

the human rights matrix to address broader and more abstract issues only tangentially related to human rights and often ill-suited for voicing criticism of particular governments abuse of specific citizens.

Mandate proliferation also has a significant impact on the technical and logistical way in which the Special Procedures system operates. As we have seen the Special Procedures system has expanded rapidly over the past two decades, yet the resources available have not increased in line with that expansion. As such, mandate holders today are unable to conduct as many country visits as in previous years and are allocated fewer human resources in terms of logistical and other support from OHCHR. Almost inevitably the continued quantitative expansion of mandates without accompanying increases in resource allocation will negatively impact the quality of the work undertaken by individual mandate holders. The increased number of mandate holders results in a preponderance of reports that not only need to be translated and disseminated but also that need to be discussed in interactive dialogues at Human Rights Council sessions. The net result is that there is less and less time and attention devoted to any one mandate, thus undermining the impact that mandates holders may have on the protection and promotion of specific rights. Taking into account that all of the UN human rights activities are allotted a mere 3 percent of the total UN budget, it is clearly unrealistic and unfeasible to expect the Special Procedures mandate holders to make any significant contribution to topics such as global poverty, climate change, foreign debt that are already addressed by specific international institutions with much more directly relevant expertise and solid funding.

5. Concluding Observations

Rights proliferation is a significant concern and increasingly is being discussed within the human rights community. Special Procedure mandates, despite being ‘soft law,’ provide a microcosm for the issue of rights proliferation within the international arena. Exploring the creation of these mandates enables greater understanding of whether there is a link between forms of governance and the types of rights and mandates that states promote.

The research findings suggest that there is indeed a *prima facie* link between forms of governance and the types of rights that states support or actively promote through the creation of Special Procedures mandates. Factors such as regional and bloc voting as well as vote trading, diplomatic negotiations and foreign policy considerations unrelated to human rights undoubtedly play a significant role in establishing voting patterns. However, the link between governance and voting patterns on SPRs seems to have flown under the radar of practitioners and academics but these preliminary findings suggest that they must be included as a factor when understanding issues including the proliferation of SPR mandates.

It is also apparent from the research findings and our analysis that proliferation of mandates is having a negative impact upon the special procedure system. At the most basic level, because there have not been increased resources to match the increasing number of mandates, those mandate holders focusing on tangible violations of tangible rights are able to conduct fewer country visits, produce fewer reports and recommendations, and have less time to discuss their findings at the Human Rights Council. For example, in the OHCHR financial statement for 2012, of the total earmarked funding for specific mandates only 24 percent was allocated to CPRs, while ESCRs accounted for 44 percent and ‘Groups in Focus’ received 32 percent.^{cl} Allocation of funds to CPR mandates was slightly higher in 2011, accounting for 36 percent, though still significantly trumped by ESCRs, which accounted for 46 percent (mandates on ‘Groups in Focus’ receiving 19 percent of earmarked funding).^{cli} Another key issue arising from mandate proliferation is that the diversion of resources away from

traditional rights and onto substantive matters that ought to be addressed by bodies other than human rights institutions has shifted the focus away from individuals as rights-holders. The newer mandates are designed in such a way as to be able to criticize countries for policy programs or interstate relations, or indeed to criticize international institutions. The focus is being shifted away from the relationship between states and individuals and onto examining state policies and foreign relations. Indeed there is no method for assessing compliance with many of the newer rights, particularly TGRs, which leads to problems in terms of protecting and promoting rights. These, and other, issues could be potential motivations for some states voting for newer mandates if those countries have nefarious reasons for wishing to undermine, dilute or significantly alter the international human rights system.

It becomes apparent, therefore, that there is a strong need for the human rights community not to view Special Procedures mandates in a vacuum and to take notice of what is occurring within that system. The creation of new mandates is just one example of rights proliferation within the international arena, and understanding how and why those mandates are being created and the broader impact that they have is key to the ongoing debates about the changing nature of international human rights law.

i Senior Lecturer, Law School, University of Birmingham

ii Co-founder and Principal Investigator, The Freedom Rights Project.

iii Ted Piccone and Marc Limon, *Special Procedures: Determinants of Influence*, UNIVERSAL RIGHTS GROUP, 2 (2014) <http://www.universal-rights.org/reports/policy-reports>.

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- iv Karel Vasak, *Les différentes catégories des droits de l'homme*, in LES DIMENSIONS UNIVERSELLES DES DROITS DE L'HOMME, Vol. I. (Lapeyre, de Tinguy & Vasak eds.,1990). Although Donnelly insists that *all* human rights require collective action for realization (Jack Donnelly, *The Theology of the Right to Development: A Reply to Alston*, 15 CAL. W. INT'L L.J. 521 (1985).)
- v *Id.*
- vi International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316, (Dec. 16, 1966).
- vii International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (Dec. 16,1966).
- viii Currently, there does not yet exist one consolidated international convention on this category of rights, albeit some have been enshrined within treaties.
- ix Ideologies can be defined as patterned clusters of normatively imbued ideas and concepts, carrying claims to social truth, as for example expressed in liberalism, conservatism and socialism. *Cf.* PAUL JAMES & MANFRED STEGER, *GLOBALIZATION AND CULTURE VOLUME 4: IDEOLOGIES OF GLOBALISM* (Sage Publications Ltd 2010).
- x *Supra* note iv.
- xi *Supra* note v.
- xii As well as difficulties in identifying concrete obligations under ESCRs
- xiii Michael J. Dennis & David P. Stewart, *Justiciability of economic, social and cultural Rights: Should there be an international complaints mechanism to adjudicate the rights to food, water, housing, and health?*, 98 AM. J. INT'L L. 462 (2004); DANIEL J. WHELAN, *INDIVISIBILITY OF HUMAN RIGHTS: A HISTORY* (2010).
- xiv *E.g.* 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and

cultural systems, to promote and protect all human rights and fundamental freedoms.’ (World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc.

A/CONF.157/23 (July 12, 1993).)

xv *E.g.* ‘Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights . . .’ (*Supra* note v, Preamble.)

xvi *Supra* note iv.

xvii Even where Western governments have taken a position that supports the equal status and importance of ESCRs they frequently fail to take legislative, administrative or judicial measures based explicitly on the recognition of specific ESCRs as international human rights or to provide effective redress for alleged violations of those rights. This is evidenced by the comparatively rare invocation of ESCRs in national systems as compared with the much more frequent invocations of civil and political treaty rights.

xviii SOCIAL RIGHTS JURISPRUDENCE EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW (Malcolm Langford ed., 2008) and Christian Bjørnskov and Jacob Mchangama, *Do Social Rights Affect Social Outcomes* (forthcoming).

xix At the time of writing in 2014 only three Western democracies – Spain, Portugal and Slovakia – have ratified the Optional Protocol to the ICESCR.

xx *See, e.g.*, E. Katz and M. Lackey, *Costa Rica as a Peaceful State: One Costa Rican Lawyer’s Odyssey v. His Nation’s Establishment*, COUNCIL ON HEMISPHERIC AFFAIRS, (Mar. 19, 2010) <http://www.coha.org/costa-rica-as-a-peaceful-state-one-costa-rican-lawyer-percentE2-percent80-percent99s-odyssey-v-his-nation-percentE2-percent80-percent99s-establishment/>; J. E. PIM, NON-KILLING, SECURITY AND THE STATE 188-190 (2013) concerning Ruling 9992-040; L.R Zamora Bolanos, *The Lowest Form of Military Aggression*, AMERICAS PROGRAM, (Aug.10, 2010) <http://www.cipamericas.org/archives/2885/>; B. Peters, *Security Without Deadly Violence, Costa Rica’s Potential as a Nonkilling State*, in J.E. PIM, NON-KILLING, SECURITY AND THE STATE 188-190 (2013) concerning Executive Order 33240-S (2006).

xxi The other, albeit rarely used, method is the creation of a special representative of the Secretary-General.

xxii U. KHALIQ, ETHICAL DIMENSIONS OF THE FOREIGN POLICY OF THE EUROPEAN UNION: A LEGAL APPRAISAL (2008); A.M. Abebe, *Of shaming and bargaining: African states and the universal periodic review of the United Nations Human Rights Council*, 9(1) HUM. RTS. L. REV. 2 (2009); N. Schrijver, *The UN Human Rights Council: A New 'Society of the Committed' or Just Old Wine in New Bottles*, 20(4) LEIDEN J. INT'L L. 812 (2007).

xxiii E.g. J.S. Nye, *UNCTAD: Poor Nations' Pressure Group*, in THE ANATOMY OF INFLUENCE: DECISION MAKING IN INTERNATIONAL ORGANIZATION 334-370 (Robert W. Cox and Harold K. Jacobson eds., 1973); G. LUNDESTAD, EAST, WEST, NORTH, SOUTH: MAJOR DEVELOPMENTS ON INTERNATIONAL POLITICS SINCE 1945 (1999); T.G. WEISS, WHAT'S WRONG WITH THE UNITED NATIONS AND HOW TO FIX IT 51 (2008).

xxiv Cf. ROSA FREEDMAN, THE UNITED NATIONS HUMAN RIGHTS COUNCIL: A CRITIQUE AND EARLY ASSESSMENT [insert page range for chapter 6] (2013).

xxv GA Resolution 60/251, paragraph 7 dictates that membership be 'based on equitable geographical distribution'. The African Group hold 13 seats, East European countries received 6 seats, GRULAC 8, Asia 13, and Western Europe and Others 7.

xxvi NAM developed from the Asian-African Conference, a political gathering held in Bandung, Indonesia, in April 1955. The conference was convened in part due to frustration by many newly independent countries unable to secure UN membership due to Cold War politics. The two then-superpowers refused to admit states seen as belonging to the other camp. Indeed no new members were admitted between 1950 and 1954 (T.G. WEISS, WHAT'S WRONG WITH THE UNITED NATIONS AND HOW TO FIX IT 51 (2008)).

xxvii The Organisation of the Islamic Conference was established in 1969 to unite Muslim countries after the 1967 War, in which Israel established control of Jerusalem. The OIC, with 57 member states, is the largest alliance of states within the UN. Membership consists of: 21 Sub-Saharan African, 12 Asian, 18 Middle Eastern and North African States, 3 Eastern European and Caucasian, 2 South American, and 1 Permanent Observer Mission (see Organisation of the Islamic Conference, *Permanent Missions of OIC Member States to the United Nations in New York* <http://www.oicun.org/categories/Mission/Members/>). Many of its members are influential

within other groups or alliances. As such, the OIC has far-reaching political power. For example, in 2006, 17 of the 47 Council member states were OIC members. Three OIC members, Algeria, Saudi Arabia and Azerbaijan, chaired the regional groups for Africa, Asia, and Eastern Europe.

xxviii Lebovic & Voeten, *The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNHCR*, 50 INT'L STUD. Q. 874-875 (2006).

xxix See <http://www.politicalterroryscale.org/download.php>

xxx Freedom House is a US-based NGO founded in 1941 to focus on civil liberties, political freedoms and democracy. See <http://www.freedomhouse.org/>

xxxi Cf. D.A. Armstrong, *Stability and change in the Freedom House political rights and civil liberties measures*, 48(5) J. PEACE STUD. 653-662 (2011) examining Freedom House's system for ranking states.

xxxii E.g. D. Giannone, *Political and ideological aspects in the measurement of democracy: the Freedom House case*, 17(1) DEMOCRATIZATION, 68-97 (2010); G.L. MUNCK, *MEASURING DEMOCRACY: A BRIDGE BETWEEN SCHOLARSHIP AND POLITICS* 31-33 (2009); N. CHOMSKY & E. HERMAN, *MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF THE MASS MEDIA* (1988).

xxxiii Freedom House, *Signature Reports: Freedom in the World* <http://www.freedomhouse.org/reports>.

xxxv Although there is no official classification, the UN informally recognizes the division for example through the OHCHR ESCR Bulletin (<http://www.ohchr.org/EN/Issues/ESCR/Pages/ESCRIndex.aspx>) provides bi-monthly updates on matters relevant to ESCRs. In these bulletins, certain Special Procedures mandates are identified and reported upon (<http://www.escr-net.org/docs/i/401556>) thus indicating a clear, albeit not 'official', categorisation by the OHCHR.

xxxvi For our exact categorization of the thematic mandates see Appendix 1.

xxxvii Freedom of peaceful assembly and of association, H.R.C. Res. 15/21, U.N. Doc. A/HRC/RES/15/21 (Sept. 30, 2010).

xxxviii Promotion of a democratic and equitable international order, H.R.C. Res. 18/6, U.N. Doc. A/HRC/RES/18/6 (Sept. 29, 2011).

xxxix Two thematic mandates have been discontinued. The mandate on Impunity, first introduced in CHR Res. 2004/72, 21 April 2004, UN Doc. E/CN.4/RES/2004/72, was discontinued after one year, as the independent expert had fulfilled his mandate of updating the ‘set of principles for the protection and promotion of human rights through action to combat immunity’. The second discontinued mandate was the independent expert/working group established ‘with a view to considering options regarding the elaboration of an optional protocol to the ICESCR,’ initially in C.H.R. Res. 2001/30, U.N. Doc. E/CN.4/RES/2001/30 (Apr. 20, 2001). The mandate was fulfilled in 2008, when the working group submitted its proposal on the text of the optional protocol to the Human Rights Committee for consideration.

xl The Council was required to ‘maintain a system of special procedures, expert advice and a complaint procedure. G.A. Res. 60/251, U.N. Doc. A/RES/60/251 ¶ 6 (Mar. 15, 2006). Schrijver notes that, prior to the Council’s creation, tensions arose regarding modifying the system (N. Schrijver, *The UN Human Rights Council: A New ‘Society of the Committed’ or Just Old Wine in New Bottles*, 20(4) LEIDEN J. INT’L. L. 812-814 (2007)). The compromise was to retain the system for the Council’s first year, and undertake a review as to whether to keep, and where necessary rationalize or improve, individual mandates.

xli Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, H.R.C. Res. 7/36, U.N. Doc. A/HRC/RES/7/36 (Mar. 28, 2008).

xlii Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, C.H.R. Res. 1993/45, U.N. Doc. E/CN.4/1993/45 (Mar. 5, 1993).

xliii Introduced by Egypt (on behalf of the Group of African States), Pakistan (on behalf of the OIC member states) and Palestine (on behalf of the Group of Arab States) in draft amendment A/HRC/7/L.39, debated on 28 March 2008.

xliv Cf. S. Parmar, *The challenge of “defamation of religions” to freedom of expression and the international human rights*, 3 EUR. HUM. RTS. L. REV. 353-375 (2009).

xlv Comments of the Canadian delegate in explanation of vote before the vote, during the 42nd Meeting of the Human Rights Council, 28 March 2008. The Audio-visual recording is available as a UN Webcast, video on-demand at: <http://www.unmultimedia.org/tv/webcast/c/un-human-rights-council.html>.

xlvi *Ibid.* ‘Instead of promoting freedom of expression, the special rapporteur would be policing its exercise. This would be a fundamental change to the mandate and a bad precedent to set for other special procedures.’

xlvii *Ibid.* For example, Slovenia (on behalf of the EU) opined that ‘the focus of the mandate must stay centered on its core notion to promote and protect the right to freedom of opinion and expression. The amendment before us, L.39. as proposed by the OIC, does exactly the reverse. It shifts the mandate away from promoting freedom of expression towards restricting it.’

xlviii In favour: Angola(NF), Azerbaijan(NF), Bangladesh(PF), Bolivia(PF), Brazil(F), Cameroon(NF), China(NF), Cuba (NF), Djibouti (PF), Egypt(NF), Gabon(PF), Ghana(F), India(F), Indonesia(PF), Jordan(PF), Madagascar(PF), Malaysia(PF), Mali(F), Mauritius(F), Mexico(F), Nicaragua(PF), Nigeria(PF), Pakistan(PF), Peru(F), Qatar(NF), Russian Federation(NF), Saudi Arabia(NF), Senegal(PF), South Africa(F), Sri Lanka(PF), Uruguay(F), Zambia(PF). Abstaining: Bosnia and Herzegovina(PF), Canada(F), France(F), Germany(F), Guatemala(PF), Italy(F), Japan(F), Netherlands(F), Philippines(PF), Republic of Korea(F), Romania(F), Slovenia(F), Switzerland(F), Ukraine(F), United Kingdom of Great Britain and Northern Ireland(F).

xliv Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, H.R.C. Res. 16/4, U.N. Doc. A/HRC/RES/16/4 (Mar. 24, 2011).

l Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, C.H.R. Res. 1995/81, U.N. Doc. E/CN.4/1995/81 (Mar. 8, 1995).

li Sale of Children, C.H.R. Res. 1990/68, U.N. Doc. E/CN.4/1990/68 (Mar. 7, 1990).

lii Arbitrary Detention, C.H.R. Res. 1991/42, U.N. Doc. E/CN.4/1991/42 (Mar. 5, 1991).

liii Violence against Women, C.H.R. Res. 1994/45, U.N. Doc. E/CN.4/1994/45 (Mar. 4, 1994).

liv Special Rapporteur on contemporary forms of slavery, H.R.C. Res. 6/14, U.N. Doc. A/HRC/RES/6/14 (Sept. 28, 2007).

lv *See* TAN, *supra* note xl-xlvi inclusive.

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- lvi The adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, C.H.R. Res. 1995/81, U.N. Doc. E/CN.4/1995/176 (Mar. 8, 1995)
- lvii Human Rights and Extreme Poverty, C.H.R. Res. 1998/25, U.N. Doc. E/CN.4/1998/25 (Apr. 17, 1998); Right to Education, C.H.R. Res. 1998/33, U.N. Doc. E/CN.4/1998/33 (Apr. 17, 1998); Adequate Housing as a Component of the Right to an Adequate Standard of Living, C.H.R. Res. 2000/9, U.N. Doc. E/CN.4/2000/9 (Apr. 17, 2000); Right to Food, C.H.R. Res. 2000/10, U.N. Doc. E/CN.4/RES/2000/10 (Apr. 17, 2000); The Effects of Structural Adjustment Policies and Foreign Debt, C.H.R. Res. 2000/82, U.N. Doc. E/CN.4/RES/2000/82 (Apr. 26, 2000); Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, C.H.R. Res. 2001/30, U.N. Doc. E/CN.4/2001/30 (Apr. 20, 2001); Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, C.H.R. Res. 2002/31, U.N. Doc. E/CN.4/RES/2002/31 (Apr. 22, 2002); People of African Descent, C.H.R. Res. 2002/68, U.N. Doc. E/CN.4/RES/2002/68 (Apr. 25, 2002); Human Rights and Transnational Corporations and other Business Enterprises, C.H.R. Res. 2005/69, U.N. Doc. E/CN.4/2005/69 (Apr. 20, 2005); Human Rights Obligations related to Access to Safe Drinking Water and Sanitation, H.R.C. Res. 7/22, U.N. Doc. A/HRC/RES/7/22 (Mar. 28, 2008); Cultural Rights, H.R.C. Res. 10/23, U.N. Doc. A/HRC/RES/10/23 [2009-2015] (Mar. 26, 2009); The Human Rights of Older Persons, H.R.C. Res. 24/20, U.N. Doc. A/HRC/RES/24/20 (Sept. 27, 2013).
- lviii Right to development, C.H.R. Res. 1998/72, U.N. Doc. E/CN.4/1998/72 [1998-2010] (Apr. 22, 1998); Human rights and international solidarity, C.H.R. Res. 2005/55, U.N. Doc. E/CN.4/2005/55 [2005-2014] (Apr. 20, 2005); Promotion of a democratic and equitable international order, C.H.R. Res. 2005/57, U.N. Doc. E/CN.4/RES/2005/57 [2011-2014] (Apr. 20, 2005); Human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment, H.R.C. Res. 19/10, U.N. Doc. A/HRC/RES/19/10 (Mar. 22, 2012).
- lix Human Rights and Extreme Poverty, C.H.R. Res. 1998/25, U.N. Doc. E/CN.4/1998/25 (Apr. 17, 1998).
- lx Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights, C.H.R. Res. 1998/33, U.N. Doc. E/CN.4/1998/33 ¶ 6 (Apr. 17, 1998).

lxi Set of Principles for the protection and promotion of human rights through action to combat impunity, C.H.R. Res. 2004/72, U.N. Doc. E/CN.4/2004/72, (Apr. 21, 2004); Contemporary forms of slavery including its causes and consequences, H.R.C. Res. 6/14, U.N. Doc. A/HRC/RES/6/14, (Sept. 28, 2007); Freedom of peaceful assembly and of association, H.R.C. Res. 15/21, U.N. Doc. A/HRC/RES/15/21 (Sept. 30, 2010); Promotion of truth, justice, reparation & guarantees on non-recurrence, H.R.C. 18/6, U.N. Doc. A/HRC/RES/18/7, (Sept. 29, 2011).

lxii Impunity, C.H.R. Res. 2004/72, U.N. Doc. E/CN.4/2004/72 (Apr. 21, 2004).

lxiii Human Rights of Migrants, C.H.R. Res. 1999/44, U.N. Doc. E/CN.4/1999/44 (Apr. 27, 1999); Human Rights Defenders, C.H.R. Res. 2000/61, U.N. Doc. E/CN.4/RES/2000/61 (Apr. 26, 2000); Human Rights and Fundamental Freedoms of Indigenous People, C.H.R. Res. 2001/57, U.N. Doc. E/CN.4/RES/2001/57 (24 April 2001); People of African Descent, C.H.R. Res. 2002/68, U.N. Doc. E/CN.4/RES/2002/68 (Apr. 25, 2002); Trafficking in Persons Especially Women and Children, C.H.R. Res. 2004/110, U.N. Doc. E/CN.4/DEC/2004/110 (Apr. 21, 2004); Minority Issues, C.H.R. Res. 2005/79, U.N. Doc. E/CN.4/RES/2005/79 (Apr. 21, 2004); Discrimination Against Women in Law and in Practice, H.R.C. Res. 15/23, U.N. Doc. A/HRC/RES/15/23 (Oct. 1, 2010); The Human Rights of Older Persons, H.R.C. Res. 24/20, U.N. Doc. A/HRC/RES/24/20 (Sept. 27, 2013).

lxiv Human Rights of Migrants, C.H.R. Res. 1999/44, U.N. Doc. E/CN.4/1999/44 (Apr. 27, 1999);

lxv Enforced or involuntary disappearances, C.H.R. Res 20 (XXXVI), U.N. Doc. E/CN.4/RES/1980/20 (Feb. 29, 1980), [in operation from: 1980-2014]; Extrajudicial, summary or arbitrary executions, C.H.R. Res. 1982/29, U.N. Doc. E/CN.4/1982/29 (Mar. 11, 1982) [1982-2014]; Torture and other cruel, inhuman or degrading treatment or punishment, C.H.R. Res. 1985/33, U.N. Doc. E/CN.4/1985/33 (May 29, 1985) [1985-2014]; Religious tolerance (freedom of religion or belief), C.H.R. Res. 1986/20, U.N. Doc. E/CN.4/1986/20 (Mar. 10 1986) [1986-2013]; Sale of Children, C.H.R. Res. 1990/68, U.N. Doc. E/CN.4/1990/68 (Mar. 7, 1990); Internally displaced people, C.H.R. Res. 1992/73, U.N. Doc. E/CN.4/1992/73 (Mar. 5, 1992) [1992-2013]; Contemporary forms of racism, racial discrimination and xenophobia, C.H.R. Res. 1993/20, U.N. Doc. E/CN.4/1993/20 (Mar. 2, 1993) [1993-2014]; Promotion and protection of the right to freedom of opinion and expression, C.H.R. Res. 1994/33, U.N. Doc. E/CN.4/RES/1994/33 (Jan. 1, 1994) [1994-2014]; Independence of judges and lawyers, C.H.R. Res. 1994/41, U.N. Doc. E/CN.4/1994/41 (Mar. 4, 1994) [1994-2014]; ‘Violence

against Women, C.H.R. Res. 1994/45, U.N. Doc. E/CN.4/1994/45 (Mar. 4, 1994). [1994-2014]; Human Rights Defenders, C.H.R. Res. 2000/61, U.N. Doc. E/CN.4/RES/2000/61 (Apr. 26, 2000); Human Rights and Fundamental Freedoms of Indigenous People, C.H.R. Res. 2001/57, U.N. Doc. E/CN.4/RES/2001/57 (24 April 2001) [2001-2013]; Set of Principles for the protection and promotion of human rights through action to combat impunity, C.H.R. Res. 2004/72, U.N. Doc. E/CN.4/2004/72, (Apr. 21, 2004) [2004-2005]; Trafficking in Persons Especially Women and Children, C.H.R. Res. 2004/110, U.N. Doc. E/CN.4/DEC/2004/110 (Apr. 21, 2004) [2004-2014]; The promotion and protection on human rights and fundamental freedoms while countering terrorism, C.H.R. Res. 2005/80, U.N. Doc. E/CN.4/2005/80 (Apr. 21, 2005) [2005-2013]; Contemporary forms of slavery including its causes and consequences, H.R.C. Res. 6/14, U.N. Doc. A/HRC/RES/6/14, (Sept. 28, 2007) [2007-2013]; Freedom of peaceful assembly and of association [2010-2013]; Promotion of truth, justice, reparation & guarantees on non-recurrence, H.R.C. Res. 18/7, U.N. Doc. A/HRC/RES/18/7 (Sept. 29, 2011) [2011-2014].

lxvi 'Extrajudicial, summary or arbitrary executions', *Id.*; 'Torture and other cruel, inhuman or degrading treatment or punishment', *Id.*; 'Religious tolerance/freedom of religion or belief', *Id.*; and 'Human rights defenders' *Id.*

lxvii This average is based on the median results for 3 out of the 4 CPR mandates *id.* that were adopted by vote as the voting breakdown for 'Extrajudicial, summary or arbitrary executions' *Id.* is unavailable.

lxviii The mandate on 'The use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination', (9 March 1987, UN Doc. E/CN.4/1987/16) does not fall readily within any of the three categories of CPR, ESCR or TGR given the hybrid nature of this right. For this reason it is not included in the data.

lxix 'Human rights and extreme poverty' *Id.*; 'Right to education' *Id.*; 'Adequate housing as a component of the right to an adequate standard of living' *Id.*; Right to food, *Id.*; The effects of structural adjustment policies and foreign debt/...and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights, C.H.R. Res. 2000/82, U.N. Doc. E/CN.4/2000/82 (Apr. 26, 2000) [2000-2014]; Draft optional protocol to the ICESCR, C.H.R. Res. 2001/30, U.N. Doc. E/CN.4/2001/30 (Apr. 20, 2001) [2001-2008]; Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, C.H.R. Res. 2002/31, U.N. Doc. E/CN.4/2002/31 (Apr. 22,

2002) [2002-2013]; ‘People of African descent’ *Id.*; ‘Human rights and transnational corporations and other business enterprises’ *Id.*; Human rights obligations related to access to safe drinking water and sanitation, H.R.C. Res 7/22, U.N. Doc. A/HRC/RES/7/22 (Mar. 28, 2008) [2008-2014]; ‘Cultural Rights’ *Id.*; and ‘The Human Rights of Older Persons’, *Id.*

lxx ‘Right to education’ *supra* note lviii; ‘Human rights and extreme poverty’ *supra* note lvii; ‘Right to food’ *Id.*; ‘The effects of structural adjustment policies and foreign debt/...and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights’ *Id.*; ‘People of African descent’ *Id.*; ‘Human rights and transnational corporations and other business enterprises’ *Id.*

lxxi Based on average of 5 of the 6 mandates as no voting data was available for the ‘Right to education’ *supra* note lviii.

lxxii ‘The adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights/sound management and disposal of hazardous substances and waste’ *supra* note lxvii; ‘Right to development’ *supra* note lvi; ‘Human rights and international solidarity’ *supra* note lvi; ‘Promotion of a democratic and equitable international order’, *supra* note xxxvi [2011-2014]; Human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment, H.R.C. Res. 19/10, U.N. Doc. A/HRC/RES/19/10 (Mar. 22, 2012) [2012-2015].

lxxiii ‘The adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights/sound management and disposal of hazardous substances and waste’ *supra* note lxvii; ‘Human rights and international solidarity’ *Id.*; ‘Promotion of a democratic and equitable international order’ *Id.*

lxxiv Which we set out in detail in a forthcoming article based on this research.

lxxv Exceptions include Mercenaries *supra* and the renewal of Freedom of Expression 2008 *supra*.

lxxvi *See* Section 5 *infra*.

lxxvii ‘Human Rights Defenders’ *supra* note lxiii

lxxviii Of the 50 states to vote in favor, 26 were F countries: Argentina, Botswana, Canada, Chile, the Czech Republic, El Salvador, France, Germany, India, Indonesia, Italy, Japan, Latvia, Liberia, Luxembourg, Mauritius,

Mexico, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Spain, the United Kingdom and the United States; 16 were PF countries: Bangladesh, Brazil, Colombia, the Congo, Ecuador, Guatemala, Madagascar, Morocco, Nepal, Niger, Nigeria, Peru, Senegal, Sri Lanka, Venezuela and Zambia; and 8 were NF countries: Bhutan, Burundi, Pakistan, Qatar, Russia, Sudan, Swaziland and Tunisia.

lxxxix In its annual country report on China in 2000, Amnesty International (AI) highlighted that '[t]he human rights situation in China deteriorated sharply during the year. Those targeted in the crack-down included political dissidents, anti-corruption campaigners, labour rights activists, human rights defenders and members of unofficial religious or spiritual groups.' Amnesty International, *Amnesty International Report 2000 - China, including Hong Kong and Macao* (Jun. 1, 2000) <http://www.refworld.org/docid/3ae6aa1138.html>. In its report on Cuba for 2000, similar concerns were raised by AI again, where it was highlighted that '[d]issidents, who included journalists, political opponents and human rights defenders, suffered severe harassment during the year. Several hundred people remained imprisoned for political offences, some of whom were recognized by AI as prisoners of conscience.' Amnesty International, *Amnesty International Report 2000 - Cuba* (Jun. 1, 2000) <http://www.refworld.org/docid/3ae6aa0e14.html>.

lxxx See statement of Mr. Sun Ang, as recorded in the Summary Record of the 66th Meeting of the Commission on Human Rights, 26 April 2000, ¶ 69. U.N. Doc. E/CN.4/2000/SR.66.

lxxxi See statement of Mr. Alfonso Martinez, as recorded in the Summary Record of the 65th Meeting of the Commission on Human Rights, 26 April 2000, para. 22. UN Doc. E/CN.4/2000/SR.65.

lxxxii H.R.C. Res. 15/21, U.N. Doc. A/HRC/RES/15/21 (Sept. 30, 2010).

lxxxiii Argentina, Australia, Austria, Belgium, Benin, Bulgaria, Canada, Chile, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ghana, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mongolia, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Republic of Korea, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom and the United States.

lxxxiv Albania, Bosnia and Herzegovina, Burkina Faso, Colombia, Georgia, Guatemala, Maldives, Mexico, Morocco, Nigeria, Republic of Moldova, Senegal, Turkey, Uganda, Ukraine and FYR Macedonia.

lxxxv Somalia.

lxxxvi See statements by the Chinese delegate, made during discussion of draft resolution A/HRC/15/L.23 at the 32nd Meeting of the Human Rights Council, 30 September 2010. The Audio-visual recording is available as a UN Webcast, archived video: <http://www.un.org/webcast/unhrc/archive.asp?go=100930>.

lxxxvii See comments by the Russian delegate, *ibid*, concerning the provisions already provided for under the International Convention on the Elimination of All Racist Discrimination (ICERD) that *e.g.* ban activities of racist organizations vis-à-vis association and assembly.

lxxxviii See comments of the delegates from Libya, Pakistan and Cuba, *ibid*, vis-à-vis the role of the International Labour Organisation (ILO).

lxxxix *Id*.

xc See Section 5 *infra*

xc i See comments made by the Cuban delegate, *Id*.

xc ii C.H.R. Res. 1998/25, U.N. Doc. E/CN.4/1998/25 (Apr. 18, 1998).

xc iii Argentina, Austria, Botswana, Canada, Cape Verde, Chile, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, India, Ireland, Italy, Japan, Luxembourg, Mali, the Philippines, Poland, Republic of Korea, South Africa, the United Kingdom and Venezuela.

xc iv Bangladesh, Brazil, Guatemala, Indonesia, Madagascar, Malaysia, Mexico, Morocco, Mozambique, Nepal, Pakistan, Peru, Senegal, Sri Lanka, Uganda and Ukraine.

xc v Belarus, Bhutan, China, the Congo, Cuba, Democratic Republic of Congo, Guinea, Russia, Sudan and Tunisia.

xc vi Report of the 54th Session of the Commission on Human Rights, 16 March-24 April 1998. U.N. Doc. E/1998/23.

xc vii C.H.R. Res. 2000/82, U.N. Doc. E/CN.4/RES/2000/82 (Apr. 26, 2000).

xc viii Bangladesh, Bhutan, Botswana, Brazil, Burundi, China, the Congo, Cuba, Ecuador, El Salvador, Guatemala, India, Indonesia, Madagascar, Mauritius, Morocco, Nepal, Niger, Nigeria, Pakistan, the Philippines, Qatar, Rwanda, Senegal, Sri Lanka, Sudan, Swaziland, Tunisia, Venezuela and Zambia.

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- xcix Canada, Czech Republic, France, Germany, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Portugal, Romania, Spain, the United Kingdom and the United States.
- c Argentina, Chile, Colombia, Mexico, Peru, Republic of Korea and Russia.
- ci Botswana, El Salvador, India, Indonesia, Mauritius and the Philippines.
- cii Bangladesh, Brazil, the Congo, Ecuador, Guatemala, Madagascar, Morocco, Nepal, Niger, Nigeria, Senegal, Sri Lanka, Venezuela and Zambia.
- ciii Bhutan, Burundi, China, Cuba, Pakistan, Qatar, Rwanda, Sudan, Swaziland and Tunisia.
- civ H.R.C. Res. 7/4, U.N. Doc. A/HRC/RES/7/4 (Mar. 27, 2008).
- cv H.R.C. Res. 16/14, U.N. Doc. A/HRC/RES/16/14 (Mar. 24, 2011).
- cvi *Cf.* Weiss *supra* note xxi who adopts this terminology to explain the current geopolitical divisions at the UN.
- cvii See the statement made by the Slovenian delegate (on behalf of the EU), during discussion of draft resolution A/HRC/7/L.9 at the 39th Meeting of the Human Rights Council, 27 March 2008. The Audio-visual recording is available as a UN Webcast, archived video:
<http://www.un.org/webcast/unhrc/archive.asp?go=080327>.
- cviii See the statement made by the US delegate, during discussion of draft resolution A/HRC/16/L.18 at the 46th Meeting of the Human Rights Council, 24 March 2011. The Audio-visual recording is available as a UN Webcast, archived video: <http://www.un.org/webcast/unhrc/archive.asp?go=110324>.
- cix *Id.*
- cx C.H.R. Res. 2005/55, U.N. Doc. E/CN.4/RES/2005/55 (Apr. 20, 2005).
- cxi *Id.* ¶ 5.
- cxii See comments by the Cuban delegate during discussion of draft resolution E/CN.4/2005/L.71, as recorded in the Summary Record of 58th Meeting of the Commission on Human Rights, 20 April 2005, ¶ 30. U.N. Doc. E/CN.4/2005/SR.58

cxiii H.R.C. Res. 7/5, U.N. Doc. A/HRC/RES/7/5 (Mar. 27, 2008); H.R.C. Res. 17/6, U.N. Doc. A/HRC/RES/17/6 (Jun. 16, 2011).

cxiv The following WEOG states voted against the mandate: C.H.R. Res. 2005/55 (2005): Australia, Canada, Finland, France, Germany, Ireland, Italy, Netherlands, the United Kingdom and the United States; H.R.C. Res. 7/5 (2008): Canada, France, Germany, Italy, the Netherlands, Switzerland and the United Kingdom; H.R.C. Res. 17/6 (2011): Belgium, France, Norway, Spain, Switzerland, the United Kingdom and the United States.

cxv As per 2013 Freedom House ranking, of the 33 countries of GRULAC, 22 were classified as F, 10 as PF and 1 as NF. See Freedom House, *Freedom in the World 2013* <http://www.freedomhouse.org/report/freedom-world/freedom-world-2013>

cxvi The following GRULAC states voted for the mandate: C.H.R. Res. 2005/55 (2005): Argentina, Brazil, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Ecuador and Mexico; H.R.C. Res. 7/5 (2008): Bolivia, Brazil, Cuba, Guatemala, Mexico, Nicaragua and Uruguay; H.R.C. Res. 17/6 (2011): Argentina, Brazil, Chile, Cuba, Ecuador, Guatemala, Mexico and Uruguay.

cxvii See comments by the Dutch delegate (speaking on behalf of the EU) during discussion of draft resolution E/CN.4/2005/L.71, as recorded in the Summary Record of 58th Meeting of the Commission on Human Rights, 20 April 2005, ¶ 30. U.N. Doc. E/CN.4/2005/SR.58.

cxviii See the statement made by the Hungarian delegate, during discussion of draft resolution A/HRC/17/L.21 at the 33rd Meeting of the Human Rights Council, 16 June 2011. The Audio-visual recording is available as a UN Webcast, archived video: <http://www.un.org/webcast/unhrc/archive.asp?go=110616>.

cxix *Id.*

cxx H.R.C. Res. 18/6, U.N. Doc. A/HRC/RES/18/6 (Sept. 29, 2011).

cxxi Angola, Bangladesh, Benin, Botswana, Burkina Faso, Cameroon, China, the Congo, Cuba, Djibouti, Ecuador, Guatemala, India, Indonesia, Jordan, Kuwait, Kyrgyzstan, Malaysia, Maldives, Mauritius, Nigeria, the Philippines, Qatar, Russia, Saudi Arabia, Senegal, Thailand, Uganda and Uruguay.

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- cxxii Austria, Belgium, the Czech Republic, Hungary, Italy, Norway, Poland, Republic of Moldova, Romania, Spain, Switzerland and the United States.
- cxxiii Chile, Costa Rica, Mauritania, Mexico and Peru.
- cxxiv Chile, Costa Rica and Peru, accounting for three of the five abstentions.
- cxxv Bangladesh, Burkina Faso, Ecuador, Guatemala, Kuwait, Kyrgyzstan, Malaysia, Maldives, Nigeria, the Philippines, Senegal, Thailand and Uganda.
- cxxvi Angola, Cameroon, China, the Congo, Cuba, Djibouti, Jordan, Qatar, Russia and Saudi Arabia.
- cxxvii As provided in the preamble of H.R.C. Res. 18/6.
- cxxviii As proposed by the Polish delegate (on behalf of the EU) in draft resolution A/HRC/18/L.33, introduced at the 35th Meeting of the Human Rights Council, 29 September 2011.
- cxxix *Id.* See comments by the Polish delegate (speaking on behalf of the EU) during discussion of draft resolution A/HRC/18/L.33. The Audio-visual recording is available as a UN Webcast, archived video: <http://www.unmultimedia.org/tv/webcast/c/un-human-rights-council.html>.
- cxxxi See comment made by the Hungarian delegate during the discussion of the mandate on international solidarity, *Id.* at 170.
- xxxii See comments made by the Cuban delegate in asking for a vote on draft resolution A/HRC/18/L.13 as orally amended by United States. The Audio-visual recording is available as a UN Webcast, archived video: <http://www.unmultimedia.org/tv/webcast/c/un-human-rights-council.html>.
- xxxiii See comments made by the US delegate, *Id.*
- xxxiiii *Id.* at 135.
- xxxv See e.g., Freedman *supra* note xxii, 197-252.
- xxxvi Nigeria is a member of the African Group; Mexico is a member of GRULAC
- xxxvii Nigeria is a member of the OIC; Mexico is a member of G8+5

cxxxvii Mexico abstained in the vote in the following: ‘The effects of structural adjustment policies and foreign debt’ C.H.R. Res. 2000/82 (2000) and H.R.C. Res. 16/14 (2011); ‘Promotion of a democratic and equitable international order’ H.R.C. Res. 18/6 (2011); ‘The adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights’ C.H.R. Res. 1995/81.

cxxxviii See discussion on toxic dumping *supra*.

cxxxix There are some notable examples where Russia and China diverged in their otherwise generally similar voting pattern. In C.H.R. Res. 2000/61 ‘Human Rights Defenders’ (2000), Russia voted in favor of the mandate while China abstained. The reverse occurred during the vote on C.H.R. Res. 2000/82 ‘The effects of structural adjustment policies and foreign debt’ (2000), where it was China that voted in favor of the mandate, while Russia abstained. However, the most flagrant break in voting alliance was visible in C.H.R. Res. 1995/81 ‘Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights’, where China voted in favor of the mandate while Russia voted against.

cxl E.M. HAFNER-BURTON, MAKING HUMAN RIGHTS A REALITY 78 (2013).

cxli As has occurred throughout the recent civil war in Syria.

cxlii A full list of countries, plus individual reports is available on the mandate’s page:

<http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/CountryVisits.aspx>

cxliii The visit was conducted between 28 October and 6 November 2007. The full report is available in U.N. Doc. A/HRC/7/5/Add.3.

cxliv *Id.* SR on the right to food (28 October - 6 November 2007) U.N. Doc. A/HRC/7/5/Add.3

cxlv Cuba has still numerous pending requests for country visits on core CPR mandates including: torture, freedom of opinion and expression, peaceful assembly and association, and independence of judges and lawyers. See full list of accepted and pending requests at the official special procedures page of the OHCHR:

<http://www.ohchr.org/EN/HRBodies/SP/Pages/countryvisitsa-e.aspx>.

cxlvi See Universal Periodic Review of Cuba, 2nd Cycle, considered on 1 May 2013, Report of the Working Group, U.N. Doc. A/HRC/24/16, at ¶ 170.64.

cxlvii UN Special Rapporteur on the right to food: Mission to Syria from 29 August to 7 September 2010 – Available at:

http://www2.ohchr.org/english/issues/food/docs/SyriaMissionPreliminaryConclusions_07092010.pdf.

cxlviii View, e.g., Human Rights Watch report about Syria from 2013 – Available at:

<http://www.hrw.org/world-report/2013/country-chapters/syria>

cxlix UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health - Visit to Syria, 6-14 November 2010. Preliminary observations available at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10532&LangID=E>.

cl See OHCHR Annual Report, 'Financial Statements' at 145:

http://www2.ohchr.org/english/ohchrreport2012/web_en/allegati/11_Financial_Statements.pdf.

cli See OHCHR Annual Report for 2011, "Financial Statements" at 153:

http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/17_Financial_Statements.pdf.