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**The United States and the UN Human Rights Council:
An Early Assessment**

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Abstract: The United States assumed membership of the United Nations Human Rights Council in 2009. That move reversed its decision, taken only a few months earlier under George W. Bush, to withdraw America's official observer mission. President Obama's new openness may suggest a fresh start to American foreign policy, but the US has not altered its basic objections to the Council's procedures and decisions. Failures of the Council's predecessor, the Human Rights Commission, had been attributed to politicisation and bias. Since the Commission's dissolution, the US had warned against a repeat of the Commission's failures. Disgruntled that those warnings were ignored, the US withdrew its observer status in 2008. America's critics dismiss such gestures, blaming that uneasy relationship with the Council on the Americans' desire to avoid scrutiny their own human rights record. This article examines such recurring claims and counter-claims. Notwithstanding the poisoned international atmosphere created by the Bush administration, it is argued here that many Council members, as well as official mandate holders, did indeed abuse the Council's procedures. The result was an excessive focus on the US and American interests, to the exclusion of serious human rights violations elsewhere in the world. *Keywords: Human Rights, Human Rights Council, International Human Rights, International Law, United Nations*

0. Introduction

The United States' election to the UN Human Rights Council in 2009¹ displays a shift in foreign policy under President Barack Obama. The Obama administration's decision to engage with the Council by seeking membership, for the first time since the Council's creation, reverses the approach taken under George W. Bush. During General Assembly discussions aimed at establishing the Council in 2005 – 06, the Bush administration had objected to key provisions. The US had argued that the proposed Council would fail to

¹ See UN Department of Public Information, 'United States Elected to Human Rights Council for First Time, with Belgium, Hungary, Kyrgyzstan, Norway, as 18 Seats Filled in Single Round of Voting', GA/10826, 12 May 2009, [<http://www.un.org/News/Press/docs//2009/ga10826.doc.htm>] (last visited 27 August 2009).

overcome the shortcomings of its predecessor, the Human Rights Commission.² When the Council was established in 2006³, the United States did not stand for election to one of the body's 47 seats.⁴ It instead opted for permanent observer status, which entitles a state to participate in all sessions. In 2008, the US withdrew its mission, disenchanted with the tone and progress of Council proceedings.

Despite widespread hope that the Obama administration will revitalise America's relationship with the UN, the 2008 withdrawal is no aberration. It remains a pivotal moment in US policy towards the UN, as Bush era policies have not been altogether abandoned. In this article, an analysis of events leading up to the 2008 withdrawal will shed light not only upon America's likely positions in the years to come, but, more importantly, on the overall performance of the Council since its creation. Two broad factors are relevant to the US withdrawal. First, I shall examine America's historical stance towards the Council, tracing its positions before, during and after the General Assembly vote on the Council's establishment. Second, I shall turn to the Council's scrutiny of human rights in the US, and the American response. Although recent US policy had done much to inflame international relations, I shall argue that the Council's

² UN Department of Public Information, 'General Assembly Establishes New Human Rights Council by Vote Of 170 in Favour', 15 March 2006, U.N. doc. GA/10449 <http://www.un.org/News/Press/docs/2006/ga10449.doc.htm> (last visited 27 August 2009).

³ GA Res. 60/251, 'Human Rights Council, 3 April 2006, U.N. Doc. A/RES/60/251.

⁴ The Council's membership of 47 states consists of the following number of countries per regional group: 13 African States, 13 Asian States, 6 Eastern European States, 8 Latin American and Caribbean States, 7 Western European and Other States. See GA Res. 60/251, para 7, 3 April 2006, U.N. Doc. A/RES/60/251.

‘Special Procedures’ mandate holders⁵ did draw excessive attention to the US, often to the neglect of far more serious human rights situations elsewhere in the world. Having examined those two factors, I shall conclude with some preliminary prognoses of America’s new membership under the Obama administration.

1. The US Vote against Establishment of the Council

News that the US had withdrawn its observer mission was first reported in *Human Rights Tribune* in June 2008, between the Seventh and Eighth Sessions.⁶ That move effectively ended US involvement with the Council, ceasing its input into the body’s discussions and activities. The US neither officially confirmed nor denied the news. It announced at its daily State Department briefing that it would only participate in Council discussions where “absolutely necessary.”⁷ The Bush administration had no further involvement

⁵ On the role of mandate holders, see ‘Institution-building of the United Nations Human Rights Council’, paras 39-64, 7 August 2007, U.N. Doc. A/HRC/Res/5/1. “‘Special procedures’ is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world ... Special procedures are either an individual (called “Special Rapporteur”, “Special Representative of the Secretary-General”, “Representative of the Secretary-General” or “Independent Expert”) or a working group usually composed of five members (one from each region) . The mandates of the special procedures are established and defined by the resolution creating them. Mandate-holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. The independent status of the mandate-holders is crucial in order to be able to fulfil their functions in all impartiality.”, ‘Special Procedures of the Human Rights Council’, <http://www2.ohchr.org/english/bodies/chr/special/index.htm> (last visited 27 August 2009).

⁶ Claire Doole, ‘US quits Human Rights Council?’, *Human Rights Tribune*, 6 June 2008, available at <http://www.humanrights-geneva.info/US-quits-Human-Rights-Council,3184> (last visited 27 August 2009).

⁷ *Id.*

since the Seventh Session, which ended in 2008. The US announced its new decision to stand for election to the Council early in Obama's Presidency.⁸ In order to secure the US membership, New Zealand withdrew its candidacy⁹, thus allowing the US to gain an unopposed seat in the Western European and Other States' group.

Those are only recent chapters of a turbulent history. In the original discussions on establishing the Council, the United States had focussed on membership issues in objections to the draft resolution establishing the Council. The Secretary-General at that time, Kofi Annan, had proposed that the Council be elected by a two-thirds majority of the General Assembly, thus making it more difficult for countries to obtain membership unless they were known to be committed to the protection and promotion of human rights.¹⁰ The US pushed for additional criteria in order to ensure that "gross and systemic" violators could not be elected.¹¹ Annan had deemed the Commission's lack of credibility to be crucial to its demise¹², along with the number and prominence of members with poor human rights records¹³.

⁸ U.S. Department of State, 'Announcement on U.S. seat on U.N. Human Rights Council', statement of Gordon Duguid, acting deputy spokesman, 1 April 2009 <http://www.america.gov/st/texttrans-english/2009/April/20090401120727eaifas4.264468e-02.html> (last visited 27 August 2009).

⁹ See, for example, Vaclav Havel, 'A Table for Tyrants', *New York Times*, 10 May 2008, <http://www.nytimes.com/2009/05/11/opinion/11havel.html> (last visited 27 August 2009).

¹⁰ UN Department of Public Information, 'General Assembly Establishes New Human Rights Council by Vote Of 170 in Favour', 15 March 2006, U.N. doc. GA/10449 <http://www.un.org/News/Press/docs/2006/ga10449.doc.htm> (last visited 27 August 2009).

¹¹ *Id.*

¹² Report of the Secretary-General, 'In larger freedom: towards development, security and human rights for all', 21 March 2005, U.N. Doc A/59/2005. On problems of credibility of inter-governmental and non-governmental

The US echoed Anan's hope that the Council would eradicate the Commission's problems, especially regarding credibility of membership. Despite some states' support for these aspirations, the final resolution simply required that "when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto"¹⁴. The US Ambassador, John Bolton, insisted that the resolution should go further in excluding countries with the worst human rights records from gaining membership. The lack of assurance of a credible membership would, he argued, result in the Council being no better than the Commission. The test would be whether countries such as "Cuba, the Sudan, Zimbabwe, Iran, Belarus and Burma" acquired membership.¹⁵

Unsurprisingly, Bolton's views won little sympathy from member states he had previously criticised. In 1994, Bolton had claimed, "There is no such thing as the United Nations. There is only the international community, which can only be led by the only remaining superpower, which is the United States".¹⁶ He famously declared, "If the UN

organisations, see Eric Heinze, 'Even-handedness and the Politics of Human Rights', 21 *Harvard Human Rights Journal* (2008), pp. 7 – 46.

¹³ For example, in its later years states such as Sudan and Saudi Arabia held membership. Another example was Libya's election as chair of the Commission in 2003.

¹⁴ GA Res 60/251 para 8, 3 April 2006, U.N. Doc. A/RES/60/251.

¹⁵ Oral intervention of US Ambassador John Bolton, General Assembly debate on the establishment of Human Rights Council, 15 March 2006, UN Department of Public Information, 'General Assembly Establishes New Human Rights Council by Vote Of 170 in Favour', U.N. doc. GA/10449 <http://www.un.org/News/Press/docs/2006/ga10449.doc.htm> (last visited 27 August 2009).

¹⁶ Roland Watson, 'Bush deploys hawk as new UN envoy', *The Times*, 8 March 2005, http://www.timesonline.co.uk/tol/news/world/us_and_americas/article421888.ece (reporting comments made by Bolton twelve years earlier at the 1994 Global Structures Convocation)

Secretariat building in New York lost ten storeys, it wouldn't make a bit of difference"¹⁷. Bolton's opinions on HRC membership carried little weight among the countries increasingly suspicious of the Bush administration. Although Bolton made serious points about the Council, his standing at the UN, and the standing of the Bush administration generally, guaranteed that his opinions would garner little support. Bolton's backing for the invasion of Iraq further undermined his ability to steer the UN on human rights.

Bolton advised the General Assembly never to "settle for good enough, for a compromise" in the promotion and protection of human rights.¹⁸ On 15 March 2006, at the General Assembly's 72nd meeting, the draft resolution to create the Council¹⁹ nevertheless passed by a landslide, with 170 states in favour, 4 against²⁰, and 3 abstentions²¹. The vote was called by the US, to the chagrin of those who had hoped that the text would pass unanimously (a vote is only called for when there are countries that oppose the draft resolution in question). Before the vote, Cuba accused the US of taking a "punitive and sanctioning" approach. The Cubans alleged that America and its allies had exerted "strong pressure and resorted to their traditional blackmail" in pursuing its preferred outcome.²²

After the vote, Bolton reminded the General Assembly that the US had counted historically among the strongest voices for the global protection and promotion of human

¹⁷ *Id.*

¹⁸ *Supra* note 15

¹⁹ 'Human Rights Council', 24 Feb 2006, U.N. Doc A/60/L.48.

²⁰ Israel, Marshall Islands, Palau, United States.

²¹ Belarus, Iran, Venezuela.

²² *Supra* note 15

rights, since the founding of the UN. He pointed out that the UN “can, and should, do more. We had an historic opportunity to create a primary human rights organ in the United Nations, poised to help those most in need.”²³ He nevertheless went on to pledge US assistance in strengthening the Council. The US declined to stand for membership, leaving its status formally peripheral, in comparison to its earlier, full-fledged membership of the Commission. Nevertheless, the American delegation energetically participated in Council sessions and activities as a permanent observer until the end of the Seventh Session. The Council’s rules regarding observer states and bodies retained those of the Commission²⁴. Observer status entitled the US to be present at all Council sessions, and to participate in all discussions. The US vigorously exercised that prerogative, as we shall now see from the many and varied discussions in which it participated.

2. US Views on the Council’s Activities

US views on Council activities scarcely changed during the seven sessions in which it participated. Its initial fears that the Council would be biased and opaque were repeated in its comments on working methods. Furthermore, the Council’s inaction on grave human rights situations²⁵ was a source of US consternation, echoing its initial fears that the Council would not go far enough in protecting and promoting human rights.

The US expressed strong opinions about the Council’s working methods, often stating that they were not conducive to the effective protection and promotion of human

²³ *Id.*

²⁴ ‘United Nations Human Rights Council: Institution-Building’, VII Rules of Procedure, Rule 7(a), 7 August 2007, U.N. doc A/HRC/Res/5/1.

²⁵ See, e.g., [reference deleted for peer review] (examining the Council’s inaction on Darfur).

rights. The US faced further frustration in its appeals for constructive working methods. From the outset, the US stressed the need for dialogue, as opposed to confrontation, and the importance of involving NGOs, national observers, and all other stakeholders²⁶. Its insistence on such tactics arguably arose from its fear that the body would fail without radical departure from the failings of its predecessor.

The US emphasised “the need to have clarity and transparency”, arguing that the Council “must follow clear and predictable guidelines”²⁷. The US seemed particularly concerned that the Council should avoid the Commission’s earlier opacity, by preferring open, formal procedures over closed, informal and unreported meetings. While the US may be criticised for its own secrecy on the Security Council, a feature shared by permanent members, such insistence on transparency at the Council cannot be deemed hypocritical, as security issues require different approaches than human rights. The protection and promotion of human rights are rarely, if ever, placed at risk by transparent procedures, particularly outside declared states of emergency.²⁸ Unfortunately, thus far, those calls have gone unheeded at the Council. Major decisions are still being taken

²⁶ Oral intervention of American delegate, 3rd Session, 30 November 2006, during discussion on working methods.

²⁷ *Id.*

²⁸ ICCPR, for example, states “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.” International Covenant on Civil and Political Rights, Article 4. 1., G.A. res. 2200A (XXI), 16 December 1966, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, (*entered into force* Mar. 23, 1976).

within closed, informal, unreported meetings. Voting tactics are discussed in closed regional group meetings, shrouding the Council in secrecy.

The US repeated the need for transparency in discussions on Universal Periodic Review (UPR). UPR is an innovative human rights mechanism, requiring peer review of all UN member states during a three-year cycle, with Council members being reviewed during their term of membership. The US emphasised that UPR success would “lie in its openness”²⁹. The Americans emphasised that UPR, and other working methods, should not supplant certain established procedures. For example, they stressed that the Council should be able to continue to consider country-specific situations on its own initiative and at any time³⁰. The US also recalled its earlier fears about politicisation, reminding the Council, for example, that there should be “no double standards”³¹ when using UPR.

The theme of impartiality and non-politicisation in the Council’s working methods continued in the US comments about country-specific mandates. Whilst the US advocated the continuation of such mandates as a strong tool for keeping “the spotlight on human rights abuse”³², it expressed reservations about the singling out of Israel and the Occupied Territories by the Council under the guise of these mandates³³. The US

²⁹ Oral intervention of American delegate, 2nd Session, 2 October 2006, during debate on Universal Periodic Review with the facilitator of the Working Group, Moroccan Ambassador, H.E. Mr. Mohammed Loulichki.

³⁰ Oral intervention of American delegate, 3rd Session, 4 December 2006, in response to Facilitator of Working Group on Universal Periodic Review, Moroccan Ambassador, H.E. Mr. Mohammed Loulichki.

³¹ *Supra* note 29.

³² Oral intervention of American delegate, 4th Session, 23 March 2007, during discussion on country-specific mandates

³³ Oral intervention of American delegate, 4th Session, 23 March 2007, during informal meeting on country-specific mandates

asserted that such focus “makes the system politicised and non-universal”³⁴ and advocated that the Occupied Palestinian Territories’ mandate “be subject to modification in the normal procedure”³⁵.

The US repeated its general positions on Council working methods during both formal and informal debates. It regularly used discussions on working methods to air concerns about the Council’s effectiveness, reminding the body of the need for “independent, impartial experts in order to maintain credibility”³⁶. It also insistently reminded the Council of the need to implement its resolutions.³⁷ American delegates repeatedly recalled the need to improve human rights mechanisms at the UN, reminding the Council of the Secretary-General’s report³⁸, especially the strong criticisms contained therein, that had acted as a catalyst for the body’s creation.

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

³⁴ *Id.*

³⁵ *Id.*

³⁶ Oral intervention of American delegate, 3rd Session, 5 December 2006, in response to the facilitator of the Review of Mandates, Ambassador H.E. Tomas Husak of the Czech Republic.

³⁷ Oral intervention of American delegate, 3rd Session, 7 December 2006, informal session with the Facilitator on Experts’ Advice, Ambassador H.E. Burayzat of Jordan.

³⁸ Report of the Secretary-General, ‘In larger freedom: towards development, security and human rights for all’, 21 March 2005, U.N doc A/59/2005.

and impartiality. These themes, albeit facially uncontroversial, were not always reflected in the Council's actions, which arguably contributed to the US decision to withdraw. The Council's primary objective of protecting and promoting human rights was frequently repeated by the US during both general discussions and those regarding specific activities. The US reminded the Council of its founding principles of "universality, objectivity, and non-selectivity"³⁹ before declaring that the "Council has fallen short in fulfilling these principles"⁴⁰.

During the sessions, the US had also criticised the Council's lack of action on specific human rights situations. It had singled out serious and ongoing violations in Sudan⁴¹, Myanmar⁴², North Korea⁴³, and Zimbabwe⁴⁴ as requiring immediate attention and action. It urged the Council to act on a number of occasions, mentioning the ongoing atrocities, and urging immediate action. It stressed its support for, amongst others, the Special Session on Darfur⁴⁵, extra resources for the Office of the High Commissioner for

³⁹ Oral intervention of American delegate, 2nd Session, 6 October 2006, during closing statements.

⁴⁰ *Id.*

⁴¹ See, for example, oral intervention of American delegate, 2nd Session, 18 September 2006, during interactive dialogue with Louise Arbour, High Commissioner for Human Rights. See also [reference deleted for peer review], *supra* note 25.

⁴² See, for example, oral intervention of American delegate, 4th Session, 15 March 2007, during interactive dialogue with Louise Arbour, High Commissioner for Human Rights.

⁴³ See, for example, oral intervention of American delegate, 4th Session, 23 March 2007, in response to Vitit Muntarbhorn, Special Rapporteur on DPRK.

⁴⁴ *Supra* note 42.

⁴⁵ Oral intervention of American delegate, 3rd Session, 29 November 2006, during interactive dialogue with Louise Arbour, High Commissioner for Human Rights.

Human Rights on the ground in these aforementioned regions⁴⁶, and the continuation of reports and recommendations from mandate holders⁴⁷. The US again condemned politicisation of the Council, criticising the incessant focus on Israel as compared with states committing equal or worse levels of abuse.⁴⁸

3. US Objections to the Council's Work

Throughout the first seven sessions, the US voiced strong objections to the work undertaken by the Council, as expressed both in (a) country-specific and (b) thematic debates. Whereas country-specific debates focus on many rights within one state, thematic debates examine one right across several states.

(a) Country-specific debates. The US commented on a number of the country-specific human rights situations that were brought to the Council's attention during its first two years. The situations discussed at the Council were either ongoing or dire, within specified countries, requiring country-specific mandate holders to report on them. The raising of certain country-specific situations depended on considerations such as the gravity of the situation as well as political motivations of Council members. The political

⁴⁶ Oral intervention of American delegate, 2nd Session, 18 September 2006, in response to Louise Arbour, High Commissioner of Human Rights.

⁴⁷ Oral intervention of American delegate, 5th Session, 11 June 2006, in response to Leandro Despouy, Special Rapporteur on Independence of Judges and Lawyers.

⁴⁸ Oral intervention of American delegate, 7th Session, 27 March 2008, during the informal meeting.

agenda of states members of the Organisation of the Islamic Conference (OIC)⁴⁹ ensured that the Council's attention remained on Israel whilst situations in, for example, Libya, Syria and Saudi Arabia, were ignored, and action on Darfur blocked. The Council did not, therefore, focus solely on the gravest situations, but also on those countries that fell foul of prominent groups of member states.

During the first seven sessions, Israel was brought to the Council's attention through reports on various aspects of the human rights situations pertaining to the Occupied Territories, the conflict between these two entities, and the situation following the Lebanese war in the summer of 2006. Notably, the US did not defend Israeli violations; it did, however, note abuses committed on the Palestinian⁵⁰ and Lebanese⁵¹ sides. The US approach emphasised the need for balance and impartiality, a position not taken by any country other than Canada⁵². During discussions on Israel, the US

⁴⁹ The OIC is the largest alliance of States within the UN. There were 57 members in 2008: 21 Sub-Saharan African States, 12 Asian States, 18 Middle Eastern and North African States, 3 Eastern European and Caucasian States, 2 South American States, 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/> (last visited 27 August 2009)). In 2006, 17 Council States were OIC members. 3 of the states, Algeria, Saudi Arabia and Azerbaijan, respectively, chaired the regional groups for Africa, Asia, and Eastern Europe.

⁵⁰ For example, "Palestinian rocket attacks must stop, and terrorist attacks that target civilians must stop", oral intervention of American delegate, 7th Session, 6 March, in response to the report on resolutions concerning the Israel/Palestine conflict of Louise Arbour, High Commissioner for Human Rights.

⁵¹ For example, condemning the Hezbollah attack on Israel and the kidnapping of two Israeli soldiers which directly preceded the war, oral intervention of American delegate, 2nd Session, 4 October 2006, in response to the 'Joint Report on Lebanon', Philip Alston, Jean Ziegler, et al.

⁵² Canada is the only member of the Human Rights Council to have voted against every resolution passed about Israel where a vote was called.

highlighted the human rights abuses on both sides, and called for the Council to act to ensure that all sides cease violations⁵³. The US reminded the Council of the underlying principles that established the body⁵⁴, stating that “the unbalanced focus on Israel”⁵⁵ was inconsistent with them,

“The Council must be more balanced The Human Rights Council can express concern about Israel’s human rights violations, but it should be equally concerned with Palestinian terrorism and other human rights violations in the world.”⁵⁶

Similarly, at the same session, the US spoke of “the human suffering on both sides” during the Israel-Lebanon war 2006. In another intervention, the US indeed called for “Israel to take into account the humanitarian impact” of the security wall.⁵⁷

⁵³ “Israel must dismantle those settlements built since March 2001, and the Palestinians must prevent terrorist activities. We join with the quartet partners to call on parties to fulfil their obligations We call on Israel to take into account the humanitarian impact . . . [of the] wall and avoid action that could prejudice issues that should be determined by negotiations. We urge everyone not to consider this situation as a one-sided context, that in the long term compromises the rights of Palestinian and Israeli peoples.”, oral intervention of American delegate, 2nd Session, 29 September 2006, in response to John Dugard, Special Rapporteur on Israel and the Occupied Palestinian Territories.

⁵⁴ “. . . the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation . . .” GA Res. 60/251 para 4, U.N. Doc. A/RES/60/251.

⁵⁵ Oral intervention of American delegate, 2nd Session, 29 September 2006, in response to John Dugard, Special Rapporteur on Israel and the Occupied Palestinian Territories.

⁵⁶ *Id.*

⁵⁷ Oral intervention of American delegate, 2nd Session, 26 September 2006, in response to John Dugard, Special Rapporteur on Israel and the Occupied Palestinian Territories.

The US regularly repeated its commitment to a two-state solution⁵⁸. American delegates attempted to steer Council discussions towards addressing solutions, contrary to the frequent criticism levelled against Israel through decisions, resolutions⁵⁹, and the calling of Special Sessions (four of the Council's seven Special Sessions during its first two years were convened about Israel). At the Sixth Session,⁶⁰ the US again urged that "addressing the Israel-Palestine conflict requires a balanced and forward-looking approach", insisting that "the Arab states should stop the incitement of hatred in the media and should cease their refusal to recognize the existence of Israel."⁶¹

The US repeatedly berated the Council's anti-Israel bias, but such concerns were largely dismissed due to the close relationship between these two countries. The only state that generally supported the US position was Canada. The EU regularly abstained during votes and made neutral comments during discussions regarding Israel. The EU's reluctance to take sides arguably resulted from the power and influence held by the large bloc of OIC member states sitting at the Council. The size and geographical diversity of its membership gave the OIC significant weight in the Council, and that influence was often deployed to ostracise those countries that disagreed with the OIC's collective

⁵⁸ See, for example, the oral interventions of American delegate: 2nd Session, 26 September 2006; 4th Session, 20 September 2007; 7th Session, 6 March 2008.

⁵⁹ 19 resolutions have been passed about Israel between 2006-2008.

⁶⁰ 6th Session, 10-28 September 2006, resumed 10-14 December 2006.

⁶¹ Oral intervention of American delegate, 6th Session, 20 September 2007, during discussions pursuant to HRC resolutions requiring the High Commissioner for Human Rights to report to the HRC on the implementation of Res 1/1 adopted by HRC at 1st special session, HRC decided to dispatch a special rapporteur to Israel; Res S3/1 adopted at 3rd session. The fact finding mission to Beit Hanoum was headed by Desmond Tutu.

stance⁶². The repercussions for a state taking a stand against the OIC can be seen in the subsequent treatment of that country by the OIC and the African Group. That deterrent undoubtedly played a role in the weakening of the Council's Resolutions and Decisions.

One example of the OIC's ability to flex its collective muscle occurred during the resumed Second Session. Canada had been the sole opposing vote against the OIC's Resolutions on Israel,⁶³ with many Western states choosing to abstain. Ignoring the reasons given for Canada's 'no' votes,⁶⁴ the OIC showed its displeasure by using its collective weight to pass a last-minute motion postponing three non-controversial Canadian Draft Resolutions⁶⁵. The OIC's leverage, bolstered by its usual supporters,⁶⁶ sent a clear message to the Council.

Throughout the sessions, the US repeated its hope that the Council would devote proportionate attention to other regions and situations. For example, during debates on the review of mandates, the US stated that "the singling out of Israel and the Occupied Palestinian Territories makes the system [of special procedures and mandates] politicised

⁶² See, e.g., [reference deleted for peer review] (examining the Council's inaction on Darfur).

⁶³ 'Human Rights in the Occupied Syrian Golan' 27 November 2006, A/HRC/RES/2/3; 'Israeli settlements in the Occupied Palestinian Territory, Including East Jerusalem, and in the Occupied Syrian Golan', 27 November 2006, A/HRC/RES/2/4.

⁶⁴ Which included the fact that the resolutions were biased and only addressed the human rights violations of Israel, which contradicted the Council's principles of non-selectivity, universality and equality.

⁶⁵ One of which - 'Effective Implementation of International Instruments on Human Rights' 28 November 2006, A/HRC/RES/2/5 - was later negotiated to be presented the following day, and passed by consensus. The other two - Resolution on Freedom of Expression and Opinion (A/HRC/2/L.44) and Resolution on Impunity (A/HRC/2/L.38) - were presented at a different Council Session.

⁶⁶ Including Cuba, China and Russia.

and non-universal”⁶⁷. The US comments in this regard reflected its displeasure with the politicisation of the body, which it viewed as a return to the practices of the Commission⁶⁸.

Sudan is of particular interest throughout the period of the Bush administration. The US in general, and particularly under the Bush administration, has repeatedly spoken out against the genocide in Darfur, and was often alone in calling for, and taking, constant action to improve the situation⁶⁹. The US behaved in a similar manner at the Council, despite the seeming indifference of many members towards the escalating crisis. Although Sudan was constantly brought to the Council’s attention due to the ongoing situation in Darfur, no meaningful action was taken by the body⁷⁰. Reports on Sudan were presented by the Special Rapporteur and the Group of Experts, as well as by the High Commissioner and others. These reports provided the basis for Council discussions on Sudan. Throughout the discussions, the US maintained its strong condemnation of the escalating humanitarian crisis, calling for steps to be taken to ensure a resolution to the conflict. At the Second Session the US asked the Special Rapporteur on Sudan⁷¹ to

⁶⁷ Oral intervention of American delegate, 5th Session, 15 June 2007, during discussion on Special Procedures and Review of Mandates

⁶⁸ For example, “[The Council was] established on the principles of universality, objectivity, non-selectivity, yet the Council has fallen short in fulfilling these principles ...”, oral intervention of US delegate, 2nd Session, 6 October 2006, during closing statements.

⁶⁹ See, for example, Andrea Bohm, ‘Sie sind schwarz? Tut uns leid!’. *Die Zeit* (Germany), 19 October 2006, p.23.

⁷⁰ *Supra* note 25.

⁷¹ Sima Samar, UN-appointed Special Rapporteur on Sudan.

provide further information on human rights violations occurring in Sudan⁷² due to the gravity of the situation. As the situation escalated, the US insisted that “the council cannot ignore the ongoing crisis in Sudan”⁷³, repeating the fact “that in the Darfur region there are gross violations of human rights”⁷⁴.

The US maintained that the reports given to the Council left “no further doubt that action is demanded”⁷⁵. Throughout these Sessions, the US asserted that the “Council has yet to adequately address the human rights violations in Sudan”⁷⁶, repeating that it “remain[ed] very concerned” and “call[ing] on the government to end its destructive behaviour”⁷⁷.

The US spoke about possible methods, including sanctions, to encourage such a resolution of the conflict.⁷⁸ American delegates asked why the Council was so slow to take action to end the atrocities in Darfur. Having secured sanctions against Sudan through the Security Council, the US encouraged the Council to take such decisive action as was within the body’s power, and for member states to follow the US lead in this regard. The Americans encouraged the Council to act swiftly rather than spend the upcoming months and years awaiting reports from mandate holders and fact-finding

⁷² Oral intervention of American delegate, 2nd Session, 27 September 2006, in response to Sima Samar, Special Rapporteur on Sudan.

⁷³ Oral intervention of American delegate, 6th Session, 14 December 2007, discussion on the renewal of the mandate of the Special Rapporteur on Sudan.

⁷⁴ Oral intervention of American delegate, 7th Session, 17 March 2007, in response to Sima Samar, Special Rapporteur on Sudan.

⁷⁵ Oral intervention of American delegate, 4th Session, 16 March 2007, in response to Jody Williams, Mission to Sudan.

⁷⁶ Oral intervention of American delegate, 5th Session, 13 June 2007, in response to Sima Samar, Special Rapporteur on Sudan.

⁷⁷ *Supra* note 74.

⁷⁸ *Supra* note 76.

missions, or passing passive resolutions calling for change without condemning the parties responsible for the atrocities. However, other Council members stressed the need to follow the Council's procedures in decision-making regarding this, and other, human rights situations. The US desire to 'rip up the rule book' and take swift, decisive action where necessary in crisis situations such as Darfur, lacked credibility, they declared, due to the US having taken similar steps before the invasion of Iraq and the subsequent international condemnation of that action.

The US was not only concerned with the OIC tactics of blocking action on humanitarian crises occurring within Muslim states such as Sudan, but also with the Council's disregard for other similar situations across the world. Various factors affected the Council's inaction regarding these states, most notably the lack of will to interfere with repressive regimes that afforded little access to the international community, or the lack of interest in those states that afforded no political gains for individual members of the Council. For example, the US also expressed concern about Myanmar throughout discussions on what it termed "one of the most repressive regimes"⁷⁹. The "lack of inclusive and genuine dialogue with all stakeholders"⁸⁰ was emphasised as being a fundamental obstacle to the protection of human rights through national reconciliation. Despite the lack of access to, or information from, Myanmar, the US emphasised the

⁷⁹ Oral intervention of American delegate, 4th Session, 23 March 2007, in response to Paulo Sergio Pinheiro, Special Rapporteur on Myanmar.

⁸⁰ Oral intervention of American delegate, 2nd Session, 27 September 2006, in response to Paulo Sergio Pinheiro, Special Rapporteur on Myanmar.

ongoing human rights violations, including the large numbers of refugees⁸¹, detention of political prisoners⁸², police brutality⁸³, and restrictions on the activities of NGOs and other such parties⁸⁴. The crux of the US position on Myanmar was to “urge this Council, the international community, and Myanmar to protect those Burmese persons whose rights are being violated”⁸⁵. In order for this to occur, “continued international attention [requiring] sustained commitment”⁸⁶ was called for in order to ensure the cooperation of the government in the implementation of Human Rights Council recommendations. The US condemnation of the regime was echoed by other western states, and was repeated throughout all Sessions. However, the situation in Myanmar was of little interest domestically for many of the Council members, as opposed to, for example, the situation in Israel. Therefore, attention was given to the Israel-Palestine conflict at the expense of the ongoing crisis in Myanmar.

⁸¹ “... hundreds of thousands of refugees ...”, oral intervention of American delegate, 2nd Session, 27 September 2006, in response to Paulo Sergio Pinheiro, Special Rapporteur on Myanmar.

⁸² “How can we support the release of political prisoners?”, oral intervention of American delegate, 2nd Session, 27 September 2006, in response to Paulo Sergio Pinheiro, Special Rapporteur on Myanmar; “Pro-democracy advocates continue to be arrested”, oral intervention of American delegate, 7th Session, 13 March 2007, in response to Paulo Sergio Pinheiro, Special Rapporteur on Myanmar.

⁸³ “The excessive force against civilians during peaceful demonstration led to the numerous killings, detention, and injuries.”, oral intervention of American delegate, 6th Session, 12 December 2007, in response to Paulo Sergio Pinheiro, Special Rapporteur on Myanmar.

⁸⁴ “The Red Cross has had to halt its activities ...”, oral intervention of American delegate, 4th Session, 23 March 2007, in response to Paulo Sergio Pinheiro, Special Rapporteur on Myanmar.

⁸⁵ Oral intervention of American delegate, 7th Session, 13 March 2007, in response to Paulo Sergio Pinheiro, Special Rapporteur on Myanmar.

⁸⁶ Oral intervention of American delegate, 7th Session, 17 March 2007, in response to Paulo Sergio Pinheiro, Special Rapporteur on the situation of human rights in Myanmar.

The US raised other similar country-specific situations such as Belarus⁸⁷, Burundi⁸⁸, Cambodia⁸⁹, Cuba⁹⁰, Liberia⁹¹, North Korea⁹² and Somalia⁹³, amongst others. The US focus on these repressive regimes and their ongoing human rights abuses followed the same pattern regardless of the countries involved. It condemned regimes for not cooperating with the Council or other UN bodies, it called for increased international action to ensure protection and promotion of human rights, and commended and supported the efforts of UN mandate holders in these regions. These positions exemplify

⁸⁷ See, for example, oral intervention of American delegate, 2nd Session, 27 September 2006, in response to Adrian Severin, Special Rapporteur on Belarus.

⁸⁸ See, for example, oral intervention of American delegate, 2nd Session, 27 September 2006, in response to Akich Okola, Special Rapporteur on Burundi; Oral intervention of American delegate, 4th Session, 23 March 2007, in response to Akich Okola, Independent Expert on Burundi.

⁸⁹ See, for example, oral intervention of American delegate, 2nd Session, 26 September 2006, in response to Yash Ghai, Special Rapporteur on the situation of human rights in Cambodia; oral intervention of American delegate, 7th Session, 19 March 2007, in discussions about renewal of the mandate on Cambodia.

⁹⁰ See, for example, oral intervention of American delegate, 2nd Session, 26 September 2006, in response to Christine Chanut, Special Rapporteur on Cuba; oral intervention of American delegate, 5th Session, 12 June 2007, in response to Christine Chanut, Special Rapporteur on Cuba.

⁹¹ See, for example, oral intervention of American delegate, 2nd Session, 29 September 2006, in response to Charlotte Abaka, Special Rapporteur on Liberia; Oral intervention of American delegate, 4th Session, 23 March 2007, in response to Charlotte Abaka, Special Rapporteur on Liberia.

⁹² See, for example, oral intervention of American delegate, 2nd Session, 27 September 2006, in response to Vitit Muntarbhorn, Special Rapporteur on DPRK; oral intervention of American delegate, 4th Session, 23 March 2007, in response to Vitit Muntarbhorn, Special Rapporteur on DPRK; oral intervention of American delegate, 7th Session, 13 March 2007, in response to Vitit Muntarbhorn, Special Rapporteur on DPRK.

⁹³ See, for example, oral intervention of American delegate, 2nd Session, 26 September 2006, in response to Ghanim Alnajjar, Special Rapporteur on Somalia; oral intervention of American delegate, 5th Session, 12 June 2007, in response to Ghanim Alnajjar, Special Rapporteur on Somalia.

the US response to human rights situations regardless of where they occur. Unlike the OIC, whose political motivations drove its responses to human rights abuses, the US was consistent in its approach towards all humanitarian situations. The belief that international aid and intervention could most appropriately assist such areas was emphasised by US calls for such action to be taken. The US demanded action and expressed frustration that the Council was dragging its heels when dealing with crisis situations. The US initial fears that the Council would become biased and politicised can be seen to have been realised in respect of the focus on certain human rights situations and the body's inaction on others. The sheer frustration that this caused was evident from the American interventions during all of the seven sessions in which it participated before its withdrawal.

Thematic debates The US constantly emphasised the need to deal with crisis situations as well as with specific human rights in order to ensure adequate protection and promotion for the latter. The US called for stronger support for certain Council mandates, expressing the need for greater cooperation and transparency in order to protect and promote specific human rights. The US constantly reiterated the importance of international support in order for Council mandates to be fulfilled. It singled out topics such as protection of women and children from violence and trafficking, freedoms of religion and expression⁹⁴, and the protection of human rights defenders, as being of particular concern. For

⁹⁴ "There is often and overlap between freedom of religion and freedom of expression", oral intervention of American delegate, 2nd Session, 22 September 2006, in response to Asma Jahangir, Special Rapporteur on Freedom of Religion.

example, the position that “violence against women is indefensible”⁹⁵ was repeated in the context of abuses against women and children, including the trafficking of people in both groups as well as sex-tourism⁹⁶. The US identified Sudan and Myanmar as the two countries where it believed these groups were particularly vulnerable. The US argued that such “human rights abuses [were being] used to terrorise people”⁹⁷ in these two states due to the ongoing situations and the government involvement in all manner of human rights violations.

The US discussed the need to promote freedom of religion⁹⁸, calling for all countries to “ensure that freedom of religion is respected for all religions ... [and] the freedom to not affiliate with any religion at all, or to change religion must also be respected”⁹⁹, due to the essentiality of this right for people across the world¹⁰⁰. Similarly, when discussing freedom of expression, the US stressed that “the right is a cornerstone in

⁹⁵ Oral intervention of American delegate, 4th Session, 21 March 2007, in response to Yakin Ertuk, Special Rapporteur on Violence Against Women.

⁹⁶ See, for example, oral intervention of American delegate, 2nd Session, 25 September 2006, in response to Juan Miguel Petit, Special Rapporteur on the sale of children and child pornography; oral intervention of American delegate, 2nd Session, 20 September 2006, in response to Yakin Ertuk, Special Rapporteur on Violence Against Women.

⁹⁷ Oral intervention of American delegate, 4th Session, 21 March 2007, in response to Yakin Ertuk, Special Rapporteur on Violence Against Women.

⁹⁸ Oral intervention of American delegate, 2nd Session, 21 September 2006, in response to Asma Jahangir, Special Rapporteur of Freedom of Religion, and Ambeyi Ligabo, Special Rapporteur on Freedom of Expression.

⁹⁹ Oral intervention of American delegate, 2nd Session, 22 September 2006, in response to Asma Jahangir, Special Rapporteur on Freedom of Religion.

¹⁰⁰ *Id.*

the protection of human rights”¹⁰¹, arguing that ongoing support of “the mandate is urgently needed”¹⁰². The strength of the US support for these two freedoms was not solely based on its traditional domestic regard for these rights¹⁰³, but also on the juxtaposition between freedoms of religion and expression and the OIC demand that defamation of religion be afforded equal protection. The US interventions on certain rights and freedoms showed its desire to promote those typically Western values that underpinned the UDHR, thus ensuring that they remained prevalent within the human rights system. That showdown of cultural values echoed the old US-Soviet controversies that once politicised the Commission and other human rights work at the UN.

The Council was strongly reminded of the absolute imperative of protecting human rights defenders during discussions of various reports given by the Secretary-General’s Special Representative on Human Rights Defenders¹⁰⁴. The US noted that “some governments feel restricted by [human rights defenders] and attempt to restrict them”¹⁰⁵, and criticised this “obviously political” motivation¹⁰⁶. The US was disturbed by the violations perpetrated against many of these people, particularly the harassment,

¹⁰¹ Oral intervention of American delegate, 7th Session, 14 March 2008, in response to Ambeyi Ligabo, Special Rapporteur on Freedom of Expression

¹⁰² *Id.*

¹⁰³ The Constitution of the United States, Amendment 1.

¹⁰⁴ Hina Jilani.

¹⁰⁵ Oral intervention of American delegate, 2nd Session, 22 September 2006, in response to Hina Jilani, Special Rapporteur on Human Rights Defenders.

¹⁰⁶ *Id.*

detention, and attacks on human rights defenders¹⁰⁷. It called for the Council to join it in “standing with courageous defenders” and to “call into account those governments that seek to undermine their liberties”¹⁰⁸. The US wished to ensure that “individuals and groups ... be able to fight for human rights”¹⁰⁹ and asked for support in this regard. The support that the US expressed for human rights defenders could also have been a way of criticising those regimes that do not allow open and easy access to such people. Many of those states that attacked the US at the Council could be accused of repressive laws and actions against human rights defenders, especially members of the OIC. The strenuous positions taken by the US in related discussions was reflected its deteriorating relations with such countries.

Throughout the Council sessions, the US repeatedly spoke out against regimes committing the worst human rights abuses. General debates were used to flag the atrocities in specific states such as Zimbabwe¹¹⁰, China¹¹¹ and Uzbekistan¹¹². The US noted violations of specific rights, as well as the general culture of violations prevalent within these countries. The US also used general discussions to encourage the Council to focus on implementation of human rights, and on providing “relevant and practical

¹⁰⁷ Oral intervention of American delegate, 4th Session, 28 March 2007, in response to Hina Jilani, Special Rapporteur on Human Rights Defenders.

¹⁰⁸ *Id.*

¹⁰⁹ Oral intervention of American delegate, 7th Session, 14 March 2008, in response to Jilani, Special Rapporteur on Human Rights Defenders.

¹¹⁰ Oral intervention of American delegate, 4th Session, 29 March 2007, during the ‘related debate’.

¹¹¹ Oral intervention of American delegate, 7th Session, 25 March 2007, during discussions on Agenda Item 8, ‘Tibet’.

¹¹² Oral intervention of American delegate, 6th Session, 24 September 2007, during general debate on Agenda Item 4.

advice” without politicisation¹¹³. This tied in with its initial fears that the Council would be selective and bias in terms of which rights it chose to protect and promote. The realisation of these fears was apparent in the vociferousness of US interventions, and was arguably the main reason for its temporary disengagement with the body.

4. The US human rights record

Towards the end of the Commission, the body had become known for protecting its own members from having their human rights records examined. A number of states became members in order to avoid scrutiny, allowing abuses to continue within their own borders¹¹⁴. At the Council’s creation, a number of safeguards were adopted to combat its predecessor’s reputation. The rules of the new body insisted that all members be subjected to peer review during their term of membership¹¹⁵, and that they be more intensely scrutinised than other non-member or observer states¹¹⁶.

It could be argued that the US under George W. Bush’s administration decided not to stand for election to the Council due to its fear that its own record would be

¹¹³ Oral intervention of American delegate, 2nd Session, 27 September 2006, in response to Marc Bossuyt, Subcommission on Promotion and Protection of Human Rights.

¹¹⁴ See, for example, “Yet the Commission’s capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole.”, report of the Secretary-General, ‘In larger freedom: towards development, security and human rights for all’, G.A. Res 2200 A (XXI) para. 182, 21 March 2005, U.N. Doc. A/59/2005.

¹¹⁵ G.A. Res 60/251 para 9, 3 April 2006, U.N. Doc. A/RES/60/251.

¹¹⁶ G.A. Res 60/251 paras 8-9, U.N. Doc. 3 April 2006, A/RES/60/251.

scrutinised more harshly as a member than as an observer. The desire to deflect attention from its human rights record may be traced to the repeated criticisms, often heard at the UN, of the Bush administration's post-9/11 tactics. Another view, however, is that the US decision not to stand for election resulted from its fear of an embarrassing defeat. The US had stood for election to the now-defunct Commission in May 2001. It suffered its first defeat since the Commission's creation in 1947. During discussions leading to the creation of the Council, Washington backed a proposal under which the permanent members of the Security Council would also be "permanent members", which was rejected by an overwhelming majority of states.

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

The Council included the US in reports and discussions on domestic US human rights issues, including contemporary forms of racism¹¹⁷ and extreme poverty. The latter mandate, on extreme poverty, will be used as an example due to it being typical of the

¹¹⁷ Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, U.N. doc A/HRC/4/19; oral intervention of Doudou Diène, Special Rapporteur, 4th Session, 28 March 2007.

way in which the US domestic human rights record was examined. The US officially welcomed visits and recommendations by such mandate holders, but in response it questioned what was being done to improve far worse situations in other countries. Whilst this stance can be argued to have missed the point of the reports, the US position was legitimate. The inclusion of the US in these reports resulted in other states not being discussed at the Council, despite there being ongoing, dire situations across the world. This was not an issue that went unnoticed by other states at the Council, for example, during discussions on extreme poverty. Despite Arjun Sengupta, the Special Rapporteur on Extreme Poverty, saying that “most of the problems I saw in the United States need to go a long way before there is a solution”¹¹⁸, a number of developing countries expressed disappointment that the US had been the sole focus of the report. Mali questioned why the Special Rapporteur visited “one of the richest countries in the world” rather than “a poor country”, stating that “the living conditions in Africa cannot be the same as in the US”¹¹⁹. The spending of time and resources on scrutinising the US human rights record at the expense of other states impacted most upon those countries wishing to utilise mandate holders’ expertise to improve the rights within their own, or neighbouring, territory.

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

¹¹⁸ Oral intervention of Arjun Sengupta, Special Rapporteur on Extreme Poverty, 2nd Session, 27 September 2006.

¹¹⁹ Oral intervention of Mali delegate, 2nd Session, 27 September 2006, in response to Arjun Sengupta, Special Rapporteur on Extreme Poverty.

various problems within the US and criticised various practices without providing alternatives or solutions. As a result, a number of states, including Brazil, Cameroon, Philippines, and Senegal, asked the Special Rapporteur for concrete proposals, or a list of best practices, for states dealing with extreme poverty. The report and subsequent discussion can be contrasted with the useful and facilitative report given by the same Special Rapporteur's report at the Fifth Session¹²⁰. This report dedicated separate chapters outlining neutral and constructive proposals for dealing with extreme poverty across Africa, Asia and even, to some extents, the European Union. The manner in which the US was dealt with in terms of extreme poverty can be argued to be politically motivated rather than being a constructive exercise in facilitating human rights.

The inclusion of the US as the sole Western state, and sometimes even the sole country, in reports on various topics indicated that it was being unfairly singled out at the Council. Furthermore, its inclusion in reports alongside grave abusers indicated selectivity by mandate holders. One might suspect that mandate holders assumed that they could ensure support for their reports and recommendations by singling out and criticising the US. This was apparent from the response to the Special Rapporteur on Extreme Poverty from countries such as China, Cuba, Ecuador, Indonesia, Morocco, and Saudi Arabia. All of these countries, as well as other states who had tense relations with the US, congratulated the Special Rapporteur for focusing on the US, although their reasons for doing so were not always apparent.

¹²⁰ Report of the independent expert on the question of human rights and extreme poverty, U.N. doc A/HRC/5/3; oral intervention of Arjun Sengupta, Special Rapporteur, 5th Session, 11 June 2007.

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

“The reason that I chose the United States is not because I do not think that developing countries have no problems. I wanted to point out that it is not a problem of *per capita* income, but a problem of society, so I chose the richest country in the world. I wanted to focus on basic problems of people in US with the intention to show that human rights are a basic issue of empowerment and dignity, which is not accepted by all the countries”¹²¹.

Despite that and other similar explanations, it is clear that the US was being used as an example in reports on such human rights issues where, arguably, resources should have been spent dealing with grave situations in other countries.

In terms of having its own human rights record examined, the main issue appeared to be whether the US was being singled out for criticism or whether it was having proportionate attention devoted to it according to its available resources for dealing with human rights issues. The US was prepared to accept some of the extra focus that its standing in the world entailed. However, as will be shown, it is clear from the US response to mandate holders on human rights issues relating to counter-terrorism that it

¹²¹ *Supra* note 118.

viewed the attention on these issues as grossly disproportionate and lacking in even-handedness.

The US was discussed in terms of counter-terrorism, as well as by the mandate holders on torture, enforced disappearances and rights of detainees. The discussions focused on Guantanamo Bay and the US tactics employed in the ‘war on terror’. Despite its support for many Council mandates, one notable exception that the US disagreed with was the Special Rapporteur on Protection and Promotion of Human Rights While Countering Terrorism¹²². At the Second Session, the mandate holder signalled his intention to look at various state and institutional trends in this area, in order to set out best practices regarding issues such as racial profiling, secret detentions and extraordinary renditions. The Special Rapporteur, having not mentioned the US in his report, was nonetheless criticised by that country. For example, the US said “we wonder whether certain areas of the Special Rapporteur’s work are sufficiently necessary and effective”¹²³. At the Second Session, the Special Rapporteur accused unspecified countries of abusing the notion of terrorism¹²⁴. He spoke of a “trend of states to stigmatize movements and ethnic groups they simply do not like and fight against

¹²² Martin Scheinin (Finland) was appointed in April 2005 by the Commission on Human Rights as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. This mandate was assumed by the Human Rights Council, and extended for one year. In December 2007 the Council decided to extend the mandate for three years. See ‘Special Rapporteur on the promotion and protection of human rights while countering terrorism’, <http://www2.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm> (last visited 27 August 2009).

¹²³ Oral intervention of American delegate, 2nd Session, 25 September 2006, in response to Martin Scheinin, Special Rapporteur on Protection and Promotion of Human Rights While Countering Terrorism.

¹²⁴ Oral intervention of Martin Scheinin, Special Rapporteur on Protection and Promotion of Human Rights While Countering Terrorism, 2nd Session, 25 September 2006.

terrorism while not defining the term “terrorism”¹²⁵. The US response cited the Special Rapporteur’s calls for research aimed towards developing a single definition of terrorism, stressing that there had already been “thousands” of such debates, and questioning the utility of such an exercise¹²⁶. This intervention missed the point of the mandate itself, as the Special Rapporteur’s concern with defining terrorism was in relation to human rights issues raised during states combating terrorism. The US obtuseness in this regard was arguably motivated by its sensitivity to having any of its anti-terrorism tactics scrutinised by the mandate holder or indeed the Council. This hostility was reflected in the US position towards other similar mandates, especially when they discussed the US in their reports.

The Special Rapporteur on the Protection and Promotion of Human Rights While Countering Terrorism¹²⁷ expressed grave concerns regarding detainees at Guantanamo Bay and other prisoners suspected of terrorism, as well as interrogation techniques, extraordinary renditions, and degrading treatment by the CIA. The US was “disappointed by the report” due to its “unfair and oversimplified criticisms”¹²⁸. For example, the report alleged that detainees were denied the right to a fair trial¹²⁹ and criticising various administrative processes. The US noted the lack of acknowledgement of the complexity of the situation by the Special Rapporteur, especially with regard to his rejection of the

¹²⁵ *Id.*

¹²⁶ *Supra* note 123

¹²⁷ *Supra* note 122.

¹²⁸ Oral intervention of American delegate, 6th Session, 12 December 2007, in response to Martin Scheinin, Special Rapporteur on Protection and Promotion of Human Rights While Countering Terrorism

¹²⁹ ‘Mission to the United States of America’, 22 November 2007, U.N. doc A/HRC/6/17/Add.3, para 12

status of detainees as ‘unlawful enemy combatants’¹³⁰. The US argued that the classification of the detainees was fundamental in terms of the rights they were afforded under international law. The Special Rapporteur’s insistence that the detainees be treated as prisoners of war or as criminal suspects ignored the complexity of the situation. The US alleged that selectivity and politicisation was apparent not only in what was reported, but also that the report was prefaced with remarks such as, “the USA is a world leader, and has a responsibility to ensure respect for human rights and international humanitarian law”¹³¹.

The aforementioned stance that the US should be held to a higher standard than less-developed countries was explicitly or implicitly repeated in the reports of other mandate holders regarding issues relating to the ‘war on terror’. The position was especially apparent in reports where the US was the sole Western state raised alongside countries known to commit grave and systematic abuses. Whilst such remarks could be argued to be non-controversial in terms of the standards that other Western nations were held to by mandate holders, the repeated focus on the US alone, despite other countries such as the UK being complicit in similar abuses, indicated a lack of even-handedness in the way that the US was treated at this body. The US desire not to have its human rights record scrutinised was arguably a factor in its response to various mandate holders’ reports, but the obvious politicisation through disproportionate attention devoted to the US gave weight to its reaction.

¹³⁰ *Id.* at para 11

¹³¹ Oral intervention of Martin Scheinin, Special Rapporteur on Protection and Promotion of Human Rights While Countering Terrorism, 6th Session, 12 December 2007.

The report at the Second Session on enforced disappearances¹³² discussed countries such as Guinea, Burundi, and Colombia, before identifying the US as being one of the four main areas of concern regarding its “anti-terrorist activities [which] are used as an excuse for not applying international obligations”¹³³. Extraordinary rendition is essentially an issue of torture, and its inclusion within this report was arguably a political ploy to attract attention and support for the mandate. The Special Rapporteur gave constructive and neutral advice to countries that had been visited, including Sri Lanka and Colombia, but solely criticised the US rather than providing any other comments. During the subsequent discussion, a number of countries requested further advice, such as a list of best practices, from the Special Rapporteur on issues as disparate as enforced disappearances of political opponents or hostage-taking by non-state actors¹³⁴. Other than the US response, there was no subsequent discussion of extraordinary rendition, arguably due to its anomalous inclusion within this report. The US expressed respect for its international obligations. It expressed recognition “that the international community has not always agreed with US position” but that, with respect to extraordinary rendition “to bring suspects to other countries is not inherently unlawful”¹³⁵. However, its comments during subsequent discussions on domestic human rights issues, at this and other sessions, indicated a waning patience with being singled out for criticism, whilst known

¹³² Oral intervention of Stephen Toope, Special Rapporteur on Enforced Disappearances, 2nd Session, 19 September 2006

¹³³ *Id.*

¹³⁴ See, for example, oral intervention of Costa Rica, 2nd Session, 19 September 2006, in response to Stephen Toope, Special Rapporteur on Enforced Disappearances.

¹³⁵ Oral intervention of American delegate, 2nd Session, 19 September 2006, in response to Stephen Toope, Special Rapporteur on Enforced Disappearances.

abusers and critical situations were seemingly ignored by mandate holders and the Council itself.

Mandate holders continued to identify the US alongside states known as human rights abusers during general reports on issues pertaining to the treatment of detainees. The US response not only disagreed with assertions made in some reports¹³⁶, but further accused some of misrepresenting facts as well as the situation itself¹³⁷. The US criticised the Special Rapporteurs that made up the Working Group on the Situation of Detainees¹³⁸ for not accepting its open invitation to visit Guantanamo Bay which subsequently led to their report being based on “second and third hand information”¹³⁹. The mandate holders had originally accepted the US invitation for only three of the five Special Rapporteurs to visit Guantanamo Bay as well as other terms set out by the US¹⁴⁰. The reason that the

¹³⁶ See, for example, oral intervention of American delegate, 4th Session, 27 March 2007, in response to Zerrougui, Special Rapporteur on Arbitrary Detention.

¹³⁷ See, for example, oral intervention of American delegate, 4th Session, 27 March 2007, in response to Alston, Special Rapporteur on Extrajudicial Killings.

¹³⁸ Including, Manfred Novak, Special Rapporteur on Torture; Leandro Despouy, Special Rapporteur on the Independence of Judges and Lawyers; Paul Hunt, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health.

¹³⁹ Oral intervention of American delegate, 2nd Session, 21 September 2006, in response to the Special Rapporteur on the Situation of Detainees.

¹⁴⁰ “. . . By letter dated 28 October 2005, the Government of the United States of America extended an invitation for a one-day visit to three of the five mandate holders, inviting them “to visit the Department of Defense’s detention facilities [of Guantánamo Bay]”. The invitation stipulated that “the visit will not include private interviews or visits with detainees”. In their response to the Government dated 31 October 2005, the mandate holders accepted the invitation, including the short duration of the visit and the fact that only three of them were permitted access, and informed the United States Government that the visit was to be carried out on 6 December 2005. However, they did not accept the exclusion of private interviews with detainees, as that would contravene the terms of reference for fact-

Working Group decided to refuse the invitation was due to the US indicating that they would not be granted private interviews with detainees¹⁴¹. Despite all this being contained within their report, the Working Group's oral statement to the Council asserted that they had declined the invitation to visit Guantanamo Bay because of the extension of said invitation to only part of the group, as well as refusal to grant unhindered access to detainees, and a lack of standard terms for the visit¹⁴². As such, the Working Group stated that they regretted that there was "no point" in visiting Guantanamo Bay¹⁴³. The US stated the "need to work together to move forward" and its "regret [regarding] the approach taken [by the Working Group] that they did not accept our invitation"¹⁴⁴.

The US argued that accusations in the report of US breaches of international law and violations of human rights were unfounded and incorrect. These comments were followed by members such as China, Cuba, and Venezuela, as well as observers such as Iran and North Korea, supporting the assertions made in the report, and criticising the US. The US was distressed by what it deemed as known abusers of human rights taking strident positions regarding the US treatment of detainees, despite the lack of first hand

findings missions by special procedures and undermine the purpose of an objective and fair assessment of the situation of detainees held in Guantánamo Bay. In the absence of assurances from the Government that it would comply with the terms of reference, the mandate holders decided on 18 November 2005 to cancel the visit.", 'Situation of detainees at Guantánamo Bay', U.N. doc E/CN.4/2006/120.

¹⁴¹ *Id.*

¹⁴² Oral intervention of Leila Zerrougui, Working Group on the Situation of Detainees, 2nd Session, 9 September 2006.

¹⁴³ *Id.*

¹⁴⁴ Oral intervention of American delegate, 2nd Session, 9 September 2006, in response to Leila Zerrougui, Working Group on the Situation of Detainees.

evidence available in the report. Iran accused the US of lying to the Council¹⁴⁵, while Venezuela asserted that the US was committing “flagrant violations of human rights”¹⁴⁶.

These positions were not echoed by Western states, most of whom were more concerned with asking questions of the Special Rapporteurs rather than making sweeping criticisms of the US. However, even Western States known as allies of the US joined in the discussions on these issues. Finland, on behalf of the EU, emphasised that whilst they were “committed to the fight against terrorism, human rights law has to be respected”¹⁴⁷. Switzerland criticised renditions of detainees to countries where torture was not prohibited. It questioned the US employment of such tactics¹⁴⁸. The US did not respond directly to Western interventions or questions on these issues, instead preferring to deal solely with comments by countries such as Iran and Venezuela.

The US belief that it should not be held to excessively higher scrutiny arguably ignored the fact that the Council encouraged each state to constantly strive to improve its own human rights record. Therefore, countries such as Switzerland were necessarily held to higher standards than, for example, Somalia, because each state was judged with reference to its available resources and abilities and not against a common standard. Although this concept does not appear too controversial, the US was the sole Western

¹⁴⁵ Oral intervention of Iranian delegate, 2nd Session, 21 September 2006, in response to Leila Zerrougui, Working Group on the Situation of Detainees.

¹⁴⁶ Oral intervention of Venezuelan delegate, 2nd Session, 21 September 2006, in response to Leila Zerrougui, Working Group on the Situation of Detainees.

¹⁴⁷ Oral intervention of Finnish delegate, 2nd Session, 21 September 2006, in response to Leila Zerrougui, Working Group on Situation of Detainees.

¹⁴⁸ Oral intervention of Swiss delegate, 2nd Session, 21 September 2006, in response to Leila Zerrougui, Working Group on the Situation of Detainees.

state to constantly condemn the scrutiny necessitated by such a process, probably due to the amount of time spent discussing the US as compared with other Western states. The US complaints gave strength to those who argued that the US feared examination of its own human rights record. However, the Council and its members placed the US under far more scrutiny than any other Western state bar Israel, thus legitimising its complaints about selectivity and bias at the body. The scrutiny it was subjected to could be due to the US being prepared to place its head above the parapet, as well as the ongoing political struggles between the US and the major powers at the Council, namely the OIC.

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

Unsurprisingly, Cuba most often used the Council to criticise the US. Cuba's comments rarely related to topics under discussion at the body, and these assertions were supported only by Cuba's allies or states maintaining equally strained relations with the US. During a discussion on torture, for example, Cuba alleged, without drawing any link

to issues of torture, and without evidence, that the CIA was training and developing terrorist groups to attack Latin American countries, and that it was involved in plots to kill the Cuban head of state¹⁴⁹. Venezuela, also out of context and without evidence, expressed similar allegations against the US, stressing that “we denounce those that protect and foster terrorism, specifically our neighbour to the north - America”¹⁵⁰. These countries both have a history of bad relations with the US, and this was by no means the first time either country had attacked the US within UN bodies.

Again offering no evidence, Cuba accused the US of “coordinating diplomatic campaigns... in the Human Rights Council”, alleging that NGOs with accreditation to the body were under American control¹⁵¹. Cuba further attacked the US through allegations that it was undermining the Council. For example, saying “to those who attack, namely the US, the Council, they must show humility. Those who make the Council fail will be criticised by history”¹⁵². Cuba’s remarks during non-US related discussions included, for example, calling it the “main sponsor of the brutal regime of [Israeli] occupation”¹⁵³. It also used similar tactics to allege that the UK was an American puppet, saying that its

¹⁴⁹ Oral intervention of Cuban delegate, 4th Session, 27 March 2007, in response to Manfred Novak, Special Rapporteur on Torture.

¹⁵⁰ Oral intervention of Venezuelan delegate, 7th Session, 6 March 2008, during general discussions.

¹⁵¹ Oral intervention of Cuban delegate, 4th Session, 29 March 2007, during the ‘related debate’.

¹⁵² Oral intervention of Cuban MFA of Cuba Felipe Perez Roque, 7th Session, 3 March 2008, during the High Level Segment.

¹⁵³ Oral intervention of Cuban delegate, 4th Session, 22 March 2007, in response to John Dugard, Special Rapporteur on the Occupied Palestinian Territories.

remarks were “prepared by Washington”¹⁵⁴. While such remarks were, presumably, afforded little weight by other countries at the Council, the constant repetition and vociferous nature of these comments made them difficult for anyone, the US included, to ignore.

Syria supported Cuba’s attacks on a number of occasions, and alleged that the country-specific mandate on Cuba was politically motivated due to the US position towards Cuba¹⁵⁵. Again, the alliance between these two countries in this regard is akin to the old adage that ‘my enemy’s enemy is my friend’. Cuba accused the US of ongoing human rights violations against it, stating that “the policy of hostility maintained by the USA has used coercive measures as a fundamental tool and has had a serious impact on Cuba. Humanitarian damage has occurred especially in areas of public health and education”¹⁵⁶. DPRK (North Korea) also attacked the US during Council discussions. It alleged that the US sought to “destroy” its “socialist system” through “hostile policies” and “conspiracies with the EU and Japan”¹⁵⁷. DPRK accused the US of human rights abuses, asserting that “it is a well-known fact that the US is the worst human rights violator in the world”¹⁵⁸, asking that a Special Rapporteur be “placed in the US”¹⁵⁹. The

¹⁵⁴ Oral intervention of Cuban delegate, 2nd Session, 21 September 2006, in response to Asma Jahangir, Special Rapporteur on Freedom of Religion.

¹⁵⁵ Oral intervention of Syrian delegate, 5th Session, 12 June 2007, in response to Christine Chanet, Special Rapporteur on Cuba.

¹⁵⁶ Oral intervention of Cuban delegate, 6th Session, 17 September 2007, during discussion on Agenda Item 3 ‘Protection and Promotion of All Rights’.

¹⁵⁷ Oral intervention of DPRK delegate, 23 March 2007 4th Session in response to Vitit Muntarbhorn, Special Rapporteur on DPRK.

¹⁵⁸ Oral intervention of DPRK delegate, 7th Session, 6 March 2008, during general discussions.

Palestinian delegate made similar comments, asserting that the US itself was a grave abuser of human rights, dubiously echoing Churchill, in exclaiming, “Americans will always only do the right thing after they have exhausted all other alternatives”¹⁶⁰.

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

The EU abstained from many votes on controversial issues, and often maintained a neutral position during related Council discussions. However, this Western regional alliance did, at times, criticise the US on topics where it may have been expected to ally itself with, or at least refrain from attacking, the US. The EU’s prevailing attitude towards the mandate ‘Protection of Human Rights Whilst Countering Terrorism’ was critical of US tactics, such as extraordinary rendition and detention without trial. The EU did not attack the US per se, but rather used discussions with Special Rapporteurs, or other related debates, to highlight its concerns in this regard. The EU’s stance during such

¹⁵⁹ *Id.*

¹⁶⁰ Oral intervention of Palestinian delegate, 4th Session, 22 March 2007, in response to John Dugard, Special Rapporteur on the Occupied Palestinian Territories

debates at the Council was rather ironic considering the role of some of its members, including the UK, in the counter-terrorism tactics being discussed.

The EU's interventions were typically placid, which neutralised its obvious disagreement with certain US practices. On one occasion, Finland - on behalf of the EU - stressed its commitment to fighting terrorism, before expressing the absolute requirement that "human rights law has to be respected" whilst doing so¹⁶¹. The Finnish intervention on this occasion continued by highlighting those findings of the Working Group on the Situation of Detainees' report that related to the US. The EU emphasised that "the US should refrain from bringing [detainees] to other countries", before suggesting that international tribunals be used in order to ensure such detainees' rights¹⁶².

Switzerland was also critical of the US, especially in terms of its 'war on terror', but followed the EU in the manner of its criticisms rather than attacking the US, as Cuba and others chose to do. Switzerland condemned the transfer of detainees to countries that practice torture, as well as other forms of cruel and degrading treatment. It criticised the use of such tactics whilst countering terrorism, coupling its comments on these issues with criticism of the holding of detainees at Guantanamo Bay¹⁶³. Switzerland's comments were less reserved than those of EU countries, and it often asked pointed questions to mandate holders and experts that made clear its position towards the US international human rights record.

¹⁶¹ Oral intervention of Finnish delegate, 21 September 2006, 2nd Session, in response to Working Group (SRs) on Situation of Detainees.

¹⁶² *Id.*

¹⁶³ Oral intervention of Swiss delegate, 21 September 2006, 2nd Session, in response to Working Group (SRs) on Situation of Detainees

Russia and China may both have a history of difficult relations with the US, but their interactions at the Council have, on the whole, remained far friendlier than at other UN bodies. Whilst China was conspicuous in its failure to criticise the US, possibly due to its fear of having its own human rights record scrutinised, Russia did, at times, condemn the US during discussions of certain issues. On one such occasion, Russia accused a US delegate of “arrogance ... in the way he talked about human rights situations”, alleging that “the US ignore the United Nations human rights mechanisms, and even stops financing them”¹⁶⁴. The Russian attack on this occasion, which included references to Guantanamo Bay and extraordinary rendition, suggested political motivations, not least due to Russia’s desire to maintain favourable relations with OIC members. The impact of such outbursts could have been to further alienate the US at the Council.

In many ways, the Western states’ criticisms probably impacted more upon the US decision to remove itself from the Council than other countries’ comments. The US must have become used to venomous and vociferous attacks at UN bodies from countries such as Cuba and Iran. However, criticism from its allies, or at least those states it has good relations with, must have stung the US considerably. Whether these comments struck a raw nerve in terms of its own human rights record, or whether the US was merely reacting to selectivity and bias against it, such interventions presumably played a large role in its decision to withdraw from the body.

In order to understand why these comments may have encouraged the US to disengage from the Council due to alienation rather than fear of scrutiny, the regularity

¹⁶⁴ Oral intervention of Russian delegate, 24 September 2007, 6th Session, in general discussion on Agenda Item 4.

and nature of these attacks must be examined. One example of a particularly venomous attack on the US occurred at the Fourth Session in response to the High Commissioner for Human Rights' report. Iran, during its right to reply, launched into the following diatribe,

“Iran wants to draw the Council’s attention to the most phenomenal irony of our era. The United States has been condemned as the most notorious violator of human rights by peoples of the world. The occupation and unilateral invasion of Iraq in 2003 was an unlawful and illegitimate invasion and has not only led to the violation and killing of innocent people. The United States is not referring to the very bitter cases of the rape of innocent women The American action had led to violations of the right to life, killings, it has caused misery and destruction ... referring to raping Iraqi girls and killing of their family. The invasion is an arrogant adventure ... the United Nations is now not as credible any more The barbaric treatment of prisoners in Guantanamo, which is by human rights criteria perfectly beyond description ... in Prisons in Iraq the United States resorts to the same approach, although it has failed. The situation in Iraq shocks the world. It has not tried to remedy the victims ... the operation transferring prisoners to force them to confess under pressure and torture has the most ridiculous justification as a ‘war on terror’.”¹⁶⁵

¹⁶⁵ Oral intervention of Iranian delegate, 4th Session, 15 March 2007, in response to Louise Arbour, High Commissioner for Human Rights.

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

5. Conclusion

The United States cannot boast a flawless human rights record. During the two years of the Council existence before its withdrawal, the US committed serious abuses both domestically and internationally. For example, the Amnesty International Annual Report 2007¹⁶⁶ highlighted the following categories of serious human rights abuses by the US during 2006: renditions and secret detentions, detention without charge in Afghanistan and Iraq, torture and other abuses at Guantanamo Bay, unlawful killings by US forces outside the USA, detention of enemy combatants in the USA, tortures, ill-treatment in jails and police custody, ill-treatment of female prisoners, and the use of the death penalty on people with serious mental illness¹⁶⁷. These, and other, issues of serious concern were justifiably looked into by national and international human rights institutions, as well as NGOs. The US accepted such attention, despite the scrutiny and criticisms that it entailed.

¹⁶⁶ Amnesty International (AI), *Annual Report 2006* (2007).

¹⁶⁷ *Id.* at 273-277

The US displeasure with the Council for scrutinising its human rights record was arguably due to the selectivity and bias displayed in the singling out of the country for political, or other, motivations. Arguably, the US would have tolerated mildly disproportionate emphasis on its human rights record had the Council proceeded more strongly on other grave situations such as Darfur, Burma or Zimbabwe. Instead, the Council spent little time discussing grave situations such as these. The Council's failure to discuss, let alone take action against, repressive regimes that systematically violated human rights, such as Libya or Saudi Arabia, only emphasised the disproportionate attention devoted to the US. Unlike organisations such as Amnesty International, the Council's credibility as an impartial body was severely lacking, resulting in the US withdrawal when it became apparent that the disproportionate focus on its human rights record would be allowed to continue indefinitely.

The Human Rights Council was created amid much promise and expectation that it would significantly depart from those practices of its predecessor, the Commission, which had undermined the credibility of the UN human rights mechanisms¹⁶⁸. During its first two years, however, the Council proved to be biased and selective, with members blocking meaningful debate about grave situations due to regional alliances¹⁶⁹, as well as failing to adequately deal with many of the issues brought to its attention. Furthermore, there were human rights situations that not only dominated the Council's discussions but were focused on to the detriment of worse abuses elsewhere. Whilst it is, at times, necessary to scrutinise some countries more than others, especially where a crisis or

¹⁶⁸ *Supra* note 114.

¹⁶⁹ *Supra* note 25.

ongoing human rights situation occurs, the disproportionate focus given by the Council to certain states such as the US was due to political rather than humanitarian motivations. Similarly, whilst it may be acceptable to hold different nations to different standards in view of their respective levels of available resources, the Council again decided its standards according to political rather than humanitarian motivations. The significant politicisation of the Council in these, and other, regards played a considerable role in the US decision to withdraw.

From the outset, the US never fully supported the Human Rights Council in the form finally agreed, and declined to stand for membership. However, it did participate in the first seven sessions as a permanent observer, expressing views on almost all issues raised during discussions and debates. The US arguably played as important a role as member states in the shaping of the new body; its opinions and interventions were often more extensive than many members of the Council, although the US did not have the power to vote on resolutions put forward at the body. Its interventions followed the same pattern throughout all seven sessions. The US repeatedly called for adherence to the Council's founding principles of non-selectivity, impartiality and lack of bias. The US stressed the importance of these principles during all discussions, including debates about Council working methods, country-specific human rights situations, and individual rights and responsibilities. Its fears that the body would repeat the mistakes of its predecessor, the Commission, were reflected in its efforts to steer the Council away from such pitfalls.

The US involvement at the Council was not limited to expressing opinions and making interventions. The US itself, and its own human rights record, became the focus of various Council discussions and of individual states' comments during debates. There

were a number of states that used this forum to criticise the US, alleging the commission of domestic and international human rights violations. The comments made by those countries that have bad relations with the US had less impact than the criticisms of Western states and other US allies despite the latter groups' comments being more constructive and less vociferous than the former. The Western states' interventions that condemned the US mainly focussed on the human rights violations occurring during the so-called 'war on terror'. The US failed to adequately respond to allegations and questions regarding extraordinary renditions, torture, arbitrary detention, and other tactics used in countering terrorism. Instead the US reacted defensively to any criticism of its human rights record, without addressing the concerns raised.

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

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

predecessor. US supporters point to the focus on Israel and the US, as well as the lack of action regarding Darfur and other such situations, as being strong evidence for contentions of the body's selectivity and partiality. Those wishing to undermine the US credibility in terms of human rights may be able to argue that it was the country's fear of having its own record scrutinised that caused it to quit the Council. In order to do so, they will be able to use the US reticence to allow its own human rights record to be examined as an indicator in this regard. Ultimately, the resolution of such a debate will not be forthcoming, and neither will it matter unless the US, having recently been elected a member of the Council, again withdraws its involvement from the body. The criticisms and reservations held by the US remain relevant to its relationship with the body until such time as those specific issues with the Council have significantly improved. However, the 'true' motivations for its withdrawal have become less relevant since its decision to reengage with the Council.

The election of President Obama inspired hope that the change in the US administration would bring a new attitude to the Council. Eric Sottas, Director of the International Organisation against Torture, argued that the withdrawal was actually a political gesture. He said that

“[the US] has always clearly shown its opposition to the Council. This is a slightly more public way of putting pressure on it in order to raise the stakes. [...] [I]t reminds me of the time when the Nixon administration, which backed Pinochet in Chile, chastised the UN for criticising the Chilean dictator. But when Carter was elected in 1977, the American government took the floor at the Human

Rights Commission to ask forgiveness. After a presidency like that of Bush, you can expect some important changes in US policy on human rights”¹⁷⁰.

This opinion was reinforced by the recent US election to the Council in May 2009, which the State Department spoke of as being “in keeping with the Obama Administration's "new era of engagement" with other nations”¹⁷¹.

After the Presidential elections, a bipartisan group of over 30 senior foreign policy figures called for President-elect Barack Obama to strengthen relations with the United Nations¹⁷², specifically urging Washington to re-engage and indeed to become a member of the Human Rights Council. One article reported on this statement:

“The statement urges Washington to join the Geneva-based HRC, an agency that has been singled out for scorn by Bolton and other hawks in and outside the Bush administration, since it replaced the U.N. Human Rights Commission in 2006 due to the presence there of governments accused of serious human rights abuses. Like its western allies, the statement said Washington should ‘work to influence [the HRC] from within.’

¹⁷⁰ Claire Doole, ‘US quits Human Rights Council?’, *Human Rights Tribune*, 6 June 2008, available at <http://www.humanrights-geneva.info/US-quits-Human-Rights-Council,3184> (last visited 27 August 2009).

¹⁷¹ *Id.*

¹⁷² The statement’s signatories included three former National Security Advisors, former secretaries of state Madeleine Albright and Warren Christopher, and former defence secretaries Harold Brown and William Perry, a range of Republicans, and three former UN ambassadors. It was published in a full-page advertisement carried by the New York Times on 20 November 2008.

‘The HRC has drawn a tremendous amount of fire, and the fact that you've got all these people coming together and saying that the best way to effect change in the institution is to have a seat at the table is very powerful,’ said PSA director Matthew Rojansky, who helped draft the statement.”¹⁷³.

Another article stated that although “the Bush administration has distanced itself from the U.N. Human Rights Council ... the experts suggested the United States should now actively seek a seat on the "faltering" council and work to influence the body from within”¹⁷⁴. During the Presidential campaign, Obama views were mixed,

“With new leadership in Washington committed to human rights standards in deed as well as in word, the United States will again have the moral authority to lead the world on human rights issues. The United States should seek to reform the UN Human Rights Council and help set it right. If the Council is to be made effective and credible, governments must make it such. We need our voice to be heard loud and clear to shine a light on the world’s most repressive regimes, end the unfair obsession with Israel, and improve human rights policies around the globe.”¹⁷⁵

¹⁷³ Jim Lobe, ‘U.S.: Obama Urged to Strengthen Ties with U.N.’, Inter Press Services, 19 November 2008, <http://ipsnews.net/news.asp?idnews=44780> (last visited 27 August 2009).

¹⁷⁴ Sue Pleming, ‘U.S. foreign policy experts give Obama U.N. advice’, Reuters, 19 November 2008, <http://www.reuters.com/article/politicsNews/idUSTRE4AI7WX20081120> (last visited 27 August 2009).

¹⁷⁵ United Nations Association of the USA, ‘Better World Campaign, 2008 Presidential Candidate Questionnaire on US-UN Relations’, http://www.globalproblems-globalsolutions-files.org/bwc_website/candidate_questionnaires/Obama-Response.pdf (last visited 27 August 2009).

However, the President has also criticised the Council, not least for passing "eight resolutions condemning Israel, a democracy with higher standards of human rights than its accusers"¹⁷⁶. He further asserted that the body "only with difficulty adopted resolutions pressing Sudan and Myanmar ... [and] has dropped investigations into Belarus and Cuba for political reasons, and its method of reporting on human rights allows the Council's members to shield themselves from scrutiny"¹⁷⁷. The likelihood is that the new administration under President Obama may not be prepared to backtrack on all of the Bush administration's attitudes and positions regarding the UN. However, the appointment of Hilary Clinton as Secretary of State demonstrated the new administration's desire for re-engagement with the Council. Some commentators point to Clinton's support for the UN, usually reserving her criticisms for individual member states, saying that she has made clear her disapproval of the "Bush administration's policy of "standing aside and not fully engaging""¹⁷⁸ with the Council. Clinton has expressed strong opinions regarding the US standing for election to the Council, saying,

““Human rights are an essential element of American global foreign policy” said Secretary Clinton. “With others, we will engage in the work of improving the UN

¹⁷⁶ Josh Rovenger, 'ANALYSIS: Obama vs. McCain on U.S.-U.N. Relations', Citizens for Global Solutions, 15 June 2008, http://www.globalsolutions.org/in_the_news/analysis_obama_vs_mccain_u_s_u_n_relations (last visited 27 August 2009).

¹⁷⁷ *Id.*

¹⁷⁸ Alan Avery, 'Hillary Clinton and the UN: How She Might Approach the Role of Secretary of State', 26 November 2008, <http://unusa.org/Page.aspx?pid=923> (last visited 27 August 2009).

human rights system to advance the vision of the UN Declaration of Human Rights. The United States helped to found the United Nations and retains a vital stake in advancing that organization's genuine commitment to the human rights values that we share with other member nations. We believe every nation must live by and help shape global rules that ensure people enjoy the right to live freely and participate fully in their societies.”¹⁷⁹

Despite the change in administration and thus the change in policy towards the Human Rights Council, change must occur at the body in order for the US to continue to engage with and support the body. The US decision to work towards such change from the inside does not negate its positions regarding the Council's flaws and weaknesses. The impact of its withdrawal on the Council's credibility was significant, and parallels can and will be drawn with the demise of the body's predecessor. The Commission failed due to politicisation and bias, as well as the undermining of its credibility due to its membership and action taken by the body. The Council has already attracted criticism for its politicisation, and the disengagement of the US only served to strengthen the arguments of the body's critics. It will be crucial to the US that during its term of membership the Council makes significant changes, especially regarding adherence to its own founding principles of non-selectivity and non-bias. This will only occur if the Council takes the

¹⁷⁹ U.S. Department of State, 'Announcement on U.S. seat on U.N. Human Rights Council', statement of Gordon Duguid, acting deputy spokesman, 1 April 2009 <http://www.america.gov/st/texttrans-english/2009/April/20090401120727eaifas4.264468e-02.html> (last visited 27 August 2009)

necessary steps towards ensuring that its politicisation is reversed, and that the body is used solely to deal even-handedly with human rights abuses across the world.