

FULFILLING STATES' EXPECTATIONS IN THE HUMAN RIGHTS COUNCIL

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Abstract

The United Nations Human Rights Council was established in 2006 to replace the United Nations Commission on Human Rights. This paper sets out to evaluate the performance of the Council since its inception. The paper provides a critical appraisal of the Council based on the goals this new body was supposed to implement. This is in contrast with the existing academic literature, which seem to take as granted that there is progress in the field of human rights and that the Council has to fulfill some objective standards of human rights. The expectation of states is identified by looking at the constitutive document of the Human Rights Council (resolution 60/251 of the United Nations General Assembly) and at the official record of the explanation of votes taking place after the adoption of the resolution. This is followed by an evaluation of the Council based on its resolutions, NGO reports and academic studies. The result is that the Council is fulfilling the states' expectations, however, this is not to say that the Council overcame the criticisms of its predecessor, rather than that the expectations of states were low. Finally, the paper identifies the root of the criticism formulated in the doctrine and finds that the Council is built on a strong contradiction. It is formulated in terms of human rights and universality, whereas it functions as a political organ where it is accepted that all kinds of political deals will be made.

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Introduction

The United Nations Human Rights Council as the principal human rights organ of the United Nations was set up in 2006 to replace the United Nations Commission on Human Rights. This replacement took place because the Commission became increasingly politicized, selective and used double standards. The paper's objective is to assess the performance of the United Nations Human Rights Council since 2006. Such an evaluation is important in order to see whether this new human rights body is any different than its predecessor. This is in no way a new attempt, as in recent years a body of academic articles has already developed on the issue. However, there are some major novelties offered by the present paper, which were not taken into consideration by other authors analyzing the performance of the Council.¹

The biggest novelty is that the paper provides a critical appraisal of the Council based on the goals this new body was supposed to implement. In order to do this, the paper explores the expectations of states regarding the new Council and then evaluates it in light of those expectations. This is in strong contrast with the existing academic literature, which seem to take as granted that there is a progress in the field of human rights and that the Council has to fulfill some objective standards of human rights. In other words, scholars seem to be of the opinion that there is a progress in the world of human rights and we are making our way towards a utopist society, therefore, not paying any or enough attention to the expectations of states. Consequently, there is a presumption in the doctrine that the Council has to be better than its predecessor, just because it came after it, disregarding the expectations of the member states in their evaluation of the Council.

¹ R. Freedman, *The UN Human Rights Council: A Critique and Early Assessment* (Oxon: Routledge, 2013), p. 391; B. Schaefer, "The United Nations Human Rights Council: a Disastrous First Year," *Backgrounders*, no. 2038 (2007); R. Gowan and F. Brantner, "The EU and Human Rights at the UN: 2011 Review," *European Council of Foreign Relation* (2011).

Before embarking on identifying the expectations of states, Chapter One presents the main criticisms of the Commission on Human Rights, the predecessor of the Human Rights Council. These shortcomings, namely politicization, lack of qualifications criteria, selectivity and the lack of resources led eventually to its demise. These are important to explore in order to understand what the expectations were from the predecessor of the Council and what went wrong along the way.

Next, Chapter Two identifies the expectations of states. This is done *via* looking at the constitutive document of the Human Rights Council (resolution 60/251 of the United Nations General Assembly) and at the official record of the explanation of votes taking place after the adoption of the resolution. The latter is very important in order to see the original expectation of states, because resolution 60/251 was already a product of hard compromise.

Firstly, based on the preambular and operative paragraphs of resolution 60/251 and their language, the paper is able to infer the expectations of states regarding the 4 major area of criticism of the former Commission (formulated in Chapter One). Concerning politicization, the paper concludes that states omitted to address the biggest factors contributing to the politicization of the Commission. Therefore, it can be established that states did not seriously attempt to de-politicize the Council. Regarding the qualifications criteria, the paper, while analyzing the “soft” nature of the qualifications criteria introduced by resolution 60/251, arrives at the conclusion that states did not realistically expect human rights abusers to stay away from the Council. With regard to selectivity, the paper notes that states did take steps in order to eliminate selectivity at least in part from the work of the Council by creating the Universal Periodic Review and by embodying the principle in the constitutive instrument of the Council. However, the paper also remarks that by leaving in place the “non-action” motion, this suggests that states wanted to eliminate selectivity only in part. Finally, in relation to the lack of resources, the paper finds that countries genuinely

considered it important to upgrade the Council to a standing body, which illustrates their expectation to have an organ dealing permanently with human rights abuses. Secondly, the analysis of the explanation of votes of the 39 countries talking in the name of 167 states reinforces the view that countries were well aware of the fact that the text of resolution 60/251 was a huge compromise and that it was pointless to have high expectations of it.

Chapter Three evaluates the Human Rights Council based on the above-mentioned expectations. The fulfillment of states expectations is evaluated in the order in which these expectations were set out in Chapter Two, namely states expectations regarding politicization, qualifications criteria, selectivity and lack of resources. In order to do that, the paper looks at the practice of the Council since 2006 and its resolutions. The paper analyses all 26 sessions of the Council taking place since 2006 and identifies a number of controversial resolutions and some others singling out certain countries, such as Israel, Syria, Sudan and North Korea (see annex I to the paper). The paper investigates the former in order to show that politicization is still present in the new Council, whereas it looked at the latter to illustrate that selectivity also persists. In addition, some academic studies were also used in order to buttress some of the findings of the paper.

The second part of Chapter Three is dedicated to the exploration of the academic articles on the Human Rights Council, pointing out the stark contrast between the findings of the present paper and the existing literature. The paper divides the academic research on the new Council into three groups. The first group is composed of articles which simply present the changes brought by the Council in comparison to the Commission and do not engage in an assessment on grounds that it is too early to draw any conclusions. The second group of authors is of the opinion that the Council is similar to the now defunct Commission, but it will prove itself with time. The last group comprises academics that criticize the Council for failing to become an improved version of the Commission. These groups are not evenly

divided, only a very small part of the scholarly articles defend the Commission, whereas the bulk of them criticize it. Consequently, the end of the chapter addresses the source of this contrast between academic articles and the findings of the paper.

A second major novelty is that this paper constitutes the first attempt to go beyond evaluating the Human Rights Council and to actually address the root of the criticism formulated against it. Consequently, Chapter Four argues that the Human Rights Council is built on a strong contradiction. It is formulated in terms of human rights and universality, whereas it functions as a political organ where it is accepted that disagreements exist and that all kinds of political deals will be made. In other words, there is a mismatch between the expectations of the Council, framed in universality, and the operation of the Council, which is political. It has to be pointed out here that one cannot have a satisfying design if this contradictory principle is enshrined in the constitutive instrument of the Human Rights Council, because this leads to incoherencies. This would explain the scholarly dissolution and also fits in the greater picture of what Kratochwil calls the “loss of the language of politics.”²

² F. Kratochwil, International Relations and International Law (lecture, Central European University, Budapest, Hungary, Winter 2014).

Chapter 1 – The story of the Commission and Council

“The Commission’s declining credibility has cast a shadow on the reputation of the United Nations system as a whole.”³

This harsh criticism is part of the 2005 Larger Freedom speech by United Nations Secretary General Kofi Annan referring to the United Nations Commission on Human Rights (Commission). These were powerful words coming from a United Nations Secretary General, who are usually well known for their passive stance on pressing issues. The speech seems to have been the last drop in an already full bucket as not long after this sharp criticism, the Commission on Human Rights was abolished in favor of a new body, the Human Rights Council (Council). The objective of the paper is to assess the work of this new body. However, if one embarks on a journey to assess the Council, it is vital to understand what the expectations from its predecessor were and what had gone wrong with it. Consequently, the period leading up to Annan’s speech will be under the spotlight.

Accordingly, this chapter will explore the membership and mandate of the Commission and how they changed over the years. The first chapter will also point out how these changes affected the efficiency of the Commission. Then it will explore its so-called “demise” by presenting the main criticisms of the Commission, which supposedly led to its abolition. The historical context and the political environment prevailing at the time play a very important role in understanding the Commission at different stages and this will be addressed throughout the chapter.

³ Office of the Spokesman for the UN Secretary-General, “Secretary-General’s Address to the Commission on Human Rights,” 2005, available at www.un.org/apps/sg/sgstats.asp?nid=1388 (accessed May 2014).

One of the main purposes of the United Nations is to promote human rights. This purpose is *expressis verbis* mentioned in article 1(3) of the United Nations Charter,⁴ which reflects its fundamental importance. The United Nations Economic and Social Council (ECOSOC), one of the principal organs of the United Nations, was entrusted with the task of setting up the Commission.⁵ In light of this, the Commission was set up in 1946 with its seat in Geneva, mandated to safeguard and promote human rights.⁶ The Commission met in regular sessions for 6 weeks every year, during March and April, being active for a period of over 60 years.

In 1946 human rights were still a very new concept and the Commission adopted a passive role, mostly focusing on the promotion of human rights and assisting states in drafting international conventions. In this vein, the first major task of the Commission was the elaboration of the world's first global human rights instrument, the Universal Declaration of Human Rights, which was adopted in 1949. The Commission was also entrusted with the task of protecting and upholding this creation.

The evolution of the Commission is closely connected to its changing membership. At the beginning it was dominated by western perceptions. In 1946 the Commission had 18 members, principally representing the victorious powers of the Second World War. It then became more diverse when it was then expanded to 21 countries in 1962. Following the first expansion, 5 regional groups were set up in order to ensure the proportionate geographic representation of countries in the Commission, these were the Western European Group, the Eastern European Group, the Latin American and Caribbean Group, the African Group and the Asian Group.⁷ The next enlargement in 1967 saw the number of countries reach 32. The

⁴ "Charter of the United Nations," June 26, 1945, 892 *UNTS* 119., Art. 1(3).

⁵ *Ibid*, Art. 68.

⁶ United Nations Economic and Social Council, Second Session, Resolution 9, *Journal of the Economic and Social Council* 29, 1946, p. 520.

⁷ R. Freedman, *The UN Human Rights Council: A Critique and Early Assessment* (Oxon: Routledge, 2013), p. 20.

two expansions were a result of the decolonization movement as the growing number of independent states pressured the Commission to increase its membership.⁸

The second enlargement marked the end of the passive approach of the Commission towards human rights issues and the beginning of a new, interventionist era. This approach was prompted by both the massive violations of human rights in South Africa during apartheid and the increasing number of developing states in the Commission, which were extremely sensitive to such issues. Consequently, the United Nations Economic and Social Council authorized the Commission to deal with human rights violations. Under the interventionist approach the Commission was empowered to investigate human rights practices in individual countries without their permission. This was possible through Procedure 1235, which allowed the Commission to create an *ad hoc* working group to examine information relating to gross human rights violations.⁹

This procedure also enabled an annual public debate between member states of the Commission on country specific human rights violations. This was followed by procedure 1503, which enabled a confidential complaints procedure for anyone (states/NGOs/individuals) against any United Nations member state.¹⁰ In 1980 membership of the Commission increased again reaching 43 countries. By this time a polarization of the Commission occurred, between, on the one hand, states aligned with the Soviet Union and, on the other hand, countries aligned with the United States of America (USA). This polarization was produced in the context of the Cold War and was a result of political games, rather than countries claiming common values. In this period human rights were consistently ignored for the sake of military and political alliances. As one author puts it, during the Cold

⁸ T.J. Farer & F.D. Gaer, "The UN and Human Rights: At the end of the beginning" in A. Roberts and B. Kingsbury, 2nd ed., *United Nations, Divided World* (Oxford: Oxford University Press 1993), p. 261.

⁹ United Nations Economic and Social Council, Forty-second Session, Resolution 1235, *UN Doc. E/4393*, 1967.

¹⁰ United Nations Economic and Social Council, Forty-eighth Session, Resolution 1503, *UN Doc. E/4832*, 1970.

War, security issues were maximized to the detriment of human rights issues, which were used as pawns in a larger game.¹¹

The last expansion took place in 1992, with the number of member states reaching 52. New member states also brought along new concepts of human rights, different interpretations of already existing human rights and different understandings of hierarchies between them. With the end of the Cold War, these features gained prominence and a new polarization took shape based on them, this time between the countries of the global north and those of the global south. The end of the Cold War also brought a paradigm change and in the absence of some unifying enemy, human rights genuinely became important. In other words there were no incentives anymore to sacrifice human rights on the altar of military alliances. However, by this time Western countries had lost their absolute majority in the Commission (held in 1946) and they only represented 1/5th of the total number of votes. Consequently, Western countries lost their grip over the Commission and over the development of human rights.

The so-called “demise” of the Commission came with this backdrop. Although there seems to be almost unanimity in the doctrine that the Commission presented serious shortcomings, there is no clear record of how states felt about the issue. Nevertheless, some official documents, such as reports of the Commission on Human Rights, reflect the view of states in some areas regarding the Commission. However, this is far from enough for identifying the biggest shortcomings and therefore, this thesis mainly draws on academic articles in order to identify the major criticisms. An additional document formulating criticisms of the Commission is the report of the “High Level Panel on Threats, Challenges

¹¹ R. Freedman, *The UN Human Rights Council: A Critique and Early Assessment* (Oxon: Routledge, 2013), p. 53.

and Change”, commissioned by Secretary General Kofi Annan.¹² Based on this report, in corroboration with the majority of academic articles and NGO reports, the paper distinguished 4 major areas of criticism, namely politicization, the lack of qualifications criteria, selectivity and lack of resources.

Under politicization the doctrine understands block voting and coalition building. Already from the beginning countries in the same regional group established common positions and voted alike in the Commission. This was, most probably, the result of pressure inside regional groups to protect group members,¹³ solidarity in general and out of a desire to maintain good relationships with neighbors. The need for coalition building grew proportionally with the increase of member states in the Commission. The creation of regional groups in 1962 and the establishment of other power blocks, such as the Group of 77, the Non-Aligned Movement, the Organization of the Islamic Conference (OIC) and the European Union only facilitated coalition building.¹⁴ Consequently, it has become a common phenomenon for states from one regional group to try to pursue other states to vote in their favor. A recent study presented empirical evidence on how non-democratic countries benefitted from increased trade flow with China once they gained membership in the Commission.¹⁵ In other words, non-democratic countries were selling their votes in order to obtain benefits. This logic of functioning of the Commission bears an extremely high resemblance with the functioning of a national parliament, where block voting and coalition building are permitted.

¹² United Nations General Assembly, Fifty-ninth Session, Follow-up to the outcome of the Millennium Summit - Report of the High-level Panel on Threats, Challenges and Change, “A More Secure World: Our Shared Responsibility,” *UN Doc. A/59/565*, 2004.

¹³ R. Wheeler, “The United Nations Commission on Human Rights, 1982-1997: A Study of - Targeted Resolutions,” *Canadian Journal of Political Science* 32, no. 1 (1999), p. 81.

¹⁴ N. Schrijver, “The UN Human Rights Council: A New ‘Society of the Committed’ or Just Old Wine in New Bottles,” *Leiden Journal of International Law* 20, no. 4 (2007), p. 812.

¹⁵ Casper B.A., “Non-Democracies and the Exploitation of the UN Human Rights Council,” paper presented at the Annual Meeting of the American Political Science Association, Chicago, 2013, pp. 24-26.

The lack of qualifications criteria was another reason for which the Commission was harshly criticized as this deficiency permitted abuser states to be elected and sit in the Commission.¹⁶ This means that any member, regardless of their human rights record, could be elected by ECOSOC. This led to the fact that major human rights violators could be selected to the Commission. The lack of qualifications criteria gained notoriety with the USA failing to be re-elected to the Commission in 2001. This happened while other countries, deemed less qualified than the USA, had no problem obtaining a seat in the body.¹⁷ The lack of qualifications criteria received a further big blow with the election of Gaddafi's Libya as Chair of the Commission in 2003.¹⁸ However, the absence of qualifications criteria reached the apogee of its criticism in 2004, when Sudan was reelected to the Commission in the midst of the massacres it perpetrated in Darfur.

The lack of qualifications criteria also had a political side as states deliberately refused to adopt a recommendation by ECOSOC stating that the body should consist of "highly qualified persons" serving as "non-governmental representatives."¹⁹ In other words, states wanted their government representatives to sit in the Commission, instead of independent experts. Consequently, the Commission began to develop as a political body, rather than an expert body.

The third area of criticism, selectivity, was present since the inception of the Commission, but it became truly visible towards its end. The best example of selectivity is

¹⁶ United Nations General Assembly, Fifty-ninth Session, Follow-up to the outcome of the Millennium Summit - Report of the High-level Panel on Threats, Challenges and Change, "A More Secure World: Our Shared Responsibility," *UN Doc. A/59/565*, 2004, p. 89; L.C. Moss, "Will the Human Rights Council have Better Membership than the Commission on Human Rights?" (2006), *Human Rights Brief* 13, no. 3 (2004), p. 11; R. Freedman, *The UN Human Rights Council: A Critique and Early Assessment* (Oxon: Routledge, 2013), pp. 33-32; P. Alston, "Richard Lillich Memorial Lecture: Promoting the Accountability of Members of the New UN Human Rights Council," *Journal of Transnational Law and Policy* 15, p. 59 (2006); Human Rights Watch, "Briefing to the 59th Session of the UN Commission on Human Rights," 2003, available at: <http://www.hrw.org/news/2003/02/14/commission-human-rights-reform> (accessed May 2014).

¹⁷ For example Sudan was elected to the Commission in the same year.

¹⁸ "Libya take human rights role", BBC, January 20, 2003, available at: <http://news.bbc.co.uk/2/hi/africa/2672029.stm> (accessed May 2014).

¹⁹ United Nations Economic and Social Council, Report of the Commission on Human Rights to the Second Session of the Economic and Social Council, *UN Doc. E/38/Rev.1*, 1946, pp. 230-231.

the case of Israel, which after the expansion of the Commission, became the permanent subject of Commission action.²⁰ While it is true that many of the actions were justified, at the same time human rights violations were happening in other parts of the world as well, which were simply overlooked by the Commission. This was most evident in the case of major powers such as the United States of America, China and Russia. Despite the fact that there was evidence of significant abuses committed by Russia in the wake of the Chechen insurgency, by China during the Tiananmen Square massacre and by the USA in Guantanamo Bay, these remained unaddressed by the Commission. This was mainly possible due to the so-called “non-action” motion, which has its origins in a simple procedural rule of ECOSOC (the Commission being its subsidiary organ) stating that a “motion requiring that no decision be taken on a proposal shall have priority over that proposal.” Countries started requesting an immediate vote of “non-action” whenever embarrassing issues regarding them were discussed in the Commission.²¹ This prevented any discussion in the Commission regarding these issues and immediately blocked any other proposals. In 2005 alone, out of a total of 8 country specific resolutions, 4 were adopted against Israel,²² whereas massive human rights violations in the Democratic Republic of Congo and Sudan again remained unaddressed.²³ Selectivity was a result partly of politicization as well, as the only countries to be condemned were the politically isolated ones, such as Israel, which failed to gather enough “friends” in their support.

The fourth and final area of criticism pertains to the resources of the Commission. The Commission lacked both financial resources and time to address all relevant human

²⁰ M. Dennis, “Human Rights in 2002: The Annual Sessions of the UN Commission on Human Rights and the Economic and Social Council,” *American Journal of International Law* 97, no. 2 (2003), p. 384.

²¹ Reporters Without Borders, “UN Commission on Human Rights Loses All Credibility,” 2003, p. 14, available at: http://www.rsf.org/IMG/pdf/Report_UNU_gb.pdf (accessed May 2014).

²² United Nations Economic and Social Council, Report of the Commission on Human Rights to the Sixty-First Session of the Economic and Social Council, *UN Doc. E/CN.4/2005/135*, 2005, p.xiv.

²³ R. Freedman, *The UN Human Rights Council: A Critique and Early Assessment* (Oxon: Routledge, 2013), p. 38.

rights issues. Firstly, the Commission was not a standing body of the United Nations, but a subsidiary body of ECOSOC, therefore it did not have its own permanent resources. Secondly, the Commission's annual six-week sessions proved incapable of handling the ever-increasing number of human rights issues. This was heavily criticized in the doctrine as one of the main reasons for which many human rights issues remained unaddressed.²⁴ This last criticism has a political aspect as well, namely that disproportionate attention was often focused on some issues, thereby diverting time and resources away from other more relevant and urgent issues.

All four areas of criticism have two things in common, namely that they all contain certain elements of politicization and that they all contributed to the lack of credibility of the Commission. Regarding the former, it is not extremely clear whether countries considered the politicization of the Commission as grounds for replacing it. After all, there is some evidence seeming to suggest that states envisaged the Commission as a political body from the very beginnings.²⁵ Nevertheless, the "High Level Panel on Threats, Challenges and Change", created by Annan, was the first to recommend the reform of the Commission in order to restore its credibility.²⁶ From the available documentation it can be inferred that the majority of states were in favor of this recommendation.²⁷ Kofi Annan's 'Larger Freedom' speech was made in this context and it took a step further by explicitly demanding the Commission to be replaced with a new body, which could ensure a fresh start. The 2005 World Summit,

²⁴ L. Rahmani-Ocora, "Giving the Emperor Real Clothes: The UN Human Rights Council," *Global Governance* 12, no. 1 (2006), p. 16; P. Scannella and P. Splinter, "The United Nations Human Rights Council: A Promise to be Fulfilled," *Human Rights Law Review* 7, no. 1 (2007), p. 46.

²⁵ Countries deliberately refused an ECOSOC recommendation proposing "highly qualified persons" to serve in the Commission as "non-governmental representatives", see: United Nations Economic and Social Council, Report of the Commission on Human Rights to the Second Session of the Economic and Social Council, *UN Doc. E/38/Rev.1*, 1946, pp. 230-231.

²⁶ United Nations General Assembly, Fifty-ninth Session, Follow-up to the outcome of the Millennium Summit - Report of the High-level Panel on Threats, Challenges and Change, "A More Secure World: Our Shared Responsibility," *UN Doc. A/59/565*, 2004, para. 3.

²⁷ United Nations General Assembly and Economic and Social Council, Fifty-ninth Session, Follow-up to the outcome of the Millennium Summit - Summary of the open-ended informal consultations held by the Commission on Human Rights pursuant to Economic and Social Council Decision 2005.217, *UN Doc. A/59/847, E/2005/73*, 2005.

convened among others to formulate reforms of the United Nations, embraced Annan's speech and requested the replacement of the Commission on Human Rights with a new body, entitled the Human Rights Council.²⁸ Consequently, in 2006, after 5 months of negotiations, resolution 60/251 was adopted by the General Assembly, abolishing the Commission and replacing it with the Human Rights Council.²⁹

In the following chapter the paper identifies the expectation of states from the Human Rights Council based on the text of its constituting instrument and on the explanation of votes taking place in the General Assembly, following the adoption of resolution 60/251. The improvements brought by the resolution and their inherent expectations will be addressed in the order in which they respond to the 4 main areas of criticism mentioned above.

²⁸ United Nations General Assembly, Sixtieth Session, Resolution 60/1 adopting the 2005 World Summit Outcome, *UN Doc. A/Res/60/1*, 2005, p. 33.

²⁹ United Nations General Assembly, Sixtieth Session, Resolution 60/251 establishing the Human Rights Council, *UN Doc. A/Res/60/251*, 2006.

Chapter 2 – Expectation of states

This chapter analyzes the expectation of states towards the Human Rights Council. Reporting the Council to the expectation of states represents an entirely new approach, as the existing academic articles do not take into consideration these expectations, but take as granted that there is some sort of progress in the field of human rights. The expectations of countries are also important in order to understand why the Commission changed to Council. Ideally, this would be done *via* looking at the constitutive document of the Human Rights Council (resolution 60/251 of the United Nations General Assembly) and at the negotiations phase preceding the establishment of the Council. The latter is very important in order to see the original expectation of states, because resolution 60/251 is already a product of hard compromise. However, these 5 months of negotiations were not recorded anywhere. Fortunately, following the adoption of resolution 60/251, most of the states of the General Assembly took the floor in order to explain their vote. The position of states and many of the difficulties encountered during the negotiations phase can be inferred from the official record of this explanation of votes.

Resolution 60/251 of the General Assembly establishing the Human Rights Council was adopted with 4 countries voting against it (USA, Israel, Palau and the Marshall Islands) and 3 abstentions (Belarus, Iran and Venezuela). The USA decided to vote against the resolution because it did not believe that the Council would be better than its predecessor. Although the USA voted against resolution 60/251, it did not stop contributing money to its establishment, which was interpreted by many states as a tacit approval of the Council. The fact that a vote was called on the resolution already illustrates the fact that there was no unanimity on the substance of the resolution, however, the large majority of states managed to find the lowest common denominator and to vote in favor of it. This chapter will present the expectation of states inferred from the text of resolution 60/251 establishing the Human

Rights Council. The provisions of the resolution will be examined in the order in which they respond to the 4 main areas of criticism of the Commission raised in Chapter One, namely politicization, lack of qualifications criteria, selectivity and lack of resources (2.1.). The strength of the language of some articles will also be analyzed so as to see whether compliance was in fact expected with them. Then, the paper will examine and categorize the explanation of votes in order to get a wider picture of the expectation of states (2.2.).

2.1. Inferring states' expectations from the constitutive instrument of the Council

Regarding the first main area of criticism, politicization, there is only one reference to it in the resolution, namely in its preamble. The preambular clause recognizes the importance of the elimination of politicization from the work of the Council.³⁰ *De jure* this is an improvement compared to the resolution establishing the Commission, which did not even mention politicization in its constituting instrument. However, *de facto* this clause is of no relevance as it is not located in the operative part of resolution 60/251. This is important as the preambular clauses only indicate the framework through which a problem is viewed and do not contain specific codes of conduct, such as the operative clauses.

More importantly, the primary importance of politicization is reflected by its omission and not its inclusion. Interestingly, resolution 60/251 not only does not introduce provisions against block voting or coalition building, but does not even mention them *expressis verbis* in its text. This happening in the context in which it was widely known that block voting was extensively practiced in the Commission. Furthermore, coalition building was also recognized as a deficiency already in the days of the Commission, but not addressed by the constituting instrument of the Council. Finally, the most important structural deficit

³⁰ United Nations General Assembly, Sixtieth Session, Resolution 60/251 establishing the Human Rights Council, *UN Doc. A/Res/60/251*, 2006, preamble.

contributing to the politicization of the former Commission, namely that government representatives instead of independent experts were sitting on the human rights body also remained unaddressed. Consequently, the new Human Rights Council is still made up of government representatives, who often possess no prior knowledge in the field of human rights. The fact that none of these issues are addressed in the preamble or the main body of the resolution, does not mean that they did not constitute a primary concern for states. On the contrary, the omission to mention them reflects their importance. The fact that none of the three issues are addressed illustrates that members of the General Assembly could not come to any agreement regarding them and dropped them altogether. Even more, the silence in the case of government representatives in the Council, can also be considered as reflecting the expectation of states to keep human rights under governmental control and therefore implicitly politicized. This is because experts are more independently minded and might have voted in a certain way out of moral duty instead of strictly following instructions from governments. All the important deliberate “omissions” lead the paper to conclude that states did not seriously attempt to de-politicize the Council.

Qualifications criteria (more precisely the lack of it) became the most debated issue during the negotiations and the Council saw several modifications in comparison to its predecessor. Firstly, the number of member states was reduced from 53 to 47.³¹ The reason of why it was reduced and why exactly to 47 states will be addressed at the second subtitle of this chapter. Secondly, the system of elections of member states to the Council was changed. Now, member states being elected by simple majority of the General Assembly’s 192 member states, instead of ECOSOC’s 54 members, as it was in the case of the Commission.³² Thirdly, a two terms limit was introduced in order to ensure the rotation of states in the Council. This ended the existing prerogative of the permanent five members of the Security

³¹ United Nations General Assembly, Sixtieth Session, Resolution 60/251 establishing the Human Rights Council, *UN Doc. A/Res/60/251*, 2006, para. 7.

³² *Ibid.*

Council to have a perpetual presence in the new human rights body. Fourthly and most importantly, some substantive qualifications criteria were introduced by paragraph 8 of the resolution, namely that states of the General Assembly have the obligation to weigh “the contribution of candidates to the promotion and protection of human rights” and to take into consideration “their voluntary pledges and commitments”.³³ Moreover, paragraph 9 states that “members elected to the Council shall uphold the “highest standards in the promotion and protection of human rights”.³⁴ Paragraph 8 also provides the possibility of suspending the rights of a Council member that commits “gross and systemic violations of human rights” with a two-third majority of the General Assembly.³⁵

All these measures reflect the expectation that states wanted a smaller Council, elected by a larger electorate, thus gaining more legitimacy and that the future member states had to pass some “objective” standards in order to be qualified for Council membership. However, the language of paragraphs 8 and 9 is very imprecise and inconclusive. The resolution does not set out what “the contribution to the protection of human rights” means, nor what it understands under “the highest standards in the promotion of human rights” or by “gross and systemic” violations of human rights. By leaving these notions undefined, member states have a green light to interpret the text in ways that suit them. Consequently, it is very hard to talk of “objective” and binding standards, as it is very easy to disregard and go around them. This flexible language was probably the result of a deadlock during the negotiations phase, but it still does not change the fact that these are only “soft” requirements. Moreover, countries cannot be possibly so naïve to expect all the states of the world to observe a non-binding rule. Consequently, countries of the General Assembly could not reasonably expect not to have human rights abuser states sitting in the Human Rights Council based on articles 8 and 9 of resolution 60/251. As a matter of fact, a stronger proposal was on

³³ Ibid, para. 8.

³⁴ Ibid, para. 9.

³⁵ Ibid, para. 8.

the negotiations table as well, but not included in the final text, namely an exclusionary criterion to keep gross abusers of human rights off the Council.³⁶ The fact that it was not included in the text of the Council just strengthens the view that countries deliberately made the qualifications criteria so flexible.

Regarding the issue of selectivity, first of all, the non-selectivity obligation was reinforced by paragraph 4 of the resolution, which states that the work of the Council “shall be guided” by the principle of “non-selectivity”.³⁷ Furthermore, paragraph 5(e) established a peer review mechanism, called the Universal Periodic Review (UPR). This mechanism was entrusted with reviewing the human rights record of each member state of the Council during its period in office. The idea behind it was that if all the countries of the Council were subject of a review, then no countries would be singled out for scrutiny, therefore avoiding selectivity. Despite these positive developments, some negative practices, such as the controversial “non-action” motion, responsible for a big part of the selectivity in the former Commission, remained in place. Although the Council was upgraded to a subsidiary body of the General Assembly, whereas its predecessor was a subsidiary body of ECOSOC, the General Assembly had the same procedural rule in place as ECOSOC regarding the “non-action motion”.³⁸ In other words, a motion requiring that no decision be taken on a proposal still trumps any other proposals or discussions. To sum up, states took some steps to combat selectivity, such as the declaration contained in paragraph 4 and the introduction of the UPR. These in principle illustrate the genuine will of states to eliminate selectivity from the work of the new Council. At the same time, states failed to do something about the “non-action” motion, which was plaguing the now defunct Commission. This latter fact illustrates that although improvements were made, compromises had to be struck regarding selectivity.

³⁶ United Nations General Assembly, Official Record of Sixtieth Session, *UN Doc. A/60/PV.72*, 2006, p. 7.

³⁷ United Nations General Assembly, Sixtieth Session, Resolution 60/251 establishing the Human Rights Council, *UN Doc. A/Res/60/251*, 2006, para. 4.

³⁸ United Nations General Assembly, Rules of Procedure, *UN Doc. A/520/Rev.17*, rule. 116.

The last area of criticism, the lack of time and resources to cope with relevant human rights issues, was addressed by the constitutive instrument of the Council. Firstly, the Council was upgraded to *de facto* standing body of the United Nations, instead of being just a subsidiary organ of ECOSOC. This meant that the Council had its own resources and was required to meet 10 weeks per year over at least three sessions.³⁹ Furthermore, it also possesses the right and ability to hold special sessions with the support of one third of the membership of the Council. With this upgrade the new body's resolutions did not have to be confirmed by ECOSOC.⁴⁰ Secondly, the body's new name, Council, was also meant to place human rights on the same footing as security and development issues. These "upgrades" show the agreement among states that they do consider human rights as important and they do want to have a standing body dealing with it.

As it can be noticed, some structural deficits were more or less successfully addressed, whereas others remained deliberately unaddressed. Some deficiencies were not addressed because of deadlock during the negotiations process or because states simply did not want to address them.

2.2. Explanation of votes

As was mentioned earlier, the text of resolution 60/251 was already the result of hard compromise, therefore, in order to get a wider picture of the expectation of states, the paper will continue by looking at the explanation of votes in the General Assembly, following the adoption of resolution 60/251 establishing the Human Rights Council. This is the best tool to shed some light over the multitude of individual positions, priorities and wishes of states, which have never made it into resolution 60/251. It has to be mentioned here that this

³⁹ United Nations General Assembly, Sixtieth Session, Resolution 60/251 establishing the Human Rights Council, *UN Doc. A/Res/60/251*, 2006, para. 10.

⁴⁰ L. Rahmani-Ocora, "Giving the Emperor Real Clothes: The UN Human Rights Council," *Global Governance* 12 (2006), p. 18.

approach has some limitations, namely that it represents the public expression of states' wishes and does not necessarily reflect the view of their population. This part, will first present an overview of the explanation of votes, namely how many countries took the floor and into how many groups these countries can be categorized according to their positions. Then, the paper will explore the views on which there was unanimity and then proceed with presenting some of the clearly identifiable positions in which countries differed from each other.

During the explanation of votes 39 individual countries took the floor, however, some of these spoke in the name of country groups. For example, Austria spoke in the name of the entire European Union and Sao Tome and Principe spoke on behalf of all the members of the Community of Portuguese-Speaking Countries, comprising not only Sao Tome and Principe, but also Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal and Timor-Leste. Taking into account also these country groups, the number of openly expressed country positions reached 169. This number represents more than 85 percent out of the total of 193 states of the General Assembly. These 167 countries can be categorized into 3 groups, countries that are satisfied with the text of the resolution establishing the Human Rights Council, countries that are partly satisfied and countries that are not satisfied or even critical about it. In the group of satisfied countries there are only 13 states. These countries praised the text of the resolution and did not express any disappointment in relation to it, such states are Argentina, Mexico, Brazil, Georgia, India and Sao Tome and Principe talking on behalf of the Community of Portuguese Speaking Countries (Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, Portugal, Timor-Leste). For example, Mexico talked of a “significantly better new human rights body”⁴¹, whereas Brazil saw the new text as “a step forward towards

⁴¹ United Nations General Assembly, Official Record of Sixtieth Session, *UN Doc. A/60/PV.72*, 2006, p. 8.

the strengthening and improvement of the United Nations Human Rights machinery.”⁴² India mentioned that it did “not see any contradiction between what is in the text and what most delegations would like to achieve and like to see happen.”⁴³ Sao Tome and Principe, talking on behalf of the Portuguese Speaking Countries, also pointed out that with this resolution the United Nations will be “better equipped to promote and protect all human rights”.⁴⁴

The second group contains the countries that are partly satisfied with the text of the resolution. In practice, this means that countries taking the floor described the Council as an improvement in comparison to the Commission, but also emphasized that it did not fulfill all of their expectations. Such countries were Austria (which was talking on behalf the European Union, Bulgaria, Romania, Croatia – not EU members at the time -, Turkey, Macedonia, Albania, Bosnia and Herzegovina, Serbia, Montenegro, the Ukraine and the Republic of Moldova), Switzerland, Norway, South Africa (talking on behalf of the Africa Group), China, Singapore, Liechtenstein, Japan, Russia, New Zealand (talking also on behalf of Canada and Australia), Monaco (talking on behalf of Andorra and San Marino as well), Saint Vincent and the Grenadines (on behalf of the Caribbean community), Yemen (on behalf of OIC).

Here, for example, Austria stressed, in the name of the European Union, that although the resolution does not reflect “everything that the European Union aimed for”, it still represents “an improvement over the Commission”.⁴⁵ Liechtenstein and Monaco also signed up for this view.⁴⁶ South Africa declared on behalf of the African Group that the resolution “is more progressive than earlier texts”, nevertheless, it does not include everything they hoped for.⁴⁷ Switzerland also emphasized that the text strengthens “the United Nations

⁴² Ibid, p. 29.

⁴³ Ibid, p. 31.

⁴⁴ Ibid, p. 34.

⁴⁵ Ibid, p. 9.

⁴⁶ Ibid, p. 18 and p. 33.

⁴⁷ Ibid, p. 15.

human rights machinery,” but without fulfilling all of their ambitions.⁴⁸ Norway also pointed out that “the text is weaker in certain parts than we would hoped for.”⁴⁹ China also acknowledged that the resolution fails to “fully to reflect the concerns of many developing countries.”⁵⁰ Japan was on the opinion that the text did “not satisfy everyone to the full”, but it provided a viable basis “for further qualitative improvements.”⁵¹ Russia described the resolution as “far from perfect”, but as a decent compromise.⁵² Finally, the OIC countries did not have an entirely unified position and this resulted in members taking different stances *vis-à-vis* the resolution. While some countries, such as Indonesia, pointed out that the text “represents a fair and reasonable compromise” without fully satisfying all expectations, others, such as Pakistan asserted that they were “not convinced that the new Council would in itself significantly improve the manner in which human rights are considered within the United Nations.”⁵³ Consequently, it is difficult to decide whether the OIC with its 57 member states belonged to group two or three. Nevertheless, having in mind that the OIC also comprises 26 African states, which ascribed to the partly satisfied position and that the position of OIC expressed by Yemen⁵⁴ was way softer than the opinion of OIC members criticizing the resolution, it can be concluded that the sharper critics form the exception in the OIC, rather than the majority. Nonetheless, the second group is the largest one even if we do not count the OIC states, containing 118 states. However, if we add the OIC states as well, the number reaches a staggering 149.

The third group is composed of countries that are not satisfied with the text of the resolution. In practice, countries in this group openly engaged in criticism of the Council during the explanation of votes. These are the USA, Israel, Belarus, Venezuela, Iran, Cuba,

⁴⁸ Ibid, p. 11.

⁴⁹ Ibid, p. 12.

⁵⁰ Ibid, p. 28.

⁵¹ Ibid, p. 20.

⁵² Ibid, p. 20.

⁵³ Ibid, p. 33.

⁵⁴ Ibid, p. 13.

Marshall Islands and Palau. Among the 8 countries, the most vociferous critic was the USA, which also called for the vote on the resolution and subsequently voted against it.⁵⁵ The delegation of the USA was also the first to take the floor during the explanation of votes and after enumerating its main problems with the text, it finished its speech by stating “we must not let history remember us as the architects of a Council that was a compromise and merely the best that we could do”. According to the levels of criticism, the USA was followed by Israel, which also voted against the adoption of the resolution. Belarus, Iran and Venezuela were less critical, which was also reflected by the fact that they only abstained from the vote, instead of voting against it. Cuba also joined the rank of countries not satisfied with the resolution. Interestingly, although it referred to the Council as a future “tribunal of inquisition”, pointing out some of its “serious omissions” and expressing its “serious reservations,”⁵⁶ it still voted in favor of its adoption.

Regarding the views that were expressed throughout the explanation of votes, the paper inferred two types of positions, namely unanimous or common positions and divergent positions. It seems that there is truly unanimity only in one aspect among states, namely on the Council becoming a standing body, which was supposed to meet on a regular basis from now on. This was the only position shared by all countries, praising this development during the explanation of votes.

Among the different positions there were some diametrically opposed to each other, the most relevant among these were the ones pertaining to membership. Many countries praised the resolution for reducing the number of states sitting in the Council, whereas other countries were criticizing this reduction. The states criticizing it, such as Chile, Cuba, Viet Nam, South Africa, Brazil and Peru,⁵⁷ were on the opinion that universalization of membership would have been more in line with the current trend of increasing membership

⁵⁵ Ibid, p. 6.

⁵⁶ Ibid, p. 4.

⁵⁷ Ibid, pp. 13, 14, 15, 29, 34.

of other United Nations bodies. Another difference in position among states appeared when negotiating whether there should be qualifications criteria included in resolution 60/251. On the one hand, some delegations, like that of Sudan, Russia, Iran and Pakistan, expressed their disappointment regarding the “soft” qualifications criteria that were already introduced in the resolution setting up the Council.⁵⁸ On the other hand, states mainly from the Western group, were annoyed by the qualifications criteria introduced by resolution 60/251, in the sense that they considered them as weak and not enough.⁵⁹

Another group of different views stem from the importance states attribute to certain human rights. This hierarchy among human rights is often varying among states with a different cultural background. For example, many developing nations consider the right to development as among the most important human right,⁶⁰ it is argued that lacking financial resources leads to involuntary human rights violations. Pakistan expressly mentioned that “[s]tates of the global south expect developed nations to help them, not to condemn them”. Pakistan also suggested that developed nations should spend 0.7 percent of their GDP on assisting developing nations.⁶¹ Of course this was vehemently opposed by Western nations, which did not want to spend money on developing nations and also did not see this as a right trumping other human rights violations. Another difference in views regarding the hierarchy of human was present in the case of defamation of religions. Countries of the Organization of Islamic Conference emphasized the need to focus more on the protection of religions and prophets.⁶² On the long run, OIC countries aspire to make criticism of religions illegal and punishable. This is in strong contradiction with the freedom of speech and inherently with the Western world, which considers latter right as one of its fundamentals and resists any attempts to place limitations on it. All these different expectations and desires not reflected in the final

⁵⁸ Ibid, pp. 17, 20, 26, 33.

⁵⁹ USA, Israel, New Zealand, European Union, Timor-Leste, Liechtenstein. Ibid. pp. 7, 22, 30, 19.

⁶⁰ Ibid, pp. 16, 19.

⁶¹ Ibid, p. 33.

⁶² Ibid, p. 13.

outcome of resolution 60/251 only reinforces the belief that the resolution was a huge compromise and that countries were aware of the shortcomings and thus did not have high expectations towards it.

To sum up, we have 13 countries satisfied with the text of the resolution, 149 states only partly satisfied and 8 not satisfied at all. As a matter of fact, there is a thin line between group one and group two and in principle the countries of both groups can be considered as not or only partially satisfied with the text of resolution 60/251. Consequently, in reality we have 13 satisfied countries against 157 satisfied or partly satisfied ones, which illustrates that the majority of states were not fully satisfied with the constitutive instrument of the Council. Furthermore, the existence of all the different viewpoints, presented above, also reinforces the view that many countries did not obtain what they sought and therefore were disappointed with the text of article 60/251. In addition, the word “compromise” appears 18 times in the transcript of the explanation of votes, which again signals that countries considered the text as a serious compromise and most probably were aware of the fact that it is pointless to have high expectations from it in the future. In fact, having in mind the often diametrically opposed positions, it is a miracle that the resolution in its current state has even been adopted.

The next chapter will evaluate whether the low expectations of states were fulfilled. The paper will look at the practice of the Council since 2006 and its output in order to conclude whether these were fulfilled. Then the paper will also present the academic articles on the Human Rights Council, pointing out the stark contrast between the findings of the present paper and the existing literature.

Chapter 3 – Evaluation of the Human Rights Council

This chapter will evaluate the Human Rights Council based on the goals this new bod was supposed to implement. The paper will look at the practice of the Council since 2006 and its output in order to conclude whether the expectations were fulfilled. The fulfillment of states expectations will be evaluated in the order in which these expectations were set out in Chapter Two, namely states expectations regarding politicization, qualifications criteria, selectivity and lack of resources (3.1). Then the paper will present the academic articles on the Human Rights Council, pointing out the stark contrast between the findings of the present paper and the existing literature (3.2.).

3.1. The evaluation of states expectations regarding politicization, qualifications criteria, selectivity and lack of resources

How it was mentioned in Chapter Two, aside one weak reference to politicization, neither block voting nor coalition building was addressed by the resolution. However, the paper also noted that de-politicization was never seriously attempted by states. Nevertheless, in order to evaluate whether the Council is still politicized or it miraculously managed to overcome it, the paper analyzed the resolutions adopted throughout 26 sessions of the Human Rights Council, from 2006 to 2014. Among these resolutions, the paper identified a number of resolutions that were adopted by a very narrow margin, these are the so-called “controversial” resolutions enumerated in annex II of the paper. This narrow margin illustrates that on many issues countries have divergent views and interpretations of human rights due to their different economical, social and cultural background. Unfortunately, the Council was not able to end the babel of different languages of human rights by coming up

with a common interpretation for them (a sort of interpretative community) or by imposing some sort of objective standard for the resolutions. Therefore, resolutions can be totally opposed to each other and still be adopted by the Council, even during the same session. However, by examining the vote sheets of these “controversial” resolutions it becomes evident that there is something common in all of them, namely that countries vote along group lines. This view is also reinforced by a 2010 study conducted on voting patterns⁶³ and another one on voting blocks inside the Council.⁶⁴ One author even mentions that the visibility of regional groupings was as evident as it was in the Commission.⁶⁵ Furthermore, it can also be noticed that whenever a “controversial resolution” is tabled by a developing country, the states opposing will be the developed ones and vice-versa. In other words, the Western and the Eastern European groups (with the exception of Russia and Belarus) coordinate and vote together and in general they are opposed by countries of the OIC (comprising of the majority of countries from the African and Asia-Pacific groups). The number of controversial resolutions, excluding session 12 of the Human Rights Council, which was not available due to a technical error, is 56. This means that since 2006 member states of the Council voted along the lines of regional groups or different organizations at least 56 times. Consequently, block voting is still present in the Council. As a natural extension of block voting, coalition building is also there. Majority building in the Council in order to pass resolutions, functions just like in a national parliament. First states with flexible stance are identified and then incentives are given and promises are made in order to obtain the vote of these members. The Latin American group (with the exception of Cuba and Venezuela) and the non-Muslim African states are known to have malleable positions on the

⁶³ S. Hug and R. Lukacs, “Preference or blocks? Voting in the United Nations Human Rights Council,” paper presented at the 4th Conference on The Political Economy of International Organizations, Zurich, 2010, p. 17.

⁶⁴ R. Houghton, “Democracy at the UN Human rights Council? Yeah Right!,” paper presented at the Annual Student Conference of Nottingham University: Human Rights and Democracy: Two Sides of the Same Coin?, Nottingham, 2013, p. 11.

⁶⁵ K. Boyle, “The United Nations Human Rights Council: politics, power and human rights”, *Northern Ireland Legal Quarterly* 60, no. 2 (2009), p. 130.

majority of the issues, therefore, these are the countries targeted by coalition builders. It has been always known that the USA and China uses legal aid to convince less developed countries to vote in their favor. However, a recent study also provided empirical evidence for this, illustrating how non-democracies start enjoying increased trade flow with China once they become members of the Human Rights Council.⁶⁶

Interestingly, politicization is not only present in the Council, but it seems to be accepted by at least a certain number of states from the very beginnings. In 2005, during informal consultations in the Commission on Human Rights, it was discussed whether members of the new Human Rights Council should be elected by simple or two-third majority of the General Assembly. A number of states, such as the Arab Group, argued that simple majority requirement should be adopted because it facilitates the participation of all countries. This is because, according to a big number of states, a two-thirds majority requirement would be “detrimental to developing countries due to obvious constraints in their ability to undertake lobbying efforts compared to developed countries.”⁶⁷ This was simple observation, with no disappointment or criticism in it. This observations illustrates how at least a number of states already envisaged the Council as a political body, where lobbying will be made. The European Union also openly admits that it devotes “considerable resources in [...] Geneva to building a broad, cross-regional base of support for UN resolutions.”⁶⁸

To sum up, politicization is not just present in the Council, but it also seems to be accepted by states. This is evidenced by the fact that countries vote along group or block lines and they also openly discuss coalition building. In other words, states did not seriously

⁶⁶ Casper B.A., “Non-Democracies and the Exploitation of the UN Human Rights Council,” paper presented at the Annual Meeting of the American Political Science Association, Chicago, 2013, p. 32.

⁶⁷ United Nations General Assembly and Economic and Social Council, Fifty-ninth Session, Follow-up to the outcome of the Millennium Summit - Summary of the open-ended informal consultations held by the Commission on Human Rights pursuant to Economic and Social Council Decision 2005.217, *UN Doc. A/59/847, E/2005/73*, 2005, p. 10.

⁶⁸ Council of the European Union, Human Rights and Democracy in the World: Report on EU Action – July 2008 to December 2009, *document no. 8363/1/10 REV 1*, 2010, p. 14.

attempt the de-politicization of the Council and this is reflected in its current level of politicization, therefore, the expectation of states is fulfilled.

Regarding the qualifications criteria, unfortunately there were several states with a worrying human rights record sitting in the Council since 2006.⁶⁹ Some of them, such as Azerbaijan, China, Cuba, Bahrain, Pakistan, Russian Federation and Saudi Arabia, attracted severe criticism from NGOs and academia.⁷⁰ In addition, Freedom House also classified these countries as “not free”,⁷¹ which is evidence that they possess a bad human rights record. These countries could be elected because of the “soft” nature of the qualifications criteria (as shown in Chapter Two), countries of the General Assembly not being obliged to take into consideration the human rights record of the candidates. Furthermore, a new practice of the regional groups emerged, namely to put forward the same number of candidates for the Council as the number of seats available to that group. This lack of candidates in practice meant that, even if a member of the General Assembly was intending to take into consideration the “soft” qualifications criteria, it was unable to challenge the inappropriateness of a countries’ nomination. In the first years of the Council this was not practiced. However, in 2010 it was already the rule, with all of the regional groups putting forward only as many candidates as seats available in the Council.⁷² A positive development was the creation of the suspension procedure in case of gross and systemic violations of human rights. This was already used once so far, but unfortunately only once, in the case of Libya in 2011.⁷³ On the one hand, it can be argued that Libya was suspended as a result of states univocally condemning the events in Libya. On the other hand, it can be also argued

⁶⁹ See annex I of the thesis.

⁷⁰ K.E. Smith, “The European Union and the Review of the Human Rights Council,” *European Parliament* (2011), p. 34.

⁷¹ See Freedom House’s annual report entitled “Freedom in the World”.

⁷² K.E. Smith, “The European Union and the Review of the Human Rights Council,” *European Parliament* (2011), p. 34.

⁷³ United Nations General Assembly, Sixty-fifth Session, Resolution 65/265 on the suspension of Libya from the Human Rights Council, *UN Doc. A/Res/65/265*, 2011.

that Libya was suspended for the same reason for which the Security Council resolution was passed against it, because Gaddafi lacked influential friends. An interesting observation at the suspension procedure is that it takes a two-third majority of the General Assembly to suspend an elected member of the Human Rights Council, whereas it only takes simple majority to elect a state to the Council. In other words, the standard is higher for suspending a member than it is for electing it. Nevertheless, states were aware that only agreeing on “soft” qualifications criteria eventually meant that there would be abusers sitting in the Council. Therefore, the presence of some human rights abuser countries in the Council did not come as a surprise to the community of states, thus, their expectations were fulfilled regarding membership.

In relation to the non-selectivity criteria, the Council did not manage to overcome the Commission’s selectivity in addressing human rights. Similarly and most visibly, Israel features predominantly among the resolutions of the Council. Since its inception it has criticized Israel on 46 occasions,⁷⁴ on 52 if we also include the special sessions.⁷⁵ Annex II shows that the reasons for bringing Israel to the Council’s attention varied from different aspects of the human rights situations in the occupied Palestinian Territories and Syrian Golan Heights to the self-determination of the Palestinian people. Israel was condemned and criticized at every possible occasion, with most of the criticism being legitimate as serious human rights violations did occur in the occupied territories, this view being also supported by an advisory opinion of the International Court of Justice.⁷⁶ However, the problem does not lie here, but in the fact that other similar or more severe human rights abuses were given less attention or simply overlooked. For examples, the human rights situation in Syria war was

⁷⁴ See annex II to the thesis for a complete list of the resolutions against Israel.

⁷⁵ For a complete list of the special sessions of the Human Rights Council see: <https://extranet.ohchr.org/sites/hrc/HRCSessions/SpecialSessions/Pages/default.aspx>.

⁷⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, (2004), I.C.J. Rep. 2004.

only addressed 9 times since 2006.⁷⁷ The contrast with Israel is staggering if we take into consideration the fact that there is an ongoing civil war in Syria, whereas in Israel the conflict is more or less frozen. Another strong contrast is with the case of Sudan, which although experiencing grave human rights abuses due to internal conflict, was only brought to the Council 11 times. Moreover, the majority of the resolutions adopted against it were concerning technical assistance, rather than condemning the abuses of the government. This Council's passive stance towards Sudan was due to the fact that being simultaneously part of the African Group and OIC, Sudan had plenty of allies willing to shield it from criticism. Finally, the starkest contrast is with North Korea. Although widely reported human rights abuses were and are happening on a regular basis, North Korea was only brought before the Council 6 times.⁷⁸ Other instance of selectivity, raised in the doctrine, was selectivity towards the US due to political reasons. Arguably the singling out of the USA was a result of developing states wanting to punish the USA for generally speaking from a moral high ground and lecturing developing states in the Council.⁷⁹ A final and very illustrative example of selectivity is the fact that the special rapporteur on situation of human rights in the Palestinian territories⁷ was mandated only to cover human rights violations committed by Israel against Palestinian civilians. A point often overlooked here, is that this same special rapporteur could not investigate violations committed by the Palestinian authorities against their own people, which were widely reported at the time.⁸⁰

Concerning the Universal Periodic Review, it was definitely a welcomed development in combatting selectivity. However, the initial satisfaction with the UPR quickly vanished with the adoption of the Institution-Building Package, which set out the workings of the

⁷⁷ See annex II of the thesis.

⁷⁸ Ibid.

⁷⁹ R. Freedman, *The UN Human Rights Council: A Critique and Early Assessment* (Oxon: Routledge, 2013), p. 264.

⁸⁰ Commission on Human Rights, Forty-ninth Session, Resolution 1993/2 A regarding the Question of violation of human rights in the Occupied Arab Territories, including Palestine, *UN Doc. 1993/2/A*, 1993.

UPR.⁸¹ According to the package, the UPR conducted its review in three phases. First, states submitted a twenty-page report with a brief description of its human rights situations, the challenges it faces and the assistance it requires. This was followed by a ten page compilation of UN information and a ten page summary of “credible and reliable information provided by other relevant stakeholders,” both of them produced by the Office of the High Commissioner for Human Rights. Finally, a troika composed of three Council members conducted a review based on the above-mentioned documents, culminating in the adoption of certain recommendations addressed to the country under review. However, there were some serious shortcomings with the UPR from the beginning. Firstly, in their 20 pages long national reports, states were free to ignore addressing certain relevant human rights issues plaguing their country. For instance, China’s 20 page long national report of 2013 extensively dealt with China’s achievements in the field of social and economic rights, while not addressing ardent issues such as the lack of free speech.⁸² Secondly, the states under review were free to ignore the recommendations. One study shows that mostly developed countries implemented recommendations, because they were already protecting human rights and in most of the cases they just had to refine their laws.⁸³ Thirdly, even if states decided to implement the recommendations, many of the recommendations were phrased in a “vague and general matter”, which made follow-up exceptionally difficult, if not impossible.⁸⁴ According to a study of an NGO specialized in the UPR, calculated that only 30.8% of the recommendations actually contain a specific action.⁸⁵ Fourthly, as one author notices it, the modalities of the

⁸¹ United Nations Human Rights Council, Fifth Session, Resolution 5/1 adopting the Institution Building Package of the United Nations Human Rights Council, UN Doc. A/HRC/RES/5/1, 2007.

⁸² Chinese Ministry of Foreign Affairs, *National Report submitted in accordance with paragraph 5 of the of the Annex to Human Rights Council resolution 16/21* (2013), A/HRC/WG.6/17/CHN/1.

⁸³ D. Frazier, “A Quantitative Analysis of the Implementation Efforts of Nine UN Member States” (2011), p. 19, available at: http://www.upr-info.org/sites/default/files/general-document/pdf/-david_frazier_paper_upr_implementation_2011-2.pdf (accessed May 2014).

⁸⁴ A.M. Abebe, “Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council,” *Human Rights Law Review* (2009), p. 34.

⁸⁵ UPR-Info.org, Analytical Assessment of the Universal Periodic Review 2008-2010, 2010, p. 14, available at: <http://www.upr-info.org/sites/default/files/general-document/pdf/upr->

UPR left much room for potential politicization through direct tactics used to protect allies, or indirectly through lack of expertise amongst the troika.⁸⁶ Indeed, as a Geneva based NGO tasked with monitoring the Council concluded it, already in 2009 group affiliations played an important role in determining how countries reviewed each other.⁸⁷ Furthermore, another sign of deliberately maintaining the UPR politicized was the exclusion of human rights experts from participation.⁸⁸

As mentioned in chapter 2, the “non-action” motion remained in place. For a period of time it was hoped that members of the new Council will not take advantage of it. However, in 2009, once the Sri Lankan government’s conflict with the Tamil Tigers came to an end, the non-action motion was successfully used to prevent the European Union from requesting an investigation into human rights violations committed during the conflict.⁸⁹ The motion was requested by Cuba and passed, with 22 countries voting in favor, 7 abstentions and 17 against.⁹⁰ This again shows that more than half of the countries voting had no problem with blocking any discussion on a certain topic “just because.”

To sum up, despite the fact that the principle of non-selectivity was enshrined in the constitutive resolution 60/251 and a new peer review mechanism was created, selectivity still persisted in the Council. This was largely due to politicization as countries in the same regional group or organizations shielded each other from scrutiny and the only countries to be condemned were the politically isolated ones, such as Israel, which failed to gather enough “friends” in their support. This view is also reinforced by the fact that the controversial “non-

[info_analytical_assessment_of_the_upr_2008-2010_05-10-2010.pdf](#) (accessed May 2014).

⁸⁶ R. Freedman, *The UN Human Rights Council: A Critique and Early Assessment* (Oxon: Routledge, 2013), p. 363.

⁸⁷ United Nations Watch, “Mutual Praise Society,” 2009, available at: http://www.unwatch.org/site/c.bdKKISNqEmG/b.4967647/k.7162/Mutual_Praise_Society.htm (accessed May 2014).

⁸⁸ A.M. Abebe, “Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council” *Human Rights Law Review* (2009), p. 8.

⁸⁹ K.E. Smith, “The European Union and the Review of the Human Rights Council,” *European Parliament* (2011), p. 15.

⁹⁰ *Ibid.*

action” motion remained in place. Nonetheless, the expectation of states establishing the Council was to partly eradicate selectivity. The fact that they wanted to eradicate selectivity is evidenced by the fact, as mentioned in Chapter Two, that the principle was enshrined in the constitutive instrument of the Council and the UPR was created in order to ensure that all members of the Council will face scrutiny. The fact that they only wanted to partly eradicate selectivity is evidenced by the action of leaving the “non-action” motion in place. As mentioned before one of the main tools for achieving this partly non-selectivity was the UPR. However, the Institution Building Package setting up the UPR watered down the language of resolution 60/251 regarding the UPR, preventing the latter from effectively achieving any of the objectives for which it was created. This again shows that states wanted to create the impression of addressing selectivity by creating the UPR, whereas in fact rendering it powerless. This was again probably the result of hard compromise between states with different world views, however, it also illustrates their expectations, namely not to enforce the non-selectivity principle too strictly, thus leaving space for states to maneuver. Henceforth, it can be said that the states’ expectations regarding non-selectivity was fulfilled.

Concerning the lack of resources, the regular session took place just as envisaged. Furthermore, 20 special sessions also took place on various issues, ranging from the earthquake in Haiti to the human rights situation in the Central African Republic. Moreover, there were no financial constraints placed on the Human Rights Council and its staff could perform their daily activities without any difficulties or disturbances. Consequently, the Council was able to operate for the past 6 years as a standing body just as it was conceived, thus fulfilling the expectations of states in this regard.

Judging strictly by the expectations of states from the Human Rights Council, it becomes obvious that to a large extent the Human Rights Council fulfills the expectations of member states. This does not mean that it is any better than its predecessor, the Commission,

but it means that it is what governments wanted it to be and on what did they agree, not more and not less. Interestingly, the scholarly articles are extremely critical of the Council, which stands in clear contradiction with the findings of subchapter 3.1. Consequently, the available doctrine will be explored.

3.2. Academic articles on the Human Rights Council

In order to see what is the perception of the Council by the doctrine, the available academic literature relating to the topic has to be explored. Academic work on the matter is not evenly divided, only a very small part of the scholarly articles defend the Council, whereas the bulk of them criticize it. The academicians writing on the new Council can be divided in three groups. The first group is composed of articles, which simply present the changes brought by the Council in comparison to the Commission and do not engage in an assessment on grounds that it is too early to draw any conclusions. The second group of authors is on the opinion that the Council is similar to the now defunct Commission, but it will prove itself with time. The last group is by far the largest and comprises academics that criticize the Council for failing to become an improved version of the Commission. Interestingly, these three groups also fit a type of chronology, which seems to suggest that disappointment in the Council among scholars grew ripe with the advancement of time. The articles of group one were all written in 2006-2007, the articles of the second group between 2007-2009, whereas the articles of the third from 2009 up to the present. While in 2006 academics were still optimistic towards the Council, from 2010 this optimism was gradually replaced by disappointment. This happened slowly as academics started realizing that the Council was flawed from its very beginning and time had nothing to do with it.

The most notable academic writing in the first group is Alston, who wrote his article in 2006, just a couple of months after the creation of the Council. He describes the mistakes

of the Commission, the new Council and expresses his hope in that the Council will avoid these “pitfalls.”⁹¹ Scannella, Splinter, Rahmani-Ocora and Upton share this view and structure as well.⁹² Hampson goes a little bit further as, after describing the novelties of the Council as compared to the Commission, he points already out that although it is too early to reach any conclusion on the Council, there are already some bad omens.⁹³

In the second group we can find authors such as Boyle and Brett, both of them sharing the opinion that so far the Council is not better than the Commission, but also not worse. Brett calls the Council “neither a mountain nor a mole hill”,⁹⁴ while Boyle adds that it “neither fulfilled the highest expectations nor has dashed them completely”.⁹⁵ Schrijver is also not satisfied with the Council, but stops short of declaring that we are worse-off with the Council than with the Commission.⁹⁶

The most recent ones seem to have lost all hope, being extremely critical. The most representative scholar in this third group is Freedman, who is extremely critical and is on the opinion that the body is failing its mandate and thus it is failing human rights.⁹⁷ Gowan, Brantner and Schaefer talk about the disappointment surrounding the Council,⁹⁸ whereas

⁹¹ P. Alston, “Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council,” *Melbourne Journal of International Law* 7 (2006), p. 39.

⁹² P. Scannella and P. Splinter, “The United Nations Human Rights Council: A Promise to be Fulfilled,” *Human Rights Law Review* 7, no. 1 (2007), p. 71; L. Rahmani-Ocora, “Giving the Emperor Real Clothes: The UN Human Rights Council,” *Global Governance* 12, no. 1 (2006), p. 20; H. Upton, “The Human Rights Council: First Impressions and Future Challenges,” *Human Rights Law Review* 7, no. 1 (2007), p. 39.

⁹³ F. Hampson, “An Overview of the Reform of the UN Human Rights Machinery,” *Human Rights Law Review* 7, no. 1 (2007), p. 27.

⁹⁴ R. Brett, “Neither Mountain nor Molehill - UN Human Rights Council: one year on,” *Quaker United Nations Office*, Geneva/Switzerland (2007).

⁹⁵ K. Boyle, “The United Nations Human Rights Council: politics, power and human rights”, *Northern Ireland Legal Quarterly* 60, no. 2 (2009), p. 133.

⁹⁶ N. Schrijver, “The UN Human Rights Council: A New ‘Society of the Committed’ or Just Old Wine in New Bottles?,” *Leiden Journal of International Law*, no. 20 (2007), p. 822.

⁹⁷ R. Freedman, *The UN Human Rights Council: A Critique and Early Assessment* (Oxon: Routledge, 2013), p. 391.

⁹⁸ R. Gowan and F. Brantner, “The EU and Human Rights at the UN: 2011 Review,” *European Council of Foreign Relation* (2011), p. 4; B. Schaefer, “The United Nations Human Rights Council: a Disastrous First Year,” *Backgrounder*, no. 2038 (2007), p. 11.

Vriens⁹⁹ refers to troubles plaguing the Human Rights Council. Hug and Lukacs manage to identify voting behaviors in the Council, which point to its politicization and suggest that the problems faced by the former Commission have reappeared.¹⁰⁰ Casper, in an extensive study, illustrates how non-democratic countries use their membership in the Council to solicit bribes.¹⁰¹ Finally, Houghton criticizes that the Council for its politicization, which is owed mainly to block voting.¹⁰²

On the one hand, the paper, based solely on the goals this new body was supposed to implement, established that the Council is fulfilling its expectations. On the other hand, as shown above, the overview of the existing academic literature highlighted that the scholars writing from 2010 onwards are highly critical of the primary human rights body of the United Nations. Why the big contrast between the academic articles and the expectation of states?

The main difference between the present paper and other articles is that it evaluated the Council based solely on the goals that countries embarked to achieve, whereas other articles seem not to pay enough attention to the expectation of states towards the Council. Interestingly, all the articles criticizing the Human Rights Council approach it from different angles, meaning that their criticism is not identical. Some of the articles criticize the Council overall, without focusing extensively on any specific issue. Other articles do exactly that, only concentrating on certain aspects, such as block voting on bribe solicitation. After thorough analysis the paper identified a thing common in all of them, namely that all of them believe in a certain type of progress. All the articles take as granted that there is a progress in the field of human rights, that there is an overall direction in history, that the world is

⁹⁹ L. Vriens: "Troubles plague UN Human Rights Council," *Backgrounders*, no. 2213 (2009), available at: <http://www.cfr.org/international-organizations-and-alliances/troubles-plague-un-human-rights-council/p9991> (accessed May 2014).

¹⁰⁰ S. Hug and R. Lukacs, "Preference or blocks? Voting in the United Nations Human Rights Council," paper presented at the 4th Conference on The Political Economy of International Organizations, Zurich, 2010, p. 17.

¹⁰¹ B.A. Casper, "Non-Democracies and the Exploitation of the UN Human Rights Council," paper presented at the Annual Meeting of the American Political Science Association, Chicago, 2013, pp. 24-26.

¹⁰² R. Houghton, "Democracy at the UN Human rights Council? Yeah Right!," paper presented at the Annual Student Conference of Nottingham University: Human Rights and Democracy: Two Sides of the Same Coin?, Nottingham, 2013, p. 11.

becoming a better place and that we are making our way towards a utopist society ruled by human rights.¹⁰³ Consequently, the articles are evaluating the Council according to some objective and universal standards of human rights, which supposedly have developed over the past century, rather than according to the expectations of states that created the Council. Furthermore, there is a presumption in the doctrine that the Council has to be better than its predecessor, just because it came after it, disregarding the expectations of the member states in their evaluation of the Council. Kratochwil pointed out in one of his recent works that human rights have attained the status of religion for agnostics and that a “missionary zeal among human rights advocates” can be observed.¹⁰⁴ Most probably the extreme criticism of the articles written after 2010 are also a product of the overly ambitious human rights advocates.

¹⁰³ For a detailed account of the theory of progress see: J. Gray, *Black Mass: Apocalyptic Religion and the Death of Utopia* (London: Penguin, 2007).

¹⁰⁴ F. Kratochwil F., *The Status of Law in World Society* (Cambridge: Cambridge University Press, 2014), p. 201.

Chapter 4 - The Human Rights Council as a political entity

It is obvious that the sole fact that the Council meets the expectation of its creators does not mean that it is performing well. As a matter of fact if we disregard the expectations of states, along the lines of the academic articles, the Council can be criticized for almost all the same reasons as the former Commission was criticized, except the lack of resources. Therefore, it can be criticized for being politicized, for not having proper qualifications criteria and for being selective. There is one common thing in these 3 criticisms, namely that all of them contain a certain amount of politicization. While the first one is politicization itself in the forms of block voting and coalition building, the other two contain elements of politicization or represent its result.

The first criticism, politicization, appears in the form of countries behaving in the council as individuals would behave in a national parliament. They organize themselves into regional groups or cross-regional organizations, such as the OIC, in the same way individuals in a national parliament organize themselves into political parties. The members of the Council grouped in regional or cross-regional groups vote in blocks, just like members of a political party in a national parliament vote alike. Consequently, when a member of such a block is under “attack”, their allies will defend them regardless of their human rights record, thwarting any action against the possible abuser state. Countries of a regional group defend each other out of solidarity and reciprocity, returning a favor or thinking of the future when they might need a favor. Moreover, countries are also free to engage into building cross-regional alliances in order to pass a resolution or to defend themselves. Interestingly, although it was widely known already in the Commission that block voting and coalition building was practiced, it was not addressed by the constitutive instrument of the Council. On top of this, politicization is not only present in the Council, but it seems to be accepted by at

least a certain number of states from its very beginnings. This is evidenced by the informal consultations taking place in the former Commission regarding the new Council and by the European Union's openly expressed position towards coalition building to pass resolutions (as shown in Chapter Three).

In the second criticism, lack of qualifications criteria, politicization is present in three ways. Firstly, states expressly rejected the opportunity to send "highly qualified" persons serving as "non-governmental" representatives in the Council, instead of government representatives,¹⁰⁵ which would have solved all the problems stemming from the lack of qualifications criteria. This illustrates the desire of states to maintain the Council politicized and under their control. Secondly, the practice of regional groups of nominating only so many states for the Council as the seats available for that group was also a result of politicization. Thirdly, the acclaimed suspension procedure was also politicized, as it could only be used with a two-third majority, which had to be politically negotiated.

The presence of politicization is most evident in the third criticism, selectivity. Here the only countries to be singled out for permanent Council actions were the politically isolated states, such as Israel. This is because any actions had to be passed by a majority of the Council, meaning that countries with plenty of allies, such as Sudan, could easily prevent any action against them. Regarding the UPR, which was introduced in order to combat selectivity, states deliberately excluded human rights experts from participating in it.

All things considered, the Human Rights Council bears a strong resemblance to a political entity, namely to a national parliament. Following the line of argumentation of an old proverb, if the Human Rights Council acts like a political organ, smells like a political organ and looks like a political organ, then it must be a political organ. Consequently, all the evidence and logical conclusions points to the fact that the Human Rights Council is in reality

¹⁰⁵ United Nations Economic and Social Council, Report of the Commission on Human Rights to the Second Session of the Economic and Social Council, *UN Doc. E/38/Rev.1*, 1946, pp. 230-231.

a political body. At the same time, the Council was envisaged by article 60/251 as an independent body with the task of impartially and non-selectively promoting and encouraging universal human rights.¹⁰⁶ There is a contradiction here and the Council as a political organ goes against some basic international law principles. As the Latin proverb says, *nemo iudex in causa sua*, meaning that no one should be judge in his own cause. Furthermore, it is an accepted principle within democracies that fair verdicts require that interested parties recuse themselves to avoid even an appearance of impropriety. In this vein, when member states of the Council are allowed to build alliances and vote in their defense, they are undermining the Council as an impartial and non-selective human rights body.

As a result, the Human Rights Council is built on a strong contradiction. On the one hand, the Council was intended to be impartial and to promote and encourage universal human rights. On the other hand, the Council was designed as a political organ that allows for manipulation by states. In theory, the Council was reformed in order to work towards the development of already existing universal human rights. In reality, it became a venue for states to attack each other (with many states attempting to punch above their weight) and to forward their own vision of human rights, which differed from country to country. In other words, there is a mismatch between the expectations of the Council, framed in universality, and the operation of the Council, which is political.

This contradiction also forms the apple of discord between the states, which perceive the Council as a political body, thus not having high expectations towards it, and the academia, which is immensely disappointed by it for not living up to its enshrined principles of impartiality and non-selectivity. As a matter of fact, it is impossible to have an impartial and a political institution in the same time, because they contradict each other. By definition in a political institution political games will be made, whereas impartiality entails equal

¹⁰⁶ United Nations General Assembly, Sixtieth Session, Resolution 60/251 establishing the Human Rights Council, *UN Doc. A/Res/60/251*, 2006, preamble.

treatment of issues. These two notions cannot go together as one excludes the other. One can only have an impartial and non-selective institution, such as a tribunal with judges, who are the experts of domestic law, are under no government control and who deal with cases equally, let us say on a first-come first-served basis. Or one can have a political entity, where the interest of the majority prevails and the agenda is set accordingly. But one cannot have both of them in the same time.

If countries would admit that the Council is a political entity, then all the criticism formulated in the doctrine would be baseless. This of course begs the question: If the Human Rights Council is essentially political body than why do states want to maintain the appearance of is as an impartial human rights body? States assume that law denies politics and that it provides a universal credibility to this organ and universality to its resolutions. This also fits in the greater picture of what Kratochwil calls the “loss of the language of politics.”¹⁰⁷ This pushes us into another discussions, namely that we are loosing the language of politics and nowadays everything is phrased in human rights, even the foreign policy of some countries, which is considered as the ultimate legitimating factor.

To sum up, the design problems of the Human Rights Council, such as politicization and the political elements in the lack of qualifications criteria and selectivity, point towards the same conclusion, that the Human Rights Council is a political and not a human rights body. At the same time, countries want to maintain its appearance as a human rights body, because they associate human rights with universal credibility. However, as shown above, an organ cannot be impartial, non-selective and political in the same time, as these notions go against each other. Consequently, the Council will be political and selective as long as it remains phrased in terms of human rights and universality, while functioning as a political organ.

¹⁰⁷ F. Kratochwil, *International Relations and International Law* (lecture, Central European University, Budapest, Hungary, Winter 2014).

Conclusion

The paper analyzed the constitutive instrument of the Human Rights Council and the explanation following its adoption in order to identify the expectations of states. The explanation of 39 states, which were talking in the name of 167 countries, was analyzed and categorized. Then the paper examined the output of the council, NGO reports and academic articles in order to establish whether the expectations were fulfilled.

From the assessment of the Council, the paper noted that almost all the shortcomings of the former Commission are still present in the Council (with the exception of the lack of resources), namely the latter is still politicized, selective and lacks qualification criteria. However, despite the existence of these major shortcomings, the expectations of states *vis-à-vis* the Council are fulfilled. This is because resolution 60/251 was the product of hard compromise, which was evidenced by the flexible language of the resolution and its omissions, such as the omissions to define some key terms (such as terms as “the highest standards in the promotion of human rights” or the “gross and systemic” violations) and to address some key issues (such as block voting and coalition building). This is also indicated by the declarations of states and their attitude during the explanations of votes following the adoption of the resolution establishing the Council.

This is in strong contrast with the majority of academic articles, which harshly criticize the Council. The reason for this contrast is that the latter do not grant enough attention to the expectation of states when assessing the Council, but seem to take as granted that there is progress in the field of human rights and that the Council has to fulfill some objective standards of human rights. This might be the result of overly ambitious human rights advocates with a “missionary zeal.”¹⁰⁸

¹⁰⁸ F. Kratochwil F., *The Status of Law in World Society* (Cambridge: Cambridge University Press, 2014), p. 201.

The fact that the Council is denounced in the doctrine for mostly the same factors as the Commission begs the question “why?” The answer is that the Council has a pathological problem, namely that it is built on a contradiction. On the one hand, the Human Rights Council was envisaged as an independent body with the task of impartially and non-selectively promoting and encouraging universal human rights.¹⁰⁹ This is because states associate human rights with universal credibility and the latter is currently living its *renaissance*. On the other hand, the Council is a political organ, which is evidenced by the fact that it was designed as a political organ (resolutions adopted by majority, members elected regardless of any qualifications criteria, the existence of regional groups) and it acts like a political organ (regional groups or other alliances shielding their members from criticism). However, an organ cannot be impartial, non-selective and political at the same time, as these notions go against each other. By definition in a political institution political games will be made, whereas impartiality entails equal treatment of issues.

Consequently, the Human Rights Council is built on a strong contradiction. It will remain political and selective as long as it remains phrased in terms of human rights and universality, while functioning as a political organ. Furthermore, since it is built on this contradiction, one should not be surprised that the Human Rights Council is how it is, but should actually be *surprised* at the ‘surprise’ of the academic world that it would be different than the Commission.

¹⁰⁹ United Nations General Assembly, Sixtieth Session, Resolution 60/251 establishing the Human Rights Council, *UN Doc. A/Res/60/251*, 2006, preamble.

Appendixes

Annex I to the thesis

The name of countries elected each year as members of the United Nations Human Rights Council for a period of 3 years. The member states are divided into regional groups:

2007 Group¹¹⁰

- African States: Algeria, Morocco, South Africa and Tunisia.
- Asian States: Bahrain, India, Indonesia and Philippines.
- Eastern European States: Czech Republic and Poland.
- Latin American & Caribbean States: Argentina and Ecuador.
- Western European & Other States: Finland and the Netherlands.

2008 Group¹¹¹

- African States: Gabon, Ghana, Mali and Zambia.
- Asian States: Japan, Pakistan, South Korea and Sri Lanka.
- Eastern European States: Romania and the Ukraine.
- Latin American & Caribbean States: Brazil, Guatemala and Peru.
- Western European & Other States: France and the United Kingdom.

2009 Group¹¹²

- African States: Cameroon, Djibouti, Mauritius, Nigeria and Senegal.
- Asian States: Bangladesh, China, Jordan, Malaysia and Saudi Arabia.
- Eastern European States: Azerbaijan and the Russian Federation.
- Latin American & Caribbean States: Cuba, Mexico and Uruguay.
- Western European & Other States: Canada, Germany, Switzerland and Turkey.

2010 Group¹¹³

¹¹⁰ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Year20062007.aspx>

¹¹¹ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Year20062007.aspx>

¹¹² <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Year20062007.aspx>

- African States: Angola, Egypt, Madagascar and South Africa.
- Asian States: India, Indonesia, Philippines and Qatar.
- Eastern European States: Slovenia and Bosnia & Herzegovina.
- Latin American & Caribbean States: Nicaragua and Bolivia.
- Western European & Other States: Netherlands and Italy.

2011 Group¹¹⁴

- African States: Burkina Faso, Gabon, Ghana and Zambia.
- Asian States: Bahrain, Japan, Pakistan and South Korea.
- Eastern European States: Slovakia and Ukraine.
- Latin American & Caribbean States: Argentina, Brazil and Chile.
- Western European & Other States: France and United Kingdom.

2012 Group¹¹⁵

- African States: Cameroon, Djibouti, Mauritius, Nigeria and Senegal.
- Asian States: Bangladesh, China, Jordan, Kyrgyzstan and Saudi Arabia.
- Eastern European States: Hungary and the Russian Federation.
- Latin American & Caribbean States: Cuba, Mexico and Uruguay.
- Western European & Other States: United States, Belgium, Norway and Turkey.

2013 Group¹¹⁶

- African States: Angola, Libyan Arab Jamahiriya, Mauritania and Uganda.
- Asian States: Malaysia, Maldives, Qatar and Thailand.
- Eastern European States: Poland and Republic of Moldova.
- Latin American & Caribbean States: Ecuador, Guatemala and Peru.
- Western European & Other States: Spain and Switzerland.

2014 Group¹¹⁷

- African States: Benin, Botswana, Burkina Faso and Congo.
- Asian States: India, Indonesia, Kuwait and Philippine.

¹¹³ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Year20072008.aspx>

¹¹⁴ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Year20082009.aspx>

¹¹⁵ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Year20112012.aspx>

¹¹⁶ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Year20112012.aspx>

¹¹⁷ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Year20112012.aspx>

- Eastern European States: Czech Republic and Romania.
- Latin American & Caribbean States: Chile, Costa Rica and Peru.
- Western European & Other States: Austria and Italy.

Annex II of the thesis:

The title and document number of all the controversial resolutions and those adopted against Israel, Syria, Sudan and North Korea. The resolutions are enumerated in reverse chronological order, starting with session 25, which took place in March 2014 and ending with the first session of the Council taking place in June 2006. In addition, the controversial resolutions also contain in the brackets the name of the country that proposed the resolution and the result of the votes in the following order: in favor-against-abstentions.

25th session

Israel: Human Rights in the occupied Syrian Golan A/HRC/25/L.40; Human Rights situation in the Occupied Palestinian Territory, including East Jerusalem A/HRC/25/L.38/Rev.1; Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan A/HRC/25/L.37/Rev.1; Right of Palestinian people to self-determination A/HRC/25/L.36; Follow-up to the report of the UN Independent International Fact-Finding Mission on the Gaza conflict A/HRC/25/L.39.

Syria, Sudan or North Korea: The continuing grave deterioration of the human rights and humanitarian situation in the A/HRC/25/L.7; The situation of human rights in the Democratic People's Republic of Korea A/HRC/25/L.17.

Controversial resolutions: Promotion of a democratic and equitable international order A/HRC/25/L.27 (Cuba, 30-14-3); Independent Expert on the Effect of foreign debt on the full enjoyment of all human rights A/HRC/25/L.28 (Cuba, 30-14-3).

24th session

Israel: -

Syria, Sudan or North Korea: The continuing grave deterioration of the human rights and humanitarian situation in the Syrian Arab Republic A/HRC/24/L.38; Technical assistance for the Sudan in the field of human rights A/HRC/24/L.10 Rev.1.

Controversial resolutions: Human Rights and unilateral coercive measures A/HRC/24/L.5 Rev.1 (Iran on behalf of the Non-Aligned Movement, 35-15-1); The use of mercenaries in violating human rights and impeding the exercise of the right of peoples to self-determination A/HRC/24/L.29 (Cuba, 35-15-1).

23rd session

Israel: -

Syria, Sudan or North Korea: The deteriorating situation of human rights in the Syrian Arab Republic, and the recent killings in Al-Qusayr A/HRC/23/L.2; The situation of human rights in the Syrian Arab Republic and the need to grant access to the Commission of Inquiry A/HRC/23/L.29.

Controversial resolutions: Promotion of the right to peace A/HRC/23/L.21 (Cuba, 30-9-8); Human Rights and international solidarity A/HRC/23/L.23 (Cuba, 32-15).

22nd session

Israel: Human Rights in the Occupied Syrian Golan A/HRC/22/L.3; Follow-up to the report of the UN Independent International Fact-Finding Mission on the Gaza conflict A/HRC/22/L.41; Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan A/HRC/22/L.42; Right of Palestinian people to

self-determination A/HRC/22/L.43; Human Rights situation in the Occupied Palestinian Territory, including East Jerusalem A/HRC/22/L.44; Follow-up to the report of the UN Independent International Fact-Finding Mission – Israeli settlements A/HRC/22/L.45.

Syria, Sudan or North Korea: Situation of human rights in the Syrian Arab Republic A/HRC/22/L.31; The situation of human rights in the Democratic People’s Republic of Korea A/HRC/22/L.19.

Controversial resolutions: Composition of Staff of the Office of the High Commissioner for Human Rights A/HRC/22/L.17 (Cuba, 31-15-1); Open-ended Intergovernmental Working Group – private military and security companies A/HRC/22/L.29 (Gabon on behalf of the African Group, 31-11-5).

21st session

Israel: -

Syria, Sudan or North Korea: The human rights situation in the Syrian Arab Republic A/HRC/21/L.32; Technical Assistance for the Sudan in the field of human rights A/HRC/21/L.4.

Controversial resolutions: Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind A/HRC/21/L.2 (Russia, 25-15-7); The use of mercenaries in violating human rights and impeding the exercise of the right of peoples to self-determination A/HRC/21/L.17 (Cuba, 34-12-1); Human Rights and international solidarity A/HRC/21/L.19 (Cuba, 35-12-0).

20th session

Israel: -

Syria, Sudan or North Korea: Human rights in the Syrian Arab Republic A/HRC/20/L.22.

Controversial resolutions: The effect of foreign debt on the full enjoyment of all human rights A/HRC/20/L.17 (Cuba, 31-11-5).

19th session

Israel: Human Rights in the occupied Syrian Golan A/HRC/19/L.3; Right of the Palestinian people to self-determination A/HRC/19/L.33; Human Rights situation in the Occupied Palestinian Territory, including East Jerusalem A/HRC/19/L.34; Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan A/HRC/19/L.35; Follow-up to the report of the UN Independent International Fact-Finding Mission on the Gaza conflict A/HRC/19/L.36.

Syria, Sudan or North Korea: The escalating grave human rights violations and the deteriorating human rights situation in the Syrian Arab Republic A/HRC/19/L.1/Rev.1; Human Rights Situations in the Syrian Arab Republic A/HRC/19/L.38/Rev.1.

Controversial resolutions: Composition of Staff of the Office of the High Commissioner for Human Rights A/HRC/19/L.19 (33-12-2).

18th session

Israel: -

Syria, Sudan or North Korea: Technical assistance to the Sudan in the field of human rights A/HRC/18/L.4.

Controversial resolutions: The use of mercenaries as a means of violating human rights and impeding self-determination A/HRC/18/L.11 (Cuba, 31-11-4); Human rights and international solidarity A/HRC/18/L.12 (Cuba, 31-12-1); Promotion of a democratic and

equitable international order A/HRC/18/L.13 (Cuba, 29-12-5); Human rights and unilateral coercive measures A/HRC/18/L.16 (Egypt, 34-12-0).

17th session

Israel: Follow-up the report of the Independent International Fact Finding Mission on the incident of the Humanitarian Flotilla A/HRC/17/L.1

Syria, Sudan or North Korea: -

Controversial resolutions: Mandate of the independent expert on human rights and international solidarity A/HRC/17/L.21 (Cuba, 32-14-0); The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights A/HRC/17/L.24 (30-13-3); Promotion of the right of peoples to peace A/HRC/17/L.23 (Cuba, 32-14-0); Human rights, sexual orientation and gender identity A/HRC/17/L.9/Rev.1 (23-19-3); Migrants and asylum seekers fleeing from events in North Africa A/HRC/17/L.13 (32-14-0).

16th session

Israel: Human rights in the occupied Syrian Golan A/HRC/16/L.2; Follow-up to the report of the independent international fact-finding mission on the incident of the humanitarian flotilla A/HRC/16/L.5; The Grave violations by Israel in the Occupied Palestinian Territory, including East Jerusalem A/HRC/16/L.28; Right of the Palestinian people to self-determination A/HRC/16/L.29; Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan A/HRC/16/L.30; Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict A/HRC/16/L.31.

Syria, Sudan or North Korea: Situation of human rights in the Democratic People's Republic of Korea A/HRC/16/L.3.

Controversial resolutions: Promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind A/HRC/16/L.6 (Russia, 24-14-7); Mandate of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights A/HRC/16/L.18 (Cuba, 29-13-4); Composition of staff of the Office of the United Nations High Commissioner for Human Rights A/HRC/16/L.19 (Cuba, 31-13-2); Postponement of the renewal of the mandate of the Independent Expert on Human Rights and International Solidarity A/HRC/16/L.40 (Cuba, 32-14-0).

15th session

Israel: -

Syria, Sudan or North Korea: -

Controversial resolutions: Human rights and unilateral coercive measures A/HRC/15/L.11 (Egypt, 32-14-0); Open-ended intergovernmental working group on the elaboration of a legally binding instrument on the regulation, monitoring and oversight of the impact of the activities of private military and security companies on the enjoyment of human rights A/HRC/15/L.22 (South Africa, 32-12-3); The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination A/HRC/15/L.31 (Cuba, 31-13-2); Human rights and international solidarity A/HRC/15/L.32 (Cuba, 32-14-0).

14th session

Israel: The Grave Attacks by Israeli Forces Against the Humanitarian Boat Convoy A/HRC/14/L.1.

Syria, Sudan or North Korea: -

Controversial resolutions: Promotion of the right of peoples to peace A/HRC/14/L.12 (Cuba, 31-14-1); The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights A/HRC/14/L.13 (Cuba, 31-13-3).

13th session

Israel: Human Rights Situation in the occupied Syrian Golan A/HRC/13/L.2; Right of the Palestinian people to self-determination A/HRC/13/L.27; Israeli settlements in the Occupied Palestinian Territory, Including East Jerusalem, and in the occupied Syrian Golan A/HRC/13/L.28; The Grave human rights violations by Israel in the Occupied Palestinian Territory, including East Jerusalem A/HRC/13/L.29; Follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict A/HRC/13/L.30.

Syria, Sudan or North Korea: Situation of human rights in the Democratic People's Republic of Korea A/HRC/13/L.13.

Controversial resolutions: Combating defamation of Religions A/HRC/13/L.1 (Pakistan on behalf of OIC, 20-17-8); Composition of staff of the Office of the United Nations High Commissioner for Human Rights A/HRC/13/L.18 (Cuba, 31-12-3).

12th session

Israel: not available due to technical error.

Syria, Sudan or North Korea: not available due to technical error.

Controversial resolutions: not available due to technical error.

11th session

Israel: -

Syria, Sudan or North Korea: Human rights situation in Sudan A/HRC/11/L.17.

Controversial resolutions: Promotion on the right of peoples to peace A/HRC/11/L.7 (Cuba, 32-13-1); The effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights A/HRC/11/L.9 (Cuba, 31-13-2).

10th session

Israel: Human rights in the Occupied Syrian Golan A/HRC/10/L.4; Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan A/HRC/10/L.5; Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip A/HRC/10/L.6; The right of the Palestinian people to self-determination A/HRC/10/L.7; Follow-up to Resolution S9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip A/HRC/10/L.37.

Syria, Sudan or North Korea: Situation of human rights in the Democratic People's Republic of Korea A/HRC/10/L.27.

Controversial resolutions: Combating defamation of religions A/HRC/10/L.2/Rev.1 (Pakistan on behalf of OIC, 23-11-13); Elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination A/HRC/10/L.8/Rev.1 (South Africa on behalf of Africa Group, 34-13-0); Composition of the staff of the Office of the UN High Commissioner for Human Rights A/HRC/10/L.21/Rev.1 (Cuba, 33-12-2); The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination A/HRC/10/L.24 (Cuba, 32-12-3).

9th session

Israel: Follow-up to resolution S-3/1: Human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory and the assault on Beit Hanoun A/HRC/9/L.8.

Syria, Sudan or North Korea: Situation of human rights in Sudan A/HRC/9/L.2.

Controversial resolutions: Human rights and international solidarity A/HRC/9/L.7 (Cuba, 33-13-0); Human rights and unilateral coercive measures A/HRC/9/L.13 (Cuba in behalf of Non-Aligned movement, 33-11-2).

8th session

Israel: -

Syria, Sudan or North Korea: -

Controversial resolutions: Promotion of a democratic and equitable international order A/HRC/8/L.6 (Cuba, 33-13-1); Promotion of the right of peoples to peace A/HRC/8/L.13 (Cuba, 32-13-2).

7th session

Israel: Human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly the recent ones in the occupied Gaza Strip A/HRC/7/L.1; Human Rights in the Occupied Syrian Golan A/HRC/7/L.2; The right of the Palestinian people to self-determination A/HRC/7/L.3; Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan A/HRC/7/L.4.

Syria, Sudan or North Korea: Situation of human rights in the Democratic People's Republic of Korea A/HRC/7/L.28; Situation of human rights in Sudan A/HRC/7/L.38.

Controversial resolutions: Mandate of the working group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination A/HRC/7/L.7/Rev.1 (Cuba, 32-11-2); Composition of the staff of the Office of the United Nations High Commissioner for Human Rights A/HRC/7/L.8/Rev.1 (Cuba, 34-10-3); Mandate of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights A/HRC/7/L.9 (Cuba, 34-13-0); Mandate of the independent expert on human rights and international solidarity A/HRC/7/L.12 (Cuba, 34-13-0); Combating defamation of religions A/HRC/7/L.15 (Pakistan on behalf of OIC, 21-10-14).

6th session

Israel: Draft resolution - Religious and cultural rights in the Occupied Palestinian Territory including East Jerusalem A/HRC/6/L.4; Draft resolution - Human rights situation in Palestine and other occupied Arab territory: Follow-up to Human Rights Council resolutions S-1/1 and S-3/1 A/HRC/6/L.2.

Syria, Sudan or North Korea: Human Rights Council Group of Experts on the situation of human rights in Darfur A/HRC/6/L.51; Mandate of the Special Rapporteur on the situation of human rights in the Sudan A/HRC/6/L.50; Mandate of the Special Rapporteur on the situation of human rights in the Sudan A/HRC/6/L.20.

Controversial resolutions: Draft resolution - Elaboration of international complementary standards to the international convention on the elimination of all forms of racial discrimination A/HRC/6/L.8/Rev.1 (Egypt on behalf of Africa Group, 32-10-4); Draft resolution - Human rights and unilateral coercive measures A/HRC/6/L.7 (Cuba on behalf of the Non-Aligned Movement, 34-11-2); Draft resolution - Human rights and international solidarity A/HRC/6/L.6 (Cuba, 34-12-1).

5th session

Israel: -

Syria, Sudan or North Korea: -

Controversial resolutions: -

4th session

Israel: Draft decision - Human rights situation in the Occupied Palestinian Territory A/HRC/4/L.4; Draft resolution - The Israeli violations of religious and cultural rights in Occupied East Jerusalem A/HRC/4/L.3; Draft resolution - Human rights situation in the Occupied Palestinian Territory: follow-up to the Human Rights Council resolutions S-1/1 and S-3/1 A/HRC/4/L.2.

Syria, Sudan or North Korea: Draft decision - Follow-up to the decision of 13 December 2006 adopted by the Human Rights Council at its fourth special session entitled "Situation of human rights in Darfur" (S-4/101) A/HRC/4/L.7/Rev.2.

Controversial resolutions: Draft resolution - Globalization and its impact on the full enjoyment of all human rights (China on behalf of the Like-Minded Group, 34-13-0); Draft resolution - Combating defamation of religions (Pakistan on behalf of OIC, 24-14-6).

3rd session

Israel: Draft decision - Human rights situation in the Occupied Palestinian Territory: Follow-up on the Human Rights Council resolution S-1/Res A/HRC/3/L.13.

Syria, Sudan or North Korea: -

Controversial resolutions: Draft resolution – Global efforts for the total elimination of racism, racial discrimination, xenophobia & related intolerance & the comprehensive follow-up to the WCAR & the effective implementation of the Durban Declaration & Programme of Action A/HRC/3/L.3 (Algeria on behalf of the African Group, 33-12-1); Draft resolution - Preparations for the Durban Review Conference A/HRC/3/L.2 (Algeria on behalf of the African Group, 34-12-1).

2nd session

Israel: Draft resolution - Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem and in the Occupied Golan A/HRC/2/L.12; Draft resolution - Human rights in the Occupied Syrian Golan A/HRC/2/L.5/Rev.1.

Syria, Sudan or North Korea: Draft decision - Darfur A/HRC/2/L.44.

Controversial resolutions: Draft resolution - Human rights and unilateral coercive measures A/HRC/2/L.14 (Cuba on behalf of the Non-Aligned Movement, 32-12-1); Draft decision - Effects of economic reform policies and foreign debt on the full enjoyment of all human rights A/HRC/2/L.17 (Cuba, 33-13-1).

1st session

Israel: Human Rights Situation in Palestine and other Occupied Arab Territories A/HRC/1/L.15.

Syria, Sudan or North Korea: -

Controversial resolutions: Incitement to racial and religious hatred and promotion of tolerance A/HRC/1/L.16 (Pakistan, 33-12-1).

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