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Published Version

Freedman, R. ORCID: https://orcid.org/0000-0003-3037-9026 and Mchangama, J. (2016) Expanding or diluting Human Rights? The proliferation of United Nations Special Procedures mandates. Human Rights Quarterly, 38 (1). pp. 164-193. ISSN 1085-794X doi: 10.1353/hrq.2016.0012 Available at https://centaur.reading.ac.uk/66578/

It is advisable to refer to the publisher's version if you intend to cite from the work. See Guidance on citing.
Published version at: http://muse.jhu.edu/article/609306
To link to this article DOI: http://dx.doi.org/10.1353/hrq.2016.0012

Publisher: The John Hopkins University Press

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Human Rights Quarterly, Volume 38, Number 1, February 2016, pp. 164-193
(Article)

Published by Johns Hopkins University Press
DOI: 10.1353/hrq.2016.0012

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HUMAN RIGHTS QUARTERLY

Expanding or Diluting Human Rights?: The Proliferation of United Nations Special Procedures Mandates

Rosa Freedman & Jacob Mchangama***

ABSTRACT

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

I. INTRODUCTION

In recent years the issue of human rights proliferation has emerged as a topic of discussion among human rights academics, diplomats, and activists. Human rights proliferation refers to the increasing number of treaties, resolutions, bodies, and institutions that focus on human rights. The United

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Dr. Freedman received funding from the British Academy to conduct this research as part of her broader, British Academy funded project on Special Procedures.

Nations Human Rights Council's adoption of ever more Special Procedures mandates significantly contributes to these developments. The Special Procedures system has existed for nearly five decades and, at the time the Human Rights Council was created in 2006, there were forty-one mandates.[1] As of August 2015, an additional fourteen mandates have been adopted. As Ted Piccone and Marc Limon have noted, if the current trajectory of the adoption of Special Procedure mandates is upheld, there will be 100 mandates in 2030.[2] The proliferation of Special Procedure mandates raises questions of whether they strengthen human rights protection and promotion through increasing awareness and widening the scope of topics to be included under the umbrella of human rights, or if expansion weakens the system by diluting core rights, reducing resources available to mandate holders, and providing a smokescreen for states seeking to avoid scrutiny of their record on fundamental human rights.

One way of answering those questions is to investigate the voting records on Special Procedures in order to determine whether or not they reveal a pattern of how states vote on and advance different categories of thematic mandates. The purpose of our research is to explore whether or not forms of governance and states' human rights ideologies are linked to the types of rights that they have promoted or supported through the vehicle of Special Procedure mandates. Empirical research on states' voting records is used to analyze the broader issues and patterns that are ongoing across the UN human rights machinery. Finally, we use the research findings to support analysis of states' potential motivations for their strategies vis-à-vis the type of rights they promote when voting for Special Procedures. The research that we have undertaken on this specific part of the UN human rights machinery is part of broader, ongoing debates about how to address the potential problems and pitfalls of rights inflation.

II. BACKGROUND: HUMAN RIGHTS CATEGORIES AND IDEOLOGIES

In order to investigate whether or not there is a link between the countries at the fore of rights proliferation and state governance, and to understand the impact this has on the international human rights law system, it is crucial to understand the three categories of human rights, though any such firm categorization in itself is debatable. Karel Vasak talks about three generations of rights based on the French principles of *liberté*, *egalité*, and *fraternité*.[3]

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1. Marc Limon & Ted Piccone, Human Rights Special Procedures: Determinants of Influence, Universal Rights Group 8 (Mar. 2014), *available at* http://www.brookings.edu/~/media/research/files/reports/2014/03/19-un-human-rights-experts-evaluation-piccone/un-human-rights-experts-evaluation-piccone.pdf.
2. *Id.* at 2.
3. Karel Vasak, *Les Différentes Catégories des Droits de L'homme, in* Les Dimensions Universelles des Droits de L'homme, Vol. I. (Lapeyre, de Tinguy & Vasak eds.,1990). Although Donnelly insists that *all* human rights require collective action for realization. *See* Jack

Vasak links Civil and Political Rights (CPRs) to liberty; Economic, Social and Cultural Rights (ESCRs) are connected to equality through social justice; and Third Generation Rights (TGRs), also known as solidarity or collective rights, embody the idea of fraternity.[4] The first two categories of rights are well explored, although the categories are not always water-tight: Civil and Political Rights[5] focus on fundamental freedoms and civil liberties of the individual and were historically linked with liberal democracies and the rule of law. Economic, Social, and Cultural Rights[6] often—but not exclusively—focus on states' positive obligations to provide, or to provide access to, certain services or standards. Third Generation Rights are the newest, and therefore least established, set of rights that generally involve a collective element and benefit for society.[7]

It is somewhat crude to categorize every human right according to these three generations, but the categories provide a useful tool for seeking to understand the ideologies underpinning different types of rights. Different forms of governance and governmental ideologies[8] affect the development of rights. Indeed, the Universal Declaration was subsequently codified into two conventions split between CPRs[9] and ESCRs,[10] owing, *inter alia*, to resistance to one or other category by countries ideologically opposed to those types of rights or the justiciability thereof.[11] That relationship between types of governments and human rights has continued despite many states formally committing to the principle of the interdependence, interrelatedness, and indivisibility of all rights.[12]

The United Nations' official position is that the sets of rights are equal, overlap, and are interdependent and indivisible—that is, they cannot exist

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Donnelly, *The Theology of the Right to Development: A Reply to Alston*, 15 Cal. W. Int'l L.J. 521 (1985).

4. *Id.*
5. International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) [hereinafter ICCPR].
6. International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976) [hereinafter ICESCR].
7. Currently, there does not yet exist one consolidated international convention on this category of rights, albeit some have been enshrined within treaties.
8. Ideologies can be defined as patterned clusters of normatively imbued ideas and concepts, carrying claims to social truth, as for example expressed in liberalism, conservatism and socialism. *Cf.* Paul James & Manfred Steger, Globalization and Culture Volume 4: Ideologies of Globalism (2010).
9. ICCPR, *supra* note 5.
10. ICESCR, *supra* note 6.
11. As well as difficulties in identifying concrete obligations under ESCRs.
12. *Justiciability of Economic, Social, and Cultural Rights: Should There be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?*, 98 Am. J. Int'l L. 462 (Paul James & Manfred B. Steger eds., 2004); Daniel J. Whelan, Indivisibility of Human Rights: A History (2010).

without each other.[13] Since the Vienna Declaration and Programme of Action at the 1993 World Conference on human rights, the indivisibility of all human rights has been a cornerstone of the international human rights movement. The concept of indivisibility highlights that all rights are interwoven within a general framework of international human rights law and that one category of rights cannot be realized fully without the implementation of the other set.[14] However, it is not clear from state practice at the national level or, indeed, from voting records at the HRC that the concept of indivisibility is an accurate reflection of how states actually view and approach human rights. As we shall see, there is a significant difference in how regional groups and political blocs support or place greater emphasis on different categories of rights.

Countries such as China and the United States make their human rights ideologies clear through ratification of human rights treaties. China, on the one hand, is not party to the ICCPR,[15] while the US is not party to the ICESCR. Other countries have adopted a more intermediate position, with an increase in states including ESCRs in their constitutions as well as a greater willingness of judiciaries to enforce such rights. However, the majority of states—including many liberal democracies—do not have a well developed set of ESCRs in their national constitutions,[16] and those that do often differentiate between the status that they afford to ESCRs and CPRs.[17] Regional

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13. *E.g.*

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Vienna Declaration and Programme of Action, *adopted* 25 June 1993, U.N. GAOR, World Conf. on Hum. Rts., 48th Sess., 22d plen. mtg., ¶ 5, U.N. Doc. A/CONF.157/23 (1993), *reprinted in* 32 I.L.M. 1661 (1993).

14. *E.g.* ICESCR, *supra* note 6, pmbl.

> Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

15. ICCPR, *supra* note 5.
16. Even where Western governments have taken a position that supports the equal status and importance of ESCRs they frequently fail to take legislative, administrative or judicial measures based explicitly on the recognition of specific ESCRs as international human rights or to provide effective redress for alleged violations of those rights. This is evidenced by the comparatively rare invocation of ESCRs in national systems as compared with the much more frequent invocations of civil and political treaty rights.
17. Social Rights Jurisprudence Emerging Trends in International and Comparative Law (Malcolm Langford ed., 2008); Christian Bjørnskov & Jacob Mchangama, *Do Social Rights Affect Social Outcomes?* (forthcoming).

human rights, such as the European Convention on Human Rights and the Inter-American Convention on Human Rights, focus overwhelmingly on CPRs.[18] Although ESCRs have more recently been added into the EU Charter on Fundamental Rights, the Charter offers a more robust protection of CPRs than ESCRs. The differences between the legal status of CPRs and ESCRs are significant, but they are far less pronounced than the differences between those two categories of rights and TGRs. Unlike CPRs and ESCRs, TGRs are yet to be codified in a legally binding treaty and are unclear in terms of normative content. This is demonstrated by the difficulties faced by the UN Human Rights Committee and regional organizations when addressing alleged violations of such rights. Indeed, relatively few states have sought to enshrine and uphold such rights and, when they have, the rights have been framed within national constitutions as individual as opposed to collective rights, as is the case with the right to peace in Costa Rica.[19]

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

Special Procedures is a system of independent experts appointed for fixed terms to examine either human rights generally within a specific country or one thematic right across the world. Mandates are almost exclusively created by states members of the Human Rights Council,[20] which means that such processes are shaped as much, if not more, by political than by legal objec-

18. At the time of writing in 2014 only three Western democracies—Spain, Portugal, and Slovakia—have ratified the Optional Protocol to the ICESCR, *supra* note 6.

19. *See, e.g., Costa Rica as a Peaceful State: One Costa Rican Lawyer's Odyssey v. His Nation's Establishment*, Council on Hemispheric Affairs (19 Mar. 2010), *available at* http://www.coha.org/costa-rica-as-a-peaceful-state-one-costa-rican-lawyer%E2%80%99s-odyssey-v-his-nation%E2%80%99s-establishment/; Benjamin A. Peters, *Security without Deadly Violence, in* Non-Killing, Security and the State 179, 188–90 (Joám Evans Pim ed., 2013) concerning Ruling 9992–040; L.R Zamora Bolanos, *The Lowest Form of Military Aggression*, Americas Program, (10 Aug. 2010), *available at* http://www.cipamericas.org/archives/2885; Benjamin A. Peters, *Security Without Deadly Violence, Costa Rica's Potential as a Nonkilling State, in* Non-Killing, Security and the State, *supra*, at 188–90 (2013) concerning Executive Order 33240–S (2006).

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

tives. Mandate holders are independent of both the United Nations and of their sending states and, at least in theory and in the majority of cases, are experts either on human rights generally or on a specific aspect of International Human Rights Law (IHRL). Mandate holders promote human rights through monitoring, fact-finding, reporting, and providing recommendations. They undertake country visits and engage with nonstate actors, national human rights institutions, and victims of violations. Although countries choose whether or not to allow mandate holders into their territories, the role of Special Procedures is an intrusive one as they very publicly present their findings as to weaknesses in states' compliance with human rights.

III. METHODOLOGY

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

The impact of regional groups and political blocs has been documented by legal scholars[21] and political scientists[22] and those alliances have used various tactics to promote their own objectives on human rights.[23] The current composition of the Human Rights Council, with proportionate geographic representation, results in the African and Asian Groups together holding an overall majority.[24] The political alliances of developing states through the Non-Aligned Movement[25] and Islamic countries through the OIC[26] dominate proceedings. The predominant forms of governance within, and types of national interests typically pursued by, states members of those groups and blocs necessarily impact the emphasis that the Council places on particular types of rights. This is demonstrated in particular by the Council's creation and renewal of Special Procedures mandates and the manner in which there has been a shift away from focusing on CPRs owing to the proliferation of ESCR and TGR mandates over the past two decades. What we are concerned with, however, is the form of governance within each state supporting or promoting each type of right.

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21. Urfan Khaliq, Ethical Dimensions of the Foreign Policy of the European Union: A Legal Appraisal (2008); A.M. Abebe, *Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council*, 9 Hum. Rts. L. Rev. 2 (2009); Nico Schrijver, *The UN Human Rights Council: A New "Society of the Committed" or Just Old Wine in New Bottles*, 20 Leiden J. Int'l. L. 809, 812 (2007).
22. *E.g.* Joseph S. Nye, *UNCTAD: Poor Nations' Pressure Group*, *in* The Anatomy of Influence: Decision Making in International Organization 334, 334–70 (Robert W. Cox & Harold K. Jacobson eds., 1973); Geir Lundestad, East, West, North, South: Major Developments on International Relations Since 1945 (5th ed. 1999); Thomas G. Weiss, What's Wrong with the United Nations and How to Fix It 51 (2009).
23. *Cf.* Rosa Freedman, The United Nations Human Rights Council: A critique and early assessment 119 (2013).
24. G.A. Res. 60/251, ¶ 7 dictates that membership be "based on equitable geographical distribution." The African Group hold thirteen seats, East European countries received six seats, GRULAC eight, Asia thirteen, and Western Europe and Others seven. G.A. Res. 60/251, ¶ 7, U.N. Doc. A/RES/60/251 (2006).
25. NAM developed from the Asian-African Conference, a political gathering held in Bandung, Indonesia, in April 1955. The conference was convened in part due to frustration by many newly independent countries unable to secure UN membership due to Cold War politics. The two then-superpowers refused to admit states seen as belonging to the other camp. Indeed no new members were admitted between 1950 and 1954. *See* Weiss, *supra* note 22, at 51.
26. The Organisation of Islamic Conference was established in 1969 to unite Muslim countries after the 1967 War, in which Israel established control of Jerusalem. The OIC, with fifty-seven member states, is the largest alliance of states within the UN. Membership consists of: twenty-one Sub-Saharan African, twelve Asian, eighteen Middle Eastern and North African States, three Eastern European and Caucasian, two South American, and one Permanent Observer Mission. *See* Organisation of the Islamic Conference, *Permanent Missions of OIC Member States to the United Nations in New York, available at* http://www.oicun.org/categories/Mission /Members/. Many of its members are influential within other groups or alliances. As such, the OIC has far-reaching political power. For example, in 2006, seventeen of the forty-seven Council member states were OIC members. Three OIC members, Algeria, Saudi Arabia, and Azerbaijan, chaired the regional groups for Africa, Asia, and Eastern Europe.

A. Categorizing States' Governance

In order to assess the impact of ideologies on the thematic rights that Special Procedures mandates are created to promote and protect, it is necessary to identify different forms of governance within states. It is therefore necessary to look at various methods for categorizing individual states. One method, adopted by James Lebovic and Eric Voeten,[27] is to use Political Terror Scale values issued by the US State Department.[28] Although the scores carry significant weight when ranking countries, they are of greater interest to a US audience than a global one. Similarly, using European Union assessments of individual states might limit the applicability of, or at least interest in, this study. We deemed it most appropriate to use a generally-accepted ranking system created and deployed by an established NGO.

Freedom House[29] has long provided rankings based on states' governance,[30] which is directly applicable to this research. Although some criticism has been leveled against the organization,[31] it is widely-esteemed and oft-cited. Freedom House divides all states into categories of "Free," "Partly Free," and "Not Free" based on observance of civil and political rights.[32] Obviously this categorization is based on liberal democratic ideology, which places emphasis on its particular category of rights. As will be shown, countries classified as Free (F) are, at least nominally, liberal democracies from across the world; Partly Free (PF) countries include a broad range from near fully-fledged to emerging democracies; and Not Free (NF) states are governed by autocratic, dictatorial, and repressive regimes.[33]

Freedom House conducts annual "comparative assessments of global political rights and civil liberties"[34] and determines country rankings based on scores collectively grouped into those three categories. Countries are

27. James H. Lebovic & Eric Voeten, *The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNHCR*, 50 Int'l Stud. Q. 873 (2006).
28. *See* Political Terror Scale, *available at* http://www.politicalterrorscale.org/.
29. Freedom House is a US—based NGO founded in 1941 to focus on civil liberties, political freedoms and democracy. *See* http://www.freedomhouse.org/.
30. *Cf.* David A. Armstrong II, *Stability and Change in the Freedom House Political Rights and Civil Liberties Measures*, 48 J. Peace Stud. 653 (2011) examining Freedom House's system for ranking states.
31. *E.g.,* Diego Giannone, *Political and Ideological Aspects in the Measurement Of Democracy: The Freedom House Case,* 17 Democratization 68 (2010); Gerardo L. Munck, Measuring Democracy: A Bridge between Scholarship and Politics 28–33 (2009); Edward S. Herman & Noam Chomsky, Manufacturing Consent: The Political Economy of the Mass Media (1988).
32. *See* Freedom House, Freedom in the World 2015, *Methodology*, *available at* http://freedomhouse.org/report/freedom-world-2015/methodology.
33. *See* Freedom House, Freedom in the World 2015, *Discarding Democracy: A Return to the Iron Fist*, *available at* http://freedomhouse.org/report/freedom-world-2015/discarding-democracy-return-iron-fist.
34. *See* Freedom House, Signature Reports: Freedom in the World, *available at* http://www.freedomhouse.org/reports.

evaluated on both political rights and civil liberties, with scores given out of seven. The combined scores for free countries are between 1–2.5; partly free countries score between 3–5; and not free countries score between 5.5–7. A country's ranking is not necessarily static; several countries have had their rankings changed over the years depending on the prevailing political climate at any given time. Similar categorization has occurred from other institutions such as The World Bank that seek to break down state institutions according to governmental indicators (including human rights compliance) in order to compare, measure, and classify forms of governance. Using these categorizations, we can loosely term these states "liberal democracies" (F), "emerging democracies" (PF), and "autocratic or repressive regimes" (NF).

Human rights ideologies are intrinsically linked to the national government and form of governance. There are political as well as governance reasons for countries' human rights ideologies. Not Free and Partly Free governments are less likely to adhere to CPRs than Free states. The form of governance of NF states is often maintained by violating CPRs such as the freedoms of assembly, association, and expression. In particularly oppressive countries, violations will also include systematic torture and deprivation of the right to life. Our aim is to explore how those different forms of governance impact the development of human rights at the international level. Our methodology does not allow us to establish causality in patterns between type of governance and voting record, yet any correlation can potentially be indicative of a significant relationship especially if supported by other factors pointing in that direction.

B. Categorizing the Mandates

As previously discussed, Special Procedures is comprised of individual mandates that focus either on a specific country or on a thematic right. Although thematic mandates may cover different human rights obligations, they can be divided largely according to the three categories of rights[35]: CPRs; ESCRs; and TGRs. These categories of rights are useful for exploring the expansion of Special Procedures over the past twenty years and for understanding the potential motivations of states for creating newer mandates.

When categorizing the mandates, we first look at whether the specific mandate relates to a right in an existing human rights treaty covering a

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

particular category. Thus, for instance, freedom of expression and opinion is protected by Article 19 of the ICCPR and the Special Procedure Mandate relating thereto should therefore clearly be categorized as CPR, whereas the right to "the enjoyment of the highest attainable standard of physical and mental health" can be found in Article 12 of the ICESCR and the Special Procedure mandate thereon should therefore be labelled as an ESCR. Certain other thematic mandates are more difficult to categorize especially since TGRs are not defined and have yet to be codified in international law. It should also be noted that certain mandates might take into account both aspects of CPRs and ESCRs.[36]

C. Mapping the Data

Empirical research on states' voting records regarding Special Procedures mandates enables us to determine which states are promoting CPR, ESCR, and TGR mandates, respectively. The research focuses on voting records for Special Procedures thematic mandates created under the former Commission on Human Rights and its successor body, the Human Rights Council. Each mandate has at least one resolution creating the mandate and all bar the newest ones, such as or those that have been discontinued have resolutions renewing the mandates.[37] Generally, thematic mandates are renewed every three years, although some have a shorter period of duration specified in the original resolution creating the mandate. The Council considered all mandates as part of its Review, Rationalization and Improvement process,[38] and therefore renewed the mandates as part of the transition from Commission to Council regardless of whether a mandate's term of duration had expired.

It must be noted that the original resolution creating a mandate is often more contentious in terms of the debates surrounding the resolution and the

36. For our exact categorization of the thematic mandates see Appendix 1.
37. Two thematic mandates have been discontinued. The mandate on Impunity, first introduced in C.H.R. Res. 2004/72, U.N. Doc. E/CN.4/RES/2004/72 (2004), was discontinued after one year, as the independent expert had fulfilled his mandate of updating the "set of principles for the protection and promotion of human rights through action to combat immunity." The second discontinued mandate was the independent expert/working group established "with a view to considering options regarding the elaboration of an optional protocol to the ICESCR," initially in C.H.R. Res. 2001/30, U.N. Doc. E/CN.4/RES/2001/30 (2001). The mandate was fulfilled in 2008, when the working group submitted its proposal on the text of the optional protocol to the Human Rights Committee for consideration.
38. The Council was required to "maintain a system of special procedures, expert advice and a complaint procedure." G.A. Res. 60/251, ¶ 6, U.N. Doc. A/RES/60/251 (2006). Schrijver notes that, prior to the Council's creation, tensions arose regarding modifying the system (Schrijver, *supra* note 21, at 812–14). The compromise was to retain the system for the Council's first year, and undertake a review as to whether to keep, and where necessary rationalize or improve, individual mandates.

vote than what occurs for subsequent renewing resolutions. This may be a case of countries not wishing subsequently to revisit previous discussions and debates. Occasionally a renewing mandate is contentious in terms of discussions and votes, but this often occurs where countries, groups, or blocs seek to alter the mandate, as occurred with the 2008 renewing resolution on Freedom of Expression.[39] That mandate was created in 1993[40] and had been in existence until 2008. In 2008, Canada proposed the renewing mandate. The OIC tabled an amendment that called for an additional operative paragraph requiring the mandate holder to examine instances where "the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination."[41] This was clearly targeted at an ongoing objective of creating a new right for people to not have their religion defamed.[42] That issue had been raised elsewhere including at conferences and within UN bodies. Canada, in light of the broader context in which the amendment was tabled as well as the fundamental impact that it would have on the right to freedom of expression, raised considerable objections to the amendment.[43] It insisted that the amendment would fundamentally change the mandate holder's role from promoting to policing the exercise of freedom of expression.[44] Countries like Slovenia, Brazil, and India, alongside the usual Western states, asserted that this amendment would restrict the very right that the mandate sought to protect and promote.[45] The mandate was adopted with the amendment despite the debate surrounding that renewing resolution.[46]

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39. Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, H.R.C. Res. 7/36, U.N. Doc. A/HRC/RES/7/36 (2008).
40. Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, C.H.R. Res. 1993/45, U.N. Doc. E/CN.4/1993/45 (1993).
41. Introduced by Egypt (on behalf of the Group of African States), Pakistan (on behalf of the OIC member states) and Palestine (on behalf of the Group of Arab States) in draft amendment U.N. Doc. A/HRC/7/L.39 (2008), debated on 28 Mar. 2008.
42. *Cf.* Sejal Parmar, *The Challenge of "Defamation of Religions" to Freedom of Expression and the International Human Rights System*, 14 Eur. Hum. Rts. L. Rev. 353 (2009).
43. Comments of the Canadian delegate in explanation of vote before the vote, during the 42nd Meeting of the Human Rights Council, 28 Mar. 2008. The audio/visual recording is a UN Webcast video on-demand, *available at* http://www.unmultimedia.org/tv/webcast/c/un-human-rights-council.html.
44. *Id.* "Instead of promoting freedom of expression, the special rapporteur would be policing its exercise. This would be a fundamental change to the mandate and a bad precedent for other special procedures."
45. *Id.* "For example, Slovenia (on behalf of the EU) opined that 'the focus of the mandate must remain centered on its core notion to promote and protect the right to freedom of opinion and expression. The amendment before us, L.39, as proposed by the OIC, does exactly the reverse. It shifts the mandate away from promoting freedom of expression towards restricting it."
46. In favor: Angola(NF), Azerbaijan(NF), Bangladesh(PF), Bolivia(PF), Brazil(F), Cameroon(NF), China(NF), Cuba (NF), Djibouti (PF), Egypt(NF), Gabon(PF), Ghana(F), India(F), Indonesia(PF), Jordan(PF), Madagascar(PF), Malaysia(PF), Mali(F), Mauritius(F), Mexico(F), Nicaragua(PF), Nigeria(PF), Pakistan(PF), Peru(F), Qatar(NF), Russian

By 2011 and the mandate's next renewal,[47] the countries that opposed the amendment did not seek to repeat the 2008 discussions, demonstrating the inference that states choose not to re-engage in previous battles once they have clearly been lost.

In order to determine which states promote and support different types of mandates, we examine voting records on the mandates. That analysis includes which countries sponsored resolutions owing to that being an indicator of promoting rather than just supporting. The mandate on toxic dumping, for example, had a significant number of sponsors (thirty-nine) that included twenty-nine African countries.[48] It is fairly clear why African states promoted this mandate, as that region is the one most affected by toxic dumping.[49] The mandate on countering terrorism, on the other hand, was sponsored by sixty-eight countries, most of which were not affected by the issue.[50] However, countering terrorism was a significant political issue. Countries from the EU, GRULAC, and some others from WEOG were the main promoters of this mandate. Perhaps more interestingly, Egypt and Russia also sponsored the resolution. Both of the countries had their own internal political objectives regarding terrorism alongside foreign policy objectives based on US involvement with violations of CPRs while countering terrorism.

Although any country may sponsor a resolution, only members of the Human Rights Council may vote. It is important to note that a country may not be involved in a resolution if it is neither a Council member nor a sponsor, and that a lack of involvement does not necessarily lead to any conclusions about that state's stance on the mandate. Not all resolutions are adopted by vote. Where there is consensus there is no voting record per se, but it is clear that no state felt strongly enough to call for a vote in which they could register their abstention or disagreement with the mandate. Often such mandates are on issues that are universally recognized as crucial human rights, even if countries systematically violate those rights within their own territories. Examples include the mandates on the Sale of Children,

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Federation(NF), Saudi Arabia(NF), Senegal(PF), South Africa(F), Sri Lanka(PF), Uruguay(F), Zambia(PF). Abstaining: Bosnia and Herzegovina(PF), Canada(F), France(F), Germany(F), Guatemala(PF), Italy(F), Japan(F), Netherlands(F), Philippines(PF), Republic of Korea(F), Romania(F), Slovenia(F), Switzerland(F), Ukraine(F), United Kingdom of Great Britain, and Northern Ireland(F).

47. *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, H.R.C. Res. 16/4, U.N. Doc. A/HRC/RES/16/4 (2011).
48. *Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights*, C.H.R. Res. 1995/81, U.N. Doc. E/CN.4/1995/81 (1995).
49. *Id.*
50. *Countering Terrorism*, C.H.R. Res. 2005/80, U.N. E/CN.4/2005/80 (2005).

Child Prostitution and Child Pornography,[51] Arbitrary Detention,[52] Violence Against Women,[53] and Contemporary Forms of Slavery.[54]

Countries may abstain from the vote, which in itself can be quite telling. Abstentions are a method of registering non-acceptance of a particular provision or of the need for a mandate even if a country agrees with the right itself. This occurred during the vote on the 2008 renewal resolution for the mandate on freedom of expression and opinion; countries that supported the right but not the alteration of the mandate abstained during the vote in order to neither undermine the mandate nor support the tabled amendment.[55]

When looking at votes and sponsors, we used Freedom House's categorization of F, PF, and NF for the particular year of the resolution. We identified how many F, PF, or NF states voted for, against, or abstained in the vote on each resolution. States such as Brazil, India, Indonesia, and Ukraine saw their classification change over time, altering the numbers of F, NF, and PF states on the Commission/Council. It must also be noted that with elections every year, a third of the Council's members change and therefore there is always a difference in terms of the numbers of members with different types of governance sitting on the body. Geographic proportionate representation at the Council means that, thus far, there has almost always been a majority of NF and PF governance combined, but there is not always a majority of any one category of governance.

D. Research Findings

Special Procedures focused almost exclusively on CPRs until 1995 when the Commission on Human Rights created a TGR mandate on toxic dumping.[56] Since then, there has been a movement towards expanding the system to include ESCRs and TGRs by adding some twelve ESCR mandates,[57] and four

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51. *Sale of Children*, C.H.R. Res. 1990/68, U.N. Doc. E/CN.4/1990/68 (1990).
52. *Question of Arbitrary Detention*, C.H.R. Res. 1991/42, U.N. Doc. E/CN.4/1991/42 (1991).
53. *Question of Integrating the Rights of Women Into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women*, C.H.R. Res. 1994/45, U.N. Doc. E/CN.4/1994/45 (1994).
54. *Special Rapporteur on Contemporary Forms of Slavery,* H.R.C. Res. 6/14, U.N. Doc. A/HRC/RES/6/14 (2007).
55. *See supra* notes 40–46 inclusive.
56. *The Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment Of Human Rights*, C.H.R. Res. 1995/81, U.N. Doc. E/CN.4/1995/176 (1995).
57. *Human Rights and Extreme Poverty*, C.H.R. Res. 1998/25, U.N. Doc. E/CN.4/1998/25 (1998); *Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights*, C.H.R. Res.

TGR mandates.[58] It is important to note that these figures do not include the so-called hybrid mandates that have been introduced since 1995: namely Human Rights of Migrants, Minority Issues, and Discrimination of Women in Law and in Practice. Mapping the data enables us to assess the extent to which forms of governance impact states' approaches to the expansion of the system.

The first two ESCR mandates were on Poverty[59] and Education,[60] both created in 1998. Between 1995 and 2013, five TGR mandates and twelve ESCR mandates have been adopted. In that time there have been four new CPRs as traditionally understood,[61] starting with Impunity in 2004.[62] There

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1998/33, U.N. Doc. E/CN.4/1998/33 (1998); *Adequate Housing as a Component of the Right to an Adequate Standard of Living*, C.H.R. Res. 2000/9, U.N. Doc. E/CN.4/2000/9 (2000); *Right to Food*, C.H.R. Res. 2000/10, U.N. Doc. E/CN.4/RES/2000/10 (2000); *The Effects of Structural Adjustment Policies and Foreign Debt*, C.H.R. Res. 2000/82, U.N. Doc. E/CN.4/RES/2000/82 (2000); *Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, C.H.R. Res. 2001/30, U.N. Doc. E/CN.4/2001/30 (2001); *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, C.H.R. Res. 2002/31, U.N. Doc. E/CN.4/RES/2002/31 (2002); *People of African Descent*, C.H.R. Res. 2002/68, U.N. Doc. E/CN.4/RES/2002/68 (2002); *Human Rights and Transnational Corporations and other Business Enterprises*, C.H.R. Res. 2005/69, U.N. Doc. E/CN.4/2005/69 (2005); *Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation*, H.R.C. Res. 7/22, U.N. Doc. A/HRC/RES/7/22 (2008); *Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights*, C.H.R. Res. 2001/30, U.N. Doc. E/CN.4/2001/30 (2001);*The Human Rights of Older Persons*, H.R.C. Res. 24/20, U.N. Doc. A/HRC/RES/24/20 (2013).

58. *Right to Development*, C.H.R. Res. 1998/72, U.N. Doc. E/CN.4/1998/72 [1998–2010] (1998); *Human Rights and International Solidarity,* C.H.R. Res. 2005/55, U.N. Doc. E/CN.4/2005/55 [2005–2014] (2005); *Promotion of a Democratic and Equitable International Order*, C.H.R. Res. 2005/57, U.N. Doc. E/CN.4/RES/2005/57 [2011–2014] (2005); *Human Rights Obligations Related to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, H.R.C. Res. 19/10, U.N. Doc. A/HRC/RES/19/10 (2012).
59. Human Rights and Extreme Poverty, *supra* note 57.
60. Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights, *supra* note 57, ¶ 6.
61. *Updated Set of Principles for the protection and promotion of human rights through action to combat impunity,* C.H.R. Res. 2004/72, U.N. Doc. E/CN.4/2005/102/Add.1 (2005);*Contemporary Forms of Slavery Including its Causes and Consequences*, H.R.C. Res. 6/14, U.N. Doc. A/HRC/RES/6/14, (2007); *The rights to freedom of peaceful assembly and of association*, H.R.C. Res. 15/21, U.N. Doc. A/HRC/RES/15/21 (2010);*Special Rapporteur on the promotion of truth, justice, reparation and guaranteed of non-recurrence*, H.R.C. Res. 18/7, U.N. Doc. A/HRC/RES/18/7 (2011) [2011–2014].
62. *Impunity*, C.H.R. Res. 2004/72, U.N. Doc. E/CN.4/2004/72 (2004).

have also been eight mandates,[63] starting with Migrants in 1999,[64] in which the resolution largely seeks to promote and protect CPRs, but only in relation to a specific group of people. The types of mandates have changed and expanded rapidly over almost twenty years. The purpose of our empirical research is to explore whether or not the system's expansion has been impacted by the type of governance within states that have been at the fore of promoting or supporting new mandates. The impact of those newer mandates will be explored in Section 5. Various reasons and motivations might be inferred from those actions, as will be explored in Section 6.

E. Empirical Data on Voting Records

The data we use is from 1980 to the end of 2013. Of the nineteen CPR mandates,[65] four resolutions creating the mandates were adopted by a

63. *Human Rights of Migrants*, C.H.R. Res. 1999/44, U.N. Doc. E/CN.4/1999/44 (1999); *Human Rights Defenders*, C.H.R. Res. 2000/61, U.N. Doc. E/CN.4/RES/2000/61 (2000); *Human Rights and Fundamental Freedoms of Indigenous People*, C.H.R. Res. 2001/57, U.N. Doc. E/CN.4/RES/2001/57 (2001); *Racism, racial discrimination, xenophobia and related intolerance*, C.H.R. Res. 2002/68, U.N. Doc. E/CN.4/RES/2002/68 (2002); *Trafficking in Persons Especially Women and Children*, C.H.R. Res. 2004/110, U.N. Doc. E/CN.4/DEC/2004/110 (2004); *Minority Issues*, C.H.R. Res. 2005/79, U.N. Doc. E/CN.4/RES/2005/79 (2004); *Discrimination Against Women in Law and in Practice*, H.R.C. Res. 15/23, U.N. Doc. A/HRC/RES/15/23 (2010); *The Human Rights of Older Persons*, *supra* note 57.

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

65. *Question of missing and disappeared persons,* C.H.R. Res. 20 (XXXVI), U.N. Doc. E/CN.4/RES/1980/20 (1980), [in operation from: 1980–2014]; *Summary or Arbitrary Executions*, C.H.R. Res. 1982/29, U.N. Doc. E/CN.4/1982/29 (1982) [1982–2014]; *Torture and Other Cruel, Inhuman or Degrading Treatment Or Punishment*, C.H.R. Res. 1985/33, U.N. Doc. E/CN.4/1985/33 (1985) [1985–2014]; *Religious Tolerance (Freedom of Religion or Belief)*, C.H.R. Res. 1986/20, U.N. Doc. E/CN.4/1986/20 (1986) [1986–2013]; *Sale of Children*, C.H.R. Res. 1990/68, U.N. Doc. E/CN.4/1990/68 (1990); *Internally Displaced Persons*, C.H.R. Res. 1992/73, U.N. Doc. E/CN.4/1992/73 (1992) [1992–2013]; *Measures to combat contemporary forms of racism, discrimination, xenophobia and related intolerance*, C.H.R. Res. 1993/20, U.N. Doc. E/CN.4/1993/20 (1993) [1993–2014]; *Right to freedom of opinion and expression*, C.H.R. Res. 1994/33, U.N. Doc. E/CN.4/RES/1994/33 (1994) [1994–2014]; *Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers*, C.H.R. Res. 1994/41, U.N. Doc. E/CN.4/1994/41 (1994) [1994–2014]; *Questions of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of Violence against women,* U.N. Doc. E/CN.4/1994/45 (1994) [1994–2014); *Human Rights Defenders*, C.H.R. Res. 2000/61, U.N. Doc. E/CN.4/RES/2000/61 (2000); *Human Rights and indigenous issues*, C.H.R. Res. 2001/57, U.N. Doc. E/CN.4/RES/2001/57 (2001) [2001–2013]; *Updated Set of Principles for the protection and promotion of human rights through action to combat impunity*, C.H.R. Res. 2004/72, U.N. Doc. E/CN.4/2005/102/Add.1 (2005); *Special Rapporteur on Trafficking in Persons Especially Women and Children*, C.H.R. Res. 2004/110, U.N. Doc. E/CN.4/DEC/2004/110 (2004) [2004–2014]; *The Promotion and Protection on Human Rights and Fundamental Freedoms While Countering Terrorism*, C.H.R. Res. 2005/80, U.N. Doc. E/CN.4/2005/80 (2005) [2005–2013]; *Contemporary*

vote.[66] On average, twenty F, nine PF, and five NF countries voted for the resolutions; zero F, zero PF and two NF countries voted against; and less than one F, two PF and six NF countries abstained.[67] As a percentage of the vote, on average 58 percent F of countries, 15 percent of PF, and 27 percent of NF voted for the resolutions and 7 percent of F countries, 26 of percent PF, and 67 of percent NF abstained. No PF states voted against a CPR mandate.[68] Of the remaining fifteen mandates adopted without a vote, on average twenty-four F countries, nine PF, and four NF sponsored the introduction of the resolutions. It is clear from this data that F countries are far more likely to promote or support CPR mandates than both PF and NF states.

For the twelve ESCR mandates,[69] six resolutions creating or renewing the mandates were adopted by a vote.[70] On average, sixteen F countries, thirteen PF, and twelve NF voted for the resolutions; seven F countries, zero

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Forms of Slavery Including its Causes and Consequences, H.R.C. Res. 6/14, U.N. Doc. A/HRC/RES/6/14, (2007) [2007–2013]; *The rights to freedom of peaceful assembly and of association*, H.R.C. Res. 15/21, U.N. Doc. A/HRC/RES/15/21 (2010); *Special Rapporteur on the promotion of truth, justice, reparation and guaranteed of non-recurrence*, H.R.C. Res. 18/7, U.N. Doc. A/HRC/RES/18/7 (2011) [2011–2014].

66. *Summary or Arbitrary Executions*, C.H.R. Res. 1982/29, U.N. Doc. E/CN.4/1982/29 (1982) [1982–2014]; Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 65; Religious Tolerance/Freedom of Religion or Belief, *supra* note 65; Human Rights Defenders, *supra* note 65.
67. This average is based on the median results for three out of the four CPR mandates that were adopted by vote as the voting breakdown for extrajudicial, summary, or arbitrary executions. *See supra* note 65.
68. The mandate on "The use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination," U.N. Doc. E/CN.4/1987/16) (9 Mar. 1987), does not fall readily within any of the three categories of CPR, ESCR or TGR given the hybrid nature of this right. For this reason it is not included in the data.
69. *Human Rights And Extreme Poverty*, *supra* note 57; *Right to Education*, *supra* note 57; *Adequate Housing as a Component of the Right to an Adequate Standard of Living*, *supra* note 57; *Right to Food*, *supra* note 57; *The effects of structural adjustment policies and foreign debt*, *supra* note 57; *Draft Optional Protocol to the ICESCR*, *supra* note 57; *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, *supra* note 57 [2002–2013]; *Racism, racial discrimination, xenophobia and related intolerance*, *supra* note 63; *Human Rights and Transnational Corporations and Other Business Enterprises*, *supra* note 58; *Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation*, *supra* note 57 [2008–2014]; *Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights*, *supra* note 57; *The Human Rights of Older Persons*, *supra* note 57.
70. *Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights, supra* note 57; *Human Rights and Extreme Poverty*, *supra* note 57; *Right to Food*, *supra* note 57; *The effects of structural adjustment policies and foreign debt*, *supra* note 57; *Racism, racial discrimination, xenophobia and related intolerance*, *supra* note 63; *Human Rights and Transnational Corporations and Other Business Enterprises*, *supra* note 58.

PF, and zero NF voted against; and two F countries, two PF, and less than one NF abstained.[71] As a percentage of the vote, on average 35 percent of F countries, 33 percent of PF, and 32 percent of NF voted for the resolutions. No PF or NF countries have ever voted against the creation of an ESCR mandate. Of the remaining five mandates adopted without a vote, on average twenty F countries, eight PF, and five NF sponsored the introduction of the resolutions. Thus, while F countries have been marginally more likely than PF and NF countries to support ESCR mandates they have also been, by far, the most likely to oppose and vote against such mandates. This suggests that F countries' attitude towards ESCR is mixed and very much dependent on the specific nature of the right in question, whereas PF and NF countries seem to view all ESCRs as a priority. The difference in data between CPR and ESCR mandates is clear: NF and PF countries are far more likely to promote or support ESCR than CPR mandates. F countries are often supportive of ESCR mandates but are also more likely to vote against or abstain on ESCR than CPR mandates.

For the five TGR mandates, seventy-three resolutions creating the mandates were adopted by a vote.[72] On average, seven F, fourteen PF, and twelve NF countries voted for the resolutions; thirteen F countries, less than one PF, and less than one NF voted against; and two F countries, two PF, and less than one NF abstained. As a percentage of the vote, on average 21 percent of F countries, 43 percent of PF, and 36 percent of NF voted for the resolutions; 93 percent of F countries, 5 percent of PF, and 2 percent of NF voted against; and 31 percent of F countries, 29 percent of PF, and 40 percent of NF abstained. The data again shows ideological divisions between forms of governance and types of mandates that states promote or support. The NF and PF states are more likely to push for TGR mandates, whereas F states overwhelmingly register dissent through voting against the resolutions.

IV. ANALYSIS

Our research findings[73] show that Free states will almost always support and almost never vote against CPR mandates, whereas their record on ESCRs is more mixed and the record on TGRs shows that F states are decidedly skepti-

71. Based on average of five of the six mandates as no voting data was available for the Right to Education in Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights, *supra* note 57.
72. *The Adverse Effects of the Illicit Movement and Dumping*, *supra* note 56; *Human Rights and International Solidarity*, *supra* note 58; *Promotion of a Democratic and Equitable International Order*, *supra* note 58.
73. Which we set out in detail in a forthcoming article based on this research.

cal about this new generation of rights.[74] Not Free states are most inclined to vote for TGRs and, to a lesser extent, sponsor ESCR mandates, but rarely promote CPRs even though they do at times vote for those mandates. Partly Free states are most inclined toward TGRs, but also promote and support ESCRs. Although it is not appropriate to explore all of the relevant mandates and voting records here, it is interesting to demonstrate these findings with reference to particular resolutions and to the countries that promoted or sought to undermine different mandates. This will inform and illustrate our analysis[75] of these research findings.

The 2000 resolution on the CPR mandate of Human Rights Defenders was adopted by fifty votes in favor,[76] zero against, and three abstentions: China, Cuba, and Rwanda, all three NF states with poor records of implementing rights for Human Rights Defenders.[77] Unsurprisingly, given its own record of harassing and imprisoning human rights defenders, China asserted that the mandate was unnecessary, claiming that Human Rights Defenders were adequately protected by other mandates, thus rendering the new mechanism obsolete.[78] The Cuban delegate went further, insisting that the mandate was not necessary owing to: "[T]he guise of "human rights defender" was often assumed by those who were bent on subversion. In Cuba, the United States subcontracted so-called human rights defenders to channel extensive funding to subversives."[79]

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74. Exceptions include Mercenaries *supra* and the renewal of Freedom of Expression 2008 *supra*.
75. *See* Section 5 *infra*.
76. Of the fifty states to vote in favor, twenty-six were F countries: Argentina, Botswana, Canada, Chile, the Czech Republic, El Salvador, France, Germany, India, Indonesia, Italy, Japan, Latvia, Liberia, Luxembourg, Mauritius, Mexico, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Spain, the United Kingdom, and the United States; sixteen were PF countries: Bangladesh, Brazil, Colombia, the Congo, Ecuador, Guatemala, Madagascar, Morocco, Nepal, Niger, Nigeria, Peru, Senegal, Sri Lanka, Venezuela, and Zambia; and eight were NF countries: Bhutan, Burundi, Pakistan, Qatar, Russia, Sudan, Swaziland, and Tunisia.
77. In its annual country report on China in 2000, Amnesty International (AI) highlighted that "[t]he human rights situation in China deteriorated sharply during the year. Those targeted in the crack-down included political dissidents, anti-corruption campaigners, labour rights activists, human rights defenders and members of unofficial religious or spiritual groups." Amnesty International, Amnesty International Report 2000: China, including Hong Kong and Macao (2000), *available at* http://www.refworld.org/docid/3ae6aa1138.html. In its report on Cuba for 2000, similar concerns were raised by AI again, where it was highlighted that "[d]issidents, who included journalists, political opponents and human rights defenders, suffered severe harassment during the year. Several hundred people remained imprisoned for political offences, some of whom were recognized by AI as prisoners of conscience." Amnesty International, Amnesty International Report 2000: Cuba (2000), *available at* http://www.refworld.org/docid/3ae6aa0e14.html.
78. See statement of Mr. Sun Ang, as recorded in the Summary Record of the 66th Meeting of the Commission on Human Rights, C.H.R., ¶ 69, U.N. Doc. E/CN.4/2000/SR.66 (2000).
79. See statement of Mr. Alfonso Martinez, as recorded in the Summary Record of the 65th Meeting of the Commission on Human Rights, C.H.R., ¶ 22, U.N. Doc. E/CN.4/2000/SR.65 (2000).

The CPR mandate on Freedom of Association was adopted in 2010[80] without a vote. Interestingly this mandate included sixty-three cosponsors: forty-seven F,[81] fifteen PF,[82] and one NF.[83] During discussions about the resolution, statements made by NF states demonstrated their strength of feeling against the mandate. During discussions, a number of NF countries that did not sponsor the resolution made statements that sought to undermine the mandate. China asserted that the right contained nonabsolute obligations and that the mandate should take into account differing opinions, particularly of developing countries.[84] Russia, Libya, and Pakistan all insisted that mechanisms such as CERD[85] and the International Labour Organisation[86]already adequately addressed the substantive issues covered by the mandate. They argued that the new mandate would simply further reduce funding and resources for Special Procedures and the Council.[87] This is an interesting point to note owing to the ongoing discussion about whether or not TGRs and some ESCRs mandates were being created simply to dilute rather than enhance the Special Procedures system.[88] Cuba, mirroring its stance on the mandate on human rights defenders, expressed its opposition to the mandate by arguing that some of the cosponsors

> criminalise the movements of national liberation that fought against colonialism and apartheid [and funded] activities in other countries that are unconstitutional . . . some of the co-sponsors have xenophobic parties who are racist in nature . . . who have organisations that fight against the dignity of other human beings.[89]

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80. H.R.C. Res. 15/21, U.N. Doc. A/HRC/RES/15/21 (2010).
81. Argentina, Australia, Austria, Belgium, Benin, Bulgaria, Canada, Chile, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ghana, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mongolia, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Republic of Korea, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom and the United States.
82. Albania, Bosnia and Herzegovina, Burkina Faso, Colombia, Georgia, Guatemala, Maldives, Mexico, Morocco, Nigeria, Republic of Moldova, Senegal, Turkey, Uganda, Ukraine, and FYR Macedonia.
83. Somalia.
84 *See* Statements by the Chinese Delegate, Made During Discussion of Draft Resolution, U.N. Doc. A/HRC/15/L.23, 32nd Meeting of the Human Rights Council, (30 Sept. 2010). The audio/visual recording is *available at* http://www.un.org/webcast/unhrc/archive.asp?go=100930.
85. See comments by the Russian delegate concerning the provisions already provided for under the International Convention on the Elimination of All Racist Discrimination (ICERD) that *e.g.* ban activities of racist organizations vis-à-vis association and assembly. *Id.*
86. See comments of the delegates from Libya, Pakistan and Cuba vis-à-vis the role of the International Labour Organisation (ILO). *Id.*
87. *Id.*
88. See Section 5 *infra*.
89. See comments made by the Cuban delegate, *Id.*

The ESCR mandate on Extreme Poverty was created in 1998[90] and was adopted with fifty-one votes in favor and one against. The votes in favor demonstrate participation across the board, with twenty-five F countries,[91] sixteen PF,[92] and ten NF.[93] The US was the only country to vote against this mandate, citing "budgetary concerns" as its reason for not supporting the mandate.[94] That vote can be interpreted in light of the US approach to ESCRs; the vote may be viewed as ideological, particularly owing to this being the first ESCR mandate and therefore the first opportunity for the US to promote its ideology within the Special Procedures system. Opposition to the mandate can also be understood in light of the mandate's substance not falling directly within the prism of human rights. Indeed, the mandate holder's reports and activities have largely focused on financial institutions and programs at the national, regional and international levels.

The ESCR mandate on Foreign Debt created in 2000[95] proved more contentious than the mandate on Extreme Poverty. Thirty countries voted for the mandate,[96] fifteen against,[97] and seven abstained.[98] Six F,[99] fourteen PF,[100] and ten NF[101] countries voted for the mandate, while all fifteen countries opposing it were Free and came from the EU and its regional allies in WEOG. The same bloc voting occurred in the renewal resolutions in 2008[102] and 2011;[103] a North-South[104] divide is clear regarding this mandate. During discussions on the 2008 resolution, the EU expressed unease with the

90. C.H.R. Res. 1998/25, U.N. Doc. E/CN.4/1998/25 (1998).
91. Argentina, Austria, Botswana, Canada, Cape Verde, Chile, Czech Republic, Denmark, Ecuador, El Salvador, Finland, France, Germany, India, Ireland, Italy, Japan, Luxembourg, Mali, the Philippines, Poland, Republic of Korea, South Africa, the United Kingdom, and Venezuela.
92. Bangladesh, Brazil, Guatemala, Indonesia, Madagascar, Malaysia, Mexico, Morocco, Mozambique, Nepal, Pakistan, Peru, Senegal, Sri Lanka, Uganda, and Ukraine.
93. Belarus, Bhutan, China, the Congo, Cuba, Democratic Republic of Congo, Guinea, Russia, Sudan, and Tunisia.
94. Report of the 54th Session of the Commission on Human Rights, 16 Mar—24 Apr. 1998, U.N. Doc. E/1998/23 (1998).
95. C.H.R. Res. 2000/82, U.N. Doc. E/CN.4/RES/2000/82 (2000).
96. Bangladesh, Bhutan, Botswana, Brazil, Burundi, China, the Congo, Cuba, Ecuador, El Salvador, Guatemala, India, Indonesia, Madagascar, Mauritius, Morocco, Nepal, Niger, Nigeria, Pakistan, the Philippines, Qatar, Rwanda, Senegal, Sri Lanka, Sudan, Swaziland, Tunisia, Venezuela, and Zambia.
97. Canada, Czech Republic, France, Germany, Italy, Japan, Latvia, Luxembourg, Norway, Poland, Portugal, Romania, Spain, the United Kingdom, and the United States.
98. Argentina, Chile, Colombia, Mexico, Peru, Republic of Korea, and Russia.
99. Botswana, El Salvador, India, Indonesia, Mauritius, and the Philippines.
100. Bangladesh, Brazil, the Congo, Ecuador, Guatemala, Madagascar, Morocco, Nepal, Niger, Nigeria, Senegal, Sri Lanka, Venezuela, and Zambia.
101. Bhutan, Burundi, China, Cuba, Pakistan, Qatar, Rwanda, Sudan, Swaziland and Tunisia.
102. H.R.C. Res. 7/4, U.N. Doc. A/HRC/RES/7/4 (2008).
103. H.R.C. Res. 16/14, U.N. Doc. A/HRC/RES/16/14 (2011).
104. *Cf.* Weiss, *supra* note 22, who adopts this terminology to explain the current geopolitical divisions at the UN.

mandate claiming "pontification of minimum standards."[105] In 2011, the US asserted that the Council is "technically incompetent" to address issues like foreign debt, and that "rules other than human rights laws are more relevant."[106] These comments are crucial for understanding opposition both to this mandate and to the more general expansion of Special Procedures to include so-called rights that focus on other areas than ones traditionally associated with human rights and that often lack support in binding treaties. The concern was also raised that such a mandate would shift focus and funds away from other more pressing and serious human rights violations.[107]

The TGR mandate on International Solidarity was created in 2005.[108] The preamble to mandate sets out that it: "Recognizes that the so-called "third-generation rights" closely interrelated to the fundamental value of solidarity need further progressive development within the United Nations human rights machinery in order to be able to respond to the increasing challenges of international cooperation in this field."[109] Cuba introduced the resolution by saying that it is "aimed at promoting the recent development of the rights of the third generation, such as the right to peace, the right to development and the right to a healthy environment."[110] The voting patterns on the resolution creating the mandate and the two renewal resolutions[111] show clear bloc voting. WEOG consistently voted against these resolutions,[112] while GRULAC, which has a significant representation of PF states,[113] voted in favor.[114] The EU insisted that Special Procedures ought to focus on the

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105. See the statement made by the Slovenian delegate (on behalf of the EU), during discussion of draft resolution U.N. Doc. A/HRC/7/L.9, 39th Meeting of the Human Rights Council, (2008). The audio/visual recording is *available at* http://www.un.org/webcast/unhrc/archive.asp?go=080327.
106. See the statement made by the US delegate, during discussion of draft resolution U.N. Doc. A/HRC/16/L.18, 46th Meeting of the Human Rights Council, (2011). The audio/visual recording is *available at* http://www.un.org/webcast/unhrc/archive.asp?go=110324.
107. *Id.*
108. C.H.R. Res. 2005/55, U.N. Doc. E/CN.4/RES/2005/55 (2005).
109. *Id.* ¶ 5.
110. See comments by the Cuban delegate during discussion of draft resolution U.N. E/CN.4/2005/L.71, as recorded in the Summary Record of 58th Meeting of the Commission on Human Rights. C.H.R. Res. E/CN.4/2005/L.71, ¶ 30, U.N. Doc. E/CN.4/2005/SR.58 (2005).
111. H.R.C. Res. 7/5, U.N. Doc. A/HRC/RES/7/5 (2008); H.R.C. Res. 17/6, U.N. Doc. A/HRC/RES/17/6 (2011).
112. The following WEOG states voted against the mandate: C.H.R. Res. 2005/55 (2005): Australia, Canada, Finland, France, Germany, Ireland, Italy, Netherlands, the United Kingdom and the United States; H.R.C. Res. 7/5 (2008): Canada, France, Germany, Italy, the Netherlands, Switzerland, and the United Kingdom; H.R.C. Res. 17/6 (2011): Belgium, France, Norway, Spain, Switzerland, the United Kingdom, and the United States.
113. As per 2013 Freedom House ranking, of the 33 countries of GRULAC, 22 were classified as F, 10 as PF and 1 as NF. *See* Freedom House, *Freedom in the World* 2013, *available at* http://www.freedomhouse.org/report/freedom-world/freedom-world-2013.
114. The following GRULAC states voted for the mandate: C.H.R. Res. 2005/55 (2005): Argentina, Brazil, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala,

duties of states to their citizens rather than of states to other states.[115] During discussions on the 2011 resolution, the EU argued that the moral nature of the concept of international solidarity makes it difficult to transform it into a legally valuable and binding human right.[116] It argued that the lack of clear definition of the entitlements of the right-holders and responsibilities of the duty bearers means that the so-called right risks are redundant.[117]

The TGR mandate on a Democratic and Equitable International Order was created in 2011.[118] It was adopted by twenty-nine votes in favor,[119] twelve against,[120] and five abstentions.[121] The abstentions largely came from Latin America,[122] while EU and WEOG once again voted against this mandate. The PF[123] and NF[124] states account for twenty-three of the twenty-nine votes in favor. During discussions on the resolution, Cuba introduced the mandate as based on a need for international cooperation for realization of "economic and social advancement of all peoples."[125] The EU asked for an amendment that also focused on democracy at a national level and plurality of political parties, as well as insisting that the mandate should focus on freedom of expression.[126] The EU insisted that such amendments would at least make a contribution to human rights,[127] echoing previous concerns

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Honduras, Ecuador and Mexico; H.R.C. Res. 7/5 (2008): Bolivia, Brazil, Cuba, Guatemala, Mexico, Nicaragua and Uruguay; H.R.C. Res. 17/6 (2011): Argentina, Brazil, Chile, Cuba, Ecuador, Guatemala, Mexico, and Uruguay.

115. See comments by the Dutch delegate (speaking on behalf of the EU) during discussion of draft resolution E/CN.4/2005/L.71, as recorded in the Summary Record of 58th Meeting of the Commission on Human Rights. C.H.R. Res. E/CN.4/2005/L.71, ¶ 30. U.N. Doc. E/CN.4/2005/SR.58 (2005).
116. See the statement made by the Hungarian delegate, during discussion of draft resolution A/HRC/17/L.21 at the 33rd Meeting of the Human Rights Council, 16 June 2011. The audio-visual recording is a UN Webcast archived video, *available at* http://www.un.org/webcast/unhrc/archive.asp?go=110616.
117. *Id.*
118. H.R.C. Res. 18/6, U.N. Doc. A/HRC/RES/18/6 (2011).
119. Angola, Bangladesh, Benin, Botswana, Burkina Faso, Cameroon, China, the Congo, Cuba, Djibouti, Ecuador, Guatemala, India, Indonesia, Jordan, Kuwait, Kyrgyzstan, Malaysia, Maldives, Mauritius, Nigeria, the Philippines, Qatar, Russia, Saudi Arabia, Senegal, Thailand, Uganda, and Uruguay.
120. Austria, Belgium, the Czech Republic, Hungary, Italy, Norway, Poland, Republic of Moldova, Romania, Spain, Switzerland, and the United States.
121. Chile, Costa Rica, Mauritania, Mexico, and Peru.
122. Chile, Costa Rica, and Peru, accounting for three of the five abstentions.
123. Bangladesh, Burkina Faso, Ecuador, Guatemala, Kuwait, Kyrgyzstan, Malaysia, Maldives, Nigeria, the Philippines, Senegal, Thailand, and Uganda.
124. Angola, Cameroon, China, the Congo, Cuba, Djibouti, Jordan, Qatar, Russia, and Saudi Arabia.
125. *Supra* note 118, pmbl.
126. *Poland: Amendments to Draft Resolution A/HRC/18/L.13*, H.R.C. Res. A/HRC/18/L13, at 90, U.N. Doc. A/HRC/18/L.33 (2011).
127. *Id. See* comments by the Polish delegate (speaking on behalf of the EU) during discussion of draft resolution A/HRC/18/L.33. The audio/visual recording is available as a UN Webcast, archived video, *available at* http://www.unmultimedia.org/tv/webcast/2011/09/cuba-vote-on-l13-item1-35th-plenary-meeting-18th-session.html.

that such mandates are far removed from the human rights matrix.[128] Cuba responded by accusing the EU of bad faith, politicization, and double standards.[129] Similarly, when the US voiced concerns about the mandate,[130] Cuba responded by accusing the US of genocide of indigenous people[131] as opposed to addressing the substance of the issues raised.

Alongside analyzing votes on the mandates, the research charts the voting records of individual states. Although this analysis goes beyond the scope of this particular article, there are interesting differences between voting patterns of states with the same category of governance. Within the Free category, Canada uses its vote to take a demonstrative stance supported by ideological comments during discussions. Brazil takes a different approach, generally voting in favor of all rights. Canada is strongly allied with WEOG countries and has been known to take a liberal ideological stance at the Human Rights Council.[132] To a large extent, Brazil is the F representative of the Global South and its voting record can be understood accordingly. Within the PF category, Nigeria can be contrasted with Mexico. The two countries' regional[133] and political[134] alliances arguably have influenced their voting records, with Mexico abstaining on several occasions[135] on issues more likely to impact Nigeria or its allies.[136] In the NF category, Cuba and Russia have taken different approaches to Special Procedures despite historical similarities between their political ideologies and the close political alliance that they present at the Human Rights Council.[137] Cuba has been

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128. See comment made by the Hungarian delegate during the discussion of the mandate on international solidarity, *Id.* at 170.
129. See comments made by the Cuban delegate in asking for a vote on draft resolution A/HRC/18/L.13 as orally amended by United States. The audio/visual recording, *available at* http://www.unmultimedia.org/tv/webcast/c/un-human-rights-council.html.
130. See comments made by the US delegate, *id.*
131. *Id.* at 135.
132. *See e.g.,* Freedman *supra* note 23, 197–252.
133. *Id.* Nigeria is a member of the African Group; Mexico is a member of GRULAC.
134. *Id.* Nigeria is a member of the OIC; Mexico is a member of G8+5.
135. Mexico abstained in the vote in the following: *Effects of Structural Adjustment Policies and Foreign Debt on the Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights,* C.H.R. Res. 2000/82 (2000); H.R.C. Res. 16/14 (2011); *Promotion of a Democratic and Equitable International Order* H.R.C. Res. 18/6 (2011); *Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights*, C.H.R. Res. 1995/81.
136. See discussion on toxic dumping *supra.*
137. There are some notable examples where Russia and China diverged in their otherwise generally similar voting pattern. Russia voted in favor of the mandate while China abstained in *Human Rights Defenders*, C.H.R. Res. 2000/61, U.N. Doc. E/CN.4/RES/2000/61 (2000) . The reverse occurred during the vote on C.H.R. Res. 2000/82 where it was China that voted in favor of the mandate, while Russia abstained, *Effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights*, C.H.R. Res. 2000/82, U.N. Doc. E/CN.4/RES/2000/82 (2000). However, the most flagrant break in voting alliance was visible in C.H.R. Res. 1995/81 where China voted in favor of the mandate while Russia voted against. *Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, C.H.R. Res. 1995/81, U.N. Doc. E/CN.4/RES/1995/81 (1995).

at the fore in terms of championing TGRs and fits well within the general analysis on NF countries. Russia tends to vote with its political allies but has voted with WEOG on mandates such as Toxic Waste and Human Rights Defenders,[138] which implies that there are broader political objectives underlying its voting record.

V. IMPACT OF MANDATE PROLIFERATION

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

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

Despite the formal UN-wide agreement on the indivisibility of all human rights, the nature of ESCRs, and in particular TGR mandates, is often very different from the nature of CPR mandates. CPR mandates tend to have a more narrow focus and deal with rights that have relatively well-established normative content, where gross and systematic violations are immediately apparent and identifiable and closely associated with authoritarianism, thus much more likely to cause embarrassment, scrutiny, and condemnation. Despite detailed general comments, an increase in national constitutions with justiciable ESCRs and the adoption of an optional protocol to the ICESCR, ESCRs tend to be more abstract and identification of individual violations are often less clear cut than when it comes to systematic violations of CPRs. In the words of Emilie M. Hafner-Burton "there is no consensus on how exactly to measure these violations [of ESCRs]."[139]

Outside of situations in which governments forcibly withhold food,[140] engage in systematic discrimination, or adopt policies of large-scale forced evictions, it is often much more difficult to determine when ESCRs have been violated and what government policy or (in)action caused poverty,

138. *Id.*
139. Emilie M. Hafner-Burton, Making Human Rights a Reality 78 (2013).
140. As has occurred throughout the recent civil war in Syria.

housing crises, or food shortages. This is also supported by the biases of international human rights organizations formally committed to indivisibility. In a brief and non-exhaustive study of Amnesty International's human rights priorities Mchangama found that Amnesty continues to prioritize work on CPRs: 80 per cent of the rights violations identified in Amnesty's reports on 10 "Global Players" related to civil and political rights, 12 per cent related to "hybrid rights" (such as rights of migrants that include both elements of CPR and ESCRs) and a mere 8 per cent of the rights identified were ESCRs. For the 10 least developed states the corresponding numbers were 86, 10 and 4 per cent respectively.[141] Moreover, governments accused of violating ESCRs will often be able to argue that resource constraints hinder them from fulfilling these rights, and because most states do in fact spend resources on education, health, and housing, governments will often be able to point to accomplishments that can be used to demonstrate commitment to ESCRs and which in turn invites praise from both Special Procedures and other states.

TGRs differ from both CPRs and ESCRs by often placing states or people rather than individuals as right holders. They also differ in that they are drafted in a very vague and unclear manner with no immediately clear normative content and thus little opportunity for Special Rapporteurs to identify and expose gross and systematic violations. This development also means that mandate holders are required to address matters falling outside of the human rights matrix and thus beyond their expertise. Secondly, mandate holders face difficulties in assessing compliance with the substantive rights. There is no method for assessing whether a state complies with the right to international solidarity or just international order—those rights are not enshrined in existing legally-binding conventions nor are they properly defined. Accordingly, there seems to be little substantive merit to these types of TGR mandates, however, important and compelling the problems such mandates formally address. CPR mandates, on the other hand, focus on rights such as freedom of expression, religion, assembly, and association, which are more easily definable and therefore it is often more clear when states violate them in a systematic fashion.

The mandate on Foreign Debt is one example of the contrast between TGR and other mandates. The Foreign Debt mandate holders have undertaken fifteen country visits during the thirteen-year duration of the mandate.[142] Almost all CPR mandate holders undertake at least three, if not more, country visits per year whereas other mandate holders, particularly TGRs, may well

141. Jacob Mchangama, *Against a human rights based approach to social justice*: Can human rights bring social justice? Twelve essays Edited by Doutje Lettinga & Lars van Troost (2015) available at http://justitia-int.org/wp-content/uploads/2015/09/2015-09-24_Amnesty_Can-human-rights-bring-social-justice_essay1.pdf.

142. A full list of countries, plus individual reports is on the mandate's page, *available at* http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/CountryVisits.aspx.

conduct fewer such visits. Country visits enable fact-finding, monitoring, and dialogues with national human rights activists and victims of violations. With the expansion of Special Procedures and the dilution of available resources as well as the increased demand on states to accept visit requests, the number of country visits has been more varied across mandates than when the system was smaller. Despite this, a ratio of 0.6 visits per year is significantly lower than almost all other mandates.[143] The mandate holder on Foreign Debt struggled to convince states of the need, or even ability, to monitor and fact-find within their territories. The vague and broad provisions within the mandate, coupled with the lack of tangible victims owing to ill-defined so-called rights, made both country visits and reports more or less meaningless and devoid of impact. This demonstrates the extent to which the mandate on Foreign Debt is misplaced, at best, or even redundant within the human rights matrix. Yet the mandate draws logistical, research and other support from OHCHR and requires time to be devoted to it during Human Rights Council sessions. Moreover, it shifts the focus away from tangible victims of tangible rights, and therefore it is clear why such a mandate is attractive for states seeking to dilute or undermine the system.

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

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

In the 1990s Cuba allowed the visits of the Special Rapporteurs on Mercenaries and Violence against Women,[144] but ignored a request and

143. OHCHR, Country Visits of Special Procedures of the Human Rights Council Since 1998, *available at* http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx.

144. *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*, C.H.R. Res. 1997/44, U.N. Doc. E/CN.4/2000/68/Add.2 (2000); *The Right of Peoples to Self-Determine and its Application to Peoples Under Colonial or Alien Domination or Foreign Occupation*, C.H.R. Res. 1999/3, U.N. Doc. E/CN.4/2000/14 (1999).

two subsequent reminders from the Special Rapporteur on Independence of Judges and Lawyers.[145] In 2002, the Secretary General appointed a Personal Representative of the High Commissioner for Human Rights[146] on the situation of human rights in Cuba. Yet Cuba never recognized the mandate nor did Cuba allow the representative access to the country. In 2007, a majority of the HRC decided to discontinue the country-specific mandate on Cuba. In 2006, Cuba ignored a request from the Special Rapporteur on freedom of religion and in 2011 it ignored a request from the Special Rapporteur on freedom of association and assembly. In 2009, Cuba agreed to a visit by the Special Rapporteur on Torture,[147] yet the Special Rapporteur had to send a reminder in 2013 and the visit is yet to be carried out. In 2007, for the first time in eight years, Cuba accepted a request from a Special Procedures mandate holder, namely the Special Rapporteur on the Right to Food,[148] a mandate created through the sponsorship of Cuba. That Rapporteur held several meetings with high level members of the Cuban government and issued a report to the HRC which generally praised Cuba's human rights record on the right to food and refrained from mentioning or criticizing the Cuban government's systematic violations of civil and political rights.[149]

Accordingly, while Cuba has been supportive of and willing to cooperate with mandate holders on ESCRs and TGRs, it has often voted against CPR mandates and systematically refused cooperation with Special Rapporteurs on CPRs.[150] There is also some evidence of rights proliferation creating cross-fertilization between the Special Procedures system and the Universal Periodic Review. Thus, in 2013 the Democratic People's Republic of Korea encouraged Cuba to "[p]romote the development of third generation rights, in particular the value of international solidarity."[151] Of course the mandate on International Solidarity was introduced by Cuba.

It is not just Cuba that uses ESCR and TGR mandates for political objectives unrelated to or that undermine human rights. There are countries that

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145. *Country and Other Visits by Special Procedures Mandate Holders Since 1998 A-E by OHCHR, latest update* 25 Sept. 2015, *available at* http://www.ohchr.org/EN/HRBodies/SP/Pages/countryvisitsa-e.aspx.
146. *Situation of Human Rights in Cuba*, C.H.R. Res. 2003/13, U.N. Doc. E/CN.4/RES/2003/13 (2003).
147. *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* H.R.C. Res. 8/8, at 3, U.N. Doc. A/HRC/13/39 (2010).
148. The visit was conducted between 28 Oct. and 6 Nov. 2007. The full report is available in U.N. Doc. A/HRC/7/5/Add.3.
149. *Id.* ¶ 67. Special Rapporteur on the right to food (28 Oct to 6 Nov. 2007).
150. Cuba has still numerous pending requests for country visits on core CPR mandates including: torture, freedom of opinion and expression, peaceful assembly and association, and independence of judges and lawyers. See full list of accepted and pending requests at the official special procedures page of the OHCHR, *supra* note 145.
151. See *Universal Periodic Review of Cuba*, 2nd Cycle, considered on 1 May 2013, Report of the Working Group. H.R.C. Res. 5/1, ¶ 170.64, U.N. Doc. A/HRC/24/16 (2013).

commit egregious violations of CPRs, but use ESCR and TGR mandates as a smokescreen to divert attention away from those gross and systemic violations. Such states welcome in ESCR and TGR mandate holders and then point to positive reports as evidence of their human rights commitment. Syria provides a clear example of such behavior. In the summer and fall of 2010, less than a year before the uprisings against Bashar Al-Assad that would set off the current bloody civil war in Syria, the Special Rapporteurs on the right to food[152] and health, respectively, were invited to visit Syria. These mandate holders met with several members of the Syrian government and issued reports that generally praised the human rights records of Syria but were silent on the repressive nature of the regime.[153] The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stated that: "Syria's commendable work in the last three decades to improve the health system as a whole, and its commitment to ensure access to healthcare for all" with regard to concerns the Special Rapporteur "noted with dismay that smoking is still highly prevalent in Syria."[154]

Prior to the visit of the Special Rapporteur on the Right to Food, the Special Rapporteur on Torture three requests for visits in 2005, 2007, and 2010 ignored, whereas the Special Rapporteur on human rights defenders had requests in 2008 and 2010 ignored. Syria has also ignored requests from the Working Group[155] on arbitrary detention and the Working Group on enforced disappearances, whereas agreements were made with the Special Rapporteurs on summary executions and Internally Displaced persons as well as with the Working Group on Mercenaries yet none of these agreements have been honored.

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

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152. UN Special Rapporteur on the Right to Food: Mission to Syria from 29 Aug. to 7 Sept. 2010, *available at* http://www2.ohchr.org/english/issues/food/docs/SyriaMissionPreliminaryConclusions_07092010.pdf.
153. View, *e.g.,* Human Rights Watch report about Syria from 2013, *available at* http://www.hrw.org/world-report/2013/country-chapters/syria.
154. UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Visit to Syria, 6–14 Nov. 2010. Preliminary observations, *available at* http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10532&LangID=E.
155. *See* OHCHR, Country visits of Special Procedures of the Human Rights Council since 1998, http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx

mandates, has shifted the focus from protecting tangible rights of tangible victims of abuses and onto using the human rights matrix to address broader and more abstract issues only tangentially related to human rights. The human rights matrix, however, is often ill-suited for voicing criticism of particular governments' abuse of specific citizens.

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

VI. CONCLUDING OBSERVATIONS

Rights proliferation is a significant concern and is increasingly discussed within the human rights community. Special Procedure mandates, despite being soft law, provide a microcosm for the issue of rights proliferation within the international arena. Exploring the creation of these mandates enables greater understanding of whether or not there is a link between forms of governance and the types of rights and mandates that states promote.

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

they must be included as a factor when understanding issues including the proliferation of Special Procedures mandates.

It is also apparent from the research findings and our analysis that proliferation of mandates is having a negative impact upon the special procedure system. At the most basic level, because there have not been increased resources to match the increasing number of mandates, those mandate holders focusing on tangible violations of tangible rights are able to conduct fewer country visits, produce fewer reports and recommendations, and have less time to discuss their findings at the Human Rights Council. For example, in the OHCHR financial statement for 2012, of the total earmarked funding for specific mandates only 24 percent was allocated to CPRs, while ESCRs accounted for 44 percent and "Groups in Focus" received 32 percent.[156] Allocation of funds to CPR mandates was slightly higher in 2011, accounting for 36 percent, though still significantly trumped by ESCRs, which accounted for 46 percent (mandates on Groups in Focus receiving 19 percent of earmarked funding).[157] Another key issue arising from mandate proliferation is that the diversion of resources away from traditional rights and toward substantive matters that ought to be addressed by bodies other than human rights institutions has shifted the focus away from individuals as rights holders. The newer mandates are designed in such a way as to be able to criticize countries for policy programs or interstate relations, or to criticize international institutions. The focus is being shifted away from the relationship between states and individuals and toward examining state policies and foreign relations. Indeed there is no recognized method for assessing compliance with many of the newer rights, particularly TGRs, leading to problems in terms of protecting and promoting rights. These, and other, issues could be potential motivations for some states voting for newer mandates if those countries have nefarious reasons for wishing to undermine, dilute, or significantly alter the international human rights system.

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

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156. *See* OHCHR Annual Report 2012, Financial Statements, at 145, *available at* http://www2.ohchr.org/english/ohchrreport2012/web_en/allegati/11_Financial_Statements.pdf.
157. *See* OHCHR Annual Report 2011, Financial Statements, at 153, *available at* http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/17_Financial_Statements.pdf.