

Garnet Conference, Brussels, April 2008
The EU in International Affairs

**Speaking with One Voice but Having Little Impact:
The EU at the UN's Human Rights Council**

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Speaking with One Voice but Having Little Impact: The EU at the UN's Human Rights Council

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This paper builds on previously published research into the role of the European Union at the United Nations in the field of human rights.¹ That research found that while the EU member states are committed to acting together within UN human rights bodies and there is evidence of increasing EU 'output' at the UN since the early 1990s, there are severe limits to the EU's unity posed mainly by conflicting national interests and the persistent desire of EU member states to act independently at the UN. Furthermore the energy required to reach internal agreement restricts the EU's influence within the UN system, and the EU does not often reach out to other states and groups to build support for its positions.

Since the research was published, a summit of the UN member states agreed to abolish the Commission on Human Rights (CHR) and replace it with a Human Rights Council. The Commission on Human Rights was widely discredited, because human rights violating countries could secure election to it and thus block condemnation of violations in their own countries and elsewhere. The new Human Rights Council (HRC), in operation since June 2006, was supposed to address such shortcomings with a more rigorous election procedure and a periodic review of the human rights records of all UN member states. But many observers claim that the new Human Rights Council is becoming just as politicised as the Commission on Human Rights was, and that serious cases of human rights violations are being ignored by the HRC because the majority of HRC members do not wish to address them.

This paper first considers the role that the EU played in the discussions leading up to the creation of the Human Rights Council, and analyses the influence it may or may not have had on the rules and set-up of the HRC. It then explores how the EU has acted within the HRC. The paper argues that while there is evidence that EU member states are acting more cohesively within the HRC than they did within the old CHR, the EU's influence in the Human Rights Council is still quite limited. Various explanations for this are considered, including internal reasons (speed and rigidity of the coordination process; member state commitment to strengthening the EU's influence) and external reasons (absence of the US; fundamental clashes of values, interests and power between the EU and developing countries).

Replacing the CHR with the HRC

As the UN approached its 60th anniversary in 2005, there was a widespread belief that the UN – the heart of the multilateral system – was in a crisis like no other that it had ever experienced in its history.² The 2003 diplomatic mess over Iraq illustrated

¹ 'Speaking with One Voice? European Union Coordination on Human Rights Issues at the United Nations', *Journal of Common Market Studies*, vol. 44, no. 1, March 2006, and 'The European Union, Human Rights and the United Nations' in Katie Verlin Laatikainen and Karen E Smith, eds, *The European Union at the United Nations: Intersecting Multilateralisms* (Palgrave, 2006),

² See, for example, 'Fighting for Survival', *The Economist*, 20 November 2004. But as Edward Newman has argued, the UN has faced 'crises' throughout its history – and many just as serious as that

graphically the challenges to the UN, but there were other signs of crisis as well: the US ‘unsigned’ the statute of the International Criminal Court and refused to ratify the Kyoto Protocol, and states could not reach agreement on a protocol strengthening the Nuclear Non-Proliferation Treaty at a review conference in 2005. The extent to which this was a crisis of the US-UN relationship or of multilateralism itself has been debated. Some observers attributed the crisis to the actions of the Bush administration, which claimed not to need a ‘permission slip’ from the UN to act if it so wanted. Others pointed to the sheer ineffectiveness of unwieldy multilateral institutions to deal with new and old security threats (terrorism, spread of weapons of mass destruction, inter-state conflicts, dictatorial regimes, and so on). Still others pointed to scandals such as the oil-for-food scandal, or evidence that UN peacekeepers have behaved appallingly – abusing those they were meant to protect – in places such as the Democratic Republic of Congo or Liberia.³

In response, the UN Secretary-General, Kofi Annan, launched a process of debate and discussion, by, among other initiatives, convening a High-Level Panel on Threats, Challenges and Change, composed of eminent diplomats and politicians, to consider reforms to the UN system of collective security. Annan also proposed reforms of his own in a report entitled *In Larger Freedom*. Following these initiatives, a World Summit was held from 14 to 16 September 2005 to try to agree on a package of reforms. The summit agreed some reforms, failed to agree others, and passed still others on to the General Assembly to decide during the 2005-06 session.⁴

Among the reforms proposed was the replacement of the Commission on Human Rights, which met every spring in Geneva to discuss human rights violations in particular countries and broader human rights issues. The Commission was a permanent subsidiary body of the UN Economic and Social Council (ECOSOC); ECOSOC elected 53 states to serve on the Commission. In the 60 years of its existence, the Commission did rack up several achievements: it was active in standard-setting (drafting new human rights treaties), establishing mechanisms to address violations of human rights including sending rapporteurs and expert groups to specific countries, and establishing technical assistance missions to build capacity for human rights protection in developing countries. According to Paul Gordon Lauren,

Whatever its failings, the Commission became the world’s premier political forum in which to create a dialogue about the direction of human rights, to confront governments over reports of serious violations, to name and shame them, and to draw attention to the need for corrective action to stand up and protect victims of human rights abuses.⁵

of the early 21st century. Edward Newman, ‘Multilateral Crises in Historical Perspective’, in Edward Newman, Ramesh Thakur and John Tirman, eds, *Multilateralism Under Challenge? Power, International Order, and Structural Change* (Tokyo: United Nations University Press, 2006).

³ Of course these reasons are also interlinked: the oil-for-food scandal, for example, was manipulated by UN-bashers in the US.

⁴ United Nations Secretary-General, ‘In Larger Freedom: Towards Development, Security and Human Rights for All’, A/59/2005, 21 March 2005; United Nations General Assembly, ‘Resolution 60/1: 2005 World Summit Outcome’, A/RES/60/1, 24 October 2005.

⁵ Paul Gordon Lauren, “‘To Preserve and Build on its Achievements and to Redress its Shortcomings’”: The Journey from the Commission on Human Rights to the Human Rights Council’, *Human Rights Quarterly*, vol. 29, no 2, 2007, p. 325

However, by the beginning of this decade, the Commission on Human Rights was increasingly condemned for becoming ‘politicised’ – with fewer consensus votes on resolutions, and more and more complaints from developing countries that rich countries were unfairly targeting them for criticism (for instance, in country-specific resolutions) and applying double standards (criticising some countries, but not their ‘friends’).⁶ There was no bar to human rights-violating states serving on it – the US in particular criticised this.⁷ So did Kofi Annan, who argued that the CHR had been undermined because countries participated in it ‘not to strengthen human rights but to protect themselves against criticisms or to criticize others.’⁸

Annan proposed replacing the CHR with a smaller, permanent Human Rights Council, elected by a two-thirds majority of the General Assembly, and charged with evaluating the human rights records of all states. Those elected ‘should undertake to abide by the highest human rights standards’.⁹

The proposals for a new human rights body were broadly supported by the EU, but it did not put forward ideas itself: its submission to the High-Level Panel emphasised the importance of respect for human rights, but did not suggest changes to the UN’s institutional framework to try to ensure this. Instead, it argued that the UN needed to assess better the human rights situations in internal conflicts, and that the UN Office of the High Commissioner on Human Rights (OHCHR) and CHR special rapporteurs could help do that.¹⁰ In fact, the EU’s position on reform of the UN human rights machinery was quite conservative: it did not call for radical change, and it was mostly concerned to retain much from the Commission on Human Rights (such as the special rapporteurs). There had not been a discussion within the EU on what the underlying problems of the CHR had been, and therefore on ways to tackle those problems.¹¹ As a result, in the ensuing negotiations, the EU was in a very weak position: it did not ask

⁶ As Paul Gordon Lauren notes, however, right from the start of the UN, the overwhelming majority of states claimed to support human rights norms but refused to sacrifice their sovereignty by allowing for international community intervention in their internal affairs. This limited the potential of the Commission on Human Rights to prevent and counter human rights violations. Lauren, ‘To Preserve and Build on its Achievements’, pp. 312-17.

⁷ And notoriously in 2003 the CHR elected as a chair the representative of Libya: the US vociferously opposed her election while EU member states merely abstained in the vote. See ‘UN Reform: Fix It or Scrap It’, *The Economist*, 14 January 2006.

⁸ Cited in Warren Hoge, ‘Officials at U.N. Seek Fast Action on Rights Panel’, *New York Times*, 01 January 2006.

⁹ United Nations Secretary-General, ‘In Larger Freedom’, paragraph 183; see also ‘Addendum: Human Rights Council, Explanatory Note by the Secretary-General’, A/29/2005/Add.1, 23 May 2005. The High-Level Panel had actually suggested that membership in the CHR should be universal: ‘the issue of which States are elected to the Commission has become a source of heated international tension...Proposals for membership criteria have little chance of changing these dynamics and indeed risk further politicizing the issue.’ ‘A more secure world: our shared responsibility’, Report of the High-level Panel on Threats, Challenges and Change’ (United Nations, 2004), paragraph 285. The High-Level Panel also proposed that the Commission’s work be supported by an advisory panel of 15 independent experts (paragraph 287).

¹⁰ Council of the European Union, ‘Paper for Submission to the High-Level Panel on Threats, Challenges and Change’, 17-18 May 2004.

¹¹ Interview with foreign ministry official from an EU member state, March 2008. Because the community of officials dealing with the EU and UN human rights bodies is so small, I have agreed not to identify any of those interviewed by nationality.

for much that was new, and so could only give way on the limited requests it was putting forward.

After Annan's report was published, the European Commission recommended that the EU fully support the proposal for a Human Rights Council, and suggested that prospective members of it should 'be expected to demonstrate a readiness to examine and improve their own human rights record.' The Human Rights Council should measure progress against a wider range of human rights standards, not just those instruments ratified by particular states, and should be able to censure states if they do not measure up. In addition, it should be able to draw attention to sudden and significant deteriorations of the human rights situation in a particular country, rather than wait for that country to go through a peer review process.¹² The EU's position that there should be some sort of criteria for membership of a new, smaller body was the one new element it supported (though on this, it was still following the lead of others).

During informal consultations on CHR reform in June 2005, the EU (and acceding and associated countries) was one of only four groups of states that made formal statements (the others were the Africa Group, the Group of Arab States, and the Organisation of the Islamic Conference). The outline of the various positions was quite clear at this stage: developing countries in particular supported the election of the new Council's membership by a simple majority of the General Assembly and no membership criteria; the EU supported a two-thirds majority requirement and that candidates for Council membership should commit themselves to upholding the highest human rights standards. The Organisation of the Islamic Conference also signalled that it was very concerned about 'politicisation', and that therefore country-specific resolutions should be limited only to situations of gross and systematic violations of human rights, and should be approved by a two-thirds majority of the Council; the human rights situation in Palestine, however, should continue to be a separate agenda item.¹³ Thus early on in the process, the EU had an opportunity to push for more radical change (if only to follow the well-known strategy of asking for more in the hope of getting the least you can accept), but its stance was instead quite conservative. It also was well aware of the negotiating stances of other UN members.

At the September 2005 World Summit, UN states could not agree on the status, size, composition, criteria for membership, procedures for electing new members, and mandates and powers of the new body. This was one of the reforms which had to be discussed during the subsequent General Assembly session. Over the next few months, UN member states debated several aspects of the proposed body.

In these debates, the EU sought to equip 'the UN with a human rights body with an enhanced status, which restores human rights to the central role originally given by

¹² European Commission, 'The 2005 UN Summit – Addressing the Global Challenges and Making a Success of the Reformed UN', COM (2005) 259 final, 15 June 2005, pp. 12-13.

¹³ United Nations Commission on Human Rights, 'Summary of the open-ended informal consultations prepared by the Chairperson of the 61st session of the Commission on Human Rights pursuant to ECOSOC Decisions 2005/217 (Unedited)', 2005, <http://www.ohchr.org/english/bodies/chr/docs/61chr/summary1.doc> (accessed 25 July 2005); see also Council of European Union, 'Press release marking the conclusion of the 61st session of the Commission on Human Rights, Geneva, 14 March to 22 April 2005', 8394/05 (Presse 98), 22 April 2005.

the Charter... able to address human rights matters and situations more quickly, more effectively and more efficiently.’¹⁴ It supported strengthening the OHCHR and its role in interactions with other UN bodies, and supported the elevation of the CHR to a standing Human Rights Council, based in Geneva, as a principal and autonomous body.¹⁵ It argued that its membership should be elected by a two-thirds majority of the General Assembly on the basis of fair geographical balances, and candidate states should commit themselves to upholding the highest human rights standards. The EU supported retaining the special procedures system developed in the CHR framework (rapporteurs, special representatives, and so on). While it would consider the proposed peer review mechanism, it emphasized that this should not enable states to avoid considering urgent and acute human rights situations.¹⁶ Again, the EU’s rather conservative negotiating stance is apparent, built around retaining much from the CHR.

The outcome of the deliberations did not fully reflect the (limited) preferences of the EU (or those of the US, which participated in the negotiations fitfully¹⁷) – as is to be expected, given that compromise is necessary in any multilateral negotiation. On 15 March 2006, the General Assembly agreed on the following:

- the Human Rights Council will be a subsidiary organ of the General Assembly, based in Geneva (though this status is to be reviewed within five years);
- it will be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms, and should address situations of violations of human rights;
- it will assume, review, and, where necessary, improve and rationalise all mandates, mechanisms, functions and responsibilities of the CHR, in order to maintain a system of special procedures, expert advice and complaint procedure;
- it will meet at least three times a year, for at least ten weeks, and can hold special sessions, when needed, at the request of a member of the HRC with the support of one-third of the HRC membership;

¹⁴ See ‘EU Presidency Statement – Human Rights Council’, 11 October 2005 (available on the European Union @ United Nations website (<http://europa-eu-un.org>)).

¹⁵ It later agreed that pending a decision to establish the HRC as a freestanding body of the UN, it could be established as a subsidiary body of the General Assembly. See ‘EU Presidency Statement – Human Rights Council: Status, Size, Composition and Membership’, 24 October 2005 (available on the European Union @ United Nations website (<http://europa-eu-un.org>)).

¹⁶ See also ‘EU Presidency Statement – Human Rights Council: Mandate and Function’, 18 October 2005, New York; ‘EU Presidency Statement – Human Rights Council: Status, Size, Composition and Membership’, 24 October 2005, New York; ‘EU Presidency Statement – Human Rights Council: Working Methods, Rules of Procedures, Transition’, 1 November 2005, New York (all available on the European Union @ United Nations website (<http://europa-eu-un.org>)).

¹⁷ US Ambassador John Bolton occasionally put forward constructive reforms, but did not even attend most negotiating sessions, and often denigrated the UN and attempted single-handedly to delay the outcome. Lauren, ‘To Preserve and Build on its Achievement’, pp. 333-4. See also the accounts regarding Bolton and the HRC in Stanley Meisler, *Kofi Annan: A Man of Peace in a World of War* (Hoboken: John Wiley & Sons, 2007), pp. 310-312; James Traub, *The Best Intentions: Kofi Annan and the UN in the Era of American World Power* (New York: Farrar, Straus and Giroux, 2006), pp. 413-14.

- it will undertake a universal periodic review of the fulfilment by each UN member state of its human rights obligations and commitments;
- it will be composed of 47 member states, elected directly and individually by secret ballot by the majority of the members of the General Assembly; seats will be distributed among the regional groups to ensure equitable geographical distribution; states can serve for a period of three years and are not eligible for immediate re-election after two consecutive terms; states found guilty of gross violations of human rights could be suspended from HRC membership by a two-thirds vote of the General Assembly.¹⁸

In line with EU preferences, the HRC's status as a subsidiary body of the General Assembly will be reviewed, urgent situations can be examined in special sessions, and the special procedures developed by the CHR are to be retained ('improved and rationalised'). But two elements of the HRC Resolution were particularly troubling for the EU. The first is that states are to be elected to the HRC by a simple majority of the General Assembly, so human rights violators could still be elected to the HRC (though candidates can voluntarily make pledges regarding their commitment to human rights). Of the states elected to the HRC since May 2006, several have attracted considerable criticism of their human rights records, including Azerbaijan, China, Cuba, Pakistan, Russian Federation, and Saudi Arabia (see appendix 1 for the membership of the HRC). But other states who sought membership, such as Iran, Venezuela and Belarus, were defeated (the first two in 2006; the latter in 2007, after a concerted effort led by the US and NGOs to block its membership¹⁹).

The second is that the share of the Western Europe and Others Group (WEOG) in the overall membership was reduced from 19% of the Commission on Human Rights to 15% of the HRC (see table 1). This could have the effect also of reducing the number of EU member states elected to the HRC. Some commentators have cited this reduction in the WEOG share as one reason for the HRC's disappointing record thus far, and the Council of the EU and European Commission refer to the 'numerically decreased representation of the EU' in the HRC as opposed to the CHR as a 'serious challenge' to the 'integration of EU positions in the work of the HRC'.²⁰ The increase in the Eastern Europe Group representation would not 'compensate' for the lower WEOG representation because the Central and East European candidate countries were seen as not terribly successful in getting themselves elected to the old CHR from the EEG.²¹

¹⁸ UN General Assembly, Resolution on the Human Rights Council, Resolution 60/251, 2006.

¹⁹ See Statement by Human Rights Watch global advocacy director Peggy Hicks to the US Senate Foreign Relations Committee on 26 July 2007 (http://hrw.org/english/docs/2007/07/26/usint16521_txt.htm). The EU was not involved in this effort, because it does not coordinate on elections from regional groups to UN bodies (including elections within WEOG and the Eastern Europe Group).

²⁰ In *EU Annual Report on Human Rights 2007*, p. 84.

²¹ Interview with a foreign ministry official from an EU member state, March 2008. However, in each of the last four years of the CHR, states that would join the EU in 2004 or 2007 or are now candidate countries (Croatia) filled at least two of the five seats available to EEG members (and in 2001, filled four of the five seats).

Table 1: UN regional group representation in UN human rights bodies

UN regional group	CHR No. of states/%	Human Rights Council No. of states/%
Africa	15 (28)	13 (28)
Asia	12 (23)	13 (28)
Latin America	11 (21)	8 (17)
Eastern Europe	5 (9)	6 (13)
WEOG	10 (19)	7 (15)
Total	53 (100)	47 (100)

But it has also been pointed out that the percentage of states designated as ‘free’ by Freedom House increased from 45 in the CHR to 55 in the HRC, and the percentage of states in the Community of Democracies went from 62 in the CHR to 76 in the HRC.²² And, as the General Assembly President, Jan Eliasson, noted after the first elections to the HRC, most HRC members still ‘possessed solid credentials’ in the area of human rights.²³

The EU’s ‘share’ of the membership in both bodies has not actually changed very much: in 2005, there were eight EU member states out of 53 on the Commission of Human Rights (15%); in 2006-07, there were eight EU member states out of 47 on the HRC (17%); and in 2007-08, there were 7 EU member states in the HRC (15%). But the EU is still very much in the minority, and this numerical reality has influenced the way it approaches negotiations within the HRC, as discussed below.

The Organisation of the Islamic Conference (OIC) is better represented in the HRC as compared to the CHR: in 2005, 13 out of 53 members of the CHR were also OIC members (24.5%); in 2006-07, 17 out of 47 members of the HRC were in the OIC (36%); and in 2007-08, 15 OIC members are serving on the HRC (32%). As will be discussed further below, the OIC has become a leader within the Human Rights Council.²⁴

The US signalled its displeasure with the General Assembly Resolution on the Human Rights Council by first calling for a vote on it, and then voting against it: the resolution creating the HRC was approved by a vote of 170 to 4, with 3 abstentions.²⁵ US Ambassador John Bolton had infamously declared that ‘We want a butterfly. We don’t intend to put lipstick on a caterpillar and call it a success’, and he believed the outcome was indeed that of a caterpillar in lipstick.²⁶ The EU, in contrast, supported

²² See Statement by Human Rights Watch global advocacy director Peggy Hicks to the US Senate Foreign Relations Committee on 26 July 2007 (http://hrw.org/english/docs/2007/07/26/usint16521_txt.htm).

²³ Lauren, “‘To Preserve and Build on its Achievements’”, p. 341.

²⁴ The Organisation of the Islamic Conference was formed in 1969 and has 57 member states. It aims to strengthen Islamic solidarity among its member, foster cooperation in a range of areas, coordinate action to safeguard the Holy Places, support the struggle of the Palestinian people and assist them to liberate the occupied territories, and eliminate racial discrimination and all forms of colonialism (see www.oic-oci.org).

²⁵ Israel, the Marshall Islands, Palau and the US voted against; Belarus, Iran and Venezuela abstained.

²⁶ ‘The UN’s Human Rights Council: A Caterpillar in Lipstick?’, *The Economist*, 4 March 2006.

the Resolution, agreeing with UN Secretary-General Kofi Annan, who stated, ‘Taken as a whole, the resolution gives us a solid foundation, on which all who are truly committed to the cause of human rights must now build.’²⁷ The challenge was to ensure that the HRC was indeed an improvement over the Commission on Human Rights.

The EU in the HRC

At the time of writing, the HRC had held six regular sessions (and was in the midst of a seventh) and six ‘special sessions’, which can be requested by a member with the support of one-third of the membership of the HRC (see Appendix 2). Much of the first year was spent on an ‘institution building process’, setting out the new rules that would guide the HRC’s work. Important components of this process include the mechanism for a Universal Periodic Review of all UN member states, and a continuation of most of the mandates and special procedures developed by the Commission on Human Rights. The US has so far refused to participate in the HRC, which means that the Human Rights Council can be seen as a classic ‘test case’ of the European Union’s influence in the absence of the US.

One strand of international relations literature (‘hegemonic stability theory’) emphasises the need for a powerful hegemon (read ‘the US’) to ensure that multilateralism works: only a hegemon can make certain that states will cooperate with each other and not defect from agreements, thus only a hegemon can guarantee the continued provision of public goods via the multilateral system. Another strand has argued instead that international cooperation is possible in the absence of a hegemon, when states have shared interests.²⁸ But the relationship between a hegemon and multilateral institutions is quite complex: on the one hand, it may be difficult for multilateralism to work if the dominant power is not engaged, but it may see the value in being so engaged (because it can thus consolidate its dominance by using institutions to help preserve the status quo); on the other, the hegemon may not see the need to work through international institutions, and by bypassing, or threatening to bypass, multilateralism, it can thus weaken it (thus enforcing a dependence of the institutions on the hegemon). Yet institutions that seem to be mere tools of the most powerful state can lose the support of other member states.²⁹

Much of the literature on hegemons and international institutions concentrates on issues of political economy or security (where it makes sense to speak of ‘public goods’ and ‘shared interests’). The role of the US in international human rights regimes can be seen to be a somewhat different case, because the issues at stake are of a different nature. On the one hand, the US was instrumental in launching the Commission on the Human Rights in the first place (and Eleanor Roosevelt served as

²⁷ Secretary-General’s statement on the Human Rights Council, Antananarivo, Madagascar, 15 March 2006, www.un.org/apps/news/printnews.asp?nid+17811 (accessed 16 March 2006).

²⁸ See the discussion in Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984).

²⁹ See Rosemary Foot, S. Neil MacFarlane, and Michael Mastanduno, ‘Introduction’, and G. John Ikenberry, ‘State Power and the Institutional Bargain: America’s Ambivalent Economic and Security Multilateralism’, both in Rosemary Foot, S. Neil MacFarlane, and Michael Mastanduno, eds, *US Hegemony and International Organizations* (Oxford: Oxford University Press, 2003); Edward Newman and Ramesh Thakur, ‘Conclusions: Multilateralism under Challenge or in Crisis?’, in Newman, Thakur and Tirman, eds, *Multilateralism under Challenge?*

its first Chair) and has made promotion of human rights, democracy, and freedom an important element of its foreign policies; on the other, the US has ratified very few international human rights treaties (in a forthright assertion of its national sovereignty). It has also long faced accusations of double standards (it demands of others what it will not do itself; allies and friends escape criticism, while human rights issues are raised with non-friendly countries). Its standing as a 'beacon' of democracy and human rights has also been severely damaged by the extent to which it has violated core human rights in the 'global war on terror'. From the point of view of the EU member states, sometimes the US has been a 'like-minded' state, but at other times, the US and EU are in opposite camps (for example, on the death penalty, Guantanamo Bay prison camp, or the International Criminal Court).

The absence of the US from the Human Rights Council has left the EU exposed and it is now clearly expected to 'carry the load' of leadership on human rights issues. 'Leadership' in this context means 'acting as the prime mover in establishing and furthering the agenda of a particular organization'.³⁰ But although some authors assert that international human rights institutions 'have historically benefited from the leadership of democratic states, particularly the United States',³¹ it is important to bear in mind that the US was contested constantly in the Commission on Human Rights: it encountered much opposition to what it tried to push forward (such as country resolutions), it could not block resolutions it didn't like (such as those criticising Israel), and it was often isolated, more so than the EU.³² It could thus be unreasonable to expect that the EU could lead in place of the US, when even the US could not play a dominant role in the CHR. But the EU has been held partly responsible for setting up such expectations.

For the past few years, the EU has consistently declared that it seeks to strengthen the UN (and thus help ensure 'effective multilateralism'³³), and that it seeks to promote human rights issues within the United Nations, in line with its commitments to the UN and to promoting respect for human rights in third countries. Whether the EU can do so depends not only on its 'internal effectiveness' (the extent to which the member states and EU institutions can agree on 'output' to present to the rest of the UN, in the form of statements, resolutions, proposals, and so forth) but also on its 'external effectiveness' (its influence on other states and actors within the UN system).³⁴ The EU member states have built up a 'coordination mechanism', or regular, intensive meetings, to try to work out common voting positions and agreement on presenting EU positions, resolutions and statements in various UN organs and committees,

³⁰ Foot, MacFarlane and Mastanduno, 'Introduction', p. 8.

³¹ Richard J. Goldstone and Erin P. Kelly, 'Progress and Problems in the Multilateral Human Rights Regime', in Newman, Thakur and Tirman, eds, *Multilateralism under Challenge?*, p. 279.

³² And infamously did not even win election from WEOG to the CHR in 2002. In the 2005 CHR, the EU was in the minority on 22 out of 64 votes; the US was in the minority on 50 occasions (these figures include abstentions; on EU split votes, if member states split between the losing side and abstention, this counts as minority; if they split and some member states voted with the majority, this is not included).

³³ This is one of the EU's three strategic objectives, as stated in the European Security Strategy of December 2003.

³⁴ On the various dimension of EU effectiveness at the UN, see Katie Verlin Laatikainen and Karen E Smith, 'Introduction – The European Union at the United Nations: Leader, Partner or Failure?', in Katie Verlin Laatikainen and Karen E Smith, eds, *The European Union at the United Nations: Intersecting Multilateralisms* (Palgrave, 2006).

including the Commission on Human Rights and now the Human Rights Council. The extent to which such coordination meetings result in ‘output’ is one indication of the effectiveness of the EU as an international actor; but another is the extent to which the EU can garner support for its positions among the wider UN membership.

The HRC thus far has been criticised (mainly in the ‘North’³⁵) for focusing on Israeli human rights violations in four of the six special sessions and in the regular sessions (where ‘the human rights situation in Palestine and other occupied Arab territories’ is a single agenda item), for failing to address other human rights violations around the world, and for advocating the limitation of the right to free speech if it does not respect religions and beliefs.³⁶ Even Kofi Annan was critical: in December 2006, he said that the HRC ‘so far, has clearly not justified all the hopes that so many of us placed in it’, and he was worried by the ‘disproportionate focus’ on Israeli violations of human rights.³⁷

The EU has been singled out for criticism, with commentators decrying its low-key role and apparent inability to counter the dominance of the Organisation of the Islamic Conference in the HRC.³⁸ The global advocacy director of Human Rights Watch, Peggy Hicks, argued that ‘the absence of the US from the Council’s membership has created a leadership imbalance that the EU has been unable to remedy.’ And she maintained that the HRC’s shortcomings ‘also reflect the poor performance of human rights supporters. Despite expressing their commitment to building a strong Council, such states routinely failed to invest the political capital and resources necessary to make that goal a reality.’ Doing so would mean that the Geneva missions of such states would have been strengthened, and diplomatic resources invested in working for a stronger Council – but they were not.³⁹

Does the EU deserve such criticism? What has it done in the HRC? Three indicators of EU ‘output’ in the HRC are used: sponsorship of resolutions, common statements and explanations of vote, and cohesive voting (see table 2).⁴⁰

³⁵ ‘North’ is admittedly a misleading geographical designation, but it refers to all developed, democratic countries, while South refers to all developing countries – though there are obvious shortcomings to such all-encompassing categorisations. However, as will be seen below, it is striking how much of a divide there is between rich democracies and ‘the rest’ in the HRC, so the North-South divide seems an apt description.

³⁶ See, for example, ‘Human Rights and the UN: Great Expectations’, *The Economist*, 24 March 2007, and ‘Human Rights: Bad Counsel’, *The Economist*, 7 April 2007; Frances Williams, ‘UN rights chief denies caving in to criticism’, *Financial Times*, 8/9 March 2008.

³⁷ Mark Turner, ‘Annan Places Rights at Base of Anti-Terror Fight’, *Financial Times*, 9/10 December 2006.

³⁸ See Leon Saltiel, ‘EU Must Speak out on Human Rights’, *European Voice*, 30 November – 6 December 2007, and Judith Crosbie, ‘EU Urged to Stand Up for UN Human Rights Council’, *European Voice*, 8-14 March 2007.

³⁹ See Peggy Hick’s statement to the US Senate Foreign Relations Committee, 26 July 2007.

⁴⁰ All figures are derived from the official reports of the HRC to the UN General Assembly; these are not verbatim reports, but are summaries of the main business, and include indications of who made statements with respect to which issues (but *not* the content of those statements, nor how extensive or long the statements were). It is entirely possible that the EU (and other HRC members) spoke more often than is reported by the rapporteur (as it is possible that the rapporteur may not have recorded correctly whether a statement was made on behalf of the EU), but since these are the official reports, they are the best records we have of who spoke during the meetings. United Nations General Assembly, ‘Report to the General Assembly on the First Session of the Human Rights Council’, A/HRC/1/L.10, 30 June 2006; ‘Report to the General Assembly on the First Session of the Human

Table 2: EU output at the HRC		
	Regular sessions 1-6	Special sessions 1-6
Resolutions sponsored (or jointly sponsored)	<p>9, on the topics:</p> <p>Cooperation with the OHCHR: Afghanistan (November 2006)</p> <p>Cooperation with the OHCHR: Nepal (November 2006)</p> <p>Follow-up to HRC decision on situation of human rights in Darfur (March 2007)</p> <p>Elimination of intolerance and discrimination based on religion or belief (twice, March 2007 and December 2007)</p> <p>Alliance of civilizations (co-sponsor) (December 2007)</p> <p>Follow-up to report of Special Rapporteur on human rights in Myanmar (December 2007)</p> <p>HRC Group of Experts on</p>	<p>1, on the situation of human rights in Myanmar (October 2007)</p>

Rights Council' (addendum), A/HRC/1/L.10/Add. 1, 5 July 2006; 'Report to the General Assembly on the Second Session of the Human Rights Council', A/HRC/2/9, 22 March 2007; 'Report to the General Assembly on the Third Session of the Human Rights Council', A/HRC/3/7, 26 March 2007; 'Report to the General Assembly on the Fourth Session of the Human Rights Council', A/HRC/4/123, 12 June 2007; 'Report to the General Assembly on the Fifth Session of the Human Rights Council', A/HRC/5/21, 7 August 2007; 'Organizational and Procedural Matters, Draft Report of the Council', A/HRC/6/L.11, 5 October 2007; 'Organizational and Procedural Matters, Draft Report of the Council, Addendum', A/HRC/6/L.11/Add.1, 19 December 2007; 'Organizational and Procedural Matters, Report of the Human Rights Council on its Sixth Session', A/HRC/6/L.10/Rev.1, 30 January 2008; 'Report on the First Special Session of the Human Rights Council', A/HRC/S-1/3, 18 July 2006; 'Report of the Human Rights Council on its Second Special Session', A/HRC/S-2/2, 17 August 2006; 'Report of the Human Rights Council on its Third Special Session', A/HRC/S-3/2, 20 November 2006; 'Report on the Fourth Special Session of the Human Rights Council', A/HRC/S-4/5, 22 January 2007; 'Draft Report of the Human Rights Council on its Fifth Special Session', A/HRC/S-5/L.2, 30 October 2007; 'Report of the Human Rights Council on its Sixth Special Session', A/HRC/S-6/L.2, 1 February 2008.

	human rights situation in Darfur (December 2007) Advisory services: Liberia (December 2007)	
Statements made/interventions in interactive debates and dialogues	124	6
Explanations of vote/statements made at time of vote	34	6
Cohesive votes as % of all roll-call votes	100% (0 out of 24 roll-call votes)	80% (4 out of a total of 5 roll-call votes)

At first glance, then, the EU's voice has certainly been heard in the HRC – it (or, rather, the presidency or another EU member state on its behalf) has issued many more statements and intervened in the interactive dialogues and debates more often than it did in the Commission on Human Rights.⁴¹ EU member states also make statements and intervene in debates and dialogues, just as they did in the CHR – often they do this on issues of importance to them (for example, France and enforced disappearances, or Austria on minority rights). Since the British presidency in 2005, furthermore, it has been agreed that it would magnify EU influence if EU member states spoke for ‘one message but with many voices’; that is, EU member states should intervene in debates to reinforce the EU's message, so that the EU-27 (or all the EU member states serving on the HRC) are not reduced to only one voice.⁴² Given that they are outnumbered, the ‘many voices’ strategy could at least ensure that EU member states fill the debating space that they are entitled to, rather than reduce themselves to one voice in a room filled with so many other speakers who are often hostile to the EU's positions. However, the official records from the Human Rights Council do not indicate that this strategy is often used: rarely do all the EU member states serving on the HRC speak in addition to the presidency (or member state speaking on behalf of the EU). It happened in the special sessions on Myanmar and Darfur, but almost never in the other special or regular sessions (where one or two other member states might speak in addition to the ‘EU voice’).

EU voting cohesion has been quite solid, with only 1 ‘split vote’ so far (on the resolution discussed in the 3rd special session, on ‘human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory’), on which France abstained while the other EU member states on the HRC voted against. This

⁴¹ The EU made 14 statements and 32 explanations of vote at the 2004 CHR, and 14 statements and 24 explanations of vote in 2005. See K.E. Smith, ‘The European Union, Human Rights and the United Nations’, table 8.1.

⁴² Interview with foreign ministry official from an EU member state, March 2008. Implementation of the Lisbon Treaty reforms could therefore have quite a profound impact on EU influence at the UN: by a strict reading of the treaty, there should only be one voice, that of the new High Representative (or his/her staff). Yet this reform might prove not only impractical (the EU itself is not a member of the UN) but also potentially damaging to EU influence in the HRC. Thus far, however, Javier Solana and his staff have never been involved in the EU's efforts in the human rights field at the UN. It has very much been a ‘show’ starring the member states only.

compares very favourably with the EU's 'cohesion' record in some years in the CHR.⁴³

The EU has also put forward resolutions for consideration by the HRC but rather fewer than it did so even in the last couple of years of the CHR.⁴⁴ Much of this appears to be due to a reluctance to put forward resolutions on country situations in the Human Right Council, because such resolutions have been greeted with intense opposition from other countries.⁴⁵ All of the EU's resolutions have been approved by the HRC,⁴⁶ a better record than in the final years of the Commission on Human Rights, when several EU-sponsored country resolutions were defeated.

But given the EU's numerical inferiority and the absence of the US (who could lobby much more effectively on behalf of EU resolutions than the EU itself could), the EU has deliberately chosen to 'go for consensus' in the HRC, which means avoiding a vote on resolutions it proposes, which in turn means avoiding the inclusion of language that would generate opposition.⁴⁷ For example, the March 2007 EU-sponsored resolution on the Darfur situation was also co-sponsored with the Africa Group, and did little more than express deep concern about the situation – again, a compromise that was not entirely in line with the EU's preference for a (slightly) stronger resolution.⁴⁸ The December 2007 EU-sponsored resolution on the Experts Group on Darfur was a compromise resolution with the Africa Group, and as such, resulted in the disbanding of the Experts Group, which the EU had originally pushed for continuing.⁴⁹

Furthermore, in March 2007, the US was pushing for a special session on the human rights situation in Burma/Myanmar which would create a commission of enquiry, but the EU rebuffed its informal proposals.⁵⁰ The UK maintained that such a resolution would have to wait until the HRC institution-building process had been completed,

⁴³ For example, in 2001, the EU split on 7 out of 50 roll-call votes (14%); in 2002, it split on 10 out of 53 (18.8%); and in 2003, it split on 7 out of 57 votes (12.3%). Smith, 'Speaking with One Voice?', table 4. In 2005, it split on 4 of 64 votes (6.25%).

⁴⁴ In 2004, the EU sponsored 10 resolutions at the CHR (2 of which were rejected); in 2005, it sponsored 7 resolutions (one of which it later withdrew). See K E Smith, 'The European Union, Human Rights', table 8.2

⁴⁵ This even though the EU declared before the HRC was launched that the Council 'must also be able to look at particular situations where human rights are being violated', and that the EU 'does not see this as a process of condemnation or finger-pointing', but where the international community can help the country concerned. 'EU Presidency Statement – Human Rights Council: Mandate and Function', 18 October 2005.

⁴⁶ But the EU did lose a vote on an amendment it proposed to an Africa Group resolution on Darfur at the 2nd regular session of the HRC.

⁴⁷ The low-key role played by the EU in terms of proposing resolutions may also be due to 'lowered ambitions' on the part of the EU diplomats involved; while the EU may have been too ambitious in the CHR (thus losing votes on resolutions, for example), it may now be erring in the opposite direction. Interview with foreign ministry official from an EU member state, March 2008.

⁴⁸ HRC Resolution 4/8, 'Follow-up to decision S-4/101 of 13 December 2006 adopted by the Human Rights Council at its fourth special session entitled "Situation of Human Rights in Darfur"', in UN General Assembly, 'Report to the General Assembly on the Fourth Session of the Human Rights Council', A/HRC/4/123, 12 June 2007

⁴⁹ International Service for Human Rights, Council Monitor, Human Rights Council, 6th Session, Daily Update, 11 December 2007, p. 12 and Daily Update, 14 December 2007 (available at <http://www.ishr.ch/hrm/council>).

⁵⁰ The US could not lead such a request as it is not a member of the HRC.

and a Finnish diplomat argued that because an EU request for a special session would not secure the necessary votes, 'it would be easier to argue for a special session if something dramatic happens, which of course nobody would wish for.'⁵¹ Clearly the EU was not willing to push the issue and potentially alienate other states in the HRC – regardless of the situation on the ground in Burma. Of course, a few months later, 'something dramatic' did happen and EU member states did request a special session (which took place in October 2007). But by December 2007, it was clear that most HRC members were willing to ease the pressure on the Burmese regime, and the EU's December 2007 resolution on Burma was 'balanced' enough to achieve consensus in the HRC.⁵² In the interests of trying to achieve a compromise, it is clear that the EU has watered down its original preferences.

The European Union has also decided not to coordinate on the Universal Periodic Review process – it will not agree on a list of questions to be asked of countries undergoing review, nor will it engage in a common analysis of the reports. This is apparently a deliberate – though quite ironic – attempt to break down the 'bloc mentality' at the HRC.⁵³

Despite the impressive quantity of output, then, it appears that the EU is on the defensive in the HRC, and is not taking a leadership position within the body. This is also clear when its influence in the 'institution-building process' is analysed, and its role compared to other groupings within the HRC.

One Voice but Little Influence?

In fact, the leading actors within the HRC are the Organisation of the Islamic Conference, the Africa Group, and the Group of Arab States - not the EU. To quite a large extent, these groupings have been able to influence the HRC's agenda and its debates, and have been arguably more active and successful than the EU has been; certainly resolutions put forward by these groupings attract a large following within the HRC.

The OIC as such has been much more active in the HRC than it was in the CHR, and the Africa Group and Group of Arab States also have been much more visible in the HRC.⁵⁴ The rise of these groupings may be a response to the increased visibility of the EU in the UN, and may also be a response to the frustration regarding the Middle East peace process – given their powerlessness in the wider context (some of which, it is said, is due to a lack of will by OIC states themselves), the UN context is a much more congenial arena in which to push their positions, given the numerical balances within it.

⁵¹ All cited in Andrew Rettman, 'EU wary of US idea for UN action on Burma', *EUobserver.com*, 5 March 2007.

⁵² See, for example, International Service for Human Rights, Council Monitor, Human Rights Council, 6th Session, Daily Update, 12 December 2007 (available at <http://www.ishr/ch/hrm/council>).

⁵³ Interview with foreign ministry official from an EU member state, March 2008.

⁵⁴ For example, in the 2005 CHR, the OIC sponsored only 2 resolutions, the Africa Group sponsored 7, Group of Arab States, 3, and the Non-Aligned Movement 3. The number of statements by these groups was also very low – a handful each.

Compared to other groupings at the HRC, the EU's output seems less impressive (see table 3). It speaks more often than any other single grouping – and on a much wider range of issues (other groupings focus only on issues of importance to them) – but is less active in sponsoring resolutions than the OIC and Africa Group. Furthermore, it must be noted that OIC members are very active in the Africa Group and Group of Arab States (states that speak on behalf of the latter two groups are often OIC members), so its influence is even greater than indicated in the table. Furthermore, OIC members do intervene in debates in addition to the country speaking on behalf of the OIC: they thus take advantage of the space available to them to do so.

	EU	OIC	Africa Group	Group of Arab States	Asia Group	Non-Aligned Movement (NAM)⁵⁵	Latin America and Caribbean Group	Like-Minded Group⁵⁶	WEOG	Nordic Group⁵⁷
Regular sessions 1-6:										
Statements	124	66	52	9	8	5	7	1	1	6
Explanations of vote	34	7	4	1	2					
Resolutions sponsored	9	10	14			4		2		
Special sessions 1-6:										
Statements	6	6	6	4		2				
Explanations of vote	4	1		1						
Resolutions sponsored	1	4		1						

Right from the beginning of the HRC, it was clear that the OIC was pushing hard for two issues in particular: condemnation of violations of human rights in Palestine and other occupied Arab territories; and promoting tolerance and respect for freedom of religion and belief, and combating incitement to racial or religious hatred.⁵⁸ And it has persistently pursued these issues within the HRC, with considerable support from

⁵⁵ For which Cuba often speaks.

⁵⁶ For which China speaks; includes: Algeria, Bangladesh, Belarus, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, Syria, Venezuela, Vietnam and Zimbabwe. See 'LMG Non-Paper', submitted to the first session of the HRC and available on the HRC Extranet (<http://portal.ohchr.org/portal/page/portal/HRCExtranet>).

⁵⁷ Admittedly this is not the appellation used: one of five states (Denmark, Finland, Iceland, Norway, and Sweden) will speak on behalf of the group without using the term 'Nordic Group' - though this is in effect the Nordic Group.

⁵⁸ See the OIC paper on the Human Rights Council, 31 May 2006, and the OIC proposal on the agenda/programme of work of the first session of the Council (no date), proposals submitted to the first session and available on the HRC extranet (<http://portal.ohchr.org/portal/page/portal/HRCExtranet>). Somewhat inexplicably, the EU put forward no proposals or non-papers to the first session of the HRC.

other HRC members. Furthermore, the OIC has been very successful in setting the agenda of the HRC.

Thus, the Middle East conflict (and particularly the Israeli-Palestinian conflict) has dominated debates at the regular and special sessions of the Human Rights Council – reflecting once again considerable opposition to US (and Western/Northern) policy amongst developing countries. During the institution-building process, the OIC (and other groups) pushed hard for a permanent agenda item (no. 7) on the human rights situation in Palestine and other occupied Arab territories – while the EU believed ‘that this issue should not have been singled out in the agenda’, it did not block consensus on the ‘institution-building package’ approved by the HRC in June 2007, which included this item.⁵⁹ And ever since the agenda item has provoked controversy, with Egypt arguing in September 2007, that ‘if the Council could not implement its own resolutions (because of Israel’s disregard of several Council resolutions) the Council’s credibility would be undermined’, while Canada declared that the existence of agenda item 7 ‘stood in the way of a credible Council that would address all situations around the world equally.’⁶⁰ OIC states and the Africa Group also refuse to review the mandate of the Special Rapporteur on the situation of human rights in the occupied Palestinian territories (though they insist that all other mandates must be reviewed), on the basis that the mandate is established until the end of the occupation.⁶¹ The EU has often not supported OIC proposals because they have not been balanced in their treatment of the Israeli-Palestinian conflict, but they have been quite isolated in this opposition.

Furthermore, defamation of religions and racism/Islamophobia are issues of particular interest to OIC members and the Africa Group. The EU has frequently been unable to support their initiatives because the predominant view has been that free speech must be limited to avoid harm to religious sentiment. A March 2007 HRC resolution on combating the defamation of religions, for example, indicates that the freedom of expression should be ‘exercised with responsibility’, and can be limited with regard to protection of ‘public health or morals, and respect for religions and beliefs’.⁶² The resolution on combating defamation of religions passed by the 2005 CHR (Resolution 2005/3) did not contain such provisions – though the EU (and US) still opposed it.⁶³ Pakistan and Egypt – backed by other states – have repeatedly argued that ‘freedom of expression if unchecked, could hurt religious feelings and respect for a religion’ and

⁵⁹ Council of the European Union, ‘Human Rights Council – Declaration by the Presidency on Behalf of the EU on the Outcome of the Institution Building Process’, Press release 11074/07 (Presse 147) 21 June 2007. The agenda for the Commission on Human Rights also included an item (no. 8) on human rights violations in the occupied Arab territories including Palestine, so the precedent would have been virtually impossible to overturn anyway, but the EU could at least have used the opportunity to push for other demands in exchange for ‘giving away’ its agreement on the agenda item. The EU also ‘lost’ in terms of its support for the continuation of the mandates on Belarus and Cuba, which were eliminated in the package deal. See also ‘Non-Paper – European Union: Future Agenda for the Human Rights Council’, 22 November 2006; submitted to the 3rd regular session; available on the HRC extranet.

⁶⁰ As summarized in International Service for Human Rights, Council Monitor, Human Rights Council, 6th Session, Daily Update, 20 September 2007, p. 5 (available at <http://www.ishr.ch/hrm/council>).

⁶¹ International Service for Human Rights, Council Monitor, Human Rights Council, 6th Session, Daily Update, 14 December 2007, p. 10-11 (available at <http://www.ishr.ch/hrm/council>).

⁶² HRC Resolution 4/9, in UN General Assembly, ‘Report to the General Assembly on the Fourth Session of the Human Rights Council’, A/HRC/4/123, 12 June 2007

⁶³ Resolution 2005/3, in ‘Report to the Economic and Social Council on the Sixty-First Session of the Commission’, E/CN.4/2005/L/11/Add.1.

cited the case of the Danish cartoons depicting the Prophet Mohammed, which sparked outrage (and violence) in several Muslim countries, and appears to have hardened their stance on freedom of expression.⁶⁴ Furthermore, OIC states have objected to an EU resolution on the elimination of all forms of intolerance and of discrimination based on religion or belief, because it calls for respect of the right to change one's religion which OIC states argue goes against the Sharia (though the OIC abstained rather than support the resolution in December 2007, and the resolution was still passed).⁶⁵

Despite the majority view in the HRC that rapporteurs and mandates should be set up to investigate human rights violations by Israel, and that resolutions singling out Israel for condemnation are an imperative, there is otherwise an extreme reluctance to consider action vis-à-vis other countries. The HRC's 'working culture' indicates that proposers of a country resolution should secure the broadest possible support for their initiatives (preferably 15 members) before action is taken.⁶⁶ Numerous HRC states also oppose discussion under agenda item 4 ('other human rights situations') of country-specific situations, arguing that 'naming and shaming would politicize the Council'.⁶⁷ This HRC majority view is not held by the EU, but, as seen above, it has been reluctant to challenge it by putting forward many country resolutions that it had previously sponsored in the Commission on Human Rights (as on Belarus, North Korea or Zimbabwe).

The EU's minority position is evident in the roll-call votes. Of the 24 total roll-call votes in the first six regular sessions of the HRC, EU member states have been in the minority on all but 3 occasions. It has been in the minority also in the four special sessions which have dealt in some way with Israeli violations of human rights. Perhaps most alarmingly for the EU's ability to influence a wide variety of states, in such cases it is joined only by a small number of other HRC members such as Canada, Japan, Korea, Switzerland and Ukraine. Not even Latin American countries (and democracies) such as Argentina, Brazil or Mexico have voted with the EU (they would gain little anyway by siding with the North). The EU and other Northern states are often isolated in the HRC, not joined by other members with 'solid human rights credentials'. Admittedly, here too the absence of the US is felt, because often the US was alone (or almost alone) in its opposition to resolutions in the Commission on Human Rights (for example, on the death penalty or international legal obligations), which meant that the EU did not appear as isolated as it does now.

Why such limited influence?

⁶⁴ See International Service for Human Rights, Council Monitor, Human Rights Council, 6th Session, Daily Update, 13 September 2007, p. 4 (available at <http://www.ishr.ch/hrm/council>).

⁶⁵ International Service for Human Rights, Council Monitor, Human Rights Council, 6th Session, Daily Update, 14 December 2007, p. 10 (available at <http://www.ishr.ch/hrm/council>).

⁶⁶ HRC Resolution 5/1, 'Institution-building of the United Nations Human Rights Council', Annex, IV Methods of Work, paragraph 117.

⁶⁷ This was the position of Cuba and Egypt in September 2007, for example. International Service for Human Rights, Council Monitor, Human Rights Council, 6th Session, Daily Update, 24 September 2007, pp. 3-4 (available at <http://www.ishr.ch/hrm/council>). Likewise Algeria claimed that the reason the CHR disappeared was that the country mandates were 'selective' and 'politicised'. International Service for Human Rights, Council Monitor, Human Rights Council, 6th Session, Daily Update, 25 September 2007, p. 4 (available at <http://www.ishr.ch/hrm/council>).

In the academic literature, the biggest impediment to EU influence in international relations is widely agreed to be a lack of unity among the member states; from this can often follow the assumption that if the EU is unified, it will be able to exercise much influence, in accordance with its global political and economic weight. But the case of the EU and the Human Rights Council shows that even though the EU is united (and more so than it was in the CHR), its influence is quite restricted. Why is this the case?

Previous research illustrated that the EU's coordination mechanism enables the EU to reach agreement on statements, voting positions, and so on (an impressive enough result in and of itself), but the time and effort needed to reach such agreement can impede the exercise of influence in the wider UN system. The EU is simply unable to engage extensively in 'outreach' (or lobbying), to try to convince other UN states to support its positions or to work together on other initiatives. One question that then arises is whether the enlargements of the EU in 2004 and 2007 have made this even more difficult. At first glance, it would seem to be an obvious implication of enlargement: reconciling the positions of 27 member states must inevitably require more time and effort, no matter how close those positions may be. But the new member states – and certainly those that have so far served on the HRC (particularly the Czech Republic, Poland and Slovenia) – are generally quite serious about promoting human rights and a common view is that enlargement has not gummed up the coordination machinery.⁶⁸ As was evident before, though, not all member states are equally committed to boosting EU influence in the UN (external effectiveness), though they may be very committed to achieving EU unity (internal effectiveness). One message, in other words, is not always given by many voices. The EU is quite poor at lobbying for its positions (in contrast to the US – whose absence is keenly felt in this area).

As noted above, one NGO, Human Rights Watch, has claimed that the Geneva missions of 'human rights friendly' states have not been boosted enough to cope with the extra work generated by the fact that the HRC now meets more often throughout the year. But several of the EU member states' delegations to the HRC (such as those of France, Germany and the UK) are among the largest of all the delegations, so it cannot be said that the EU is outnumbered on that front. There may, however, be a problem of low ambitions which comes from generational change among the diplomats based in Geneva – diplomats may have had little experience of the (perhaps too) high ambitions of the EU at the Commission on Human Rights and have adjusted to the politicised atmosphere of the HRC by taking a low-key approach.

But there are also three reasons for thinking that even if the EU member states did work harder at outreach, the EU might still have limited impact at the HRC. The first is that the North-South split in the HRC appears to be a deep and serious one. Of course, troubled relations between developed and developing countries have long been a feature of diplomacy at the UN, though there were those who might have hoped that the end of the East-West split would have opened an era of greater consensus at the UN even between North and South. Attempts to build an 'alliance of civilisations' or a 'community of democracies' have not (yet) overcome quite

⁶⁸ Though enlargement has deepened some splits within the EU, such as those on sexual and reproductive health issues

profound tensions between the rich and (relatively) poor of this world.⁶⁹ A manifest preference for ‘regime change’, at least for a period of some time on the part of the US, has stoked hostility towards any action to foster ‘western’ human rights and democracy.⁷⁰ It also cannot be ignored that several ‘rising powers’, such as China and Russia, are actively opposing the ‘old’ developed countries in the HRC: soft balancing seems a particularly apt term to apply here.

The second reason to predict continued limited EU influence at the HRC is that the clash over values or norms is indeed quite serious. There are two elements to this: the first is that there are clashes over specific ‘human rights’: free speech vs respect for religion (or, perhaps more to the point, respect for Islam). To some extent, then, states have agreed on the universality of human rights, but are arguing over the specifics – which in some accounts might be considered progress for the ‘human rights agenda’.

But there is also a clash over the relative seriousness of human rights violations, with the South accusing the North of double standards (the human rights records of rich states not being unblemished) and of being selective in its own human rights and democracy policies (countries can escape censure if they are of strategic or economic importance to rich states; other countries are condemned if they are not). ‘Islamophobia’ in the North – at least as perceived, with more than a little justification, in the South, the restrictions of civil liberties that several Northern states have justified in the name of the fight against terrorism, and direct or indirect complicity with violations of human rights by the US (as in ‘extraordinary rendition’ or indefinite detention in Guantanamo Bay prison), are just some of the developments that concern Muslim states in particular.⁷¹ The North is trapped by its own rhetoric on human rights: its failings in this regard make it very difficult indeed to claim the moral high ground. A deficit in its ‘soft power’ is quite manifest.

Thirdly, the Israeli occupation of the Palestinian territories is a lightning rod for opposition to the North. The EU, which has often tried to strike a relatively neutral stance in the conflict (supporting a two-state solution), usually thus finds itself in a minority position when resolutions or debates focus only on the Israeli side. Yet it is undeniable that there are quite serious violations of human rights being perpetrated by the Israeli government on Palestinians (in particular). Until a (fair) solution to this conflict is agreed (or imposed), then the issue is going to continue to fester.

Conclusion

‘Practicing’ multilateralism is difficult. The problems besetting the Human Rights Council are a reflection of wider tensions in international relations. To expect the EU to be able to overcome those tensions might be considered to be unreasonable. But it can also be debated whether the EU’s strategy of consensus-seeking is going to lead

⁶⁹ For example, a Cuban-sponsored resolution on ‘human rights and international solidarity’ urges the ‘international community’ to promote assistance to developing countries thus making possible the full realisation of all human rights; it was approved by 34 HRC states. The idea that the rich have to provide aid before human rights can be respected was opposed by ‘Northern’ states. HRC Resolution 6/3-in UN General Assembly, ‘Organizational and Procedural Matters, Draft Report of the Council’, A/HRC/6/L.11, 5 October 2007.

⁷⁰ See, for example, Thomas Carothers, ‘The Backlash Against Democracy Promotion’, *Foreign Affairs*, vol. 85, no. 2, 2006.

⁷¹ Not to mention incidents like the ‘Danish cartoons’.

to the ‘effective multilateralism’ it claims as one of its core strategic objectives. Multilateralism implies compromise, but can there be compromise on ‘fundamental values’? And could – or should – the EU support the ‘effective implementation’ of HRC resolutions that it considers to be loathsome? The EU faces serious challenges to its preferences for multilateralism and for strengthening international human rights law.

Even though the EU cannot be considered a ‘replacement’ for the US on the Human Rights Council (if for nothing else because it is a poor negotiator and a weak lobbyist), it is facing similar challenges to that of the hegemon: unable to influence the debates and agenda when it is so heavily outnumbered, accused (alas sometimes accurately) of practicing double standards, and ‘rhetorically trapped’ by its own commitment to multilateralism and international human rights protection. Walking away from the HRC is inconceivable - EU member states are far too supportive of the multilateralism in general, international law, the UN and UN human rights bodies to envisage following the US example. Tenacity in muddling through may be the best we can hope for under the circumstances. The Commission on Human Rights had produced some notable achievements to further the protection of human rights internationally, despite sensitivities about sovereignty and politicisation; the Human Rights Council may seem ineffective now but this may be just a particularly rough time for the international human rights regime. But for the moment, it is not clear how the European Union can turn the situation around in its favour.

Appendix 1

Membership of the UN Human Rights Council

2006-07

Africa Group (13 seats, 28% of the HRC):

Algeria (OIC), Cameroon (OIC), Djibouti (OIC), Gabon (OIC), Ghana, Mali (OIC), Mauritius, Morocco (OIC), Nigeria (OIC), Senegal (OIC), South Africa, Tunisia (OIC), Zambia

Asia Group (13 seats, 28% of the HRC):

Bahrain (OIC), Bangladesh (OIC), China, India, Indonesia (OIC), Japan, Jordan (OIC), Malaysia (OIC), Pakistan (OIC), Philippines, Republic of Korea, Saudi Arabia (OIC), Sri Lanka

Eastern European Group (6 seats; 13% of the HRC):

Azerbaijan (OIC), Czech Republic (EU), Poland (EU), Romania (EU), Russia Federation, Ukraine

Latin American and Caribbean Group (8 seats; 17% of the HRC):

Argentina, Brazil, Cuba, Ecuador, Guatemala, Mexico, Peru, Uruguay

Western European and Other Group (7 seats; 15% of the HRC):

Canada, Finland (EU), France (EU), Germany (EU), Netherlands (EU), Switzerland, UK (EU)

[17 OIC members (36%); 8 EU members (17%)]

2007-08

Africa Group (13 seats; 28% of the HRC):

Angola, Cameroon (OIC), Djibouti (OIC), Egypt (OIC), Gabon (OIC), Ghana, Mali (OIC), Madagascar, Mauritius, Nigeria (OIC), Senegal (OIC), South Africa, Zambia

Asia Group (13 seats; 28% of the HRC):

Bangladesh (OIC), China, India, Indonesia (OIC), Japan, Jordan (OIC), Malaysia (OIC), Pakistan (OIC), Philippines, Republic of Korea, Saudi Arabia (OIC), Sri Lanka, Qatar (OIC)

Eastern European Group (6 seats; 13% of the HRC):

Azerbaijan (OIC), Bosnia-Herzegovina, Romania (EU), Russia Federation, Slovenia (EU), Ukraine

Latin American and Caribbean Group (8 seats; 17% of the HRC):

Bolivia, Brazil, Cuba, Guatemala, Mexico, Nicaragua, Peru, Uruguay

Western European and Other Group (7 seats; 15% of the HRC):

Canada, France (EU), Germany (EU), Italy (EU), Netherlands (EU), Switzerland, UK (EU)

[15 OIC members (32%); 7 EU members (15%)]

Appendix 2: Sessions of the Human Rights Council

Regular sessions:

- 1st regular session, 19-30 June 2006
- 2nd regular session, 18 September-6 October and 27-29 November 2006
- 3rd regular session, 29 November-8 December 2006
- 4th regular session, 12-30 March 2007
- 5th regular session, 11-18 June 2007 (concluded the 'institution-building process' by adopting a package of procedures on the future operation of the Council)
- 6th regular session, 10-28 September and 10-14 December 2007
- 7th regular session, 3-28 March 2008

Special sessions:

- 1st special session, 5-6 July 2006, on the human rights situation in the Occupied Palestinian Territory (session requested by Tunisia on behalf of the Group of Arab States)
- 2nd special session, 11 August 2006, on human rights violations in Lebanon caused by Israel (session requested by Tunisia on behalf of the Group of Arab States and the Organization of the Islamic Conference)
- 3rd special session, 15 November 2006, on human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory (session requested by Bahrain and Pakistan on behalf of the Group of Arab States and the Organization of the Islamic Conference)
- 4th special session, 12-13 December 2006, on the situation of human rights in Darfur (session requested by Finland on behalf of 30 members, including all the EU member states on the Council and the Africa Group)
- 5th special session, 2 October 2007, on the situation of human rights in Myanmar (session requested by Slovenia on behalf of 17 members, including all the EU member states on the Council)
- 6th special session, 23-24 January 2008, on human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory (session requested by Syria on behalf of the Arab group and Pakistan on behalf of the Organization of the Islamic Conference)