Why Legitimacy Eludes: Going Beyond the Procedural versus Substantive Distinction to Explain Legitimacy Deficit in International Organizations

by

Galina Sergeeva

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARTS

in

THE FACULTY OF GRADUATE AND POSTDOCTORAL STUDIES

(Political Science)

THE UNIVERSITY OF BRITISH COLUMBIA

(Vancouver)

July 2014

© Galina Sergeeva, 2014
Abstract

The paper examines the concept of legitimacy, its different forms and the way it is related to conceptions of international society. It argues that the legitimacy of international organizations will decline if the relevant audience splits in its perceptions of what is legitimate. In cases where different members of the audience develop incompatible conceptions of legitimacy, institutional solutions to the resulting legitimacy crisis will have limited potential. In these cases, even procedural legitimacy may be out of reach because of fundamental disagreements over even the minimal terms of cooperation.

The paper applies this theoretical argument to the case study of the United Nations Commission on Human Rights (CHR, or the Commission) and its reform. It finds that the CHR’s legitimacy crisis was precipitated by the change in the normative environment of the international society after the end of the Cold War. As a result of this shift, some members of the CHR developed a substantive understanding of input and output legitimacy, while others promoted a neutral understanding of legitimacy.

Because the Commission’s members held incompatible conceptions of what is legitimate and because none were satisfied with the status quo, the CHR’s legitimacy declined. Furthermore, institutional solutions to the legitimacy crisis in this case proved ineffective. Because the shift affected both input and output legitimacies, compromise even on strictly procedural aspects became impossible. As a result, the CHR’s reform did not address legitimacy concerns and the United Nations Human Rights Council suffers from the same “credibility deficit” (General Assembly A/59/2005, 2005) as the abolished Commission.

Keywords: international organizations, legitimacy, United Nations Human Rights Council, United Nations Commission on Human Rights, substantive legitimacy, solidarism, pluralism.
Preface

This research did not require ethics approval and was not previously published in whole or in part. It was designed, carried out, and analyzed by the author, Galina Sergeeva.
# Table of Contents

Abstract ........................................................................................................................................... ii
Preface ............................................................................................................................................... iii
Table of Contents ............................................................................................................................... iv
List of Tables ....................................................................................................................................... v
List of Abbreviations ........................................................................................................................... vi
Acknowledgements ............................................................................................................................ vii
Dedication ........................................................................................................................................... viii
Chapter 1: Introduction ....................................................................................................................... 1
Chapter 2: Legitimacy in International Organizations ................................................................. 3
Chapter 3: The CHR and Its Reform ................................................................................................ 10
  3.1 Background Information on the CHR and Its Reform ............................................................. 10
  3.2 The CHR’s Legitimacy Crisis ................................................................................................. 12
    3.2.1 Normative Shift Within International Society and the CHR .......................................... 13
    3.2.2 Substantive Conception of Legitimacy ........................................................................... 17
    3.2.3 Neutral Conception of Legitimacy ............................................................................... 20
  3.3 The Failure of Institutional Solutions .................................................................................... 24
Chapter 4: Conclusion ...................................................................................................................... 32
Bibliography ..................................................................................................................................... 34
Appendices ......................................................................................................................................... 44
  Appendix A The Commission’s Membership by Freedom Status in 2003 ............................... 44
List of Tables

Table 1 *Visions of International Society, Conceptions of Legitimacy and Legitimacy Criteria* .... 8
Table 2 *Commission’s Membership in 2003 by Freedom Status* .................................................. 16
List of Abbreviations

CHR: Commission on Human Rights
HRC: Human Rights Council
UNCHR: United Nations Commission on Human Rights
UNHRC: United Nations Human Rights Council
UPR: Universal Periodic Review
Acknowledgements

I am deeply grateful to my supervisor Dr. Katharina Coleman for her thoughtful comments and generous guidance during the writing of this thesis. I would also like to thank Dr. Brian Job for his support. Finally, I offer my gratitude to the faculty, staff and my fellow students at the UBC.
Dedication

To my parents
Chapter 1: Introduction

On March 22, 2006, the United Nations Commission on Human Rights (CHR, or the Commission) held its final, 62nd session. After six decades of being the primary human rights institution within the United Nations system, it faced a “credibility deficit” (General Assembly A/59/2005, 2005) and was dissolved amidst accusations of ineffectiveness, selectivity and politicization. Out of the reform process designed to address the legitimacy concerns associated with the CHR emerged a new human rights body, the United Nations Human Rights Council (UNHRC, or the Council).

The CHR’s legitimacy crisis was precipitated by the post-Cold War change in the international normative environment. This period witnessed a dramatic move on the part of liberal democracies to expand the normative agenda associated with the liberal international order. Major Western powers increasingly emphasized the importance of the norms of democracy and human rights and the role of international organizations in promoting these values (Hurrell, 2007). As will be explored in more detail below, this expansion of the normative agenda affected how Western liberal democracies understood both input and output legitimacy of international organizations, moving this understanding in a more substantive direction. At the same time, another group of the CHR members promoted a neutral conception of legitimacy.

As the Commission’s members diverged in their understanding of legitimacy, the organization was caught between these incompatible visions. Unable to satisfy the criteria of either group, the CHR lost its legitimacy. Furthermore, institutional solutions to the legitimacy crisis in this case proved ineffective. Because the shift affected both input and output legitimacies, compromise even on strictly procedural aspects became impossible. As a result, the CHR’s reform did not address legitimacy concerns and the United Nations Human Rights Council...
Council suffers from the same “credibility deficit” (General Assembly A/59/2005, 2005) as the abolished Commission.

This paper argues that this process of the fall of legitimacy is not specific to the CHR’s case. Instead, legitimacy of any international organization can decline if the relevant audience splits in their perceptions of what is legitimate. In cases where members of the audience develop incompatible conceptions of legitimacy, institutional solutions to the resulting legitimacy crisis will have limited potential. The paper will proceed as follows. It begins with an overview of the concept of legitimacy, the practice of legitimation and legitimacy audiences. The section will also describe how the two visions of international society, pluralist and solidarist, interact with different legitimacy forms. The paper then shows the contestation over different conceptions of legitimacy as observed in the case of the CHR and provides evidence for the difficulty of designing institutional solutions to such legitimacy crises.
Chapter 2: Legitimacy in International Organizations

In defining legitimacy I follow Suchman (1995, p. 574) who argues that legitimacy is “a
generalized perception or assumption that the actions of an entity are desirable, proper, or
appropriate within some socially constructed system of norms, values, beliefs, and definitions.”

The definition contains several central elements. First, implicit in this definition is the
existence of an audience who determines, through the process of negotiation and contestation,
what is desirable and appropriate. In that sense, legitimacy is the result of “a practical political
activity” (Clark, 2007, p. 255) in that it “needs to be claimed, sustained, and recognized” (Zaum,
2013, p. 10). The practice of legitimation involves actors constructing the meaning of legitimacy
based on their own beliefs and values and making determinations about whether a particular
institution is legitimate¹. Thus, “legitimacy is possessed objectively, yet created subjectively”
(Suchman, 1995, p. 574).

In the context of international organizations, actors who are involved in the practice of
legitimation may include member states (“legitimation from below”), institutions’ secretariats
(“legitimation from above”), and actors “outside the hierarchical relationship governed by
legitimacy” (“horizontal legitimation”) (Zaum, 2013, pp. 10-11). Although both secretariats and
external actors can make legitimacy claims, by virtue of having voting powers and being able to

¹ This aspect of the concept is reflected in Coicaud’s definition of legitimacy, which he understands as “a
recognition of the right to govern” (Coicaud, J.-M. (2001). International democratic culture and its sources of
legitimacy. In J.-M. Coicaud, & V. Heiskanen, The legitimacy of international organizations. Tokyo ; New York,
NY: United Nations University Press). Similarly, Clark notes that “[t]o ask whether a particular international action
is legitimate is not to ask a question of moral philosophy or jurisprudence. It is to ask a factual question about how it
is regarded by the members of international society” (Clark, I. (2007). Legitimacy in International Society. Oxford:
Oxford University Press). Finally, Franck points out that the primary indicator of legitimacy is “whether it is
validated by community” (Franck, T. M. (1990). The Power of Legitimacy among Nations. USA: Oxford University
Press).
withhold or offer support, member states constitute the most important audience for analyzing legitimacy of an international institution.

Audiences evaluate legitimacy based on several criteria. First, an organization may be considered legitimate if it is effective in producing outputs that are viewed as desirable and appropriate by the relevant audience. Poor performance can lead to a decline in output legitimacy. Thus, Coicaud and Da Silva (2003) argue that the crisis of legitimacy in international financial institutions resulted from “a gradual shift in the perception of their effectiveness.”

Second, an organization may be perceived as legitimate if its procedures correspond to the audience’s perceptions of appropriateness, and if they have “come into being and [operate] in accordance with generally acceptable principles of right process” (Franck, 1990, p. 19). This type of legitimacy is often referred to input, or procedural, legitimacy (Zaum, 2013, p. 9; Suchman, 1995, p. 580; Barnett M. N., 1997, p. 539).

The third commonly identified type of legitimacy is substantive legitimacy, which “has to do with substantive values” (Hurrell, 2005, p. 20) or what Hurd (2008, p. 70) calls “substantive fairness.” This type arises when the relevant audience considers an organization’s ends as desirable and “means selected to pursue these ends” as appropriate (Barnett, 1997, p. 539). Substantive legitimacy entails examination of an organization’s ends and means on the merits and is often constrained2 with input legitimacy, which is argued to entail neutrality. Thus, Zaum, (2013, p. 9) contends that in the context of international organizations, input legitimacy involves “even-handedness vis-à-vis those subject to its authority, a perception that all member states

2 Clark (2007, pp. 188-189), in particular, argues that “the substantive content of the current criteria for rightful membership” is in tension with “the procedural norms of legitimacy.”
have appropriate opportunity to participate in decision-making, and the equal application of its rules to all member states.”

However, the distinction between procedural and substantive legitimacy muddies rather than clarifies the concept. The substantive aspect should not be considered as a separate type of legitimacy; instead, it can be present in both input and output types of legitimacy and is best conceptualized as one part of the “neutral”-“substantive” dichotomy of conceptions of legitimacy. Substantive conception of legitimacy entails correspondence of all aspects of an international organization, whether its procedures or raison d’être, to one common set of values. By contrast, the neutral conception of legitimacy presupposes diversity of values among the relevant audience, and an organization is considered legitimate when its processes and goals reflect that normative plurality. It is neutral in a sense that it does not privilege any one set of values over another. I argue that the two conceptions of legitimacy overlap with two visions of international society, pluralist and solidarist. Furthermore, the pluralist and solidarist visions are associated with different preferences that actors hold in terms of institutional forms of input and output legitimacy.

The distinction between solidarism and pluralism arose within the English School of international relations. Pluralists emphasize the diversity of values that exist across states and regions. They “see it as a persistent illusion of liberals and Marxists that modernization and development will lead naturally and/or easily to a convergence of social, cultural, and ethical outlooks” (Hurrell, 2007, p. 47). Because of the diversity of values, the probability of coming to an agreement on any particular value system is low. Moreover, attempts to promote convergence of viewpoints are bound to create tensions in international society. Adhering to the principles of
non-intervention, sovereignty and autonomy is seen as a way of avoiding conflict in world
classified by deep disagreements about norms and values (Hurrell, 2007, p. 47).

The solidarist vision, on the other hand, is characterized by “its increased normative
ambition” (Hurrell, 2005, p. 18). The solidarist outlook seeks to promote common values that are
“morally substantive, regulating both the interaction of states and protecting the rights of
individuals against their states” (Zaum, 2007, pp. 10-11).

The suggestion that visions of international society correspond to particular conceptions
of legitimacy is not new. Hurrell (2005, p. 18), in particular, argues that procedural “conceptions
of legitimacy mesh naturally with pluralist conceptions of international society,” while the
solidarist conception aligns well with substantive interpretation of legitimacy. In this
conceptualization, input legitimacy is assumed to be neutral and free of morally substantive
content. This neutral, impartial character is what is supposed to allow the sovereign states of the
pluralist conception to cooperate: although actors may fail to agree on substantive values, it is
possible to design processes that can be perceived as acceptable by all actors. Procedures, by
virtue of being free of divisive normative content, can provide a baseline of cooperation between
sovereign states.

Furthermore, implicit in this suggested connection between procedural legitimacy and
pluralist conception is the assumption that, in the case of input legitimacy, actors have the same
understanding of what the “right process” looks like. However, based on whether actors
represent the world that is captured by either pluralist or solidarist viewpoints, they can have
preferences for either neutral or substantive conceptions of input legitimacy.

Pluralists envision an international society whose members are diverse in their values but
sovereign and equal. Thus, states that believe that the world is characterized by the plurality of
values may indeed perceive an organization as legitimate only if its procedures are even-handed and if “all member states have appropriate opportunity to participate in decision-making” (Zaum, 2013, p. 9).

The solidarist outlook, on the other hand, envisions an international order where states are able to come to an agreement on normative content. This conception entails a belief that democracy is the only legitimate form of government and that a state’s sovereignty and equality in international society is conditional on its adherence to the norms of democracy and human rights domestically. States that view the world in these terms may understand the “right process” very differently. These states may prefer restrictive membership conditional on appropriate domestic conduct and may view inclusive processes that involve all actors, without regard for their domestic democratic legitimacy, as illegitimate.

Similarly, output legitimacy can take both neutral and substantive forms. In the case of value-based organizations, member states whose vision of international society may be characterized as pluralist may prefer institutional arrangements that facilitate dialogue and exchange of opinions, rather than make normative evaluations and binding recommendations. By contrast, member states whose conception of international order may be described as solidarist may perceive an organization as legitimate only if it substantively engages in enforcement of norm-based rules. The relationship between different visions of international society, conceptions of legitimacy and legitimacy criteria is outlined in Table 1.

---

Footnote 3: Further research, that goes beyond the scope of this study, is required to determine whether solidarists would argue for membership criteria in all international organizations or just in value-based ones. Clark (2007, 188-9) argues that membership in the international society itself increasingly relies on “good governance, and […] democratic accountability and responsibility,” which suggests that a substantive conception of legitimacy may indeed be applied to all international organizations.
Table 1 Visions of International Society, Conceptions of Legitimacy and Legitimacy Criteria

<table>
<thead>
<tr>
<th>Conception of international society</th>
<th>Pluralist</th>
<th>Solidarist</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conception of legitimacy</td>
<td>Neutral</td>
<td>Substantive</td>
</tr>
<tr>
<td>Institutional forms of input</td>
<td>Even-handed and inclusive procedures</td>
<td>Decision-making procedures do not have to be inclusive and may involve only a sub-set of actors</td>
</tr>
<tr>
<td>legitimacy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Institutional forms of output</td>
<td>Dialogue and exchange of ideas; soft principles</td>
<td>Hard enforcement of norm-based rules; binding principles</td>
</tr>
<tr>
<td>legitimacy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Relevant audiences may draw on either one or both legitimacy criteria to evaluate the legitimacy of an international organization and may privilege one conception of legitimacy over the other. Legitimacy is constructed through a process of negotiation between members of the relevant audience who advance these varying legitimacy claims, which can be based on internalized\(^4\) norms and beliefs or can represent an instrumental use\(^5\) of the concept to mask self-

\(^4\) Hurd (2008) and Hurrell (2005) argue that compliance in the context of legitimate institutions results from identification with and internationalization of the institution’s norms. Hurrell (2005, p. 16), in particular, claims that the norm-based rationale distinguishes this kind of rule-following “from purely self-interested or instrumental behavior on the one hand, and from straightforward imposed or coercive rule on the other.” Hurd (2008) similarly links compliance to internalization of norms and argues that legitimate institutions or rules influence behavior by affecting strategic calculations and beliefs as the actors switch from the logic of consequences to the logic of appropriateness.

\(^5\) While it may be important for conceptual purposes to differentiate between instrumental and norm-based behavior (Hurrell, 2005, p. 16), this distinction between the two rationales is often difficult to pinpoint since both often result in similar outcomes in terms of actual state practice. Consequently, members of the relevant audience may have to treat all claims formulated with reference to legitimacy as if they were genuine because actors can ultimately rely only on discourse to make that evaluation. As a result, multiple claims challenging the legitimacy of an international organization, regardless of whether they are genuine or purely rhetorical, will have an effect on legitimacy. Therefore, in this study I will not attempt to distinguish between genuine and rhetorical legitimacy claims because they have a similar effect on the legitimacy of an international organization.

8
interested preferences of the actors. If the audience is able to reconcile their different preferences and come to a consensus, legitimacy will result.

However, such consensus may be difficult to achieve, particularly if members of the relevant audience have different conceptions of legitimacy. Neutral and substantive conceptions are incompatible and result in irreconcilable preferences with regard to institutional forms. As a result, what constitutes a legitimate institution or action for one group of states will be considered illegitimate by other states. If, within one organization, members of the audience develop divergent conceptions of legitimacy, previously held consensus will disintegrate and legitimacy will decline.

Furthermore, in cases where members of the audience have different conceptions of legitimacy, attempts to find institutional solutions to a legitimacy crisis will prove extremely challenging. One of the assumptions underlying institutional reforms is the expectation that states unable to agree on values can nonetheless come to a consensus on procedures. Thus, procedures deemed acceptable by all members of the relevant audience might provide a basis of legitimacy. However, the fact that input legitimacy can take two incompatible forms (neutral and substantive) indicates that even procedural legitimacy will prove elusive. At the same time, reforms designed to address a legitimacy deficit by accommodating all legitimacy claims will be of limited potential because they are likely to result in compromised solutions ultimately unsatisfying to all sides.
Chapter 3: The CHR and Its Reform

3.1 Background Information on the CHR and Its Reform

The CHR was established in 1947 as a subsidiary body of the Economic and Social Council, as mandated by Art. 68 of the UN Charter (United Nations, 1945). Initially consisting of 18 members, its membership increased to 53 governments from five regional groups\(^6\) elected on a three-year term basis (OHCHR, n.d.b). To fulfill its goal of promotion and protection of human rights, it “provide[d] overall policy guidelines, studie[d] human rights problems, develop[ed] and codifie[d] new international norms and monitor[ed] the observance of human rights around the world” (OHCHR, n.d.a).

During its early years the CHR was engaged only in standard-setting and achieved considerable success in that area, drafting, among other major treaties, what became known as the International Bill of Human Rights: the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (adopted in 1966), and the International Covenant on Economic, Social and Cultural Rights (adopted in 1966) (OHCHR, 1996).

Initially the Commission emphasized that it had “no competence to deal with any complaint about violations of human rights” (United Nations Commission on Human Rights, 1947, p. para. 22). However, for reasons explored further below, it eventually reversed its

---

\(^6\) The five regional groups were: Asia and Pacific group (12 states), African group (15 states); Latin American and Caribbean group (11 states); Western European and Other group (10 states); and Central and Eastern European group (5 states).
position and 20 years after its creation began responding to human rights violations in specific
countries under Resolution 1235 and 1503 Procedures (Tolley, 1984; Lebovic & Voeten, 2006).

In the late 1990s and early 2000s, the CHR’s legitimacy began to be called into question
and charges of politicization and selectivity were increasingly heard from both the Commission’s
members and civil society. In 2003, Secretary-General of the United Nations Kofi Annan called
for the creation of a high-level panel to “assess current threats to international peace and
security; to evaluate how [...] existing policies and institutions have done in addressing those
threats; and to make recommendations for strengthening the United Nations” (High-level Panel
on Threats, Challenges and Change, 2004, p. 1). The work of the High-level Panel on Threats,
Challenges and Change was concluded in 2004 with the release of a report, which, among other
proposals, recommended reform of the Commission.

Shortly after, in his “Larger Freedom” report, the UN Secretary-General, using the words
from the High-level Panel, issued a strongly-worded condemnation of the

Commission’s capacity to perform its tasks, [which] has been increasingly undermined
by its declining credibility and professionalism. In particular, States have sought
membership of the Commission not to strengthen human rights but to protect themselves
against criticism or to criticize others. As a result, a credibility deficit has developed,
which casts a shadow on the reputation on the United Nations system as a whole (General

Following a period of negotiations over the necessary changes, in March 2006 the CHR
was abolished and the UNHRC was established as a subsidiary body of the General Assembly.
Compared to the Commission, the Council has a smaller membership (47 members compared to
the 53 members of the CHR) and a slightly different geographical distribution\(^7\) (OHCHR, n.d.d).

Members are elected by a direct and secret ballot, and when making selection the General Assembly is supposed to consider the candidates’ “contribution to the promotion and protection of human rights, as well as their voluntary pledges and commitments” (OHCHR, n.d.d).

Members of the Council cannot be re-elected immediately after having served two consecutive three-year terms, which distinguishes the Council from the CHR, on which members of the Security Council were virtually guaranteed a seat with no term limits.

3.2 The CHR’s Legitimacy Crisis

The Commission’s legitimacy crisis developed in the late 1990s – early 2000s. The end of the Cold War was accompanied by the increased willingness, at least among Western powers, to assert democracy as the only legitimate form of government and human rights as the universal norm. These changes in the normative environment of the international society led to a corresponding shift in how members of the Commission conceived of legitimacy. In particular, liberal democracies, represented primarily by the United States, began to insist on the substantive form of both *input* and *output legitimacy* of the CHR. At the same time, another group of countries, represented, among others, by China, started privileging a neutral conception of legitimacy. The two groups of states developed fundamentally different visions about what constituted a legitimate body. This disagreement meant that the legitimacy criteria of both groups pointed in different directions with regard to the Commission’s processes and expected results; both could not be met at the same time. Importantly, not only the two conceptions of legitimacy

\[^7\] The geographical distribution is as follows: Asia-Pacific states (13 seats), African states (13 states); Latin American and Caribbean states (8 seats); Western European and Other states (7 seats); and Eastern European states (6 seats).
were not reconcilable with each other but also none of the groups was satisfied with the status quo. As a result, legitimacy of the organization declined.

3.2.1 Normative Shift Within International Society and the CHR

Legitimacy is a social phenomenon and cannot be judged by referring to a set of abstract criteria formulated without consideration of the relevant audience’s beliefs. Instead, it is “in the eye of the beholder” (or, rather, a community of beholders). As Hurd (2008, 31) argues, “[o]utside observers cannot make determinations about legitimacy on behalf of those on the ‘inside,’ and legitimacy cannot be measured except through an assessment of whether the audience in question acknowledges it.” It is therefore necessary to establish how the relevant community viewed the CHR.

Prior to the 1990s legitimacy of the Commission did not appear to be a concern for member states. Even in the absence of statements made by members of the relevant audience positively affirming the organization’s early legitimacy, the fact that the concerns were not raised in the early years of the CHR can be taken as indirect evidence of the Commission’s legitimacy.

The CHR’s legitimacy crisis can be traced back to the normative shift that occurred in the late 1990s – early 2000s within international society. The decade following the fall of communism became characterized by “a growing consensus that democracy is the only system which confers legitimacy upon a government, and a widespread agreement that democracy promotes human rights, development, and peace” (Gershman & Allen, 2006, p. 36). However, Western states developed not only the sense of the rising importance of human rights and democracy as a form of government (Hurrell, 2007, p. 145; Barnett, 1997, p. 537) but also the willingness to commit resources to promote these norms throughout the world. Thus, the amount
of democracy promotion aid committed by Development Assistance Committee (DAC)\textsuperscript{8} members\textsuperscript{9} rose substantially since 1980 and, in particular, since the end of the Cold War and after 9/11 (Barry, 2012, p. 321).

This normative shift within international society had two effects on the functioning of the Commission. First, countries with better human rights records started to use the “naming and shaming” mechanisms more often and were more likely to support them against member states who were known to engage in grave human rights violations (Leovic and Voeten, 2006, p. 881).

The roots of these “naming and shaming” mechanisms predate the end of the Cold War. As noted above, initially the Commission did not respond to individual violations in specific countries. Over the years the Commission took a more active role in the field of human rights monitoring. This change occurred partly due to the pressure from developing nations, whose membership in the CHR increased significantly in the 1960s and who “pushed for additional powers to denounce and combat the vestiges of colonialism that lingered in Africa and Middle East” (Leovic & Voeten, 2006, p. 863). Thus, in 1967, the ECOSOC adopted Resolution 1235 that authorized the Commission “to examine information relevant to gross violations of human rights and fundamental freedoms” in South Africa and, decided that the Commission may “in appropriate cases, […] make a thorough study of situations which reveal a consistent pattern of violations of human rights” (Economic and Social Council, 1967). Furthermore, in 1970, the


\textsuperscript{9} As of June 2014, the DAC has 29 members: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, European Union, Finland, Germany, Greece, Iceland, Ireland, Italy, Korea, Luxemburg, The Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States. OECD. (n.d.a). DAC members. Retrieved June 15, 2014, from OECD: http://www.oecd.org/dac/dacmembers.htm
ECOSOC adopted Resolution 1503 that authorized the creation of a working group which could consider complaints from individual victims revealing “a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms” in specific countries (Economic and Social Council, 1970). Thus, procedures 1235 and 1503, named after their respective resolutions, allowed the Commission to address human rights violations in individual countries.

Although these procedures were available during the Cold War, their use and effectiveness increased dramatically since the 1990s (Lebovic & Voeten, 2006, pp. 865-866). Lebovic and Voeten (2006) find that since the 1990s onwards, country resolutions became driven less by “partisan ties, power politics, and the privileges of membership” and more “by the actual human rights records of potential targets” (Lebovic & Voeten, 2006, pp. 861-863). Furthermore, there were increasingly not only reputational but also material costs associated with being publicly shamed at the Commission: Lebovic and Voeten (2009), for example, find that targeted resolutions were associated with reduced multilateral aid.

Second, as the number of resolutions targeting individual countries increased (Lebovic & Voeten, 2006), so did the incentives for countries seeking to gain membership to shield themselves from public accusations of human rights violations and from the resulting costs. As a result, in the last decade of the CHR’s history, countries with highly questionable human rights records sought seats on the Commission. Thus, Kenneth Roth, executive director of Human Rights Watch, argued that nearly half of the Commission’s membership represented “a virtual Who’s Who of human rights violators” and acted as an “Abusers’ Defense Society” (Roth, 2005). In 2003, less than half of the Commission’s members were classified as free by the Freedom House, while 14 members had a “not free” freedom status. Among the latter, five members
Cuba, Libya, Saudi Arabia, Sudan, and Syria) had the worst (highest) scores on both political rights and civil liberties on the Freedom House scale (Table 2).

**Table 2 Commission’s Membership in 2003 by Freedom Status**

<table>
<thead>
<tr>
<th>Freedom status in 2003</th>
<th>Number of Commission’s members in 2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free</td>
<td>24</td>
</tr>
<tr>
<td>Partly free</td>
<td>15</td>
</tr>
<tr>
<td>Not free</td>
<td>14</td>
</tr>
</tbody>
</table>


Thus, the normative shift within international society had two major effects on the functioning of the Commission. First, led by member states with better human rights records, the Commission began to engage in stricter enforcement of human rights standards through the use of actions targeting specific human rights abusers. Second, it affected the composition of the CHR by unintentionally providing incentives for human rights violators to seek membership on the Commission. Both changes in the organization’s functioning undermined the status quo and prompted accusations of illegitimacy from member states revealing the irreconcilable nature of disagreements over conceptions of legitimacy within the CHR’s membership.

The table showing freedom status for all member states in 2003 is available in Appendix A.
3.2.2 Substantive Conception of Legitimacy

One group of member states, represented by the United States and other liberal democracies, had a vision of the world that can be described as solidarist. Consistent with the theoretical argument of this paper, this group of states held and promoted a substantive conception of both input and output legitimacy. Solidarism as a theoretical framework provides an accurate description of the system of beliefs that this group of member states holds about legitimacy of the CHR. This system of values is characterized by a wide normative agenda and strong support for the spread of democracy and enforcement of human rights standards globally. For these states, sovereignty and equal status within the international system of states is not a given. Instead, it is conditional on domestic and international adherence to democratic and human rights norms.

Thus, delivering opening remarks at the Community of Democracies opening plenary, Secretary Rice argued that “successful relations with our democratic community depend on the dignified treatment of […] people,” and that “upholding democratic principles is the surest path to greater international status” (States News Service, 2005a). Similarly, Alexander Downer, Minister for Foreign Affairs of Australia argued for a conditional understanding of sovereignty asserting that “states had their own responsibility to protect their populations, but when they were unwilling to protect their own, the international community had to respond and put aside the principle of non-intervention” (United Nations, Department of Public Information, 2005c).

Consistent with this system of beliefs, this group of countries linked legitimacy of the Commission’s procedures (and therefore, legitimacy of the entire organization) to what they considered appropriate membership. These member states questioned the inclusive nature of membership, a characteristic of most UN bodies. In particular, Mark Lagon, a representative of
the United States and Deputy Assistant Secretary of State for International Organization affairs, explicitly argued against the universal voting system of the UN where all states get equal number of votes and asserted that universality “presents tremendous challenges to the United Nations, and calls into question the democratic practices of the UN” because in “too many cases, the government doing the voting is NOT democratically elected, and therefore does not necessarily represent the interests of its citizens. Many governments which do not represent the consent of the governed have an equal voice to those which do” (Lagon, Mark P., 2005).

Furthermore, the United States expressed support for membership criteria based on whether the prospective member adheres domestically to the norms of human rights and democracy. During the 2005 discussions surrounding CHR reform, Mark Lagon argued that it is inappropriate for countries lacking the will to protect the human rights of their own people to be making decisions about human rights in the rest of the world. It may not be a pure club of democracies, but the election procedures must winnow the critical mass of audacious autocracies and spoiler states that exist in the broken Commission in the new institution. Our task now is to build consensus among countries that share these values (US Fed News, 2005).

Similarly, before the vote on the candidacy of Zimbabwe in an election to the CHR, Deputy U.S. Representative to ECOSOC stated that “members of the Commission must adhere to high standards if the Commission is to have credibility” (States News Service, 2005b).

The U.S. position on the membership issue was supported by a number of other liberal democracies. Following the 2006 vote on the new Human Rights Council, a representative of Austria, speaking on behalf of the European Union, linked the UNCHR’s membership to “the functioning of the Council and the credibility of its work” and argued that no “State guilty of
gross and systematic human rights violations should serve on the Council” (US Fed News, 2006). Similarly, Alexander Downer, Minister for Foreign Affairs of Australia, identified the fact that the Commission “had allowed some of the worst abusers to lead human rights efforts” as a problem that needed to be overcome in the new human rights body (United Nations, Department of Public Information, 2005c). Finally, Canada expressed its support for a Council with “credible membership criteria” (Office of the Prime Minister, 2005).

With regard to output legitimacy, member states with a substantive conception, such as the United States, linked the legitimacy of the Commission to substantive achievements in human rights protection. Therefore, they expressed preference for stricter enforcement of human rights standards. In the context of the CHR and the Council, this preference took the form of support for targeted resolutions against human rights abusers, substantive examination of human rights records and “an action-oriented mandate” (States News Service, 2006a). Thus, on the occasion of voting on the resolution on Sudan, Ambassador Richard Williamson, who was the head of the U.S. Delegation to the Commission, argued that the CHR had "a moral obligation to keep the faith with those victims, and the Universal Declaration of Human Rights and stand up tomorrow with a strong resolution on Sudan" (Africa News, 2004).

Furthermore, during discussions surrounding Agenda Item 9 (“Question of the violation of human rights and fundamental freedoms in any part of the world”) in early 2000s, the United States demanded substantive examination of human rights violations as a necessary condition for promoting the norms of democracy and human rights. Thus, the U.S. representative claimed that arguments against Item 9 were self-serving and were based on the desire of human rights violators “to protect themselves” (Capdevila, 2004). Moreover, in “unofficial comments, [the representative] said the United States would consider leaving the Commission if its members
were to decide to eliminate Item 9” (Capdevila, 2004). This statement indicates that for the United States, legitimacy of the organization hinged on substantive understanding of the concept.

3.2.3 Neutral Conception of Legitimacy

By contrast, another group of states argued for a vision of international society that can be described as pluralist. These states emphasized sovereign equality, non-interference in internal affairs of states and plurality of value systems. Correspondingly, these member states held and promoted a neutral interpretation of legitimacy, including inclusive membership and equal treatment of all members with respect to input legitimacy, and cooperation and dialogue with regard to output legitimacy.

In the context of input legitimacy, the belief in sovereign equality was reflected in two demands. First, these states called for inclusive membership. Thus, the African group explicitly rejected the idea of exclusive membership and argued that “attempts […] to turn the Commission on Human rights into a private club of purists […] undermines the fundamental principle of international law regarding the sovereign equality of States” (United Nations Commission on Human Rights, 2004). Minister for Foreign Affairs of Guyana made a similar argument and asserted that “[t]he new Human Rights Council should be built on the ideals of equal representation, not comprised of an “elite directorate” of nations” (United Nations, Department of Public Information, 2005c). Finally, a representative of Russia called on member states to keep in mind, during the reform process of the Commission, “[t]he High-Level Panel’s suggestion to universalize the Commission’s membership” (United Nations, Department of Public Information, 2005b).

Second, these member states insisted on procedural even-handedness, both in the selection of countries that were selected for examination of their human rights records and in the
selection of specific issues. Thus, a number of member states demanded that the CHR, in implementing its procedures, adhere to the principles of equality and representativeness:

States complained of double standards, especially in the selection of countries for public scrutiny. Some states from the South rightly wondered why the Commission on Human Rights – on which the “Permanent Five” members of the Security Council […] were virtually guaranteed a permanent seat – never adopted a resolution condemning well-known and gross abuses in, for instance, Tibet, Chechnya […], or in Guantanamo Bay (Terlingen, 2007, p. 169).

In 2002, a group of countries in Latin America and the Caribbean expressed concern that “the Commission condemns countries like Cuba, for example, but not China, whose human rights record is loudly criticised by international rights groups” (IPS-Inter Press Service, 2002). Echoing these concerns, South Africa’s Foreign Minister Nkosazana Dlamini-Zuma claimed that the Commission “had applied its mandate selectively, and that what was needed was a stronger, more effective Human Rights Council that would apply its mandate fairly and evenly across the board, without glossing over violations committed in certain countries while focusing on others” (BuaNews, 2006).

In addition, China consistently criticized what it considered politically motivated and selective actions of the Commission. Calling country-specific resolutions “a chronic disease of the Commission on Human Rights” (BBC Monitoring Asia Pacific, 2006), Chinese representatives emphasized that the Commission should be free from “political confrontation and interference in other countries' affairs” (Agence France Presse, 1998). This position was on many occasions supported by Russia, whose representatives also emphasized “[c]ooperation in the area of human rights that is free from 'double standards' and political considerations” (Xinhua General
Furthermore, China viewed the CHR’s emphasis on political rights as selective and therefore illegitimate. Thus, China consistently emphasized that “equal attention should be given to economic, social and cultural rights” and accused developed nations of tending “to regard civil and political rights as the basis and preconditions for the realization of all human rights and neglect economic, social and cultural rights” (Xinhua News Agency, 1997a).

This view was shared by some other member states: in particular, “Indonesian Makarim Wibisono, chairperson of the 61st United Nations Commission on Human Rights, said [that …] all categories of human rights can be considered and implemented in a balanced manner” (Xinhua General News Service, 2006).

With regard to output legitimacy, member states with a neutral conception viewed dialogue and exchange of ideas as an appropriate and preferred output of the Commission’s activities. This preference can be seen as a logical extension of the pluralist belief that international society is characterized by diversity of values and that, as a result of this diversity, any agreement on values is unlikely. Furthermore, attempts to promote any one system of values will lead to conflict. Consequently, one way to avoid conflict in the context of a value-based organization is to focus on non-confrontational, non-intrusive dialogue. As a representative of Indonesia put it,

"differences [about certain human rights and the ways to implement them] should be considered a source of inspiration, not an obstacle, in the search for appropriate solutions, with the fundamental goal remaining the achievement of genuine international cooperation among States. Mr. Wibisono said one of the most effective ways of addressing specific human rights situations lay in strengthening international cooperation,"
not engaging in condemnation (United Nations, Department of Public Information, 2005a).

Thus, member states with a neutral conception of output legitimacy viewed substantive examination of human rights records as confrontational, representative of Western dominance and illegitimate. China, in particular, interpreted the CHR’s monitoring work as interference in the internal affairs of sovereign nations, in violation of the “strict interpretation of Article 2(7) of the UN Charter”11 (Wheeler, 1999). Chinese representatives emphasized that “[s]overeign equality was the primary principle laid down in the UN charter as the cornerstone of the United Nations” (Xinhua News Agency, 1997b). This position was supported by some countries in the Asian and Arab groups, as in the case of Syria which justified its vote to not support a resolution against Russia by referring to the concept of sovereignty: “The Chechen project is political by nature and may be regarded as interference into domestic affairs” (Semenova, 2002).

Similarly, on the occasion of discussing Agenda Item 9 (“Question of the violation of human rights and fundamental freedoms in any part of the world”), a representative of Congo and spokesperson for the African bloc “said that Item 9 is a "relic of the past" and called on the Commission to adopt a culture of dialogue and to do away with confrontation” (Capdevila, 2004). The Organization of the Islamic Conference drew attention to "the current abuse of Item 9 to target Islamic and developing countries,” while a representative of Malaysia similarly claimed Western bias and argued that "Agenda Item 9 has been the avenue for the developed countries of

the West to push for the adoption of politically motivated country-specific resolutions vilifying developing countries for policies which are not to their liking" (Capdevila, 2004).

Therefore, in the late 1990s-early 2000s, a key audience for the CHR’s legitimacy, UN member states, split in their conceptions of legitimacy. One group of states, represented largely by liberal democracies, adopted a substantive interpretation of both input and output legitimacy. Their vision of a legitimate organization entailed selective membership and substantive progress on human rights promotion. Another group of states held a neutral conception of input and output legitimacy, which involved inclusive and even-handed processes and exchange of ideas as the preferred output. Because these conceptions were not reconcilable, processes and results that were considered legitimate by one group were seen as inappropriate by another group.

Importantly, neither group was content with the status quo. States insisting on a substantive interpretation were dissatisfied with the Commission’s membership. Members with a neutral understanding of legitimacy considered the Commission’s processes, both in selecting countries for the review of their human records and in selecting specific human rights for examination, as too politicized and selective. In addition, these states rejected the CHR’s efforts to engage in substantive examination of human rights records in specific countries as confrontational and illegitimate. As a result of the irreconcilable character of legitimacy conceptions and dissatisfaction of both groups with the status quo, legitimacy of the CHR declined.

3.3 The Failure of Institutional Solutions

During the reform process, member states were similarly split along irreconcilable conceptions of legitimacy. Consequently, the prospect that the reform which aimed at accommodating both claims could enhance legitimacy of the new human rights body was low.
Consistent with the substantive understanding of procedural legitimacy, several members of the United Nations argued that the new human rights body should address the issue of problematic membership. The United States was the most vocal in proposing changes related to this issue: it favored a much smaller body with membership criteria, such as democracy and good human rights record (Alston, 2006b). Specifically, the United States proposed to limit the size of the new Council to no more than 30 members “selected primarily on the basis of their commitment to human rights” (States News Service, 2006b). In addition, it proposed several mechanisms to ensure ‘appropriate’ membership. These included requirements that candidates obtain “two-thirds support within the General Assembly […], as well as letters of nomination and endorsement from at least half of a candidate’s regional group.” The requirement of the two-thirds majority in particular was intended as a screening mechanism, based on the assumption that the worst human rights violators would not be able to garner enough support (Alston, 2006, p. 199; States News Service, 2006). Additionally, it also proposed the requirement of a written expression of support from the candidate’s foreign minister; and exclusion from consideration of any country “under Security Council sanctions for human rights violations or terrorism” (States News Service, 2006b).

As described above, in its position the United States was backed by a number of other member states, including Canada. In addition, the European Union expressed support for a body of smaller or comparable size\(^\text{12}\), while, at the same time, stressing the need for “representativity of the UN membership at large” (EU Presidency, 2005). The European Union was also prepared


25
to support the United States in its proposal for “election of the Council's members by a 2/3 majority of the General Assembly” (EU Presidency, 2005).

These proposals, however, were challenged by states with a neutral conception of *input legitimacy* who argued in favor of equality, inclusiveness and even-handedness. During informal discussions, the UN norms of universality and equal membership were invoked to argue against limited membership. “Several speakers […] pointed out that greater participation in the new body, reflected in its membership, would be consistent with the universal character of human rights” (M2 Presswire, 2005). Developing countries, in particular, and the European Union were in favor of a larger Council with equitable geographical representation (Africa News, 2005; M2 Presswire, 2005). Similarly, “the Arab Group and several other delegations felt that no criteria other than those set forth in the Charter should apply to membership of the Human Rights Council” (M2 Presswire, 2005).

Attempts to accommodate these opposite sets of preferences resulted in solutions that were ineffective in addressing *input legitimacy* concerns of the United States and other members with a substantive conception. First, as a compromise between explicit membership criteria and no criteria at all, the final resolution creating the Council referred to voluntary pledges that may be “taken into account” when selecting candidates (UN General Assembly, 2006). Although the UN Office of the High Commissioner of Human Rights created a template13 with suggested pledges and commitment, it is non-binding. As a result, the extent of commitments undertaken

by candidates is ultimately at their own discretion and varies substantially from candidate to candidate (Chetail, 2010).

Second, also as a compromise and instead of explicit criteria, the resolution introduced direct and individual elections by secret ballots by the majority of the members of the General Assembly (UN General Assembly, 2006). Direct and individual voting was supposed to discourage the practice of grouping candidates into “clean slates,” in which regional groups put forward the same number of candidates as there were seats (Chetail, 2010). The practice of “clean slates” contributed to controversial membership composition since it ensured that even the worst human rights violators were virtually guaranteed to pass the election once put on the slate.

However, because the practice was not explicitly prohibited, the use of clean slates continued: for example, in the November 2012 elections, out of five regional groups only the Western European and Others group put forward more candidates than there were seats allocated for the group (International Service for Human Rights, 2012). The practice also continues contributing to the Council’s problematic membership. Thus, in the 2010 elections, Libya was elected on a closed slate from the African regional group, only nine months prior to having its membership rights suspended by the General Assembly (Human Rights Watch, 2011).

Finally, another measure to address problematic membership proved of an equally limited potential. The resolution creating the Council provided for the opportunity to suspend membership of the states with gross human rights violations, an innovative feature designed to address legitimacy concerns expressed by the United States. However, the measure appears to be largely symbolic since “states cannot be expelled from the Council” (Alston, 2006, p. 202). Furthermore, suspension of membership requires a two-third majority making it more difficult to suspend an offending member than to get elected to the Council. Although this fact does not
necessarily diminish the symbolic impact of suspension, it does make it very difficult to implement this mechanism in practice. In fact, only one member has been suspended so far: in March 2011, the General Assembly voted to suspend Libya from the Human Rights Council (United Nations, Department of Public Information, 2011a). Yet even in this case of grave human rights violations, some countries emphasized the extraordinary character of this measure and the exceptional nature of the Libyan situation or even doubted the need for the resolution. In particular, the “representative of Lebanon, introducing the draft resolution, underlined that the measure was both “exceptional and temporary”, and that Libya’s status would be restored “in due time”. He added that he hoped that time would come very soon” (United Nations, Department of Public Information, 2011). Representative of other countries worried about future implications of the resolution. Thus, “Bolivia’s representative stressed that it was critical that the consensus reached today not be used to promote “unjustified interventions” against sovereign States, and warned against the selective application of any resolutions against States with a “different orientation” from the major Powers” (United Nations, Department of Public Information, 2011).

These statements indicate that the human rights situation in any specific country has to be extremely grave before any resolutions on suspension of the Council’s members can garner enough support. As a result, the mechanism is unlikely to be used often, even against known human rights abusers.

Therefore, the reform failed to address input legitimacy concerns of the countries, such as the United States, who favored a more restrictive membership. Furthermore, attempts to satisfy the criteria of states with a neutral conception of legitimacy exacerbated the concerns of
members with a substantive understanding, which is evident in the functioning of the universal periodic review (UPR).

The UPR is arguably the most innovative feature of the Council and has been called “the only logical answer to the criticism[s]” (Terlingen, 2007, p. 172) and “some kind of panacea” (Ghanea, 2006, p. 703). It is a peer review process under which human rights records of all UN member states are examined periodically. It is state-led and allows each state to “declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations” (OHCHR, n.d.f). The UPR was designed to address concerns of selectivity and double standards and “to ensure equal treatment for every country when their human rights situations are assessed” (OHCHR, n.d.f).

However, while the UPR addressed legitimacy concerns of states with a neutral understanding of legitimacy, it failed to satisfy the criteria of members with a substantive conception. Reflecting the strong focus on cooperation and dialogue, favored by such states as China and Russia, the resolution establishing the Council “places much emphasis on the principles of cooperation and genuine dialogue in the council’s work” (Terlingen, 2007, p. 170). However, attempts to accommodate these preferences and to design procedures reflecting the neutral conceptions of China and Russia resulted in an organization that cannot satisfy the substantive legitimacy criteria of the states who hold preferences consistent with a solidarist outlook. Thus, in the name of cooperation, “[s]tates are not required to answer questions during the interactive dialogue, resulting in selective responses to the issues raised;” in the name of avoiding selectivity, “[c]ertain states asked the same questions at each interactive dialogue, which were often too broad to be of direct assistance to the review” (Freedman, 2013, pp. 278-82).
Overall, the reform failed to address the key factor underlying the Commission’s legitimacy crisis, namely the fundamental divergence of its membership on what constitutes a legitimate body. In the last decade of the CHR’s existence it became “a forum within which member states tried to legitimate competing visions of international order” (Peters, 2013, p. 198). In the context of an international organization, such as the CHR, this contestation was reflected in preferences for different legitimacy conceptions and in disagreement about what constituted legitimate activities and results. During the reform process, groups of states proposed changes to the new body that addressed their own legitimacy concerns, similarly advancing their own visions of international society and conceptions of legitimacy. However, because of the incompatible nature of claims based on the neutral and substantive conceptions of legitimacy, proposals that reflected preferences of one group inevitably raised legitimacy concerns of the other. As a result, the new Human Rights Council from its very beginning was destined to suffer from the same legitimacy deficit that characterized the Commission in its last decade.

Indeed, there is evidence that the new body failed to obtain legitimacy from the time of its inception as criticisms of the Council began to be voiced by member states shortly after it started its work. One year into the Council’s work, the representative of the United States which had been very skeptical of the Council since the beginning, noted that “the Council's record had so far not only failed to fulfill his country's hopes, it had even fallen below its expectations” (US Fed News, 2007).

On the occasion of a five-year review of the Council’s work, an Israeli delegate asserted that “the capacity of the Human Rights Council to perform its work had been undermined by declining credibility and professionalism” (United Nations, Department of Public Information, 2011). A representative of Romania similarly identified credibility and efficiency as challenges
facing the Council and argued that “gross and systematic violations of human rights must not be ignored by the Council [...] Nor should any attempt to bring them before the Council be seen as a sign of selectivity” (United Nations, Department of Public Information, 2008). Indeed, charges of politicization and selectivity persist in the Council: as the Iranian representative protested the adoption of a resolution against Iran, he described the process as “highly politicized” and called the resolution “illegitimate” (Iranian Government News, 2011). These allusions to accusations of selectivity, voiced when the HRC attempts to engage in substantive examination of human rights records, indicate that the tension between substantive and neutral conceptions of legitimacy is as present in the Council as it was in the Commission.

Finally, because the reform process attempted to accommodate incompatible input legitimacy claims, institutional solutions proved ineffective and the issue of problematic membership continued to plague the Council (Toronto Star, 2009). Thus, the Acting Head of the Observer Delegation of the European Union argued that following the five-year review of the Council’s work, “no action had been taken to ensure that Council members upheld the highest human rights standards, either to be elected or during the course of their membership” (United Nations, Department of Public Information, 2011b).
Chapter 4: Conclusion

This paper analyzed how the concept of legitimacy, its different forms and the way conceptions of international society relate to legitimacy apply to the case of the United Nations Commission on Human Rights and its reform. It found that the Commission lost its legitimacy due to the divergence of within its membership over what constitutes a legitimate international institution. Furthermore, the reform process, attempting to accommodate diverse and irreconcilable preferences of a split audience, resulted in compromised solutions unlikely to satisfy legitimacy criteria of either one of the split groups.

Analyzing legitimacy crises and failure to achieve legitimacy is just as important as studying cases of successful legitimation. It allows us to understand the limits of international cooperation and the necessary conditions for obtaining legitimacy in the context of international organizations. Peters (2013) recently demonstrated how the OSCE’s legitimacy was undermined by the competing visions of the international order held by its membership. This paper similarly attempted to contribute to this area of inquiry and clarified how different conceptions of international society overlap with both input and output legitimacy.

As the case study in this paper demonstrated, obtaining legitimacy is a “practical political activity” (Clark, 2007, p. 255); and legitimation of any international organization is a unique process. During this process, actors, based on their own beliefs and values, prioritize and emphasize different forms and conceptions of legitimacy to arrive at consensus on the preferred meaning of legitimacy. However, in the contemporary international society characterized by deep disagreements over values and norms, such consensus may prove impossible. For international organizations whose members hold incompatible conceptions of legitimacy, attainment of legitimacy will remain elusive. Importantly, even procedural legitimacy may be out
of reach because of fundamental disagreements over what constitute legitimate processes and failure to come to a consensus even on minimal terms of cooperation.

Furthermore, in such cases, reforms designed to find institutional solutions to legitimacy deficit may prove extremely challenging. First, reforms that attempt to increase legitimacy by finding a middle ground between competing claims are likely to result in solutions unsatisfying to either group of members. Similarly, accommodating legitimacy claims of either one group of members will result in a legitimacy deficit. In that regard, the claim that input legitimacy can take both substantive and neutral forms is particularly significant, since it suggests that procedures will not be able to serve as the minimal basis for cooperation between states. Finally, even solutions that recognize the difficulty of reconciling different conceptions and allow for the possibility of limiting membership to states with similar legitimacy conceptions may not be acceptable since the scope of action of these organizations will be limited to their reduced membership.
Bibliography


http://www.freedomhouse.org/sites/default/files/Territory%20Ratings%20and%20Status%202014%20%28final%29.xls


http://www.hrw.org/news/2011/05/20/un-limited-choice-marks-rights-body-election


OECD. (n.d.a). *DAC members.* Retrieved June 15, 2014 from OECD:
http://www.oecd.org/dac/dacmembers.htm


Office of the Prime Minister. (2005, September 16). Statement by the right honourable Paul Martin Prime Minister of Canada to the high-level meeting of the sixtieth session of the United Nations General Assembly. New York, New York, USA.

http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf

http://www2.ohchr.org/english/bodies/chr/further-information.htm
http://www2.ohchr.org/english/bodies/chr/membership.htm

http://www2.ohchr.org/english/bodies/chr/membership.htm

http://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx

www.ohchr.org/Documents/HRBodies/HRCouncil/Pledges.pdf


Toronto Star. (2009, May 13). *U.S. wins seat on 'dubious' rights council; UN body's members have been criticized for repressive practices.* Retrieved June 1, 2014


United Nations, Department of Public Information. (2005a, March 14). *HR/CN/1107.*

*Commission on Human Rights opens sixty-first session.*

United Nations, Department of Public Information. (2005b, April 7). *GA/10338. Speakers question possibility of ‘package’ adoption of reform proposals, as General Assembly continues debate on ‘in larger freedom’.*
United Nations, Department of Public Information. (2005c, September 21). GA/10392. *Although world summit outcome ‘disappointing’, UN reform efforts must continue, General Assembly told during annual high-level debate.*


Xinhua News Agency. (1997b, April 8). *Developed Countries not Qualified to Judge Human Rights In Developing Countries.* Retrieved December 03, 2013


Appendices

Appendix A The Commission’s Membership by Freedom Status in 2003

<table>
<thead>
<tr>
<th>Members with “free” status</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Argentina</td>
<td>F</td>
</tr>
<tr>
<td>2. Australia</td>
<td>F</td>
</tr>
<tr>
<td>3. Austria</td>
<td>F</td>
</tr>
<tr>
<td>4. Belgium</td>
<td>F</td>
</tr>
<tr>
<td>5. Brazil</td>
<td>F</td>
</tr>
<tr>
<td>6. Canada</td>
<td>F</td>
</tr>
<tr>
<td>7. Chile</td>
<td>F</td>
</tr>
<tr>
<td>8. Costa Rica</td>
<td>F</td>
</tr>
<tr>
<td>9. Croatia</td>
<td>F</td>
</tr>
<tr>
<td>10. France</td>
<td>F</td>
</tr>
<tr>
<td>11. Germany</td>
<td>F</td>
</tr>
<tr>
<td>12. India</td>
<td>F</td>
</tr>
<tr>
<td>13. Ireland</td>
<td>F</td>
</tr>
<tr>
<td>14. Japan</td>
<td>F</td>
</tr>
<tr>
<td>15. Mexico</td>
<td>F</td>
</tr>
<tr>
<td>16. Peru</td>
<td>F</td>
</tr>
<tr>
<td>17. Poland</td>
<td>F</td>
</tr>
<tr>
<td>18. Republic of Korea</td>
<td>F</td>
</tr>
<tr>
<td></td>
<td>Country</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------</td>
</tr>
<tr>
<td>19.</td>
<td>Senegal</td>
</tr>
<tr>
<td>20.</td>
<td>South Africa</td>
</tr>
<tr>
<td>21.</td>
<td>Sweden</td>
</tr>
<tr>
<td>22.</td>
<td>Thailand</td>
</tr>
<tr>
<td>23.</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>24.</td>
<td>United States of America</td>
</tr>
<tr>
<td>25.</td>
<td>Uruguay</td>
</tr>
</tbody>
</table>

**Members with “not free” status**

<table>
<thead>
<tr>
<th></th>
<th>Country</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Algeria</td>
<td>NF</td>
</tr>
<tr>
<td>2</td>
<td>Cameroon</td>
<td>NF</td>
</tr>
<tr>
<td>3</td>
<td>China</td>
<td>NF</td>
</tr>
<tr>
<td>4</td>
<td>Cuba</td>
<td>NF</td>
</tr>
<tr>
<td>5</td>
<td>Democratic Republic of the</td>
<td>NF</td>
</tr>
<tr>
<td>6</td>
<td>Congo</td>
<td>NF</td>
</tr>
<tr>
<td>7</td>
<td>Libyan Arab Jamahiriya</td>
<td>NF</td>
</tr>
<tr>
<td>8</td>
<td>Pakistan</td>
<td>NF</td>
</tr>
<tr>
<td>9</td>
<td>Saudi Arabia</td>
<td>NF</td>
</tr>
<tr>
<td>10</td>
<td>Sudan</td>
<td>NF</td>
</tr>
<tr>
<td>11</td>
<td>Swaziland</td>
<td>NF</td>
</tr>
<tr>
<td>12</td>
<td>Syrian Arab Republic</td>
<td>NF</td>
</tr>
<tr>
<td>13</td>
<td>Togo</td>
<td>NF</td>
</tr>
<tr>
<td>14</td>
<td>Viet Nam</td>
<td>NF</td>
</tr>
<tr>
<td>Members with “partly free” status</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Armenia</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>2. Bahrain</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>3. Burkina Faso</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>4. Gabon</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>5. Guatemala</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>6. Kenya</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>7. Malaysia</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>8. Paraguay</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>9. Russian Federation</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>10. Sierra Leone</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>11. Sri Lanka</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>12. Uganda</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>13. Ukraine</td>
<td>PF</td>
<td></td>
</tr>
<tr>
<td>14. Venezuela</td>
<td>PF</td>
<td></td>
</tr>
</tbody>
</table>