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Abstract

This Note uses the case of Honduran street children to demonstrate that the U.N. Principles have not been adequately implemented, and argues that the international community should use the creation of the U.N. Human Rights Council (“Council”) as an opportunity to insist on better training and monitoring of investigative personnel worldwide. Part I reviews the legal standards establishing extrajudicial executions of street children as a major human rights violation and the Honduran State’s duty to investigate. Part I also examines challenges facing Honduran investigative police agencies, including budget crises and accusations of corruption and complicity. Part I concludes with a review of the structure and function of the U.N. Commission on Human Rights (“Commission”) and the investigative standards set forth in the U.N. Principles. Part II of this Note discusses competing frameworks for Commission reform, focusing on the proposal of the High Level Panel on Threats, Challenges, and Change (“High Level Panel Proposal”), the proposal of U.N. Secretary-General Kofi Annan (“Report of Secretary-General”), and the proposal of Human Rights Watch (“HRW”) and the international human rights non-governmental organization (“NGO”) community (“HRW Proposal”). Part II also reviews the U.N. Draft Text (“Draft Text”) on the creation of the Human Rights Council (“Council”). Part III of this Note argues that the HRW Proposal best conceives of Commission reform vis-à-vis the U.N. Principles. Part III also proposes that, in restructuring the U.N. human rights system, Member States should consider strengthening the role of the Special Rapporteur on Extrajudicial Executions, and should explore options for more consistent U.N. monitoring of investigative personnel worldwide.
NOTES

THE IMPACT OF U.N. HUMAN RIGHTS COMMISSION REFORM ON THE GROUND: INVESTIGATING EXTRAJUDICIAL EXECUTIONS OF HONDURAN STREET CHILDREN

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INTRODUCTION

The issue of street children implicates a series of social and legal challenges, including discrimination, drug abuse, mistreatment, poverty, public health, and violence.1 The problem remains especially acute in Central and Latin America, where urban streets and spaces double as homes for roughly forty million children.2 Honduras, in particular, faces one of the most urgent

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1. See Human Rights Watch [HRW], Easy Targets: Violence Against Children Worldwide 14 (2001), available at http://www.hrw.org/reports/2001/children/children.pdf (last visited Mar. 12, 2006) (noting that street children face significant violence at hands of authorities more than other children; that street children are sometimes tortured and killed; and that street children are easy targets for violence because they are often impoverished and do not know their rights); see also Selina Kossen, Five Murdered Street Children in Guatemala: A Precedent Before the Inter-American Court of Human Rights, 6 Hum. RTS. BR. 11, 11 (1999) (stating that street children often come from unstable and impoverished families and suffer from malnutrition, drug abuse, and hunger); Timothy J. Treanor, Note, Relief for Mandela's Children: Street Children and the Law in the New South Africa, 65 Fordham L. Rev. 883, 883 (1994) (describing how street children's problems are similar throughout world, including arbitrary murder, begging, depression, drug dealing, glue sniffing, homelessness, hunger, illness, malnutrition, physical abuse, and sexual abuse).

of these situations, with roughly twenty thousand homeless children throughout the country.\(^3\)

Although the Honduran Government has attempted to eradicate the mistreatment of street children by implementing protective legislative measures, limited legal remedies exist to provide redress for street children and their families, and legislation remains poorly enforced.\(^4\) Human rights organizations cite cases in which Honduran law enforcement authorities have been responsible for arbitrary violence against street children.\(^5\) Law enforcement authorities have been accused of assaulting street children, forcing them to vacate certain areas, and stealing from them.\(^6\) Certain accounts allege that Honduran police officers
have used torture tactics to punish street children, including electrocution, mutilation, and rape. Consequently, there is a widespread belief that the Honduran police officers have contributed, in part, to certain deaths.

Not only are Honduran street children subject to arbitrary acts of violence, but they are also victimized by a campaign of extrajudicial executions, which are defined as unlawful and intentional murders committed either by agents of a State or with their collusion or assent. The Latin American human rights organization Casa Alianza reports that thousands of Honduran children, some of whom lived entirely in the streets, have been

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7. See Michael Neumann, Anti-Semitism: A Minor Problem, Overbaun, L.A. TIMES, Dec. 28, 2003, at M1 (referring to March 2003 BBC report which noted that Honduran Government was initiating investigations of 1569 murdered street children; quoting Amnesty International as stating that killers might be police officers and there have been few prosecutions); see, e.g., Nation Briefs, NEWSWEEK, Aug. 17, 2001, at A22 (reporting that police and private security agents have murdered significant number of Honduran street children in recent years); Duncan Campbell, Police 'Dispose' of Honduran Street Kids, GUARDIAN (London), June 30, 2000, at 13 (discussing Honduran police officers as responsible for murders of Honduran street children); Peter Paterson, Children of Despair, DAILY MAIL, Dec. 9, 1997, at 49 (reviewing television documentary and mentioning accounts of Guatemalan and Honduran police electrocuting, eye-gouging, mutilating, and raping street children).

8. See Kevin Sullivan, Street Killings Aim at Honduran Youths; Gang Members Targeted in Grisly Cycle, WASH. POST, May 18, 2003, at A14 (stating that Honduran Government has admitted that some street children murders can be attributed to police officers); see also The Unaccompanied Alien Child Protection Act: Hearing Before the Subcomm. on Immigration of the S. Comm. on the Judiciary, 107th Cong. (2002) (testimony of eighth-grader Edwin L. Munoz) [hereinafter Munoz Testimony] (testifying that he had heard that gangs and law enforcement authorities had killed street children).

9. See Jahangir Report, supra note 5, at ¶ 73 (concluding that Honduran security forces have extrajudicially executed children); see also Wardle, supra note 2, at 326 (discussing State Department reports which allege that Honduran children have been tortured and killed by police officers).

brutally murdered in recent years. Former United Nations ("U.N.") Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions ("Special Rapporteur on Extrajudicial Executions") Asma Jahangir has noted that Honduran children suffer from one of the world's highest rates of arbitrary murder at the hands of national security forces. The Honduran State's efforts to investigate these cases, however, remain weak.

11. See 41% de Muertes de Jovenes Son Ejecuciones [41% of Deaths of Minors Are Executions], ANSA NOTICIERO EN ESPAÑOL, Oct. 22, 2005 [hereinafter 41% of Deaths] (noting that, during first three quarters of 2005, Casa Alianza estimated that 124 children and 204 young people between ages of eighteen and twenty-three were found with bullet holes in neck and hands and legs tied, abandoned outside Honduran cities); see also ECOSOC, Comm'n on Human Rights, La Violencia y Su Impacto Sobre La Niñez y Juventud Hondureña [Violence and Its Impact on Honduran Children and Youths], at 1, U.N. Doc. E/CN.4/2005/NGO/326 (2005) [hereinafter Violence and Its Impact] (stating that during period of 1998 to 2004, Casa Alianza registered 2520 violent deaths of minors under age of twenty-three in Honduras); Juan Jose Dalton, Mas De Dos Mil Ninos De la Calle Asesinados En Honduras; Casa Alianza Insiste En La Necesidad De Investigar La Relacion De La Policia Con Las Muertes [More Than 2000 Street Children Murdered in Honduras; Casa Alianza Insists on the Necessity of Investigating the Relationship Between the Police and the Deaths], LA OPINION (Los Angeles), Dec. 21, 2003 (quoting, according to Casa Alianza statistics that during period of January 1998 to roughly December 2003, Casa Alianza documented 2089 murders of children and young people under age twenty-three; noting that, at press time, political unit in charge of investigations had only assigned 103 cases, of which twenty-three had been investigated); Niños de la Calle Piden Fin a Asesinatos y Castigo a Culpables [Children of the Street Seek End to Murders and Punishment for Those Guilty], EFE NEWS SERVS., Dec. 10, 2003 [hereinafter End to Murders] (mentioning that between 1998 and 2003, Casa Alianza registered approximately 2089 assassinations of Honduran minors, many of whose cases have not been resolved); Denuncian Asesinatos y Torturas de Niños de la Calle [Murders nd Torture of Street Children Denounced], EFE NEWS SERVS., June 25, 1999 [hereinafter Murders and Torture] (quoting Casa Alianza statistics that fifteen street children were killed in last three years and another sixty were victims of torture and violence by police and individuals).


13. See Manuel Bermúdez, Maras, Síntoma Exsistente, INTER PRESS SERV.—SPANISH, Sept. 6, 2005 (quoting one lawyer as saying that, since 1998, Casa Alianza has been investigating series of murders of minors under age twenty-three; stating that as of roughly July 2005, 2778 deaths had been counted, most of which were gang-related; noting lack of investigation and lack of interest of authorities creates impunity; stating, however, that no evidence exists showing direct State participation in these murders); see also Updates from the Regional Human Rights Systems, 11 HUM. RTS. BR. 28, 29 (2003) (describing weak judicial institutions in Honduras and high rate of impunity, particularly with respect to investigation of extrajudicial executions); Jahangir Report, supra.
The United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions ("U.N. Principles") suggest comprehensive standards for neutral, thorough, and timely investigations into all cases of suspected extrajudicial execution and arbitrary murder. In particular, the U.N. Principles provide that the purpose of criminal investigations shall be to determine the details surrounding all extrajudically executed individuals and any possible patterns in the murders in order to bring the perpetrators to justice. The Honduran State, however, falls short of meeting these standards. Moreover, States throughout the world remain similarly ill-equipped to effectively implement the U.N. Principles.

note 5, ¶ 56-62 (commenting that there have not been significant convictions, investigations, or trials in cases of extrajudicial executions of street children).


15. See U.N. Principles, supra note 14, ¶ 9 (providing for impartial, prompt, and thorough investigations of all extrajudicial executions, through physical collection of evidence and autopsy, to ascertain time of death and perpetrator); see also Kenneth Watkin, Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict, 98 AM. J. INT'L L. 1, 19 (2004) (describing U.N. Principles as providing guidance on evidence preservation and autopsy procedures and arguing that this, in turn, promotes accountability).

16. See Rachel Harvey, Children's Legal Centre, From Paper to Practice: An Analysis of the Juvenile Justice System in Honduras, at 72 (2005) (estimating that, among 384 cases of extrajudicial executions of Honduran street children during period of July 2003 to May 2004, agency responsible for investigating these deaths has sent only seventy-five cases (involving 116 victims) to Office of Public Prosecutor); see also Wendy Carolina Funes, Paralizada 60% de Investigaciones [Sixty Percent of Investigations Paralyzed], EL HERALDO (Hond.), July 2, 2004 (on file with author) (approximating that sixty percent of investigations were held up in early 2004 due to financial crisis affecting investigative police).

This Note uses the case of Honduran street children to demonstrate that the U.N. Principles have not been adequately implemented, and argues that the international community should use the creation of the U.N. Human Rights Council ("Council") as an opportunity to insist on better training and monitoring of investigative personnel worldwide. Part I reviews the legal standards establishing extrajudicial executions of street children as a major human rights violation and the Honduran State's duty to investigate. Part I also examines challenges facing Honduran investigative police agencies, including budget crises and accusations of corruption and complicity. Part I concludes with a review of the structure and function of the U.N. Commission on Human Rights ("Commission") and the investigative standards set forth in the U.N. Principles.

Part II of this Note discusses competing frameworks for Commission reform, focusing on the proposal of the High Level Panel on Threats, Challenges, and Change ("High Level Panel Proposal"), the proposal of U.N. Secretary-General Kofi Annan ("Report of Secretary-General"), and the proposal of Human Rights Watch ("HRW") and the international human rights non-governmental organization ("NGO") community ("HRW Proposal"). Part II also reviews the U.N. Draft Text ("Draft Text") on the creation of the Human Rights Council ("Council"). Part III of this Note argues that the HRW Proposal best conceives of Commission reform vis-à-vis the U.N. Principles. Part III also proposes that, in restructuring the U.N. human rights system, Member States should consider strengthening the role of the Special Rapporteur on Extrajudicial Executions, and should explore options for more consistent U.N. monitoring of investigative personnel worldwide.

I. THE INVESTIGATION OF EXTRAJUDICIAL EXECUTIONS OF HONDURAN STREET CHILDREN

Casa Alianza reports that thousands of Honduran children, both homeless and with shelter, have been extrajudicially executed in recent years by unknown perpetrators and by Honduran police officers.\(^\text{18}\) Various non-State actors also have been associated with extrajudicial executions of these street children in Honduras, including gang members, ordinary civilians, security forces, and unknown individuals.\(^\text{19}\) Little accountability for extrajudicial executions has been imposed by the Honduran judiciary, prompting civilians, in the past, to organize illegal armed groups in order to target homeless children or gang-affiliated youths.\(^\text{20}\) Although no direct evidence links any of these murders to the Honduran State, weak investigative efforts often permit the perpetrators to escape punishment.\(^\text{21}\)

Most seriously, witnesses in Honduras have also provided

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18. See 41% of Deaths, supra note 11 (commenting that, during first three quarters of 2005, Casa Alianza estimated that 124 children and 204 youths between ages of eighteen and twenty-three were found outside Honduran cities, with bullet holes in neck and hands and legs tied); see also Violence and its Impact, supra note 11, at 1 (finding that during period of 1998 to 2004, Casa Alianza registered 2520 violent deaths of Honduran minors under age of twenty-three); Murders and Torture, supra note 11 (referring to Casa Alianza statistics which state that fifteen street children were assassinated in Honduras during approximate period from 1996 to 1999, with another sixty victimized by violence and torture).

19. See Extrajudicial Executions, supra note 10, at 8-12 (describing different causes of extrajudicial executions of children as unknown "death cars," gangs, individuals, police, private guards, and security committees); see also Harvey, supra note 16, at 69 (observing that, among 574 murders recorded during period of 1998 to September 2001, 54.9% of murders were committed by unknown individuals and 4.2% of murders were committed by law enforcement officials).

20. See 41% of Deaths, supra note 11 (reporting that Honduran Ministry of Security has admitted that illegal armed bands were organized by civilians to engage in social cleansing, due, in part, to impunity for perpetrators); see also Tim Weiner, Outside Experts Find Cover-Up of Killings in Honduras Prison, N.Y. TIMES, May 20, 2003, at A1 (citing State Department report which suggested that Honduran death squads formed by members of community, police, and vigilante groups were responsible for killing suspected criminals, often teenagers).

21. See Updates from the Regional Human Rights Systems, supra note 13, at 29 (describing weak judicial enforcement and impunity in Honduras, particularly with respect to investigation of extrajudicial executions); see also Jahangir Report, supra note 5, ¶¶ 56-62 (observing poor record of Honduran investigations and convictions into deaths of street children); Manuel Bermúdez, Death Squads Prey on Gang Members Deported by U.S., INTER PRESS SERV., Sept. 6, 2005 (mentioning that perpetrators of extrajudicial executions often escape punishment and underscoring that no evidence exists directly linking extrajudicial executions to Honduran State).
descriptive accounts of Honduran investigative police officers directly participating in murders of children.\textsuperscript{22} Human rights organizations estimate that Honduran police officers are responsible for a considerable percentage of the country's reported extrajudicial executions.\textsuperscript{23} Moreover, Honduran police agencies have been cited by both the U.N. and the United States for their alleged involvement in extrajudicial executions.\textsuperscript{24} Although certain cases have resulted in successful prosecutions and convictions of security forces, arbitrary murders nevertheless continue.\textsuperscript{25}

\textsuperscript{22} See Jahangir Report, supra note 5, ¶ 73 (finding evidence that security forces have killed children in Honduras); see also Jan McGirk, Honduras Investigates Murders of 1,300 Street Children, INDEP. (London), Sept. 4, 2002 (discussing Inter-American Court of Human Rights ("IACHR") examination of case of fifteen-year-old Oscar Daniel Medina Cortes and fourteen-year-old Jose Luis Hernandez, murdered and, according to witnesses, allegedly abducted by Dirección General de Investigación Criminal ("DGIC"); Extrajudicial Executions, supra note 10, at 17 (explaining cases of Medina and Hernandez, who were found tortured and murdered, allegedly by DGIC); Harvey, supra note 16, at 69 (noting that, among 574 murders recorded during period of 1998 to September 2001, 54.9\% of murders were committed by unknown individuals and 4.2\% percent of murders were committed by law enforcement officials).

\textsuperscript{23} See José Pablo Calleja Jiménez et al., Conociendo a la Infancia Que Vive en la Calle 100 (Escuela Universitaria de Trabajo Social de Gijón, Dec. 2004), available at http://www.casa-alianza.org/files/libro-los-ninos.pdf (noting Casa Alianza's opinion that considerable percentage of deaths of street children can be attributed to social cleansing by individuals and members of security forces; affirming that police are behind roughly twenty-five percent of murders in Honduras, whereas Honduran State only recognizes roughly one percent of cases); see also 41\% of Deaths, supra note 11 (observing that, according to one study by Honduran NGO Centro de Prevención, Tratamiento y Rehabilitación de Víctimas de la Tortura ("CPTVRT"), roughly twenty-two percent of murders of young people and minors in country were committed by police officers, by means of unnecessary force, or use of death squads).

\textsuperscript{24} See Bureau of Democracy, Human Rights, and Labor, State Department, Honduras: Country Reports on Human Rights Practices—2004 (Feb. 28, 2005) [hereinafter State Department Report], available at http://www.state.gov/g/drl/rls/hrrpt/2004/41765.htm (last visited Nov. 8, 2005) (noting Honduras' general respect for human rights, but noting that members of police have committed extrajudicial executions); see also Jahangir Report, supra note 5, ¶ 73 (stating that research conducted by former Special Rapporteur Asma Jahangir during her visit to Honduras makes it extremely clear that security forces have killed street children in Honduras); Wardle, supra note 2, at 326 (citing U.S. Department of State reports which noted that Honduran street children are often tortured and killed by police officers); Lopez, supra note 5, at 610 (discussing cases in which U.S. courts cited U.S. Department of State reports on Honduran police murdering street children).

\textsuperscript{25} See Harvey, supra note 16, at 72 (explaining that among 384 cases of extrajudicial executions of Honduran street children during period of July 2003 to May 2004, agency responsible for investigating these deaths has sent only seventy-five cases (involving 116 victims) to Office of Public Prosecutor); see also State Department Report, supra note 24 (referring to Ministry of Public Security statistics and stating that, generally
A. Legal Standards Regarding Street Children

Both Honduran and international legal standards establish that the arbitrary murder of street children is a serious human rights violation.\textsuperscript{26} The Código de la Niñez y la Adolescencia ("Children's Code") is the primary legislation governing children's rights in Honduras.\textsuperscript{27} This domestic legislation guarantees Honduran children the right to life from the moment of conception and imposes upon the Honduran State an affirmative obligation to adopt necessary measures to protect this right.\textsuperscript{28} Moreover, the Children's Code binds the Honduran State to accommodate at-risk children's special needs.\textsuperscript{29} Extrajudicial executions of street children violate the Honduran Children's Code.\textsuperscript{30}

speaking, in 2004, Honduras continued to have high homicide rate with low rate of case closure); \textit{41\% of Deaths}, supra note 11 (noting Casa Alianza reports of murdered Honduran children and youth, found outside urban areas with hands and legs bound, shot in back of neck); \textit{Violence and its Impact}, supra note 11, at 1 (noting that during period of 1998 to 2004, Casa Alianza registered 2520 violent deaths of Honduran minors under age of twenty-three).


Similarly, extrajudicial executions of street children violate international law. The American Convention on Human Rights ("American Convention"), which Honduras ratified on September 8, 1977, protects individuals, including children, from torture and arbitrary deprivation of the right to life. According to the Inter-American Court of Human Rights ("IACHR"), when a right enumerated in the American Convention is violated, a duty on the part of States arises to investigate the violation.

A case involving forced disappearances in Honduras illustrates the idea that States incur liability for failing to investigate human rights violations. In In re Velasquez-Rodriguez, the
IACHR found the Honduran State liable for forced disappearances committed by non-State actors, because the Honduran State had breached its duty under the American Convention to use appropriate diligence in preventing such disappearances.\footnote{56} Under Velasquez-Rodriguez, violations of the American Convention committed by non-State actors can lead to State liability.\footnote{36}

The IACHR further established in Velasquez-Rodriguez that the Honduran State has an affirmative duty to undertake meaningful investigations of violations protected by the American Convention, as well as to identify the individuals responsible for the violations, impose an appropriate punishment, and provide the victim with reasonable compensation.\footnote{37} Pursuant to this duty, the Honduran State must investigate, in an effective and

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\footnote{35. See In re Velasquez-Rodriguez, [1998] Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (finding that rights violation, although not directly imputable to State, can trigger State liability if State fails to use due diligence in preventing violation as required by American Convention); see also Trooboff, supra note 34, at 361-67 (explaining Velasquez-Rodriguez decision and noting that case represents extremely important contribution to human rights law because of its pragmatic treatment of forced disappearances); Beyond Voluntarism, supra note 34, at 51-53 (noting Velasquez-Rodriguez decision’s imposition of obligation to use due diligence in investigating human rights violations, whether committed by private or public actors).

36. See In re Velasquez-Rodriguez, [1998] Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (observing that acts committed by non-State actors can lead to State liability); see also Trooboff, supra note 34, at 361-67 (describing Velasquez-Rodriguez decision and arguing that IACHR appropriately imposed high standard of liability on Honduran State); Beyond Voluntarism, supra note 34, at 51-53 (discussing Velasquez-Rodriguez decision’s assignment of liability to State if it fails to use appropriate diligence in investigating human rights violations, regardless of perpetrators).

serious manner, every situation in which a right protected by the American Convention has been violated. Furthermore, this duty to investigate continues despite changes in political administration. Despite the clear obligations on the part of the Honduran State to prevent and investigate, however, extrajudicial executions and forced disappearances continue, even in recent years.

The Convention on the Rights of the Child ("CRC"), as ratified by Honduras, provides binding legal authority regarding extrajudicial executions of Honduran children. The CRC obligates signatory States to use all appropriate measures, including legislative and administrative efforts, to implement children's

38. See In re Velasquez-Rodriguez, [1998] Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 176-77 (providing that Honduras has duty to investigate every situation involving violation of right protected by American Convention and that Honduras fails to fulfill this duty if violation goes unpunished; holding that in order to fulfill duty to investigate, Honduras must undertake investigation in serious and effective manner, and that if Honduras does not seriously investigate violations by private parties, Honduras is essentially aiding such parties and exposing itself to State liability on international level); see also Katherine M. Culliton, Finding a Mechanism to Enforce Women's Right to State Protection from Domestic Violence in the Americas, 34 Harv. Int'l L.J. 507, 549 (1993) (noting Velasquez-Rodriguez's imposition of State duty to investigate, prosecute, and punish rights violators).

39. See In re Velasquez-Rodriguez, [1998] Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 184 (holding that duty to investigate continues despite changes in political administration, even if attitude of new administration is more attentive to rights violated); see also Jon M. Van Dyke, Promoting Accountability for Human Rights Abuses, 8 Chap. L. Rev. 153, 177 n.49 (2005) (observing that duty to investigate continues without respect to changes in political administration).


The CRC also imposes a duty upon States to ensure children’s basic living standards, to protect children from arbitrary attacks on honor and reputation, to protect children from physical and mental violence, and to respect children’s right to life.43

The American Convention and the CRC speak to cases involving the arbitrary murder of street children, which violate the positive rights to life and basic living standards as well as the negative rights of being free from honor attacks, torture, and violence.44 Moreover, Article 16 of the Honduran Constitution makes international agreements applicable to domestic legislation.45 Instances of extrajudicial executions of street children, therefore, violate both Honduran and international legal standards, in addition to establishing a pattern of serious and urgent human rights violations.46

42. See CRC, supra note 41, art. 4 (stating that States Parties must use all appropriate administrative, legislative, and other measures in order to implement rights recognized by CRC; noting that, with respect to cultural, economic, and social rights, States shall undertake measures in accordance with their maximum available resources); see also Maria Grahn-Farley, Foreword: Crossing Borders, 30 CAP. U. L. REV. 657, 658 (2002) (observing that CRC calls upon States, as well as individuals, to protect children’s rights).

43. See CRC, supra note 41, arts. 6, 7, 16, 19 (providing that every child has inherent right to life; mandating that parties to CRC ensure that children are not subjected to torture or cruel, inhuman, or degrading treatment or punishment; prohibiting parties to CRC from interfering with children’s privacy and engaging in attacks on honor and reputation; stating that parties to CRC must take all appropriate measures to protect children from violence); see also Rebeca Rios-Kohn, The Convention on the Rights of the Child: Progress and Challenges, 5 GEO. J. ON FIGHTING POVERTY 139, 142 (1998) (discussing CRC’s provisions that protect children from exploitation and abuse).

44. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1987) (discussing concept of customary international law as set of legal standards that result from general and consistent practices that States follow out of sense of legal obligation); see also Connie de la Vega, The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?, 11 HARV. BLACKLETTER L.J. 37, 45 (1994) (noting that CRC is source of customary international law). C.f. Henry J. Steiner & Philip Alston, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 363-64 (2000) (drawing distinctions between positive rights, which are seen as legal entitlements, and negative rights, which are seen as legal protections).

45. See Constitución de la Republica de Honduras [Cn.] [Constitution] tit. I, ch. II, art. 16, Jan. 11, 1982, available at http://pdba.georgetown.edu/Constitutions/Honduras/hond82.html (providing that international treaties become part of domestic law as soon as they enter into force); see also Harvey, supra note 16, at § 2 (discussing Honduras as monist system and incorporation of international treaties into domestic Honduran legislation); Periodic Report, supra note 41, ¶ 2 (noting that CRC represents part of domestic Honduran law and is therefore binding on Honduran State).

46. See Beth Stephens, Upsetting Checks and Balances: The Bush Administration’s Ef-
B. Criminal Investigation in Honduras

The Dirección General de Investigación Criminal ("DGIC") is the Honduran police unit responsible for investigating all criminal infractions.\footnote{See Extrajudicial Executions, supra note 10, at 14 (noting that function of criminal investigation in Honduras falls to DGIC); see also Harvey, supra note 16, at 10 (stating that DGIC is responsible for investigating offenses and collecting evidence).} With respect to extrajudicial executions, the DGIC has been implicated in the torture and murder of Honduran children, both homeless and with shelter.\footnote{See McGirk, supra note 22 (discussing IACHR's examination of case of fifteen-year-old Oscar Daniel Medina Cortes and fourteen-year-old Jose Luis Hernandez, murdered and, according to witnesses, allegedly abducted by DGIC); see also Extrajudicial Executions, supra note 10, at 17 (describing cases of Medina and Hernandez, who were allegedly tortured and murdered by DGIC).} Moreover, evidence shows that, in general, Honduran police officers have solved only a small fraction of these cases.\footnote{See Harvey, supra note 16, at 72 (discussing few number of extrajudicial execution cases that police are handling); see also Gustavo Palmieri, Wash. Office on Latin America [WOLA], THEMES AND DEBATES IN PUBLIC SECURITY REFORM, A MANUAL FOR CIVIL SOCIETY: CRIMINAL INVESTIGATIONS, available at http://www.wola.org/publications/pub_security_themesdebates_criminalinvestigation.pdf (finding that roughly thirty percent of homicides are solved in Honduras, compared with forty-five percent in United States and arguing that improving criminal investigation techniques remains challenging in many countries).}

The Honduran police agencies, including the DGIC, have been critiqued by the Honduran public as generally ineffective.\footnote{See Overseas Security Advisory Council, Honduras: 2005 Crime and Safety Report (Apr. 6, 2005), available at http://www.ds-osac.org/Reports/report.cfm?contentID=26859 (last visited May 9, 2006) (explaining that despite training efforts on behalf of other States, including United States, DGIC still remains unable to effectively prevent crime); see also Leticia Salomón, U.N. Dev. Program [UNDP], EL DESEMPEÑO POLICIAL Y LA SATISFACCIÓN DE LA CIUDADANÍA 8, Feb. 2004 (stating that Honduran citizens tend to believe that police do not effectively combat delinquency and that police system is in need of modernization, particularly with respect to criminal investigation).} Surveys of Honduran citizens indicate a general lack of faith in the police, with concerns about corruption, filing of cases, logistical support, and police training.\footnote{See Salomón, supra note 50, at 27 (observing that, in response to question "Are the Investigative Police Efficient?", forty-four percent of respondents considered investigative police to be effective, compared with forty-five percent of respondents who answered, "at times," and sixteen percent of respondents who answered "no"; stating that respondents were concerned about corruption, logistical support, filing cases, and police training); see also Munoz Testimony, supra note 8 (providing testimony of eighth-
DGIC has been criticized internationally for its limited capabilities with respect to the investigation and prosecution of crimes and its limited presence throughout the country. Although there have been improvements with respect to the quality of criminal investigations, some citizens still attribute the high rate of crime in Honduras to the complacency of law enforcement authorities.

The Honduran DGIC also suffers from a severe lack of logistical resources; it is widely recognized as poorly trained, underfunded, and understaffed. Inadequate budgetary resources directly affect the quality and efficacy of the criminal justice system, and the DGIC has halted investigations due to fiscal crises on more than one occasion in recent years. Moreover, inequitable budgetary allocation leaves a disproportionately low percentage of DGIC funds devoted to substantive investigation: ninety percent of the DGIC budget pays officers’ wages and nine percent supports investigative operations. Massive budgetary

52. See State Department Issues Consular Information Sheet on Honduras, US Fed News, Nov. 21, 2005 (mentioning Honduran law enforcement authorities’ limited ability to prevent and investigate crimes); see also Harvey, supra note 16, at 10 (discussing limited DGIC presence in Honduras).

53. See State Department Report, supra note 24 (concluding that although criminal investigations improved in 2004, general public still believed that corrupt security agents were complicit in crimes involving murders of children and minors); see also Reconocen Que Policía Esta Infiltrada Por Delincuentes [Police Infiltrated by Delinquents], EFE News Servs., June 21, 2002 [hereinafter Delinquents] (stating that DGIC is infiltrated with criminals; noting that head of DGIC indicated that presence of delinquents within DGIC has been confirmed).

54. See State Department Report, supra note 24 (noting that Honduran police, including DGIC, were underfunded, undertrained, and understaffed, with corruption still remaining serious problem); see also Harvey, supra note 16, at 19 (mentioning insufficient funding of DGIC); 'Paralizada' DGIC Por Falta de Presupuesto [DGIC Paralyzed Due to Lack of Budget], La Tribuna (Los Angeles), Nov. 24, 2005 [hereinafter Lack of Budget], available at http://www.latribuna.hn/2054.0.html (reporting that DGIC investigations were nearly paralyzed in one area of Honduras, after budget expired); Wendy Carolina Funes, Paralizada la DGIC Por Falta de Gasolina [DGIC Paralyzed Due to Gasoline Shortage], El Heraldo (Hond.), June 21, 2004 [hereinafter Funes, Gasoline Shortage] (discussing paralyzing impact of gasoline shortage on DGIC).

55. See Lack of Budget, supra note 54 (stating that Hondurans had donated supplies without which investigations would have been nearly halted); see also Funes, supra note 54 (reporting police investigations were halted when DGIC experienced financial crisis of nine million Honduran lempiras); Funes, Gasoline Shortage, supra note 54 (discussing negative consequences of gasoline shortage on DGIC).

56. See Funes, supra note 16 (estimating that roughly ninety percent of DGIC budget is used for payment of salaries while roughly nine percent is used for investiga-
problems have a direct effect on impunity, creating discord between detectives and the Office of the Public Prosecutor. Yet, despite the low turnover in successful case resolution, DGIC investigations remain absolutely critical to the criminal justice system.

Apart from budgetary problems, bias often taints DGIC investigations. Members of the DGIC and Honduran police officers have been generally criticized for their involvement in corrupt practices. Certain DGIC agents, moreover, have been suspended for more serious offenses, including abuse of power, attempted homicide, collaboration with organized crime, and destructive operations); see also Beyer, supra note 41, at 321 (stating that Honduran police officers receive average income of roughly $1000 per year).

57. See Funes, supra note 16 (observing that sixty percent of investigations were paralyzed due to financial crisis in 2004; noting that this caused serious degree of impunity; stating difficulties coordinating with Office of Public Prosecutor; noting that courts cannot act without complete investigations); see also Douglass Cassel, Lessons From the Americas: Guidelines for International Response To Amnesties for Atrocities, 59 LAW & CONTEMP. PROBS. 197, 199 (1996) (explaining de facto and de jure blanket of impunity that exists throughout Latin America in context of undertraining and underfunding of police, prosecutors, and judges, as well as extremely inadequate budgets, antiquated and ineffective criminal procedures, pervasive corruption, and politicized leadership).

58. See Funes, supra note 16 (reporting that, were DGIC to collapse, there would be serious repercussions because Office of Public Prosecutor would be unable to try criminals; stating that, of total pending denunciations, twenty percent are being diligently investigated; noting that situation is not new); see also Harvey, supra note 16, at 19 (referring to 2003 Prosecutor’s Office report which identified two major problems facing criminal justice system as poor quality of investigations and DGIC inefficiency); Extrajudicial Executions, supra note 10, at 16 (stating that shortcomings in DGIC’s investigative functions prevent Office of Public Prosecutor from fully prosecuting and punishing criminals).

59. See State Department Report, supra note 24 (noting that despite improvements in criminal investigations during 2004, public at large continued to harbor belief that security personnel were partly to blame for high crime rate; underscoring particular problem of murders of children and minors); see also Delinquents, supra note 53 (stating that head of DGIC admitted that DGIC is infiltrated with criminals); Extrajudicial Executions, supra note 10, at 15 (noting that investigative functions may have lost impartiality, influenced by corruption and partisan political considerations).

60. See State Department Report, supra note 24 (estimating that, during period from 2000 through August 2004, 186 police were prosecuted and 1344 were fired for either incompetence or corruption); see also Wendy Carolina Funes, Con Baja Deshonrosa 56 Agentes de la DGIC [With Dishonorable Discharge of Fifty-Six DGIC Agents], El HERALDO (Hond.), July 6, 2005 [hereinafter Dishonorable Discharge] (stating that, from 2002 to 2005, fifty-six agents were removed and thirteen were, at time of publication, currently suspended with criminal charges pending). But see id. (reporting that, in 2003, twenty-nine agents resigned, compared with twenty in 2004 and only seven as of mid-2005).
damages to third parties.\(^{61}\)

Moreover, the DGIC often fails to adequately investigate cases of extrajudicial executions.\(^{62}\) In such cases, the DGIC often only files a *por cuanto*—a basic document establishing that a violent death has occurred and that an investigative file should be opened.\(^{63}\) In response to many instances of extrajudicial executions, the DGIC does not file a *por cuanto* and, instead, devotes minimal effort to investigating the case.\(^{64}\) Commentators suggest that the DGIC has also been involved in certain instances of extrajudicial executions.\(^{65}\)

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61. See Dishonorable Discharge, supra note 60 (reporting thirteen suspended agents and detectives face criminal proceedings because of abuse of office, attempted homicide, collaboration with organized crime, or injuries and damages to third parties); see also Policías de Día, Ladrones de Noche [Police Officers By Day, Theives By Night], El Heraldo (Hond.), Mar. 3, 2005 (mentioning that two DGIC officials were cited for their alleged involvement with dangerous criminal organization that intercepts and assaults van drivers).

62. See Extrajudicial Executions, supra note 10, at 15-16 (noting instances in which DGIC inadequately investigates instances of extrajudicial executions); see also Mark Ungar, La Mano Dura: Current Dilemmas in Latin American Police Reform 6 (2004), http://www.newschool.edu/gf/centers/janey/conf04_Mark-Ungar.pdf (last visited May 12, 2006) (discussing poor overall quality of DGIC investigations and stating that unless criminals are literally caught in act, there is little chance that crimes will be resolved).

63. See Extrajudicial Executions, supra note 10, at 15-16 (explaining that, with respect to DGIC, in most cases of extrajudicial executions, *por cuanto* document is only filed to indicate that violent death has taken place, which should lead to opening of file but rarely does); see also Centro de Prevención Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares [CPTRT], Estudio de Casos de Policías Denunciados por Homicidio en Juzgado de Tegucigalpa y Comayagüela, at 24 [hereinafter CPTRT Report], available at http://www.cptrt.org/pdf/Estudio%20de%20Casos%20Policias%20Denunciados%20por%20Homicidio.pdf (last visited Mar. 11, 2006) (reporting that, in case of Rony Ricardo Padilla Sierra, allegedly murdered by DGIC agent Mario Mendoza, only evidence documenting death is *por cuanto* document).

64. See, e.g., Extrajudicial Executions, supra note 10, at 16 (stating that in many cases, *por cuanto* document is not even filed; stating that in other cases, investigation is altogether inadequate, with low levels of prosecution and sentencing); Bermúdez, supra note 13 (discussing one lawyer's comment that, since 1998, Casa Alianza has been investigating series of murders of minors under age twenty-three; stating that as of roughly July 2005, 2778 deaths had been counted, most of which were gang-related; noting lack of investigation and lack of interest of authorities have created impunity; stating, however, that no evidence exists showing direct State participation in these murders); Jahangir Report, supra note 5, ¶¶ 56-62 (concluding that there have been insufficient investigations in cases of extrajudicial executions of children).

65. See CPTRT Report, supra note 63, at 3 (describing cases in which violent deaths were attributed to police); see also Implican a Policias en 22 Por Ciento de Muertes Jovenes y Ninos [Police Implicated in Twenty-Two Percent of Deaths of Children and Youths], EFE News Servs., Mar. 29, 2004 (providing Honduran NGO CPTRT's conclusions that Honduran police have been complicit in many murders of children); McGirk, supra
Another Honduran institution that focuses on investigating the deaths of children is the Unidad Especial de Tratamiento de Muerte de Menores, or Special Unit to Examine Children’s Deaths (“Special Unit”).\textsuperscript{66} The Special Unit was established by former President Ricardo Maduro\textsuperscript{67} in September 2002 and is comprised of five DGIC agents, initially committed to investigating and resolving, within a ninety-day period, cases involving the arbitrary murder of children.\textsuperscript{68} The Special Unit investigates cases primarily involving children or youths found with bullet wounds to the head, with mutilated bodies, or outside urban areas.\textsuperscript{69}

\footnotesize
\textsuperscript{66} See Harvey, supra note 16, at 70-71 (reporting that Unidad Especial de Tratamiento de Muerte de Menores (“Special Unit”) was created to investigate violent deaths of children which occurred from 1998 to present); see also Extrajudicial Executions, supra note 10, at 20 (noting that Honduran Government created Special Unit to specifically investigate extrajudicial executions of street children).

\textsuperscript{67} See Harvey, supra note 16, at 70-71 (stating that Special Unit was created in response to urging of Special Rapporteur on Extrajudicial Executions); see also Extrajudicial Executions, supra note 10, at 20 (remarking that Ricardo Maduro’s urging caused Ministry of Security to create Special Unit).

\textsuperscript{68} See Extrajudicial Executions, supra note 10, at 20 (stating that Special Unit was established under administration of President Ricardo Maduro; stating that Special Unit was initially committed to investigating and resolving, within ninety-day period, fifteen cases of murdered children and youth, documented by Casa Alianza); see also Police Unit Set Up to Probe Youth Murders, World Mkt. Analysis, Sept. 11, 2002 (explaining that, responding to international pressure, government of Ricardo Maduro set up Special Unit to combat high level of murdered children and youth in Honduras; noting that DGIC detectives would comprise Special Unit).

\textsuperscript{69} See Harvey, supra note 16, at 71 (stating that Special Unit is authorized to investigate cases in which children or youths are found with bullet wounds to head, with mutilated bodies, or outside urban areas); see also Extrajudicial Executions, supra note 10, at 20 (noting that Special Unit is responsible for investigating deaths of extrajudicial executions of children and minors, as well as for determining causes of deaths and establishing identities of those responsible).
Since the establishment of the Special Unit, the prosecution rate of children and youth murders has risen.\textsuperscript{70} However, the Special Unit has only been able to address a fraction of the cases that it has received.\textsuperscript{71} Extrajudicial executions of children and minors continually occur, with a number of cases reported in the last two years.\textsuperscript{72} For this reason, international human rights organizations still urge additional efforts on the part of the Honduran State to bring those responsible to justice.\textsuperscript{73}

\textsuperscript{70.} See Harvey, \textit{supra} note 16, at 72 (discussing that rate of prosecution has risen and that, among 384 cases during period of July 2003 to May 2004, Special Unit has sent seventy-five cases (involving 116 victims) to Office of Public Prosecutor); see also Bermúdez, \textit{supra} note 13 (noting that law enforcement authorities have been implicated in extrajudicial executions of youth; noting that charges have been brought against 285 people).

\textsuperscript{71.} See News Release, Amnesty Int'l (UK), \textit{Honduras: Killing of Children Continues with Impunity} (Sept. 6, 2004) (reporting that Special Unit has only been able to examine 400 of over 2500 cases of extrajudicial executions of children and youths, from January 1998 to September 2004, with eighty-eight cases submitted to Attorney General's Office, and three resulting in convictions; noting that although Honduran State has admitted degree of police involvement, only two officers have been convicted); see also Peter Beaumont & Sandra Jordan, \textit{Marked for Death, The Tattoo Gang Kids: Rebel Youths Pay a Terrible Price Under Zero Tolerance, Honduras-Style}, \textit{Observer} (U.K.), Sept. 5, 2004, at 23 (stating that Special Unit has only looked at 400 of over 2500 killings of children during period of January 1998 to September 2004; reporting that only eighty-eight cases were forwarded to Attorney General's Office).

\textsuperscript{72.} Although exact statistics are not available, many authoritative sources have noted that extrajudicial executions of street children continue. See, e.g., 41% of Deaths, \textit{supra} note 11 (discussing Casa Alianza estimates that, during first three quarters of 2005, 124 children and 204 youths between ages of eighteen and twenty-three were found); Harvey, \textit{supra} note 16, at 73 (explaining that, from February 2003 to September 2004, nearly 700 additional children were murdered in Honduras); \textit{Violence and its Impact}, \textit{supra} note 11, at 2 (reporting that during period of 1998 to 2004, Casa Alianza registered 2520 violent deaths of minors under age of twenty-three in Honduras); Dalton, \textit{supra} note 11 (referring to Casa Alianza statistics as providing that during period of January 1998 to roughly December 2003, Casa Alianza documented 2089 murders of children and young people under age twenty-three); \textit{End to Murders, supra} note 11 (referring to Casa Alianza statistics, which state that, between 1998 and 2003, roughly 2089 minors were assassinated in Honduras); \textit{Murders and Torture, supra} note 11 (citing Casa Alianza statistics which state that fifteen street children were assassinated in Honduras during approximate period from 1996 to 1998, with another sixty victimized by violence and torture).

\textsuperscript{73.} See Ndiaye Report, \textit{supra} note 40, ¶ 199-200 (documenting recent cases of forced disappearances in Honduras); see also \textit{Violence and its Impact}, \textit{supra} note 11, at 2 (arguing that Honduran State must sanction perpetrators of extrajudicial executions and international community must focus attention on impunity and continued executions).

The Commission, established by the U.N. Economic and Social Council ("ECOSOC"), is responsible for monitoring and responding to diverse human rights violations.\(^74\) In particular, the Commission addresses the issues of forced disappearances and summary executions.\(^75\) The Commission, composed of fifty-three Member States including Honduras, meets annually during a six-week session in Geneva, Switzerland to examine human rights violations on a global scale.\(^76\)

The Commission has the authority to examine, monitor, and publicly report on human rights violations through either country-specific or issue-specific mandates.\(^77\) In 1982, the Commission appointed the first Special Rapporteur on Extrajudicial


\(^77\) See A.M. Weisburd, Implications of International Relations Theory for the International Law of Human Rights, 38 Colum. J. Transnat'L L. 45, 50-51 (1999) (noting that Commission may investigate human rights in particular State or situation of particular theme or issue in many countries and noting there is reason to doubt effectiveness of Commission procedures, such as those of Working Group on Enforced Disappearances); see also Basic Facts on Human Rights Comm'n, supra note 75 (explaining that Commission may address human rights situations on country-specific or issue-specific basis).
Executions to address the issue of arbitrary, extrajudicial, and summary executions. The Special Rapporteur's mandate is to examine situations of arbitrary, extrajudicial, and summary executions, respond effectively to imminent threats of executions, with special attention to executions of women and children, and submit findings to the Commission on an annual basis. The Special Rapporteur must also transmit urgent appeals in cases of imminent executions, submit annual reports on his or her mandate, and undertake fact-finding visits to investigate extrajudicial executions.

Motivated by the international community's general sense

78. See U.N. High Comm'r for Human Rights, Special Rapporteur of the Comm'n on Human Rights on Extrajudicial, Summary, or Arbitrary Executions, Introduction (hereinafter Basic Facts on Special Rapporteur), http://www.unhchr.ch/executions/ (last visited Dec. 28, 2005) (stating that Commission passed Resolution recommending that ECOSOC create position of Special Rapporteur on Extrajudicial Executions in March 1982 in order to investigate summary and arbitrary executions, along with recommendations); see also Weissbrodt, supra note 75, at 687 (mentioning that Commission initiated creation of position of Special Rapporteur on Extrajudicial Executions in March 1982).

79. See Weissbrodt, supra note 75, at 688-89 (discussing progressive grant of authority to Special Rapporteur); see also Peter G. Danchin, U.S. Unilateralism and the International Protection of Religious Freedom: The Multilateral Alternative, 41 COLUM. J. TRANSNAT'L L. 33, 89 (2002) (noting that thematic procedures of Special Rapporteur run risk of inconsistency because no fact-finding guidelines exist; stating that Special Rapporteurs have not always been provided with unlimited access to regions or human rights situation and that ability of Special Rapporteurs to ensure effective measures has been limited); William G. O'Neill, Human Rights Monitoring vs. Political Expediency: The Experience of the OAS / U.N. Mission in Haiti, 8 HARV. HUM. RTS. J. 101, 127 (1995) (arguing that Commission should coordinate and collaborate with other institutions addressing extrajudicial executions, including Special Rapporteur, U.N. Human Rights Centre in Geneva, Crime Prevention and Criminal Justice Branch in Vienna and Inter-American Commission on Human Rights); HRW, Algeria; HRW Calls on U.N. to Investigate Atrocities in Algeria, AFRICA NEWS, Mar. 23, 1998 (quoting HRW as urging Commission to strengthen roles of Special Rapporteurs and Working Groups); Basic Facts on Special Rapporteur, supra note 78 (noting that Commission requested that Special Rapporteur continue to examine executions worldwide; submit findings thereon; respond effectively to potential executions; enhance dialog with governments; follow up on country visits; pay special attention to executions of children, women and human rights defenders; monitor worldwide standards on capital punishment; and apply gendered perspective to this work).

80. See Alston Report, supra note 17, ¶ 11 (discussing Special Rapporteur’s principal methods of work as transmitting urgent appeals; responding to individual complaints; issuing press statements; undertaking country visits; and undertaking promotional activities to advance objectives of Commission and General Assembly); see also Basic Facts on Special Rapporteur, supra note 78 (stating that Special Rapporteur’s mandate includes transmitting urgent appeals, undertaking fact-finding country visits, and submitting annual reports on activities).
of alarm at the high rate of impunity in cases of forced disappearances and arbitrary executions, ECOSOC adopted the non-binding U.N. Principles in 1989.\footnote{See U.N. Principles, supra note 14, \S\S 9-17 (providing detailed guidance on investigating extrajudicial executions); see also Nathanael Heasley et al., Impunity in Guatemala: The State's Failure to Provide Justice in the Massacre Cases, 16 AM. U. INT’L L. REV. 1115, 1128 (2001) [hereinafter Impunity in Guatemala] (explaining that although U.N. Principles are not binding, they provide persuasive authority, which guides States); Irwin, supra note 30, at 1839 (describing international alarm at violations of right to life as motivation for creating Special Rapporteur on Extrajudicial Executions).} The U.N. Principles set forth comprehensive means for the prompt, serious, and thorough investigation of all suspected cases of arbitrary, extra-legal, and summary executions.\footnote{See U.N. Principles, supra note 14, ¶ 9 (stating that there should be impartial, thorough, and prompt investigation of all suspected cases of extrajudicial executions, and noting States’ duties to provide investigative offices and resources to conduct autopsy); see also Irwin, supra note 30, at 1840 (noting U.N. Principles’ emphasis on thorough and impartial investigations of violation of right to life).} Moreover, the U.N. Principles urge Member States to allocate the necessary authority, budgetary, and technical resources to those authorized to investigate.\footnote{See U.N. Principles, supra note 14, ¶ 10 (providing that investigative personnel must be granted requisite authority and resources to obtain information relevant to inquiry, including compelling witnesses to share information); see also U.N. Office at Vienna Ctr. for Social Dev. and Humanitarian Affairs, UNITED NATIONS MANUAL ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS, U.N. Doc. ST/CSDHA/12, U.N. Sales No. 91.IV.1 (1991) [hereinafter U.N. MANUAL], available at http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html#II (last visited Mar. 11, 2006) (urging States to devote full resources and power to criminal investigators).} With specific reference to the treatment of victims, the U.N. Principles recommend adequate autopsies conducted by impartial experts in forensic pathology in order to establish the identity of victims, as well as the cause, manner, place, and time of their deaths.\footnote{See U.N. Principles, supra note 14, ¶¶ 12-13 (providing that, where possible, autopsy shall be conducted by expert in forensic pathology; stating that purpose of autopsy shall be to determine identity of victim as well as cause, manner, time, and place of death); see also U.N. MANUAL, supra note 83, §§ III.C, III.D (creating extremely detailed guidelines on forensic process including scene investigation and autopsy); Watkin, supra note 15, at 19 (noting that U.N. Principles provide for conducting adequate autopsy).}

Most importantly, the U.N. Principles urge States to bring perpetrators to justice or extradite them to the jurisdictions in which they would more effectively stand trial.\footnote{See U.N. Principles, supra note 14, ¶ 18 (stating that, through investigation, governments shall ensure that individuals that participated in extrajudicial executions are brought to justice, regardless of citizenship of perpetrators or place in which of-
U.N. Principles provide that investigators, victims’ families, and witnesses shall be protected from violence, as well as provided with relevant information regarding the investigation and prosecution. In terms of damages and redress, the U.N. Principles provide that families and dependants of victims shall be entitled to compensation within a reasonable amount of time.

The U.N. Principles reflect the rationale of the Velasquez-Rodriguez decision, which identified a State duty to investigate and prosecute human rights violations. Although not enforceable as binding international law, the U.N. Principles represent persuasive authority on which Member States rely in conducting investigations of extrajudicial executions. Moreover, the Spe-
cial Rapporteur on Extrajudicial Executions relies on the legal framework set forth in the U.N. Principles in realizing the mandate.\(^\text{90}\) As such, the recommendations of the Special Rapporteur on Extrajudicial Executions are included in the body of customary international law that guides States worldwide.\(^\text{91}\)

In 2002, former Special Rapporteur on Extrajudicial Executions Asma Jahangir authored a report detailing the severity and urgency of extrajudicial executions of children after a fact-finding mission to Honduras.\(^\text{92}\) Finding it overwhelmingly clear that security forces have extrajudicially executed children in Honduras, Jahangir remarked that in most cases, the victims were unarmed, and that little investigation had been conducted in order to identify the perpetrators.\(^\text{93}\) Special Rapporteur Jahangir further noted that the Honduran State is obligated to investigate these deaths, suggesting that it establish an independent commission to investigate such cases.\(^\text{94}\) The report provides the Commission with meaningful and clear policy recommenda-

\(^90\) See Alston Report, supra note 17, \(\text{¶} 10\) (mentioning that legal framework of Special Rapporteur’s work includes U.N. Principles); see also Basic Facts on Special Rapporteur, supra note 78 (providing that Special Rapporteur on Extrajudicial Executions is requested to investigate violations of right to life as defined in Universal Declaration of Human Rights and ICCPR and noting that Special Rapporteur’s legal work is complemented by U.N. Principles).

\(^91\) Accord Diane F. Orentlicher, Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime, 100 YALE L.J. 2537, 2585 (1991) (arguing that duty to punish human rights violations is emerging as norm in international law). See generally Impunity in Guatemala, supra note 81, at 1129 (explaining that findings of Special Rapporteur on Extrajudicial Executions represent customary international law).

\(^92\) See generally Jahangir Report, supra note 5, \(\text{¶} 10-40, 73-88\) (describing situation of extrajudicial executions of children in Honduras and making recommendations on how to improve situation). Accord T. Christian Miller, Dying Young in Honduras, L.A. TIMES, Nov. 25, 2002, at 1 (reporting on former Special Rapporteur Asma Jahangir’s visit to Honduras and mentioning findings of report which noted instances of children being murdered by law enforcement authorities).

\(^93\) See Jahangir Report, supra note 5, \(\text{¶} 73-74\) (noting that murdered children were usually unarmed and did not provoke police; stating that little investigation has been conducted to determine perpetrators); see also Miller, supra note 92, at 1 (mentioning Jahangir’s visit to Honduras and report which concluded that, in many instances, children had been murdered by police or other groups).

\(^94\) See Jahangir Report, supra note 5, \(\text{¶} 79\) (urging Honduran State to thoroughly investigate all murders of children; suggesting that Honduran State institute commission to study situation with goal of forming policy recommendations to eradicate murders); see also In re Velasquez-Rodriguez, [1988] Inter-Am. Ct. H.R. (ser. C) No. 4, \(\text{¶} 176\) (finding that Honduras has duty to investigate every situation involving violation of rights protected by American Convention and that Honduras fails to fulfill this duty if violation goes unpunished).
tions, in addition to the U.N. Principles, which outline an effective means of investigation. The Commission, however, has been unable to ensure that the Honduran State effectively implements these recommendations, rendering them theoretically ideal, yet realistically unworkable.

As such, the Commission and its subsidiary bodies have received an overwhelming amount of criticism based on their perceived inability to adequately resolve urgent human rights situations, as well as their practice of allowing notorious human rights violators to take active roles in monitoring rights worldwide. Critics have argued that States such as China, Congo, Cuba, Guatemala, Nepal, Saudi Arabia, and Sudan join the Commission in order to thwart condemnation of their own human rights policies or to criticize other States' policies. As a result

95. See Jahangir Report, supra note 5, ¶ 73-88 (providing clear policy recommendations for Honduran State to implement in its approach to extrajudicial executions of children); see also U.N. Principles, supra note 14, ¶ 9, 12-15 (providing for thorough, prompt, and impartial investigations of all extrajudicial executions, through physical collection of evidence and autopsy, to ascertain time of death and perpetrator)

96. See, e.g., Violence and its Impact, supra note 11, at 4-5 (advocating that Commission and international community should fully implement recommendations of former Special Rapporteur Jahangir and continually monitor effective application of justice in Honduras, particularly in cases of extrajudicial executions of children and minors); see also O'Neill, supra note 79, at 127 (arguing that Commission should coordinate and collaborate with other institutions addressing extrajudicial executions, including IACHR, Special Rapporteur, and U.N. Human Rights Centre in Geneva, Crime Prevention and Criminal Justice Branch in Vienna).

97. See Editorial, Thugocracies and the U.N., Chi. Trib., Jan. 31, 2006, at 12 [hereinafter Thugocracies] (noting that Commission, which includes Members such as Libya and Cuba, has come to be known as ineffectively, unwilling to condemn Mugabe regime in Zimbabwe, and merely expressing concern as thousands of civilians were killed in Darfur); see also Warren Hoge, U.N. Chief Bemoans 'Really Difficult' Year and Looks Toward '06, N.Y. Times, Dec. 22, 2005, at 13 [hereinafter U.N. Chief Bemoans] (stating that Commission has been discredited due to poor rights records of Members); Stevenson Swanson, Bolton Throws a Wrench; Envoy's 750 Proposals to Reshape Reforms May Thwart UN Plans, Chi. Trib., Sept. 14, 2005, at 3 [hereinafter Bolton Throws a Wrench] (referring to Commission as discredited for including States such as Libya and Cuba); Editorial, Cuba Joins in UN Mockery, Chi. Sun-Times, Apr. 29, 2005, at 25 (explaining hypocrisy in Commission's inclusion of Libya and failure to censure Russia on its actions in Chechnya while strongly condemning Israel for its policies towards Palestine).

98. See Editorial, Human Rights and the U.N., N.Y. Times, May 3, 2005, at 24 [hereinafter Human Rights and the U.N.] (concluding that States such as China, Cuba, and Sudan seek membership to stymie criticism of their own practices); see also Howard LaFranchi, How the US Wants the United Nations to Reform, Christian Sci. Monitor, Sept. 13, 2005, at 2 (quoting spokesman for Ambassador Bolton as saying that Commission is completely broken; quoting Secretary-General Annan as saying that States seek membership to protect themselves and criticize others); Editorial, Diplomatic Abuse, Chi.
of this widespread criticism, human rights activists, newspapers, rights organizations, and U.N. leaders have advocated reforming or replacing the Commission.

II. COMPETING PROPOSALS ON COMMISSION REFORM

In light of international critique of the Commission, competing proposals have outlined possible Commission reforms. Two proposals originate from within the U.N. itself—one promulgated by the High Level Panel, and one advocated by Secretary-General Annan. In addition, the human rights organization HRW, along with representatives from numerous international NGOs, put forward its own recommendations on Commission reform. The following Sections will discuss these

99. See Newt Gingrich & George Mitchell, Report card from America; UN reform, INT’L HERALD TRIB., Nov. 26, 2005, at 4 (claiming that international community must take prompt action to abolish and replace discredited Commission with Council); see also Editorial, Human Rights and the U.N., supra note 98 (positing that States should vote to abandon existing Commission during 2005 World Summit).


101. See High Level Panel Report, supra note 100, ¶¶ 282-91 (providing High Level Panel’s recommendations on improving Commission); see also Report of Secretary-General, supra note 100, ¶¶ 181-83 (detailing Secretary-General Annan’s recommendation that Commission be abolished in favor of Council).

102. See HRW Proposal, supra note 100 (explaining HRW and NGO community’s vision of Commission reform); see also Second HRW Proposal, supra note 100 (following
competing proposals for Commission reform, as well as the U.N. Draft Text on the creation of a Human Rights Council.

A. Proposal by the High Level Panel on Threats, Challenges and Change ("High Level Panel")

The first proposal regarding the reform of the Commission was put forth by the High Level Panel, a group of experts called together by Secretary-General Kofi Annan in September 2003 in order to better understand threats to international peace and make recommendations addressing the security needs of the international community.103 Framed within the context of international security, the High Level Panel made specific recommendations for reforming the Commission.104 In making its recommendations, the High Level Panel recognized that wavering credibility and professionalism, as well as Member States’ joining the Commission to avoid criticism of their own human rights policies, have undermined the Commission’s capacity in recent years.105 The High Level Panel argued that reforming the Commission represents the best means through which the U.N. human rights system can achieve a more efficient operation and more aptly fulfill its mandate.106

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103. See High Level Panel Report, Note by the Secretary-General, supra note 100, ¶¶ 2-3 (stating Secretary-General Annan’s request to Members of High Level Panel); see also Binding the Colossus—America and the World, ECONOMIST, Nov. 22, 2003 (noting creation of High Level Panel in order to address current dangers and coordinate U.N.’s response).

104. See High Level Panel Report, supra note 100, ¶¶ 2-3 (mentioning Secretary-General Annan’s request for Members of High Level Panel to investigate international security); see also Can Its Credibility Be Repaired?—The United Nations, ECONOMIST, Sept. 10, 2005 (explaining High Level Panel’s conclusions that radical reform is needed at U.N.).

105. See High Level Panel Report, supra note 100, ¶ 283 (concluding that Commission’s ability to perform activities has been eroded by lagging credibility and standards in professionalism; expressing concern over States’ seeking Commission membership to protect themselves against criticism or criticize other States; noting that Commission cannot be credible if it maintains double standards); see also Frances Williams, UN Rights Official Backs Call By Annan for Reform, FIN. TIMES (London), Apr. 22, 2005, at 8 (remarking that High Commissioner Louise Arbour agreed that High Level Panel’s conclusions on lagging legitimacy of Commission were entirely justified).

106. See High Level Panel Report, supra note 100, ¶ 284 (arguing that Commission reform is necessary to make U.N. human rights system perform efficiently and better realize its mandate); see also Report of Secretary-General, supra note 100, ¶ 182 (contending that current U.N. human rights framework is currently under considerable strain, with change essential to meaningful progress in human rights).
Noting that the Commission was initially comprised of delegation members with professional qualifications and experience in human rights work, the High Level Panel advocated that Commission Member States restore this practice by nominating prominent human rights figures as the heads of their delegations.107 Most notably, the High Level Panel proposed that membership of the Commission should be made universal—available to all U.N. Member States—arguing that Commission membership remains a difficult and sensitive subject that provokes international tension and encourages the politicization of human rights.108 Also, the High Level Panel recommended the creation of an advisory council or panel, composed of fifteen experts to advise on country-specific issues and thematic mandates.109

The High Level Panel also recommended that the High Commissioner for Human Rights (“High Commissioner”) be required to prepare an annual report on the global situation of human rights, which would serve as a framework for discussion with the Commission.110 Additionally, the High Level Panel proposed that the Security Council request that the High Commis-

107. See High Level Panel Report, supra note 100, ¶ 286 (stating that, although Commission was initially composed of delegations which evinced high professional qualifications and experience in human rights, this is no longer practiced; arguing that high standards should be restored, with nomination of Commission delegation Members with exceptional human rights qualifications); see also Global Pol’y Forum, Reform of the Human Rights Commission, [hereinafter Global Pol’y Forum], http://www.globalpolicy.org/reform/topics/hrcindex.htm (last visited Jan. 31, 2006) (noting High Level Panel’s proposal that Member States appoint prominent, experienced human rights experts).

108. See generally High Level Panel Report, supra note 100, ¶ 285 (finding that Commission membership should be made universal in order to defuse tension between Members seeking seats; to depoliticize Commission membership; and to refocus Commission on human rights, not politics). But see Vance Serchuk, The Good Fight, N.Y. Times, Sept. 13, 2005, at 31 (arguing that bigger Commission membership would render deliberations more difficult).

109. See High Level Panel Report, supra note 100, ¶ 287 (positing that Council should be supported by advisory council consisting of roughly fifteen independent experts, representing world’s regions); see also Global Pol’y Forum, supra note 107 (referring to High Level Panel’s proposal to establish advisory council).

110. See High Level Panel Report, supra note 100, ¶ 288 (recommending that High Commissioner for Human Rights (“High Commissioner”) prepare annual report on state of human rights worldwide); see also Report of Secretary-General, supra note 100 (contending that Security Council’s increasing requests for briefings by High Commissioner emphasizes need for Security Council Resolutions to include human rights considerations).
sioner make regular reports on the implementation of human rights-related Security Council Resolutions.\textsuperscript{111} Lastly, the High Level Panel concluded that, at some point, the Commission should become a Human Rights Council that does not report to ECOSOC but, rather, stands alone as a charter-based body akin to the Security Council.\textsuperscript{112}

B. Proposal by Secretary General Kofi Annan ("Report of Secretary-General")

In response to the High Level Panel’s recommendations, and in preparation for the 2005 U.N. World Summit, Secretary-General Kofi Annan released a report in March 2005 and an addendum amplifying the recommendations in that report in April 2005, advocating the replacement of the Commission with a new Human Rights Council.\textsuperscript{113} Underscoring the critical nature of human rights in an age of terrorism,\textsuperscript{114} Secretary-General Annan

\begin{itemize}
\item[\textsuperscript{111}] See High Level Panel Report, \textit{supra} note 100, \textsuperscript{2} 289 (proposing that Security Council and Peacebuilding Commission should arrange for regular briefings on human rights issues by High Commissioner on implementation of human rights issues in Security Council resolutions); \textit{see also} Report of Secretary-General, \textit{supra} note 100, \textsuperscript{2} 144 (explaining that Security Council’s frequent requests for briefing by High Commissioner illustrate need for human rights input resolutions on peace and security); Warren Hoge, \textit{Human Rights Commissioner Urges U.N. to Act Quickly on Darfur}, N.Y. Times, Feb. 17, 2005, at 9 (discussing High Commissioner Louise Arbour’s briefing Security Council on human rights violations in Sudan and her urging Security Council to refer case to International Criminal Court).
\item[\textsuperscript{112}] See High Level Panel Report, \textit{supra} note 100, \textsuperscript{2} 291 (proposing that, in terms of long term Commission reform, Member States should consider elevating Commission to Human Rights Council ("Council"), no longer subsidiary to ECOSOC, but equal to Charter-based bodies such as Security Council); \textit{see also} HRW Proposal, \textit{supra} note 100 (arguing that Council should be elevated to organ status within five years and, in meantime, should act as subsidiary of General Assembly); U.N. Comm’n on Human Rights, 61st Session, Informal Consultations on the Establishment of Human Rights Council and the Transitional Arrangement, Civil Society Proposal for the Human Rights Council (2005) [hereinafter Informal Consultations], http://www.unwatch.org/site/apps/nl/content2.asp?c=BdKKISNqEmG&b=1313923&ct=1747953 (last visited Mar. 11, 2006) (recommending, on behalf of NGO community, that Council be elevated to principal organ status within five years and, transitionally, should serve as subsidiary body of General Assembly).
\item[\textsuperscript{113}] See \textit{generally} Report of Secretary-General, \textit{supra} note 100 (contending that Commission should be replaced by stronger Council); Colum Lynch, \textit{U.N. Leader’s Plan Draws Objections; U.S. Dissents on Rules for Use of Force}, WASH. POST, Mar. 22, 2005, at A13 (describing Secretary-General Annan’s proposal as his most ambitious effort to close gap between wealthy and developing Nations).
\item[\textsuperscript{114}] See Report of Secretary-General, \textit{supra} note 100, \textsuperscript{2} 140 (arguing that we weaken efforts to fight terrorism when we infringe on human rights); \textit{see also} Louis Henkin, \textit{The First Ten Years of the Office, and the Next}, 35 \textit{COLUM. HUMAN RIGHTS L. REV.}
argued that the current U.N. system falls short of achieving its long-term, high-level commitment to human rights protection. Secretary-General Annan emphasized the serious need for further resources and personnel to train "country teams" in order to increase the effectiveness of Commission programs, as well as the need for the Commission to play a greater role in monitoring the implementation of Security Council Resolutions. Secretary-General Annan further argued that the Commission remains markedly ill-equipped to effectively respond to human rights challenges facing the international community.

Recommending harmonized guidelines to replace the disjointedness of the current system, Secretary-General Annan argued that the duplication of reporting requirements across various bodies, combined with poor implementation of human rights recommendations, creates a confusing situation. Refer-


115. See Report of Secretary-General, supra note 100, ¶ 141 (contending that current U.N. human rights framework is currently under considerable strain, with change essential to meaningful progress in human rights); see also U.N. Chief Bemoans, supra note 97, at 13 (noting that Commission has been discredited due to poor rights records of Members); Editorial, Reforming the U.N., WASH. POST, June 30, 2005, at A22 [hereinafter Reforming the U.N.] (arguing that Secretary-General Annan’s proposals to make Commission smaller and composed of democracies with high human rights records represent positive changes that will strengthen institution and make it less susceptible to critique).

116. See Report of Secretary-General, supra note 100, ¶ 142 (arguing that further resources and staff, along with stronger Commission capacity to train country teams, are needed to implement U.N. programs); see also Samuel R. Berger & Brent Scowcroft, The Right Tools to Build Nations, WASH. POST, July 27, 2005, at A21 (concluding that U.N. reform must include greater attention and resources from key contributors such as United States and allies).

117. See Report of Secretary-General, supra note 100, ¶ 144 (noting that increasing invitations from Security Council to High Commissioner underscore greater awareness of need to consider human rights in drafting Security Council Resolutions on peace and security and arguing that human rights must be mainstreamed into U.N. system); see also Hoge, supra note 111 (describing High Commissioner Louise Arbour’s briefing Security Council on human rights situation in Darfur as example of interdependence of Security Council Resolutions and human rights).

118. See Report of Secretary-General, supra note 100, ¶ 145 (referring to Office of High Commissioner as woefully ill-equipped to respond to international community’s human rights challenges); see also Colum Lynch, Bolton Plans to Restart Stalled Efforts to Restructure U.N.; Ambassador Seeks to Ensure Permanent Security Council Members Have Seats on New Rights Council, WASH. POST, Jan. 2, 2006, at A07 [hereinafter Bolton Plans] (quoting Ambassador Bolton as saying that there is near universal belief that Commission’s intergovernmental decision-making process is broken beyond repair).

119. See Report of Secretary-General, supra note 100, ¶ 147 (observing that U.N.
Acknowledging the Commission's declining image with respect to credibility and professionalism, Secretary-General Annan proposed that Member States resolve to replace the Commission with a smaller, permanently standing Human Rights Council. He refrained from further sketching the Council's substantive features, but recommended that its Members be elected directly by the General Assembly—and by a vote of no less than a two-thirds majority of U.N. Member States—and that the Council act as a chamber of peer review. Moreover, Secretary-General Annan proposed that all Council Members be required, in their own domestic policies, to abide by the highest domestic human rights standards.

The treaty-body system remains poorly known, weakened by poor implementation, and duplicated reporting requirements; arguing that harmonized treaty-body guidelines are need to make bodies function in uniform fashion; see also Jonathan Fanton, Taking Human Rights Seriously, Chi. Trib., Jan. 10, 2006 (finding that political considerations between Member States overly influence Commission activities); Creation of Peacebuilding Commission, Emergency Response Fund Highlights, as 60th General Assembly Takes First Steps Towards Major U.N. Reform, US Fed News, Dec. 27, 2005, at 17 (referring to Commission as marred by finger-pointing and double standards); Current Events at the United Nations Transcript, CNN Int’l, Dec. 2, 2005 (noting that membership remains most critical element of Council reforms and arguing that international community must support Secretary-General Annan’s proposals).

120. See Addendum to Report of Secretary-General, supra note 100, ¶ 6 (contending that Council must replace Commission if U.N. is going to take human rights as serious as security and development; arguing that civil, cultural, economic, political, and social rights, including right to development, should be addressed equally); see also Editorial, Impasse on Human Rights, Wash. Post, Jan. 20, 2006, at A16 (noting that Secretary-General Annan proposed replacing Commission with smaller, more effective Council).

121. See Report of Secretary-General, supra note 100, ¶ 183 (noting that Member States must decide whether Council will act as principal U.N. organ or subsidiary of General Assembly; arguing that, in either case, Members must be selected directly by General Assembly through two-thirds majority vote); see also Addendum to Report of Secretary-General, supra note 100, ¶ 6 (stating that Council should act as chamber of peer review); Reforming the U.N., supra note 115 (claiming that Secretary-General Annan’s proposals to make Commission smaller and composed of democracies with high human rights records represent positive changes that will strengthen institution and make it less susceptible to critique). But see Joshua Muravchik, Corruption, Hypocrisy Will Always Prevail, L.A. Times, Nov. 6, 2005, at M1 (opining that making Commission smaller will have little impact on ending Commission’s disgrace).

122. See Report of Secretary-General, supra note 100, ¶ 183 (stating that Member States should determine whether Council will serve as principal U.N. organ or subsidiary General Assembly body; contending that, in any case, Members should be selected directly by General Assembly through two-thirds majority vote); see also Reforming the U.N., supra note 115 (contending that Secretary-General Annan’s proposals to make Commission smaller and composed of democracies with high human rights records represent positive changes that will strengthen institution and make it less susceptible
The U.N. General Assembly debated Secretary-General Annan’s proposals during the U.N. World Summit in September 2005, endorsing the general idea in the World Summit Outcome Document ("Outcome Document") after negotiations on the Council’s substantive features. Most basically, the General Assembly resolved to create a Council to further strengthen the existing U.N. human rights system. Although the General Assembly did not assign specific obligations and duties to the Council, it provided that the Council will be responsible for the promotion of universal respect and protection of human rights in a fair manner. In addition, the Council will have the responsibility of addressing gross and systematic violations, making recommendations onremedying such situations, and coordinating with other U.N. agencies. Lastly, the General Assembly requested that its President of the Assembly conduct transparent and inclusive negotiations, to be completed within the U.N.’s 60th Session, in order to establish the Council’s defining features, including its functions, mandate, membership, size, and

to critique). But see Muravchik, supra note 121, at M1 (claiming that making Commission smaller will have little impact on improving Commission’s reputation).

123. See Colum Lynch & Glenn Kessler, U.N. Scales Back Plan of Action, WASH. POST, Sept. 14, 2005, at A06 (remarking that Secretary-General Annan was pleased with U.N.’s commitment to reduce child mortality, disease, and poverty as well as decision to create Council and Peacebuilding Commission); see also Mark Turner, United Nations Takes Another Step Along Rocky Road to Reform, FIN. TIMES (London), Oct. 8, 2005, at 10 (noting difficulties in establishing Council; mentioning particular points of contention as mandate, membership, and size; stating that 2005 World Summit Outcome was only possible because substantive details were removed at last minute).


125. See World Summit Resolution, supra note 124, ¶ 158 (providing that Council will be responsible for promoting human rights for all); see also Better Than Nothing: United Nations Reform, ECONOMIST, Sept. 17, 2005 (claiming that World Summit Resolution was not completely devoid of substance, particularly with respect to replacement of Commission with Council). But see Maggie Farley & Warren Vieth, Bush, Annan Tout the Role of the U.N.; The President Surprises Summit Delegates by Reversing U.S. Positions that Nearly Sank Talks, L.A. TIMES, Sept. 15, 2005, at A13 (explaining President Bush’s criticism of World Summit for failing to establish defining features of Council).

126. See World Summit Resolution, supra note 124, ¶ 159 (providing that Council will have responsibility to address and remedy situations of gross human rights violations); see also Fix It or Scrap It; UN Reform, ECONOMIST, Jan. 14, 2006 [hereinafter Fix It] (reporting that Council would be ready to act in response to serious violations of human rights).
working procedures. In 2005, the General Assembly authorized a Working Group of human rights experts ("Working Group") to negotiate the Council's defining characteristics and to formulate a proposal for the General Assembly's consideration. At the end of the 2005 World Summit, the substantive terms at issue mainly included Council membership eligibility, size, term-limits, and voting procedures. The ideas expressed in the Outcome Document received support from the United States and major international newspapers. They also received qualified support

127. See World Summit Resolution, supra note 124, ¶ 160 (stating that General Assembly will oversee open and transparent negotiations); see also Howard LaFranchi, UN Leaders Endorse Modest Reforms, CHRISTIAN SCI. MONITOR, Sept. 15, 2005, at 1 (explaining that specific characteristics of Council will be decided by negotiations and approved by General Assembly).

128. See Assembly President Says Human Rights Council Negotiations Could Wind Up Next Month, UN NEWS CENTRE, Nov. 23, 2005 [hereinafter Council Negotiations] (remarking that U.N. General Assembly President was hopeful that Council negotiations would be complete by conclusion of December 2005); see also U.N., Dep't of Pub. Info., Daily Press Briefing by the Offices of the Spokesman for the Secretary-General and the Spokesperson for the General Assembly President, Oct. 5, 2005 (noting that Council negotiations began on October 11, 2005 and were scheduled to conclude at end of 2005).

129. See Council Negotiations, supra note 128 (stating that points of contention during Council negotiations included frequency of Council meetings, number of possible Members, and voting procedures); see also Warren Hoge, Officials at U.N. Seek Fast Action on Rights Panel, N.Y. TIMES, Jan. 1, 2006, at 1 [hereinafter Fast Action] (mentioning that Council size, term-limits, and voting procedures were subject to negotiation; quoting Chief of Staff to Secretary-General Annan as saying that Commission reform has become litmus test of U.N. renewal and underscoring importance of timely negotiations); Fanton, supra note 119, at 17 (claiming that U.N. Member States and American representatives must advocate importance of Council more forcefully and assume greater presence during negotiations).

130. See Warren Hoge, Panel's Report, Faulting U.N., Urges Reforms, N.Y. TIMES, June 13, 2005, at 1 (reporting that Congressional Task Force headed by Newt Gingrich and George J. Mitchell endorsed Secretary-General Annan's proposal and recommended membership be restricted to practicing democracies); see also Editorial, Wrong on Human Rights, N.Y. TIMES, Jan. 10, 2006, at 24 (arguing that Ambassador Bolton's idea to have permanent Council seats for permanent Security Council Members would guarantee seats to countries with questionable records, including China, Russia, and United States). But see Joe Lauria, Little Consensus on What Future Holds for United Nations Annan's Plans Meet Resistance From US, Others, BOSTON GLOBE, June 22, 2005, at A6 (describing difference between U.S. goal of having only democracies permitted to join Council, while Secretary-General Annan would favor membership for any State voted in by two-thirds of U.N. General Assembly).

131. See Editorial, Blocking Reform at the U.N., N.Y. TIMES, Dec. 2, 2005, at 26 [hereinafter Blocking Reform] (contending that one significant U.N. reform needed is creation of Council with permanent membership of countries with highest human rights records); see also Gingrich & Mitchell, supra note 99 (claiming that Council must replace Commission).
from U.S. Ambassador to the U.N. John Bolton.\textsuperscript{132}

C. Proposal by Human Rights Watch and the Human Rights Non-Governmental Organization Community ("HRW Proposal")

The HRW Proposal, created by the human rights NGO community, provides specific recommendations as to the Council's composition, election procedures, mandate, special procedures, status, voting procedures, and working methods.\textsuperscript{133} HRW also proposed that the Council be elevated to a status equal to that of the other six U.N. principal organs within five years of the Council's existence, with transitional status as a subsidiary body of the General Assembly until that point.\textsuperscript{134} HRW also advocated that the Council have a mandate that includes any matters relating to the protection and promotion of human rights in all countries, with special authorization to address specific situations of continuing, gross, systematic, or urgent rights violations, and the power to make recommendations to Member States and other U.N. organs, such as the General Assembly or Security Council.\textsuperscript{135}

\begin{footnotes}
\textsuperscript{132} See Bolton Plans, supra note 118 (noting Ambassador Bolton's goal to have permanent Council seats for permanent Security Council Members); see also Warren Hoge, U.N. Creates Commission to Assist Nations Recovering From Wars, N.Y. TIMES, Dec. 21, 2005, at 25 (stating that Bolton prioritized creation of Council and noting Bolton's concern over lagging in process).

\textsuperscript{133} See HRW Proposal, supra note 100 (proposing significant changes for abolishing Commission and creating Council); see also Second HRW Proposal, supra note 100 (affirming that, of Working Group's draft resolution proposals, HRW deems following Council features most important: Council purpose language should be taken from World Summit Resolution; Members shall abide by highest human rights standards; Members shall be peer-reviewed; Council shall meet throughout year; and Council shall provide for meaningful NGO participation).

\textsuperscript{134} See HRW Proposal, supra note 100 (explaining that Council should be elevated to organ status within five years and, in meantime, should act as subsidiary General Assembly body); see also Eric Ting-Lun Huang, Taiwan's Status in a Changing World: United Nations Representation and Membership for Taiwan, 9 ANN. SURV. INT'L & COMP. L. 55, 64 (2003) (noting that there are six principal organs of U.N., including ECOSOC, General Assembly, International Court of Justice, Secretariat, Security Council, and Trusteeship Council); Informal Consultations, supra note 112 (supporting elevation of Council to principal organ status within five years and noting that, transitonally, it should serve as subsidiary body of General Assembly body).

\textsuperscript{135} See HRW Proposal, supra note 100 (proposing that Council address any matters relating to protection of human rights in any country, as well as be empowered to make recommendations to other U.N. bodies, such as Security Council and General Assembly); see also World Summit Resolution, supra note 124, ¶ 159 (noting that Council should address all violations of human rights, including those classified as gross and systematic, and be authorized to make recommendations in response to such situations).
\end{footnotes}
In terms of the Council's composition, HRW proposed that, as a prerequisite to obtaining Council membership, States actively adopt the highest domestic human rights standards, which would implicitly exclude notorious rights violators from membership. With respect to procedural requirements for elections and voting, HRW recommended that Council members be elected by a two-thirds majority vote of the General Assembly. Moreover, the HRW Proposal suggested that the human rights record of each candidate State be considered in evaluating its fitness for membership. HRW also proposed that the Council be structured as a standing body that meets on a regular basis throughout the year in order to ensure a timely response to issues of serious human rights concern. In addition to HRW, this proposal received support from over fifty-two other individuals and international human rights organizations, including such influential groups as Amnesty International, Fédération Internationale des Ligues des Droits de l'Homme, Freedom House, Human Rights First, the International Commission of Jurists, and the International Crisis Group.

136. See HRW Proposal, supra note 100 (stating that States seeking positions of power on Council must have records that exhibit highest human rights standards); see also Human Rights and the U.N., supra note 98 (describing current system as one in which States with notorious rights records seek Commission membership in order to thwart criticism of their own policies).

137. See HRW Proposal, supra note 100 (recommending that Council Members be elected by two-thirds of General Assembly); see also Lauria, supra note 130 (discussing Secretary-General Annan's proposal, like that of HRW, as favoring vote by two-thirds majority of General Assembly).

138. See HRW Proposal, supra note 100 (proposing that Member States consider candidate States' human rights records when electing them for Council membership); see also Blocking Reform, supra note 131 (posing that Council should be composed of Members with excellent human rights records).

139. See HRW Proposal, supra note 100 (noting that Council should be standing body with regular meetings and with option of calling special sessions); see also Blocking Reform, supra note 131 (underscoring importance of establishing Council as permanent body).

140. See HRW Proposal, supra note 100 (detailing proposed Commission changes and Council formation from HRW and international human rights NGO community); see also Second HRW Proposal, supra note 100 (opining that following Council features are most important: Council purpose language should be taken from World Summit Resolution; Members shall abide by highest human rights standards; Members shall be peer-reviewed; Council shall meet throughout year; and Council shall provide for meaningful NGO participation).
D. Draft Text on the Creation of the Human Rights Council ("Council")

In February 2006, the Working Group responsible for drafting the terms of the Human Rights Council circulated a Draft Text for the General Assembly to consider. Most notably, the Draft Text provided that the Council will be a permanent body, composed of forty-five Member States elected by the General Assembly, in accordance with regional representation. While the Draft Text also provided that all U.N. Member States may be considered for Council membership, it emphasized that, in selecting members, Member States should consider candidate States' commitments and contributions to human rights, as well as the States' own human rights records.

While the Draft Text provided that Council members shall be guided by the highest human rights standards and urged that voting States consider whether any measures involving gross human rights violations are currently pending against candidate States, but the Draft Text did not explicitly prevent notorious rights violators from gaining access to Council membership.


142. See Council Draft Text, supra note 141, OP 7, 10 (recommending that Council meet regularly and be composed of forty-five Member States); see also Oversight Under Fire, supra note 141 (remarking on Council membership and frequency of Council meetings). But see Fix It, supra note 126 (explaining that American diplomats would prefer Council not to have more than thirty Members).

143. See Council Draft Text, supra note 141, OP 8, PP 11 (stating that candidates' human rights backgrounds should be considered in determining membership; discussing commitment to strengthening U.N.'s promotion of all human rights equally); see also Oversight Under Fire, supra note 141 (noting weight Council will give to States' human rights records).

144. See Council Draft Text, supra note 141, OP 8 (providing that, in being considered for Council membership, candidates' records with respect to gross violations shall be considered); see also Plan for UN Rights Council Circulated, Irish Times, Feb. 4, 2006 (describing consideration given to candidates' human rights records).
The language of the Draft Text granted the Council a broad mandate to prevent human rights violations through dialogue and cooperation, and gave the Council authority to promptly respond to grave human rights situations.145 The Draft Text also stated that States will be elected by a majority vote.146 Last, the Draft Text stated that the Council will serve as a subsidiary organ of the General Assembly and concluded that the current Commission on Human Rights should be abolished by June 2006.147 In March 2006, the General Assembly voted overwhelmingly to adopt Resolution 60/251, almost entirely mirroring the Draft Text, and to create the Council.148

III. THE IMPACT OF COMMISSION REFORM ON THE INVESTIGATION OF EXTRAJUDICIAL EXECUTIONS OF HONDURAN STREET CHILDREN

The U.N. human rights machinery is currently in a state of momentous transition.149 The aforementioned proposals suggest innovative solutions for the restructuring of the Human Rights Commission.150 The proposals outlined by the High Level Panel and Secretary-General Kofi Annan provide meaningful guidance on improving the reputation and activities of the

145. See Council Draft Text, supra note 141, OP 5(f) (using broad language to grant Council power to respond to human rights violations); see also Oversight Under Fire, supra note 141 (noting Draft Text’s broad language).
146. See Council Draft Text, supra note 141, OP 7 (providing that Council Members shall be elected by majority of General Assembly); see also Oversight Under Fire, supra note 143 (discussing Council voting procedures).
147. See Council Draft Text, supra note 141, OP 1, 13 (affirming that Council will act as subsidiary body of General Assembly and Commission will be abolished by June 2006); see also Oversight Under Fire, supra note 141 (noting Council’s position as subsidiary of General Assembly).
148. See G.A. Res. 60/251, ¶¶ 1-16, U.N. Doc. A/RES/60/251 (Mar. 15, 2006); see also Warren Hoge, U.N. Approves a New Council on Rights Abuse, N.Y. TIMES, Mar. 16, 2006, at 3 (stating that 170 Member States in General Assembly voted in favor of creating Council; noting that General Assembly voted to have Council Members elected by absolute majority as opposed to two-thirds majority); Mark Turner, UN Human Rights Vote Leaves US Isolated, FIN. TIMES (London), Mar. 16, 2006, at 11 (reporting that 170 Member States voted in favor of replacing Commission with Council, despite opposition from U.S.).
149. See supra note 124 and accompanying text (noting that, in light of Members’ commitment to strengthening U.N. human rights system, U.N. Member States decide to create Council).
150. See supra notes 100-140 and accompanying text (describing background on three models proposing how to reform U.N. human rights machinery).
Commission.\textsuperscript{151} Looking at the case of street children in Honduras, however, it becomes evident that the HRW Proposal creates the most appropriate, nuanced, and workable framework for Commission reform.\textsuperscript{152} The following Section will critique these proposals.

A. Critique of the High Level Panel’s Proposal

The High Level Panel appropriately addressed the U.N. human rights machinery within the context of threats to international peace and security.\textsuperscript{153} To that end, the High Level Panel made several sensible proposals to reform the Commission.\textsuperscript{154} These suggestions, however, do not sufficiently address the situation of street children in Honduras and the DGIC’s implementation of the U.N. Principles.\textsuperscript{155}

The High Level Panel rightly recognized that the Commission’s reputation has been seriously undermined in recent years.\textsuperscript{156} However, its recommendation that the Commission expand membership to all Member States, if implemented, would likely perpetuate the system’s existing weaknesses.\textsuperscript{157} Universal

\textsuperscript{151.} See supra notes 103-132 and accompanying text (explaining recommendations made by High Level Panel and Secretary-General Annan as to how to strengthen U.N. human rights machinery).

\textsuperscript{152.} See supra notes 17-25, 100, 133-140 and accompanying text (describing arbitrary murders of Honduran street children and detailing Council proposals advocated by HRW and NGO community).

\textsuperscript{153.} See supra notes 103-104 and accompanying text (noting Secretary-General Annan’s request to High Level Panel and their recommendation that U.N. undergo significant reform).

\textsuperscript{154.} See supra note 107-112 and accompanying text (recalling that, historically speaking, Commission Members’ delegations were composed of some of world’s most qualified human rights experts; stating that Commission should be supported by advisory council or panel, hypothetically composed of fifteen individuals and representative of different regions).

\textsuperscript{155.} See supra notes 47-65, 81-87, 107 and accompanying text (documenting DGIC’s weak investigative techniques; describing U.N. Principles’ provisions on impartial, prompt, and thorough investigations of extrajudicial executions; explaining that Commission was originally composed of professionals with highest human rights qualifications and expertise in human rights).

\textsuperscript{156.} See supra notes 97, 105 and accompanying text (contending that Commission’s credibility has been undermined by States seeking membership to shield themselves from criticism, discussing Commission’s discredited reputation and referring to Commission’s weak reputation as result of admitting countries such as Libya and Cuba).

\textsuperscript{157.} See supra note 108 (stating that membership represents most contentious issue for Commission and that making membership universal would defuse tension between Member States; arguing that larger Commission would render body more unworkable).
Commission membership would make States that permit extrajudicial executions, like Honduras, responsible for ensuring that other States prevent and investigate extrajudicial executions.\textsuperscript{158} Were this recommendation implemented, Honduras would continue to hold a position on the Commission and this would continue to shield the Honduran State from criticism, creating little incentive to improve the DGIC’s implementation of the U.N. Principles or the Honduran State’s investigation into the deaths of street children.\textsuperscript{159}

Similarly, offering Commission membership to all U.N. Member States would do little to realign the U.N.’s focus on targeting the weak judicial and law enforcement system in Honduras.\textsuperscript{160} In order to combat complicity, corruption, ineffectiveness, and impartiality within the DGIC, the U.N. human rights framework must focus less on superficial institutional reforms like Commission membership.\textsuperscript{161} Instead, the U.N. human rights system must devote its time to actively investigating and censuring substantive rights violations committed by agents of the Honduran State.\textsuperscript{162} To that end, the High Level Panel could have recommended that the Commission make a greater commitment to assisting States with significant logistical and budgetary limitations in order to better implement the U.N. Principles.\textsuperscript{163}

Although the High Level Panel recommended the creation

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  \item 158. See supra note 97-98 and accompanying text (mentioning discredited reputation of Commission as result of admitting countries with poor human rights records).
  \item 159. See supra note 97 and accompanying text (claiming that Commission has failed to appropriately prevent and condemn massive rights violations such as those in Darfur because many Commission Member States have dubious rights records).
  \item 160. See supra notes 50-51, 54-55, 57, 60, 62-65 and accompanying text (describing extraordinary problems plaguing Honduran police relating to budget, corruption, and logistics, and explaining effect of weak investigative techniques on Public Prosecutor’s ability to bring perpetrators to justice).
  \item 161. See supra notes 93, 133-140 and accompanying text (finding it clear that Honduran children have been murdered by security forces and arguing that Commission reform must entail more than mere superficial revisions).
  \item 162. See supra notes 8, 12, 65, 81, 89-90 and accompanying text (documenting instances of Honduran police participating in extrajudicial executions of children and concluding that U.N. Principles are not binding on States but stand as persuasive authority relied upon by Special Rapporteur on Extrajudicial Executions and States).
  \item 163. See supra notes 54-58, 103-112 and accompanying text (noting failure to recommend that Commission devote further resources to assist States implement U.N. Principles and documenting extreme lack of logistical support plaguing Honduran law enforcement agencies).
\end{itemize}
of an advisory council to consult on thematic mandates, such as extrajudicial executions, it failed to recognize the limitations facing Commission Special Rapporteurs, such as the Special Rapporteur on Extrajudicial Executions. The High Level Panel Proposal could have made specific recommendations as to how to strengthen the role of Special Rapporteurs, for example, by increasing logistical and personnel resources. Such a reform would allow the Special Rapporteur to follow up the initial investigation of Honduras with another fact-finding mission to Honduras and report to the international community on the Honduran State's slow progress in implementing the U.N. Principles on Extrajudicial Executions. Moreover, strengthening the role of the Special Rapporteur on Extrajudicial Executions with further staff and budgetary resources would permit him to work, on a long-term basis, with challenged States to create a working model for combating extrajudicial executions and increasing accountability within the judiciary and law enforcement branches of government.

Also, the High Level Panel Proposal did not sufficiently solve the problems facing Honduran street children, because it failed to provide concrete steps on how to better address substantive human rights violations. In this sense, the High Level Panel Proposal took a very theoretical approach to human rights reform, and failed to censure actual rights violations, such as the right to life and the right to be free from torture, that are protected by international human rights treaties. These rights

164. See supra notes 79, 103-112 and accompanying text (refraining from commenting on limitations facing Commission Special Rapporteurs but noting challenges facing Special Rapporteurs).
165. See supra notes 79, 103-112 and accompanying text (neglecting to make any specific proposals on strengthening the role of Commission Special Rapporteurs and discussing ways of strengthening role of Special Rapporteurs and Working Groups).
166. See supra notes 62-65, 82-87 and accompanying text (recommending that States provide impartial, prompt, and thorough investigations into all suspected cases of extrajudicial executions and documenting flaws in techniques used by Honduran police to investigate extrajudicial executions).
167. See supra note 79 and accompanying text (discussing issues facing Special Rapporteurs, including limited fact-finding guidelines and inaccessibility of certain regions; urging Commission to strengthen these positions).
168. See supra notes 103-112 and accompanying text (failing to mention situation of street children in Honduras).
169. See supra notes 26-33 and accompanying text (reviewing Honduran and international legal standards which establish right to life and right to be free from torture and underscoring fundamental importance of such rights).
are directly implicated in Honduras, where, in many cases, police are responsible for arbitrarily torturing and murdering street children.\textsuperscript{170} Finally, the High Level Panel Proposal recommended that the Commission pay more attention to the implementation of Security Council Resolutions, yet failed to urge the Commission to reaffirm its commitment to other authoritative sources, such as the U.N. Principles and the CRC.\textsuperscript{171} It seems fairly clear that the High Level Panel could have more aptly used its platform to censure violations of the right to life, mount pressure on States like Honduras to better enforce the U.N. Principles and, ultimately, positively impact the situation of street children.\textsuperscript{172}

B. Critique of the Report of Secretary-General

Secretary-General Annan’s proposal appropriately envisioned Commission reform as a radical abolition of the current system in favor of a smaller Human Rights Council.\textsuperscript{173} As a more streamlined body, the Council would be able to address rights violations in a more active manner.\textsuperscript{174} Although the reforms detailed by Secretary-General Annan would positively impact the implementation of the U.N. Principles, certain additional reforms would render Secretary-General Annan’s Proposal more applicable to the specific problem of street children in Honduras.\textsuperscript{175}

Secretary-General Annan’s suggestion that the Council subject all U.N. Member States to periodic peer review would posi-

\textsuperscript{170} See supra notes 5-8, 12, 22-24 and accompanying text (documenting instances of Honduran police assaulting and using torture against street children, as well as participating in extrajudicial executions).

\textsuperscript{171} See supra notes 42-43, 81-87, 111 and accompanying text (discussing children’s rights protected by CRC; noting U.N. Principles’ standards regarding impartial, prompt, and thorough investigations of extrajudicial executions; proposing that Commission request High Commissioner for Human Rights to make regular reports on implementation of Security Council resolutions).

\textsuperscript{172} See supra notes 103-112 and accompanying text (failing to censure violations of the right to life or mount pressure on Honduras to better enforce U.N. Principles).

\textsuperscript{173} See supra notes 113-122 and accompanying text (describing Secretary-General Annan’s proposal to abolish Commission and create Council in its place).

\textsuperscript{174} See supra notes 97-99 and accompanying text (critiquing weaknesses of Commission and arguing that it should be abolished).

\textsuperscript{175} See supra notes 113-122 and accompanying text (providing substantive suggestions to reform U.N. human rights machinery but neglecting to include specific provisions addressing situation of street children in Honduras or implementation of U.N. Principles).
tively impact the situation of Honduran street children.\textsuperscript{176} Thorough peer review would allow the Council to focus on censuring Honduras for failing to actively police domestic extrajudicial executions and having insufficiently implemented the U.N. Principles.\textsuperscript{177} Peer review would also make it difficult for Honduras to escape scrutiny or lobby their allies for votes, ensuring that Council activities would not become politicized.\textsuperscript{178}

However, Secretary-General Annan's Proposal that the Council act as a chamber of peer review too narrowly defines the scope of Council activities.\textsuperscript{179} With respect to the DGIC's implementation of the U.N. Principles, this point remains extremely important.\textsuperscript{180} The Council must be granted broad authority not only to condemn, monitor, and report rights violations, but also to reaffirm the international community's commitment to the proper investigation of extrajudicial executions.\textsuperscript{181} Extensive peer review and reporting obligations, while necessary, remain insufficient to compel Honduras to cure the DGIC's weaknesses and hold perpetrators of extrajudicial executions accountable.\textsuperscript{182} To reach this goal, the Council must be granted the broadest possible authority to censure dubious human rights practices, establish a more full-time monitoring presence in Honduras, and recommend the imposition of sanctions to the

\footnotesize{\textsuperscript{176} See supra notes 50-51, 53-54, 56, 59, 66-73, 100 and accompanying text (providing for peer review of Council Members and documenting extraordinary limitations facing Honduran law enforcement and judicial institutions, ranging from endemic public lack of faith, incompetence, inefficiency, and poor resources).

\textsuperscript{177} See supra note 97 and accompanying text (stating that Commission, which currently lacks peer review mechanisms, has failed to appropriately prevent and condemn massive rights violations such as those in Darfur because many Commission Member States have dubious rights records).

\textsuperscript{178} See supra note 113 and accompanying text (discussing Secretary-General Annan's proposal to have Council Members be elected by two-thirds majority of Members and importance of Member States' high human rights standards).

\textsuperscript{179} See supra note 121 and accompanying text (noting that Secretary-General Annan's proposal recognizes that Member States will either prefer Council to stand as principal U.N. organ or subsidiary body of General Assembly).

\textsuperscript{180} See supra notes 59-65 and accompanying text (recording instances of poor DGIC investigation of extrajudicial executions of children in Honduras).

\textsuperscript{181} See supra note 17 and accompanying text and accompanying text (claiming that urgency is always involved in cases of extrajudicial executions and, nevertheless, accountability measures established by States in response do not always produce effective results).

\textsuperscript{182} See supra notes 11, 73, 121 and accompanying text (arguing that Council should engage in peer review of States and urging international community to substantively address extrajudicial executions in Honduras).}
Security Council.\(^{183}\)

Moreover, Secretary-General Annan did not place enough emphasis on excluding Member States with weak human rights records from obtaining Council membership.\(^{184}\) In choosing States for positions of leadership on the Council, the General Assembly must remain extremely attentive to only vote for Member States that have strong records of preventing and punishing extrajudicial executions, and providing special legislative protections for street children.\(^{185}\) This would ensure that no Member State with a pattern of permitting extrajudicial executions of street children would be responsible for censuring Honduras for doing so, which would, in turn, make it more likely that Honduras would substantially alter its approach to the protection of street children.\(^{186}\)

Recognizing that the Council can serve either as a principal organ of the United Nations or a subsidiary body of the General Assembly, Secretary-General Annan did not take a stand on which framework would better address rights violations.\(^{187}\) Principal organ status would better address the situation of street children in Honduras because it would grant the Council the independence and authority to better oversee the implementation of the U.N. Principles.\(^{188}\) Granting the Council principal

\(^{183}\) See supra notes 11, 121 and accompanying text (proposing peer review of States as one of Council’s main functions and finding that Honduran State must conduct effective investigations in order to sanction perpetrators and that this must be prioritized by Honduran State and international community, as impunity and executions of minors continues).

\(^{184}\) See supra notes 96-99 and accompanying text (describing discredited reputation of Commission as a result of its permitting States with treacherous human rights records to join Commission and noting certain States’ efforts to seek membership in order to avoid criticism of their domestic human rights policies).

\(^{185}\) See supra notes 97, 121-122 and accompanying text (describing Secretary-General Annan’s proposals for Commission reform and arguing that current Commission maintains weak reputation due to hypocrisy of States with poor human rights reputations acting as symbolic leadership of U.N. human rights framework).

\(^{186}\) See supra note 121 and accompanying text (recognizing that Member States will either prefer Council to stand as principal U.N. organ or subsidiary body of General Assembly).

\(^{188}\) See supra note 134 and accompanying text (noting HRW Proposal’s suggestion that Council be elevated to organ status within five years and, in meantime, should act as subsidiary body of General Assembly).
organ status, moreover, would demonstrate that the U.N. considers human rights a concern on par with those of peace and security.\textsuperscript{189}

Certain Council recommendations that would generally improve the Honduran State’s investigative treatment of extrajudicial executions of street children, however, do not appear in Secretary-General Annan’s proposal.\textsuperscript{190} In particular, Secretary-General Annan could have more fully provided for increased resources for the Special Rapporteur on Extrajudicial Executions.\textsuperscript{191} Similarly, the Secretary-General could have decided to place particular importance on the protection of civil and political rights, such as the right to life, instead of recommending that all rights—including civil, cultural, economic, political, and social rights—be addressed with equal urgency.\textsuperscript{192}

C. Critique of the HRW Proposal

Of the discussed proposals, the HRW Proposal best addressed Commission reform, creating the most workable solutions for the U.N. human rights framework.\textsuperscript{193} With respect to the situation of street children in Honduras, the HRW Proposal has the most potential to positively address the DGIC’s weak implementation of the U.N. Principles and the Honduran State’s failure to fully hold perpetrators accountable.\textsuperscript{194} Advocating the most groundbreaking changes, HRW recommended abolishing the Commission and replacing it with a Council that would have a broad mandate, principal organ status, and wide discretion to

\textsuperscript{189} See supra notes 112-122 and accompanying text (stating Secretary-General Annan’s proposal that creating Council would grant human rights more meaningful authority in U.N. system).

\textsuperscript{190} See supra notes 113-122 and accompanying text (including mainly theoretical recommendations on Council implementation; failing to mention extrajudicial executions).

\textsuperscript{191} See supra notes 113-122 and accompanying text (neglecting to provide for increased resources for Special Rapporteur on Extrajudicial Executions).

\textsuperscript{192} See supra note 120 and accompanying text (arguing that civil, cultural, economic, political, and social rights, including right to development, should be addressed equally).

\textsuperscript{193} See supra notes 133-140 and accompanying text (detailing substantive Commission reforms recommended by international human rights NGO community).

\textsuperscript{194} See supra notes 133-140 and accompanying text (providing meaningful guidance on how to address U.N. human rights reform with view towards addressing substantive rights violations).
make recommendations to Member States.\textsuperscript{195}

HRW's recommendation—also advocated by Secretary-General Kofi Annan—that the Council's members be elected by a two-thirds majority, would positively impact the situation of street children in Honduras.\textsuperscript{196} In recent years, Honduras has been a member of the Commission—a position of power that has helped shield it from criticism regarding instances of extrajudicial executions of street children.\textsuperscript{197} A two-thirds majority vote by Members of the General Assembly would increase the likelihood that Honduras and other States with histories of extrajudicial executions would not gain access to influential positions on the Council.\textsuperscript{198} In turn, this would ensure that the Council could censure, without influence by the Honduran State, the poor investigative techniques of the DGIC and unresolved cases of extrajudicially executed street children.\textsuperscript{199}

Also, the HRW Proposal made the essential point that the Council must be a permanent body; the Commission's current six-week annual session remains insufficient to address the world's most serious human rights situations.\textsuperscript{200} In terms of Honduran street children, a permanent Council would have more time to formulate a plan of action on improving the DGIC's weak implementation of the U.N. Principles and holding the Honduran State accountable for preventing the deaths of

\textsuperscript{195} See supra notes 133-140 and accompanying text (recommending that Council be empowered to promote and protect human rights in all countries as well as be granted authority to report to Member States and other U.N. bodies).

\textsuperscript{196} See supra notes 100, 130 and accompanying text (describing both HRW and Annan Proposals as favoring election of Council Members by two-thirds majority vote of General Assembly Member States)

\textsuperscript{197} See supra notes 76, 97-99, 100 and accompanying text (discussing Commission membership of Honduras and critiquing Commission Members for maintaining poor domestic human rights standards and attempting to thwart human rights condemnations).

\textsuperscript{198} See supra notes 5-8, 12, 22-24, 100 and accompanying text (documenting instances of Honduran police participating in extrajudicial executions and noting that HRW Proposal recommends election of Council Members by two-thirds majority vote of General Assembly Member States).

\textsuperscript{199} See supra notes 76, 97-99 and accompanying text (explaining hypocrisy of current Commission for including Member States with poor human rights records, their attempts to thwart human rights condemnations and resulting failure of Commission to meaningfully censure rights violations; noting that Honduras is currently Member of Commission).

\textsuperscript{200} See supra note 139 and accompanying text (proposing that Human Rights Council meet regularly and make timely responses to human rights violations).
children. Moreover, a permanent Council would generally allow more time for comprehensive follow-up dialogue and reporting on situations of urgent concern, such as the extrajudicial executions of street children in Honduras.

Like Secretary-General Annan's proposal, the HRW Proposal would require Council Members to commit themselves to maintaining the highest domestic human rights standards. This reform remains absolutely critical to improving both the situation of street children in Honduras and the Council's reputation within the international community. In particular, this reform would likely result in Honduras losing its influential position in the U.N. human rights machinery and being forced to address its history of permitting extrajudicial executions.

The HRW Proposal also appropriately conceived of the Council as having transitional five-year status as a subsidiary body of the General Assembly, eventually reaching principal organ status. Establishing a principal organ body to exclusively address rights violations would place human rights concerns on equal footing with those of international peace and security. This would have a positive impact on the monitoring of extrajudicial executions in Honduras and the DGIC's implementation of the U.N. Principles, as it would devote full-time attention to rights violations.

201. See supra note 131 and accompanying text (underscoring importance of Council standing as permanent body to better address human rights concerns).
202. See supra note 120 and accompanying text (arguing that permanent, standing Council would allow more time for substantive follow-up of decisions and resolutions).
203. See supra note 136 and accompanying text (noting that Council Members should commit themselves to highest human rights standards).
204. See supra note 136 and accompanying text (recommending that Council Members maintain exceptional human rights records and such records should be considered in application for membership).
205. See supra notes 76, 97-100 and accompanying text (discussing Commission membership of Honduras and arguing that Council candidate States must maintain highest domestic human rights practices).
206. See supra note 134 and accompanying text (recommending that Council maintain transitional status as subsidiary body of General Assembly, eventually reaching principal organ status).
207. See supra notes 112, 134 and accompanying text (explaining that Member States should consider making Commission full-time body with authority akin to Security Council; proposing that Council have transitional status as subsidiary body of General Assembly, eventually reaching principal organ status).
208. See supra note 134 and accompanying text (advocating that Council be granted transitional status as subsidiary body of General Assembly, reaching principal organ status in future).
The HRW Proposal, however, did not explicitly recommend excluding States with dubious rights records from obtaining Council membership.209 Failing to wholly exclude States with serious domestic rights violations from becoming Members increases the chances that States that permit extrajudicial executions will become responsible for condemning extrajudicial executions worldwide.210 Were such an eventuality to ensue, the Honduran State would have little incentive to improve the DGIC's implementation of the U.N. Principles and, accordingly, the situation of street children.211

In sum, the reforms detailed by the HRW Proposal would positively impact the Honduran DGIC's implementation of the U.N. Principles and, consequently, the situation of street children in Honduras.212 This proposal best conceived an entirely new institution composed of Member States with the highest human rights records—highly efficient, respected, serious, and streamlined.213 Such an institution would ensure more efficient monitoring of the DGIC's implementation of the U.N. Principles, more concentrated authority, and consequently, more decisive action.214

D. Critique of the Council Draft Text

The Council Draft Text represents a workable point of departure for U.N. human rights reform, appropriately recommending the abolition of the current Commission.215 Certain

209. See supra notes 141, 143 and accompanying text (describing weight given to candidates' human rights records; providing that, in being considered for Council membership, candidates' records with respect to gross violations shall be considered).
210. See supra notes 141, 144 and accompanying text (stating that Council candidates' records with respect to gross violations shall be considered, but failing to wholly exclude rights violators from membership; reporting Draft Text's emphasis on review of candidates' human rights records).
211. See supra note 97 and accompanying text (claiming that Commission has failed to appropriately prevent and condemn massive rights violations such as those in Darfur because many Commission Member States have treacherous rights records).
212. See supra notes 133-140 and accompanying text (providing meaningful guidance on how to address U.N. human rights reform with view towards addressing substantive rights violations).
213. See supra notes 133-140 and accompanying text (describing defining features of HRW Proposal).
214. See supra note 115 and accompanying text (arguing that Commission must be made smaller and must prohibit non-democracies from obtaining membership).
215. See supra note 147 and accompanying text (stating that Council will act as subsidiary body of General Assembly and Commission will be abolished by June 2006).
features detailed in the Draft Text would positively impact the Honduran State's implementation of the U.N. Principles and, consequently, the situation of street children in Honduras. Other features that would more fully address the situation of Honduran street children, however, remain absent from the Draft Text.

The Draft Text rightly provided that potential Council Member States' records should be considered—particularly their commitments and contributions to human rights. This would likely ensure that Honduras would no longer be able to maintain a position of power within the U.N. and shield itself from human rights criticism. Also, the Draft Text correctly conceived of the Council as a permanent, standing body, with members selected according to regional representation.

Moreover, the language of the Draft Text explicitly grants the Council a broad mandate to prevent human rights violations through dialogue and cooperation, which seems ideal for improving implementation of the U.N. Principles. This language, particularly the provision authorizing prompt response, would appropriately grant the Council the maximum authority to address the issue. While this language would theoretically

216. See supra notes 141-147 and accompanying text (discussing Draft Text's thoughtful reforms on U.N. human rights machinery after gathering input from NGO community).

217. See supra notes 141-147 and accompanying text (failing to address situation of street children in Honduras or encourage recommitment to implementation of U.N. Principles).

218. See supra note 141 and accompanying text (providing that candidates' human rights backgrounds should be considered in determining membership and discussing weight Council will give to States' human rights records).

219. See supra notes 76, 97-99 and accompanying text (observing that reputation of Commission has been weakened by weak domestic human rights policies of Member States, such as Honduras).

220. See supra note 141 and accompanying text (stating that Council shall meet regularly and be composed of forty-seven Member States; discussing Council membership and frequency of Council meetings). But see supra note 126 (noting that American diplomats would prefer Council not to have more than thirty Members).

221. See supra notes 11, 141 and accompanying text (providing broad authority for Council to address human rights violations and finding that Honduran State must conduct effective investigations in order to sanction perpetrators and that this must be prioritized by Honduran State and international community, as impunity and executions of minors continue).

222. See supra notes 144-145 and accompanying text (granting Council authority to promptly respond to urgent rights situations but neglecting to mention any specific rights, such as right to life).
permit the Council to apply greater pressure on Honduras to implement the U.N. Principles and to expand the role of the Special Rapporteur on Extrajudicial Executions in accomplishing this goal, the Draft Text failed to mention any specific rights to which the Council should devote greater attention. In reaffirming the U.N.'s commitment to better rights enforcement, the Draft Text could have mentioned particular rights of the most serious consequence. As such, the Council must consider, in its future resolutions, to reaffirm its commitment to ensuring the most basic rights, such as the right to life, which is directly implicated in situations of extrajudicial executions.

The Council should also consider reaffirming the U.N.'s commitment to encouraging States' complete implementation of the U.N. Principles. In creating the U.N. Principles, the U.N. recognized the gravity of extrajudicial executions and the importance of investigating them in an efficient and impartial manner. However, one Special Rapporteur on Extrajudicial Executions cannot possibly monitor poor implementation of the U.N. Principles at the international level and on a continual basis. This seems particularly clear in Honduras, as little progress has been reported following former Special Rapporteur Jahangir's 2003 investigation and report on the extrajudicial executions of Honduran children.

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223. See supra note 141 and accompanying text (reaffirming commitment to strengthening U.N. human rights machinery in order to promote better enjoyment of all rights, including civil, cultural, economic, political, and social rights, as well as right to development).

224. See supra note 143 and accompanying text (discussing commitment to strengthening U.N.'s equal promotion of all human rights but failing to mention specific rights of most serious consequence, such as right to life).

225. See supra notes 30, 141-147 and accompanying text (finding that extrajudicial executions represent violation of right to life; recommitting U.N. to strengthening human rights machinery in order to promote better enjoyment of all rights but failing to mention right to life).

226. See supra note 17 and accompanying text (documenting States' failure to wholly implement U.N. Principles).

227. See supra notes 81-90 and accompanying text (discussing international community's motivation for creating U.N. Principles as alarm at continued instances of extrajudicial executions and providing for complete, impartial, and thorough investigations into all possible instances of extrajudicial executions).

228. See supra note 80 and accompanying text (describing mandate of Special Rapporteur as transmitting urgent appeals in cases of imminent executions, undertaking fact-finding country visits and submitting annual reports on his mandate).

229. See supra notes 5, 11, 25 and accompanying text (discussing recommendations
Although the U.N. initially affirmed its commitment to the investigation of extrajudicial executions through the U.N. Principles—a brilliant model for States to follow—it must do more to ensure they are seriously implemented, especially in Honduras. In particular, non-binding U.N. Principles that provide for little consequence for poor implementation do not adequately compel States to reallocate law enforcement and judicial resources to provide for more meaningful investigations. The Council should consider either making the U.N. Principles binding or imposing some sort of penalty when States like Honduras fail to implement them.

During a time of momentous change in U.N. human rights institutions, the Council must pledge to take a more active role in aiding the Honduran State’s implementation of the U.N. Principles. In this sense, the Council should consider strengthening the role of the Special Rapporteur on Extrajudicial Executions and apply greater pressure on the Honduran Government to better implement the U.N. Principles, especially in cases involving street children. As part of this effort, the Council might consider devoting greater budgetary and personnel resources to the Special Rapporteur on Extrajudicial Executions or perhaps establishing a Working Group, under his or her supervision, to monitor the investigative techniques of the Honduran DGIC.

of former Special Rapporteur Asma Jahangir and documenting instances of extrajudicial executions of Honduran children in recent years).

230. See supra note 81 and accompanying text (noting motivation for creating Special Rapporteur on Extrajudicial Executions as international alarm at violations of right to life).

231. See supra note 81 and accompanying text (discussing non-binding status of U.N. Principles and their place in international customary law).

232. See supra notes 17, 81-90 and accompanying text (noting that, although U.N. Principles do not legally bind States, they represent persuasive authority; listing many States’ shortcomings with respect to implementation of U.N. Principles).

233. See supra note 17 and accompanying text (mentioning certain States’ weak implementation of U.N. Principles).

234. See supra note 79 and accompanying text (doubting effectiveness of Commission procedures, such as those of Working Group on Enforced Disappearances, and urging Commission to strengthen roles of Special Rapporteurs and Working Groups).

235. See supra note 79 and accompanying text (noting logistical challenges facing Special Rapporteurs and urging Commission to strengthen roles of Special Rapporteurs and Working Groups).
CONCLUSION

The American Convention and the Velasquez-Rodriguez case make clear that States must protect their citizens from the threat of arbitrary murder and extrajudicial execution.\(^\text{236}\) When States fail to adequately protect this right, an obligation arises on their part to use appropriate diligence in investigating and prosecuting the crimes, and to provide meaningful information to victims' families.\(^\text{237}\) To that end, the U.N. Principles provide a solid framework for realizing the duty to investigate cases of arbitrary murder.\(^\text{238}\) Many States, however, struggle to meet these standards.\(^\text{239}\) The limited implementation assistance provided by the U.N. and the lack of punitive consequences for poor implementation do not encourage States to comply with the standards set forth in the U.N. Principles.\(^\text{240}\)

The example of Honduras demonstrates that some States have fallen strikingly short of fulfilling their obligation to effectively investigate and prosecute the arbitrary murder of street children in accordance with the U.N. Principles.\(^\text{241}\) The Honduran investigative police agencies suffer from severe budgetary problems, logistical mismanagement, corruption, and a pervasive lack of faith, among Honduran citizens, in law enforcement branches.\(^\text{242}\) The lack of complete, efficient, speedy, and uniform investigations renders the Honduran criminal justice system fragile and promotes a regime of impunity and arbitrary jus-

\(^{236}\) See supra notes 28, 32, 43 and accompanying text (reviewing Honduran legislation that grants right to life from moment of conception and States' duty to protect this right; discussing States' duties under CRC to protect lives of children).

\(^{237}\) See supra notes 35-39 and accompanying text (noting legal obligations imposed by Velasquez-Rodriguez decision).

\(^{238}\) See supra notes 82-87 and accompanying text (stating that there shall be impartial, prompt, and thorough investigations of all extrajudicial executions, facilitated through government offices and standardized procedures).

\(^{239}\) See supra note 17 and accompanying text (documenting that States such as Burkina Faso, Nigeria, Russia, and Sri Lanka have not adequately investigated certain cases of extrajudicial executions).

\(^{240}\) See supra notes 81, 89-90 and accompanying text (concluding that U.N. Principles are not binding on States but stand as persuasive authority relied upon by Special Rapporteur on Extrajudicial Executions and States).

\(^{241}\) See supra notes 62-64 and accompanying text (discussing investigative techniques that police often use in investigating extrajudicial executions of Honduran street children).

\(^{242}\) See supra notes 54-55 and accompanying text (reviewing logistical challenges facing Honduran police and documenting budgetary problems and corruption within Honduran police agencies).
tice. Moreover, the limited sense of redress for victims and their families weakens public perceptions of the police and of the legitimacy of judicial institutions. The inquiry, however, cannot be focused solely on the Honduran State and judiciary, as poor implementation of the U.N. Principles affects justice worldwide.

The proposals put forth by Secretary-General Kofi Annan and HRW appropriately conceived of U.N. human rights reform not as a mere restructuring of the Commission on Human Rights, but as a complete overhaul of the current framework through the creation of a Human Rights Council. This approach is absolutely necessary to repair a fundamental institution that carries the burden of monitoring rights worldwide. In today's age, the U.N.'s human rights framework is often the only means of shining light on rights violations and censuring them using the strength of the international community's voice. Few other international institutions have a mandate equivalent in scope to that of the Commission, and yet, limited resources, politicization, and the hypocrisy of Member States prevent the Commission from condemning rights violations and realizing its mandate. This notion must remain prominent on the international community's agenda as it restructuring the U.N.'s human rights framework.

Other considerations should also shape the creation of the Council. The Council must approach human rights reform not only as a simple reworking of the U.N.'s structural framework, but also as an opportunity to reaffirm the international community's commitment to certain rights. In particular, the Council must devote attention to the implementation of the U.N. Principles; consider strengthening the role of the Special Rapporteur on Extrajudicial Executions; and explore options to create a permanent committee to monitor implementation of the U.N. Principles.

The Council, through its purpose, mission, and mandate, has the potential to strengthen the U.N.'s monitoring of investigations of extrajudicial executions worldwide. Doing so would

243. See supra notes 50-51 and accompanying text (discussing weak public perceptions of Honduran police officers).
244. See supra note 17 and accompanying text (finding that States such as Burkina Faso, Nigeria, Russia, and Sri Lanka have not adequately investigated certain cases of extrajudicial executions).
lead to an increased overall effectiveness and faith in investigations and prosecutions as well as greater crime deterrence in countries like Honduras. Most importantly, strengthening the implementation of the U.N. Principles would lead to a greater sense of justice for some of the neediest and most vulnerable victims of extrajudicial executions—street children.