The 2008 Annual Meeting of the American Society of International Law explored the topic 'The Politics of International Law'. The organisers of the Annual Meeting posed certain questions about this relationship in the following terms: "Critics contend that international law is really the deployment of power politics, and that resolving disputes under the auspices of international law in a judicialized forum serves only to 'launder' the rule of the powerful. Admirers of internationalism and international institutions, on the other hand, contend that the legalization of power has a civilizing effect that leads to some of the most effective forms of law-making."

The establishment of the United Nations Human Rights Council in 2006 and its activities in its first years give occasion for an analysis of the relationship between politics and the law in the human rights work of the United Nations. The intent, at least in some quarters, behind the new institutional structure was to minimise the 'political' aspects evident in the work of the former Human Rights Commission. The United Nations General Assembly, in the preamble to its resolution establishing the Council, recognised "the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization". Against this background, it is instructive to analyse the situation so far in order to try to identify whether there is any evidence of a move towards addressing the shortcomings of the Human Rights Commission in this connection.

I shall be discussing, as a kind of 'case study', the work of the Preparatory Committee for the Durban Review Conference, that is, the body charged with organising a review conference, to be convened in 2009, on the implementation of the Durban Declaration and Programme of Action adopted at the World Conference against Rac-
The organisational meeting of the Preparatory Committee was held in Geneva from 27 to 31 August 2007. The first substantive session of the Committee will take place from 21 April to 2 May 2008. Of course, given the preliminary nature of the work thus far, no firm conclusions can be set out. However, it is clear that the results of the Preparatory Committee’s work, and of the Review Conference itself, will provide one of the earliest opportunities to evaluate whether the installation of the new Council will, indeed, lead to the ‘elimination of double standards and politicization’ in the consideration of human rights issues.

It will be recalled that the 2001 Durban Conference was held in a highly charged atmosphere where the interaction between law and politics was clearly evident. It is noteworthy for having concluded only three days before 11 September 2001, and the follow-up work cannot be analysed except in the context of measures taken, both under United Nations auspices and by individual states, to combat terrorism. In her message on the occasion of Human Rights Day 10 December 2001 Mary Robinson, then United Nations High Commissioner for Human Rights, said:

“2001 also saw the World Conference against Racism. From 31 August to 8 September, thousands of people from around the world met in Durban, South Africa, to elaborate strategies for combating racism and intolerance. Durban was an honest, if at times painful, global dialogue about some of the most searing issues facing humanity. At Durban the world confronted complex issues of the past and the present. The historic gathering made it plain that the scourge of racism crosses all national and cultural boundaries. Durban launched a renewed global alliance against racism and gave it a solid anti-discrimination agenda to work with.

In the aftermath of 11 September and the international response to terrorism, this anti-discrimination agenda is even more crucial. It should be an integral part of efforts to safeguard against any erosion of human rights standards that might flow as an unintended consequence of measures to counter terror.”

In developing the relationship between politics and law, the first question to be considered is how one defines a political versus a legal process. Here, by politics, I refer simply to the use of power to achieve defined aims. Now, power takes many forms. The purest and most acceptable in the modern day is the democratic process, with the will of the majority prevailing (ideally, tempered by the regard for the legitimate rights

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3 The United Nations General Assembly, in its resolution 61/149 of 19 December 2006, requested the Human Rights Council to undertake preparations for this event. The Human Rights Council, in its resolution 3/2 of 8 December 2006, decided that the Human Rights Council would act as the Preparatory Committee for the Durban Review Conference.


5 See UNGA resolution 60/251, supra note 2.