

Background

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The U.N. Human Rights Council Is Not Enough: Time for a New Approach to Human Rights

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The United Nations' record on promoting basic human rights is one of decline. The drafters of the Charter of the United Nations included a pledge by member states "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women."¹ U.N. treaties, such as the Universal Declaration on Human Rights, which the General Assembly passed in 1948, form the core of international standards for human rights. Each U.N. member state is party to at least one of the seven major human rights treaties. Yet the U.N.'s record in promoting basic human rights in recent times has been one of failure and inaction.

Perhaps no institution illustrates this more than the U.N. Commission on Human Rights (CHR). As the premier human rights body in the U.N. system, the CHR is supposed to hold "public meetings to review the human rights performance of States, to adopt new standards and to promote human rights around the world."² Sadly, the CHR has devolved into a feckless organization that human rights abusers use to block criticism or action to promote human rights. Even Secretary-General Kofi Annan has acknowledged, "We have reached a point at which the commission's declining credibility has cast a shadow on the reputation of the United Nations system."³

Considering the tattered state of the U.N.'s reputation in the wake of the Oil-for-Food scandal, peace-keeping abuses in the Congo and elsewhere, and the recent procurement scandals, one would think that the U.N. would act quickly to address the dysfunc-

Talking Points

- Governments, nongovernmental organizations, and others seeking to strengthen observance of basic human rights and freedoms should not let their affection for the U.N. blind them to its inability to hold abusers to account.
- Failure by the U.S. and other nations to replace the U.N. Commission on Human Rights with a smaller, more effective Human Rights Council that excludes human rights abusers and non-democracies from membership should be a clear sign that the U.N. is too heavily influenced by the human rights abusers to serve as the sole authority for human rights.
- The U.S. and other like-minded countries should establish a supplementary, independent human rights body that meets those standards outside the U.N. framework.

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tional embarrassment of the CHR. Regrettably, while the United States and other countries have been fighting to replace the CHR with a smaller, more effective Human Rights Council, other countries that are eager to prevent scrutiny or criticism of their actions have strongly opposed these efforts.

While it is too early to predict the final outcome of negotiations, it seems likely that the resulting council will fall far short of the reformed, effective body sought by the U.S. This is hardly surprising because every nation can claim U.N. membership, regardless of its dedication to basic human rights and freedoms, and the U.N. reflects the lack of freedom and respect for human rights among its membership. Until the U.N. can overcome this problem, the U.S. and other countries that seek to advance basic human rights should establish an independent group of politically and economically free nations to supplement and encourage U.N. efforts to promote basic human rights and freedoms.

The Struggle for Reform

The Commission on Human Rights was created by the U.N. Economic and Social Council (ECOSOC) in 1946 to examine, monitor, and report on human rights issues in countries and human rights violations worldwide. It meets annually for six weeks in March and April in Geneva, Switzerland. The CHR is subsidiary to ECOSOC, and its 53 members are elected by regional groupings.⁴ There are no qualifications for membership aside from being selected by the regional group.

The commission has fallen far from the aspirations of its founders. Its most important achieve-

ment was completing the Universal Declaration on Human Rights in 1948. Subsequent years were spent developing standards relating to the basic rights outlined in that document.

In recent years, however, the commission has been hijacked by human rights abusers that have used it to prevent scrutiny of human rights abuses inside their borders and block action against abusers. An egregious example is the failure of the commission to confront well-documented abuses in the Darfur region of Sudan—inaction that is abetted by Sudan's membership on the CHR. Six of the 53 CHR members—China, Cuba, Eritrea, Saudi Arabia, Sudan, and Zimbabwe—were considered among world's "worst of the worst" abusers of human rights by Freedom House in 2005.⁵ In a mockery of the commission's purpose, Libya served as CHR chairman in 2003.

The commission's inability to confront human rights abusers in the U.N. led the United States and other advocates to demand that it be replaced with a more effective Human Rights Council. The U.S. and other countries have sought to make this council a smaller, more effective advocate for human rights, with standards for membership to make it more difficult for human rights abusers to serve. Specifically, the U.S. has sought to:

- Establish the Human Rights Council as a principal U.N. organ that is not subordinate to the General Assembly;
- Adopt minimum criteria for membership, such as prohibiting membership for countries that are subject to Security Council sanction;

1. Charter of the United Nations, preamble, at www.un.org/aboutun/charter/index.html (January 26, 2006).
2. United Nations, "UN in Brief: What the UN Does for Justice, Human Rights and International Law," at www.un.org/Overview/brief3.html (February 6, 2006).
3. Mark P. Lagon, Deputy Assistant Secretary for International Organization Affairs, U.S. Department of State, "The UN Commission on Human Rights: Protector or Accomplice?" testimony before the Subcommittee on Africa, Committee on International Relations, U.S. House of Representatives, April 19, 2005, at www.state.gov/p/io/rls/rm/44983.htm (February 4, 2006).
4. Current membership is allocated by group, with 15 states from Africa; 12 states from Asia; 11 states from Latin America and the Caribbean; 10 states from the Western European and Others group, which includes the United States; and five states from Eastern Europe. For a current list of members, see U.N. Commission on Human Rights, "Membership," at www.unhchr.ch/html/menu2/2/chrmem.htm (February 4, 2006).
5. Press release, "World's Worst Regimes Revealed," Freedom House, March 31, 2005, at www.freedomhouse.org/template.cfm?page=70&release=255 (February 4, 2006).

- Require members to be elected by a two-thirds majority of the General Assembly;
- Limit the size of the council to 20 to 30 members (according to news reports), which would be much smaller than the unwieldy and inefficient 53-member CHR;
- Have the council sit in permanent session so that human rights abuses could be considered year-round instead of just six weeks during the year; and
- Adopt a peer review system under which human rights records would be judged by other states.⁶
- Make the council a subsidiary organ of the General Assembly.
- Minimally reduce the membership to 45 (compared to the CHR's 53 members).
- Allocate a specified number of seats to regional blocs, reinforcing opportunities for the type of backroom power brokering that aided human rights abusers to gain CHR membership.
- Not require the regional groupings to offer more countries than slots, which would deny the overall membership an opportunity to vote against a particularly unqualified candidate.

These reforms are strongly opposed by countries that have long used the commission to impede scrutiny and block action against human rights abusers. As a result, the Outcome Document for the September 2005 World Summit said next to nothing on the Human Rights Council aside from endorsing its creation.⁷

The subsequent months have been spent in time-consuming negotiations over the shape of the new council. Opponents of an effective council have steadfastly opposed allowing the council to sit in permanent session or set any criteria for membership. They have sought to make the council subservient to the General Assembly and to keep it at 53 members apportioned by geography. They have even rejected the idea that countries under Security Council sanction should be barred from membership, which would affect only seven of the 191 U.N. member states. Indeed, if the opponents of reform have their way, the only change between the Commission on Human Rights and the Human Rights Council will be the name.

The February 1 draft proposal for the Human Rights Council demonstrates that the opponents of reform are succeeding in blocking major changes.⁸ The proposal would:

- Not adopt specific qualifications for membership or bar any member of the U.N.—not even those under Security Council sanction—from sitting on the council. Instead, the proposal requests, “When electing members of the Council, Member States shall take into consideration the candidates’ contribution to the promotion and protection of human rights and the voluntary pledges and commitments made thereto.... Members shall also take into account whether there are any situations that constitute systematic and gross violations of human rights or any agreed measures currently in place at the United Nations against a candidate for human rights violations.”
- Formally establish controversial “rights” under the council’s authority, such as the right to development, and instruct the council to promote and protect an unspecified collection of “civil, political, economic, social, and cultural rights.”
- Require the council to meet at least three times per year, only marginally increasing the session to a minimum of 10 weeks versus six weeks for the CHR.
- Subject council members to periodic review of their human rights practices based on “objective and reliable information.”

6. Hudson Institute and Touro Law Center Institute for Human Rights, “Summary of the Outcome of the Human Rights Commission Negotiations: Nothing to Show,” *Eye on the UN*, 2005, at www.eyeontheun.com/un-reform.asp?p=77 (February 4, 2006).

7. “Human Rights Council,” 2005 World Summit Outcome, General Assembly Resolution A/RES/60/1, October 24, 2005, p. 33, at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>.

8. U.N. General Assembly, “Human Rights Council,” draft resolution, co-chair’s text, February 1, 2006, at www.eyeontheun.org/assets/attachments/documents/Draft%20of%20HR%20Council%20text%202-2-06.pdf (February 4, 2006).

Agreement has not been reached on whether election to the council by the General Assembly will require a simple majority vote or a two-thirds majority vote. While the two-thirds requirement could make it more difficult for human rights abusers to gain seats, it is no panacea and is unlikely to deny seats to noted human rights abusers like China, Cuba, or Saudi Arabia, which wield considerable influence in the regional blocs and the General Assembly. Even viewed in the most positive light, this proposal falls far short of the reform benchmarks set forth by the United States.

Unrealistic Expectations

It should surprise no one that the council will be less than ideal. After all, every nation claims membership in the U.N. even though many fail to adhere to the principles embodied in the U.N. Charter, including the commitment to fundamental human rights.⁹ Indeed, many member states actively subvert those principles and repress their own populations. The very culture of the U.N. lends itself to obfuscation, and debates over basic human rights frequently devolve into arguments over the merits of various entitlements and demands for the developed world to give additional resources and special privileges to developing countries.¹⁰

Pakistani Ambassador to the United Nations Munir Akram illustrated this point by expressing outrage at the suggestion that states under U.N. sanction for human rights abuses should be ineligible for membership on the council:

The presumption that a country is a violator of human rights is very subjective. If you want to create criteria...that exclude certain countries, why not those that don't support

trade liberalization or that don't implement foreign aid targets? The knife cuts both ways.¹¹

Regrettably, such assertions that failing to meet arbitrary aid targets is morally equivalent to state-sanctioned rape, slavery, religious persecution, or genocide are all too common at the U.N.

The problem facing the Commission on Human Rights or the proposed Human Rights Council in the promotion of basic human rights and freedoms is that a substantial portion of the U.N. membership simply does not observe these standards.

- According to Freedom House, less than half of the U.N. membership is politically free. The 2006 edition of *Freedom in the World* lists only 89 countries that are considered free in terms of political rights and civil liberties. Worse, "six of the eighteen most repressive governments—those of China, Cuba, Eritrea, Saudi Arabia, Sudan, and Zimbabwe—are members of the Commission on Human Rights (CHR), representing nearly 11 percent of the 53-member body.... An additional nine countries Freedom House rates as 'Not Free' enjoy membership on the Commission: Bhutan, Egypt, Guinea, Mauritania, Pakistan, Qatar, Russia, Swaziland, and Togo. Together, 'Not Free' countries comprise just over one quarter of the Commission's membership."¹²
- According to the 2006 *Index of Economic Freedom*, published by The Heritage Foundation and *The Wall Street Journal*, less than half of the U.N. membership is economically "free" or "mostly free."¹³ The *Index* lists only 20 of 161 countries as economically "free." Even including "mostly free" countries, there are only 72 countries in the top two categories of economic

9. Charter of the United Nations, preamble.

10. Joseph Loconte, "Relativism and Rights: Utopian Illusions Are Preventing Practical Reforms of the Human Rights Commission," *National Review Online*, February 2, 2006, at www.nationalreview.com/comment/loconte200602020832.asp (February 4, 2006).

11. Bloomberg, "U.S. Drive to Remake UN Stalled; Penalties Threatened," January 11, 2006, at www.bloomberg.com/apps/news?pid=10000086&sid=aeqOc0MAhbYM (February 4, 2006).

12. Press release, "World's Worst Regimes Revealed."

13. Marc A. Miles, Kim R. Holmes, and Mary Anastasia O'Grady, *2006 Index of Economic Freedom* (Washington, D.C.: The Heritage Foundation and Dow Jones & Company, Inc., 2006), at www.heritage.org/index (February 4, 2006).

freedom.¹⁴ Well over half of the 2005 CHR membership were economically “mostly unfree” or “repressed” according to the 2006 *Index*.

The regrettable reality is that the U.N. reflects the lack of freedom among its membership. The 191-member General Assembly—strongly influenced by China, Cuba, Pakistan, Zimbabwe, and other nations opposed to an effective human rights body—will not create an independent Human Rights Council capable of taking strong actions on human rights abusers. It is therefore unrealistic to expect the U.N. to lead the effort to confront human rights abusers among its membership.

Time for a Two-Track Approach on Human Rights

When asked about the negotiations over the Human Rights Council, U.S. Ambassador John Bolton declared, “We want a butterfly. We’re not going to put lipstick on a caterpillar and declare it a success.” An effective human rights body in the U.N. could greatly bolster efforts to strengthen basic human rights and representative government. However, such a body does not exist and is unlikely to be established if the recent proposal is any indication. Any objective observer must conclude that the draft proposal for the Human Rights Council is far closer to a caterpillar than to a butterfly.

The question is what the United States should do about this disappointment. Continued negotiation may yield incremental improvements, but the resulting council is unlikely to meet the standard sought by the U.S. The temptation to walk away from the inadequate council by suspending American participation and support is strong and has its merits. Such an action would make a clear statement about the council’s failings and absolve the U.S. of culpability in the council’s likely course of milquetoast inaction. It could possibly even spur further reform.

However, walking away would also minimize U.S. influence in the council and probably further weaken the council’s determination to confront human rights abusers. A better solution would be for the U.S. to use membership on the council to push its human rights agenda in council and to protect U.S. interests by blocking codification of objectionable “rights” while simultaneously creating a supplementary human rights effort outside of the U.N. framework and political limitations.

The bipartisan Task Force on the United Nations observed that “until the United Nations holds its members accountable for their failure to observe well-established human rights norms, the United Nations is not the best forum for the proposed Human Rights Council.”¹⁵ Indeed, there is no reason why the council should be the only multilateral body dedicated to advancing basic human rights and freedoms. An independent human

14. While most human rights groups and treaties do not specifically identify economic freedom among basic human rights, economic freedom is a critical element in individual liberty without which the notion of basic human rights is hollow. What can be more fundamental to human rights than the freedom to enjoy the fruits of one’s own labor? Protecting individuals from unreasonable or excessive confiscation of their property is central to liberty, and permitting unreasonable state confiscation of earnings or property severely inhibits their ability to provide for their families and the pursuit of their happiness. Such ties between economic and political liberty extend back to the very beginnings of thought into the idea of inalienable human rights, whose foremost philosophers perceived such liberties as inextricable. For instance, John Locke asserted that “every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his.” Thus, “[t]he great and chief end...of men’s uniting into commonwealths, and putting themselves under government, is the preservation of their property. To which in the state of nature there are many things wanting.” John Locke, *The Second Treatise of Civil Government*, 1690, Chap. 5, Section 27, and Chap. 9, Section 124, at oregonstate.edu/instruct/phl302/texts/locke/locke2/2nd-contents.html (February 6, 2006). As Thomas Jefferson noted in his 1801 inaugural address, “A wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and all that is necessary to close the circle of our felicities.” Thomas Jefferson, *Thomas Jefferson: Writings* (New York: Literary Classics of the United States, Inc., 1984), p. 494. These ideals form the core of the U.S. Constitution and the earlier Declaration of Independence, which in turn were the inspiration for international recognition of inherent individual rights.

rights body composed solely of countries dedicated to advancing and protecting basic human rights and freedoms could supplement the council's efforts and pressure it into becoming more vigorous and assertive in its inquiries, reviews, and actions.

Suggesting that governments create a more active international body to promote basic human rights and freedoms is hardly heretical. Indeed, the Council for a Community of Democracies, the Council of Europe, the Organization for Security and Cooperation in Europe, and other organizations already seek to promote democracy and human rights outside of the U.N. framework. These organizations vary in their formal structures, binding commitments, and supporting structures and bureaucracies. Theoretically, one of them could be modified to remove the regional limitations on membership and extend its focus on democracy and human rights to include economic liberty, but they already perform useful tasks, and establishing a new complementary group may well be a better and easier option, given the difficulty in reforming any multilateral organization.

The United States should approach other nations that are dedicated to promoting basic human rights and freedoms about cosponsoring a summit to establish an independent group to promote basic human rights and protect individual liberty. To minimize politicization of membership in this body, qualification should be determined by independent analysis of government policies on basic human rights, including political and economic freedom. A variety of measures are available. For

example, using an eligibility standard of "free" countries according to *Freedom in the World 2006* and "free" or "mostly free" countries according to the *2006 Index of Economic Freedom* would yield a group of at least 54 countries from all regions of the world that provide strong protections to their citizens' economic and political rights.¹⁶

Establishing an independent human rights body outside the U.N. does not preclude cooperation with the U.N., or even merging such a body with the U.N. at some future date, if the U.N.'s membership were to change in a way that made it more likely to promote basic human rights and freedoms aggressively. To minimize barriers to this future option, the body should be informal, perhaps modeled after the G-8, and meet as often and for as long as deemed necessary to address specific human rights problems or jointly review basic human rights and freedoms around the world. The inefficiency inherent in a group of this size should be mitigated by the common observance of basic human rights and political and economic freedom, but a much smaller executive committee should also be selected to conduct reviews and recommend action on countries that violate the group's established principles. Failure to maintain membership standards should result in censure or ejection from the human rights body.

Governments, nongovernmental organizations, and others seeking to strengthen the observance of basic human rights should not let their affection for the U.N. blind them to its inability to hold abusers to account. The priority should be to advance the cause of basic human rights and political and eco-

15. United States Institute of Peace, Task Force on the United Nations, *American Interests and UN Reform: Report of the Task Force on the United Nations*, June 2005, p. 34, at www.usip.org/un/report/usip_un_report.pdf (February 4, 2006).

16. The countries that were both "free" according to Freedom House's *Freedom in the World 2006* and economically "free" or "mostly free" in the *2006 Index of Economic Freedom* are Australia, Austria, the Bahamas, Barbados, Belgium, Belize, Botswana, Bulgaria, Canada, Cape Verde, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Jamaica, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Mongolia, the Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Slovak Republic, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Taiwan, Trinidad and Tobago, the United Kingdom, the United States, and Uruguay. Because *Freedom in the World* ranks 192 countries and the *Index* ranks only 161, there may be additional countries that could qualify but are not covered by both publications. One example is Lichtenstein, which is not graded in the *Index* but would probably be rated "free" or "mostly free." Freedom House, "Freedom in the World 2006: Selected Data from Freedom House's Annual Global Survey of Political Rights and Civil Liberties," at www.freedomhouse.org/uploads/pdf/Charts2006.pdf (February 4, 2006), and Miles et al., *2006 Index of Economic Freedom*.

conomic freedom. These goals are best achieved through a two-track approach to human rights—one in the U.N. and the other outside the U.N. in the form of an independent supplementary group of economically and politically free nations.

Conclusion

Human rights advocates should not shy away from uncomfortable truths. Perhaps the U.N. will one day be dominated by democratic states that respect the basic rights and freedoms of their citizens and demand similar standards from all U.N. member states, but that is not the U.N. of today. Failure by the U.S. and other nations to create a

smaller, more effective Human Rights Council that excludes human rights abusers and non-democracies from membership should be a clear sign that the U.N. is too heavily influenced by the human rights abusers to serve as the sole authority for human rights. The U.S. and other like-minded countries should establish a supplementary, independent human rights body that meets those standards outside the U.N. framework.

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