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The U.S. Is Right to Shun the U.N. Human Rights Council

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The United Nations General Assembly voted in March 2006 to replace the Commission on Human Rights with the Human Rights Council. The Commission, dominated by human rights abusers who used their influence to block scrutiny or criticism, proved to be a poor champion of human rights.

Nearly two years after it was created, the United States' concerns that the Council would not be an improvement over the Commission have been realized. Like the Commission, the Council has focused on criticizing Israel—condemning it in 19 separate resolutions and decisions. No other country—not even noted human rights violators like Burma, China, Cuba, Iran, North Korea, or Sudan—has received a fraction of the criticism or attention that the Council has focused on Israel.

States hostile to human rights have undermined the Council's agenda by eliminating scrutiny of states such as Iran and Cuba, constraining the independence of human rights experts, and obtaining passage of a resolution on defamation of religion that condones constraints on freedom of expression.

Despite its poor record, even skeptics hoped that the Council could do a service for human rights through its Universal Periodic Review of human rights practices in all countries. Sadly, even this process has fallen far short of expectations.

Based on the record of the U.N. Human Rights Council, the U.S. was clearly right to distance itself from this body. In the face of strong criticism from human rights groups, the U.S. refused to run for a

seat on the Council, a move that would have lent this flawed institution underserved credibility.

The Council is a sham that does not effectively promote or protect human rights. The Bush Administration should be congratulated for its recent decision to withhold an amount equivalent to the U.S. share of the Human Rights Council budget from its 2008 funding for the United Nations.

The False Promise of the Human Rights Council. Since the birth of the United Nations, protecting and advancing fundamental human rights has been one of the organization's primary objectives. The drafters of the U.N. Charter 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." U.N. treaties and conventions, such as the Universal Declaration on Human Rights, which the General Assembly passed in 1948, form the core of international standards for human rights.

Sadly, the adoption of the Universal Declaration has been, in many ways, the high-water mark of U.N. efforts to promote human rights. The U.N.'s subsequent record in getting member states to adopt and protect the fundamental human rights

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identified in that document has been riddled with failure and inaction.

For nearly six decades, the U.N. Commission on Human Rights served as the premier U.N. human rights body charged with reviewing the human rights performance of states and promoting human rights around the world. However, the Commission devolved into a feckless organization used by human rights abusers to block criticism and as a forum for attacks on Israel. The Commission's disrepute grew so great that even former U.N. Secretary-General Kofi Annan 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 as a whole, and where piecemeal reforms will not be enough."¹

After lengthy deliberations and negotiations, the U.N. General Assembly voted in March 2006 to replace the Commission with a new Human Rights Council.² Regrettably, during the negotiations, the General Assembly rejected many basic reforms and standards that had been proposed by the U.S. to ensure that the Council would not repeat the mistakes of the Commission.

Despite minimal safeguards to prevent human rights abusers from using the Council as they had the Commission, Council supporters—including U.N. High Commissioner for Human Rights Louise Arbour—were quick to declare that the new body represented the "dawn of a new era" in promoting human rights in the United Nations.

The U.S. was concerned that the Council would not be an improvement over the old Commission and voted against the resolution creating the Council. Significantly, states well know for human rights

violations—including Burma, Syria, Libya, China, Cuba, Ethiopia, Sudan, Saudi Arabia, and Zimbabwe—all voted in favor of the new Council in the General Assembly.

Predictably, the 47-seat body is *not* a significant improvement over the hugely discredited Commission on Human Rights. The Council's lack of substantive membership criteria rendered it open to infiltration and manipulation by the world's worst human rights abusers.

Who Runs and Who Wins? The Council's first two elections were less than heartening. The first Council election in 2006 produced a Council in which 25 out of 47 members (53 percent) were ranked "free" by Freedom House.³ Some of the more disreputable human rights abusers—Burma, North Korea, Sudan, and Zimbabwe—did not run for seats. Iran and Venezuela ran for seats but were unsuccessful, although Venezuela received enough votes (101) to win a seat if other states had not won more support.

The 2007 election marked a regression from 2006. The number of "free" countries on the Council according to Freedom House rankings declined, and the number of "not free" countries increased.⁴ The only significant victory in the 2007 election for Council members was blocking Belarus from winning a seat. Yet until about a week before the election, Belarus and Slovenia were the only two candidates for the two open Eastern European seats. Only enormous pressure from human rights groups and the U.S. persuaded Bosnia and Herzegovina to run, narrowly denying Belarus a seat on the Council.⁵ However, Angola, Egypt, Qatar, and Bolivia—states with dismal human rights records—were elected easily.⁶

1. Office of the United Nations Secretary-General, "Secretary-General's Address to the Commission on Human Rights," April 7, 2005, at www.un.org/apps/sg/sgstats.asp?nid=1388 (May 1, 2008). Also see Mark P. Lagon, "The U.N. 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 (May 1, 2008).
2. United Nations General Assembly, "General Assembly Establishes New Human Rights Council by Vote of 170 in Favor to 4 Against, with 3 Abstentions," Department of Public Information, General Assembly Document GA/10449, March 15, 2006, at www.un.org/News/Press/docs/2006/ga10449.doc.htm (May 1, 2008).
3. United Nations General Assembly, "Election: Human Rights Council," at www.un.org/ga/62/elections/hrc_elections.shtml#candidates (May 1, 2008); Freedom House, "Freedom in the World," 2006 Edition, at www.freedomhouse.org/template.cfm?page=363&year=2006 (May 1, 2008).
4. *Ibid.*

The May 21, 2008, election will not significantly improve the composition of the Council's membership. There are currently 20 candidates for 15 seats.⁷ The best-case scenario would have the Council essentially maintain its current composition with 23 "free" countries, 15 "partly free" countries, and nine "not free" countries. The worst case would see the Council fall to 21 "free" countries, 18 "partly free" countries, and 10 "not free" countries. Thus, at best, the Council would continue to have only a minority of "free" countries that actually practice the freedoms the Council is supposed to promote.

Despite well-known and extensively documented histories of repression and violation of basic human rights, Algeria, Angola, Azerbaijan, Cameroon, China, Cuba, Egypt, Pakistan, Qatar, Russia, Saudi Arabia, and Tunisia have been elected to seats

on the Council in its first two years. These countries have been key players in undermining the effectiveness of the Council. However, they have been abetted by the reluctance of free, democratic states such as South Africa and India to support human rights initiatives on the Council.⁸

The combination of having states on the Council determined to undermine initiatives to promote human rights and unwillingness by a number of "free" and "partly free" countries to oppose their efforts has resulted in making the Council a weak and ineffectual instrument to promote basic human rights. For instance:

- The Council decided to discontinue consideration of the human rights situations in Iran and Uzbekistan under the 1503 Procedure⁹ and to eliminate the experts focused on Belarus and Cuba, despite

5. According to one news report, Bosnia and Herzegovina decided to run only after the U.S. strongly implied to other European countries that the U.S. would run for a Council seat next year if Belarus did not win a seat. If true, this is a perverse and shortsighted strategy that would undermine America's principled position not to run for a seat until the Council proves its merit in return for only a one-time defeat of Belarus. Maggie Farley, "U.S. Appears Willing to Join U.N. Human Rights Panel," *Los Angeles Times*, May 18, 2007, at www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEmG&b=1319279&ct=3869517 (May 1, 2008).
6. See Anne Bayefsky, "The Oppressors' Club," *National Review*, May 18, 2007, at <http://article.nationalreview.com/?q=NDM2NTQ2ODZmNDU3MTA2ZTBiNDFiNGExZWRjMWM2YjQ> (May 1, 2008).
7. In the Western European and Other States group, the choice is between three countries considered "free" by Freedom House. The Latin American and Caribbean States and the African States regional groups each have just enough candidates to fill the vacant seats. Together, these two groups offset each other in the rankings with the Latin American and Caribbean States gaining a "free" country and losing a "partly free" country, while the African States lose a "free" country and gain a "partly free" country. The Eastern European States have four "free" countries running for two seats currently filled by "free" countries. The only potential for shifting the net composition of the Council lies with the Asian States, where two "free" countries, three "partly free" countries, and one "not free" country are vying for four seats currently filled by two "free" countries, one "partly free" country, and one "not free" country. See United Nations General Assembly, "Election: Human Rights Council."
8. A U.N. Watch analysis of significant actions taken by the Council during its first year concluded that only 13 of the Council's 47 members were net positive contributors to its human rights agenda. U.N. Watch scored 20 "key actions" of the Human Rights Council in its first year. The positions taken by countries on these key actions were assigned a value: 1 point for taking a positive position for human rights in the HRC, 0 points for taking a neutral position, and -1 point for taking a negative position. Four free democracies—Indonesia, Mali, Senegal, and South Africa—were among the countries with the worst record. See U.N. Watch, "Dawn of a New Era?" at www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/DAWN_OF_A_NEW_ERA_HRC%20REPORT_FINAL.PDF (May 1, 2008). pp. 5–8, 26–27.
9. The Working Group on Situations (WGS) examines the particular situations referred to it by the Working Group on Communications under the 1503 Procedure. The WGS then makes recommendations to the council on how to proceed. In these cases, it recommended that the Council discontinue consideration of the situations in Iran and Uzbekistan. The WGS is composed of representatives from five countries, including Zimbabwe—despite that country's own massive abuses that merit Council consideration. See Office of the U.N. High Commissioner for Human Rights, "Working Group on Situations," at www.ohchr.org/english/issues/situations/index.htm (May 1, 2008). Also see United Nations Office at Geneva, "Human Rights Council Concludes Fourth Session," March 30, 2007, at [www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/E6876F6D72C67C0AC12572AE004CA5C0](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/E6876F6D72C67C0AC12572AE004CA5C0) (May 1, 2008).

extensive evidence of ongoing human rights violations in all of those countries.¹⁰

- Like the Commission, the Council has repeatedly singled out Israel for condemnation. The Council has focused on criticizing Israel, condemning it in 19 separate resolutions and decisions, while ignoring human rights abuses committed by Hamas and Hezbollah.¹¹ No other country—not even noted human rights violators like Burma, China, Cuba, Iran, North Korea, or Sudan—has received a fraction of the criticism or attention that the Council has focused on Israel.
- The Council adopted new rules and procedures, including a new “Code of Conduct,” to intimidate independent experts. According to the U.S. Department of State, many of the institution-building procedures adopted by the Council are “seriously flawed” and will make the many problems of the Council “even worse.”¹²
- One of the most troubling trends in the Council is the success the Organization of the Islamic Conference (OIC) has had in passing “religious defamation” measures. As noted by the Becket Fund:

While a religious defamation resolution purports to advance civility, its application inevitably stifles the free expression of ideas and beliefs because they protect ideas and beliefs rather than people.... All religions make truth claims that conflict with one an-

other, thus making the interpretation of religious defamation laws subjective to the beliefs of the judicial authority. Naturally, the subjective nature of religious defamation laws creates dangerous situations for minority religions and their assurance of freedom of conscience.¹³

The Human Rights Council passed a resolution in March 2007 that expressed “deep concern at attempts to identify Islam with terrorism, violence, and human rights violations” and urged states to “take all possible measures to promote tolerance and respect for all religions and their value systems and to complement legal systems with intellectual and moral strategies to combat religious hatred and intolerance.”¹⁴ Worryingly, the resolution asserts that the right to freedom of expression may be limited out of “respect for religions and beliefs.” The OIC again passed a resolution in the 7th Session of the Council (held March 3–28, 2008) on “combating the defamation of religion” with text very similar to the resolution passed in March 2007.

- The Council is responsible for organizing the 2009 Durban Review Conference, commonly referred to as Durban II, which is the follow-up to the disastrous 2001 United Nations World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance. The 2001 conference, held in Durban, South Africa,

10. United Nations Office at Geneva, “Human Rights Council Hears Praise and Criticism About Adopted Text on Institution Building of Council,” June 19, 2007, at [www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/8F849DF300991F12C12572FF005FB375](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/8F849DF300991F12C12572FF005FB375) (May 1, 2008); and Brett D. Schaefer, “U.N. Further Weakens Human Rights Council,” Heritage Foundation WebMemo No. 1707, November 20, 2007, at www.heritage.org/Research/InternationalOrganizations/wm1707.cfm.

11. See U.N. Watch, “Anti-Israel Resolutions at the HRC,” at www.unwatch.org/site/c.bdKKISNqEmG/b.3820041/ (May 1, 2008); and Eye on the U.N., “Human Rights Action,” at www.eyeontheun.org/browse-un.asp?ya=1&ua=1&sa=1&tpa=1 (May 1, 2008).

12. For more information, see Brett D. Schaefer, “The United Nations Human Rights Council: A Disastrous First Year and Discouraging Signs for Reform,” Heritage Foundation Lecture No. 1042, September 5, 2007, at www.heritage.org/Research/InternationalOrganizations/hl1042.cfm; and Sean McCormack, “Conclusion of the U.N. Human Rights Council’s Fifth Session and First Year,” June 19, 2007, at www.state.gov/r/pa/prs/ps/2007/jun/86802.htm (May 1, 2008).

13. The Becket Fund, “Session in Review: A Becket Fund for Religious Liberty Report on HRC Activities Affecting Religious Freedom,” at www.becketfund.org/files/67b16.pdf (May 1, 2008).

14. U.N. Human Rights Council, “Report to the General Assembly on the Fourth Session of the Human Rights Council,” A/HRC/4/L.11/Add.1, March 30, 2007, at www.ohchr.org/english/bodies/hrcouncil/docs/4session/A_HRC_4_L.11_Add1.doc (May 1, 2008).

fell victim to nations and non-governmental organizations that hijacked it to criticize Israel and the United States. After unsuccessfully trying to counter those efforts, the U.S. delegation walked out of the 2001 conference. The Council decided that it will act as the Preparatory Committee for Durban II—with Libya as chair—electing 19 other countries to serve on the bureau for the Preparatory Committee that will set the agenda and objectives for the Review Conference. Among the 19 vice-chairs are Cuba, Iran, Pakistan, Russia, and South Africa, not one of which has distinguished itself as a champion of equality or human rights during its tenure on the Council. Placing OIC nations in key positions on the Preparatory Committee paves the way for having Durban II follow in the footsteps of the 2001 debacle.¹⁵

The Universal Periodic Review. Despite its poor record, even skeptics hoped that the Council could do a service for human rights through a Universal Periodic Review (UPR) of human rights practices in all countries. The General Assembly resolution that created the Council required the body to review the human rights situation in all U.N. member states to eliminate the selective reviews undertaken by the Commission.

Although a review of the human rights practices in all countries is a welcome improvement over the Commission, the procedures for the review adopted by the Council are very weak and virtually assure a milquetoast outcome. For instance, the review for every country, whether Sweden or Sudan, is limited to three hours every four years, and the review will be a country-led process in which input from non-governmental organizations is slight.

In other words, a genocide or massive political crackdown could occur in Burma, China, Sudan, Venezuela, or some other country, and the Council could wait *four years or more* before examining whether a country has addressed the human rights concerns raised during the review.

Needless to say, even strong proponents of the Council are disappointed with the results of the first

two-week session of the UPR that concluded on April 18, 2008. For instance, according to Human Rights Watch:

The first session of the new country review mechanism of the U.N. Human Rights Council was undermined by inconsistencies and the timidity of some governments in reviewing others....

There was a marked contrast in the strength of criticism faced by some countries under review, with, for instance, the Czech Republic facing detailed questioning regarding the treatment of Roma, while on the other hand, few states challenged Tunisia and Algeria on their records. Other African states avoided talking about human rights problems in those two countries, instead congratulating both for their alleged achievements....

Algeria's interventions on Tunisia, Bahrain, and the United Kingdom provide a good example of the double standards applied by some. The Algerian ambassador trod softly with regard to both Tunisia and Bahrain, noting the difficulties the Tunisian government faced protecting human rights while combating terrorism and asking only if Tunisia believed it would be "a good idea to have a seminar" on that subject, while congratulating Bahrain for the progress it has made with regard to protection of women's rights. In contrast, Algeria gave a strong, detailed statement when the United Kingdom was reviewed, raising concerns over its rate of incarceration of children, the violation of the U.K.'s commitments under the Convention Against Torture, excessive use of pre-trial detention, and the lack of protection for asylum seekers and migrants.

In addition to such inconsistencies, the review was marked by excessive praise and timid criticisms.... [E]fforts to find something to commend in even the most dire situations undermined the credibility of the process.¹⁶

Infrequent Success. The record of the Council is not without some positive actions. For instance, a

15. Brett D. Schaefer, "Durban II: The Administration Moves in the Right Direction," Heritage Foundation *WebMemo* No. 1896, April 17, 2008, at www.heritage.org/Research/InternationalOrganizations/wm1896.cfm.

number of the human rights experts reporting to the Council make solid contributions to the purpose of the Council, although there are notable exceptions.¹⁷ The Council also has convened special sessions on Sudan and Burma.

Unfortunately, the resolutions on Sudan have been weak and non-condemnatory; the Council has strained to avoid blaming the government of Khartoum for its role in the genocide in Darfur.¹⁸

The resolution on Burma was stronger. While the timing of the Burma resolution leaves the impression that the resolution was a reaction to international media coverage of Burma, rather than a sincere fulfillment of the Council's mandate to condemn human rights violations, the Council deserves credit for condemning the crackdown on protestors by Burma's military junta.

U.S. Response. The U.S. has concluded rightly, however, that these infrequent positive actions do not outweigh the many negative aspects of the Council. This determination has led it to forego

running for a seat on the basis that having the U.S. on the Council would make little difference to the proceedings.¹⁹

Moreover, based on evident bias and other problems, the U.S. announced that it will withhold an amount equivalent to the U.S. share of the Human Rights Council budget from its 2008 funding for the United Nations.²⁰ This withholding also extends to the U.S. portion of the \$6.8 million expected costs for the Durban II preparatory process administered by the Human Rights Council.²¹

Conclusion. The U.S. should not be satisfied with a flawed, biased, and ineffective Council. Other U.N. member states have refused to act when presented with opportunities to make the Council more effective. Through their actions, they have demonstrated that they do not take the Council or human rights seriously.

Considering the poor record of the Council in its first two years and the dim prospects for improvement, the Bush Administration was correct to refuse

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16. Human Rights Watch, "U.N.: Mixed Results for New Review Process," April 18, 2008, at <http://hrw.org/english/docs/2008/04/18/global18606.htm> (May 1, 2008).
 17. For instance, Richard Falk and Jean Ziegler have both been appointed by the Human Rights Council as experts, despite long histories of anti-American and anti-Israeli bias. See Nile Gardiner, Ph.D., "The Second Time as Farce: Meet the U.N.'s New Human Rights Council," *Weekly Standard*, April 23, 2008, at www.weeklystandard.com/Content/Public/Articles/000/000/015/018nqpas.asp (May 1, 2008).
 18. United Nations Human Rights Council, "Decision 2/115: Darfur," November 28, 2006, at <http://ap.ohchr.org/documents/E/HRC/decisions/A-HRC-DEC-2-115.doc> (May 1, 2008); and United Nations Human Rights Council, "Decision S-4/101: Situation of Human Rights in Darfur," December 13, 2006, at www.ohchr.org/english/bodies/hrCouncil/specialsession/4/docs/Dec_S_4_101_en.doc (May 1, 2008).
 19. Some have suggested that the U.S. could improve the Council if it were a member. This is unlikely. Winning a seat on the Council would not necessarily give the U.S. greater voice or influence. Any U.N. member state can comment on and speak to issues before the Council, and the U.S. has frequently expressed its support of or opposition to various resolutions and decisions. Because membership is based on geographic representation, even if the U.S. won a seat on the Council, it would simply displace one of the seven countries representing the Western Europe and Other States region, which already vote largely as the U.S. would vote. In numerous votes over the past year, the Council has adopted resolutions over the objection of 11 or 12 Western nations. U.S. membership on the Council would not change this situation. Indeed, over the past year, Canada has filled the traditional U.S. role of raising controversial resolutions and demanding votes. Canada's admirable actions have not been successful. On the contrary, they have resulted in retaliation. There is no reason to expect that the U.S. would be treated differently than Canada by the human rights abusers that have successfully used the Council to undermine human rights. For more information, see Brett D. Schaefer, "The United Nations Human Rights Council: A Disastrous First Year and Discouraging Signs for Reform," Heritage Foundation *Lecture* No. 1042, September 5, 2007, at www.heritage.org/Research/InternationalOrganizations/hl1042.cfm.
 20. Zalmay Khalilzad, "Statement on the Durban II Conference and the Human Rights Council to the Conference of Presidents of Major Jewish Organizations," April 8, 2008, at www.usunnewyork.usmission.gov/press_releases/20080408_075.html (May 1, 2008).
 21. Brett D. Schaefer, "Durban II."

to lend the Council the credibility of U.S. membership or the symbolic support of U.S. contributions.

Perhaps one day the Council will merit U.S. participation and financial support, but the current Council does not. Until the Council takes its responsibilities seriously—by censuring major human rights abusers, exposing their reprehensible

actions to public scrutiny, and eschewing its disproportionate focus on Israel—the United States should sever its ties to the Council completely.

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