

Background

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U.N. Human Rights Council Whitewash Argues Against U.S. Participation

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Since the presidential election in November, human rights organizations and nations that support the U.N. Human Rights Council (HRC) have anticipated that the United States would seek a seat on the council. On March 31, their hopes were realized when U.S. Secretary of State Hillary Rodham Clinton and U.S. Permanent Representative to the U.N. Ambassador Susan Rice announced that the U.S. would seek a seat on the Human Rights Council in the upcoming May election to “make it a more effective body to promote and protect human rights.”¹ This decision is a mistake. The HRC is a seriously flawed organization that, absent fundamental changes, will not be improved by U.S. participation.

The first three years of the Human Rights Council have been bitterly disappointing, with the council continuing the worst practices of the U.N. Commission on Human Rights (CHR), including stigmatizing Israel and overlooking serious human rights violations by China, Cuba, and other states. These practices led the U.N. General Assembly to replace the CHR with the HRC in 2006. When the HRC also proved lacking, the Bush Administration declined to seek a seat on the council and distanced the U.S. from its deliberations.

Human rights activists have similarly expressed frustration with the HRC’s disproportionate criticism of Israel and lack of action on a number of serious human rights crises, but have maintained that U.S. membership could improve the work of the council. They have also pointed to the Universal Periodic

Talking Points

- The U.N. Human Rights Council’s first three years have been bitterly disappointing, with the council emulating the worst practices of the U.N. Commission on Human Rights, including stigmatizing Israel and overlooking serious human rights violations in China, Cuba, and other states.
- Human rights activists have pointed to the Universal Periodic Review of human rights practices as justifying U.S. support and participation. In reality, the UPR has proven to be weak and ineffective.
- President Obama made the wrong call in deciding to run for a seat on the HRC. There is no reason to believe that U.S. membership will overcome the efforts of other countries to undermine the aims of the council.
- Instead, the U.S. should make its participation contingent on an immediate review of the council and adoption of reforms to make the council a stronger forum for examining human rights practices and holding violators to account.

This paper, in its entirety, can be found at:
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Review (UPR) of the human rights practices of all U.N. member states as a key reform that would justify U.S. support and participation. Sadly, with the fourth review now complete, the UPR has proven to be weak and ineffectual. In the most recent review, notorious human rights violators China and Cuba were praised by their fellow council members. States willing to voice criticism were lonely outliers.

The HRC's record in its first three years deserves scorn, not the legitimacy that U.S. membership would convey. Without a serious and rigorous UPR and strict membership standards, there is little reason to believe that U.S. membership on the council would improve the work of the HRC. A wiser course of action would be to make U.S. participation contingent on an immediate review of the council and adoption of reforms that would make the council a more rigorous forum for examining human rights practices and holding violators accountable.

The Disappointing Council

The U.N. Human Rights Council was created in 2006 to replace the U.N. Commission on Human Rights after the CHR's reputation had fallen so far that even U.N. Secretary-General Kofi Annan acknowledged that "the Commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole."² Regrettably, during negotiations to establish the council, many basic reforms and standards designed to ensure that the HRC would not repeat the commission's mistakes failed to gain the necessary support in the General Assembly.

Out of concern that the council would not be an improvement over the commission, the U.S. voted against the resolution that created the council and chose not to run for a seat in 2006. However, the U.S. did not immediately dismiss the council, deciding instead to engage with it as an observer and adopting a wait-and-see attitude on whether to run for a seat in future years.

Critically, when it negotiated the resolution creating the HRC, the General Assembly failed to adequately address the problem of states seeking seats on the council to prevent scrutiny rather than to promote human rights. Because seats are allocated based on regional groupings, a few determined states can dominate the council's agenda by manipulating voting through regional blocs—the African and Asian states (26 seats) control a majority on the 47-seat HRC. In its first three years, the HRC has proven itself to be weak and ineffectual in promoting fundamental human rights, in large part because influential countries opposed to strong HRC scrutiny of human rights (e.g., China and Cuba) and groups such as the Organization of the Islamic Conference (OIC) have been able to negatively influence council deliberations, resolutions, and decisions.³

Among its dubious accomplishments, the HRC discontinued consideration of the suppression of human rights in Iran and Uzbekistan under the 1503 procedure,⁴ eliminated the special rapporteurs on the situations in Belarus and Cuba, and failed to address deplorable human rights violations in such countries as Belarus, China, Cuba, North Korea, and Zimbabwe. The OIC, through its mem-

1. Press release, "U.S. to Run for Election to the UN Human Rights Council," U.S. Department of State, Bureau of Public Affairs, March 31, 2009, at <http://www.state.gov/r/pa/prs/ps/2009/03/121049.htm> (April 1, 2009).
2. Kofi Annan, "Secretary-General's Address to the Commission on Human Rights," Office of the Spokesman for the U.N. Secretary-General, April 7, 2005, at <http://www.un.org/apps/sg/sgstats.asp?nid=1388> (March 25, 2009).
3. For a more detailed analysis, see Brett D. Schaefer, "The U.S. Is Right to Shun the U.N. Human Rights Council," Heritage Foundation *WebMemo* No. 1910, May 2, 2008, at <http://www.heritage.org/Research/InternationalOrganizations/wm1910.cfm>, and "The United Nations Human Rights Council: A Disastrous First Year and Discouraging Signs for Reform," Heritage Foundation *Lecture* No. 1042, September 5, 2007, at <http://www.heritage.org/Research/InternationalOrganizations/hl1042.cfm>.
4. The 1503 procedure is named after the U.N. Economic and Social Council resolution that established the procedure by which the council considered reliable reports or claims from NGOs of consistent patterns of gross human rights violations. U.N. Human Rights Council, "Human Rights Council Complaint Procedure," at <http://www2.ohchr.org/english/bodies/chr/complaints.htm> (November 24, 2008). See also U.N. Economic and Social Council, "Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms," Resolution 1503, May 27, 1970.

bers on the council, has succeeded in having the council pass resolutions on the defamation of religion that support constraints on the fundamental rights of freedom of speech and expression.⁵ The council's most notorious shortcoming is its obsession with condemning Israel—more than 80 percent (26 of 33) of its country resolutions have focused on Israel—while ignoring far worse human rights situations elsewhere.

Based on the council's poor record, the Bush Administration chose not to run for a seat in 2007 or in 2008.⁶ In addition, the Bush Administration announced that it would withhold the equivalent of the U.S. share of the HRC budget from its 2008 funding for the United Nations.⁷ In a press briefing on June 6, 2008, State Department spokesman Sean McCormack articulated a policy further distancing the U.S. from the council:

[O]ur skepticism regarding the function of the UN Council on Human Rights in terms of fulfilling its mandate and its mission is well known. It has a rather pathetic record in that regard. Instead of focusing on some of the real and deep human rights issues around the world, it has really turned into a forum that seems to be almost solely focused on bashing Israel.

...[W]e will engage the Human Rights Council really only when we believe that there are matters of deep national interest before the Council and we feel compelled; otherwise, we are not going to. Part of our strategy is to take a look at any suggestions or thoughts we might have to improve the performance of the Council. There's a five-

year review period, and that review period is going to fall outside the term of this Administration, but of course, we'll—we feel as stewards of the national interest, we are going to think about ways that might improve the function of the Council.⁸

News reports earlier this year indicated that the Obama Administration was considering reversing Bush Administration policies toward the council. It announced its intention to engage with the council as an observer and declared that it was considering running for a council seat because, in the words of State Department spokesman Robert Wood, "It's hard to improve [the HRC] from the outside."⁹ On March 31, 2009, U.S. Secretary of State Hillary Rodham Clinton and U.S. Permanent Representative to the U.N. Ambassador Susan Rice announced that the U.S. would indeed seek a seat on the Human Rights Council in the upcoming May election to "make it a more effective body to promote and protect human rights."¹⁰

This decision is off base. There is no basis for believing that the U.S. would be any more effective as a member than as an observer. Any U.N. member state can comment on issues before the council, and the U.S. has frequently expressed support of or opposition to various resolutions and decisions. Membership would grant only marginally more influence in this regard.

Moreover, the U.S. vote will be largely irrelevant because membership is based on geographic representation. Even if the U.S. won a seat, it would simply displace one of the seven countries representing the Western Europe and Other States (WEOG) region on the council, which already vote largely in

5. Steven Groves, "Why the U.S. Should Oppose 'Defamation of Religions' Resolutions at the United Nations," Heritage Foundation *Backgrounder* No. 2206, November 10, 2008, at <http://www.heritage.org/research/legalissues/bg2206.cfm>.
6. Schaefer, "The United Nations Human Rights Council."
7. Zalmay Khalilzad, statement on the Durban II Conference and the Human Rights Council to the Conference of Presidents of Major Jewish Organizations, U.S. Mission to the U.N. in New York, April 8, 2008, at http://www.usunnewyork.usmission.gov/press_releases/20080408_075.html (May 1, 2008).
8. Sean McCormack, Daily Press Briefing, U.S. Department of State, June 6, 2008, at <http://2001-2009.state.gov/r/pa/prs/dpb/2008/jun/105716.htm> (March 25, 2009).
9. Betsy Pisik, "U.S. Eyes Bid for U.N. Rights Council," *The Washington Times*, February 10, 2009, at <http://www.washingtontimes.com/news/2009/feb/10/us-now-eyes-bid-for-un-rights-council> (March 25, 2009).
10. Press release, "U.S. to Run for Election to the UN Human Rights Council."

concert with U.S. positions. The current HRC members from the WEOG are Canada, France, Germany, Italy, the Netherlands, Switzerland, and the United Kingdom. Countries on the council serve for three-year terms, which are staggered so that a portion of each region's seats are open each year.¹¹ By running for a seat, the U.S. would not replace China, Cuba, or some other human rights abuser serving on the council and undermining its actions, but another Western country that generally shares America's views on human rights and would likely vote as the U.S. would. With only seven seats among the 47 total seats on the council, the WEOG countries are routinely outnumbered.

The net effect of a U.S. vote will be minimal because other regions have a controlling majority of council votes. Countries like Egypt and China use their influence in their respective blocs to vote down positive resolutions with disturbing regularity. The OIC and other groups also use their influence in regional blocs to block resolutions that they oppose or to advance resolutions condemning Israel. Indeed, in numerous votes over the past few years, the council has adopted resolutions over the objections of 11 or 12 nations—generally Western and other developed nations, such as Japan, that have a long-standing commitment to human rights. U.S. membership would not change this situation.

During its time on the council, Canada has often filled the traditional U.S. role of raising controversial resolutions and demanding votes, but Canada's admirable actions have not succeeded in persuading the council to operate more responsibly. Even as a member, the U.S. could not stop the human rights abusers from continuing to use the council to undermine human rights. However, the presence of the U.S. on the council would lend undeserved legitimacy to their destructive efforts by allowing them to claim that council decisions or lack of action simply reflects the will of the international community. The U.S. was in a position to reject that

claim by staying outside of the council, but will now be complicit in the process.

Ensuring a Weak UPR Process

Nor is there much hope that the council's procedures will significantly increase scrutiny of human rights abusers. Human rights activists have long held out hope that the UPR would be the saving grace of the HRC because each of the U.N.'s 192 member states, including the sitting members of the council, submits to a review of its human rights record.¹² This was designed to prevent the HRC from emulating the old CHR's frequently selective scrutiny.

Regrettably, the UPR procedures virtually ensure a non-confrontational and meek process. For instance, contributions to the process by nongovernmental organizations (NGOs) are strictly curtailed. NGOs and other stakeholders cannot speak during the three-hour working-group examination of a country. Although they are allowed to submit reports based on "credible and reliable information" to the UPR Working Group for consideration, the Office of the High Commissioner for Human Rights (OHCHR) distills and summarizes their reports down to the strict limit of 10 pages for NGO material. Many NGOs have complained that the document prepared by the OHCHR ignored or did not include key issues. In addition, a number of countries have used points of order and other procedures to intimidate NGOs from making statements or to strike their comments from the record if the NGOs did not strictly reference comments in the report.¹³

As with the regular council sessions, the inmates run the asylum during the UPR. The recent treatment of Cuba and China in the fourth session of the UPR (February 2–13, 2009) is a case in point.

China's report to the council made a number of claims that contradicted other reports on its human rights practices.¹⁴ For example, China claimed that it "adheres to the principle that all ethnic groups are equal and implements a system of regional ethnic

11. The terms for Canada, Germany, and Switzerland expire in 2009. U.N. Human Rights Council, "Membership of the Human Rights Council 19 June 2008–18 June 2009," at <http://www2.ohchr.org/english/bodies/hrcouncil/groups0809.htm> (April 2, 2009).

12. Each year, the council is required to convene three UPR sessions to examine 48 countries, which means that over a four-year period it will review all 192 U.N. member states.

autonomy in areas with high concentrations of ethnic minorities,” that elections are “democratic” and “competitive,” that “citizens enjoy freedom of speech and of the press,” and that China respects the right to religious freedom.¹⁵

The U.S. Department of State’s scrupulously researched *2007 U.S. Country Reports on Human Rights Practices* concludes that China in fact has a “poor” human rights record and that citizens are denied the very rights claimed by China in its report.¹⁶ Independent human rights-focused NGOs concur. For instance, Amnesty International described China’s report on its human rights practices as a “whitewash” that “fails to list some of the country’s most pressing issues,” including repression in Tibet and prosecution of religious practitioners, such as the Falun Gong.¹⁷

Despite the report’s obvious problems and China’s poor human rights record, however, the few countries challenging Beijing were drowned out by others that rushed to disparage China’s critics and

praise its policies, including its censorship of the Internet and forced-labor practices. For instance, Sri Lanka dismissed criticism of China as “malignant” and illegitimate because the critics were former colonial powers.¹⁸

Cuba’s review was similarly biased. Cuba’s report to the council claimed that “Cuba’s democratic system is based on the principle of ‘government of the people, by the people and for the people’” and that the right to “freedom of opinion, expression and the press” is guaranteed and protected, as are the rights to assembly and peaceful demonstration.¹⁹

These claims contrast starkly with reports of political prisoners, constraints on freedom of speech and assembly, and denial of the right of the people to change their government.²⁰ Indeed, Reporters Without Borders urged the council to confront Cuba over its constraints on freedom of the press and its incarceration of 23 journalists for holding dissident views.²¹ Yet, of the 60 countries commenting on Cuba’s human rights situation during

13. U.N. Human Rights Council, “Institution-Building of the United Nations Human Rights Council,” A/HRC/RES/5/1, June 18, 2007, at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc (March 25, 2009). For an example, during the HRC’s consideration of the UPR reports for Bahrain and Morocco, particularly the presentation of the Cairo Institute for Human Rights Studies, Egypt repeatedly interrupted the Cairo Institute presentation on the grounds that it allegedly failed to focus specifically on the UPR report. This was followed by a lengthy debate over how much input NGOs should have in the process under the council’s rules. Slovenia, representing the EU, referred to Egypt’s interpretation of the rules, which was supported by the council’s president, as a “farce.” U.N. Human Rights Council, 8th Session, audio files, June 9, 2008, at <http://www.un.org/webcast/unhrc/archive.asp?go=080609> (March 25, 2009).
14. For example, see U.S. Department of State, *2007 Country Reports on Human Rights Practices*, s.v. “China,” March 11, 2008, at <http://www.state.gov/g/drl/rls/hrrpt/2007/index.htm> (March 25, 2009).
15. U.N. Human Rights Council, Working Group on the Universal Periodic Review, “National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: China,” A/HRC/WG.6/4/CHN/1, November 10, 2008, pp. 7 and 14–15, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A_HRC_WG6_4_CHN_1_E.pdf (March 25, 2009).
16. U.S. Department of State, *2007 Country Reports on Human Rights Practices*, March 11, 2008, s.v. “China,” at <http://www.state.gov/g/drl/rls/hrrpt/2007/100518.htm> (March 27, 2009).
17. Amnesty International USA, “Chinese Government Report to UN Human Rights Council ‘Whitewashes Abuses,’” February 6, 2009, at <http://www.amnestyusa.org/document.php?id=ENGNAU200902069331> (March 25, 2009).
18. Lisa Schlein, “China Defends Human Rights Record at UN Council,” *Voice of America News*, February 9, 2009, at <http://www.voanews.com/english/archive/2009-02/2009-02-09-voa34.cfm> (March 25, 2009).
19. U.N. Human Rights Council, Working Group on the Universal Periodic Review, “National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Cuba,” A/HRC/WG.6/4/CUB/1, November 8, 2008, pp. 4 and 9–10, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_WG6_4_CUB_1_E.pdf (March 25, 2009).
20. For example, see U.S. Department of State, *2007 Country Reports on Human Rights Practices*, s.v. “Cuba.”
21. Press release, “As UN Conducts Universal Periodic Review, 205 Political Prisoners, Including 23 Journalists, Await Release,” Reporters Without Borders, February 3, 2009, at http://www.rsf.org/article.php3?id_article=30185 (March 25, 2009).

the review, only nine criticized Cuba or its reports, while 51 expressed glowing praise of Cuba's human rights record.²²

Past Time to Review the Council

The Human Rights Council has been widely criticized as a disappointing replacement for the U.N. Commission on Human Rights, and the milquetoast Universal Periodic Review process underscores that it is not capable of fulfilling its responsibilities as the premier human rights organization in the U.N. system. The preceding examples illustrate a general trend of countries queuing up to dominate the allotted comment period with praise for the country under review in an effort to avoid scrutiny and crowd out criticism. In its analysis of the UPR process, UN Watch concluded:

According to the Council's Institution-Building Package of 2007, UPR's objectives are to achieve "the improvement of the human rights situation on the ground" in the country under review, and "the fulfillment of the State's human rights obligations and commitments." Reviews are to be conducted in an "objective," "non-selective" and "non-politicized" manner.

The substantial data compiled in this study reveals, however, that the reviews conducted by the vast majority of countries participating in the UPR process are failing to achieve its stated purpose. More than 300 UPR interventions were analyzed and evaluated, as detailed in 12 country charts. Out of 55 countries examined—including all 47 members of the UN Human Rights Council—only 19 had average scores indicating that they contributed positively. Tragically, a majority of 32 out of 55 countries acted as a

mutual praise society, misusing the process in order to legitimize human rights abusers, instead of holding them to account.²³

The UPR exercise, like the council itself, has proven gravely disappointing. It constitutes little more than a "mutual praise society" in which countries with poor human rights records mock the UPR by dominating the reviews to shield some states while heaping excessive criticism on others—generally the Western countries that are willing to criticize and confront abusive states during the UPR. While the UPR has admittedly put some human rights problems on the record, it has not been the saving grace of the council and does not justify the Obama Administration's efforts to re-engage with the council.

However, a slim hope remains that the Human Rights Council could right itself. The resolution creating the council requires the U.N. General Assembly to "review the status of the Council within five years," or by April 2011.²⁴ Instead of seeking to engage with a fatally flawed institution, the Obama Administration should call for the General Assembly to schedule its review of the council at the earliest possible date to address the problems undermining the council. At a minimum, the Obama Administration should seek to:

- **Strengthen** membership criteria,
- **Eliminate** the institutionalized bias against Israel,
- **Expand** use of country-specific mandates, and
- **Create** a more robust mechanism for Universal Periodic Review.

Strengthening Membership Criteria. The council's biggest problem is that states with no interest in advancing civil and political rights can use their positions on the council to block serious scru-

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22. Agence France-Presse, "Cuba Hails Its Human Rights Record," *Sydney Morning Herald*, February 6, 2009, at <http://news.smh.com.au/breaking-news-world/cuba-hails-its-human-rights-record-20090206-7z67.html> (March 25, 2009), and Cuban Agency News, "Cuba Considers the Outcome of Its Review Under the Universal Periodic Review Mechanism to Be Very Positive," *Voltairenet.org*, February 10, 2009, at <http://www.voltairenet.org/article159055.html> (March 25, 2009).
23. UN Watch, "Mutual Praise Society: Country Scorecard and Evaluation of the Universal Periodic Review System of the U.N. Human Rights Council," February 6, 2009, p. 2, at <http://www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/Mutual%20Praise%20Society.pdf> (March 25, 2009).
24. U.N. General Assembly, "Human Rights Council," A/RES/60/251, April 3, 2006, at http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf (March 25, 2009).

tiny of human rights practices. 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. These countries have been key players in undermining the council's effectiveness.

In 2006, the first HRC election produced a council in which 25 of 47 members (53 percent) were ranked "free" by Freedom House. The 2007 election marked a regression, with only 23 council members (49 percent) ranked as "free." The 2008 election did not improve matters, again producing a council with only 23 "free" members.²⁵

Improving the council's composition will require raising the threshold for election from a simple majority to at least two-thirds of the General Assembly, barring governments under U.N. Security Council sanction for human rights abuses from council membership, and pressing for an independent assessment of candidate states' adherence to human rights. Independent assessments should replace the often sadly comical "pledges" that states submit to justify their candidacies in order for other nations to consider their "contribution...to the promotion and protection of human rights and their voluntary pledges and commitments made thereto" when voting for prospective members of the HRC.²⁶ The annual Freedom House report, for example, could serve as one objective assessment. Increasing competition for seats by reducing the size of the council from 47 countries to a maximum of 30 countries would also help to improve the composition of the council.

Eliminating Institutionalized Anti-Israel Bias.

The council's biased treatment of Israel is well doc-

umented. No other country—not even notorious human rights violators Burma and Sudan—has received anything approaching the criticism and attention that the council has heaped on Israel. The Organization of the Islamic Conference has organized this anti-Israel focus through its 16 members on the council, which provide the required one-third vote to call for "special sessions" on human rights situations. As UN Watch has noted:

The council has criticized Israel on 21 separate occasions, in resolutions that grant effective impunity to Hamas, Hezbollah and their state sponsors. Obsessed with condemning Israel, the Council in its first year failed to condemn human rights violations occurring in any of the world's 191 other countries. In its second year, the Council finally criticized one other country when it "deplored" the situation in Burma, but only after it censored out initial language containing the word "condemn."

...Moreover, Israel is the only country subjected to an investigatory mandate that examines the actions of only one side, presumes those actions to be violations, and which is not subject to regular review.²⁷

Efforts to demonize Israel will no doubt continue. However, to reduce their frequency, the threshold for calling special sessions should be raised from one-third of the council's membership to a majority. While this would not prohibit special sessions focused on Israel, it would make calling them more difficult by preventing the OIC minority from orchestrating politicized special sessions without support from other members. Moreover, it would still permit special sessions for truly extraordinary human rights crises like

25. U.N. General Assembly, "Election: Human Rights Council," at http://www.un.org/ga/62/elections/hrc_elections.shtml (March 25, 2009), and Freedom House, *Freedom in the World*, 2006, 2007, and 2008 eds., at <http://www.freedomhouse.org/template.cfm?page=15> (March 25, 2009).

26. Such statements must be submitted in accordance with U.N. General Assembly, "Human Rights Council," A/RES/60/251, April 3, 2006. For examples, see the pledges of Belarus, China, Cuba, Egypt, Saudi Arabia, and many others at U.N. General Assembly, "Human Rights Council," May 9, 2009, at <http://www.un.org/ga/60/elect/hrc> (April 1, 2009); "Human Rights Council Election," May 17, 2007, at <http://www.un.org/ga/61/elect/hrc> (April 1, 2009); and "Election: Human Rights Council," May 21, 2008, at http://www.un.org/ga/62/elections/hrc_elections.shtml (April 1, 2009).

27. UN Watch, "Anti-Israel Resolutions at the HRC," at <http://www.unwatch.org/site/c.bdKKISNqEmG/b.3820041> (March 26, 2009).

Burma's crackdown on peaceful protestors or the situation in Darfur.

In addition, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967—one of 30 thematic and eight country mandates of the Human Rights Council²⁸ and the only one that is permanent rather than requiring periodic renewal—serves as a platform for demonizing Israel by specifically excluding provocations by terrorist groups, such as Hamas, from the scope of the mandate despite frequent rocket and other terrorist attacks on Israel. The special procedure should be made nonpermanent to conform with other mandates and expanded to include human rights violations and violence perpetrated by Palestinians against Israelis.

Expanding Use of Country-Specific Mandates.

A regrettable consequence of the Universal Periodic Review is that countries wary of scrutiny are attempting to use the UPR process as an excuse to eliminate all country-specific mandates. These countries contend that country-specific mandates are no longer necessary because all nations will be reviewed once every four years under the UPR process. This argument is both baseless and disingenuous because country-specific mandates entail ongoing, comprehensive study of a country, including visits by the human rights expert to witness the human rights situation firsthand.

Nevertheless, the country-specific mandates for Belarus, Cuba, Liberia, and Democratic Republic of Congo have already been terminated, and efforts are underway to prevent creation of new mandates and to eliminate the remaining renewable country-specific special procedures for Burundi, Cambodia, North Korea, Haiti, Burma, Somalia, and Sudan.²⁹ Of course, the exception is the special procedure on the situation of human rights in the Palestinian territories occupied since 1967 (i.e., the special procedure focusing on Israel).

To be credible, the council must not shy away from “naming and shaming” the world's worst abusers of human rights. As the reviews of Cuba and China illustrate, the UPR process lacks assertiveness. The Obama Administration should insist that country-specific special procedures be increased with special emphasis on governments that systematically violate fundamental civil and political rights. For example, the human rights situations in Burma, China, Cuba, Iran, Saudi Arabia, Venezuela, and Zimbabwe should be given special attention and resources in contrast to the current system, which devotes the extensive time and resources to Israel and the relatively minor human rights blemishes in European countries and the United States.

More Robust Universal Periodic Review. While the UPR offers an unprecedented opportunity to hold the human rights practices of every country open for public examination and criticism, it has proven to be a flawed process. Rules should be adopted to prevent countries from overwhelming the queue with their allies to dominate the comment period, thereby stifling criticism.

As a counterweight to the government-dominated UPR process, NGOs should have more time to state their concerns verbally during the review, especially if the OHCHR continues to sanitize the NGO submissions to placate the member states. As part of this process, the HRC president should clamp down on procedural maneuvers designed to silence and intimidate NGO speakers.³⁰

Conclusion

The Obama Administration is wrong to believe that the efforts of countries that are determined to undermine the aims of the U.N. Human Rights Council will be overcome by U.S. membership. The U.S. was largely unsuccessful in the U.N. Human Rights Commission, the council's predecessor organization, despite nearly continual membership for

28. U.N. Human Rights Council, “Special Procedures of the Human Rights Council,” at <http://www2.ohchr.org/english/bodies/chr/special/index.htm> (March 25, 2009).

29. U.N. Human Rights Council, “Special Procedures Assumed by the Human Rights Council,” 2007–2008, at <http://www2.ohchr.org/english/bodies/chr/special/countries.htm> (March 25, 2009).

30. For an example, see Egypt's repeated interruptions of the Cairo Institute presentation at U.N. Human Rights Council, 8th Session, June 9, 2008.

decades, as demonstrated by the need to replace it with the council. If the council is to live up to its potential, substantial membership criteria and other reforms must be adopted to prevent the HRC from being used by governments that seek to block scrutiny of human rights abuses or by groups, such as the Organization of the Islamic Conference, that seek to constrain fundamental rights of freedom of speech and expression.

Instead of embracing the HRC, the Obama Administration should call for a review of the council and press for serious membership criteria and

other reforms to rescue the council from irrelevance. Reforms that fall short of these basic requirements will underscore the difficulty of addressing human rights through the U.N., undermine the case for engaging with the council, and highlight the necessity of creating an alternative arbiter of international human rights outside of the U.N. system.

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