

WebMemo



Published by The Heritage Foundation

No. 2375
April 1, 2009

U.S. to Seek Seat on the U.N. Human Rights Council: A Wrong Step for the Obama Administration

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The United Nations Human Rights Council's (HRC) first three years 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 distanced the U.S. from the council.

Since the American presidential election in November 2008, human rights organizations and nations that support the HRC have anticipated that the U.S. would reverse its policy of non-engagement with the council. On March 31, U.S. Secretary of State Hillary Clinton and U.N. Ambassador Susan Rice fulfilled this expectation by announcing that the U.S. would seek a seat on the HRC 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 fundamentally flawed organization that, absent fundamental changes, will not be improved by U.S. participation.

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. As a result, the U.S. was one of only a handful of countries that voted against creating the council.

Critically, nothing was done to 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 and groups such as the Organization of the Islamic Conference (OIC). In its first three years, the HRC has proven itself to be weak and ineffectual in promoting fundamental human rights, in large part because groups like the OIC have been able to use their members to 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 procedure⁴;

This paper, in its entirety, can be found at:
www.heritage.org/Research/InternationalOrganizations/wm2375.cfm

Produced by The Margaret Thatcher Center for Freedom

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

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- Eliminated the Special Rapporteurs on the situations in Belarus and Cuba;
- Repeatedly singled out Israel for condemnation; and
- Failed to address deplorable human rights violations in such countries as Belarus, China, Cuba, Egypt, North Korea, Saudi Arabia, and Zimbabwe.

The OIC, through its members on the HRC, has succeeded in having the council condemn Israel multiple times and in passing resolutions on the defamation of religion that support constraints on the fundamental rights of freedom of speech and expression.⁵ Moreover, the controversial Durban Review Conference, known commonly as Durban II, was orchestrated under the auspices of the HRC. Earlier this year, the Obama Administration announced its intention to boycott the Durban II conference, pronouncing the gathering irredeemable.⁶

A Naïve and Shortsighted Decision. The HRC has been rightly criticized as a disappointing replacement for the CHR.

Based on the council's poor record, the Bush Administration chose not to run for a seat on the HRC and distanced itself from the council's proceedings.⁷ The Obama Administration's reversal of that decision in its announcement that it will seek a seat on the council is naïve and shortsighted. Rather

than improve the council, U.S. participation will more likely lend underserved legitimacy to its destructive efforts.

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 HRC resolutions and decisions. 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" region on the council, which already vote largely in concert with U.S. positions. 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.

Indeed, 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 council from being used to undermine human rights.

1. Press release, "U.S. to Run for Election to the UN Human Rights Council," U.S. Department of State, 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 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 <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. "Human Rights Council Complaint Procedure," U.N. Human Rights Council, at <http://www2.ohchr.org/english/bodies/chr/complaints.htm> (November 24, 2008). See also, "Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms," U.N. Economic and Social Council, Resolution No. 1503, May 27, 1970.
5. Steven Groves, "Why the U.S. Should Oppose 'Defamation of Religions' Resolutions at the United Nations," Heritage Foundation *Background* No. 2206, November 10, 2008, at <http://www.heritage.org/Research/LegalIssues/bg2206.cfm>.
6. Brett D. Schaefer and Steven Groves, "U.S. Boycott of U.N. Durban II Conference on Racism: The Right Decision by the Obama Administration," Heritage Foundation *WebMemo* No. 2326, March 4, 2009, at <http://www.heritage.org/Research/InternationalOrganizations/wm2326.cfm>.
7. Schaefer, "The United Nations Human Rights Council."

The HRC Needs Fundamental Reform, Not U.S. Membership. The resolution creating the council requires the U.N. General Assembly to “review the status of the Council within five years,” or by April 2011.⁸ Instead of engaging a fundamentally flawed institution, the Obama Administration should call for the General Assembly to schedule its review of the council at the earliest possible date. In order to address the problems undermining the council, the Obama Administration should, at a minimum, seek to:

- *Strengthen HRC membership criteria.* This would include 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 reducing the size of the council from 47 countries to a maximum of 30 countries.
- *Eliminate the institutionalized bias against Israel.* The threshold for calling HRC special sessions should be increased from one-third of the council’s membership to a majority and the permanent mandate for a Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967⁹ should be made nonpermanent to conform to other mandates. Furthermore, this mandate should be expanded to include human rights violations and violence perpetrated by Palestinians against Israelis.

- *Expand the use of country-specific mandates.* A review once every four years under the council’s Universal Periodic Review of human rights practices is no substitute for “naming and shaming” the world’s worst abusers of human rights and holding them to continuous review under an ongoing mandate.
- *Create a more robust mechanism for Universal Periodic Review.* Such a mechanism would prevent countries from dominating the review period with praise in order to limit time for those states willing to criticize a nation’s human rights failings, expanding the time allotted to NGOs during the review, and clamping down on procedural maneuvers designed to silence and intimidate NGO speakers.¹⁰

The Obama Administration is wrong if it believes that the efforts of countries determined to undermine the aims of the HRC will be overcome by U.S. membership on the council. Instead of embracing the HRC, the Obama Administration should call for an immediate review of the council and press for serious membership criteria and other reforms to rescue the council from irrelevance.

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8. “Human Rights Council,” U.N. General Assembly, 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).

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

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