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U.S. Targeted by Human Rights Abusers at Its Universal Periodic Review

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The United States underwent a three-hour review of its human rights record before the United Nations Human Rights Council (HRC) on November 5 under that body's Universal Periodic Review (UPR). As predicted,¹ the farcical nature of the process was immediately apparent as serial human rights violators Cuba, Venezuela, Iran, Russia, China, Sudan, and North Korea queued up to lecture the U.S. on its human rights lapses and instruct it on how to improve its observance of the human rights that those countries routinely deny their own citizens.

The HRC ignored the Alice in Wonderland nature of the U.S. review and acted as if it were indeed conducting a serious human rights review. While this treatment was inevitable, the U.S. grist for the mill was in its UPR report.² Ultimately, the primary problem is the decision by the Obama Administration to legitimize the HRC through U.S. membership, which has given the council and its farcical UPR process³ undue credibility. The Obama Administration was mistaken to believe it could improve the HRC from within and should instead press for fundamental reforms at the mandatory review of the council next year.

The Obama Administration's Wrongheaded Decision to Join the Human Rights Council. The HRC was created in 2006 to replace the U.N. Commission on Human Rights, a body that had failed to hold governments accountable for violating basic human rights and fundamental freedoms. During negotiations to establish the HRC, many basic

reforms and standards to ensure that the new council would not simply be a repeat of the commission did not receive sufficient support in the General Assembly. As a result, the HRC has been no better—and in some ways, worse—than the commission it replaced.

Anticipating this outcome, the Bush Administration decided not to seek a seat at the Geneva-based council and distanced itself from the council's proceedings except in instances of “deep national interest.” The Obama Administration reversed this policy, arguing that the U.S. would be able to improve the HRC from within. Unfortunately, the performance of the HRC with the U.S. as a member has been virtually indistinguishable from its performance absent U.S. membership.⁴

The Flawed UPR. The council's UPR was created to hold the human rights practices of every country open for public examination and criticism. Under the UPR, countries are supposed to self-assess their human rights records with input from civil society and submit a report to the HRC. That report—combined with submissions from NGOs and information from independent U.N. human rights experts, human rights treaty bodies, and other U.N. human

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rights bodies—is used as the basis for the UPR, which culminates in a three-hour dialogue in the Human Rights Council between the state under review and the other U.N. member states.

Unfortunately, past UPR sessions have featured countries like China,⁵ Cuba,⁶ Iran,⁷ and North Korea⁸ offering false reports to the council, laudably affirming their commitment to fundamental human rights and freedoms. These patently dishonest reports were accepted at face value and approved by the majority of member states in the council. Indeed, these countries received relatively little criticism during their reviews.

By contrast, the U.S. was roundly criticized during its review earlier today in Geneva. Countries resentful of the U.S. and its practice of criticizing their human rights records gamed the system to paint the U.S. as one of the world's worst human

rights violators, with Cuba circulating an advance “sign-up sheet”⁹ to allow U.S. critics to dominate the two hours reserved for country statements on America's record.¹⁰ The results were predictable:

- Cuba demanded an end to the “blockade against Cuba,” which it described as a “crime of genocide” and a violation of the human rights and freedoms of Cubans, U.S. citizens, and third-party states. Cuba also accused the U.S. of harboring “terrorists” responsible for the “deaths of more than 3,000 Cubans” and sanctioning and committing war crimes and torture.
- Venezuela likewise demanded that the U.S. end the “infamous blockade of Cuba,” abolish the death penalty, abrogate U.S. law that “permits slavery as a punishment,” remove limits on freedom of expression, and cease spying on its own citizens. It also accused the U.S. of treating its

1. Brett D. Schaefer and Steven Groves, “The U.S. Universal Periodic Review: Flawed from the Start,” Heritage Foundation *WebMemo* No. 2994, August 26, 2010, at <http://www.heritage.org/research/reports/2010/08/the-us-universal-periodic-review-flawed-from-the-start>.
2. 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: United States of America,” August 23, 2010, at http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/A_HRC_WG.6_9_USA_1_United%20States-eng.pdf.
3. U.N. 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> (August 26, 2010).
4. For more detailed reform proposals, see Brett D. Schaefer and Steven Groves, “The U.N. Human Rights Council: No Better for Obama's Engagement,” Heritage Foundation *Backgrounder* No. 2339, November 9, 2009, at <http://www.heritage.org/research/reports/2009/11/the-un-human-rights-council-no-better-for-obamas-engagement>.
5. 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,” November 10, 2008, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A_HRC_WG6_4_CHN_1_E.pdf (November 5, 2010).
6. 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,” November 8, 2008, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_WG6_4_CUB_1_E.pdf (November 5, 2010).
7. 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: Islamic Republic of Iran,” November 8, 2008, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IR/A_HRC_WG6_7_IRN_1_E.pdf (November 5, 2010).
8. 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: Democratic People's Republic of Korea,” August 27, 2009, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KP/A_HRC_WG6_6_PRK_1_E.pdf (November 5, 2010).
9. U.N. Watch, “Cuba Organizing Rogue Speakers' List of Hardliners in Bid to Ambush U.S. at Friday's U.N. Review,” November 3, 2010, at <http://blog.unwatch.org/index.php/2010/11/03/cuba-organizing-rogue-speakers-list-of-hardliners-in-bid-to-ambush-us-at-fridays-un-review> (November 5, 2010).
10. The text of the statements is unavailable at the time of publication, but video archives are available at <http://www.un.org/webcast/unhrc/archive.asp> (November 5, 2010).

agricultural workers as slaves and accused the U.S. of xenophobia, war crimes, terrorism, and other human rights violations.

- Russia congratulated the Obama Administration for efforts taken to eliminate “some of the most odious violations of human rights which were committed in the war on terrorism” and bring those responsible for torture in secret detention centers and Guantanamo to justice and pay compensation to the victims. It also demanded that the U.S. prohibit the death penalty.
- Iran condemned the U.S. and expressed its deep concern over the “extensive and systematic violation [of human rights] by the U.S. government at both national and international levels.” It called on the U.S. to prohibit torture, close Guantanamo, halt serious violations of human rights, bring domestic legislation into compliance with international human rights standards, stop violating the freedoms of its citizens, try its “war criminals,” end child prostitution, and adopt legislation to ban “Islamophobia.”
- China voiced concern over “gaps” in U.S. law preventing full protection of human rights and the failure of the U.S. to ratify all human rights treaties. It specifically condemned the tendency toward “excessive use of force” by U.S. law enforcement and widespread discrimination against minorities and immigrants.
- Nicaragua asserted that the U.S. “since its very origin, [has] used force indiscriminately as the central pillar of its policy of conquest and expansion and causing death and destruction. Latin America has been one of the victims of this genocide caused by military dictatorships imposed and sustained by the United States.” Nicaragua then stated that the U.S. “pretends to be the guardian of human rights in the world” but, in reality, is “the one which most systematically violates human rights.” Nicaragua went on to demand that the U.S. abolish the death penalty, compensate Nicaragua for the acts of “terrorism” committed by the U.S. under President Reagan,

and assume responsibility for the global warming consequences of capitalism.

- North Korea condemned “systematic and widespread human rights violations committed by the United States of America at home and abroad,” including torture and illegal extrajudicial killings by U.S. troops. It also demanded that the U.S. abolish the North Korean Human Rights Act because it represents a “flagrant breach” of North Korea’s sovereignty and violates the dignity and rights of the North Korean people.
- Sudan urged the U.S. to ratify all of the core international human rights treaties, branded Guantanamo as a violation of human rights and called for its closure, called for the end of the U.S. practice of registering the entry and exit of citizens of 25 countries from the Middle East and North Africa as discriminatory racial profiling, and demanded the end of the sanctions against the Sudanese government for genocide in Darfur.

The audacity of these countries in accusing the U.S. of human rights violations is staggering. While the U.S. is not perfect, it is as respectful and observant of human rights as any state sitting on the HRC and far superior to these countries that perpetrate serious, widespread violations of human rights daily. But to hear comments during the UPR, one would think that the U.S. was the worst human rights abuser on the planet.

American Self-Flagellation. The U.S. is not blameless for its treatment at the council. Although the U.S. self-assessment generally defends America’s strong record in preserving human rights, including a robust defense of the U.S. Constitution as the basis for and protection of human rights in the U.S., it also provided ample fodder for those bent on using the UPR to deflect criticism of their own human rights records or assert a false moral equivalency between themselves and the U.S. on human rights.

For instance, the report inappropriately disparages Arizona’s immigration law.¹¹ Unsettled domes-

11. Brett Schaefer, “Arizona Heat: Another Reason to Question U.S. Participation in the Human Rights Council,” *The Foundry*, August 30, 2010, at <http://blog.heritage.org/2010/08/30/arizona-heat-another-reason-to-question-u-s-participation-in-the-human-rights-council>.

tic legal issues such as immigration should be presented, if at all, impartially within international forums like the UPR, especially when such issues are complex and controversial. Obviously, countries were quick to capitalize on this as evidence of America's discrimination toward Hispanics and immigrants, both legal and illegal.

Another paragraph in the U.S. report demonstrates the type of self-flagellation that the HRC expects of the U.S.:

We are not satisfied with a situation where the unemployment rate for African Americans is 15.8%, for Hispanics 12.4%, and for whites 8.8%, as it was in February 2010. We are not satisfied that a person with disabilities is only one fourth as likely to be employed as a person without disabilities. We are not satisfied when fewer than half of African-American and Hispanic families own homes while three quarters of white families do. We are not satisfied that whites are twice as likely as Native Americans to have a college degree.¹²

This paragraph's emphasis on group rights and achieving "equality of results" rather than only "equality of opportunity" is consistent with the HRC's flawed view of the nature of human rights

and what member states are obligated to guarantee to their citizens.

Fundamental Reform Needed. Regrettably, the Administration's decision to elevate and legitimize the deeply flawed HRC through U.S. engagement and membership gives the UPR process similar credibility. It is imperative that the Administration pursue reforms in the 2011 review of the council to make the HRC and the UPR process a focused and powerful weapon in improving observance of fundamental human rights and freedoms. This starts with establishing strong membership criteria for the council.¹³

Failure to achieve reforms in the 2011 review should lead Congress to again withhold a proportional amount of the U.S. contribution to the U.N. that supports the work of the council and serves as a stark reminder of the need to create an alternative arbiter of international human rights outside of the U.N. system.

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12. "Report of the United States of America, Submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review," p. 8, at <http://www.state.gov/documents/organization/146379.pdf> (August 26, 2010).

13. For more detailed reform proposals, see Schaefer and Groves, "The U.N. Human Rights Council: No Better for Obama's Engagement."