

Background

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The U.S. Should Pursue an Alternative to the U.N. Human Rights Council

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Abstract: *The U.N. Human Rights Council has failed to consistently fulfill its mandate to hold governments accountable for violating basic human rights and fundamental freedoms and to promote and protect human rights. Two years of U.S. membership on and engagement with the council have not significantly improved its performance. Rather than continuing to expend finite resources to achieve marginal, temporary results, the U.S. should focus its U.N. human rights efforts through the Third Committee of the General Assembly, supplemented with targeted support for the more effective elements of the U.N. human rights apparatus, such as Office of the High Commissioner for Human Rights and the independent human rights experts who are charged with monitoring specific human rights issues and situations. The U.S. should also begin exploring the option of creating a truly effective international human rights body outside the U.N. system.*

Created in 2006 to replace the United Nations Commission on Human Rights (UNCHR), the U.N. Human Rights Council is supposed to be the world's premier human rights body. Although it has occasionally condemned governments that violated basic human rights and fundamental freedoms, the HRC has more often neglected its responsibility to promote universal respect for human rights and fundamental freedoms and promptly address violations of human rights. Fulfilling its mandate only occasionally or when strongly pressed by the United States is not enough. Even the Commission on Human Rights managed to adopt positive resolutions occasionally, but those rare

Talking Points

- The Obama Administration has invested significant time and resources into improving the U.N. Human Rights Council, but the council is still plagued by the same problems that existed before the U.S. became a member.
- Despite U.S. membership, the HRC continues to exhibit bias against Israel, willful inattention to serious human rights situations, and a weak and politicized Universal Periodic Review.
- Countries with terrible human rights records continue to win seats on the council and use their positions to undermine efforts to promote and protect human rights.
- Nearly every reform proposed during the council's 2011 mandatory review was rejected, ensuring that the council's fundamental problems will persist for the foreseeable future.
- The U.S. needs to recognize that the costs of improving the council greatly outweigh the benefits. The U.S. should shift its strategy toward creating an alternative human rights body outside the U.N. system.

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good acts did not dissuade former U.N. Secretary-General Kofi Annan from condemning the UNCHR and calling on the U.N. member states to replace it. For the HRC to fulfill its mandate, it must be a reliable, fair, and impartial advocate for human rights and fundamental freedoms.

Since the council's creation, U.S. policy toward the HRC has shifted dramatically from disappointed detachment under the George W. Bush Administration to eager engagement under the Barack Obama Administration, which has invested significant time and diplomatic resources into improving the council's work. These efforts have resulted in some modest achievements, albeit not to the degree claimed by the Obama Administration. Regrettably, these achievements have not included reforms that would address the council's fundamental problems. As a result, many of the same problems that beset the commission also plague the HRC, despite U.S. membership in the council for the past two years.

The council spent a disproportionate amount of time condemning the actions of Israel, while failing to address far more serious human rights violations committed by other nations.

Moreover, the mandatory 2011 review of the council, the most promising window for implementing the needed reforms, has passed without addressing the HRC's anti-Israel bias, lack of membership standards, and inability to confront human rights violations objectively and systematically. To its credit, the Obama Administration proposed changes to address all of these problems, but was unable to convince the other member states to support those reforms in the HRC or in the U.N. General Assembly. As a result, the fundamental flaws of the council will remain in place and the council will continue to be a grave disappointment for the foreseeable future.

The Obama Administration's two-year experiment has shown that a significant investment of American diplomatic resources can marginally improve the council's performance, but that even the most dedicated efforts cannot overcome its fundamental weaknesses. The U.S. needs to recognize that the costs of improving the council greatly outweigh the benefits. Instead, the U.S. should shift the focus of its U.N. human rights efforts away from the Human Rights Council toward the Third Committee of the General Assembly and selectively support other elements of the U.N. human rights apparatus, such as Office of the High Commissioner for Human Rights and the independent human rights experts who are charged with monitoring specific human rights issues and situations. The U.S. should also begin exploring the option of creating an alternative, effective human rights body outside of the U.N. system.

Engaging the Council

The U.N. Human Rights Council was created in 2006 to replace the U.N. Commission on Human Rights after its reputation had fallen so far that U.N. Secretary-General Kofi Annan stated that "the Commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole" and called for it to be replaced.¹

After arduous negotiations, the U.N. General Assembly adopted a resolution replacing the UNCHR. In addition to directing the HRC to conduct a universal periodic review of the human rights practices of all member states and to serve as a forum for dialogue on thematic issues, the resolution instructs the council to promote universal respect for human rights and fundamental freedoms "in a fair and equal manner"; promptly address "violations of human rights, including gross and systematic violations"; and operate under "the principles of universality, impartiality, objectivity and non-selectivity."² In short, the council was specifically instructed to be fair, objective, and impartial

1. U.N. News Centre, "Without Reform of Human Rights Body, UN Credibility at Stake, Annan Says," April 7, 2005, at <http://www.un.org/apps/news/story.asp?NewsID=13895&Cr=commission&Cr1=rights> (June 8, 2011).

2. 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 (June 8, 2011).

in promoting and protecting human rights and fundamental freedoms and not to repeat the selectivity, bias, and disinterest that discredited the UNCHR.

Regrettably, during the negotiations, basic reforms and membership standards designed to ensure that the council would fulfill this vision and to prevent it from repeating the UNCHR's mistakes failed to gain the necessary support in the General Assembly.³

Prompted by concerns about the proposed council's ability to effectively advocate for human rights, the Bush Administration voted against the resolution creating the council in the U.N. General Assembly. It also declined to seek a seat on the HRC pending evidence of its effectiveness.

During its first three years, the HRC confirmed the Bush Administration's concerns. Like the UNCHR, the council spent a disproportionate amount of time condemning the actions of Israel, while failing to address far more serious human rights violations committed by other nations. Countries with deplorable human rights records sought and won seats on the council and used their privileged position to undermine the council's work. The council's performance was as disappointing as that of the commission that it replaced, and led the Bush Administration to distance the U.S. from its deliberations except in instances of "deep national interest."⁴

Despite this gravely disappointing record, the Obama Administration entered office determined to engage with the council. On March 31, 2009, U.S. Secretary of State Hillary Clinton and U.S. Permanent Representative to the U.N. Susan Rice announced that the U.S. would seek a seat on the HRC to "make it a more effective body to promote and protect human rights."⁵ On May 12, 2009, the U.N. General Assembly elected the United States to the council with support from 167 countries.⁶ After the election Ambassador Rice stated:

We ran for the Human Rights Council because this Administration and indeed, the American people, are deeply committed to upholding and respecting the human rights of every individual. While we recognize that the Human Rights Council has been a flawed body that has not lived up to its potential, we are looking forward to working from within with a broad cross section of member states to strengthen and reform the Human Rights Council and enable it to live up to the vision that was crafted when it was created.⁷

The Modest Fruits of Engagement

The HRC has held five regular sessions and five special sessions since the U.S. joined the council in 2009.⁸ Over that period, the U.S. has invested significant diplomatic resources to improve the

3. For a more detailed account, see Brett D. Schaefer, "The United Nations Human Rights Council: Repeating Past Mistakes," Heritage Foundation *Lecture* No. 964, September 6, 2006, at <http://www.heritage.org/Research/Lecture/The-United-Nations-Human-Rights-Council-Repeating-Past-Mistakes>.
4. 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> (June 8, 2011), and Zalmay Khalilzad, statement on the Durban II Conference and the Human Rights Council, April 8, 2008, at <http://www.eyeontheun.org/assets/attachments/documents/6581.doc> (June 8, 2011). For a summary of Bush Administration policy toward the HRC, see Luisa Blanchfield, "The United Nations Human Rights Council: Issues for Congress," Congressional Research Service *Report for Congress*, January 26, 2011, pp. 13–14, at <http://www.fas.org/sgp/crs/row/RL33608.pdf> (June 8, 2011).
5. 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> (June 8, 2011).
6. Press release, "United States Elected to Human Rights Council for First Time, with Belgium, Hungary, Kyrgyzstan, Norway, as 18 Seats Filled in Single Round of Voting," U.N. Department of Public Information, May 12, 2009, at <http://www.un.org/News/Press/docs/2009/ga10826.doc.htm> (June 9, 2011).
7. Susan E. Rice, remarks on the election of the U.S. to the Human Rights Council, U.S. Mission to the United Nations, May 12, 2009, at <http://usun.state.gov/briefing/statements/2009/may/128514.htm> (June 9, 2011).
8. The council concluded its 17th session on June 17, 2011, but the actions undertaken during that session were not available during the writing of this paper. Where possible, significant events from the 17th session related to points addressed in the paper are mentioned in the footnotes.

HRC's work. The Administration has identified a number of "key accomplishments" arising from its engagement:⁹

- Renewing or establishing special rapporteurs or independent experts on the human rights situations in Burma, North Korea, Sudan, and Iran.
- Passing resolutions condemning the human rights situations in Guinea, Kyrgyzstan, and Tunisia and holding special sessions to investigate the human rights situations in Côte d'Ivoire, Libya, and Syria.
- Helping to secure resolutions on thematic issues, including creating a Special Rapporteur to Protect Freedom of Assembly and Association, establishing the Working Group of Independent Experts to prevent Discrimination Against Women, and replacing the "highly problematic concept of 'defamation of religions'" with the "combating discrimination and violence" resolution, which is less threatening to freedom of expression.

The Administration is right to highlight these actions, which are generally positive and worthwhile, but wrong to imply that these accomplishments are solely attributable to U.S. membership on or engagement with the council. A comparison of the council's actions prior to U.S. membership with those since the U.S. joined indicates that the

The creation of a special rapporteur for human rights in Iran is the first country-specific mandate created by the HRC and reverses a disconcerting trend.

council would almost certainly have taken most of these actions regardless of U.S. membership on or engagement with the council.

Renewing or Establishing Special Rapporteurs and Independent Experts. The mandates for the special rapporteurs for Burma and North Korea and the Independent Expert for Human Rights in Sudan previously had been extended by the council before the U.S. joined it. Thus, while the Obama Administration supported these extensions, the decisions were hardly a break with past practice.

By contrast, appointment of a special rapporteur for human rights in Iran is a noteworthy achievement.¹⁰ The creation of a special rapporteur for human rights in Iran is the first country-specific mandate created by the HRC and reverses a disconcerting trend.¹¹ In previous sessions, the council eliminated the country-specific mandates for Belarus, Cuba, Liberia, and the Democratic Republic of the Congo and serious proposals were made to prevent creation of new mandates and to eliminate the remaining renewable country-

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9. Among the achievements listed by the U.S. was American support of the "Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity" statement. Statements like these, while conducted in the context of the council, are not specific actions of the council and, therefore, were not considered in this paper. Subsequently, during the 17th session, the council adopted resolution A/HRC/17/L.9/Rev.1 (23 in favor, 19 against, and 3 abstentions) that requested the High Commissioner for Human Rights to "commission a study to be finalised by December 2011 to document discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity" and decided to convene a panel discussion on that study during its 19th session. U.S. Department of State, "Key U.S. Accomplishments at the UN Human Rights Council," March 30, 2011, at <http://www.state.gov/r/pa/prs/ps/2011/03/159343.htm> (June 9, 2011), and Office of the High Commissioner for Human Rights, "Council Establishes Mandate on Côte d'Ivoire, Adopts Protocol to Child Rights Treaty, Requests Study on Discrimination and Sexual Orientation," Human Rights Council, June 17, 2011, at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11167&LangID=E> (June 20, 2010).
 10. The extent of this achievement depends heavily on the quality and character of the special rapporteur and the extent to which Iran will cooperate with the mandate holder. Other countries, such as Sudan and North Korea, refuse to cooperate with the special rapporteurs, even denying entry into their countries. This forces the special rapporteur to rely on second-hand testimonials and evidence and otherwise inhibits the rapporteur's work.
 11. During its 17th session, the council also decided to establish a mandate for an independent expert on the situation of human rights in Côte d'Ivoire. Office of the High Commissioner for Human Rights, "Council Establishes Mandate on Côte d'Ivoire, Adopts Protocol to Child Rights Treaty, Requests Study on Discrimination and Sexual Orientation."

specific mandates. Given this trend and Iran's influence in the council through the Organization of the Islamic Conference (OIC) and other allies, it is unlikely that this special rapporteur would have been established absent U.S. membership or engagement.

Passing Resolutions and Holding Special Sessions. The resolutions condemning human rights situations in Kyrgyzstan, Tunisia, and Guinea were conducted under very cooperative circumstances:

- Civil unrest led to the ouster of the Kyrgyz government in April 2010. On June 18, 2010, the HRC passed the resolution, cosponsored by Kyrgyzstan and the United States, without a vote. The resolution strongly condemned “the human rights violations committed during the protests surrounding the change of government” and requested technical assistance from the U.N. High Commissioner for Human Rights. During the council debate on the resolution, the Kyrgyz representative at the council thanked the sponsors of the resolution and expressed support for the text.
- Protestors were massacred at a September 2009 rally, when Guinea was controlled by a military junta. The military yielded control to a civilian transition government in January 2010. The new Guinean government was interested in investigating the incident and supported the resolution sponsored by Nigeria on behalf of the African Group, which the council adopted without a vote on March 26, 2010.
- In Tunisia, popular protests forced the previous government from power in January 2011. On March 24, 2011, the council passed without a vote a resolution sponsored by Hungary (on behalf of the European Union), Canada, and the United States that praised the transition and urged cooperation with the High Commissioner for Human Rights. During the council debate on the resolution, the Tunisian representative at the council thanked the sponsors and expressed support for the text.

Thus, in each case, the HRC resolution focused on condemning the actions of a government no longer in power or praising the actions of a new

government. While positive, passing such resolutions is not nearly as difficult as passing resolutions condemning governments still in power. These resolutions would likely have been offered and passed by the council without U.S. membership or engagement.

In the council and more generally in the U.N., regional groups tend to band together to block condemnation of the governments in their regions.

The Obama Administration deserves some credit for helping to persuade the council to establish special sessions for Côte d'Ivoire, Libya, and Syria, but there are reasons to believe that the special sessions would have been called even without U.S. membership or engagement.

First, the HRC had established special sessions before the U.S. became a member. Since 2006, the council has held 16 special sessions, of which three were thematic and 13 focused on specific human rights situations. Six of the 13 country-specific special sessions focused on Israel, and seven focused on human rights situations in Sudan, Burma, the Democratic Republic of the Congo, Sri Lanka, Côte d'Ivoire, Libya, and Syria. Three of the country-focused sessions unrelated to Israel were established before the Obama Administration and three after. Thus, the practice of calling special sessions was functioning before U.S. membership.

Second, special sessions are frequently driven by human rights violations that had received notable press coverage. Before U.S. membership, the three special sessions were driven by press reports of mass killings and genocide in Darfur, the Burmese government's crackdown of the Saffron Revolution, and widespread civilian deaths in the Democratic Republic of the Congo. In the past few months, the press has devoted extensive coverage to the crackdowns and conflicts in Libya, Syria, and Côte d'Ivoire.

The U.N. Secretary-General and the U.N. High Commissioner for Human Rights have condemned human rights violations in all three coun-

tries.¹² The Security Council has passed multiple resolutions in 2011 addressing the situations in Libya and Côte d'Ivoire.¹³ Given the attention that each of these situations attracted, the HRC would likely have held special sessions on Côte d'Ivoire, Libya, and Syria absent U.S. membership.

Finally, several factors made calling the special sessions easier. In the council and more generally in the U.N., regional groups tend to band together to block condemnation of the governments in their regions. But in the case of Libya, the Arab League condemned the Libyan government for its actions, thereby freeing other countries in the region to support the call for a special session. The Libyan diplomats at the council facilitated matters by defecting and actively condemning the Qadhafi government. The African Union similarly condemned the government of Côte d'Ivoire, producing a similar result. In both cases, the special sessions adopted the resolutions unanimously. The Arab Spring revolutions and the general condemnation of government repression of protestors led to more receptivity toward a special session on Syria. However, unlike Libya or Côte d'Ivoire, the lack of a regional condemnation prevented unanimous adoption of the resolution on Syria.¹⁴

Resolutions and Statements on Thematic Issues. While the U.S. delegation undoubtedly con-

tributed support for these resolutions, U.S. membership on the council was probably not pivotal.

Crediting U.S. membership as helping pass a resolution regarding discrimination against women is dubious. Actual observance of women's rights by U.N. member states is often weak, but few causes enjoy more rhetorical support in the U.N. system than women's rights, and supporting women's rights proposals is rarely controversial. Indeed, the U.N. General Assembly unanimously voted in 2010 to create a new U.N. Entity for Gender Equality and the Empowerment of Women (UN Women), which merged four existing U.N. agencies and offices¹⁵ and significantly expanded the total budget of the new body beyond that of the four merged entities. Moreover, prior to the 2010 vote, the HRC already had two thematic mandates on women's rights: the special rapporteur on trafficking in persons, especially in women and children, and the special rapporteur on violence against women, its causes, and consequences. Unsurprisingly, the resolution co-sponsored by Mexico and Colombia to establish a "working group of five independent experts... on the issue of discrimination against women in law and in practice" passed without a vote by the council. Considering the past rhetorical support for women's rights by U.N. member states, this

12. U.N. Secretary-General, Office of the Spokesperson, "Statement Attributable to the Spokesperson for the Secretary-General on Syria," April 22, 2011, at <http://www.un.org/apps/sg/sgstats.asp?nid=5217> (June 9, 2011); U.N. Secretary-General, Office of the Spokesperson, "Statement Attributable to the Spokesperson for the Secretary-General on the Situation in Libya," April 6, 2011, at <http://www.un.org/apps/sg/sgstats.asp?nid=5190> (June 9, 2011); Ban Ki-moon, "Statement by the Secretary-General on the situation in Côte d'Ivoire," April 10, 2011, at <http://www.un.org/apps/sg/sgstats.asp?nid=5196> (June 9, 2011); U.N. Office of the High Commissioner for Human Rights, "Pillay Denounces Escalation of Government Crackdown in Syria, Calls for Immediate End to Killings," April 25, 2011, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10958&LangID=E> (June 9, 2011); U.N. Office of the High Commissioner for Human Rights, "Libya's Indiscriminate Attacks on Civilians in Misrata May Be International Crimes—Pillay," April 20, 2011, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10954&LangID=E> (June 9, 2011); and U.N. Office of the High Commissioner for Human Rights, "Human Rights Situation in Côte d'Ivoire 'Deteriorating Alarmingly'—Pillay," March 10, 2011, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10831&LangID=E> (June 9, 2011).
13. U.N. Security Council, "Resolutions: 2011," at http://www.un.org/Docs/sc/unscl_resolutions11.htm (June 9, 2011).
14. See U.N. Human Rights Council, "The Current Human Rights Situation in the Syrian Arab Republic in the Context of Recent Events," A/HRC/RES/S-16/1, April 29, 2011, at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20AHCRES%20RES%20S-16%201.pdf> (June 9, 2011).
15. The U.N. Development Fund for Women (UNIFEM), the Division for the Advancement of Women (DAW), the Office of the Special Adviser on Gender Issues, and the U.N. International Research and Training Institute for the Advancement of Women (UN-INSTRAW). See United Nations, "UN Women' Merges Four UN Agencies and Offices into One," at <http://www.un.org/en/globalissues/women/> (June 9, 2011).

resolution would likely have passed without U.S. membership.¹⁶

The resolution to create a special rapporteur to protect “rights to freedom of peaceful assembly and of association” was also adopted without a vote on September 30, 2010, which implies that resistance to the proposal was not adamant. However, while Cuba, Libya, Russia, and China did not vote against the resolution, they did criticize and express reservations about the text. Moreover, the fact that such a mandate had not previously existed, despite being listed as a basic right in the Universal Declaration of Human Rights, indicates general lack of enthusiasm for such a mandate historically. The U.S. and other delegations had to overcome resistance to pass the resolution, and they deserve credit for their efforts. That said, the resolution was cosponsored by the U.S., Lithuania, Czech Republic, Maldives, Nigeria, Indonesia, and Mexico, and this coalition could have offered a resolution even if the U.S. had not been a council member. U.S. membership likely made this effort easier, but was not necessarily determinative.

A similar argument can be made for replacing the “defamation of religions” resolution with a less objectionable “combating discrimination and violence” resolution. The U.S. has long opposed defamation of religions resolutions, sponsored by the Organization of the Islamic Conference, both at

the council and in the General Assembly. Through the efforts of nongovernmental organizations and pressure from the U.S. under the Bush and Obama Administrations and other countries, support in the General Assembly and in the Human Rights Council for resolutions supporting bans on the defamation of religions has declined significantly over the past several years.

The General Assembly has voted on resolutions to combat defamation of religions since its 60th session in 2005. While the resolutions passed each year, the number of votes in favor of these resolutions has steadily declined from a peak of 111 votes in favor in 2006 to 79 votes in 2010, a drop of 29 percent. The number of “no” votes combined with the number of abstentions has exceeded the votes in favor since 2008.¹⁷

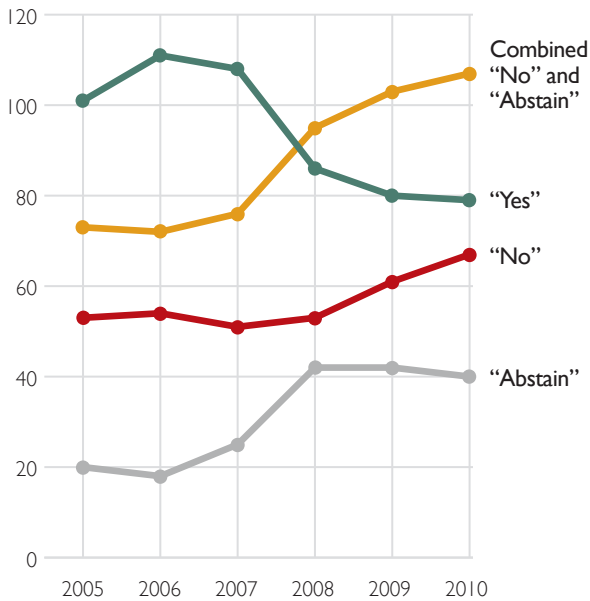
The HRC adopted a decision or resolution on combating defamation of religions every year from 2006 through 2010. In June 2006, the HRC adopted a decision in support of combating defamation of religions with 33 countries voting in favor. Subsequently, the council adopted resolutions on combating defamation each March from 2007 to 2010 with steadily declining support. In 2007, only 24 members voted in favor. In 2010, support fell to an all-time low of 20 in favor versus 17 against.¹⁸ Seeing support erode, the OIC offered an alternative text in 2011 that omitted the most objectionable

16. Without U.S. membership, an amendment proposed by Saudi Arabia to change paragraph 1 of the text from “Reaffirms the obligation of States to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” to “Reaffirms the obligation of States to take all appropriate measures *in accordance with their international obligations under international human rights law* to eliminate discrimination against women by any person, organization or enterprise” may have been adopted. It was narrowly defeated during the 15th session by a vote of 18 to 22 with 4 abstentions. For final text, see Human Rights Council, “Elimination of Discrimination Against Women,” A/HRC/RES/15/23, October 8, 2010, at http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.RES.15.23_En.pdf (June 15, 2011). Saudi Arabia offered the amendment verbally during the debate. For the verbiage, see Human Rights Council, 15th Sess., Webcast, October 1, 2010, at <http://www.un.org/webcast/unhrc/archive.asp?go=0145> (June 15, 2011). For the vote on the proposed amendment, see Human Rights Council, “Report of the Human Rights Council on Its Fifteenth Session,” A/HRC/15/L.10, pp. 26–27, at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A-HRC-15-L-10.pdf> (June 15, 2011) (emphasis added).
17. For text of the resolutions and the results of the votes, see U.N. General Assembly, “Resolutions: Regular Sessions,” at <http://www.un.org/documents/resga.htm> (June 9, 2011).
18. For the text and vote tallies on the HRC decision and resolutions on the “defamation of religions,” see Strasbourg Consortium, “A Collection of UN Documents Relating to the Topic ‘Defamation of Religions,’” at http://strasbourgconsortium.org/index.php?blurb_id=778 (June 9, 2011), and U.N. Human Rights Council, “Combating the Defamation of Religions,” A/HRC/RES/13/16, April 15, 2010, at http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.RES.13.16_AEV.pdf (June 9, 2011).

Support for “Combating Defamation of Religions” Resolutions Has Been Steadily Declining

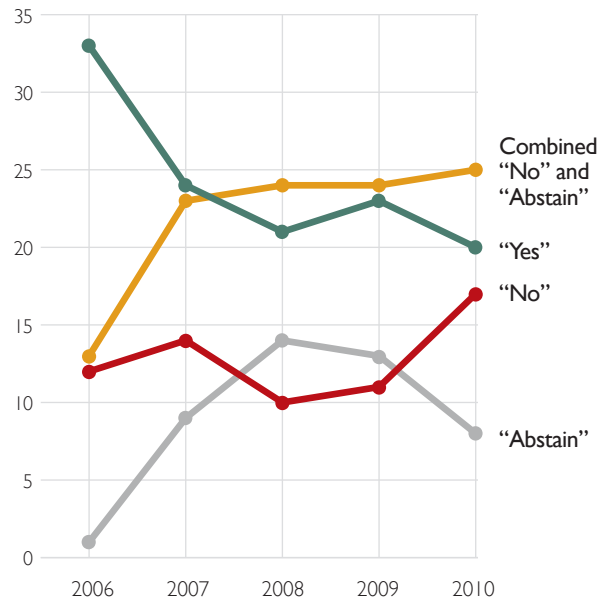
Although resolutions on “combating defamation of religions” have passed each year through 2010, the two charts below show growing opposition in both the General Assembly and the Human Rights Council.

GENERAL ASSEMBLY



	2005	2006	2007	2008	2009	2010
Yes	101	111	108	86	80	79
No	53	54	51	53	61	67
Abstain	20	18	25	42	42	40
No + Abstain	73	72	76	95	103	107

HUMAN RIGHTS COUNCIL



	2006	2007	2008	2009	2010
Yes	33	24	21	23	20
No	12	14	10	11	17
Abstain	1	9	14	13	8
No + Abstain	13	23	24	24	25

Notes on Human Rights Council votes: 2006 votes were for a “decision,” not a resolution. In 2006, 46 of a possible 47 votes were cast; in 2008 and 2010, 45 of a possible 47 votes were cast.

Sources: U.N. General Assembly, Resolutions A/RES/60/151, A/RES/61/164, A/RES/62/154, A/RES/63/171, A/RES/64/156, and A/RES/65/224, 2005–2010, at <http://www.un.org/documents/resga.htm> (June 15, 2011), and U.N. Human Rights Council, Decision A/HRC/DEC/1/107 and Resolutions A/HRC/RES/4/9, A/HRC/RES/7/19, A/HRC/RES/10/22, and A/HRC/RES/13/18, at <http://www2.ohchr.org/english/bodies/hrcouncil/> (June 15, 2011).

Chart 1 • B 2572 heritage.org

aspects¹⁹ of the earlier resolutions. It passed with-out a vote in the council in 2011.

In short, support for defamation of religions resolutions has declined steadily for years in the General Assembly and the HRC with the greatest decline occurring under the Bush Administration when the U.S. was not on the council. Eventually, the OIC would have faced defeat or been forced to offer a new text. The trend was hastened by

the destabilization of several OIC governments in 2011 and the murder of two prominent politicians opposed to blasphemy laws in Pakistan, which was the sponsor of the defamation of religions resolutions in the council.²⁰ The Obama Administration deserves credit for continuing America’s opposition to defamation of religions efforts, but U.S. membership on the council was not a critical part of this achievement.

An Effective Council?

Given the Human Rights Council's poor record since 2006, the Obama Administration can reasonably argue that the council has been more effective over the past two years, even though most of those achievements are not indisputably attributable to U.S. membership or as significant as the Administration claims. Yet these modest, positive improvements are not necessarily evidence that the council is an *effective* body or becoming one.

Even the discredited Commission on Human Rights occasionally managed to pass resolutions in support of human rights or condemning violations. Moreover, the UNCHR founded the system of special procedures—*independent experts*, often referred to as *special rapporteurs*, charged with monitoring and reporting on thematic issues or specific human rights situations in countries—*inherited* by the council.²¹ Indeed, seven of the nine current HRC special procedures focused on the human rights situation in specific countries were first established by the UNCHR.²² Yet these occasional bright spots did

not prevent the General Assembly from concluding that the commission was deficient and needed to be replaced.

The HRC should not be held to a lower standard than the UNCHR, which it was created to replace. U.S. membership has not transformed the council. Prior to U.S. membership, the council periodically convened special sessions and occasionally passed constructive resolutions. These positive actions and those since the U.S. joined are welcome, but they do not outweigh the HRC's fundamental deficiencies that continue unabated: bias against Israel, willful inattention to serious human rights situations, and a weak and politicized Universal Periodic Review (UPR).

Bias Against Israel. Like the Commission on Human Rights, the council disproportionately focuses on condemnation of Israel. It has exhibited this bias in three ways:

- When circumstances merit, the HRC can appoint an independent expert or special rapporteur to investigate a human rights situation in specific countries. All of the nine current “country man-

19. The combating discrimination and violence resolution is a welcome retreat from the more obvious attempts to undermine freedom of religion and freedom of expression. However, the OIC could revive the defamation of religions efforts in the General Assembly. That would be difficult, but not impossible in the wake of the HRC's combating discrimination and violence resolution. The OIC would more likely seek to conflate defamation of religions and incitement to violence and seek to protect domestic blasphemy laws by equating them with hate speech laws permitted under Article 20 of the International Covenant on Civil and Political Rights. For a discussion of recent events, see Jacob Mchangama, “The OIC vs. Freedom of Expression,” *National Review*, April 7, 2011, at <http://www.nationalreview.com/author/243450/latest> (June 9, 2011), and Nina Shea, “The OIC vs. Freedom of Expression,” Hudson Institute, April 8, 2011, at http://www.hudson.org/index.cfm?fuseaction=publication_details&id=7899 (June 9, 2011). For a historical perspective on defamation of religions and incitement, see Leonard A. Leo, Felice D. Gear, and Elizabeth K. Cassidy, “Protecting Religions from ‘Defamation’: A Threat to Universal Human Rights Standards,” *Harvard Journal of Law and Public Policy*, Vol. 34, No. 2 (Spring 2011), pp. 769–784, at <http://www.harvard-jlpp.com/wp-content/uploads/2011/05/LeoFinal.pdf> (June 9, 2011).
20. Patrick Goodenough, “U.N. Human Rights Council Moves Away from ‘Dangerous’ Defamation of Religion Concept,” CNS News, March 25, 2011, at <http://www.cnsnews.com/news/article/un-human-rights-council-moves-away-dange> (June 9, 2011).
21. The quality of these experts varies considerably and some advance overtly politicized agendas that taint their work. For instance, the U.S. specifically condemned Richard Falk, Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, for endorsing “conspiracy theorists who allege that the September 11, 2001 terrorist attacks were perpetrated and then covered up by the U.S. government and media.” See Eileen C. Donahoe, “Statement by Ambassador Donahoe on Comments by Richard Falk,” U.S. Mission to the United Nations and Other International Organizations in Geneva, January 25, 2011, at <http://geneva.usmission.gov/2011/01/25/donahoe-statement/> (June 15, 2011). However, the works of the independent experts are generally considered one of the strengths of the U.N. human rights system. See Ted Piccone, “Catalysts for Rights: The Unique Contribution of the UN's Independent Experts on Human Rights,” The Brookings Institution, at http://www.brookings.edu/~media/Files/rc/reports/2010/10_human_rights_piccone/10_human_rights_piccone.pdf (June 15, 2011).
22. The list does not yet include the Special Rapporteur on the Human Rights Situation in the Islamic Republic of Iran. Office of the High Commissioner for Human Rights, “Special Procedures Assumed by the Human Rights Council: Country Mandates,” August 1, 2010, at <http://www2.ohchr.org/english/bodies/chr/special/countries.htm> (June 9, 2011).

dates,” including the recently adopted mandate on Iran, are time limited and must be extended periodically, except the special rapporteur on the situation of human rights in the Palestinian territories. Thus, only the special rapporteur focused on Israel is permanent. The country mandate on Israel is also unique in that it focuses only on Israel’s actions, excluding Palestinian actions and those by the terrorist organization Hamas. Moreover, the “human rights situation in Palestine and other occupied Arab territories” is the only specific human rights situation listed on the permanent agenda of the council.²³

- In its first 16 sessions, the council adopted 78 country-specific resolutions, of which 38 (49 percent) focused on Israel.²⁴ U.S. membership has not stopped this bias: 14 of the 29 country-specific resolutions adopted in 2010 and 2011 focused on Israel. In fact, in its 16th session in March 2011, the council adopted—over U.S. objections—six new resolutions condemning Israel or its actions.²⁵
- In addition, of the council’s 13 special sessions focused on specific human rights situations in countries, six focused on Israel. The most recent was held in 2009, while the U.S. was a member, to discuss the U.N. Human Rights Council Fact Finding Mission on the Gaza Conflict (the Gold-

stone Report). The council adopted the Goldstone Report, in a resolution that condemned Israel in detail, but failed to mention Hamas’s indiscriminate firing of rockets and mortars at Israeli civilian settlements, which “constitute war crimes and may amount to crimes against humanity,” according to the Goldstone Report.²⁶ The report’s principal author has since repudiated it, stating, “If I had known then what I know now, the Goldstone Report would have been a different document.”²⁷

No country should be above the council’s scrutiny, and Israel’s human rights record is not perfect. However, the HRC’s agenda and actions indicate that it views Israel’s human rights shortfalls as permanent and so severe that they merit roughly half of the council’s special sessions and resolutions. This is clearly a distortion of reality and evidence of extreme and ongoing bias against Israel.

Willful Inattention to Serious Human Rights Situations. There is no shortage of human rights situations for the HRC to investigate. Freedom House’s 2011 survey of country practices on human rights ranks 47 countries (24 percent) of the 194 ranked countries as “not free.” Yet, through its 16th session, the HRC has passed resolutions condemning human rights situations in only 15 countries²⁸ and held special sessions on human rights viola-

23. Human Rights Council, “Institution-Building of the United Nations Human Rights Council,” A/HRC/5/1, June 18, 2007, at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc (June 15, 2011).

24. Eye on the UN, “Human Rights Actions: Human Rights Council,” May 17, 2011, at http://www.eyeontheun.org/browse-un.asp?ya=1&sa=1&u=344&un_s=0&ul=1&tp=1&tpn=Resolution (June 9, 2011).

25. Resolutions A/HRC/Res//16/17, A/HRC/Res//16/20, A/HRC/Res//16/29, A/HRC/Res//16/30, A/HRC/Res//16/31, and A/HRC/Res//16/32. U.N. Human Rights Council, “16th Session of the Human Rights Council: Resolutions, Decisions and President’s Statements,” at <http://www2.ohchr.org/english/bodies/hrcouncil/16session/resolutions.htm> (June 10, 2011).

26. U.N. Human Rights Council, “Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict,” A/HRC/12/48, September 25, 2009, p. 32, at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf> (June 10, 2011), and Haaretz Service, “Richard Goldstone Slams UN for Failing to Censure Hamas,” *Haaretz*, October 16, 2009, at <http://www.haaretz.com/hasen/spages/1121620.html> (June 10, 2011).

27. Richard Goldstone, “Reconsidering the Goldstone Report on Israel and War Crimes,” *The Washington Post*, April 1, 2011, at http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html (June 10, 2011).

28. The 78 resolutions condemned Israel (38 resolutions), Burma (9 resolutions), Sudan (8), Democratic People’s Republic of Korea (4), Somalia (4), Cambodia (3), Democratic Republic of the Congo (3), Côte d’Ivoire (2), Afghanistan (1), Burundi (1), Guinea (1), Honduras (1), Iran (1), Kyrgyzstan (1), and Libyan Arab Jamahiriya (1). Eye on the UN, “Human Rights Actions: Human Rights Council Resolutions,” at http://www.eyeontheun.org/browse-un.asp?ya=1&sa=1&u=344&un_s=0&ul=1&tp=1&tpn=Resolution (June 10, 2011).

tions in eight countries.²⁹ Thus, after accounting for overlap, the Human Rights Council has condemned human rights violations in only 16 countries.

In 2011, Freedom House identified 20 countries and territories as the “Worst of the Worst” on human rights: Belarus, Burma, Chad, China, Côte d’Ivoire, Cuba, Equatorial Guinea, Eritrea, Laos, Libya, North Korea, Saudi Arabia, Somalia, South Ossetia, Sudan, Syria, Tibet, Turkmenistan, Uzbekistan, and Western Sahara.³⁰ Yet the council has passed resolutions or held special sessions on only a handful: Burma, Côte d’Ivoire, Libya, North Korea, Somalia, Sudan, and Syria. Aside from the Universal Periodic Review that every state undergoes, the council has taken no action to address or raise awareness about the human rights situations in 13 of these situations.

In addition, despite U.S. membership, the council continues to ignore recent, widely acknowledged human rights violations in Algeria, Bahrain, Egypt, Pakistan, Uganda, Venezuela, Yemen, Zimbabwe, and other countries.

The Human Rights Council has condemned human rights violations in only 16 countries.

This inaction illustrates the council’s vulnerability to influence from repressive governments. The council’s geographic quotas—13 seats for Asia, 13 for Africa, eight for Latin America and the Caribbean, seven for Western European and Other States, and six for Eastern Europe—make it much easier for states hostile to human rights to dominate the agenda. The African and Asian Groups, the regions with the highest concentrations of “not free” countries according to Freedom House, control a majority on the 47-seat council. Most countries in these regions are members of the Non-Aligned Movement and the G-77. The OIC members also constitute a majority in those regions, which helps to explain

the council’s biased treatment of Israel. Using geographic and ideological bloc fidelity, influential countries (e.g., China and Cuba) and groups such as the OIC have successfully influenced council deliberations, resolutions, and decisions to protect themselves from council action or otherwise undermine the council’s ability to fulfill its responsibilities.

Weak and Politicized Universal Periodic Review. During negotiations to establish the HRC, the General Assembly failed to support many basic reforms and standards designed to ensure that the council would not simply repeat the UNCHR’s mistakes. However, criticism of the commission’s bias and selectivity in examining human rights practices did lead the General Assembly to specifically instruct the council to “[u]ndertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.”³¹

While acknowledging the failure to keep countries with deplorable human rights records from winning seats on the council, human rights activists held out hope that requiring all countries to undergo an examination under the UPR would make the council better than its failed predecessor. Regrettably, the UPR modalities, established in June 2007, virtually ensure a nonconfrontational and meek process. For instance, despite the requirement that the UPR incorporate information from nongovernmental organizations (NGOs), their contribution to the process has been strictly curtailed. The country under review still shapes the UPR process by its willingness, or lack thereof, to volunteer information on human rights violations. Moreover, the review process and oral interventions are conducted by the 47-member council, which includes a majority of countries with questionable or poor human rights records. Allies of countries seeking to avoid

29. Israel (6 sessions), Sudan (1), Burma (1), the Democratic Republic of the Congo (1), Sri Lanka (1), Côte d’Ivoire (1), Libya (1), and Syria (1). For details, see the Appendix.

30. Arch Puddington, “Freedom in the World 2011: The Authoritarian Challenge to Democracy,” Freedom House, p. 4, at http://www.freedomhouse.org/images/File/fiw/FIW_Overview_2011.pdf (June 10, 2011).

31. 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 (June 10, 2011).

scrutiny have manipulated the process by queuing up to dominate the allotted comment period. As described in a UN Watch report, the result is a “mutual praise society” in which repressive countries do their best to defend each other from scrutiny.³²

In past UPR sessions, China,³³ Cuba,³⁴ Iran,³⁵ and North Korea³⁶ have submitted false reports to the council, laughably affirming their commitment to fundamental human rights and freedoms. A majority of the council accepted these patently dishonest reports at face value and approved them. Indeed, these countries and others that have recently been criticized for violations of basic human rights received less criticism during their reviews than the United States. North Korea’s UPR made 167 recommendations to improve its human rights record.³⁷ China received 138 recommendations, and Cuba received 148. Among the countries seized by unrest in the Middle East, Iran received 212 recommendations; Yemen, 153 recommendations; Egypt, 171; Libya, 66; Tunisia, 28; and Bahrain, 12.³⁸

By contrast, the U.S. UPR report recommended that the U.S. make 228 changes to improve its human rights practices³⁹—more recommendations

than any other nation has received. Thus, using the number of UPR recommendations as a standard, the Human Rights Council has determined that the U.S. needs to improve its observance of human rights more than any other nation. This is patently ridiculous and casts grave doubt on the objectivity and reliability of the entire UPR process.

Because the council cannot undertake any binding action, the UPR depends on voluntary action. The first cycle of the UPR is still underway, but it is already apparent that those countries inclined to improve their human rights practices are using the UPR process to focus their efforts,⁴⁰ while those not inclined to improve their human rights practices are simply going through the motions.

The council and its supporters have asserted that the council is better than the commission because every U.N. government must undergo a review of its human rights record under the UPR. Even if countries do not take the process seriously or implement recommendations, they argue that the process itself is a beneficial breakthrough. Critics have pointed out that the UPR gives a U.N. human rights imprimatur to *all* countries going through the process,

32. 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> (August 26, 2010).
33. U.N. Human Rights Council, Working Group on the Universal Periodic Review, “China,” A/HRC/WG.6/4/CHN/1, November 10, 2008, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A_HRC_WG6_4_CHN_1_E.pdf (June 10, 2011).
34. U.N. Human Rights Council, Working Group on the Universal Periodic Review, “Cuba,” A/HRC/WG.6/4/CUB/1, November 8, 2008, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_WG6_4_CUB_1_E.pdf (June 10, 2011).
35. U.N. Human Rights Council, Working Group on the Universal Periodic Review, “Islamic Republic of Iran,” A/HRC/WG.6/4/CUB/1, November 8, 2008, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/IR/A_HRC_WG6_7_IRN_1_E.pdf (June 10, 2011).
36. U.N. Human Rights Council, Working Group on the Universal Periodic Review, “Democratic People’s Republic of Korea,” A/HRC/WG.6/6/PRK/1, August 27, 2009, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KP/A_HRC_WG6_6_PRK_1_E.pdf (June 10, 2011).
37. UPR Info, “Statistics of UPR Recommendations,” at <http://www.upr-info.org/database/statistics/> (June 10, 2011).
38. Syria’s UPR is scheduled for 2011.
39. UPR Info has not yet compiled statistics for recommendations after the eighth session. The number of U.S. recommendations are based on the UPR report. See U.S. Department of State, “U.S. Response to UN Human Rights Council Working Group Report,” March 10, 2011, at <http://www.state.gov/g/drl/upr/157986.htm> (June 10, 2011), and U.N. Human Rights Council, “Report of the Working Group on the Universal Periodic Review: United States of America,” A/HRC/16/11, January 4, 2011, at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-11.pdf> (June 10, 2011).
40. UPR Info, “Follow-up,” at <http://www.upr-info.org/-Follow-up-.html> (June 12, 2011).

even when they manifestly do not merit such status or make any meaningful effort to improve their human rights records.

The worth of the UPR process must ultimately be judged by its success in improving the human rights situation in specific countries, particularly those which are hostile to human rights and dismissive of fundamental freedoms, not by the list of recommendations or the number of paper reforms enacted by governments, or by the number of human rights treaties ratified. While the UPR may be useful to countries looking for suggestions on improving their human rights protections, these countries could just as easily solicit advice from other countries, U.N. human rights treaty bodies, NGOs, or other experts. Meanwhile, the evidence thus far indicates that the formulaic UPR human rights discussion is unlikely to elicit a change of heart for regimes disinclined to observe and protect human rights.

The Critical Lack of Meaningful Membership Standards

A critical reason for the council's failure to fulfill its charge of "promoting universal respect for the protection of all human rights and fundamental freedoms for all"⁴¹ is the absence of any meaningful membership criteria other than geographical representation. The General Assembly resolution that created the HRC merely instructs member states to "take into account"⁴² a candidate's human rights record when voting on candidates for seats on the council, but it established no minimum standard. Even states under Security Council sanction for human rights violations or those governments specifically condemned by the HRC can run and win a seat on the council. The failure to mandate a mini-

mum membership standard is inexcusable because this was widely recognized as a key failing of the Commission on Human Rights.

Each year, countries with deplorable or questionable human rights records seek and win election to the council. NGOs and governments, including the U.S., lobby against these candidates and are sometimes successful. However, the political dynamics of the General Assembly make defeating one or two of the more egregious countries much easier than successfully opposing all of the candidates with poor or questionable human rights records.

For instance, defeating states with poor human rights records is easier if there is a competitive election in which countries could be encouraged to vote for one country over another.⁴³ Increasingly, however, countries are seeking to avoid defeat by agreeing to clean election slates from their regional groups, i.e., the group submits the same number of candidates as open seats. Without competition, every candidate country is virtually guaranteed to receive the 97 votes in the General Assembly necessary to win a seat. In the 2010 election, only the Latin America and the Caribbean Group offered a competitive election. Libya won a seat on the council in 2010 with support from 155 countries after running on a clean slate from the African Group. In the 2011 election, the African, Asian, and Western European and Others Groups offered clean slates. Syria was set to win a seat in 2011 despite its longstanding horrible human rights record until its widespread killing of protestors embarrassed the Asia group to the point that it convinced Syria to pull out in favor of Kuwait.⁴⁴

As illustrated in Chart 2, countries with good human rights records have historically been outnumbered on the council:⁴⁵

41. U.N. General Assembly, "Human Rights Council."

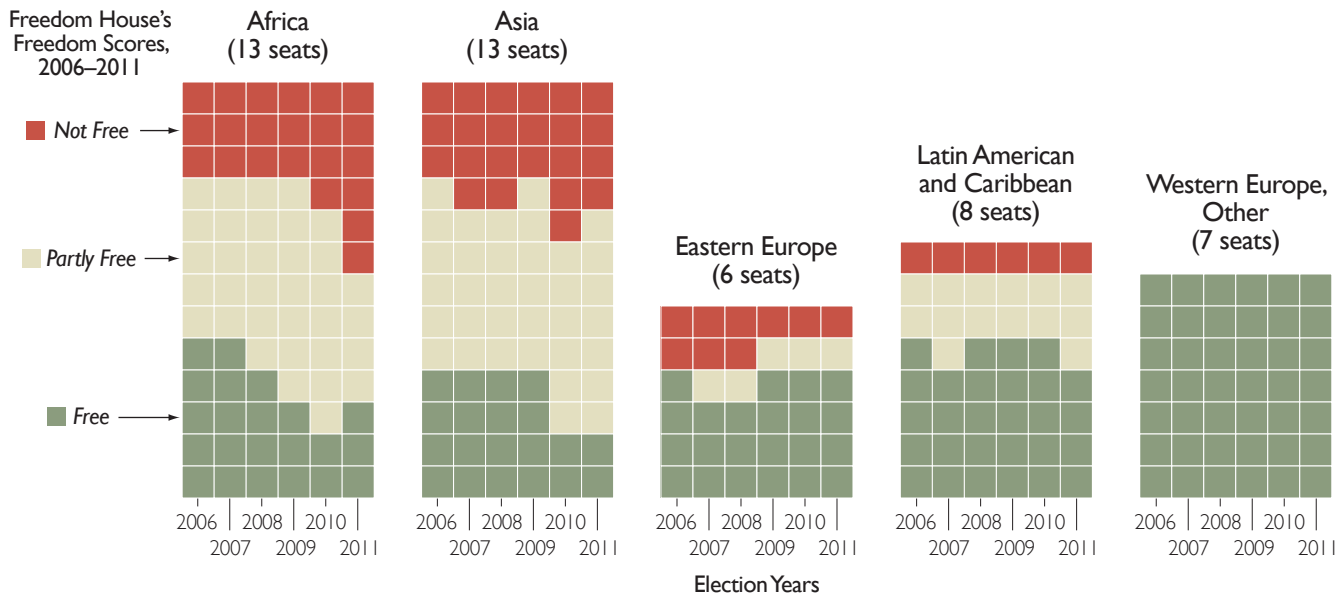
42. *Ibid.*

43. In the very competitive 2006 election, Iran and Venezuela lost to other candidates. U.N. General Assembly, "Human Rights Council: Elections," May 9, 2006, at <http://www.un.org/ga/60/elect/hrc/> (June 12, 2011). In the 2007 election, the U.S. convinced Bosnia and Herzegovina to run to provide competition for Belarus. U.N. General Assembly, "Human Rights Council Election," May 17, 2007, at <http://www.un.org/ga/61/elect/hrc/> (June 12, 2011). Sri Lanka lost in 2008. U.N. General Assembly, "Election: Human Rights Council," May 21, 2008, at http://www.un.org/en/ga/62/elections/hrc_elections.shtml (June 12, 2011). In 2009, Azerbaijan lost to Russia and Hungary. U.N. General Assembly, "Election: Human Rights Council," May 12, 2009, at http://www.un.org/en/ga/63/elections/hrc_elections.shtml (June 12, 2011).

44. Radio Free Europe/Radio Liberty, "Syria Pulls out of Race for UN Human Rights Council," May 11, 2011, at http://www.rferl.org/content/syria_out_race_un_human_rights_council/24097787.html (June 12, 2011).

Asia and Africa Dominate the U.N. Human Rights Council

Africa and Asia hold a majority of seats (26) on the 47-seat U.N. Human Rights Council, and since 2006 they have gradually replaced countries categorized by Freedom House as “free” with “not free” countries.



Sources: U.N. Human Rights Council, “Membership of the Human Rights Council,” at <http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm> (May 24, 2011); Freedom House, “Freedom in the World,” 2006–2011, at <http://www.freedomhouse.org/template.cfm?page=15> (May 24, 2011); and U.N., “Results of the election of 15 members of the Human Rights Council (20 May 2011),” at <http://www.un.org/en/ga/65/meetings/elections/hrc.shtml> (May 24, 2011).

Chart 2 • B 2572 heritage.org

- In 2006, the first HRC election produced a council in which only 25 of 47 members (53.19 percent) were ranked as “free” by Freedom House;
- The 2007 election marked a regression, with only 23 members (48.94 percent) ranked as “free”;
- The 2008 election also produced a council with only 23 “free” members;
- The U.S. was elected in 2009, but the council included only 22 “free” members;
- The 2010 election yielded an all-time low of only 20 “free” countries (42.55 percent) on the council;
- In the 2011 election, two “not qualified” countries (Republic of the Congo and Kuwait) and four “questionable” countries (Burkina Faso, India, Indonesia, and the Philippines) were elected to the council.⁴⁶ Overall, the council’s balance in 2011 is the worst to date. The number of “free” countries remained at the all-time low of 20, and the number of “not free” countries rose to a high of 12 countries, more than 25 percent of the membership.

The council’s membership illustrates the results of failing to include membership standards or mandate competitive elections. In short, in the six elections for seats to the Human Rights Council, the

45. U.N. Human Rights Council, “Membership of the Human Rights Council,” at <http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm> (June 12, 2011), and Freedom House, “Freedom in the World,” 2006–2010, at <http://www.freedomhouse.org/template.cfm?page=15> (June 12, 2011).

46. UN Watch, “Evaluation of Candidates for 2011–2014 Membership on the UN Human Rights Council,” May 17, 2011, at <http://blog.unwatch.org/wp-content/uploads/Rating-the-2011-candidates-to-UNHRC.pdf> (June 12, 2011).

number of countries actually observing and protecting fundamental human rights has gradually declined, while repressive states, which should be the targets of the council's scrutiny, have expanded their number and influence on the council.

The relative difficulty of suspending a country's membership compounds the lack of membership standards. A country can win a seat on the council with a simple majority of the General Assembly, but two-thirds of the General Assembly is required to "suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights."⁴⁷ Following Libya's attacks on its civilians, the General Assembly took the unprecedented action of suspending it from the council.⁴⁸ It has not suspended any other council members, such as China or Cuba, despite ample evidence of "gross and systematic violation of human rights."

The membership is at the heart of the council's disappointing record. The influence of repressive OIC member countries in the African and Asian groups is the principal source of the council's anti-Israel bias. China, Cuba, and other repressive governments in their regions trade votes to impede council action on their human rights situations. Repressive countries have worked to minimize the NGO participation in the UPR and rubber-stamp patently false reports. Without serious and strict membership standards, the council will continue to disappoint.

The Review of the Council: A Lost Opportunity

The HRC's record has consisted of repeated disappointment and inaction interspersed with rare positive actions of dubious long-term effect. Individual nations, including the U.S. and Canada, have injected some balance into discussions through diplomatic pressure and enticements and occasionally

shepherded positive resolutions through the body. However, convincing the world's premier human rights body to support human rights standards should not be this difficult.

The problems are systemic: an institutional bias against Israel, a Universal Periodic Review with rules and procedures designed to minimize scrutiny and challenges, and a vulnerability to politicization by influential states that consistently violate human rights. The ability of states with poor human rights records to win seats on the council exacerbates these problems and undermines the council's mission. As long as these problems remain, U.S. efforts to positively influence the council will be difficult, rarely successful, and impermanent.

Only a new General Assembly resolution modifying the resolution that established the council could address these flaws to a lasting degree. The original resolution included a provision requiring a performance review of the council by 2011, when reforms could be proposed.⁴⁹ This mandatory review presented the best chance for enacting membership standards and other reforms necessary to make the council effective.

In October 2009, the council established "an open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council" charged with considering recommendations for improving the council and its work and to draft a resolution for the U.N. General Assembly to consider as the culmination of the mandatory five-year review.⁵⁰ NGOs, the U.S., and other nations proposed numerous substantive reforms in the working group's two sessions in October 2010 and February 2011. The Obama Administration alone proposed more than two dozen reforms, including creating multiple means for calling special sessions, establishing stronger criteria for candidates running for seats on the council, mandating competitive elections, and making the

47. U.N. General Assembly, "Human Rights Council."

48. Eric Shawn, "U.N. General Assembly Suspends Libya from Human Rights Council," Fox News, March 1, 2011, at <http://www.foxnews.com/world/2011/03/01/general-assembly-suspends-libya-human-rights-council/> (June 12, 2011).

49. U.N. General Assembly, "Human Rights Council."

50. U.N. Human Rights Council, "Human Rights Council Review," at http://www2.ohchr.org/english/bodies/hrcouncil/HRC_review.htm (June 12, 2011).

Israel country mandate subject to renewal like the other mandates.

In nearly every case, the proposed reforms were rejected. The committee failed to address membership standards; the selectivity and inability of the council to address urgent human rights situations, especially those in specific countries; and the permanent country mandate on Israel.⁵¹ Aside from a

Convincing the world's premier human rights body to support human rights standards should not be this difficult.

few minor changes to UPR rules and procedures, such as ensuring that all states have the opportunity to speak during the UPR, the draft resolution lacks any substantive reforms that would improve the work of the body or address the key problems identified in its first five years.⁵² Instead, the review has focused primarily on minor issues, such as shifting the council from the current June–June schedule to a calendar-year schedule.

Human rights organizations condemned this outcome of the review process as a “decision to maintain the status quo.”⁵³ The U.S. also strongly criticized the outcome:

We started our work here with a number of our own proposals, and with an open mind to hearing those of others. Yet we were met with a process that seemed designed to be a race to the bottom....

...[W]e will be judged by the results of this process, by how well we advance the ability of the Council to improve the human rights situation around the world, address violations, and prevent abuses. Reviewing this document, it is clear that we are not closer

to these ends than when we began our work. We again take this opportunity to register our continued disappointment with the state of the overall review....

We have stated repeatedly that there are a number of issues that the Council should address, among them: membership and greater scrutiny of the human rights records of those countries that offer themselves for election to this body; an increased ability to take on country situations in a variety of formats not limited to resolution work; and the fact that there remains to be one country, Israel, singled out on the agenda of this Council. The Council's bias against Israel is confirmed at every HRC sitting, and to not deal with it here is to ignore one of the Council's most egregious flaws.

The current document does not address, or does not adequately address, these and other issues.⁵⁴

The HRC nonetheless approved the grossly inadequate outcome of the review and U.S. efforts to improve the outcome in the General Assembly negotiations failed. By endorsing the outcome of the review and approving the draft resolution, the General Assembly has decided to perpetuate the serious flaws that have hindered the council since it was created.⁵⁵ In response to the decision, the U.S. delegate said:

[T]he final resolution before us also fails to address the core problems that still plague the Human Rights Council. We deeply regret that this opportunity has been missed. The United States has therefore voted “no” on the resolution....

The gravest of the Council's structural problems remains its politicized standing Agenda Item 7 on Israel. No member state during this

51. For an overview, see Sihasak Phuangketkeow, “Statement by the President of the Human Rights Council at the Informal Plenary Meeting of the UNGA on the Review of the Status of the Human Rights Council,” March 30, 2011, at http://www.council-review.org/wp-content/uploads/docs/INST_2011_PlenaryMeetingNY_EN.pdf (June 12, 2011).

52. U.N. Human Rights Council, “Review of the Work and Functioning of the Human Rights Council,” A/HRC/16/21, April 12, 2011, at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-21.pdf> (June 12, 2011).

53. African Democracy Forum *et al.*, “Joint NGO Statement on the GA Status Review of the Council,” at http://www.council-review.org/wp-content/uploads/docs/NGO_2011_JointStatment_GAStatusReview_EN.pdf (June 12, 2011).

Review has been able to explain how Item 7 is consistent with the principles clearly outlined in the resolution that established the Human Rights Council: “impartiality, non-selectiveness, and balance.” This Review should have eliminated this unfair and unbalanced Agenda Item and instead ensured that all member states, including Israel, are treated on an equal and impartial basis....

This Review also failed to tackle another fundamental issue: Council membership. The Council discredits, dishonors, and diminishes itself when the worst violators of human rights have a seat at its table. During the Review in New York, the United States put forward a proposal to ensure that GA members have real choices in Human Rights Council elections by calling on all regional groups, including our own, to run competitive slates. This was rejected out of hand.... Let there be no doubt: membership on the Human Rights Council should be earned through respect for human rights, not accorded to those who abuse them.⁵⁶

The U.S. was one of only four countries to vote against the resolution, along with Canada, Israel, and Palau.⁵⁷

Moving Beyond the United Nations

The United Nations deserves credit for its early efforts to establish standards for fundamental human rights through the Universal Declaration of Human Rights and other human rights treaties.

Ultimately, however, respect for and protection of human rights depends directly on each government’s commitment to observe those rights and indirectly on other governments’ commitment to hold nations to those standards. Neither the U.N. human rights system nor any other human rights body has the authority or means to actually protect the rights of individual human beings living in its member states. The governments of each respective nation are the only entities that can provide such protection.

The goal of the U.N. human rights system is to positively influence governments to increase their respect for “universal” freedoms, rights, and values. The problem is that these freedoms, rights, and values are not universal. This is the key weakness of relying on universal membership organizations, such as the U.N., to promote these standards. Universal membership allows, even invites, nations that do not observe human rights to manipulate the system to undermine efforts to promote and protect human rights.

Moreover, the concept of sovereign equality of nations is sacred in the U.N. and preserved to the point of absurdity. In political matters, every state does and should have a vote in the U.N., but in moral issues, such as human rights, there are clear standards of behavior. Yet a false moral equivalence pervades the U.N. to the point that an exemplary state, such as Sweden, is dutifully considered on par with a genocidal state, such as Sudan, supported by the claim that neither state is perfect and both need to improve. This false moral equivalence leads to

54. Permanent Mission of the United States of America (Geneva), “HRC 2011 Review—U.S. Statement at the Adoption of the Working Group Report Human Rights Council 2011 Review,” February 24, 2011, at <http://geneva.usmission.gov/2011/02/25/hrc-2011-review-u-s-statement-at-the-adoption-of-the-working-group-report/> (June 12, 2011).

55. The General Assembly passed the resolution on the outcome of the review 154 in favor versus 4 against. See United Nations Department of Public Information, “Five Years after Creation, General Assembly Maintains Human Rights Council as Subsidiary Body, Concluding Review of Work, Functioning,” United Nations Document GA/11101, June 17, 2011, at <http://www.un.org/News/Press/docs/2011/ga11101.doc.htm> (June 20, 2011). For text of the resolution, see U.N. General Assembly, letter from the co-facilitators of the review of the Human Rights Council, June 14, 2011, at <http://www.un.org/en/ga/president/65/issues/hrc140611.pdf> (June 20, 2011).

56. John F. Sammis, “Explanation of Vote by John F. Sammis, Deputy Representative to the Economic and Social Council, in the General Assembly on the Human Rights Council Review,” U.S. Mission to the United Nations, June 17, 2011, at <http://usun.state.gov/briefing/statements/2011/166477.htm> (June 20, 2011).

57. United Nations Department of Public Information, “Five Years after Creation, General Assembly Maintains Human Rights Council as Subsidiary Body, Concluding Review of Work, Functioning.”

neglect of grave human rights situations and short-changes those around the world who have been deprived of their dignity and liberty.

The Human Rights Council, the premier human rights body in the United Nations, exemplifies this erratic, unprincipled approach to human rights. The council has demonstrated repeatedly that it will act selectively and reluctantly to promote respect for human rights and will confront human rights violations only when its examinations are welcomed by the target government or when the violations are so violent and extensive that they simply cannot be ignored. The results of the mandatory review clearly demonstrate the member states' unwillingness to address the council's key flaws. The council will continue to wallow in mediocrity regardless of whether the U.S. remains a member.

The U.N. has no monopoly on the promotion of human rights in the world, and the United States should explore alternative means to promote respect for fundamental human rights.

Other parts of the U.N. have been slightly more effective in promoting basic human rights, but they are all vulnerable to varying degrees to the politicization that plagues the council. For instance, the Third Committee of the General Assembly—which deals with social, humanitarian, and cultural issues—annually musters support for resolutions condemning a few notorious human rights violators, although most violators escape even this cursory criticism. Individual treaties, like the International

Covenant on Civil and Political Rights, generally have independent bodies of experts charged with monitoring treaty compliance. These treaty bodies have at times abused their authority by reinterpreting their respective treaties in ways never envisioned when the treaties were ratified.⁵⁸ Similarly, some special rapporteurs and independent experts have engaged in polemics and pushed political agendas rather than focus on their mandates. Nonetheless, selectively supporting the positive and useful aspects of these efforts can support America's interest in advancing human rights. But such selective support does not require U.S. membership on or robust engagement with the HRC.

The United States and other countries interested in promoting fundamental human rights should not tolerate institutionalized mediocrity, ineffectiveness, or politicization that undermines the very purpose of a human rights body. The U.N. has no monopoly on the promotion of human rights in the world, and the United States should explore alternative means to promote respect for fundamental human rights, including establishing a body outside the U.N. system to promote and scrutinize human rights practices. By establishing it outside of the U.N., its membership need not and should not be universal, but based on strict human rights criteria.⁵⁹

What the U.S. Should Do

Regrettably, the Human Rights Council is poised to prolong the gravely disappointing record of its first five years, even with the U.S. seated at the table. The majority of the U.N. member states either oppose the council functioning as an objective advocate of basic human rights and fundamental

58. Steven Groves, "Ratification of the Disabilities Convention Would Erode American Sovereignty," Heritage Foundation *Backgrounder* No. 2406, April 26, 2010, at <http://www.heritage.org/Research/Reports/2010/04/Ratification-of-the-Disabilities-Convention-Would-Erode-American-Sovereignty> (June 12, 2011); Steven Groves, "Women's Rights Are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," testimony before the Subcommittee on Human Rights and the Law, Committee on the Judiciary, U.S. Senate, November 18, 2010, at <http://www.heritage.org/Research/Testimony/Womens-Rights-Are-Human-Rights> (June 12, 2011); and Susan Yoshihara, "The Quest for Happiness: How the U.N.'s Advocacy of Economic, Social, and Cultural Rights Undermines Liberty and Opportunity," in Brett D. Schaefer, ed., *ConUNdrum: The Limits of the United Nations and the Search for Alternatives* (Lanham, Md.: Rowman and Littlefield Publishers, 2009), pp. 169–208, at http://www.c-fam.org/docLib/20091020_ConUNdrum.pdf (June 12, 2011).

59. For a more detailed description of this proposed body along with membership criteria and responsibilities, see Brett D. Schaefer and Steven Groves, "Human Wrongs: Why the U.N. Is Ill Equipped to Champion Human Rights," in Schaefer, *ConUNdrum*, pp. 131–167.

freedoms or are simply uninterested in undertaking the steps necessary for it to fulfill that mission. Rather than focusing on difficult and ephemeral efforts to temporarily improve the council's voting dynamics, the U.S. should:

- **Not seek another term on the Human Rights Council.** After five years—two with the U.S. as an eager, active member—the council's record echoes the worst behavior of the Commission on Human Rights in its bias against Israel, deliberate disregard of many serious human rights situations, partiality and politicization of its examination of human rights, and membership that includes governments with terrible human rights records. Investment of American resources can marginally improve the council's performance, but even the most dedicated efforts cannot overcome its fundamental weaknesses. The U.S. needs to recognize that the costs of improving the council exceed the benefits. The Obama Administration should reverse its decision to seek another term on the council.
- **Withhold the U.S. share of the council's budget from U.S. contributions to the U.N.'s regular budget.** The HRC's gravely disappointing record has not improved significantly over the past two years, despite U.S. membership. Congress concluded previously that the council's infrequent positive actions do not outweigh its many shortcomings. Regrettably, the U.S. cannot directly withhold its contribution to the council because the council's budget is funded through the U.N. regular budget. However, withholding the U.S. portion of the council's budget from its contribution to the U.N. regular budget sends an unmistakable, if symbolic, signal of U.S. dissatisfaction.
- **Work with other U.N. member states to eliminate the council in favor of the U.N. General Assembly's Third Committee.** As with the Commission on Human Rights, occasional positive actions should not prevent the General Assembly from concluding that the HRC is deficient. With the mandatory review of the council complete, the council's critical flaws will clearly not be addressed in 2011 and are unlikely to be revisited in the future. The absence of reform,

particularly the unwillingness to establish meaningful membership criteria, virtually ensures that the council will continue to be weak and feckless. This situation should lead the U.S. to ask whether the council provides any vital, unique contribution.

In many ways, the council duplicates the responsibilities of the Third Committee of the General Assembly, which is responsible for human rights. As a universal membership body, the Third Committee exhibits the same problems of universal U.N. membership. Yet the Third Committee has proven capable of condemning specific countries and could fulfill the council's bureaucratic and reporting functions, particularly since it already receives reports on the activities of the U.N. High Commissioner for Human Rights, the special procedures, and the Human Rights Council. Eliminating the HRC in favor of the Third Committee would remove the need for lobbying during elections, save funds by eliminating an unnecessary body, and increase participation because the Third Committee meets in New York, where every country maintains a mission, rather than Geneva where fewer countries have a mission.

- **Continue to participate in those parts of the U.N. human rights system that the U.S. finds relevant or useful.** The United States should provide voluntary support on a case-by-case basis to the U.N. High Commissioner for Human Rights and those special procedures whose experts have demonstrated objectivity, impartiality, and dedication to fulfilling their mandates. It should also participate in the Human Rights Committee and other expert bodies of treaties that the United States has ratified.
- **Explore options for creating an alternative human rights body outside the U.N. system.** The U.N. has no monopoly on the promotion of human rights in the world, and the United States and like-minded countries should explore alternative means to promote respect for fundamental human rights, including establishing a body outside the U.N. system. It should have strict membership criteria and be directed to promote and scrutinize human rights practices

around the world. Such an alternative institution composed of nations that observe fundamental human rights and basic freedoms could easily surpass the HRC in objectivity, responsiveness, decisiveness, and non-selectivity.⁶⁰

Conclusion

Despite assuming the mantle as the world's human rights arbiter and enforcer, the U.N. Human Rights Council has proven gravely disappointing and ineffective. Through diplomatic pressure and influence, the Obama Administration has at times positively influenced the council's actions, but these accomplishments are very modest and often not solely attributable to U.S. membership. Even if they were ascribable to U.S. membership, the council's dismal record over the past two years falls far short of the standard that the premier U.N. human rights body should achieve.

The council's weakness and ineffectiveness and its lack of meaningful membership standards are fundamental flaws, which are likely permanent after nearly all of the substantive reform proposals were rejected during the 2011 review. Institutionalized mediocrity and ineffectiveness in the defense of fundamental human rights should not be accepted. The United States should eschew the council and seek to establish a more effective alternative body outside the U.N. to examine human rights practices and to promote respect for fundamental human rights.

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60. For further discussion of non-U.N. options, see Kim R. Holmes, *Liberty's Best Hope: American Leadership for the 21st Century* (Washington, D.C.: The Heritage Foundation, 2008), p. 122, and Schaefer and Groves, "Human Wrongs."

APPENDIX

Special Sessions of the Human Rights Council

Session	Date	Subject
1st	July 5–6, 2006	Human Rights Situation in the Occupied Palestinian Territory
2nd	August 11, 2006	The Grave Situation of Human Rights in Lebanon Caused by Israeli Military Operations
3rd	November 15, 2006	Israeli Military Incursions in Occupied Palestinian Territory
4th	December 12–13, 2006	The Human Rights Situation in Darfur
5th	October 2, 2007	The Human Rights Situation in Myanmar
6th	January 23–24, 2008	Human Rights Violations Emanating from Israeli Military Incursions in the Occupied Palestinian Territory, Including the Recent Ones in Occupied Gaza and West Bank Town of Nablus
7th	May 22, 2008	The Negative Impact on the Realization of the Right to Food of the Worsening of the World Food Crisis, Caused Inter Alia by the Soaring Food Prices
8th	November 28, 2008	The Situation of the Human Rights in the East of the Democratic Republic of the Congo
9th	January 9, 2009	The Grave Violations of Human Rights in the Occupied Palestinian Territory Including the Recent Aggression in the Occupied Gaza Strip
10th	February 20, 2009	The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights
11th	May 26–27, 2009	The Human Rights Situation in Sri Lanka
12th	October 15–16, 2009	The Human Rights Situation in the Occupied Palestinian Territory and East Jerusalem
13th	January 27, 2010	Support to Recovery Process in Haiti: A Human Rights Approach
14th	December 23, 2010	The Situation of Human Rights in Côte d'Ivoire Since the Elections on 28 November 2010
15th	February 25, 2011	Situation of Human Rights in the Libyan Arab Jamahiriya
16th	April 29, 2011	Situation of Human Rights in the Syrian Arab Republic

Source: U.N. Human Rights Council, Web site, at <http://www2.ohchr.org/english/bodies/hrcouncil> (June 15, 2011).

Appendix Table I • B 2572  heritage.org