The United Nations Human Rights Council: Issues for Congress

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March 11, 2009

Congressional Research Service
7-5700
www.crs.gov
RL33608

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

On March 15, 2006, the U.N. General Assembly passed a resolution replacing the Commission on Human Rights with a new Human Rights Council (the Council). The U.N. Secretariat and some governments, including the United States, view the establishment of the Council as a key component of comprehensive U.N. reform. The Council was designed to be an improvement over the Commission, which was widely criticized for the composition of its membership when perceived human rights abusers were elected as members. The General Assembly resolution creating the Council, among other things, increased the number of meetings per year and introduced a "universal periodic review" process to assess each member state's fulfillment of its human rights obligations.

One hundred seventy countries voted in favor of the resolution to create the Council. The United States, under the George W. Bush Administration, was one of four countries to vote against the resolution. The Bush Administration maintained that the Council structure was no better than the Commission and that it lacked mechanisms for "maintaining credible membership." It initially stated that it would fund and support the work of the Council. During the Council's first two years, however, the Administration expressed concern with the Council's focus on Israel and lack of attention to other human rights situations. In April 2008, the Bush Administration announced that the United States would withhold a portion of its contributions to the 2008 U.N. regular budget equivalent to the U.S. share of the Human Rights Council budget. In June 2008, it further announced that the United States would engage with the Council "only in matters of deep national interest."

On February 27, 2009, the Barack Obama Administration announced that it would participate as an observer in the 10th regular session of the Human Rights Council (held from March 2 to 27, 2009). The Administration stated that it "furthers our [the United States'] interest if we are part of the conversation and present at the Council's proceedings." At the same time, however, the Obama Administration stated that the Council's trajectory was "disturbing," particularly its "repeated and unbalanced" criticisms of Israel. The United States has not run for a seat in any of the three Council elections and is currently a Council observer with no voting rights.

Since its establishment, the Council has held 10 regular sessions and 10 special sessions. The regular sessions addressed a combination of specific human rights abuses and procedural and structural issues. Five of the 10 special sessions addressed the human rights situation in the Occupied Palestinian Territories and in Lebanon.

Congress maintains an ongoing interest in the credibility and effectiveness of the Council in the context of both human rights and broader U.N. reform. In Division J, the Department of State, Foreign Operations, and Related Programs Appropriation Act, 2008, of the Consolidated Appropriations Act, 2008 (P.L. 110-161), for example, Congress prohibits U.S. contributions to support the Human Rights Council unless (1) the Secretary of State certifies to the Committees on Appropriations that funding the Council is "in the national interest of the United States" or (2) the United States is a member of the Council. Due to the nature of U.N. budget mechanisms, withholding Council funds would be a largely symbolic act and may have little or no effect on the Council's operational work. This report will be updated as events warrant.

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Background

Overview of the U.N. Commission on Human Rights[1]

The U.N. Human Rights Commission (the Commission) was the primary intergovernmental policymaking body for human rights issues before it was replaced by the U.N. Human Rights Council (the Council) in 2006. Created in 1946 as a subsidiary body of the U.N. Economic and Social Council (ECOSOC),[2] the Commission's initial mandate was to establish international human rights standards and develop an international bill of rights. One of the Commission's notable successes was the Universal Declaration of Human Rights, adopted by the U.N. General Assembly on December 10, 1948.[3] During its tenure, the Commission played a key role in developing a comprehensive body of human rights laws and regulations.[4] Over time, its work evolved to address specific human rights violations and complaints as well as broader human rights issues. It developed a system of special procedures to monitor, analyze and report on human rights violations. The procedures addressed country-specific human rights violations, as well as "thematic" crosscutting human rights abuses such as racial discrimination, religious intolerance, and denial of freedom of expression.[5]

In recent years, controversy developed over the human rights records of Commission members. Countries widely perceived as systematic abusers of human rights were elected as members. In 2001, Sudan, a country broadly criticized by governments and human rights groups for ethnic cleansing in its Darfur region, was elected. Sudan was reelected in 2004, prompting outrage from human rights organizations and causing the United States to walk out of the Commission chamber in protest.[6] These instances significantly affected the Commission's credibility. Critics claimed that countries used their membership to deflect attention from their own human rights violations by questioning the records of others. Some members were accused of bloc voting and excessive procedural manipulation to prevent debate of their human rights abuses.[7] In 2005, the collective impact of these controversies led U.N. Secretary-General Kofi Annan to propose the idea of a new and smaller Council to replace the Commission. On March 15, 2006, the U.N. General Assembly approved a resolution to dissolve the Commission and create the Council in its place.

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[1] For further information on the background and evolution on the Commission on Human Rights, see CRS Report RS20110, *The United Nations Commission on Human Rights: Background and Issues*, by Vita Bite (archived; available from the author of this report).

[2] ECOSOC is a principal organ of the United Nations that coordinates the economic and social work of the specialized U.N. agencies. It is comprised of 54 member governments elected to three-year terms by the U.N. General Assembly.

[3] The Universal Declaration of Human Rights was adopted by General Assembly resolution 217 A (III), December 10, 1948, and can be viewed at http://www.un.org/Overview/rights.html.

[4] This includes the International Covenant on Civil and Political Rights, which entered into force on March 23, 1976, and the International Covenant on Economic, Social, and Cultural Rights, which entered into force on January 3, 1976. The United States signed both treaties on October 5, 1977, and ratified the Covenant on Civil and Political Rights on June 8, 1992.

[5] Other examples of thematic mandates include the right to development; the right to education; the rights of migrants; and the right to food.

[6] Press briefing by Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

[7] "A New Chapter for Human Rights: A handbook on issues of transition from the Commission on Human Rights to the Human Rights Council," *International Service for Human Rights* and *Friedrich-Ebert-Stiftung*, June 2006.

The Commission held its final meeting in Geneva, Switzerland, on June 16, 2006, where, among other actions, it transferred its reports and responsibilities to the new Council.

The Office of the High Commissioner for Human Rights (OHCHR) is a department within the U.N. Secretariat headed by a High Commissioner for Human Rights, currently Navanethem Pillay of South Africa.[8] Its mandate is to promote and protect human rights worldwide through international cooperation, and through the coordination and streamlining of human rights efforts within the U.N. system. The OHCHR provided general support to the Commission and will continue to do so for the Council, working specifically with Council experts to document human rights violations.

The United States and U.N. Human Rights Efforts

The United States is generally supportive of human rights mechanisms at the United Nations. It played a key role in creating the Commission on Human Rights in 1946, and was a member and active participant of the Commission until it lost its first election in 2001. It was restored to the Commission the following year by election. In 2005, the United States supported doubling the U.N. regular budget resources of OHCHR. This increased the U.N. regular budget for human rights activities from $64 million in 2004-2005 to $83 million in 2006-2007. Congress has also demonstrated continued support for U.N. human rights bodies, often using the mechanisms and special procedures of the Commission to call attention to the human rights abuses of countries such as Cuba and China.[9] In addition, Congress receives annual Country Reports on Human Rights Practices from the Secretary of State as mandated by the Foreign Assistance Act of 1961.[10] The Secretary of State is required, among other things, to submit reports on countries that are members of the United Nations.

There have been instances when both Congress and the executive branch have been critical of the Commission. In 1997, controversy emerged between the U.S. government and the Commission when the Commission appointed a Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions to analyze how the death penalty is implemented in the United States.[11] The Rapporteur reported that economic status, ethnicity, and racial discrimination were indicators for death penalty verdicts, reportedly prompting then-Senator Jesse Helms to declare the Special Rapporteur's mission "an absurd U.N. charade."[12]

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[8] Pillay's appointment was confirmed by consensus on July 28, 2008, and her term began on September 1, 2008. She succeeded the previous High Commissioner, Louise Arbour of Canada. Pillay is the fifth U.N. High Commissioner for Human Rights since the office was established 15 years ago. The OHCHR has just under 1,000 staff working in 50 countries with a budget of approximately $150 million.

[9] Examples include H.Con.Res. 83, introduced on March 3, 2005, Urging the appropriate representative of the United States to the 61st session of the U.N. Commission on Human Rights to introduce a resolution calling on the Government of the People's Republic of China to end its human rights violations; and H.Res. 91, passed/agreed to in the House of Representatives on April 3, 2001, urging the President to make all necessary efforts to obtain passage during the 2001 meetings of the Commission on Human Rights of a resolution condemning the Cuban government for its human rights abuses.

[10] Country Reports on Human Rights Practices are submitted to Congress in compliance with Sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended.

[11] Bacre Waly Ndiaye, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, U.N. document E/CN.4/1998/68/Add.3, January 22, 1998.

[12] Elizabeth Olson, "U.N. Report Criticizes U.S. for 'Racist' Use of Death Penalty," *The New York Times*, April 7, 1998.

In 2001, more controversy followed when the United States was not elected to the Commission and widely perceived human rights violators such as Pakistan, Sudan, and Uganda were elected. The Bush Administration and Congress were frustrated and disappointed by the election outcome. The House of Representatives reacted with a Foreign Relations Authorization Act amendment that linked payment of U.S. arrears to the United Nations with the United States regaining a seat on the Commission.[13] The Administration, however, stated it would not link U.S. payment of U.N. dues and arrears to the outcome of the Commission elections.[14] Given the controversy over the Commission, both Congress and the Administration supported the U.N. Secretary-General's 2005 proposal to disband the Commission and create a new Council.

The U.N. Human Rights Council and U.N. Reform

The establishment of the U.N. Human Rights Council was part of a comprehensive U.N. reform effort by former U.N. Secretary-General Annan and member states. In March 2005, the Secretary-General outlined a plan for U.N. reform in his report, *In Larger Freedom: Towards Development, Security, and Human Rights for All*. He presented human rights, along with economic and social development and peace and security, as one of three "pillars" on which to base the work of the United Nations. In September 2005, heads of state and other high-level officials met for the World Summit at U.N. Headquarters in New York to address issues of development, security, human rights, and reform. The Summit Outcome document listed several mandates for "Strengthening the United Nations," including reform of the U.N. Security Council, management structure, and human rights bodies. In particular, the Outcome document mandated the creation of a new Council as part of broader U.N. reform.

The United States also viewed the Council as a critical element of overall U.N. reform. The Bush Administration identified the establishment of a new Council as a key reform priority necessary to achieve a "strong, effective, and accountable organization."[15] Congress also identified U.N. human rights reform as a significant component of overall U.N. reform. Recent proposed legislation has linked payment of U.N. assessed dues with the fulfillment of specific reforms, including those involving human rights.[16]

Council Mandate, Structure, and Procedures

Mandate and Responsibilities

On March 15, 2006, the U.N. General Assembly passed resolution A/RES/60/251, which established the Council and outlined its purpose and responsibilities.[17] Under the resolution, the

[13] For more information on this congressional action, see CRS Report RS20110, *The United Nations Commission on Human Rights: Background and Issues*, by Vita Bite, p. 3-4 (archived; available from the author of this report).

[14] Press Conference of the President, Office of the Press Secretary, The White House, May 11, 2001.

[15] "U.S. Priorities for a Stronger, More Effective United Nations," U.S. Department of State publication, June 17, 2005. Other Administration reform priorities included budget, management, and administrative reform, Democracy initiatives, and the creation of a comprehensive Convention on Terrorism. Further information on U.S. policy toward U.N. reform can be found at http://www.un.int/usa/Issues/reform.html.

[16] See **Appendix A** for more information.

[17] One hundred seventy parties voted in favor of the U.N. General Assembly resolution creating the Council; four voted (continued...)

Council is responsible for "promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner." The Council will "address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon." It may also promote and coordinate the mainstreaming of human rights within the U.N. system. In order to achieve the above goals, the Council undertakes a universal periodic review of each U.N. Member State's fulfillment of its human rights obligations and commitments. (See the "Universal Period Review" section for more information.)

The resolution also ensures adequate transition of responsibilities from the Commission on Human Rights to the new Council. Like the Commission, the Council continues to collaborate with OHCHR. It works to maintain and improve the system of special mandates, expert advice, and complaint procedures instituted by the Commission. Under the resolution, the Council also:

- promotes human rights education, advisory services, technical assistance, and capacity building with relevant member states;
- serves as a forum for dialogue on thematic human rights issues and recommend opportunities for the development of international human rights law to the U.N. General Assembly; and
- promotes the full implementation of human rights obligations by member states, and follow-up on human rights commitments from other U.N. conferences and summits.[18]

Structure and Composition

On June 18, 2007, the Council adopted a resolution entitled "Institution-Building of the United Nations Human Rights Council" that addressed many critical details related to the work of the Council, including its mechanisms, procedures, framework, and system of universal periodic review.[19] Some aspects of the Council's work, however, will continue to be debated and determined by Council members. This section addresses current structural elements of the Council. Key differences between the Council and the Commission are noted where relevant.

Status Within U.N. Framework

The Council is designated a subsidiary body of the General Assembly, whereas the Commission was a subsidiary body of ECOSOC. This change significantly enhances the standing of human

(...continued)

against (Israel, Marshall Islands, Palau, and the United States), and three abstained (Belarus, Iran, and Venezuela).

[18] The mandates and responsibilities are drawn from U.N. document, A/RES/60/251, March 15, 2006.

[19] During its first year, the Council established four working groups (WGs) to address its working methods: (1) WG to Develop the Modalities of Universal Periodic Review; (2) WG on the Review of Mechanisms and Mandates on the Future System of Expert Advice; (3) WG on the Review of Mechanisms and Mandates and Special Procedures; and (4) WG on the Agenda, Annual Program of Work, Working Methods, and Rules of Procedures. WG members met throughout the year to negotiate and recommend Council procedures and mechanisms. Based on the recommendations, then-Council President Luis Alfonso de Alba proposed a draft institution-building text that was subsequently negotiated and adopted by Council members in Human Rights Council resolution 5/1 (June 18, 2007). See U.N. document, A/HRC/5/L.11, *Report to the General Assembly on the Fifth Session of the Human Rights Council*, June 18, 2007.

rights within the U.N. framework. In its new capacity, the Council reports directly to the General Assembly's 192 members instead of through ECOSOC's 54 members.

Membership

The Council is composed of 47 members apportioned by geographic region as follows: 13 from African states; 13 from Asian states; six from Eastern Europe states; eight from Latin America and the Caribbean states; and seven from Western European and other states. Members are elected for a period of three years and may not hold a Council seat for more than two consecutive terms. If a Council member commits "gross and systematic violations of human rights," the General Assembly may suspend membership with a two-thirds vote of members present. For comparison, the Commission was composed of 53 member states elected by members of the ECOSOC. Countries served three year terms with no term limits. Like the Council, the Commission created a formula to ensure equitable distribution of seats by region.[20]

Elections

All U.N. member states are eligible to run for election to the Council. Countries are elected through secret ballot by the General Assembly with an absolute majority (97 out of 192 votes). When voting, the resolution instructs countries to consider "the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments." A country submitting its name for election must affirm its commitment to human rights with a written pledge.

A key difference between the Council and the Commission is the direct election of Council members by the U.N. General Assembly. Under the Commission, candidates were first nominated by their regional groups and then the nominees were submitted for election by members of ECOSOC. Regional groups often sent the same number of nominees to the election as there were seats available. This forced some member states to cast votes for countries with questionable human rights records in order to fill all regional group seats. The next election will be held in May or June of 2009, and 18 of the 47 Council seats will be open. (See **Appendix B** for a list of current members grouped by region and duration of membership.)

Structure

The Council holds an organizational meeting at the beginning of each Council year. At the meeting, members elect a president from among Bureau members for a one-year term. The president presides over the election of four vice-presidents representing other regional groups in the Council.[21] The president and vice-presidents form the Council Bureau, which is responsible for all procedural and organizational matters related to the Council. The current president is Ambassador Martin Ihoeghian Uhomoibhi of Nigeria. Under the Commission, the role of president was held by a chairperson.

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[20] Regional distribution of seats on the Commission on Human Rights was as follows: 15 members from African states; 12 from Asian states; five from Eastern European states; 11 from Latin America and Caribbean states; and 10 from Western Europe and other states.

[21] Current Vice-Presidents are Elchin Amirbayov of Azerbaijan, Erlinda F. Basilio of the Philippines, Alberto J. Dumont of Argentina, and Marius Grinius of Canada. Their term will end on June 18, 2009.

Meetings

The Council is headquartered in Geneva, Switzerland, and meets for three or more sessions per year for ten weeks or more, including a high-level session. It can hold special sessions at the request of any Council member with the support of one-third of the Council membership. By contrast, the Commission on Human rights met in Geneva once a year for approximately six weeks, and since 1990 special sessions were held on request.[22]

Reporting

The Council submits annual reports directly to the General Assembly. At the end of its first five years, the Council is also required to review and report to the General Assembly on its work and functioning. The Commission submitted reports primarily to ECOSOC, a limited membership body, which reported Commission activities to the General Assembly.

Rules of Procedure

The Council follows the rules of procedure created for committees of the General Assembly.[23] Procedures that relate to the participation of observer states, international organizations, non-governmental organizations (NGOs), specialized agencies, and human rights institutions fall under the practices that were observed by the Commission.[24] These rules encourage consultation and interaction at Council sessions among Council members, observing U.N. member states, NGOs, and other relevant organizations. Countries that are not Council members do not have voting rights.

Universal Periodic Review

All Council members and observer states are required to undergo a universal periodic review (UPR) that examines a state's fulfillment of its human rights obligations and commitments. The review is an intergovernmental process that facilitates an interactive dialogue between the working group and the country under review. It is conducted by a UPR working group composed of the 47 Council members and chaired by the Council President. The first UPR cycle lasts four years, with Council members evaluating 48 states per year during three two-week sessions (six weeks total). Observer states may attend and speak at the working group, and relevant stakeholders (such as NGOs) may also attend the meetings. All Council members will undergo a review during the term of their membership, and initial members (those with one- and two-year terms) will be reviewed first.[25]

UPR is based on the principles of the U.N. Charter, the Universal Declaration of Human Rights, and human rights instruments to which the state under review is party. Voluntary pledges by states are also taken into account, as is input from the U.N. Office of the High Commissioner for

[22] Examples of Special Sessions under the Commission included Situation of human rights in Rwanda (1994); Situation in East Timor (1999); and "Grave and massive violations" of the human rights of the Palestinian people by Israel (2000).

[23] General Assembly Rules of Procedure can be viewed at http://www.un.org/ga/60/ga_rules.html.

[24] The Commission on Human Rights followed ECOSOC rules of procedure.

[25] More information on UPR is available at http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx.

Human Rights and relevant stakeholders, such as NGOs and national human rights institutions. During the review cycles, which began in April 2008, the UPR working group makes initial recommendations, with subsequent reviews focusing on the implementation of recommendations from the previous review. The full Council also addresses any cases of consistent non-cooperation with the review. After the first four-year UPR cycle is completed, the Council will review the process to identify best practices and lessons learned. In April and May 2008, the UPR working group completed its first and second review sessions. A fourth session was held from February 2 to 13, 2009.[26]

Special Procedures

The Council, like the previous Commission, maintains a system of special procedures that includes country and thematic mandates. Country mandates, which last for one year and can be renewed, allow for special rapporteurs to examine and advise on human rights situations in specific countries. Thematic mandates, which last for three years and can also be renewed, allow special rapporteurs to analyze major human rights phenomena globally.[27] Similar to the Commission, the special rapporteurs serve in an independent, personal capacity and conduct in-depth research and site visits pertaining to their issue area or country. They can be nominated by U.N. member states, regional groups within the U.N. human rights system, international organizations, NGOs, or individuals. A newly established "consultative group" nominates rapporteurs for country and thematic mandates. Based on the consultative group's input, the Council president submits a list of possible candidates to Council members, who then consider each appointment.[28]

Complaint Procedure

The Council maintains a complaint procedure that allows individuals and groups to report human rights abuses in a confidential setting. The goal of the procedure is to objectively and efficiently facilitate dialogue and cooperation among the accused state, Council members, and the complainant(s). A working group on Communications and a working group on Situations evaluate the complaints and bring them to the attention of the Council.[29] The groups hold two five-day meetings per year to consider complaints and replies from concerned states. The full Council determines whether to take action on the complaints based on recommendations from the working groups. The Council's complaint procedure is very similar to the complaint procedure under the Commission on Human Rights, which also allowed for confidential reporting of human rights abuses.

[26] For a schedule of UPR, seehttp://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx.

[27] For more information on Council special procedures, see http://www2.ohchr.org/english/bodies/chr/special/index.htm.

[28] On June 18, 2007, the Council adopted a new Code of Conduct for special procedure mandate holders. See Human Rights Council resolution 5/1, in U.N. document, A/HRC/5/L.11, *Report to the General Assembly on the Fifth Session of the Human Rights Council*, June 18, 2007, pp. 45-55.

[29] For more information on the newly-established complaint procedures, see U.N. document, A/HRC/5/L.11, *Report to the General Assembly on the Fifth Session of the Human Rights Council*, June 18, 2007, pp. 19-24.

Human Rights Council Advisory Committee

The Advisory Committee replaces the Council's previous Sub-Commission on the Promotion and Protection of Human Rights. Similar to the Sub-Commission, the Advisory Committee is a subsidiary body of the Council and functions as a "think-tank" for Council members. The committee is composed of 18 experts nominated or endorsed by U.N. member states and elected by Council members through a secret ballot. Upon the Council's request, the Committee provides research-based advice that focuses on thematic human rights issues. The Committee meets twice a year for a maximum of 10 days, and can schedule meetings on an ad hoc basis with approval from Council members.[30] The previous Sub-Commission came under criticism for duplicating the work of the Council and disregarding the Council's guidance and direction. The Sub-Commission consisted of 26 independent experts elected for four-year terms, and held an annual four-week session in Geneva.[31]

Overview of the Council's Work

Since it was established in March 2006, the Council has held 10 regular sessions and 10 special sessions.[32] The regular sessions addressed a mixture of procedural and substantive issues, with a focus on improving working methods of the Council.[33] The Council has also held nine special sessions, five of which have focused on human rights violations in the Occupied Palestinian Territory and in Lebanon. Others have addressed the human rights situation in the Democratic Republic of the Congo, Sudan, and Myanmar (Burma). (See **Table 1**.)

Table 1. Special Sessions of the Human Rights Council

Session/Subject	Dates
First Special Session: Human rights situation in the Occupied Palestinian Territory	July 5-6, 2006
Second Special Session: Grave situation of Human Rights in Lebanon caused by Israeli Military Operations	August 10-11, 2006
Third Special Session: Israeli Military Incursions in the Occupied Palestinian Territories	November 15, 2006
Fourth Special Session: Human Rights Situation in Darfur	December 12-13, 2006
Fifth Special Session: Human Rights Situation in Myanmar (Burma)	October 2, 2007
Sixth Special Session: Violations Stemming from Israeli Incursions in the Occupied Palestinian Territory	January 24, 2008
Seventh Special Session: Negative Impact on the Realization of the Rights to Food of the	May 22, 2008

[30] For more information on the Advisory Committee, see U.N. document, A/HRC/5/L.11, *Report to the General Assembly on the Fifth Session of the Human Rights Council*, June 18, 2007, p. 15-18. The first meeting of the Committee is scheduled from August 4 to 15 in Geneva, Switzerland.

[31] Additional information on the Sub-Commission for the Promotion and Protection of Human Rights can be found at http://www2.ohchr.org/english/bodies/subcom/index.htm.

[32] A synopsis of the Human Rights Council regular and special sessions is available from the author of this report.

[33] Information on regular sessions of the Human Rights Council is available at http://www2.ohchr.org/english/bodies/hrcouncil/.

Session/Subject	Dates
Worsening of the World Food Crisis, Caused inter alia by the Soaring Food Prices	
Eighth Special Session: Situation of the Human Rights in the East of the Democratic Republic of the Congo	November 28, 2008
Ninth Special Session: The Grave Violations of Human Rights in the Occupied Palestinian Territory including the recent aggression in the occupied Gaza Strip	January 9, 2009
Tenth Special Session: The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights	February 20, 2009

Source: U.N. Office of the High Commissioner for Human Rights

Criticism and Support

Since its establishment, the Council has faced considerable criticism from governments, NGOs, and other observers on a number of issues.

Focus on Specific Countries/Bloc Voting

The Council's focus on Israel during its regular and special sessions alarmed many countries and human rights organizations. After the first elections, the Organization of the Islamic Conference (OIC)[34] held 17 seats on the Council—accounting for about one-third of the votes needed to call a special session.[35] Some observers believe that consequently the Council held more special sessions on Israel than on any other country.

Role of Regional Groups in Council Elections

Some Council members and observers are worried that the process of elections by regional group does not allow for competition among member states running for Council seats. In the May 2007 elections, for example, three out of five regional groups nominated the same number of countries as there were seats available. This limited the number of choices and guaranteed the election of nominated member states regardless of their human rights records.

Leadership from Democratic Countries

Some have noted that the Council lacks leadership, particularly from democracies and countries with positive human rights records.[36] Some observers have speculated that pro-democracy Council members are not pushing their initiatives as they have in the past because they need

[34] The OIC is an intergovernmental group composed of 57 states with a goal of combining their efforts and resources to "speak with one voice to safeguard the interest and ensure the progress and well-being of... Muslims in the world over." For more information, see http://www.oic-oci.org/.

[35] After the second elections, OIC members occupied 15 of 47 Council seats. This includes a majority in both the African and Asian regional groups, which together account for over half of the Council membership. After the third election, OIC members accounted for 16 of 47 Council seats.

[36] "Human Rights Hoax," *Wall Street Journal*, June 21, 2007.

support from other Council members, particularly the Non-Aligned Movement, in negotiations on Council structure and mechanisms.[37]

Alternately, some observers maintain that the Council can still change its current course and improve. They emphasize that the Council has yet to fully implement some of the mechanisms that differentiate it from the Commission—most notably the universal periodic review process. Council supporters also maintain that the composition of Council membership is a significant improvement over the composition of Commission membership. They emphasize that the most egregious human rights abusers did not attempt to run in Council elections because of the new criteria. Some supporters also point out that widely perceived human rights violators that announced their candidacy, such as Belarus, failed to win a seat in the second election. Finally, proponents highlight the Council's recent adoption of resolutions on the human rights situation in Sudan, Myanmar (Burma), and the Democratic Republic of the Congo as examples of the Council's continued improvement.

Institution-Building Framework: Controversial Issues and the Secretary-General's Response

In the institution-building text adopted on June 18, 2007, Council members identified the "Human rights situation in Palestine and other occupied Arab territories," as a permanent part of the Council's agenda and framework for its future program of work. The Council also established a mechanism for confidential complaint procedures, as well as Council rules of procedure. In addition, the text stated the need for "proposers of a country resolution to secure the broadest possible support for their initiatives (preferably 15 members), before action is taken."[38] Council members also terminated the mandates of the special rapporteur for Belarus and Cuba.[39]

Many U.N. member states and Council observers objected to the Council singling out human rights violations by Israel while terminating the Council's country mandates of widely perceived human rights abusers.[40] At the conclusion of the Council's fifth regular session in Geneva in June 2007, a U.N. spokesperson noted Secretary-General Ban's "disappointment" with the Council's decision to "single out only one specific regional item, given the range and scope of allegations of human rights violations throughout the world."[41] In response to the Council's decision to terminate the country mandates of Cuba and Belarus, Ban released a statement that emphasized

[37] "Dawn of a New Era? Assessment of the U.N. Human Rights Council and its Year of Reform," *U.N. Watch*, May 7, 2007, p. 7.

[38] U.N. document A/HRC/5/L.11, p. 29. This provision was a point of contention among Council members. During negotiations, China maintained that a two-thirds majority should be required to take action on country-specific resolutions—a position that EU countries did not accept. Multiple credible sources confirm that the European Union (EU) agreed to terminate the Council's Cuba and Belarus mandates if China would agree to the language in the adopted text.

[39] Council members maintained country mandates for countries such as Burma, Democratic Republic of the Congo, Haiti, North Korea, Somalia, and Sudan. The mandates for Cuba and Belarus were not included in the final list of renewed mandates in Appendix I of the institution-building text. (U.N. document A/HRC/5/L.11, June 18, 2007, p. 38).

[40] For a synthesis of U.N. member state views, see U.N. press release, "Human Rights Council Hears Praise and Criticism About Adopted Text on Institution Building of Council," June 19, 2007. See also, "Conclusion of the United Nations Human Rights Council's Institution Building," Amnesty International External Document, No. 115, June 20, 2007.

[41] Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, June 21, 2007, available at http://www.un.org/News/briefings/docs/2007/db070621.doc.htm.

"the need to consider all situations of possible human rights violations equally," and noted that "not having a Special Rapporteur assigned to a particular country does not absolve that country from its obligations under the Universal Declaration of Human Rights and every other human rights treaty."[42] Ban, however, welcomed and supported the new procedures for universal periodic review, calling them "strong and meaningful," and noting that they "send a clear message that all countries will have their human rights record and performance examined at regular intervals."[43]

Election Results

The Human Rights Council has held three elections. On May 17, 2007, the General Assembly elected 14 new Council members in the second Council elections. Reelected members include India, Indonesia, Netherlands, Philippines, and South Africa. Newly elected members are Angola, Bosnia and Herzegovina, Bolivia, Egypt, Italy, Madagascar, Nicaragua, Qatar, and Slovenia. India and Indonesia received the highest number of votes, earning 185 and 182 votes, respectively. With two exceptions (the Eastern European group and Western European and Others group), regional groups nominated the same number of countries as there were seats available.[44] In the weeks leading up to the election, the Eastern European group nominated only two states, Belarus and Slovenia, for two available seats. Many Council members and observers were concerned that Belarus, a widely perceived human rights abuser, would be elected to the Council. Canada, the United Kingdom, the United States, and others reportedly mounted a successful lobbying effort to encourage the last-minute candidacy and election of Bosnia and Herzegovina.

The third Human Rights Council elections were held on May 21, 2008. Fifteen countries were elected, three of which will be serving on the Council for the first time. Re-elected members include Argentina, Bahrain, Brazil, France, Gabon, Ghana, Japan, Pakistan, Republic of Korea, Ukraine, United Kingdom, and Zambia. The new Council members are Burkina Faso, Chile, and Slovakia.[45]

U.S. Response

Overall, the United States supports the mission of the Human Rights Council.[46] Past and current Administrations and Members of Congress, however, have disagreed as to whether the Council is an effective or credible mechanism for addressing human rights.

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[42] U.N. press release, "Secretary-General Urges Human Rights Council to Take Responsibilities Seriously, Stresses Importance of Considering All Violations Equally," June 20, 2007, available at http://www.un.org/News/Press/docs/2007/sgsm11053.doc.htm.

[43] U.N. press release, SG/SM/11053, HRC/8, June 20, 2007.

[44] Member States that announced their candidacies in the second election include Angola, Egypt, Madagascar, and South Africa from the African group (four seats available); India, Indonesia, Philippines, and Qatar in the Asian group (four seats available); Belarus, Bosnia and Herzegovina, and Slovenia in the Eastern European group (two seats available); Bolivia and Nicaragua in the Latin American and Caribbean group (two seats available); and Denmark, Italy and the Netherlands in the Western European and Other group (two seats available).

[45] For more information on the third election, see http://www.un.org/ga/62/elections/hrc_elections.shtml.

[46] See, for example: (1) "Remarks on the Human Rights Council Elections by Kristen Silverberg, Assistant Secretary for International Organization Affairs," U.S. Department of State, May 17, 2006; and (2) Questions for the Record Submitted by Senator John Kerry on the Nomination of Susan E. Rice for U.S. Permanent Representative to the United Nations, January 15, 2009.

Barack Obama Administration

On February 27, 2009, the Obama Administration announced that it would participate as an observer in the 10th regular session of the Human Rights Council (held from March 2 to 27, 2009). The Administration stated that it "furthers our [the United States'] interest if we are part of the conversation and present at the Council's proceedings."[47] The Administration emphasized that U.S. participation is a sign of its commitment to advancing the cause of human rights in the multilateral arena.[48] At the same time, however, the Administration stated that the Council's trajectory was "disturbing," particularly its "repeated and unbalanced" criticisms of Israel.[49]

Susan Rice, appointed U.S. Permanent Representative to the United Nations, stated at her confirmation hearing:

> ...we [the Obama Administration] will work closely with friends, allies, and the United Nations Secretariat to seek to improve the performance and prospects of the Human Rights Council, which has strayed far from the principles embodied in the U.N. Declaration of Human Rights.[50]

Rice acknowledged that the Council was "seriously flawed and a major disappointment," and stated that the Administration "intends to work to strengthen the United Nations human right mechanisms so that they focus on the world's most egregious human rights abusers."[51] She further stated that regardless of whether the United States is a member of the Council, it will use "all available policy tools at its disposal and the full weight of its diplomacy to defend and advocate ... for human rights around the world."[52]

George W. Bush Administration

The Bush Administration opposed the agreed-to Human Rights Council structure agreed to in March 2006, and the United States was one of four countries to vote against the U.N. General Assembly resolution creating the Council. In a statement made after the vote, then-U.S. Ambassador to the United Nations John Bolton called the U.S. position a "matter of principle," and said the United States could not support the resolution because it lacked "stronger mechanisms for maintaining credible membership." He stated that the United States did not have confidence that the new Council would be better than its predecessor, but at the same time indicated the United States would work with other member states to ensure the Council is strong and operates as effectively and efficiently as possible.[53]

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[47] Department of State press release, "U.S. Posture Toward the Durban Review Conference and Participation in the U.N. Human Rights Council," February 27, 2009, available at http://www.state.gov/r/pa/prs/ps/2009/02/119892.htm.

[48] Ibid

[49] Ibid.

[50] Ibid.

[51] Questions for the Record Submitted by Senator John Kerry on the Nomination of Susan E. Rice for U.S. Permanent Representative to the United Nations, January 15, 2009.

[52] Ibid.

[53] Drawn from Ambassador Bolton's statement in the U.N. provisional verbatim record. U.N. document, A/60/PV.72, March 15, 2006, p. 6.

On April 6, 2006, the United States announced that it would not run for a Council seat in the first election. A State Department spokesperson stated, "There are strong candidates in our regional group, with long records of support for human rights, that voted in favor of the resolution creating the Council. They should have the opportunity to run."[54] On March 6, 2007, the Administration announced that the United States would not run for a Council seat in the May 2007 elections. A State Department spokesperson stated that the Council had "not proved itself to be a credible body," and had exhibited a "nearly singular focus on Israel," while not adequately addressing human rights situations in countries such as Cuba, Burma, or North Korea.[55] The United States did not run for a seat in the third Council elections, held in May 2008.

During the Council's first two years, the George W. Bush Administration was generally disappointed with the work of the Council. A main point of concern was the Council's focus on Israeli human rights violations while it failed to address human rights abuses in other parts of the world. The Administration maintained that the legitimacy of the Council would be undermined if some Council members continue to push such "imbalanced" views. It further stated it did not object to discussing potential Israeli human rights abuses as long as violations by other countries were also discussed.[56]

In July 2007, the Bush Administration stated that it remained committed to supporting human rights in the multilateral system, though it was "deeply skeptical that the U.N.'s Human Rights Council will, in the near future, play a constructive role in our efforts."[57] The Administration also maintained that despite its concerns, it will continue to support U.S. funding of the Council.[58] On April 8, 2008, however, then-U.S. Permanent Representative to the United Nations, Zalmay Khalilzad, stated that the United States would withhold a portion of its contributions to the 2008 U.N. regular budget equivalent to the U.S. share of the Human Rights Council budget.[59]

On June 6, 2008, a State Department spokesperson announced that the United States would engage with the Council "only when we [the United States] believe that there are matters of deep national interest before the Council and we feel compelled; otherwise, we are not going to."[60] According to the official, instead of focusing on human rights situations around the world, the Council "turned into a forum that seems to be almost solely focused on bashing Israel." The official added that future U.S. participation will be "ad hoc."[61] According to the Administration

[54] Press Statement by Sean McCormack, Spokesman, U.S. Department of State, April 6, 2006.

[55] Press Statement by Sean McCormack, Spokesperson, U.S. Department of State, March 6, 2007.

[56] U.S. Statement on the Third Special Session of the Human Rights Council, Tom Casey, Deputy Spokesman, U.S. Department of State, Washington, DC, November 15, 2006.

[57] Moreover, the Administration stated that the primary responsibility for the Council's failures "lies with Member States, rather than the U.N. as an institution." Remarks by Assistant Secretary for International Organization Affairs Kristin Silverberg, before the Senate Committee on Foreign Relations Subcommittee on International Operations and Organizations, Democracy, and Human Rights, July 26, 2007.

[58] Drawn from a press briefing of Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006, and remarks by Assistant Secretary for International Organization Affairs Kristin Silverberg, before the Senate Committee on Foreign Relations Subcommittee on International Operations and Organizations, Democracy, and Human Rights, July 26, 2007.

[59] U.S. Mission to the United Nations press release #075(08), "Statement by Zalmay Khalilzad on the Durban II Conference and the Human Rights Council," April 8, 2008, available at http://www.usunnewyork.usmission.gov/press_releases/20080408_075.html.

[60] Daily Press Briefing, Sean McCormack, Spokesperson, U.S. Department of State, June 6, 2008, available at http://www.state.gov/r/pa/prs/dpd/2008/jun/105716.htm.

[61] Ibid. The State Department official also stated, "Part of our strategy is to take a look at any suggestions or thoughts (continued...)

officials, the United States continued to work with other multilateral human rights mechanisms, such as the U.N. Office of the High Commissioner for Human Rights and the General Assembly's Third Committee (Social, Humanitarian, and Cultural).[62]

Congressional Actions Regarding Council Funding

Some Members of Congress sought to limit U.S. contributions to the Human Rights Council because of concerns over the Council's work.[63] On December 26, 2007, Congress agreed to H.R. 2764, the Consolidated Appropriations Act, 2008 (P.L. 110-161), which included a provision on Human Rights Council funding. Section 695 specified that "none of the funds appropriated by this Act may be made available for a United States contribution to the United Nations Human Rights Council." The provision specified that it shall not apply if (1) the Secretary of State certifies to the Committees on Appropriations that funding the Council is "in the national interest of the United States" or (2) the United States is a member of the Human Rights Council.

Response from Organizations and Other Governments

Human Rights Groups and Other Organizations

Response to the formation of the Council from a majority of NGOs, human rights groups, and other relevant agencies and organizations appears to be cautiously optimistic. Some groups share concerns about the Council's work, however, and one source of apprehension is the composition of Council membership. Though the new membership criteria discourage some countries from running, several perceived human rights abusers ran for seats and were elected to the Council in the first elections.[64] Some groups are also concerned about the increase in frequency of the Council meetings. While they support the increase and believe it will make the Council more effective, they worry that smaller NGOs and human rights groups could have a difficult time obtaining funds to attend these meetings.[65] Another common concern expressed by some groups is whether NGOs will continue to be active participants in the Council process.[66]

(...continued)

we have to improve the performance of the Council. There's a five-year review period, and that review period is going to fall outside the term of this Administration, but of course... we feel as stewards of the national interest, we are going to think about ways that might improve the function of the Council."

[62] Remarks by Assistant Secretary for International Organization Affairs Kristin Silverberg, before the Senate Committee on Foreign Relations Subcommittee on International Operations and Organizations, Democracy, and Human Rights, July 26, 2007.

[63] For information on possible political and budget implications of withholding Council funds, see the "U.S. Funding of the Council," under the "Congressional Issues" section.

[64] Human Rights Watch stated that seven of the 65 members running for a Council seat in the 2006 Council elections were "unworthy" of membership due to poor human rights records. They included Azerbaijan, China, Cuba, Iran, Pakistan, Russia, and Saudi Arabia. Only Iran was not elected.

[65] Frederic Burnand, "Geneva NGOs Brace for New U.N. Rights Body," *Swiss Info*, March 23, 2006.

[66] "Briefing Paper on Asian Candidates to the New Human Rights Council Membership," *FORUM-ASIA*, May 8, 2006, p. 3.

Response to Council Elections

Proponents of the Council suggest that the decision of perceived human rights abusers such as Sudan, North Korea, and Zimbabwe not to run for Council election is an early indicator of the Council's success.[67] Supporters also emphasize the importance of the universal periodic review process, observing that since every country is subject to periodic review, there may be less selectivity and targeting of specific countries in resolutions. Some groups are pleased that Council members will undergo a periodic review of their human rights record within their term of membership. Some also observe that the presence of many perceived promoters and protectors of human rights on the Council may positively influence members with poorly perceived human rights records. In addition, many human rights groups and NGOs are surprised and disappointed with the U.S. vote against the General Assembly resolution creating the Council.[68] Some called the subsequent U.S. decision not to run in the first election a "missed opportunity," noting that the first year of the Council was most important because the procedures and future work were established during that time.[69]

Response to the Council's Work

Some NGOs were disappointed with the Council's focus on Israel during its regular and special sessions. Human Rights Watch called the Council's work during the second regular session a "huge disappointment," noting that while the Council debated human rights violations in countries and regions other than Israel, Lebanon, or the Occupied Palestinian Territories, it did not pass any decisions or resolutions on these situations.[70] Other human rights groups gave the Council credit for some of its improvements, noting that parts of the Council's work represent "steps in the right direction."[71] However, these groups also emphasized that in order for the Council to be viewed as credible, it must address human rights violations that do not involve Israel.

Most groups generally regarded the Council's fourth special session on Darfur as a positive development, but some were disappointed that the Council did not go far enough to condemn the government of Sudan for its role in the crisis. Some observers noted that the language in the resolution was relatively weak when compared to previous country-specific resolutions adopted by the Commission. U.N. Watch calls the resolution a "soft approach" and emphasized that it does not include the word "violation."[72] Others contended that the text had to be watered-down in order to achieve consensus among Council members.

Many organizations were concerned with the human rights records of some of the countries that were elected to the Council during the second election in May 2007—particularly Angola, Egypt,

[67] Edith M. Lederer, "Groups Hail New U.N. Human Rights Council," *Associated Press*, May 8, 2006.

[68] Ten human rights groups wrote a letter to Secretary of State Condoleezza Rice urging U.S. support of the resolution. The letter is available at http://hrw.org/english/docs/2006/02/24/usint12716.htm.

[69] Maggie Farley, "U.S. Won't Seek Seat on U.N. Rights Panel," *Los Angeles Times*, April 7, 2006, p. 22.

[70] "Human Rights Watch Blasts New U.N. Rights Watchdog," *Reuters*, October 6, 2006. The Human Rights Watch Annual Report is available at http://www.hrw.org/wr2k6/. For its perspective on U.N. human rights bodies, including the Council, see pages 32-35.

[71] "First Session of the Human Rights Council: A Step in the Right Direction," Amnesty International Public Statement, July 3, 2006.

[72] "Human Rights Council Darfur Resolution Falls Short," U.N. Watch Press Release, December 13, 2006.

and Qatar.[73] Some organizations were also worried that the General Assembly could not select among competing candidates in each regional group because, in all but two cases, regional groups nominated the same number of countries as there are seats available.[74]

Some groups were dismayed with the U.S. government's June 2008 decision to disengage from the Council except in matters of national interest. A representative for Human Rights Watch, an international NGO, stated, "The U.S. decision to walk away from the Human Rights Council is counter-productive and short-sighted. Whatever the Council's problems, this decision is a victory for abusive states and a betrayal of those fighting for their rights worldwide."[75] Amnesty International also disagreed with the U.S. move, calling it an "aberration."[76] Other groups, however, supported the U.S. decision to withdraw from the Council. The International Organization Against Torture viewed the move as a political gesture, stating, "The U.S. has always clearly shown its opposition to the Council. This is a slightly more public way of putting pressure on it in order to raise the stakes."[77]

Other Governments

There was a wide range of reactions from U.N. member states regarding the establishment of the Human Right Council. A main point of contention was the number of votes required for election.[78] Overall, however, most parties support the mainstreaming of human rights issues into the U.N. system and agree that the Council should be elevated to a subsidiary body of the General Assembly within the U.N. system. Member states that were consistent targets of country-specific resolutions under the Commission on Human Rights, including China and Iran, oppose the "politicization and finger-pointing" they say are associated with country resolutions.[79] Most countries agree that the resolution creating the Council is a fair compromise, and that the true worth of the Council will be determined through its work

Some governments were disappointed with the U.S. decision to vote against the resolution creating the Council.[80] The United Kingdom and other European Union members actively lobbied

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[73] "Evaluation of 2007-2010 U.N. Human Rights Council Candidates: Joint Analysis by U.N. Watch and Freedom House," May 7, 2007.

[74] Joint NGO Letter to the President of the U.N. General Assembly regarding the U.N. Human Rights Council Elections, from: Amnesty International, the Carter Center, Democracy Coalition Project, Human Rights Watch, Institute for Global Policy, Open Society Institute, World Federation of United Nations Associations, and International Service for Human Rights. The letter is available at http://www.ishr.ch/lca/statements_council/otherngos/JointNGOLetter_Elections.pdf.

[75] "HRW Slams U.S. Over Disengagement from UN Rights Council," *The Hindu*, June 7, 2008, and US: Leaving UN Rights Council Fails Victims of Abuse: US Failure to Engage Added to Council's Shortcomings," June 6, 2008, available at http://www.hrw.org/english/docs/2008/06/06/usint19048.htm.

[76] "U.S. Quits Human Rights Council?" *Human Rights Tribune*, June 6, 2008, available at http://www.humanright-geneva.info/US-quits-Human-Rights-Council,3184.

[77] Ibid.

[78] Some countries, such as Argentina, the European Union, New Zealand, and the United States, supported the requirement of a two-thirds majority vote in the General Assembly for election to the Council instead of an absolute majority.

[79] Ibid.

[80] In a Kremlin International News Broadcast interview on March 2, 2006, Russian Deputy Foreign Minister Alexander Yakovenko stated that the United States should be elected to the Council if it runs, and that Russia would like the (continued...)

the United States to support the resolution.[81] U.S. Deputy Assistant Secretary of State Mark Lagon noted that a number of countries approached the United States about running and offered their support in both the first election and future elections.[82] Some governments attempted to link the U.S. decision not to run in the first election with its alleged human rights abuses toward detainees in the Guantanamo Naval Base in Cuba and Abu Ghraib in Iraq.[83]

Congressional Issues

The 111th Congress will likely remain interested in the work of the Council both as a mechanism for addressing human rights abuses and as an element of broader U.N. reform. Ultimately, future U.S. policy toward the Council may depend on whether the United States views the Council's future work as effective and credible.

U.S. Funding of the Council

Comprehensive U.N. reform is a pressing issue for Congress, and the Human Rights Council is a component of this broader U.N. reform effort.[84] As a result, there is continued congressional interest in U.S. funding of the Council. Specifically, some Members of Congress have proposed the United States withhold a proportionate share of its assessed contributions, approximately 22%, from the U.N. regular budget, which is used to fund the Council. Since 1980, the United States has withheld proportionate shares of its contributions to the U.N. regular budget for U.N. programs and activities it has opposed. However, withholding Council funds in this manner would be a largely symbolic policy action because assessed contributions finance the entire U.N. regular budget and not specific parts of it.[85]

On December 26, 2007, the President signed into law H.R. 2764, the Consolidated Appropriations Act, 2008 (P.L. 110-161), which prohibits U.S. contributions to support the Human Rights Council unless (1) the Secretary of State certifies to the Committees on Appropriations that funding the Council is "in the national interest of the United States" or (2) the United States is a member of the Council (Sec. 695).[86] In April 2008, then-U.S. Permanent Representative to the United Nations, Zalmay Khalilzad, announced that the United States would withhold a portion of U.S. contributions to the 2008 U.N. regular budget equivalent to the U.S. share of the Human Rights Council budget. The Congressional Budget Office estimates that under current law U.S.

(...continued)

United States to participate in the Council's work.

[81] British Ambassador to the United Nations Emyr Jones Parry said that adopting a text without U.S. support "isn't good for human rights and not particularly good for the Council," in a March 2, 2006 Associated Press article by Edith M. Lederer titled, "European Union backs proposal for new U.N. Human Rights Council, leaving U.S. isolated."

[82] Press briefing of Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

[83] U.N. document A/60/704, "Statement of the Ministry of Foreign Affairs of Cuba," February 28, 2006.

[84] For information on recent congressional efforts to limit U.S. contributions to the Human Rights Council, see the "Congressional Reaction" section.

[85] In the past, the United States withheld certain amounts from U.N. activities and/or programs pending clarification on the exact cost or the program or activity. This was done in order to determine a more appropriate measure of the proportionate figure to withhold.

[86] Consolidated Appropriations Act 2008, (P.L. 110-161, December 26, 2007; 121 Stat. 1844).

contributions to the Human Rights Council for 2008 and 2009 will be approximately $1.5 million per year.[87]

Impact of Observer Status

The ability of the United States to promote its human rights agenda within the U.N. framework may be significantly affected by its observer status and its initial policy position on the Council.[88] Under the ECOSOC rules of procedure for non-Member State participation, the Council may invite "any State that is not one of its own members to participate in its deliberations on any matter of particular concern to that State." The invited observer status does not carry the right to vote, but allows the state to submit proposals that can be put forward for vote at the request of any Council member.[89] Many Council members may be interested in U.S. statements and policies, but the United States's inability to vote may diminish its influence on the work of the Council. As a result, if the United States chose to participate in the Council, it may have to rely on close collaboration and cooperation with like-minded countries to further its human rights agenda. In 2002, the United States held observer status on the Commission on Human Rights for the first time in the Commission's history (previously it was a member with full voting rights). It was subsequently elected from 2003 to 2006.

The Council and Alleged U.S. Human Rights Abuses

When considering the work of the Council, Members of Congress will likely monitor its activities related to the United States. The following sections address recent instances of the Council's involvement and/or investigations regarding human rights and the United States.

Council Report on Detainees in Guantanamo Bay

On February 16, 2006, the U.N. Commission on Human Rights released a report on the "situation of detainees at Guantanamo Bay."[90] The report was written by five independent rapporteurs appointed by the Chairperson of the Commission on Human Rights.[91] It alleges, among other things, that the United States violated the human rights of detainees held at the Guantanamo Bay Detention Center in Cuba, and that consequently the facility should be closed. According to the report, the United States is responsible for the "force-feeding of detainees on hunger strike," and using "excessive violence" when transporting detainees. The report also alleges that detainees are denied the right to "challenge the legality of their detention before a judicial body," which violates the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

[87] For more information, see Congressional Budget Office Cost Estimate for S. 1698 (110th), July 16, 2007, available at http://www.cbo.gov/ftpdocs/83xx/doc8328/s1698.pdf.

[88] As an observer state, the United States may attend and speak at the proceedings of the UPR working group and the Human Rights Council Advisory Committee.

[89]

Rules of Procedure of the U.N. Economic and Social Council, part XII, rules 1-3.

[90] U.N. document, E/CN.4/2006/120, February 15, 2006.

[91] The special rapporteurs include Leila Zerrougui, Chairperson rapporteur of the Working Group on Arbitrary Detention; Leandro Despouy, rapporteur on the independence of judges and lawyers; Manfred Nowak, the rapporteur on torture and other cruel, inhuman or degrading treatment; Asthma Jahangir, the rapporteur on freedom of religion or belief; and Paul Hunt, the rapporteur on the right to physical and mental health.

Punishment.[92] It requests that the five U.N. rapporteurs be granted full and unlimited access to the facility, and allowed private interviews with detainees. When researching the report, the rapporteurs collected their information from interviews with former detainees, reports from non-governmental organizations (NGOs), media reports, and a questionnaire answered by the United States. The rapporteurs were not permitted to visit the detention facility in Guantanamo Bay.

In its rebuttal to the report, the Bush Administration wrote that it was "engaged in a continuing armed conflict against Al Qaida, that the law of war applies to the conduct of that war and related detention operations."[93] The Administration maintained that detainees at Guantanamo Bay were treated "humanely," and that potential human rights violations were thoroughly investigated by the U.S. government.[94] On July 7, 2006, the U.N. special rapporteurs, acting in their new capacity as Council experts, renewed their call for the closing of the Guantanamo Detention Center. They encouraged the United States to develop a timeline for closing the facility, and urged U.N. member states, the International Committee for the Red Cross (ICRC),[95] and other relevant agencies and organizations to "collaborate actively, constructively, and urgently with the United States," to ensure the closure of the detention center.[96]

Inquiry of the Council's Special Rapporteur on Human Rights while Countering Terrorism

In October 2006, the Council's Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin of Finland, wrote a letter of inquiry to the United States regarding its counter-terrorism practices.[97] In December 2006, the Administration invited Scheinin to visit the United States to discuss his concerns.[98] Scheinin hoped to engage in a dialogue with U .S. officials and groups to discuss a variety of issues, including "U.S. counter-terrorism laws, policies and practices ... issues regarding detention, arrest and trial of terrorist suspects and the rights of victims of terrorism or persons negatively impacted by counter terrorism measures."[99]

[92] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was adopted and opened for signature by General Assembly resolution 39/46 on December 10, 1984. The Convention entered into force on June 26, 1987, and the United States became party to it on November 20, 1994.

[93] U.N. document, E/CN.4/2006/120, Annex II, p. 53-54, February 15, 2006.

[94] Press Briefing by Scott McClellan, Spokesman, The White House, February 16, 2006.

[95] Since 2002, the ICRC has visited the Guantanamo Detention Center to monitor whether detainees are treated in accordance with international law. The ICRC has stated it "remains concerned that significant problems regarding conditions and treatment at Guantanamo Bay have not been adequately addressed," and "will pursue its discussions on these issues with the U.S. authorities." More information on the role of ICRC at U.S. detention centers can be found at http://www.icrc.org.

[96] U.N. Press Release, "U.N. Rights Experts Ask International Community to Aid with Expeditious Closure of Guantanamo Detention Centre," July 6, 2006.

[97] In the inquiry letter, Scheinin expressed concern that the U.S. Military Commission Act may violate U.S. obligations under international human rights law.

[98] U.N. Press Release, "United States Accepts Visit Request of U.N. Expert on Human Rights and Counter-terrorism," January 16, 2007.

[99] Ibid. Scheinin also stated his intent to identify counter-terrorism measures and formulate conclusions and recommendations that balance human rights with the fight against terrorism.

Scheinin visited the United States from May 16 to 25, 2007.[100] He met with officials from the Departments of State, Homeland Security, Defense, and Justice, and traveled to Miami to observe the trial against Jose Padilla. He was not allowed access to the detention center at Guantanamo Bay to interview detainees. Scheinin met with some Members of Congress, as well as academics and NGOs. In his preliminary findings, Scheinin dismissed criticism by some that the United States had become an enemy of human rights and complimented its judicial system, rule of law, and respect for individual rights.[101] Scheinin emphasized, however, that he does not consider the U.S. fight against terrorism to be a "war"—though he recognizes that the United States views itself as "engaged in an armed conflict with Al Qaeda and the Taliban."[102] He also stated that the United States violated international law by detaining prisoners in Guantanamo Bay for several years without charges, thereby "undermining the right of fair trial."[103] In addition, he highlighted reports from the Central Intelligence Agency (CIA) that noted the use of enhanced interrogation techniques by the United States. These activities, according to Scheinin, are in violation of international law, particularly the International Covenant on Civil and Political Rights.[104] He also noted with regret that laws such as the USA PATRIOT Act of 2001, the Detainee Treatment Act of 2005, and the Military Commissions Act of 2006 eliminate important legal mechanisms that protect individual rights. Scheinin is expected to present a full report on his findings to the Human Rights Council at a future session.

Then-U.S. Ambassador to the United Nations Zalmay Khalilzad disagreed with Scheinin's findings, stating, "We have a different point of view."[105] Khalilzad emphasized that the United States followed U.S. laws, procedures, and decision-making authorities. He stated, "We are a rule of law country and our decisions are based on rule of law."[106]

Inquiry of the Special Rapporteur on the Human Rights of Migrants

The Council's Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, visited the United States from April 30 to May 17, 2007.[107] He visited the Arizona and California borders to observe U.S. Border Patrol and Immigration and Customs Enforcement operations. He also met with migrants in Florida, New York, Georgia, and Washington, DC, and visited the Florence Detention Center in Florence, Arizona, to observe the living conditions of migrant detainees. Bustamante's preliminary findings highlight (1) the lack of a centralized system for tracking

[100] U.N. Press Release, "U.N. Special Rapporteur on Human Rights and Counter-terrorism to Visit United States," May 10, 2007. For an overview of the Special Rapporteur's mandate, see http://www.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm

[101] For more detailed information on Scheinin's findings, see U.N. Office in Geneva Press Release, "Preliminary Findings on the Visit to the United States by Special Rapporteur on Human Rights and Counter-Terrorism," May 29, 2007.

[102] Ibid.

[103] Ibid. Scheinin also stated that U.S. labeling of prisoners in Guantanamo Bay as enemy combatants is a "description of convenience, without legal effect" since it is not a category under international law, where individuals are described as either "combatants" or "civilians."

[104] The International Covenant on Civil and Political Rights entered into force on March 23, 1976. It was signed by the United States on October 5, 1977, and was ratified on September 8, 1992. As of April 19, 2007, 160 countries are party to the Covenant. The text of the Covenant is available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

[105] Evelyn Leopold, "U.N. Expert Faults U.S. on Human Rights in Terror Laws," *The Washington Post*, May 26, 2007.

[106] Ibid.

[107] More information on the mandate of the Council's Special Rapporteur on the Human Rights of Migrants is available at http://www.ohchr.org/english/issues/migration/rapporteur/.

information on detained migrants, (2) the lack of representation for migrants being deported (many of whom are often forced to represent themselves in judicial proceedings), and (3) poor working and living conditions for migrants affected by Hurricane Katrina.[108]

In addition, Bustamante recommended that the United States work to ensure that its domestic laws and immigration activities are "consistent with its international obligations to protect the rights of migrant workers," especially in the context of international agreements such as the International Covenant on Civil and Political Rights. He also stated that the United States "overly-relies" on local law enforcement for its immigration activities, which could potentially impact the federal government's ability to effectively address migrant issues and ensure compliance with international law.[109]

[108] For a more detailed description on Bustamante's findings, see U.N. Office in Geneva Press Release, "Special Rapporteur on Human Rights of Migrants Ends Visit to the United States," May 21, 2007.

[109] Ibid.

Appendix A. Enacted or Passed Legislation in the 110th Congress

H.R. 2764, the Consolidated Appropriations Act, 2008 (P.L. 110-161) prohibits U.S. contributions to support the Human Rights Council unless (1) the Secretary of State certifies to the Committees on Appropriations that funding the Council is "in the national interest of the United States;" or (2) the United States is a member of the Council (Sec. 695).[110]

H.Res. 557 "strongly condemns the United Nations Human Rights Council for ignoring severe human rights abuses in various countries, while choosing to unfairly target Israel by including it as the only country permanently placed on the Council's agenda." The resolution was introduced by Representative John Campbell on July 19, 2007, and was passed/agreed to on September 25, 2007.

[110] Consolidated Appropriations Act 2008, (P.L. 110-161, December 26, 2007; 121 Stat. 1844).

Appendix B. Human Rights Council Membership

Table B-1. Human Rights Council Membership, by Regional Group

African States (13)	Asian States (13)	Latin American and Caribbean States (8)	Eastern European States (6)	Western European and Other States (7)
Angola (2010)[a]	Bangladesh (2009)	Argentina (2011)	Azerbaijan (2009)	Canada (2009)
Cameroon (2009)	Bahrain (2011)	Bolivia (2010)	Bosnia & Herzegovina (2010)	France (2011)
Burkina Faso (2011)	China (2009)	Brazil (2011)	Slovakia (2011)	Germany (2009)
Djibouti (2009)	India (2010)	Chile (2011)	Russian Federation (2009)	Italy (2010)
Egypt (2010)	Indonesia (2010)	Cuba (2009)	Slovenia (2010)	Netherlands (2010)
Gabon (2011)	Japan (2011)	Mexico (2009)	Ukraine (2011)	Switzerland (2009)
Ghana (2011)	Jordan (2009)	Nicaragua (2010)		United Kingdom (2011)
Madagascar (2010)	Malaysia (2009)	Uruguay (2009)		
Mauritius (2009)	Pakistan (2011)			
Nigeria (2009)	Philippines (2010)			
Senegal (2009)	Qatar (2010)			
South Africa (2010)	Republic of Korea (2011)			
Zambia (2011)	Saudi Arabia (2009)			

Notes: Council membership is staggered by year. All Council members are eligible for reelection for a full second term.

a. Dates represent year of term end.

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