The United Nations Human Rights Council: Issues for Congress

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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, viewed 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 Administration maintained that the Council structure was no better than the Commission and that it lacked mechanisms for maintaining credible membership. During the Council's first two years, the Bush Administration expressed concern with the Council's focus on Israel and lack of attention to other human rights situations. In April 2008, it 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."

In March 2009, the Barack Obama Administration announced that it would run for a seat on the Council. The United States was elected as a Council member by the U.N. General Assembly on May 12, 2009, and its term began on June 19, 2009. The Administration stated that it furthers the United States' interest "if we are part of the conversation and present at the Council's proceedings." At the same time, however, it called the Council's trajectory "disturbing," particularly its "repeated and unbalanced" criticisms of Israel. On November 5, 2010, the United States underwent the Council's universal periodic review process for the first time.

Since its establishment, the Council has held 17 regular sessions and 16 special sessions. The regular sessions addressed a combination of specific human rights abuses and procedural and structural issues. Six of the 16 special sessions addressed the human rights situation in the Occupied Palestinian territories and in Lebanon. Other special sessions focused on the human rights situations in Burma (Myanmar), Cote d'Ivoire, Darfur, Haiti, Libya, Sri Lanka, and Syria. The Council held a five-year review of its work in March 2011. Some participants—including the United States—felt the review did not sufficiently address the Council's weaknesses, particularly its focus on Israel and lack of mechanisms for ensuring credible membership.

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 the Omnibus Appropriations Act, 2009 (Division H, the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009, of P.L. 111-8), for example, it prohibited U.S. contributions to support the Council unless (1) the Secretary of State certifies to Congress that funding the Council is "in the national interest of the United States" or (2) the United States is a member of the Council. 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. More recently, in the Omnibus Appropriations Act, 2010 (Division F, the Department of State Foreign Operations, and Relations Appropriations Act, 2010, of P.L. 111-117), Congress required that the Secretary of State report to Congress on resolutions adopted by the Council.

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Introduction

Members of 112th Congress may consider the role and effectiveness of the United Nations (U.N.) Human Rights Council (the Council) in promoting U.S. foreign policy and combating international human rights violations. Specifically, they may examine the following questions:

- What role should the Council play in international human rights policy?
- Can the Council be an effective mechanism for addressing human rights situations worldwide?
- Should the United States be a member of the Council, and what are the implications for U.S membership?

The Council was established by the U.N. General Assembly in 2006 to replace the U.N. Commission on Human Rights, which was criticized for its lack of attention to human rights abuses and for the number of widely perceived human rights abusers that served as its members. Since then, many governments and policymakers—including the United States—have expressed serious concern with the Council's apparent focus on Israel and lack of attention to other pressing human rights situations. Six of the Council's 16 special sessions have focused on Israel, and in mid-2007, Council members agreed to make the "human rights situation in Palestine and other occupied Arab territories" a permanent part of the Council's agenda. In March 2011, U.N. member states conducted a five-year review of the Council's work and functioning. Many governments and human rights organizations were disappointed with the review's outcome because in their view it did not sufficiently address the Council's continued focus on Israel and its perceived inability to ensure credible membership.

At the same time, supporters argue that the Council is an improvement over the previous Commission. They contend that mechanisms such as the universal periodic review process, which aims to evaluate each member state's fulfillment of its human rights obligations, is a potentially effective means for addressing human rights in various countries. Many Council proponents have also been encouraged by the Council's increased attention to human rights situations in countries such as Cote d'Ivoire and Syria, as well as the General Assembly's recent decision to suspend Libya's Council membership based on its human rights record. Some governments and human rights organizations have also applauded the Council's decision to establish a special rapporteur on the human rights situation on Iran, representing the first new country mandate created since the Council was formed in 2006.

U.S. policymakers have disagreed as to whether the United States should be a member of or provide funding for the Council. The Bush Administration voted against the U.N. resolution creating the Council and decided not to run as a Council member. In mid-2008, it announced that it would disengage from the Council and withhold a portion of its contributions to the 2008 U.N. regular budget equal to the U.S. share of the Council budget. The Obama Administration expressed its disappointment with the Council's focus on Israel but concluded that it was better for the United States to be involved in the Council's work. It announced it would run for a Council seat in March 2009 and was elected in May of the same year. Its three-year term began in June 2009 and will end in June of 2012. Administration officials recently stated that the United States will run for a second term.

Members of Congress have demonstrated a continued interest in the Council. For FY2008 and FY2009, Congress enacted legislation in foreign operations appropriations limiting U.S.

contributions to the Council. In FY2010 foreign operations appropriations, Congress required that the Secretary of State report to Congress on resolutions adopted by the Council. Members have also introduced legislation calling for U.S. withdrawal from the Council and criticizing its focus on Israel.

This report provides historical background of the Council, including the role of the previous Commission. It discusses the Council's current mandate and structures, as well as U.S. policy and congressional actions. Finally, it highlights possible policy issues for the 112th Congress, including the overall effectiveness of the Council in addressing human rights, implications for U.S. membership, and U.S. financial contributions to the Council.

Background

Overview of the U.N. Commission on Human Rights

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),[1] 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.[2] During its tenure, the Commission played a key role in developing a comprehensive body of human rights treaties and declarations.[3] 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.[4]

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. These instances significantly affected the Commission's credibility. Critics claimed that countries used their membership to deflect attention from their own human rights violations

[1] ECOSOC is a principal organ of the United Nations that serves as the central forum for discussing and making recommendations related to international economic and social issues. It is comprised of 54 member governments elected to three-year terms by the U.N. General Assembly.

[2] 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.

[3] 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.

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

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.[5] 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. 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.[6] 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. Congress has 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.[7] 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.[8] 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, however, when both Congress and the executive branch were 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 who, among other things, analyzed how the death penalty is implemented in the United States.[9] The Rapporteur reported that economic status, ethnicity, and

[5] "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.

[6] 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.

[7] Examples include H.Con.Res. 83, introduced on March 3, 2005 [109th], 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 [107th], 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.

[8] 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.

[9] 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.

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."[10]

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 U.N. regular budget with the United States regaining a seat on the Commission.[11] The Administration, however, stated it would not link U.S. payment of U.N. dues and arrears to the outcome of the Commission elections.[12] Given the controversy over the Commission, both Congress and the Administration supported the U.N. Secretary-General's 2005 proposal that the Commission be disbanded and a new Council created.

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."[13] 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 and the Human Rights Council.[14]

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

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

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

[13] "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.

[14] For more information, see the "Congressional Actions" section.

Council Mandate, Structure, and Procedures

Mandate and Responsibilities

On March 15, 2006, the U.N. General Assembly passed resolution 60/251, which established the Council and outlined its purpose and responsibilities.[15] Under the resolution, the 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 addresses human rights violations, 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.[16]

The resolution also ensured 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.[17]

The resolution also required that within five years the General Assembly shall review the status of the Council. This five-year review occurred in March 2011.[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] This section addresses current structural elements of the Council. Key differences between the Council and the Commission are noted where relevant.

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[15] One hundred seventy countries voted in favor of the U.N. General Assembly resolution creating the Council; four voted against (Israel, Marshall Islands, Palau, and the United States), and three abstained (Belarus, Iran, and Venezuela).

[16] See the "Universal Periodic Review" section for more information.

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

[18] For more information on the outcome of the review, see the "Overview: Council Sessions, Elections, and Five-year Review" section.

[19] During its first year, the Council established four working groups (WGs) to address its working methods: (1) WG to (continued...)

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

Membership

The Council comprises 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. (To date, the Assembly has suspended the membership of one country, Libya.) 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 Commission, the Council created a formula to ensure equitable distribution of seats by region.[20] (See **Appendix A** for a current list of Council members.)

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) required. The resolution instructs countries to consider "the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments" when voting for Council members. A country submitting its name for election must affirm its commitment to the promotion and protection of 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 meant some member states might 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 2012, and 18 of the 47 Council seats will be open.

(...continued)

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.

[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.

Structure

The Council holds an organizational meeting at the beginning of each year. The Council 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. At the meeting, members elect a president from among Bureau members for a one-year term. The current president is Ambassador Sihasak Phuangketkeow of Thailand. Under the Commission, the role of president was held by a chairperson.

Meetings

The Council is headquartered in Geneva, Switzerland, and meets for three or more sessions per year for a total of 10 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. In some instances, a special rapporteur addressing a specific human rights situation or issue might report directly to both the Commission and 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. These rules are meant to 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.

[21] Current Vice-Presidents are Anatole Fabien Marie Nkou of Cameroon, András Dekany of Hungary, Gulnara Iskakova of Kyrgyzstan, and Christian Strohal of Austria.

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

Universal Periodic Review

All Council members and U.N. member 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 country under review and the UPR working group, which is composed of the 47 Council members and chaired by the Council President. The first UPR cycle lasted four years, with Council members evaluating 48 states per year during three two-week sessions (six weeks total). During the UPR process, observer states may attend and speak at the working group, and relevant stakeholders (such as NGOs) may also attend the meetings and present information that is assembled by OHCHR. All Council members undergo a review during the term of their membership.

UPR is based on the principles of the U.N. Charter, the Universal Declaration of Human Rights, and the 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 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. The United States underwent its first UPR in November 2010.[24]

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.[25] 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.[26]

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

[24] For more information on the U.S. UPR, see the "U.S. Perspectives" and "Congressional Issues" sections.

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

[26] 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.

the complaints and bring them to the attention of the Council. 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.

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. Since it was established, some have criticized the composition of Committee membership. Specifically, some contend that Committee members are driven by political or ideological agendas.[27] 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.[28]

Overview: Council Sessions, Elections, and Five-Year Review

Since it was established in March 2006, the Council has held 17 regular sessions and 16 special sessions. The regular sessions addressed a mixture of procedural and substantive issues, with a focus on improving working methods of the Council. Six of the Council's 16 special sessions have focused on Israeli human rights violations in the Occupied Palestinian territories, Lebanon, or East Jerusalem. Others have addressed the human rights situation in the Democratic Republic of the Congo, Libya, Sri Lanka, Sudan, Syria, Haiti, Burma (Myanmar), and Cote d'Ivoire, as well as the impact of the world food crisis and the global economic crisis on human rights (see **Appendix B** for a full list of special sessions).

Recent Election Results

The Human Rights Council has held six elections. The most recent was held on May 20, 2011. Fifteen countries were elected, many of which ran unopposed after being nominated by their regional groups. Reelected members include Burkina Faso and Chile. The newest Council

[27] Hillel Neuer, "U.N.'s Human Rights Advisory Panel is UN-fit to Serve," *New York Daily News*, January 21, 2011.

[28] 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.

members are Austria, Benin, Botswana, Congo, Costa Rica, Czech Republic, India, Indonesia, Italy, Kuwait, Peru, the Philippines, and Romania. They began their term on June 18, 2011.[29]

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

In June 2007, Council members adopted an institution-building resolution to address the Council's working methods. In the resolution, 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."[30] Council members also terminated the mandates of the special rapporteur for Belarus and Cuba.[31]

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.[32] At the conclusion of the Council's fifth regular session in Geneva in June 2007, a U.N. spokesperson noted Secretary-General Ban Ki-moon'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."[33] In response to the Council's decision to terminate the country mandates of Cuba and Belarus, Ban released a statement that emphasized "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."[34] 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."[35]

[29] See **Appendix A** for a full list of Council members broken down by regional group and term.

[30] 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.

[31] 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).

[32] 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.

[33] Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, June 21, 2007.

[34] U.N. press release, "Secretary-General Urges Human Rights Council to Take Responsibilities Seriously, Stresses Importance of Considering All Violations Equally," June 20, 2007.

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

The Council's Five-Year Review: Outcome and Criticism

On June 17, 2011, the U.N. General Assembly adopted resolution 65/281, which reviewed the work and functioning of the Human Rights Council after five years.[36] It was adopted by a vote of 154 in favor, four against (including the United States), and no abstentions. In the resolution, member states agreed to maintain the Council's status as a subsidiary body organ of the General Assembly. They also adopted several procedural changes to the Council's work, such as moving its yearly membership cycle from June to January, creating an office of the Council President, modifying UPR speaking procedures, and establishing future review mechanisms.[37] The adoption of the resolution represented the culmination of member states' year-long effort to review the status of the Council in both Geneva and New York. Review process participants could propose and discuss possible reforms and modifications to the Council's work and structure through various working groups and informal consultations.

The outcome of the five-year review has been criticized by some human rights groups and governments—particularly the United States—for not sufficiently addressing what many view as the Council's lack of effectiveness in addressing human rights issues. During negotiations leading up to the review, many proposed changes were rejected by other governments that argued that the Council did not need reform, prompting some review participants to contend that there was a "lack of goodwill [among some states] to address the weaknesses" in the Council's work.[38] The United States stated that the five-year review did not yield "even minimally positive results," which forced it to "disassociate" itself from the outcome.[39] U.S. representatives expressed particular concern regarding two key issues: (1) the Council's focus on Israel, particularly the continued inclusion of a permanent item on the Council's agenda addressing human rights in Palestine and other occupied Arab territories, and (2) the Council's inability to address the "critical problem" of Council membership. (Many contend that the membership of widely perceived human rights abusers discredits the Council.)[40]

Canada, which also voted against the resolution, argued that the review process did not address issues important to the Council's functioning, including improving the UPR process, enhancing member state cooperation with special procedures, and improving the credibility of Council membership. Similar to the United States, it also expressed concern regarding the Council's decision to continue the permanent agenda item focusing on human rights in Palestine and other occupied territories.[41]

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[36] The adoption of resolution 65/281 fulfilled member states obligations under General Assembly resolution 60/251, adopted in 2006, which established the Council and decided that member states should review the Council's status after five years. The other three countries that voted against the resolution were Canada, Israel, and Palau.

[37] U.N. document, A/RES/65/281, adopted June 17, 2011.

[38] Statement by Human Rights Watch at the second session of the Intergovernmental Working Group on the Review of the Human Rights Council, "Review of the Human Rights Council: A Deplorable Lack of Progress," February 9, 2011.

[39] 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, New York, June 17, 2011.

[40] Ibid. During negotiations, the United States had proposed that to improve Council membership all regional groups should be required to run competitive slates. Other governments did not support this proposal. The United States was also "dismayed" when a more modest recommendation that called on candidates states to hold interactive dialogues on their human rights records with human rights groups was also blocked.

[41] U.N. document, GA/11101, "Five Years After Creation, General Assembly Maintains Human Rights Council as Subsidiary Body, Concluding Review of Work, Functioning," June 17, 2011.

U.S. Perspectives

The United States has generally supported the Human Rights Council's overall mission. 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.

Obama Administration

U.S. Membership on the Council (June 2009 to Present)

On March 31, 2009, the Obama Administration announced that it would run for a seat on the Human Rights Council. The United States was elected as a Council member by the U.N. General Assembly on May 12, 2009, receiving a total of 167 General Assembly votes. Its term began on June 19, 2009. After the vote, U.S. Permanent Representative to the United Nations Susan Rice recognized the Council as a "flawed body that has not lived up to its potential," but stated that the United States was "looking forward to working from within a broad cross section of member states to strengthen and reform the Human Rights Council."[42] The Administration recently announced that although it continued to be disappointed by the Council's focus on Israel, it would run for a second term because it felt the institution would be stronger with U.S. membership.[43]

According to the Administration, the United States has a played a key role in a number of Council actions since it became a member in 2009, including

- the establishment of a special rapporteur on the human rights situation in Iran;
- a special session on Cote d'Ivoire and the creation of a Commission of Inquiry to investigate human rights abuses by the government;
- a special session on the human rights situation in Syria where the Council unequivocally condemned the use of violence against peaceful protestors by Syrian authorities; and
- a special session on Libya in February 2011 that led to the eventual suspension of Libya's Council membership.

The Administration reports that it also played a lead role in adopting a resolution addressing sexual orientation and gender identity, establishing a working group of independent experts on discrimination against women, and creating a special rapporteur to address freedom of assembly and association.[44]

[42] U.S. Mission to the United Nations press release #095(09), "Remarks by Ambassador Susan E. Rice, U.S. Permanent Representative, Regarding the Election of the U.S. to the Human Rights Council at the General Assembly Stakeout," May 12, 2009.

[43] Assistant Secretary Esther Brimmer on World Press Freedom, Remarks to the Washington Foreign Press Center, May 3, 2011. Also see "Fact Sheet: Advancing U.S. Interests at the United Nations," U.S. Department of State, April 6, 2011.

[44] Drawn from various Administration statements and documents, including Press Statement by Secretary of State Hillary Rodham Clinton, "U.N. General Assembly Suspends Libya's Human Rights Council Membership," March 1, 2011; "Key U.S. Accomplishments at the U.N. Human Rights Council: Factsheet," U.S. Department of State, March 30, 2011; and Press Statement by Victoria Nuland, Office of the State Department Spokesperson, "Human Rights (continued...)

U.S. Universal Periodic Review (November 2010)

The United States participated in its first Universal Periodic Review (Review) on November 5, 2010. The U.S. delegation was jointly led by Esther Brimmer, Assistant Secretary of the Bureau of International Organizations Affairs in the Department of State, and Harold Koh, Legal Adviser in the Department of State. In preparation for the review, the State Department organized consultations with civil society on human rights issues that were held in a number of U.S. cities, including Detroit, El Paso, New Orleans, New York City, and Washington, DC.[45] Feedback from the consultations was incorporated into the Administration's official report to the UPR panel.

In the 27-page report, the Administration provided what it viewed as a "snapshot" of the current human rights situation in the United States, including examples of areas where problems may persist.[46] Specifically, it emphasized the United States' long-standing commitment to human rights and highlighted the key role of the U.S. Constitution in ensuring these rights. It discussed issues such as discrimination based on sex, skin color, ethnicity, sexual orientation, disability, and religion; in some cases highlighting its dissatisfaction current inequalities.[47] The report also examined U.S. commitments to education, healthcare, and housing, as well as human rights issues related to national security, immigration, and human trafficking.[48] In particular, the Administration emphasized the United States is fully committed to "complying with the Constitution and with all applicable domestic and international law, including the laws of war, in all aspects … of this or any armed conflict," and specifically stated that it "remains committed to the closure of the Guantanamo detention facility."[49]

During the review process, a number of governments and NGOs asked questions and made statements on the human rights situation in the United States. They also made recommendations to the U.S. delegation regarding specific aspects of the U.S. UPR report and other related issues. In all, governments made 228 recommendation to the United States on a range of perceived human rights issues, including ratifying human rights treaties that it is not yet a party to; ensuring and raising awareness of the rights of lesbians, gays, and transsexuals; creating policies to promote and ensure the rights of indigenous people; extending a standing invitation to all Human Rights Council special procedures; instituting a national moratorium on the death penalty; eliminating all forms of torture and ill-treatment of detainees by military or civilian personnel in any territory; closing, without delay, all detention facilities at Guantanamo Bay; and taking measures to improve the situation of inmates in prisons.[50]

(...continued)

Council Statement on Human Rights Abuses in Syria," June 16, 2011.

[45] A summary of the consultations is available at http://www.state.gov/g/drl/upr/summaries/index.htm.

[46] The final U.S. UPR report, *Report of the United States of America Submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review,* (hereafter "U.S. UPR Report,") is available at http://www.state.gov/documents/organization/146379.pdf.

[47] For example, the Administration stated it was unhappy with unemployment rates that appear to disproportionately affect African Americans and Hispanics.

[48] When discussing immigration, the Administration cited recent Arizona law S.B. 1070 and stated that it is being addressed in ongoing court action which argues that "the federal government has the authority to set and enforce immigration law." This generated debate among some U.S. policymakers and observers who argue that the Administration should address such unresolved domestic legal issues in an impartial manner.

[49] U.S. UPR Report, p. 20, 22.

[50] These represent only a small sample of the recommendations made by governments. A full list is available in U.N. document, A/HRC/WG.6/9/L.9, dated Nov. 10, 2010, *Draft Report of the Working Group on the Universal Periodic* (continued...)

On November 9, 2010, the United States provided an initial response to the UPR process. Legal Adviser Harold Koh acknowledged that many of the recommendations "fit well" with Administration policy and could be implemented "in due course." He stated that other recommendations, however, were purely political and could not be taken seriously. Still others warranted "fuller discussions" within the U.S. government and among civil society. In March 2011, the United States issued a more detailed response to the UPR process that addressed all 228 recommendations.[51]

George W. Bush Administration

Decision Not to Run for Council Seat

The Bush Administration opposed the Human Rights Council structure agreed to in March 2006, and consequently the United States was one of four countries to vote against the U.N. General Assembly resolution creating the Council. The Administration stated that it did not have confidence that the new Council would be better than its predecessor, but at the same time indicated that it would work with other member states to ensure the Council was strong and operated as effectively and efficiently as possible.[52] In April 2006, the Bush Administration 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."[53]

The Bush Administration was generally disappointed with the work of the Council during its first two years. A main point of contention was the Council's focus on Israeli human rights violations while failing 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. Citing these concerns, the Administration announced that it would not run for a Council seat in the May 2007 elections.[54] It expressed similar concerns when it announced its decision to not run for a seat in the third Council election, held in May 2008.

(...continued)

Review: United States of America, pp. 13-24.

[51] Remarks by Harold Koh, Legal Advisor, Department of State, "Response of the United States of America to Recommendations of the United Nations Human Rights Council," Geneva, Switzerland, November 9, 2010. Also see *Report of the United States of America, Submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review Response to the U.N. Human Rights Council Working Group Report*, March 10, 2011, at http://www.state.gov/g/drl/upr/157986.htm.

[52] 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." 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.

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

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

Withholding Council Funds

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."[55] The Administration also maintained that despite its concerns, it would continue to support U.S. funding of the Council.[56] In April 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.[57]

In June 2008, a State Department spokesperson announced that the Bush Administration 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."[58] 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 would be "ad hoc."[59] According to Bush Administration representatives, 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).[60]

Congressional Actions

Members of Congress have sought to limit U.S. contributions to the Human Rights Council because of concerns over the Council's effectiveness.[61] On March 11, 2009, Congress enacted H.R. 1105, the Consolidated Appropriations Act, 2009 (P.L. 111-8), which included a provision on Human Rights Council funding. Section 7053 of Division H, the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009, 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

[55] 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.

[56] 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.

[57] 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.

[58] Daily Press Briefing, Sean McCormack, Spokesperson, U.S. Department of State, June 6, 2008.

[59] Ibid.

[60] 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.

[61] For information on possible political and budget implications of withholding Council funds, see the "Congressional Issues" section.

Rights Council. Because the United States was elected as a Human Rights Council member on May 19, 2009, the provision will likely not apply. Similar legislation was enacted in FY2008.[62]

Congress has also enacted legislation requiring the Administration to report on Human Rights Council actions. In December 2009, Congress adopted the Consolidated Appropriations Act, 2010 (P.L. 111-117), which included a reporting requirement related to the work of the Council. It required the Secretary of State to report to the appropriations committees on resolutions adopted in the U.N. Human Rights Council no later than 30 days after the date of the enactment of the act, and 180 days thereafter until September 2010.[63] Members have also introduced legislation calling for U.S. withdrawal from the Council and requiring that the United States withhold assessed contributions to the Council through the U.N. regular budget and any voluntary contributions.[64]

Congressional Issues

The 112th Congress may 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 will depend on whether the United States views the Council's work as effective and credible.

Overall Effectiveness of the Council

Since its establishment, the Council has faced considerable criticism from governments, NGOs, and other observers who contend that it does not effectively address human rights issues. Many contend that this apparent ineffectiveness stems from a number of political and organizational 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) held 17 seats on the Council—accounting for about one-third of the votes needed to call a special session.[65] (As of July 2011, 17 OIC members still serve on the Council.) In addition, some experts contend that blocs such as the African Group and Non-Aligned Movement (NAM) tend to view economic and security issues as more important than human rights violations.[66] Some

[62] On December 26, 2007, Congress agreed to H.R. 2764, the Consolidated Appropriations Act, 2008 (P.L. 110-161), which included an identical provision on Human Rights Council funding.

[63] Consolidated Appropriations Act, 2010 (Section 7052 of Division F, the Department of State, Foreign Operations, and Related Program Appropriations Act, P.L. 111-117, December 16, 2009).

[64] See Title IV of H.R. 557 [111th], the United Nations Transparency, Accountability, and Reform Act of 2009, introduced by Rep. Ileana Ros-Lehtinen on January 15, 2009 and referred to the Committee on Foreign Affairs on the same day.

[65] 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/.

[66] Lauren Vriens, "Troubles Plague U.N. Human Rights Council," Council on Foreign Relations, May 13, 2009.

observers believe that consequently the Council held more special sessions on Israel than on any other country or human rights situation.

Credible Membership: 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 2011 election, members from three of the five regional groups—African states, Asian states, and the Western European and Other states—ran unopposed after regional groups nominated the exact number of countries required to fill Council vacancies. Such actions limited the number of choices and guaranteed the election of nominated member states regardless of their human rights records.

On the other hand, Council supporters contend that the composition of Council membership is an improvement over the composition of Commission membership. They emphasize that the most egregious human rights abusers have not ran or were defeated in Council elections because of the new membership criteria and process. Many also highlight the General Assembly's March 2011 decision to suspend Libya's membership as an example of the Council's improved membership mechanisms.[67]

Leadership from Democratic Countries

Some have noted that the Council lacks leadership, particularly from democracies and countries with positive human rights records.[68] Many observers have speculated that pro-democracy Council members are not promoting their initiatives as they have in the past because they need support from other Council members, particularly from the Non-Aligned Movement, in negotiations on Council structure and mechanisms.[69]

Alternately, some observers maintain that the Council can still change its current course and improve. Proponents cite the Council's recent adoption of resolutions and special procedures addressing the human rights situations in Cote d'Ivoire, the Democratic Republic of the Congo, Iran, Libya, Myanmar (Burma), and Sudan as examples of its ongoing improvement. Some also suggest that the May 2009 election of the United States has enhanced the Council's ability to effectively address human rights issues.[70]

[67] A/RES/65/265, March 1, 2011. Also see Human Rights Council resolution S-15/1, February 25, 2011.

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

[69] 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.

[70] See, for instance, Nick Amies, "Human Rights Organizations Welcome U.S. Bid for U.N. Council Seat," *Deutsche Welle*, February 4, 2009; *The Brookings Institution*, "U.S. Leadership at the Human Rights Council," Washington, DC, February 6, 2010, at http://www.brookings.edu/events/2010/0216_un_human_rights.aspx; and *Freedom* House, "U.S. Leadership at the U.N. Human Rights Council, Featuring Voices from the Ground: Iran and Burma," April 14, 2001, at http://www.freedomhouse.org/uploads/events/RemarksHtun.pdf.

Role of the Universal Period Review Process

Overall, many governments, observers, and policymakers support the Council's Universal Periodic Review (URP) process. They maintain that it provides an important forum for governments, NGOs, and others to discuss and bring attention to human rights situations in specific countries that may not otherwise receive international attention. According to supporters, many governments and human rights activists approach the UPR process with a "seriousness of purpose" that leads to "productive engagement" toward the correction of human right violations. Some countries have reportedly made commitments based on the outcome of the UPR process.[71] In addition, they emphasize that NGOs and human rights groups operating in various countries use UPR recommendations as a political and diplomatic tool for achieving human rights.[72]

At the same time, critics of UPR contend that the process is flawed because it provides credibility to countries with poor human rights records. Specifically, some are concerned that the UPR submissions and statements of governments widely perceived to be human rights abusers are taken at face value rather than being challenged by other governments. In addition, many contend that the UPR process gives these same countries a platform to criticize countries that may have positive human rights records.

Some experts and policymakers have also expressed concern regarding the role of NGOs in UPR. They argue that the three-hour review process for each country does not provide NGOs and other speakers with sufficient opportunity to present their cases. During some reviews, for instance, many NGOs were unable to make statements due to lack of time. In addition, some have expressed concern regarding points of order and other procedures being used some countries to possibly intimidate NGOs or to block any statements that do not specifically address the countries' UPR reports.[73] Some governments, including the United States, had hoped that improvements would be made to the UPR process through the Council's five-year review, particularly related to the length of time provided to speakers. However, member states did not act on this issue during the review process.

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. As a result, there is continued congressional interest in U.S. funding of the Council. Specifically, some members of Congress have proposed that 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

[71] Egypt, for example, stated that it would reform its criminal code to include a definition of torture. Jordan agreed to undertake a comprehensive review of the conditions of its prison system. It is unclear whether these commitments have or will be met.

[72] "U.S. Engagement with the U.N. Human Rights System," The Carter Center and Brookings Institution, February 17, 2010.

[73] Brett D. Schaefer, "U.N. Human Rights Council Whitewash Argues Against U.S. Participation," Heritage Foundation Backgrounder No. 2255, April 2, 2009.

would be a largely symbolic policy action because assessed contributions finance the entire U.N. regular budget and not specific parts of it.[74]

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).[75] Congress enacted similar restrictions for FY2009.[76]

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. In 2007, the Congressional Budget Office estimated that under current law U.S. contributions to the Human Rights Council for 2008 and 2009 would be approximately $1.5 million per year.[77]

Benefits and Drawbacks of U.S. Membership

There is debate among U.S. policymakers regarding whether the United States should serve as a member of the Human Rights Council. Supporters of U.S. participation contend that the United States should work from within to build coalitions with like-minded countries and steer the Council toward a more balanced approach to addressing human rights situations. Council membership, they argue, places the United States in a position to advocate its policy priorities, including human rights situations in Burma, Iran, and Sudan. Supporters maintain that U.S. leadership in the Council has led to several promising Council developments, including increased attention to country-specific situations (demonstrated by recent resolutions addressing human rights in Cote d'Ivoire and Syria); the creation of a special rapporteur on the human rights situation in Iran; the Council's renewal of its mandate in Sudan; and its continued engagement on human rights situations in North Korea and Somalia.[78]

Opponents argue that U.S. membership provides the Council with undeserved legitimacy. The United States, they maintain, should not be a part of a body that focuses disproportionately on one country (Israel) while ignoring human rights situations in countries that are widely believed to violate human rights (such as Cuba, Saudi Arabia, and Zimbabwe). Moreover, critics maintain that the United States should not serve on a body that would allow possible human rights abusers to serve as members. Critics were also disappointed with the Council's June 2007 decision to eliminate the country mandates of Cuba and Belarus while at the same time making human rights in Palestine and other occupied Arab territories a permanent part of its agenda. Many also contend that U.S. membership on the Council provides countries such as Iran and North Korea with a

[74] 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.

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

[76] See the "Congressional Actions" section for more information.

[77] 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.

[78] Letter from Human Rights Watch, Freedom House, the Brookings Institution, Human Rights First, and other NGOs to Chairpersons of the House Foreign Affairs Committee and the Senate Foreign Relations Committee, regarding the "U.S. Role at the Human Rights Council," January 19, 2011.

platform to criticize the United States. They argue that the Universal Periodic Review process, in particular, may provide "fodder" for governments aiming to divert criticism from their own human rights records.[79] More recently, many have expressed serious concern regarding what they view as the failure of member states to address the Council's weaknesses as part of the five-year review that was agreed to in March 2011.[80]

The United States and Council Special Procedures

When considering the work of the Council, members of Congress will likely monitor its activities related to the United States in addition to UPR. The following sections address recent instances of the Council's (or Commission's) investigations of human rights situations in 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."[81] The report was written by five independent rapporteurs appointed by the Chairperson of the Commission on Human Rights.[82] 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 alleged "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 Punishment.[83] 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, and that the law of war applies to the conduct of that war and related detention operations."[84] The Administration maintained that detainees at Guantanamo Bay were treated "humanely," and that potential human rights violations were thoroughly investigated

[79] Some were particularly concerned with the Obama Administration's mention of Arizona immigration law S.B. 1070 in the United States UPR report. See, for instance, Brett D. Schaefer, "U.S. Targeted by Human Rights Abusers at Its Universal Periodic Review," Heritage Foundation Backgrounder No. 3050, November 5, 2010.

[80] Brett Schaefer, *The U.S. Should Pursue an Alternative to the U.N. Human Rights Council*, The Heritage Foundation, Backgrounder No. 2572, June 22, 2011.

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

[82] 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.

[83] 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.

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

by the U.S. government.[85] 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), and other relevant agencies and organizations to "collaborate actively, constructively, and urgently with the United States," to ensure the closure of the detention center.[86]

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.[87] In December 2006, the Administration invited Scheinin to visit the United States to discuss his concerns.[88] 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."[89]

Scheinin visited the United States from May 16 to 25, 2007.[90] 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.[91] Scheinin emphasized, however, that he did not consider the U.S. fight against terrorism to be a "war"—though he recognized that the United States views itself as "engaged in an armed conflict with Al Qaeda and the Taliban."[92] 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."[93] In addition, he highlighted

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

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

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

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

[89] 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.

[90] 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.

[91] 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.

[92] Ibid.

[93] 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."

reports from the Central Intelligence Agency (CIA) that noted the use of enhanced interrogation techniques by the United States. These activities, according to Scheinin, violated international law, particularly the International Covenant on Civil and Political Rights.[94] 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 eliminated important legal mechanisms that protect individual rights.

Then-U.S. Ambassador to the United Nations Zalmay Khalilzad disagreed with Scheinin's findings, stating, "We have a different point of view."[95] 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."[96]

Inquiry of the Special Rapporteur on the Human Rights of Migrants

The Council's Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante, traveled to the United States from April 30 to May 17, 2007.[97] 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, AZ, to observe the living conditions of migrant detainees. Bustamante's preliminary findings highlighted (1) the lack of a centralized system for tracking 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.[98]

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.[99]

[94] 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 behalf of the United States on September 8, 1992. As of April 19, 2007, 160 countries were party to the Covenant. The text of the Covenant is available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

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

[96] Ibid.

[97] 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/.

[98] 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.

[99] Ibid.

The "Goldstone Report" on Human Rights in Palestine and Other Occupied Arab Territories

On September 15, 2009, a report entitled *Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict* (also referred to as the "Goldstone Report" after the main author, Richard Goldstone) was published.[100] The report, which was mandated by a U.N. Human Rights Council resolution, concluded there is "evidence of serious violations of international human rights and humanitarian law" by Israel during the Gaza conflict and that Israel committed actions amounting to war crimes, and possibly crimes against humanity. The report also found evidence that Palestinian armed groups committed war crimes, as well as possibly crimes against humanity, in their repeated launching of rockets and mortars into southern Israel.[101]

The Goldstone Report generated considerable debate among the international community and U.S. policymakers, including members of Congress. On November 3, 2009, for example, the House of Representatives passed a resolution calling on the President and Secretary of State to oppose unequivocally any endorsement or further consideration of the Goldstone Report in multilateral fora.[102]

The report garnered further attention in April 2011, when Richard Goldstone authored an editorial in the *Washington Post* which stated that if he had known during the fact-find mission what he knows now, "the Goldstone Report would have been a different document." [103] According to Goldstone, the report's conclusion that Israel committed possible war crimes may have been incorrect:

> The allegations of intentionality by Israel were based on the deaths and injuries to civilians in situations where our fact-finding mission had no evidence on which to draw any other reasonable conclusion. While the investigations published by the Israeli military and recognized in the U.N. committee's report have established the validity of some of the issues that we investigated in cases involving individual soldiers, they also indicate that civilians were not intentionally targeted as a matter of policy ... I regret that our fact-finding mission did not have such evidence explaining the circumstances in which we said civilians in Gaza were targeted, because it probably would have influenced our findings about intentionality and war crimes.[104]

Members of the 112th Congress have expressed concern with these comments. On April 14, 2011, for example, the Senate passed S.Res. 138, which calls on the United Nations to rescind the

[100] U.N. document A/HRC/12/48, September 25, 2009.

[101] For the Human Rights Council resolution mandating the report, see U.N. document, A/HRC/S-9/L.1, January 12, 2009. United Nations Press Release, "UN Fact Finding Mission finds strong evidence of war crimes and crimes against humanity committed during the Gaza conflict; calls for end to impunity," September 15, 2009.

[102] H.Res. 867 [111th], introduced on October 23, 2009, by Rep. Ileana Ros-Lehtinen.

[103] Richard Goldstone, "Reconsidering the Goldstone Report on Israel and War Crimes," *The Washington Post*, April 1, 2011.

[104] Ibid.

Goldstone Report.[105] Moreover, bills introduced in both the House and Senate call on the United States to withhold contributions to the United Nations until it formally retracts the report.[106]

[105] S.Res. 138 was introduced by Senator Kirsten Gillbrand on April 8, 2011.

[106] S. 923 [112th], "A bill to withhold United States contributions to the United Nations until the United Nations formally retracts the final report of the 'United Nations Fact-Finding Mission on the Gaza Conflict,'" introduced by Sen. David Vitter on May 9, 2011 and referred to the Senate Committee on Foreign Relations on the same day; and H.R. 1501 [112th] of the same title, introduced by Rep. Joe Walsh on April 12, 2011 and referred to the House Committee on Foreign Affairs on the same day.

Appendix A. Human Rights Council Membership

Table A-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 (2013)	Bangladesh (2012)	Chile (2014)	Czech Republic (2014)	Austria (2014)
Benin (2014)	China (2012)	Costa Rica (2014)	Hungary (2012)	Belgium (2012)
Botswana (2014)	India (2014)	Cuba (2012)	Moldova (2013)	Italy (2014)
Burkina Faso (2014)	Indonesia (2014)	Ecuador (2013)	Poland (2013)	Norway (2012)
Cameroon (2012)	Jordan (2012)	Guatemala (2013)	Romania (2014)	Spain (2013)
Congo (2014)	Kuwait (2014)	Mexico (2012)	Russian Federation (2012)	Switzerland (2013)
Djibouti (2012)	Kyrgyzstan (2012)	Peru (2014)		United States (2012)
Libya (2013)	Malaysia (2013)	Uruguay (2012)		
Mauritania (2013)	Maldives (2013)			
Mauritius (2012)	Philippines (2014)			
Nigeria (2012)	Qatar (2013)			
Senegal (2012)	Saudi Arabia (2012)			
Uganda (2013)	Thailand (2013)			

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

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

Appendix B. Human Rights Council Special Sessions

Table B-1. Human Rights Council Special Sessions, by Date and Subject

Session/Subject	Dates
1st Special Session: Human rights situation in the Occupied Palestinian Territory	July 5-6, 2006
2nd Special Session: Grave situation of Human Rights in Lebanon caused by Israeli Military Operations	Aug. 10-11, 2006
3rd Special Session: Israeli Military Incursions in the Occupied Palestinian Territories	Nov. 15, 2006
4th Special Session: Human Rights Situation in Darfur	Dec.12-13, 2006
5th Special Session: Human Rights Situation in Myanmar (Burma)	Oct. 2, 2007
6th Special Session: Violations Stemming from Israeli Incursions in the Occupied Palestinian Territory	Jan. 24, 2008
7th Special Session: Negative Impact on the Realization of the Rights to Food of the Worsening of the World Food Crisis, Caused inter alia by the Soaring Food Prices	May 22, 2008
8th Special Session: Situation of the Human Rights in the East of the DRC	Nov. 28, 2008
9th Special Session: The Grave Violations of Human Rights in the Occupied Palestinian Territory including the recent aggression in the occupied Gaza Strip	Jan. 9, 2009
10th Special Session: The Impact of the Global Economic and Financial Crises on the Universal Realization and Effective Enjoyment of Human Rights	Feb. 20, 2009
11th Special Session: The human rights situation in Sri Lanka	May 26, 2009
12th Special Session: The human rights situation in the Occupied Palestinian Territory and East Jerusalem	Oct. 15-16, 2009
13th Special Session: Support to the recovery process in Haiti: A Human Rights approach	Jan. 27, 2010
14th Special Session: The situation of human rights in Cote d'Ivoire since the elections on 28 November 2010	Dec. 23, 2010
15th Special Session: The situation of human rights in the Libyan Arab Jamahiriya	Feb. 25, 2011
16th Special Session: The situation of human rights in the Syrian Arab Republic	Apr. 29, 2011

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

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