

The Human Rights Council Must Reform to Earn U.S. Re-Engagement

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KEY TAKEAWAYS

If the U.N. Human Rights Council (HRC) lived up to its values, it would be worthy of U.S. support and membership. But the HRC falls gravely short.

Rejoining the HRC before reforms are adopted will only demonstrate to other governments that they can gain the legitimacy of U.S. membership without reform.

The U.S. is justified in demanding reform, and must press member states to adopt reforms necessary for the HRC to live up to its mandate and earn U.S. support.

The relationship between the United States and the United Nations Human Rights Council (HRC) has swung dramatically. The Bush 43 Administration supported former Secretary-General Kofi Annan's 2005 call to replace the discredited Commission on Human Rights, but opposed the resolution creating the HRC and refused to run for a seat—after the U.N. did not implement standards that the U.S. deemed vital to ensuring that the HRC did not replicate the weaknesses of the commission.

The Obama Administration reversed course and won a seat on the HRC in 2009 and pledged to reform the HRC from within, but failed to secure reforms to resolve the fundamental problems besetting the body. The Trump Administration left the HRC in 2018 after also failing to gain support for reforms to address anti-Israel bias and other failings. This decision was much criticized by human rights groups who have urged the U.S. to re-engage the HRC.¹

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Undoubtedly, if the HRC lived up to its stated values, it would be worthy of U.S. support and membership. But the HRC falls gravely short. Whether the U.S. was absent or present, anti-Israel bias continued, human rights violators routinely won seats on the HRC, and the HRC proved unwilling to confront China, Cuba, and other influential countries for their blatant human rights atrocities. This was not for lack of U.S. criticism or efforts to reform it. It is because most other countries prefer the status quo. Rejoining the HRC before reforms are adopted will only encourage other governments by demonstrating that they can gain the legitimacy of U.S. membership absent reform.

The U.S. and the Human Rights Council

The HRC was created in 2006 after former Secretary-General Annan acknowledged that the “declining credibility” of the council’s predecessor, the Commission on Human Rights, had “cast a shadow on the reputation of the United Nations system as a whole” and called for it to be replaced.² The primary failings of the commission were its inability to forthrightly confront the world’s most serious human rights situations, gross bias against Israel, and inclusion of the world’s worst human rights abusers among its membership.³

When the U.N. General Assembly was drafting the resolution creating the HRC, the U.S. pressed hard for membership standards and other reforms to ensure that it did not also fall victim to the problems that beset the commission. The General Assembly rejected most of these proposals, and for that reason the Bush Administration declined to seek a seat on the council and engaged only when major U.S. interests were under consideration.⁴

The Obama Administration reversed this policy and invested significant time and diplomatic resources into improving the HRC’s work. These efforts resulted in some modest achievements, particularly an increase in the number of resolutions condemning countries other than Israel. Yet, the Obama Administration failed to gain support for reforms to address the HRC’s fundamental problems that, like the commission it replaced, included flagrant anti-Israel bias, lack of membership standards, and an unwillingness to confront countries like China about their human rights abuses. In particular, the Obama Administration failed to seize the opportunity to rally support for reforms to address these problems at the 2011 mandatory review of the council.⁵

The Trump Administration made clear that if the U.N. membership did not adopt reforms to improve the council, the U.S. would leave. In June 2017, U.S. Ambassador to the U.N. Nikki Haley laid out specific U.S. criticisms of the HRC: bias against Israel, inclusion of human rights violators among the

membership, and the inability to address serious human rights situations evenhandedly. These problems continue to beset the HRC:

- **Bias against Israel.** Alone among the world's countries, Israel is subject to a separate human rights item: Agenda Item 7, titled "Human rights situation in Palestine and other occupied Arab territories." Every other country is examined under Agenda Item 4, titled "Human rights situations that require the Council's attention." In addition, the HRC currently has 10 "country mandates" that focus on human rights situations in individual countries, such as North Korea and Iran.⁶ All of these country mandates are subject to periodic renewal except for the "Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967" that remains in place "until the end of the Israeli occupation." According to the UN Watch database, Israel was the focus of 90 of 210 condemnatory resolutions (43 percent) adopted by the HRC from 2006 through August 2020.⁷ Since 2006, the HRC has adopted between five and eight resolutions condemning Israel annually. As of August, the HRC in 2020 has passed five condemnatory resolutions focused on Israel, and nine focused on other countries (Belarus, Eritrea, Iran, Myanmar, Nicaragua, North Korea, Syria twice, and the United States).
- **Human rights abusers among the membership.** Governments deemed "not free" and "partly free" by Freedom House have historically comprised a majority of the membership of the council. Not even the world's most repressive regimes have been excluded. Currently, Pakistan, Qatar, Sudan, Venezuela, and other human rights violators sit on the HRC.⁸ For most of the HRC's history, China, Cuba, Russia, and Saudi Arabia had seats on the council. They are likely to win seats again this fall. These countries use their presence to undermine the HRC and protect each other from scrutiny.
- **Inability to address serious human rights situations evenhandedly.** Although the HRC has in recent sessions increased the number of condemnatory resolutions involving countries other than Israel, it has been unable or unwilling to adopt resolutions on serious human rights abuses by China, Cuba, Saudi Arabia, Zimbabwe, and others.⁹ Picking low-hanging fruit is not fulfilling the mandate or stated values of the HRC. The HRC must be a reliable, fair, and impartial advocate for human rights and fundamental freedoms.

After other member states made it clear that they were uninterested in reforming the council, the U.S. followed through and withdrew in June 2018.¹⁰

Reforming the Human Rights Council: Next Steps

In the resolution establishing the HRC, the General Assembly decided that “the Assembly shall review the status of the Council within five years.”¹¹ The 2011 review resulted in some changes, notably the terms of members and the procedures for the Universal Periodic Review (UPR), but did not address the problems identified by the U.S. In adopting the 2011 review, however, the General Assembly decided to “consider again the question of whether to maintain this status [of the Human Rights Council as a subsidiary body of the General Assembly] at an appropriate moment and at a time no sooner than ten years and no later than fifteen years.”¹²

In other words, a second review of the council will occur between 2021 and 2026. Regardless of who wins the November presidential election, the U.S. should see the need to insist both that the review occur as soon as possible, and that reforms to resolve anti-Israel bias and the lack of membership criteria be considered.

Rejecting Anti-Israel Bias. Neither the U.S. nor Israel expect or propose shielding Israel from scrutiny or criticism. On the contrary, a credible Human Rights Council must be able and willing to examine the human rights practices of each nation. But the agenda and procedures of the HRC single out Israel for different treatment from other nations, which is unacceptable. Specifically, the U.S. must:

- **Demand** the elimination of Agenda Item 7, and that examination of Israel’s human rights practices be conducted under Agenda Item 4, as is the case for every other nation; and
- **Require** that the “Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967” be subject to renewal every few years as is the case with other HRC special procedures.

No reform of the HRC can overcome or eliminate the hostility of many U.N. member states to Israel. As long as the HRC is reflective of the U.N. membership, disproportionate—and biased—attention will be focused on Israel. But, as a matter of fairness, the U.S. can and should demand that

Israel be treated the same as other nations under the agenda and procedures of the HRC.

Stricter Membership Criteria. Resolution 60/251 sets minimal criteria for the 47 members of the HRC. Membership is open to all states, but members are to be elected by a majority of the General Assembly (currently 97 of 193 member states) in a secret ballot. Seats are geographically allocated: 13 African seats, 13 Asian seats, six Eastern European seats; eight Latin American and Caribbean seats; and seven seats for the group of Western European and other nations.

While the U.N. member states are supposed to “take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments”¹³ when electing HRC members, the human rights record of a nation is not disqualifying. This allows gross violators to be elected to the HRC and impede effective action to meet the council’s mandate to “promot[e] 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; ...[and] address situations of violations of human rights, including gross and systematic violations.”¹⁴

Outrageously, countries that uphold human rights and freedoms most strongly, such as those ranked “free” by Freedom House, have been a minority of council membership throughout most of its history. If the council is to improve, the membership must improve. There are a number of reforms that could enhance the chances for increasing the number of HRC members that respect human rights. The General Assembly should pass a resolution to:

- **Mandate a competitive election process.** Regional blocs frequently game the system by offering “clean slates” (having the same number of candidates stand for election as there are open seats). This practice makes it easier for repressive states to win seats on the council, because there is no competition. Ideally, each region should offer more candidates than open seats, in order to offer the General Assembly choices for council elections. But states are reluctant to run if they could lose, and the General Assembly cannot compel states to run. However, the General Assembly could change the elections to automatically list as candidates every state that is not currently serving on the council or is otherwise prohibited from running (such as having served two consecutive terms or, if the reform prohibiting consecutive terms proposed below is adopted, a single three-year term), and hold successive ballots eliminating the lowest half of vote recipients until all the open seats are filled.

- **Increase the threshold for HRC elections to two-thirds of the General Assembly.** Currently, election to the HRC only requires support from a simple majority (97 votes) of the General Assembly. Increasing the threshold for election to two-thirds (129 votes) of the General Assembly, as originally proposed by former Secretary-General Annan, would not prevent human rights violators from getting elected, but it would make it more difficult, and would improve the chances of the U.S. and other democratic countries to rally in opposition to particularly odious governments.
- **Lower the threshold for suspending an HRC member from two-thirds to a simple majority of the General Assembly.** Under current procedures, it is harder to suspend a country from the council than it is to elect it to membership. This situation should be reversed. In addition, the General Assembly should change “suspend” to “dismiss” and adopt a process for replacing the dismissed member.
- **Bar countries from consideration for seats if they are the focus of HRC country mandates for human rights concerns.** The council currently has 10 country human rights mandates: Belarus, Cambodia, Central African Republic, Iran, Israel, Mali, Myanmar, North Korea, Somalia, and Sudan. Although many serious human rights violators are absent from this list, barring these countries would at least establish a minimum standard that governments under HRC scrutiny should not be sitting among the council membership. (An unfortunate consequence of this reform would be that Israel, already subject to biased treatment, would almost certainly be barred, since the country mandate focused on Israel enjoys broad support among the U.N. membership and is unlikely to be eliminated.) However, Israel would face significant challenges in being elected to the HRC in the first place because of the hostility of many governments in the General Assembly, and preventing human rights abusers currently under HRC scrutiny from membership would be an important standard to set.
- **Prohibit consecutive terms.** Currently, states are elected to three-year terms and can immediately stand for re-election. After two consecutive terms, a state must take a one-year hiatus from the HRC. Prohibiting consecutive terms and forcing countries to take a hiatus after each term would create more turnover among HRC membership and offer more possibilities for states that have never been on the council to be elected.

- **Create a group of “at large” seats.** A seat could be taken from each regional group to establish five at-large seats open to any member state not otherwise prohibited from running. Interest in running for these seats would be high and would likely generate competitive elections that are currently too rare.
- **Require HRC candidates to participate in a public forum where they must defend their human rights record** and field questions from other governments and nongovernmental organizations. Most candidates make voluntary pledges and commitments. These statements are not subject to challenge even if they blatantly misrepresent the human rights record of the candidate country. Requiring candidates to participate in a forum in which their human rights records and claims could be challenged, particularly by nongovernmental organizations, would be illuminating and, perhaps, dissuade some countries from running.

Other reforms, such as recorded, rather than secret, voting for candidates, or making countries that routinely refuse to allow human rights experts to visit ineligible for election, could also be helpful.

A majority of the U.N. membership is either “not free” or only “partly free” according to Freedom House. Thus, if the council reflects the U.N. membership, it will always include states with poor or questionable human rights records. But the U.S. should demand higher standards. The reforms above, all or some, could lead to improvements in membership that should lead to a stronger appetite for holding even powerful countries like China to account for its human rights violations.

No U.S. Participation in the UPR Until Reforms Are Adopted. Under the UPR process, the council reviews the human rights practices of every country. However, it has proven to be a flawed process subject to manipulation by countries seeking to shield themselves from criticism.¹⁵ The third cycle of the UPR is not yet complete, thus an apples-to-apples comparison had to be restricted to the first and second cycles. During the first two cycles of the UPR, the United States, by far, received the most recommendations (668) for improving its human rights practices. Cuba was next (534), and Iran was third (511).¹⁶

In other words, in the eyes of the HRC, the *United States* is the country most in need of improving its human rights record—more than China, Cuba, Iran, Venezuela, or Zimbabwe.

The U.S. was scheduled to undergo its third UPR in May 2020, but it was delayed until November 9 because of COVID-19.¹⁷ The U.S. withdrew from the HRC in 2018 over the fundamental failings of the body and the determination that U.S. membership lent it unwarranted credibility. Participating in the UPR kabuki dance likewise lends that process unwarranted credibility. The U.S. should not participate in the UPR until the U.N. member states adopt reforms that make the HRC worthy of U.S. engagement.

Conclusion

The Human Rights Council is supposed to be the world's premier human rights body, yet it remains biased against Israel, repressive governments are well-represented among its membership, and it too often fails to note, let alone condemn, many of the world's worst abusers of human rights. These failings undermine the credibility of the council. The Trump Administration was justified in demanding reforms to address these ongoing, fundamental problems, as well as in leaving when the other U.N. member states proved uninterested in addressing them.

The mandatory review of the Human Rights Council required between 2021 and 2026 presents an opportunity to press for reforms. The next U.S. Administration should insist that the review be conducted immediately, and use the opportunity to again challenge U.N. member states to adopt reforms that would allow the council to live up to its lofty mandate.

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Endnotes

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