

# ISSUE BRIEF

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## A U.N. Human Rights Council Reform Agenda for the Trump Administration

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The United Nations Human Rights Council (HRC) is supposed to be the world's premier human rights body. The U.S. can make the council better through its presence and engagement, but the record shows that U.S. participation is not sufficient to overcome its problems. Despite years of U.S. membership and earnest engagement by the Obama Administration, the HRC remains biased against Israel, repressive governments remain well represented among its membership, and it too often fails to condemn many of the world's worst abusers of human rights. These serious, fundamental problems undermine the credibility of the council and raise legitimate questions about whether the U.S. should participate in such a flawed institution.

The Trump Administration is evaluating the council, and Secretary of State Rex Tillerson has informed human rights groups that continued U.S. participation depends on "considerable reform" of the body.<sup>1</sup> Secretary Tillerson did not elaborate on the reforms that the U.S. would like to see adopted, but he should understand that he cannot "fix" the HRC. No reform agenda can prevent governments from misusing the council or preventing it from fulfilling its mandate. The council is a reflection of U.N. membership. Many governments actively repress their citizens and deny them basic rights and free-

doms, while others are uninterested in promoting human rights if it complicates other foreign policy priorities. In short, as long as HRC membership reflects the U.N. membership, it will disappoint.

But the Administration can press for reforms to improve the council. It is up to the Trump Administration to decide whether this more modest goal is worth the effort necessary. If so, it should focus on reforms to address the council's core problems of substandard membership, anti-Israel bias, opacity, and the increasing financial and time demands of the HRC's expanding agenda. These targeted reforms would improve the council's performance, objectivity, and focus. If the U.N.'s member countries reject them, however, they will ensure that the council continues its bias and mediocrity, which would justify a decision by the Trump Administration to end U.S. participation.

### The U.S. and the Council

The council was created in 2006 after former U.N. Secretary-General Kofi Annan acknowledged that the "declining credibility" of the council's predecessor, the United Nations 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.<sup>2</sup> The commission's primary failings were its inability to confront the world's most serious human rights situations forthrightly, its gross bias against Israel, and the inclusion of the world's worst human rights abusers among its membership.<sup>3</sup>

When the U.N. General Assembly (UNGA) 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. Most of

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these proposals were rejected, and the Bush Administration declined to seek a seat on the council and engaged only when major U.S. interests were under consideration.<sup>4</sup>

The Obama Administration reversed this policy and invested significant time and diplomatic resources into improving the council's work. These efforts have resulted in some modest achievements, particularly an increase in the number of resolutions condemning countries other than Israel. Regrettably, these achievements have not included reforms that would address the council's fundamental problems, and many of the commission's weaknesses continue to beset the HRC:

■ **Inability to address serious human rights situations equally and objectively.** The HRC has increased the number of condemnatory resolutions involving countries other than Israel in recent years. Many of these country resolutions have benefited from the willing cooperation of the subject of the resolution, such as the recent resolution on Sri Lanka or resolutions in previous sessions on Guinea and Tunisia.<sup>5</sup> Others, such as those on Syria or North Korea, involved pariah governments with blatantly abhorrent human rights practices. These situations are low hanging fruit. Where the HRC has failed is by being unable or unwilling to adopt resolutions on serious human rights abuses by governments like China,

Cuba, Russia, Venezuela, Saudi Arabia, and Zimbabwe. Fulfilling its mandate only occasionally or when circumstances are positive is not enough. Even the discredited commission managed to adopt resolutions on countries like Cuba, which is politically challenging in the U.N. system. The HRC must be a reliable, fair, and impartial advocate for human rights and fundamental freedoms.

■ **Human rights abusers among the membership.** Governments deemed “not free” and “partly free” by Freedom House historically have comprised a majority of the council's members. Not even the world's most repressive regimes have been excluded. Currently, China, Cuba, Saudi Arabia, and other human rights violators sit on the HRC.<sup>6</sup> These countries use their presence to undermine the HRC and protect each other from scrutiny.

■ **Bias against Israel.** Alone among the world's countries, Israel is subject to a separate human rights item: Agenda Item 7, “Human rights situation in Palestine and other occupied Arab territories.” Every other country is examined under Item 4, “Human rights situations that require the Council's attention.” According to UN Watch, “In the first 10 years of its existence, from 2006 to 2016, the council adopted 68 resolutions against Israel, and 67 on the rest of the world com-

1. Colum Lynch and John Hudson, “Tillerson to U.N. Rights Council: Reform or We're Leaving,” *Foreign Policy*, March 14, 2017, <http://foreignpolicy.com/2017/03/14/tillerson-to-u-n-rights-council-reform-or-were-leaving/>.
2. U.N. News Centre, “Without Reform of Human Rights Body, UN Credibility at Stake, Annan Says,” April 7, 2005, <http://www.un.org/apps/news/story.asp?NewsID=13895&Cr=commission&Cr1=rights>.
3. Editorial, “The Shame of the United Nations,” *The New York Times*, February 26, 2006, <http://www.nytimes.com/2006/02/26/opinion/the-shame-of-the-united-nations.html>, and Hillel C. Neuer, “The Struggle Against Anti-Israel Bias at the UN Commission on Human Rights,” *Jerusalem Center for Public Affairs*, January 1, 2006, <http://www.jcpa.org/phas/phas-040-neuer.htm>.
4. Brett D. Schaefer, “The United Nations Human Rights Council: A Disastrous First Year and Discouraging Signs for Reform,” Testimony before the Subcommittee on International Operations and Organizations, Democracy and Human Rights, Committee on Foreign Relations, United States Senate, July 26, 2006, <https://www.foreign.senate.gov/imo/media/doc/SchaeferTestimony070726p.pdf>.
5. Acting Department of State Spokesperson Mark C. Toner, “Support for Human Rights Council Resolution on Sri Lanka,” March 15, 2017, <https://www.state.gov/r/pa/prs/ps/2017/03/268475.htm>, and Brett D. Schaefer, “The U.S. Should Pursue an Alternative to the U.N. Human Rights Council,” *Heritage Foundation Backgrounder* No. 2572, June 23, 2011, <http://www.heritage.org/report/the-us-should-pursue-alternative-the-un-human-rights-council>.
6. UN Watch, Human Rights Foundation, and Raoul Wallenberg Center for Human Rights, “Electing the 2017-2019 Members of the U.N. Human Rights Council,” October 2016, <https://www.unwatch.org/wp-content/uploads/2016/10/HRC-Candidates-Report-2017-2019-Final-1.pdf>.
7. Testimony of Hillel C. Neuer, “Israel, the Palestinians, and the United Nations: Challenges for the New Administration,” Joint Hearing before the Subcommittee on the Middle East and North Africa and the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, Committee on Foreign Affairs, U.S. House of Representatives, February 2, 2017, <http://docs.house.gov/meetings/FA/FA13/20170202/105508/HHRG-115-FA13-Wstate-NeuerH-20170202.pdf>.

bined.”<sup>7</sup> The recently completed 34th session saw five more anti-Israel resolutions adopted, with only the U.S. and Togo voting against all of them. In addition to this disproportionate focus, the anti-Israel resolutions tend toward strongly condemnatory language without the balancing rhetoric that often characterizes resolutions on other countries.

### “Considerable Reform”

In response to a letter from human rights organizations inquiring whether the Trump Administration intended to participate in the HRC, Secretary of State Rex Tillerson stated that the council “requires considerable reform in order for us to continue to participate.”<sup>8</sup> He did not provide details with respect to the reforms that the Administration would seek or consider sufficient. In large part, the goal of the Administration must guide these details. Because the HRC is a reflection of the world’s governments, many of which are not committed to protecting human rights, it will never be an objective and robust champion of human rights. If that is the goal, then the Trump Administration is wasting its time.

If, however, the goal is to improve the council, then the U.S. needs to provide details of its HRC reform priorities and should consider convening a high-level meeting during U.N. General Debate in September to propose specific reforms to be included in an UNGA resolution to update the original 2006 resolution establishing the council.<sup>9</sup> This resolution should:

- **Require competitive elections for the council.** HRC seats are allocated by regions, with a portion coming open each year. Regions have frequently gamed the system by offering “clean slates” (i.e., having the same number of candidates standing for election as there are open seats). This practice makes it easier for repressive states to win seats on the council. The U.S. should demand that the UNGA require competitive slates, which would give the UNGA greater choice during HRC elec-

tions and hopefully result in improved council membership. In addition, the U.S. should seek to increase the threshold for election to two-thirds of the UNGA as originally proposed by Annan and bar countries from consideration for seats if they are under Security Council sanctions or are the focus of HRC mandates for human rights concerns.

- **Eliminate the biased treatment of Israel.** There should be no special treatment, positive or negative, between countries on HRC scrutiny of their human rights practices. The U.S. should demand that Agenda Item 7 (the anti-Israel item) be eliminated and that all country-specific human rights situations be dealt with under Agenda Item 4. In addition, the U.S. should require that the council rescind resolution A/HRC/31/L.38 requesting the High Commissioner for Human Rights to produce a “database” of all Israeli businesses operating in settlements in support of the boycott, divestment, and sanctions (BDS) campaign against Israel, which the U.S. opposes because it “falls far outside the scope of the Human Rights Council’s mandate and drains precious resources that could be used to promote and protect human rights around the world.”<sup>10</sup>
- **Require periodic renewal of all HRC mandates.** No country or thematic special procedure, including the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, should be permanent. Accountability demands that all such mandates be subject to periodic scrutiny and renewal, if not annually, then every few years.
- **Improve transparency.** The HRC budget is not reported separately by the U.N., but bundled into a broad human rights section of the U.N. regular budget. The U.S. should demand that the council publish a separate budget document listing all assessed and voluntary funding received to sup-

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8. Lynch and Hudson, “Tillerson to U.N. Rights Council: Reform or We’re Leaving.”

9. United Nations General Assembly, “Human Rights Council,” A/RES/60/251, April 3, 2006, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf>.

10. U.S. Mission of the United Nations (Geneva), “U.S. Explanation of Votes on Item 7 Resolutions,” March 24, 2017, <https://geneva.usmission.gov/2017/03/24/u-s-explanation-of-votes-on-item-7-resolutions/>.

port its activities and how the funds were used. In addition, this report should include disclosure from all mandate holders on all support received from governments and institutions.<sup>11</sup>

In conjunction with pressing its reform agenda in New York, the U.S. should work in Geneva to address the growing financial cost of the HRC, which has roughly quadrupled over the past eight years,<sup>12</sup> and the increasing burden posed by the rapidly expanding HRC agenda that has taxed the resources of even the most well-manned missions in Geneva. Specifically, the U.S. should propose significantly trimming the 43 thematic special procedures—particularly those masking political agendas in human rights guises like special rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights and special rapporteur on the right to development—in order to focus time and resources on gross and systematic human rights situations in specific countries. In addition, the U.S. should propose cutting the HRC sessions from four to three weeks by moving the growing number of panel discussions and high-level panels, which consumed approximately one-quarter of the 34th session, to side rooms and ending the practice of passing identical or similar resolutions year after year.

## Conclusion

After more than a decade, the U.N. Human Rights Council remains biased against Israel, includes human rights violators among its membership, and too often is unable or unwilling to confront influential or powerful governments about their human rights violations. As demonstrated over the past eight years, the U.S. can make the council more effective in limited circumstances, but it cannot make it fulfill its responsibilities impartially and robustly. The sad reality is that, despite the best efforts of the U.S. and like-minded governments, the council suffers from the same problems that led the U.N. to replace the discredited U.N. Commission on Human Rights in 2006.

The council may or may not be fixable, but the Trump Administration can seek to improve it if it chooses to do so. Overcoming resistance to reform will require significant effort, and the Trump Administration must determine for itself whether that more modest goal merits that investment of time and political capital. Certainly, an unreformed HRC will result in the same mediocrity with or without U.S. participation. The only way to change this course is for the Trump Administration to challenge the U.N. membership to adopt reforms to address the problems that impede it from fulfilling its responsibilities. Rejection of these reforms would reveal the shallowness of U.N. member states' commitment to human rights and justify ending U.S. participation.

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11. A 2011 report by the U.N. Board of Auditors revealed that 14 special procedures received "earmarked donations" that, on average, "accounted for 49 per cent of their total financial resources available, with five procedures receiving over 50 per cent of funding from earmarked donations and the highest being 85 per cent." The report noted with concern that mandate holders "are not required to disclose support received from other sources," which extended to support from unspecified governments and other institutions, because "the absence of clear disclosures could put in doubt the perceived independence of mandate holders." In 2013, the board noted that the recommendation that "in the interest of transparency, propose to the Human Rights Council that mandate holders be required to disclose all sources of funding and any conditions attached to them" had been fully implemented. However, if this disclosure is public, it is not prominent. United Nations, "Financial Report and Audited Financial Statements for the Biennium Ended 31 December 2013 and Report of the Board of Auditors," A/69/5 (Vol/ 1), p. 67, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/69/5\(VOL.I\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/69/5(VOL.I)).
12. Beyond the costs of operation, each independent expert and mandate approved by the council, each report commissioned by the council, and every document considered by the council has a cost associated with it. For instance, each council text has to be translated into the six official U.N. languages at a cost of over \$1,200 per page (on average). Special Procedures, moreover, have expenses associated with fulfilling their mandates. Thus, as the council agenda expands and texts proliferate and lengthen, the associated costs similarly grow. Brett D. Schaefer, "The Human Rights Council's Failings Should Lead to Reassessment," Universal Rights Group, August 19, 2015, <http://www.universal-rights.org/blog/the-human-rights-councils-failings-should-lead-to-reassessment/>.
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