

## **A GLASS HALF FULL: WHY THE U.S. NEEDS TO BE ON THE U.N. HUMAN RIGHTS COUNCIL**

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Mr. Pitts and Mr. McGovern, as Co-Chairmen of the Lantos Commission, I thank you for including me in this hearing. The Commission has performed an important role which honors the memory of a legislator I had the pleasure of witnessing as a House and Senate staffer and testifying before *as witness*.

I was one of the lead negotiators for the United States in the effort to replace the Commission on Human Rights with a new Human Rights Council, and I was there when Secretary of State Condoleezza Rice decided the U.S. ought not run to join it – both when I was Deputy Assistant Secretary of State. Ten years later, as the U.S. has to take a year off from Council membership due to term limits, it is an apt juncture to make a dual assessment: of the Council, and of the U.S. influence improving it.

That dual assessment should be based on examining five areas.

### **Country-Specific Work**

First is the Council’s country-specific work. When I served in the George W. Bush Administration, we were deeply worried that the Council as it got fashioned would actually address country-specific situations *less* often than its dysfunctional predecessor. It looked harder to pass *resolutions* and create *rapporteurs* than before, with a Universal Periodic Review mechanism (which I will discuss later) as pretext for autocratic and democratic

Global South states to call them too confrontational or unnecessary. The disappearance of a mandate in the Global *North* for Belarus in the early life of the Council seemed to verify that fear.

Moreover, the Council retained the Commission's unfair practice of only one country having an institutionalized place on the body's agenda, namely Israel. Israel deserves scrutiny like any other nation, and at times -- like the U.S. -- infringes on rights in the name of security and counter-terrorism. Yet the number of resolutions, Special Sessions, and Commissions of Inquiry inflating alleged rights infringements to the level of atrocities devoted to the Middle East's only democracy is grossly disproportionate to the attention paid to any other state in the Council's work. It is clear, however, that this flaw of the Council is better counteracted when the U.S. is a formal member of that body.

Active membership in the Council by the U.S. has contributed to successes. A resolution and rapporteur on Belarus were restored.

Moreover, I would never have thought ten years ago that a resolution devoted to Iran could be passed not only in New York but in Geneva. The Human Rights Council resolution does not yet enumerate Iran's human rights violations chapter and verse -- as it should. But it has sustained a Special Rapporteur when the international community (and candidly the United States) have let nuclear nonproliferation be a pretext for deprioritizing human rights in that country -- both before *and* after a nuclear deal with Tehran. Despite fears to the contrary, the Council once again extended the Iran mandate on March 23, 2016 by a 5 vote margin. Today, the Council and the current Iran resolution remain important vehicles for the world to increase pressure on Iran to improve its human rights record.

While the Security Council has been all too inert on the atrocities of Assad in Syria, allowing ISIS to grow as a second source of atrocities, the Human Rights Council has repeatedly devoted its attention to those calamities. On August 22, 2011, the Council established a Commission of Inquiry on Syria which found that the Syrian government is

responsible for violations that amount to crimes against humanity. Since then, the UNHRC has held over 20 sessions on Syria and adopted no less than 17 resolutions.

The Human Rights Council was pretty feckless in calling attention to human rights abuses in Sri Lanka in the period when the United States refused to run to be a Member. After the United States got on, there was a pronounced shift in the substance of resolutions adopted on Sri Lanka, making clear the international community's demand for accountability for mass atrocities committed during the civil war. Sri Lanka is making some progress. It is one ray of hope in Freedom House's *Freedom of the World* survey, which shows ten straight years of a global *recession* of democracy, notably in freedom of expression, freedom of association, and rule of law.

Most striking was the Commission of Inquiry launched by the Council to investigate North Korea's atrocities. No single multilateral mandate or report on human rights has changed the terms of debate on a neglected human rights issue than this Commission headed by Australian jurist Michael Kirby. No mandate devoted to atrocities-level abuse has treated a case where open warfare has not existed for decades. And yet, so powerful were the Commission's findings that China and Russia could not block North Korea's human rights situation from being added to the U.N. Security Council's standing agenda.

Less striking, but highly important, was action on Eritrea – a country all but forgotten, and of little strategic importance, yet so repressive that in 2014, some 6 percent of its population fled to seek asylum. In July 2012, the Council appointed a Special Rapporteur to shine a light onto widespread human rights violations. On June 27, 2014, the Council established a Commission of Inquiry to investigate these gross and systematic abuses, with a particular focus on documenting crimes against humanity.

The United States helped make the numerous Council assessments of Israel's conduct in Gaza and in the humanitarian flotilla controversy fairer. The United States may not fix the quantitative volume and qualitative tilt of the Council's treatment of Israel, but

its presence has been helpful. And at a minimum, the United States using its voice and vote means that excessive criticism of Israel is not answered with silence.

## **Thematic Work**

In a second area, the thematic work of the Human Rights Council has improved, and been ameliorated by U.S. leadership. Let's take a few examples.

First, the United States helped turn around a perverse set of resolutions on defamation of religion which gave states in Islamic-majority nations cover in order to use blasphemy laws to sideline and repress freedom of religion and of expression in the name of anti-defamation. Those resolutions always have represented a latent threat for creation of a broader UN Declaration or Convention codifying their pernicious provisions. In 2011, the United States, working with a cross-regional group of partners, engaged the Organization of Islamic Cooperation to end-run intransigent, longstanding ambassadors in Geneva. The result was a new consensus framework on combatting religious intolerance, resting on the pillars of defending freedom of expression and veritable freedom of all religions. That victory is precarious and is already vulnerable. As the single most pronounced voice for freedom of conscience and expression in the international community, the U.S. should be on the Council.<sup>1</sup>

Second, a much-needed mandate was created for Freedom of Assembly and Association, in large part because of U.S. leadership. At a time when autocracies and ostensible democracies worldwide are squeezing civil society groups and demonizing them for getting international advice and backing, this mandate is essential. We know the Rapporteur well. Kenyan Maina Kiai happens to have won the Freedom Award at the annual dinner where I was named to become Freedom House's President. As Special Rapporteur, he embodies the UN's thematic work on human rights at its most energetic and effective.

I have said in my book *Human Dignity and the Future of Global Institutions* that multilateral measures on economic and social aspirations are not inherently less important

than the political and civil liberties Freedom House champions. Yet the Human Rights Council does dignify a number of matters that no serious person could claim are really human rights. The number of mandates for economic, social, and cultural rights have grown, even while the U.S. has been on the Council as a voice of reason. Without the U.S. there, there would be even more silly mandates, like treating the real problem of toxic waste as a human rights matter. And those efforts which have proven constructive, like the Council resolution on business and human rights springing from the work of John Ruggie as Special Representative, would be in danger of being taken in the wrong direction, which bears watching as Ecuador and others seek a related treaty.

### **Universal Periodic Review**

A third area relates to peer review. The most distinctive innovation of the negotiation I took part in to create the Council is the Universal Periodic Review (UPR). It meant all nations, including some heinous, human rights-abusing states managing to get on the Council would be subject to regular scrutiny. Some of us feared the UPR would be a pretext for winnowing the number of country-specific resolutions and rapporteurs, but they have been sustained, especially when the U.S. has been a Council Member.

The UPR gives an opportunity for civil society groups to shine a light of accountability on their states. The largest part of Freedom House's work, our true comparative advantage, is capacity-building and emergency assistance to civil society organizations in all regions of the world. We see how the UPR helps our local civil society partners assert their voice in an organized, focused and coordinated manner, which is why we support these frontline activists to engage directly in the UPR process, including appearing in Geneva and producing shadow reports. At its best, governments are adopting the practice of formally consulting with civil society, a good example being Mali, where the government arranged meetings between ministerial departments and representatives of civil society, and where the Ministry of Justice established a working group to prepare the UPR report. In more restrictive environments, civil society and even the media have the option of discussing UPR recommendations at one step removed: rather than themselves

raising issues directly, they can report on recommendations raised by the international community. According to a 2014 report of the civil society organization UPR Info, 48 percent of UPR recommendations triggered action (partially or fully implemented) within two and a half years, and 19 percent of recommendations that were not accepted but merely “noted” still resulted in action.

The UPR is not an unvarnished success.<sup>ii</sup> It offers an opportunity to raise human rights issues in any nation every four years, makes recommendations to states, and those states in turn make commitments to address some of the recommendations. Yet in a decade, with nations now getting repeatedly assessed, it is not clear to me that there is sufficient onus on states to live up to even the recommendations they agree to meet, much less those they do not. This is one reason Freedom House helps civil society actors, like some from Venezuela, to present their case to the expert bodies assigned to assess how much parties to UN human rights conventions fulfill their commitments, because these treaty bodies have more impact than the UPR.

The United States is empirically the most vocal participant in the UPR dialogue with states under examination. The UPR will be stronger over time for U.S. involvement in the Council.

### **Credibility of Membership: Expulsion**

A fourth area for assessment relates to kicking the worst of the worst off the UN’s main human rights body. When he was Secretary General, Kofi Annan criticized the Commission on Human Rights for lacking credibility, with human rights violating states on it. The Council improved upon the Commission by having a provision for bouncing a particularly odious government from its membership for flagrant abuses. When the United States was a Member, the Council proved in 2011 it could apply this provision to suspend Libya from its midst when the late Muammar Qaddafi threatened to exterminate opponents rising up against him (notably in Benghazi).

A second expulsion would enhance the Council's credibility beyond this singular case of Libya. Alas, this year – a year in which the United States still exerts some influence but not as fully while taking a required year off from membership – the Council failed to bounce a Member while atrocities were occurring there. Burundi is yet another case of a nation's president, Pierre Nkurunziza, seeking by irregular means to extend his tenure beyond established term limits, in 2015. Mass violence ensued. While a Member of the Council, atrocities there merited its ejection. Even getting enough states to back a Special Session on Burundi has been a truly uphill battle, notably due to misdirected African solidarity. That said, the Council did act to convene a special session on the crisis in Burundi and established the United Nations Independent Investigation on Burundi (UNIIB). UN investigators have inspected mass graves and met with detainees being held by the Burundi security services who were victims of cruel and unusual punishment. At the March 2016 session of the Council, one of Burundi's leading human rights defenders, Pierre Claver Mbonimpa, was able to make a statement on human rights abuses before the international community, in defiance of the Burundi government that had targeted him in an assassination attempt in August 2015 to stifle his human rights reporting.

### **Credibility of Membership: Elections**

Fifth, and last, is elections to the Council. Expulsion is the most extreme and negatively-defined method for boosting the credibility of the world's leading multilateral human rights body. The Council improved upon the predecessor Commission in two respects regarding elections for membership. First, the practice of regional groups putting up "clean slates" of candidate countries equaling to the quota of seats allotted to the region was counteracted by General Assembly elections with transparent rollcalls. Second, the norm was established for states to justify their candidacy by speaking to the merits of their human rights record, and even making pledges for future conduct and improvement. This norm suggested the grounds for voting on a candidacy was in fact *human rights*.

These two improvements, diplomatic activity by Western democracies, and especially mobilization by civil society organizations have beneficially affected the

credibility of the Council's elected membership. As such, candidacies of Sri Lanka before its recent liberalization, Iran, and Azerbaijan were defeated.

Nonetheless, neither of these two improvements have been foolproof. While open tallies are taken in elections, regional groups have still put up "clean slates" without giving the General Assembly a choice of more candidates than allotted berths for the region. Indeed, while in theory the most forward-leaning on human rights values, the Western European and Other Group, has undercut the credibility of competitive slates by putting up clean slates itself, and the United States has at times sought to assure victory with clean slates. (The high vote totals for the United States in running have shown that it need not fear running on a competitive slate.)

Secondly, that states offer "platforms" for their human rights record and commitments has not prevented some states from offering bogus rhetorical pledges or reprehensible rights abusers getting elected.

It is hard to convince decent states to run for the Council. Compared to other bodies which help bring home the bacon, as it were, of resource transfers and development benefits, devoting the time to winning and using a seat just may be more grief than it is worth. Even a decent, human rights respecting Global South democracy will find itself poked and prodded to vote with unsavory regional or global powers rather than to do the right thing. American diplomats complain to me how labor-intensive the recruitment of good candidate nations or campaigns to defeat repulsive states are. Yet, the United States has more wherewithal to mount such efforts than any other country, and it is necessary.

To convince good governments to run and countries to vote for the good candidates, the United States running for (in contested slates) and serving on the Council boosts our credibility.

If I can make one major recommendation for U.S. policy today, it is to oppose Saudi Arabia's reelection to the Council. Like the United States, Saudi Arabia is taking a required year off the Council due to term limits. The United States should prove that it will subject



an ostensible strategic ally to the same standards as other horrific autocracies, and not only oppose, but *lead* the campaign against Saudi Arabia being elected. An elected Member State with a record of gender Apartheid, religious persecution, executions at a level higher last year than in the previous twenty, exporting extremism by subsidizing Wahhabist schools of hate worldwide, helping Bahrain squash dissent, and using indiscriminate force in Yemen (blocking meaningful action on violations there at the Council) significantly undercuts the Council's standing. That is not reason for the *United States* to stay off the body; it is reason to fight like the dickens to prevent *Saudi Arabia* being reelected. Freedom House will be making that goal a primary focus of its UN-related advocacy in the coming months.

### **Conclusion: Back Onto the Council**

The implications of these assessments of the Council's performance over a decade, and the impact of U.S. leadership on the Council, are evident.

First, with the United States on the body, the Human Rights Council has improved and indeed offered some real value, in country-specific resolutions, thematic work, and the UPR giving "lift" to civil society voices in their own countries. Its work has been helpful, even vis-à-vis the Security Council where the U.S. has a veto – performing better than the latter on Syria and getting North Korea's atrocious human rights situation onto the latter's agenda. These benefits should not be breathlessly overstated, but the fear of those in the Administration in which I served that the Council was no better or was even worse than the Commission have proven too fatalistic.

Second, the very flaws and pathologies of the Council's work product argue not for boycotting it, but adding the United States' considerable weight to counteracting them. The institutionalized bias and way Israel is addressed more often and more harshly than due scrutiny merits is the reason to be *on* the body – to temper it. The danger of an unraveling of the U.S.-led victory for free expression over the misuse use of defamation of religion is reason to be there *in the arena*.

Third, the Human Rights Council needs greater solidarity of the democracies, across regions and across the North-South divide, for the universal values their polities ostensibly stand for. This is one reason Freedom House co-chairs the civil society pillar of the Community of Democracies – not just to help civil society actors on the ground in non-democracies, but to press democratic governments to increasingly act like a caucus within the UN, speaking up for democratic values. An effective democracy caucus at the Human Rights Council is a goal of the Community of Democracies, which the U.S. Government now chairs and will host the biannual ministerial meeting in 2017. It seems far from a plausible reality in the short term that the Community of Democracies could show more unity within the UN than the oddly named and even more oddly behaving Nonaligned Movement and G-77. Yet the UN is a legislature of sorts, and votes are won by caucuses which are not just regional but values-based. We know – we *know* – that solidarity among the democracies will not spontaneously come from emerging powers in the Global South, like Brazil, South Africa, and India. The Freedom House report *Supporting Democracy Abroad* demonstrates that fact. Indeed, that report shows that the U.S. and Europe back human rights and democrats’ aspirations beyond their borders far more actively than other democracies do. Let’s be plain: the EU is not to be expected to efficaciously lead the world’s democracies without the U.S. To expect Global South democracies to promote human rights energetically absent U.S. leadership is a fantasy. If not us, who?

Let us get out of our funk. The United States still has a lot more going for it than military power. For its occasional flaws (which Freedom House openly acknowledges in its reports), it has plenty of soft power and moral authority to offer for human rights – more than *any* other nation on Earth. And the Human Rights Council needs it. That Council has proven to be a glass half full, not half empty. It has proven it can add value to the lives of those whose dignity is under threat. And the U.S. has proven it can add value to its work. Even the most hardened critic of the Council (even friends of mine on this very panel) should recognize it won’t go away, and will do more good and less harm if the U.S. is on it, as a vigorous presence. In a body with blemishes, leadership and solidarity for democracy require that presence.

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<sup>i</sup> With thanks for insights from my colleague Ryan Kaminski at the UN Foundation, with whom I have conversed and written about these issues, let me elaborate for those interested in greater detail. U.S. engagement at the UN Human Rights Council facilitated a transition from Council resolutions focusing on the “defamation” of religion to resolutions on combatting religious intolerance. While outwardly this difference may seem superficial or a mere slight adjustment in “UN-speak,” this shift represents an unequivocal game changer for human rights advocates.

So-called “defamation of religion” resolutions first appeared in the former Commission on Human Rights in the late 1990s. As I argued in the *Georgetown Journal of International Affairs* in 2013 these resolutions “provided illiberal states a UN imprimatur for limiting freedom of speech and conscience of dissident voices and religious voices” under the guise of respect for a state’s preferred religion. A 2009 U.S. International Commission on Religious Freedom report cited the defamation resolutions as “an attempt to export the repressive blasphemy laws found in some OIC countries to the international level.” Recall, for example, Pussy Riot, was not originally jailed for insulting Vladimir Putin but for “inciting religious hatred.”

With expansion of U.S. engagement at the Council, support for these defamation resolutions started to erode. In 2010, for example, a defamation resolution passed by just three votes in the Council, a stark contrast from 1999 and 2000 when then defamation resolutions passed by consensus in the former Human Rights Commission.

One year later, in 2011, at the Council, a combination of U.S. State Department thought leadership, internal innovation, and cross-regional diplomatic engagement ended the ritual of passing these problematic resolutions contrary both to U.S. values and universal human rights. Instead of focusing on defamation, the U.S. delegation lobbied OIC states to pursue a groundbreaking new framework focused on combatting religious intolerance. Ultimately, this effort yielded a resolution that not only passed the Council by consensus, but also advanced U.S. values as well as universal human rights. The new text received praise from a wide spectrum of groups including: Freedom House, the Heritage Foundation, Human Rights First, Cairo Institute for Human Rights, Human Rights Watch, and the U.S. Commission on International Religious Freedom, among others.

Rather than focusing on “defamation” and “blasphemy” the new framework promotes religious pluralism, interreligious dialogue, as well as role of freedom of expression in combating religious intolerance. Regional dialogues convened by the UN Human Rights Office followed in Vienna, Nairobi, Bangkok, Santiago, Rabat, Jeddah, and Istanbul among other places that sought to connect the resolution with tangible implementation efforts on the ground. In 2012, President Obama succinctly summarized this strategy at the UN General Assembly declaring that, “The strongest weapon against hateful speech is not repression, it is more speech—the voices of tolerance that rally against bigotry and blasphemy, and lift up the values of understanding and mutual respect.”

However, there are some countries, including certain Council members, which hold out hope the Council will revert to the traditional “defamation” formula. Maintenance of the new Council consensus is by no means assured. Around the world, blasphemy and defamation are still cited all too often to restrict fundamental human rights and stifle dialogue. Nevertheless, from Freedom House’s perspective, strong U.S. engagement at the Council serves as a necessary bulwark to ensure a norm that emphasizes constructive dialogue on religious intolerance, repeal of blasphemy and defamation restrictions, and that religious freedom continues to be strengthened and concretized on the ground.

<sup>ii</sup> The UPR works best for smaller and newly democratic countries. It helps countries most where there is some space for civil society, and the latter is active. A country requires some political will by government to benefit from the UPR. Countries with hardened authoritarian states do not benefit much from UPR, nor do established democracies whose civil society do not necessarily need the UPR as a vehicle to expand their voice.