

Assessing the United Nations Human Rights Council

*Hearing of the Senate Subcommittee on Multilateral
International Development, Multilateral Institutions, and
International Economic, Energy, and Environmental Policy*

*Testimony by Hillel C. Neuer
Executive Director of United Nations Watch
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Chairman Young, Ranking Member Merkley, and Members of the Subcommittee, thank you for the opportunity to appear before you today to testify on the important matter of the performance of the United Nations Human Rights Council, the role of U.S. engagement, and possible options for reform.

The primary human rights body of the UN is the 47-nation Human Rights Council, which was created in 2006 by General Assembly Resolution 60/251, with the goal of replacing the Commission on Human Rights and redressing its shortcomings.

How has the council performed in its first decade?

Let us measure its performance by the yardstick of the UN's own standards. These were set forth in 2005 by then-UN Secretary-General Kofi Annan.

In calling to scrap the old Commission, Secretary-General Annan identified its core failings:

- Countries had sought membership “not to strengthen human rights but to protect themselves against criticism or to criticize others.”
- The Commission was undermined by the “politicization of its sessions” and the “selectivity of its work.”
- The Commission suffered from “declining professionalism” and a “credibility deficit” — which “cast a shadow on the reputation of the United Nations system as a whole.”¹

Today, almost 11 years later, we must ask: Has the council remedied these fatal flaws?

In creating the council, the U.N. General Assembly made clear its expectations for the new body:

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- Resolution 60/251 of 2006 promised that the new council would elect members committed to “uphold the highest standards in the promotion and protection of human rights.”
- Those committing gross and systematic violations of human rights could have their membership suspended, by a two-thirds majority vote.
- The council would in its regular work “address situations of violations of human rights, including gross and systematic violations.”
- A powerful tool was the ability of merely one-third of the members, only 16 countries, to convene urgent sessions.
- The council’s work would be guided by “universality, impartiality, objectivity and non-selectivity.”

A decade later, where do we stand? Have these expectations been met?

Kofi Annan’s call for reform had identified the issue of membership, as noted above, as a core failing of the old Commission. The entire work of the council stands or falls on the quality of its members.

Sadly, council membership remains dismal. Less than half the members meet basic democracy standards of a “Free” society as measured by Freedom House. The majority are human rights abusers of varying degrees.

Members include: Burundi, China, Congo, Cuba, Egypt, Iraq, Qatar, Saudi Arabia, United Arab Emirates, and Venezuela.

In 2001, speaking of the old Commission, Kenneth Roth of Human Rights Watch said this:

“Imagine a jury that includes murderers and rapists, or a police force run in large part by suspected murderers and rapists who are determined to stymie investigation of their crimes.”²

Sadly, a decade after the reform, these words apply even more today.

Turning A Blind Eye to Victims

Given this membership, it should not be surprising that, apart from a number of exceptions, the council has regularly turned a blind eye to the world's worst human rights violations. The council has failed the victims who are most in need of international attention.

Impunity for Worst of the Worst

- There have been no resolutions for victims in **China**, despite gross, systematic and state-wide repression, the unjust imprisonment of Nobel Laureate Liu Xiaobo and democracy leader Wang Binzhang, the massacre of Uighurs, and the killing of Tibetans;
- None for **Cuba**, where peaceful civic activists are beaten or languish in prison, and where the suspicious death of legendary dissident Oswaldo Paya remains uninvestigated;
- None for **Zimbabwe**, despite ongoing brutality by the Mugabe regime;
- None for **Turkey**, where more than 100,000 teachers, judges, academics, and government officials have been fired in the past year by President Erodgan's regime, with journalists like Orhan Kemal Cengiz indicted on trumped-up charges;
- None on **Saudi Arabia**, even as its military has killed thousands of civilians in its carpet bombing of Yemen, and even as it offers example and inspiration for the Islamic State through a regime that subjugates women, tramples religious freedom and conducts beheadings—all in the name of a fundamentalist theology which, over decades and with billions of petro-dollars, Saudi Arabia has propagated around the globe;
- None on **Russia**, even as it invaded Ukraine, swallowed Crimea, sparked bloody wars on its eastern and western borders, crushed

basic freedoms at home, and reportedly assassinated dissidents and journalists who dare to defy the dictatorship of Vladimir Putin;

- And the list goes on. More than 170 out of the UN's 193 member states have never been condemned by the council for any human rights violations. These governments have never been made the subject of a commission of inquiry, investigation by an independent expert, or an urgent session.

What is most troubling is that no resolutions have even been *proposed* regarding these gross violators.

Notably, while from 2006 to 2016 the council only condemned 14 different countries, even its discredited predecessor, in the 10-year period from 1991 to 2001, condemned 24 different countries. For this the minority faction of liberal democracies—France, Germany, the UK, the U.S. cannot blame others. Democracies that care about human rights ought to hold the worst abusers to account.

Universal Periodic Review: A Mutual Praise Society

The new Universal Periodic Review (UPR) mechanism, introduced in the 2006 reform, was supposed to be the council's saving grace. In theory, the fact that every country is reviewed under the UPR—even if it is only once every four years, and for only three hours—is a positive development.

In practice, however, most of the reviews have failed to be meaningful, effective, or noteworthy. During one session in 2009, Libya used the UPR to praise Cuba for “promoting freedom of thought and expression,” while China praised Saudi Arabia for its record on women's rights.

In 2013, China again used the UPR to praise Saudi Arabia—shortly after 53 Ethiopian Christians were arrested for praying in a private home—for its “religious tolerance.” The next day, Saudi Arabia praised China, which has trampled the human rights of the Tibetans, for “progress” in “ethnic minority regions, at the political, cultural and educational levels.”

With the exception of a small amount of meaningful questions posed by democracies, the UPR has amounted to a mutual praise society.

Elevating Apologists for Dictators

There are many UN human rights experts, known as Special Procedures or Special Rapporteurs, who do good work. For example, Dr. Ahmed Shaheed, the former Special Rapporteur on Iran, did an exemplary job of holding that regime to account for their abuses, even if the council's annual resolution, in contrast to that of the General Assembly, contains nothing of substance on the situation of human rights in Iran.

At the same time, on several occasions, the council has appointed experts who distort human rights.

One example is the council's 18-member Advisory Committee. Members in the past have included Halima Warzazi, who in 1988 shielded Saddam Hussein from being censured after he gassed Kurds in Halabja; Jean Ziegler, who co-founded the "Muammar Qaddafi International Prize for Human Rights," and who is still a member today; and Miguel d'Escoto Brockmann, who embraced the murderous rulers of Iran and Sudan.

Likewise, in 2015 the council appointed Idriss Jazairy as one of its human rights monitors, despite the fact that he is the same person who, as Algerian ambassador in 2007, personally directed an aggressive campaign to muzzle the council's human rights monitors, by imposing a "Code of Conduct."

Mr. Jazairy promptly made a UN visit to Sudan, not to criticize a government whose leader is wanted by the International Criminal Court for being a perpetrator of genocide, but rather to declare that Sudan was a *victim* of human rights violations, in the form of U.S. sanctions against that government.

Demonizing Israelis and Denying Their Human Rights

Nowhere is the chasm between promise and performance more pronounced than in the council's pathological obsession with demonizing Israelis and denying their human rights. The council's selective treatment of Israel is a standing and gross breach of its obligation to act "without distinction of any kind" and "in a fair and equal manner."

The council's persecution of Israelis has never been worse. From its creation in June 2006 through June 2016, the UNHRC over one decade adopted 135 resolutions criticizing countries; 68 out of those 135 have been against Israel—more than 50%.

More significantly, in qualitative terms, never before has the actual damage been greater in terms of human lives affected. The council's 2009 commission of inquiry on Gaza which produced the Goldstone Report—a 500-page document that excoriated Israel and exonerated Hamas—initiated a new era whereby a terrorist group has come to rely on the council as a reliable and powerful global tool in its war against Israel.

Knowing that the council and its appointed commissioners will condemn Israel based on a false effects-based evaluation of targeting judgments, Hamas been incentivized by the UN to launch rocket attacks against Israeli civilians while placing its own civilian population in harm's way. Thus the council's Goldstone Report contributed to the Gaza war of 2014, which produced an identical pattern of the council convening an urgent session condemning Israel from the start, and producing an egregiously flawed and biased report.

Another example of the council's intensifying assault on the human rights of Israelis is the March 2016 resolution which instituted a new UN black-list of companies doing business across the 1949 armistice line, whose goal is to have the UN implement the anti-Israeli BDS campaign — boycott, divestment and sections. By legitimizing coercive measures akin to the Arab Boycott of Israel, the council now seeks to strangle the economic life of Israeli citizens. High Commissioner Zeid should not allow his office to be complicit in this assault.

Special Agenda Item Against Israel

When the council's creation was debated in 2006, the UN's Department of Public Information distributed a chart promising that, in its words, the "agenda item targeting Israel" (Item 8) of the old commission would be replaced at the new council by a "clean slate."³ Although this course correction never came to fruition, it is important to note that a key UN document acknowledged the true nature of the agenda item: to target Israel.

Despite the promise of reform, the new council revived the infamous agenda item, now as Item 7. No other country in the world is subjected to a stand-alone focus that is engraved on the body's permanent agenda, ensuring its prominence, and the notoriety of its target, at every council meeting.

The council's credibility and legitimacy remain compromised as long as one country is singled out while serial human rights abusers escape scrutiny. Item 7 negates the council's founding principles of non-selectivity and impartiality.

Indeed, UN Secretary-General Ban Ki-moon criticized this act of selectivity a day after it was instituted. On June 20, 2007, Mr. Ban "voiced disappointment at the council decision to single out Israel as the only specific regional item on its agenda, given the range and scope of allegations of human rights violations throughout the world."⁴

Importantly, the U.S., the EU and other democracies as a general rule today no longer speak under Item 7. Rather, they voice any of their criticisms of Israel during the general debate on all country human rights situations, which is Item 4.

Content of Resolutions

What makes the resolutions on Israel different from virtually every other country-specific resolution is that they are suffused with political hyperbole, selective reporting, and the systematic suppression of any countervailing facts that might provide balance in background information or context.

By contrast, even the council's resolutions on a perpetrator of atrocities such as Sudan—whose president, Omar al-Bashir, is wanted for genocide by the International Criminal Court—regularly included language praising, commending and urging international aid funds for its government.⁵

A 2008 resolution on Sudan, for example, even as it expressed concern at violations in Darfur, failed to condemn the Sudanese government, and instead falsely praised the regime for its "collaboration" and "engagement" with the international community, for "measures taken to address the human rights situation," and for "cooperating fully with the Special Rapporteur."⁶

It suggested the regime was engaged in the “progressive realization of economic, social and cultural rights in the Sudan,” and failed to reflect the true gravity of the human rights and humanitarian situation. It called for support and assistance to the Sudanese government. A resolution adopted in 2010 was similar.⁷ None of this positive language, by contrast, appears in any of the resolutions on Israel.

Indeed, on one occasion, the council’s praise of the al-Bashir regime was so excessive that the EU actually voted in opposition to a resolution on Darfur.⁸

The practice of singling out Israel—not only with a disproportionate amount of resolutions, but with language that is uniquely condemnatory—constantly reinforces the impression that there is nothing whatsoever to be said in Israel’s favor. The effect, as the philosopher Bernard Harrison has carefully shown in his book *The Resurgence of Anti-Semitism*, describing this same phenomenon in other influential sectors, is to stigmatize Israel as evil.⁹

Former UN Secretary-General Kofi Annan has criticized this bias:

“I believe the actions of some UN bodies may themselves be counterproductive. The Human Rights council, for example, has already held three special sessions focused on the Arab-Israeli conflict. I hope the council will take care to handle the issue in an impartial way, and not allow it to monopolize attention at the expense of other situations where there are no less grave violations, or even worse.”¹⁰

Ban Ki-moon delivered similar remarks at the conclusion of his term in 2016.

Indeed, victims of human rights crises around the globe have been ignored. Worse, some special sessions have been used to legitimize violations. In 2009, Western states finally managed to convene a special session on Sri Lanka after it killed an estimated 40,000 civilians. Yet the council majority turned the draft resolution upside down and praised the Sri Lankan government for its “promotion and protection of all human rights.”¹¹

Conclusion: Reform of the UNHRC Has Failed

In conclusion, it is clear that, according to the UN's own standards, the promises of the council's founding resolution—improved membership, action for victims, an end to politicization and selectivity—have not been kept. Sadly, every one of Kofi Annan's criticisms of the old Commission apply equally to the new council.

Recommendations for the United States

I believe there are important actions that the United States can and should take to fight back and protect the American values which are embodied in the founding human rights principles and purposes of the United Nations.

1. U.S. Should Keep Its Membership and Lead the Opposition

The U.S. should hold on to its council membership in order to lead the opposition in an arena that influences hearts and minds worldwide. The council is a dangerous place. But we already witnessed in the 2006-2009 period how the absence of the U.S. failed to make the problems go away, and the situation only got worse. The U.S. should appoint an ambassador to the council like Daniel Patrick Moynihan, Jeane Kirkpatrick and Nikki Haley, who will go on the record on the council floor and speak truth to power. This will have the greatest impact. Articulate human rights advocates who have been outspoken opponents of U.N. double standards—such as Alan Dershowitz—ought to be considered.

2. The U.S. Should Oppose the Election of Violators

The U.S. should lobby UN member states to defeat the election of unqualified candidates, and speak out against the most egregious candidacies.

Regrettably, the U.S. was inexplicably silent when the murderous Libyan regime of Muammar Gadhafi was elected to the new council in 2010, as it was during the successful 2013 election campaigns of China, Russia, Cuba and Saudi Arabia. As a rule, it has failed to publicly oppose the election to the council of the worst human rights violators. This should end.

In a major 2012 policy speech delivered at the council on Foreign Relations, then-U.S. ambassador for U.N. reform Joseph Torsella declared: “In the case of membership on the Human Rights council, the U.S. will work to forge a new coalition at the UN in New York, a kind of ‘credibility caucus’ to promote truly competitive elections, rigorous application of membership criteria, and other reforms aimed at keeping the worst offenders on the sidelines.”

Sadly, this did not happen. The U.S. should encourage countries with the strongest record of commitment to human rights to run for UNHRC election in their respective regional groups. The U.S. should likewise encourage countries to choose candidates based on their record of protecting human rights at home and at the UN, and not based on political factors.

3. The U.S. Should Hold Abusers to Account by Introducing Resolutions

The U.S. should lead its allies in demanding accountability from council members that commit gross and systematic human rights violations. At every regular session, the U.S. and its allies should initiate measures that meaningfully name rights-abusing countries, unequivocally condemn their abuses, and directly attribute responsibility to the perpetrators.

Under the council’s founding Charter, Resolution 60/251, elected member states have special obligations including the duty to “uphold the highest standards in the promotion and protection of human rights.”

Yet the worst abusers on the council currently enjoy impunity. Of council members whose human rights records rank lowest on the Freedom House survey, rated as “Not Free,” only one—Burundi—has been the object of a resolution, and this occurred prior to its membership term.

The other abusers—China, Congo, Cuba, Saudi Arabia, United Arab Emirates, Venezuela, Qatar—have never once been the object of a single resolution, special session, special rapporteur mandate, or commission of inquiry.

Disappointingly, the council finds itself in an even lower position than its discredited predecessor. Even the Commission on Human Rights, despite all of its severe, systemic, and fatal defects, managed to strongly condemn Russia, for its

serious human rights violations in Chechnya; hold Cuba to account with a special human rights monitor; debate U.S.-backed draft resolutions on China; and hold confidential proceedings on Saudi Arabia. By contrast, under the supposedly reformed council, all of these measures of accountability were eliminated, and council members with the worst human rights records enjoy immunity and impunity.

Though resolutions addressing these regimes may well be defeated by the majority, the U.S. should end its unwritten policy of submitting texts only when they are likely to be adopted. As was proven by U.S. action more than a decade ago on China and other countries, the very introduction of draft resolutions would succeed in focusing the international community on severe country situations, generate worldwide publicity, and accomplish the desired goal of turning an international spotlight on abuses. To do otherwise effectively grants a veto on accountability to the abuser regime and its supporters.

4. The U.S. Should Convene Urgent Sessions on Gross Abuses

The U.S. should convene more urgent sessions on situations of gross human rights abuse. Support from only one third of the membership, or 16 states, is sufficient to convene a special session. While obtaining this amount of signatures is never guaranteed, it is achievable with a modest amount of U.S. diplomacy. Once the session is convened, it is true that any attempt to adopt a censure resolution may well be defeated by the majority, as happened at the May 2009 special session on Sri Lanka. Yet the very convening of an urgent session turns a powerful international spotlight on the violator.

Mass abuses committed in recent years—by China against its Uighur minority, Iran against protesters, Venezuela against opposition leaders—should have been the object of urgent sessions.

The U.S. should vigorously oppose, however, special sessions that serve no purpose other than distraction from core human rights priorities. Sessions held on the world financial and food crises—issues lying far outside the competence of the UNHRC—were designed to point an accusing finger at the West, and to create the false image of a council that seriously responds to pressing developments. The 2010 session on

the Haiti earthquake, initiated by Brazil—a meeting that involved no criticism of any government or human rights abuse—also fell in this category.

5. The U.S. Should Promote an Accurate Narrative on the council

The U.S. should provide a full and complete account of the council's performance. In recent years under the Obama Administration, at the conclusion of each regular session of the council, the U.S. State Department issued a set of talking points entitled "Key U.S. Outcomes." These reports described the council as being "at the forefront of international efforts to promote and protect human rights," and as a "more effective and credible multilateral forum." As a rule, these U.S. talking points reported only on perceived achievements, while ignoring the adoption of numerous harmful resolutions that were opposed by the U.S., as well as egregious council failures to address human rights emergencies. The effect of this narrative was to reduce pressure on the council to reform, and to likewise discourage other democracies from speaking out against council misconduct.

6. The U.S. Should Act to Eliminate the Anti-Israeli Agenda Item

The U.S. should act to eliminate the UNHRC's Agenda Item 7, which permanently singles out Israelis for differential and discriminatory treatment at every session, as well as other council measures that demonize Israelis and deny their basic human rights, including the right to life.

7. The U.S. Should Reform the UN Committee on NGOs

Finally, the U.S. should invest more efforts to defend NGOs from harassment by acting to reform the UN's influential 19-government Committee on NGOs in New York, which is increasingly misusing its approval and quadrennial review procedures, unduly politicizing what should be a strictly professional and technical process. The U.S. should act to dramatically alter the membership which currently includes—and is dominated by—Iran, Russia, China, Cuba, Pakistan, Venezuela, Turkey, Sudan (whose president is wanted by the ICC for genocide), Burundi (where there have recently been warnings of genocide), Mauritania (which has slavery), Nicaragua, Guinea and Azerbaijan.

Conclusion

Only if we act now, with conviction and vigor, will the world's highest international human rights body have any chance of improving on the fortunes of its failed predecessor.

I look forward to working with the Senate and this committee on these issues, to help reshape the UNHRC into an institution that is credible and effective for human rights victims, according to the noble vision articulated 70 years ago by Eleanor Roosevelt. I applaud your continued interest in this vital matter, and I welcome your questions. Thank you.

¹ See *Report of the Secretary-General*, "In larger freedom: towards development, security and human rights for all," March 21, 2005 (A/59/2005); and *Explanatory Note by the Secretary General*, Addendum 1 to "In larger freedom," May 23, 2005 (A/59/2005/Add.1).

² "Despots Pretending to Spot and Shame Despots," Kenneth Roth, *New York Times*, April 17, 2001 http://www.nytimes.com/2001/04/17/opinion/17iht-edroth_ed2_.html

³ UNDPI, "CHR vs. HRC: Key Differences." The chart had been posted on a UN website, but has since been removed. However, copies are available at http://www.kintera.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/HRC_PROMISES.PDF?tr=y&auid=2735018.

⁴ See http://www.un.org/apps/news/story.asp?NewsID=22984#.UsyFz_RQIk0.

⁵ Two related resolutions adopted on 14 December 2007 are illustrative. In A/HRC/RES/6/34, the council renewed the mandate of an expert on Sudan, yet it failed to condemn the government's massive human rights violations. Instead, the text praised Sudan for "cooperating fully" with the UN and urged countries to give money to the Sudanese government. The preamble demanded that the UN expert abide by the HRC's code of conduct, implicitly criticizing the monitor's work and weakening his standing. Similarly, in A/HRC/RES/6/35, the council expressed general concern at impunity in Darfur, but quietly abolished its group of experts mandated to monitor that region. The text failed to directly condemn the Sudanese government for violations, and instead praised Sudan for "cooperation," "open and constructive dialogue," and for its alleged efforts to implement recommendations. By contrast, no council resolution on Israel has ever praised its government for cooperation, or anything else, even when UN officials in their reports occasionally do so.

⁶ A/HRC/RES/7/16: "Situation of Human Rights in the Sudan" (27 March 2008).

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⁷ In A/HRC/RES/15/27, “The situation of human rights in the Sudan” (1 October 2010), the council renewed the mandate of an expert for one year, yet failed to mention the grave human rights situation in the country or hold the government accountable for its violations. Instead it repeatedly praised the Sudanese government: “Recognizing... the efforts of the Government of the Sudan in the promotion and protection of human rights...”; “Commends the cooperation extended by the Government of the Sudan to the independent expert and to the [UN] and [AU] missions...”; and “Congratulates the Government and the people of the Sudan for organizing and for widely participating in the April 2010 elections.”

⁸ HRC Decision 2/115 entitled “Darfur” (28 November 2006) noted with concern the human rights situation in Darfur, but failed to name the Sudanese government as a perpetrator. Instead, it extolled Khartoum’s positive measures and “cooperation,” and called upon the international community to provide “urgent and adequate financial assistance to the Government of Sudan.” In protest to the resolution’s gross imbalances, the EU and other democracies took the exceptional move of voting No, even though they strongly supported passing a resolution on Darfur and several aspects of that particular text. Yet the same logic is not applied by EU states when they vote each year to support approximately 15 imbalanced UNGA resolutions on Israel sponsored by the Arab and Islamic states.

⁹ B. Harrison, *The Resurgence of Anti-Semitism: Jews, Israel, and Liberal Opinion* (Rowman & Littlefield, 2006) at 67-70.

¹⁰ UN Secretary-General Kofi Annan, addressing the Security council, 12 December 2006, <http://www.un.org/News/Press/docs/2006/sgsm10796.doc.htm>.

¹¹ Resolution A/HRC/S-11/1, entitled “Assistance to Sri Lanka in the promotion and protection of human rights” (27 May 2009) was adopted by a vote of 29 to 12 (EU and other Western countries voting No), with 6 abstaining. The text “[w]elcomes the continued commitment of Sri Lanka to the promotion and protection of all human rights.”