

The UN Human Rights Council

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Mr. Chairman:

Thank you very much for inviting me to testify at this hearing and for your attention to the UN Human Rights Council.

In its first year, the Human Rights Council has failed to take action regarding countries facing human rights crises such as Burma, Colombia, Somalia, Turkmenistan and Zimbabwe, ended the mandates of human rights experts on Belarus and Cuba, and rolled back its consideration of the deteriorating situations in Iran and Uzbekistan. At the same time, it focused disproportionately on Israel's human rights record and worse still, did so in a manner doomed to be ineffective because it failed to look comprehensively at the situation, including the responsibilities and roles of Palestinian authorities and armed groups. On these points, all of those testifying before you today are likely to agree. But on the two crucial questions of why the Council has disappointed, and what are the prospects for improving its performance, opinions differ widely. I hope to shed some light on those points in this testimony.

Of course, the Council's troubling performance was in some ways unsurprising. The US, which was one of only four states that voted against the Council's creation, did so because the General Assembly resolution creating the Council contained insufficient guarantees to keep states with poor human rights records off the body. The US can hardly play the hero in this drama however. Under then UN Ambassador John Bolton, the US managed both to neglect the negotiations to establish the Council and to push pet proposals that detracted from the goal of building a stronger body. The US undermined its demands for rigorous membership criteria, for instance, by its own failure to ratify core human rights treaties, such as the Convention on the Rights of the Child. And the US push for a smaller council backfired dramatically when reducing the body's size led to a redistribution of seats that took seats away from the regional groups most friendly to human rights ("Western Europe and Others" and "Latin America and the Caribbean").

But the Council's membership is only part of the story. By most measures, the percentage of states in this new body that can be expected to support human rights is slightly improved. The number of Council members counted by Freedom House as "free" increased from 45% of the Commission to 55% of the Council; the number of members of the Community of Democracies increased from 62% to 76%. Yet human-rights supporting states in the Council have clearly been on the defensive, and have been able to successfully push for action on only one country

situation – Sudan’s abuses in Darfur – in the past year. Two other important factors help explain the Council’s weak performance.

The Council’s failures reflect the disturbing state of the global political environment. The war in Iraq, Guantanamo, secret prisons, torture and unlawful rendition have reverberated worldwide, including at the Human Rights Council.

Mr. Chairman, this Committee is well aware of the larger problems the US faces in advancing its interests across the globe today. The US loss of moral authority and influence has had an impact on every issue the US pursues in every forum, and the Human Rights Council is no different.

The Organization of the Islamic Conference (OIC), the only active cross-regional coalition at the Council, has been successful in harnessing ill-will towards Bush administration policies to pursue an agenda aimed more at protecting than condemning human rights abusers. The divide between the “northern” developed states and the “southern” developing world has never been greater, and infects all policy debates within the Council. States that might have been expected to push a strong human rights agenda at the Council, like South Africa, have found it convenient to play to those tensions, and have refused to take even small steps that could be seen as criticizing another developing country. While the US has played a relatively active role as an observer at the Council, the absence of the US from the Council’s membership has created a leadership imbalance that the EU has been unable to remedy.

The Council’s shortcomings in its first year also reflect the poor performance of human rights supporters. Despite expressing their commitment to building a strong Council, such states routinely failed to invest the political capital and resources necessary to make that goal a reality. Making the Council a priority would have meant bolstering the staff of Geneva missions which were ill-equipped to deal with a body that now meets year-round and had a dual-track agenda involving both institution-building and its regular business, as well as appointing senior envoys who could engage in an effective and sustained manner in capitals.

Given the Council’s weak record so far, what hope is there that continuing engagement will improve the picture?

Mr. Chairman, despite the international political landscape and the limitations inherent in any intergovernmental body such as the Human Rights Council, intensified engagement by human rights supporters in the Council could still make a difference. Beginning this year, the Council will scrutinize for the first time the human rights situations in all UN member states through the new Universal Periodic Review. This process is the greatest innovation in the Council, and will counter the selectivity that discredited the Commission on Human Rights and has already damaged the Council. Of course, some states have already revealed that they would prefer a whitewash to an effective review. But this review provides an unprecedented opportunity for public scrutiny of state’s human rights records, which could be a valuable lever to encourage governments to take concrete steps on human rights abuses, if the process is properly supported.

In addition, the human rights experts appointed by the Council to address both thematic and country situations could also push the Council forward in the coming year. The Council has for

the first time afforded these experts a real opportunity to present their findings and recommendations, a step that increases the pressure upon governments to respond. These experts have also come together to address urgent issues – including Darfur, where an expert group has developed indicators that should help hold the Sudanese government to account for ongoing abuses. But the Council’s human rights experts face continuing attacks from states with poor human rights records, a testament to the fact that the experts are indeed seen as a threat. Those states succeeded in ending the mandates for experts on Cuba and Belarus, but failed in their efforts to eliminate the system of country experts altogether. Without continuing engagement by human rights supporters, these experts face threats to their independence and existence. With support from states such as the US, this system of human rights experts can be maintained and strengthened.

States do not change their abusive practices lightly, and when they do they rarely acknowledge that they are responding to pressure from outside. Counting the lives that have been saved or the abuses that have been ended due to the work of an institution like the Human Rights Council will never be easy. But one example from the Council’s predecessor, the Commission on Human Rights, provides hope that the Council could have such an impact in the coming year. In 2005, the possibility that the Commission would adopt a resolution on Nepal led the Nepalese government to agree to deployment of a UN human rights monitoring mission, a step that contributed to a dramatic improvement in the human rights situation in that country.

Today, organizations like Human Rights Watch are pushing the Human Rights Council to take up the situation in Sri Lanka, where we believe a human rights monitoring mission could make a real difference. In the Council’s first year, the situation in Sri Lanka took a backseat to reaching agreement on a package of measures on the Council’s working methods and agenda. In the coming year, states that are committed to human rights have the opportunity to identify a limited number of priorities, including Sri Lanka, where engagement by the Council could save lives.

The Council’s detractors have been vocal in identifying its many shortcomings. What is missing from those critiques, however, is an analysis of the alternatives. The Council is an intergovernmental body that is not surprisingly subject to all the flaws inherent in policy-making by a group of states with disparate interests and agendas. In deciding about the Council’s fate, we need to be realistic about the options, if we agree that some sort of international human rights body is useful. The advantage of the Human Rights Council is that it represents all regions of the world and allows states to engage peer-to-peer, including with human rights abusers. Election of the Council’s members by a universal vote adds to the Council’s legitimacy, and hence to its potential for effectiveness. An institution made up overwhelmingly of northern, developed countries would be more likely to adopt resolutions on human rights abuses, but would be substantially less able to influence governments perpetrating human rights abuses and stop those violations from happening.

The only other institution that could leverage the condemnation of peers to address human rights abuses is the UN General Assembly. But the General Assembly hardly presents an appealing alternative. The General Assembly suffers from the same shortcomings as constraints as the Human Rights Council, and its record gives little hope that it would be more willing to take action on human rights abuses than the Council. The Council’s membership can be improved by

intensified efforts in yearly elections, while the General Assembly's universal membership offers no such prospect. Giving the General Assembly exclusive jurisdiction over human rights issues would mean eliminating the Council's system of human rights experts, and abandoning the process of universal periodic review before it has begun. The General Assembly would be able to devote only a fraction of the time and resources to human rights that a specialized body meeting year round can.

Given these facts, deciding to cut off funding for the Human Rights Council may succeed in signaling dismay over the Council's record, but does nothing to help human rights victims. If the US truly wants a stronger human rights body, it should stop distancing itself from the Council and instead work harder to improve this new body. Such efforts can pay off.

This May, Belarus – a state with an appalling human rights record – failed in its bid to become a Council member, largely because of a determined campaign by a few states, including the US, and a group of NGOs, including Human Rights Watch. Yet in the same elections, only two candidates competed for Latin America's two open seats: Bolivia and Nicaragua. Surely the US has the ability to encourage stronger human rights partners from this region to contend for Council membership. The Africa group again insisted on putting forward a "clean slate" with only as many candidates as the number of seats available, composed of Angola, Egypt, Madagascar and South Africa. If the US cannot convince its allies in Africa to stop this practice, it should at least be able to encourage human rights supporters in Africa to insist on a better slate of candidates.

The Human Rights Council is a political body made up of states, and its success or failure depends on how those states perform. Instead of holding the Council itself responsible for its disappointing first year, the US should consider directing its attention to allies like South Africa, India and Pakistan which played leading roles in pushing the Council onto the wrong track (and which voted in favor of every resolution adopted by the Council on Israel).

Mr. Chairman, proponents of human rights in the US Congress should continue to express their dissatisfaction with the Council's shortcomings. But those complaints should not be the end of the story. Writing off the Human Rights Council with no reasonable alternative in sight would send a devastating signal to human rights victims throughout the world. Instead, human rights supporters should focus their attention on holding bad performers at the Council accountable, and pushing for action on priority issues such as Sri Lanka.