

**THE U.N. HUMAN RIGHTS COUNCIL:
SHORTCOMINGS AND PROSPECTS FOR REFORM**

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS
AND
ORGANIZATIONS, DEMOCRACY AND HUMAN RIGHTS
OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

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THE U.N. HUMAN RIGHTS COUNCIL: SHORT-COMINGS AND PROSPECTS FOR REFORM

THURSDAY, JULY 26, 2007

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND
ORGANIZATIONS, DEMOCRACY AND HUMAN RIGHTS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Bill Nelson (chairman of the subcommittee) presiding.

Present: Senators Nelson, Menendez, and Vitter.

OPENING STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator BILL NELSON. Good afternoon. Unfortunately our member of the committee, Senator Coleman's father has died. And so he, obviously, is not going to be here. This just happened, and Senator Coleman will be issuing a statement for the record, which of course will become part of the record.

Senator Menendez, did you have an opening statement?

Senator MENENDEZ. I will wait for questions.

Senator BILL NELSON. I want to welcome everybody. And we're going to be looking into the United Nations' new human rights body. And the Assistant Secretary, I appreciate you being here. We look forward to your testimony and also a distinguished panel of experts from the nongovernmental community.

In March 2006, the United Nations General Assembly disbanded the former Human Rights Commission. It was a Commission that had been widely criticized for many things, including inclusion of human rights abusers as members. The General Assembly created a different body: The Human Rights Council. This new, leaner body was intended to improve the quality of the membership, making Member States accountable and subject to periodic investigations of their human rights records.

By elevating the Council to report directly to the General Assembly, reformers hope to be able to take swifter action in dire circumstances. But a year later, after its creation, we now find ourselves examining the record of a Council that is supposedly devoted to promoting human rights all over the world, which nonetheless, the record shows, has failed to take any action on grave crises, such as the Sudan. Has failed to renew the mandates of the Special Rapporteurs for Cuba and Belarus, and has regularly passed one-sided resolutions, singling out Israel. Eleven such measures criti-

cizing Israel to date. And what about North Korea? What about Burma?

When I raised these concerns privately with the Secretary General of the United Nations, he shared my concern regarding the unmet expectations of the new Council. He spoke favorably of the Council's strong commitment, not to politicize its activities. And he told me he would continue to urge the Council to proceed with its system of universal periodic reviews. These investigations, intended to shed light first on the 47 members of the Council, has not begun.

I am a supporter of the United Nations. I'm a great admirer of people like the Secretary General and his efforts to reform the United Nations and for people like him who have dedicated their lives to world peace.

I also believe that we should treat each other with mutual respect and with truth and candor. Speaking in Geneva last month, the Secretary General emphasized, himself, the importance of considering all situations of possible human rights violations and considering them equally.

The U.N. Human Rights Council, in my opinion, has yet to demonstrate its commitment to all of the countries of the world—dealing fairly with them, dealing quickly, and dealing justly, with regard to human rights abuses, whenever they may occur—in order to protect the world's most vulnerable citizens.

So, the questions before us are, if we are not there yet, is this Council at least headed in the right direction? Is it, or will it be, any better than what we had before? And if not, what do we do about it? We have already reformed the U.N.'s human rights apparatus once and the result has been called seriously flawed recently, by a State Department spokesperson.

There are those who will argue strongly in favor of continued engagement to achieve progress in human rights. I look forward to hearing from our participants today on whether such participation is warranted and to what extent the United States should support the Human Rights Council. How can we affect positive change?

Senator VITTER, I have just concluded my statement. Did you have a statement before we go to our Assistant Secretary Silverberg?

Senator VITTER. I do not. I'm anxious to hear from our distinguished guests and witnesses and certainly follow up with questions.

Senator BILL NELSON. Madame Assistant Secretary.

STATEMENT OF HON. KRISTEN SILVERBERG, ASSISTANT SECRETARY, BUREAU OF INTERNATIONAL AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC

Ms. SILVERBERG. Mr. Chairman, Senators, thank you for convening this hearing. I'd like to offer the Department's condolences to Senator Coleman and his family. I know, of course, his strong interest in these issues so I will look forward to following up with him when he returns.

Since the founding of the United Nations, the United States has worked to make that body a champion for people living under oppressive governments. We've worked for the United Nations to ne-

gotiate international treaties on human rights, to provide technical assistance and training to governments and NGOs, and when necessary, to condemn the actions of governments who seriously commit human rights violations. Governments like Burma and Cuba and North Korea and Sudan.

And so we have viewed the failures of the Human Rights Council with significant sadness. We see a great need for a strong and effective multilateral fora on human rights and we are deeply skeptical that the U.N.'s Human Rights Council will, at least in the near future, play a constructive role in those efforts.

You are all well aware of the sordid history of the Commission on Human Rights, the Council's predecessor, as you, Mr. Chairman, laid out. Kofi Annan characterized that body as a shadow on the United Nations. And so we helped lead the effort in the General Assembly to replace the Commission with a Council. When those negotiations fell victim to—in our view—G-77 politics, and also a lack of political will by some democratic states, we voted against the resolution creating the Council and did not run for a seat on the Council that May. Nevertheless, in the first year of the Council we remained actively involved in Geneva.

Secretary Rice, Under Secretary Burns, Assistant Secretary Lowenkron, and I, along with our regional Assistant Secretary counterparts, raised the Human Rights Council with our foreign counterparts. Assistant Secretary Lowenkron and I—along with our Deputies and Ambassador Joseph Rees—traveled to capitals to raise Human Rights Council issues. And of course, our delegation in Geneva, led by Ambassador Warren Tichenor, remained actively involved in Human Rights Council matters.

Despite our best efforts in this regard, the Council has been remarkably a step backward, in our view, from its predecessor. It has passed 13 anti-Israel actions and some weak noncondemnatory actions on Sudan, and it has done nothing of note on Belarus, Burma, Cuba, North Korea, Turkmenistan, Uzbekistan, or Zimbabwe. We were especially dismayed by the final session of the Council's first year, which was focused on completing the institution-building package; the rules and the systems that would define the Council's operations. At the end of this session, in a back-room deal, concluded in the dark of night without agreement from the full Council, a small group of members decided to push through a final agenda that singled out Israel as the only country subject to a permanent agenda item and to eliminate the Special Rapporteurs on human rights for Cuba and Belarus, giving those undeserving governments a victory before the Council had acted to address other critical issues.

I should note that throughout these discussions, Canada—which has been a stalwart defender of human rights—and a few select allies remained firm in their principled opposition to this deal. We think there are a number of reasons for the Human Rights Council's failure in this first year.

One is the makeup of the Council. Twenty-eight of the Council's forty-seven seats are held by members of the Non-Aligned Movement, a group that typically supports economic and social and cultural rights over civil and political rights. Seventeen of the NAM members are also members of the organization—the Islamic

Conference. And the decision of this membership to make Israel-bashing a priority of the Council hasn't done much to enhance its credibility.

We think that the failure of the Council is a failure of Member States, rather than a failure of the United Nations as an organization. I'd like to quote one former Ambassador to the United Nations, who said that, "blaming the United Nations for what happens inside the tall palaces on the East River is like blaming Madison Square Garden for a poor showing by the New York Knicks." Ambassadors who show up in Geneva are there with instructions from their capitals, and those instructions are what will determine whether this Council is a success or a failure. This is a responsibility of the Member States who make up the Council.

Some of our traditional allies have correctly pointed out that there are some positive outcomes from Geneva. One is the—or I should say potentially positive outcomes from Geneva—the universal periodic review, which you mentioned, where the Council will evaluate the human rights records of each United Nations Member State. We think this has potential to do good, but there are some real risks involved in the process. No special importance will attach to particular governments' human rights, no matter how unaccountable or abusive they've been in the past. So, Sudan will get the same scrutiny as Norway. And there's a real danger that this universal periodic review produces reports that suggest that because we all have human rights issues, we're all equally bad.

We hope, of course, to be wrong in our skepticism about the Council. We hope that Council members will rise to the occasion; will stand up for our shared values of the Council. However, we're not optimistic, to be honest. We therefore think we need to redouble our efforts in other multilateral fora. There are many important ways for the United States to engage on human rights issues, promoting direct technical assistance to strengthen institutions in developing countries. And so, to that end, we've supported doubling the resources of the Office of the High Commissioner for Human Rights.

We've supported the U.N. Secretariat's Electoral Assistance Division, which does good work worldwide in election monitoring and training. They lent logistical and strategic support to over 20 elections in the last year. We remain very hopeful that the U.N.'s General Assembly's Third Committee can play a constructive role. We had good success in both 2005 and 2006, passing some strong resolutions condemning the world's worst violators and we'll continue to do that in the following year. And finally, we'll work to strengthen coalitions with our allies, as well as encourage better regional partnerships.

With the ministerial level conference being held in Mali in 2007, the Community of Democracies has potential to become a more robust organization. We are deeply engaged in helping to promote the human rights efforts of other organizations like the OECD, the OAS. We've increased outreach to the African Union on human rights issues and we are in the initial stages of establishing an exciting new forum for Asian countries to focus on democracy promotion.

So with that, I look forward to your questions.
 [The prepared statement of Ms. Silverberg follows:]

PREPARED STATEMENT OF HON. KRISTEN SILVERBERG, ASSISTANT SECRETARY FOR
 INTERNATIONAL ORGANIZATION AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC

Mr. Chairman, thank you for convening this hearing to discuss the U.N. Human Rights Council (HRC) at the end of its first year. I appreciate the opportunity to present the Department's views.

U.S. AND MULTILATERAL HUMAN RIGHTS WORK

Since the founding of the United Nations, the United States has worked to make that body a champion for people living under oppressive governments. The United States has worked through the United Nations to negotiate international treaties on Human Rights, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We have worked through the United Nations to provide technical assistance and training. For example, we are today the largest funder of the Office of the High Commissioner for Human Rights. And, when necessary, we have worked through the United Nations to condemn the actions of governments who have committed serious human rights violations, such as Burma, Cuba, North Korea, and Sudan. Although we remain committed to supporting human rights in the multilateral system through the United Nations, we are deeply skeptical that the U.N.'s Human Rights Council will, in the near future, play a constructive role in our efforts. I am grateful for the opportunity to talk with you about the problem as we see it and to discuss with you some of the options for addressing it.

HISTORY OF THE U.N. HUMAN RIGHTS SYSTEM

The United Nations Commission on Human Rights was founded in 1947 to be the global body for the protection and promotion of human rights. By the start of this decade, however, the Commission had become a highly politicized refuge for serial abusers, such as Sudan, Zimbabwe, and Syria, who sought to use membership in the body to protect themselves from international scrutiny. In 2001, Sudan won a seat on the Commission while the United States, a member since the body's inception in 1947, failed to win reelection. After 2003, when Libya was elected President, Kofi Annan characterized the body as "a shadow on the United Nations." In the 2005 U.N. 60th anniversary World Summit Outcome Document, the United States led the call in the General Assembly for a new body to replace the Commission. To ensure the body would be credible and effective, we said that membership should require elections by a two-thirds majority and that nations under U.N. Security Council sanctions for terrorism and human rights-related reasons should be excluded from membership.

NEGOTIATING THE CREATION OF THE HRC

Throughout the negotiations to create the Human Rights Council we confronted expected resistance from antidemocratic states, but we were disappointed that many democratic countries with strong human rights traditions were willing to compromise on the final outcome, making it impossible to agree even on the most modest safeguards against the problems that led to the Commission's loss of credibility. Because of our deep dissatisfaction with the Council's structure and rules, we voted against its creation in March 2006 and did not run for a Council seat that May. However, we decided to stay actively engaged as an observer at the Council.

In this first year, we have worked actively with our allies and other democratic countries in order to help the Council meet its mandate to protect and promote human rights. Secretary Rice, Under Secretary Burns, Assistant Secretary Lowenkron and I, along with regional Assistant Secretaries as necessary, raised Human Rights Council issues with our counterparts. Assistant Secretary Lowenkron, his Deputies, and I, along with Senior Advisor Ambassador Joseph Rees, traveled to capitals to raise Human Rights Council issues. And of course, our delegation in Geneva, led by Ambassador Warren Tichenor, remained actively involved in Human Rights Council matters.

Unfortunately, despite our best efforts, the Council has been worse than its predecessor. It has passed 13 anti-Israel actions and 3 weak, noncondemnatory actions on Sudan, and it has done nothing on Belarus, Burma, Cuba, North Korea, Turkmenistan, Uzbekistan, or Zimbabwe. We were especially dismayed by the most recent and final session of the Council's first year, which was focused on completing the "institution-building" package, the rules and systems that define the Council's

operations. At the end of the session, in a back room, in the dark of night, without a vote, a small group of Council members decided to push through a final agenda that singled out Israel as the only country subject to a permanent agenda item and to eliminate the Special Rapporteurs on human rights in Cuba and Belarus, giving those undeserving governments a victory before the Council had acted to address other critical cases.

We found it troubling that some of the most democratic members of the Council supported these measures in order to achieve consensus on the seriously flawed institution-building package. We were particularly disturbed that the decision was made to deny Canada and other allies their procedural rights to call for a vote on the package.

REASONS FOR THE HRC'S FAILINGS

The Commission was a subsidiary body of the Economic and Social Council and the regional distribution of its 53 seats reflected that organization's slight Latin American, Eastern Europe, and Western Group majority. The Human Rights Council, however, is a subsidiary of the General Assembly, and its geographic distribution mirrors the substantial Asian and African membership of its parent body. In its first year, 28 of the Council's 47 seats were held by members of the Non-Aligned Movement (NAM), a group that typically supports economic, social, and cultural rights over civil and political liberties. Seventeen of the NAM members were also members of the Organization of the Islamic Conference. The decision of the NAM-dominated membership to make Israel the primary focus of the Council's scrutiny has done much to undercut its credibility. The Council's membership includes some members that routinely violate the rights of their citizens, such as Cuba. We have been clear from the beginning that the credibility of the Council would depend on its ability to act on the most egregious cases of human rights abuse globally—to make a difference for the victims of abuse. We are deeply disappointed in the Council's failure to act to hold to account governments that systematically abuse their people.

We believe that the primary responsibility for these failures of the Human Rights Council lies with Member States, rather than the United Nations as an institution. In the words of one former U.S. Ambassador to the United Nations, "Blaming the United Nations for what happens inside the talk palaces on the East River is like blaming Madison Square Garden for a poor showing by the New York Knicks." The United Nations deliberative bodies reflect the views of Member States who send their ambassadors instructions.

UNIVERSAL PERIODIC REVIEW PROCESS

As one positive outcome of this first year, some of our traditional allies have correctly pointed to the Universal Periodic Review, during which the Council will evaluate the human rights record of each United Nations Member State. However, there are some real risks that this process will not work as intended. The cumbersome review process will take at least 4 years for the Council to review all Member States, and no special importance will be attached to reviewing the governments with the worst human rights records. Norway will be as high a priority as Sudan. Even more important, the quality of the review process and the final decisions that will result from the reviews will be constrained by the extent to which HRC members are committed to putting human rights principles above international politics.

NEXT STEPS

We hope to be wrong in our skepticism about the Council's future. We hope that Council members, especially the nearly one-half of the members that are democracies with good domestic human rights records, will stand up for our shared values at the Council and work to set it on the right track. However, based on what we have seen to date and the underlying structural flaws in the way the Council was created, we cannot be optimistic. We believe the United Nations should take a leading role in human rights work, but we have serious questions about the Human Rights Council's ability to contribute materially to such work.

We therefore need to redouble our efforts in other multilateral fora. There are many important ways for the United States to engage in multilateral human rights through the United Nations. Among them are direct technical assistance to strengthen institutions in developing countries and human rights monitoring and training. We have supported increased resources for the Office of the High Commissioner for Human Rights to increase cooperative technical assistance to Member States. It can be far more cost-effective to provide support for fieldwork rather than for a Geneva-based bureaucracy. For example, the U.N. Secretariat's Electoral As-

sistance Division has done good work worldwide in election monitoring and training. U.N. officials lent logistical and strategic support to over 20 elections in the last year and a half alone, including in Afghanistan, the Palestinian Authority, Iraq, and Burundi.

We also remain hopeful that the General Assembly's Third Committee can play a constructive role. In both 2005 and 2006, the Committee passed strong resolutions condemning some of the world's worst violators. We will work with allies to focus on key priorities, in particular on abuses the Council has failed to address.

Additionally, we will strengthen coalitions with our allies as well as encourage better regional partnerships. With the ministerial-level conference being held in Bamako, Mali, in 2007, the Community of Democracies has the potential to become a more robust organization. The United States is deeply engaged in the human rights work of organizations such as the Organization of Security and Cooperation in Europe and the Organization of American States Inter-American Commission on Human Rights. This year we increased outreach to the African Union on human rights issues. And, we are in the initial stages of establishing a similar forum for Asian countries to focus on democracy promotion.

CONCLUSION

As we have seen, the Human Rights Council is a troubled organization that increasingly appears unable to carry out its mandate to promote and protect human rights around the world. We must redouble our efforts to work in effective fora on behalf of the world's vulnerable people.

Senator BILL NELSON. Senator Menendez.

Senator MENENDEZ. Well, thank you, Mr. Chairman.

Madame Secretary, thank you for your testimony.

I have to be honest with you. It's amazing to me that not just the Council—but where is our diplomacy? I agree, I think you said the Knicks, right? All right, I just want to make sure it's not the Nets. [Laughter.]

Senator MENENDEZ. I would be upset if it was the Nets.

The, you know, where is our diplomacy? As you say, it's the member countries at the end of the day that are going to have their Ambassadors reflect those votes. And I look at, for example, what happened with the Council and the Special Rapporteurs on Cuba and Belarus being eliminated. And it seems to me that it is an abdication by Mexico, and what I had thought was its commitment to human rights, that moves in a different way. But where was our engagement and our advocacy from government to government with Mexico? Where was our engagement from government to government with a whole host of these other countries?

You know, if you are languishing in Castro's jails in Cuba, the elimination of the Special Rapporteur is not welcome news. If you are one of the human rights activists trying to create civil society inside of Cuba, you are not welcoming the Council's action. If you are one of the political independent journalists or economists or political dissidents inside of Cuba, often who are jailed for their activity, you are not welcoming the Council's actions.

So, you know, I look at Mexico and Chairman de Alba and I wonder, where were we, though, in that respect? I wonder whether we are taking the right role in simply criticizing—although it is certainly—it is more than meritorious of criticism, the Council's actions—but where is the leadership? Where is the leadership of the democratic countries in the world, in this respect?

And I look at it and it seems that Israel, in addition to getting rid of the Special Rapporteur—Israel is reserved as the only—the only country in which we have established one permanent and special agenda item. It's beyond amazement; beyond amazement.

And then finally, the process here, you know, to herald that we're going to have all of the countries go through a review, and suggest that that's a victory. Well, as you suggest that, in fact, everybody is the violator at the end of the day, and we will judge it on equal terms. But beyond that, it also seems to me that that whole process is yet to be defined as to how it's going to take place. And that can be totally manipulated as well.

And so I—yes; there's plenty to condemn in my mind, big time, about the Council. And I think this Council, so far from what I see, is no more promising than the Commission. And I don't see this as reform. But what really bothers me is: Where is our leadership in this regard? It seems to me to be, to have been subverted to a whole host of other things. And maybe it is that we don't have the ability, for so long as we're bogged down in Iraq and other places, to lead. I would hope that we can. But where's our leadership? Where were we with the Mexicans? Where were we with the others in trying to move this agenda in a different direction, even if we had decided not to be a Council member?

Ms. SILVERBERG. Senator, thank you.

I agree with you entirely that U.S. leadership is essential, it's critical. The United Nations will not act on human rights issues without a strong U.S. hand pressing these agenda items. We repeatedly raised this issue with the Mexicans throughout Chairman de Alba's time in the chair. We raised it in Geneva, in fact, Ambassador Tichenor on this final night when the decision was made in the back room—illegitimately, in our view—as in the negotiations until midnight. Our Ambassadors in capitals—not just in Mexico City, but really for all the Council members—are very accustomed to getting requests from me to deliver demarches, noting our strong concern with some of these agenda items. Secretary Rice raised it personally with her Mexican counterpart and Canadian counterpart in their last meeting.

I've traveled personally on these issues, and Ambassador Rees—sitting behind me—has been getting a lot of frequent flier miles on his trips to Latin America, to Africa, and to Asia to press Human Rights Council's issues. Barry Lowenkron did as well.

So, I think there was no question in the mind of any Human Rights Council member where the United States priority was on keeping the Cuba and Belarus mandates. I think if not for our engagement, we would not have been able to persuade the member governments who were prepared to raise objections to this final agenda item. I think that our lobbying, in that regard, made a big difference.

But as I said, at the end of the day there was major procedural irregularity that denied those countries the right to object. There was a circumvention of the Human Rights Council rules. And I've raised our concerns directly with the Mexican Government on their representative's role in that.

Senator MENENDEZ. Now, what was their response?

Ms. SILVERBERG. They stated, I think correctly, that a chairman of a committee has a responsibility to try to negotiate a deal and we didn't object to him trying to reach a consensus agreement. But there wasn't, at the end of the day, a consensus. And so, our objec-

tion was that the Canadians and others should have been allowed to call for a vote.

You know, the Mexican Government is one of our closest partners on these issues. We've worked so constructively with them on a range of issues. So really, to us, it was a disappointment, partly because we think it was a violation, it was an abandonment of their priorities and values, to agree to this final deal.

Senator MENENDEZ. Well, maybe if we keep building walls, things will improve.

Let me ask you this: What's our role now? I mean, to be very honest with you, it sounded like we are impotent at the end of the day. That's what, I mean, I hear about your demarches and the participation, but it didn't produce very much. It didn't even produce the ability to achieve a success on a procedural vote. Where are we at in terms of pursuing an aggressive human rights policy, as it relates to the Council?

I mean, we have a third of the way this is structured with these regional entities deciding who goes on, for example. Maybe the reason that Israel is the only country in the world that has a permanent agenda item is because a third of the entire Council comes from the membership of the Islamic Council. That might be a reason.

Ms. SILVERBERG. I think—I do not think the United States is impotent on these issues. I still think we have a lot of levers we can use to press human rights concerns multilaterally.

And just to give you some examples: Security Council in a way the United States has not frequently done so, to help bring human rights issues that have a connection to threats to international peace and security into the Council. We've done that over the objection of some of our allies on the Council, but we've really tried to use that opportunity selectively and strategically.

President Bush's engagement with human rights dissidents around the world and Mrs. Bush's engagement as well, has been a way that we can help drive our U.N. agenda, bringing some attention to issues that would otherwise fall off the radar screen. We've had a very ambitious agenda in the U.N.'s Third Committee to help pass condemnatory resolutions on North Korea and Burma and Belarus and Iran.

So I think there's a lot we can do. But I do think we need to be realistic about the shortcomings of this body. I do think we need to focus U.S. attention where it's likely to be the most effective. And I think it's not an admission of impotence to say that many times Member States will not take their guidance from us. They will cast their votes according to what they see as their national interest.

One important thing we can do, and one important role that, I think, Congress has to play in helping to drive our agenda, is to let countries know that their votes on human rights issues will be a factor in our bilateral relationship. That we're keeping an eye on how countries act in Geneva and New York and other multilateral fora. And so, and I think that's something that Members of Congress can help us do very effectively.

Senator MENENDEZ. Mr. Chairman, I don't want to belabor my time, I will just close on it, and I appreciate the Chair's indulgence.

Let me just say, I appreciate your urging Congress to do something, I think the administration needs to make it very clear in its bilateral relationships that this—this question of human rights—is a major threshold, and significant part of the equation of how this administration will look at other countries. Unless it happens there—since the primary promotion of foreign policy ultimately comes through the President—unless it happens there, we can do in Congress all of these other things, but I just don't think that we've had, that we've had that attention. I don't think that we've had that message. I don't think that we've created that threshold. I don't think we've made it as intricate a part of our policies as it's been in the past.

And I think the results are what we're beginning to see. And it is going to undermine other key issues that we are concerned about, above and beyond human rights, as it relates to countries who now will believe that they can largely act with impunity, because we have a system that, No. 1, doesn't work, and No. 2, because we don't make it a significant enough issue, and therefore with a wink and a nod, we say other things are more important to us. That is a dangerous slope to begin to go on, and that's where, I fear, we're headed.

Thank you, Mr. Chairman.

Senator BILL NELSON. Thank you, Senator Menendez.

Senator VITTER.

Senator VITTER. Thank you, Mr. Chairman.

Thank you, Madame Secretary for your work. I'm glad you mentioned our colleague, Senator Coleman. As you know, he has a bill that this committee has approved, that would end U.S. funding to the Human Rights Council, and I certainly support that.

In light of everything you've said, I would argue that it's so bad, that we need to go beyond where we are, of not running for membership, and say, "This is just beyond the pale; this is a kangaroo court," if you will, and withhold our funding. I realize our funding is not going to stop the operations of the Council dead in its tracks, but I think that's a darn significant step that we should take. Why shouldn't we do that?

Ms. SILVERBERG. I think, Senator, we'd certainly share the sentiment behind the Coleman legislation, this really profound frustration with the Council, in fear that it's doing harm to our human rights agenda.

The one thing we would—we want to make clear, though, is that we would not expect the legislation to result in a decrease in the resources available to the Human Rights Council. It might have a valuable symbolic message, but it's unlikely to actually decrease the amount of resources available to the Council. The Human Rights Council, as you pointed out, is funded out of the U.N. regular budget. Because money is fungible, the United Nations can redirect its resources, and even if we withhold our, roughly, \$3 million a year, it can redirect resources to cover that.

Senator VITTER. Well, just to be clear, I understand that, and I tried to say that in my question. But, why shouldn't we do that, for the very clear message it sends about what an utter farce we think the whole enterprise is?

Ms. SILVERBERG. I think it might send an important symbolic message, I don't think that withholding legislation along these lines would undermine our efforts in the United Nations, but I do think we have a general position at the State Department, that we should pay our U.N. dues, I think it's very important that I, as Assistant Secretary, call on Congress to fully pay our dues to the United Nations, but I cannot tell you that it would injure our agenda at the United Nations.

Senator VITTER. And maybe that's the logical conclusion of where we're heading, because I really think when things get so out of hand, and so ridiculous, in terms of actions at the United Nations, including this, but not limited to this, we need to consider those other options.

I share a lot of members' concerns about the actions and votes of some members of the Council, who are supposed to be some of our closest allies. For instance, on at least one vote, Canada was the only member to vote against a decision to make Israel a permanent item on the Council's agenda. To take that instance—what did we do, in terms of responding to our other allies, who voted outrageously in the other direction? What did we do before, and after that?

Ms. SILVERBERG. We lobbied very heavily in advance of the adoption of this permanent agenda item. Primarily focused on our European allies, where we thought there really was an opportunity to persuade them to draw a hard line. When, as I said, in Geneva, we were very active in the negotiations, raising our objections at every turn. We persuaded both Canada, and some other Member States to raise objections in Geneva.

When all of that failed, we had both from me, but all the way up to the Secretary, we had discussions with Council members—especially our allies—about our disappointment with their behavior, in the final decisionmaking package.

Senator VITTER. Let me ask this bluntly: Did we do anything after the fact, besides express our displeasure?

Ms. SILVERBERG. Our primary response has been to express our displeasure. Secretary Rice has done it, directly. And I think that point was taken by Member States. I called in Ambassadors to discuss our concerns—

Senator VITTER. No other concrete action besides saying, "Gee, we don't like this"?

Ms. SILVERBERG. Well, I think the appropriate response is to express our strong displeasure at Member States, and their conduct.

Our real disappointment in this case was with the Europeans, and other governments that have a strong commitment to human rights. This is the kind of thing we would have expected from some other members of the Council, it's not the kind of thing we would have expected from our strongest allies.

Senator VITTER. And finally, I just want to bring up a related farce, related to North Korea and the U.N. Development Program, and the fact that there have been all sorts of abuses there—abuses of the U.N.'s own rules that are clear; that are set in place. For instance, the Development Program hired North Koreans designated by the North Korean Government, gave them control over project resources on site activity, paid them in hard foreign cur-

rency—all of that completely contrary to the rules. And we even think maybe \$107 million may have been diverted to the North Korean regime. What can we do to ensure that that sort of flagrant abuse of the U.N.'s own rules doesn't happen over and over again? Oil for food, North Korea, et cetera?

Ms. SILVERBERG. We don't know the figure that was diverted to the North Korean regime, so I cannot tell you that it was \$100 million, or any other figure. These are all allegations, but we really don't know the exact facts.

What we did in this case was shut down the UNDP Program in North Korea, precisely because we don't have the confidence, and other board members don't have the confidence that we can protect this kind of—

Senator VITTER. But, if I can interrupt?

Ms. SILVERBERG. Yes.

Senator VITTER. I know—and I'll acknowledge—I know the \$100 million is a suspicion. We do know that all of those other rules were broken, with regard to hiring North Koreans, giving them access to hard currency, et cetera, et cetera—that's pretty much confirmed, correct?

Ms. SILVERBERG. Yes. Senator, you're right—the preliminary audit from UNDP confirmed that UNDP had violated the U.N. rules in terms of both how staff was supplied, limited access in terms of monitoring, provision of hard currency. We've also had some eyewitness allegations that money that was provided from UNDP was provided to the North Koreans for some dual-use items, that would have been a cause for concern from the United States. And we've had allegations that money that was provided to North Korea was diverted for unintended uses, including some real estate acquisitions and other things. We have raised some very serious concerns.

We fought in the Board for a decision to shut down the North Korea program while we uncovered the rest of the facts. And what we've been working on is, basically, some provisions that would give us greater transparency over all of UNDP's activities, and really the activities of the full U.N. system.

Senator VITTER. Let me go to that, and ask in another way, besides after-the-fact audits—which are obviously limited impact, because they're after the fact—what can we do before the fact, before the next fact, to prevent this? And, is there any progress with regard to that?

Ms. SILVERBERG. I think that all of our transparency initiatives are things that would give us indications while some illicit activity was happening. I think they are good things that can actually flag something before the violation.

Senator VITTER. And, to what extent are they being adopted?

Ms. SILVERBERG. The UNDP actually has adopted a number of our changes, with regard to access to internal documents. We're now trying to take that to the full U.N. system. The Secretary General has been helpful in this regard, because he called for a U.N. systemwide audit of activities in North Korea, so that we know where the risks and opportunities for violations are.

So, I can't say we're at the answer yet; there's still a lot of information we don't have about what happened in North Korea, and

a lot information we don't have about how other U.N. organizations are conducting their activities, but this is something that we're raising with the Secretary General and Kamal Dervis on a regular basis.

Senator VITTER. OK, thank you.

That's all I have, Mr. Chairman, but thank you for your work.

Senator BILL NELSON. Madame Secretary, can you help us understand what would be going through the minds of the Council members, when they renew the mandates of the Special Rapporteurs, but don't for Cuba and Belarus? Those two countries were lost in what's been called a "horse trade." Help us understand what's going on in the minds of the Council members.

Ms. SILVERBERG. I suspect, Mr. Chairman, although I am speculating from here, that a couple of things were going on.

One is that there's this strong predilection from a lot of Member States this—that interference in the internal affairs of a particular country ought to be off limits. So, there's a view from many Member States, that the United Nations ought to do things, such as cooperative, technical assistance, that are done with a government, but that the United Nations should not take action to condemn governments. These were two Special Rapporteurs who were condemnatory, who were there without support of the governments. And so, for a lot of Member States, it was really pushing on an open door, I think, to say, "You ought to get rid of them."

In addition, you had—opposing these Special Rapporteurs—some governments that are very effective, and powerful in the United Nations system—Cuba and Russia—supporting their elimination. So, I think that probably added to the equation.

And then, to add to all of that, there was a belief by some European governments, even from some NGOs that have the strongest records on these issues, that at the end of the day, they needed to cut a deal. That, basically, we need to come to some consensus agreement at the Council, that we couldn't risk a vote, that would cause the entire final agreement to collapse. And so, that we had what was in some cases, a tactical disagreement about whether it was better to call for a vote, to make countries take a stand, or whether it was better to accept what we thought was just a fundamentally flawed compromise.

Senator BILL NELSON. And all the time, we, the United States, are sitting there as an observer.

Ms. SILVERBERG. Mr. Chairman, most of these negotiations were taking place in side rooms, and discussions throughout Geneva, and we were very actively engaged in every case.

We are also particularly active in foreign capitals, helping to make the case for a strong package. I think there was, really, no confusion at all, either about our views, about the importance we attached to the Special Rapporteurs—I think that part was very clear in Geneva.

Senator BILL NELSON. I've talked—as I indicated in my opening comments—with the Secretary General privately about this, and he's even said publicly, as I quoted in my opening comments, his concern with the operation and the functioning of this Council. And, when a Council issues and does such work that is so violative of what is common sense, it seems that it's time for us—especially

since we're paying 27 percent of the tab—that it's time for us to let our displeasure be known, and to do something about it. And that's the whole reason that I called this hearing.

So, why don't you tell us—I heard your previous answer to previous questioners, but let's state it very clearly for the record—given the reservations and the apprehension that you have about the Human Rights Council, should we continue to fund it?

And I know what you said about, it comes out of the General Fund, but you know, a 27-percent cut of that \$3 million would be a fairly significant placement of a marker.

Ms. SILVERBERG. Sir, whatever happens with the Coleman legislation, we will inevitably continue to fund this Human Rights Council. And the reason is that our payment—in this case, 22 percent of the Human Rights Council budget—comes out of the U.N. regular fund. And so, even if we withhold the \$3 million, they can still take funds that come from the U.S. Government, and other countries, and redirect the same amount of resources to the Human Rights Council as they would otherwise.

So, this is not to express opposition to Congress' very understandable desire to express a strong view about the failures of the Human Rights Council, it's only to say that the Human Rights Council will have the same amount of resources, in all likelihood, at the end of the day.

In this case, the \$3 million might help send an important symbolic message, but it's unlikely to impact the Council.

Senator BILL NELSON. So, stay the course?

Ms. SILVERBERG. No, sir. I think we should not stay the course. I think we have a number of options that can help keep the U.S. leadership position on human rights, that can help maximize our chances of being able to actually affect the lives of people living under oppressive governments. Some of those things, I think, involve focusing on other fora. And that means, the Third Committee, the General Assembly, it means technical assistance with the Office of the High Commissioner, and I think it means looking at some non-U.N. opportunities, including the ones I mentioned—OAS, and OECD.

Senator BILL NELSON. We—of course, there are members of us on this committee who, with our 22-percent contribution to the United Nations, think that that should go to more realistically reflect the United Nations, the United States obligation. Which is, I think, somewhere in the range of 25 percent. And, of course as we try to make that happen, it's hard to make that happen when you have a rogue Council like this, running around, doing such things that are violative of common sense.

Ms. SILVERBERG. Yes, sir. I share that concern, and I think that was an important point that you made to the Secretary General, to let him know that this really is casting a shadow on the larger body.

We have been very supportive of a range of U.N. activities—U.N. peacekeeping in places like Darfur, in places like the Congo. And this kind of thing makes it harder to make the case—both to you, to Members of Congress, and also to the American public—that the United Nations really can be a valuable partner in the U.S. foreign policy agenda.

Senator BILL NELSON. Do you, personally, know of anything that the Council has done about Darfur?

Ms. SILVERBERG. The Council passed, what we thought, were some pretty feeble actions on Darfur. One resolution in particular was weaker than a resolution we opposed in 2004, because it was too feeble. Sudan is the one example where the Council has taken some country-specific action on a country other than Israel. But in our view, it really was much weaker than is appropriate, given the circumstances.

Senator BILL NELSON. Did it say that the Sudan ought to be condemned for all of the rape and mayhem and murder and starvation that has occurred in Darfur?

Ms. SILVERBERG. No, sir; the language was not that strong. I would have to check the exact resolution, but I think it was along the lines of expressing concern. But no, it did not include the kind of language we would have supported, along those lines.

Senator BILL NELSON. No action with regard to some of the similar kind of activities in Eastern Chad within the last year?

Ms. SILVERBERG. No, sir.

Senator BILL NELSON. Well, thank you very much for your testimony. We want to shine the spotlight on this problem, and it is a problem, because there are members up here who are supportive of our position of supporting the United Nations, because it's the right thing to do, that nations should be talking to each other, and working out their differences. And I am one among those supporters. But, it sure makes our job a lot harder when you have a rogue activity, such as this Council, going off in all kind of—as we say in the South, cockamamie—positions that defy the common sense of human rights.

Thank you, Madame Secretary, we appreciate it.

And we'd like to ask up the next panel, please.

Mr. Thomas Melia, who is deputy executive director of the Freedom House, Ms. Peggy Hicks, the global advocacy director of the Human Rights Watch, and Mr. Brad Schaefer, Kingham Fellow in International Regulatory Affairs at the Heritage Foundation.

So, we will just take you all in the order that I called you, and what we'd like—your written testimony will be part of the record, I don't want you to sit there and read it back to us; I want you to talk to us. And then we'll get into some questions.

So, Mr. Melia, thank you for coming.

STATEMENT OF THOMAS O. MELIA, DEPUTY EXECUTIVE DIRECTOR, FREEDOM HOUSE, WASHINGTON, DC

Mr. MELIA. Thank you, Chairman Nelson, and thank you for inviting Freedom House to be here today, and I do ask that my complete testimony be submitted.

Senator BILL NELSON. It already has been.

Mr. MELIA. Thank you, sir.

You know that Eleanor Roosevelt was not only the first chairperson of the Human Rights Commission, and in that capacity presided over the drafting of the Universal Declaration of Human Rights, but that she was a founder of Freedom House. When we got started, we focused on the founding of the United Nations, and all of the work that's gone on for these last 60 years. So we come

to this discussion today with an inherited predisposition to think that it is possible to build an international order, based on the rule of law, and respect for human rights.

We did not disagree with the position of the Bush administration last year that the Council was flawed at its creation in 2006, the view that led the U.S. Government to cast one of just four votes against the enabling resolution in March 2006. Yet, we thought that it was possible that, with vigorous American diplomacy, and concerted action by the democracies of the world, the new basis for election to the Council, in which the entire General Assembly would choose members, rather than leave it in the hands of the regional groups, could result in a credible body of states, seriously interested in fulfilling the mandate of the Council.

The Council has now concluded its first year of operation, and a second election has been conducted. Our assessment is that the Council does not, at this point, constitute an improvement over its predecessor.

The dictatorships of the world take this Council very seriously. They see it as a serious threat, and they work assiduously to thwart those who want to see it succeed. And, up to this point, they're winning more often than the defenders of human rights are winning.

We all remember that great line from Yates, "The best lack all conviction, while the worst are full of passionate intensity." We see that at the U.N. Human Rights Council, the worst are very intense. The United States, however, ought to be engaged on human rights with comparably passionate intensity, and ought to be engaged in mobilizing our allies to see things in the same way.

I won't go through the litany of the record of the last year. You know about the Special Rapporteurs and that half the portfolio that was inherited from the Commission has been abolished. You know about the Israel-bashing, and the overfocus on that one situation. No other country-specific resolutions were adopted, other than the watered-down one that was just discussed about Darfur. Nothing on Burma. Nothing on Cuba. Nothing on North Korea. Nothing on Uzbekistan or Zimbabwe or Iran. Not any of the situations that we describe as the "Worst of the Worst" in our annual publication on human rights.

Interestingly, however, the U.N. General Assembly's Third Committee—it was mentioned previously, and briefly—was more successful than the Human Rights Council in this past year, at condemning specific countries for human rights violations. It's composed of all 192 Member States of the United Nations. The Third Committee, in December, passed resolutions, sanctioning Belarus, Burma, Iran, and North Korea for human rights violations.

This means that we've now arrived at the curious place where the equilibrium on human rights standards—that collective understanding of what constitutes a violation serious enough to warrant public comment and condemnation—is lower in the Human Rights Council than it is in the U.N. General Assembly.

At the Human Rights Council, important democracies such as India, South Africa, and Brazil, among others, have failed to exercise the leadership that the world needs from them now, and it would bolster their contentions that they belong among the world's

leading powers, as permanent members of the U.S. Security Council.

Assistant Secretary Silverberg made this very clear as she talked about all the administration's efforts to try to improve the Council—there has been an extensive bilateral series of meetings that she talked about. Yet, one is left wondering, as Senator Menendez asked, whether this is well-focused, or efficient, or successful enough.

Clearly, the absence of U.S. leadership at the Council has not improved the Council's functioning in this first year. At the same time, it has been shown, when the United States is engaged, we can make a difference, as in the Third Committee. As in the diplomacy that surrounded the recent elections to the second year of the Council the United States engaged very vigorously to thwart Belarus' bid to become a member of the Council—and it worked. Because the United States was engaged and enlisted allies.

Unfortunately, the United States did not invest similar diplomatic energy, and try to thwart other not-qualified countries in their efforts to get onto the Council. Freedom House put out a report in April that said that Angola, Egypt, and Qatar, were among those candidate countries who were clearly not qualified to be members. And, while the United States worked energetically to thwart the bid by Belarus, nothing was done really, as far as we know, to thwart the bid by Egypt. And certainly, Egyptian human rights activists are dismayed that their government was elevated to the Human Rights Council. Nineteen human rights groups in Egypt had appealed to the United Nations not to overlook what they described as Egypt's "consistent contempt for human rights." And, unfortunately, Egypt is now a member of the Council, and will probably do more damage than Belarus would have done, because Egypt is an influential regional power.

You mentioned, Mr. Chairman, Secretary General Ban Ki-moon. We believe that he needs to be engaged, and encouraged to lead in this critical area. His statement on June 20, when he voiced regret that the Council had singled out Israel for repeated condemnation to the exclusion of addressing so many other urgent cases, was a good, important, straightforward statement.

The rebuke that he received, just yesterday, in Geneva from the Pakistani Ambassador, speaking there on behalf of the Organization of the Islamic Conference, confirms that Secretary General Ban will need the support of the United States and other democracies to confront the threat to the Council represented by the OIC.

The heightened effort to pervert the Council does not take place in isolation there. It is an integral part of a resurgent global rise in influence and confidence, by a motley collection of increasingly autocratic states—Russia, China, Saudi Arabia, Pakistan, Cuba—countries that do not have much in common, except a shared interest in diminishing the power of the Council, and eviscerating the language of the Universal Declaration on Human Rights.

To walk away now from that battle, just as it is commencing in earnest, would be a remarkable declaration of failure for the country that is largely responsible for articulating the values, and establishing the institutions of the United Nations.

The late Daniel Patrick Moynihan, before he became our Ambassador to the United Nations, and before he commenced his illustrious career here in the U.S. Senate, told us what to do when a democratic nation comes to be isolated in the world body. In 1975 he wrote, "This is our circumstance, we are a minority. We are outvoted. This is neither an unprecedented, nor an intolerable situation. The question is: What do we make of it? So far we have made little, nothing, of what is, in fact, an opportunity. We go about saying that the world has changed; we toy with the idea of stopping it, and getting off. We think that, if only we are more reasonable, perhaps they will be more reasonable. But they do not grow more reasonable."

We need to mobilize the democracies of the world, of which there are many more in the world than there were in 1975, and strengthen the democratic faction in the United Nations, and in the Human Rights Council.

Thank you, sir.

[The prepared statement of Mr. Melia follows:]

PREPARED STATEMENT OF THOMAS O. MELIA, DEPUTY EXECUTIVE DIRECTOR,
FREEDOM HOUSE, WASHINGTON, DC

Chairman Nelson, Senator Vitter, thank you for inviting Freedom House to testify today on the critical subject of the U.N. Human Rights Council, its shortcomings, and the prospects for reform.

As you know, the U.N. Human Rights Council was created last year in an extraordinary response to the disgrace that the U.N. Human Rights Commission had become. Populated with envoys from Saudi Arabia, China, Cuba, Eritrea, and Sudan, the Commission was even chaired by Libya's Ambassador during the 2003 session. It had become a disgrace to the entire U.N. system. Kofi Annan and many others sought a fresh start.

Freedom House has been focused on how the U.N. system defends and advances human rights virtually since our founding by Eleanor Roosevelt and Wendell Willkie as a bipartisan voice for informed American engagement in the world in support of human rights and democracy. You know that Eleanor Roosevelt was first chairperson of the U.N. Human Rights Commission, and in that capacity presided over the drafting of the Universal Declaration of Human Rights, which was adopted by the General Assembly in 1948. We at Freedom House come to this discussion, therefore, with an inherited predisposition to believe that an international order can be constructed based on norms of civilized behavior, including principally respect by governments for the fundamental rights articulated in the Universal Declaration of Human Rights; with the firm belief that the political security and economic interests of the United States would be enhanced in such a world; and with the realization that, practically speaking, this can only be done with strong leadership from the United States.

During the months of negotiation to determine the structure of the new Council, we expressed a number of serious reservations about the lack of stringent membership requirements that might prevent the most notorious human rights abusers from gaining membership on the Council, as they had with the Commission. We did not disagree with the position of the Bush administration that the Council was thus flawed at its creation—a view that led the U.S. Government to cast one of just four votes against the enabling resolution in the U.N. General Assembly on March 15, 2006. Yet we also thought it possible that, with vigorous American diplomacy and concerted action by the democracies of the world, the new basis for election to the Council—in which decisions were taken out of the hands of the regional groups and placed in the U.N. General Assembly as a whole—could result in a credible body of states seriously interested in fulfilling the mandate of the Council. As the enabling resolution states, the Council—

Shall be responsible for promoting 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; . . .

The Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.

We urged the administration to reengage with the Council, notwithstanding its understandable reservations. As Freedom House Executive Director Jennifer Windsor testified before the House International Relations Committee last September, shortly after the Council had held its inaugural session: “While we continue to have serious concerns, Freedom House believes that the potential for the Council’s success is not yet lost. We believe that the U.S. Government and other democratic countries should make every effort to strengthen, not weaken, their engagement with the Council and to work together more effectively to ensure that the United Nations regains its leadership in protecting and advancing human rights and freedom.”

Today, 10 months later, the Council has now concluded its first year of operations, the U.N. General Assembly has conducted elections for the second year and our assessment is that the Council does not at this point constitute an improvement over its disgraced predecessor. Our optimism has been tempered not only by the consistent inability of the Council to address serious human rights violations occurring around the world, but more importantly, by the recurring success of the nondemocracies in undermining the mandate of the body by stonewalling action on the most urgent situations, and by diverting energy and time of all the Member States to discussion of structural innovations intended to further hobble the Council. The dictatorships of the world take this Council as a serious threat, they work assiduously to thwart those who want it to succeed and, up to this moment, they are winning more often than the defenders of human rights are winning.

Mr. Chairman, it matters who engages in the world, and on what issues, and how vigorously, especially when the diplomatic going gets tough. I am reminded of the passage from W.B. Yeats’ poem, “The Second Coming”:

Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere
The ceremony of innocence is drowned;
The best lack all conviction, while the worst
Are full of passionate intensity.

The United States ought to be engaged on human rights with “passionate intensity.”

Last November, Freedom House issued a report card evaluating the body’s efforts to address some of the most critical issues. The report also focused on the actions of members of the U.N. Democracy Caucus and the U.S. Government both of which need to step up to the plate if the Council is ever to succeed. Grades in the report card, though low, were still mixed. We noted that “key processes determining the Council’s future are still in formation, the track record is not promising.” We have taken the opportunity today to update the report card.

Naming and Shaming. The most important element of the former Commission, as of any multilateral human rights body, is its ability to identify and expose specific, urgent human rights abuses. The Council has several mechanisms—Special Rapporteurs, country-specific resolutions, and the new Universal Periodic Review—that allow it to “name and shame” those countries committing egregious abuses against their citizens. Once such a diplomatic record is thus established, the United Nations itself or individual countries may take specific actions to isolate or punish offending states. In free societies, in particular, popular and political debate on how governments ought to react can be informed by such diplomatic documentation. However, this first year has shown that the Council is largely unwilling to use the tools at its disposal. Even more problematic is the fact that some members are actively trying to undermine the usefulness of these mechanisms, now and in the future.

Special Rapporteurs. Country-specific “Special Rapporteurs”—independent individuals tasked with monitoring and reporting on human rights abuses in specific countries—had constituted one of the old Commission’s only mechanisms that genuinely functioned to promote and protect human rights. The credible and accurate reports that they often provided are still one of the most vital components of an effective Council.

In the final session of its first year, however, Council members proposed ending the mandates of 11 Special Rapporteurs—all of the country-specific Special Rapporteurs, save the one assigned to Israel. Ultimately, a compromise was reached between members of the European Union and those countries that wanted to do away with all of the Special Rapporteurs, allowing for the elimination of only two, those assigned to Cuba and Belarus. However, as only 4 of the 12 country-specific Special Rapporteurs monitored the very worst human rights abusing countries in the world, the elimination of two of the four country-specific Special Rapporteurs inherited by the newly created Council is an enormous loss. It is appalling that this occurred in

what was widely touted as a “compromise measure,” with only Canada’s delegate dissenting, that the European and other democracies would decide that losing half of the existing stable of Special Rapporteurs was an acceptable outcome underscores how far the world’s standards have fallen.

Country-Specific Resolutions. In the Council’s first year, country-specific resolutions were passed addressing only two situations. Israel’s behavior in the Occupied Territories and in Lebanon was sanctioned repeatedly: At least one resolution on the topic was passed at each of the Council’s five sessions, and Israel was the principal subject of three out of the body’s four special sessions. In fact, as Israel has now been added as one of the Council’s “permanent agenda items,” many more resolutions censuring that country are sure to come. The distortion this represents, when one considers the range and scope of human rights problems in the world today, is breathtaking. To date, the only condemnatory resolutions adopted by the Council in its first and second years—11 of them now—have been directed at Israel.

In contrast, addressing the genocidal human rights abuses occurring in the Darfur region of Sudan has been the subject of constant political maneuvering. Negotiations over wording between members of the European Union and the African group delayed passage of a resolution. Eventually, a weak initiative “welcoming the cooperation established by the Government of the Sudan” (as if there had been any such cooperation) was finally approved, and a high-level mission headed by Nobel Peace laureate Jody Williams was dispatched to the region. However, a hearing of the report was blocked by Sudan’s allies on the Council, and only after international outcry was the report finally presented. Since then, the Council has convened a group to work with the Government of Sudan and assist in monitoring the human rights situation on the ground.

However, no other country-specific resolutions were passed in the past year. None.

- Not for Burma, where a wide range of human rights violations against political activists, journalists, and members of ethnic and religious minority groups continued unabated throughout the year;
- Not for Cuba, where the unauthorized assembly of more than three persons is punishable by law with up to 3 months in prison and a fine, and peaceful civic activists imprisoned 3 years ago languish in prison;
- Not for North Korea, the country with perhaps the most stunning systematic nationwide repression, a land where more than 200,000 people are imprisoned in a vast gulag and punishment against three generations of families is used to respond to even trivial utterances seen as disloyal to Kim Jong-Il;
- Not for Uzbekistan, where the massacre at Andijon remains unacknowledged and unexamined by a regime that has turned traditional neighborhood organizations into an official system of public surveillance of private discussion;
- Not for Zimbabwe, where, this year, the government expanded its crackdown on the country’s few remaining independent media outlets, escalated the physical assaults against peaceful demonstrators against the gross mismanagement of the country; and
- Not for any of the situations described on the recent Freedom House publication, “The Worst of the Worst,” which describes the 20 worst places in the world in terms of civil liberties and political rights.

No member of the Council even proposed resolutions on these topics. All democratic diplomatic hands were apparently mobilized to manage the retreat from the underwhelming portfolio of the failed Commission. Nor was any discernable effort made to expand the frontier by creating additional Special Rapporteurs, given the largely successful resistance offered by Sudan regarding Darfur.

Instead, in March the Council passed a resolution justifying suppression of unpopular speech. Under the guise of discouraging “defamation of religions,” the resolution challenges freedom of expression, and gives rights to religions, rather than individuals. Many—too many—democratic countries voted for the resolution.

Just as alarmingly, a number of countries have spoken out throughout the year against the very notion of country-specific resolutions, as if the most egregious human rights violations in the world were happening somehow outside the boundaries or beyond the control of the very governments that were often responsible for assaults on their own citizens.

During the last week of the Council’s first year, as a final package of institution-building mechanisms was being debated, China proposed a rule that would require that passage of any country-specific resolutions be contingent on a two-thirds majority of the Council. The initiative was never formally proposed as a resolution, yet by all accounts, it acquired considerable support among members and was thwarted only on the last day of the session.

Intriguingly, another body, the U.N. General Assembly's Third Committee, was more successful than the Human Rights Council at condemning specific countries this past year. Composed of all 192 Member States of the United Nations, the Committee passed resolutions in November sanctioning Belarus, Burma, Iran and North Korea for human rights violations. This means that we have now arrived at the curious place where the equilibrium on human rights standards—the collective understanding of what constitutes a situation grave enough to warrant public comment and condemnation—is lower in the Human Rights Council than in the United Nations at large.

Universal Periodic Review. In lieu of stronger country-specific resolutions or an increased number of Special Rapporteurs, the Universal Periodic Review (UPR) was envisioned as a tool that could potentially highlight human rights abuses in every U.N. Member State, and thus provide a recurring opportunity in this global forum for discussion of solutions. Because the procedure has not yet been implemented, it is not yet clear how effective it will be. However, a number of elements that could have contributed to a stronger UPR were watered down prior to its final passage by the Council; the result is a procedure that stresses intergovernmental consensus and inclusiveness over rigorous standards and specificity.

For instance, while Freedom House and other human rights organizations had pushed for a panel of independent experts to oversee this review process, most governments—including the United States, apparently had pressed for a panel composed of representatives from Member States' delegations who would conduct the reviews. The result is that the review will be conducted by three representatives of Member States, rather than by independent human rights experts. Of the documents used as a basis for the review, 20 pages of text can be submitted by the country in question, while the Office of the High Commissioner for Human Rights can submit 10 pages and "other relevant stakeholders" can provide another 10. Whether these stakeholders include NGOs based inside or outside the country is still unclear.

The Role of Democratic Governments. Although 79 percent of Council members during its first year were members of the Community of Democracies (and this also includes members of the U.N. Democracy Caucus, created in 2004) they have never voted as a group in the Council. Today's hearing is not the forum for a discussion on the Community of Democracies per se (Freedom House has long been concerned that too many nondemocracies are included in this gathering of Foreign Ministers). But it should be clear to anyone who peruses the roster of states currently members of the Human Rights Council and examines the vote totals that led to their election by the General Assembly that (a) many democracies obviously voted to send conspicuous dictatorships to the Council; and (b) even so, there are enough democratic states on the Council that it should be able to muster a working majority of democracies to determine outcomes much of the time. Instead, Member States are far more likely to attach greater value to regional solidarity than to human rights considerations. This enables China and Russia, while suppressing the rights of Muslims in their own countries, to build alliances with the Organization of the Islamic Conference, with its reach into the Africa and Asia groups, to form a blocking majority. Important democracies such as India, South Africa, and Brazil and among others, have failed to exercise the leadership that the world needs from them now—and that would bolster their contentions that they belong among the world's leading powers as permanent members of the Security Council.

Other countries, including some that do not lay claim to be regional or global leaders, have stood more unambiguously on the side of freedom. Look at the vote on the defamation resolution in March. While Guatemalans can be proud that theirs was the only one of eight Latin American countries to cast a vote for free expression, five others abstained, and—alarming—Mexico joined with Cuba to vote yes for suppression of free speech.

Canada is deserving of special recognition as the only country that stood up during the final week of the Council's first year to decry the loss of Special Rapporteurs for Cuba and Belarus, as well as Israel's placement as a permanent agenda item. Canada was not, however, joined by other democracies, and the resolution containing these points passed, officially by consensus—notwithstanding the Canadian objection.

The United States. U.S. Government officials have said that improving the Council is a priority, and a few key officials have worked hard to reach out to allies and promote higher standards at the Council. Worthy of special recognition are the concerted efforts of then-Deputy Assistant Secretary of State Mark Lagon, recently confirmed by the Senate as Ambassador-at-Large and Director of the Office to Monitor and Combat Trafficking in Persons. He worked closely with Assistant Secretary Kristen Silverberg and others in the Department, such as Deputy Assistant Sec-

retary Erica Barks-Ruggles in DRL, and energetically strove for a stronger and more effective Council.

Yet, overall, one is left to wonder if the U.S. Government truly did all that it could to improve the Council. There appear to have been several occasions when the administration passed up opportunities to make a difference. For example, the U.S. Government chose not to present itself as a candidate for a seat on the Council last year, and did not send Secretary of State Condoleezza Rice to speak at the high-level opening of the Council's first session, though more than 100 countries dispatched heads of state or Foreign Ministers to the event. Although Freedom House urged the Bush administration to appoint a special envoy to the Council, whose only job would be to engage diplomats in Geneva—and, importantly, in foreign capitals around the world—to strengthen human rights standards, the administration declined. Earlier this year, the United States decided again this year not to run for a seat on the Council.

The absence of U.S. leadership at the Council has clearly not improved the body's functioning. On the contrary, those times that the United States has pushed for higher standards for human rights at the United Nations over the past year have shown that our engagement can make the difference. For example, the United States actively pressed for passage of the resolutions condemning Burma, Belarus, Iran, and North Korea in the General Assembly's Third Committee last November. The effort was successful, in large part because of U.S. diplomatic leadership.

In May, when the membership of Belarus as one of the two new Eastern European members was emerging as a real possibility—because other countries were not willing to be candidates—the United States joined in a concerted diplomatic effort to encourage Bosnia and Herzegovina to run for a seat, as well. In the final week prior to elections, Bosnia officially declared its candidacy, and Belarus was ultimately defeated.

Unfortunately, the U.S. Government did not invest comparable diplomatic energy in the elections that took place in the African or Asian group. Interestingly, the non-democratic candidates for election there, ones that Freedom House had assessed, along with Belarus, to “not qualified” for membership on the Council—Angola, Egypt, and Qatar—are countries with whom the United States has, well, more complicated relations than it does with Belarus. The United States worked energetically to thwart the bid by Belarus, though one can make the case that Egypt will be more damaging to the work of the Council because it is more influential. Certainly, Egyptians are dismayed by their government's elevation to the Council. Nineteen Egyptian human rights groups had appealed to the United Nations not to overlook what they described as Egypt's “contempt for human rights, since Egyptian history is replete with grave human rights violations, carried out on a large scale and over long periods of time.” The Egyptian Government, meanwhile, boasted that Egypt's selection to the Council is proof of the esteem and respect in which Egypt is held by the international community. And, unfortunately, these events lend credence to the impression that the United States is willing to utilize its diplomatic prowess to oppose hostile states of little strategic consequence, but not to exercise its influence with others who equally do not belong on the Council.

It is also not clear that the U.S. Government brings other countries' performance at the Council into our bilateral relationships. Are Algeria and Egypt challenged in Algiers and Cairo for their behavior at the Council? How are South Africa or India enlisted to step up to their responsibilities as key Third World democracies? How many performance evaluations of U.S. ambassadors or political officers, or embassy mission plans, will include a reference to the U.N. voting records of the countries to which they are assigned? The most important work in this regard is not necessarily to be done in those countries that are the main human rights abusers; it is to be done in those democratic states that have yet to incorporate into their own diplomacy a principled engagement on these issues. The U.S. Government can work much harder than it currently does to energize our allies and partners to promote human rights in Geneva.

The United States should be congratulated for amply funding the Office of the High Commissioner for Human Rights. However, though the High Commissioner's office provides critical technical assistance for human rights work around the world, it is not a substitute for the Human Rights Council.

Related U.N. Institutions. The High Commissioner for Human Rights, Louise Arbour, has recently sought to distance her office from the Council and to downplay expectations that the U.N.'s human rights Secretariat has much ability to influence events at the Council. The Council, she recently wrote, “. . . is a political body made up of its Member States and its decisions and actions are the result of negotiations among those members. The OHCHR provides Secretariat support to the Council but does not in any way determine the Council's decisions, resolution, recommendations,

or actions.” Coming from the United Nations’s most prominent institutional champion of human rights, this is dismaying. The world needs her, a distinguished international jurist of some renown, to speak clearly on these issues and to make clear that she knows when the Council has strayed. It is also interesting that she has had rather little interaction with anyone in the U.S. Government, other than the Ambassador to the United Nations in Geneva. What are we to infer from the fact that Ms. Arbour just made her first visit to the United States, and that our Government has reached out so little to her?

U.N. Secretary General Ban Ki-moon needs to be engaged and encouraged to lead in this critical area, utilizing the immense respect of his office and, as importantly, utilizing his private encounters with governments at the highest levels. His work already on Darfur shows that he has a clear sense of the world body’s responsibility to act on grievous situations. His statement on June 20, when he voiced regret that the Council has singled out Israel for repeated condemnation to the exclusion of addressing other urgent cases, was a good one. The rebuke he received just yesterday in Geneva, from the Pakistani Ambassador speaking on behalf of the Organization of the Islamic Conference, confirms that Secretary General Ban will need the support of the United States and the other democracies to confront the threat to the Council represented by the OIC. This, too, needs to be a plank in the American diplomatic platform—encouragement and facilitation for the Secretary General to strengthen the Council.

The Future. The Human Rights Council is clearly a flawed institution, though it is less clear what might be the best way to fix it. The year just begun at the Council is the first “normal” year for the body, now that institutions and mechanisms have been established. Standing by, watching and waiting for the Council to fail, in hopes that the international community will invent something better when the present Council’s mandate expires in a few years—apparently the preferred approach of some people in the current administration—is untenable. Jumping in at the last moment to suggest changes will have very little effect, as the United States discovered last year in the negotiations about the present Council. Given the ongoing human rights abuses that are occurring in the world, and the tremendous damage that continuation of the current situation will have on the credibility of the entire United Nations, it is time for reinvigorated diplomacy rather than retreat. If the United States genuinely wants a better Council in 4 years, it must be more engaged now in a sustained effort to influence other countries and to work with others to develop meaningful reforms.

This is a challenge worthy of the best diplomatic talent of the United States of America, working in tandem with an attentive, informed, and engaged Congress, which this hearing today suggests it is. This will be difficult to do, not least because our Government seems not to have grasped the enormity of the challenge. As daunting as it appears to be, it will only become more so in the near term.

The heightened effort to pervert the Council is not taking place in isolation. It is an integral part of a resurgent global rise in influence and confidence by a motley collection of increasingly autocratic states. Increasingly, the only pluralism reflected in many governments around the world is in the diversity of despotism they are developing. Russia, China, Saudi Arabia, Pakistan, Cuba. They do not have much in common except a shared interest in diminishing the power of the Council, the meaning of the U.N. Charter and eviscerating the language of the Universal Declaration on Human Rights. To walk away now from the battle, just as it is commencing in earnest, would be a remarkable declaration of failure for the country that is largely responsible for articulating the values and establishing the institutions of the United Nations.

Eleanor Roosevelt would not have been surprised at what is happening now in the Human Rights Council. She anticipated it. In Paris at the Sorbonne, in September 1948, she said: “We must not be deluded by the efforts of the forces of reaction to prostitute the great words of our free tradition and thereby to confuse the struggle. Democracy, freedom, human rights have come to have a definite meaning to the people of the world which we must not allow any nation to so change that they are made synonymous with suppression and dictatorship.”

Almost three decades later, and three decades ago, at a very low point of American prestige and influence in the world (not terribly dissimilar to the present moment in some ways), sentiment for withdrawal from the United Nations was mounting, as the United States found itself increasingly outmaneuvered in the United Nations. The late Daniel Patrick Moynihan—before he became our Ambassador to the United Nations and before he commenced his illustrious career in the U.S. Senate—told us what to do when a democratic nation comes to be isolated in the world body. Writing in *Commentary* magazine, in March 1975, in an article entitled “The United States in Opposition,” he declared: “This is our circumstance. We

are a minority. We are out-voted. This is neither an unprecedented nor an intolerable situation. The question is what do we make of it. So far we have made little—nothing—of what is in fact an opportunity. We go about dazed that the world has changed. We toy with the idea of stopping it and getting off. We rebound with the thought that if only we are more reasonable perhaps ‘they’ will be . . . But ‘they’ do not grow reasonable. . . .”

He told us then, and soon thereafter he showed us how, to take the United Nations seriously and to use our voice to tell the truth and to seek to persuade others to join ranks with us. During the three decades since, there has been a growing consensus among democratic states that protecting human rights is a vital shared interest of humanity—and that it is possible to band together and to do something about it. There are more democratic states in the world than there were in 1975—a lot more.

Yet there is hesitation and confusion about whether to mount a serious diplomatic campaign. This hesitation is misplaced. Democratic governments have an obligation to speak up for those who are being silenced, jailed, and in some cases murdered by their own governments. Current conditions may demand new strategies, but on the universal value of freedom, there should be no second thoughts, no apologies, and no hesitation.

The United States cannot afford to ignore—nor to lose—the debate on freedom that is currently occurring in and around the Human Rights Council. We need to take it seriously and be more strategic in combating the trend. Human rights activists in many of these countries look to the Council to give voice to, and defend, their concerns; they believe that what happens in Geneva matters, and so should we. More energetic high-level diplomacy on the several fronts I have described is necessary, not less.

Senator BILL NELSON. Ms. Hicks, we’re going to have to suspend, there is a vote in progress, we’re down to 5 minutes to vote. So, I’m going to go run and vote; I’ll be right back. The meeting will stand in recess until the call of the Chair.

[Recess.]

Senator BILL NELSON. The committee will resume.

Ms. Hicks.

**STATEMENT OF PEGGY HICKS, GLOBAL ADVOCACY
DIRECTOR, HUMAN RIGHTS WATCH, NEW YORK, NY**

Ms. HICKS. Thank you, Mr. Chairman, for inviting us to testify, and for your attention to the Human Rights Council.

As has already been emphasized, the Human Rights Council in its first year, failed to act on human rights crises in a variety of places, ended the mandates of experts on Belarus and Cuba, and rolled back its consideration of Iran and Uzbekistan.

At the same time, it focused disproportionately on Israel, and did so in a way that was likely to be ineffective, because it fails to look comprehensively at the situation, including the responsibilities of Palestinian authorities, and armed groups.

On these points, all of us agree. But on the key questions of why the Council has disappointed, and to your question, Mr. Chairman, of whether it’s headed in the right direction, there are many different opinions.

In addition to its unimpressive membership, which we’ve already discussed, we believe that two factors help explain the Council’s weak performance.

Mr. Chairman, this committee is well aware of the larger problems the United States faces in advancing its interests across the globe today, and Senator Menendez has referred to them as well. The war in Iraq, Guantanamo, secret prisons, torture, and unlawful rendition have reverberated worldwide. The U.S. loss of moral authority and influence has had an impact on every issue the U.S.

pursues, in every forum, and the Human Rights Council is no different.

The Organization of the Islamic Conference has been successful in harnessing ill-will toward Bush administration policies, to pursue an agenda aimed more at protecting than condemning human rights abusers. States that might have been expected to play a strong human rights role, like South Africa, have found it convenient to play to tensions between the developed, and developing world. The absence of the United States from the Council's membership has created a leadership imbalance that the European Union has been unable to remedy.

The Council's shortcomings in its first year also reflect the poor performance of human rights supporters. States friendly to human rights routinely fail to invest the political capital and resources necessary to make the Council work. Senator Menendez asked Assistant Secretary Silverburg regarding this point, and we looked at the extent to which the United States has failed to extend full, high-level, sustained advocacy, and that's not just a problem with the United States, but within other human rights supporters, as well.

Human Rights Watch and other NGOs called for a special envoy to be appointed to demonstrate a real commitment to pushing these issues forward, and to do so in a sustained way—that simply didn't happen.

Given the Council's record so far, what hope is there of continuing engagement will improve the picture?

Mr. Chairman, the Council may not be moving in the right direction yet, but getting the Council on the right track can be done. Beginning this year, the Council will scrutinize all states human rights records in the new Universal Periodic Review.

It is exactly because this process will counter the selectivity that discredited the Commission, and has already damaged the Council, that this process can have a real impact on human rights.

In addition, the Council's systems of human rights experts, including ones who will continue to work on Burma and North Korea, has been maintained, and will continue to put pressure on governments to respond to their findings and recommendations. These experts have helped develop indicators, that should help hold the Sudanese Government to account for ongoing abuses in Darfur.

With support from states such as the United States, this system of human rights experts can be maintained and strengthened. In looking at what the Council has done, we need to look at results, not just rhetoric.

In looking, for example, at the Sudan and Darfur, a question that you raised, Mr. Chairman, Assistant Secretary Silverberg pointed to the fact that there have been three so-called "weak" or "feeble" resolutions on Darfur. Of course, it's always nice to have a condemnatory resolution. But I think we, as human rights supporters, need to look at what is the impact of resolutions on the ground. The three resolutions on Darfur in Sudan led to a fact-finding mission headed by a Nobel Laureate that resulted in a thorough and compelling report on abuses of human rights in Darfur, including addressing, in detail, all of the issues you raised, Mr. Chairman,

and those resolutions also created an experts group that is engaged, right now, in hands-on work to address violations in Darfur.

Counting the lives saved due to the work of institutions like the Human Rights Council is never easy, but one example provides hope. In 2005, the possibility that the Commission on Human Rights might adopt a resolution on Nepal, helped convince the Nepalese Government to agree to a U.N. human rights monitoring mission, a step that contributed to a dramatic improvement in human rights. Using that model, we are pushing the Council to take up the situation of Sri Lanka this year, where a monitoring mission could save lives, now.

In deciding the Council's fate, we need to consider our options. We've already heard a bit about the work that could be done in the Third Committee, but that simply is no substitute for the work that a year-round body, like the Council, could do.

Election of the Council's members by universal vote also adds to the potential legitimacy and effectiveness of the institution, and allows us a lever to improve the membership of the Council, as well.

Given these facts, deciding to cut off funding for the Human Rights Council may succeed in signaling dismay over the Council's record, but it does nothing to help human rights victims. And, I would say, we disagree with the Assistant Secretary's view that this would not undermine the work of the United States at the Council.

But working for a better Council can pay off, as it did this May in the crucial vote on Belarus, which my colleague has already described. Mr. Chairman, proponents of human rights in the U.S. 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 Council, with no reasonable alternative in sight, would send a devastating signal to human rights victims throughout the world.

This human rights body is, as has been said, a political body made up of States, and its success or failure depends on how those States perform. Instead of blaming the Council, the United States should hold bad performers accountable, including allies like India, Pakistan, and South Africa, and push for action on priority issues, such as Sri Lanka, where the Council could make a real difference in the coming year.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Hicks follows:]

PREPARED STATEMENT OF PEGGY HICKS, GLOBAL ADVOCACY DIRECTOR, HUMAN RIGHTS WATCH, NEW YORK, NY

Mr. Chairman, thank you very much for inviting me to testify at this hearing and for your attention to the U.N. 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 United States, 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 United States can hardly play the hero in this drama however. Under then-U.N. Ambassador John Bolton, the United States 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 United States 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 U.S. 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 percent of the Commission to 55 percent of the Council; the number of members of the Community of Democracies increased from 62 percent to 76 percent. 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 United States faces in advancing its interests across the globe today. The U.S. loss of moral authority and influence has had an impact on every issue the United States 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 toward 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 United States has played a relatively active role as an observer at the Council, the absence of the United States from the Council's membership has created a leadership imbalance that the European Union 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 U.N. 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 states' 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 United States, 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 U.N. 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 policymaking 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 U.N. 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 United States 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 United States, 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 United States 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 United States 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 United States 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 U.S. 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.

Senator BILL NELSON. Thank you, Ms. Hicks.
Mr. Schaefer.

**STATEMENT OF BRETT D. SCHAEFER, JAY KINGHAM FELLOW
IN INTERNATIONAL REGULATORY AFFAIRS, THE HERITAGE
FOUNDATION, WASHINGTON, DC**

Mr. SCHAEFER. Thank you.

Mr. Chairman, thank you for providing me with the opportunity to come and testify this afternoon.

You have asked the panelists today to give their assessment of the prospects for reforming the U.N. Human Rights Council. The very question is a telling indictment of how difficult it is to achieve reform within the United Nations system. The Council is actually the disappointing result of a reform process. Only 1 year ago the General Assembly passed a resolution creating the Council to replace the discredited U.N. Commission on Human Rights.

After the U.N. General Assembly passed that resolution, Council supporters like U.N. High Commissioner for Human Rights Louise Arbour were quick to declare that the new body represented a "dawn of a new era," in promoting human rights at the United Nations. Perhaps they should have been a little more cautious, considering that well-known human rights abusers, Burma, China, Cuba, Sudan, Syria, Zimbabwe, and others, all voted in favor of the new Council. The United States was one of four countries to vote against the resolution. It cast its vote out of concern that the new Council would lack the safeguards against the problems that afflicted the Commission. Looking back at the deplorable performance of the Council in its first year, the concern has proven to be very well-founded.

The election process for the new Council resulted in only minor improvement in the quality of Council membership, over the discredited Commission. Some countries did decide not to run for election, but a number of states with dismal human rights records ran and won seats in 2006, including Algeria, Cuba, China, Pakistan, Saudi Arabia, and Russia.

The 2007 election actually saw a decline in the quality of membership in the Council from 2006. The only significant victory was blocking Belarus from winning a seat and that was only accomplished due to extensive efforts by the United States and human rights groups to persuade Bosnia and Herzegovina to run. The United States and these groups cannot apply similar pressure in

every single instance when human rights abusers run for a seat on the Council. There are simply too many.

The small victory of keeping Belarus off the Council, was overshadowed by the election of Angola, Egypt, Qatar, and Bolivia—all states with dismal human rights records. Worse, we have seen a return to the practice of regions presenting clean slates for elections to the Council, by only offering as many candidates as there are open seats. This undermines the purpose of having the General Assembly elect members to the Council in the first place.

In its first year, the Council, just like the discredited Commission, has exhibited an obsessive discriminatory focus on Israel while ignoring far worse human rights abuses around the world. In its first year the Council has held 3 special sessions focusing on Israel, and passed 10 harsh condemnatory resolutions and 4 decisions focusing on Israel. Moreover, Israel is singled out as the only country subject to a permanent agenda item.

By contrast, the Council has held only one special session on Sudan and the issue of Darfur—widely considered the most serious human rights crisis in the world, involving the genocide of up to, of at least 200,000 individuals. The Council passed only one soft, noncondemnatory resolution and four mild decisions expressing “concern” about the situation, and failing to condemn the Sudanese Government. The Council even thanked Sudan for its cooperation, even though it denied access to Darfur by the very study group sent there by the Council.

The Council has not passed a single resolution condemning human rights abuses in 19 of the 20 Worst of the Worst—the worst repressive human rights situations as identified by Freedom House—as mentioned earlier in the panel.

Sadly, the Council has done even worse than ignore human rights abuses. It’s ended existing scrutiny of human rights practices inherited from the Commission. It has discontinued consideration of human rights situations in Iran and Uzbekistan under the confidential 1503 procedures. The Council eliminated experts focused on Belarus and Cuba, despite extensive evidence of ongoing violations. And many countries plainly hope to eliminate all country specific experts in the near future, with the notable exception of Israel, again singling that country out.

The Council has also adopted new rules and procedures, including a new code of conduct to pressure, influence, and intimidate independent experts. Under the new procedures, a committee appointed by the Council will appoint these experts from a roster of precleared qualified candidates. Restrictions under the code of conduct offer ample opportunities for countries to dispute, block, and otherwise criticize reports by the experts.

The new universal periodic review will assess human rights practices in all Member States, a much-heralded improvement over the Commission. However, the proposed procedures for the review are very weak and virtually assure a Milquetoast outcome. The review for every country, whether it’s Sweden or Sudan, is limited to 3 hours. The review will be a country-led process in which the country—“the country under review will have, shall be fully involved in the outcome,” and requires the review to take, “into account the level of development and specificities of the countries.” Input from

nongovernmental organizations will be minimal and moreover, the reviews will only occur every 4 years.

As summarized by the U.S. Department of State, these institution-building procedures are seriously flawed and make the problems of the Council even worse. Quite simply, the actions of the Council are not worthy of an organization considered to be the world's premier human rights body. It has continued the worst aspects of the Commission and has become a platform for human rights abusers to deflect criticism rather than holding them to account.

The United States chose not to run for a seat on the Council in 2006 and in 2007. This was the right decision. Winning a seat on the Council would not necessarily give the United States a greater voice or influence. Any U.N. member can comment on and speak to issues before the Council and the United States has frequently expressed its support or opposition to various resolutions and decisions. Because membership is based on geographic representation, even if the United States won a seat on the Council, it would simply displace one of the seven countries representing Western Europe and other states in that particular region, which already largely vote as the United States would vote.

In numerous votes over the past year, the Council has adopted resolutions over the objection of 11 or 12 nations. U.S. membership on the Council would not change that situation at all. The gain from the United States being on the Council would be marginal at best. Until the Council approves, the United States should not lend its credibility to the flawed body by seeking a seat.

The Council could, potentially, improve if members of the Council and the General Assembly decide to support strong resolutions or elect credible members to the Council. Unfortunately, the actions of the Council over the past year indicate that most members of the Council and in the General Assembly do not care to support a stronger more effective Council. On the contrary, they are perfectly happy with the dreadful record of the Council over the past year and oppose reform. The United States and other states that want to improve the Council simply don't have the votes to force change in the face of this resistance.

In my opinion, the Council will continue to hinder rather than help protect and advance human rights.

In closing, I want to congratulate the House of Representatives and the Senate Foreign Relations Committee for expressing their displeasure with the Council, by supporting legislation to withhold U.S. funding. While this action will have little direct impact on the budget of the Council and the behavior of the Council, it sends a powerful signal of displeasure.

This concludes my oral statement, Mr. Chairman, and I look forward to your questions.

Thank you.

[The prepared statement of Mr. Schaefer follows:]

PREPARED STATEMENT OF BRETT D. SCHAEFER, JAY KINGHAM FELLOW IN INTERNATIONAL REGULATORY AFFAIRS, THE MARGARET THATCHER CENTER FOR FREEDOM, THE HERITAGE FOUNDATION, WASHINGTON, DC

Mr. Chairman, thank you for providing me with the opportunity to testify on how the new United Nations Human Rights Council (HRC) has performed in its first

year and the prospects for reform. With permission, I would like my full written statement submitted for the record.

Since the birth of the United Nations, protecting and advancing fundamental human rights has been one of the organization's primary objectives. The drafters of the U.N. Charter included a pledge by Member States "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women."¹ U.N. treaties and conventions, such as the Universal Declaration on Human Rights, which the General Assembly passed in 1948, form the core of international standards for human rights.

Yet the U.N.'s recent record in promoting fundamental human rights is riddled with failure and inaction. For nearly six decades, the U.N. Commission on Human Rights (CHR) epitomized this failure as the premier U.N. human rights body charged with reviewing the human rights performance of states and promoting human rights around the world.² Sadly, the Commission devolved into a feckless organization that human rights abusers used to block criticism and a forum for attacks on Israel.³ The Commission's disrepute grew so great that even former U.N. Secretary General Kofi Annan acknowledged, "We have reached a point at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole, and where piecemeal reforms will not be enough."⁴

After lengthy deliberations and negotiations, the U.N. General Assembly voted to replace the Commission with a new Human Rights Council in March 2006.⁵ Regrettably, during the negotiations, the General Assembly rejected many basic reforms and standards that had been proposed to ensure that the Council would not repeat the mistakes of the Commission.⁶ For instance, the United States wanted a much smaller body than the 53-member Commission to enable it to act more easily; a high threshold for election to the Council (a two-thirds vote of the General Assembly); and a prohibition on electing nations to the Council that are under U.N. Security Council sanction for human rights abuses.

Negotiators produced a 47-member Council that is only marginally smaller than the Commission. The HRC has no hard criteria for membership other than quotas for each of the regional groups in the United Nations and a requirement that Council members be elected by a simple majority of the General Assembly (currently 97 of 192 votes). No state, no matter how poor its human rights record, is barred from membership. Even states under Security Council sanction for human rights abuses may become members.

The resolution, instead, instructs U.N. Member States that "when electing members of the Council, [they] shall take into account the contribution of candidates to the promotion and protection of human rights."⁷ Candidates are also asked to submit "voluntary pledges and commitments" on their qualifications for the Council based on their past and future adherence to and observance of human rights standards. The toothlessness of this instruction quickly became evident when notorious human rights abusers Algeria, Cuba, China, Iran, Pakistan, Saudi Arabia, and Russia ran for election, asserting their strong commitment to human rights and pledging their commitment to such standards in the future.⁸

¹ Charter of the United Nations, preamble, at www.un.org/aboutun/charter/index.html (May 24, 2007)

² United Nations, "UN in Brief," chap. 3, at www.un.org/Overview/uninbrief/chapter3_humanrights.html (May 24, 2007).

³ See Brett D. Schaefer, "The United Nations Human Rights Council: Repeating Past Mistakes," Heritage Foundation Lecture No. 964, September 19, 2006, at www.heritage.org/Research/WorldwideFreedom/upload/hl_964.pdf (May 24, 2007).

⁴ Kofi Annan, "Secretary General's Address to the Commission on Human Rights," Office of the Spokesman for the U.N. Secretary General, April 7, 2005, at www.un.org/apps/sg/sgstats.asp?nid=1388 (May 24, 2007). See also Mark P. Lagon, Deputy Assistant Secretary for International Organization Affairs, U.S. Department of State, "The UN Commission on Human Rights: Protector or Accomplice?" testimony before the Subcommittee on Africa, Global Human Rights and International Operations, Committee on International Relations, U.S. House of Representatives, April 19, 2005, at www.state.gov/p/io/rls/rm/44983.htm (May 24, 2007).

⁵ Press release, "Explanation of Vote by Ambassador John R. Bolton, U.S. Permanent Representative to the United Nations, on the Human Rights Council Draft Resolution, in the General Assembly," U.S. Mission to the United Nations, March 15, 2006, at www.un.int/usa/06_051.htm (May 24, 2007).

⁶ See Schaefer, "The United Nations Human Rights Council."

⁷ U.N. General Assembly, "Human Rights Council," Resolution A/RES/60/251, 60th Sess., April 3, 2006, at www.ohchr.org/english/bodies/hrCouncil/docs/A.RES.60.251_En.pdf (May 24, 2007).

⁸ For pledges and candidates for election to the Human Rights Council in 2006, see U.N. General Assembly, "Human Rights Council," at www.un.org/ga/60/elect/hrc (May 24, 2007). For

Because of these weaknesses, the United States voted against the resolution creating the HRC and announced that it would not run for a seat on the Council, but would consider running in the future if the Council proved effective.⁹ “Absent stronger mechanisms for maintaining credible membership, the United States could not join consensus on this resolution,” explained then-U.S. Ambassador to the United Nations, John Bolton. “We did not have sufficient confidence in this text to be able to say that the HRC would be better than its predecessor.”¹⁰ Ambassador Bolton’s statement has proven prophetic.

Less than half of the old Commission’s members in 2005 were considered “free” by Freedom House. China, Cuba, Egypt, Pakistan, Sudan, and Zimbabwe—some of the world’s worst human rights abusers—routinely used their positions on the Council to block scrutiny of their own practices and to launch spurious attacks on other countries for political reasons (e.g., Israel) or for speaking openly about their human rights violations (e.g., the United States).

The May 2006 election showed that simply creating a new Council had not convinced the General Assembly to spurn the candidacies of human rights abusers. Overall, the Council’s membership in 2006 was only marginally better than the Commission’s membership in 2005. The first Council election in 2006 produced a Council in which 25 out of 47 members (53 percent) were ranked “free” by Freedom House. Some of the more disreputable human rights abusers—Burma, North Korea, Sudan, and Zimbabwe—did not run for seats. Iran and Venezuela ran for seats but were unsuccessful, although Venezuela received enough votes (101) to win a seat if other states had not won more support.¹¹

Despite these minor successes, a number of states with dismal human rights records won seats, including Algeria, Azerbaijan, Cameroon, Cuba, China, Pakistan, Saudi Arabia, Tunisia, and Russia.¹²

All Council members pledge their commitment to human rights standards when they run for election. As a Council member, a country is supposed to “uphold the highest standards in the promotion and protection of human rights.”¹³ This requirement did not translate into better promotion and protection of human rights at the HRC. On the contrary, the Council’s actions reveal a profound lack of commitment to human rights. Council decisions reveal that the bulk of its membership has declined to scrutinize major violators of human rights and has instead focused disproportionately on censuring Israel.

In its first year, the Council failed to address ongoing repression in Belarus, China, Cuba, North Korea, and Zimbabwe and many other dire human rights situations around the world. Nor did the HRC censure the Government of Sudan for its role in the genocide in Darfur. Instead, it held one special session on Darfur and adopted one mild resolution and four mild decisions expressing “concern” regarding the human rights and humanitarian situation in Darfur, dispatching a “High-Level Mission to assess the human rights situation in Darfur and the needs of the Sudan in this regard.”¹⁴ However, the Council did find the time to hold 3 special sessions on Israel and pass 10 resolutions condemning Israel and another 4 decisions on Israel’s human rights record.¹⁵ More than 70 percent of the Council’s country-specific resolutions and decisions have focused on Israel.

pledges and candidates for election to the Human Rights Council in 2007, see U.N. General Assembly, “Human Rights Council Election,” May 17, 2007, at www.un.org/ga/61/elect/hrc (May 24, 2007). See also Brett D. Schaefer, “Human Rights Relativism Redux: UN Human Rights Council Mirrors Discredited Human Rights Commission,” Heritage Foundation WebMemo No. 1069, May 10, 2006, at www.heritage.org/Research/InternationalOrganizations/wm1069.cfm.

⁹ Press statement, “The United States Will Not Seek Election to the UN Human Rights Council,” U.S. Department of State, April 6, 2006, at www.state.gov/r/pa/prs/ps/2006/64182.htm (May 24, 2007).

¹⁰ U.N. General Assembly, “General Assembly Establishes New Human Rights Council.”

¹¹ See Human Rights Watch, “Human Rights Council: Latin America & Caribbean States: 8 Seats, 11 Declared Candidates,” at www.hrw.org/un/elections/lac/lac.htm (May 24, 2007).

¹² Schaefer, “Human Rights Relativism Redux” and “The United Nations Human Rights Council.”

¹³ U.N. General Assembly, “Human Rights Council.”

¹⁴ U.N. Human Rights Council, “Decision 1/115: Darfur,” November 28, 2006, at <http://ap.ohchr.org/documents/E/HRC/decisions/A-HRC-DEC-2-115.doc> (May 24, 2007), and “Decision S-4/101: Situation of Human Rights in Darfur,” December 13, 2006, at www.ohchr.org/english/bodies/hrCouncil/specialsession/4/docs/Dec_S_4_101_en.doc (May 24, 2007).

¹⁵ Eye on the UN, “Statistics on the UN Human Rights Council’s First Year of Operation June 2006–June 2007,” EyeontheUN.org, at www.eyeontheun.org/view.asp?l=11&p=330 (July 25, 2007); UN Watch, “Dawn of a New Era?”; and press release, “Irregularities, Old Habits Plague UN Human Rights Council Transition: Canada Ignored, Israel Censured, Darfur Atrocities Dismissed,” UN Watch, June 20, 2007, at www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEmG&b=1316871&ct=3983453 (July 25, 2007).

Even the discredited Commission had a better record. Over a 40-year period, only 30 percent of its resolutions condemning specific states for human rights violations focused on Israel.¹⁶

Some of this disappointing performance can be blamed on the negligible difference in quality between the Council's membership and the Commission's membership. The situation is aggravated by the shift in proportional representation of regions. The Commission had greater representation of Western democracies, while Africa and Asia control a majority of the Council. This has dramatically increased the influence of groups like the Non-Aligned Movement (NAM) and the Organization of the Islamic Conference (OIC). Members of the NAM also held a majority of seats in the Council's first year. The OIC held 17 seats, more than the one-third (16 seats) required to call a special session. Unsurprisingly, both groups have repeatedly used their influence to attack Israel and to protect abusive states from Council scrutiny.

However, the most frustrating aspect of the Council's first year has been the reluctance of free, democratic states, including South Africa and India, to support human rights efforts on the Council. A U.N. Watch analysis of significant actions taken by the Council during its first year concluded that only 13 of the Council's 47 members were net positive contributors to its human rights agenda. Four free democracies—Indonesia, Mali, Senegal, and South Africa—were among the countries with the worst record.¹⁷

PROSPECTS FOR REFORM

The topic of today's hearing is the prospects for reform of the Human Rights Council. Based on the past year's record in the Council, the 2007 membership, and the record of the General Assembly, the prospects for reform or improvement are dim.

The prospects for improved performance by the Council depend entirely on the members of the HRC who set and adopt the agenda, rules, procedures, and resolutions and on the General Assembly that elects the Council membership and could reform the body in the future.

The resolution creating the Council requires the General Assembly to review the status of the Council within 5 years, or by 2011. However, many Member States have clearly indicated that they are pleased to have a dysfunctional Council and support for strengthening the body in the General Assembly cannot be counted on.

An illustration of this is the May 2007 election of members to the Council. The 2007 election marked a regression from 2006.¹⁸ The number of "free" countries on the Council according to Freedom House rankings declined, and the number of "not free" countries increased.

The only significant victory was blocking Belarus from winning a seat. Yet until about a week before the election, Belarus and Slovenia were the only two candidates for the two open Eastern European seats. Only enormous pressure from human rights groups and the United States persuaded Bosnia and Herzegovina to run, narrowly denying Belarus a seat on the Council.¹⁹ However, Angola, Egypt, Qatar, and Bolivia—states with dismal human rights records—were elected easily.²⁰

An additional concern is that, unlike the robust competition for seats in the 2006 election, only two regions—Eastern European States and the Western Europe and Other States—offered more candidates than the number of available seats in the

¹⁶This figure increased over time. In 2005, the commission adopted four resolutions against Israel and four resolutions against all other countries. UN Watch, "Dawn of a New Era?"

¹⁷UN Watch scored 20 "key actions" of the HRC in its first year. The positions taken by countries on these key actions were assigned a value: 1 point for taking a positive position for human rights in the HRC, 0 points for taking a neutral position, and -1 point for taking a negative position. *Ibid.*, pp. 5-8 and 26-27.

¹⁸The resolution calls for one-third of the HRC to be elected annually. The 47 members elected in 2006 were randomly assigned terms of 1, 2, or 3 years to set the stage for this process. Each member elected in 2007 will hold its term for the full 3 years. For a list of members and their terms, see U.N. Human Rights Council, "Membership of the Human Rights Council," at www.ohchr.org/english/bodies/hrCouncil/membership.htm (May 24, 2007).

¹⁹According to one news report, Bosnia and Herzegovina decided to run only after the U.S. strongly implied to other European countries that the U.S. would run for a Council seat next year if Belarus did not win a seat. If true, this is a perverse and shortsighted strategy that would undermine America's principled position not to run for a seat until the Council proves its merit in return for only a one-time defeat of Belarus. Maggie Farley, "U.S. Appears Willing to Joint U.N. Human Rights Panel," *Los Angeles Times*, May 18, 2007, at www.latimes.com/news/printedition/asection/la-fg-rights18may18,1,2886241.story (May 24, 2007).

²⁰See Anne Bayefsky, "The Oppressors' Club," *National Review*, May 18, 2007, at <http://article.nationalreview.com/?q=NDM2NTQ2ODZmNDU3MTA2ZTBiNDFiNGExZWRjMWM2YjQ> (May 24, 2007).

2007 election.²¹ The decision of the African, Asian, and Latin American and Caribbean regions to offer only enough candidates to fill their open seats marked a disturbing return to the practices of the Commission and defeated the purpose of competitive elections in the General Assembly, which were supposed to offer a larger choice of possible candidates in order to select the best possible members for the Council.

Nor do the Council members seem inclined to strengthen the body. On the contrary, the Council made a series of decisions in its 5th session that significantly weakened its ability to objectively advance and advocate human rights or fall far short of the expectations of the United States and most human rights groups.²²

- *Universal Periodic Review.* The Council, as required in the General Assembly resolution creating the body, adopted a “universal periodic review” of the human rights situation in all U.N. Member States. This step is welcome, but the proposed procedures for the review are very weak and virtually assure a milquetoast outcome. The review for every country, whether it is Sweden or Sudan, is limited to 3 hours. The review will be a country-led process in which the “country under review shall be fully involved in the outcome” and requires the review to “take into account the level of development and specificities of countries.”²³ Input from nongovernmental organizations will be minimal. Moreover, reviews will occur every 4 years regardless of circumstances in the country and only after exhausting “all efforts to encourage a state to cooperate with the UPR mechanism” would the Council “address, as appropriate, cases of persistent noncooperation with the mechanism.”²⁴ In other words, a genocide or massive political crackdown could occur in Sudan, China, Venezuela, or some other country and the Council could wait 4 years or more before examining whether a country has addressed the human rights concerns raised during the review.
- *Independent Experts.* The Council decided to maintain the system of independent experts charged with thematic human rights issues, such as freedom of opinion and expression, torture, the right to food, but weakened their ability to investigate and report their findings. Under the new procedures, a committee appointed by the HRC will appoint these experts from a roster of “qualified” candidates. This process increases opportunities for the Council to directly pressure and influence the experts.
- *New Code of Conduct.* Moreover, the experts will be subject to a new Code of Conduct designed to restrict the independence of the human rights experts and the sources for their reports. For instance, experts are required to “show restraint, moderation, and discretion” when implementing their mandate, avoid using “unfounded or politically motivated” communications or “abusive” language, and not rely on “reports disseminated by mass media” or nongovernmental organizations or persons unless they are the “victim of violations . . . and claim[] to have direct or reliable knowledge of those violations substantiated by clear information.”²⁵ These restrictions offer ample opportunities for countries to dispute, block, and otherwise criticize reports by experts.
- *Country-Specific Experts.* A majority of the Council sought to eliminate all experts focused on investigating human rights abuses in specific countries. The effort failed when European countries threatened to walkout. However, the Council did eliminate the experts focused on Belarus and Cuba, despite extensive evidence of ongoing violations. The Council chose to maintain experts for Burma, Burundi, Cambodia, the Democratic Republic of the Congo, Haiti, Liberia, North Korea, Somalia, and Sudan, but many countries plainly plan to eliminate them in the near future through a “review” process. As with the thematic

²¹ For a list of the candidates for the Human Rights Council in 2007, see U.N. General Assembly, “Human Rights Council Election.”

²² See Sean McCormack, “Conclusion of the UN Human Rights Council’s Fifth Session and First Year,” U.S. Department of State, June 19, 2007, at www.state.gov/r/pa/prs/ps/2007/jun/86802.htm (July 25, 2007); Anne Bayefsky, “The First Year of the Human Rights Council: A Human Rights Catastrophe,” Eye on the UN, at www.eyeontheun.org/view.asp?l=11&p=334 (July 25, 2007); Human Rights Watch, “UN: Rights Council Ends First Year With Much To Do,” June 19, 2007, at <http://hrw.org/english/docs/2007/06/18/global16208.htm> (July 25, 2007); and press release, “Castro and Lukashenko to Celebrate at UN Human Rights Council,” UN Watch, June 18, 2007, at www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNgEmG&b=1316871&ct=3970325 (July 25, 2007).

²³ U.N. Human Rights Council, “Report to the General Assembly on the Fifth Session of the Human Rights Council,” U.N. General Assembly Document A/HRC/5/L.11, June 18, 2007, p. 5, at www.ohchr.org/english/bodies/hrCouncil/docs/5session/a_hrc_5_l11.doc (July 25, 2007).

²⁴ *Ibid.*, p. 11.

²⁵ *Ibid.*, pp. 49–55.

experts, the country experts will also have to abide by the Code of Conduct and will be selected by the committee appointed by the Council.

- *Israel*. In a disappointing repetition of one of the Commission's most egregious discriminatory practices, the Council voted to keep Israel as the sole country assigned a permanent expert charged with investigating "the situation of human rights in the Palestinian territories occupied since 1967."²⁶ While it sounds as if this mandate might cover possible human rights abuses by Palestinians and Israelis in the territory, this is not the case. John Dugard, the special rapporteur on the situation of human rights in the occupied Palestinian territory, said "it was understood that his mandate was limited to investigate human rights violations by Israelis and not by Palestinians."²⁷ Moreover, the mandate is one-sided and presumes Israel's guilt through language on the duration of this mandate, which extends "until the end of the occupation."²⁸ Unsatisfied with the efforts to condemn Israel in earlier sessions or with the successful effort to permanently install a blatantly discriminatory mandate focused solely on Israel, the Council passed an additional two resolutions condemning Israel in June.²⁹

As summarized by the U.S. Department of State, these institution-building procedures are "seriously flawed" and will make the many problems of the Council "even worse, by terminating the mandates of the U.N. Rapporteurs on the Governments of Cuba and Belarus, two of the world's most active perpetrators of serious human rights violations, and singling out Israel as the only country subject to a permanent agenda item."³⁰

Some have suggested that the performance of the Council would be improved if the United States had been a member of the Council or could be improved if the United States sought a seat on the Council in the future. This is very unlikely. Winning a seat on the Council would not necessarily give the United States greater voice or influence. Any U.N. Member State can comment on and speak to issues before the Council, and the United States has frequently expressed its support of or opposition to various resolutions and decisions.

Because membership is based on geographic representation, even if the United States won a seat on the Council, it would simply displace one of the seven countries representing the Western Europe and Other States region, which already vote largely as the United States would vote. In numerous votes over the past year, the Council has adopted resolutions over the objection of 11 or 12 Western nations.³¹ U.S. membership on the Council would not change this situation. The gain from a U.S. vote on the Council would be marginal at best.

Indeed, the U.S. experience over the past year would likely mirror that of Canada. Over the past year, Canada has assumed the traditional U.S. role of raising controversial resolutions and demanding votes. Canada's admirable actions have not

²⁶ Human Rights Council, "Report to the General Assembly on the Fifth Session of the Human Rights Council," p. 41.

²⁷ U.N. General Assembly, Department of Public Information, "Third Committee Approves Draft Resolutions on Human Trafficking, Literacy, Ageing, Crime Prevention, Kidnapping; Continues Consideration of Human Rights Issues," General Assembly Document GA/SHC/3858, October 19, 2006, at <http://domino.un.org/UNISPAL.NSF/eed216406b50bf6485256ce10072f637/b5567a93f841d5b28525720d00737d57> (July 25, 2007.)

²⁸ Human Rights Council, "Report to the General Assembly on the Fifth Session of the Human Rights Council," p. 38.

²⁹ Press release, "Human Rights Council Adopts Three Resolutions on Lebanon, Occupied Palestinian Territory and Darfur," U.N. Human Rights Council, June 20, 2007, at www.unhcr.ch/hurricane/hurricane.nsf/view01/04C68E89E3B992D7C1257300004D2901 (July 25, 2007).

³⁰ Sean McCormack, "Conclusion of the UN Human Rights Council's Fifth Session and First Year."

³¹ For instance, the July resolution on Israel and Palestine passed by a vote of 29 to 11 with five abstentions, the August decision on the Israeli invasion of southern Lebanon passed by a vote of 27 to 11 with 8 abstentions, and the November decision on Darfur passed by a vote of 25 to 11 with 10 abstentions. Canada, the Czech Republic, Finland, France, Germany, the Netherlands, Poland, Romania, Ukraine, and the United Kingdom voted against these resolutions. Switzerland and Japan voted for at least one. Press release, "Human Rights Council Decides to Dispatch Urgent Fact-Finding Mission to the Occupied Palestinian Territories," U.N. Human Rights Council, July 6, 2006, at [www.unog.ch/unog/website/news__media.nsf/\(httpNewsByYear_en\)/6382E27860145DA7C12571A3004D1F19](http://www.unog.ch/unog/website/news__media.nsf/(httpNewsByYear_en)/6382E27860145DA7C12571A3004D1F19) (May 24, 2007); press release, "Second Special Session of Human Rights Council Decides to Establish High-Level Inquiry Commission for Lebanon," U.N. Human Rights Council, August 11, 2006, at [www.unog.ch/unog/website/news__media.nsf/\(httpNewsByYear_en\)/F16C6E9AE98880A0C12571C700379F8C](http://www.unog.ch/unog/website/news__media.nsf/(httpNewsByYear_en)/F16C6E9AE98880A0C12571C700379F8C) (May 24, 2007); and press release, "Human Rights Council Notes with Concern Serious Human Rights and Humanitarian Situation in Darfur," November 28, 2006, at [www.unog.ch/unog/website/news__media.nsf/\(httpNewsByYear_en\)/62C6B3F928618CCEC12572340046C4BB](http://www.unog.ch/unog/website/news__media.nsf/(httpNewsByYear_en)/62C6B3F928618CCEC12572340046C4BB) (May 24, 2007).

been successful. On the contrary, they have resulted in retaliation and—in one remarkable instance—blatant and willful distortion of the record when the HRC declared that the new procedures were adopted by consensus despite Canada's insistence that it never gave its consent or even received a copy of the resolution text. Bizarrely, the Council voted 46 to 1 that Canada had indeed agreed to the consensus.³² As noted by the United States, the procedural maneuvers to obtain consensus on the resolution violated both the spirit and letter of the rules of the Council: "We are concerned about the procedural irregularities employed last night denying Council members the opportunity to vote on this agenda. The Human Rights Council was intended to be the world's leading human rights protection mechanism. Its proceedings should be a model of fairness and transparency. Instead, in the interest of political expediency, procedural irregularities denied members the right to an up-or-down vote on principled human rights concerns—a right guaranteed by the rules of the institution."³³

There is no reason to expect that the United States would be treated differently than Canada by the human rights abusers that have successfully used the Council to undermine human rights rather than protect them.

CONCLUSION

Hopes that the Human Rights Council would rectify the poor record of the U.N. Commission on Human Rights in holding human rights abusers to account have proven illusory. The Council ultimately reflects the quality of its membership. The General Assembly simply did not incorporate the protections and standards for membership that would have led to a more effective body. Predictably, human rights abusers are running the Council agenda in the same manner they did with the Commission.

The United States should not be satisfied with the status quo. Congress and the administration should continue their efforts to improve the HRC's membership, procedures, mechanisms, and institutions. However, we must also be realistic in recognizing that most members of the General Assembly and the Council do not want an effective Council and that America's best efforts will likely fall short.

As a result, the United States should refuse to lend the Council the credibility of U.S. membership or the symbolic support of U.S. contributions until such time as the Council takes its responsibilities seriously by censuring major human rights abusers, exposing their reprehensible actions to public scrutiny, and eschewing its disproportionate focus on Israel.³⁴

Senator BILL NELSON. Did any of you disagree with any of the other panelists on any of the testimony?

Yes ma'am, Ms. Hicks.

Ms. HICKS. Senator Nelson, I would like to point out, Mr. Chairman, that the issue of the Universal Periodic Review has been talked about quite a bit here, and it could either be the worst thing to happen or the best thing to happen based on some of the views expressed.

My colleague from the Heritage Foundation talked about the fact that the text virtually assures a Milquetoast outcome and that the input from NGOs in process will be minimal. Neither of those statements, in my view, is correct.

First, a Milquetoast outcome is assured only if states like the United States and allies at the U.N. Human Rights Council do not engage actively in making this process work. The terms of ref-

³² UN Watch, "Consensus Declared—Whether Canada Consented or Not," View From Geneva, June 20, 2007, at www.unwatch.org/site/c.bdKKISNqEmG/b.1317481/k.96E7/View_From_Geneva/apps/nl/newsletter2.asp (July 25, 2007).

³³ Sean McCormack, "Conclusion of the UN Human Rights Council's Fifth Session and First Year."

³⁴ The HRC is funded through the U.N. regular budget, so the U.S. cannot directly withhold funding. Instead, it could withhold an amount equal to the U.S. portion of the Council's budget (the U.S. pays 22 percent of the HRC budget estimated at \$12.9 million to \$14.1 million per biennium, or about \$1.5 million per year) from the U.N. regular budget. This withholding would have little direct effect on the Council's budget because the withholding would be spread across all U.N. activities funded through the regular budget, but it would clearly signal U.S. displeasure with the Council.

erence for this process are sufficient for a real outcome. And as a human rights group, I have to tell you that we're very excited about the fact that there will be a chance for every country to be put under the spotlight in this way. The process gives NGOs equal access, basically, by allowing a 10-page summary of their input to be made the same way that the HRC will have a 10-page summary from the Office of the High Commissioner for Human Rights of U.N. information. So it's a fair process.

Thank you.

Senator BILL NELSON. So you think the universal periodic review can be a deterrent on the abuses if the United States is an active participant?

Ms. HICKS. Absolutely, Mr. Chairman.

No country likes to have its human rights record review, and our experience has been that when human rights reviews of that sort happen, states take action. They often adopt legislation, they release prisoners, they move things on the ground for human rights. This may not, as I said earlier, be as satisfying as a condemnatory resolution, but it can be a process that can change the reality on the ground.

Senator BILL NELSON. Mr. Melia.

Mr. MELIA. I would agree with Ms. Hicks, that there's potential for the universal review to be meaningful and for it to be, at least, one chance, one bite at the apple, for some of these countries that won't otherwise be subjected to scrutiny. I'm not sure that it's a good use of the limited time and resources of the Council to do it on every country in the world, however. I do not think the world needs an extensive review of Finland and Iceland and Costa Rica and some of these other countries. We really need to have the Council focus on the problem places in the world. And it is not a mystery which places those are.

So, there's potential value to the Universal Review. I think it's—we're concerned it's going to divert resources that could be better spent otherwise. But most importantly, it depends on what kind of review it is and how we and others take advantage of this opening to do some of these reviews.

Senator BILL NELSON. Does the observer status of the United States hinder its opportunity to work with NGOs?

Mr. SCHAEFER. In my opinion, it does not. The United States has a very strong presence in Geneva. It works closely with the Council. It works closely with other Member States that have seats on the Council and regularly offers comment on resolutions, decisions, and matters before the Council. It engages frequently with NGOs. In fact, I was just at the session this past March and I witnessed the negotiations between the U.S. delegation and the various NGOs that were present that day. They were extensive and continuous throughout the day. In fact, they continued through virtually the entire discussion. The United States worked with them very closely and it continues to do so.

Ms. HICKS. Could I comment on that as well?

Thank you, Mr. Chairman. I think I'm probably the only person in the room who has actually attended the last four sessions of the Human Rights Council in Geneva, so I have a good sense of the

U.S. role there. It certainly has been able to engage and has done so in a constructive fashion with NGOs and otherwise.

But, anyone who has visited there as well, would repeat the refrain from our allies, that they need the United States at the table. Observer status is not enough. We simply do not have the influence we would if we were a voting member of the Council. And our U.S. leadership can play an important role. That is something you hear routinely from allies in Latin America and in Europe.

When you look at the decision of the United States, for example, not to run for a seat on the Council, this was a question that was asked routinely in Geneva. The U.S. decision was a grave disappointment and, I think, set back the efforts of the U.S. delegation to do its job. When that decision came through, people in Geneva questioned, "Well, if you're not willing to even run for a seat, what do your opinions matter in the context of this body?" raising an understandable concern in my view.

Senator BILL NELSON. Did the United States think that it wasn't going to get elected? Is that why it didn't run?

Ms. HICKS. That's not the stated reason for the U.S. decision not to run. They've said that they haven't run because of the lack of credibility of the body. But in fact, of course, by being at the table, they have a greater propensity to affect the credibility and effectiveness of the Council.

Senator BILL NELSON. Do either of the two of you disagree with that?

Mr. SCHAEFER. I have no idea whether the United States would have won a seat or not, if it sought one. I do know that it would have been a difficult process to get the number of votes necessary to win a seat. I think that the United States wisely chose to focus its efforts on, in the past case of electing Bosnia and Herzegovina over Belarus, trying to get better membership on the Council rather than getting itself elected.

If you take a look at the Western European and Others group, you have European countries that largely share the U.S. values and vote when pressed on those issues, in many cases, the way the United States would. Instead of trying to replace one of those countries, which would have had a marginal affect on the outcome of votes, it instead focused on preventing countries like Belarus from being elected.

I think this has a much stronger effect overall on the membership of the Council, even though it's still an uphill battle.

The number of members who regularly supported strong pro-human rights resolutions over the past year on the Council was, unfortunately, small. It's about 13 countries. Thirteen countries out of 47 countries is about 28 percent of the Council. Senator, if you can imagine yourself as part of a 28-Member minority in the Senate. Ask yourself, how effective could you be? How strongly could you advocate your positions, and how successful would you be in advancing those positions? And that's exactly the situation that the United States and other like-minded countries face in the Council. Considering the regional allocation of the seats on the Council and the unwillingness of developing world democracies like India and South Africa to support human rights and stand by those principals, instead yielding to pressures from the regional voting

blocks, the situation's not going to change in the future, regardless of whether the United States is on the Council or not.

Senator BILL NELSON. Mr. Melia.

Mr. MELIA. The challenge the United States faces is precisely that of being in the minority position. I guess it depends on what your disposition would be to how to address being in the minority. Would you walk away if you're in the 20-percent minority in the legislative body? Would you not show up or would you use your seat at the table to make statements, define your position, create a position that others could gravitate toward in the future? That's what we need to be doing at the U.N. Human Right Council.

There's been discussion about the symbolism attached to potentially withholding some dues to the United Nations. Well, there's some symbolism attached to being present at the table. You have to play to win. If you want to build a political movement, if you want to build a larger coalition, you have to be engaged in it, you have to be visible, articulating the standards to which you want others to repair. And that's what the United States has not done adequately.

I think there has been some vigorous diplomacy by this administration. Ms. Silverberg and her colleagues, Mark Lagon and Barry Lowenkron and Erica Barks-Ruggles, they have done what they were talking about. They have gone to capitals. But they have to go to more capitals and they have to really make it part of our bilateral relationship with that second tier of democracies; not just with the Western Europeans who are always going to vote right. We need the Western Europeans to use their influence with other democracies. We need them to use their influence in Latin America and Africa. We haven't done that yet; we haven't really stepped up our diplomacy to really try to build a coalition that is a minority's only chance to build a majority.

Mr. SCHAEFER. Mr. Chairman, look back at the United Nations Commission on Human Rights. The United States was a paying member of the Commission for decades. The United States worked hard in the Commission to make it work. The United States worked hard to get various resolutions and country-specific mandates passed in the Commission. Yet, the Commission was condemned by Secretary General Kofi Annan as a discredited institution that cast a shadow on the United Nations system as whole.

Simply being at the table and being part of the process isn't enough. It's not enough to overcome the entrenched resistance by a number of Member States that simply seek to use that institution to block scrutiny of themselves and to use it as a platform for attacking Israel and other countries. That is the situation that we're dealing with and simply having the United States at the table is not going to change that.

I do agree that the United States needs to continue to press to try and make the institution better, but we need to deal in reality and the reality is that the numbers are stacked against the United States and like-minded states in the Council.

Senator BILL NELSON. Well Mr. Schaefer, do you agree that the present course where the Council is condemning Israel, but is doing nothing about atrocities in Lebanon or, and the atrocities in the Sudan. Do you think that that's out of kilter?

Mr. SCHAEFER. Absolutely.

Senator BILL NELSON. All right. Well, then does the United States get engaged? In what way, Mr. Schaefer, since you don't think that it makes any difference for the United States to be a member of the Council? What do you think about the observer status?

Mr. SCHAEFER. I think that the United States should continue to press for good resolutions. The United States should continue to support good Member States for seats on the Council and should try and make the Council better. But that doesn't mean that it should seek to be elected to what has turned out to be an illegitimate and utterly ineffective organization for preserving, protecting, and advancing human rights. The U.S. membership on the Council is something that many states desperately want and it's one of the cards that we can play by saying, "If you live up to the standards for the Council that are in the resolution creating this institution, at that point the United States would join this institution. And it will not join it until it meets those standards." You're setting a threshold for behavior and you're setting a standard—a principle. And at that point, if the Council lives up to that standard, then it should seek a seat.

Senator BILL NELSON. Ms. Hicks.

Ms. HICKS. Mr. Chairman, I'm surprised by the skepticism by my colleague from the Heritage Foundation about the numbers within the Human Rights Council. If we use the same numbers that my colleagues have used and look to the Freedom House analysis, 55 percent of the Council are countries that are considered free. Seventy-six percent are members of the Community of Democracies. Now, of course those states don't always vote the right way at the Council, but to say that we're in a minority and that we can't get anything done at the Council simply belies the numbers. There is a working majority. We saw it take action, actually, on Sudan and Darfur, and it can be used—as it was with Belarus at the General Assembly—if the United States and other countries were to make it so.

And turning to the HRC elections, which both of my colleagues have referred to, the United States worked and made sure that Belarus didn't get elected. But at the same time, the Latin America slate had room for two countries, and those two slots were taken up by Nicaragua and Bolivia. Surely the United States has enough influence in that region of the world to work with its allies, to put forward a better slate of candidates. The same can be said for Africa where, as has already been noted, Egypt and Angola were among the countries elected. We can work with human rights supporters in Africa, we can improve the membership, and we can get things accomplished even with the membership as it currently exists.

Senator BILL NELSON. Well, I want to thank you all for your participation. We are going to continue to shine the light on this matter because something isn't right. And we've talked a lot about process and membership and the degree of participation and all of that, but underlying all of this is that something's not running right. And we've got to get it right. For a country that values the rights of humans being upheld, we can do no less.

I'm very grateful to you for your participation today. I apologize for the interruption, but that is an occupational hazard around here. When we vote, we vote, and you have to go vote.

So thank you and the meeting is adjourned.

[Whereupon, at 4:30 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. NORM COLEMAN, U.S. SENATOR FROM MINNESOTA

Last year, a call for reform led the United Nations to replace the discredited Human Rights Commission, which had included the likes of Libya and Sudan as members, with a new Human Rights Council. The Human Rights Council celebrated its 1-year anniversary last week, but unfortunately this anniversary was nothing to celebrate. Despite concerns about the structure of the new Council when it began operating, no one anticipated that within 1 year it would be possible to gut the intended agenda of the Council and make a mockery of its stated purpose on the scale that the Human Rights Council has managed to do.

In short, after five regular sessions and four special sessions, the Council has proved that it is nothing more than a platform to launch vitriolic attacks against one country—Israel. Despite the fact that the Human Rights Council is tasked with monitoring the human rights situation of all 192 members of the U.N., the only country that has been directly condemned through country-specific resolutions is Israel—which has been subject to nine resolutions, or 75 percent of all resolutions passed by the Council. In keeping with this selective focus, the Council has called three special sessions—which are intended only to address the most egregious and urgent human rights situations—on Israel. And for anyone that remains unconvinced about the blatant bias of the Council, when the decisions were adopted last week on the governing rules of the “Program of Work” were established with only one country-specific agenda item—the human rights violations of Israel in the Palestinian territories. The sad irony was that this decision was adopted while Hamas carried out murderous attacks against fellow Palestinians in Gaza.

Only three noncondemnatory measures were adopted last year on the human rights situation in Sudan despite its perpetration of a genocide, and beyond that there was zero consideration of human rights in all of the remaining 190 U.N. Member States. In its annual report of the state of freedom in the world, Freedom House lists 19 of the “worst of the worst” human rights violators, none of which were given any consideration by the Council except for the feckless gestures passed on Sudan. In other words, the response of the Council to the state-sponsored brutality in countries such as North Korea, Burma, Zimbabwe, and Belarus was a deafening silence.

The truth is that members of the Council are too busy trying to protect themselves from criticism for their own human rights abuses and taking political shots at Israel. And they are succeeding—this past week when the governing rules were passed, the mandates of the special rapporteurs for human rights in Cuba and Belarus were eliminated. This should come as no surprise when there are not even minimal requirements for democracy or respect for human rights to run for membership on the Council. Predictably, less than half of the states on the 47-member Council qualify as free democracies and current members include countries like Cuba, Azerbaijan, Angola, and Saudi Arabia.

I could go on and on about the outrages of the Human Rights Council, but I think the point has been made. At the very least, the performance of this Council has been a profound disappointment and I believe this body must make a statement to that effect. That is why I introduced a bill that prohibits U.S. funding to support the U.N. Human Rights Council, S. 1698. I would note that this bill does not cut off U.S. contributions to the U.N., but it makes it U.S. policy that the contributions we give to the U.N. are not to be used for supporting the Council. I would urge my colleagues to join me in expressing their disappointment with the Council by supporting this bill.

Thank you very much.

RESPONSES OF ASSISTANT SECRETARY KRISTEN SILVERBERG TO QUESTIONS
SUBMITTED BY SENATOR RUSSELL FEINGOLD

Question. It appears that the administration is continuing to refrain from engaging with the U.N. Human Rights Council (Council). We all know that it is not work-

ing well. What is the administration's strategy for improving the Council, or—failing that—working toward the development of an alternative structure to address the issues the Council has not addressed?

Answer. The United States has been actively engaged in the Council's first year. We have not yet made any formal decisions on our participation with the Council. We are concerned about the Council's performance and are discussing ways to strengthen human rights through other fora. We continue to look for ways to positively affect developments in the Council and hope to see an improvement in its outcomes.

We intend to continue our work on human rights matters in a variety of fora, including the U.N. General Assembly's Third Committee, the Security Council, when appropriate, other U.N. bodies, and in regional organizations. We will continue to provide support for technical assistance to promote human rights and democracy through the U.N. High Commissioner for Human Rights, the U.N. Democracy Fund, U.N. bodies, regional organizations, and by our direct support for civil society initiatives around the world.

We are focusing our efforts to achieve our human rights goals in venues other than the Council and in which we can make a measurable difference on the ground and bring attention to the world's most pressing human rights concerns.

Question. Seventy-seven percent of the new Council members belong to the Community of Democracies, but they tend not to vote as a group. Human rights advocates have said that the United States is the only government that could potentially bring together democratic governments on the Council to vote in favor of human rights promotion, possibly with the help of a U.S. Special Envoy to the Council. If you agree, what is the rationale for not being more engaged with the Council?

Answer. In the Council's first year, despite intensive diplomatic efforts by the United States, the Human Rights Council fell back into some of the unfortunate patterns of its predecessor, the Human Rights Commission, including making decisions based on regional group or other bloc loyalties rather than on the merits of promoting and protecting rights.

We have worked hard to try to encourage all members of the Council to be committed to protecting and promoting human rights—both domestically and internationally. Weaknesses in the resolution establishing the Council, including its failure to include any prohibition on membership in the Council by states that systematically abuse the rights of their people, is one of the reasons why we voted against the resolution. While 77 percent of the HRC members belong to the Community of Democracies, there remains a substantial portion that do not. We are actively supporting the Community of Democracies, and are working to strengthen its capacity to work as a caucus in multilateral fora.

Question. In accordance with the General Assembly resolution establishing the Council, when electing members of the Council, countries are supposed to be reviewed under the Universal Periodic Review mechanism during their term. How many Council members have undergone a review of their own human rights record?

Answer. The working guidelines for the Universal Periodic Review process are still under development and will probably be formalized within the next year. Thus far, no country has yet had its human rights record reviewed.