

The United States in Opposition – Again
Revitalizing the International Democratic Faction

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Thomas O. Melia, Deputy Executive Director
Freedom House, Washington, D.C.

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

As you know, the UN Human Rights Council was created last year in an extraordinary response to the disgrace that the UN 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 United Nations system. Kofi Anan and many others sought a fresh start.

Freedom House has been focused on how the United Nations 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 UN 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 United States Government to cast one of just 4 votes against the enabling resolution in the UN General Assembly on March 15, 2006. Yet we also thought that 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 UN 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 re-engage 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, ten months later, the Council has now concluded its first year of operations, the UN 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 non-democracies 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.

Too often, this is what we see at the Human Rights Council. The worst are full of passionate intensity; the best lack all conviction. The United States and its natural allies 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 UN 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 UN 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 EU 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 four 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 breath-taking. To date, the only condemnatory resolutions adopted by the Council in its first and second years – eleven 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 EU 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 three months in prison and a fine, and peaceful civic activists imprisoned three years ago languish in prison;
- Not for **North Korea**, the country with perhaps the most stunning systematic nation-wide 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;
- Not for Iran, which is steadily increasing its repression of every aspect of independent civil society, and has recently taken to seizing and abusing émigrés returning from the West to visit relatives, and declaring them to be subversive agents;
- 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 2/3 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 UN 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 UN, 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 UN 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 UN 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 inter-governmental 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 members of the UN 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 non-democracies 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 – alarmingly – 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. Along with Assistant Secretaries Kristen Silverberg and Barry Lowenkron, and others in the Department such as Deputy Assistant Secretary Erica Barks-Ruggles and Ambassador Joe Rees, Mr. Lagon energetically worked toward a stronger and more effective Council.

Yet, overall, one is left to wonder if the United States 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 U.S. 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. Meanwhile, when the U.S. has pushed for higher standards for human rights at the UN over the past year our engagement has sometimes made the difference. For example, the U.S. 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 U.S. 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, as “not qualified” for membership on the Council – Angola, Egypt and Qatar – did not receive the same attention. The U.S. 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 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 U.S. 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 sufficiently integrates other countries' performance at the Council into our bilateral relationships. To what extent 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 UN 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 U.S. 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 UN 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 UN'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 UN'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 US government, other than the Ambassador to the UN 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?

UN 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, no one disputes that. 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 U.S. 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 U.S. genuinely wants a better Council in four 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. 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 UN 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. 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 United States Senate – told us what to do when a democratic nation comes to be isolated in the world body. Writing in *Commentary*

magazine, in March of 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 U.S. 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.

The United States must lead the way in revitalizing the international democratic faction. It will not be easy or quickly done. But the makings of a working majority are there in the Council even as it exists today, and certainly if we mobilize our resources to shape its membership in the future.

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.