

Dawn of a New Era?

*Assessment of the United Nations
Human Rights Council and
its Year of Reform*

A report by UN Watch

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Table of Contents

Executive Summary.....	1
Introduction.....	2
Methodology.....	5
<i>Key HRC Actions on Human Rights and Democracy.....</i>	5
<i>Why Key Votes Were Mostly on Negative Initiatives.....</i>	6
Findings.....	7
<i>HRC Membership.....</i>	8
<i>HRC Treatment of Specific Countries.....</i>	10
<i>Statements in the HRC on the World's Worst Abuses.....</i>	15
<i>HRC Response to Islamic Campaign on "Defamation of Religion".....</i>	15
<i>HRC Protection of Independent Human Rights Experts and Professionals.....</i>	16
<i>Other Meaningful HRC Votes.....</i>	17
<i>Ongoing HRC Institution Building.....</i>	19
Recommendations.....	20
Table 1: Key HRC Actions on Human Rights and Democracy.....	22
Table 2: Scorecard of HRC Members on Key Actions.....	26
Table 3: The HRC's Genocide Test and the Williams Report.....	28
Table 4: The HRC's Genocide Test and Members' Statements.....	32
Table 5: Statements in the HRC on the World's Worst Abuses.....	35
Table 6: HRC Voting Record.....	43

Executive Summary

The new UN Human Rights Council was inaugurated last year amid great fanfare and high expectations. Proponents hailed it as the “dawn of a new era” for the promotion and protection of human rights. The Council has now met in four regular sessions and four special sessions, and will soon hold the final session of its first year. How has it performed so far? Has the Council met the criteria set by former Secretary-General Annan, who envisioned a new body comprised of members with solid records of human rights commitment, one that would eschew the politicization and selectivity that so discredited its predecessor, the Commission on Human Rights?

Sadly, despite having some promise on paper, the new Council has not been an improvement over the much-derided Commission. In some ways, it has even been worse. Members are supposed to be elected based on their human rights records, yet the Council includes persistent violators, and after the upcoming elections is expected to include several more. It is supposed to objectively and non-selectively promote and protect human rights worldwide, yet it has ignored the world’s worst abusers while repeatedly condemning only one country in the entire world—Israel. It is supposed to strengthen the UN’s human rights mechanisms, yet threatens now to erode the system and eliminate many of the independent experts.

In this report, we assess the 2006-2007 Council’s record by considering those votes and actions that were the most significant to Council stakeholders. These include most prominently resolutions addressing specific countries, as well as other resolutions implicating bedrock democratic principles of the Universal Declaration of Human Rights. Our analysis shows that, although slightly more than half of the Council’s 47 members are free democracies, only a minority of these countries— about a dozen—have consistently voted in defense of the values and principles that the Council is supposed to promote. Instead, the body has been dominated by an increasingly brazen alliance of repressive regimes seeking not only to spoil needed reforms but to undermine the few meaningful mechanisms of UN human rights protection that already exist. Their goal is impunity for systematic abuses. Unfortunately, too many democracies have thus far gone along with the spoilers, out of loyalty to regional groups and other political alliances.

All is not yet lost, but the Council’s free democracies must unite and redouble their efforts to ensure that the Council can live up to its promises. The upcoming June session, at which vital decisions on the Council’s mechanisms are going to be made, will be critical. As signified by the image on the cover of this report, victims worldwide—including prisoners of conscience like Aung San Suu Kyi—continue to count time while the Council neglects their plight. If the most damaging proposals are adopted—such as the elimination of the human rights monitors for specific countries—the prognosis for the Council will be grim.

Introduction

This report assesses the work of the new UN Human Rights Council (the HRC or the Council) as it approaches the end of a year of reform that began with the Council's inauguration in June 2006. During this time period, the Council held four regular sessions, four special sessions and numerous informal meetings on the process of institution-building.

The Council was created by the UN General Assembly in March 2006 to replace the Commission on Human Rights as the UN's main human rights body. The Commission was led in its early years by such illustrious figures as Eleanor Roosevelt and René Cassin. It gave the world the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights and the system of independent UN human rights experts that still exists today. Unfortunately, however, the Commission became discredited over time by its poor membership and performance. In its later years, its members included such notorious human rights violators as Cuba, Saudi Arabia, and Sudan. In 2003, Libya was elected as chair. Its annual meetings ignored most of the world's worst abuses while focusing selectively on a handful of countries.¹

The situation had so deteriorated that, in March 2005, Secretary-General Kofi Annan, following a report by a high level panel of eminent figures, declared the Commission to be suffering from a fatal "credibility deficit"—one that was casting "a shadow on the reputation of the United Nations system as a whole." Mr. Annan cited the Commission's declining professionalism and decried a reality where countries sought membership of the Commission "not to strengthen human rights but to protect themselves against criticism or to criticize others." The Commission, said Annan, was undermined by the "politicization of its sessions" and the "selectivity of its work."² Indeed, "politicization and selectivity," according to Mr. Annan, were nothing less than "hallmarks of the Commission's existing system." Accordingly, Mr. Annan proposed far-ranging reform and the replacement of the Commission with a new body.³ When the new Council was created, Mr. Annan

¹ At the Commission, over a 40-year period, 30 percent of the resolutions condemning specific states for human rights violations were against Israel—and in its last years, the figure rose to 50 percent. In 2005, for example, the Commission adopted four resolutions against Israel and four resolutions against all other states in the world. (Belarus, Cuba, Burma/Myanmar, and North Korea were the subject of one resolution each.)

² Explanatory Note by the Secretary General, Addendum 1 to the Report of the Secretary-General, "In larger freedom: towards development, security and human rights for all," May 23, 2005 (A/59/2005/Add.1).

³ Report of the Secretary-General, "In larger freedom: towards development, security and human rights for all," March 21, 2005 (A/59/2005). Mr. Annan's proposed reforms were stronger than those that were ultimately enacted. He envisioned a smaller, more efficient body, with a strengthened mandate and a more credible membership, elected by a two-thirds vote. Six months of contentious negotiations in the General Assembly, however, resulted in the watered-down compromise text that became Resolution 60/251, the March 2006 resolution creating the Council. UN Watch

expressed his hope that it would avoid the “selectivity and politicization” that had characterized the Commission. He specifically cited the most extreme example by urging the Council not to focus on Israel alone.⁴

More than a year after the Council was created, and almost a year after its inaugural first session, this report asks: How has it performed? In what direction is it headed? Is the Council remedying the material defects of its predecessor as cited by Secretary-General Annan?

To be sure, the Council’s founding was attended by exuberant optimism on the part of the UN’s highest officials. The 47-member body was hailed, in the words of UN High Commissioner for Human Rights Louise Arbour, as “the dawn of a new era.”⁵ “I claim that it is clearly better,” said General Assembly President Jan Eliasson, who oversaw the reform negotiations.⁶ He called Resolution 60/251, the March 2006 General Assembly resolution that created the Council, “a new beginning for the promotion and protection of human rights.” He described the Council as a body which would be based on “dialogue and cooperation” and would be “principled, effective and fair.”⁷

Governments and NGOs shared this optimism. France’s UN envoy Jean Marc de La Sablière expressed confidence that the Council would be “more active, more reactive and more demanding,” saying “it shows we are serious about reform.”⁸ Swedish Prime Minister Goran Persson and Mexican President Vincente Fox described the Council’s creation as “an historic

supported Mr. Annan’s stronger reforms and was disappointed by the lesser changes enacted in Resolution 60/251. See, e.g., H. Neuer quoted in Steven Edwards, “Canada backs new UN Human Rights body,” *National Post*, March 16, 2006 (“The council falls short of what we in the human rights community have requested for many years. It’s not what Kofi Annan asked for a year ago. And we’re concerned that in June the faces around the table will look awfully familiar”); UN Watch, “New Human Rights Council Proposal Falls Short,” Press Release, February 23, 2006.

⁴ Secretary-General Kofi Annan, Statement at Press Conference, June 15, 2006.

⁵ Address to Human Rights Council, June 19, 2006.

⁶ “The World Tonight,” *BBC Radio*, May 10, 2006.

⁷ Mr. Eliasson further described the Council as “a body whose members would uphold the highest standards in the promotion and protection of human rights,” and as “a body that would advance the founding principles that were initiated by the General Assembly with the Universal Declaration of Human Rights.” Official Record of General Assembly Plenary Meeting (A/60/PV.72), March 15, 2006.

⁸ “UN General Assembly overwhelmingly endorses new rights council,” *Agence France Presse*, March 15, 2006.

achievement” that would “improve the life conditions for millions of people.”⁹ Swiss Foreign Minister Micheline Calmy-Rey, whose web page describes the Council as a Swiss initiative, said that the creation of the Council was a “major advance in the UN’s history of protecting human rights.”¹⁰ Many leading human rights NGOs likewise celebrated the new Council as “a significant improvement.”¹¹ Evidence warning to the contrary tended to be dismissed.¹²

Regrettably, the Council so far has failed to meet the basic standards set by Secretary-General Annan, or to live up to the promises of Resolution 60/251 and the hopes of victims and reform advocates around the world. The Council’s members are supposed to be elected based on their human rights records and commitments. Yet the first Council, while including a slightly higher proportion of democracies than the old Commission, still includes persistent violators like China, Cuba, Russia and Saudi Arabia. It is supposed to promote and protect human rights worldwide “without distinction of any kind and in a fair and equal manner” and to base its work on “the principles of universality, impartiality, objectivity, and non-selectivity.” To date, however, the only country in the entire world that it has condemned for human rights violations has been Israel.

⁹ “Article by the Swedish Prime Minister Göran Persson and Mexico’s President Vicente Fox,” April 3, 2006. Council President Luis de Alba of Mexico described the Council as “a new institution able to respond to the expectations of the world’s peoples.” Address to Human Rights Council, June 19, 2006.

¹⁰ Address to Human Rights Council, June 19, 2006. The resolution created an institution “with greater legitimacy,” said Peter Maurer, Switzerland’s UN ambassador. “We do not share the intransigent and maximalist approaches of certain delegations, who want to make us believe that they are the only ones fighting for an ambitious human rights machinery,” he added. Official Record of General Assembly Plenary Meeting (A/60/PV.72), March 15, 2006.

¹¹ Human Rights Watch, “New Rights Council Offers Hope for Victims,” Press Release, March 15, 2006; see also Amnesty International, “UN Human Rights Council: A Victory for Human Rights Protection,” Press Release, March 15, 2006 (welcoming the Council’s creation as “an historic step toward strengthening the U.N.’s human rights machinery” and “a victory for human rights protection around the world”); Amnesty International, About the Proposed Human Rights Council, March 13, 2006 (stating that “[t]he new Human Rights Council would offer far-reaching, long-lasting and positive opportunities to further human rights protection”); NGOs Make Urgent Appeal to U.N. Member States to Back Human Rights Council Resolution, March 9, 2006 (63 NGOs—including Amnesty International, the Conference of NGOs (CONGO), Human Rights First, Human Rights Watch, the International Commission of Jurists, and the International Service for Human Rights, among many others—calling the draft that became Resolution 60/251 “a sound basis to strengthen the U.N.’s human rights machinery,” and urging its adoption).

¹² Following the election of Council members on May 9, 2006, a BBC Radio interviewer asked Human Rights Watch executive director Kenneth Roth whether he was concerned that a majority of Council members had voted in the General Assembly against action for the victims of Darfur. “They have to condemn Sudan for what’s going on in Darfur,” replied Mr. Roth, “and I have every confidence that they will.” *The World Tonight*, *BBC Radio*, May 10, 2006. More than one year later, they still have not.

Improvement is still possible, particularly through the universal mechanism for reviewing the human rights records of all countries equally. But the Council's record so far is profoundly disappointing. Sadly, all existing evidence indicates that this situation will continue in the foreseeable future.

Methodology

Key HRC Actions on Human Rights and Democracy

To assess the Council's performance, we focused on its most meaningful human rights actions. By meaningful, we mean resolutions and motions that were widely considered among HRC stakeholders to be important and were treated as such by members through their statements and actions. Resolutions on technical issues and those that passed by consensus, without significant debate, were not considered meaningful for the purposes of our evaluation.

The most important class of resolutions for diplomats and human rights activists has always been the "name and shame" votes where a specific country is censured. Out of more than 190 UN member states, the Council's predecessor body each year typically censured only five or six. The power of such denunciations in the world of human rights and the arena of international relations cannot, therefore, be underestimated. Large and small states alike exert considerable diplomatic efforts to avoid censure. Even if they are major violators of human rights, powerful states, such as China or Russia, have routinely been shielded from condemnation. The same has held true for those that belong to large and powerful alliances—e.g., Zimbabwe, which belongs to the African Group and the Non-Aligned Movement (NAM), a political bloc of developing countries; or Saudi Arabia, a member of NAM, the Arab League, and the Organization of the Islamic Conference (OIC), an alliance of 57 Muslim nations.

To date, there have been 12 country-specific HRC resolutions: nine censures of Israel and three non-condemnatory resolutions on Sudan.¹³ There was also one vote on a set of proposed amendments on Sudan. Other meaningful votes concerned:

¹³ At its September 2006 second regular session, the Council also enacted consensus and consensual resolutions on "technical cooperation with the Office of the High Commissioner for Human Rights" in Afghanistan and Nepal, but these do not meet our standards for meaningfulness described above.

- A successful motion by Islamic states to postpone three thematic resolutions sponsored by Canada, introduced solely out of retaliatory spite after Canada voted “no” on the Islamic group’s fifth and sixth censures of Israel.
- Two Islamic-group texts on “incitement to racial and religious hatred” and “combating defamation of religions.” These resolutions seek to suppress perceived offenses against Islam—and even to justify violent reactions thereto—and are inconsistent not only with free speech protections but with the fundamental principle that international human rights law protects individuals, not religions.
- A resolution sponsored by the African Group imposing a “code of conduct” on human rights monitors and a resolution by China for the “Like Minded Group”¹⁴ limiting the independence of the Office of the UN High Commissioner for Human Rights. Both of these are acts of intimidation by regimes interested in hiding their abuses, and the way in which countries voted demonstrates their commitment to protecting the UN’s non-political human rights mechanisms.
- A resolution by China and the Like Minded Group on “globalization and its impact on the full enjoyment of all human rights” suggesting, nonsensically, that globalization negatively impacts all human rights.
- A Cuban-sponsored resolution requiring the Secretary-General and the UN High Commissioner for Human Rights to consider and report to the Council on “the negative impact on populations” of “unilateral coercive measures”—a political jab at the United States for its trade embargo against Cuba.

Why Key Votes Were Mostly on Negative Initiatives

Regrettably, the list of votes at the Human Rights Council that met our criteria for meaningfulness includes more counter-productive initiatives by repressive governments than positive initiatives by the traditional, rights-supporting democracies. This is a consequence of two factors.

First, the positive initiatives that one used to see at the former Commission on Human Rights—country resolutions that objectively addressed at least some of the world’s worst abuses, or

¹⁴ The “Like Minded Group” at the UN consists of Algeria, Bangladesh, Belarus, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Sudan, Viet Nam, and Zimbabwe.

pro-democracy resolutions by the fledgling Democracy Caucus—have been almost entirely absent, the Darfur situation being the exception. Historically, the democracies that initiated these actions were the United States or members of the European Union. However, the United States is not a Council member, and the European Union has for the most part abandoned initiating any country-specific resolutions in the Council's first year. The EU says that this is a necessary trade-off to win the support of NAM—which is currently led by Cuba and holds more than half of the Council seats—in creating all of the Council's new mechanisms. However, it must also be noted that the EU, like other countries, has always been reticent to pursue politically sensitive matters at the Commission as well.

Second, and quite significantly, a consequence of the reform process—unintended by its initial proponents—was that proportional representation of Western democracies was diminished, and that of other alliances increased. In addition to NAM, the group of Islamic states was a big winner and, during recent hostilities in the Middle East, it repeatedly utilized the HRC to score propaganda points against Israel.

Findings

As explained above, we assessed 20 key Council actions, set forth in **Table 1: Key HRC Actions on Human Rights and Democracy**. On these actions, we scored each Council member's position as positive, negative, or neutral. A positive position was assessed as 1 point, a negative position as -1 point, and a neutral position as 0 points.¹⁵

Sadly, only 13 of the 47 Council members received positive total scores. Among these, Canada came in at first place, with 14 of a maximum of 20 points. In second place, with scores of 10 points, were 7 of the Council's 8 European Union members: the Czech Republic, Finland, Germany, the Netherlands, Poland, Romania, and the United Kingdom. France (the eighth EU member) and Ukraine came in third, with scores of 9 points. Other countries receiving positive scores were Switzerland (7 points), Japan (5 points), and South Korea (1 point).

¹⁵ In general, a neutral position was abstaining or being absent. However, for the March 2007 session's consensus resolution on Darfur, we gave all Council members a zero score. This is because, although we do not view this resolution, overall, as a positive step for human rights in Darfur, it nevertheless is not entirely negative. It does keep the situation in Darfur on the HRC's agenda for its next session and it does leave open the possibility of future Council action to improve the human rights situation in Darfur, including by implementing the recommendations of the Darfur Assessment Mission's report.

The remaining 34 Council members received negative scores ranging from -3 to -16 points. The 17 members receiving the worst score included four free democracies—Indonesia, Mali, Senegal, and South Africa—that deserve a particular mark of shame. India, another free democracy, also scored near the bottom, with -15 points. The scores of all Council members, as well as their regional and political group memberships, are shown in descending order on **Table 2: Scorecard of HRC Members on Key Actions**.¹⁶

HRC Membership

Before examining the key HRC actions in more detail, we must explain the way Council members are selected and the body’s current membership. The topic is particularly apt as the Council prepares for its second annual elections.¹⁷

The Council’s 47 members are elected by an absolute majority (in 2006, 96 votes) of the UN General Assembly. Although the Council’s founding resolution provides that Council members should be chosen based on their human rights records and commitments, it imposes a significant structural constraint: the Council’s 47 seats are divided by a set formula among the UN’s five regional groups, with 13 for the African Group, 13 for the Asian Group, 6 for the Eastern European Group, 8 for the Latin American and Caribbean Group (“GRULAC”), and 7 for the Western European and Others Group (“WEOG”). Regional allotment was the practice in the Commission as well, but a re-distribution of seats reduced WEOG’s representation in the Council, a loss for democracies.

As a result, the current Council is 47% non-democracies.¹⁸ Moreover, it includes nine countries—19% of its members—ranked “Not Free” by Freedom House in its 2006 worldwide survey of political rights and civil liberties.¹⁹ Four of these nine—China, Cuba, Russia, and Saudi

¹⁶ All Council members’ votes on the key actions are shown on **Table 6: HRC Voting Record**.

¹⁷ See www.unwatch.org for the joint evaluation of 2007 candidates by Freedom House and UN Watch.

¹⁸ Of the 47 Council members, only 25—a slight majority of 53%—are Free democracies under Freedom House’s standards. This is a small step forward, compared to the 2006 Commission’s figure of 45%, but it is not a significant break from the past. In addition, in terms of press freedom—a key indicator of a country’s respect for individual liberty, human rights, and the rule of law—only 15 of the new Council members (32%) ranked in the top third of the Reporters without Borders (*Reporters Sans Frontières*) 2005 worldwide press freedom index. A larger proportion—18 members, or 38%—ranked, disappointingly, in the bottom third of the index. For more information on members’ human rights records, see UN Watch Statement on the UN Human Rights Council, May 15, 2006 (available under “Statements and Letters” at www.unwatch.org).

¹⁹ These nine are: Algeria, Azerbaijan, Cameroon, China, Cuba, Pakistan, Russian Federation, Saudi Arabia, and Tunisia.

Arabia—are also among Freedom House’s 2006 “Worst of the Worst” human rights abusing regimes, as well as among the five countries UN Watch identified, before the May 9, 2006 election, as particular threats to the legitimacy of the Council.²⁰ Unfortunately, all four received well over the 96-vote threshold that was supposed to prevent human rights violators from winning Council membership. Saudi Arabia, for example, won 126 votes, close to two-thirds of the General Assembly.

The non-democracies control the Council’s two largest regional groups, Africa and Asia, which together hold a majority (26, or 55%) of the Council’s 47 seats. Only 30% of the Asian Group members, and 38% of those from the African Group, are Free countries under Freedom House’s standards.²¹ By contrast, the GRULAC members are 63% Free; the Eastern European Group members, 66% Free; and the WEOG members, fully 100% Free.

NAM, a political alliance of developing countries that includes many repressive regimes and is currently led by Cuba, holds a majority—57%—of the Council seats. The OIC, a political alliance of Muslim countries led in the Council by Pakistan, holds 36%, or 17 seats. This has proved to be consequential because one-third of the Council, or 16 members, can convene special sessions—which the OIC did three times in the Council’s first five months, all to criticize Israel. OIC countries also dominate, and as a result chair, both the African and Asian Groups that together make up the Council’s majority. In all three respects—percentage of total membership, percentage of the African Group, and percentage of the Asian Group—the OIC wields more power in the Council than it does in the UN General Assembly. Regrettably, the OIC has used its unprecedented power in the Council to obtain repeated condemnations of Israel while blocking accountability for the genocide in Sudan or the examination of abuses in any other country. It has also used its power to enact repeated resolutions promoting the notion of Islam as a victim.

Moreover, although they do have a slight numerical majority, the Council’s Free democracies are split. An informal “democratic alliance” of Canada, the 10 European democracies, and sometimes Japan and South Korea, generally have voted together to support positive initiatives and oppose counterproductive measures. However, the Council’s other democracies—from Asia, Africa and Latin America—usually have sided with the non-democracies, out of regional group and other

²⁰ UN Watch Endorsements for Elections to the UN Human Rights Council, May 3, 2006 (available under “Reports” at www.unwatch.org). Thankfully, Iran—the fifth particular threat that we identified—failed in its bid for a Council seat.

²¹ The Free countries among the African Group members are Ghana, Mali, Mauritius, Senegal, and South Africa. The Free countries in the Asian Group are India, Indonesia, Japan, and South Korea.

bloc solidarity, as well as out of consideration of sizable domestic constituencies that are sympathetic to Islamic-sponsored texts.

HRC Treatment of Specific Countries

To date, the Council has passed resolutions on the human rights situations of only two specific countries. It has held three special sessions and adopted nine condemnatory resolutions against Israel, and it has held one special session and adopted three non-condemnatory resolutions on Sudan. None of the U.N.'s other 190 countries have been addressed in a special session or cited by a resolution.

The Council adopted by vote seven one-sided, OIC-sponsored resolutions condemning Israel for human rights violations without addressing other parties' violations and without acknowledging Israel's legitimate concerns. Many also were redundant to resolutions passed at the same time in the General Assembly. Canada voted "no" on all seven of these resolutions and the Council's European democracies opposed most of them.²²

After Canada was the sole opposing vote on the Islamic group's fifth and sixth censures of Israel, the OIC retaliated with an unexpected, last-minute motion to postpone the consideration of three theretofore non-controversial Canadian drafts. (Canada had solid reasons for its votes²³ and the OIC's politically-motivated tactic, supported by such abuser regimes as China, Cuba and Russia, resulted in the delay of two positive texts.²⁴)

²² All of the Council's European Union members except France (the Czech Republic, Finland, Germany, the Netherlands, Poland, Romania, and the United Kingdom) voted "no" to four of the anti-Israel resolutions, abstained on two, and voted "yes" to one. France voted "no" to three, abstained on three, and voted "yes" to one, as did Ukraine. Switzerland voted "no" to one, abstained on five, and voted "yes" to one. Japan was the only other country that opposed any of the anti-Israel resolutions; it voted "no" to three of them, abstained on three, and voted "yes" to one. The one resolution on which all of these countries voted "yes" is Resolution 2/4, concerning Israeli settlements.

²³ As the Canadian ambassador explained, the General Assembly in New York was adopting its own resolutions on both the Golan and Israeli settlements, and there was no legitimate reason to condemn Israel for the same matters in Geneva—especially when the Council already had passed multiple resolutions against Israel and many other pressing situations around the world remained unaddressed. In addition, both resolutions were unbalanced and did not recognize all victims of the conflict in the Middle East. To address Syrian-related issues in the HRC without addressing the nature of the Syrian police state, or its sponsorship of Hamas, Hezbollah and other enemies of peace, is inconsistent with the HRC's own principles of human rights, equality and universality.

²⁴ After further negotiations, one of the three Canadian texts (on the effective implementation of international human rights instruments) was adopted by the Council by consensus the following day, but Canada agreed to defer the other two to a later Council session. But it was the spoilers, and not Canada, that lost credibility because of this action. As the Geneva-based Press Emblem Campaign (PEC) noted, the OIC's "diplomatic tactics delaying action" on Canada's

The retaliatory motion to postpone passed by majority of 25 to 20, and was a telling statement: the Islamic group had proved it could pass any resolution at all—even a frivolous measure for which no substantive pretext had even been claimed. The minority who opposed the motion included Canada, the eight EU countries, Ghana, Guatemala, Japan, South Korea, Switzerland, Ukraine and Zambia, as well as Argentina, Brazil, Peru, and Uruguay, countries that supported the Islamic bloc on all of the anti-Israel resolutions.

The Council also enacted two OIC-sponsored resolutions against Israel by consensus. The first of these adopted the report of the HRC's Commission of Inquiry into Israeli actions in Lebanon (established at its second special session in August) and mandated the UN High Commissioner for Human Rights to undertake follow-up activities based on that report. The second criticized Israel for refusing to admit the investigatory missions established at the Council's first and third special sessions, both concerning Israeli military actions in Gaza. All three of these investigatory missions were compromised from the start. Each was mandated to examine Israeli conduct only—i.e., to disregard all Hamas and Hezbollah actions—and, moreover, the resolutions establishing them had already prejudged Israel's guilt. Because of this one-sidedness, Canada disassociated itself from consensus on both follow-up resolutions. For its part, the EU noted, in its explanations of vote on the follow-up resolutions, that it had been unable to support all three underlying resolutions because of their lack of balance. Argentina also said the same concerning the resolution on the Lebanon war.

Our criticism of the Council's nine resolutions against Israel is not to say that Israel's human rights record should be immune from criticism. To the contrary, Israel should be held accountable for its human rights abuses, as should every other UN member state. The problem is that at the Council, Israel is not treated like any other UN member state. The systematic demonization of Israelis—and dehumanization, with Syria telling the Council that Israelis are “invaders from the Planet Mars”—not only violates the equality principles of the UN Charter and of the Council itself, but directly causes the world's worst situations to go ignored.

The only other country that has been addressed by the Council has been Sudan. But a comparison of the Council's approach on Sudan to its approach on Israel illustrates the Council's pattern and practice of disparate treatment and discrimination. After widespread criticism of its exclusive focus on condemning Israel, including from major human rights groups and then-

freedom of opinion and expression text “further complicates the situation of journalists in the field who are the only losers. Journalist victims of targeted attacks in armed conflicts and elsewhere will carry the brunt of this delay.”

Secretary-General Annan, the Council finally adopted a resolution addressing the crisis in the Sudanese province of Darfur, in late November. (By this point, the Council had held three special sessions and passed six resolutions against Israel.) The result was the adoption of a non-condemnatory, African Group-sponsored text. Canada, the eight EU members, Switzerland and Ukraine voted to oppose the text on the grounds that it was too weak.

Canada and the European Union, which had persistently urged the Council to address Darfur since June, had sought amendments to the African Group draft that, while still not condemning the government of Sudan for human rights violations in Darfur, would at least have emphasized its “primary obligation . . . to protect all individuals against violations.” This proposal, however, was rejected in a close vote. Joining Canada and the EU in supporting the defeated proposal were Argentina, Ecuador, Ghana, Guatemala, Japan, Mexico, Peru, South Korea, Switzerland, Ukraine, and Uruguay.

In response to more public criticism, this time for the November resolution’s soft approach toward Khartoum, the Council convened a mid-December special session on Darfur, initiated by Canada and Europe. But knowing that a strongly-worded measure would lose on a vote, the democracies had to settle for a compromise text acceptable to the Islamic, African, and Asian groups. As a result, the brief, 6-paragraph resolution was again non-condemnatory, merely expressing “concern regarding the seriousness of the human rights and humanitarian situation” in Darfur without giving any specifics, and urging “all parties” to sign and implement the Darfur peace agreement. (The Canadians and Europeans wanted to express “grave concern,” but that was too strong for Sudan’s defenders.) The well-documented facts about the ongoing atrocities in Darfur and Khartoum’s involvement in them—including evidence presented to the Council by the Office of the UN High Commissioner for Human Rights, the Office of the UN Coordinator for Humanitarian Affairs, the UN Population Fund, UNICEF, the Office of the UN High Commissioner for Refugees, humanitarian NGOs, and Darfur victims themselves—were completely ignored.

In fact, the word “violation” does not appear in the resolution at all. The OIC even rejected a Canadian and European proposal that the resolution’s introduction should refer generally to the Council’s power to address situations of human rights violations (using language taken verbatim from GA Resolution 60/251), because that would have “prejudged” Sudan.²⁵

²⁵ By contrast, consider an example of a Council resolution against Israel: the one from the second special session, in August, on “the grave situation of human rights in Lebanon caused by Israeli military operations.” This OIC-sponsored text, which runs to 29 paragraphs, cited Israel for a long list of “gross and systematic,” “massive,” “grave,” and “flagrant” “violations of the human rights of the Lebanese people” and “breach[es] of the principles of the Charter of the United Nations, international law and international humanitarian law.” These include “the massacre of thousands of civilians, injuries, extensive damage to civilian infrastructure, displacement of one million people,” “indiscriminate and

The Council did agree at the special session to dispatch an assessment mission to Darfur, but only under terms that were extremely deferential to Sudan. Unlike the three previous special sessions, the resolution on Darfur did not find any human rights or humanitarian law violations but only a serious “situation.” The investigatory mission was tasked to assess the human rights situation in Darfur—but also “the needs of the Sudan in this regard.” In doing all of this, the mission was obliged “to consult as appropriate” with the government of Sudan.²⁶ It could investigate all parties’ actions, rather than just one side’s. In addition, the Council President’s selection of the mission’s members required consultation with the Council, a majority of which had fought off any criticism of Sudan. As a result, unlike any previous mission, the Darfur mission’s six members included the Geneva permanent representatives of two Council member states: the Ambassadors of Gabon and Indonesia, both of whom had a record of speaking and voting in Sudan’s defense.

massive Israeli air strikes,” “environmental degradation,” “adverse impact on health,” “targeting of the communication and media networks,” and “continuing senseless killings by Israel, with impunity, of children, women the elderly and other civilians.” The war between Israel and Hezbollah undisputedly had severe human rights and humanitarian consequences, but they were not caused only by Israel or suffered only by the Lebanese. Yet the resolution makes no mention of any action or violation by Hezbollah or its sponsors, or of the deaths, injuries, destruction of property, and displacement of Israelis. Canada, Japan and 9 European members opposed this unbalanced approach, and some other democracies abstained, but the resolution still passed—prompting a chorus of criticism of the Council’s one-sidedness from major international human rights organizations. Amnesty International said that “members’ focus on their narrow political objectives resulted in a highly-politicized resolution that muted the Council’s voice by ignoring the violations of one party to the conflict” and that “failed to meet the principles of impartiality and objectivity expected” of the Council. Amnesty International, “Lebanon/Israel: Human Rights Council members put politics before lives,” Press Release, August 11, 2006. Human Rights Watch said that “the one-sided approach . . . is a blow to [the Council’s] credibility and an abdication of its responsibility to protect human rights for all. . . . Victims of human rights violations deserve better than the partisan fare that the Human Rights Council has offered so far.” Human Rights Watch, “Lebanon/Israel: UN Rights Body Squanders Chance to Help Civilians,” Press Release, August 11, 2006. Reporters Sans Frontières “condemn[ed] this use of the Council for political ends” and said that the Council, so far, had been “a repeat of the worst moments of the defunct Human Rights Commission . . . , with an automatic, blocking majority imposing its will and doing as it pleases,” that is, “exploiting human rights for political ends.” Reporters Sans Frontières, “Another sign of failure for Human Rights Council in resolution on Lebanon,” Press Release, August 12, 2006. Human Rights First said that it was “deeply disappointed” by the Council’s failure to respect its mandate to be universal, impartial, objective, and non-selective. Human Rights First, “UN Human Rights Council—Recent Resolution on Rights Violations in Lebanon Condemns Israel but Fails to Mention Hezbollah,” Press Release, August 22, 2006.

²⁶ By contrast, the mission of “eminent experts on human rights law and international humanitarian law” established at the Council’s August special session, which already had found Israel guilty of grave violations, was tasked “(a) To investigate the systematic targeting and killing of civilians by Israel in Lebanon; (b) To examine the types of weapons used by Israel and their conformity with international law; [and] (c) To assess the extent and deadly impact of Israeli attacks on human life, property, critical infrastructure and the environment.”

Despite the presence of the government representatives, the Darfur mission's overall composition and mandate were fair and its establishment therefore seemed a positive step—particularly in light of Sudan's statements at the special session that it accepted the resolution and would admit the assessment team. The Khartoum government, however, reneged on these representations and barred the mission from Darfur, although the team, led by Nobel Peace Laureate Jody Williams, did travel to Ethiopia and to the Chad-Sudan border.

On March 16, 2007, the Williams team presented to the Council a detailed report finding the government of Sudan responsible for orchestrating and participating in “large-scale international crimes in Darfur,” as well as citing other parties to the conflict for gross violations.²⁷ The report recommended specific action by the Council, the warring parties, and the international community to improve the situation and protect civilians in Darfur. In response, Sudan and its HRC allies—the OIC, the Arab League, almost all of the Asian Group, and Russia and Cuba—immediately rejected the Williams report as “invalid” on the grounds that the team had not gone to Darfur, and that one of its members had quit. Since Sudan and its allies were responsible for both, this was akin to the proverbial child who killed his parents and then demanded mercy from the court on grounds of being an orphan.

A two-week battle over how to treat the Williams report ensued, resulting in a meekly-worded compromise resolution that merely “took note” of the report without adopting its specific findings or recommendations. This resolution again failed to condemn, or even to cite, the Sudanese government or any other party to the conflict for abuses. It expressed “deep concern” about violations in Darfur—a slight improvement over the December resolution in which the word violation did not even appear—but it did not attribute those violations to any party. (An earlier European Union draft, although still not a condemnation, referred to attacks “by rebel and government forces,” but those words were dropped to achieve consensus.) The resolution also deferred to Sudan by expressing regret that the Williams mission “could not visit Darfur,” obscuring that it was the Khartoum government that denied them entry.²⁸

The resolution's one positive aspect is that it keeps the issue of Darfur on the Council's agenda—but only with the Council's typical deference to Sudan. It establishes a group of independent experts to “work with the Government of Sudan” and to report to the Council at its next session on how, “taking into account the needs of the Sudan,” to “ensure the effective follow-

²⁷ When it became clear that the Williams report would be significantly different than the Islamic group's pro-Sudan positions, the Indonesian ambassador quit the mission.

²⁸ By contrast, the resolution on the two missions that Israel refused to admit expresses the Council's regret that “Israel, the occupying power, . . . hindered the dispatching of the urgent fact-finding missions. . . .”

up” and “foster the implementation” of unspecified UN “resolutions and recommendations” on Darfur—which we hope will include at least some of the suggestions of the Williams team’s report.

For a recommendation-by-recommendation comparison of the Williams team’s report and the Council’s March resolution, see **Table 3: the HRC’s Genocide Test and the Williams Report**. To see which countries spoke out to protect the victims in Darfur and which ones shielded the government of Sudan, including quotes from illustrative statements, see **Table 4: the HRC’s Genocide Test and Members’ Statements**.

Statements in the HRC on the World’s Worst Abuses

Despite meeting for more than 10 weeks in 2006-2007, the Council failed to adopt a single resolution or decision, or make any other official statement, on the abuses of 18 of the 19 Freedom House 2006 “Worst of the Worst” human rights violating regimes. These regimes are: Belarus, Burma/Myanmar, China, Cuba, Equatorial Guinea, Eritrea, Haiti, Laos, Libya, Morocco (for Western Sahara), North Korea, Russia (for Chechnya), Saudi Arabia, Somalia, Syria, Turkmenistan, Uzbekistan, and Zimbabwe. Its actions concerning the nineteenth Worst of the Worst regime, Sudan, have been weak at best.

In statements to the Council, some countries—both Council members and observers—did mention abuses by 11 of these 18 regimes, but unfortunately no country introduced a resolution or decision concerning any of them. For details on which of the Worst of the Worst regimes were mentioned by which countries, see **Table 5: Statements in the HRC on the World’s Worst Abuses**.

HRC Response to Islamic Campaign on “Defamation of Religion”

Outraged by the September 2005 publication by a Danish newspaper of cartoons depicting the Prophet Mohammed, the Islamic states have been waging a campaign to obtain repeated UN condemnations of such perceived offenses to Islam, which it views as “incitement to religious hatred,” defamation of the Muslim religion, and blasphemy.²⁹ While we agree with the OIC on the importance of promoting religious tolerance, the Islamic group’s proposals on these issues have been objectionable because they privilege Islam alone among the world’s religions, ignore

²⁹ In deference to the OIC, the Council’s March 2006 founding resolution even affirms the media’s “important role . . . in promoting tolerance, respect for and freedom of religion and belief” without referencing free speech concerns or condemning violence. The OIC’s original proposal was to ban “actions against religions, prophets and beliefs.”

countervailing individual rights issues, and do not recognize that violence is an inappropriate response to offense, whether by words or cartoon.

As part of this campaign, the OIC has pushed through two HRC resolutions—one at the Council’s June 2006 inaugural session and another, with even worse language, at its most recent session in March 2007. While the brief June resolution simply mandated expert reports,³⁰ the longer and more detailed March resolution urged legal measures to protect religions rather than individual believers, specifically mentioned only Islam, and stated that the right to freedom of expression may be limited out of “respect for religions and beliefs”—a qualification not present in international human rights law.³¹

Both resolutions were opposed by Canada, the eight EU members, Switzerland, Ukraine, and Japan. In addition, South Korea (which had been the sole abstention in June) and Guatemala voted “no” on the March resolution, and Argentina, Brazil, Ecuador, Ghana, India, Nigeria, Peru, Uruguay and Zambia abstained.

HRC Protection of Independent Human Rights Experts and Professionals

One positive aspect of the old Commission on Human Rights that the new Council has inherited is its system of Special Procedures: the independent human rights experts who investigate and report to the Council on human rights issues around the world. In its sessions to date, the Council has heard over 60 expert reports, many identifying serious human rights issues in countries

³⁰ With the Council’s adoption of the June 2006 resolution, the Islamic states succeeded in commissioning reports meant to support their position that the religion of Islam and its practitioners are singular victims in today’s world. The UN High Commissioner for Human Rights, the Special Rapporteur on racism, and the Special Rapporteur on freedom of religion were each charged with preparing reports on “incitement of religious hatred” and “defamation of religion,” which were presented at the Council’s September session. However, the joint report by the two rapporteurs discussed not only Islamophobia but also anti-Semitism and Christianophobia. In further defiance of the OIC’s original design, the experts observed that international human rights law protects “primarily individuals in the exercise of their freedom of religion and not religions per se.” They also noted that “criminalizing defamation of religion can be counter-productive.” The High Commissioner’s report included a reference to the incitement of hatred of non-Muslims in the Middle East, in particular “some very violent articles against Jews” in the Egyptian press. Consequently, while the March 2007 resolution “welcomed” the racism expert’s report on “the situation of Muslims and Arabs in various parts of the world,” it failed to even mention the joint report described above. Similarly, the OIC-dominated Council only “took note” of the High Commissioner’s report, but did not “welcome” it, as is often the practice.

³¹ Article 19(3) of the International Covenant of Civil and Political Rights provides that freedom of expression may be limited only as necessary “for respect of the rights or reputations of others” or “for the protection of national security or of public order (ordre public), or of public health or morals.” Paragraph 10 of the June resolution includes this language, but also adds an additional basis for limitation—“respect for religions and beliefs”—that does not appear in the article.

around the world which, in almost all cases, were the only attention that these situations received. To their great credit, the experts' reports have forced Council members at least to hear about human rights violations that they would rather ignore.

In its first year, the Council is reviewing the Special Procedures system to determine what, if any, changes to make to it.³² Predictably, the Council's abuser states view the review as an opportunity to limit the experts' independence and to minimize their ability to criticize individual countries for human rights problems. Thus, for example, Resolution 2/1, sponsored by the African Group and supported by such repressive regimes as China, Cuba, Russia, and Saudi Arabia, imposes on the experts a "code of conduct" to be drafted by Council member states. Canada, the eight EU members, Switzerland, Ukraine, Guatemala, Mexico, Peru, and South Korea opposed this resolution. In a similar vein, China and the "Like Minded Group" sponsored a resolution at the Council's March session that, although entitled "strengthening the United Nations Office of the High Commissioner for Human Rights," in fact seeks to interfere with that office's independence. Canada, the 8 EU members, Switzerland, Ukraine, and Guatemala abstained on this text.

The abuser states are also campaigning vigorously to eliminate all of the independent experts who are mandated to investigate the actions of specific countries.³³ Exceptionally, these same states seek to indefinitely prolong the mandate on "Israeli violations in the occupied Palestinian territories," and to thereby preclude the regular review of the mandate's relevance to a changing situation. Although the issue will not be decided until June, thus far the Council's Western democracies have strongly opposed this damaging and unfair proposal.

Other Meaningful HRC Votes

The remaining two meaningful votes took place at the March 2007 session. The first was a resolution by China and the "Like Minded Group," a UN alliance of non-democratic regimes, that asserted, illogically, that globalization has a negative impact on *all* human rights and was adopted over the opposing votes of Canada, the 8 EU members, Switzerland, Ukraine, Japan, and South Korea. In the second, Cuba, on behalf of NAM, sponsored a resolution on the negative effects on human rights of "unilateral coercive measures," a thinly-veiled political jab at the United States for its trade embargo, which was gradually imposed in the early 1960's following Cuba's expropriation

³² The Council's founding resolution envisions that the Special Procedures will continue to exist in some form, although it does not specify the details.

³³ Currently, there are independent experts for the human rights situations in Belarus, Burundi, Cambodia, Cuba, the Democratic People's Republic of Korea, the Democratic Republic of Congo, Haiti, Liberia, Myanmar, the Palestinian territories, Somalia, Sudan, and Uzbekistan. See <http://www.ohchr.org/english/bodies/chr/special/countries.htm>.

of properties privately owned by Americans. This resolution was opposed by Canada, the 8 EU members, Switzerland, Ukraine, and Japan, and South Korea abstained.

Ongoing HRC Institution Building

In addition to its review of the Special Procedures, before mid-June the Council also must complete its first-year review of the expert advice body³⁴ and the confidential complaints procedure³⁵ that it inherited from the Commission. In addition, it will have to decide its agenda, working methods, and rules of procedure. On all of these issues, it remains uncertain whether the Council will implement positive changes, preserve the status quo, or backtrack. The abuser regimes have been energetically seeking negative results throughout. They seek to limit the participation of non-governmental organizations (NGOs). They seek to restrict the independence of the High Commissioner and her professional colleagues.

Two possible setbacks in June give particular cause for alarm: the Council's elimination of many if not most of the country-specific rapporteurs, and its assent to the permanent singling out of Israel by adoption of a special agenda item. Either of these developments will constitute a major failure to comply with the basic principles of reform set forth by Secretary-General Annan.

The Council also is in the process of building a mechanism meant to review the human rights records of all countries equally, known as universal periodic review (UPR). If achieved, this would be a great improvement—but not surprisingly, the spoilers are trying their best to prevent the creation of any meaningful review.³⁶

³⁴ The Sub-Commission on the Promotion and Protection of Human Rights.

³⁵ The “1503” Procedure.

³⁶ In their view, the information on which the review is based would come only from the government of the country under review—not from individual victims, non-governmental organizations, the media, or even the UN High Commissioner for Human Rights. Developed countries would be reviewed more often than developing ones, and the review would vary based on each country's “religious and socio-cultural specificities.” The review panel would be chaired by a country from the reviewed country's regional group, and NGOs would not be allowed to participate in the panel's discussion. And the review would never result in censure of the country. This would hardly be a review by any meaningful standard.

Recommendations

The Council's record to date is not encouraging, but we cannot yet give our final assessment of its first year. The body is still in the midst of its institution building, and it will hold its last session with the current membership from June 11 to 18. Room for improvement—or for further deterioration—remains. We hope that the conclusion of the institution-building process will not only bring improved mechanisms and procedures but also will free up time for more country situations to be addressed. If, however, the result is the adoption of the most damaging pending proposals—particularly the special agenda item singling out Israel, the abolishment of all the country monitors (but renewing indefinitely the one mandated to investigate “Israel’s violations of the principles and bases of international law” in the Palestinian territories), and restrictions on the participation of NGOs—the prognosis for the Council will be grim.

The Council's human rights supporting states must now redouble their efforts to ensure that the HRC lives up to its promises. In particular, we urge the Council's free democracies to:

- Seek accountability for at least some of the rest of the world's most repressive regimes, including by introducing country-specific resolutions and, where appropriate, initiating special sessions. In addition, speak out more often and more strongly against the human rights violations of these regimes.
- Fight genocide by holding the government of Sudan accountable for the atrocities in Darfur and seek concrete action to protect civilians there. Begin by immediately implementing the recommendations of the Williams team's report.
- Hold Israelis and Palestinians alike accountable for their human rights records, while continuing to oppose repeated and one-sided resolutions against Israel. Support a balanced human rights approach consistent with the Council's founding principles of equality and non-selectivity and those of the UN-sponsored Road Map for Middle East Peace.
- Continue to support the creation of credible, effective mechanisms and procedures and to oppose the persistent anti-reform efforts of the Council's repressive regimes.
- Continue to act in support of democratic values, for example, by continuing to oppose the campaign by the Islamic states to limit speech that they deem offensive.
- Vote at the Council based on democratic values rather than on regional bloc and other group alliances, and seek to hold fellow Community of Democracies members to their

