

ISSUE BRIEF

No. 4788 | NOVEMBER 27, 2017

U.N. Human Rights Council: Reform Recommendations for the Trump Administration

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Since the earliest days of the Trump Administration, its officials have made clear that they are closely scrutinizing the United Nations Human Rights Council (HRC). In March, Secretary of State Rex Tillerson informed human rights groups that continued U.S. participation in the HRC depends on “considerable reform” of the body.¹ In June, Ambassador to the United Nations Nikki Haley laid out specific U.S. criticisms of the HRC: bias against Israel, inclusion of human rights violators among the membership, and failure to address many serious human rights situations. She called for reforms to “keep the worst human rights abusers from obtaining seats on the Council” and for an end to the HRC’s discriminatory focus on Israel.² In a speech this month, Ambassador Haley confirmed: “We’ve made clear that the Human Rights Council will either adopt these reforms, or the United States will leave and fight for human rights in other forums.”³

In that same speech, Ambassador Haley stated: “We only want to be part of the Human Rights Council if it is true to its name.”⁴ But the HRC is a reflection of the U.N. membership—of which a majority are rated “not free” or only “partly free” by Freedom House. As long as HRC membership is reflective of the broader U.N., it will fall short of being the cham-

pion of human rights that it should be. But the U.S. is right to expect and demand that the HRC improve dramatically. Specifically, the U.S. should press for reforms to make membership criteria stricter, and insist that, as a matter of fairness, criticism of Israel be handled in the same manner and under the same procedures as any other state, rather than through separate and unique mechanisms. If the U.N.’s member countries reject these reasonable reforms, they will ensure that the HRC continues its bias and mediocrity, which would justify a decision by the Trump Administration to end U.S. participation in the HRC.

Reasonable Reforms to Address HRC Failings

The flaws of the council fall into three broad areas that each need to be addressed:

- Anti-Israel bias;
- Lack of membership criteria, which allows human rights violators to be elected to the HRC and impede effective action to meet the council’s mandate to “promot[e] universal respect for the protection of all human rights and fundamental freedoms for all...[and] address situations of violations of human rights, including gross and systematic violations”⁵; and
- Inadequate transparency and budget constraint.⁶

The first two problems are most prominent and objectionable on principle, while the third is consistent with America’s broader U.N. reform agenda and should not be neglected.

This paper, in its entirety, can be found at
<http://report.heritage.org/ib4788>

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Rejecting Anti-Israel Bias. Alone among the world's countries, Israel is subject to a separate human rights item: Agenda Item 7, "Human rights situation in Palestine and other occupied Arab territories." Every other country is examined under Item 4, "Human rights situations that require the Council's attention." According to UN Watch, "In the first 10 years of its existence, from 2006 to 2016, the council adopted 68 resolutions against Israel, and 67 on the rest of the world combined."⁷ In addition, the HRC currently has 12 "country mandates" that focus on human rights situations in individual countries, such as North Korea and Iran. All of these country mandates are subject to periodic renewal except for the "Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967" that remains in place "until the end of the Israeli occupation."⁸

Neither the U.S. nor Israel expect or propose shielding Israel from scrutiny or criticism for its human rights practices. On the contrary, a credible Human Rights Council must be able and willing to examine the human rights practices of each nation. But the agenda and procedures of the HRC single out Israel for different treatment from other nations, which is unacceptable. Specifically, the U.S. should—at a minimum:

- Demand the elimination of Agenda Item 7, and that examination of Israel's human rights practices be conducted under Agenda Item 4, as is the case for every other nation; and

- Require that the "Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967" be subject to renewal every few years as is the case with other HRC special procedures.

In addition, the U.S. should make every effort to rescind resolution A/HRC/31/L.38 requesting the High Commissioner for Human Rights to produce a "database" of all Israeli businesses operating in settlements in support of the boycott, divestment, and sanctions (BDS) campaign against Israel, which the U.S. opposes because it "falls far outside the scope of the human rights council's mandate and drains precious resources that could be used to promote and protect human rights around the world."⁹

No reform of the HRC can overcome or eliminate the hostility of many U.N. member states to Israel. As long as the HRC is reflective of the U.N. membership, disproportionate—and biased—attention will be focused on Israel. But, as a matter of fairness, the U.S. can and should demand that Israel be treated the same as other nations under the agenda and procedures of the HRC.

Stricter Membership Criteria. HRC seats are allocated by region, with approximately one-third coming open each year. The only requirement for election is that candidates receive support from a majority of the U.N. General Assembly (currently 97 of 193 member states) in a secret ballot. In vot-

1 Colum Lynch and John Hudson, "Tillerson to U.N. Rights Council: Reform or We're Leaving," *Foreign Policy*, March 14, 2017, <http://foreignpolicy.com/2017/03/14/tillerson-to-u-n-rights-council-reform-or-were-leaving/> (accessed November 20, 2017).

2 Nikki Haley, "A Place for Conscience: The Future of the United States in the Human Rights Council," remarks at the Graduate Institute of Geneva, June 6, 2017, <https://usun.state.gov/remarks/7828> (accessed November 20, 2017).

3 Nikki Haley, "Remarks at the Israeli-American Council Conference," November 4, 2017, <https://usun.state.gov/remarks/8088> (accessed November 2017).

4 Ibid.

5 United Nations General Assembly, "Resolution Adopted by the General Assembly on 15 March 2006: 60/251. Human Rights Council," A/RES/60/251, April 3, 2006, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/60/251&Lang=E (accessed November 17, 2017).

6 For more details, see Brett D. Schaefer, "A U.N. Human Rights Council Reform Agenda for the Trump Administration," Heritage Foundation *Issue Brief* No. 4674, March 29, 2017, http://www.heritage.org/sites/default/files/2017-03/IB4674_0.pdf.

7 Hillel C. Neuer, "Israel, the Palestinians, and the United Nations: Challenges for the New Administration," testimony at the joint hearing before the Subcommittee on the Middle East and North Africa and the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, Committee on Foreign Affairs, U.S. House of Representatives, February 2, 2017, <http://docs.house.gov/meetings/FA/FA13/20170202/105508/HHRG-115-FA13-Wstate-NeuerH-20170202.pdf> (accessed November 20, 2017).

8 U.N. Office of the High Commissioner for Human Rights, "Special Procedures of the Human Rights Council: Country Mandates," http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx (accessed November 17, 2017).

9 U.S. Mission of the United Nations (Geneva), "U.S. Explanation of Votes on Item 7 Resolutions," March 24, 2017, <https://geneva.usmission.gov/2017/03/24/u-s-explanation-of-votes-on-item-7-resolutions/> (accessed November 20, 2017).

ing, governments are encouraged “take into account the contribution of candidates to the promotion and protection of human rights,”¹⁰ but any pledges or commitments by candidate states are voluntary.

This method is grossly inadequate, as demonstrated by the ability of countries that flagrantly violate human rights to be elected to the HRC, such as Burundi, China, Cuba, Libya, Russia, Saudi Arabia, and Venezuela. Regions frequently game the system by offering “clean slates” (having the same number of candidates stand for election as there are open seats). This practice makes it easier for repressive states to win seats on the council, because there is no competition. Unsurprisingly, countries that uphold human rights and freedoms most strongly, such as those ranked “free” by Freedom House, have been a minority of council membership through most of its history. If the council is to improve, the membership criteria must improve. There are a number of reforms that could enhance chances for increasing the number of HRC members that respect human rights:

- **Hold competitive elections.** Ideally, each region should offer more candidates than open seats, in order to offer the General Assembly choices for council elections. But states are reluctant to run if they may lose, and the General Assembly cannot compel states to run. However, the General Assembly could change the elections to automatically list as candidates every state that is not currently serving on the council or is otherwise prohibited from running (such as having served two consecutive terms or, if the reform prohibiting consecutive terms proposed below is adopted, a single three-year term), and hold successive ballots eliminating the lowest half of vote recipients until all the open seats are filled.
- **Increase the threshold for HRC elections to two-thirds of the General Assembly.** Currently, election to the HRC only requires support from a simple majority (97 votes) of the General Assembly. Increasing the threshold for election to two-thirds (129 votes) of the General Assembly, as originally proposed by former Secretary-General Kofi Annan, would not prevent human rights violators from getting elected, but it would make

it more difficult and would improve the chances of the U.S. and other countries to rally in opposition to particularly odious governments.

- **Lower the threshold for suspending an HRC member from two-thirds to a simple majority of the General Assembly.** It is harder to suspend a country from the council than it is to elect it to membership under current procedures. This situation should be reversed. In addition, the General Assembly should change “suspend” to “dismiss” and adopt a process for replacing the dismissed member.
- **Bar countries from consideration for seats if they are the focus of HRC country mandates for human rights concerns.** The council currently has 12 country mandates: Belarus, Burma, Cambodia, Central African Republic, Eritrea, Iran, Israel, Mali, North Korea, Somalia, Sudan, and Syria. Although many serious human rights violators are absent from this list, barring these countries would at least establish a minimum standard that governments under HRC scrutiny should not be sitting among the council membership. An unfortunate consequence of this reform would be that Israel, already subject to biased treatment, would almost certainly be barred, since the Palestinian mandate enjoys broad support among the U.N. membership and is unlikely to be eliminated. However, Israel would face significant challenges in being elected to the HRC for the same reason, and preventing human rights abusers currently under HRC scrutiny from membership would be an important standard to set.
- **Prohibit consecutive terms.** Currently, states are elected to a three-year term and can immediately stand for re-election. After two consecutive terms, a state must take a one-year hiatus from the HRC. If consecutive terms were prohibited and countries were forced to take a hiatus after each term on the council, it would create more churn among HRC membership and offer more possibilities for states that have never been on the council to be elected.

10 United Nations General Assembly, “Resolution Adopted by the General Assembly on 15 March 2006: 60/251. Human Rights Council.”

- **Create a group of “at-large” seats.** A seat could be taken from each regional group to establish five at-large seats open to any member state not otherwise prohibited from running. Interest in running for these seats would be high and would likely generate competitive elections that currently are too rare.
- **Require HRC candidates to participate in a public forum where they must defend their human rights record and field questions from other governments and nongovernmental organizations.** Most candidates make voluntary pledges and commitments. These statements are not subject to challenge even if they blatantly misrepresent the human rights record of the candidate country. Requiring candidates to participate in a forum in which their human rights records and claims could be challenged, particularly by nongovernmental organizations, would be illuminating and, perhaps, dissuade some countries from running.

A majority of the U.N. membership is either “not free” or only “partly free” according to Freedom House. Thus, if the Council reflects the U.N. membership, it will always include states with poor or questionable human rights records. But the U.S. is right to demand higher standards. The reforms above, together or in some combination, could lead to improvements. Other reforms, such as having recorded rather than secret voting for candidates or making countries that routinely refuse to allow human rights experts to visit ineligible for election, could also be helpful. The U.S. needs to be creative and determined if it is to overcome the inertia of the entirely inadequate status quo.

Transparency and Budget Restraint. The HRC’s work has grown substantially since 2006, which is increasing costs and imposing a growing burden that has taxed even the best resourced missions in Geneva. The U.S. should seek to trim the 43 thematic special procedures—particularly those mask-

ing political agendas in human rights guises, such as the special rapporteur on the negative impact of unilateral coercive measures [sanctions] on the enjoyment of human rights and the special rapporteur on the right to development—in order to focus time and resources on gross and systematic human rights situations in specific countries. In addition, the U.S. should propose shortening HRC sessions, moving the panel discussions and high-level panels to side rooms, and ending the practice of passing identical or similar resolutions year after year. The U.S. should also demand that the council publish a separate budget that lists all assessed and voluntary funding received to support its activities, including disclosure from all mandate holders on all support received from governments, international organizations, and private sources, and how the funds were used.

Conclusion

The U.N.’s Human Rights Council is supposed to be the world’s premier human rights body, yet it remains irrationally biased against Israel, repressive governments are well-represented among its membership, and it too often does not condemn many of the world’s worst abusers of human rights. These serious, fundamental problems undermine the credibility of the council.

The Trump Administration is justified in demanding reforms to address these ongoing, fundamental problems. Securing reforms will not be easy, and the Administration should work earnestly toward their adoption in New York and Geneva over the next year. If this effort is unsuccessful, it will demonstrate that the U.N. membership is not interested in reforming the blatant injustices of the HRC, and the Trump Administration would be justified in leaving the council to its mediocrity, bias, and capriciousness.

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