

# CRS Report for Congress

## The United Nations Human Rights Council: Issues for Congress

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## Summary

On March 15, 2006, the U.N. General Assembly passed a resolution replacing the Commission on Human Rights with a new Human Rights Council (the Council). The U.N. Secretariat and some governments, including the United States, view the establishment of the Council as a key component of comprehensive U.N. reform. The Council was designed to be an improvement over the Commission, which was widely criticized for the composition of its membership when perceived human rights abusers were elected as members. The General Assembly resolution creating the Council, among other things, increases the number of meetings per year, reduces the number of Council seats from 53 to 47, and introduces a “universal periodic review” process to assess each Member State’s fulfillment of its human rights obligations.

One hundred seventy countries voted in favor of the resolution to create the Council. The United States was one of four countries to vote against the resolution, stating that the Council was no better than the Commission and that it lacked mechanisms for “maintaining credible membership.” Despite these initial concerns, the Administration has said it will continue to fund and support the work of the Council. It also decided the United States would not run in the first Council elections held in May 2006. In March 2007, the State Department announced that the United States will not run for a seat in the second Council elections to be held in May 2007. Currently, the United States is an observer to the Council and has no voting rights.

Since its establishment, the Council has held three regular sessions and four special sessions. The regular sessions have addressed a combination of specific human rights abuses and procedural and structural issues. Three of the four special sessions have addressed possible Israeli human rights violations in the Occupied Palestinian Territory and in Lebanon. In December, the Council held its fourth special session on the human rights situation in Darfur, Sudan.

The reaction of non-governmental organizations (NGOs), human rights groups, and governments to the new Council can be described as cautiously optimistic. Generally, they believe the new Council is an improvement over the Commission, but view the Council’s first full year of work as an indicator of its success. To date, some governments (including the United States) and NGOs have expressed concern with the Council’s initial focus on Israel.

Congress maintains an ongoing interest in the credibility and effectiveness of the Council in the context of both human rights and broader U.N. reform. Some Members have proposed legislation that would withhold Council funding if certain criteria are not met. Due to the nature of U.N. budget mechanisms, withholding Council funds would be a largely symbolic gesture and may have little or no effect on the Council’s operational work. It is expected that interest in this issue will continue in the 110<sup>th</sup> Congress as the Council continues to hold its first year of meetings and expected U.N. reform efforts move forward. This report will be updated as events warrant.

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# The United Nations Human Rights Council: Issues for Congress

## Background

### Overview of the U.N. Commission on Human Rights<sup>1</sup>

The U.N. Human Rights Commission (the Commission) was the primary intergovernmental policymaking body for human rights issues before it was replaced by the U.N. Human Rights Council (the Council) in 2006. Created in 1946 as a subsidiary body of the U.N. Economic and Social Council (ECOSOC),<sup>2</sup> the Commission's initial mandate was to establish international human rights standards and develop an international bill of rights. One of the Commission's notable successes was the Universal Declaration of Human Rights, adopted by the U.N. General Assembly on December 10, 1948.<sup>3</sup> During its tenure, the Commission played a key role in developing a comprehensive body of human rights laws and regulations.<sup>4</sup> Over time, its work evolved to address specific human rights violations and complaints as well as broader human rights issues. It developed a system of special procedures to monitor, analyze and report on human rights violations. The procedures addressed country-specific human rights violations, as well as "thematic" crosscutting human rights abuses such as racial discrimination, religious intolerance, and denial of freedom of expression.<sup>5</sup>

In recent years, controversy developed over the human rights records of Commission members. Countries widely perceived as systematic abusers of human rights were elected as members. In 2001, Sudan, a country broadly criticized by

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<sup>1</sup> For further information on the background and evolution on the Commission on Human Rights, see CRS Report RS20110, *The United Nations Commission on Human Rights: Background and Issues*, by Vita Bite (archived; available from the author).

<sup>2</sup> ECOSOC is a principal organ of the United Nations that coordinates the economic and social work of the specialized U.N. agencies. It is comprised of 54 member governments elected to three-year terms by the U.N. General Assembly.

<sup>3</sup> The Universal Declaration of Human Rights was adopted by General Assembly resolution 217 A (III), December 10, 1948, and can be viewed at [<http://www.un.org/Overview/rights.html>].

<sup>4</sup> This includes the International Covenant on Civil and Political Rights, which entered into force on March 23, 1976, and the International Covenant on Economic, Social, and Cultural Rights, which entered into force on January 3, 1976. The United States signed both treaties on October 5, 1977, and ratified the Covenant on Civil and Political Rights on June 8, 1992.

<sup>5</sup> Other examples of thematic mandates include the right to development; the right to education; the rights of migrants; and the right to food.

governments and human rights groups for ethnic cleansing in its Darfur region, was elected. Sudan was reelected in 2004, prompting outrage from human rights organizations and causing the United States to walk out of the Commission chamber in protest.<sup>6</sup> These instances significantly affected the Commission's credibility. Critics claimed that countries used their membership to deflect attention from their own human rights violations by questioning the records of others. Some members were accused of bloc voting and excessive procedural manipulation to prevent debate of their human rights abuses.<sup>7</sup> In 2005, the collective impact of these controversies led U.N. Secretary-General Kofi Annan to propose the idea of a new and smaller Council to replace the Commission. On March 15, 2006, the U.N. General Assembly approved a resolution to dissolve the Commission and create the Council in its place. The Commission held its final meeting in Geneva, Switzerland, on June 16, 2006, where, among other actions, it transferred its reports and responsibilities to the new Council.

The Office of the High Commissioner for Human Rights (OHCHR) is a department within the U.N. Secretariat headed by a High Commissioner for Human Rights, currently Louise Arbour of Canada. Its mandate is to promote and protect human rights worldwide through international cooperation, and through the coordination and streamlining of human rights efforts within the U.N. system. The OHCHR provided general support to the Commission and will continue to do so for the Council, working specifically with Council experts to document human rights violations.

## **The United States and U.N. Human Rights Efforts**

The United States is generally supportive of human rights mechanisms at the United Nations. It played a key role in creating the Commission on Human Rights in 1946, and was a member and active participant of the Commission until it lost its first election in 2001. It was reelected to the Commission the following year. In 2005, the United States supported doubling the U.N. regular budget resources of OHCHR. This increased the U.N. regular budget for human rights activities from \$64 million in 2004-2005 to \$83 million in 2006-2007. Congress has also demonstrated continued support for U.N. human rights bodies, often using the mechanisms and special procedures of the Commission to call attention to the human rights abuses of countries such as Cuba and China.<sup>8</sup> In addition, Congress receives

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<sup>6</sup> Press briefing by Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

<sup>7</sup> "A New Chapter for Human Rights: A handbook on issues of transition from the Commission on Human Rights to the Human Rights Council," *International Service for Human Rights* and *Friedrich-Ebert-Stiftung*, June 2006.

<sup>8</sup> Examples include H.Con.Res. 83, introduced on March 3, 2005, Urging the appropriate representative of the United States to the 61<sup>st</sup> session of the U.N. Commission on Human Rights to introduce a resolution calling on the Government of the People's Republic of China to end its human rights violations; and H.Res. 91, passed/agreed to in the House of Representatives on April 3, 2001, urging the President to make all necessary efforts to obtain passage during the 2001 meetings of the Commission on Human Rights of a  
(continued...)

annual Country Reports on Human Rights Practices from the Secretary of State as mandated by the Foreign Assistance Act of 1961.<sup>9</sup> The Secretary of State is required, among other things, to submit reports on countries which are members of the United Nations.

There have been instances when both Congress and the Executive Branch have been critical of the Commission. In 1997, controversy emerged between the U.S. government and the Commission when the Commission appointed a Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions to analyze how the death penalty is implemented in the United States.<sup>10</sup> The Rapporteur reported that economic status, ethnicity, and racial discrimination were indicators for death penalty verdicts, reportedly prompting then-Senator Jesse Helms to declare the Special Rapporteur's mission "an absurd U.N. charade."<sup>11</sup>

In 2001, more controversy followed when the United States was not elected to the Commission and widely perceived human rights violators such as Pakistan, Sudan, and Uganda were elected. The Bush Administration and Congress were frustrated and disappointed by the election outcome. The House of Representatives reacted with a Foreign Relations Authorization Act amendment that linked payment of U.S. arrears to the United Nations with the United States regaining a seat on the Commission.<sup>12</sup> The Administration, however, stated it would not link U.S. payment of U.N. dues and arrears to the outcome of the Commission elections.<sup>13</sup> Given the controversy over the Commission, both Congress and the Administration supported the U.N. Secretary-General's 2005 proposal to disband the Commission and create a new Council.

## The U.N. Human Rights Council and U.N. Reform

The establishment of the U.N. Human Rights Council was part of a comprehensive U.N. reform effort by former U.N. Secretary-General Annan and member states. In March 2005, the Secretary-General outlined a plan for U.N. reform in his report, *In Larger Freedom: Towards Development, Security, and Human Rights for All*. He presented human rights, along with economic and social development and peace and security, as one of three "pillars" on which to base the

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<sup>8</sup> (...continued)

resolution condemning the Cuban government for its human rights abuses.

<sup>9</sup> Country Reports on Human Rights Practices are submitted to Congress in compliance with Section 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended.

<sup>10</sup> Bacre Waly Ndiaye, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, U.N. document E/CN.4/1998/68/Add.3, January 22, 1998.

<sup>11</sup> Elizabeth Olson, "U.N. Report Criticizes U.S. for "Racist" Use of Death Penalty," *The New York Times*, April 7, 1998.

<sup>12</sup> For more information on this congressional action, see CRS Report RS20110, *The United Nations Commission on Human Rights: Background and Issues*, by Vita Bite, p. 3-4 (archived; available from the author).

<sup>13</sup> Press Conference of the President, Office of the Press Secretary, The White House, May 11, 2001.

work of the United Nations. In September 2005, heads of state and other high-level officials met for the World Summit at U.N. Headquarters in New York to address issues of development, security, human rights, and reform. The Summit Outcome document listed several mandates for “Strengthening the United Nations,” including reform of the U.N. Security Council, management structure, and human rights bodies. In particular, the Outcome document mandated the creation of a new Council as part of broader U.N. reform.

The United States also views the Council as a critical element of overall U.N. reform. The Bush Administration identified the establishment of a new Council as a key reform priority necessary to achieve a “strong, effective, and accountable organization.”<sup>14</sup> Congress has also identified U.N. human rights reform as a significant component of overall U.N. reform. Recent proposed legislation has linked payment of U.N. assessed dues with the fulfillment of specific reforms, including those involving human rights.<sup>15</sup>

## **The U.N. Human Rights Council**

### **Mandate and Responsibilities**

On March 15, 2006, the U.N. General Assembly passed resolution A/RES/60/251, which established the Council and outlined its purpose and responsibilities.<sup>16</sup> Under the resolution, the Council is 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 will “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.” It will also promote and coordinate the mainstreaming of human rights within the U.N. system. In order to achieve the above goals, the Council will undertake a universal periodic review of each U.N. Member State’s fulfillment of its human rights obligations and commitments. The review will be a “cooperative mechanism” based on a dialogue between the reviewers and the countries involved. Each member will undergo a periodic review during the term of its membership. The Council is tasked with developing guidelines for the universal periodic review process within one year of its first session. These review processes are currently ongoing.

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<sup>14</sup> “U.S. Priorities for a Stronger, More Effective United Nations,” U.S. Department of State publication, June 17, 2005. Other Administration reform priorities included budget, management, and administrative reform, Democracy initiatives, and the creation of a comprehensive Convention on Terrorism. Further information on U.S. policy toward U.N. reform can be found at [<http://www.un.int/usa/reform-un.htm>].

<sup>15</sup> See “Legislation Appendix” for a full list of legislation proposed in the 109<sup>th</sup> Congress.

<sup>16</sup> One hundred seventy parties voted in favor of the U.N. General Assembly resolution creating the Council; four voted against (Israel, Marshall Islands, Palau, and the United States), and three abstained (Belarus, Iran, and Venezuela).

The resolution also ensures adequate transition of responsibilities from the Commission on Human Rights to the new Council. Like the Commission, the Council will continue to collaborate with the OHCHR. It will work to maintain and improve the system of special mandates, expert advice, and complaint procedures instituted by the Commission. The Council shall also:

- review all the mandates, mechanisms, and functions of the Commission within one year of its first session;
- promote human rights education, advisory services, technical assistance, and capacity building with relevant member states;
- serve as a forum for dialogue on thematic human rights issues and recommend opportunities for the development of international human rights law to the U.N. General Assembly; and
- promote the full implementation of human rights obligations by member states, and follow-up on human rights commitments from other U.N. conferences and summits.<sup>17</sup>

## Structure and Composition

Many crucial details related to the work of the Council, such as its mechanisms, procedures, framework, and system of universal periodic review will be debated and determined by Council members as part of its first year of work. This section addresses what is known about the current structural elements of the Council. Key differences between the Council and the Commission are noted where relevant.

**Status Within U.N. Framework.** Under the General Assembly resolution, the Council is designated a subsidiary body of the General Assembly, whereas the Commission was a subsidiary body of ECOSOC. This change significantly enhances the standing of human rights within the U.N. framework. In its new capacity, the Council reports directly to the General Assembly's 192 members instead of through ECOSOC's 54 members. Former Secretary-General Annan stated that eventually he would like to see the Council become a principal organ of the United Nations in the same vein as the Security Council or Secretariat.<sup>18</sup>

**Membership.** The Council is composed of 47 members apportioned by geographic region as follows: 13 from African states; 13 from Asian states; six from Eastern Europe states; eight from Latin America and the Caribbean states; and seven from Western European and other states. Members are elected for a period of three years and may not hold a Council seat for more than two consecutive terms. If a Council member commits "gross and systematic violations of human rights," the General Assembly may suspend membership with a two-thirds vote of members present. For comparison, the Commission was composed of 53 member states elected by members of the ECOSOC. Countries served three year terms with no term

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<sup>17</sup> The mandates and responsibilities are drawn from U.N. document, A/RES/60/251, March 15, 2006.

<sup>18</sup> "'The Eyes of the World Are Upon You,' Secretary-General says in address to first meeting of Human Rights Council," U.N. Press Release, June 19, 2006.



limits. Like the Council, the Commission created a formula to ensure equitable distribution of seats by region.<sup>19</sup>

**Elections.** All U.N. member states are eligible to run for election to the Council. Countries are elected through secret ballot by the General Assembly with an absolute majority (97 out of 192 votes). When voting, the resolution instructs countries to consider “the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments.” A country submitting its name for election must affirm its commitment to human rights with a written pledge.

A key difference between the Council and the Commission is the direct election of Council members by the U.N. General Assembly. Under the Commission, candidates were first nominated by their regional groups and then the nominees were submitted for election by members of ECOSOC. Regional groups often sent the same number of nominees to the election as there were seats available. This forced some member states to cast votes for countries with questionable human rights records in order to fill all regional group seats. The first Council elections were held on May 9, 2006. See **Table 1** for a list of members grouped by region and duration of membership. The next election will be held in May 2007, and 14 of the 47 Council seats will be available.

**Structure.** At the inaugural session, the Council elects a president for a one-year term. The president presides over the election of four vice-presidents representing other regional groups in the Council.<sup>20</sup> The president and vice-presidents form the Council “Bureau.” The presidency rotates among different Bureau members on an annual basis. The president appoints experts, rapporteurs, and working groups to examine human rights issues. The current president is Ambassador Luis Alfonso de Alba of Mexico. Under the Commission, the role of “president” was held by a chairman.

**Meetings.** The Council is headquartered in Geneva, Switzerland, and meets for three or more sessions per year for ten weeks or more, including a main session. It can hold special sessions at the request of any Council member with the support of one-third of the Council membership. By contrast, the Commission on Human rights met in Geneva once a year for approximately six weeks, and since 1990 special sessions were held on request.<sup>21</sup>

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<sup>19</sup> Regional distribution of seats on the Commission on Human Rights was as follows: 15 members from African states; 12 from Asian states; five from Eastern European states; 11 from Latin America and Caribbean states; and 10 from Western Europe and other states.

<sup>20</sup> Current Vice-Presidents are: Tomas Husak of the Czech Republic (Eastern European states), Mohammed Loulichki of Morocco (African states), Blaise Godet of Switzerland, (Western Europe and other states), and Musa Burayzat of Jordan (Asian states).

<sup>21</sup> Examples of Special Sessions under the Commission included Situation of human rights in the territories of the former Yugoslavia (1992); Situation of human rights in Rwanda (1994); Situation in East Timor (1999); and “Grave and massive violations” of the human rights of the Palestinian people by Israel (2000). More information on these sessions is (continued...)

**Reporting.** The Council submits annual reports directly to the General Assembly. At the end of its first five years, the Council is also required to review and report to the General Assembly on its “work and functioning.”<sup>22</sup> The Commission submitted reports primarily to ECOSOC, a limited membership body, which reported Commission activities to the General Assembly.

**Rules of Procedure.** The Council follows the rules of procedure created for committees of the General Assembly.<sup>23</sup> Procedures that relate to the participation of observer states, international organizations, non-governmental organizations (NGOs), specialized agencies, and human rights institutions fall under the practices that were observed by the Commission.<sup>24</sup> These rules encourage consultation and interaction at Council sessions among Council members, observing U.N. member states, NGOs, and other relevant organizations. Countries that are not Council members do not have voting rights.

**The Sub-Commission for the Promotion and Protection of Human Rights.** The Sub-Commission was the main subsidiary body of the Commission, and it is currently operating in the same capacity for the Council, though its future is uncertain. The Sub-Commission undertakes human rights studies, identifies and analyzes potential human rights issues, and assists the Council with its work when directed. It consists of 26 independent experts elected for four-year terms and holds an annual four-week session in Geneva attended by observers from member states, human rights groups, U.N. bodies, NGOs, and other organizations.<sup>25</sup> The Human Rights Council is currently debating whether to replace the Sub-Commission with a new body, and Council members have been unable to reach a consensus. Several proposals have been considered, such as establishing a new permanent Sub-Commission with a revised mandate, completely abolishing the Sub-Commission, and establishing a non-permanent ad hoc expert advice body to assist the Council when necessary.<sup>26</sup> It is expected that negotiations on the future of the Sub-Commission will continue in the coming months.

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<sup>21</sup> (...continued)

available at [<http://www.ohchr.org/english/bodies/chr/special-sessions.htm>].

<sup>22</sup> The first annual report of the Human Rights Council was considered by the Third Committee (Social, Humanitarian and Cultural) on November 10, 2006, and submitted to the 61<sup>st</sup> General Assembly for consideration. The report is available at [<http://www.ohchr.org/english/bodies/hrcouncil/docs/A.61.53.pdf>].

<sup>23</sup> General Assembly Rules of Procedure can be viewed at [[http://www.ohchr.org/english/bodies/hrcouncil/docs/gaA.520.Rev.15\\_En.pdf](http://www.ohchr.org/english/bodies/hrcouncil/docs/gaA.520.Rev.15_En.pdf)].

<sup>24</sup> The Commission on Human Rights followed ECOSOC rules of procedure that can be viewed at [[http://www.ohchr.org/english/bodies/hrcouncil/docs/ECOSOC.rules\\_En.pdf](http://www.ohchr.org/english/bodies/hrcouncil/docs/ECOSOC.rules_En.pdf)].

<sup>25</sup> Additional information on the Sub-Commission for the Promotion and Protection of Human Rights can be found at [<http://www.ohchr.org/english/bodies/subcom/index.htm>].

<sup>26</sup> For a summary of the debate on the future of the Sub-Commission, see U.N. Office at Geneva Press Release, “Human Rights Council Considers Expert Advice Body to Replace Former Sub-Commission,” December 7, 2006.

## Most Recent Council Sessions

To date, the Council has held three regular sessions and four special sessions. The fourth regular session will be held in Geneva, Switzerland, from March 12 to April 6, 2007. Key outcomes from past sessions are highlighted below.

**First Regular Session (June 2006).** The Council held its first meeting in Geneva, Switzerland, from June 16 to 30, 2006, adopting eight resolutions, three decisions, and two statements by Council President Luis Alfonso de Alba. A high-level meeting was held during the first four days of the session. During the sessions, parties exchanged views on a mixture of substantive and procedural issues, including the nature of the universal periodic review process, the role of human rights defenders in protecting and promoting human rights, and the overall implementation of the General Assembly resolution that created the Council.<sup>27</sup> Countries also discussed special procedures, reviewed the mandates and mechanisms inherited from the Commission, and renewed several working group mandates.<sup>28</sup> Additional outcomes from the first session include, among other things:

- a one-year extension for all Council and Sub-Commission mandates, mechanisms, functions, and responsibilities previously under the Commission;
- creation of an intersessional open-ended Working Group to review and make recommendations on these existing mandates, mechanisms, functions, and responsibilities inherited from the Commission;
- adoption of the International Convention for the Protection of all Persons from Enforced Disappearance, and the U.N. Declaration on the Rights of Indigenous Peoples, which were forwarded to the General Assembly for adoption; and
- creation of an intersessional, open-ended Working Group to establish the components and procedures of the universal periodic review process.

The only country-specific resolution considered or passed at the first Council session involved Israel and the Arab Territories. This issue was identified for discussion by Council President de Alba based on consultations with other Council member and observer States. Pakistan, on behalf of the Organization of the Islamic Conference (OIC), introduced a resolution requesting special rapporteurs to report on Israeli human rights abuses in Palestine and Other Occupied Arab Territories at the next Council session and in subsequent sessions. The Council adopted the resolution with a vote of 29 in favor, 12 against, and 5 abstentions.

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<sup>27</sup> “Human Rights Council concludes first session,” U.N. Media Centre, June 30, 2006.

<sup>28</sup> The Council welcomed the report of the Working Group on Optional Protocol to the Covenant on Economic, Social, and Cultural Rights and extended its mandate for two years. It endorsed the recommendations and conclusions of the Working Group on the Right to Development, renewing its mandate for one year. The Working Group on the Effective Implementation of the Durban Declaration was extended for three years.

**Second Regular Session (September 2006).** The second regular Council session was held in Geneva, Switzerland from September 18 to October 6 and November 27 to 29, 2006. The Council adopted 18 texts that, among other things:

- requested the Working Group on the Review of Mandates to review the draft manual of Council special procedures;
- determined that all legislative measures and actions taken by Israel that may alter the “character and legal status” of the Occupied Syrian Golan are in violation of international law and therefore null and void;
- urged Israel to reverse its settlement policy in the Occupied Arab Territories, and to prevent any new settlements; and
- requested parties who have not done so to sign the Peace Agreement in Darfur, Sudan, as well as to end ongoing human rights violations in Darfur, with a particular focus on vulnerable groups such as women and children.<sup>29</sup>

Additionally, the Council considered the reports of independent rapporteurs and experts assigned to monitor human right situations in Belarus, Cambodia, Cuba, the Democratic People’s Republic of Korea, Haiti, Liberia, the Occupied Palestinian Territory, Myanmar, Somalia, and Sudan. It also heard statements from special rapporteurs tasked with examining possible Israeli human rights abuses in the Occupied Palestinian Territory and in Lebanon. The Council held a series of 1503 procedure meetings (closed-door sessions where Council members discussed human right violation of specific countries) for Iran, Kyrgystan, and Uzbekistan. Members determined that the 1503 procedure for Kyrgystan should be discontinued.

**Third Regular Session (December 2006).** The third regular Council session was held in Geneva from November 29 to December 8, 2006.<sup>30</sup> At the session, then-Secretary-General Annan urged Council members not to allow their current focus on the Middle East to “monopolize attention at the expense of others where there are equally grave or even graver violations.”<sup>31</sup> The Council adopted six resolutions and one decision, which included:

- creating an open-ended intersessional working group to make “concrete” recommendations on the Council agenda, annual program of work, methods of work, and rules of procedure,<sup>32</sup>

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<sup>29</sup> The report of the second regular session is available at [<http://www.ohchr.org/english/bodies/hrcouncil/2session/>].

<sup>30</sup> The report of the third regular session is available at [<http://www.ohchr.org/english/bodies/hrcouncil/3session/>].

<sup>31</sup> Statement Delivered to the Third Regular Session of the Human Rights Council by U.N. High Commissioner for Human Rights, Louise Arbour, on behalf of Secretary-General Kofi Annan, November 29, 2006.

<sup>32</sup> The Working Group held its first session during the week of January 15, 2007, and was chaired by Council President De Alba.

- requesting the U.N. High Commissioner for Human Rights to consult with the Lebanese government on how to implement recommendations from the Commission of Inquiry report on Lebanon;
- convening a Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asian Region;
- deciding that the Council will act as a “preparatory committee” for the upcoming Durban Review Conference; and
- establishing an ad hoc committee on the “Elaboration of Complementary Standards,” to fill the gaps in the International Convention on the Elimination of All Forms of Discrimination, and provide new standards for fighting all forms of contemporary racism.

Council members also heard reports from the Working Group on the Universal Periodic Review, which concluded its work on November 23, 2006. Additionally, members considered progress reports on complaint procedures and the review of Council mandates and mechanisms. The Council also engaged in an interactive dialogue on a variety of issues, including the prevention of genocide, and the rights of indigenous peoples.

**Special Sessions.** Since its establishment, the Council has held four special sessions, including three sessions addressing Israeli human rights violations in the Occupied Palestinian Territory and in Lebanon, and one session addressing the human rights situation in Darfur, Sudan. A brief summary of each session follows.

***First Special Session (July 2006).*** The first special session on the Human Rights Situation in the Occupied Palestinian Territory was held on July 5, 2006 in Geneva. The Council adopted a resolution demanding that Israel end its military operations in the Occupied Palestinian Territory, and, among other things, “refrain from imposing collective punishment on Palestinian civilians.”<sup>33</sup> The resolution was adopted with a vote of 29 in favor, 11 opposed, and five abstentions. In the resolution, the Council agreed to send a group of experts and special rapporteurs to the Palestinian Territory to examine potential Israeli human rights abuses.<sup>34</sup> To date, the special rapporteurs have not been dispatched.<sup>35</sup>

***Second Special Session (August 2006).*** On August 10 and 11, 2006, the Council held a second special session on the Grave Situation of Human Rights in Lebanon Caused by Israeli Military Operations. At the session, the Council adopted a resolution condemning Israeli military operations in Lebanon, particularly the Israeli air strikes in Qana on July 30, 2006. The resolution ordered the dispatch of a high-level commission of human rights law experts to investigate “the systematic targeting and killings of civilians by Israel,” and examine “the types of weapons

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<sup>33</sup> U.N. document, A/HRC/S-1/L.1/Rev.1, July 18, 2006.

<sup>34</sup> More information on the first special session can be found at [<http://www.ohchr.org/english/bodies/hrcouncil/specialsession/index.htm>].

<sup>35</sup> At its third regular session, held in Geneva from November 19 to December 8, 2006, the Council adopted text “regretting” that the special rapporteurs had not yet been sent to the Occupied Territory, and calling for the “speedy implementation” of their mission.

used,” and the “extent and deadly impact” of the attacks, and report to the Council.<sup>36</sup> The resolution was adopted with a vote of 27 in favor, 11 opposed, and 8 abstentions. Some member states abstained or voted against the resolution because they believed it did not adequately address possible human right violations by Hezbollah against Israel.<sup>37</sup>

**Third Special Session (November 2006).** The Council held a third special session on Israeli Military Incursions in the Occupied Palestinian Territory on November 15, 2006. Council members adopted a resolution expressing “shock and horror” regarding the Israeli killings of Palestinian civilians in Beit Hanoun, and expressed alarm over the “gross and systematic violations of human rights of the Palestinian people in the Occupied Palestinian Territory.”<sup>38</sup> In addition, the Council decided to send a high-level fact-finding mission to Beit Hanoun to examine the condition of the victims and make recommendations on how to protect Palestinian civilians from Israeli attacks.

**Fourth Special Session (December 2006).** At the fourth special session, the Council broke its pattern of concentrating on Israeli human rights violations and addressed the human rights situation in Darfur, Sudan.<sup>39</sup> From December 12 to 13, 2006, the Council discussed the humanitarian crisis in Darfur and adopted by consensus a decision that: (1) expressed the Council’s concern for the seriousness of the human rights situation; (2) urged the government of Sudan to cooperate with the Human Rights Council and the OHCHR; and (3) decided to dispatch a high-level mission to examine the human rights situation in Darfur and report to the Council.<sup>40</sup> The text did not condemn Sudan for its human rights abuses, and some member states felt the language should have been stronger. However, most member states were relatively satisfied that the Council was able to come to consensus given the importance and urgency of the issue.<sup>41</sup>

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<sup>36</sup> U.N. document, A/HRC/S-2/2, August 17, 2006, p. 3-4. The high-level Commission issued its report on November 23, 2006. A copy of the Commission of Inquiry on Lebanon’s report is available at [<http://www.ohchr.org/english/bodies/hrcouncil/docs/specialsession/A.HRC.3.2.pdf>].

<sup>37</sup> Drawn from country statements in United Nations Press Release, “Council Strongly Condemns Grave Israeli Violations of Human Rights in Lebanon,” August 11, 2006.

<sup>38</sup> U.N. document, A/HRC/S-3/L.1, November 14, 2006.

<sup>39</sup> Further information on the fourth special session, including press releases and country statements, is available at [<http://www.ohchr.org/english/press/hrc/index.htm>].

<sup>40</sup> U.N. document, Human Rights Council. Decision S-4/101, December 13, 2006 [advanced edited version].

<sup>41</sup> Due to visa problems, the high-level panel did not visit Sudan as part of its research — though the panel did travel to neighboring Chad to interview Sudanese refugees. For more information, see U.N. News Service article, “Lacking Visas, U.N. Mission to Darfur to Carry Out Work Without Visit to Sudan,” February 14, 2007.

## U.S. Policy Towards the Council

**Overview.** Overall, the United States supports the work of the Council and views it as an improvement over the Commission on Human Rights.<sup>42</sup> However, the United States opposed the final Council structure, and was one of four countries to vote against the U.N. General Assembly resolution creating the Council. In a statement made after the vote, then-U.S. Ambassador to the United Nations John Bolton called the U.S. position a “matter of principle,” and said the United States could not support the resolution because it lacked “stronger mechanisms for maintaining credible membership.” He stated that the United States did not have confidence that the new Council would be better than its predecessor, but at the same time indicated the United States would work with other member states to ensure the Council is strong and operates as effectively and efficiently as possible.<sup>43</sup>

During negotiations for the resolution creating the Council, the United States supported several measures it believed would make it more difficult for human rights abusers to be elected. It agreed with Secretary-General Annan’s proposal that a two-thirds vote should be required in the General Assembly for election instead of an absolute majority, noting that election by an absolute majority would make it easier for a country to be elected to the Council than to be removed. The United States also supported “exclusionary criteria” for Council membership, arguing that member states under Security Council sanctions for human rights abuses or acts of terrorism should not be eligible to run for a Council seat. Additionally, the United States felt that there should be fewer than 47 seats to further reduce the possibility that human rights abusers were elected. It was disappointed with the reduction of seats in the Western European and Others regional group (to which the United States belongs) from ten to seven.

Despite these concerns, the United States expressed support for several components of the Council. It agreed with the Council’s enhanced status in the U.N. system as a subsidiary body to the General Assembly. The United States also supported the increase in number of Council meetings per year, saying it could give the Council the flexibility to respond immediately to pressing human rights issues.

**U.S. Decision Not to Run for a Council Seat.** On April 6, 2006, the United States announced that it would not run for a Council seat in the first election. A State Department spokesperson stated, “There are strong candidates in our regional group, with long records of support for human rights, that voted in favor of the resolution creating the Council. They should have the opportunity to run.”<sup>44</sup> State Department officials admitted that if the United States ran, losing the election was a possibility. They determined that the United States would most likely be elected

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<sup>42</sup> Remarks on the Human Rights Council Elections by Kristen Silverberg, Assistant Secretary for International Organization Affairs, U.S. Department of State, May 17, 2006.

<sup>43</sup> Drawn from Ambassador Bolton’s statement in the U.N. provisional verbatim record. U.N. document, A/60/PV.72, March 15, 2006, p. 6.

<sup>44</sup> Press Statement by Sean McCormack, Spokesman, U.S. Department of State, April 6, 2006.

with a good lobbying effort (though it was not guaranteed). Officials said that instead of focusing U.S. political capital on getting elected, the United States could more effectively leverage its resources by campaigning against candidates with poor human rights records and in favor of those with a demonstrated commitment to human rights.<sup>45</sup> When the election results were announced, the United States stated that while several countries elected to the Council lacked “a genuine commitment to the protection and promotion of human rights,”<sup>46</sup> it was pleased that countries like Iran and Venezuela were not elected.<sup>47</sup>

On March 6, 2007, the Administration announced that it would not run for a Council seat in the May 2007 elections. A State Department spokesperson stated that the Council had “not proved itself to be a credible body,” and had exhibited a “nearly singular focus on Israel,” while not adequately addressing human rights situations in countries such as Cuba, Burma, or North Korea.<sup>48</sup> The Administration emphasized that it will continue to promote human rights globally, and will remain actively engaged in human rights issues, not only within the U.N. system but outside as well.

**Congressional Reaction.** Congressional response to the Administration’s decision not to run in the Council elections has been mixed. Representative Tom Lantos, Chairperson of the House Committee on Foreign Affairs, reportedly stated that the decision not to run in the first Council election was “a major retrenchment in America’s long struggle to advance the cause of human rights around the world and it is a profound signal of U.S. isolation at a time when we need to work cooperatively with our Security Council Partners.”<sup>49</sup> Similarly, Lantos called the U.S. decision not to run in the second Council election an “act of unparalleled defeatism.”<sup>50</sup> Representative Henry Hyde, former Chairperson of the House International Relations Committee and a strong advocate of U.N. reform, also supported U.S. membership on the Council. At a March 27, 2006 news conference at U.N. Headquarters, Representative Hyde reportedly stated, “I think we should engage in the process.... It is the best that’s available and you do what you can with what you have at hand.”<sup>51</sup>

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<sup>45</sup> Drawn from a press briefing by Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

<sup>46</sup> The introduction to the 2005 State Department Country Reports on Human Rights Practices listed several countries elected to the Council that were cited for their poor human rights records. They included Azerbaijan, Cuba, China, Ecuador, Pakistan, and Russia. Other Council members such as Saudi Arabia and Cameroon were also cited for their poor human rights records. Country Reports can be viewed at [<http://www.state.gov/drl/hr/>].

<sup>47</sup> Press Statement by Sean McCormack, Spokesperson, U.S. Department of State, May 11, 2006.

<sup>48</sup> Statement by Sean McCormack, Spokesperson, U.S. Department of State, March 6, 2007.

<sup>49</sup> Warren Hoge, “U.S. Won’t See a Seat on the U.N. Rights Council,” *The New York Times*, April 6, 2006, p. 6.

<sup>50</sup> Press Release, Office of Representative Tom Lantos, “Lantos Blasts Administration Decision Not to Take Part in United Nations Human Rights Council,” March 6, 2007.

<sup>51</sup> Colum Lynch, “U.S. Will Not Join U.N. Rights Council,” *The Washington Post*, April 7, (continued...)



At the same time, other Members of Congress have been supportive of the Administration's decision not to run for a seat on the Council. In March 2006, Senate Majority Leader Bill Frist wrote a letter to President Bush stating that joining the Council "undermines our own [the United States] credibility and confers unwarranted legitimacy on this new body."<sup>52</sup> Representative Ileana Ros-Lehtinen, Ranking Member of the House Committee on Foreign Affairs, agreed with the Administration's decision not to run in the second Council election. She reportedly stated, "rather than standing as a strong defender of fundamental human rights, the Human Rights Council has faltered as a weak voice subject to gross political manipulation."<sup>53</sup>

**The First Council Sessions: U.S. Participation and Concerns.** The United States has been "heavily involved," and "participated actively," in Council sessions despite its non-member status.<sup>54</sup> Specifically, the U.S. delegation has conferred with like-minded Council members regarding "when to pursue condemnatory resolutions directed at violating states," and has held various bilateral meetings on the subject.<sup>55</sup> It has also submitted proposals on the universal periodic review process and mandate review for consideration by the Council. The Administration has stated it will continue to work cooperatively with other like-minded countries in the upcoming sessions to ensure that the Council "reverses course" and fulfills its purpose.<sup>56</sup>

The Administration has been generally disappointed with the work of the Council to date. A main point of concern is the Council's focus on Israeli human rights violations while it has failed to address human rights abuses in other parts of the world. Specifically, the Administration maintains that the legitimacy of the Council may be undermined if some Council members continue to push such "imbalanced" views. It has stated it does not object to discussing potential Israeli human rights abuses as long as violations by other countries are also discussed.<sup>57</sup> In the case of the third special session held on Israeli human rights abuses in the

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<sup>51</sup> (...continued)  
2006, p. A16.

<sup>52</sup> Letter from Senator Bill Frist to President George W. Bush, March 30, 2006, available at [<http://www.centerforsecuritypolicy.org/FristHRC.pdf>].

<sup>53</sup> George Gedda, "U.S. Criticizes U.N. Human Rights Body," *Los Angeles Times*, March 6, 2007.

<sup>54</sup> Remarks by Ambassador John Bolton, on the Human Rights Council, Sudan, North Korea, and other matters, at the Security Council stakeout, U.S. Mission to the United Nations Press Release, October 6, 2006.

<sup>55</sup> Testimony by Deputy Assistant Secretary Erica Barks-Ruggles, House International Relations Committee hearing, "U.N. Human Rights Council: Reform or Regression," September 6, 2006.

<sup>56</sup> Statement by Miriam K. Hughes, Deputy U.S. Representative to the Economic and Social Council, on the Report of the Human Rights Council in the General Assembly, U.S. Mission to the United Nations Press Release, November 10, 2006.

<sup>57</sup> U.S. Statement on the Third Special Session of the Human Rights Council, Tom Casey, Deputy Spokesman, U.S. Department of State, Washington, DC, November 15, 2006.

Occupied Palestinian Territory, the United States maintained that the Council “should not address particular military actions taken during a period of armed conflict that are clearly governed by the law of war.”<sup>58</sup> The United States said it was “unfortunate” that the Council used its limited resources to focus on issues not clearly within its mandate while other human rights concerns were not addressed.<sup>59</sup>

Overall, the United States was satisfied with the Council decision to convene a fourth special session on the human rights situation in Darfur, Sudan. It welcomed the Council’s special session and commended the Human Rights Council for “drawing the world’s attention to this ongoing crisis.” Additionally, it called on the government of Sudan to “shoulder its responsibility to protect all individuals against human rights violations,” and also noted its concern with the spreading violence in Chad and the Central African Republic.<sup>60</sup>

**U.S. Position on the Sub-Commission for the Promotion and Protection of Human Rights.** On May 15, 2006, Mark Wallace, the former U.S. Representative for U.N. Management and Reform, called for the elimination of the Sub-Commission for the Promotion and Protection of Human Rights and its subsidiary bodies.<sup>61</sup> He stated that the work of the experts and working groups was duplicative under the Council. He said that the Sub-Commission “disregards directives and guidance from its parent body,” and that its reports do not reflect the interest of member states, but “the personal interests of the members of the Sub-Commission, who in some cases are simple government officials posing as ‘independent experts’ in contravention of U.N. rules.”<sup>62</sup> This position is consistent with some broader United States efforts to eliminate mechanisms it believes to be burdensome to the U.N. process. It also reflects recent controversy over Jean Ziegler, a Sub-Commission expert from Switzerland, who is alleged by the United States and Canada to have defended countries widely perceived as human rights abusers.<sup>63</sup>

On December 7, 2006, the Council held discussions on the future of the Sub-Commission. The United States emphasized that the Council would “be best served by a system of expert advice that was flexible, small, and responsive solely to the needs of the Council.” Specifically, it advocated for an expert advice mechanism that would provide technical assistance to programs in order to help governments “deepen and broaden the roots of human rights protection.” In order to avoid politicization

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<sup>58</sup> Statement of the United States at the Third Special Session of the U.N. Human Rights Council, November 15, 2006.

<sup>59</sup> *Ibid.*

<sup>60</sup> Statement by Ambassador Warren W. Tichenor, U.S. Permanent Representative to the United Nations in Geneva to the Human Rights Council Special Session on Sudan, U.S. Mission to the United Nations Press Release, December 12, 2006.

<sup>61</sup> Subsidiary bodies include the Working Groups on Minorities, the Working Group on Contemporary Forms of Slavery, and the Working Group on Indigenous Populations.

<sup>62</sup> Press statement by Mark D. Wallace, U.S. Representative for U.N. Management and Reform, U.S. Mission to the United Nations, U.S. Department of State, May 15, 2006.

<sup>63</sup> Steven Edwards, “Harper urged to block U.N. appointment: Human rights groups oppose controversial Swiss Politician,” *The National Post*, April 13, 2006.

of membership, the United States maintained that members should not be elected but be nominated by member states, NGOs, or regional groups and selected by the Council president.<sup>64</sup>

**Future U.S. Role.** Though the Bush Administration remains “constructively skeptical,” that the Council will be an improvement over the Commission, it states it will continue to fund and support the Council.<sup>65</sup> The Administration maintains that it will continue to collaborate with like-minded members and observe the work of the Council. In particular, the United States believes the special rapporteur system and country-specific resolutions are important mechanisms from the Commission that should be continued under the Council.<sup>66</sup> Congress remains highly interested in the work of the Council both as a mechanism for addressing human rights abuses and as an element of broader U.N. reform. Congressional interest and engagement is expected to continue as the Council moves forward with its agenda. Ultimately, future U.S. policy toward the Council may depend on whether Congress and the Administration view the Council’s work as effective and credible.

## Response from Organizations and Other Governments

**Reaction from Human Rights Groups and Other Organizations.** Response to the formation of the Council from a majority of NGOs, human rights groups, and other relevant agencies and organizations appears to be cautiously optimistic. Some groups share concerns about the Council’s work, however, and one source of apprehension is the composition of Council membership. Though the new membership criteria discouraged some countries from running, several perceived human rights abusers ran for seats and were elected to the Council.<sup>67</sup> Some groups were also concerned about the increase in frequency of the Council meetings. While they supported the increase and believed it would make the Council more effective, they worried that smaller NGOs and human rights groups would have a difficult time obtaining funds to attend these meetings.<sup>68</sup> Another common concern expressed by groups was whether NGOs would continue to be active participants in the Council process.<sup>69</sup>

Proponents of the Council suggest that the decision of perceived human rights abusers such as Sudan, North Korea, and Zimbabwe not to run for Council election

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<sup>64</sup> U.N. Office at Geneva Press Release, “Human Rights Council Considers Expert Advice Body to Replace Former Sub-Commission,” December 7, 2006, p. 9.

<sup>65</sup> Drawn from a press briefing of Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

<sup>66</sup> Ibid.

<sup>67</sup> Human Rights Watch stated that seven of the 65 members running for a Council seat were “unworthy” of membership due to poor human rights records. They included Azerbaijan, China, Cuba, Iran, Pakistan, Russia, and Saudi Arabia. Only Iran was not elected.

<sup>68</sup> Frederic Burnand, “Geneva NGOs Brace for New U.N. Rights Body,” *Swiss Info*, March 23, 2006.

<sup>69</sup> “Briefing Paper on Asian Candidates to the New Human Rights Council Membership,” *FORUM-ASIA*, May 8, 2006, p. 3.

was an early indicator of the Council's success.<sup>70</sup> Supporters also emphasize the importance of the universal periodic review process, observing that since every country is subject to periodic review, there may be less selectivity and targeting of specific countries in resolutions. Some groups are pleased that Council members will undergo a periodic review of their human rights record within their term of membership. As a result of this new mechanism, a country with a questionable human rights record could be subject to an immediate and comprehensive human rights review. Some also observe that the presence of many perceived promoters and protectors of human rights on the Council may positively influence members with poorly perceived human rights records. In addition, many human rights groups and NGOs were surprised and disappointed with the U.S. vote against the General Assembly resolution creating the Council.<sup>71</sup> Some have called the subsequent U.S. decision not to run in the first election a "missed opportunity," noting that the first year of the Council is most important because the procedures and future work are established during that time.<sup>72</sup>

Some NGOs were disappointed with the Council's focus on Israel during its regular and special sessions. Human Rights Watch called the Council's work during the second regular session a "huge disappointment," noting that while the Council debated human rights violations in countries and regions other than Israel, Lebanon, or the Occupied Palestinian Territory, it did not pass any decisions or resolutions on these situations.<sup>73</sup> Other human rights groups give the Council credit for some of its improvements, noting that parts of the Council's work represent "steps in the right direction."<sup>74</sup> However, these groups also emphasize that in order for the Council to be viewed as credible, it must address human rights violations that do not involve Israel.

Most groups generally regard the Council's fourth special session on Darfur as a positive development, but some are disappointed that the Council did not go far enough to condemn Sudan for its role in the crisis. Some observers noted that the language in the resolution was relatively weak when compared to previous country-specific resolutions adopted by the Council. U.N. Watch calls the resolution a "soft approach" and emphasizes that it did not include the word "violation."<sup>75</sup> Others

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<sup>70</sup> Edith M. Lederer, "Groups Hail New U.N. Human Rights Council," *Associated Press*, May 8, 2006.

<sup>71</sup> Ten human rights groups wrote a letter to Secretary of State Condoleezza Rice urging U.S. support of the resolution. The letter is available at [<http://hrw.org/english/docs/2006/02/24/usint12716.htm>].

<sup>72</sup> Maggie Farley, "U.S. Won't Seek Seat on U.N. Rights Panel," *Los Angeles Times*, April 7, 2006, p. 22.

<sup>73</sup> "Human Rights Watch Blasts New U.N. Rights Watchdog," *Reuters*, October 6, 2006. The Human Rights Watch Annual Report is available at [<http://www.hrw.org/wr2k6/>]. For its perspective on U.N. human rights bodies, including the Council, see pages 32-35.

<sup>74</sup> "First Session of the Human Rights Council: A Step in the Right Direction," Amnesty International Public Statement, July 3, 2006.

<sup>75</sup> "Human Rights Council Darfur Resolution Falls Short," U.N. Watch Press Release, (continued...)

contend that the text had to be watered-down in order to achieve consensus among Council members.

**Reaction from Other Governments.** There was a wide range of reactions from U.N. member states regarding the establishment of the Human Right Council. A main point of contention was the number of votes required for election.<sup>76</sup> Overall, most parties support the mainstreaming of human rights issues into the U.N. system and agree that the Council should be elevated to a subsidiary body of the General Assembly within the U.N. system. Member states that were consistent targets of country-specific resolutions under the Commission on Human Rights, including China and Iran, oppose the “politicization and finger-pointing” they say are associated with country resolutions.<sup>77</sup> Most countries agree that the resolution creating the Council was a fair compromise, and that the true worth of the Council would be determined through its future work.

Some governments were disappointed with the U.S. decision to vote against the resolution creating the Council.<sup>78</sup> The United Kingdom and other European Union members actively lobbied the United States to support the resolution.<sup>79</sup> U.S. Deputy Assistant Secretary of State Mark Lagon noted that a number of countries approached the United States about running and offered their support in both the first election and future elections.<sup>80</sup> Some governments attempted to link the U.S. decision not to run with its alleged human rights abuses toward detainees in the Guantanamo Naval Base in Cuba and Abu Ghraib in Iraq.<sup>81</sup>

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<sup>75</sup> (...continued)

December 13, 2006.

<sup>76</sup> Some countries, such as Argentina, the European Union, New Zealand, and the United States, supported the requirement of a two-thirds majority vote in the General Assembly for election to the Council instead of an absolute majority.

<sup>77</sup> Ibid.

<sup>78</sup> In a Kremlin International News Broadcast interview on March 2, 2006, Russian Deputy Foreign Minister Alexander Yakovenko stated that the United States should be elected to the Council if it runs, and that Russia would like the United States to participate in the Council’s work.

<sup>79</sup> British Ambassador to the United Nations Emyr Jones Parry said that adopting a text without U.S. support “isn’t good for human rights and not particularly good for the Council,” in a March 2, 2006 Associated Press article by Edith M. Lederer titled, “European Union backs proposal for new U.N. Human Rights Council, leaving U.S. isolated.”

<sup>80</sup> Press briefing of Mark Lagon, Deputy Assistant Secretary of State for International Organization Affairs, U.S. Department of State, April 25, 2006.

<sup>81</sup> U.N. document A/60/704, “Statement of the Ministry of Foreign Affairs of Cuba,” February 28, 2006.

## Congressional Issues

### U.S. Funding of the Council

Comprehensive U.N. reform is a pressing issue for Congress, and the Human Rights Council is a component of this broader U.N. reform effort. As a result, there is continued congressional interest in U.S. funding of the Council. Specifically, some Members of Congress have proposed the United States withhold a proportionate share of its assessed contributions, approximately 22 %, from the U.N. regular budget, which is used to fund the Council. Since 1980, the United States has withheld proportionate shares of its contributions to the U.N. regular budget for U.N. programs and activities it has opposed. However, withholding Council funds in this manner would be a largely symbolic policy action because assessed contributions finance the entire U.N. regular budget and not specific parts of it.<sup>82</sup> Additionally, it is difficult to identify the portion of the regular budget that would be allocated to the Council. For example, the funding may come not only from the Human Rights section of the budget, but also from the General Assembly and Economic and Social Council Affairs and Conference Management section, and the Administration and Staff Assessment section.

In preparation for the transition from the Commission to the Council, the U.N. Secretary-General provided budget documents estimating the biennial cost of the Commission and the Council for 2006 and 2007. The two-year budget requirement for the Council was estimated at \$4,503,700, with \$4,328,700 representing new funding.<sup>83</sup> The difference of \$175,000 was previously budgeted for the Commission on Human Rights in 2006 and 2007.<sup>84</sup> If the U.S. government were to withhold a proportionate share of the Council's gross cost, the annual withholding would be estimated at \$495,407.<sup>85</sup>

### Impact of Observer Status

The ability of the United States to promote its human rights agenda within the U.N. framework may be significantly affected by its observer status and its initial policy position on the Council. Under the ECOSOC rules of procedure for non-Member State participation, the Council may invite "any State that is not one of its own members to participate in its deliberations on any matter of particular concern to that State." The invited observer status does not carry the right to vote, but allows

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<sup>82</sup> In the past, the United States withheld certain amounts from U.N. activities and/or programs pending clarification on the exact cost or the program or activity. This was done in order to determine a more appropriate measure of the proportionate figure to withhold.

<sup>83</sup> The total two-year budget includes a minimum of ten weeks for formal meetings; additional personnel requirements for review of Council mechanisms and mandates; and personnel requirements and resources for the periodic review of human rights records.

<sup>84</sup> See U.N. documents A/C.5/60/28, A/60/7Add.34, and A60/721.

<sup>85</sup> This estimate was calculated by taking 22% of the gross biennial cost of the Council (\$4,503,700), which equals \$990,814. This number is divided by two years to estimate the annual proportionate withholding.

the state to submit proposals that can be put forward for vote at the request of any Council member.<sup>86</sup> Many Council members may be interested in U.S. statements and policies, but the United States's inability to vote may diminish its influence on the work of the Council. As a result, the United States may have to rely on close collaboration and cooperation with like-minded countries to further its human rights agenda. In 2002, the United States held observer status on the Commission on Human Rights for the first time in the Commission's history. It was subsequently reelected from 2003 to 2006.

## **The Council and Alleged U.S. Human Rights Abuses**

When considering the work of the Council, members of Congress will likely monitor its activities related to the United States. The following sections address recent instances of the Council's involvement and/or investigations regarding human rights and the United States.

**Council Report on Detainees in Guantanamo Bay.** On February 16, 2006, the U.N. Commission on Human Rights released a report on the "situation of detainees at Guantanamo Bay."<sup>87</sup> The report was written by five independent rapporteurs appointed by the Chairperson of the Commission on Human Rights.<sup>88</sup> It alleges, among other things, that the United States violated the human rights of detainees held at the Guantanamo Bay Detention Center in Cuba, and that consequently the facility should be closed. According to the report, the United States is responsible for the "force-feeding of detainees on hunger strike," and using "excessive violence" when transporting detainees. The report also alleges that detainees are denied the right to "challenge the legality of their detention before a judicial body," which violates the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>89</sup> It requests that the five U.N. rapporteurs be granted full and unlimited access to the facility, and allowed private interviews with detainees. When researching the report, the rapporteurs collected their information from interviews with former detainees, reports from non-governmental organizations (NGOs), media reports, and a questionnaire answered by the United States. The rapporteurs did not visit the detention facility in Guantanamo Bay.

In its rebuttal to the report, the United States wrote that it is "engaged in a continuing armed conflict against Al Qaida, that the law of war applies to the conduct

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<sup>86</sup> Rules of Procedure of the U.N. Economic and Social Council, part XII, rules 1-3.

<sup>87</sup> U.N. document, E/CN.4/2006/120, February 15, 2006.

<sup>88</sup> The special rapporteurs include Leila Zerrougui, Chairperson rapporteur of the Working Group on Arbitrary Detention; Leandro Despouy, rapporteur on the independence of judges and lawyers; Manfred Nowak, the rapporteur on torture and other cruel, inhuman or degrading treatment; Asthma Jahangir, the rapporteur on freedom of religion or belief; and Paul Hunt, the rapporteur on the right to physical and mental health.

<sup>89</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was adopted and opened for signature by General Assembly resolution 39/46 on December 10, 1984. The Convention entered into force on June 26, 1987, and the United States became party to it on November 20, 1994.

of that war and related detention operations.”<sup>90</sup> The Administration rejected the findings of the report, maintaining that detainees at Guantanamo Bay are treated “humanely,” and that potential human rights violations were thoroughly investigated by the U.S. government.<sup>91</sup> On July 7, 2006, the U.N. special rapporteurs, acting in their new capacity as Council experts, renewed their call for the closing of the Guantanamo Detention Center. They encouraged the United States to develop a timeline for closure of the facility, and urged U.N. member states, the International Committee for the Red Cross (ICRC),<sup>92</sup> and other relevant agencies and organizations to “collaborate actively, constructively, and urgently with the United States,” to ensure the closure of the detention center.<sup>93</sup>

**Inquiry of the Council’s Special Rapporteur on Human Rights while Countering Terrorism.** In October 2006, the Council’s Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin of Finland, wrote a letter of inquiry to the United States regarding its counter-terrorism practices.<sup>94</sup> On December 20, 2006, the Administration invited Scheinin to visit the United States in the spring of 2007 to discuss his concerns.<sup>95</sup> Scheinin stated that he hopes to engage in a dialogue with members of the government, NGOs, law enforcement officials, and civil society to discuss a variety of issues, including “U.S. counter-terrorism laws, policies and practices ... issues regarding detention, arrest and trial of terrorist suspects and the rights of victims of terrorism or persons negatively impacted by counter terrorism measures.”<sup>96</sup> He has also stated his intent to identify counterterrorism measures and formulate conclusions and recommendations that balance human rights with the fight against terrorism. The final dates of the Special Rapporteur’s visit have not yet been confirmed.

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<sup>90</sup> U.N. document, E/CN.4/2006/120, Annex II, p. 53-54, February 15, 2006.

<sup>91</sup> Press Briefing by Scott McClellan, Spokesman, The White House, February 16, 2006.

<sup>92</sup> Since 2002, the ICRC has visited the Guantanamo Detention Center to monitor whether detainees are treated in accordance with international law. The ICRC has stated it “remains concerned that significant problems regarding conditions and treatment at Guantanamo Bay have not been adequately addressed,” and “will pursue its discussions on these issues with the U.S. authorities.” More information on the role of ICRC at U.S. detention centers can be found at [<http://www.icrc.org>].

<sup>93</sup> U.N. Press Release, “U.N. Rights Experts Ask International Community to Aid with Expedient Closure of Guantanamo Detention Centre,” July 6, 2006.

<sup>94</sup> In the inquiry letter, Scheinin expressed concern that the U.S. Military Commission Act may violate U.S. obligations under international human rights law.

<sup>95</sup> U.N. Press Release, “United States Accepts Visit Request of U.N. Expert on Human Rights and Counter-terrorism,” January 16, 2007.

<sup>96</sup> Ibid.



## Legislation Appendix

An overview of proposed legislation related to the funding and reform of the Human Rights Council in the 109<sup>th</sup> and 110<sup>th</sup> Congress follows:

**H.R. 225 (110<sup>th</sup>).** H.R. 225 was introduced on January 4, 2007, and states that the new Human Rights Council “fails to adequately reform the United Nations Commission on Human Rights.” The bill seeks to withhold U.S. funding of the Council beginning October 1, 2007. It was introduced by Representative Cliff Stearns and was referred to the House Committee on Foreign Affairs.

**H.R. 2745 (109<sup>th</sup>).** In 2005, H.R. 2745, the Henry J. Hyde U.N. Reform Act, passed in the House of Representatives with a vote of 221 to 184. It would withhold 50% of U.S. assessed dues to the U.N. regular budget if a series of reforms are not implemented. Specifically, the act states that a U.N. member country would be ineligible for membership on any U.N. human rights body if it is under Security Council sanctions or under U.N. investigation for human rights abuses.

**S. 1383 (109<sup>th</sup>).** S. 1383 calls for “urgent and essential reform of the United Nations.” It would give the President the authority to withhold 50% of U.S. contributions to the United Nations if he determines that the United Nations is not making adequate progress on reforms, among other things. The bill was introduced by Senator Norm Coleman on July 12, 2005, and was referred to the Committee on Foreign Relations.

**S.Res. 419 (109<sup>th</sup>).** S.Res. 419 advocates that the United States withdraw its financial support from the Human Rights Council until meaningful reforms are implemented. The resolution was introduced on March 31, 2006 by Senator Bill Frist (R-TN), and was referred to the Senate Committee on Foreign Relations.<sup>97</sup>

**H.R. 5476 (109<sup>th</sup>).** H.R. 5476 calls for the withholding of U.S. funds from the Council. It was introduced by Representative Cliff Stearns on May 24, 2006, and referred to the House Committee on International Relations.

**H.Amdt. 1154 to H.R. 5672 (109<sup>th</sup>).** H.Amdt. 1154 proposes prohibiting funds from the administration and operation of the Council while countries designated as states sponsors of terrorism are Council members.<sup>98</sup> It was introduced by Representative Michael McCaul on June 28, 2006, and agreed to by a voice vote.

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<sup>97</sup> Representative Christopher Smith opposed this resolution, stating that despite his own disappointment with the Council, “the United States cannot isolate itself from international human rights mechanisms... We must now make every effort to influence the implementation of the Council.” The statement is available at [[http://www.house.gov/list/press/nj04\\_smith/prUNHRCSENRES.html](http://www.house.gov/list/press/nj04_smith/prUNHRCSENRES.html)].

<sup>98</sup> Currently, Cuba is the only Council member designated by the Secretary of State as a state sponsor of terrorism. The 2006 membership of the Commission on Human Rights had three members identified as State Sponsors of Terrorism: Cuba, North Korea, and Sudan.

**Table 1. Human Rights Council Membership by Regional Group**

<b>AFRICAN STATES (13)</b>		<b>LATIN AMERICAN &amp; CARIBBEAN STATES (8)</b>	<b>WESTERN EUROPEAN &amp; OTHER STATES (7)</b>
Algeria - 2007** Cameroon - 2009 Djibouti - 2009 Gabon - 2008 Ghana - 2008 Mali - 2008 Mauritius - 2009 Morocco - 2007	Nigeria - 2009 Senegal - 2009 South Africa - 2007 Tunisia - 2007 Zambia - 2008	Argentina - 2007 Brazil - 2008 Cuba - 2009 Ecuador - 2007 Guatemala - 2008 Mexico - 2009 Peru - 2008 Uruguay - 2009	Canada - 2009 Finland - 2007 France - 2008 Germany - 2009 Netherlands - 2007 Switzerland - 2009 United Kingdom - 2008
<b>ASIAN STATES (13)</b>		<b>EASTERN EUROPEAN STATES (6)</b>	
Bahrain - 2007 Bangladesh - 2009 China - 2009 India - 2007 Indonesia - 2007 Japan - 2008 Jordan - 2009	Malaysia - 2009 Pakistan - 2008 Philippines - 2007 Republic of Korea - 2008 Saudi Arabia - 2009 Sri Lanka - 2008	Azerbaijan - 2009 Czech Republic - 2007 Poland - 2007 Romania - 2008 Russian Federation - 2009 Ukraine - 2008	

**Note:** Council membership is staggered by year. Members elected in the first elections drew lots to determine when their term would end. All Council members are eligible for reelection for a full second term.

\* Dates represent year of term end.