

Testimony by Morton H. Halperin  
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Africa, Human Rights and Global Operations Subcommittee  
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Mr. Chairman,

I appreciate the opportunity to appear before the sub-committee to present the views of the Open Society Policy Center on the new UN Human Rights Council and to suggest steps that the United States should take to improve the functioning of the Council. I want to make three basic points:

1. The UN Human Rights mechanisms including the new Council (and before that the Commission) play an important role in promoting human rights standards and in protecting those subject to human rights abuses around the globe.
2. The early actions of the new Council have sent a mixed signal, but some actions including especially the two special sessions on the Middle East must be a cause for great concern among all who care about even-handed and objective action in support of human rights.
3. It is far too soon to give up on the Council. American leadership is essential to the effective functioning of the Council, but the United States government has thus far abdicated its essential leadership of this effort.

Let me start with the second point. I will be very brief since the problem will, I am sure, be described at length by others testifying today. However, I want to leave no doubt that the Open Society Policy Center joins many other organizations including Human Rights Watch and Amnesty International, in condemning the decision of the Council to focus recent resolutions in Special Sessions exclusively on Israel and to ignore the flagrant human rights abuses by Hamas and Hezbollah which provoked the latest Middle East crisis. Special sessions are merited in a variety of circumstances, but particularly when a human rights situation significantly and rapidly deteriorates -- with the immediate aim of containing the situation

and preventing further abuses from taking place. Unfortunately, the resolutions that resulted from the July 5th and August 11th special sessions were widely considered to be unbalanced as they failed to address the responsibility of such actors as Hezbollah and Hamas in committing human rights abuses.

Further, the Council was unbalanced in its failure to call Special Sessions on other situations -- we believe that events in Darfur meet the criteria for a Special Session and the Council should urgently take up this issue. The fact that a special session was not called for in the case of Darfur raises important concerns about the ability of the Council to be even-handed in its decision to take action. The Commission was rightly condemned for its politicization, including its failure to condemn all human rights abuses in the Middle East, and the actions of the Council show that there is still a great deal to be done.

However, we need to keep in mind the indispensable role that the Commission played, and that the Council must play, in protecting those struggling for human rights everywhere in the world. The Council provides a forum in which human rights abuses in places such as Burma, Cuba, and Darfur can be highlighted and condemned. The special rapporteurs, both those for particular countries and those with functional responsibilities, play a key role by visiting countries engaged in human rights abuses and pressing for reforms. Other experts help draft human rights standards, which when approved by the Council or the General Assembly play an important role in motivating governments to improve their conduct. The Council also is more open than any other UN institution to the participation of civil society organizations and provides a forum for NGOs to influence the activities of the United Nations.

The debate over the creation of a new Council served to remind all of us of these important functions. One task ahead is to be sure that the new Council preserves and builds on these important achievements of the Commission. If we are to succeed in this effort and prevent further politicalization of the Council, the United States must be deeply engaged. Regrettably it has not been.

The effort to create a new Human Rights Council stemmed in part from the election to the Commission of countries which were themselves significant violators of human rights. While the effort to draft new rules for the

Council, and the first election to the Council, failed to completely solve this problem far greater progress was achieved than is generally understood.

The members of the Commission were elected by consensus by the Economic and Social Council – a subsidiary body of the GA -- based on the recommendations of regional groups which proposed only as many candidates as they were entitled to elect. There were no agreed criteria for selection and many human rights abusers were routinely nominated and elected.

Although the human rights community did not get all the reforms that it wanted, the new rules are dramatically different. Members of the Council are elected by the General Assembly and each member must be elected directly and individually by secret ballot and must receive an absolute majority of the member states of the GA. States are advised to take account of the human rights record of those seeking election to the Council in deciding which states to vote for. The new procedures provide an opportunity to improve membership by discouraging and defeating poor candidates and encouraging states with good human rights record to participate in these competitive elections.

On May 9<sup>th</sup>, 2005 the General Assembly, using these new procedures, elected the 47 members of the new Council. Although a handful of states with poor human rights records, including two permanent members of the Security Council, were elected to the Human Rights Council -- Russia, China, Pakistan, Cuba and Saudi Arabia -- most of the world's worst abusers no longer serve on the body and overall membership is a significant improvement over the past Commissions.

In a dramatic break from the past, sixty-four candidates competed for the 47 seats. From every region but Africa, more countries stood for election than could be chosen, insuring a competitive election. No deadline was given, yet all candidates announced early and campaigned actively for seats. Each candidate submitted a pledge that outlined the country's qualifications for membership, and its platform for action as a Council member.

Out of the 47 members elected, 37 are members of the Community of Democracies. This is a far higher percentage than was ever elected to the Commission and represents an opportunity for democratic member states to

work within the Democracy Caucus across regional lines to ensure a stronger and more effective Council.

The election results demonstrated that Member States voted for many candidates based on their merit, as instructed by the resolution that established the Council. Thus, Iran and Venezuela, countries with troubling human rights records, were unsuccessful in their efforts to be elected to the Council. The African bloc, which was the only one to nominate a slate, used that process to keep four human rights abusers who had previously served on the Commission -- Zimbabwe, Sudan, Libya and Egypt—from seeking a seat on the Council. Similarly, former Commission members Syria and Viet Nam did not run for Asian seats.

We can and must do better in future elections, but we must not allow the election of a few countries which do not deserve to be on the Council to blind us to the substantial progress that has been made.

Let me turn finally to the question of what the United States should do.

Regrettably the actions of the American government since the recess appointment of John Bolton as the US Permanent Representative to the UN have been ineffective and counter-productive.

Great progress toward building consensus on creating an effective Human Rights Council had been made in the months leading up to the World Summit in September 2005. Among other reforms in the draft text was a provision requiring states to receive an affirmative vote of 2/3 of the members of the General Assembly to be elected to the Council.

When he arrived at the UN with a recess appointment, Ambassador Bolton denounced the negotiating process that had produced this document and proposed 750 last-minute edits to the document, opening Pandora's box. Ambassador Bolton's proposed edits to the document and the negotiations which followed led to a much less specific endorsement of the Human Rights Council, omitting the 2/3 provision and other reforms.

When negotiations resumed on the Council, Ambassador Bolton rejected the negotiating process agreed to by all other states and held himself aloof attending only one of over thirty plenary sessions to negotiate the Council. Moreover, the United States never presented a draft resolution that it was

prepared to support and left other nations in the dark about what our real position was. When the rest of the membership reached agreement on a text which incorporated many advances, the United States demonstrated how much it had lost leadership on this issue by voting no along with only three other states. The United States decision not to seek membership on the Council during the first year has further reduced our influence.

Despite calls from international human rights organizations including the American Jewish Committee, Human Rights Watch, Amnesty International USA, the Carter Center for Human Rights, Freedom House, Global Rights and Human Rights First, the United States failed to appoint a Special Envoy to the Council to advance U.S. policy objectives during this critical year. This has directly undermined U.S. influence. For example, the U.S. Ambassador to the UN in Geneva delivered an address at the historic inaugural session of the UN Human Rights Council. However, because the U.S. representative was only at Ambassadorial level, this address was delivered at a general session, not the high-level session where over 80 high or ministerial level representatives spoke. The absence of the United States from the high-level session was a glaring omission, and sent a damaging signal to the Council about U.S. priorities and commitment to strengthen the Council, notwithstanding the constructive engagement of the U.S. mission in Geneva at the working level in the activities of the Council.

On March 15, Ambassador Bolton, speaking on instructions from the State Department, told the General Assembly that the United States was committed to working, “cooperatively with other Member States to make the Council as strong and effective as it can be. We will be supportive of efforts to strengthen the Council and look forward to a serious review of the Council’s structure and work.” It is time to put that commitment into practice. To do that the United States should:

- Appoint a Special Envoy to represent the United States at Council sessions and in dealing with other member states on human rights issues. A Special Envoy would send an unequivocal message that the United States will continue to work actively to uphold universal human rights standards. The Special Envoy should have the diplomatic experience and credibility to work cooperatively and effectively with other democratic states to promote U.S. interests and strategically isolate spoiler states.

- Work with the government of Mali, the current chair of the democracy caucus at the UN, to activate the caucus as a means of developing a consensus of democratic states in dealing with issues before the Council. We should use meetings of the caucus to educate democratic states from the developing world about the importance of an even handed approach to the Middle East
- Seek early support in the Council for resolutions dealing with urgent human rights problems in countries such as North Korea, Burma, and Sudan regarding the Darfur region.
- Announce now that we intend to seek a seat on the Human Rights Council at the next election in the spring and urge other democratic states to also seek election.

Congress should support these efforts and should not condition funding to the Human Rights Council or the UN. Other large donor nations are committed to engaging and strengthening the Council during its inaugural years and we would only be isolated in such an effort as we were when we threatened to without funding over the question of UN reforms.

Ensuring that this new body is effective and fair in advancing human rights requires a U.S. engagement that is more than business as usual – on par with the commitment made by the United States to establish the Commission. Today, we face similar challenges, including genocide, and the new Council faces heightened expectations to accomplish growing responsibilities. The resolution to create the new Council took steps toward outlining the body’s responsibilities, but critical decisions regarding how the body will review its members, address pressing human rights situations, the extent to which NGOs are allowed to engage and which mandates and procedures will be maintained, will be determined during the Council’s inaugural years. The range and scope of issues to be addressed and the challenges posed by those that would seek to undermine human rights require a sophisticated and dedicated effort beyond the ordinary. The stakes for those on the front line of human rights struggles around the world is far too great for us to concede defeat at this early stage.

Mr. Chairman, allow me once again to thank you and the sub-committee and to express my willingness to answer any questions you may have.