PREPARED STATEMENT OF HILLEL C. NEUER
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HEARING

before the

CONGRESS OF THE UNITED STATES
109th CONGRESS, 2nd SESSION

HOUSE INTERNATIONAL RELATIONS
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS
AND INTERNATIONAL OPERATIONS

SEPTEMBER 6, 2006

Reform or Regression?
An Assessment of the UN's New Human Rights Council

I. Introduction

Mr. Chairman and Members of the Subcommittee:

Good afternoon and thank you for the privilege of testifying at today's hearing on a vital international issue: our collective commitment to protect human rights.

My name is Hillel Neuer and I am the executive director of UN Watch, a non-governmental organization that holds the United Nations accountable to the principles of its Charter—most notably, the principles of human rights and equality. Based in Geneva, we devote special attention to monitoring the UN human rights apparatus that is headquartered there.[1]

[1] UN Watch is a non-governmental organization dedicated to monitoring the UN according to the principles of its Charter, and to the promotion of human rights worldwide. Based in Geneva, UN Watch was founded in 1993 by the late Morris Abram, former U.S. Permanent Representative to the UN in Geneva and a leading advocate of the civil rights movement. Board members include human rights advocates and scholars from around the globe, including Per Ahlmark, former Deputy Prime Minister of Sweden, and Professor Irwin Cotler, international human rights lawyer and former Attorney General of Canada. Affiliated with the American Jewish Committee, UN Watch is chaired by Alfred H. Moses, a former U.S. ambassador and presidential special envoy to Europe. UN Watch is at the forefront in the struggle against anti-Semitism at the UN, and has been outspoken for victims of religious persecution in China, political

On March 15, 2006, by Resolution 60/251, the UN General Assembly created a new human rights body, the Human Rights Council (the "Council"), to replace the old Commission on Human Rights (the "Commission"). To date, the Council has met in one regular session (June 19 to 30) and two special sessions (July 5-6 and August 11). The next regular session is scheduled for September 18 to October 6.

In this statement we assess the work of the Council so far. Our conclusion: despite looking promising on paper, the Council in practice has, sadly, proved to be much the same as—and in some ways worse than—the Commission.

One cannot discount the possibility of certain modest improvements in the future. So far, however, the Council's record has been a profound disappointment. Despite holding three sessions that purported to address substantive human rights issues, the Council has managed to ignore most of the world's worst abuses. The situation in Darfur—perhaps today's worst case of mass human rights abuse—merited only a brief passing debate, with Sudan easily escaping censure. Notwithstanding urgent warnings of even worse atrocities to come, there has been no attempt by Council members to convene a special session for the millions of Darfur victims. Instead, the Council, dominated by the Organization of the Islamic Conference (OIC), devoted 100% of its country-specific resolutions, two special sessions, one "fact-finding" mission, and a "high-level commission of inquiry" to one-sided and politically-motivated attacks on Israel, all of which granted effective immunity to violations of international law by Hamas and Hezbollah.

Moreover, at a time when the world is threatened by re-emergent terrorist groups acting in the name of global Jihad, the OIC-controlled Council provided further encouragement to extremists by adopting resolution HRC/1/L.16—a thinly-veiled endorsement of the fury of violence that followed the Danish newspaper cartoon controversy. This same malignant spirit saw the Council allow the blatant breach of mandate by its advisory Sub-Commission, which, not to be outdone, purported to censure Israel despite its express legal incapacity to censure any country. Finally, in what seemed like a defiant demonstration of fealty to the old Commission, which was fatally discredited by the election of Libya as Chair in 2003, the Council re-appointed as one of its experts the co-founder of the "Moammar Khaddafi Human Rights Prize."[2]

The OIC's subversion of the world's top human rights body for blatantly political ends would not be successful without willing allies. Predictably, repressive regimes like China, Cuba, and Saudi Arabia have all lent their support for the OIC initiatives, each of

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repression in Zimbabwe, the violation of women's rights in Iran, and many other causes. It is accredited by the UN as a NGO in Special Consultative Status with the Economic and Social Council (ECOCOC).

[2] See, *infra,* Section D regarding the Council's human rights experts.

which contravenes the founding principles of the Council and, taken together, amount to an assault on its integrity. What is disturbing, however, is that some free countries have also decided to— in Senator Moynihan's memorable words—join the jackals. Those joining include not only members of the Soviet-era Non-Aligned Movement like India, but also the South American countries of Argentina, Ecuador, Mexico, Peru and Uruguay. All of these, as explained in the comparative table below, we have designated as counter-productive to human rights protection.

By contrast, a solid minority alliance of eleven Council members has emerged to defend the principles, values and institutions of liberal democracy which the Council is supposed to promote. The Council's de facto democratic alliance is comprised of its European Union (EU) members (Czech Republic, Finland, France, Germany, Netherlands, Poland, United Kingdom), EU-aligned countries (Romania and Ukraine), Canada and Japan. This democratic alliance we have designated as constructive.

Others were mixed: countries like Cameroon, Ghana, and Nigeria supported some of the OIC measures, but, on the grossly one-sided resolution of the second special session, constructively defied both their African and OIC group alliances in abstaining. Switzerland admirably opposed both of the one-sided and inflammatory OIC resolutions of the regular session, but regrettably refused to join the democratic alliance in opposing those of the special sessions.

Our diagnosis of the Council's ills does not mean that supporters of reform should give up on pursuing every opportunity to remedy them, such as by cultivating the potentially positive universal periodic review mechanism, or by working to strengthen the quality of Council membership through the partially-improved annual election procedure. On the contrary, those who desire a truly reformed Council must begin by addressing its serious failings with the same candor and courage exercised by UN Secretary-General Kofi Annan last year in his diagnosis of the Commission.

As Mr. Annan acknowledged, the Commission was discredited by its poor membership and performance. In recent years, it included some of the world's worst human rights violators.[3] It was known for its indifference to the vast majority of the world's most pernicious and persistent abuses, and for its obsessive and unbalanced condemnation of one country—Israel.[4] Indeed, in the words of Secretary-General Annan, the Commission's "credibility deficit" was "cast[ing] a shadow on the reputation of the

[3] Cuba, Libya (its 2003 chair), Saudi Arabia, Sudan, and Zimbabwe, for example.

[4] At the Commission, over a 40-year period, 30 percent of the resolutions condemning human rights violations by specific states were against Israel—and in the several years preceding its disbanding, that percentage rose to half. In 2005, for example, the Commission adopted four resolutions against Israel, equaling the combined total of resolutions against all other states in the world. (Belarus, Cuba, Myanmar, and North Korea were the subject of one resolution each.) For more information on the Commission's anti-Israel bias, see Hillel C. Neuer, "The Struggle against Anti-Israel Bias at the UN Commission on Human Rights," Jerusalem Center for Public Affairs, January 1, 2006 (available under "Articles" at www.unwatch.org).

United Nations system as a whole," and he called for meaningful reform.[5] Before the new Council's first meeting, Mr. Annan expressed his hope that it would avoid the "selectivity and politicization" that had characterized the Commission. Mr. Annan addressed the most egregious example when he specifically urged the Council not to focus on Israel alone.[6]

The Council was widely hailed by proponents of the March resolution as "the dawn of a new era," in the words of UN High Commissioner for Human Rights Louise Arbour.[7] "I claim that it is clearly better," said General Assembly President Jan Eliasson, who oversaw the reform negotiations.[8] He called Resolution 60/251 "a new beginning for the promotion and protection of human rights." He described the Council as a body which would be based on "dialogue and cooperation" and would be "principled, effective and fair."[9]

France's UN envoy Jean Marc de La Sabliere expressed confidence that the Council would be "more active, more reactive and more demanding," saying "it shows we are serious about reform."[10] Swedish Prime Minister Goran Persson and Mexican President Vincente Fox described the Council's creation as "an historic achievement" that would "improve the life conditions for millions of people."[11] Swiss Foreign Minister

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[5] Report of the Secretary-General, "In larger freedom: towards development, security and human rights for all," March 21, 2005 (A/59/2005). Mr. Annan's proposed reforms were stronger than those ultimately enacted. He envisioned a smaller, more efficient body, with a strengthened mandate and a more credible membership, elected by a two-thirds vote. Six months of contentious negotiations in the General Assembly, however, resulted in the watered-down compromise text that became Resolution 60/251. UN Watch supported Mr. Annan's stronger reforms and was disappointed by the lesser changes enacted in Resolution 60/251. See, e.g., Steven Edwards, "Canada backs new UN Human Rights body," *National Post*, March 16, 2006 ("'The council falls short of what we in the human rights community have requested for many years. It's not what Kofi Annan asked for a year ago. And we're concerned that in June the faces around the table will look awfully familiar,' said Hillel Neuer, a Montrealer serving as executive director of monitoring group UN Watch"); UN Watch, "New Human Rights Council Proposal Falls Short," Press Release, February 23, 2006.

[6] Secretary-General Kofi Annan, Statement at Press Conference, June 15, 2006.

[7] Address to Human Rights Council, June 19, 2006.

[8] "The World Tonight", BBC Radio, May 10, 2006.

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

[10] "UN General Assembly overwhelmingly endorses new rights council," *Agence France Presse*, March 15, 2006.

[11] "Article by the Swedish Prime Minister Göran Persson and Mexico's President Vincente Fox," April 3, 2006. Council President Luis de Alba of Mexico described the Council as "a new institution able to respond to the expectations of the world's peoples" and "an opportunity to overcome the deficiencies" of the past. Address to Human Rights Council, June 19, 2006.

Micheline Calmy-Rey, whose web page describes the Council as a Swiss initiative, said that the creation of the Council was a "major advance in the UN's history of protecting human rights."[12] Many leading human rights NGOs likewise celebrated the new Council as "a significant improvement."[13] Evidence warning to the contrary tended to be dismissed.[14]

Regrettably, the Council has not lived up to reform advocates' hopes or to Resolution 60/251's promises. Its members are supposed to be elected based on their human rights records and commitments—yet the first Council includes serial human rights violators like China, Cuba, Russia and Saudi Arabia. It is supposed to promote and protect human rights "without distinction of any kind and in a fair and equal manner," and to base its work on "the principles of universality, impartiality, objectivity, and non-selectivity"—yet a full 100% of its country-specific resolutions have condemned Israel, and both of its special sessions were convened for the same exclusive purpose, with a one-sided bias that shocked even veteran UN diplomats. In this regard, the new Council's record is even worse than that of the old Commission.

In the sections that follow, we first discuss the standards set for the Council by Resolution 60/251. We then assess the Council's performance in six important areas: (1) membership; (2) ending politicization and selectivity, (3) addressing gross human rights violations, (4) establishing effective mechanisms, (5) creating a new culture of dialogue and cooperation, and (6) championing the UN Charter's democratic values. Finally, we provide some recommendations for the upcoming session and beyond.

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[12] Address to Human Rights Council, June 19, 2006. The resolution created an institution "with greater legitimacy," said Peter Maurer, Switzerland's UN ambassador. "We do not share the intransigent and maximalist approaches of certain delegations, who want to make us believe that they are the only ones fighting for an ambitious human rights machinery," he added. Official summary of General Assembly debate, March 15, 2006.

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

[14] Following the election of Council members on May 9, 2006, a BBC Radio interviewer asked Human Rights Watch executive director Kenneth Roth whether he was concerned that a majority of Council members had voted in the General Assembly against action for the victims of Darfur. "They have to condemn Sudan for what's going on in Darfur," replied Mr. Roth, "and I have every confidence that they will." The World Tonight, BBC Radio, May 10, 2006. Regrettably, despite holding three sessions, they have not.

II. Resolution 60/251's Standards

Resolution 60/251 gives the Council the following main responsibilities:

- to promote 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;
- to address situations of violations of human rights, including gross and systematic violations;
- to promote effective coordination and mainstreaming of human rights within the United Nations system;
- to promote human rights education and learning, advisory services, technical assistance, and capacity building;
- to serve as a forum for dialogue on thematic issues on all human rights;
- to make recommendations to the UN General Assembly for the further development of international law in the field of human rights;
- to promote the full implementation by UN member states of their human rights obligations and commitments;
- to undertake a universal periodic review of every UN member state's fulfillment of its human rights obligations and commitments; and
- to contribute, through dialogue and cooperation, toward the prevention of human rights violations and respond promptly to human rights emergencies.

The resolution requires that the Council's work "shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation with a view to enhance the promotion and protection of all human rights. . . ." It further requires Council members to "uphold the highest standards in the promotion and protection of human rights, fully cooperate with the Council, and be reviewed under the universal periodic review mechanism during their term of membership."

III. Assessment

A. Membership

To understand the Council, one must understand the way its members are elected and the composition of its current membership.

On membership, Resolution 60/251 represents a compromise between the ideals of human rights advocates and the realities of UN politics. It provides that Council members should be chosen based on their human rights records and commitments, but imposes a significant structural constraint: The Council's 47 seats are divided by a set formula among the UN's five regional groups—some of which have more liberal democratic members than others. The Council must always have 13 members from the African Group, 13 from the Asian Group, 6 from the Eastern European Group, 8 from the Latin American and Caribbean Group ("GRULAC"), and 7 from the Western European and Others Group ("WEOG"). Regional allotment was the practice in the Commission as well, but a re-distribution of seats reduced WEOG's representation in the Council, a loss for democracies.[15]

Thus, although membership requires election, supposedly based on human rights credentials, by a General Assembly majority (rather than simply appointment by a regional group, as at the Commission), the first Council nevertheless remains 47% non-democratic.[16] Moreover, it still includes nine countries—19% of its members—ranked Not Free by Freedom House in its most recent survey of political rights and civil liberties.[17] Four of these nine—China, Cuba, Russia, and Saudi Arabia—are also among Freedom House's "Worst of the Worst" human rights abusing regimes, as well as among five countries UN Watch identified, before the May 9, 2006 election, as particular threats to the Council's legitimacy.[18] Sadly, all four received well over the 96-vote threshold that was supposed to prevent human rights violators from winning Council membership. Saudi Arabia, for example, won 126 votes, close to two-thirds of the Assembly.

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[15] The re-jiggering of seats for the Council resulted in gains for the Asian and Eastern European Groups and losses for GRULAC and WEOG. In percentages, the Council is divvied up as follows: 27.5% African Group; 27.5% Asian Group; 13% Eastern European Group; 17% GRULAC; and 15% WEOG. This roughly corresponds to each group's current representation in the General Assembly (which is 28% African; 28% Asian; 12% Eastern European; 17% GRULAC; and 15% WEOG). The Commission had 53 seats, divided as follows: 15 for the African Group (28%), 12 for the Asian Group (23%), 5 for the Eastern Europe Group (9%), 11 for GRULAC (21%), and 10 for WEOG (19%).

[16] Of the 47 Council members, only 25—a slight majority of 53%—are Free democracies under Freedom House's standards. Although this is a small step forward, compared to the 2006 Commission's figure of 45%, it does not represent a significant break from the past. In addition, in terms of press freedom—a key indicator of a country's respect for individual liberty, human rights, and the rule of law—only 15 of the new Council members (32%) ranked in the top third of the latest worldwide press freedom index published by Reporters without Borders (*Reporters Sans Frontières)*. A larger proportion—18 of the members, or 38%—ranked, disappointingly, in the bottom third of the index. For more information on Council members' human rights records, see UN Watch Statement on the UN Human Rights Council, May 15, 2006.

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

[18] UN Watch Endorsements for Elections to the UN Human Rights Council, May 3, 2006. Thankfully, Iran—the fifth particular threat that we identified—failed in its bid for a Council seat.

In addition, non-democracies control the Council's two largest regional groups, Africa and Asia, which together hold a majority (26, or 55%) of the council's 47 seats. Only 30% of the Asian Group members, and 38% of those from the African Group, are Free countries under Freedom House's standards.[19]

Furthermore, the Council is dominated by the Organization of the Islamic Conference ("OIC"), the UN's Islamic bloc. Seventeen OIC countries are members, representing 36% of the Council's total membership.[20] This number is significant, as Resolution 60/251 allows one-third of the Council, or 16 members, to convene a special session.[21] As discussed below, in the Council's first two months of existence, the OIC has already exercised this power to call special sessions to examine Israel, twice.

OIC countries also dominate both the African and Asian blocs in the Council, which together constitute its majority. The OIC holds 9 of the 13 African Group seats (69%) and 7 of the 13 Asian Group seats (54%).[22] Thus Morocco or Algeria will typically head the African Group, and Saudi Arabia the Asian Group. Regrettably, the Islamic bloc—led by its more extremist member states—has abused this enormous power by turning the Council into their diplomatic plaything.

B. Ending Politicization and Selectivity

The Commission's downfall was its extreme politicization and selectivity, epitomized by its gross discrimination against Israel. To be sure, Israel must be held accountable for its human rights record like every other UN member state. But at the Commission, Israel was not treated like other UN member states—most of whom, including egregious human rights abusers, received no Commission scrutiny or condemnation. Instead, Israel was singled out for a unique measure of differential treatment. Israel alone was subject to its own special agenda item. Israel alone was targeted by no less than half of all country-specific resolutions. Israel alone was barred from any of the Commission's regional groups.

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[19] The Free countries among the African Group members are: Ghana, Mali, Mauritius, Senegal, and South Africa. The Free countries in the Asian Group are: India, Indonesia, Japan, and South Korea. By contrast, the GRULAC members are 63% Free; the Eastern European Group members, 66% Free; and the WEOG members, fully 100% Free.

[20] They are: Algeria, Azerbaijan, Bahrain, Bangladesh, Cameroon, Djibouti, Gabon, Indonesia, Jordan, Malaysia, Mali, Morocco, Nigeria, Pakistan, Saudi Arabia, Senegal, and Tunisia. Seven of these countries—Algeria, Bahrain, Djibouti, Jordan, Morocco, Saudi Arabia, and Tunisia—are also members of the Arab League.

[21] At the Commission, the support of a majority of the membership was required to convene special sessions.

[22] Numerically, the OIC wields more power in the Council than it does in the General Assembly, where it represents 29% of the total membership, 51% of the African Group, and 44% of the Asian Group.

The new Council was supposed to be different. Secretary-General Annan and others urged the Council to protect its integrity and follow a different path.[23] The Council's Arab and Islamic members, however, had other priorities. From the outset, they showed themselves to be more interested in using the Council to promote their anti-Israel political agenda than to protect human rights, and their numbers allowed them to overcome resistance from the democratic alliance. This is to the great detriment of the fledgling Council.

Despite promises to the contrary, selectivity and politicization have marked the Council's first regular session, its two special sessions, its advisory Sub-Commission and other related bodies.

1. The Regular Session

During the three months between the Council's creation and inauguration, preparatory sessions in Geneva were dominated by Arab and Islamic states' incessant demands for a special agenda item to censure Israel. Regardless of the meeting's announced topic, OIC countries insisted on raising the issue, notwithstanding calls from other states that the first session should focus on creating the new body's mechanisms and initially avoid the controversy of country-specific situations. Council President Luis de Alba of Mexico, supported by Canada, members of the EU, and other democracies, attempted to ensure an unbiased agenda. As a compromise, it was agreed that the first session's substantive debate would address five issues, under a neutral agenda item, and the result would be a consensus Presidential statement.

But the OIC's power in the Council is such that two of its current causes célèbres were included among the five issues to be discussed: (1) the "human rights situation in the occupied Arab Territories, including Palestine" (the Commission's old anti-Israel item); and (2) preventing the incitement of religious hatred (the OIC's euphemism for restricting speech or publications—such as the now-infamous Danish cartoons—that

[23] At the Council's "historic" opening, Mr. Annan urged its new members that their work "must mark a clean break from the past . . . . What must be apparent, above all, is a change in culture. In place of the culture of confrontation and distrust, which pervaded the Commission in its final years, we must see a culture of cooperation and commitment." (This notion of a new culture was repeated often by the diplomats at the Council. As discussed below in Section E, it was never clear what this was supposed to mean, a classic example of how muddled language at the UN has often led to muddled thinking and action.) Mr. Annan added that members "must recognize, as the General Assembly did when it established this Council, the importance of universality and objectivity, and the need to eliminate double standards." Mr. Eliasson likewise warned Council members to be "vigilant" against "the negative dynamics of the past," and urged them to "be guided by a spirit of renewed cooperation and of upholding the highest standards of human rights" and to show "statesmanship and preparedness not only to examine others but also to examine [themselves]." High Commissioner for Human Rights Louise Arbour called on Council members to "implement a broad concept of universality of rights and freedoms, designed to reflect first and foremost individual human dignity, rather than cater to the narrow pursuit of national self-interest and regional factionalism."

Muslims might find offensive).[24] The debate itself, held on Monday, June 26, was dominated by Arab and Islamic states' anti-Israel tirades.

Then, on the session's final day (Friday, June 30), the OIC broke the agreement about the Presidential statement and introduced two last-minute draft resolutions: one condemning Israel for alleged human rights violations in the Occupied Palestinian Territories, and one on the incitement of religious hatred.[25] That evening, the Council adopted the OIC's anti-Israel draft by a vote of 29 in favor, 12 against, and 5 abstentions, making the Jewish state the only country in the world that it singled out for censure in the session. Members aligned with the EU, Canada and Japan were the minority of 12 who voted No.[26]

The resolution calls for expert reports with Israel prejudged as guilty of violations, and forces a permanent anti-Israel agenda item at every future Council meeting. In addition, a separate, and otherwise procedural, resolution singled out, at the OIC's demand, the Council's Special Rapporteur on Palestine—whose one-sided mandate allows for the examination of alleged Israeli violations only—as its only expert mandate with no year of expiry.

The OIC draft on "incitement of religious hatred" also passed, over objections by the democratic alliance that it ignored the countervailing free speech considerations, by a vote similar to that on the anti-Israel resolution.[27] This resolution was in fact a thinly-

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[24] The other three issues were: the situation in Darfur, Sudan (but with a whitewashed title: "support for the Abuja Peace Agreements by providing back-up assistance for enhancing the promotion and protection of human rights"); the situation of human rights defenders; and the situation of migratory workers.

[25] Proving that its interests are political, not human-rights related, the OIC did not introduce a resolution concerning the forced displacement, rape and murder of Muslim civilians in Darfur, Sudan. The perpetrator of these atrocities is, after all, an OIC-member government, not the Jewish state. The OIC did not feel that the situations of human rights defenders or migrant workers merited Council resolutions, either.

[26] The vote count was:

Yes (29): Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Cuba, Ecuador, Gabon, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Uruguay, Zambia.

No (12): Canada, Czech Republic, Finland, France, Germany, Netherlands, Japan, Poland, Romania, Switzerland, Ukraine, United Kingdom.

Abstain (5): Cameroon, Ghana, Guatemala, South Korea, Nigeria.

Absent (1): Djibouti.

[27] This vote was 33-12-1, as follows:

Yes (33): Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, Cameroon, China, Cuba, Ecuador, Gabon, Ghana, Guatemala, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Nigeria,

veiled endorsement of the fury of violence that followed the Danish newspaper cartoon controversy. For the past year, the OIC has assiduously stoked this fury by demanding repeated pronouncements from the High Commissioner, independent experts, and the Council, culminating in this resolution. Indeed, the very charter of the Council—GA Resolution 60/251 of March 15, 2005—is tainted by its own thinly-veiled approval of the violent reactions to the cartoon controversy.[28] These OIC-sponsored texts are meant to intimidate domestic dissidents by characterizing liberal democracy as equal to blasphemy.

Yet all of this was still not enough. Seconds after the inaugural session concluded, the Arab League formally requested an immediate special session to censure Israel for recent actions in Gaza. It had the support of 21 of the Council's members, 5 more than the necessary one-third.[29]

2. The First Special Session

The outcome of the special session, held on July 5 and 6, was preordained. Both the request for it and the OIC-proposed draft resolution were entirely one-sided, speaking only of alleged Israeli violations, while completely ignoring the Hamas government's role—not only in the June 25 incident that that precipitated the Gaza crisis,[30] but also in deliberately attacking Israeli civilians. The session itself, held on July 5 and 6, consisted primarily of anti-Israel diatribes by Arab and Islamic states, including the spectacle of Sudan accusing others of "war crimes."

A Swiss attempt to insert balancing language referring to the conduct and obligations of "Palestinian armed groups" into the OIC draft was rejected, and the resolution passed by a vote of 29-11-5. The 11 No's came from the same democratic alliance of countries who had opposed the previous Friday's anti-Israel resolution minus Switzerland, which abstained this time.[31] In addition to condemning Israel alone for the

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Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Uruguay, Zambia.

No (12): Canada, Czech Republic, Finland, France, Germany, Netherlands, Japan, Poland, Romania, Switzerland, Ukraine, United Kingdom.

Abstain (1): South Korea.

Absent (1): Djibouti

[28] UN Watch and other NGO's objected to this. See ____

[29] The members supporting the request were: Algeria, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Cuba, Gabon, India, Indonesia, Jordan, Malaysia, Mali, Morocco, Pakistan, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, and Tunisia.

[30] Hamas tunneled into Israeli territory from Gaza and murdered and kidnapped Israeli soldiers.

[31] The vote count was:

Gaza crisis, the resolution demands an "urgent fact-finding mission" to the area led by the Special Rapporteur on Palestine, John Dugard—whose anti-Israel bias is, even by UN standards, particularly virulent.[32]

3. The Second Special Session

After Hezbollah sparked another crisis on July 12, with what Secretary-General Annan described as a provocative attack on Israel, the Arab League and the OIC, supported by 16 Council members,[33] convened another special Council session. This session was held on August 11.[34] Again, both the request and the OIC-proposed draft resolution referenced Israeli actions and violations alone. No mention was made of Hezbollah's incursion into Israel to murder and kidnap Israeli soldiers, its firing of thousands of rockets, packed with ball bearings to maximize casualties, at Israeli civilians, or its use of Lebanese civilians as human shields.

In addition to being politically-motivated and one-sided, this special session seemingly violated the UN Charter's principles of separation of powers. Because the Security Council was already dealing with the Lebanon crisis, Article 12 of the Charter dictates that the Human Rights Council, as a subsidiary of the General Assembly, should not have entered the fray. Also, as a matter of common sense, the session risked complicating the delicate negotiations then underway in New York.

Again, the debate featured harsh anti-Israel speeches—with no references to Hezbollah or its sponsors[35] or to Israeli civilian casualties—from Islamic states and their

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Yes (29): Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Cuba, Ecuador, Ghana, Guatemala, India, Indonesia, Jordan, Malaysia, Mali, Mauritius, Morocco, Pakistan, Peru, Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Uruguay, Zambia.

No (11): Canada, Czech Republic, Finland, France, Germany, Netherlands, Japan, Poland, Romania, Ukraine, United Kingdom.

Abstain (5): Cameroon, Mexico, Nigeria, South Korea, Switzerland.

Absent (2): Djibouti, Gabon.

[32] Not only does Mr. Dugard systematically ignore Palestinian acts of terror and their victims, he has gone so far as to laud Palestinian militants for their "determination, daring, and success." He also regularly attacks the Quartet (of which the UN is a part) and the internationally-recognized Road Map as too pro-Israel. At the special session, he could not even express sympathy for the kidnapped soldier without saying he also had sympathy for "all Israel's young soldiers compelled to serve in the army of an occupying power."

[33] The members supporting the special session were: Algeria, Azerbaijan, Bahrain, Bangladesh, China, Cuba, Indonesia, Jordan, Malaysia, Morocco, Pakistan, the Russian Federation, Saudi Arabia, Senegal, South Africa, and Tunisia.

[34] The request was made on August 7.

[35] Algeria alone recognized that there was another party to the crisis, although it neither named that party nor described it in a manner consistent with reality: it said that Israel had attacked "a small resistance group

allies. Most accused Israel of committing war crimes. Cuba accused Israel of "genocidal intent." Tunisia, speaking on behalf of the Arab League, accused Israel of violating "all human rights."

Again, the democratic alliance objected to the OIC draft as unfair and one-sided. Interestingly, this time Russia, despite having supported the call for the meeting, also criticized the draft, calling it "strongly worded" and "directed only at Israel, even though Israelis had suffered." This prompted the OIC to add a sentence urging "all concerned parties" to respect international law—but still no reference to actions or violations by, or investigation of, any party other than Israel. This was enough to get Russia to vote in favor, but was insufficient for the democratic alliance. [36]

The OIC resolution passed 27-11-8, with the same 11 members of the democratic alliance voting no as at the first special session.[37] The resolution "strongly condemns the grave Israeli violations of human rights and breaches of international humanitarian law" and contemplates the urgent dispatch of a "high-level commission of inquiry" to investigate Israeli actions only.

Major international human rights NGOs, including those critical of Israel (both generally and for its actions in the Lebanon crisis), quickly and uniformly condemned the session. Amnesty International said that "members' focus on their narrow political objectives resulted in a highly-politicised resolution that muted the Council's voice by ignoring the violations of one party to the conflict" and that "failed to meet the principles of impartiality and objectivity expected" of the Council.

Human Rights Watch said that "the one-sided approach . . . is a blow to [the Council's] credibility and an abdication of its responsibility to protect human rights for all. . . . Victims of human rights violations deserve better than the partisan fare that the Human Rights Council has offered so far." Reporters Sans Frontières "condemn[ed] this use of the Council for political ends" and said that the Council, so far, had been "a repeat of the worst moments of the defunct Human Rights Commission . . . , with an automatic, blocking majority imposing its will and doing as it pleases," that is, "exploiting human rights for political ends." Human Rights First said that it was "deeply disappointed" by the Council's failure to respect its mandate to be universal, impartial, objective, and non-selective.

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that uses rudimentary means to defend themselves." The Algerian representative did not mention Hezbollah's successful use of a sea-borne cruise missile, its night-vision optical equipment or other high-tech weaponry.

[36] In its explanation before the vote, Russia thanked the OIC for the amendments and said that although it thought that the draft was "still not perfect," it would nevertheless vote for it.

[37] The only differences from the previous special session were the following: Ghana, Guatemala, and the Philippines, which voted yes at the first session, abstained. Gabon, which was absent from the first session, abstained. Mexico, which abstained at the first session, voted yes.

4. The Sub-Commission and Related Bodies

Unbalanced condemnation of Israel also marred the August session of the Council's subsidiary, the Sub-Commission on the Promotion and Protection of Human Rights (the "Sub-Commission"), as well as the recent work of several other Geneva-based UN human rights entities.

The Sub-Commission is a body of 26 supposedly independent, impartial experts that provided "studies, research and expert advice" to the Commission. It now falls under the jurisdiction of the Council, which must decide whether, and if so in what form, it will continue to exist. On August 7, it issued a statement—drafted by the Pakistani member (a former foreign minister of leading OIC-member Pakistan)—that one-sidedly condemned Israel for "massive denial and violation of human rights in Lebanon." The statement not only pointedly ignored Hezbollah's role in attacking Israel and violating the human rights of Israeli civilians, but it blatantly violated the Sub-Commission's legal mandate, which forbids it from addressing country-specific situations.[38] The Sub-Commission knew full well that it was violating this restriction, but went ahead anyway.[39]

In addition, in late July, a group of the Council's Special Rapporteurs, including those on freedom of opinion and expression and on the right to "highest attainable standard of physical and mental health" issued a statement on the Lebanon crisis, despite unclear connections between some of their mandates and the situation. This statement claimed a litany of violations by Israel in Lebanon, and described at length the suffering of Lebanese civilians, yet begrudged only a mention to Israelis forced to hide in bomb shelters and said nothing at all about Israelis killed and injured. The words Hamas and Hezbollah did not appear in the statement at all.

Finally, on August 3, the Committee on the Elimination of Racial Discrimination ("CERD"), which is supposed to oversee the implementation of the 1965 International Covenant on the Elimination of All Forms of Racial Discrimination, suspended its normal work to debate "the humanitarian crisis in Lebanon." The session was initiated by a few panel members led by Mahmoud Aboul-Nasr, a former Egyptian diplomat and

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[38] Its mandate is clear: "the Sub-Commission should not adopt country-specific resolutions, decisions or Chairperson's statements and, in negotiating and adopting thematic resolutions or decisions, should refrain from including references to specific countries." Commission on Human Rights Resolution 2005/53. The reason for this is because "resolutions on country situations risk duplication with the work of the Commission and creating a perception of politicization of independent experts." Commission on Human Rights Decision 2000/106, p. 9.

[39] As reported in the official UN summary of the meeting: "FRANCOISE JANE HAMPSON, Sub-Commission Expert, said there were two separate issues - whether to do this, and what to do if so. *The Commission had given express instructions that the Sub-Commission was not to pass country-specific resolutions.* She had no fundamental objection to challenging this, as long as the Sub-Commission was sure of what it was doing. It was inevitable to mention the country concerned. *The Sub-Commission needed to be sure that it was breaking the rules, and was doing so at the very year that its existence was at stake* […]" (emphasis added).

Arab League official. (Mr. Aboul-Nasr is notorious for his 1998 support of convicted Holocaust denier Roger Garaudy, which was roundly criticized at the time by his colleague, now CERD Chairman, Regis de Gouttes.) The session on Lebanon went ahead despite the objections of others that it threatened the body's legitimacy, being entirely outside CERD's mandate. It also was framed in a lopsided manner, so that the humanitarian suffering of Israeli civilians would be entirely ignored.[40]

C. Addressing Gross Human Rights Violations

1. Darfur

A major test for the new Council will be whether it acts to stop the ongoing crimes against humanity in the Darfur region of Sudan. As discussed above, the situation in Darfur was indeed addressed in the Council's first session, but only in veiled tones, evoking memories of the Commission's treatment, in March 2005, of Darfur as a matter of "Technical Cooperation." The Council failed to adopt a resolution for the victims of Darfur. Nor, despite attempts by some, could it even agree on the softer measure of a Chairman's Statement.

There were no initial plans to raise Darfur, but not to do so would have proved embarrassing once the OIC forced a substantive debate on human rights violations. That said, in relative terms for the UN, the fact that the situation was debated at all marks an improvement over the General Assembly's deplorable decision—supported by 51% of the Council's current members—to take "No Action" on Darfur in November last year. The Council members supporting inaction in the GA included Free countries like Ghana, India, Indonesia, Mali, Senegal and South Africa who, despite their membership in the Community of Democracies, have tended to vote at the UN according to regional or developing world alliances rather than on their democratic values. As Resolution 60/251 requires Council members to put the promotion and protection of human rights before UN politics, we hope these countries will vote in the future to protect human rights victims in Darfur and elsewhere, not the perpetrators.

To their credit, a few countries did make substantive statements to the Council about Darfur. Austria, on behalf of the European Union, called for "the end of impunity and of the gross and systematic human rights violations" in the region. The Netherlands called it "unacceptable that grave human rights violations continue even after Security Council resolutions." Canada, the United States, and Spain stressed that Darfur should be among the Council's priorities. Interestingly, Azerbaijan, Senegal and Mali—all current Council members and all of whom voted in favor of the 2005 No Action motion—also expressed concern about the situation in Darfur. While we hope this trend continues, the Council's overall failure to adopt any official statement for Darfur's victims is damning.

2. Other Situations

[40] For more details, see Hillel C. Neuer, "Where Israel Still Equals Racism," *Jerusalem Post,* August 10, 2006.

As described above, only 5 substantive human rights issues were on the Council's agenda at its first session: 2 country situations (Israel and Sudan), and 3 thematic topics (the human rights of migrants; human rights defenders; and incitement to religious hatred). Some speakers, including UN High Commissioner for Human Rights Louise Arbour, urged the Council to consider more specific situations. UN Watch and a coalition of NGOs submitted evidence regarding many such countries, but none was addressed.[41] Instead, regrettably, the Council ignored gross human rights violations occurring in countries around the globe. We hope that this was due to the shortness of the initial session—only two weeks, most of which necessarily dealt with beginning to build the mechanisms of the new body—and does not indicate the approach that will be taken in future sessions.

D. Establishing Effective Mechanisms

The first Council is mandated to decide the body's agenda, working methods, and rules of procedure, including rules for participation of NGOs and other observers. It will "review, and where necessary improve and rationalize" the existing systems of independent human rights investigators (known as the Special Procedures), expert advice (the Sub-Commission), and complaints processing (the 1503 procedure). It also will create an entirely new system of universal periodic human rights review. These are vitally important elements, on which the Council's ability to address human rights problems will stand or fall.

1. Preserving the Independent Human Rights Experts

The Council voted to extend for one year the mandates of the 40-odd independent human rights experts (known as the Special Procedures) that it inherited from the Commission, to allow time for each one to be reviewed. This was a victory over objections from abuser countries like Cuba that preferred immediately to eliminate all of the country monitors. Many of these experts do excellent and important work, and should be retained.

However, as mentioned above, the resolution extending the mandates unfairly singled out the Special Rapporteur on Palestine—whose one-sided mandate is to examine alleged Israeli violations only—as the Council's only mandate with no year of expiry.

In addition, it is regrettable that among the individuals whose mandates were extended is one epitomizing the old Commission's worst aspects: Jean Ziegler, the Special Rapporteur on the Right to Food. Mr. Ziegler is a longtime apologist for dictators who has systematically abused his mandate to pursue his extremist political agenda, at the expense of hunger victims around the world.[42] As Mr. Ziegler had reached

[41] This Joint NGO Statement lists many grave situations that warrant the Council's consideration.

[42] Since his appointment in 2000, Mr. Zielger, a former radical Swiss politician, has paid little or no attention to regions with actual hunger crises, instead devoting his energies to polemics against the free

the six-year term limit for individual mandate-holders, the Council should have named someone else to fill this mandate pending its review.[43]

The Council also decided to extend, also for one year to allow for review, the largely ineffective complaints procedure and Sub-Commission.[44] We hope that the Council's review of these entities over the next year will lead to much-needed improvements.

2. Developing a Strong Universal Periodic Review

The universal periodic review that the Council will conduct of the human rights performance of all UN member states is its major innovation, and its best hope to save the Council from the selectivity and politicization that destroyed the Commission. Whether the system that is ultimately created will amount to more than a superficial questionnaire, however, remains to be seen.

At its first session, the Council established a working group to begin to set up the review system. The working group will report on its progress at the upcoming September session.

3. Ensuring Robust NGO Participation

Resolution 60/251 states that "the participation of and consultations with observers, including . . . non governmental organizations, shall be based on arrangements including ECOSOC resolution 1996/31, and practices observed by the Commission, while ensuring the most effective contribution of these entities." Active NGO participation was one of the Commission's strengths, and it is a victory for human rights activists that, against the wishes of some abuser regimes, civil society's place at the

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market, the West, the United States, and, especially, Israel. See UN Watch, Jean Ziegler's Campaign Against America, October 2005; UN Watch, Blind to Burundi, October 2004. He also has improperly used UN staff and resources to run a campaign urging a commercial boycott of Israel. His substantial ties to dictators like Moammar Khaddafi include being the co-founder, longtime vice president, and a past recipient of the "Moammar Khaddafi Human Rights Prize," an award established by the Libyan ruler in 1989 and used to reward prominent anti-American, anti-Western, and anti-Semitic individuals. See UN Watch, Switzerland's Nominee to the UN Human Rights Council and the Moammar Khaddafi Human Rights Prize, June 20, 2006. In addition, Mr. Ziegler is the only UN human rights expert in history to be denounced by the organization's highest officials, after he compared Israelis to Nazis, a classic manifestation of anti-Semitism as defined by the EU. "Annan slams UN official," *JTA*, July 8, 2005; "Gaza comments by rights expert irresponsible - UN," *Reuters*, July 7, 2005. Seventy members of the U.S. Congress also protested in letters to UN officials.

[43] The term limit adopted in 1999 is mandatory: "any individual's tenure in a given mandate, whether thematic or country specific, will be no more than six years." Report of the 55th Session of the Commission on Human Rights, Para. 552. The Commission expressly imposed this limit "to help maintain appropriate detachment and objectivity on the part of individual office-holders, and to ensure a regular infusion of new expertise and perspectives." *Id.*

[44] See Hillel C. Neuer, "Rights and Wrongs," *The New Republic*, February 18, 2005.

Council was assured. The "while ensuring the most effective contribution" language, however, is of continuing concern, as it seems to leave open the possibility for restrictions.

The Council's overall record on NGO participation at its first three sessions was mixed.

On the positive side, for the first time ever, the "High Level Segment" of speeches by dignitaries during the June session's first week made room for NGOs, represented by 5 prominent personalities.[45] In addition, the Council decided, significantly, to include "all stakeholders" in its year-long review of independent expert mandates and creation of the universal periodic review mechanism, ensuring that the voices of NGOs will continue to be heard on key elements of the new Council.

Also on the upside, Chairman de Alba has been accessible and attentive to NGOs, as have UN staffers, particularly the NGO Liaison Office, whose update emails and extranet of relevant documents are invaluable. Webcasts of some of the meetings during the first session also made it easier for non-Geneva NGOs to follow the proceedings. We hope that more meetings will be webcast in future sessions.

As for the negatives: First, the speaking time for joint NGO statements during the first session's substantive debate was reduced dramatically from past levels, which prevented NGOs from fully addressing gross violations around the world.[46] We hope that this was an exception due to the brevity of the session, and not an indication of things to come.

Also, at the first special session, NGOs were barred completely from speaking when debate was suspended, on the Islamic group's motion, just before civil society was slated to start. It was unclear whether this was prompted by the lengthening of the afternoon or the desire to censor speech. To its credit, the Council Secretariat afterward circulated the statements of all NGOs that were on the speakers' list to the entire UN system, in addition to posting them on the Council extranet. NGOs were allowed to speak at the second special session a month later, so we hope that the occurrence at the first was an aberration.

Finally, repressive states continue to threaten NGOs that dare to challenge them. At one of the preparatory meetings for the June session, Syria responded to a UN Watch question that it did not like by warning that "NGOs need to be strictly monitored." This left other NGOs scared. Given the "while ensuring effective participation language," the

[45] The speakers—Arnold Tsungo of Zimbabwe Lawyers for Human Rights; Natasa Kandic of the Humanitarian Law Centre, Belgrade; Sunila Abeyesekera of Inform, Sri Lanka; and Marta Ocampo de Vazquez, of Mothers of Plaza de Mayo, Argentina—were nominated by CONGO (the Conference of NGOs in Consultative Status with the United Nations) upon input from its members.

[46] See, *e.g.*, the June 26 statement by UN Watch, Union Internationale des Avocats, the Transnational Radical Party and 11 other NGOs, which had to be cut short.

outnumbered democracies on the Council who support strong civil society participation must continue to exercise vigilance.

E. Creating a New Culture of Dialogue and Cooperation

Although much-discussed during the reform negotiations and much-trumpeted as a great strength of Resolution 60/251, it was never clear what, exactly, this "new culture" was supposed to mean. As too often happens at the UN, "dialogue and cooperation" became a catchphrase that many delegations used, but with no agreed definition, each interpreted it however it liked.

Does it mean that Council members should work together towards consensus positions? This seemed to be the idea behind having one Chairman's Statement on all five specific human rights issues discussed at the June session, but the OIC soundly rejected such a compromise. Instead, it submitted two controversial resolutions, and then refused to engage in any negotiation over their language. Rather than dialogue and cooperation, the OIC's approach seems to be "take it or leave it."

Does it mean that there should be less inflammatory rhetoric and more respectful debate at Council sessions? It appears not, at least when the target is Israel or the United States. And the unfortunate tenor of the debate was set right from the Council's start: In the first week alone, the Cuban foreign minister's vehemently anti-American diatribe was interrupted, unusually, several times for long applause,[47] and the disrespect toward Israel included the Syrian calling the Jewish state "an invader from the planet Mars."

Does it mean, as many delegations argued during the reform process, that there should be no "naming and shaming," that is, no criticism of specific countries? This idea was most vocally advanced by countries from the OIC, the African Group, the Asian Group and the Non-Aligned Movement—but as they quickly demonstrated, what they meant was no naming and shaming of themselves or their friends. They never had any intention of discontinuing the naming and shaming of their favorite target, Israel.[48]

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[47] The Cuban began by gloating that it was "a victory for principles and truth" and "a defeat for lies" that Cuba was a member of the Council and the United States was not. He then embarked on a long exposition of Cuba's alleged human rights virtues and the U.S.'s alleged human rights sins, including the "concentration camp" at Guantanamo Bay and U.S. support for Israel. Apparently, Cuba's position in the reform negotiations and preparatory sessions that specific countries should never be singled out for criticism in the Council does not apply when it comes to the U.S. or Israel. (Cuba voted yes on all three resolutions against Israel and supported the convening of both anti-Israel special sessions.)

[48] Pakistan, now the OIC chair in the Council, made this argument in the most detail. Its view was that the Council should only be able to address a country situation if there is clear, credible and reliable evidence (not just news reports) of gross and systematic human rights violations being perpetrated by or with the complicity or consent of the government. Even then, the situation should first be addressed confidentially by an expert body through dialogue and technical and financial assistance. Only if there is clear evidence that the country is not willing or able to redress the violations should the Council publicly deal with the matter. To Pakistan, gross and systematic violations meriting country-specific review mostly occur in situations of armed conflict, particularly in cases of "foreign occupation" and "suppression of self-

Naming and shaming, in itself, is not the problem. In signing the Charter, all UN member states agreed to uphold certain principles, including the promotion and protection of human rights, and those violating these obligations *should* be criticized. The problem is the naming and shaming of one country over and over again, while the others get a free ride. In that regard, the Council's culture, unfortunately, is not new at all.

F. Championing the UN Charter's Democratic Values

With the liberal values of the UN Charter and the very concept of universal human rights under attack, did the democratic Council members stand up in their defense? On this, the record so far was mixed.

The threat is clear. Repressive regimes continue to seek shelter from scrutiny by invoking cultural relativism to undermine the universal application of fundamental human rights. Malaysia cited "distinct national circumstances and varying levels of development." China, boasting of its "people-centric" approach, urged consideration of "different social systems and levels of development," and argued for separate standards depending on "countries' historical, cultural and religious backgrounds and differences." That its Islamic members are attempting to morally justify their unequal treatment of women, and the Chinese their broad repression of individual freedoms, before the Council is a worrying indicator for the body's future.

There was, however, one high point of democratic vigilance and moral clarity. When it became known that Iran had sent an accused torturer and murderer as part of its delegation, Canada demanded his arrest, rightly condemning Tehran's contempt for the Council.[49]

But when the OIC decided to stoke the flames of outrage over the Danish cartoon incident—dismissing any balancing consideration of free speech, and providing moral justification and political support for violent protests—the West was largely silent. The EU's statement, for example, smacked of appeasement, with only a passing reference to the freedoms of expression and belief. None of the democracies at the Council was willing to proclaim that the proper response to a publication seen as objectionable, even offensive, must conform to the norms of free societies, which invite peaceful protest and public debate, and abjure all violence. In the end, however, the democratic alliance, although outnumbered, voted against the OIC resolution on this matter, which was commendable.

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determination" (*i.e.* by Israel). In such cases, Pakistan said, the Council should automatically dispatch fact-finding missions to assess the situation.

[49] Tehran prosecutor-general Said Mortazavi, a member of the delegation from Iran, has been implicated in the illegal detention, torture and murder of the Iranian-Canadian journalist Zahra Kazemi. He also has been involved in prosecuting dissident journalists, closing more than 100 newspapers, and ordering the arrest and detention of bloggers.

IV. The Upcoming September Session

Sub-Commission Report

The September session will consider the report that the Sub-Commission has prepared concerning its own future.[50] Not surprisingly, the Sub-Commission recommended that it continue to exist, in essentially the same form but with a new name: the Human Rights Consultative Commission ("HRCC").[51] This body's mandate would be virtually identical to the Sub-Commission's, but with one interesting omission: the report makes no reference to continuing the ban on addressing country-specific situations that, as discussed above, the Sub-Commission recently so blatantly violated.

The Sub-Commission also recommended that the 1503 complaint procedure be continued in essentially the same form. While it did recommend two small changes—that the entire HRCC review complaints and decide which ones to refer to the Council and that the full Council consider all complaints that are referred[52]—these do not address the procedure's larger problems: its closed nature and its toothlessness.

The Sub-Commission further recommended that an expert body should assist the Council with the universal periodic review, although it was split as to whether this should be the HRCC or a new, separate body.

Universal Periodic Review

The working group on universal periodic review will report on its progress to the Council at the September session. This report is not yet available, but the country and group position papers that have been submitted to the working group reveal several significant divides.

First, despite the mechanism's title, its universality is already under threat. Developing countries and the Islamic group argue that the review must take into account their "level of development" and their "religious and socio-cultural specificities." They also propose that developing countries should be reviewed less often than developed ones.

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[50] A/HRC/Sub.1/58/CRP.13, August 25, 2006.

[51] It recommended a body of either the present 26 or 28 members (1 more from Asia and one more from Eastern Europe). Seats would still be allocated regionally and members would still be nominated by states and elected by the Council. The term of membership would still be four years, and members would be able to serve for at least two terms, and possibly longer. (The Sub-Commission could not agree whether there should be a maximum number of terms.) Half the members would be elected every two years, as is the case now.

[52] Under the 1503 procedure, complaints went to the full Commission only after being filtered by two extremely politicized bodies: a sub-group of the Sub-Commission and then a sub-group of the Commission. See Hillel C. Neuer, "Rights and Wrongs," *The New Republic*, February 18, 2005. Given recent events in the Sub-Commission and Council, however, it is unclear whether review of complaints by the entire HRCC and the entire Council would in fact be any less politicized and selective.

There is also a dispute over the information on which to base the review. Western countries propose that it should not require extensive new reporting, but rather use existing information from a variety of sources: UN bodies,[53] regional organizations, national human rights institutions, NGOs, and the concerned state. The Islamic states want state-provided information to be the main source, UN information to be secondary, and make no mention of information from NGOs.

In addition, Western states want NGOs to participate not only by providing information, but also by taking part in the so-called "interactive dialogue" sessions where the Council questions the country under examination. The Islamic group argues that NGOs should only observe.

Special Procedures:

At the September session, the Council will hear reports from all of the current Special Procedures, as well as the report of the working group reviewing this system. Resolution 60/251 envisions that the Special Procedures will continue to exist in some form, although it does not specify the details.[54]

Abuser countries can be expected to continue to try to use the ongoing review to weaken or destroy the system.[55] We hope that the Council's democracies are able to defeat these efforts and ensure that the review results in a coherent and effective system of independent, impartial and expert mandate-holders.

V. Conclusion and Recommendations

The Council's record so far has been a great disappointment for the cause of protecting human rights victims worldwide. All Council stake-holders—member states, the Secretary-General, the High Commissioner and other leading UN officials, NGOs and other observers—have an obligation to speak out and act forcefully against the malign subversion of the Council as detailed above. Leading NGOs, particularly after the grossly biased second special session against Israel, have begun to condemn the blatant

[53] Specifically, the treaty bodies, relevant Special Procedures, and the Office of the High Commissioner for Human Rights.

[54]The Resolution provides that "the Council will assume, review and where necessary improve and rationalize, all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, in order to maintain a system of special procedures, expert advise and complaint procedure."

[55] These attempts take the form of proposals such as: outlawing country-specific mandates; requiring domestic remedies to be exhausted before an expert could consider a situation; turning over the selection of experts to the regional groups; and disqualifying people who work for or are on the governing board of NGOs from serving as experts.

and unrestrained abuse of the Council for political ends. All stake-holders must follow this example.

Supporters of true reform must make their voices heard in opposition to the Council's culture of anti-Israel bias, which has become a pathology challenging its basic integrity and future. They must oppose Israel's ongoing exclusion from any of the Council's regional groups, the special agenda item, and all of the other discriminatory measures described above. Likewise, they must speak out forcefully—by their votes and by their speeches—in defense of liberal democratic principles. Supporters of a credible Council should oppose the membership renewal of countries that act in a counter-productive manner.

In a word, I do not believe that we should give up. Rather, we must recognize that a truly reformed Council is an enormously uphill battle. Only by honestly identifying both its strengths and weaknesses can we move forward.

Thank you, Mr. Chairman.

ANNEX

Country Performance in the UN Human Rights Council
(First Session and First and Second Special Sessions, Summer 2006)

The tables that follow show UN Watch's assessment of the performance, to date, of the members of the United Nations Human Rights Council. We examined each country's vote on four important resolutions and its support for the convening of two special sessions, and classified its performance as constructive, counter-productive, or mixed.

We looked at two resolutions from the first session—A/HRC/1/L.15, the one-sided resolution against Israel for alleged human rights violations in Palestine, and A/HRC/1/L.16, the resolution denouncing the "incitement of religious hatred" at the expense of free speech and thought. We also considered the two unbalanced resolutions against Israel from the special sessions (S-1/Res/1 and S-2/Res/1, respectively). Each country's votes on the three anti-Israel resolutions, and its views on the two anti-Israel special sessions, reveal the extent of its commitment to the fairness and impartiality required of the Council. Each country's vote on the incitement resolution indicates its willingness to defend the liberal democratic values underpinning the entire international legal regime of human rights protection that the Council is supposed to enforce. Similarly, it reflects their determination to combat the ongoing OIC campaign to discredit democracy as blasphemy, a dangerous threat to human rights defenders in the region.

For each country, we also list the following information:

- Its rating in Freedom House's most recent global survey, Freedom in the World 2006. This annual study measures political rights and civil liberties worldwide and ranks countries as Free, Partly Free, or Not Free. Where applicable we also noted the Not Free countries designated as the world's most repressive by Freedom House in its 2005 special report, The Worst of the Worst.

- Its placement in the UN's regional group system. There are five regional groups at the UN—the African Group, the Asian Group, the Eastern European Group, the Group of Latin American and Caribbean States (GRULAC), and the Western Europe and Others Group (WEOG). Seats in most UN bodies, including the Council, are allocated by a set formula among the groups. The groups also coordinate policy positions and act as negotiation and voting blocs at the UN, including in the Council.

- Its membership(s) in other alliances that act in concert at the UN and in the Council. These include the European Union (EU), the Islamic Group (known as the Organization of the Islamic Conference, or OIC), the Arab League, and the Non-Aligned Movement.

Constructive

Country	Freedom House Rating	UN Regional Group	Political Alliance
Canada	Free	WEOG	
Czech Republic	Free	Eastern Europe	EU
Finland	Free	WEOG	EU
France	Free	WEOG	EU
Germany	Free	WEOG	EU
Netherlands	Free	WEOG	EU
Japan	Free	Asia	
Poland	Free	Eastern Europe	EU
Romania	Free	Eastern Europe	EU-aligned
Ukraine	Free	Eastern Europe	
United Kingdom	Free	WEOG	EU

Mixed

Country	Freedom House Rating	UN Regional Group	Political Alliance
Cameroon	Not Free	Africa	Islamic Group, Non-Aligned Movt.
Gabon	Partly Free	Africa	Islamic Group, Non-Aligned Movt.
Ghana	Free	Africa	Non-Aligned Movt.
Guatemala	Partly Free	GRULAC	Non-Aligned Movt.
Nigeria	Partly Free	Africa	Islamic Group, Non-Aligned Movt.
South Korea	Free	Asia	
Switzerland	Free	WEOG	

Counter-Productive

Country	Freedom House Rating	UN Regional Group	Political Alliance
Algeria	Not Free	Africa	Islamic Group, Arab League, Non-Aligned Movt.
Argentina	Free	GRULAC	
Azerbaijan	Not Free	Eastern Europe	Islamic Group
Bahrain	Partly Free	Asia	Islamic Group, Arab League, Non-Aligned Movt.

Bangladesh	Partly Free	Asia	Islamic Group, Non-Aligned Movt.
Brazil	Free	GRULAC	
China	Not Free, Worst of the Worst	Asia	
Cuba	Not Free, Worst of the Worst	GRULAC	Non-Aligned Movt.
Djibouti	Partly Free	Africa	Islamic Group, Arab League, Non-Aligned Movt.
Ecuador	Partly Free	GRULAC	Non-Aligned Movt.
India	Free	Asia	Non-Aligned Movt.
Indonesia	Free	Asia	Islamic Group, Non-Aligned Movt.
Jordan	Partly Free	Asia	Islamic Group, Arab League, Non-Aligned Movt.
Malaysia	Partly Free	Asia	Islamic Group, Non-Aligned Movt.
Mali	Free	Africa	Islamic Group, Non-Aligned Movt.
Mauritius	Free	Africa	Non-Aligned Movt.
Mexico	Free	GRULAC	
Morocco	Partly Free	Asia	Islamic Group, Arab League, Non-Aligned Movt.
Pakistan	Not Free	Asia	Islamic Group, Non-Aligned Movt.
Peru	Free	GRULAC	Non-Aligned Movt.
Philippines	Partly Free	Asia	Non-Aligned Movt.
Russian Federation	Not Free, Worst of the Worst	Eastern Europe	
Saudi Arabia	Not Free, Worst of the Worst	Asia	Islamic Group, Arab League, Non-Aligned Movt.
Senegal	Free	Africa	Islamic Group, Non-Aligned Movt.
South Africa	Free	Africa	Non-Aligned Movt.
Sri Lanka	Partly Free	Asia	Non-Aligned Movt.
Tunisia	Not Free	Africa	Islamic Group, Arab League, Non-Aligned Movt.
Uruguay	Free	GRULAC	
Zambia	Partly Free	Africa	Non-Aligned Movt.

Voting Record — UN Human Rights Council Resolutions

✓ Voted Yes
X Voted No

Country	"Human Rights Situation in Palestine and other Occupied Arab Territories" (A/HRC/1/L.15)	(re Danish Cartoons) "Incitement to racial and religious hatred and promotion of tolerance" (A/HRC/1/L.16)	"Human rights situation in the Occupied Palestinian Territory " (S-1/Res/1)	"The grave situation of human rights in Lebanon caused by Israeli military operations" (S-2/Res/1)
Argentina	✓	✓	✓	✓
Azerbaijan	✓	✓	✓	✓
Bahrain	✓	✓	✓	✓
Bangladesh	✓	✓	✓	✓
Brazil	✓	✓	✓	✓
Cameroon	Abstain	✓	Abstain	Abstain
Canada	x	x	x	X
China	✓	✓	✓	✓
Cuba	✓	✓	✓	✓
Czech Republic	x	x	x	X
Djibouti	(not present)	(not present)	(not present)	(not present)
Ecuador	✓	✓	✓	✓
Finland	x	x	x	X
France	x	x	x	X
Gabon	✓	✓	(not present)	Abstain
Germany	x	x	x	X
Ghana	Abstain	✓	✓	Abstain
Guatemala	Abstain	✓	✓	Abstain
India	✓	✓	✓	✓
Indonesia	✓	✓	✓	✓
Japan	x	x	x	X
Jordan	✓	✓	✓	✓
Malaysia	✓	✓	✓	✓
Mali	✓	✓	✓	✓
Mauritius	✓	✓	✓	✓
Mexico	✓	✓	Abstain	✓
Morocco	✓	✓	✓	✓
Netherlands	x	x	x	X
Nigeria	Abstain	✓	Abstain	Abstain

Pakistan	✓	✓	✓	✓
Peru	✓	✓	✓	✓
Philippines	✓	✓	✓	Abstain
Poland	x	x	x	X
Republic of Korea	Abstain	Abstain	Abstain	Abstain
Romania	x	x	x	X
Russian Federation	✓	✓	✓	✓
Saudi Arabia	✓	✓	✓	✓
Senegal	✓	✓	✓	✓
South Africa	✓	✓	✓	✓
Sri Lanka	✓	✓	✓	✓
Switzerland	x	x	Abstain	Abstain
Tunisia	✓	✓	✓	✓
Ukraine	x	x	x	X
United Kingdom	x	x	x	X
Uruguay	✓	✓	✓	✓
Zambia	✓	✓	✓	✓

** See above for methodology.*