



**American Branch of the
International Law Association**

UNITED NATIONS LAW COMMITTEE

**The United States and the United Nations Human Rights
Council: Why the US should seek membership in the
upcoming May 2009 elections**

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Since the adoption of the United Nations Charter and the Universal Declaration on Human Rights, human rights have been a central purpose of the UN. Equally central over the past sixty years has been the United States' leadership on human rights issues. Over the last few years, however, the US has failed to support the UN Human Rights Council, likely the most important human rights organ in the UN system. The American Branch of the International Law Association's United Nations Law Committee¹ submits this report to encourage the United States to seek membership in the Human Rights Council in the upcoming May 2009 elections.² US membership in the Council would significantly benefit US interests, the UN, and the global human rights movement.

On March 15, 2006, the UN General Assembly passed a resolution replacing the Commission on Human Rights with a new Human Rights Council ("Council").³ The resolution received overwhelming support from the General Assembly. One hundred seventy countries voted in favor, four voted against, and three abstained.⁴ Over the past few years, the Council has held ten regular sessions and ten special sessions. The Council has engaged in dialogue and passed resolutions on innumerable human rights issues, including extreme poverty, women's rights and transitional justice.⁵ In addition, the Universal Period Review ("UPR") process began in 2008.⁶ The UPR represents a significant innovation in the UN system and provides an opportunity for each UN Member State to present its fulfillment of human rights obligations. The Council has thus far reviewed forty eight countries, and all one hundred ninety two UN Member States will be reviewed by 2012.⁷

Set forth below are reasons why the American Branch of the International Law Association's United Nations Law Committee believes the US should seek membership in the Council in the upcoming May 2009 elections:

- **Membership in the Human Rights Council would reaffirm the US commitment to human rights, international law and the United Nations.** One of the fundamental premises of the UN, reflected in the UN Charter, is the pledge of each Member State to "reaffirm the faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women." As expressed by former Secretary-General Kofi Annan, human rights remain one of the "three pillars" of the UN system,

¹ The International Law Association was established in 1873 and is currently the preeminent international non-governmental organization involved in developing and restating international law. The American Branch is one of forty-five national branches and is comprised of numerous leading US international lawyers. The Branch regularly engages in a wide range of international law projects, including treaty-drafting, studies and advocacy work. For more information, see www.ambranch.org.

² The American Branch welcomes the United States' decision to participate in preparations for the Durban Review Conference.

³ U.N. Doc. A/RES/60/251, Mar. 15, 2006.

⁴ The US was one of the four to vote against creation of the Council. "General Assembly Establishes New Human Rights Council by Vote of 170 in Favour to 4 Against, With 3 Abstentions," Sixtieth General Assembly, 72nd Meeting, <http://www.un.org/News/Press/docs/2006/ga10449.doc.htm>.

⁵ See, e.g., Report of the Human Rights Council on its Eighth Session, U.N. Doc. A/HRC/8/52, Sept. 1, 2008, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/8session/A.HRC.8.52.doc>.

⁶ UPR Sessions, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>.

⁷ The Council's "institution-building package" of 2007 decided that the Council will hold three two-week UPR sessions per year. The Council has also adopted a calendar detailing the schedule for each UN Member State's review in the first four-year cycle. See *id.*

crucial to global progress and stability.⁸ As such, the US should take an active role on human rights issues at the UN and in the Council.

- **The Human Rights Council, the only world-wide intergovernmental human rights body, is flawed but indispensable.** As the top human rights organ in the UN system, the Council remains the best opportunity for the promotion and protection of human rights at the universal level. The human rights movement is an ideological struggle that requires sustained and constructive engagement with governments worldwide. And the Human Rights Council provides an indispensable forum for such engagement.
- **The Human Rights Council's problems are political rather than institutional.** Unlike other judicial or quasi-judicial human rights institutions, the Council is a political forum. And as with other rights movements, progress is inevitably imperfect and incremental. There will be debate, disagreements and setbacks. But when failures occur, it is most often not the institution or the procedures, but rather the governments involved, that are responsible. As such, human rights progress will come only with sustained political leadership; and the US remains in the best position to engage its full diplomatic and moral authority to spur collective promotion of international human rights.
- **The Human Rights Council would benefit from US leadership.** The credibility and authority of the Council cannot be adopted or declared. Rather, key stakeholders in the human rights movement need to work actively to build the Council to a position of strength. Since the inception of the UN, the US has been at the forefront of the human rights movement. Over the past few years, European states have not been successful in replacing US leadership at the UN on human rights issues. The Council is in need of leadership, and the US remains the country most capable of guiding the institution to live up to its mandate.
- **The current membership composition should encourage not discourage US participation.** It is inevitable that countries with poor human rights records will continue to seek membership in the Council. Such countries have a tremendous incentive to obstruct the promotion and protection of human rights, and discredit the institution. The onus is thus on the US and other like-minded states to engage in the debate and to ensure that the Council remains a credible force for human rights promotion and protection. Allowing the Council to be directed by states with poor human rights records does not further the interests of the US or the Council. Instead, it allows the human rights movement to be discredited and damaged at the international level.
- **The Universal Periodic Review system offers an opportunity for constructive intergovernmental dialogue.** The Council's founding document establishes that the Council shall "undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments."⁹ Unlike the reviews performed in UN treaty bodies, the UPR is reserved

⁸ Report of the Secretary-General, *In larger freedom: towards development, security and human rights for all*, U.N. Doc. A/59/2005, Mar. 21, 2005.

⁹ U.N. Doc. A/RES/60/251, Mar. 15, 2006.

completely for states. Other relevant stakeholders, including non-governmental organizations, cannot participate actively in the review. Although cited as an inherent weakness of the UPR, this premise should instead be viewed as an invaluable opportunity for intergovernmental dialogue and political pressure where necessary. While independent human rights experts are well-suited to providing findings on human rights progress, ultimately it is only state and intergovernmental actors who are able to speak from positions of strength. An established process for intergovernmental human rights dialogue serves a useful purpose for promoting US interests and human rights worldwide.

- **Meaningful dialogue on the Council, even with countries with poor human rights records, is in the interests of the US and the Council.** As demonstrated by the Human Rights Commission’s review of China during the 1990s, meaningful dialogue with a state with a poor human rights record can have numerous positive effects, including: (1) the long-term socializing effects of inclusion in the “club”; (2) strengthening the morale of those within the country who are working to promote and protect human rights; and (3) causing a country to renegotiate its sovereignty vis-à-vis international human rights organs and treaties.¹⁰ If conducted with respect and civility, constructive dialogue in the Council can have beneficial, even if only incremental and long-term, effects. The international community and the human rights movement benefits by including all countries willing to participate in the “club.” Even if no short-term resolution is reached with a non-complying country, engagement in the Council allows for future amicable dialogue, shows solidarity with human rights reformers in a country, and causes countries, even if denying any violation, to acknowledge the existence and import of international human rights.
- **States that are committed to human rights are able to make the UPR a meaningful process.** The UPR has been much-criticized for inconsistencies in the depth and quality of review. Fear of *tu quoque* criticism has led to ineffectual reviews. But where reviewing states have been open to discussion and willing to talk about difficult subjects, reviews have been productive.¹¹ The US could ensure that the UPR is maximized through more consistent and constructive engagement on difficult topics.
- **US interests are affected by human rights law and norms that are developing before the Council.** Prominent recent examples include the Council’s involvement as the Preparatory Committee for the Durban Review Conference, as well as the Council’s recent recognition of global climate change as a human rights issue.¹² In March 2008, the Council passed a resolution expressing concern that climate change has implications for the full enjoyment of human rights, and mandating the Office of the High Commissioner for Human Rights to conduct an analytical study on the relationship between climate

¹⁰ See Ann Kent, *China, The United Nations, and Human Rights*, reprinted in INTERNATIONAL HUMAN RIGHTS IN CONTEXT 638 (Henry J. Steiner & Philip Aston eds., 2000).

¹¹ Human Rights Watch, *UN: Mixed Results for New Review Process*, Apr. 17, 2008, <http://www.hrw.org/en/news/2008/04/17/un-mixed-results-new-review-process>.

¹² Human Rights Council Resolution 7/23, “Human rights and climate change,” Mar. 28, 2008, available at http://www2.ohchr.org/english/issues/climatechange/docs/Resolution_7_23.pdf.

change and human rights.¹³ In the next several years, the Council will undoubtedly continue to grapple with other issues at the vanguard of international human rights. The US would benefit from playing an active role in those efforts.

- **The focus of the Council’s work continues to evolve and could benefit from US involvement.** The Council’s evolution over the past three years has happened both formally and informally, and has had a significant impact on US interests and US allies. In 2007, the Council adopted an institution-building package¹⁴ that addressed several Council modalities and procedures, instituted significant reforms, and established a Human Rights Advisory Committee.¹⁵ And the focus of the Council’s work has also evolved informally at the direction of member states. Notably, in the past three years, the Council has held nine special sessions. Five of them have addressed alleged human rights violations by Israel. By comparison, between 1990 and 2006, the Human Rights Commission held only five special sessions in total, addressing the alleged violations of five different countries. The marked difference is not only the result of institutional reforms, but of political maneuvering among Council members. Although the Council’s selectivity thus far has been unfortunate, it ultimately reflects that there remain fundamental differences among UN members on human rights issues, and there are ongoing efforts to damage the human rights movement as it is understood by the US and its allies. Disagreement with Council decisions should not discredit the institution, but instead signals the need for US involvement. As a member, the US could play a vital role in re-shaping the focus of future Council efforts to help the Council live up to its mandate.
- **The US should join the Council prior to the mandatory General Assembly review.** The General Assembly resolution creating the Council decided that the Council shall review “its own work and functioning” by 2011.¹⁶ The US will be in a more credible position to advocate Council reforms as a member state, actively committed to the Council’s success. ⊕

¹³ The Council resolution calls on the OHCHR to conduct the study by consulting with Member States, relevant international organizations and other stakeholders. *Id.* ¶ 1.

¹⁴ During its first year, the Council established four working groups (WGs) to address its working methods: (1) WG to Develop the Modalities of Universal Periodic Review; (2) WG on the Review of Mechanisms and Mandates on the Future System of Expert Advice; (3) WG on the Review of Mechanisms and Mandates and Special Procedures; and (4) WG on the Agenda, Annual Program of Work, Working Methods, and Rules of Procedures. Based on the recommendation of the WGs, then-Council President Luis Alfonso de Alba proposed a draft institution-building text that was subsequently negotiated and adopted by Council members in Human Rights Council resolution 5/1 (June 18, 2007). See U.N. Doc. A/HRC/5/L.11, *Report to the General Assembly on the Fifth Session of the Human Rights Council*, June 18, 2007, available at http://www.ohchr.org/english/bodies/hrcouncil/docs/5session/a_hrc_5_l11.doc.

¹⁵ The Human Rights Advisory Committee serves as a think-tank of independent experts for the Council.

¹⁶ G.A. Res. 60/251, ¶ 16.