

TESTIMONY PREPARED FOR
THE TOM LANTOS HUMAN RIGHTS COMMISSION OF THE U.S. CONGRESS
“Ten Years Later: The Status of the UN Human Rights Council”

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Good afternoon, Honorable Co-chairs of the Lantos Commission, and many thanks for inviting me to present some thoughts about the United Nations Human Rights Council on its ten-year anniversary, and the role of U.S. leadership on the body.

I have been involved in research and advocacy around the Human Rights Council since before it was established in 2006, a time in which highly contentious debates were underway to reform and upgrade the previous Commission on Human Rights. Then-Secretary General Kofi Annan was right to call for a major overhaul of the body, which had been hampered for years by the politics of intransigence, geopolitical rivalries and inadequate concern for the victims of human rights violations around the world. Many of us fought hard for a stronger Council that would elevate the primacy of human rights as the third main pillar of the United Nations, improve its effectiveness, and increase its resources, which represent a mere three percent of the UN regular budget.

The outcome of those debates was on balance more positive than negative but we also knew from the start that operationalizing the new Council would require ongoing attention and pressure. This pressure had to come not only from Washington and other pro-human rights governments but also from a broad cross-section of civil society, which continues to be the engine that holds the Council accountable to its principles.¹ I applauded President Obama’s decision to join the Council after the previous administration decided to sit on the sidelines during those first crucial years. It’s fair to say that U.S. leadership has made a major contribution to the successes of the Council since it joined the body in 2009.

I welcome this Commission’s desire to take stock of the record after ten years of the Council’s existence and to look ahead at ways the body can be further improved to ensure better implementation of its recommendations.

¹ In this regard, I would call the Commission’s attention to the important work of leading international and national human rights organizations from around the world who increasingly are coordinating their efforts to make the Council a more effective body. See, e.g., the Joint Civil Society Paper, “Strengthening the Human Rights Council at 10,” April 28, 2016, <http://www.ishr.ch/HRCat10>.

Late last year, I compiled my own accounting of the Council's first ten years based on several misunderstandings that continue to plague perceptions of its work. I also recently completed a study of the Council's record on monitoring country-specific situations that demand greater attention by the UN. I hereby request that both documents be entered into the Commission's record.

My assessment covers five main myths about the Human Rights Council.

First, regarding the *Council's membership*. I agree that some members of the Council do not represent the shining stars of the human rights universe. In particular, the continued election of states like China, Russia, Cuba, and Venezuela, in addition to newer members like Burundi and Ethiopia, is a sad testament to the General Assembly's willingness to prioritize politics over principles. But it is not the case that the majority of the Council's members are authoritarian. In fact, from 2007-2015, over 74 percent of the Council's members met the Freedom House standards of free and partly free. In addition, other states with notorious human rights records – Iran, Sudan, Syria, Azerbaijan and Belarus, for example – have either failed in their campaigns to win a seat or have withdrawn in the face of heavy opposition.

The problem with the membership process is two-fold. First, too often the regional slate is not competitive, giving states little to no choice when electing members. Second, some member states avoid running for a seat for lack of resources to staff the daunting workload of the Council or to avoid the difficult tradeoffs involved in casting votes for or against a particular state's human rights record. Other big democracies elected to the body, like India, Indonesia, and South Africa, too often sit on the fence when it comes to criticizing fellow governments. The United States has worked hard to persuade such states to join or become more engaged on the Council. But ultimately improving the Council's membership depends on both more sustained horizontal peer pressure from governments and vertical pressure from citizens below to get states to mend their ways. Building cross-regional coalitions of like-minded states, which requires sustained and smart diplomacy not only in Geneva but in capitals, can and does make a difference.

The ten-year anniversary is a good moment to reflect on other ways the standards for membership can be improved. States could organize a formal pledging conference at which candidates must make specific commitments to uphold the highest standards in protecting human rights. The Office of the High Commissioner for Human Rights (OHCHR) could issue an annual report on if and how each candidate has fully cooperated with the Council's mechanisms, as set forth in General Assembly Resolution 60/251. This report would include whether a state accepts country visits by Special Procedures and responds to their communications, submits timely reports to treaty bodies, and implements recommendations from the Universal Periodic Review. Regional groups could voluntarily commit to run only competitive slates.

Finally, I would point out a silver lining on the membership issue: Given the diverse membership of the Council, it speaks with unique legitimacy when it does in fact take action

against violations in specific situations. I would note, in this regard, the powerful signal sent by the Council's unanimous resolutions on North Korea, Myanmar and South Sudan, which we saw this spring.

Second, regarding *country-specific scrutiny* by the Council, there is an incorrect impression that the body spends too much time passing "soft" thematic resolutions and not enough time on the hard cases of systematic violations in specific countries. While it is true that, measured strictly in terms of resolutions adopted by the Council, thematic resolutions do predominate by an order of three to one. But if we consider all the relevant mechanisms of the Council, including country visits and reports by the Council's independent experts, special sessions, commissions of inquiry and the new Universal Periodic Review (UPR) (not to mention treaty bodies), we discover a much higher level of attention to country situations. In fact, the UPR, which has received 100 percent participation by all UN member states, has yielded an unprecedented global examination of states' human rights performance.

The intensity of Council scrutiny has varied depending on the tool employed, but it is vastly broader and more systematic than in the old days. This is having the effect of expanding universality of human rights norms, reducing polarization at the Council, and opening the door to new actors at the national level participating either directly in the UPR process or through shadow reports. Finally, I would add that so-called "soft" thematic resolutions are some of the most important tools the UN has to investigate and pressure states to clean up their acts on everything from torture and human trafficking to freedom of expression, arbitrary detentions and religious freedom.

This increased scrutiny of country situations does not mean that all the most important cases are getting the high-level attention they deserve. In part, this is a function of power politics and also of a lack of resources. One remedy would be to allow other credible stakeholders a voice in triggering examination of country situations, particularly those that demand urgent attention. The High Commissioner, a group of Special Procedures, the General Assembly or the Security Council, for example, could request Council action on a particular crisis.

Third, it is important to consider the Council's biased treatment of *Israel*. As this Congress is well aware, Israel's human rights record in the Occupied Palestinian Territories (OPT) is the only country-specific permanent item on the Council's agenda, a result of bad bargaining in the early days of the Council, when the United States was inactive. During those early years, the Council convened no less than six special sessions on Israel. Since the United States joined the body, however, only two such sessions have been called; a similar decrease in the number of country resolutions devoted to Israel occurred, along with a corresponding increase in attention to dire cases like Iran, North Korea and Syria.

Not surprisingly, Israel approaches the Council with trepidation and routinely fails to cooperate with its fact-finding commissions and rapporteurs. It has not, however, walked away from the

UPR process. As Israel's Ambassador to Geneva stated at the time, "Israel came to the review with respect for the process, belief in the importance of its universality and cooperative nature, and with great pride in its achievements." The United States should continue to fight hard for fair treatment of Israel in Geneva, and Israel could also do more to cooperate with the Council's mechanisms. But experience shows we are much better off staying engaged at the Council to defend Israel against unfair treatment than walking away from it. I would also argue that conditioning U.S. funding to the Council on it taking steps to remove the permanent item on Israel is short-sighted and likely to reduce our influence in Geneva at a time when the demand for greater resources has never been higher.

A fourth myth is that the Council is nothing more than a *toothless debating society* and has no real impact outside the halls of Geneva. We risk falling into a trap of our own making if we believe that the opinions of humankind expressed at the UN are meaningless paper tigers with no effect in the real world. Through diplomacy and negotiations, we reached agreement on the Universal Declaration of Human Rights and a slew of human rights treaties that followed. The fundamental principles they articulate represent civilized norms to protect ourselves from the worst impulses of human nature.

The real challenge the international community faces is implementation of such norms. Accountability for human rights violations starts by shedding light on a variety of pressing human rights problems. In this regard, the explosive increase in the scope and depth of the Council's workload demonstrates a much more determined and systematic attempt by the international community to monitor state behavior. Since its creation, for example, the Council has established 20 new mandates of independent experts to act as its eyes and ears on the ground. My research on the effectiveness of these monitors at the national level revealed dozens of stories of the impact they had in getting prisoners released, protecting journalists, decriminalizing blasphemy and reducing prison sentences.² The UPR process is adding another layer of transparency and accountability for upholding international human rights norms; nearly half of the recommendations made to states were fully or partially implemented just two-and-a-half years after the first round of reviews.

On some of the most serious cases, the Council has taken action that has led to important and unprecedented results. The commission of inquiry on North Korea, for example, which delivered a hard-hitting report in 2014 documenting crimes against humanity, has changed the conversation from denials of human rights abuses to acceptance that the UN Security Council must address the matter, including through a potential referral to the International Criminal Court. On Sri Lanka, the Council has shifted from initially applauding the bloody termination of the conflict in 2009 to demanding an independent investigation of the abuses; this international

² For more on the effectiveness of the Council's mandates, see Ted Piccone, *Catalysts for Change: How the UN's Independent Experts Promote Human Rights* (Washington, D.C.: Brookings Institution Press, 2012) and Marc Limon and Ted Piccone, *Human Rights Special Procedures: Determinants of Influence*, Universal Rights Group (March 2014), <http://www.brookings.edu/research/reports/2014/03/19-un-human-rights-experts-evaluation-piccone>

pressure had a direct effect on subsequent elections in the country, and helped bring to power a new leader who immediately adopted a set of important reforms. On Syria, where the Security Council has failed to act, the Council has held multiple special sessions to hear from a commission of inquiry that is already passing names of suspects to courts in Europe, paving the way, some day, for real accountability for the manifold crimes in the country. On balance, the Council's actions turn out to be much more than paper exercises.

Nonetheless, greater documentation of abuses does not translate into real accountability. Resources to do the hard work in the field are pathetically scarce and desperately need to be replenished, not cut, as the Council's opponents suggest. A special implementation fund should be created to provide both governmental and nongovernmental bodies the tools they need to implement the hundreds of important and useful recommendations flowing from the Council's mechanisms.

Fifth, and of particular relevance to this hearing, is the question of *U.S. leadership at the Council*. Some argue that the body is so tainted by politics and spoilers that we would be better off staying away from it. But this approach would abandon the field to those who remain determined to block any international scrutiny or condemnation of human rights violations around the world. The evidence against U.S. withdrawal is already available – its absence from the Council's tables during the first two years of its existence led to setbacks on multiple fronts, including the preponderant focus on Israel.

Since the United States joined in 2009, the Council has taken a string of important actions that move the human rights agenda forward on both country situations like North Korea, Iran and Syria and on thematic priorities like LGBT rights and freedom of association. At the most recent session alone, U.S. diplomats played key roles in securing positive action on the protection of human rights defenders, the right to peaceful protest, and accountability for violations in South Sudan, Myanmar, Iran, Syria and North Korea, among others; it also led efforts to present a joint statement criticizing the deteriorating human rights situation in China.

The United States' current mandated absence from the body for one year does not mean the State Department should rest from its strong track record in building the cross-regional coalitions needed to get things done in Geneva or lobby capitals to elect better candidates to serve on the Council. Without an active U.S. strategy to push ahead, including with ample diplomatic and financial resources dedicated to bolstering the UN's human rights machinery, the human rights agenda will inevitably fall victim to those governments that would rather look the other way or worse undermine international norms and mechanisms. The United States, like it or not, needs to stay in the fight if it wants to remain a leader for human rights on the world stage.

A final word regarding the *participation of civil society* at the Human Rights Council. Preserving and expanding the role of human rights defenders in Geneva was one of the priority objectives many of us shared during establishment of the Council ten years ago. Already, the

Council's mechanisms are the most open and accessible of any body at the United Nations, and it has only grown over the last decade. Unfortunately, however, several problems remain. NGO representatives invited to speak at the Council are routinely interrupted with harassing points of order from repressive delegations. Reprisals against advocates who cooperate with Council mechanisms are much too frequent; a state's failure to address reprisals should disqualify it from sitting on the Council. In addition, the UN committee in New York that grants accreditation to NGOs to speak at the Council has long ago lost any credibility in its failure to give applicants a fair hearing or a credible outcome. If Congress wants to improve this situation, it should instruct our diplomats to demand a complete overhaul of the accreditation system to take it out of the hands of diplomats trying to shield their governments from scrutiny and give it to professional experts qualified to make the technical assessments needed to give civil society a greater voice at the United Nations.

Many thanks for your attention and I look forward to your comments and questions.