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The Myth of Membership: Reforming the U.N. Human Rights Council

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The Myth of Membership: Reforming the U.N. Human Rights Council

Abstract

The purportedly new-and-improved Human Rights Council is, by most accounts, failing to live up to its promise. Critics accuse the Council of following in the footsteps of its predecessor the U.N. Human Rights Commission because it permits rights abusers among its ranks and it focuses overwhelmingly on Israel. The dominant assumption, articulated by the United States, is that this is a problem of membership; more stringent criteria would result in a less biased body. This, however, is wishful thinking. Changing the rules of membership would only substitute one set of biases for another. A productive dialogue about reforming the Human Rights Council should strive to be de-politicized, emphasizing notions of *equal treatment*. Who sits on the Council is less important than what they are permitted to do once there.

Keywords

Human rights, United Nations, United Nations Human Rights Council

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The Myth of Membership: Reforming the U.N. Human Rights Council

by Sonia Cardenas

The purportedly new-and-improved Human Rights Council is, by most accounts, failing to live up to its promise. Critics accuse the Council of following in the footsteps of its predecessor the U.N. Human Rights Commission because it permits rights abusers among its ranks and it focuses overwhelmingly on Israel. The dominant assumption, articulated by the United States, is that this is a problem of membership; more stringent criteria would result in a less biased body. This, however, is wishful thinking. Changing the rules of membership would only substitute one set of biases for another. A productive dialogue about reforming the Human Rights Council should strive to be de-politicized, emphasizing notions of *equal treatment*. Who sits on the Council is less important than what they are permitted to do once there.

The Council's problem is not that it calls attention to Israeli violations, but that it does so to the exclusion of other potential cases. Critics attribute the Council's bias to its control by the Organisation of the Islamic Conference (OIC) and the [Non-Aligned Movement](#) (NAM). The reality is far more complex. Only fourteen of the Council's forty-seven members belong to the OIC; and resolutions isolating Israel have been supported widely, including by Latin American countries. Nor is it feasible for an international organization concerned with regional representation to exclude members of NAM, comprising almost two-thirds of the world's states.

For the United States, the Council's defects are no surprise. Had Ambassador John Bolton gotten his way, the Council would be a leaner and tougher body: with thirty members maximum, elected by two-thirds of the General Assembly rather than simple majority. Rights-abusing states would be excluded (but not necessarily Security Council members Russia and China), and the Council would focus on the most egregious situations. When things did not go its way, the United States refused to participate.

While excluding violators from the Council may seem sensible, it is in fact problematic. Here are the reasons why:

- How are states to determine fairly which violations count or which victims matter? It is delusional to assume that voting will be free of political calculations;
- Human rights practices are a matter of gradation. Consequently, dividing the world into rights violators and protectors is misguided and counter-productive. It inhibits dialogue, reinforces global cleavages, and disenfranchises many states;
- In practice, human rights norms are contested. Should civil and political rights be privileged? Can national security ever justify torture? Should religious tolerance limit free speech? Only a Human Rights Council that debates these positions will be most credible; and
- The prospect of Council membership is not an incentive to change state practices. Accession conditionality is typically effective vis-à-vis organizations promising large benefits, such as the E.U. or NATO. The benefits of belonging to the Council are, in contrast, small, ambiguous, and realizable in less costly ways than by altering human rights practices.

The new Human Rights Council is not all bad. During the most recent session, it issued twenty resolutions, only five of them country-specific (two on Israel, one on Palestinian self-determination, and two targeting Sudan and North Korea). Other resolutions addressed topics as varied as disability rights, counter-terrorism, and the right to food. The new broader-based electoral system—direct vote by the General Assembly—has kept former Commission members like Libya, Zimbabwe, and Sudan off the Council, even if critics deride Saudi Arabia or Cuba's election, and secret ballots undermine transparency. In principle, moreover, the new system of [universal periodic review](#) introduces some fairness, subjecting all states to scrutiny, while more frequent meetings give the Council greater flexibility in emergency situations.

The Council's [special procedures](#)—a legacy of the earlier Commission—are also crucial. These procedures currently consist of twenty-nine thematic and nine country mechanisms. Critics are correct that, among country mandates, only the special rapporteur for violations in the Palestinian territories has an indefinite tenure. But it is also true that special-procedure mechanisms have been robust, leading in 2007 alone to a total of sixty-two fact-finding missions to fifty-one countries. This work should not be forgotten in the rush to highlight weaknesses.

While the Council is scheduled for self-review in 2011, serious dialogue about potential reforms must begin now. [UNGA Resolution 60/251](#), which created the Council, pushes the body to promote human rights “in a fair and equal manner.” It further encourages “the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.” Can this be achieved, or is it another human rights chimera?

Institutional design matters, more so if premised on political realities. Reforming the Human Rights Council requires changing *procedural* (not membership) rules to promote equal treatment of violators. For example, agenda rules could re-structure the amount of time or number of resolutions devoted to single cases. Country-specific resolutions might be restricted to the special-procedures mechanisms or newly arising emergencies, while Council resolutions could be largely thematic. Above all, reforms should be framed in terms of general principles like equal treatment, not the particular interests of member states. Political exclusion should not drive a body dedicated to human inclusiveness.

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