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The Human Rights Council: A Failure in Global Governance

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The Human Rights Council: A Failure in Global Governance

Abstract

"The UN and Human Rights: A Screaming Start," makes several valid points of concern in regards to the recently formed Human Rights Council. As the article stipulates, in many ways the Council does not look radically different from its predecessor, the Human Rights Commission, in that it fails to provide membership regulations that would keep "not free" states of the Council (with only twenty-three out of forty-seven states defined as free) and it lacks the clout in the political hierarchy to truly accomplish anything of substance. However, the article does point out that the one mechanism that could prove useful is the new universal periodic review process in which every UN member state must submit to a peer-review of their human rights record every four years. Such a process is a tremendous step forward and it may even provide a mechanism of increased public shame and humiliation of serial offenders of human rights law. However, what this article fails to address in its critique of the Council is the origin of the organization's flaws, which is not its membership or its anti-Israeli focus, but its state-centric approach to curtailing human rights violations.

Keywords

Human rights, United Nations, United Nations Human Rights Council

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The Human Rights Council: A Failure in Global Governance

by Eric K. Leonard

“The UN and Human Rights: A Screaming Start,” makes several valid points of concern in regards to the recently formed Human Rights Council. As the article stipulates, in many ways the Council does not look radically different from its predecessor, the Human Rights Commission, in that it fails to provide membership regulations that would keep [“not free” states](#) of the Council (with only twenty-three out of forty-seven states defined as free) and it lacks the clout in the political hierarchy to truly accomplish anything of substance. However, the article does point out that the one mechanism that could prove useful is the new [universal periodic review process](#) in which every UN member state must submit to a peer-review of their human rights record every four years. Such a process is a tremendous step forward and it may even provide a mechanism of increased public shame and humiliation of serial offenders of human rights law. However, what this article fails to address in its critique of the Council is the origin of the organization’s flaws, which is not its membership or its anti-Israeli focus, but its state-centric approach to curtailing human rights violations.

One of the primary problems in the fight to improve human rights is the state-centric nature by which the world approaches this issue. This is not only a quandary for the area of human rights, but for many of the global community’s issue-areas. The Human Rights Council, [although laudable in its mission, rhetoric, and stated goals](#), fails to provide a meaningful mechanism by which to correct and/or punish the world’s violators of human rights law. One mechanism that may assist in assessing the Council’s success or failure to fulfill its mandate, which includes both the promotion of and prevention of human rights, is the literature on [legalization](#). This theoretical approach to international law and organization provides a lens by which scholars and practitioners can gauge the plausibility of international organizations to impact the global system and uphold international legal standards. It basis the strength of an organization on three characteristics: obligation, precision, and delegation. The term “obligation” refers to the level of legal commitment that binds the agents; “precision” involves an analysis of the level of ambiguity that surrounds the rules that define the institution; and finally, “delegation” refers to the amount of authority that the institution grants to third parties. This authority concerns the ability of third parties to implement, interpret and apply rules; resolve disputes; and make future rules.

It is this final characteristic that is most pertinent to a discussion of the Human Rights Council and its impact on the global governance structure. As the Council is currently constructed there is an authority structure that is solely reliant on member states to not only review the human rights record of its peers, but to also elect those that will serve on the Council. This structure of governance provides a system of “soft law” which is bound to fail—failure being defined as the inability to uphold the organization’s mandate. John Locke recognized this problem in his famous characterization of the state of nature. In his state of nature, autonomous self-interested entities, in this case states, residing in a state of anarchy have the ability to serve as judge and executive in their own cases. This method of adjudication results in a biased method of judgment

that serves the interests of the stronger party involved. The rational byproduct of such a system was Locke's recommendation that the social contract contain a known and neutral arbitrator.

In essence, that is what the global system also needs and what the Human Rights Council fails to provide. The Council is not neutral and it lacks any real power of adjudication. Thus, it fails to fulfill either of the requirements Locke set forth. As a result, if the global governance structure is to ever implement a system that truly protects human rights and prevents future violations there must be a system of authority predicated on third-party arbitration. Until that time it is my belief that the global community will continue to establish flawed institutions that uphold the façade of human rights protection when in essence they are only maintaining a self-interested or national interest agenda that may occasionally accord with the principles and norms of the human rights movement, but never fully embraces these norms.

If we look at the Human Rights Council, and for that matter its predecessor the Commission on Human Rights, it is clear that they both lack a system of delegation that relies on a neutral-arbitrator. This is the fundamental problem of the Council and although it provides viable means by which to begin a dialogue on human rights, it will never fulfill its mandate in total. The flawed state-centric system is the origin of the Council's problems and until a time in which the global governance structure is not reliant on states, humanity will continue to fail in its attempt to protect global human rights.

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