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DISCUSSION PAPER

Bolstering the UN  
Human Rights Council's  
Effectiveness

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## Introduction

Two successive terms of U.S. membership on the UN Human Rights Council (UNHRC), before the mandatory one-year hiatus, have improved the body's performance in several ways. These improvements include strengthening the council's commitment to country-level action, fortifying norms that underpin fundamental freedoms and assist at-risk populations, rebalancing the human rights agenda, and building momentum for the defense of civil society.

U.S. membership has not, however, remedied all of UNHRC's chronic ills. The UN General Assembly routinely elects to the council egregious rights violators such as China, Saudi Arabia, and, until recently, Russia. The UNHRC's official agenda retains a standing agenda component, Item 7, focused exclusively on Israel. Recent years have witnessed an upsurge of UN mandates for new independent experts and monitors, called special procedures, weighted toward economic and social rights that are either ideological or are too vague to be effectively implemented, straining the council's limited resources. Human rights groups bemoan the UNHRC's inadequate response to a rising tide of reprisals against human rights defenders. Member state delegations have also launched campaigns—such as resolutions on “traditional values” of humankind—that promote norms at odds with the principle of universal human rights. Further, some countries seek to overturn progress on issues settled years ago or to disrupt existing, constructive compromises or voluntary rights frameworks, for instance, by pushing a formal treaty on business and human rights.

In October 2016, the United States won a 2017–2019 term on the UNHRC. Shortly afterward, Donald J. Trump was elected U.S. president. Trump has both praised and criticized the United Nations, with recent criticism related to the treatment of Israel.<sup>1</sup> As a candidate, Trump made a limited number of calls for protecting basic freedoms (e.g., in Cuba and for lesbian, gay, bisexual, transgender, and intersex, or LGBTI, persons) and stressed the need for the United States to be seen as winning on the international stage.<sup>2</sup> U.S. participation in the UNHRC can advance these goals and lessen anti-Israel bias while supporting measures to avert and de-escalate human rights crises, thus reducing the likelihood of costly military interventions.

Doing so would require a stronger UNHRC. Further improvements at the council entail building upon its strong record of burden sharing among Washington's allies and partners and strengthening the alignment of council action with existing U.S. foreign policy priorities. It also means having in place an effective team that can conduct high-level negotiations and define the council's narrative. To further maximize the benefits of its membership on the council, the United States should:

- retain the special rank of ambassador to the UNHRC and prioritize swift Senate confirmation hearings for appointees to top international organizations and human rights officials;
- establish as a high priority of U.S. diplomacy, reinforced by congressional support, the building of solidarity among the broadly democratic members of the UNHRC—those designated as “free” in Freedom House's scale and part of the Community of Democracies governing council—including a focus on increasing the initiative of democracies from the global south;

- cooperate with other “free” nations to reduce the number of “not free” nations elected to the UNHRC, including by encouraging rights-respecting candidates to run for UNHRC membership and actively opposing “not free” candidates, with the aim to yield more council votes aligned with U.S. values;
- reanimate discussion of the UNHRC member suspension mechanism—invoked just once to date—and organize an expert-level working group that addresses specific conditions for suspension and for suspended members to regain seats;
- avoid legislative strings tying U.S. membership on the council or prorated withholding of UN dues to specific UNHRC outcomes;
- align support for international implementation of UNHRC resolutions and Universal Periodic Review (UPR) recommendations as a priority in the U.S. State Department and U.S. Agency for International Development (USAID) and increasingly across other appropriate agencies by emphasizing human dignity and framing the debate at the UNHRC; and
- work to bridge diplomatic divides on the UNHRC over political-civil versus socioeconomic rights through an expanded diplomatic dialogue centered on human dignity, therefore winning more global south backing.

Taken together, these recommendations will ensure an effective and efficient UNHRC leadership that advances U.S. interests by both serving as a counterweight to rights-violating council members and strengthening the UNHRC to address potential human rights crises before they cross international borders.

## The U.S. Experience on the UNHRC: Upward Trajectory

In 2009, the incoming Barack Obama administration secured a U.S. seat on the UNHRC after running in a noncompetitive election in the UN General Assembly. This was three years after the United States, along with three other countries, had voted against the UN General Assembly resolution to replace the UN Commission on Human Rights with the UNHRC and had not sought membership in the new body.

During its first three-year term as a UNHRC member, the United States pursued an incrementalist strategy, seeking to chip away at the council's deficiencies while strengthening its capacity as a credible international human rights institution. When the United States pursued a second term, it faced an unusually competitive election campaign as one of five countries within the Western European and Others Group seeking three open seats.<sup>3</sup> Nevertheless, the United States finished first within the group, a clear endorsement of its role on the UNHRC. The United States automatically rotated off the council at the end of its second term in 2015, in accordance with term limits established by the UN General Assembly. On October 28, 2016, the General Assembly elected the United States to a third term, from 2017 to 2019.

During the U.S. tenure on the UNHRC, the body launched investigations into human rights crises, atrocities, and crimes against humanity in Burundi, North Korea, Sri Lanka, Syria, and several other countries. The UNHRC also created or reestablished special procedures, empowering independent human rights experts to report systematically on the human rights situations in Belarus and Iran, as well as to monitor global progress on broad, thematic goals such as freedom of peaceful assembly and of association. Moreover, the council broke new ground in passing resolutions on sexual orientation and gender identity (SOGI) while also pivoting away from inhibitive measures on defamation of religion. Equally impressive, the UNHRC's UPR process (a mechanism to scrutinize the human rights records of all 193 UN member states in four- or five-year intervals) emerged as a constructive platform for grassroots advocates and national governments to raise awareness on specific human rights challenges as well as to offer recommendations for reform. A few cracks emerged in the tired, regional bloc voting patterns that had plagued the work of the UN Commission on Human Rights. Finally, Russia's failure to be reelected to the UNHRC in October 2016—on the heels of bombing civilians in Aleppo, Syria—is an encouraging sign that standards for council membership are rising, even for a UN Security Council permanent member.

This record exhibits a steady, if imperfect, progress from its defunct and failed predecessor, the UN Commission on Human Rights (UNCHR), which was abolished in 2006. Although the forty-seven UNHRC members can pass nonbinding resolutions by a simple majority vote, organize special council sessions, and share best practices through the UPR, effective outcomes are far from guaranteed. The General Assembly resolution limiting UNHRC membership to governments that “uphold the highest standards in the promotion and protection of human rights” does not realistically bar any country from seeking a seat on the council, although it includes a novel suspension mechanism for UNHRC members that commit “gross and systematic violations of human rights.”<sup>4</sup> The council's composition, based on seats allotted semi-proportionally by five major regional groupings, means that countries outside the Northern Hemisphere have a built-in majority every session.<sup>5</sup>

Given the UNHRC's structural limitations, U.S. leadership is a necessary—but not in itself a sufficient—element in aligning the council with its mandate. In fact, a U.S. State Department official warns that one of the most fraught misconceptions among policymakers concerning U.S. involvement in international institutions is overestimating what the United States can accomplish alone.<sup>6</sup> This elevates the need for nimble, proactive, and long-term coalition-building among governments and civil society.

### *EXPANDING BANDWIDTH FOR COUNTRY-SPECIFIC ACTION*

Actions taken by the UNHRC, the only global intergovernmental human rights body, carry special weight. Whereas countries can deflect criticism of their human rights record by another government as being politicized, it is harder to dismiss the voting outcomes of a globally representative rights body. “Simply putting a country on the agenda of the council has import and meaning for human rights,” explained Eileen Donahoe, the first U.S. representative to the UNHRC. “It’s forcing that country to engage on some level.”<sup>7</sup>

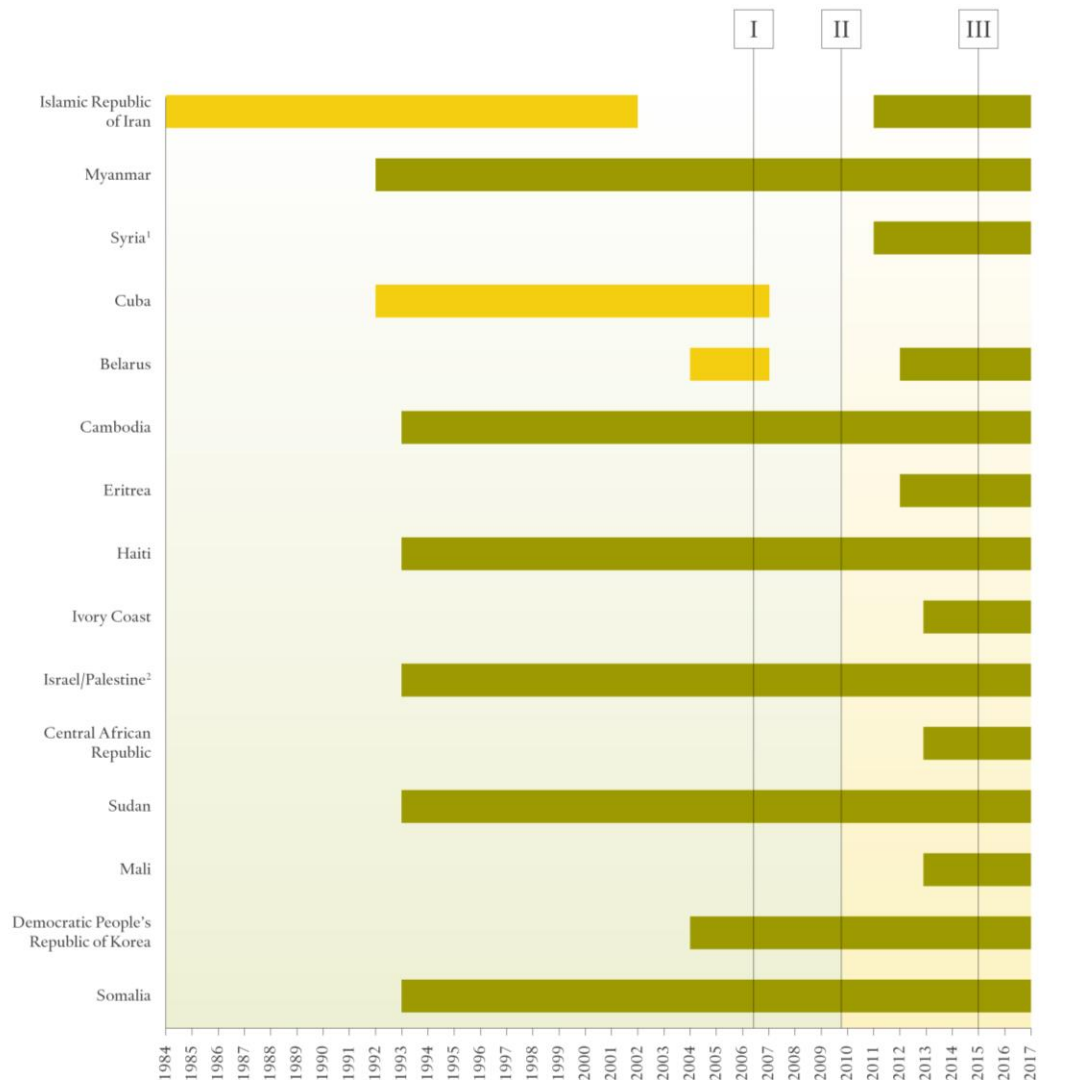
In this respect, the UNHRC is more effective than its predecessor, which had eliminated half the mandates for country-specific special procedures between 1998 and 2006.<sup>8</sup> Special procedures refer to independent experts mandated to investigate, monitor, and report on human rights situations, as well as interact with a country’s population on human rights concerns. This trend away from special procedures also dominated the council’s early years when the United States was not a member, as some governments, such as China’s, pushed for the highest possible threshold for the body to scrutinize individual countries.<sup>9</sup>

During this period, the United States was often treated with “disdain” in Geneva, and even close allies paid Washington less heed.<sup>10</sup> Absent U.S. leadership, the UNHRC began a downward slide, its credibility nearing “rock bottom.”<sup>11</sup> Marc Limon, a former diplomat for the United Kingdom in Geneva, noted that “the council was essentially controlled by a small group of states, including Algeria, Cuba, Egypt, Pakistan, and Saudi Arabia” when the United States was not involved in the council.<sup>12</sup> Diplomats from the European Union (EU) reportedly despaired that all country-specific special procedure mandates faced termination.<sup>13</sup> The Obama administration’s decision to join the UNHRC and to exercise leadership, through cooperative burden sharing, reversed this trend and expanded the council’s bandwidth for country-specific action on issues intimately connected with U.S. interests and values.

### **Monitoring and Reporting of Belarus and Iran**

In 2002, with the United States sidelined from the UN Commission on Human Rights after losing its first bid for a seat on that body, commission members defeated an EU-led resolution to extend the special procedure mandate on Iran originally established in 1984. In 2007, the council failed to muster support for extending existing special procedure mandates for Belarus and Cuba; these failures were significant blows to the cause of country-specific human rights scrutiny.<sup>14</sup> U.S. actions in the council during its first term resurrected the mandates on Iran and Belarus, both of which serve as case studies of effective U.S. leadership. Determined demarches by U.S. diplomats in Geneva and capitals of member states, reinforced by senior officials in Washington, helped expand the UNHRC’s will to spotlight human rights challenges in Iran and Belarus (see figure 1).

Figure 1. Country-Specific Special Procedure Mandates



I UN Commission on Human Rights is abolished, and the UN Human Rights Council (UNHRC) is established. The United States had been a member of the commission since its establishment, in 1947, except in 2002.

II United States serves as UNHRC member (2009–2012, 2012–2015, and 2017–2019).

III U.S. membership of the UNHRC ends due to term limits (2015).

1. Mandate will start after the Independent International Commission of Inquiry on the Syrian Arab Republic ends.

2. Mandate will extend "until the end of the Israeli occupation."

Source: Office of the UN High Commissioner for Human Rights.

In late 2010, the United States launched an ambitious diplomatic plan to reestablish a special procedure mandate on Iran. This involved cultivating a cross-regional core group—including Colombia, Macedonia, Maldives, and Zambia—in support of the Iran effort in Geneva while enlisting Sweden to serve as the resolution's lead sponsor.<sup>15</sup> This strategy was purposefully designed and implemented to avoid a perception of the effort as predictable unilateralist bullying by the United States.<sup>16</sup> Further, the United States emphasized a straightforward, pithy resolution rather than the traditional approach of

detailing specific rights abuses within a country. This was intended to avoid potential objections to the document based on its evaluative clauses rather than the goal of reestablishing a special procedure mandate.<sup>17</sup> The efforts bore fruit. After a contested vote, the UNHRC ultimately created a special rapporteur mandate on Iran in March 2011.

Without this form of tactful U.S. leadership combined with the global reach of U.S. diplomatic clout, such a result “would have not have been possible, period,” observed one high-level U.S. official connected with the process.<sup>18</sup> The importance of U.S. leadership in partnership with other democracies was also highlighted by civil society working closely on the issue. Dokhi Fassihian, formerly with the nongovernmental organization (NGO) Democracy Coalition Project, which advocated for the establishment of the Iran mandate at the time, also noted:

When powerful democratic leaders such as the United States, EU member states, and other emerging leaders work together at UN human rights bodies, it can lead to important actions that advance accountability and eventual reform. In 2011, the U.S., Sweden, and the other members of the EU joined together to reestablish a UN special rapporteur mandate on Iran. In my view, the U.S. and other government sponsors should look beyond the Iran nuclear deal and follow country-specific precedents with a mandate that is supported by an Iran resolution which explicitly enumerates those human rights abuses taking place and those effective reforms and remedies a violating government should adopt.

Since the mandate’s establishment, Special Rapporteur Ahmed Shaheed has conducted over four hundred interviews related to the human rights situation in Iran, documenting violations including torture as well as challenges to freedom of religion and of expression.<sup>19</sup> In his latest report, Shaheed notes an uptick in communication between Iran’s government and UN special procedures, as well as a series of overdue revisions to Iran’s Islamic Penal Code and Criminal Procedure Code. Although the special rapporteur cautions that the reforms still do not go far enough, the mandate nonetheless spotlighted the parlous human rights situation in Iran.<sup>20</sup>

Reinstituting the Belarus mandate in 2012 presented a unique challenge, given initial hesitation of EU countries. According to sources within the U.S. State Department, U.S. leadership was “pivotal” in ratcheting up council action from a country-specific resolution to a special procedure rather than keeping the status quo approach, limited to a condemnatory resolution.<sup>21</sup> This included clear communication of “top-level” support to allies from U.S. officials at the council that Washington would assist the effort by reassuring anxious EU partners, both at the council and in Brussels, on the efficacy of reinstating the Belarus special procedure mandate.<sup>22</sup> The overarching goal was to build a winning coalition with enough votes to pass a resolution inclusive of a special procedure mandate.<sup>23</sup> Ultimately, with Denmark enlisted as a lead sponsor and with EU support, the vote to reestablish the Belarus special procedure mandate passed by a wide margin. The special procedure remains the sole international monitoring mechanism on the country.<sup>24</sup>

### **Spotlighting the Crisis in Burundi**

Convening a council special session to supplement the three normally scheduled sessions per year requires support from a minimum one-third of UNHRC members. In December 2015, the United States led an effort to convene a UNHRC special session on the deteriorating human rights situation in Burundi. Hundreds have died since the political crisis began in 2015, and over three hundred thousand civilians have fled the country.<sup>25</sup>



The Burundi special session helped support the norm that the council should respond expeditiously in the face of grave, emerging human rights crises. Among other elements, the adopted resolution called upon the Office of the UN High Commissioner for Human Rights (OHCHR) to dispatch a panel of independent experts to investigate rights abuses.<sup>26</sup> In September 2016, the investigatory team documented ten categories of rights violations, concluding that the Burundi crisis threatened the “overall security of the region” and recommended the launch of an independent, international justice process.<sup>27</sup> Although the special session sidestepped the issue of Burundi’s potential suspension from the council, Keith Harper, the second U.S. ambassador to the UNHRC, said that the session sent a clear message: “The international community is watching.”<sup>28</sup>

In September 2016, the council followed up on the U.S.-led special session and voted to establish a commission of inquiry (COI) on Burundi. Formed in November 2016, the new commission will assess whether instances of violence in the country constitute war crimes and will support accountability by identifying perpetrators of rights abuses.<sup>29</sup> Along with a recommendation of suspension of a state’s UNHRC membership to the UN General Assembly, a COI is among the strongest “sticks” available in the council’s toolbox.

### **Naming and Shaming China**

Widespread reports of expanding human rights crackdown in China targeting civil society reinvigorated scrutiny of Beijing’s rights record at the council. In March 2016, Harper delivered a joint statement on behalf of the United States, ten European countries, and Japan that helped keep the status of China’s human rights record on the international agenda. The statement was significant because no resolution on China had been passed in the commission or the UNHRC since 1990.<sup>30</sup> Indeed, none had even been offered since 2004. Given council members’ limited appetite for spotlighting China’s rights record, issuance of the joint statement would have been unlikely without proactive U.S.-organized effort.<sup>31</sup> The U.S.-led statement focused on the arrest and detention of rights activists, calling on China to adhere to its international human rights commitments.<sup>32</sup>

A senior U.S. State Department official stated that authorities in Beijing were surprised by the joint statement and that China warned diplomats of the eleven cosponsoring nations against future statements.<sup>33</sup> According to Human Rights Watch’s lead China specialist Sophie Richardson, “It’s been twelve years since this many governments spoke with one voice about human rights erosions in China. . . . [The statement is] a powerful and public metric of concern.”<sup>34</sup>

### *COMBATING ATROCITIES WHILE PURSUING RECONCILIATION AND ACCOUNTABILITY*

Over time, the UNHRC has matured as a body capable of nimbly addressing atrocities both through systematic collection of first-hand evidence and by developing roadmaps for reconciliation and accountability. Again, the record points to the potential of U.S. leadership to reboot languishing processes of accountability and reconciliation, not least by emboldening previously self-doubting partners.

Both U.S. and foreign officials stress the United States’ unrivaled capacity to deliver diplomatic demarches and utilize its presence in capitals worldwide to advance UNHRC objectives. By adequately resourcing its diplomatic comparative advantage, the United States can build a reservoir of

partners who can help deliver outcomes in Geneva that advance U.S. global human rights policy. Three country cases—North Korea, Sri Lanka, and Syria—attest to the potential of catalytic U.S. leadership.

### **Elevating Human Rights Abuses in North Korea**

In 2013, the UNHRC established a COI on human rights in North Korea. The United States strongly backed this effort in different forums, including by coordinating a team of partners in the UNHRC and the UN Security Council.

Although there had been broad political support within the UNHRC for tackling rights abuses in North Korea, the body's decision to establish a country-specific COI was hardly a foregone conclusion, given available alternatives. The council had already established a special-rapporteur mandate on North Korea, and simply extending the mandate, or maintaining the status quo, would have been easily achievable. A COI was not only a more ambitious form of country-specific scrutiny—it required three experts as opposed to just one special rapporteur—but also a highly unusual mechanism to focus on a country's human rights record in the absence of an active armed conflict. Donahoe noted that U.S. allies in the EU and Japan sought a clear “signal” at the ambassadorial level that United States would provide diplomatic backup for the effort at the council, which was necessary to advance the COI effort.<sup>35</sup> As a State Department official connected with the effort recalled, the North Korean case provides a good example of the strong role the United States can play behind the scenes, which included lobbying at the council and in capitals of member states.<sup>36</sup> With the United States soothing the concerns of reluctant partners, the UNHRC unanimously passed the resolution establishing a COI on North Korea. Not even China, which has historically shielded North Korea's human rights abuses from international scrutiny, called for a vote.

The commission's ultimate report to the UNHRC—which integrated 80 public testimonies from witnesses and experts, 240 confidential interviews, and satellite imagery, as well as hearings in London, Seoul, Tokyo, and Washington—was historic. The report documented abuses amounting to crimes against humanity and singled out Kim Jong-un for his responsibility in atrocities ranging from forced labor to sexual violence and the persecution of Christians and other religious minorities. Civil society advocates and human rights practitioners praised the COI report.<sup>37</sup> As the COI chair, Michael Kirby of Australia, summarized, “We can't say we didn't know.”<sup>38</sup>

The heavy global media interest in the COI elicited several reactions from North Korea. Pyongyang abruptly shifted its position from rejecting all recommendations on its UPR to accepting eighty-one.<sup>39</sup> North Korea's top UN diplomat was dispatched to the Council on Foreign Relations for a rare public appearance to defend the country's human rights record.<sup>40</sup> “They were rattled,” said Roberta Cohen of the Brookings Institution.<sup>41</sup>

The COI led the UN Security Council to add the subject of human rights in North Korea to its agenda, with the United States and its partners overriding Chinese and Russian objections. In 2014, the UNHRC voted to establish a UN Human Rights Office in Seoul to track Pyongyang's rights violations; the office has since become operational.<sup>42</sup> Two years later, the UNHRC voted to establish an independent panel of experts focused on accountability for crimes against humanity in North Korea.<sup>43</sup> South Korea followed up and passed the North Korean Human Rights Act in March 2016. The legislation, which calls for South Korea to implement a comprehensive strategy on human

rights in North Korea, among other institutional and diplomatic reforms, demonstrates how council resolve can increase burden sharing among U.S. allies.<sup>44</sup>

### **Cultivating Political Progress in Sri Lanka**

After an almost three-decade civil war that claimed one hundred thousand lives, the challenges of pursuing accountability and fostering reconciliation for war crimes and atrocities in Sri Lanka took center stage at the UNHRC. The council focused on the latter phase of the conflict, when an estimated forty thousand Tamil civilians were killed. The UNHRC's performance in advancing accountability and reconciliation in Sri Lanka improved markedly after the United States became a member.

At the request of EU countries, the UNHRC convened a special session on Sri Lanka in May 2009. The result was abysmal. Sri Lanka effectively hijacked the resolution-drafting process.<sup>45</sup> The final resolution praised the country's efforts, and even requested expanded cooperation from the "international community" to support Sri Lanka's government rather than hold it accountable.<sup>46</sup> As U.S. allies and civil society criticized the resolution as a distortion, the coalition of council members that had originally requested a special session overwhelmingly voted against the final resolution.

In 2012, collaborating with other partners, the United States sponsored a resolution that included a request for a targeted investigation by the OHCHR. The resolution also urged domestic follow-up on a genuine reconciliation and accountability process.<sup>47</sup> A year later, the United States sponsored an additional Sri Lanka resolution that was more explicit on the shortcomings of the country's internal human rights process.<sup>48</sup>

In early 2015, presidential candidate Maithripala Sirisena—who ran on a platform promising to reinvigorate Sri Lanka's battered international standing—upset the incumbent in Sri Lanka's elections.<sup>49</sup> The United States reacted positively by cosponsoring with Sri Lanka a consensus UNHRC resolution promoting reconciliation and accountability.<sup>50</sup> Although the 2015 resolution lacked a mandate for a special, hybrid court similar to the one that had been established a decade before in Sierra Leone—and which the OHCHR had recommended—the Sri Lankan Tamil National Alliance noted that the resolution provided "a constructive starting point for what will inevitably be a long road to reconciliation."<sup>51</sup> According to Harper, Sri Lanka as a case study illustrates a "direct link between actions taken in the [UN Human Rights] council and changes on the ground in a country in a profound way."<sup>52</sup> However, Alan Keenan with the International Crisis Group cautions that cementing this progress will require council involvement beyond March 2017.<sup>53</sup>

### **Building a Paper Trail on Syria**

On U.S. initiative, the UNHRC convened a special session on the Syrian crisis in April 2011, calling on the UN Human Rights Office to launch an investigation into the lethal violence against protesters.<sup>54</sup> As the crisis metastasized, the United States marshaled support for three additional emergency sessions on Syria, resulting in the creation of a COI in August 2011. The COI not only reported on the Syrian regime's activities but also released thematic reports and statements on barrel bombs, detention centers, access to medical care, conditions in Islamic State-held territory, targeting of Yazidis, and the alleged use of chemical weapons. Given the great power divisions in the Security Council, the COI's investigations provided critical material for broader U.S. efforts to condemn and isolate the Syrian regime.

Another tangible accomplishment of the COI is production of a list of Syrian individuals and groups allegedly guilty of war crimes. Discussing those implicated, then UN High Commissioner for Human Rights Navanethem Pillay said, “The evidence indicates responsibility at the highest level of [the Syrian] government, including the head of state.”<sup>55</sup> While the COI catalogue remains sealed to protect due process, three European countries had made information requests to the COI to assist with domestic judicial proceedings concerning foreign fighters as of March 2015.<sup>56</sup>

### *BUILDING NORMS FOR PROTECTING VULNERABLE POPULATIONS*

Beyond its country-specific work, the UNHRC also provides a critical forum for advancing human rights norms, including through the passage of thematic resolutions. Although some of these resolutions and mandates address economic and social issues only indirectly connected to human rights, such as the effects of foreign debt, the norm-building work of the UNHRC remains important.

U.S. leadership in promoting human rights norms takes many forms. This includes building coalitions, providing thought leadership, and championing important but politically sensitive rights. To continue advancing norms that can translate into action, the United States needs not only a well-equipped diplomatic team but also enhanced partnerships with the global south.

#### **Coalition-Building to Support Freedom of Peaceful Assembly and of Association**

In September 2010, the United States led the creation of a new special rapporteur mandate on freedom of peaceful assembly and of association (FOAA) by adopting a novel cross-regional strategy. Rather than starting by seeking votes within one regional group and then trying to target a wider set of UNHRC members, the United States began with a global strategy that sought to link the proposed new FOAA mandate to the national democratization experiences of a core group whose membership was drawn from across the world’s regions.<sup>57</sup> The effort worked. The United States established a diverse core group that included the Czech Republic, Indonesia, Lithuania, the Maldives, Mexico, and Nigeria. This strategy left those favoring a weaker approach on FOAA, such as China, isolated as the UNHRC got closer to the final vote. According to one UN official, the U.S. approach to building issue-specific, cross-regional coalitions of interest offered a promising model for moving contentious resolutions across the finish line.<sup>58</sup>

The FOAA mandate holder has since conducted official country visits to Chile, Georgia, Kazakhstan, Oman, Rwanda, South Korea, the United Kingdom, and the United States. Thematic reports have also been produced relevant to national elections as well as to protection of FOAA from reprisals at multilateral institutions themselves, including at the United Nations.

#### **Course Correction on Defamation of Religions**

Passed on an annual basis since the late 1990s by countries primarily associated with the Organization of Islamic Cooperation (OIC), successive defamation of religion resolutions became increasingly inconsistent with the freedom of expression.<sup>59</sup> Amid concerns that OIC countries were mobilizing to pursue a new, legally binding, and likely damaging treaty on defamation, the United States worked with other council members to formulate an alternative. The result of this effort was a consensus 2011 UNHRC resolution focused on combating religious intolerance.<sup>60</sup> Success in this case

reflected what Donahoe called the U.S. delegation’s “keen ears” in discerning opportunities for compromise and consensus.<sup>61</sup>

Although U.S. allies and partners had opposed the defamation resolutions at the council before the United States joined, the debate shifted conclusively only after the United States gained membership. In March 2009, for example, the defamation resolution passed with twelve votes to spare. After the United States joined the UNHRC in 2010, the resolution squeaked through with a margin of three votes. This was the result of a concentrated U.S. campaign to articulate the misalignment between the defamation resolutions and respecting the freedom of expression in Geneva and elsewhere, including among council members in Latin America who had previously supported the defamation resolutions.<sup>62</sup> By 2011, a U.S. cross-regional approach, which included enlisting former sponsors of defamation resolutions, such as Pakistan, resulted in the UNHRC unanimously adopting an entirely new framework focused on combating religious intolerance (resolution 16/18). Building on a statement delivered by the OIC secretariat at the council, the new resolution stresses “intolerance” over “defamation.”<sup>63</sup>

The rationale for the new resolution embodies a theme that Obama stressed in 2012: “The strongest weapon against hateful speech is not repression, it is more speech—the voices of tolerance that rally against bigotry and blasphemy and lift up the values of understanding of mutual respect.”<sup>64</sup> Although nonbinding, the resolution has seeded multistakeholder cooperation among international experts, law enforcement officials, and religious figures in Bangkok, Istanbul, Jeddah, Nairobi, Rabat, Santiago, Vienna, and Washington.

### **Groundbreaking Efforts on Sexual Orientation and Gender Identity**

At the UNHRC, the United States has adopted a nuanced multilateral and multi-actor strategy to strengthen norms on prevention of violence and discrimination based on sexual orientation and gender identity. The result has been unprecedented global-level reporting of rights violations; a growing focus on LGBTI issues within the UN human rights system; and a groundbreaking new UN SOGI special procedure mandate. “Unrivaled” U.S. diplomatic capacity in capitals of UNHRC member states as well as partnership-building, both among other UN member states and civil society actors, supported the effort.<sup>65</sup> Another pillar of the U.S. strategy encouraged partners on the council to take on more controversial issues even when a unanimous outcome was unlikely or impossible.

The first UNHRC resolution on the prevention of violence and discrimination based on SOGI passed by a narrow plurality in June 2011.<sup>66</sup> Although the United States strongly and outwardly supported the measure, South Africa, a nation with explicit LGBTI nondiscrimination protections in its constitution, was the lead sponsor of the resolution. This configuration was a deliberate exercise of U.S. catalytic leadership, as it “empower[ed] other voices to take leadership.”<sup>67</sup> Building on the momentum, the UNHRC passed two additional resolutions on SOGI in 2014 and 2016, both of which were spearheaded by countries in Latin America.<sup>68</sup> At least two countries that the United States had previously privately encouraged to run for council membership, and which secured council seats, bolstered the narrow margin of support for latter resolution.

Similarly, collaborating with international civil society groups, the United States has pushed for regularization of reporting on SOGI through a special procedure rather than relying on isolated UN reports. None of this would have happened without U.S. leadership, according to multiple UN officials.<sup>69</sup>

## *PURSUING A STRATEGY ON UNHRC AGENDA ITEM 7*

In 2007, the UNHRC voted to make the “human rights situation in Palestine and other occupied Arab territories”—commonly known as “Item 7”—a permanent agenda item; this means that the council debates Israel’s actions toward the Palestinian territories in each session.<sup>70</sup> No other country is the subject of a stand-alone agenda item. Similarly, an Israel-specific special procedure will remain active “until the end of the Israeli occupation.” The disproportionate scrutiny on Israel remains an albatross to the council’s credibility as a human rights organization. The United States can make a difference by steering the council’s limited bandwidth to address other important concerns.

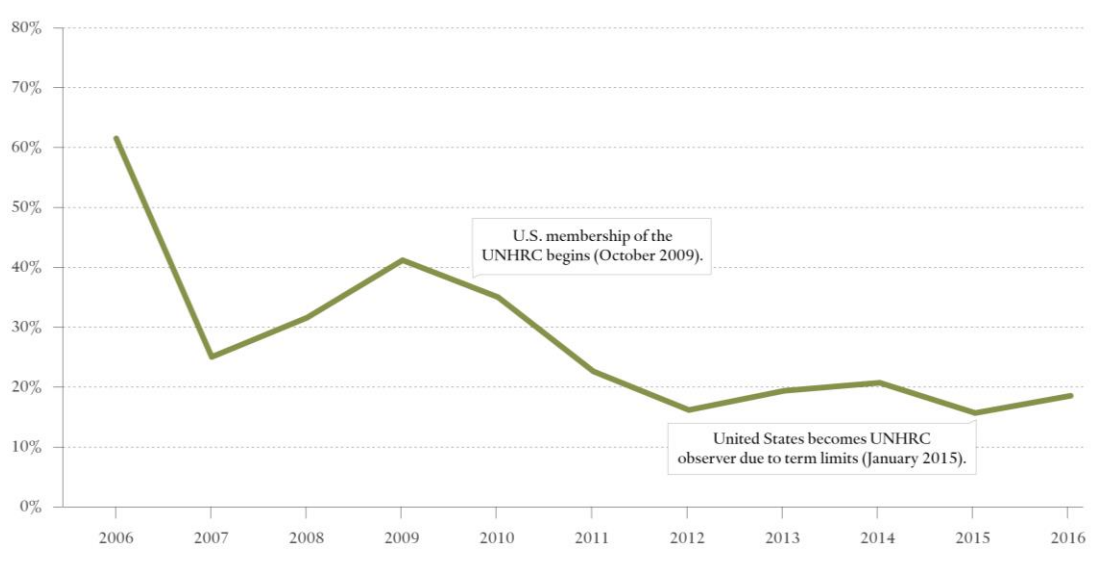
### **Pointing Out Selective Bias**

The U.S. strategy on Item 7 has centered on gradually diluting its effect while opposing deliberations under the provision. As a UNHRC member, the United States has reliably called for votes on repetitive baskets of annual resolutions under Item 7, preventing otherwise politically weighty consensus outcomes. The United States has also steadfastly urged its allies and partners not to speak on Item 7 on the grounds that it lacks legitimacy.<sup>71</sup>

Discussing the effect of U.S. oral interventions related to Item 7, a former U.S. official at the UNHRC asserted: “A principled statement by the United States in the council even when we lose on a motion still carries weight in international media, [with] opinion makers, and intellectual leadership internationally. . . . By putting markers down in a strong way, we influence the international dialogue on the issues.”<sup>72</sup> Although five resolutions under Item 7 were passed in the council in 2016, the United States and its EU allies made a visible stand by largely boycotting the debate in March.

Finally, the proportion of country-specific resolutions focusing on Israel, while still skewed, has steadily receded. Prior to U.S. membership, more than half of country-specific UNHRC resolutions concerned Israel, with the council focusing on that issue and on little else (see figure 2). After the United States became a UNHRC member, Israel-specific resolutions have hovered around one-fifth of the total.<sup>73</sup> Similarly, the rounds of special sessions on Israel have slowed: in the UNHRC’s first four years, six special sessions related to Israel were convened; only one was launched in the past six years.<sup>74</sup> If the incoming administration is concerned about bias against Israel, then evidence indicates that the most effective option is to defend Israel against disproportionate scrutiny by asserting catalytic leadership and influencing UNHRC decisions.

**Figure 2. Proportion of Country-Specific UNHRC Resolutions on Israel**



Source: “Human Rights Resolutions Portal,” Universal Rights Group, <http://universal-rights.org/human-rights/human-rights-resolutions-portal>.

## *ADVANCING TOOLS TO SUPPORT UNIVERSALITY AND CIVIL SOCIETY*

The concept of universality, that rights transcend borders, constitutes the cornerstone of the international human rights system. Civil society—human rights organizations, other nongovernmental actors, and individual activists—can be a force multiplier for the United States and allies by advocating for individuals who are pursuing redress from states and nonstate actors that impinge on basic rights.<sup>75</sup> Over time, the UNHRC’s UPR mechanism has underscored both of these realities. However, some governments have escalated obstruction of civil society from pursuing advocacy.

The United States has adopted a mutually reinforcing strategy of seeking to improve the UPR’s process and outcomes while energetically defending openings for civil society at the UNHRC. For the UPR to become a more consequential tool for bringing about human rights change, the United States and other governments on the council need to reemphasize the UPR’s effect beyond Geneva and between formal reviews. Further, the United States and its partners should prioritize the defense of civil society’s substantive role.

### **Building a More Effective Universal Periodic Review**

The UPR, the process of assessing human rights records of all 193 UN member states in four- to five-year cycles, is a core feature distinguishing the UNHRC from the UN Commission on Human Rights.<sup>76</sup> Although imperfect in practice, the UPR has garnered 100 percent state participation and significantly expanded access for human rights advocates to work with the United Nations and pertinent governments. It has also placed human rights—both issues blocked by member states and situations that do not rise to the weight of country-specific resolutions—on the international agenda.

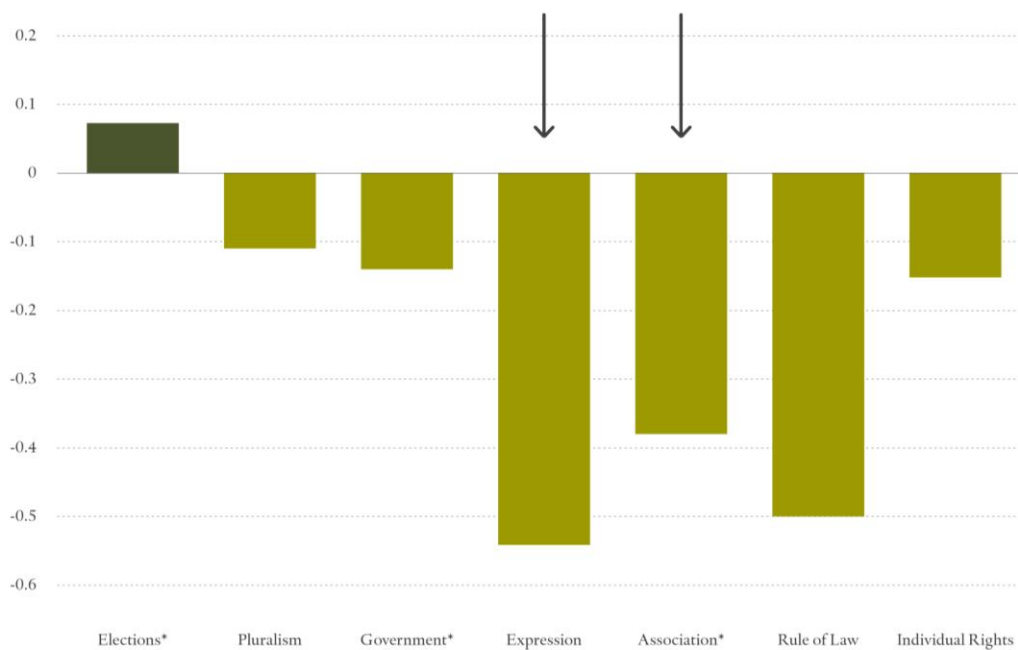
U.S. leadership on the UPR takes the form of modeling conduct for peers in two respects: how it approaches the UPR of other countries and how it responds to reviews of the United States.

During the UPR, governments offer one another nonbinding human rights recommendations, from urging protection of religious minorities to combating human trafficking. The United States has adopted a policy of offering two to three recommendations for the reviews of all 193 member states.<sup>77</sup> This practice embodies a belief in the principle of universality that undergirds the United Nations as a whole and human rights in particular. It also offers Washington another avenue to spotlight human rights challenges in countries of traditional heightened U.S. interest. Another hallmark of the U.S. approach to the UPR is articulating to other countries recommendations that are specific, time-bound, and actionable.<sup>78</sup>

The United States has undergone two UPR assessments of its domestic human rights record. In both cases, the State Department acknowledged that dialogue with U.S. civil society enhanced the credibility and relevance of its review and that the U.S. government seeks to establish a model for civil society–government cooperation. This process includes launching consultation partnerships with academia and civil society organizations focused on human rights in the United States to raise awareness of and solicit feedback on domestic efforts to realize U.S. human rights obligations across the country.<sup>79</sup>

Advancing a model that supports not only specific recommendations at the UNHRC but also proactive and genuine consultation with civil society is critical. Freedom House, for example, has documented a decade-long global trend in which both authoritarian and ostensibly democratic states have constrained freedoms of expression and assembly (see figure 3).

**Figure 3. Global Decline in Indicators of Nonviolent Civil Society Actors in the Past Decade**



\* Indicators marked with asterisks were scored on a twelve-point scale; other indicators were scored on a sixteen-point scale.

Source: "Freedom in the World 2016," Freedom House, <http://freedomhouse.org/report/freedom-world/freedom-world-2016>.



Despite this progress, the UPR has limitations. Many countries with poor rights records have attempted to misrepresent the process by praising other states with comparably lackluster records.<sup>80</sup> Moreover, in elevating the role of direct advocacy in Geneva as well as literacy in a complex UN process, the UPR can present capacity challenges for NGOs.

### Supporting the Space for Civil Society

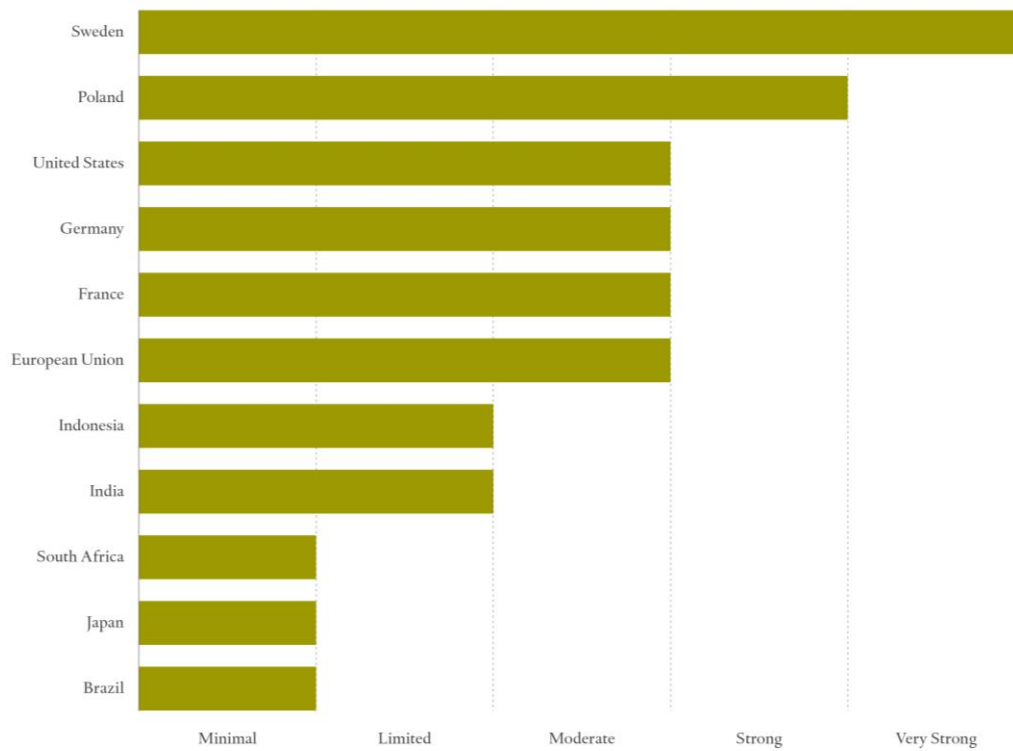
At the UNHRC, some member states have attempted to restrict space for the participation of NGOs through dilatory use of council procedures, bullying, and reprisals. The United States and like-minded governments have worked to resist these efforts so as to ensure that civil society representatives can have an influential voice in UNHRC's work.

At the UN headquarters, the United States has supported civil society groups seeking UN credentials in the increasingly abusive Committee on NGOs, the UN body where nineteen member states consider applications and ultimately vote on accrediting specific NGOs.<sup>81</sup> (Some rights-abusing states—such as Cuba, China, Russia, and Sudan—seek seats on the committee to limit the access human rights NGOs have to the United Nations.) The United States has also been active in Geneva, where some countries routinely object to civil society statements that reference particular governments. In response, the U.S. delegation and others have both defended civil society statements as well as taken part in intricate, procedural negotiations supporting the right of NGOs to offer oral interventions and to participate in certain working group sessions where resolutions are discussed. U.S. statements supportive of civil society have been effective in encouraging certain like-minded countries that would have otherwise kept quiet to do the same, according to the representative of a global south-focused NGO operating in Geneva.<sup>82</sup> Donahoe contended that the United States played a conclusive role in reversing a troubling trend at the council in this regard:

[Previously] there was sense that real business of the council is negotiating resolutions, and that happens between governments . . . that the things like little efforts to erode freedom of speech or opportunities for civil society participation isn't the real business of the council, and therefore, we don't that much pay attention to it. I think the [United States] said: "No, that is what we pay attention to, and . . . we are willing to be vigilant in protecting the right of civil society to engage."<sup>83</sup>

A September 2014 Freedom House study reported that many governments—including major democracies such as Brazil, India, Indonesia, Japan, and South Africa—have become complacent about standing up for democratic norms beyond their borders. (Many observers believe a Trump administration would do the same, but the president-elect's stance on Taiwan may indicate otherwise.) The report recommended—in the absence of other great power democracies as catalysts—heightened U.S. efforts to ensure civil society space within the UN human rights system by galvanizing collective action (see figure 4). The same study documented a similar inaction at the United Nations in New York, particularly among democracies from the global south.

**Figure 4. Freedom House Ratings of Countries' Support for Democracy and Human Rights in 2014**



Source: Daniel Calingaert, Arch Puddington, and Sarah Repucci, "The Democracy Support Deficit: Despite Progress, Major Countries Fall Short," Freedom House, <http://freedomhouse.org/report/special-reports/democracysupport>.

Most concerning is that some rights advocates face direct intimidation and reprisals.<sup>84</sup> In one instance, Chinese rights activist Cao Shunli perished after disappearing from a Beijing airport while attempting to reach the UNHRC for a human rights training session.

## Recommendations for the Next U.S. Term on the UNHRC

U.S. leadership is most effective when it is catalytic; that is, when the United States strategically forges multilateral partnerships rather than acts unilaterally. Catalytic leadership combines agenda-shaping diplomacy, targeted burden sharing, and interregional cooperation on liberal norms. Successful implementation requires close, senior-level coordination among U.S. diplomats based in Geneva, New York, and Washington, and substantive collaboration with civil society.

In order to sustain and expand a coalition capable of securing stronger resolution mandates and more victories in contested votes, the United States should promote election to the council of states that are willing to advance a constructive agenda on the UNHRC—including those that support country scrutiny and basic freedoms and the empowerment of civil society—and it should form coalitions that span regional blocs. By doing so, the United States will enjoy the tangible returns from burden sharing among its allies and winning more outcomes that support basic freedoms.

### *EQUIP A STRONG DIPLOMATIC TEAM*

Significant country-specific and thematic measures benefit from U.S. ambassadors, who exercise superior global diplomatic power, to succeed. Strong ambassadorial presence in Geneva helps bring trust, access, and credibility to negotiations.<sup>85</sup> It also helps the U.S. delegation predict actions simultaneously in Geneva and Washington.<sup>86</sup>

Ambassadors help assess the viability of different items on the often complicated and cluttered U.S. global to-do list and are well placed to secure foreign buy-in for priority objectives. For example, the presence of a U.S. ambassador in Geneva during negotiations to establish the North Korea COI provided a high-level channel to assure Washington that the timing was appropriate and that supporting the EU and Japan in establishing a North Korea COI would not substantively detract from other U.S. priorities.

A central U.S. strength at the council is “mobilizing support on an issue like no other country can do,” observed one UN official.<sup>87</sup> Accordingly, extended gaps in U.S. ambassador-level representation at the UNHRC—such as the nearly one-year delay between the nomination and Senate confirmation of Harper—can undercut the U.S. diplomatic team’s ability to cultivate strategic partnerships and pursue desirable outcomes. Therefore, the U.S. Senate should swiftly conduct hearings on appointments relevant to the UNHRC.

### *AVOID LEGISLATIVE CONDITIONALITY*

The U.S. Congress regularly tries to legislate fixes to what it sees as UNHRC’s failings. Recent legislation requires the secretary of state to certify that U.S. participation at the council is “in the national interest” and that efforts are underway to eliminate Item 7. From 2008 to 2016, however, congressional members periodically proposed more sweeping legislation focused on the UNHRC, including tying payment of UN dues to achieving the immediate elimination of Item 7, tightening UNHRC membership standards by the UN General Assembly, and blocking any country targeted

by U.S. sanctions from holding a seat on the council. However, these and other legislative efforts to attach strings to U.S. participation on the UNHRC do not advance U.S. interests or policies.

First, legislation that ties U.S. membership to specific outcomes is a political nonstarter in Geneva and New York and, if enacted, would hamstring U.S. leadership on the council.<sup>88</sup> Second, there is little evidence that withholding a portion of U.S. dues to the United Nations would compel other states to change their behavior. Conversely, entering into arrears on U.S. dues to the UN regular budget could generate political blowback and make it more difficult for Washington to accomplish its objectives—including normalizing Israel’s treatment. In any case, even if the United States withheld the portion of its UN dues that would go to UNHRC—a trivial fraction of overall U.S. contributions—the deficit would be spread across the UN budget, minimizing both the financial burden and political message.<sup>89</sup>

U.S. policymakers and others are right to acknowledge the council’s shortcomings. However, “the inevitably emerging politicization should not be used as an argument against the UNHRC but as an impetus for a bigger commitment of those states claiming to be ‘human rights champions,’ including the United States,” said Maximilian Spohr, a former German foreign affairs officer.<sup>90</sup>

#### *PROMOTE GOOD CANDIDATES AND OPENNESS ON UNHRC ELECTIONS*

UNHRC’s composition remains a challenge to its credibility, as egregious human rights violators—such as Burundi, China, Cuba, and Saudi Arabia, all of which will hold seats on the council in 2017—are elected to the body annually. Frequently, governments run on noncompetitive regional slates within the UN General Assembly. Council membership elections are also routinely influenced by shadowy vote trading, at times organized years in advance, or even by exchanging gifts like iPhone cases. The United States eschews such practices.

As the council addresses more rights abuses, electing even a few countries deemed “not free” by Freedom House can have grave implications for UNHRC outcomes.<sup>91</sup> For example, a hostile amendment that China, Cuba, Egypt, Pakistan, and Russia submitted in an attempt to water down a March 2016 resolution on human rights defenders failed by merely three votes.<sup>92</sup> Moreover, margins of support for UNHRC action on U.S. foreign policy priorities—including Iran and Syria—have steadily receded.

Although there is room to expand the pool of potential candidate governments likely to improve the work of the UNHRC, significant challenges remain. Some small countries lack the financial wherewithal to support a diplomatic representation in Geneva. Others opt to devote diplomatic energies to international organs that provide greater prestige and opportunities to influence UN funding flows.<sup>93</sup> Recruiting good candidate nations or campaigns, therefore, can be cumbersome for U.S. diplomats.<sup>94</sup> Nonetheless, Washington has succeeded in encouraging some countries to consider council membership rather than opt out of UNHRC candidacies, an effort made more credible by the fact that the United States itself is now active in the council.

Increasing transparency in council elections should be combined with tactfully recruiting candidates in order to take advantage of the worthy standard for membership laid out in the 2006 General Assembly mandate creating the council.<sup>95</sup> In 2017, Washington is hosting the Community of Democracies ministerial meeting and should use this opportunity to elevate the need for greater solidarity among democracies in the council and particularly its election process.<sup>96</sup>

## *REANIMATE THE SUSPENSION MECHANISM*

In addition to the UPR and election procedures, the suspension mechanism—whereby the UN General Assembly can suspend council members by a two-thirds majority vote—is widely recognized as a major improvement of the UNHRC over its predecessor. Unfortunately, the mechanism has remained dormant with the exception of the suspension of Libya, under Muammar al-Qaddafi, in 2011. In a special session, UNHRC members recommended that the UN General Assembly suspend Libya’s council membership due to “gross and systematic human rights.”<sup>97</sup> The UN General Assembly swiftly enacted the recommendation.

The United States uniquely possesses both the will and the capacity to facilitate a collective discussion on the suspension mechanism. Although quiet U.S. attempts to promote the suspension of Burundi in 2015 failed, Washington should encourage greater public dialogue—in Geneva and New York—outlining circumstances that can trigger a suspension of council membership and defining a framework for suspended member states to be readmitted. A UNHRC resolution addressing the risks of suspension could have a deterrent effect on both incumbent and aspiring council members. Given Russia’s recently failed bid for council membership, a second successful suspension of a council member could strengthen the norm that the UNHRC has no place for egregious rights violators.

## *PRIORITIZE IMPLEMENTATION AND REFRAME THE DIALOGUE*

The council’s effectiveness should be measured by real impact and not just by the number of resolutions or UPR recommendations adopted. As such, the United States should actively support implementing existing UNHRC actions in accordance with its foreign policy objectives with the goals of avoiding costly duplicative efforts and ensuring the council’s work substantively changes outcomes on the ground.

To further council actions that are in accordance with U.S. values and priorities, the State Department should strengthen interagency cooperation (such as with USAID) to take tangible steps to further the implementation of UPR recommendations and UNHRC resolutions. Additionally, the record of U.S. diplomacy at the United Nations suggests that U.S. efforts to frame debates with cross-regional coalitions are essential to preventing the council from being commandeered by a small group of states with poor rights records.<sup>98</sup> As a consensus-building concept invoked in the United Nations’ core international human rights treaties, human dignity should be a leitmotif of U.S. leadership, whether that involves the United States leading or supporting from behind.<sup>99</sup> The concept, which resonates across cultures, faiths, and societies, can be particularly helpful in bridging divisions among countries and regional blocs.<sup>100</sup> Finally, the United States should facilitate ambassador-level retreats modeled after the successful 2012 meeting held in Silicon Valley focusing on internet freedom.<sup>101</sup> By connecting diplomats to experts and civil society outside Geneva, multi-stakeholder retreats can help reframe complex or controversial issues.<sup>102</sup>

Implementing these recommendations would not lead to a quantum leap in the council’s performance, but it would allow Washington to further build upon U.S. impact on the UNHRC during its two terms. Evidence shows that energetic U.S. leadership in the UNHRC has delivered results ranging from reduced anti-Israel bias to documenting North Korean atrocities extensively enough to alter the Security Council’s agenda. By actively participating in the council for the 2017–2019 term,

the Trump administration would be limiting the influence of rights violators on the council while effectively advancing U.S. national interests.

## About the Authors

**Mark P. Lagon** is centennial fellow and distinguished senior scholar at Georgetown University's School of Foreign Service. He was previously president of the Freedom House. Earlier, Lagon was chair of the global politics and security concentration at Georgetown University's master of science in foreign service program and adjunct senior fellow at the Council on Foreign Relations. At the Department of State, he was ambassador-at-large to combat trafficking in persons, deputy assistant secretary for international organization affairs, and member of the policy planning staff. Lagon was senior staffer at the Senate Foreign Relations Committee and deputy director of the House Republican Policy Committee. He also has served as chief executive officer of the anti-trafficking nonprofit Polaris, CFR international affairs fellow, and principal aide to Jeane Kirkpatrick at the American Enterprise Institute. Lagon is coeditor of *Human Dignity and the Future of Global Institutions* and author of *The Reagan Doctrine: Sources of American Conduct in the Cold War's Last Chapter*. Lagon has an AB from Harvard University and a PhD from Georgetown University.

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