

# WebMemo



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## The U.S. Universal Periodic Review: Flawed from the Start

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The United States recently released its report to the United Nations Human Rights Council (HRC). This report will serve as the basis of the U.S.'s first examination under that body's Universal Periodic Review (UPR).<sup>1</sup> Although the U.S. report gives undue attention and credit to the actions of the Obama Administration, it is largely a factual presentation of current U.S. laws, standards, and other efforts to promote human rights.<sup>2</sup> While the U.S. is not perfect, it is at least as respectful and observant of human rights as any state sitting on the HRC and far superior to members like China, Cuba, Libya, Saudi Arabia, and Russia.

By legitimizing the HRC through U.S. membership, the Obama Administration will give credibility to a farcical UPR process that has become little more than a "mutual praise society"<sup>3</sup> for repressive regimes and created the opportunity for human rights abusers to take unjustified shots at America's human rights record. The Obama Administration was mistaken to believe it could improve the HRC from within and should press for fundamental reforms at the mandatory 2011 review of the council.

**The Administration's Wrongheaded Decision to Join the Human Rights Council.** The HRC was created in 2006 to replace the U.N. Commission on Human Rights, a body that had failed to hold governments accountable for violating basic human rights and fundamental freedoms. During negotiations to establish the HRC, many basic reforms and standards to ensure that the council would not simply be a repeat of the commission did not receive

sufficient support in the General Assembly. As a result, the HRC has been no better—and in some ways, worse—than the commission it replaced.

Anticipating this outcome, the Bush Administration decided not to seek a seat at the Geneva-based council in 2006. Based on its subsequent disappointing record, the U.S. again declined to seek a seat in 2007 and 2008. The Bush Administration also withheld a portion of the U.S. contribution to the U.N. regular budget (equivalent to the part of the U.S. contribution allocated to the HRC) and distanced itself from the council's proceedings except in instances of "deep national interest."

Once in office, the Obama Administration quickly reversed Bush Administration policy by participating in council deliberations and winning election to the HRC. Several Obama Administration officials argued that the Bush policy of distancing the U.S. from the HRC had not improved its performance, and that as a member, the U.S. would be able to improve it from within. Unfortunately, they were wrong. The performance of the council with the U.S. as a member has been virtually indistinguishable from its performance absent U.S. membership.<sup>4</sup>

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Now the HRC can claim added legitimacy for its decisions and resolutions because the U.S. supports the institution and is included among its membership. Moreover, the Obama Administration created the opportunity for some of the world's most repressive regimes to criticize the U.S. human rights record during the UPR—an opportunity that they are likely looking forward to eagerly this November.

**The Flawed UPR.** Established in Human Rights Council Resolution 5/1 of June 18, 2007, the UPR process reviews countries on several bases, including, but not limited to: (a) the charter of the United Nations; (b) the Universal Declaration of Human Rights; (c) human rights instruments to which the state is a party; and (d) voluntary pledges and commitments made by states, including those undertaken when presenting their candidatures for election to the HRC.

While the UPR offers an unprecedented opportunity to hold the human rights practices of every country open for public examination and criticism, it has proven to be a flawed process hijacked by countries seeking to shield themselves from criticism—a flaw that the HRC shares with the broader human rights efforts in the U.N. system.

There are two key problems with the UPR: (1) contributions to the process by nongovernmental organizations (NGOs) are strictly curtailed; and (2) countries use points of order and other procedures to intimidate NGOs from making statements or to strike their comments from the record.<sup>5</sup> These two issues have tainted the UPR and resulted in numerous farcical human rights reviews. For instance:

- China laughably claimed in its UPR report that it “adheres to the principle that all ethnic groups are equal and implements a system of regional ethnic autonomy in areas with high concentrations of ethnic minorities,” that elections are “democratic” and “competitive,” that “citizens enjoy freedom of speech and of the press,” and that China respects the right to religious freedom.<sup>6</sup>
- Cuba's UPR report claimed that its “democratic system is based on the principle of ‘government of the people, by the people and for the people’” and that the right to “freedom of opinion, expression and the press” is guaranteed and protected, as are the rights of assembly and peaceful demonstration.<sup>7</sup>
- North Korea asserted that it “comprehensively provides” for fundamental rights and freedoms,

1. Report of the United States of America, submitted to the U.N. High Commissioner for Human Rights in Conjunction with the Universal Periodic Review, at <http://www.state.gov/documents/organization/146379.pdf> (August 26, 2010).
2. This is entirely appropriate. As The Heritage Foundation observed in its submission to the HRC, “The United States’ system of representative government, its independent judiciary, its robust civil society, and the principles enshrined in its Constitution represent best practices that all states and stakeholders should emulate in observing and protecting human rights and fundamental freedoms.” Steven Groves *and* Brett D. Schaefer, “United Nations Human Rights Council: Universal Periodic Review for the United States of America,” testimony to the United Nations Human Rights Council’s Universal Periodic Review (9th Session, December 2010) of the human rights record of the United States of America, at <http://www.heritage.org/Research/Testimony/United-Nations-Human-Rights-Council-Universal-Periodic-Review-for-the-United-States-of-America>.
3. U.N. Watch, “Mutual Praise Society: Country Scorecard and Evaluation of the Universal Periodic Review System of the U.N. Human Rights Council,” February 6, 2009, p. 2, at <http://www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/Mutual%20Praise%20Society.pdf> (August 26, 2010).
4. For more detailed reform proposals, see Brett D. Schaefer and Steven Groves, “The U.N. Human Rights Council: No Better for Obama’s Engagement,” Heritage Foundation *Backgrounder* No. 2339, November 9, 2009, at <http://www.heritage.org/research/reports/2009/11/the-un-human-rights-council-no-better-for-obamas-engagement>.
5. For a more detailed discussion see: Brett D. Schaefer, “U.N. Human Rights Council Whitewash Argues Against U.S. Participation,” Heritage Foundation *Backgrounder* No. 2255, April 2, 2009, at <http://www.heritage.org/Research/Reports/2009/04/UN-Human-Rights-Council-Whitewash-Argues-Against-US-Participation>.
6. U.N. Human Rights Council, Working Group on the Universal Periodic Review, “National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: China,” November 10, 2008, pp. 7, 14–15, at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A\\_HRC\\_WG6\\_4\\_CHN\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A_HRC_WG6_4_CHN_1_E.pdf) (August 26, 2010).

including “the right to elect and to be elected, the freedoms of speech, the press, assembly, demonstration and association, the rights to complaints and petitions, work and relaxation, free medical care, education and social security, freedoms to engage in scientific, literary and artistic pursuits, and freedoms of residence and travel.”<sup>8</sup>

These patently false reports were accepted at face value and approved by the majority of member states in the council.

**A U.S. Grilling in the Offing.** The U.S. review is unlikely to go as smoothly as those for China or Cuba. Countries deeply resentful of the U.S. and its practice of criticizing their human rights records in its annual *Country Reports on Human Rights Practices* will seize with great glee the opportunity to accuse the U.S. of violating the rights of its citizens (and non-citizens). Human rights NGOs (including organizations based in the U.S.) will eagerly join them to make sure that their complaints, which are often unsupported if not specious, are highlighted.

Aside from the Administration’s obvious self-aggrandizement (President Obama is referred to over 20 times in the 25-page report, and his health care reform is credited with vast achievements that have yet to be realized, if they ever will), the U.S. UPR report generally defends America’s strong record in the preservation of human rights. To its credit, the report provides a robust defense of the U.S. Constitution as the basis for and protection of human rights in the U.S. The report properly emphasizes the primacy of civil and political rights (dedicating over 12 pages to those rights) as opposed to so-called “economic and social rights” (of which the report discussed only three and asserted that they were pursued as “a matter of public policy” rather than as human rights obligations).

That emphasis will likely displease the HRC, which tends to give equal if not greater weight to economic and social “rights” when analyzing a nation’s human rights record.

Yet some of what the Obama Administration wrote in the official U.S. report will be cannon fodder to the HRC during the U.S. review. For instance, one particular paragraph in the U.S. report demonstrates the type of self-flagellation that the HRC expects of the U.S.:

We are not satisfied with a situation where the unemployment rate for African Americans is 15.8%, for Hispanics 12.4%, and for whites 8.8%, as it was in February 2010. We are not satisfied that a person with disabilities is only one-fourth as likely to be employed as a person without disabilities. We are not satisfied when fewer than half of African-American and Hispanic families own homes while three-quarters of white families do. We are not satisfied that whites are twice as likely as Native Americans to have a college degree.<sup>9</sup>

This paragraph’s emphasis on group rights and achieving “equality of results” rather than only “equality of opportunity” is consistent with the HRC’s often wrongheaded perspective on the nature of human rights.

It remains to be seen how the HRC will react to the U.S. report this November in Geneva. But the UPR process thus far has been closer to farce than fact. Those countries bent on attacking the U.S. will no doubt come armed with plenty of criticisms regarding the U.S. record. The UPR report will provide them with some additional, unnecessary ammunition. However, U.S. participation in the UPR process itself already provides undue legitimacy to their complaints.

7. U.N. Human Rights Council, Working Group on the Universal Periodic Review, “National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Cuba,” November 8, 2008, pp. 4, 9–10, at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A\\_HRC\\_WG6\\_4\\_CUB\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_WG6_4_CUB_1_E.pdf) (August 26, 2010).
8. U.N. Human Rights Council, Working Group on the Universal Periodic Review, “National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Democratic People’s Republic of Korea,” A/HRC/WG.6/6/PRK/1, August 27, 2009, pp. 4–5, at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KP/A\\_HRC\\_WG6\\_6\\_PRK\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KP/A_HRC_WG6_6_PRK_1_E.pdf) (August 26, 2010).
9. Report of the United States of America, Submitted to the U.N. High Commissioner for Human Rights In Conjunction with the Universal Periodic Review, p. 8, at <http://www.state.gov/documents/organization/146379.pdf> (August 26, 2010).

**Fundamental Reform Needed.** The U.S. UPR will likely be a painful and embarrassing process made possible by the Administration's decision to elevate and legitimize the deeply flawed Human Rights Council through U.S. engagement and participation.

Fundamental reform of the council, particularly establishing strong membership criteria,<sup>10</sup> should be the principle objective of the Obama Administration's agenda for the council. Failure to achieve

these reforms in the upcoming 2011 review would serve as a stark reminder of the necessity of creating an alternative arbiter of international human rights outside of the U.N. system.

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10. For more detailed reform proposals see Schaefer and Groves, "The U.N. Human Rights Council."