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U.N. Human Rights Experts: More Transparency and Accountability Required

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Recent statements by United Nations Human Rights Council Special Rapporteur Richard Falk rekindled a debate over how such experts should be held accountable when their behavior violates the conduct expected of them. Moreover, the scrutiny elicited by Falk's statements has exposed the fact that funding for special procedures deserves more transparency, especially regarding the ability of mandate holders to not disclose financial support received from sources other than the U.N. regular budget.

The U.S. should address these issues by demanding that the Human Rights Council (HRC) adopt an explicit procedure for dismissing mandate holders who grossly or repeatedly violate the Code of Conduct for Mandate Holders, directing the HRC to publicly post the financial implications of the special procedures, and requiring full disclosure of all financial and other support received by mandate holders.

Inadequate Accountability. The HRC is empowered to establish "special procedures" through resolutions creating a mandate to monitor, advise, and report to the HRC on human rights

issues or situations in specific countries. In the course of their duties, the mandate holders (entitled "special rapporteurs" or independent experts) may visit countries, bring attention to alleged human rights violations or abuses through statements and communications, conduct studies, and otherwise comment, advocate, and raise awareness of their mandates. As of April 1, 2013, there were 36 thematic mandates and 13 country-specific mandates of which a number were inherited by the HRC from its predecessor, the discredited U.N. Commission on Human Rights.¹

Many mandate holders conduct themselves professionally and strive to fulfill their responsibilities with independence, impartiality, personal integrity, and objectivity, which, along with expertise and experience, are identified by the HRC as being of "paramount importance" in the selection of mandate holders.² Although Falk, the "Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967," is not the only mandate holder to fall short of these standards, he is unique in his recidivism among current HRC human rights experts.

Falk has demonstrated a pattern of anti-Semitic prejudice, endorsement of 9/11 conspiracy theories, and offensive statements for which he has been repeatedly condemned by the U.S. and senior U.N. officials.³ Most recently, Falk implied that U.S. actions and America's support for Israel were to blame for the bombings in Boston:

Should we not all be meditating on W.H. Auden's haunting line: "Those to whom evil is done/do evil in return"? The American global domination

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project is bound to generate all kinds of resistance in the post-colonial world. In some respects, the United States has been fortunate not to experience worse blowbacks, and these may yet happen, especially if there is no disposition to rethink US relations to others in the world, starting with the Middle East. Some of us naively hoped that Obama's Cairo speech of 2009 was to be the beginning of such a process of renewal.... Now at the start of his second presidential term, it seems that Obama has given up altogether, succumbing to the Beltway ethos of Israel First.⁴

U.S. Permanent Representative to the U.N., Ambassador Susan Rice, and U.N. Secretary-General Ban Ki-moon both rightly condemned Falk's comments. However, multiple condemnations over the years have had little effect. Falk's anti-Semitism and unprofessionalism contravene the HRC's stated

"paramount considerations" for mandate holders. His statements also flout the Code of Conduct for Mandate Holders, which requires them to "[u]phold the highest standards of efficiency, competence and integrity, meaning, in particular, though not exclusively, probity, impartiality, equity, honesty and good faith," to adopt "a conduct that is consistent with their status at all times," and to behave "in such a way as to maintain and reinforce the trust they enjoy of all stakeholders."⁵

As noted by the U.S. Mission to the U.N. last month, "The United States has previously called for Mr. Falk's resignation for his numerous outrageous statements, and these comments underscore once more the absurdity of his service as a UN Special Rapporteur."⁶ However, according to a State Department official, Falk must be tolerated until his term expires in 2014 because "Human Rights Council rules contain no provision for removing or

1. United Nations Office of the High Commissioner for Human Rights, "Special Procedures: Thematic Mandates," April 1, 2013, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx> (accessed May 16, 2013); and U.N. Office of the High Commissioner for Human Rights, "Special Procedures: Country Mandates," April 1, 2013, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx> (accessed May 16, 2013).
2. U.N. Human Rights Council, "Institution-Building of the United Nations Human Rights Council," June 18, 2007, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1 (accessed May 16, 2013).
3. In 2012, Ambassador Susan Rice labeled Falk's call for a boycott on "businesses that are profiting from the Israeli settlement enterprise" as "irresponsible and unacceptable.... [His] recommendations do nothing to further a peaceful settlement to the Israeli-Palestinian conflict and indeed poison the environment for peace. His continued service in the role of a UN Special Rapporteur is deeply regrettable and only damages the credibility of the UN." Ambassador Susan E. Rice, "Statement on Richard Falk," U.S. Mission to the United Nations, October 25, 2012, <http://usun.state.gov/briefing/statements/199727.htm> (accessed May 16, 2013). In 2011, the U.S. condemned Falk for endorsing "conspiracy theorists who allege that the September 11, 2001 terrorist attacks were perpetrated and then covered up by the U.S. government and media." Eileen C. Donahoe, "Statement by Ambassador Donahoe on Comments by Richard Falk," U.S. Mission to the United Nations and Other International Organizations in Geneva, January 25, 2011, <http://geneva.usmission.gov/2011/01/25/donahoe-statement/> (accessed May 16, 2013). Also in 2011, U.N. High Commissioner for Human Rights Navi Pillay was forced to condemn Falk for posting an anti-Semitic image on his website. UN Watch, "Letter of UN Rights Chief Calling Richard Falk's Cartoon 'Anti-Semitic,' Condemning Hatred," July 11, 2011, <http://blog.unwatch.org/index.php/2011/07/14/letter-of-un-rights-chief-calling-richard-falks-cartoon-anti-semitic-condemning-hatred/> (accessed May 16, 2013). In 2010, Falk asserted to the General Assembly that Israel was practicing apartheid and ethnic cleansing. United Nations, "Situation of Human Rights in the Palestinian Territories Occupied Since 1967," August 30, 2010, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/65/331 (accessed May 16, 2013). The charges were reiterated in January 2011 in U.N. Human Rights Council, "Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Richard Falk," January 10, 2011, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/16/72 (accessed May 16, 2013). In 2009, the U.S. condemned as "biased and inappropriate" Falk's report to the HRC characterizing Israel's offensive action in Gaza as "inherently unlawful" and "a war crime of the greatest magnitude under international law." Mark C. Storella, "Situation of Human Rights in the Palestinian Territories, Statement by the Head of Delegation of the United States of America," March 24, 2009, <http://geneva.usmission.gov/2009/03/24/situation-of-human-rights-in-the-palestinian-territories/> (accessed May 16, 2013); and U.N. Human Rights Council, "Human Rights Situation in Palestine and Other Occupied Arab Territories: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk*," February 11, 2009, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/10/20 (accessed May 16, 2013).
4. Richard Falk, "A Commentary on the Marathon Murders," April 21, 2013, <http://www.foreignpolicyjournal.com/2013/04/21/a-commentary-on-the-marathon-murders/> (accessed May 16, 2013).
5. U.N. Human Rights Council, "Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council," June 18, 2007, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/2 (accessed May 16, 2013).
6. Erin Pelton, "Statement on Commentary by UN Special Rapporteur for the Palestinian Territories Richard Falk," U.S. Mission to the United Nations, April 23, 2013, <http://usun.state.gov/briefing/statements/207893.htm> (accessed May 16, 2013).

firing a special rapporteur once he or she has been appointed.”⁷

There is no explicit procedure to dismiss a mandate holder, but the implication that no such authority exists is dubious. The HRC establishes the mandates, and the HRC President appoints mandate holders from a list of candidates prepared by a five-member consultative group. Implicitly, the power to appoint encompasses the power to dismiss. However, the lack of explicit procedures should be addressed.

Additional Transparency Needed. The focus on Falk has had the ancillary benefit of exposing two other areas where transparency for special procedures should be improved: budgetary implications and third-party support.

The HRC special procedures are supported by the Office of the U.N. High Commissioner for Human Rights (OHCHR) and receive their primary budgetary support through the U.N. regular budget. Although each of the 49 individual HRC mandates has a dedicated web page providing detailed information about their responsibilities and activities, information on the budgetary costs associated with the mandate are absent. A Fox News story provided an OHCHR internal document projecting the financial implications of 10 recently adopted country and thematic mandates, which are substantial at \$11.7 million.⁸ These costs should be publicly available on the mandate websites.

In addition, while the primary funding for most HRC special procedures is through the U.N. regular budget, a report by the U.N. Board of Auditors revealed 14 special procedures received “earmarked donations” that, on average, “accounted for 49 per cent of their total financial resources available, with five procedures receiving over 50 per cent of funding from earmarked donations and the highest being 85 percent.”⁹

The report noted with concern that mandate holders “are not required to disclose support received from other sources,” which extended to support from unspecified governments and other institutions, because “the absence of clear disclosures could put in doubt the perceived independence of mandate holders.”¹⁰

What the U.S. Can Do. Despite significant effort by the Obama Administration, the HRC has not proven markedly better than its discredited predecessor, which should lead the U.S. to reconsider its engagement.¹¹ However, so long as U.S. taxpayer dollars fund the HRC, it is incumbent on the Administration to:

- Call upon the HRC and its president to exercise their authority to dismiss Falk for his repeated violation of the code of conduct and anti-Semitic behavior that impinges his ability to fulfill his mandate with impartiality and objectivity;
- Seek to establish an explicit process for dismissing mandate holders who repeatedly violate the code of conduct, engage in serious personal misconduct, or provide evidence that their impartiality is gravely compromised or otherwise seriously harms the “trust they enjoy of all stakeholders”;
- Demand that the HRC require each mandate website to provide a clear account of all resources budgeted and expended in support of the mandate; and
- Lead an effort to require each mandate holder to disclose all sources of funding or other compensation received.

Correct These Oversights. The independence of mandate holders is important to their ability to

7. George Russell, “Anti-Israel UN Human Rights Official Can’t Be Fired, State Department Says,” Fox News, May 9, 2013, <http://www.foxnews.com/world/2013/05/09/anti-israel-un-human-rights-official-cant-be-fired-state-department-says/?intcmp=trending#ixzz2TI8oFvsT> (accessed May 16, 2013).

8. Fox News, “Human Rights Council Mandate Costs,” <http://www.foxnews.com/world/interactive/2013/05/09/human-rights-council-mandate-costs/> (accessed May 16, 2013).

9. U.N., “Financial Report and Audited Financial Statements for the Biennium Ended 31 December 2011 and Report of the Board of Auditors: Volume I,” p. 23, [http://www.un.org/ga/search/view_doc.asp?symbol=A/67/5\(VOL.I\)](http://www.un.org/ga/search/view_doc.asp?symbol=A/67/5(VOL.I)) (accessed May 16, 2013).

10. *Ibid.*, p. 24.

11. See Brett D. Schaefer, “The U.S. Should Pursue an Alternative to the U.N. Human Rights Council,” Heritage Foundation *Backgrounder* No. 2572, June 23, 2011, <http://www.heritage.org/research/reports/2011/06/the-us-should-pursue-an-alternative-to-the-un-human-rights-council>.

objectively fulfill their mandates, but they should also be accountable and subject to dismissal. Similarly, budgetary transparency and mandatory disclosure of sources of funding and other support are critical to maintaining the perception of objectivity and independence of the mandate holders. The U.S. should lead efforts to correct these lapses.

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