The Human Rights Council:
The False Promise of Reform

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Abstract

The shift from the United Nations Commission on Human Rights (CHR) to the Human Rights Council (HRC) in 2006 was intended to allow for the targeting and prevention of human rights issues with greater efficiency. Whether or not there was a qualitative improvement with the move from the Commission to the Council is tested first in this study. The number of case, country, or region specific resolutions passed by the Commission versus the Council in the sample years displays their similarity in lack of effectiveness. Then, the study attempts to point out what factors could be contributing to the lack of improvement demonstrated by the Council. This lack of variation is measured by comparing the member states’ level of democracy which equates to their respect for human rights domestically. An average rating of the level of democracy held by members of the Commission as a whole for the years 2000 to 2005 is compared with the average level of democracy held by Council members in the first five years after the replacement of the Commission. Therefore, the second part of the study compares the quality (in terms of respect for human rights) of the members sitting on the Commission versus the Council to indicate whether or not the lack of reform to its membership structure undermines the UN body’s ability to ensure the election of states that defend versus those that violate human rights.
Introduction

With its creation of the Human Rights Council in 2006 to replace the highly criticized Commission, the UN General Assembly had intended to improve upon its overall ability to combat human rights abuses in the world. A report by the High-level Panel on Threats, Challenges and Change suggesting the shift from the Commission to the Council made apparent the Commission’s ‘eroding credibility and professionalism,’ inability to effectively commit to promoting and defending human rights, and obvious double standards (Ghanea 2006, 698). Moreover, according to his article, "Rhetorical Inaction? Compliance and the Human Rights Council of the United Nations," Matthew Davies points out, “Promising to defuse the tensions that had overwhelmed its maligned predecessor, the Commission on Human Rights, the Council is based on the belief that depoliticizing human-rights discussions would enhance the effectiveness of the United Nations in the realm of human-rights promotion” (2010, 449).

Considering all of the good intentions to bring greater legitimacy to the Council, thus increasing its performance in defending human rights, has the Council actually displayed clear signs of improvement in its first five years of existence?

This study attempts to answer this question beginning with a brief examination of the historical evolution of the Commission and the reasons behind its loss of legitimacy. Next, the Council’s organization and functions are explained in order to display the slight reform to membership structure and elections. Qualitative reforms made to the Council are also outlined, demonstrating that the most significant reform made to the Council was the addition of the Universal Periodic Review (UPR) in order to assess the status of human rights within all UN member countries once every four years. Following this is the comparative analysis of data
collected on human rights resolutions which measures the performance of the Commission versus the Council. Then a comparative analysis of membership structure is carried out in order to explain the findings on level of performance between the two human rights bodies. In the end, two major conclusions can be drawn from the data collected in this study: 1) Because their average percentages of case, country, or region specific resolutions are nearly identical, quality of performance has remained the same despite the shift from the Commission to the Council. 2) The Council’s level of performance has remained unchanged due to the lack of reform to the regionally-representative membership structure that continues to increase the tendency for undemocratic states to gain membership at the expense of more credible human rights defenders.

From Commission to Council: Seeking improvement

In 1945, following the establishment of the UN, delegates unanimously approved the mandate present in Chapter X, Article 68 of the UN Charter for the creation of a human rights commission. However, from the very beginning, the UN founders ensured that the Commission, a subsidiary of the United Nations Economic and Social Council (ECOSOC), would agree not to construe any part of Chapter IX as a right to intervene within member states. This emphasis on the respect for state sovereignty is further supported by Article 2 in the UN Charter (Tolley 1987, 6-7). With Eleanor Roosevelt as chair, the Commissions first session was held in New York on January 27, 1947 (Tolley 1987, 14). By 1948, the Commission completed its Universal Declaration on Human Rights that was adopted by the General Assembly six months later (Alston 1995, 131).

ECOSOC held the authority to elect approximately one-third of Commission members every May. Once elected, Commission members served three year terms and with the absence of
term limits, were eligible for unlimited re-election. The Commission consisted of 53 member states chosen to fill seats from five separate world regions. African states held 15 seats on the Commission, Asian states held 12, Latin American and Caribbean states held 11, Western European and other states (Andorra, Australia, Iceland, Israel, Malta, Monaco, New Zealand, San Marino, and Turkey) held 10, and Eastern European states held 5 seats (OHCHR “Membership” 2007, para. 1-3).

By the year 2000, the shortcomings, mainly the politicization of the Commission had become glaringly obvious. The Commission was deemed ineffective due to the lack of legitimacy found in allowing UN member states to pass resolutions targeting other UN member states. This procedure set the stage for politicization, especially when some members are obvious human rights violators while others hold legitimate authority on the subject. States began seeking membership to the Commission in order to shield themselves from criticism of their own human rights violations while turning attention to violations committed by other UN members (Cox 2010, 87). Secretary-General Kofi Annan, in his report, “In Larger Freedom” pointed to the credibility deficit experienced by the Commission, admitting that: “In particular, states have sought membership of the Commission not to strengthen human rights, but to protect themselves against criticism or to criticize others” (Seligman 2011, 521). Moreover, allied countries began turning their focus to gaining a majority in the Council, thereby being able to protect themselves while condemning the lack of protection of human rights in those states in the minority (Davies 2010, 453). According to Eric Cox, allies utilized a form of logrolling to protect each other from being singled out by specific resolutions (2010, 99). In addition, the Commission failed to recognize individual rights.
or civil liberties (ie. freedoms of speech, religion, assembly, and press) as essential elements of human rights deserving protection. Instead, the Commission defined gross violations of human rights as the victimization of a specific racial or religious group (Tolley 1987, 191). Further evidence suggests that states let domestic interests shape their definition of human rights. For example, lesser developed countries would often single out issues revolved around economic rights, ignoring political rights and civil liberties (Kate Irvin, et al. 2008, 394). Lastly, the Commission was further denounced due to its tendency to become distracted by Israel and Palestine. The Israeli-Palestinian issue shows up repeatedly in resolutions by the CHR, as a result, whether or not this tendency continued after the establishment of the Council will provide some insight into whether or not the Council improved upon the Commissions shortcomings.

In their resolution establishing the HRC, the General Assembly affirmed that the new body needed to improve the shortcomings of the CHR. According to the General Assembly, “ensuring universality, objectivity and non-selectivity in the consideration of human rights issues” was essential for the new body. Furthermore, “the elimination of double standards and politicization” along with “strengthening the capacity of Member States to comply with their human rights obligations” were improvements that the General Assembly saw as important with the shift from the Commission to the Council (UN General Assembly 2006, 2). Overall, the UN, itself determined with the work of its high-level panel on reform that ‘States lacking a demonstrated commitment to the promotion and protection of human rights could not properly set standards to reinforce human rights’ (Davies 2010, 452-53). Yet, even with this conclusion, no clear, authoritative mechanism was put into place upon the creation of the Council to prevent
non-democratic countries who do not offer citizens adequate political rights or civil liberties, i.e. human rights from being elected.

In 2006, the General Assembly voted to replace the ineffective Commission with the HRC. Through a secret ballot system, the General Assembly charged itself with electing members of the Council as it would be a subsidiary organ of the Assembly. As with the Commission, member states serve three year terms; however, a state may not be immediately re-elected after two consecutive terms.

The Assembly decided that the Council would consist of 47 instead of 53 members. However, once again the members would fill a set number of regional seats as follows: African States, 13; Asian States, 13; Latin American and Caribbean States, 8; Western European and other States, 7; and Eastern European, 6. General Assembly Resolution 60/251 establishing the Council goes on to explain that all UN member states are eligible for election to the HRC, but the protection of human rights should be a factor influencing states’ decisions of who to appoint. However, this is merely a suggestion and no mechanism is described that would prevent the election of human rights violators to the Council (UN General Assembly 2006, 3). As a result, there is little contrast between the election and membership structure between the Commission and Council. HRC members would still be chosen to fill regional seats; a few seats were simply subtracted from each region. The only real change to the election of members is seen in the limit of two consecutive terms, forcing members to be removed from the council for at least one term before being eligible for re-election again. Therefore, few structural alterations were made to Council when it filled the previous role of the Commission.
Although few adjustments were made to the structure of the new Council, several upgrades were made in terms of rules and procedures. First off, an accountability mechanism was put in place which would remove members of the Council that committed gross human rights violations. As a result, the General Assembly would now have the authority to suspend a state’s membership on the Council by a two-thirds majority vote. There would also be an increase in the number of meetings by the new Council. Instead of meeting for six weeks each year as had been the practice of the Commission, the Council would meet at its headquarters in Geneva, Switzerland for ten weeks or more. In addition, these ten weeks would be broken up into three or more sessions in contrast with the single session per year held by the Commission (Blanchfield 2007, 6-7). Moreover, the General Assembly tasked the new HRC with the completion of an annual report on human rights to be submitted to the Assembly. The Council would also have to maintain the Commission’s Special Procedures and Complaints Procedures along with the process of collecting expert advice (General Assembly 2006, 3). Special Procedures allow working groups, special rapporteurs, and independent experts to monitor and report on either country or thematic specific human rights issues worldwide (OHCHR “Special Procedures” 2010, para. 1-2). In addition, as was suggested in Resolution 60/251 establishing the HRC, the Council has improved upon the Commission’s Complaints Procedure. In June 2007, the HRC adopted an updated Complaints Procedure that would require two working groups to bring repeated human rights violations to the Council’s attention (OHCHR “Complaint Procedure” 2011, para. 1-8). Furthermore, Non-Governmental Organization (NGO) participation was expanded slightly by the new HRC. Under the Commission, only the largest, most significant NGOs could suggest submitting brief statements to the Secretariat for distribution and
suggest that certain items be put on the agenda. Smaller NGOs were able to send out short statements and deliver short oral presentations (Tolley 1987, 14-15). In contrast, the Council granted observer status to all NGOs, allowing them to observe all proceedings except those involving the Complaints Procedure. More importantly, the HRC gave NGOs the ability to take part in debates, discussions, and informal meetings (OHCHR “NGO Participation 2011, para. 10). Consequently, updates to the Complaints Procedure by the HRC along with the organ’s expansion of the participation by NGOs were mechanisms put in place in order to ensure that the HRC would, in fact be an improvement compared to the Commission.

Even more substantial was the addition of the Universal Periodic Review (UPR), outlined by the General Assembly in Resolution 60/251 as a new mandate for the HRC. The proposed purpose for the UPR was to decrease the politicization that hindered the effectiveness of the Commission by providing an objective, unbiased review of the status of human rights in not only members of the Council during their term, but of all UN member states (General Assembly 2006, 3). The UPR assesses the fulfillment of human rights obligations based on the Universal Declaration of Human Rights by every UN member once every four years. Forty-eight member states are randomly selected each year for review by an HRC working group. At the end of each review, this working group issues three documents addressing the current status of human rights of the state under review (SuR). The interactive dialogue, the most significant part of the UPR, follows and allows the SuR to respond to the findings within the working group’s review. Furthermore, HRC members along with select observer states are given the opportunity to participate in this interactive dialogue by asking questions of the SuR and offering their concerns related to issues of human rights within the SuR. Because it is supposed to result in a collective
commitment for action in improving the status of human rights by the SuR, the UPR is supposed to lead to the implementation of recommendations given throughout the review process. However, state sovereignty holds precedence, providing the SuR with complete freedom in choosing which questions to answer or ignore and in accepting or rejecting any recommendations. Following the interactive dialogue, the Office of the High Commissioner for Human Rights (OHCHR) publishes a document that includes the SuR’s responses to recommendations made by the working group of the HRC. The review of the SuR is then presented at the next plenary session of the Council and the final document, which includes voluntary commitments by the SuR, is adopted (Sen 2009, 9-10). At this point in time, the SuR has a period of four years to decide whether or not it should implement any of the recommendations set forth by the UPR before coming under review again (Davies 2010, 463). As it stands, there is no mechanism included within the UPR to directly prevent those states determined to have poor human rights records from becoming HRC members nor to directly promote the election of states receiving positive reviews. Consequently, at best, the UPR simply acts as a persuasive mechanism meant to influence individual UN member states to improve the status of human rights domestically before being placed at the center of attention of other member states during the UPR process. If the SuR is unmoved by this, they are also likely to ignore the recommendations set forth in the final report of the UPR. As a result, without the authority to require the recommendations of its report be implemented, the UPR cannot be a forcefully influential reform that ensures the improvement upon human rights protections by UN member states.
Comparative Analysis of Resolutions: Assessing performance

The first portion of this study attempts to answer whether or not there was an improvement in efficiency with the shift from the Commission to the Council by comparing both the quantity and most importantly, the quality of resolutions adopted by both bodies.

The following data found in tables 1 through 3 was collected from the UN Documentation Research Guide. Table 1 displays the overall number of resolutions passed by the Commission and Council in regular sessions during the sampled years (2000-2010). The numbers are broken down further to show the numbers of case, country, or region specific resolutions passed by the Commission and Council. An example of a case, country, or region specific resolution would be A/HRC/RES/13/14, titled Situation of human rights in the Democratic People’s Republic of Korea (OHCHR “UN Documentation: Research Guide” 2007). Many of these specific resolutions are titled the same as the one above, simply targeting different states. An example of a region specific resolution would be titled something similar to, “the situation of human rights in Sub-Saharan Africa.” Finally, a common example of a case specific resolution that was found repeatedly is A/HRC/RES/16/30, titled “Right of the Palestinian people to self-determination” (OHCHR “UN Documentation: Research Guide” 2007). The specific resolutions are singled out as a clearer indicator of effectiveness. Because resolutions are simply recommendations and as stated earlier in this study, the Commission and later, Council were not granted authoritative powers (to override state sovereignty) by which to enforce their suggestions. As a result, the more specific a resolution is, the greater the chance UN members will act upon its recommendations. For instance, a resolution may focus on gross human rights violations by a specific government, UN member states, especially those with greater respect for
human rights, may be influenced to team up with others to put pressure on the violator. Provided they ignore these warnings, the democracies of the UN have the potential to damage their credibility as promoters of human rights and democracy. Finally, Table 1 shows the number and percentage of resolutions pertaining to the Israeli-Palestinian issue. Again, as noted earlier, a common criticism of the Commission was its tendency to draw a substantial amount of attention to the Israeli actions in Palestine at the expense of other human rights violations. As a result, the data will determine whether or not the Council was amended in order to avoid this shortcoming of the Commission. If so, the overall effectiveness of the Council can be expected to increase.

Table 2 displays the number of resolutions passed by the Commission and Council during special sessions. As they are called under unusual circumstances, all resolutions adopted are deemed case, country, or region specific. Thus, this number is simply split to show what percentage of these resolutions pertain to the Israeli-Palestinian issue.

### Table 1

**Regular Session Resolutions**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Resolutions</th>
<th>Number of Case/Country/Region Specific Resolutions</th>
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<tbody>
<tr>
<td>2000 (CHR)</td>
<td>87</td>
<td>23</td>
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<tr>
<td>2001 (CHR)</td>
<td>82</td>
<td>23</td>
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<td>2002 (CHR)</td>
<td>92</td>
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<td>2003 (CHR)</td>
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<td>22</td>
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<td>17</td>
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<td>2007 (HRC)</td>
<td>49</td>
<td>10</td>
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<tr>
<td>2008 (HRC)</td>
<td>69</td>
<td>16</td>
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<tr>
<td>2009 (HRC)</td>
<td>73</td>
<td>14</td>
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<tr>
<td>2010 (HRC)</td>
<td>71</td>
<td>17</td>
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<tr>
<td>Cases</td>
<td>26.44%</td>
<td>28.05%</td>
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<tr>
<td>Cases</td>
<td>3</td>
<td>3</td>
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<tr>
<td>Cases</td>
<td>13</td>
<td>13</td>
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Data used in Tables 1, 2, and 3 collected from: “United Nations Documentation Research Guide”

### Table 2

**Special Session Resolutions**

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<tr>
<td>Cases</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
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<td>Cases</td>
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<td>2</td>
<td>1</td>
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According to Table 1, the Commission actually adopted a greater number of resolutions compared to the Council; an unexpected result given the reforms made to the newer body. However, because they hold the most weight in terms of effectiveness, the case, country, region...
specific resolutions will be focused on as the primary indicators of performance. Therefore, as demonstrated by Table 1, the percentage of case, country, and region specific resolutions adopted by both the Commission and Council remain relatively similar, showing very little variation. Even more significant is the evidence in Table 3 proving that the percentage of regular session resolutions adopted by the Commission was almost exactly the same as that of the Council. From 2000-05, 24.50 percent of the regular session resolutions passed by the Commission focused on specific targets while 23.06 percent of the Council’s regular session resolutions were case, country, or region specific in the years studied. As a result, when it replaced the Commission, the Council adopted a nearly identical percentage of target-specific resolutions as its predecessor. This finding displays a clear lack of improvement to productivity by showing that specific human rights violations were targeted at the same rate by both bodies.

Furthermore, Table 1 demonstrates that the percentage of those resolutions involving the Israeli-Palestinian issue ranges from 13 to approximately 23, with an average of 16.65 percent for the Commission. This evidence is not strong enough to suggest that the Commission was too focused on Israel and Palestine. However, the percentage of Israeli-Palestinian resolutions increased dramatically from the Commission to the Council. The Council more than doubled the Commission’s percentage of specific resolutions focusing on the Israeli-Palestinian issue with an average percentage of 34.96 for the years studied. This increase suggests that the Council was not amended to prevent the focus on Israel and Palestine that was said to plague the Commission. Thus, this finding, like the one above, suggests that the Council has failed to achieve improvements in terms of productivity.

Even more telling is the repetitive nature of the case, country, or region specific resolutions passed by both the Commission and the Council. With very few exceptions, almost
the exact same list of states appears as the target for specific Commission resolutions each of the six years. For example, Somalia, Cambodia, Myanmar, the Democratic Republic of the Congo, Burundi, Sudan, Afghanistan, and Sierra Leone, just to name a few, show up every year. Moreover, when the Council took over, the same states continued to show up in specific resolutions. This points to the inability of both the Commission and the Council to effectively combat human rights abuses within states.

Table 2 shows the only real increase in performance made by the Council; although, this evidence, does not demonstrate an extremely significant increase in productivity. This table illustrates that the Council passed more resolutions during special sessions, with an average of 1.4 over five years as compared to the Commission’s average of .17 over six years. Even though the Council seems to be slightly more efficient at using special sessions to adopt resolutions, this does not outweigh its lack of improvements as displayed in tables 1 and 3.

Consequently, based on the procedural changes implemented with the creation of the Council, an increase in the quantity and quality of work would likely be expected between the Commission and the Council. In reality, the Commission actually appears more effective in terms of quantity and quality of work as it adopted more resolutions and focused on the Israeli-Palestinian issue far less than the Council. Just as with the Commission, the Council frequently adopted resolutions regarding the same exact states every year, suggesting that the same exact violations continue to occur regardless of any suggestions made by the UN authority on human rights, whether it be the Commission or the Council. Based on this data which seeks to demonstrate effectiveness of the Commission versus the Council, the only area in which the Council excels in comparison to the Commission is in special sessions. The Commission only developed one resolution from a special session over the six years tested, while the Council
adopted seven within five years. Overall, the only obvious, more definitive conclusion that may be drawn from the data in Tables 1, 2, and 3 is that the Council does not appear to be more effective than the Commission that it was supposed to amend as it continually accomplished either less or about the same amount of work on average per year.

**Comparative Analysis of Membership Structure**

With substantial evidence pointing to the failure of the Council to effectively improve upon the Commission’s shortcomings and thereby, increase productivity, the second part of this study seeks to explain how the element that remained the same between the two bodies, membership structure, is the likely culprit behind this lack of improvement. Due to their direct experience with offering and protecting the human rights of their citizens, democracies can be considered more qualified to defend human rights in the world than their undemocratic counterparts. Therefore, the following membership analysis measures the combined level of democracy of the states serving as members of the Commission and Council in order to determine whether or not the Council succeeded in acquiring more credible members, or those with respectable human rights records.

Since it focuses on the freedoms enjoyed by citizens of a certain state, Freedom House’s annual “Freedom in the World” report data is used to rate each member of the two UN bodies in question, offering a good indication of how licensed a country may be to protect human rights worldwide. The Freedom House evaluation of democracy or how much freedom citizens within a state have is based on two areas: political rights and civil liberties. The survey defines political rights as the ability for individuals to freely participate in the political process within their state. This encompasses the right to vote in competitive and fair elections, to organize politically, to run for political office, and to directly elect and hold accountable influential representatives to
their government. Civil liberties include freedom of expression, belief, and association, the right to organize, protection of personal autonomy from the government, and the rule of law (Freedom House 2011, para. 1). Countries receive a separate rating from one to seven for political rights and civil liberties with one indicating the highest possible level of individual freedoms and seven pointing to the lowest amount possible of individual freedoms offered by a government. For the purpose of this study, the average of the two numbers indicating political rights and civil liberties is used to define Commission and Council member states’ levels of democracy on both an individual and collective basis. Also used are members’ statuses determined by Freedom House based on the combined political rights and civil liberties scores. Based on their scores, countries fall into one of three categories according to the report, free, partly free, or not free (Freedom House 2011, para. 4). Before 2003, those countries with an average rating of 1 to 2.5 were considered free, countries with a rating between 3 and 5.5 were partly free, and those with ratings between 5.5 and 7 were considered not free. Beginning in 2004, Freedom House denoted those countries with combined average ratings of 3 to 5 as partly free and those between 5.5 and 7 as not free. Again, for the purpose of this study, those Commission or Council members that fall into the categories of partly free and not free, will not be considered democracies. Rather, only those member states with a status of free will be regarded as democracies, having the most authority to defend human rights worldwide as they offer the highest level of individual rights domestically. As a result, Freedom House data, meaning a country’s average rating of political rights and civil liberties is used to indicate the average level of democracy found on the Commission in its last six years versus Council members through the year 2010.

In addition, membership data for the Commission on Human Rights and for the Human Rights Council was obtained from the Office of the High Commissioner for Human Rights
website. Level of democracy for Commission members is displayed consecutively from the year 2000 until 2005, after which it was replaced. Membership of the Council is then tested from its creation in 2006 until 2010.

Table 4
Levels of Democracy: Commission Members vs. Council Members

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<tbody>
<tr>
<td>Members' Overall Average Freedom House Rating</td>
<td>3.38</td>
<td>3.54</td>
<td>3.64</td>
<td>3.67</td>
<td>3.55</td>
<td>3.53</td>
<td>3.19</td>
<td>3.21</td>
<td>3.15</td>
<td>3.11</td>
<td>3.35</td>
</tr>
<tr>
<td>Percentage of Non-Democratic Members (partly free and not free states)</td>
<td>54.72</td>
<td>54.72</td>
<td>54.72</td>
<td>58.49</td>
<td>58.49</td>
<td>60.38</td>
<td>48.94</td>
<td>53.19</td>
<td>51.06</td>
<td>51.06</td>
<td>57.45</td>
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<tr>
<td>Percentage of Democratic Members (free states)</td>
<td>45.28</td>
<td>45.28</td>
<td>45.28</td>
<td>41.51</td>
<td>41.51</td>
<td>39.62</td>
<td>51.06</td>
<td>46.81</td>
<td>48.94</td>
<td>48.94</td>
<td>42.55</td>
</tr>
</tbody>
</table>

Data collected from:
The Office of the High Commissioner for Human Rights: “Membership”
Freedom House: "Freedom in the World Country Ratings by Region 1972-2011"
Several conclusions can be drawn based on the data provided in Table 4. Most apparent is the lack of diversity in the first row displaying the overall average of member states’ Freedom House ratings. Commission members become increasingly undemocratic from 2000 to 2003 and in its last two years of existence, the Commission’s members drop back down to a rating of approximately 3.5. Therefore, as a whole, member states would be classified as only partly free for the entire six year period sampled.

Beginning in 2006, the Council scores only show a slight improvement compared to those of the Commission. Council member states still remain at the partly free status where Commission members fell each of the six years sampled. Most importantly, over the entire sampled period, even with the evolution from the Commission to the Council, the average level of democracy for all members never reaches the free status. In fact, the most democratic or the closest to the free status that either body reaches is a rating of 3.11, obtained by the Council in 2009. This lowest rating still puts the Council at an overall status of partly free, with a majority of members being undemocratic, thereby lacking credibility in the area of human rights. As a result, the average Freedom House ratings of members do not display a strong variation between the Commission to the Council, as each year members as a whole can only be considered partially democratic.

Table 4 also displays the percentage of member states that are free or fully democratic versus those member countries that are just partly or not free, meaning undemocratic. These percentages offer a more conclusive description of levels of democracy between Commission and Council members. The averaged statuses of member states show a definitive decline in the level of democracy held by member states of the Commission. Not once in the six year period does the percentage of democratic members surpass that of the undemocratic members.
Moreover, by 2005, only about 39 percent of the Commission was made up of fully democratic states. Similarly, the Council mirrors this membership trend where undemocratic countries consistently hold a majority over the fully democratic states; however, there is one exception. In 2006, the year the Council assumed authority as the new UN human rights organ, a majority of member states (approximately 51 percent) were democracies. This is the only time between the years sampled that either the Commission or the Council has a larger number of democratic members versus undemocratic members. Tables 5 and 6, located in the appendix, show those members that left the Commission in its final year, 2005 and the first members added to the new Council in an attempt to explain what may have caused this increase in democratic membership. The addition of two free or democratic states, Mauritius and Senegal in the African region explains how the attainment of a democratic majority of members to the Council was possible in its first year of existence. The year before (2005), only one of the fifteen African seats was filled by a democratic state (South Africa). However, with the subtraction of two not free states and the addition of two new free states to the African region in 2006, the newly established Council now had five free members holding African seats. Also, the number of democracies in the Asian region increased by one with the addition of the Philippines in 2006. The best explanation for this is that the General Assembly’s recommendation to take state’s human rights records into account when it created the Council that year resonated with UN member countries, influencing them to choose more democratic states. Further evidence from Table 4 suggests that the General Assembly had forgotten about their recommendations for the new Council after the first year, as membership recedes back into the pattern shown by the Commission where undemocratic states hold the majority.
Overall, the data in Table 4 shows no decisive improvement to the combined level of democracy of Commission versus Council member states. With the exception of 2006, the Council’s first year of existence, there is a repeated majority of undemocratic states holding membership on both UN organs. This leaves the democratic states that have more experience with human rights domestically, offering substantial personal freedoms to citizens, in the minority. This explains exactly why performance between the Commission and the Council (as explained through the analysis of resolutions) remained largely the same. By not putting a mechanism into place to prevent undemocratic countries or human rights violators from obtaining membership, the General Assembly set the Council up to be plagued by the same problems of inefficiency due to a lack of credibility among members.

The findings related to levels of democracy and membership above prove that the mandate carried over from the Commission to the Council allotting a specified number of seats to each of the five UN regional groups is the sole factor explaining the Council’s failure to improve performance relative to the Commission. Rather than be chosen based on holding a positive human rights record, members of the Council continued to be selected to fill these five regional groups. As stated earlier, the overall number of members was simply reduced when the Council was created. Consequently, the average percentage of case, country, and region specific resolutions have remained the same between both bodies because the same number of undemocratic, human rights violators continue to obtain membership (as proven in Table 4), thereby politicizing and discrediting the Council as they were criticized for doing on the Commission.

Although it sought to amend the problem of a lack of credibility leading to politicization and thereby, ineffectiveness in its creation of the Council, the General Assembly did not put any
specific mechanisms in place to combat the factor influencing that lack of credibility on the
Commission, membership. As stated earlier in the section on criticism of the Commission, the
General Assembly merely recommended that UN member states take a state’s respect for human
rights into account when voting in Council elections. Therefore, no clearly defined requirements
were placed into effect to actually prevent human rights violators from entering onto the Council.
In fact, adjustments were simply implemented requiring the Council to follow certain new
procedures such as the UPR, while changes to the membership structure were avoided. In fact,
the only change made to the structure of membership in the shift to the Council was to decrease
the overall number of seats from 53 to 47. This was accomplished with the addition of seats to
the Asian and Eastern European regions and the subtraction of seats in the following regions:
African, Latin American and Caribbean, and Western European and others.

The only amendment invented by the General Assembly relating to membership structure
of the Council was the limit to two-consecutive terms, requiring member states to remain off of
the Council for at least one year after two repeated terms. The implementation of the two-thirds
majority vote by the General Assembly allowing for the removal of gross human rights violators
from the Council was the only other adaptation made to the newly formed Council. Neither of
these amendments had the ability to effectively target the Commission’s biggest shortcoming,
over-politicization caused by the tendency for undemocratic states to utilize their membership to
the Council as a way to compete in order to shield themselves from criticism of their own,
domestic human rights violations. As is displayed by Table 4, with the exception of the year
2006, undemocratic members continue to dominate the Council just as they had in the
Commissions last six years of existence. As a result, because no adjustment was made to the
membership structure of the Council which requires members to be selected to fill a specified
number of regional seats, undemocratic members continued to gain membership, delegitimizing
the Council. Some regions are simply more democratic than others, making filling seats with
states that are respectful of human rights simple. However, in other regions, filling the Council’s
allotted number of seats with democratic states that are respectful of human rights is nearly
impossible.

For example, according to Freedom House, in 2006 there were only eleven democracies
in the African region specified by the UN; however, there are thirteen African seats on the
Council (“Map of Freedom” 2007). As a result, two undemocratic states will inevitably be
chosen to fill seats. Moreover, if one of those eleven countries had just served two consecutive
terms, the number of undemocratic countries to inevitably be elected would increase. Of these
eleven democracies in the African region, only five were members of the Council in 2006 (OHCHR “Membership of the Human Rights Council” 2011). These flaws in membership
structure explain how the United States, a democratic country can lose its bid for membership
while an undemocratic, human rights abuser like Sudan can win membership. This exact event
happened in 2002 when the Commission was still operating and instances such as this one can
continue to happen with the Council today (Seligman 2011, 520). Only seven seats were open to
the Western European and Other States in 2006 when all except for one (Turkey) of those
countries were considered free. At the same time, as stated above, only eleven countries in the
entire African region were considered free, yet it holds thirteen seats on the Council,
guaranteeing the election of two undemocratic members. Therefore, the Council, like its
predecessor, facilitates the inevitable election of undemocratic members from less democratic
regions while forcing the General Assembly to deny membership to democracies in regions
where most states are free.
The other region displaying the same problem of lack of democratic states is Asia. Asian states also hold thirteen seats on the Council, therefore the African and Asian regions hold a total of 26 of the 47 seats on the Council. Yet, according to Freedom House data, these are the regions that consistently have the lowest percentage of democratic states. The African and Asian states hold a majority of seats, calculating to 55.32 percent of the overall membership to the Council and 50.94 percent of membership to the Commission. As is displayed in Table 4, over fifty percent of the members on both the Commission and Council every year sampled, except for 2006, are undemocratic ("Freedom in the World Country Ratings by Region 1972-2011"). Therefore, the lack of reform to the membership structure of the Council allowed for the most undemocratic regions, Africa and Asia, to continue to hold the majority of seats. This finding points to the exact explanation as to why, despite the installment of reforms with the shift to the Council, performance has remained relatively similar when compared to the Commission. With the two most undemocratic regions comprising over half of each body, the more democratic, experienced human rights protectors making up the remaining regions are left at a disadvantage in their attempts to promote the adoption of specific resolutions targeting specific human rights violators.

**Conclusion**

Overall, despite the promises for reform accompanying it, the Council has displayed the same level of efficiency as the Commission that it replaced. The Council’s failure to solve the problems that plagued the Commission and its ability to perform are directly attributed to the General Assembly’s failure to shift from a regionally representative to a merit-based membership structure. This failure to reform membership structure allowed the undemocratic, human rights
abusing states to continue to dominate the Council, thus continuing to undermine its legitimacy and hinder its performance.

Tables 1 through 3 display the level of success of the Commission versus the Council based on amount of work accomplished and the quality of that work. After measuring high performance based on the adoption of more case, country, or region specific resolutions, the Commission and the Council actually end up almost identical in terms of efficiency. In addition, the Commission that was criticized for focusing on the Israeli-Palestinian issue actually passed fewer resolutions involving the case than the Council. Consequently, Tables 1 through 3 display a clear lack of improvement in performance by the Council.

This low level of effectiveness displayed by both the Commission and Council is then explained by the findings pertaining to levels of democracy held by members. When the Commission replaced the Council in 2006, new procedural requirements were implemented, but membership structure was mostly ignored. With the exception of decreasing the number of overall seats from fifty-three to forty-seven by eliminating some regional seats, the composition of the Council mirrors that of the Commission. Based on the research by Kate Irvin, et al., democratic members of the Commission or Council will be more likely to promote and defend human rights than undemocratic members (Kate Irvin, et al 2008, 393). In addition, research by Steven Seligman explaining voting behavior on the Commission and Council suggests that democracies are more likely than their undemocratic counterparts to support specific resolutions targeting human rights abusers (2011, 520). Yet, the regionally-representative membership structure continues to allow for more undemocratic members to not only obtain membership, but to comprise a majority of the entire Council. Therefore, even though some new procedural requirements such as the completion of the UPR on individual UN members were implemented,
the Council’s membership structure remained the same, excluding democracies in some regions while allowing the abundance of undemocratic members to lower its legitimacy.

The results from Table 4 measuring the overall levels of democracy for Commission and Council members indicate a lack of significant variation between the Commission and its replacement, the Council. The average level of democracy for all members does not drop below a rating of three or partly free in any of the years sampled. Furthermore, excluding 2006, the Commission and the Council consistently had a majority of undemocratic members. In 2006, the Council’s first year of existence, democratic states gained a slight majority over undemocratic states, at fifty-one percent. The only explanation for this is the addition of democratic members and the removal of undemocratic members to the African and Asian regional seats that year. However, because democracies do not continue to hold a majority on the Council from 2007 to 2010, it is likely that 2006 is a special case. In 2006, General Assembly Resolution 60/251 that was adopted to create the Council suggests that a state’s human rights record should be taken into account when selecting members (UN General Assembly 2006, 3). Since there were no rules established to forcefully implement this suggestion, it stands to reason that the Council simply disregarded it after the first year. Thus, the levels of democracy between Commission and Council members in the years sampled do not show substantial variance, with a majority of members on the Council continuing to remain undemocratic.

As a result, the prominent conclusion that can be drawn from this study is that the Council’s effectiveness when compared to that of the Commission did not improve because regionally-based membership structure remained the same, allowing for a majority of illegitimate, undemocratic states to hold a majority. Thus, the tendency for the Commission to have a majority of undemocratic members that cannot be considered defenders of human rights,
carried over to the Council. From the period of 2000 to 2005, the commission never dropped below a Freedom House rating of 3, or partly free and from 2006 to 2010, the Council upheld this trend. Therefore, the lack of adjustment to the membership structure of the Council versus its predecessor, the Commission, prevented the guaranteed attainment of a democratic majority which would have increased the Council’s performance.

As a result, if the regional seats were completely eliminated, and members were instead chosen based solely on merit (in terms of level of democracy), there is a possibility that the tendency for the Commission, now the Council to have a majority of undemocratic members would be eliminated allowing resolutions targeting specific human rights violators to be adopted with greater ease.
Bibliography


http://www2.ohchr.org/english/bodies/hrccouncil/docs/A.RES.60.251_En.pdf.

http://www2.ohchr.org/english/bodies/hrccouncil/past_current_members.htm.


## Appendix

### Table 5
Members Leaving Commission at the end of 2005

<table>
<thead>
<tr>
<th>Country</th>
<th>Regional Seat</th>
<th>Freedom House Rating (average of political rights and civil liberties ratings)</th>
<th>Freedom House Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burkina Faso</td>
<td>African</td>
<td>4</td>
<td>Partly Free</td>
</tr>
<tr>
<td>Gabon</td>
<td>African</td>
<td>4.5</td>
<td>Partly Free</td>
</tr>
<tr>
<td>Swaziland</td>
<td>African</td>
<td>5.5</td>
<td>Not Free</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>African</td>
<td>6</td>
<td>Not Free</td>
</tr>
<tr>
<td>China</td>
<td>Asian</td>
<td>6.5</td>
<td>Not Free</td>
</tr>
<tr>
<td>Japan</td>
<td>Asian</td>
<td>1.5</td>
<td>Free</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>Asian</td>
<td>3.5</td>
<td>Partly Free</td>
</tr>
<tr>
<td>Argentina</td>
<td>Latin American and Caribbean</td>
<td>3</td>
<td>Partly Free</td>
</tr>
<tr>
<td>Brazil</td>
<td>Latin American and Caribbean</td>
<td>2.5</td>
<td>Free</td>
</tr>
<tr>
<td>Paraguay</td>
<td>Latin American and Caribbean</td>
<td>3.5</td>
<td>Partly Free</td>
</tr>
<tr>
<td>Australia</td>
<td>Western European and Others</td>
<td>1</td>
<td>Free</td>
</tr>
<tr>
<td>Germany</td>
<td>Western European and Others</td>
<td>1</td>
<td>Free</td>
</tr>
<tr>
<td>Ireland</td>
<td>Western European and Others</td>
<td>1</td>
<td>Free</td>
</tr>
<tr>
<td>USA</td>
<td>Western European and Others</td>
<td>1</td>
<td>Free</td>
</tr>
<tr>
<td>Ukraine</td>
<td>Eastern European</td>
<td>4</td>
<td>Partly Free</td>
</tr>
</tbody>
</table>

Data collected from:
The Office of the High Commissioner for Human Rights: “Membership”
Freedom House: "Freedom in the World Country Ratings by Region 1972-2011"
Table 6
Members Entering the Council in 2006

<table>
<thead>
<tr>
<th>Regional Seat</th>
<th>Freedom House Rating (average of political rights and civil liberties ratings)</th>
<th>Freedom House Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cameroon</td>
<td>6</td>
<td>Not Free</td>
</tr>
<tr>
<td>Djibouti</td>
<td>5</td>
<td>Partly Free</td>
</tr>
<tr>
<td>Mauritius</td>
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<td>Free</td>
</tr>
<tr>
<td>Nigeria</td>
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<td>Partly Free</td>
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<td>Senegal</td>
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<td>Free</td>
</tr>
<tr>
<td>Bangladesh</td>
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<td>Partly Free</td>
</tr>
<tr>
<td>China</td>
<td>6.5</td>
<td>Not Free</td>
</tr>
<tr>
<td>Jordan</td>
<td>4.5</td>
<td>Partly Free</td>
</tr>
<tr>
<td>Malaysia</td>
<td>4</td>
<td>Partly Free</td>
</tr>
<tr>
<td>Saudi Arabia</td>
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<td>Not Free</td>
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<tr>
<td>Cuba</td>
<td>7</td>
<td>Not Free</td>
</tr>
<tr>
<td>Mexico</td>
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</tr>
<tr>
<td>Peru</td>
<td>2.5</td>
<td>Free</td>
</tr>
<tr>
<td>Uruguay</td>
<td>1</td>
<td>Free</td>
</tr>
<tr>
<td>Canada</td>
<td>1</td>
<td>Free</td>
</tr>
<tr>
<td>Germany</td>
<td>1</td>
<td>Free</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1</td>
<td>Free</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>5.5</td>
<td>Not Free</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>5.5</td>
<td>Not Free</td>
</tr>
</tbody>
</table>

Data collected from:
The Office of the High Commissioner for Human Rights: “Membership”
Freedom House: "Freedom in the World Country Ratings by Region 1972-2011"