

**Human Rights Council 2011 Review**  
**Open-ended Working Group**  
**Statement by the Delegation of the United States of America**  
**February 7, 2011**

Thank you, Mr. President.

I thank you for the draft outcome document and extend particular thanks to the facilitators for their hard work in consulting with delegations and in preparing their contributions.

Mr. President,

The United States has repeatedly stated that we view this review process as an opportunity to improve the Council's ability to fulfill its mandate. That mandate calls on us to improve respect for human rights around the world, to address situations of violations, to contribute to the prevention of abuses, and to address issues in an objective and impartial manner.

This review process must be a genuine and legitimate exercise in improving this body and its functioning, which will ultimately allow us to better fulfill our mandate. To be frank, Mr. President, we have been very disappointed by the repeated attempts to constrict and limit the options available to us in this review in a way that has hampered dialogue and restricted our ability to achieve meaningful results. The review process to date has entailed numerous meetings and informals; however, those meetings have often been a forum for repetition of fixed positions as opposed to a genuine give and take on detailed proposals.

Without open dialogue and genuine negotiations on a text, we risk failing to achieve consensus in this process. The ultimate result would be a failure by all of us to improve the work and functioning of the Council and more importantly a missed opportunity to make the Council a more effective instrument to improve human rights.

With that in mind, we believe it is important to have a comprehensive draft outcome document that we can discuss and negotiate in detail. Having proposals

on paper, even ones that are not fully agreed, will allow us to consider options that could lead to consensus and compromise. The current draft outcome falls short of that standard.

To be very clear, Mr. President, we are asking for a draft outcome document that includes more proposals. Even on issues we may not support, we want to have the opportunity to engage with other delegations and seek agreement on various ideas. You have asked that we concentrate on areas of consensus. Consensus, however, is the result of negotiation, not the starting point. If we want to reach consensus, we must have a broader starting point that will allow all delegations to have a say in the outcome.

As a delegation, we have made many proposals and expressed our preparedness to discuss ideas and to be flexible in addressing the key issues we have raised. We recognize that not all proposals will win agreement, but a failure to put these ideas on paper and negotiate them actively is selling short our collective ability to find solutions and secure compromises that can satisfactorily address concerns we all have about the Council's functioning.

Substantively, there are a number of important elements that the review outcome should reflect. At a minimum, we need to find agreement on the following points.

### **1. Improving the Council's ability to respond to situations.**

Improved responsiveness could take many forms, however, the essential element is that there must be a way to prompt the Council to engage on and hold dialogues before situations reach a state of crisis. Trigger mechanisms to hold dialogues, with no proposed predetermined outcome, or a non-politicized early warning/prevention system are two such options. We welcome other proposals that achieve this same objective, and encourage use of a wide variety of tools to address emerging situations, including interactive dialogue among States, potentially including civil society.

To those delegations that are concerned about creating such triggers or prevention mechanisms, let me emphasize that we are not trying to force the

Council to take a particular follow-up action or to pass a resolution. We have said that these dialogues could happen without a pre-determined outcome. The action decided by the Council is only for the Member States to decide. More importantly, for all those delegations that talk about the need for dialogue with states and a non-confrontational approach, we are convinced that earlier engagement by the Council, including in the form of informational meetings or briefings, roundtables or interactive dialogues, will allow us to avoid a confrontational approach later, when a human rights situation has gravely deteriorated. The value added would be the fulfillment of our role to aid in prevention of human rights abuses.

Finally, the proposal to reduce the Council from three to two sessions risks taking the Council in the wrong direction, diminishing rather than increasing its ability to live up to its mandate.

## **2. The Council should better define and track cooperation with Special Procedures.**

What we seek through such proposals is to keep the Council more informed about the work of the Special Procedures and the cooperation that States have with those mechanisms. The Council must have for its consideration detailed information on cooperation.

## **3. Clarified rules on holding briefings and urgent debates**

Briefings by the High Commissioner or her representatives may currently take place; however, in order to facilitate such exchanges of information, the review should spell out that the High Commissioner shall provide a briefing to the Council upon the request of a certain number of member states.

## **4. Better consideration of the human rights records of Human Rights Council Candidates.**

As we have stated before, the Council should find a concrete way to fulfill the directive in UNGA 60/251 to "take into account the contribution of candidates to the promotion and protection of human rights." This could be done by requesting that candidate countries discuss their contributions to the promotion and

protection of human rights, and present their voluntary pledges, during an interactive dialogue in New York before the elections.

Similarly, and in line with our calls for better information being made available, the OHCHR could be asked to prepare a short document summarizing status of accepted UPR recommendations, responses to special procedures, or other indicators of performance on human rights issues. This dialogue should not serve as a replacement for the UPR, and care should be taken to make sure preparations are not so onerous that they discourage candidacies of well-qualified countries.

We recognize that the issue of membership is highly contested here, but we believe such limited proposals, all within the existing framework of 60/251, should be discussed and at a minimum must be transmitted to New York for its consideration in this review process.

**There are other, technical improvements that should be accomplished in this review**

**In the UPR cluster, we must be sure that the outcome satisfies a basic principle of universality.** All those who wish to speak at a review, should be able to speak. We must resolve the speakers list problems. Secondly, sufficient information must be made available about the implementation of all accepted recommendations. As such, the OHCHR should prepare a report to update on the progress since the previous UPR, and the state under review should address it in their report. We welcome proposals along those lines.

**In the complaints procedure cluster, we need to define what is meant by non-duplication between public and private procedures, as the Council would be disserved by a rule or practice that would insulate a State from a public procedure.** We welcome the facilitator's efforts to achieve that goal and will work with other delegations to find an agreed approach, so that all Council Members understand what rules apply to addressing cases and situations. Given the complexity of the issues surrounding the complaints procedure, we also believe an outcome from this review process should task the Council to study the

complaints procedure in greater detail to determine if it requires improvements, modifications, or other action.

**In the Advisory Committee cluster, we continue to maintain that** the Advisory Committee is not functioning properly or effectively and should be abolished. The budget expenditures for the Advisory Committee should be shifted to the Special Procedures. At the same time, we have been willing to discuss proposals that would improve the Advisory Committee and have recognized that if there is no agreement to abolish the Advisory Committee, we must at least improve the expertise and membership of the Advisory Committee to ensure that the individuals working on any given project assigned by the Council are indeed experts in the field or subject matter. To do so, it would be best to ensure that the Advisory Committee becomes a reserve group of internationally recognized experts in specific fields who are available on an ad hoc basis. Although we have indicated such flexibility to consider options for improvement instead of abolishment, we have not seen similar flexibility to negotiate on this point. We urge others to take a fresh look at this issue with a view to discussing a way forward.

**Of a more general nature, we believe the review should improve time management and preparation for sessions. We welcome proposals to**

- Rationalize the calendar
- Ensure early identification and tabling of resolutions
- Establish an agenda item on best practices
- Establish a once annual review of cooperation with the Council and the other human rights bodies and mechanisms under agenda item 5
- limit frequency/periodicity of thematic resolutions on same subject.

I also need to make clear that **the elimination of Item 7 must remain part of the HRC Review discussion.** Agenda Item 7 is the only agenda item targeting one particular country. These issues could be addressed better, more fairly, and in a less politicized manner under Agenda Item 4. Agenda Item 7 creates the impression that the Council is a highly politicized body, and this impression distracts from the important work that the Council has accomplished. No member state has explained how Item 7 meets the principles of impartiality, non-

selectiveness, balance, or the other principles listed in UNGA 60/251 and the IBP Agenda and Programme of Work [HRC 5/1 v(a)]. For this review to be credible, we must continue to consider the status of agenda item 7.

**On a very important procedural point, it will be essential that all views and proposals must be reflected in the outcome that is transmitted to New York.** The package that is transmitted to New York must include not only proposals that reflect consensus but a report containing all the issues that were discussed and not agreed. Delegations will need to demonstrate to their capitals and their domestic constituencies what was sought and ultimately achieved in the review. It will not be sufficient to only send the final outcome document, or domestic audiences will not understand the range of proposals delegations sought and the seriousness of this review.

Thank you, Mr. President.