

**A. EDWARD ELMENDORF  
1901 WYOMING AVENUE NW, APARTMENT 61  
WASHINGTON, D.C. 20009**

July 30, 2020

Mr. Duncan Walker  
Designated Federal Officer  
Commission on Unalienable Rights  
Department of State

Dear Mr. Walker,

As a former American diplomat who was privileged to participate in the 1960s in the work of the UN Human Rights Commission, its Economic and Social Council, and the UN General Assembly's Third Committee, I was pleased to observe the central importance of the Universal Declaration of Human Rights (UDHR) in the conceptual framework and substance of the draft report of the Commission on Unalienable Rights. Yet, in its critical observations about the UN, the Commission almost seems to forget, or at least consciously to ignore, that the UDHR has provided the foundation for the UN's subsequent work on human rights even up to this day.

As it revises and completes its final report, the Commission should recognize that efforts by the United States over many decades have significantly advanced the cause of human rights through the UN. Indeed, US intellectual and political leadership on human rights at the UN has been important in the institutional development of the UN human rights system, including in the establishment of the post of UN High Commissioner for Human Rights and in the special procedures and rapporteurs who do so much to bring human rights violations to light. Sometimes this leadership has been open and public, but often US leadership has been equally or more important behind the scenes through diplomatic action at the UN in New York and Geneva and in embassies around the world. Finally, it is important to recognize that US leadership also takes place in the development of new ideas for the UN's human rights work beyond the government, in universities, think tanks and NGOs.

The Commission's final report should acknowledge that the strength of the UN's human rights machinery lies in its independence. A public or even private critique by the US of country human rights performance may not generate the same seriousness of response as a critique by a UN entity.

While acknowledging that international entities can play a constructive role in monitoring, supervising and promoting human rights, the Commission's draft report asserts that "these institutions are rife with serious flaws: they are frequently subject to interest group capture." The draft report asserts that the quality of the work of international human rights institutions is "hugely variable," and that "even the more serious institutions are often ineffective." These assertions are not documented in the report, and merit revision and nuancing in the final report.

While it is inevitable in any political institution that one or another group will see its priorities as “interest group capture” by others, on the whole the work of the High Commissioner and the UN’s special procedures are less subject to this risk than the UN’s intergovernmental machinery for human rights. The Commission’s final report should recognize this.

In alluding to “self-appointed elites,” “lack of widespread democratic support” and “failure to benefit from the give and take of negotiated provisions,” the Commission’s report devalues them, relative to the highly politicized activities of the intergovernmental organs. Yet, it is precisely in the UN’s intergovernmental organs dealing with human rights that the US intellectual, NGO, and behind the scenes leadership is less strong than in the professional, technical mechanisms derided by the Commission. I urge that this be changed in the final report of the Commission, especially since a revised formulation would more accurately reflect American ideas and interests.

The Commission’s draft report finds: “It is inevitable that nations that are themselves flagrant human rights abusers— such as China, Cuba, Libya, Russia, Saudi Arabia, and Venezuela — participate in, and even dominate, the Council.” Indeed, in any major UN body reflective of the world as it is rather than as we wish it were, it is inevitable that there will be human rights abusers among its members. This does not mean that they “dominate” the work of the Council. The evidence of multiple resolutions dealing with abusers shows that they do not. It is also true that much improvement is needed on the composition of the Council and that this would reduce the participation and influence of human rights abusers. The Commission’s final report should emphasize the importance of open, competitive elections to the Council, and of open and behind the scenes engagement of the US to promote them.

The Commission is certainly correct that the disproportionate emphasis of the UN’s human rights work on Israel reflects poorly on the UN. But the Commission should also recognize that criticism of Israel declined after the US became a member of the Human Rights Council and engaged as such in its work. The Commission seems to argue that the US could have more influence on human rights internationally by withdrawing from the Council rather than engaging in it. Analyses of the work of the Council published by the Council on Foreign Relations<sup>1</sup> and the American Jewish Committee<sup>2</sup> suggest that US action to join the Council increased its influence. Amendment of the report on this point would be appropriate.

The Commission rightly finds that: “The U.S. engagement with the early United Nations and its active role in promoting the UDHR met with strong resistance from those who feared, with reason, that international human rights law would add to pressures against the legal segregation and unequal access to political participation that persisted in the United States.” Now, at a time when this country must find new and different approaches to addressing the no-longer legal but

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<sup>1</sup> Suzanne Nossel, *Advancing Human Rights in the UN System*, Council on Foreign Relations Working Paper, May 2012.

<sup>2</sup> <https://www.jbi-humanrights.org/jacob-blaustein-institute/2016/02/country-specific-scrutiny-by-the-un-human-rights-council-changes-documented-during-us-membership-200.html#more>

still strong segregation and unequal access to political participation, and also their negative impact on the US image and influence overseas, this history becomes a reason for the US to strengthen rather than weaken the United States engagement with international human rights law. I recommend that the Commission revise its report in this spirit and recognize that the “legacy of racial injustice,” which it seems to see as part of the past, persists today and cannot be ignored in analysis and policy recommendations for the international human rights engagement of the United States.

Sincerely yours,

A handwritten signature in black ink, appearing to read "A. Edward Elmendorf". The signature is written in a cursive style with a large initial "A" and a long, sweeping tail.

A. Edward Elmendorf