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DID THE CREATION OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL PRODUCE A BETTER "JURY"?

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**Did the Creation of the United Nations Human Rights Council Produce a Better
“Jury”?**

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Abstract: In 1946, the United Nations (UN) created a body comprised of member states known as the Commission on Human Rights (CHR) to promote international human rights. The CHR was consistently plagued with accusations that it was a bad “jury” because its members frequently had abhorrent human rights records. To remedy this problem, in 2006 a reform eliminated the CHR and replaced it with a new body with modified membership rules known as the Human Rights Council (HRC). It is not clear, however, whether the 2006 reform was effective. Using data on the human rights practices of all members of the UN and the relevant bodies from 1998 to 2013, we evaluate whether the 2006 reform helped fix the CHR’s membership problem. We find that the human rights records of the members of the HRC are better on average than the records of the CHR’s members were, but that the human rights records of the members of the HRC still are worse than the average UN member not on the HRC.

Keywords: United Nations; Human Rights; International Organizations; Human Rights Council; Commission on Human Rights

INTRODUCTION

One of the primary goals of the United Nations (UN) is advancing human rights around the world. To accomplish this goal, the UN has created two successive bodies, comprised of member states, charged with promoting and protecting human rights.

The first of these bodies, the Commission on Human Rights (CHR), was established in 1946 as a subsidiary body of the Economic and Social Council (ECOSOC). Initially created with eighteen member states, the CHR expanded to fifty-three members over the course of its existence.¹ Those members were chosen according to regional groupings, with a certain number of seats assigned to each region.

Many states elected to the CHR, however, were notorious human rights violators. This, critics argued, made the CHR an ineffective vehicle for promoting human rights. For instance, Human Rights Watch Executive Director Kenneth Roth vividly compared the CHR to “a jury that includes murderers and rapists, or a police force run in large part by suspected murderers and rapists who are determined to stymie investigation of their crimes.”² Similarly, UN Secretary-General Kofi Annan wrote, “States have sought membership of the [CHR] not to strengthen human rights but to protect themselves against criticism or to criticize others.”³

In large part to address the problem that the CHR’s members were among the worst human rights violators, the UN undertook a major reform in 2006 (the “2006 reform”) that eliminated the CHR and replaced it with a new UN body called the Human Rights Council (HRC).⁴ The HRC had several new rules regarding how its members would be selected. These included: First, the HRC’s members are chosen by all of the UN’s 193 member states, rather than by the fifty-four countries that make up the ECOSOC. Second, there was a reduction in the body’s number of members, from fifty-three to forty-seven.

¹ Paul Gordon Lauren, *“To Preserve and Build on its Achievements and to Redress its Shortcomings”: The Journey from the Commission on Human Rights to the Human Rights Council*, 29 HUM. RTS. Q. 307, 326 (2007).

² Kenneth Roth, *Despots Pretending to Spot and Shame Despots*, INT’L HERALD TRIB. (Apr. 17, 2001), <http://www.nytimes.com/2001/04/17/opinion/despots-pretending-to-spot-and-shame-despots.html>.

³ U.N. Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶ 182, U.N. Doc. A/59/2005 (Mar. 21, 2005).

⁴ See Steven Seligman, *Politics and Principle at the UN Human Rights Commission and Council (1992–2008)*, 17 ISR. AFF. 520, 520–21 (2011).

Third, unlike in the CHR, members of the HRC are not eligible for immediate reelection after serving two consecutive terms. Fourth, states must be elected individually to the HRC. By contrast, in the CHR, regional groups often followed the practice of putting forward “clean slates” of potential candidates that the ECOSOC would practically have to rubber-stamp.⁵ One thing that did not change, however, is that the HRC still has a fixed number of seats allocated to each regional group.

Although this was a major change to the UN human rights system, it is still unclear whether the 2006 reform actually produced a better jury. To empirically assess this question, we built a dataset that combines information on all members of the UN, the CHR and the HRC from 1998 to 2013 with a recently developed measure of human rights practices. Using this data, we found that the human rights records of the HRC’s members are better on average than they were previously under the CHR, but that the average HRC member still has a worse human rights record than the average UN member not on the council.

I BACKGROUND

The few commentators to discuss the effect of the reforms on the HRC’s membership have largely based their assessments on qualitative observations. For example, Katherine Short, looking at “the first election for membership of the council,” contended that it “showed significant improvements in comparison to the Commission.”⁶ Five years later, Conall Mallory argued that the new membership provisions have “thus far yielded only moderate success.”⁷ Meanwhile, some of the HRC’s critics, such as U.S. Representative Ileana Ros-Lehtinen, argue that because “some of the world’s worst human rights violators” are on the HRC, it remains fundamentally flawed and needs to be reformed or dissolved.⁸

⁵ Conall Mallory, *Membership and the UN Human Rights Council*, 2 CAN. J. HUM. RTS. 1, 30 (2013); see also Lauren, *supra* note 1, at 326.

⁶ Katherine Short, *From Commission to Council: Has the United Nations Succeeded in Creating a Credible Human Rights Body?*, 9 SUR – INT’L J. ON HUM. RTS. 147, 156 (2008).

⁷ Mallory, *supra* note 5, at 1.

⁸ Ileana Ros-Lehtinen, *A Human Rights Council Worthy of the Name*, WASH. TIMES (Dec. 9, 2015), <http://www.washingtontimes.com/news/2015/dec/9/ileana-ros-lehtinen-un-human-rights-council-must-b/>.

To our knowledge, the only attempt to empirically examine the effect of the 2006 reform on human rights records of the members was made by Eric Cox in 2010.⁹ Cox used data from Freedom House’s rankings for “Political Rights and Civil Liberties” to count the number of “free,” “partially free,” and “not free” states in each body in the three years before and four years after the 2006 reform. Cox found that there was a very modest level of overall improvement in the records of members of the HRC as compared to those of the CHR.

However, Cox’s work had several limitations. Because it was written in 2010, there were only four years of data on HRC membership available. Additionally, Cox did not compare the countries that made up the CHR or the HRC to other UN members. Finally, Cox did not look at the ratings for the losing candidates in any of the HRC elections.

Here, we provide a more complete picture of the effects of the transition from the CHR to the HRC. To do so, we have compiled data on the members of the UN and these two human rights bodies from 1998 to 2013—eight years under the CHR and eight years under the HRC. We have also compiled information on the UN regional groups¹⁰ that each country belongs to and the candidates that have stood for election to the HRC since the 2006 reform.

The data on human rights records that we use for this analysis are the “Human Rights Scores” created by Christopher Fariss.¹¹ The Human Rights Scores are a latent measure of repression that combines information from thirteen other data sources on human rights. The Human Rights Scores range from roughly -3 to 3; a score of 0 represents an average human rights record based on all of the years contained in the dataset, and a score of 1 represents a Human Rights Score that is one standard deviation better than average.¹² This measure has the advantage of correcting for changes in reporting standards that

⁹ See Eric Cox, *State Interests and the Creation and Functioning of the United Nations Human Rights Council*, 6 J. INT’L L. & INT’L REL. 87 (2010).

¹⁰ The data on UN regional groupings is available at: *United Nations Regional Groups of Member States*, UNITED NATIONS, <http://www.un.org/depts/DGACM/RegionalGroups.shtml> (last visited Aug. 5, 2016).

¹¹ The Human Rights Scores are presented and explained in Christopher J. Fariss, *Respect for Human Rights Has Improved over Time: Modeling the Changing Standard of Accountability*, 108 AM. POL. SCI. REV. 297 (2014).

¹² For an extended discussion of Fariss’s Human Rights Scores, see Adam S. Chilton & Mila Versteeg, *The Failure of Constitutional Torture Prohibitions*, 44 J. LEGAL STUD. 417 (2015).

potentially bias other sources of human rights data. Given this advantage, this measure has already been widely used in the human rights literature.¹³

II RESULTS

Figure 1 presents our primary results. It plots the average Human Rights Score of UN Members that were not on the relevant human rights body (“Other UN Members”) as well as the average Human Rights Score of UN members that were on the CHR before 2006 or the HRC after 2006 (“HR Members”). Consistent with other research using the Fariss 2014 data,¹⁴ Figure 1 shows that the Human Rights Scores of both groups improved between 1998 and 2013.

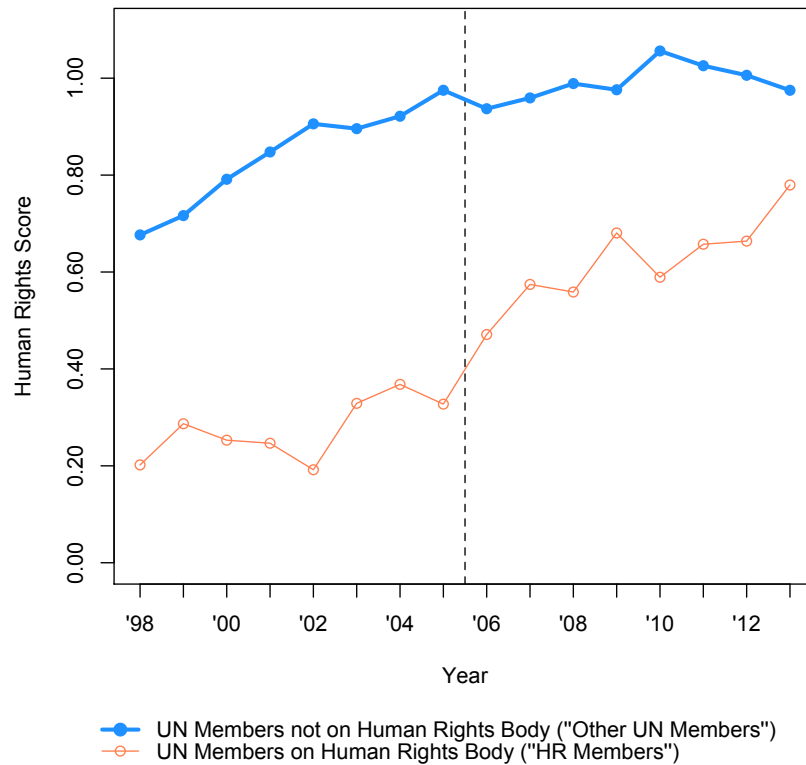
There are two noteworthy results in Figure 1. First, HR Members consistently have worse Human Rights Scores than Other UN Members. This is true both before and after the 2006 reform. Over the entire 16 years of data, the average Human Rights Score for HR Members is 0.45 and the average for Other UN Members is 0.92—a difference of 0.47. To put this in perspective, this is roughly the same as the difference between Moldova (0.46) and Greece (0.97) in 2010.

Second, the 2006 reform has helped to close the gap between HR Members and Other UN Members. From 1998 to 2005, the average difference between these two groups was 0.57. After the 2006 reform, however, this difference closed to 0.37. In other words, the 2006 reform does appear to have made some progress towards the goal of creating a “jury” with better human rights records.

¹³ See, e.g., *id.*; Christopher J. Fariss, *The Changing Standard of Accountability and the Positive Relationship between Human Rights Treaty Ratification and Compliance*, BRIT. J. POL. SCI. (forthcoming), <http://ssrn.com/abstract=2517457>.

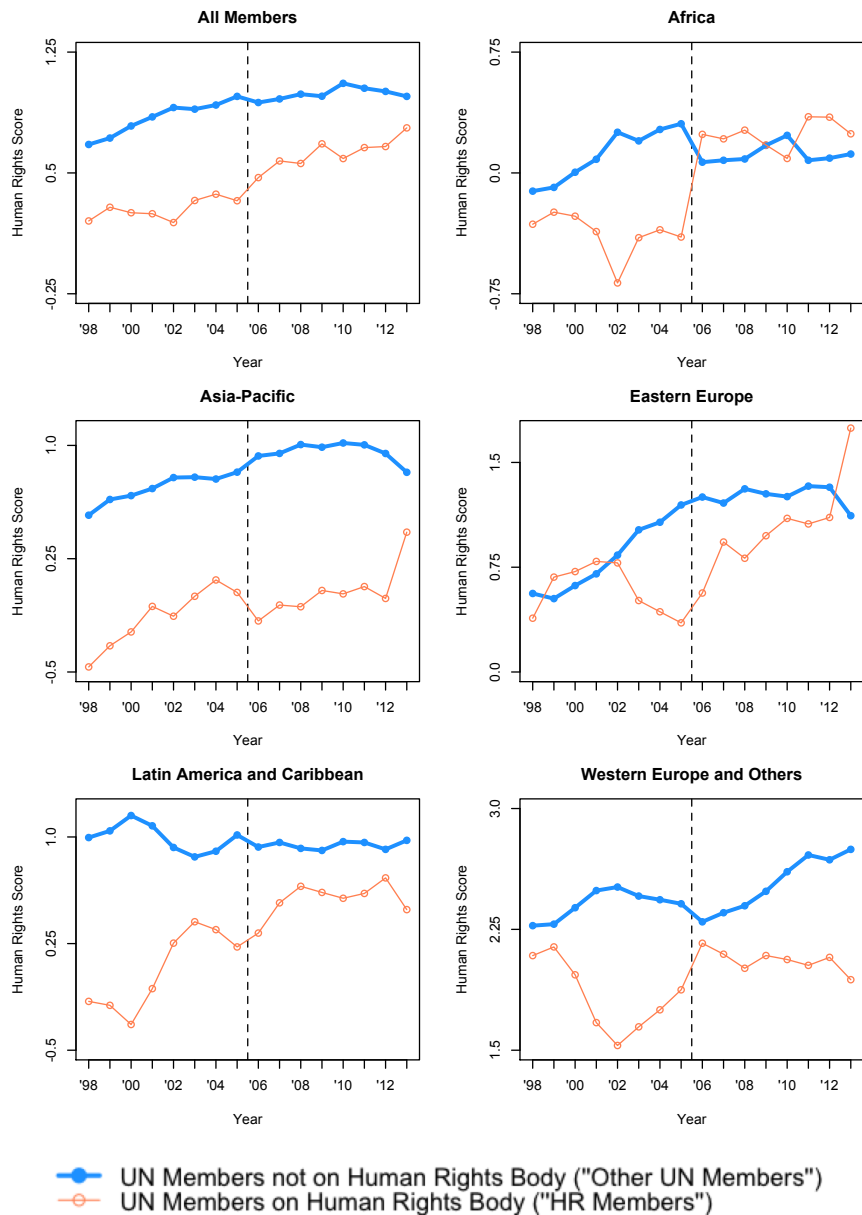
¹⁴ See, e.g., Fariss, *supra* note 13.

Figure 1: Members' Human Rights Records Before & After 2006 Reform



But, as previously noted, despite the progress since 2006, the Human Rights Scores of HR Members are still worse than the records of Other UN Members. Since both bodies' members are chosen by region, Figure 2 explores why this gap persists by disaggregating the results by region (the top left panel recreates Figure 1 and the other 5 panels show the data for each of the regional groups).

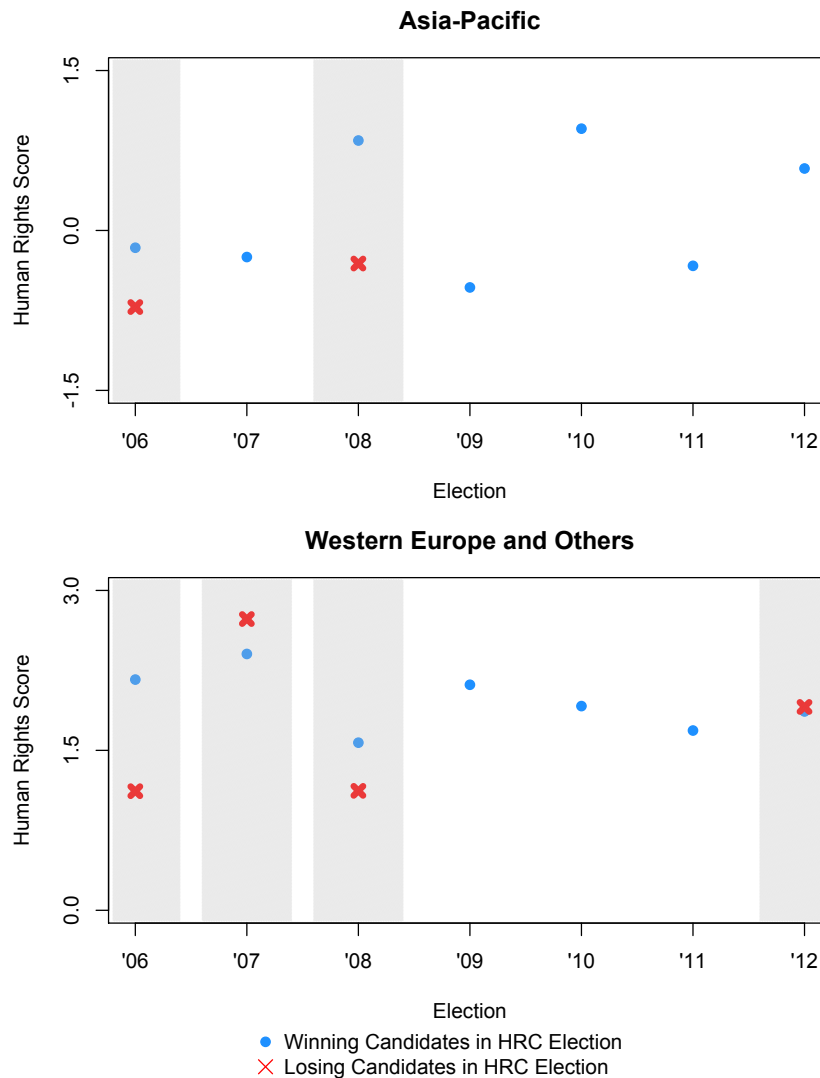
Figure 2: Members' Human Rights Records Before & After 2006 Reform By Region



As Figure 2 shows, since the 2006 reform there has been considerable regional variation in the differences between the human rights records of HR Members and Other UN Members. Within the Africa region, for example, the HR Members have actually had better Human Rights Scores than Other UN Members on average since 2006 (0.24 compared to 0.11). For both the Asia-Pacific and Western Europe and Others region, however, the Human Rights Scores of the HR Members still lag behind those of the Other UN Members from those same regions. Since 2006, in the Asia-Pacific region the Human

Rights Scores for HR Members have been 0.93 lower than Other UN Members from the region, and in the Western Europe and Others region the Human Rights Scores for HR Members have been 0.48 lower than Other UN Members from the region.

Figure 3: Human Rights Records of Candidates in Human Rights Council Elections



The large discrepancies in these two regions raise the question of whether the states chosen for the HRC are the best available candidates in any given year or region. To further explore this issue, Figure 3 plots the average Human Rights Scores for the winning and losing candidates for the Asia-Pacific and Western Europe and Others seats in HRC elections between 2006 and 2012. The gray bars represent contested elections. As the figure illustrates, in many years elections to the HRC simply are not contested.

When they were contested, the candidates that won the elections typically had higher average Human Rights Scores than candidates that lost the elections. In short, the gap in Human Rights Scores between HR Members and Other UN Members cannot be closed further unless members with better records contest the elections.

Table 1: Open Seats & Candidates for HRC Elections by Regions

| Regional Group | Election | | | | | | |
|------------------------------------|----------|-----|-----|-----|-----|-----|-----|
| | '06 | '07 | '08 | '09 | '10 | '11 | '12 |
| Africa | | | | | | | |
| --Open Seats | 13 | 4 | 4 | 5 | 4 | 4 | 5 |
| --Total Candidates | 13 | 4 | 4 | 6 | 4 | 4 | 5 |
| Asia-Pacific | | | | | | | |
| --Open Seats | 13 | 4 | 4 | 5 | 4 | 4 | 5 |
| --Total Candidates | 18 | 4 | 6 | 5 | 4 | 4 | 5 |
| Eastern Europe | | | | | | | |
| --Open Seats | 6 | 2 | 2 | 2 | 2 | 2 | 2 |
| --Total Candidates | 13 | 3 | 3 | 3 | 2 | 3 | 2 |
| Latin America and Caribbean | | | | | | | |
| --Open Seats | 8 | 2 | 3 | 3 | 2 | 3 | 3 |
| --Total Candidates | 11 | 2 | 3 | 3 | 2 | 4 | 3 |
| Western Europe and Others | | | | | | | |
| --Open Seats | 7 | 2 | 2 | 3 | 2 | 2 | 3 |
| --Total Candidates | 9 | 3 | 3 | 3 | 2 | 2 | 5 |
| Total | | | | | | | |
| --Open Seats | 47 | 14 | 15 | 18 | 14 | 15 | 18 |
| --Total Candidates | 64 | 16 | 19 | 20 | 14 | 17 | 20 |

Other regions frequently had uncontested elections as well. Indeed, HRC elections for all regions frequently go uncontested. Table 1 illustrates this by presenting information on the number of open seats and candidates by region for HRC elections from 2006 to 2012. As the results show, in twenty-one of thirty-five regional elections—a full sixty percent of regional elections—the number of candidates was identical to the number of open seats. Given the available candidates, in many cases countries simply do not have the option of electing countries with better human rights records. Of course, countries with better human rights records might not win if they stood for election. These countries may be opting not to run because they have reason to believe they will lose. But the results do demonstrate that there is a significant connection between the remaining gap in

human rights records between HR Members and Other UN Members and the lack of competitive regional elections for the HRC in many years.

III CONCLUSION

Our research suggests that the 2006 reform that eliminated the CHR and replaced it with the HRC did result in members with better human rights records. Nonetheless, the gap in human rights records between HR Members and Other UN Members was not eliminated by the reform; on average, Other UN Members still have better records than the members of the HRC. This gap varies across regions and is in part driven by the fact that uncontested elections are still quite common.

It is important to note, however, that human rights records are not the only measure of a country's fitness to be on the HRC. For example, some small countries with excellent human rights records may lack the diplomatic capacity to serve effectively as council members, and some large countries with poor human rights records may be valuable members because of the perspectives they bring. Considerations such as these suggest that completely eliminating the gap in human rights records between the HR Members and Other UN Members may not be possible or even desirable.