

AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW
CENTER FOR HUMAN RIGHTS
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
STANDING COMMITTEE ON LAW AND NATIONAL SECURITY
RECOMMENDATION

1 RESOLVED, That the American Bar Association supports fundamental reform of the United
2 Nations human rights process; and

3 FURTHER RESOLVED, That the American Bar Association supports the establishment of a
4 Human Rights Council (“Council”) in place of the UN Human Rights Commission
5 (“Commission”) as follows:

- 6 1. The Council should be substantially smaller than the 53-member Commission.
7 Council members should be elected by a two-thirds majority of the General
8 Assembly. The voting procedures should not allow regional bloc voting to
9 compromise the objective of the super-majority voting requirement to screen out
10 unqualified candidates.
- 11 2. The Council should be a standing body of the UN.
- 12 3. All Member States of the UN should be required to cooperate with the Council
13 particularly with its investigative processes.
- 14 4. No Member State which is subject to actions taken under Chapter VII of the UN
15 Charter by the Security Council or under censure of the Human Rights Council
16 should be eligible for membership in the Council, and the Secretary-General
17 should use his good offices to persuade members to select only states with good
18 human rights records for membership.

19 FURTHER RESOLVED, That the American Bar Association recommends that the Council
20 should give priority to fulfilling its mandate to protect and promote fundamental human
21 rights as follows:

- 22 1. Establish a highly professional investigative system, and in particular a strong rapporteur
23 process.
- 24 2. Reject any discriminatory, exclusive agenda items aimed at specific countries.
- 25 3. Focus world attention on conflicts that may result in ethnic cleansing, genocide, or other
26 mass violations of human rights.

27 FURTHER RESOLVED, That the American Bar Association supports the following
28 improvements in the human rights system at the United Nations:

- 29 1. The High Commissioner for Human Rights should continue to develop initiatives
30 to promote the rule of law in post-conflict and transitional states. To assist in that
31 effort, the High Commissioner should appoint a task force of experts to provide
32 advice and assist in identifying and proliferating “best practices,” as well as
33 generating support for actions of the High Commissioner.
- 34 2. The United States and other leading democracies should seek to strengthen and
35 activate the emerging “Democracy Caucus,” so as to promote the effective
36 operation of the Council.
- 37 3. The Member States of the Council should adopt a Code of Conduct similar to the
38 proposed Code in Appendix I affirming their commitment to comply with human
39 rights treaties to which they are party; to designate persons with substantial
40 human rights expertise to head their delegations; to cooperate with Council
41 initiatives; to cooperate with the investigative mechanisms of the Council,
42 including cooperating with rapporteurs appointed to investigate allegations of
43 human rights abuses; and to be subject to sanctions for violations of Article IV of
44 the Code which imposes obligations of good citizenship of the Council upon all
45 Member States.
- 46 4. The capacity of rapporteurs for the Council should be strengthened through the
47 establishment of professional rosters, training manuals, common investigative
48 protocols, increased staff and financial resources, and enhanced professionalism.
49 Coordination with the human rights treaty bodies should be improved and
50 enhanced.
- 51 5. The relationship between the Council and nongovernmental organizations
52 (NGOs) should provide direct NGO access to the Council.
- 53 6. The position of the High Commissioner for Human Rights should be strengthened
54 and the relationship between the Council and the High Commissioner established

55 and regularized in such a way as to provide greater opportunity for the High
56 Commissioner to focus the efforts of the Council. The High Commissioner should
57 issue an annual report on the situation of human rights in the world, and the
58 abuses identified should drive the agenda of the Council.

59 7. The office of the High Commissioner should be given additional funding as
60 needed to support these recommendations.

61 FURTHER RESOLVED, That the American Bar Association encourages the U.S. Government
62 to adopt and promote these recommendations as a program for reform of the UN human rights
63 system.

64 FURTHER RESOLVED, That the American Bar Association will disseminate these
65 recommendations to international and foreign bar associations for the adoption and promotion
66 thereof.
67

67

APPENDIX I

68

PROPOSED CODE OF CONDUCT FOR STATE MEMBERS TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL

69

70 *Whereas* the UN Human Rights Council (hereinafter “the Council”) is the main international
71 body entrusted with the protection and promotion of human rights;

72 *Whereas* the Council has a mandate for standard setting, monitoring, responding to
73 violations, promoting development;

74 *Whereas* these responsibilities of the Council cannot be credibly carried out without
75 exemplary performance of the Member States individually and collectively;

76 *Whereas* the credibility and long term impact of the Council depend on the objectivity and the
77 active respect for human rights of its members;

78 *Now* therefore, the General Assembly adopts the following Code of Conduct for Member
79 States of the Council.

80

Part I

81

Commitments to the Council

82

Article I

83 By virtue of their membership on the Council, Member States confirm their commitment to:

84 (a) perform their obligations arising from international human rights instruments to
85 which they are a party;

86 (b) use their membership on the Council to promote international efforts to protect human
87 rights; and,

88 (c) protect their internal populations from genocide, ethnic cleansing and serious
89 violations of international humanitarian and human rights law.

90

Article II

91 Member States should strive to:

92 (a) maintain an impartial and independent judiciary; and

93 (b) increase public awareness of human rights and the mechanisms available to protect
94 those rights;

95

Article III

96 Member States should demonstrate their support for regional and international human rights
97 institutions of which they are members by:

- 98 (a) performing their duties under the enabling statute or charter of such institutions; and
- 99 (b) ensuring full cooperation with such institutions.

100

Part II

101 **Commitment to Abide by the Principle of Good Citizenship within the Council**

102

Article IV

103 Member States must comply with obligations that arise from membership in the Council by:

- 104 (a) undertaking a voluntary commitment not to abuse “no-action” procedures;
- 105 (b) cooperating with pertinent Council initiatives and recommendations;
- 106 (c) cooperating with the investigative mechanisms of the Council, including cooperating
107 with thematic and country-specific rapporteurs charged with investigating allegations
108 of human rights abuses and responding to their findings;
- 109 (d) appointing as heads of delegation persons with substantial human rights expertise;
- 110 (e) ensuring that all special rapporteurs and other experts on mission receive all
111 privileges and immunities to which they are entitled under the UN Convention on
112 Privileges and Immunities and in keeping with the rulings of UN judicial and
113 administrative bodies; and
- 114 (f) refraining from pressuring the High Commissioner for Human Rights to terminate the
115 employment or mandate of any special rapporteur performing in an unbiased and
116 professional manner as a means of retaliation based on disagreement or discomfort
117 with the conclusions expressed in such individual’s work product.

118 A material breach of Article IV is deemed a serious breach of a Member State’s obligations
119 and may lead to censure, suspension of membership or ineligibility for future membership
120 for one or more terms.