

Game-Changer: the U.S. at the UN Human Rights Council

May 2017

The United States has been a member of the UN Human Rights Council for more than six of the body's 11 years of existence; it began its most recent three-year term of membership on January 1, 2017.

Soon after taking office in 2017, the two senior American officials with primary responsibility for U.S. engagement with intergovernmental organizations – Secretary of State Rex Tillerson and Ambassador Nikki Haley, U.S. Permanent Representative to the United Nations – signaled that the U.S. might change its position on the value of membership on the Council.ⁱ The U.S. government fully participated in the Council's 34th session in February and March 2017, leading to achievements on U.S. priorities including condemning human rights violations in North Korea, Iran, and Syria and speaking out strongly about, voting against, and persuading key allies to object to the Council's adoption of a number of resolutions directed against Israel.ⁱⁱ However, Ambassador Haley has stated that she intends to address the Council during its 35th session which begins on June 6, 2017 and will put its members "on notice" about the need for further reforms.ⁱⁱⁱ

For several years, the Jacob Blaustein Institute has documented the impact of U.S. presence on the Human Rights Council on the body's performance with respect to country-specific scrutiny and its treatment of Israel.^{iv} Our assessment leads us to conclude that the U.S. presence has indeed resulted in accomplishments in key U.S. priority areas, that further reforms to address the Council's enduring flaws are both necessary and achievable, and that U.S. interests – including with respect to Israel – would not be served by a U.S. withdrawal from the world body.

U.S. presence has resulted in scrutiny of many of the world's worst human rights violators

In the years since the U.S. has been engaged at the UN Human Rights Council, it has worked together with allies to ensure that a number of the world's worst human rights violators are identified and subjected to particular scrutiny.^v Without U.S. leadership, many of these countries likely would not have been addressed by the preeminent international human rights body.

Since 2009, at the urging of the U.S., the Council has created or maintained several country-specific independent human rights experts, known as "Special Procedures," including on North Korea, Iran, Sudan, Myanmar (Burma), and Syria. The number of such experts has increased from eight to thirteen since 2009.^{vi} The U.S. also has successfully urged the Council to create other types of country-specific monitoring on countries such as South Sudan, Sri Lanka and Burundi, as well as on non-State terrorist groups like Boko Haram and the so-called Islamic State (Da'esh). These country-specific mechanisms have allowed the Council to shine a spotlight on a wide range of human rights crises that might otherwise go unaddressed by the UN. The country specific reports created by many of these monitors have served as unique sources of information for Member States of the UN General Assembly and UN Security Council, even in cases where political deadlock has prevented these bodies from taking further action to address the violations.

In March 2017, with U.S. support, the Human Rights Council adopted country-specific resolutions on nine countries other than Israel, including on Syria,^{vii} North Korea, Iran, Myanmar (Burma), South Sudan, and Libya. These resolutions extended the Commission of Inquiry on Syria^{viii} and the Commission on Human Rights in South Sudan,^{ix} created an international fact-finding mission on Myanmar (Burma),^x

extended the mandates of Special Rapporteurs on Iran^{xi} and North Korea^{xii} and called on the Office of the UN High Commissioner for Human Rights to report on Sri Lanka^{xiii} and Libya.^{xiv}

Figure 2. Country-Specific & Non-State Actors Addressed by the UN Human Rights Council, 2009-2017

	Special Rapporteur	Independent Expert	Commission of Inquiry	Other Fact-Finding Mission or Investigation	Report by High Commissioner	Human Rights Council Special Session	Human Rights Council Resolution
Afghanistan					✓		✓
Belarus	✓				✓		✓
Boko Haram					✓	✓	✓
Burundi		✓	✓	✓	✓	✓	✓
Cambodia	✓				✓		✓
Central African Republic		✓			✓	✓	✓
Côte d'Ivoire		✓	✓	✓	✓	✓	✓
Dem. Republic of the Congo					✓		✓
DPR Korea (North Korea)	✓		✓	✓	✓		✓
Eritrea	✓		✓				✓
Guinea					✓		✓
Haiti		✓			✓		✓
Honduras					✓		✓
Israel	✓		✓	✓	✓	✓	✓
Iran (Islamic Republic of)	✓						✓
Iraq (ISIL)				✓	✓	✓	✓
Libya		✓	✓	✓	✓	✓	✓
Mali		✓			✓		✓
Myanmar (Burma)	✓			✓	✓		✓
Somalia		✓			✓		✓
South Sudan			✓	✓	✓	✓	✓
Sri Lanka				✓	✓	✓	✓
Sudan	✓	✓					✓
Syrian Arab Republic	✓		✓	✓	✓	✓	✓
Tunisia					✓		✓
Ukraine					✓		✓
Yemen					✓		✓

The Council has promoted universal human rights principles as a result of U.S. engagement

Membership on the UN Human Rights Council has provided the U.S. with an unparalleled opportunity to advance universal human rights principles on a global stage. These dividends have paid off, with the Council adopting resolutions creating and maintaining thematic “Special Procedures” experts on thematic issues including freedom of assembly and association, freedom of opinion and expression, and freedom of religion or belief during the period of U.S. engagement.

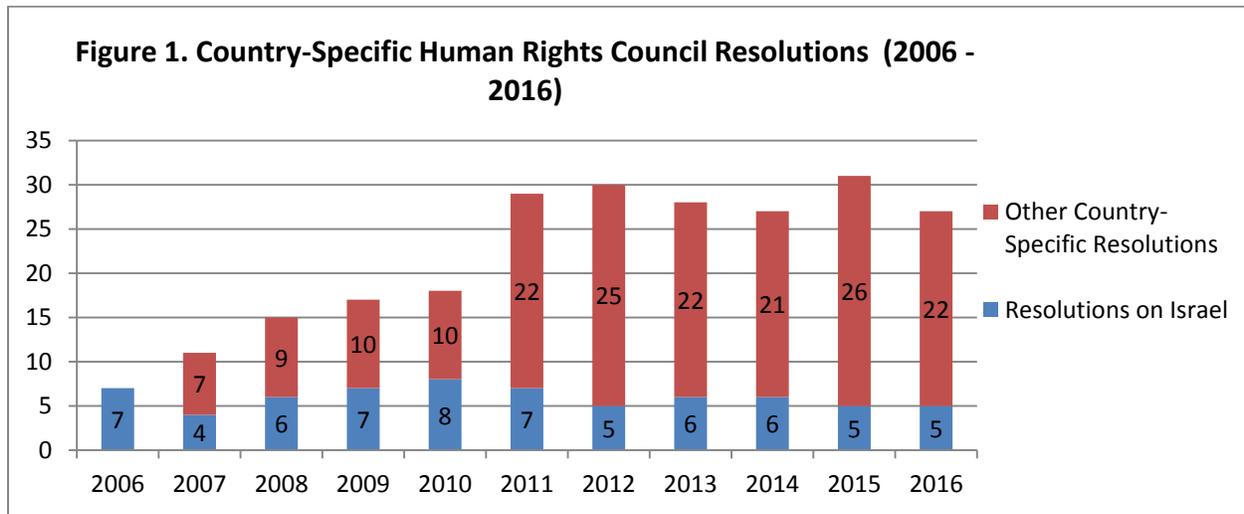
U.S. engagement on thematic issues at the Council has been a game-changer in two respects. First, the U.S. has successfully projected core American values that some repressive governments challenge by championing Human Rights Council initiatives addressing them. For example, at the most recent session of the Council, the U.S. supported a successful resolution clearly reaffirming the right to freedom of religion or belief^{xv} and a U.S.-sponsored resolution on freedom of opinion and expression extended the mandate of a Special Rapporteur specifically tasked with monitoring and reporting on this issue worldwide.^{xvi}

Second, the U.S. has played a critical role in opposing harmful initiatives at the Council that would undermine and eviscerate essential human rights protections. For example, through engagement with the Council the U.S. brought an end to a longstanding series of resolutions entitled “defamation of religions” that actually justified States’ use of anti-blasphemy laws and suggested that the right to freedom of expression does not apply in cases where expression is seen to ‘insult’ a religion..^{xvii} At the most recent Council session, the U.S. successfully opposed a harmful proposal that would have exempted “national liberation movements” from a resolution condemning terrorism and its impact on the enjoyment of human rights.^{xviii} The U.S. also opposed hostile amendments to resolutions that call for States to protect human rights defenders^{xix} and create a forum on democracy and the rule of law.^{xx} A U.S. withdrawal from the Council would embolden States to pursue pernicious agendas to reshape human rights standards and undermine protections that the U.S. has long sought to promote worldwide.

U.S. participation has improved the Human Rights Council’s treatment of Israel

At the Human Rights Council’s March session, the U.S. delegation reiterated its strong opposition to “the many repetitive and one-sided resolutions that run year after year” on Israel.^{xxi} Indeed, the UN Human Rights Council devotes an exceedingly disproportionate proportion of its attention to condemning Israel’s human rights record. No State has ever been subject to more resolutions than Israel in any single year since the Council’s establishment in 2006, and no other nation is the focus of a stand-alone item on the Council’s agenda.

However, the Council’s performance with respect to Israel has improved over time: from 2006 to 2008, the initial years of the Council during which the U.S. was not a member, Israel was condemned in more than half (17 out of 33) of all country-specific resolutions adopted by the body. As a result of U.S. membership, the Israel-specific resolutions adopted by the Council declined, both in absolute terms and as a percentage of all country-specific resolutions.^{xxii} The five resolutions adopted by the Council on Israel in 2016 represented 19% percent of the country-specific resolutions it adopted during the entire year. The Council’s use of its ‘Special Sessions’ procedure also improved with respect to Israel during the period of U.S. membership. By refusing to speak at all under agenda item 7, the U.S. has taken an important step, together with Member States of the European Union, to make it clear that the Council’s agenda item 7 is inappropriate.



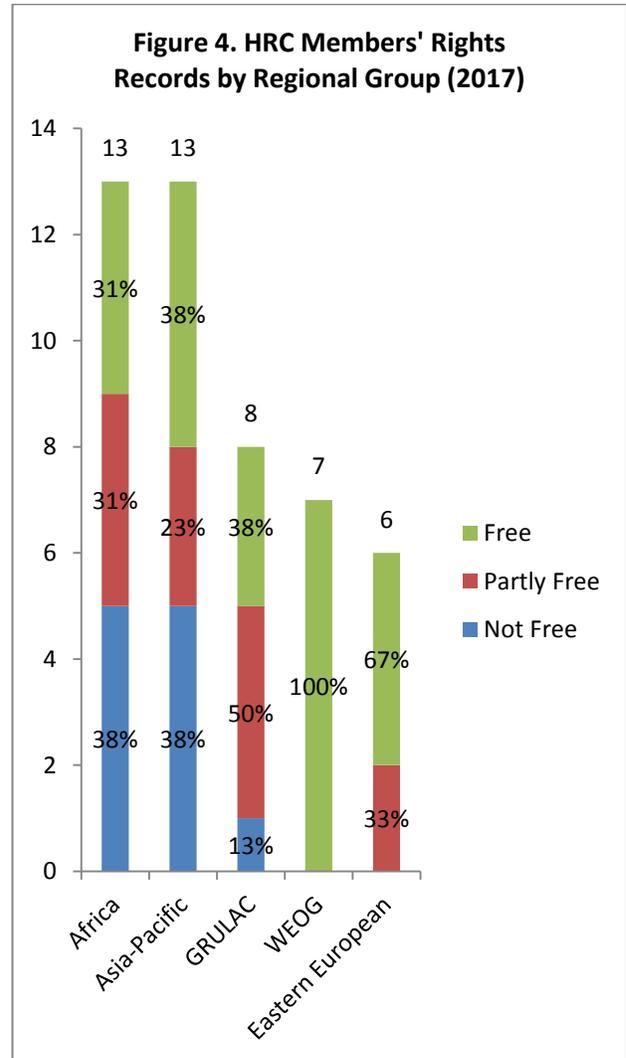
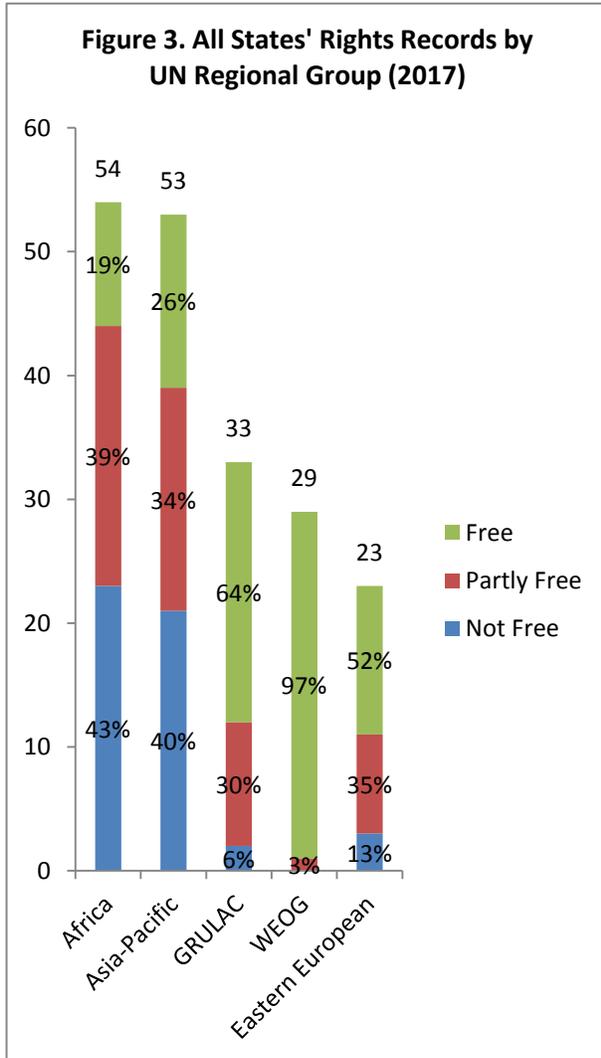
Despite this progress, the Council’s biased treatment of Israel persists, seriously undermining its credibility. At the Council’s most recent session in March 2017, all five of the Israel-specific resolutions proposed by Member States were put to a vote by the U.S. Other States’ support for several of those resolutions was weaker than in past years.^{xxiii} With regard to the Council’s unfair treatment of Israel, new strategies and redoubled U.S. reform efforts will be required in order to achieve further reforms. At the same time, absent U.S. engagement, the Council’s treatment of Israel can be expected to become even more problematic, affecting not only the Human Rights Council but also other UN bodies and international fora, to the detriment both America’s and Israel’s interests.

The Council’s membership is more rights-respecting as a result of U.S. leadership

Concerns regarding the Human Rights Council’s membership provide a further justification for maintaining U.S. participation in the world body. The Human Rights Council has 47 seats which are allocated to States according to regional group quotas. Thirteen seats are allocated to each of the African and Asia-Pacific Groups, eight seats are allocated to the Latin American and Caribbean Group, seven seats to the Western European and Others Group (WEOG), and six seats to the Eastern European Group. There is no rule that conditions States’ eligibility for membership on the Human Rights Council on good human rights records.^{xxiv} This has allowed a number of States that have poor human rights records to seek and obtain seats on the Council, and then to take advantage of their privileged position to vote against key resolutions. While the number of egregious violators has always been significantly less than the number of rights-respecting members on the Council, the problem of Council membership remains a serious one.

Upon deciding to engage with the Human Rights Council, the U.S. indicated that it would undertake to improve the quality of the Council’s membership.^{xxv} Over the course of the past six years, these efforts have paid notable dividends. To date, none of the world’s nine worst human rights offenders as ranked by the NGO Freedom House (Syria, Eritrea, North Korea, Uzbekistan, South Sudan, Turkmenistan, Somalia, Sudan, and Equatorial Guinea), has ever been elected to the Council.^{xxvi} This is no small achievement, as three of these countries – Syria, Eritrea, and Somalia – obtained membership on the Human Rights Council’s predecessor institution, the UN Commission on Human Rights. So too did Afghanistan, Belarus, the DRC, Iran, and Zimbabwe, none of which have ever been members of the Human Rights Council, despite attempts by several of them to seek election.

Despite the fact that the Council’s regional quotas make it highly unlikely that the body would ever be composed primarily of countries ranked “free” or “partly free” by Freedom House, the rights records of the members of the Human Rights Council for 2017 generally outperform the average for their regional groups, with more “free” countries and fewer “not free” countries than might be expected serving as Council members from all but one group.



Through public and private diplomacy such as calling on States to refrain from voting for candidate countries with poor human rights records and in encouraging rights-respecting members of their regional groups to challenge rights-abusers in competitive elections, U.S. engagement has played a key role in ensuring this outcome.

In the coming years, the U.S. should take advantage of opportunities to promote better membership of the Human Rights Council, both in Geneva and at the UN General Assembly where votes on States’ candidacies take place. The U.S. should, as a matter of priority, discourage regional groups from the practice of running “clean slates” of States seeking election to the Council. It could also redouble its efforts to encourage rights-respecting countries to seek election to the body, as a great number of States that have been ranked “free” by Freedom House have never served on the Council, and yet hail from regional groups that are frequently represented at the Council by States with poor rights records. For

example, only four of the States ranked “free” by Freedom House in the Asia-Pacific Group have ever served on the Human Rights Council^{xxvii} and 13 members of the Latin American and Caribbean States Group that are ranked “free” have never served on the Council.^{xxviii} Moreover, in the event that a Council member’s rights record seriously deteriorates during its term of membership, the U.S. should appeal to the UN General Assembly to suspend its Council membership, as it has done successfully once before, for Libya.

Of course, America’s efforts to improve the Human Rights Council’s membership would be greatly diminished if it were to renounce its own seat on the Council.

U.S. engagement with the Human Rights Council has been a “game changer” for the world body, and redoubled commitment to reform could bring significant improvements

The Human Rights Council is the preeminent intergovernmental body tasked with advancing human rights, which has been a central U.S. priority since the founding of the United Nations. As described above, U.S. engagement with this body has resulted in concrete improvements to its practices and its membership, and has provided the U.S. with a singular opportunity to persuade an institution with global reach to recognize the principles the U.S. holds most dear.

Also as reflected above, the U.S. efforts to date have not been sufficient to correct practices by the Council that undermine its legitimacy. The most glaring of these is the body’s consistent anti-Israel bias, as manifested by its highly disproportionate treatment of Israel as compared to other countries to which it devotes particular attention.

Yet, as reflected above, U.S. disengagement from the Council would not correct this situation, nor minimize the damage that could be inflicted on U.S. interests, on Israel, and on human rights standards. Victims of human rights violations who look to the Council for recognition and support would lose the essential boost they have received from the active U.S. presence.

As Madeleine Albright once said, “engagement does not mean endorsement.”^{xxix} Rather, U.S. engagement presents an opportunity to carry out much-needed reform that will allow the UN Human Rights Council to realize its potential to provide international protection to victims of violations. Continued U.S. presence at the Council would also signal to the world that America remains committed to human rights values and the rule of law, both at home and abroad.

ⁱ While Secretary Tillerson stressed that the Council would need to undergo “considerable reform” to justify continued U.S. participation, Ambassador Haley raised concerns about its membership. Colum Lynch and John Hudson, “Tillerson To U.N. Rights Council: Reform or We’re Leaving” March 14, 2017, <http://foreignpolicy.com/2017/03/14/tillerson-to-u-n-rights-council-reform-or-were-leaving>. Council on Foreign Relations, “A Conversation with Nikki Haley”, transcript, March 29, 2017, <http://www.cfr.org/diplomacy-and-statecraft/conversation-nikki-haley/p38970>.

ⁱⁱ Office of the Spokesperson, “Key Outcomes of U.S. Priorities at the UN Human Rights Council’s 34th Session, March 27, 2017, <https://www.state.gov/r/pa/prs/ps/2017/03/269155.htm>.

ⁱⁱⁱ Council on Foreign Relations, “A Conversation with Nikki Haley”, transcript, March 29, 2017, <http://www.cfr.org/diplomacy-and-statecraft/conversation-nikki-haley/p38970>.

^{iv} “The Impact of US Engagement on the UN Human Rights Council’s Country-Specific* Scrutiny”, March 31, 2017, <http://www.jbi-humanrights.org/jacob-blaustein-institute/2017/03/the-impact-of-us-engagement-on-the-un-human-rights-councils-country-specific-scrutiny-.html>

^v In 2006, the Council adopted 7 country-specific resolutions, 100% of which were on Israel. In contrast, in 2016 the Council adopted 27 country-specific resolutions, only 5 of which were on Israel (19%).

^{vi} Office of the High Commissioner for Human Rights, “Current and Former Mandate-Holders for Existing Mandates (valid as of 31 December 2016),” available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/Currentmandateholders.aspx>. Note that the

mandate of the Independent Expert on the situation of human rights in Haiti was discontinued in March 2017 (*Situation of human rights in Haiti*, A/HRC/PRST/34/1).

^{vii} At the Council's most recent session, States adopted another resolution on Syria (The human rights situation in the Syrian Arab Republic, A/HRC/RES/34/26), in which the Council extended the mandate of the COI for one year and recommended that the General Assembly submit the reports of the COI to the Security Council for appropriate action. In April 2017, during its presidency of the Security Council, the U.S. circulated the Syria COI report as an official UN Security Council document.

^{viii} *The human rights situation in the Syrian Arab Republic*, A/HRC/RES/34/26.

^{ix} *Situation of human rights in South Sudan*, A/HRC/RES/34/25.

^x *Situation of human rights in Myanmar*, A/HRC/RES/34/22.

^{xi} *Situation of human rights in the Islamic Republic of Iran*, A/HRC/RES/34/23.

^{xii} *Situation of human rights in the Democratic People's Republic of Korea*, A/HRC/RES/34/24.

^{xiii} *Promoting reconciliation, accountability and human rights in Sri Lanka*, A/HRC/RES/34/1.

^{xiv} *Technical assistance and capacity-building to improve human rights in Libya*, A/HRC/34/38.

^{xv} *Freedom of religion or belief*, A/HRC/34/10.

^{xvi} *Freedom of opinion and expression: mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/RES/34/18.

^{xvii} Human Rights Council resolution 16/18 (2011).

^{xviii} *Effects of terrorism on the enjoyment of all human rights*, A/HRC/34/8.

^{xix} *Mandate of the Special Rapporteur on the situation of human rights defenders*, A/HRC/RES/34/5.

^{xx} *Human rights, democracy and the rule of law*, A/HRC/RES/34/41.

^{xxi} U.S. Explanation of Votes on Item 7 Resolutions, As Delivered by Head of US Delegation to Human Rights Council Bill Mozdzierz, Human Rights Council 34th session, Geneva, (Mar. 24, 2017), <https://geneva.usmission.gov/2017/03/24/u-s-explanation-of-votes-on-item-7-resolutions/>

^{xxii} The term "country-specific" is used to designate resolutions and special sessions that draw attention to particular human rights violations as opposed to thematic human rights issues. This term includes resolutions and special sessions that address specific countries and those that are primarily aimed at monitoring human rights abuses perpetrated by specific non-State actors, such as armed terrorist groups.

^{xxiii} The Council adopted five resolutions related to Israel at the 34th session on the Council: on ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory (A/HRC/RES/34/28), adopted by a vote of 30 in favor, 2 against and 15 abstentions; on the right of the Palestinian people to self-determination (A/HRC/RES/34/29), adopted by a vote of 43 in favor, 2 against and 2 abstentions; on human rights situation in the occupied Palestinian territory (A/HRC/34/30), adopted by a vote of 41 in favor, 2 against and 4 abstentions; on Israeli settlements (A/HRC/RES/34/31), adopted by a vote of 36 in favor, two against and nine abstentions; and on human rights in the occupied Syrian Golan (A/HRC/RES/34/27), adopted by a vote of 26 in favor, 3 against and 18 abstentions.

^{xxiv} However, the UN General Assembly resolution creating the Human Rights Council states that its members "shall uphold the highest standards in the promotion and protection of human rights." See *Human Rights Council*, UN Doc. A/RES/60/251 at para 9 ("Decides also that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership...").

^{xxv} See Mission of the United States in Geneva, Switzerland, "Ambassador Keith Harper Press Statement: Opening Day of the 26th Human Rights Council (June 2014), <https://geneva.usmission.gov/2014/06/10/ambassador-keith-harper-press-statement-opening-day-of-the-26th-human-rights-council/>.

^{xxvi} As defined as the countries with the lowest aggregate scores for political rights and civil liberties in Freedom House's 2017 *Freedom of the World Report*, available here: https://freedomhouse.org/sites/default/files/FH_FIW_2017_Report_Final.pdf

^{xxvii} These are Japan, Mongolia, South Korea, and India. Cyprus, Tuvalu, Micronesia, Marshall Islands, Palau, Nauru, Samoa, Vanuatu, Tonga, and the Solomon Islands are all ranked "Free" and have never served on the Council.

^{xxviii} These are: Barbados, Dominica, Saint Lucia, Bahamas, Saint Vincent and the Grenadines, Grenada, Saint Kitts and Nevis, Belize, Antigua and Barbuda, Trinidad and Tobago, Suriname, Jamaica, and Guyana.

^{xxix} George Lardner, Jr. "Clinton to be 'Forceful' in China, Aide Says," *Washington Post* (June 15, 1998).