

From Commission to Council: More Than Just a Name Change?

Comment: The New UN Human Rights Council

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On 15 March, 2006, the United Nations (UN) General Assembly passed a historic resolution, replacing the Commission on Human Rights (Commission) with the Human Rights Council (Council). This decision was driven largely by the failures of the Commission over the last 60 years.

Why the need for change?

Membership and Size of the Commission: Members of the Commission were appointed as government representatives, rather than as individual experts on human rights. This membership model transformed the Commission into a highly politicised body. It is unfortunate that the new Council has replicated this model. The size of the Commission, 53 members, made the Commission inefficient and subject to extensive diplomatic wrangling. The new Council has reduced the membership to only 47. The Commission included states such as Zimbabwe, Sudan, and Saudi Arabia as members. The Commission ceased to have any legitimacy when those entrusted with advancing human rights were, in many cases, the ones perpetrating the worst human rights atrocities.

Complaint Processes – 1235 and 1503 Procedures: Resolution 1235 authorised a member state to initiate a complaint against another state, and Resolution 1503 allowed individuals, and non-governmental organisations (NGOs), to make confidential complaints about “situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights”. The limited language of these resolutions meant that the Commission could only consider ‘situations’ of ‘gross systematic violations’, and between 1972-2006, only 84 states were subjected to scrutiny.

Non-action Procedure: The non-action procedure set out in Rule 65, Article 2, allowed a state to call for a vote, which, if passed, blocked any further discussion on that subject. In recent years members were using this procedural rule to stifle debate on any issue which was too uncomfortable.

Role of NGOs: As states with poor human rights records became members of the Commission, NGO participation was limited. It is positive that the participation of NGOs at the 1st session of the Council appears to have been constructive.

Special Procedures: The Commission’s ‘Special Procedures’ involved the appointment of independent experts including Special Rapporteurs to investigate human rights violations and increase awareness of specific human rights issues. The Commission began to turn on the Special Rapporteurs as reflected in the dismissal of the special rapporteur on racism in 2002 for referring to a document which the Organization of the Islamic Conference regarded as blasphemous. The Council should retain the Special Procedures, but treat them with the respect and integrity they deserve.

Does the new Council promise genuine reform?

Membership, Size and Structure of the Council: Unlike the Com-

mission, the Council is a subsidiary organ of the General Assembly. States are elected to the Council if they have a bare majority of votes in the General Assembly. This may not be enough to block notorious human rights abusers from gaining membership. The idea of requiring members be elected by a two third majority should be revisited. Although the Council is only marginally smaller than the Commission it has a different geographical spread. Of the 20 new states, the majority are African (11), with the next largest group coming from the Asian region. Neither Australia, nor the United States are members.

The Council’s Work to Date: In this first session, the Council encouragingly adopted the draft International Convention for the Protection of All Persons from Enforced Disappearance and it accepted the draft Declaration on the Rights of Indigenous Peoples. The Council recommended that the General Assembly adopt both of these documents.

Peer Review: The Council is required to review the human rights records of all countries, beginning with its own members. As such, membership can no longer shield member states from an examination of their own human rights record. This peer review process should involve active dialogue and participation by all relevant stakeholders (including NGO’s) and be undertaken by independent human rights experts to avoid the politicisation of the process. Guidelines are required to assist the Council in responding to a negative review of a state’s human rights practices. The system will be useless if a critical review is without consequence.

What further reforms are needed?

The Council must develop specific selection criteria to ensure that states guilty of committing serious human rights violations are not eligible for membership. The Council meets more frequently than the Commission: ten weeks a year plus special sessions if required. However, given the number of human rights atrocities even this does not allow for comprehensive analysis and debate. A year round standing body would allow for proactive, rather than reactive, responses to human rights crises.

The Council has an extremely broad mandate - to protect and promote human rights. It is suggested that the Council be split into two separate, but complementary, bodies. The existing Council could retain the functions relating to investigating and enforcing human rights abuses, and a new body, could be responsible for developing norms and promoting human rights generally. This will result in each area receiving more attention and will enable more states to become involved in important human rights organs of the UN. Early signs indicate that the Council is adopting some of the Commission’s negative practices. If the Council is to realise its full potential, there must be a concerted effort to avoid the conduct that led to the Commission losing credibility and eventually being shut down.

An expanded, referenced version of this article is available on request.