



U.N. REFORM WATCH no. 3

Analyses from Associates of CENTER FOR U.N. REFORM EDUCATION

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REFORM FORUM REPORT

September 22, 2005

THE PROPOSED HUMAN RIGHTS COUNCIL: PROSPECTS AND OBSTACLES

On September 8, 2005 **Peggy Hicks, Craig Mokhiber, Harris Schoenberg, Thomas Schweich, and Martin Thüemmel** addressed the 58th Annual United Nations Department of Public Information Conference for Non-Governmental Organizations in New York at a workshop sponsored by the Center for U.N. Reform Education. Ms. Hicks is the Global Advocacy Director at the Human Rights Watch; Mr. Mokhiber serves as the Deputy Director of the High Commissioner for Human Rights Office in New York; Mr. Schoenberg teaches Human Rights at New York University; Mr. Schweich is the Chief of Staff at the United States Mission to the United Nations; and Mr. Thüemmel serves as a First Secretary at the German Mission to the United Nations. The discussion was moderated by **Walter Hoffmann**, the President of the Center for U.N. Reform Education. The following is a rapporteur's summary of their remarks.

Our discussion will be based on the latest version of the Draft Outcome Document available to us at this time, dated August 10, 2005, which stated that member states "decided to establish a *standing* Human Rights Council, as a *subsidiary organ* of the General Assembly to be based in Geneva, in replacement of the Commission on Human Rights." The states have proposed that the council "comprise between 30 to 50 members, each serving for a period of three years, to be elected directly by the General Assembly, by a two-thirds majority" and that they should consider transforming the council to a *principal organ* within five years. How will this body be different from the Human Rights Commission? Should there be a criterion for membership? What should be the role of the High Commissioner for Human Rights vis a vis the Human Rights Council? Will the Human Rights Council procedures retain, expand or eliminate the access rights that NGOs now have? Current United Nations human rights body, the *commission*, is made up of 53 states, sits for annual session of six weeks in Geneva and is a *subsidiary organ* of the Economic and Social Council (ECOSOC). ECOSOC is one of the six *principal organs* of the United Nations, has 54 member states and elects the members of the Commission of Human Rights.

[Editor's note: On September 16, 2005, world leaders adopted a final outcome document in which they have agreed to create a Human Rights Council in principle, but deferred the details to be decided later by a General Assembly working group.]

PEGGY HICKS

In the course of its last session, the Human Right Commission failed to either discuss or take action on Human Rights violations in China, Chechnya, Iran or Zimbabwe to name a few. Furthermore, attempts by the *Human Rights Watch* to get a limited statement regarding the access by Special Rapporteurs to the United States Detention Facilities met with no response. The crisis of credibility afflicting the commission stems partly from the membership on the commission of states with dismal human rights records, and partly from politicization of the discussions. In that atmosphere, it is not easy for the commission to agree on where the human right violations occur. On the other hand, there are aspects of the commission which have been very successful and should be preserved. NGO participation on the commission has proven very effective and has been welcomed in a way that it is not, in other parts of the United Nations. *Special Procedures* [which allow the input and support of country specific human rights experts] are another aspect of the commission that needs to be kept.

In order to assure the effectiveness of the new body, we have to address several key issues. First, the establishment of a council as a year-round *standing* body is a necessity. Currently, the commission meets for a short six-week period, during which states make empty promises only to disregard them later. For instance, a state can release political prisoners before the session and arrest them again the day after the session ends. In addition, a standing body would be able to address urgent human rights issues, whenever they occur. Second, the council should have a strong mandate to consider any and all human rights violations. Third, a peer review system and its linkage to the membership may be helpful in reducing the politicization mentioned earlier. *Human Rights Watch* suggests that the countries which serve on the council should be the first subjects of peer review. This would encourage states with acceptable human right records to apply for membership. Finally, the proposed two-thirds majority vote in the General Assembly should also help accomplish the goal of establishing a representative and credible membership in the proposed new body.

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MARTIN THÜMMEL

In the context of the overall U.N. reform perspective, the Human Rights Council proposal has made real progress in the course of the negotiations. A few months ago, many member states were opposed to the creation of such a council, currently all will agree to it at least in principle. However, the negotiations have not been going well regarding the specifics and the real challenge going forward is to avoid cosmetic reform. Many important issues, such as the size of the body and the voting procedures, have not been decided. With regard to the budgetary implications, clearly the new body would cost more, but the resources should be made available as all five of the top contributors to the United Nations budget - United States, Japan, Germany, France and United Kingdom- are extremely in favor of it.

As far as peer review, many Southern countries fear that the new body might be dominated by countries from the North and the negotiators have not been able to allay their concerns. There are those who would wish to get on the council to avoid criticism, and are therefore reluctant to submit their human rights records to such scrutiny. Much is still in flux in the negotiations and the goal is to keep as much detail in the text as possible. An open-ended working group is not likely to achieve any more than the present negotiations. There will be trade-offs before the final outcome, and success in the human rights field depends significantly on how other issues such as trade, development, and disarmament will play out. However, everyone is in agreement that the Human Rights Council is one of the main deliverables of the summit and if it fails, it will be hard to say that the summit has succeeded.

THOMAS SCHWEICH

The United States has been a leader in supporting reform of the human rights apparatus of the United Nations. With respect to the mandate, we want an action-oriented council, one that is not so much tied down by thematic debate but dealing with actual problems that are arising everyday. By "action-oriented", we do not necessarily mean a new council referring countries to the Security Council for sanctions, but a strategy for assisting the High Commissioner for Human Rights in sending diplomatic missions and flexibility in wide range of options. The question of peer review has met with skepticism from a variety of delegations, including our own. We are not actually opposed to the peer review concept, as long as it does not divert time, attention and resources away from the more country specific, action-oriented plan.

On the structure of the organization, United States wants it to start out as a *subsidiary body* of the General Assembly. My government has not ruled out the idea of a new charter body, but we don't think we ought to wait years for a charter amendment, to start improving the situation. Having it start out as subsidiary organ of the General Assembly also helps to allay the concerns of the Group-of 77 countries, that some of the reforms might take away authority from the General Assembly [established in 1964, Group-of 77 is the largest Third World coalition in the United Nations]. If we put this body under the General Assembly, it really strengthens the General Assembly rather than weakens it. Another good reason to start the council in the General Assembly is that we will have the chance to see how well it works before making it a principal charter body.

On membership, United States wants regional allocations with a small body, preferably with 20 members. I think our latest position is that we are up to 30, but I don't think we will be able to accept anything more than that. The most effective bodies around here and around the world are the smaller ones. The bodies get less and less effective as they get over 20 members. Some countries want to see a Human Rights Council composed of 51 members, some 191 members. That means that there will be compromises on membership. If we were a body of 20, we would expect the typical regional allocations - five seats for Africa, four for Asia, four for Latin America and the Caribbean, four for Western Europe and Other Countries and three for Eastern Europe. There is a lot of resistance to any kind of standards because there is a fear that certain countries will be sitting in judgement of other countries. The only standards we want are objective ones - if you are subjected to sanctions by the United Nations Security Council on human rights violations or Commission of Inquiry, you would not be eligible. There are two ways to make a distinction between countries which do not abide by human rights standards for political reasons and those who do not have the means to do so. One is the minimum objective standards mentioned earlier. The second is the election process, where countries will have a chance to explain and defend their human rights records. The United States also believes that NGOs have played a valuable role under the existing arrangement, so we think a very strong NGO presence would be an essential part of the new council. The United Nations Human Rights budget is no more than 3% of the total budget. How are we going to get more

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money? We advocated a review of mandates in other areas and an elimination of those that are least productive. The money saved might be used as a source of funding for the new proposed body.

CRAIG MOKHIBER

There is no doubt that the Commission on Human Rights is in crisis. But the notion that the United Nations Human Rights Commission so far has been nothing more than some "duplicitous club of violators" is neither fair nor historically correct. The United Nations Commission on Human Rights, in spite of a lack of resources and a very serious shortage of political will, has had a very positive history. It is the only global, international forum that meets annually to discuss all human rights issues, with the active participation of member states, NGOs, independent experts and academics. For 60 years it has set standards, established monitoring mechanisms, undertaken investigations and published reports on civil, political, economic, cultural and social rights violations, in all parts of the world. If the goal is to now make it stronger, successfully reforming and renewing the human rights mechanisms will necessitate a depoliticized approach.

The starting point must be to reject the "good guys vs. bad guys" analysis. Every government in the world has human rights problems of varying degrees. At different levels of severity, different rights are at risk [some have poor records on civil and political rights, some on economic and social rights]; some countries lack the political will; some lack the means to address human rights issues, but the United Nations has to attend to them all. Making the council a *standing* body is an absolutely vital issue. It should also be a *principal organ*, so that the human rights pillar will be brought up to the same level as the U.N's peace, security and development pillars. Preserving the *Special Procedures* and meaningful NGO participation will be essential, and it must have a broad mandate to promote and protect all human rights. We hope that every member of the council will be subjected to review, and that the council should also deal with urgent and gross situations. The negotiating process is very difficult and is not always motivated by pure, human rights motives. But the commission has never been motivated by pure human rights motives and has, in spite of that, made an important contribution. This inter-governmental process is not different. Some thought has been given to the idea of electing the members of the council from the international human rights experts, but this will not change the fact that the commission is, and the council will be, a political body made up of member states. We also have the *Treaty Bodies*, composed of independent, elected experts. But these do not obviate the need for a more effective political body. There is a proposal on the table that if the council is established, it might have some kind of chamber of experts attached to it, but the profile of the council remains, necessarily, that of a political body -- with all the benefits, and all the costs, that this implies.

HARRIS O. SCHOENBERG

Within this house there are two forces. One is composed of those who are trying to build the kind of world described in the U.N. Charter. The other, seeking a different world, would undermine the foundations of this house in the process. The Commission on Human Rights started with luminaries like Eleanor Roosevelt, Rene Cassin, and Charles Malik. It is now compared to a family restaurant that has been transformed into a biker bar. The problem is the current assertion that the U.N. derives its legitimacy from its universal membership, rather than from its allegiance to charter values. This assertion makes understandable and justifies the U.N.'s tolerance and respect for the views of the worst violators of human rights. Such violators should not benefit by election to a coveted position on a human rights body. Yet, persistent violators of human rights have been nominated by regional groups and elected to the commission, where they have used their influence to frustrate action rather than to promote the enjoyment of rights, or to attack governments with far better human rights records than they have. In one case, 80% of a region's members are dictatorships. Not surprisingly, at the informal consultation on a human rights council, which the commission held on June 20th of this year, these governments and their allies came out opposed to most reforms. They engage in incitement and consistently obstruct the work of the commission, and the democracies that go along with them are also to blame. Election by a two-thirds majority of the General Assembly of a small number of members, ideally 18, to a standing human rights council, followed by a peer review system, might be able to weed out the persistent human rights violators. But unless these rules are established from the beginning and governments commit to send to a human rights council only high caliber people like a Danilo Türk from Slovenia or a Bertrand Ramcharan from Guyana, the new body will be no different than the one it replaced.

This Special Reform Forum Report was prepared by Niamh Gibbons. Ms. Gibbons is a Research Assistant at the Center for U.N. Reform Education.

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