

2006

Will the Human Rights Council Have Better Membership than the Commission on Human Rights?

Lawrence C. Moss

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#)

Recommended Citation

Moss, Lawrence C. "Will the Human Rights Council Have Better Membership than the Commission on Human Rights?" Human Rights Brief 13, no. 3 (2006): 5,11.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

Will the Human Rights Council Have Better Membership than the Commission on Human Rights?

by Lawrence C. Moss

HUMAN RIGHTS WATCH observed in April 2001 that countries with poor human rights records were seeking seats on the United Nations Commission on Human Rights (Commission) not to strengthen human rights but instead to protect themselves from criticism. “Imagine a jury,” wrote Executive Director Kenneth Roth, “that includes murders and rapists, or a police force run in large part by suspected murders and rapists who are determined to stymie investigation of their crimes.”¹

The issue entered U.S. public consciousness in May 2001 when the United States lost a bid for reelection to the Commission for the first time since its creation in 1948, largely as a result of ineffective campaigning. In 2001 the “Western European and Other Group” within the UN, of which the United States is a part, nominated four countries for the three seats allocated to its group and the members of the UN Economic and Social Council (ECOSOC) elected the other three countries (Austria, France, and Sweden). When Sudan won automatic election the same year on the slate nominated by the African Group, which fielded only as many candidates as there were African seats, the results were widely condemned in the U.S. media.

The presence of countries with egregious human rights records was only one of the reasons the Commission often failed to adopt strong condemnations of human rights abuses. Even democratic governments are often reluctant to join in condemnation of other countries when doing so could harm the many other interests and ties — economic, political, security, regional, cultural, or religious — they have with those countries. The U.S., for instance, which frequently sought resolutions concerning China, Iran, Sudan, and Cuba, at other times refused to support condemnation of gross violations in countries with which it had important security relationships, most notably Saddam Hussein’s Iraq in 1989.

Win or lose on resolutions, the Commission was the premier political forum in which to confront governments with reports of serious violations and highlight the need for corrective action. Still, the presence of some serious violators was highly damaging and much diminished the credibility of the Commission.

The abolition of the Commission and its replacement by a new UN Human Rights Council (Council) provides a singular opportunity to raise membership standards. It may seem intuitive, but it was never before stated that the members of the UN’s premier human rights body should be states with good human rights records, which would use their membership to promote human rights around the world. The resolution establishing the new Council calls on its members to “uphold the highest standards in the promotion and protection of human rights” and requires the General Assembly, in electing Council members, “to take into account the contribution of countries to the promotion and protection of human rights and their voluntary pledges and commitments made thereto.”²

Under Article 22 of the United Nations Charter, in elections to the Security Council, the General Assembly should particularly consider the contributions of candidate countries to the maintenance of international peace and security. In fact, countries running for the Security Council do campaign based on their contributions to UN peacekeeping missions. There is now a similar standard for the Human Rights Council.

The Council resolution also sets a higher procedural bar to obtaining membership. Secretary-General Kofi Annan proposed in his March 2005 report, “In Larger Freedom: Toward Development, Security, and Human Rights for All,” that the new Council be a principal organ of the United Nations, elected by a two-thirds vote of the General Assembly, in the hope that the worst abusers would not be able to obtain a super-majority.³ But the General Assembly adopted only a new requirement that an absolute majority — 96 of the 191 UN members — must affirmatively vote for a country to elect it to the new Council.



Courtesy of the UN Liaison Office of the Seventh-Day Adventist

The closing meeting of the Human Rights Commission on March 27, 2006.

Still, this is a much higher threshold than the old system, which provided virtually no opportunity to challenge the election of inappropriate states. Previously ECOSOC’s 54 members, themselves chosen by the General Assembly on a very political basis with no particular regard for human rights, usually selected the 53 members of the Commission on Human Rights by merely rubber-stamping closed regional slates, slates that had been proposed by the five regional groups within the UN and that included only as many countries as there were seats.

The new system is therefore very different. Although regional groups may still nominate a closed slate if they choose, each individual member of that slate must win an absolute majority — 96 members — of the full UN membership, who must affirmatively write in that country’s name on a ballot. A regional group cannot therefore alone dictate the choice of members from its region. This gives supporters of human rights a much greater

continued on page 11

Lawrence C. Moss, an international lawyer based in New York, is Special Counsel for UN Reform at Human Rights Watch. He previously served as Chair of the Special Committee on the United Nations of The Association of the Bar of the City of New York and as the Association’s Representative to the United Nations.

rights be determined in advance by new Council members or by a subsidiary expert body? Unfortunately, these issues are all still to be determined.

Finally, there is the question of what will happen if universal review determines that a country is a gross violator of human rights. What if the country examined does not agree to change its practices in accord with the recommendations from the universal peer review? Will the procedure provide in those or other circumstances that the country concerned is ineligible for membership in the Human Rights Council? And if it does not, will this body have any more professionalism and credibility than its predecessor? These are serious challenges to be met by the new members of the Council as they design this new form of country scrutiny.

ENDNOTES: Scrutinizing Countries

¹ Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All* (Mar. 21, 2005), available at <http://www.un.org/largerfreedom/contents.htm> (accessed Apr. 11, 2006).

² Report of the Secretary-General's High-level Panel on Threats, Challenges and Changes, *A More Secure World: Our Shared Responsibility* (Dec. 2, 2004), available at <http://www.un.org/secureworld/> (accessed Apr. 11, 2006).

³ United Nations Human Rights Council Explanatory Note, *The Secretary-General's Proposal* (Apr. 2005), available at <http://www.globalpolicy.org/reform/hrc/04explanatory.htm> (accessed Apr. 11, 2006).

⁴ *The Secretary-General's Proposal* at <http://www.globalpolicy.org/reform/hrc/04explanatory.htm>.

It is certainly daunting to begin a new human rights body of 47 countries that is charged with examining practices in all 194 Member States. There are many concerns that states will have to take into account as they shape this new procedure in the Council's first year. To be effective, however, the new Council should focus on those situations where standards are most egregiously violated, as well as those where its intervention will have greatest efficacy. If this means agreeing on core indicators to be examined throughout the universal review process, it may be the most successful way to launch this new procedure. It would certainly help focus the new body on egregious abuses while also avoiding the duplication that will inevitably result if the new body tries to combine the work of all the specialized mechanisms of the UN's human rights program. *HRB*

⁵ *Id.*

⁶ United Nations High Commission for Human Rights, *Commission's Structures Are Sound, Problems Can Be Surmounted, High Commissions Says As Main Human Rights Body Ends Session* (Apr. 25, 2003), available at <http://www.unhchr.ch/hurricane/hurricane.nsf/0/997CB87D98CAB294C1256D16002B1276?opendocument> (accessed Apr. 11, 2006).

⁷ U.N. Doc. A/RES/60/251, ¶ 15 (Mar. 15, 2006), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement> (accessed Apr. 11, 2006).

WILL THE HUMAN RIGHTS COUNCIL HAVE BETTER MEMBERSHIP *continued from page 5*

opportunity to build a coalition of states that will decline to support the election of inappropriate candidates.

The resolution establishing the new Human Rights Council also contains provisions that should affirmatively discourage abusive states from wanting to join. It requires that members cooperate with the Council, including its special investigators who can go into countries and investigate human rights situations. Members of the old Commission often refused to grant such access. Further, Council members will be the first reviewed under the new system of periodic review of the human rights records of all UN members. This new system should also address the problem of double standards by ensuring that even the most powerful states, including the permanent five members of the Security Council, will now be subject to scrutiny. Yet another new provision allows for the first time the suspension of members of the Council who commit gross human rights violations during their term of membership.

In a world organization of universal membership, the challenge is to encourage the election of countries to a Human Rights Council with better-than-average records, those that set an exam-

ple in their regions and can help promote human rights and pull up the standards of the world. The new election procedures and standards for membership provide the tools for countries and non-governmental organizations that support human rights to work for much improved membership on the new Council.

The test will come very soon. As of this writing, the election of all 47 initial members of the new Council will be held in the UN General Assembly in New York on May 9, 2006.⁴ Human Rights Watch already has indications that countries seeking election to the Council accept the new standards and are beginning to campaign based on their contributions to human rights. The UN has established a website to post the pledges and commitments that candidate countries make for the promotion of human rights⁵ and various non-governmental organizations will post further information about candidate countries.⁶ The hope is to change the political culture surrounding the election so that this new body will be led by countries truly committed to promoting human rights. *HRB*

ENDNOTES: Will the Human Rights Council Have Better Membership

¹ Kenneth Roth, *International Herald Tribune*, "Despots Pretending to Spot and Shame Despots" (Apr. 17, 2001).

² U.N. Doc. A/RES/69251 (Mar. 15, 2006), available at <http://www.un.org/Depts/dhl/resguide/r60.htm> (accessed Apr. 10, 2006).

³ Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All* (Mar. 21, 2005), available at <http://www.un.org/largerfreedom/contents.htm> (accessed Apr. 11, 2006).

⁴ Whether initial members get terms of one, two, or three years will be determined by lot; in subsequent years only one-third of the Council membership will be elected each year to three-year terms.

⁵ UN General Assembly 60th Session, *Elections & Appointments*, "Human Rights Council Elections," available at <http://www.un.org/ga/60/elect/hrc/> (accessed Apr. 11, 2006).

⁶ Human Rights Watch, *United Nations*, "Human Rights Council," available at http://hrw.org/doc/?t=united_nations_hrc (accessed Apr. 11, 2006).