



Human Rights in Transition

QUNO Briefing Paper

The UN has created a brand new human rights body. On 15 March 2006, the General Assembly adopted resolution A/Res/60/251 by an overwhelming majority to establish a Human Rights Council. Elections for the new 47-member intergovernmental body will be held on 9 May, with the first session set to take place in Geneva from 19 –30 June 2006. In this briefing paper we look at a human rights system in transition.

Breakdown of the 2006 General Assembly vote:

In favour: 170

Against: 4 (USA, Israel, Marshall Islands and Palau)

Abstentions: 3 (Democratic People's Republic of Korea, Iran and Venezuela)

The End

The same General Assembly resolution spelt the end for the UN Commission on Human Rights. Formally, it will cease to exist on 16 June. In practice, the Commission held its final meeting on the afternoon of Monday 27 March. This brief 'funeral service' was a sad ending for a much-maligned body that has made an outstanding contribution to the promotion and protection of human rights— starting with the drafting of the Universal Declaration of Human Rights (adopted in 1948).

Key Achievements of the Commission on Human Rights include:

- Almost all the main international human rights texts have been the work of the Commission, including the Covenants on Civil and Political and on Economic and Social Rights, and the Convention on the Rights of the Child and its Protocols.
- The Commission created human rights monitors (known as 'special procedures') to consider and report on the situation of human rights in specific countries and on specific issues globally, such as the Special Rapporteur on Democratic People's Republic of Korea, and the Special Rapporteur on Torture (for a full list of the existing and former mandates, see the website of the Office of the UN High Commissioner for Human Rights: www.ohchr.org)
- The Commission identified and debated issues which increased the understanding of the depth and breadth of the concept of human rights and its application in everyday life, such as violence against women, the rights of indigenous peoples or the right to health. Sometimes these activities led to the creation of new 'special procedure' mandates and sometimes to new standards or guidelines, or both.
- The Commission provided a forum and focus of attention for the world's human rights community – governmental, non-governmental, national human rights institutions, other UN and regional intergovernmental bodies or agencies – to come together and interact both formally and informally. During formal sessions, many 'side events' were organised (usually by non-governmental organisations) to supplement official proceedings, and allow all actors to build networks and strategic partnerships.

Despite these and many other achievements, the Commission was considered by some to be 'discredited' to the extent that it had to be replaced. It is important to understand why these views took shape, and how they led to institutional reform of the principal international human rights body.

Of course, it is always easy to criticise, and in particular to criticise bodies made up of Government representatives. Indeed, the Commission failed to adequately address many situations of serious human rights violations: certainly, it did not stop the genocide in Rwanda (but neither did anyone else).



Behind much of the negative rhetoric is the fundamental problem that Governments do not like bodies that criticise them. Thus, when the Commission was doing the task of promoting and protecting human rights most effectively by drawing attention to the shortcomings of Governments, it was disliked by those governments; when it failed to do so, it was criticised by human rights advocates and the media for its silence.

Much of this criticism was borne of ignorance or misguided – sometimes wilfully so – with attention given *only* to whether or not the Commission adopted resolutions on certain named countries, irrespective of whether such resolutions would be helpful in improving the human rights situation in those countries, and leaving aside all other aspects of the Commission's work. In fact, the biggest problem for the Commission was the increasing willingness of its members to refuse to accept its mandate and role, and therefore also the legitimacy of the procedures which it created, despite the fact that the Commission comprised those same Governments.



Setting sun or new dawn? The Office of the High Commissioner for Human Rights (OHCHR) prepares to service the new Council from Palais Wilson on the lakefront. Photo: N. Tyabji 2006

The Beginning: will the Council be an Improvement?

There are certainly some improvements that the new Human Rights Council will bring. Firstly, it is mandated to meet for at least three sessions per year (10 weeks in all), rather than the one session of the Commission. This should enable it to give more consistent attention to the state of human rights. Secondly, it has a higher status in the UN hierarchy than the Commission did, being directly under the UN General Assembly (to be reviewed after 5 years, with the possibility of raising its status to that of the General Assembly and the Security Council). And all States, including the Council members themselves, will undergo a 'periodic review' of their human rights record.

However, almost all the important details have yet to be worked out. Endless questions remain: what will be the agenda? How will it divide up its work and address the issues and countries that need its attention? How will the 'special procedures' and non-governmental organisations relate to it in practice? How will the periodic review of countries' human rights records be undertaken? and so on...

The drafting, negotiation and adoption of the General Assembly resolution was a tough process of international decision-making, and inevitably the result is a compromise; but the real work is only just beginning.

The Challenge

The Commission's 'special procedures' were created in response to the internal repression in dark years of military regimes in Argentina, Chile, Peru and Uruguay. Recently these countries paid tribute to them:

"The special procedures have played an important role in the positive evolution of the human rights situation in Latin America."

From a joint paper submitted by 10 Latin American and Caribbean States to OHCHR, October 2005

It is regrettable that those earliest mandates – on disappearances, summary executions, torture as well as religious intolerance – are as needed now as they were then, together with the most recent addition, on the protection of human rights and fundamental freedoms in our tense of age of counterterrorism. The Council must demonstrate that it can be as effective with the current 'human rights violators' as the Commission was with the earlier ones.