

## **The U.N. Commission on Human Rights: A Crisis of Legitimacy and Possible Solutions**

**By Kenneth Roth, Executive Director, Human Rights Watch**

When critics of the United Nations build their case against the world organization, Exhibit A is often the fact that Libya, with its long record of human rights abuse, was recently allowed to chair the U.N. Commission on Human Rights, or that Sudan was allowed to evade condemnation and stay a Commission member even as it was committing crimes against humanity in Darfur. One can try to explain that Kofi Annan and the U.N. Secretariat had nothing to do with asking the fox to guard the chicken coop, that the U.N. in this case was merely a conference room where the governments of the world met. But as so often happens when governments behave irresponsibly within the corridors of the United Nations, public opinion assigns the United Nations, not the governments, the lion's share of the blame. It is an unfortunate fact that, to a large extent, the U.N.'s reputation rises or falls with the conduct of its member states. Appropriately, the Secretary-General's High-Level Panel on Threats, Challenges and Change cited the Commission on Human Rights as a major part of the U.N.'s reputation problem, and the Secretary-General himself addressed the problem in his follow-up report, "In larger freedom: towards development, security and human rights for all."

The U.N. devotes enormous attention to influencing the behavior of its member states outside the institution. U.N. efforts at peacekeeping, mediation, human rights defense, development, refugee protection, and humanitarian relief, to name just a few, all involve efforts to influence the behavior of governments. But when it comes to governmental behavior within the halls of the U.N. itself, the organization seems to pay no attention at all. This indifference has come back to haunt the institution at the Commission on Human Rights.

Victims around the world look to the Commission to investigate serious human rights violations and generate pressure to stop them. Many governments – even powerful ones such as China or Russia – go to great lengths to avoid the sting of criticism by the foremost human rights body of their peers. Yet in recent years, the Commission has become a victim of its own success. Abusive governments have figured out that the best way to avoid embarrassing condemnation is to join the Commission and try to steer it in less troublesome directions. The process used to select Commission members has made this tactic relatively easy.

Governments from around the world vie to join the U.N.'s many political bodies because they provide opportunities for prestige, influence, and funding. For example, a reasonably law-abiding government from the developing world might put a high premium on joining one of the U.N.'s development-oriented committees, since membership is seen as improving the government's chances of gaining access to development funds. But abusive governments facing the possibility of condemnation by the Commission on Human Rights often value avoiding censure the most. These rights abusers tend to flock to the Commission.

As the various regional groups meet to propose candidates for their allocated committee slots, governmental preferences play a large role in resolving the horse-trading that goes into the selection process. Moreover, regional groups typically propose “clean slates” containing the same number of candidates as openings for governments from that region, leaving governments from other regions with no further say in the matter. (Even rights-respecting governments often like to propose clean slates for their own regions, since it minimizes the need to cut deals with less savory governments.) As a result, a significant number of the candidates for the Commission on Human Rights, especially from Africa, Asia, and the Middle East, are confirmed rights abusers, dedicated to frustrating efforts to defend human rights.

This dynamic has seriously undermined the Commission. Today, nearly half of its 53 members are determined mainly to prevent the Commission from accomplishing its purpose. In recent years, they have included a virtual *Who's Who* of human rights violators: Algeria, Bhutan, China, Cuba, Egypt, Indonesia, Kenya, Libya, Malaysia, Saudi Arabia, Sudan, Togo, Vietnam, and Zimbabwe. An effective Abusers' Defense Society, they vote consistently to block any serious effort to investigate or condemn their own human rights record or abuses by fellow despots. Apart from ritualistic condemnations of Israel or a handful of disfavored governments, no abuse, in the eyes of these governments, is too big to be ignored. The atrocities in Darfur are a perfect illustration.

The result is a Commission increasingly paralyzed in its efforts to protect human rights. Resolutions seeking to condemn highly abusive governments are voted down. Some resolutions do not even get that far but are blocked after “no action” motions – essentially censorship motions – before even being discussed on the merits. New human rights standards are watered down or derailed. “Reforms” are proposed for the purpose of weakening the Commission's various investigative bodies – the experts, special rapporteurs, and working groups. Sometimes, despite all odds, the Commission succeeds in condemning an abusive government, and this stigma remains intense, but the cards are increasingly stacked against such denunciations. Even leading international human rights organizations have begun to ask whether it is worth devoting significant resources to this uphill battle.

Kofi Annan initially addressed the problem before the 58<sup>th</sup> session of the U.N. General Assembly. He said: “There has been public disquiet over the fact that Governments accused of gross violations of human rights are admitted to membership in the Commission. There has been concern about the tone of discussion in the Commission and the fact that it does not address certain situations of grave violations of human rights. These are all important questions that I hope will be seriously addressed....”

Following his lead, the High-Level Panel came to a similar conclusion: “We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.”

Kofi Annan in his “larger freedom” report reiterated these findings and went further. He spoke of the “credibility deficit” created by the Commission which “casts a shadow on the reputation of the United Nations system as a whole.”

Unfortunately, rather than address the problem head-on, the High-Level Panel recommended throwing in the towel. Because it felt that upgrading the members of the Commission would be too difficult, it recommended universal membership on the Commission – turning it into another General Assembly. But that capitulation would hardly solve the problem. At the most recent session of the General Assembly, its universal membership refused to even discuss (adopted no-action motions for) Belarus, Sudan, and Zimbabwe – a record even more pitiful than the Commission’s.

The good news is that the spectacle of abusive governments undermining the Commission is neither inevitable nor irreversible, but overcoming it will require dedicated effort on the part of those who believe the U.N. should play an important role in defending human rights. Various proposals for reforming the Commission have been advanced, but the most promising ones aim to encourage the regional blocs to select members for the Commission that have at least a modicum of interest in promoting human rights and to upgrade the behavior of governments once they join the Commission.

Sergio Vieira de Mello, the U.N. High Commissioner for Human Rights before his tragic death in Iraq, endorsed this approach in a report to the Commission: “Membership of the Commission on Human Rights must carry responsibilities. I therefore wonder whether the time has not come for the Commission itself to develop a code of guidelines for access to membership of the Commission and a code of conduct for members while they serve on the Commission. After all, the Commission on Human Rights has a duty to humanity and the members of the Commission must themselves set the example of adherence to the international human rights norms - in practice as well as in law.”

The most effective approach, though also the most radical in terms of the U.N.’s culture, would be to impose minimum criteria for membership on the Commission. There is no reason in law or logic why membership on the Commission should not be limited by U.N. rules requiring governments to demonstrate at least a basic commitment to respect human rights in their own conduct and to promote human rights in their relations with other governments. However, a strong tradition pervades the institution of treating all governments equally on membership matters. With the exception of the permanent positions on the Security Council, every U.N. member state has at least a theoretical right to join any U.N. political body. That tradition makes sense for the General Assembly, which by definition is composed of all member states. It need not prevail for other U.N. bodies, but changing it would be a major undertaking.

As a more modest step, Human Rights Watch has proposed that governments seeking to join the Commission make a public membership pledge. This approach might be implemented without attempting the difficult task of adopting new membership rules, if peer pressure and example were used instead. Candidate and existing members would be asked to make a pledge embracing all or most of the following:

- A commitment to cooperate fully with the Commission's investigative mechanisms, including by issuing a standing invitation for these investigators to visit the member's country.
- Presentation of a national plan of action on human rights, as required by the 1993 Vienna World Conference on Human Rights.
- Ratification of all or most major human rights treaties, and the review of reservations to treaties already ratified with the aim of eliminating restrictive ones.
- Completion of all outstanding reports to U.N. treaty bodies.
- A commitment in all voting and deliberations on Commission resolutions to be guided by the Commission's purpose to promote and protect human rights.
- A commitment not to table or vote for any "no action" motion on country resolutions.

Variations on these criteria could certainly be offered, but the point is to come up with some basic attributes that demonstrate at least minimal commitment to abide by human rights standards, and to make those attributes an important, if informal, part of the selection process.

Given the current composition of the Commission, it is virtually inconceivable, for now, that it would require such pledges of itself. Rather, informal pressure will have to be used to make such pledges the norm, beginning with rights-respecting members of the Commission making such pledges themselves. The power of such example has already had some effect in the area of standing invitations for U.N. investigative bodies. Roughly four years ago, Human Rights Watch started urging governments to issue such standing invitations. Today, more than fifty have done so.

Yet even with the power of peer pressure, reforming the Commission is no easy feat. It is for that reason that Kofi Annan in his "larger freedom" report recommended a more radical solution: replacing the Commission altogether with a new Human Rights Council. The Council would be a smaller, standing body, meeting year-round and selected by the General Assembly by a two-thirds majority.

Why would the Council avoid the membership problems of the Commission? It wouldn't necessarily, but there are various steps that can be taken to increase its chances of success. Perhaps most important, we should learn a lesson from the process used to select judges for the International Criminal Court and not assign all Council seats to particular regional groups. In the U.N. system, it is probably necessary that regional groups are guaranteed a significant proportion of the Council seats, but it would be important to have some meaningful number of the seats left open for any state. Since regional blocs will want to maximize their influence by capturing as many of these at-large seats as possible, each will have an incentive to put forward candidates who are capable of securing the votes of two-thirds of the General Assembly membership. That could have an upgrading effect on the rights-respecting qualities of the candidates – much as it did in the process for selecting ICC judges.

In addition, whether the Commission remains or the Council takes its place, rights-respecting governments should use criteria like the ones outlined above to put pressure on regional groups to select more appropriate candidates. That might involve encouraging rights-respecting governments from key regions – governments such as Botswana, Fiji, or Mali – to become candidates. Financial support or technical assistance to rights-respecting governments that lack the resources to maintain an expanded Geneva mission would be useful in this regard. Other positive and negative inducements might be used as well to encourage governments in a region to vote for better-qualified candidates. So far, this selection process operates entirely below the radar screen. The only way to change it is to raise its visibility significantly – and the costs of continuing business as usual. Voting for membership on the U.N.’s human rights body should become an important topic in bilateral discussions. Groups of rights-respecting states, such as the community of democracies, might vow to vote only for other rights-respecting governments. If the Commission continues, or if the Council doesn’t leave at-large seats to be filled, it would be helpful to discourage regional blocs from presenting “clean slates,” so as to preserve the option of non-regional governments voting against abusive candidates.

One challenge may be the U.S. government, which shares Kofi Annan’s assessment of the problem but may be tempted to water down membership pledges because of its own problematic human rights record. For example, because the United States has not ratified three of the leading six human rights treaties, it may discourage the use of pledges aimed at ratification. The United States might also be reluctant to forsake its practice of opposing certain human rights initiatives for self-serving reasons, such as its efforts initially to block a resolution urging the campaign against terrorism to be waged consistently with international human rights standards or its resistance to the creation of an optional body to investigate alleged violations of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Given Washington’s enormous influence, its lukewarm support for these proposals is a problem, but this is obviously not the first time in recent years that the U.S. government has forsaken its historic role at the forefront of promoting human rights. As in other circumstances, the larger community of rights-respecting governments should be capable of proceeding on its own.

Solving the membership problem of today’s Commission or tomorrow’s Council is not all that is required to improve the U.N.’s record in protecting human rights. Today, the Commission meets regularly for only six weeks a year. Absent the politically difficult step of holding a special session, this limited calendar puts the Commission in the irresponsible position of having to say, for example, “We’re very sorry that your genocide is happening in July. Please come back in March when we’re next meeting.” Urgent action, let alone a preventive role, is obviously difficult under such a pre-modern schedule.

Moreover, the Commission’s six-week session is so chock full of agenda items that superficiality has become the norm. There is little time to consider the reports of U.N. investigators or to genuinely inquire into abusive practices under review. Following up on compliance with past resolutions seems almost inconceivable. A permanent body, meeting regularly year-round, as Kofi Annan envisions for his proposed Council, would

transform the U.N.'s leading human rights body into a far more deliberative, and effective, one.

But even a better calendar won't fix the troubling performance problem until the membership problem is resolved. Human rights represent one of the highest ideals around which the U.N. was founded. It is thus sadly ironic that the U.N.'s handling of human rights so jeopardizes its reputation as an enlightened and effective institution. It is essential that whatever deliberative body the U.N. uses to address human rights, whether the Commission or a new Council, it is composed of governments committed to respecting the international standards that the U.N. has pledged to uphold. That is a critical first step toward reaffirming the legitimacy of the United Nations as a body that can transcend its members' parochial interests to serve the values of humanity that inspired its founding.