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 murderers and rapists, or a police force run in large part by suspected murders and rapists who are determined to stymie investigation of their crimes.”

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.”

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.

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

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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


5 Id.

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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 example 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. 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 rights and various non-governmental organizations will post further information about candidate countries. 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.

ENDNOTES: Will the Human Rights Council Have Better Membership

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.