

2006

## Scrutinizing Countries: The Challenge of Universal Review

Felice D. Gaer

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



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

---

### Recommended Citation

Gaer, Felice D. "Scrutinizing Countries: The Challenge of Universal Review." Human Rights Brief 13, no. 3 (2006): 9-11.

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](mailto:kclay@wcl.american.edu).

# Scrutinizing Countries: The Challenge of Universal Review

by Felice D. Gaer

IN EARLY 2005 UNITED NATIONS Secretary-General Kofi Annan complained of the “declining credibility and professionalism” of the Commission on Human Rights (Commission), the preeminent intergovernmental human rights body named in the UN Charter. Annan proposed to eliminate the Commission, which he claimed cast “a shadow on the reputation of the United Nations system as a whole[.]”<sup>1</sup> because states sought membership on the Commission “not to strengthen human rights but to protect themselves against criticism or to criticize others.”<sup>2</sup> The Secretary-General further remarked that the Commission had been hurt by “politicization of its sessions” and “selectivity of its work.”<sup>3</sup> One way to correct this, he declared, would be to create “an explicitly defined function as a chamber of peer review ... to evaluate the fulfillment by all states of all their human rights obligations.” The process, he noted, would entail states to “voluntarily enter into discussion”<sup>4</sup> on human rights in their own countries and be based on a system that is “fair, transparent and workable, whereby states are reviewed against the same criteria.”<sup>5</sup>

Ongoing international concern over country scrutiny has buoyed human rights supporters and troubled countries with poor human rights records. Because human rights have become a more important aspect of the UN’s work since the end of the Cold War, many more countries have come under its scrutiny, which often led to accusations against the Commission of “politicization” and “selectivity.” Of course, the Commission on Human Rights was never a court; it was a political body charged with gaining cooperation from other states to improve human rights. The late High Commissioner Sergio Viera de Mello identified the hypocrisy of accusing the Commission members of “politicization” before his untimely death in Iraq:

Most of the people in this room work for governments or seek to affect the actions of governments. That is politics. For some to accuse others of being political is a bit like fish criticizing one another for being wet. It has become a way to express disapproval without really saying what is on our mind.<sup>6</sup>

In the end the Annan proposal went forward in large part because the proceedings of the Commission had become an embarrassment to his office. The growing dominance of what Human Rights Watch called the “violators club” had become too well publicized and had been exacerbated in recent years by Libya’s election as Chairman of the Commission, Sudan’s election to the body during the height of the Darfur conflict, and the coalescence of states in vocal opposition to the Commission’s “special procedures.” Annan’s solution was to try to change the dynamic of the body altogether. The question now is whether the proposed “uni-

versal review” or “peer review” procedure mandated in the UN resolution that created the new Human Rights Council (Council) can actually change the dynamics of this “politicized” body. Unfortunately, the heightened expectations that it can have not been accompanied by a realistic look at what is required to do so.

General Assembly Resolution 60/251, which established the Human Rights Council, demanded that it should

Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation of the universal periodic review mechanism within one year after the holding of its first session.<sup>7</sup>

These are relatively uncharted waters. Only a small number of specialized international bodies use peer review mechanisms and those that do have developed resource-intensive and often complex procedures, such as communications and fact-finding visits, to



In an historic vote, the General Assembly created the new UN Human Rights Council.

ensure that the process remains unbiased. As the experiences of other bodies, including the Organisation for Economic Co-operation and Development, the International Labour Organization, and the African peer review mechanism employed by New Partnership for Africa’s Development (NEPAD), has shown, the process is highly resource-intensive in terms of expense, time, and staffing expertise.

Although much attention has focused on the size of the new Human Rights Council, its membership, and its meeting dates and venue, little has been said about peer review itself. Its primary goal

Felice D. Gaer is Director of the Jacob Blaustein Institute for the Advancement of Human Rights. She was appointed a Public Member of six U.S. delegations to the UN Commission on Human Rights (1994-1999) and is a member of the Committee against Torture, a UN treaty body on which she has served since 2000.

must certainly be to promote compliance with international obligations, but other goals might include improved policy-making, exchange of information, learning from best practices, promotion of transparency, and opening of opportunities for technical assistance and capacity building. At the same time, the mandate of a peer review mechanism and the scope of issues that it assesses must be narrow in order for the process to be successful. Moreover, individuals familiar with various peer review processes have stressed that it should not be adversarial or employ “naming and shaming.”

Procedures for peer review processes are normally based on an agreed set of principles and criteria that serve as the basis for review. These can include legally binding principles, formal guidelines, quantitative benchmarks, or national laws. The body that conducts the review must have competent personnel conducting the review and, it is widely argued, must be independent. Peers, i.e., representatives of the member states being reviewed, must be involved in the evaluative process. Although the procedures for such reviews vary, there is generally a preparatory phase, a consultation phase in which the dialogue between states occurs, and a reporting/assessment phase.

narrow to be effective. It is important to ensure that the peer review process enhances and deepens, but does not duplicate, the work of the UN’s seven other treaty bodies.

Experts told delegates in informal meetings in New York that peer review is most effective when there is trust among participants. The most obvious shortcoming identified by Kofi Annan in his original proposal was a deficit of trust and mutual respect between states on the Commission on Human Rights. Those designing the new procedures in the Human Rights Council will thus have to grapple with key questions as to what extent universal peer review can promote an atmosphere conducive to mutual respect and trust.

Also troublesome is that few negotiators seemed to be clear about the added value of peer review, the benefits of the procedure, and necessary elements for its effectiveness. Everyone agreed that the process should be cooperative, dialogue-based, and take into account a country’s capacity, but to seasoned UN observers these words mean the opposite of “compliance.” And although some of the countries running for membership on the new Council have expressed interest in peer review as a mechanism

---

“To be effective ... 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.”

---

A range of practical issues will be involved in implementing a universal peer review mechanism in the new Human Rights Council. Will it supplement or replace the usual form of country scrutiny by UN human rights bodies? What resources will be necessary to match the complexity of the process? Will Member States devote the resources? How will budget support and staff be found? Clearly, existing peer-review mechanisms must employ an engaged and informed secretariat to supervise information-gathering communications and responses, manage contacts with countries, and guide countries under review through preparation, consultation, and final assessments. Such a mechanism must also prepare accurate country studies and recommendations and have the capacity to produce effective and timely reports.

Further, because universal review is so resource-intensive, it is important to ensure that a large share of the funding and staff support for human rights at the UN is not siphoned off to the detriment of the overall effectiveness of other human rights programs. Unless major new funds are dedicated, the resources and time requirements necessary to make peer review effective might be too much of a stress on the UN’s Office of the High Commissioner. Various observers and participants of peer review processes also argue that it is important that the mandate of the peer review be

that can enhance scrutiny, others clearly want it to be a way to avoid scrutiny. Indeed, during the negotiations there were distinctly different views on whether peer review would have an outcome. States at first agreed that the chair of the Council should read publicly a conclusion, but in the final document even this proposal was dropped.

Some have argued that the new process will succeed in scarifying away violator governments from seeking membership on the new Council because they will be reluctant to have such scrutiny take place. Those arguing this point seem to forget, however, that every country in the world is party to at least one human rights treaty and is already reviewed in public by the relevant monitoring committees. Such scrutiny has rarely been enough to keep those countries from running for seats on the committees or from carrying out actions that may violate the norms being examined there. This raises questions as to the added value of the peer review process.

One value added element of peer review, however, is its universality: every country is subject to periodic review. But important questions still remain. What standards will Member States be reviewed on? Will only the treaties signed by the state under review apply or will all standards apply to all rights? Will a core set of

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.

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*

## ENDNOTES: Scrutinizing Countries

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

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

<sup>5</sup> *Id.*

<sup>6</sup> 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.unhcr.ch/hurricane/hurricane.nsf/0/997CB87D98CAB294C1256D16002B1276?opendocument> (accessed Apr. 11, 2006).

<sup>7</sup> 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.<sup>4</sup> 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<sup>5</sup> and various non-governmental organizations will post further information about candidate countries.<sup>6</sup> 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

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

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

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> Human Rights Watch, *United Nations*, "Human Rights Council," available at [http://hrw.org/doc/?t=united\\_nations\\_hrc](http://hrw.org/doc/?t=united_nations_hrc) (accessed Apr. 11, 2006).