Prospects for the New UN Human Rights Council

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Introduction

The United Nations Human Rights Council came into existence in June 2006, replacing the U.N. Human Rights Commission. The Commission was mandated by the Charter of the United Nations and it had been in operation since 1946. Although the Commission played a central role in the drafting of the Universal Declaration of Human Rights and the International Human Rights Covenants, for the first two decades of its existence it did not undertake any monitoring or enforcement activities (Donnelly 2007:81). Eventually, especially through its 1503 procedure, the Human Rights Commission did undertake to investigate complaints of consistent patterns of "gross and reliably attested violations of human rights and fundamental freedoms."

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However, investigations under this procedure were rare, limited and of questionable effectiveness. Rather, the Commission's most useful contribution to the protection of human rights was through its working groups and special rapporteurs on a wide range of activities, including torture and disappearances.

During the past decade the Human Rights Commission became the target of an enormous amount of criticism, much of it from Western countries and the United States in particular. The most frequent charge was that the Commission had itself become a haven for human rights abusing states. Indeed, among the 53 member states that sat on the Human Rights Commission during its final session were countries such as Sierra Leone, Sri Lanka, the Sudan, and Zimbabwe. We certainly share the view that the United Nations is in need of strong and viable bodies that protect human rights. Although the U.N. is constantly scrutinized and frequently criticized for the work that it does (or does not do) in the realm of peace and security, we believe that an even more costly failure is the institution's overall inattention to the protection of human rights. This is not to deny the cruelty and inhumanity visited by wars. Rather, it is simply to recognize the fact that tens of thousands of people die every day due to a failure to protect human rights. And in our view a large part of the blame for this lies with the United Nations. We offer an empirical analysis of what merely has been assumed by politicians, pundits and scholars

alike, namely, that the membership of the Human Rights Commission had gone from "good" to "bad." Using data from the Political Terror Scale (PTS), which provides a yearly measure of the level of political violence experienced in each country (and which is produced by the two authors), what we find instead is that the evidence is far more mixed than the public debate (and accusations) might otherwise indicate. Our reading of the empirical information is that there was never a "golden age" when only states that protected human rights served on the Committee. Rather, at the time of its dissolution the Human Rights Commission was not that different than it ever has been in terms of the human rights record of its member states. That is to say, the Commission was always a blend of the "good" and the "bad." Beyond this, we also offer a tentative analysis of the make up of the Human Rights Council. What our data show is only a slight improvement in the human rights practices of member states. Although some of the worst and most visible human rights offenders are not serving on this new body, at least initially, a nontrivial number of human rights repressive states still enjoy membership in the UN's human rights organ. Our concern, then, is that the same issues that bedeviled the Human Rights Commission will come to work against the Human Rights Council. We are of the mind that things do not have to be like this. Rather, human rights data exists that could not only help determine membership on the Human Rights Council but the work performed by this body.

Inmates Guarding the Asylum?

Our first task is to assess what has often been asserted as common knowledge and too often taken as a given by some politicians and a host of UN critics, namely, that the "quality" of Commission membership has worsened during the last several years. Despite the frequency with which this accusation was made, to our knowledge there is little empirical evidence to support or contradict this claim. As such, in order to address the validity of this charge we first examine the domestic human rights performance of past members. For this analysis, we focus our attention on physical integrity rights. While not all inclusive, respect for physical integrity rights represents a significant portion of the total rights stipulated in the Universal Declaration of Human Rights (e.g. UDHR articles 2, 3, 5, 9) and is almost universally accepted. This subset of human rights includes freedom from extrajudicial execution, torture and inhumane treatment, forcible disappearance, and arbitrary detention. Our data on state violations of these rights is taken from the Political Terror Scale (PTS), which measures the severity of abuse employed by each state on a simple 1 to 5 categorical scale (included in appendix). A state scoring a "1" on the PTS scale is under the firm rule of law and violations of the aforementioned rights are extremely rare or anomalous events. A country scoring a "5," on the other hand, places few limitations on the means and thoroughness with which it imposes pursues its goals (Gibney and Dalton, 1996). In such states,

political executions, torture, and/or imprisonment without trial are commonplace, and all citizens are subject to violations regardless of their involvement in politics.

We first examine the recent composition of the UN Human Rights Commission. The last session of the UNHRC was convened in the Spring 2005. This body was composed of 53 states from each region of the world, representing a variety of political systems and levels of development. It likewise was composed of states with a range of respect for core human rights values. A few states exhibited an undeniable history of flagrant abuse of these rights. According to the US and other similarly minded critics, these states -- Cuba, Libya, Sudan, and Zimbabwe in particular -- illustrated the fatal flaws of the body and rendered the entire organ incapable of defending and promoting human rights. With respect to these cases, it would seem that the US criticisms were on target. For example, the Sudan's human rights record during its most recent tenure on the Commission (2003-2005) was consistently abysmal as shown by its PTS score of "5" during each year it served on the Commission. During this period, thousands of civilians died and hundred of thousands were displaced as a result of violence in the Darfur region; the government routinely employed torture against detained citizens; forced child labor was used by government security forces; and security, police, and military forces operated with virtual impunity. Zimbabwe, while not as repressive

as the Sudan, has for its part committed notable violations of human rights including politically motivated killings of opposition parties and critics of the government, kidnapping, disappearances, and arbitrary detention of opposition leaders, and abuse of detainees in police custody. Thus, Zimbabwe received an average PTS score of "4" for the years of its most recent membership on the Commission. Cuba and Libya have been less consistent and less severe in their violations but likewise show significant patterns of failing to respect human rights. Both states fell into the moderately repressive range of the PTS with a score of "3" for their most recent years on the Commission. Common violations included the abuse of detainees in police custody and holding political prisoners.

This sample offers some support for the criticisms of the US and others that the Human Rights Commission has failed itself by allowing abusive regimes to sit among more legitimate, human rights-friendly states. But is this the case generally, or are these states only a small minority in the Commission? Looking at the collective records of the Commission, we can assess that for the last year of its existence, the average PTS score of member states was approximately 2.75.

Sadly, this observation illustrates some fundamental problems in Commission membership. The group of states charged with the global promotion and defense of human rights is ideally characterized by a high level of respect for the dimensions of human rights outlined

in the Universal Declaration of Human Rights and particularly keen respect for the physical integrity rights discussed herein (e.g. scores of 1-2 on the PTS index). Yet of the 53 Commission members in the year 2005, 15 (28%) had a PTS score of 4 (severely abusive) or higher that year.1 As a brief example, in 2005, in addition to the states discussed above, China, Egypt, Ethiopia, Nepal, Nigeria, Russia, Saudi Arabia, and Sri Lanka were Commission members. None of these would be considered exemplars of respect for human rights along any dimension. We therefore conclude that while the states that composed the final Commission were representative of the wider global community in terms of their mean respect for human rights, a number of significantly abusive states were on the Commission – a fact that surely undermined the will and inhibited the ability of the Commission to effectively promote global human rights and to punish those states that egregiously violate them. Consequently, we find some evidence to support the criticisms of the US and others that an uncomfortable number of severely abusive states have gained membership to the Commission during recent years.

The Past as Prolog?

We next look at the historical patterns of respect for human rights among the Commission's members in order to determine whether the presence of abusive states is a recent occurrence—as is widely assumed

– or whether it has been a relatively constant feature of the body. Given limitations on data (the PTS dates back only to 1976) we cannot assess the performance of the Commission's members for the entirety of its 60 year history. As such, we make some descriptive comments regarding the political and institutional characteristics of the states that composed the first session of the Commission, extrapolating to the extent possible their performance along the dimension of human rights discussed above. We then turn to the available data and assess the aggregate level of respect for human rights in the Commission over time. We do this in two ways: first by analyzing the mean PTS scores for the Commission as a whole, and second, by counting the number of member states that fall into the severely repressive categories of the PTS during each time period. This allows to us to roughly track any changes in the overall human rights behavior of the members over time. Tracking such changes then allows us to determine if the poor human rights showing of the states that composed the Commission has been a recent occurrence, perhaps brought on as a result of political maneuverings of members states, or whether the most recent Commission and its collection of undesirable states simply represents the status quo.

We first attend to the composition of the initial Commission. While the specific human rights data necessary for a full analysis is not available for the early years of the Commissions, we can make a

number of inferences about the human rights behavior of the states that were members at its inception in 1947. First, of the 15 original members, five (Australia, Belgium, France, the United Kingdom, and the United States) were formal democracies; six had nominally participatory political institutions or a form of competitive party systems (Chile, Egypt, Lebanon, Iran, the Philippines, and Uruguay); four were fully autocratic or single party systems that proscribed popular participation in politics (China, Panama, USSR, Yugoslavia); and one state was still in transition from colonial rule to independence (India). Extrapolating from this information and assuming, as past studies have shown (Davenport and Armstrong, 2005; Poe and Tate, 1994; Poe et al., 1999), that formal democracies are more likely to respect the human rights and civil liberties of the their citizens, the makeup the newly convened Commissioned was not comprised solely of those states most eligible or most deserving of membership, but rather, reflected the geopolitical balance of the post-War period.

Looking beyond the political institutions of these states, a number of key events occurring in or policies adopted by these states at the time of the Commission's inception speaks to its initial quality as well as its likely desire to promote global human rights standards. Two graphic examples of domestic repression come from the Soviet Union and China. First, between 1946 and 1947 the Soviet Union's grain redistribution policies coupled with episodes of drought led

to famine in parts of Ukraine that resulted in the deaths of some one million people. In addition, in 1948 the regime launched an anti-Jewish campaign that led to mass arrests and disappearances of Jewish intellectuals and activists and the suppression of Jewish culture throughout the country. During this time the USSR also barred Soviet Jews from immigrating to the newly formed state of Israel. For its part, China was still in the last throes of a civil war between communist and nationalist forces that had resulted in the deaths and displacement of millions of people and acts of extreme brutality by both sides. Moreover, this period saw the beginnings of mass political repression by the newly-installed communist regime, including the rural purges that were responsible for the imprisonment or death of thousands.

The human rights situations of post-war USSR and China are both vivid and frequently cited examples, but several other founding members of the Commission likewise abjured the international human rights laws the Commission was charged to uphold in the interest of ousting political opposition groups, promoting domestic social and political stability, or retaining colonial territories. For example, in 1946 the pro-communist HUK (Hukbo ng Bayan Laban sa Hapon) launched an insurgency in the Luzon province of the Philippines, which was met with significant repression by the newly independent, US-backed Philippine government. In the United States, despite its strong democratic history, the black population of the southern states

was effectively barred from participation in politics, faced systematic societal and economic discrimination, and was targeted for violence. Finally, France was engaged in repressing the growing Algerian independence movement, and it was also in the process of reoccupying its colonies in Southeast Asia. In 1945 the French authorities in Algeria responded to the killings of French settlers in Setif with a series of reprisals that included summary executions, mass arrests, and the bombing of Muslim villages in the region. And in 1946, the Viet Minh initiated a low-level rural insurgency against the French colonial government, to which the French responded with increasing violence against Vietnamese peasants. In both cases, the government of the Fourth Republic employed significant repression against nationalist political leaders and anti-colonial activists that sought to upset the French colonial system.

These observations, while brief and lacking thorough empirical analysis, suggest that from its very inception, an irreproachable record of respect for human rights was not a criterion for membership in the Commission. Indeed, if the above cases are any indication at all, mass starvation, political repression, purges, mass civil violence, systematic discrimination, and frequent acts of brutality against citizens was not a tangible bar to entry into the original United Nations human rights organ. Perhaps, however, this was to be expected. The compromises necessary to undertake the monumental task of building the UN and

guaranteeing the support of ideologically opposing states required the admission of many states with poor human rights records. But did this trend follow after the initial compromises were made?

We now turn to a more systematic analysis of the human rights behavior of Commission members over time. Tracking changes for five year periods between 1976 and 2005, we are able to determine if the initially poor human rights showing among the members of the Commission remained a constant feature or whether it improved or worsened over time. Table 1 lists the severely repressive states (PTS $\geq$ 4) that served on the Commission at any point during each five year period. We also include the mean scores for all nations on the Commission during each of the five year time spans as well as a raw count of the number of abusive states serving in each period. Since the PTS contains scores based on both Amnesty International and US State Department annual human rights reports, we report the means of both scores in order to reduce the effect of any bias in the reports of either organization (see Poe et al., 2001).

This information reveals a number of interesting details about the composition of the Commission; it likewise suggests some changes over time with respect to the human rights behavior of the member states. First, it illustrates that human rights repressive states have consistently enjoyed membership in the Commission. In each of the five-year windows examined herein, more than a dozen of the

Commission's members scored a 4 or higher on the PTS. This means that consistently some significant number of Commission members were engaged in systematic human rights abuses such as extrajudicial killings, torture, or disappearances against their citizens.

Table 1

Human Rights Performance of UN Human Rights Commission Members						
Years	1976-1980	1981-1985	1986-1990	1991-1995	1996-2000	2001-2005
Mean Score	AI: 2.51 SD: 2.05	AI: 2.79 SD: 2.62	AI: 2.65 SD: 2.44	AI: 2.85 SD: 2.89	AI: 2.85 SD: 2.78	AI: 2.82 SD: 2.82
Severely Repressive States Serving on UNHRC (PTS ≥ 4)	Argentina Brazil Bulgaria Colombia Cuba Ethipoia India Iran Pakistan Peru Philippines Sierra Leone Syria Tanzania Uganda Uruguay	Argentina Bangladesh Brazil Cameroon Colombia Ethiopia India Kenya Libya Mozambique Nicaragua Pakistan Peru Philippines Sri Lanka Syria Uganda Uruguay Zimbabwe	Algeria Bangladesh Brazil China Colombia Ethiopia India Iraq Mexico Mozambique Nicaragua Pakistan Peru Philippines Somalia Sri Lanka Syria Venzuela	Algeria Angola Bangladesh Brazil Cameroon China Colombia Cuba Egypt Ethiopia Gabon India Indonesia Iran Kenya Mauritania Mexico Nigeria Pakistan Peru Philippines Sri Lanka Sudan Syria Togo Tunisia Venezuela Yugoslavia	Algeria Bangladesh Brazil Burundi China Colombia Congo, DRC Congo, Republic Egypt Guatemala India Indonesia Liberia Mexico Nepal Pakistan Peru Philippines Russia Rwanda Senegal S. Africa Sri Lanka Sudan Togo Uganda Venezuela Zimbabwe	Algeria Brazil Burundi Cameroon China Colombia Congo, DRC Egypt Eritrea Ethiopia Guatemala India Indonesia Kenya Liberia Nepal Nigeria Pakistan Russia Sierra Leone S. Africa Sri Lanka Sudan Togo Uganda Venezuela Zimbabwe
Number	16	19	18	28	27	27

A few notable examples perhaps better illuminate the severity of this situation. Looking at the first five year time bloc, we note that Argentina, Brazil, Ethiopia, Iran, and Uganda all served on the Commission. Argentina served on the Commission for a number of years during which it was pursuing a vicious "Dirty War" against communism. During this period, the state's military government killed, tortured, or disappeared thousands of trade unionists, student activists, and leftist political leaders. The military government of Brazil was conducting a similar, though less high profile and less extensive, campaign of terror against left wing political activists, using many of the same strategies employed in Argentina. In Ethiopia, Mengistu's regime conducted a brutal campaign of domestic terror and repression that became known as the "Red Terror" against anti-Communist opposition. The civil strife and repression surrounding this campaign was responsible for the deaths of upwards of one million Ethiopians. In addition, Iran was a member of the Commission prior to and during the Islamic Revolution, a period in which the Shah's security forces routinely detained and tortured its citizens and employed violence against protesters. Most notably, however, is Uganda's membership. Between 1977 and 1979 Uganda held a position in the Commission even though it was at the time ruled by Idi Amin, who was responsible for the torture and deaths of hundreds of thousands of Ugandan citizens was arguably one of the most brutal leaders of the period.

The same is true for later time periods as many states used significant repression against domestic political opponents while simultaneously enjoying membership in the Commission. For example, Syria ratcheted up repression against Islamists in the late 1970s, culminating in the destruction of Hama and the deaths of thousands of civilians in 1982. China was a Commission member during the well-documented repression of the Tiananmen Square protests in 1989. In the late 1980s and early 1990s the government of Peru committed significant human rights violations in its efforts to eliminate the Shining Path Guerrillas. Similarly, Russia maintained membership throughout the civil war in the province of Chechnya. Indonesia was a member during its involvement in the mass civil violence in East Timor that directly preceded the province's independence. The Sudan served on the Commission during two civil conflicts, the first in the Southern provinces and the latter in Darfur, both of which resulted in the vast atrocities, mass internal displacement, the creation of millions of refugees, and the deaths of hundreds of thousands of Sudanese. And other states such as Algeria, Colombia, and Sri Lanka have likewise managed to retain their seats in the Commission despite well-documented abuses conducted during their multi-decade civil conflicts. Perhaps most disturbing, Iraq served as a member of the Commission during the 1980s and early 1990s. Iraq even remained a member of the UN human rights body despite the Hussein regime's

use of chemical weapons against Iranian troops and Iraqi Kurds during the Iran-Iraq War, a policy of genocide against Kurdish citizens in the Al-Anfal campaign, and the repression of the Shi'ite in the south of the country.

The membership of such high profile abusers as Iraq under the Hussein regime, Uganda during the Amin years, and Syria during Assad's campaign against Islamists as well as the plethora of consistently abusive states that have served on the Commission since 1947 suggests that the membership of human rights violators in the UN's human rights wing has been more of a constant feature than a recent trend. As the table 1 shows, in each period a significant number of grossly abusive states enjoyed membership. The presence of repressive states and gross violators of human rights no doubt undermines the willingness and capability of the body to effectively investigate and address human rights issues. In addition, their continued membership severely discredits the Commission. However, given the frequent presence of such governments across the time points for which we have specific data - and likely since the Commission's inception – the recent complaints lodged by critics of the Commission seem unrelated to the actual composition of the body. That is, if the membership of such states is a constant feature over time, why have the most vehement attacks on the Commission only come within the last few years? Perhaps such criticism is rooted in the perception of increasing

permissiveness toward abusive regimes gaining membership to the Commission. But has the Commission really become worse over time, or has the number or repressive states on the Commission remained relatively stable? To answer this question we look at changes in the composition of the Commission for the past 30 years.

We analyze this change along two dimensions. First, we look at the change in the total number of severely repressive states that enjoyed a position in the body in each time period. This allows us to determine if a greater number of severe human rights abusers were allowed entry into the Commission during recent years compared to years past. Second, we look at the changes in the mean level of repression and abuse for all members of the Commission for each brief time period. This provides a general picture of the average human rights conditions experienced by the people whose governments are represented on the Commission. Comparing the two also permits us to estimate whether any changes in the overall level of repression (based on changes in mean PTS scores) are the result of the growth of the number of repressive states on the Commission or a growth in the level of repression employed by a few states in the Commission. That is, it would be inappropriate to assume a small increase in the mean PTS scores of the Commission as a whole represents a fundamental problem for the Commission if it were the result of one or two states becoming involved in civil or international conflicts. On the other

hand, if this change coincides with the addition of abusive members (i.e. a raw increase in the number of abusive states) it might suggest a relative decline in the quality of membership in the Commission and therefore a tangible and irreparable failure of the Commission to fulfill its legal and moral human rights obligations.

Table 1 provides a graphic illustration of the change in the composition and human rights performance of the Commission over time. Looking at the number of repressive states in each time period, we see that the proportion of severely abusive states represented on the Commission is relatively stable between the mid-1970s to the late 1980s and again between 1991 and 2005. Consequently, we can divide the time-frame presented here into two distinct period separated by the end of the Cold War. In the earlier Cold War period the proportion of severely repressive states on the Commission hovered just above 30%. Following the winding down of the Cold War in the later 1980s and the collapse of the Soviet Union in the early 1990s, however, the proportion of severe human rights violators jumps significantly. Between 1991 and 2005 roughly half the members of the Commission were by our standards (as well as human rights NGOs and international law) considered to be severe violators of human rights.

The mean scores of all members provides additional insight into the performance of the composition of the Commission. According to the table, the average level of abuse carried out by Commission

members changes noticeably over the time frame of the analysis. The difference between the "best" scores (State Department scores for 1976-1980) and the "worst" scores (Amnesty International scores for 1991-1995 and 1996-2000) is almost one point (or an entire category) on the PTS index, suggesting a significant increase in overall violations among Commission members between the mid-1970s and the 1990s. However, past research has demonstrated that some level of bias existed in both the Amnesty International and US State Department reports during the Cold War period as the US tended to be hypercritical of left wing regimes while limiting its criticisms of rightist allies, while the Amnesty International reports trended in the opposite direction (Poe et al., 2001). In addition, the number of states for which either or both organizations compiled human rights reports grew over time, in part due to the increasing will and capacity of such groups to conduct human rights inquiries, and in part due to the increase in the number of states in the international system. Thus, fewer states were evaluated for the earlier period compared to the latter. We should therefore treat the scores for the earliest time period with some skepticism, particularly the scores for the State Department reports as they diverges so noticeably form the other scores reported in the table. Regardless, the table suggests a rather uneven pattern for the Cold War period followed by a consistent pattern for the years following the Cold War. More specifically, in the first period the scores

increase noticeably between the first and second periods and then fall between the second and third periods. It then increases noticeably between with the end of the Cold War period and remains stable for the subsequent decade and a half.

The most revealing finding is the substantial change that occurred following the end of the Cold War. The table clearly shows that the post-Cold War period witnessed the greatest aggregate mean level of repression employed by Commission members. When taken together with the net increase in the number of abusive states serving on the Commission, these observations show that a tangible decline in the overall level of respect for human rights in the Commission has indeed occurred over time. Consequently, in contrast to the spate of criticisms that have arisen during the recent years, this trend began in the early 1990s rather than the early 2000s. It would seem then that if any state had a clear interest in reforming the UN's human rights apparatus in the interest of preventing offenders from attaining membership and subsequently credibly and effectively promoting global human rights standards, the time for action occurred more than a decade prior to the actual call for reform. Based on this information, we cannot assume that the recent reform of the Commission and its replacement with the new Human Rights Council reflects a true will and desire to improve human rights monitoring and enforcement. Rather, it likely reflects political maneuvering on the part of the member states that see

a strategic advantage in limiting certain states from participating in the human rights wing of the UN. Moreover, the relatively small change in the human rights scores of the Commission members over time and the consistent inclusion of notoriously abusive states such as Algeria, China, Colombia, Iraq, Libya, Sri Lanka, and Zimbabwe suggest that the problem of the inmates guarding the asylum was a persistent feature of the Commission that has simply worsened slightly with the passage of time.

Our analysis finds little evidence of a recent pronounced downturn in the quality of the Commission as was suggested by many critics of the UN body. Rather, the observations presented here suggest two things. First, we note that at no point does it seem that serious abuse of human rights has barred states from entry to the body. Indeed, abusive states have been a constant feature of the Commission. Second, we find that while the human rights practices of the Commission's members have worsened over time, this change largely coincided with the end of the Cold War, and as such is hardly recent. Therefore, calls for reform are not likely directly related to concerns over the actual human rights behavior of recent members but likely informed by other factors.

Evaluating the Successor

The creation of the Commission's successor, the UN Council on Human Rights, was in large part the result of persistent complaints about the quality of the body's members with respect to their history of human rights abuses. As such, membership in the Council is supposedly tied to a regime's actual respect for human rights standards. Under the new institution's rules, member states should exercise nominal respect for internationally recognized human rights standards or at least promise to commit to reforms, and blatant violators can be barred from membership to the Council. But has this policy been implemented in practice? To assess the success of this aspect of the reform, we examine the human rights performance of current and recently approved members of the Council (those approved for membership through 2009)2 using the same criteria as that employed above. We assess their respect for basic human rights standards using the same scale, the PTS, for the latest year available in the dataset (2005). Some descriptive information is presented in table 2.

Table 2

Human Rights Performance of UN Human Rights Council Members*		
Mean: AI: 2.53, SD: 2.6		
PTS ≤ 2	PTS = 3	PTS ≥ 4
Argentina	Azerbaijan	Algeria
Bahrain	Cuba	Bangladesh
Canada	Ecuador	Brazil
Czech Republic	Gabon	Camroon
Djibouti	Jordon Malaysia	China
Finland	Mexico	Guatemala
France	Morrocco	India
Germany	Peru	Indonesia
Ghana	South Africa	Nigeria
Japan	Saudi Arabia	Pakistan
Mali	Switzerland	Phillipines
Mauritius	Tunisia	Russia
Netherlands	Ukraine	Sri Lanka
Poland	Zambia	
Senegal		
South Korea		
Uruguay		
17	15	13

*Summary of members approved through 2009. Based on average PTS values for 2005. Member list and dates of membership available: http://www.ohchr.org/english/bodies/hrcouncil/membership.htm

While this analysis offers only a rough overview of the human rights commitments and practices of the Council's members, it provides some gauge of the potential difference between the Commission and its successor. Based on the limited observations of the current members, it appears as if the composition of the Council represents a slight improvement over the Commission. The mean PTS score for the states that comprise the UN Human Rights Council is less that observed in the final years of the Commission, thus suggesting some positive movement toward more restrictive, performance-based membership. Specifically, the combined average for both the Amnesty International and US State Department for the post-Cold War period was 2.83. By contrast, the score for the first session of the new Council was less than 2.57. Consequently, the composition of the Council reflects a slight improvement in the human rights quality of the UN's new human rights body. However, it is important to note that this score is not appreciably different than that of the Cold War era Commission, which carried a mean combined PTS score of approximately 2.53. Consequently, the human rights performance of the members of the UN human rights body has simply returned to the levels observed 20 plus years ago.

A more notable and possibly more significant difference between the Commission and the Council might be found in the absence of high profile abusers such as Amin-era Uganda, Mengistu's Ethiopia,

or Argentina during its Dirty War. However, the new Council still includes a number of states that have recently been or are currently accused of systematic violations of basic human rights. The most striking examples are the Philippines, Russia, and Sri Lanka. In the Philippines, the Arroyo government has recently come under heavy criticisms for frequent extrajudicial killings, mainly against left wing activists, labor union leaders, and political opponents (Amnesty International, 2006a; Foster et al, 2006, 2007; UN, 2007). Human rights scholar Philip Alston, acting as a representative of the United Nations, recently toured the country to investigate accusations of human rights abuse by state security forces. Following this visit, Alston voiced strong concern over the hundreds of politically motivated killings that have occurred during Arroyo's six year administration and the climate of impunity it has promoted (United Nations, 2007; BBC, 2007). Likewise, Russia has been heavily criticized for its failure to protect the basic human rights of its citizens. In addition to its recent civil conflict in Chechnya and ongoing campaign against domestic terrorism, which have led to mass violations of human rights, Russian authorities have been accused of torturing detainees, discrimination against minority groups, the inhumane treatment of military recruits, failing to protect the rights of women and children, and promoting a culture of impunity by failing to investigate allegations of human rights abuses (Amnesty International, 2002). Finally, human rights

organizations have expressed a variety of concerns regarding Sri Lanka's human rights record, including the government's use of child soldiers, extrajudicial executions, torture, disappearances, the killing of international aid workers, and other significant violations of human rights during its ongoing civil war with Tamil separatist groups (see Amnesty International, 2006b; Human Rights Watch, 2007).

The Way Forward?

The Human Rights Council is in the process of defining itself. We end by offering the new body two policy proposals, both of which are based on empirical human rights research. The first relates to the issue of membership. In creating the Human Rights Council, General Assembly Resolution 60/251 proclaims that while membership on the body will be open to all countries, "Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto . . . ." Furthermore, states that commit gross and systematic violations of human rights may have their membership suspended by a two thirds vote of the General Assembly. Finally, the Resolution specifies that members elected to the Council "shall uphold the highest standards in the promotion and protection of human rights."

The reason for this attention to states' human rights practices is the concern that the Human Rights Commission had become a haven

of human rights abusing states. This charge is true. However, as we also have shown here, the Commission has always been infected with states that commit gross and systematic human rights violations. Perhaps the admonitions in Resolution 60/251 will change this, but we offer a simple proposal: no country with a PTS score above 3 (in the preceding three years) should be allowed to serve on the Council. Only in that way will the Human Rights Council be comprised of states that honor human rights.

The second issue relates to the work of the Council. One of the key functions that this new body has been assigned is to engage in a "universal periodic review" of all U.N. member states (including states while they serve on the Council). How is this to be done? The first issue relates to the kind of information that the Council will rely on for this task and we are in complete agreement with Felice Gaer, who writes: "Although UPR needs a solid base of information, it is not more information that is needed, but analysis of the information that exists" (Gaer 2007). The point is that plenty of data on human rights already exists. What the Human Rights Council should not do is attempt to re-create the form of self-monitoring that the U.N. treaty bodies engage in, but neither should it attempt to collect its own data. Rather, what the Human Rights Council should rely on is the solid human rights data that already has been collected either by governmental bodies, such as the U.S. State Department, or by nongovernmental organizations such

as Amnesty International and Human Rights Watch. There is no need for the Council to attempt to re-invent the wheel.

The other issue is how universal periodic review should proceed. One of the great failures of human rights is the manner in which it is conceptualized. Human rights are declared to be "universal," yet responsibility for meeting and protecting those rights has been based almost exclusively on territorial considerations. Tragically enough, the system that has evolved is one in which Western states have used human rights as a means of taking the moral high ground, viewing themselves as the "saviors" in this enterprise against the barbaric practices of "savage" Third World states (Mutua 2001). The Commission served as a microcosm of this approach to human rights and one of the repeated charges is the body was fraught with (but also paralyzed by) continuous confrontation. General Assembly Resolution 60/251 attempts to address this issue by positing that the "promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings." What is needed is a system of universal periodic review that focuses on the domestic human rights practices of each individual state – but the international or extraterritorial human rights practices of states as well (Skogly and Gibney forthcoming). Only in that way will a true system of human

rights protection begin to emerge. ❐

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