Dim Prospects for the United Nations Human Rights Council

By Alexander Besant and Sébastien Malo

“Why has it not been possible for the United Nations to make the crucial transition from an agency engaged in defining principles of human rights to an effective instrument for implementing those rights which have been, on paper at least, universally agreed upon?” asked Morris Abram, a former U.S. Ambassador to the United Nations in Geneva in a 1969 article in Foreign Affairs. Forty years later, after tireless efforts at making the United Nations more effective and responsive to human rights abuses, this question still remain unanswered. Though reform of the United Nations was a top priority for the former Secretary-General, the human rights bodies and mechanisms of the organization remained as politicized and partisan as they did during the Cold War. In 2006, a ray of light appeared when the Commission for Human Rights, the body whose work Mr. Abram lamented in his article, was replaced by the Human Rights Council as the principal human rights body of the United Nations. The Council was proclaimed to be a “new chapter for human rights,” as it sought to right the wrongs of its predecessor.

The reverie proved too good to be true, with Council members, NGOs and observers promptly reminded of the unforgiving reality of multilateral diplomacy. The Council not only inherited the ailments of the Commission, but again failed to make abstract rights a tangible reality for victims. The immediate reservations of likeminded Western countries with the functioning of the Council continued to remain palpable at every session. It has not been uncommon to see Western delegates grimace with disapproval when Iran condemns Sweden for abusing women’s rights or when Cuba talks about the importance of the independence of civil society. Sensing the repetition of such incidents, the United States disengaged from the Human Rights Council in 2008 citing partiality and politicization.

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Indeed, the Council shared many of the flaws of the now defunct Commission with critics bemoaning its Sisyphean fate. The disproportionate focus on Israel in the Council has been lamented by states and NGOs which initially sought to undo this most unpalatable of the Commission’s numerous idiosyncrasies. If anything, the Council has focused even more on the Middle East than its predecessor, condemning Israel more than twenty times in two years, including five times during the last session in March – more than all other countries combined.

Responding to this excess, United Nations Secretary-General, Ban Ki-Moon, warned member states early on that the Council risked its credibility by continually singling out Israeli violations of human rights at the expense of other egregious situations. Indeed, excessive treatment of the Israeli-Palestinian conflict has come at the expense of other country-specific mandates, such as Iran or Cuba, which have recently been voted down. During the tenth session of the Council in March 2009, both the Democratic Republic of the Congo and Turkmenistan, two egregious violators of human rights, were released from the Council’s scrutiny through devious procedural tactics and an overt hostility towards country-specific mandates by developing countries. Many other grave situations demanding the Council’s attention have simply been ignored.

Another serious concern surrounding the Commission was its composition, both given its lack of liberal, democratic members and, more generally, its lax criteria for membership. The Human Rights Council’s composition has fared little better with a reduction of seats for Western liberal democracies and with countries such as Cuba, China and Saudi Arabia among its current members notwithstanding their less than stellar human rights records. The recent election in May has certainly brought new members to the forum, but the breakdown of seats remains unchanged. The Council’s division along regional and socio-economic lines is also inherited from the Commission. The United Nations Secretary General has expressed concern that these divisions – between regional blocs and between developing and developed countries - risk the Council’s credibility as an objective body which seeks to tackle human rights violations wherever they occur.

Regrettably, the Organization of the Islamic Conference (OIC) and the African Group, headed by Pakistan and Egypt respectively, possess undue influence in the Council often persuading their followers to vote on the basis of solidarity and camaraderie rather than on principle or even national interest. When asked why the African Group elected Egypt as its leader, a country not necessarily
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Universal Periodic Review, the “mutual praise society” – where the credo “you scratch my back and I’ll scratch yours” reigns supreme. As in the Commission, developing countries are loathe to criticize their peers in a multilateral forum. “Whether we agree or not with the resolution, these are matters of solidarity among developing countries,” said one diplomat after a recent vote on a resolution regarding the situation of human rights in the Palestinian territories. This tenet, unfortunately, has so far prevailed in the Council.

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It is this intransigence and contempt for impartiality which the United States will face as it undertakes its duties for the first time, as a member of the Council during its September session. President Obama’s pledge to usher in a “new era of engagement” with multilateral institutions has translated into a complete reversal of the previous administration’s aversion to all things multilateral, including engagement with the U.N. human rights body. The election of the United States as a member of the Council is the climax of this new policy – the new administration speaking openly about its strategic interest in its improvement. In a press release, the U.S. Ambassador to the United Nations, Susan Rice, said that “the United States believes that working within the U.N. Human Rights Council is the best way to improve the Council’s goal of thwarting global human rights abuses”. In taking a seat alongside states whose engagement in implementing their human rights obligations remain dubious; the United States is effectively taking a leap of faith in believing in its power to reform the Council.

Indeed, the United States has had an ominously tortuous relationship with both the Commission and the Council, having had to fight an uphill, yet often futile, battle to make these bodies effective and impartial. In 2004, the United States walked out of the Commission following the election of Sudan. At the time, former U.S. Ambassador to the ECOSOC, Sichan Siv, called the election
“an absurdity”. Just weeks later, a Security Council resolution would condemn Sudan’s actions in Darfur, and threaten Sudan with sanctions if the abuses continued. Sudan remained on the Commission.

The United States was largely responsible for the fate of the Commission, naively putting its hopes in the new Council to become a de-politicized body that would swiftly address human rights crises around the world; in the same way the UN Security Council is supposed to attend to security crises. Yet, its inherent flaws ensured that the Council remains a shadow of its inept predecessor and may, in the end, work to weaken international human rights norms so hard wrought in the post World War II period. Hope of renewal remains faint. The United States will have little room to maneuver in promoting a reform agenda for the Council. Clearly, states that misbehave have come to realize that their conduct in the Council has no consequences for their bilateral relations with the United States and its allies.

The United States should send a clear message to those states that seek to further weaken the Council regarding its expectations for their behavior and the potential repercussions for failing to heed this call. In particular, the United States should focus on ensuring that freedom of expression is no longer threatened by the notion of “defamation of religion,” that the often one-sided resolutions against Israel are ceased, and that country mandates remain on the agenda. One of the best ways of ensuring this occurs is to work closely with African and Latin American countries which often sit on the fence on resolutions waiting for instructions from regional bloc leaders. Too often their capitals are not even aware of the issues on the table and what is at stake. The United States and its allies should inform them directly. In other words, for multilateral diplomacy at the Council to function effectively, it will need a dose of bilateral influence.

Further hope lies in the Council review by the United Nations General Assembly in 2011, a gargantuan undertaking which promises to divide along similar lines as the original institution building debate. If the United States is serious about its commitment to human rights at the United Nations, it should immediately begin working with allies as to how best to ensure the review is used to make the Council more effective, not less. Until then, like-minded countries that wish to make the Council a credible mechanism to uphold human rights, need to be vigilant in combating those resolutions and decisions which seek to undermine the notion of universal human rights.
Mr. Abram’s vision for an effective human rights instrument may not have been heeded with the creation of the Human Rights Council, yet America’s efforts to promote change may be the last hope for the Council to finally become a credible voice for the protection of human rights around the world. ■

- Shreya Basu served as lead editor for this article.