
The Parliament of the Commonwealth of Australia

Reform of the United Nations Commission on Human Rights

Joint Standing Committee on Foreign Affairs, Defence and Trade

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Canberra

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Chair's Foreword

On 14 -16 September 2005, more than 170 Heads of State and Government will gather at the United Nations (UN) in New York for the 2005 World Summit. Leaders will review progress made since the UN Millennium Declaration adopted by all member states in 2000.

The agenda will be based on the UN Secretary-General's report *In Larger Freedom* which focuses on strengthening the three central pillars of the United Nations: development; security, and human rights. The report contains a number of proposals for reforming elements of the UN's human rights machinery, including replacing the Commission on Human Rights with a Human Rights Council.

It is in this context that the Committee decided to convene a public hearing, to discuss the current human rights reform agenda and to hear the views for and against the establishment of a Human Rights Council.

The Committee invited a broad range of witnesses from the Australian community to participate in its roundtable discussions. Participants included UN representatives, non government organisations (NGOs), and human rights and legal experts, from Canberra and inter-state.

The Committee was pleased with the level of interest that the inquiry generated. Many witnesses commented on how important it was for these topics to be debated in the Parliament and that they appreciated the opportunity to address them in this forum. The Committee certainly found the discussions engaging and hopes that the hearing and this report can contribute to informed debate on UN reform, both within the Parliament and in the wider Australian community.

At this stage, it is difficult for the Committee to comment on the suitability of the Human Rights Council proposal. Details remain vague for the implementation of the proposal and views are varied. Nonetheless, the Committee will follow the outcomes of the September summit with interest. Irrespective of whether member states adopt the Human Rights Council proposal at the summit, the Committee wishes to see this important human rights body continue to function in a strengthened rather than weakened form.

In conclusion, and on behalf of the Committee, I would like to extend my appreciation to all those who contributed to the inquiry - witnesses, officers from the Department of Foreign Affairs, Defence and Trade, and secretariat staff.

Senator M A Payne

Chair

Human Rights Sub-Committee



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Membership of the Committee – 41st Parliament

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Deputy Chair Hon G J Edwards, MP

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	Hon B G Baird, MP	Mr B H Wakelin, MP
	Mr P A Barresi, MP	Mr K W Wilkie, MP

Secretary Dr Margot Kerley



Membership of the Human Rights Sub-Committee – 41st Parliament

Chair	Senator M A Payne	
Deputy Chair	Senator the Hon N Bolkus, MP (<i>to 30/07/05</i>)	Ms M Vamvakinou, MP (<i>from 10/08/05</i>)
Members	Senator George Campbell (<i>from 23 June 2005</i>)	Hon B G Baird, MP
	Senator A B Ferguson (<i>ex-officio</i>)	Mr M Danby, MP
	Senator B Harradine (<i>to 30/07/05</i>)	Hon G J Edwards, MP (<i>ex-officio</i>)
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Terms of reference

Pursuant to paragraph 1 (b) of its resolution of appointment, the Joint Standing Committee on Foreign Affairs, Defence and Trade is empowered to consider and report on the annual reports of government agencies, in accordance with a schedule presented by the Speaker of the House of Representatives.

On 12 May 2005 the Human Rights Sub-Committee resolved to examine the 2003-2004 annual report of the Department of Foreign Affairs and Trade, focusing specifically on reform of the United Nations Commission on Human Rights.



List of abbreviations

ACFID	Australian Council for International Development
DFAT	Department of Foreign Affairs and Trade
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CHR	Commission on Human Rights
CROC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
GONGO	Government Sponsored Non-Government Organisation
HREOC	Human Rights and Equal Opportunity Commission
ICJ	International Commission of Jurists
JSCFADT	Joint Standing Committee on Foreign Affairs, Defence and Trade
NGO	Non-Government Organisation
P5	Permanent Five Members of the Security Council
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nations

UNDP United Nations Development Programme

UNHCR United Nations High Commissioner for Refugees

UNIC United Nations Information Centre



List of recommendations

2 Issues and Conclusions

Recommendation 1

The Committee recommends that the Department of Foreign Affairs provide it with a briefing on the outcomes of the United Nations September summit, with particular regard to issues surrounding reform of the United Nations Commission on Human Rights.

Introduction

Background

- 1.1 In its 2001 report entitled *Australia's Role in United Nations Reform*, the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) recognised that elements of the United Nations (UN) require reform:

The need for reform of the United Nations is widely accepted. The organisation has been in existence for over 50 years. In that time, the world has changed significantly: the Cold War strategic influences have declined, membership of the UN has increased almost four-fold; and the expectations of what the UN might do have grown. Many of the changes that have affected the UN have been random, with systems and elements of the organisation growing like topsy and financial support for the activities largely remaining static.¹

The [UN] is an organisation in need of a new focus and new structures, greater efficiency and accountability and greater support from the more powerful states in the world.²

- 1.2 Chapter 7 of the JSCFADT's report focused specifically on human rights and the need to redress long-standing problems associated with the UN's human rights machinery, including:

1 JSCFADT, *Australia's Role in United Nations Reform*, June 2001, Commonwealth Parliament of Australia, Canberra, p.177

2 JSCFADT, *Australia's Role in United Nations Reform*, June 2001, Commonwealth Parliament of Australia, Canberra, p. xxi

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- block voting and obstruction by powerful states preventing effective action against serious violations of human rights at the Commission on Human Rights (the Commission);
 - weaknesses in the human rights treaty body system, namely a backlog in reporting and inconsistency and overlap between treaties; and
 - insufficient personnel and financial support for the Office of the High Commissioner for Human Rights (OHCHR).³
- 1.3 One of the recommendations in the JSCFADT's report was that, to encourage greater community awareness and understanding of the United Nations, as part of a review of the annual report of the Department of Foreign Affairs, it should conduct public hearings each year on Australia's activities at the United Nations. The JSCFADT suggested that particular reference should be made, inter-alia, to:
- the progress of reform within the structural, administrative and fiscal systems of the UN;⁴
- 1.4 Subsequent to that recommendation, in July 2002, the JSCFADT conducted its first annual review of Australia's activities at the UN.⁵

Referral

- 1.5 On 12 May 2005, the Human Rights Sub-Committee (hereafter referred to as the Committee) resolved to examine the 2003-2004 annual report of the Department of Foreign Affairs (DFAT), with specific reference to the issues surrounding reform of the United Nations Commission on Human Rights.
- 1.6 In its annual report, the Department noted its efforts to secure Australia's election as President of the CHR for 2004 – the first time that Australia has held this position -and made a number of observations about the Commission, its nature and actions during that time.⁶
- 1.7 The annual report indicated that Australia supports resolutions at the Commission in support of good governance, treaty-body reform and

3 JSCFADT, *Australia's Role in United Nations Reform*, June 2001, Commonwealth Parliament of Australia, Canberra, pp.133-154

4 See Recommendation 23 in JSCFADT, *Australia's Role in United Nations Reform*, June 2001, Commonwealth Parliament of Australia, Canberra, p. 232

5 See the JSCFADT website for a copy of the transcript, http://www.aph.gov.au/house/committee/jfadt/u_nations/40thIndex.htm

6 DFAT Annual Report 2003-2004, p. 93

national human rights institutions. Australia also works to raise the profile of the interests of Pacific Island Countries.⁷

Scope of Inquiry

- 1.8 The Committee's decision to conduct an inquiry into reform of the Commission was timely in light of the upcoming summit of Heads of State and Government at the United Nations in New York from 14-16 September 2005, where a wide range of reforms to UN bodies will be discussed in the context of proposals set out in the UN Secretary-General's March 2005 report entitled *In Larger Freedom*.⁸
- 1.9 *In Larger Freedom* is the Secretary-General's blueprint reform agenda for discussion by nearly 180 member states ahead of and at the world summit. The report is divided into five clusters and contains proposals from expanding the membership of the Security Council to establishing a Peacebuilding Commission. There are a number of recommendations that relate to reform of the UN's human rights machinery. One of the more significant reform agenda items presented in cluster five is the proposal to transform the Commission on Human Rights into a Human Rights Council. That proposal is outlined in Addendum 1 of the report.⁹
- 1.10 In his address to this year's session of the 61st Commission in April, the UN Secretary-General noted that the Commission in its present form has some notable strengths, including its country resolutions, special procedures and close engagement with civil society groups. He went on to say that, at the same time, the Commission's ability to perform its tasks has been overtaken by new needs. In his view, the Commission has been undermined by the politicisation of its sessions and the selectivity of its work, to the point where its declining credibility has cast a shadow on the reputation of the UN system as a whole.¹⁰
- 1.11 The Secretary-General believes that a Human Rights Council would offer a fresh start. He proposes that a Council be afforded similar status to the Security Council and Economic and Social Council (ECOSOC), be a smaller standing body, able to meet when necessary

7 DFAT Annual Report 2003-2004, p. 93

8 The full report is available from the UN website, <http://www.un.org/largerfreedom/>

9 Addendum 1, Human Rights Council: Explanatory Note by the Secretary-General, *In Larger Freedom*, 23 May 2005, <http://daccess-ods.un.org/TMP/4995400.html>

10 UN Secretary-General's Opening Address to 61st Commission on Human Rights, 7 April 2005, <http://www.un.org/apps/sg/sgstats.asp?nid=862>

rather than for only six weeks a year as it does at present, and that it should have an explicitly defined function as a chamber of peer review to evaluate the fulfilment by all states of their human rights obligations. The Secretary-General also suggests that the new Human Rights Council be made accountable and representative through having its members elected by a two-thirds majority of the General-Assembly. Further, those elected should have a solid record of commitment to the highest human rights standards.¹¹

- 1.12 Notwithstanding the need for member states to refine the details of how the Council will operate, the Secretary-General hopes that they will agree in principle to the establishment of a Human Rights Council at the September summit. The revised draft outcome document of the summit which was submitted to the General Assembly on 5 August 2005 sets out the proposed mandate, size and composition of the new Human Rights Council.¹²
- 1.13 In the post-summit phase the Secretary-General anticipates that member states will discuss in greater detail matters such as the size, composition and actual establishment of the Council. Member states will need to decide whether to keep, amend or discard the Commission's existing functions, procedures and working groups. The Secretary-General emphasises that the special procedures and civil society engagement are two aspects of the Commission which should be preserved and strengthened.¹³
- 1.14 The Secretary-General also notes that there are a number of other important issues to consider in relation to the Human Rights Council proposal, particularly the role it will play in relation to the OHCHR, treaty monitoring bodies, the Security Council, ECOSOC, Third Committee of the General Assembly, and the proposed new Peacebuilding Commission.¹⁴

11 UN Secretary-General's Opening Address to 61st Commission on Human Rights, 7 April 2005, <http://www.un.org/apps/sg/sgstats.asp?nid=862>

12 Revised draft outcome document of the High-level Plenary Meeting of the General Assembly of September http://www.un.org/ga/59/hlpm_rev.2.pdf, pp. 32 - 33

13 UN Secretary-General's Opening Address to 61st Commission on Human Rights, 7 April 2005, <http://www.un.org/apps/sg/sgstats.asp?nid=862>

14 Addendum 1, Human Rights Council: Explanatory Note by the Secretary-General, In Larger Freedom, 23 May 2005, <http://daccess-ods.un.org/TMP/4995400.html>, p. 6

Inquiry Process

Roundtable Public Hearing

1.15 For the inquiry, the Committee decided to invite a wide range of witnesses from the Australian community to give evidence at and participate in a half-day roundtable discussion with committee members at Parliament House. At the hearing, the Chair described the benefits of conducting committee hearings in a roundtable format.

I think it is much more constructive, for a discussion such as this in particular, than the formal taking of evidence back and forth across the table with separate witnesses and with very little interaction.¹⁵

1.16 The Chair acknowledged that the idea for this roundtable had originated in another roundtable held in Geneva in April this year convened by Australian Ambassador Mike Smith, during the 61st Commission which the Chair, members of the permanent mission in Geneva, and other Australian participants had attended. The Chair said that those discussions were fruitful and it was clear at the Geneva event that there was an opportunity to pursue talks further in Australia.¹⁶

1.17 On this occasion the Committee did not call for written submissions. However, two submissions were received and these are available on the Committee's website.¹⁷

1.18 The Committee advertised the public roundtable hearing in *The Australian* on 10 August 2005. The Committee also placed submissions and other information relating to the inquiry, including details of the hearing, on its website in order to encourage further public participation.

Program and Participants

1.19 The Committee invited a number of organisations and individuals to participate in the roundtable which was held on 12 August 2005 at Parliament House in Canberra. Those able to attend included United Nations representatives, non-government organisations and legal and human rights experts. A representative from the Department of Foreign Affairs was also present in an observer capacity. Appendix A contains a copy of the program and list of participants.

15 Official Transcript of Evidence, p. 36

16 Official Transcript of Evidence, p. 36

17 See the JSCFADT website for copies of the submissions, <http://www.aph.gov.au/house/committee/jfadt/chr/subs.htm>

Hearing Transcript

- 1.20 The public hearing was webcast and broadcast internally on the House Monitoring System. The transcript is available from the Committee's website.¹⁸

18 See the JSCFADT website for a copy of the transcript,
<http://www.aph.gov.au/house/committee/jfadt/chr/index.htm>

Human rights are at the core of the package of proposals that I have just put before the member states in my report, "In Larger Freedom". I argue that we will not enjoy development without security, or security without development. But, I also stress that we will not enjoy either without universal respect for human rights. Unless all these causes are advanced, none will succeed. And unless we re-make our human rights machinery, we may be unable to renew public confidence in the United Nations itself.¹

Issues and Conclusions

- 2.1 The Committee's roundtable hearing was divided into two sessions. The first session was entitled *The Commission Today: Achievements, Shortcomings and the Need for Reform*. In the first session the Committee was interested to learn which elements of the Commission already work well; suggested areas for improvement; and to what extent reform is necessary. The second session was entitled *The Commission of the Future: The Current Reform Agenda and the Proposed Human Rights Council*. During the second session, the Committee wished to examine what form the Commission might take in the future, if member states should vote at the September summit to replace the Commission with a Human Rights Council. The Committee wanted to know how the new Council might function; what support there is for the proposal as it stands; and whether changing the structure of the Commission can deliver the desired changes.
- 2.2 While there was some overlap of the key issues across the two sessions, this basic structure helped to keep discussions focused.
- 2.3 This chapter highlights some of the main themes that emerged from both sessions.

1 UN Secretary-General's Opening Address to 61st Commission on Human Rights, 7 April 2005, <http://www.un.org/apps/sg/sgstats.asp?nid=862>

Session 1 - The Commission Today: Achievements, Shortcomings and the Need for Reform

Achievements

- 2.4 In his report *In Larger Freedom* the UN Secretary-General states that the Commission on Human Rights has had a number of accomplishments, including:
- giving the international community a universal human rights framework, comprising the Universal Declaration of Human Rights, the two International Covenants and core human rights treaties;
 - through its annual session, drawing public attention to a wide range of human rights issues and debates and providing a forum for the development of human rights policy;
 - close engagement with hundreds of civil society organisations, providing an opportunity for working with civil society that does not exist elsewhere; and
 - establishing a system of independent and expert special procedures to observe and analyse human rights compliance.²
- 2.5 At the hearing, participants addressed these positive aspects of the Commission. In the context of the Commission's successes, they also emphasised the value of peer review mechanisms and the input that Australia has had over the years.

Standard Setting

- 2.6 The Commission has been instrumental in codifying and universalising international human rights standards. For the first twenty years, its efforts were concentrated on developing the International Bill of Rights.³ Since then, the Commission has developed human rights treaties relating, inter alia, to civil and political rights, economic and social and cultural rights, the elimination of racial discrimination, torture, and the rights of the child. All states that accept these standards are obliged to implement the rights they entail and to report regularly to the treaty bodies (i.e. UN committees) set up to monitor their compliance.⁴

2 *In Larger Freedom*, <http://www.un.org/largerfreedom/chap5.htm>, paragraph 181.

3 Comprising the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (ICCPR) (1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)

4 Website of the OHCHR, <http://www.ohchr.org/english/bodies/chr/background.htm>

2.7 At the hearing, a number of witnesses endorsed the Commission's standard setting function. The Human Rights and Equal Opportunity Commission (HREOC) stated:

Over the last four decades, its standard setting has been remarkable in terms of establishing a set of international norms and it continues to develop norms.⁵

Human Rights Forum

2.8 Few would dispute that the Commission is the world's foremost human rights forum. One participant at the hearing described it as a 'fantastic bazaar.'⁶ Currently over 3,000 delegates from 53 member states and observer states, including hundreds of NGOs, converge on Geneva to participate in the six-week annual session held during March and April.⁷

2.9 Each year, the Commission adopts about 100 resolutions, decisions and Chairperson's statements on a broad spectrum of human rights issues that span all the world's regions.⁸

2.10 In addition, there are a large number of related activities that occur outside the conference room. In 2004, more than 600 side events took place, with seminars, debates and presentations enabling discussion between NGOs, experts, national human rights commissioners, national delegates and UN officials on a wide range of issues.⁹

2.11 Much informal contact and networking is made possible by the fact that so many of the organisations and individuals interested and involved in the field of human rights gather in Geneva for the conference.

Civil Society Participation

2.12 Many roundtable witnesses spoke about the value that civil society groups bring to the Commission.¹⁰ Mr Keir MacDonald, a student intern attached to the Australian permanent mission in Geneva during this year's session, reported that he was impressed with the high level of interaction between states and civil society representatives:

5 Official Transcript of Evidence, HREOC, p. 7

6 Official Transcript of Evidence, ACFID, p. 10

7 OHCHR website, <http://www.ohchr.org/english/bodies/chr/index.htm>

8 OHCHR website, <http://www.ohchr.org/english/bodies/chr/index.htm>

9 Address to the Castan Centre for Human Rights Law by Ambassador Mike Smith, Australian Permanent Representative to the UN in Geneva and Chair of the Commission of Human Rights in 2004, <http://www.law.monash.edu.au/castancentre/events/2004/smith-paper.html>, p. 3

10 Official Transcript of Evidence, Australian Baha'i Community, p. 6, ACFID, p. 10 & Amnesty, p. 24

The delegations were very open and accessible to the NGOs and civil society.¹¹

- 2.13 There was some concern that if the Commission is transformed into a Council, the level and status of NGO involvement might be compromised. The UNHCR representative said:

If in the reform process, as other speakers have already said, we were to lose the perspectives that come from the technical expertise of NGOs...or the operational grand truth-if I may put it that way- that they can bring to the forum, that really would be a big mistake.¹²

- 2.14 HREOC added that national human rights institutions are increasingly playing a significant role in the Commission and this should be maintained:

From our point of view, we think it would be a pity if any tinkering with the system meant that the role of national human rights institutions was reduced. They do have a different perspective from NGOs on many issues, and it is a perspective that I think is worth putting.¹³

- 2.15 Noting the ever increasing numbers of NGOs and national human rights institutions wishing to take part at the Commission, the Committee wondered whether that process is sustainable and if the Commission can continue to accommodate the sheer numbers of people wishing to speak.¹⁴

- 2.16 Rights Australia and HREOC explained that there were accreditation processes in place respectively for monitoring the membership of NGOs and national human rights institutions.¹⁵

- 2.17 Rights Australia commented that there were some issues surrounding the NGO accreditation process through ECOSOC, namely whether or not it is appropriate for GONGOs (Government sponsored NGOs) to participate in the Commission.¹⁶

- 2.18 On this matter the Australian Council for International Development (ACFID) cited an instance at the 2004 Commission where a state, in this case Pakistan, had wished to see a GONGO from India excluded. The

11 Official Transcript of Evidence, Mr Keir Macdonald, p. 5

12 Official Transcript of Evidence, UNHCR, p. 13

13 Official Transcript of Evidence, HREOC, p. 7

14 Official Transcript of Evidence, p. 9

15 Official Transcript of Evidence, Rights Australia, p.9 and HREOC, p. 16

16 Official Transcript of Evidence, Rights Australia, p. 9

Expanded Bureau¹⁷ had overridden the objection on the grounds that it could be perceived as closing off civil society.¹⁸

Consultation in Australia

- 2.19 The Committee also wished to learn what consultation Australian NGOs had had on UN reform matters with DFAT in the lead up to the September summit. ACFID explained that the Department had arranged a day-long consultation with invited NGOs on 19 August 2005. The session would focus on a range of human rights issues, including human rights reform.¹⁹

Special Procedures

- 2.20 Special procedures is the term given to an independent expert or group of individuals mandated by the Commission to examine, monitor, advise and publicly report at the annual session on a given human rights situation. The work might involve undertaking fact-finding missions, conducting studies, providing advice on technical cooperation, responding to individual complaints or engaging in general promotional activities. The OHCHR supports the mandates with personnel and logistical assistance.²⁰
- 2.21 Nearly all of the roundtable participants acknowledged the benefit that special procedures bring to the Commission. The Australian Baha'i Community told the Committee:
- They play a very important role in alerting the world to particular crises and aspects of human rights abuse and the like.²¹
- 2.22 The ICJ, HREOC, UNHCR, Amnesty and ACFID concurred that the special procedures were an important element of the present system, but noted that 'they operate on a shoe-string' and require additional resources for them to operate more effectively.²² It was also suggested that there needs to be a greater monitoring of special procedures to increase their accountability, particularly in respect of recruiting experts.²³

17 The Expanded Bureau is comprised of the Chair, the 3 Vice-Chairs and the Rapporteur, plus the five regional coordinators.

18 Official Transcript of Evidence, ACFID, p. 10

19 Official Transcript of Evidence, ACFID, p. 34

20 OHCHR website, <http://www.ohchr.org/english/bodies/chr/special/>

21 Official Transcript of Evidence, Australian Baha'i Community, p. 33

22 Official Transcript of Evidence, ICJ, p. 4, HREOC, p. 7, UNHCHR, p. 21, Amnesty, p. 24, & ACFID p. 27

23 Official Transcript of Evidence, HREOC, p. 7

Peer Review

- 2.23 Several participants described the strength of the Commission's peer review mechanisms, not just the treaty bodies that scrutinise those states that have become parties to the various human rights treaties – but also 'the power of embarrassment' that can be extended to all states whose human rights records are called into question at the Commission, irrespective of whether or not they are signatories to the treaties.
- 2.24 Professor Joseph of the Castan Centre for Human Rights Law agreed with Mr Dowd and Dr Mathews that the 'naming and shaming' effect should not be underestimated:
- Countries might not react immediately and it can take years and years, but no country likes [embarrassment].²⁴

Australia and the Commission

- 2.25 Australia's history of involvement with the Commission goes back to the beginning. Australia was one of the first members to help draft the Universal Declaration of Human Rights and has served frequently on the Commission (1947-56, 1978-83, 1985-87, 1991-96, 2003-05).²⁵
- 2.26 In the current term of membership (2003-2005), Australia has been on the Expanded Bureau both years. As has already been noted, in 2004, for the first time Australia held the Chair when Ambassador Mike Smith, Australia's Permanent Representative to the UN in Geneva was elected as President of the Commission.
- 2.27 In the 2003-2004 DFAT Annual Report, the Department states that at the 60th session, the Chair:
- ...set new standards in efficiency for the Commission, enabling a more disciplined and productive session.²⁶
- 2.28 Ambassador Mike Smith summarised his main achievement,
- ...for the first time in 3 years CHR complete[d] its full agenda without having to either cluster items or reduce speaking times in the course of the meeting.²⁷

24 Official Transcript of Evidence, Professor Joseph, Castan Centre for Human Rights Law, p. 15

25 P. Singer and T. Clegg, *How Ethical is Australia: An Examination of Australia as a Global Citizen*, Swartz Publishing 2004, Melbourne, p. 28

26 DFAT Annual Report 2003-2004, p. 93

27 Address to the Castan Centre for Human Rights Law by Ambassador Mike Smith, Australian Permanent Representative to the UN in Geneva and Chair of the Commission of Human Rights in 2004, <http://www.law.monash.edu.au/castancentre/events/2004/smith-paper.html>, p. 6

2.29 At the hearing, Rights Australia acknowledged the contributions that Australia has made to the Commission:

I think it would be good just to acknowledge the quality of our representation in Geneva. Under Ambassador Mike Smith most recently, but over many years, we have had some very good people there.²⁸

2.30 The Australian Baha'i community echoed this sentiment:

Australia in the past has played a role that we can all be proud of at these moments in the history of the UN. I would strongly urge Australia to play such a role again.²⁹

Shortcomings

2.31 In his report, *In Larger Freedom*, the UN Secretary-General states that, despite its strengths, the Commission's capacity to perform its tasks has been overtaken by new needs and undermined by the politicisation of its sessions and the selectivity of its work. In his view,

States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticise others.³⁰

2.32 From his experience as Chair in 2004, Ambassador Mike Smith remarked on the following aspects of the Commission as negative ones. He said the Commission is:

- preoccupied with the politics of issues rather than the substance;
- inconsistent in what it addresses and does not address (some country situations are repeatedly debated whilst others are ignored);
- inconsiderate in its treatment of speakers; and
- tolerant of a level of invective and verbal intimidation not seen anywhere else in the UN system.³¹

Politicisation

2.33 At the hearing, several participants commented on the 'politics of membership'. This is one of the key moot points in the Commission

28 Official Transcript of Evidence, Rights Australia, p. 8

29 Official Transcript of Evidence, Australian, Baha'i Community, p. 28

30 In Larger Freedom, Addendum 1 and p. 45

31 Address to the Castan Centre for Human Rights Law by Ambassador Mike Smith, Australian Permanent Representative to the UN in Geneva and Chair of the Commission of Human Rights in 2004, <http://www.law.monash.edu.au/castancentre/events/2004/smith-paper.html>, p. 2

reform debate and is discussed in more detail in the next section, under the heading Membership.

- 2.34 Participants touched on another political issue (and this was previously raised by the Committee in its 2001 report),³² namely states' use of "no action motions" to prevent debate on human rights issues at the Commission.³³

Mr Keir Macdonald emphasised that:

The willingness of countries to block discussion on certain issues is an area that definitely needs to be addressed.³⁴

- 2.35 A further criticism levelled at the Commission concerns the agenda which allows for lengthy political debate on certain country situations, Israel-Palestine under Item 8 and any others under Item 9. Rights Australia observed:

One of the big disappointments at the Commission is the enormous amount of time spent debating issues that are completely unresolvable or are going to be resolved somewhere other than in the Commission. The Palestine situation and the United States versus Cuba are two examples.³⁵

- 2.36 On the issue of 'politicisation'; it is perhaps worth bearing in mind the words of the late High Commissioner for Human Rights, Sergio Viera de Mello, in his closing remarks at the 59th session of the Commission:

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 criticising one another for being wet. It has become a way to express disapproval without really saying what is on our mind. The Commission could do with plainer speaking. This, rather than charges of politicisation, will truly help us get beyond politics to the strengthening of human rights in all countries.³⁶

Need for Reform

- 2.37 While most roundtable participants agreed that the Commission has a number of shortcomings as it stands today, there were reservations about

32 See 1.2

33 Official Transcript of Evidence, Australian Baha'i Community, p. 6

34 Official Transcript of Evidence, Mr Macdonald, p. 6

35 Official Transcript of Evidence, Rights Australia, p. 9

36 Statement of the High Commissioner for Human Rights Sergio de Mello to the closing meeting of the 59th session of the Commission on Human Rights on 25 April 2003.

whether the UN Secretary-General's solution to replace it with an entirely new body, a Human Rights Council, is actually necessary.

2.38 At the beginning of the second session, HREOC stated:

...one wonders, whether you really need to pull down the existing structure or whether it is more a question of looking at how you can improve what you have by extra resources to special procedures, some change of internal rating mechanisms and so on.³⁷

2.39 Mr Keir Macdonald also advocated retaining the Commission, albeit with changes to the voting systems and membership.³⁸

2.40 Mr Brandt of the UNIC told the Committee that there needs to be a greater focus on the implementation of human rights to mitigate,

The gap between what we promise and what we in the international community are able to and actually deliver.³⁹

37 Official Transcript of Evidence, HREOC, p. 7

38 Official Transcript of Evidence, Mr Macdonald, p. 6

39 Official Transcript of Evidence, UNIC, p. 23

Session 2 - The Commission of the Future: The Current Reform Agenda and the Proposed Human Rights Council

2.41 This section of the report concentrates on two central concerns of many participants at the hearing, the issues of voting systems and membership, and implementation. It finishes with some general concluding remarks on the current reform agenda and Human Rights Council proposal.

Membership

2.42 The Commission currently has 53 serving member states, elected through ECOSOC and filled according to the following regional quotas: Africa (15), Asia-Pacific (12), Latin American/Caribbean (11), Western Europe (10) and Eastern Europe (5).⁴⁰

2.43 According to Freedom House about 14 of the 53 members are among the countries that Freedom House classes as Not Free, meaning a systematic suppression of democratic rights and violations of human rights. Another 17 countries are classified Partly Free in which some democratic freedoms prevail. By contrast, 22 countries have attained a Free designation. Of the 14 Not Free countries, 6 are given the lowest rating possible.⁴¹

2.44 Noting that the election of certain states to the Commission has been a source of international tension, the predecessor report to *In Larger Freedom*, the *High-Level Panel* report, recommended that membership of the Commission be expanded to universal membership:

[because it] would underscore that all members are committed by the Charter to the promotion of human rights and might help to focus attention back on substantive issues rather than who is debating and voting on them.⁴²

2.45 By contrast *In Larger Freedom* recommends that states demonstrate their commitment to high human rights standards by changing the current selection process through ECOSOC to election by a two-thirds majority vote of the General Assembly. Those in favour of this voting system argue that it would be more difficult for the worst human rights violators to get a seat on the Commission and,

40 OHCHR website, <http://www.ohchr.org/english/bodies/chr/membership.htm>

41 Testimony of J. Windsor, Executive Director, Freedom House, The Committee on International Relations Sub-Committee on Africa, Global Human Rights and International Operations, April 19, 2005, http://www.house.gov/international_relations/109/win041905.pdf

42 High Level Panel Report, <http://www.un.org/secureworld/report.pdf>, p. 74

...would allow the body to be more accountable to the full membership of the organisation.⁴³

2.46 At the hearing several participants put forward the case for universal membership. Amnesty stated:

We see that the strength of a council or commission is to have everyone around the table, inside the tent, if you like. We must remember that every state's human rights record is up for scrutiny.⁴⁴

Mr Keir Macdonald added:

You have your Chinas, your Sudans there. They take active participation. They sit there and listen. They attend all the meetings. They have that involvement and whether they sign on to treaties or not, are there listening and the word gets back to their governments.⁴⁵

2.47 HREOC said that it too sees a number of arguments in favour of universality. Repeating a comment of Ambassador Smith's, HREOC informed the Committee that non-member states attend the Commission in an observer capacity anyway, so:

...why draw an artificial line between some of the members and others.⁴⁶

2.48 Some witnesses expressed concern at the practicalities of managing a Commission if there were to be universal membership:

...decision making will be a real problem.⁴⁷

2.49 Dr Mathews and others, including the ICJ, advocate that there should be minimum criteria set for eligibility to election to the Council. They believe if it is to be taken seriously, its members should have at least ratified the international human rights treaties.⁴⁸

2.50 There are several issues that arise from this proposition. Firstly, how the minimum standards are defined i.e. which international covenants should be used as the barometer. Mr Dowd of the ICJ and Professor Joseph recommended that the only objective standard is ratification, and suggested that perhaps as a minimum the two covenants be used.⁴⁹ Rights Australia suggested that the covenants and the four major

43 *In Larger Freedom*, p. 5

44 Official Transcript of Evidence, Amnesty International Australia, p. 17

45 Official Transcript of Evidence, Mr Keir Macdonald, p. 17

46 Official Transcript of Evidence, HREOC, p. 20

47 Official Transcript of Evidence, Dr Mathew, p. 18

48 Official Transcript of Evidence, Dr Mathew, p. 15, ICJ, p. 16

49 Official Transcript of Evidence, ICJ, p. 16 and Professor Joseph, p. 15

conventions, CEDAW, CERD, CROC and CAT should be the criteria.⁵⁰ Dr Mathews cautioned against setting the bar too low and Professor Joseph against setting the bar too high.⁵¹

2.51 The Australian Baha'i Community implied that -selection criteria aside- the greatest problems relate to members' lack of compliance with the international standards. Ms Scrine said, if members of a future council are shown through peer review to be serious violators of human rights, they should not be allowed to remain on the Commission to act as moral arbiter.⁵²

2.52 The Committee noted all these points of view. However, it seems that, as minimum standards, both ratification and compliance have subjective components which require further consideration if selection criteria are to be introduced. For example, is it wise to potentially exclude some of the world's most populous and/or powerful nations like China because they have not signed a treaty and/or have expressed various reservations to them?⁵³ Similarly, how is compliance constituted? As Rights Australia says:

There would be people who would argue that Australia should not be a member or the United States should not be a member because we do not comply with all of the treaties; we are not amongst that. I think we aspire to high standards and so consequently should be part of the processes.⁵⁴

A Middle Road

2.53 Mr Keir Macdonald suggested that support might be garnered from states for a smaller standing body to co-exist with and complement the functions of the present Commission:

...in the vicinity of the Security Council size, maybe 18 states, mobile and easy to sit in action and see the implementation of these resolutions that are passed at CHR and that [in the case of] special crises either the High Commissioner or the Security Council can draw their attention to the specific or urgent crises.⁵⁵

50 Official Transcript of Evidence, Rights Australia, p. 16

51 Official Transcript of Evidence, p. 19

52 Official Transcript of Evidence, Australia Baha'i Community, p. 17

53 Official Transcript of Evidence, p. 26

54 Official Transcript of Evidence, Rights Australia, p. 17

55 Official Transcript of Evidence, Mr Macdonald, p. 30

- 2.54 HREOC told the Committee that the *High Level Panel* report actually proposed something along those lines in its recommendation that the Commission be supported in its work by an advisory council or panel.⁵⁶
- It is not quite the same sort of thing, but you would have a panel of 15 people, perhaps as advisors rather than decision makers, who would have a function of investigating urgent matters...and would be another adjunct to special procedures.⁵⁷
- 2.55 To some extent, the Sub-Commission on the Promotion and Protection of Human Rights, as the Commission's main subsidiary organ, already performs these extra functions. It too is comprised of experts rather than professional diplomats and distinguishes itself from the Commission as a "think tank" that considers contemporary issues such as,
- the fight against extreme poverty; human rights and bioethics; and terrorism and counter-terrorism.⁵⁸
- 2.56 At the hearing, Professor Joseph raised concerns as to where such a new body would leave the Sub-Commission. She advocated that the Sub-Commission should have a successor or be maintained. She noted that it has played an important role in bringing important issues that fall outside the treaties to the Commission's attention.⁵⁹

Implementation

- 2.57 The Commission regularly requests that the OHCHR provide advisory and technical assistance on human rights matters to governments, including:
- human rights seminars;
 - national and regional training courses and workshops;
 - fellowships and scholarships; and
 - activities aimed at strengthening national capacities for the promotion and protection of human rights.⁶⁰
- 2.58 ACFID stated that the main weakness of the current Commission is the difficulty in implementing the international standards at its disposal:
- We have standards. We have investigated human rights violations. We have heard from special rapporteurs as to human

56 High Level Panel Report, p. 74

57 Official Transcript of Evidence, HREOC, p. 31

58 Website of the OHCHR, <http://www.ohchr.org/english/bodies/subcom/57/docs/englishmain.pdf>

59 Official Transcript of Evidence, Professor Joseph, p. 32

60 Website of the OHCHR, <http://www.ohchr.org/english/bodies/chr/background.htm>

rights concerns. And yet, as [Rights Australia] said before in regard to the urgency with which the Commission acts, we come to a grinding halt.

When we try to look at what it is that a Commission could be doing to implement those standards and ensure the protection of human rights, we really have to look at the mechanisms and the relationships that a Commission or a Council on Human Rights has with the wider UN network.⁶¹

Resources

2.59 ACFID drew the Committee's attention to the Plan of Action report which the OHCHR released in May this year.

2.60 The Plan of Action was requested by the Secretary-General in the human rights section of *In Larger Freedom*. The report presents a strategic vision for the future direction of the OHCHR and focuses on a range of "implementation gaps". One of the report's five priorities is the need for greater country engagement:

Though an expansion of geographic desks; increased deployment of human rights staff to countries and regions; the establishment of standing capacities for rapid deployment; investigations; field support; human rights capacity building; and work on transitional justice and the rule of law.⁶²

2.61 ACFID, the Australian Bahai Community and UNHCR all endorsed the High Commissioner's recommendation that it develop a more significant operational field presence to follow through on the Commission's recommendations.⁶³

2.62 Mr Dowd noted that section 101 of the draft outcome document calls for a doubling of regular budget resources over the next five years to fund more staff recruitment and support closer cooperation with all relevant UN bodies. He informed the Committee that many of the other human rights bodies are also under-resourced and competing for the same limited funds.⁶⁴

61 Official Transcript of Evidence, ACFID, p. 11

62 OHCHR, Plan of Action, <http://www.ohchr.org/english/planaction.pdf>, p. 2

63 Official Transcript of Evidence, ACFID, p. 11, UNHCR, p. 21 & Australian Baha'i Community, p. 33

64 Official Transcript of Evidence, Mr Dowd, p. 24

The Committee's Views

- 2.63 Four years on from the Committee's last major review of the UN, its concerns about the UN's human rights machinery largely remain the same. The question of the OHCHR having adequate funding to carry out its work is but one perennial example.
- 2.64 Towards the end of the roundtable hearing, Mr Brandt from the UNIC commented how pleased he was at the high level of interest in the current reform agenda set out in the UN Secretary-General's report *In Larger Freedom*.
- 2.65 The Committee hopes that the roundtable and the report will also contribute to informed debate on UN reform within the Parliament and the Australian community.
- 2.66 The Committee certainly found the discussions very interesting and will follow the outcomes of the September summit and beyond. The Committee intends to invite the Department of Foreign Affairs to provide it with a private debriefing on the summit, with particular reference to issues surrounding reform of the Commission on Human Rights.

Recommendation 1

The Committee recommends that the Department of Foreign Affairs provide it with a briefing on the outcomes of the United Nation's September summit, with particular regard to issues surrounding reform of the United Nations Commission on Human Rights.

- 2.67 At this point in time, it is difficult for the Committee to comment on whether the proposal to replace the Commission with a Human Rights Council is the best or even an appropriate avenue to pursue. Details of the new body and how it might operate are scant. The primary question is whether a new body is likely to redress the shortcomings in substance or simply transfer existing problems to a new structure.
- 2.68 The Committee is concerned about what might happen to the Commission if the Human Rights Council proposal is not adopted by member states as the UN Secretary-General expects them to at the summit. The draft outcome document does not indicate whether there is a default plan. If the Council proposal is not adopted, the Commission might simply continue in its present form. Or, the present system or components of it such as the Sub-Commission could be abolished, without agreed upon replacements. Alternatively, the Commission could be replaced by a

weaker body than the one we already have. In any case, there seems a real risk that the Commission's "credibility deficit" could worsen.

2.69 For the international human rights agenda that would be calamitous. The Committee recognises that the Commission lies at the heart of the UN's human rights machinery:

...it provides a focal point for world opinion where countries can get together in one venue to express their point of view when all countries are there listening.⁶⁵

2.70 At the beginning of the hearing, the Committee noted the areas in which the UN does very well-and these are well-documented- areas such as world health, education and the work of the UNDP.⁶⁶ The real achievements of the Commission -including its standard setting and peer review functions- as outlined in the beginning of this chapter can be added to that list of fine UN achievements.

2.71 There are major shortcomings in the way that the Commission operates. The worst of these, namely its politicisation and the difficulties in implementing its recommendations, are to some extent, inevitable. The Commission is an inter-governmental body that cannot be anything but political. Like the UN itself, the Commission is comprised of member states from different parts of the world, with different individual and allied agendas. It has finite resources. And, peer review and the 'power of embarrassment' are never going to stop the most egregious human rights abuses from occurring.

2.72 First and foremost, it is incumbent on member states to decide to what extent they accept help from the OHCHR and/or implement any of the Commission's recommendations. It is important to recognise that the Commission is not itself empowered to fix domestic human rights abuses:

It is like courts. [The Commission] does not have back-up. It has public respect. So a human rights body will not solve the Darfurs and Tibets, but it will help focus public opinion on them by highlighting and articulating the problem.⁶⁷

2.73 Nor is the Commission the Security Council. It cannot sanction intervention. While it has been posited that the Human Rights Council have P5 representation, this is a dramatic and potentially problematic proposal on several fronts. At the hearing, Dr Mathew outlined some of the factors for consideration:

65 Official Transcript of Evidence, p. 12

66 Official Transcript of Evidence, p. 11

67 Official transcript of Evidence, HREOC, p. 14

Human Rights generally are not about using military force and I would be very reluctant to see that sort of connection being made. While I recognise that human rights and security are interrelated, I do not want to see that connection being made where [the P5] automatically get a place on the council...It is worth pointing out that the Security Council is the only place where they have that special [veto] status, ...so we would be creating something quite unusual for a body concerned with human rights.⁶⁸

2.74 One thing is certain. Whether the Commission continues to operate in its present structure or it is transformed into a Human Rights Council, we need to continue to strive towards making United Nations bodies like the Commission function as effectively as possible. While the following quote drives its point home hard it contains an important truth:

...despite the United Nations' dysfunction, the world's dependence on such bodies is growing, not shrinking. We need them despite the fact that they are slow, inefficient, often ineffective, a bit ridiculous and sometimes corrupt.⁶⁹

We would do well not to lose sight of that need in our talk of reform.

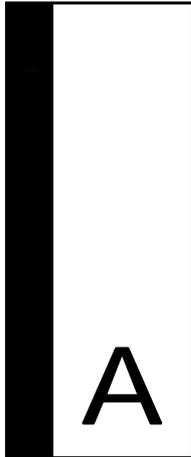
Senator A B Ferguson

Chair

12 September 2005

68 Official Transcript of Evidence, Dr Mathew, p. 30

69 M. Naim, "The Bad Boys of Politics" in *Foreign Policy*, July/August 2005, p. 95



Appendix A – Program and List of Participants

REFORM OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

FRIDAY 12 AUGUST 2005

09:00 am to 12:00 noon

Committee Room 2S1

09:00 am Chair's Opening Statement

09:05 am SESSION 1

**The Commission Today: Achievements, Shortcomings and
the Need for Reform**

10:15 am Morning Tea

10:30 am SESSION 2

**The Commission of the Future: The Current Reform
Agenda and the Proposed Human Rights Council**

12:00 pm Adjournment

Participants

Name	Position & Organisation
Mr Juan Carlos Brandt	Director, UN Information Centre, Australia and the Pacific (UNIC)
The Hon John Dowd AO, QC	President, Australian Section of the International Commission of Jurists (ICJ)
Mr Howard Glenn	Executive Director, Rights Australia Inc.
Professor Sarah Joseph	Director, Castan Centre for Human Rights Law, Monash University
Mr Craig Lenehan	Senior Legal Officer, Human Rights and Equal Opportunity Commission (HREOC)
Mr Keir Macdonald	Student intern at Australian Permanent Mission, Geneva during 61 st session of Commission
Dr Penelope Mathew	Reader, Centre for Public and International Law, Australian National University
Mr Paul O'Callaghan	Executive Director, Australian Council for International Development (ACFID)
Ms Kathy Richards	Policy Officer, ACFID
Ms Tessa Scrine	Australian Baha'i Community
Ms Rebecca Smith	Advocacy Coordinator, Amnesty International Australia
Mr Neill Wright	Regional Representative, United Nations High Commissioner for Refugees (UNHCR)
The Hon John Von Doussa	President, HREOC