

Egypt and the UN Human Rights System Reform

An Overview

**Egyptian Initiative for Personal Rights
August 2005**

Title: Egypt and the UN Human Rights System Reform
An Overview

Publisher: Egyptian Initiative for Personal Rights (EIPR)
8 Mohamed Ali Jinnah Street Garden City – Cairo
Tel/fax: + (202) 27943606 - 27962682

Website: www.eipr.org

Email: eipr@eipr.org

First Edition: August 2005 – Cairo

National Library Registration no.: 15842/2005

Table of Contents

I. Introduction.....	4
II. The Establishment and Formation of the UN Commission on Human Rights.....	6
III. The Crisis at the UN Commission on Human Rights.....	8
a) Membership	8
b) Politicization, Selectivity and Double Standards.....	9
c) Weakened Infrastructure	10
IV. Recommendations for Reform of the UN Commission on Human Rights	11
a) Report of the High-Level Panel on Threats, Challenges and Change	12
b) The UN Secretary-General’s Report “In Larger Freedom”	14
c) The Secretary-General’s Speech Before the Commission on Human Rights and his Explanatory Note on the Human Rights Council	16
The Plan of Action of the Office of the UN High Commissioner for Human Rights	18
e) Discussions on Reform	19
f) The Next Step.....	21
V. The Egyptian Government’s Position Regarding the Establishment of the Human Rights Council.....	22
a) General Opposition to the Concept of Establishing a United Nations Human Rights Council	22
b) Attempts to Resist the Supervisory and Protective Function of the Human Rights Council	24
c) Attempts to Resist the Independence and Effectiveness of the Special Procedures.....	28
d) Attempts to Limit NGO Participation	30
e) Attempts to Derail the Negotiations for Establishing the Human Rights Council.....	31
VI. Conclusion	32
VII. Recommendations	33
To the Egyptian Ministry of Foreign Affairs:.....	33
To the National Human Rights Council:.....	34

I. INTRODUCTION

From 14-16 September 2005, New York City will host the 2005 World Summit, held at the United Nations (UN) headquarters, and attended by approximately 170 Heads of State and Government. It is the largest congregation of the world's leaders in history and provides a rare historical opportunity to reach fundamental decisions concerning security, development and human rights. The Summit will allow the international community to debate, in particular, much-needed reform of the UN human rights system, including the creation of a permanent Human Rights Council to replace the UN Commission on Human Rights.

Such reforms will play a critical role in improving the efficiency of the international community's response to pressing human rights concerns. Yet this important process has failed to receive the attention it warrants within Egypt. The inadequate response is due in a large part to the lack of information and resources available in Arabic discussing the reform of the Commission on Human Rights and the initiative to establish a permanent Human Rights Council. The Egyptian media has focused instead on issues relating to reform of the Security Council and the expansion of its membership and Egypt's efforts to secure one of the proposed additional seats. By issuing this report, the Egyptian Initiative for Personal Rights (EIPR) seeks to correct this information deficit and to provide a summary of the history and development of the international human rights system reform process.

Another goal in issuing this report is to draw attention to the negative stance of the Egyptian government towards reform of the Commission on Human Rights. Egypt's position has ranged from a strident rejection of the idea of establishing a permanent Human Rights Council to actual attempts to weaken the new Council by stripping it of its monitoring and protective functions as well as limiting its activities to thematic discussions and norm-setting, without any real role in ensuring the enforcement of rights protection.

The EIPR believes that the 2005 World Summit and the establishment of a Human Rights Council as a subsidiary body of the UN General Assembly provides an historical opportunity for human rights to receive proper attention within the UN. The establishment of a new body with new powers is the ideal route to remedy the problems of over-politicization, selectivity, and double standards that paralyze the Commission on Human Rights and render it ineffective and lacking in credibility and relevance. The EIPR is therefore both alarmed and disappointed by the response of the Egyptian Ministry of Foreign Affairs, which appears intent on ensuring that the new Council, if established, will not be afforded sufficient power to render it capable of protecting human rights with autonomy and effectiveness.

This report is part of the EIPR's wider efforts to encourage Egyptian human rights organizations to utilize and play a more influential role within the regional and international human rights mechanisms. At the same time, it contributes to the EIPR's ongoing commitment to monitor and publicize the Egyptian government's attitude

towards these mechanisms. The EIPR believes it is particularly important to assess the extent to which Egypt's actions within the intergovernmental human rights institutions comply with its human rights commitments and, if necessary, to advocate for Egypt to adopt a more constructive role.

This publication therefore complements the EIPR's wider advocacy work, which this year has included participation at both the Commission on Human Rights' annual session in Geneva and at the UN Commission on the Status of Women in New York (on the occasion of the tenth anniversary of the Beijing Conference on Women). The EIPR also attended sessions at the African Commission on Human and Peoples' Rights in Gambia to discuss Egypt's periodic report on the implementation of the African Charter on Human and Peoples' Rights. In addition, the EIPR has followed the ongoing negotiations between the Egyptian government and the European Union concerning the human rights section of the Egyptian Plan of Action within the framework of the European Neighbourhood Policy.

The international community is currently discussing a variety of reforms that aim to streamline and strengthen the UN human rights system. Such reforms include supporting and strengthening the Office of the High Commissioner for Human Rights; emphasizing the Security Council's responsibility to protect civilians from gross human rights violations; restructuring the UN human rights treaty bodies system; and affirming key thematic human rights related to women, children and refugees, democracy and the rule of law, sexual and reproductive health, and combating HIV/AIDS.

This report deals with a single element of the proposed UN human rights reforms, namely the establishment of a Human Rights Council to replace the current Commission on Human Rights. The choice of focus is due to many factors, including the significance of this new Council (which will replace the highest international intergovernmental human rights body), the EIPR's direct experience in dealing with this body and using its various mechanisms, and the Egyptian government's opposition to and attempts to weaken this Council.

The report begins in Section II by outlining the establishment and formation of the Commission on Human Rights. Section III describes the Commission's current crisis that led international entities, nearly sixty years after its creation, to seek its replacement with a more credible and effective body. Section IV discusses the various recommendations for reforming the UN, including the current proposal that will be discussed and voted upon by the world's leaders next September. Section V analyzes the Egyptian stance towards these reform initiatives since they came to light at the beginning of 2005. It considers in particular Egypt's opposition to a permanent body and its attempts to strip the Council of its monitoring and protective functions, to hamper the independence of its special mechanisms and to limit the participation of NGOs in its work. It also looks at how Egypt has attempted to postpone detailed discussion of how the Council will function until after the Summit. The report concludes with the EIPR's recommendations to the Ministry of Foreign Affairs and the Egyptian National Council for Human Rights.

II. THE ESTABLISHMENT AND FORMATION OF THE UN COMMISSION ON HUMAN RIGHTS¹

The Commission on Human Rights, established in 1946, is the world's supreme human rights authority and the principal governmental body responsible for human rights policymaking within the UN. The Commission's first duty was to draft the 1948 Universal Declaration of Human Rights, which is a watershed in human rights history and represents the Commission's greatest achievement. The Commission protects and promotes human rights by investigating human rights violations, setting new human rights standards in the form of declarations or treaties, providing support and consultation services to countries in need of assistance in the protection of human rights, and suggesting programs and policies in the field.

The Commission was established with eighteen member states, after which membership gradually increased to its current fifty-three member states. Members are elected for a three-year period based on the following geographical distribution: sixteen countries from Africa, twelve from Asia, five from Eastern Europe, eleven from Latin America and the Caribbean, and ten from Western Europe and other countries. Egypt currently occupies a seat from the African group for a term of membership which began in 2004.

The Commission on Human Rights holds an annual meeting in Geneva for a period of six weeks beginning in mid-March and ending in April. This meeting is the largest annual meeting of small and large nations, governmental and non-governmental organizations, and human rights defenders from every continent of the world. Over the course of the six weeks, some 3,000 people participate in this meeting. The Commission discusses the human rights situation throughout the world and studies the information it receives from states, NGOs and other sources.

During its regular meeting, the Commission issues up to one hundred resolutions and a report that can include, amongst other things, an invitation to the government in question to take concrete action to address human rights concerns. The report can also announce the establishment of a working group, the drafting of a new agreement or international document, or the appointment of a Rapporteur to study a given issue or country. The name 'special procedures' is given to the network of Special Rapporteurs, Independent Experts, Special Representatives and expert Working Groups appointed by the Commission in their personal capacity to assist the Commission in its functions throughout the year on a volunteer, part-time basis, through the study of a particular country or thematic issue.

Any member state of the UN can present a draft resolution to the Commission under any of the items on its annual agenda, provided that the draft resolution is sponsored by at least one of the Commission's member states. All UN member states and those with

¹ See, for example, International Commission of Jurists, "What is the Commission on Human Rights," available at http://www.icjcanada.org/en/news/news_2005-03-18b.htm or Office of the United Nations High Commissioner for Human Rights, "Commission on Human Rights – Background Information," available at <http://www2.ohchr.org/english/bodies/chr/background.htm>

observer status may sponsor proposed resolutions. However, the right to vote on these resolutions is limited to member states inside the Commission. Resolutions are generally passed unanimously without voting; however, any of the states inside the Commission can request that the draft resolution be put to the vote.

The current items on the Commission's annual agenda include the following:

- the right to self-determination;
- the right to development;
- human rights violations in the occupied Arab territories, including Palestine;
- violations against human rights and basic freedoms anywhere in the world;
- economic, social and cultural rights;
- civil and political rights, including questions of torture and detention;
- disappearances and summary executions;
- freedom of expression;
- independence of the judiciary;
- impunity;
- absence of religious tolerance;
- the human rights of women, children, migrant workers, minorities and migrants;
- the rights of indigenous peoples;
- the promotion and protection of human rights, including the activities of the Sub-Commission, treaty bodies, and national institutions; and
- advisory services and technical cooperation in the field of human rights.

III. THE CRISIS AT THE UN COMMISSION ON HUMAN RIGHTS

Criticism of the Commission has intensified in recent years, focusing particularly on its ineffectiveness, its reduced credibility and its inability to respond to the real challenges currently facing the world in the field of human rights. These criticisms have been leveled both by member and non-member states of the Commission, by NGOs, and by individuals working within the UN. Criticism has come from both developed and developing countries. The list of accusations naturally differs depending on the regional bloc voicing the criticism. However, there are certain key flaws that are primarily responsible for the current crisis within the Commission. These problems can be summarized as: a) membership; b) politicization, selectivity and double standards; and c) weakened infrastructure.

a) Membership

The Commission's current membership includes some of the countries with the worst human rights record in the world. These countries have recently become aware of the Commission's importance, the media attention it receives, and the damage done to their image and reputation whenever the Commission adopts resolutions condemning them or drawing attention to the violations they commit. While it is true that the Commission's decisions are political and non-binding and that they lack a clear mechanism for implementation, a country's reputation is still negatively affected when it is criticized by the Commission during its annual session. This process is known as "naming and shaming." Indeed, it is by bringing the world's attention to the worst human rights violations, and by pressuring the governments responsible to remedy the situation in order to avoid embarrassment, that the Commission plays its most effective and valuable role.

In order to evade international scrutiny and condemnation, the states known for repeated violations of their citizens' rights have resorted to two tactics: firstly, these states attempt to downsize and limit the important role played by the Commission (a tactic pioneered and led by Egypt, as will be shown below); secondly, they exert serious efforts to secure Commission membership so that they are entitled to vote on the Commission's decisions and thereby avoid criticism. Whereas the Commission's membership was originally limited to the UN member states most concerned with the protection and promotion of human rights, it has now mutated into a list of governments whose only concern is to protect themselves from any form of monitoring of their human rights record. These states consequently forestall any serious discussion of the most important and pressing human rights issues, and limit the Commission's independence and ability to prevent and respond effectively to human rights violations.

Sudan's membership in the Commission, concurrent with the escalation of the Darfur massacres of civilians, was one of the most notable manifestations of the Commission's membership crisis. Sudan's membership continued even after the release of the UN international fact-finding mission's report that accused the Sudanese government of committing acts that may constitute war crimes and crimes against humanity. The

Security Council referred the Darfur case to the International Criminal Court. Yet, during the 2004 and 2005 sessions, the only concern of a number of the Commission's members, and especially Egypt, was to prevent the Commission from issuing a condemnation directed at the Sudanese government – or, at the very least, to tone down and weaken any condemnation that was successful. As a result, the Commission failed to take the type of action warranted by the level of human disaster suffered in Darfur.

Similarly, a glance at the list of the fifty-three Commission member countries for 2005 is sufficient to make clear the problems surrounding membership. In addition to Sudan, the member list includes, for example, China, Cuba, Saudi Arabia and Zimbabwe – all countries with severe human rights problems.

b) Politicization, Selectivity and Double Standards

One of the results of the Commission's membership crisis is that its deliberations and resolutions are influenced more by political considerations than by human rights values or the desire to protect victims of gross violations. It came as no surprise, for example, that China refused to support a decision condemning wide-ranging crimes of forced 'disappearances' committed by Russian forces in Chechnya, in exchange for Russia's refusal to support a resolution condemning China's deplorable human rights record.²

The Commission has consistently failed over the past few years to introduce or pass resolutions on human rights issues in Zimbabwe, China, Iran or Russia. It has also become normal practice for some countries to exploit administrative shortcomings in order to end discussion of the most important human rights issues. Overall, it is the smaller states that come under scrutiny – states with insufficient geopolitical influence to persuade the rest of the members to turn a blind eye to their practices. The criteria by which countries are assessed or condemned are therefore dictated more by a country's size and influence than by its record of human rights violations.

For example, during the Commission's 2005 session, the issue of the treatment of Iraqi prisoners failed to appear on the Commission's agenda during its entire six-week meeting. This omission occurred despite the fact that it was the first time the Commission had convened after the scandal of the torture and ill-treatment of prisoners at the hands of US forces at the Abu Ghraib prison in Iraq. The resolution that would have called upon the US to open the Guantanamo Bay prison to UN inspectors to determine the treatment and legal status of prisoners received only eight out of a total of fifty-three votes. Political considerations prevented most states, including Egypt, from condemning the United States.

² See, for example, Human Rights Watch, "Russia: U.N. Chechnya Vote Assailed," (19 Apr. 2002), available at <http://hrw.org/english/docs/2002/04/19/russia3866.htm>

c) Weakened Infrastructure

In addition to the problems listed above, the Commission suffers from structural problems that limit its ability to respond to human rights abuses. One of the most significant problems is the limited time available for the Commission: it only convenes once a year for six weeks, during which time it has on its agenda a vast and ever-increasing number of human rights issues to discuss. As a result, the time allotted to each of these important issues is grossly inadequate and does not allow for serious and thorough discussions. In addition, the fact that the Commission does not meet throughout the year, but only for six weeks in March and April, prevents it from responding to urgent crises which require an immediate response but which occur when it is not in session.

In addition to operating under a highly restricted time-frame, the Commission also suffers from a lack of resources. For example, in order to gather information about, and respond to, alleged rights violations year-round, the Commission relies upon the efforts of independent experts. The Commission appoints these independent experts who work on a voluntary basis in addition to their permanent jobs in their respective countries. The experts rely upon the Office of the UN High Commissioner for Human Rights to fund their activities and to provide them with human resources and research support. However, the High Commissioner's Office suffers from a serious lack of resources that limits its ability to provide support for experts: it receives less than 2% of the UN's budget despite the importance accorded to human rights by the UN Charter. The reports, meetings and monitoring activities that the Commission asks the Office of the High Commissioner to prepare and fund constitute an additional drain on the High Commissioner's already limited budget. The lack of funding undermines the independent experts' work and weakens any subsequent monitoring of their recommendations.

These and other problems have led to a steady rise of criticism directed at the Commission and have contributed to a crisis of confidence in the institution's capabilities. There is now a general consensus that the current situation is untenable. This crisis has motivated various parties to prepare recommendations for reforming and improving the situation. These proposals will be discussed in the following section.

IV. RECOMMENDATIONS FOR REFORM OF THE UN COMMISSION ON HUMAN RIGHTS

The Commission has undergone numerous changes as part of a continuous effort for reform since its inception in 1946. These reforms have occasionally contributed to increasing the UN's ability to deal with human rights issues. Other reforms, however, have compromised the Commission's ability and autonomy, motivated as they were by the member states that see no benefit in the existence of an effective UN body possessing the capacity to protect human rights worldwide.

The most recent episode in this continuing process of reform is expected to mark an important shift in the development of UN human rights mechanisms and their future role. This new stage of reform began as part of a comprehensive review of the UN system. It aimed to assess the extent of the system's effectiveness in realizing the objectives agreed upon by the signatories to the 1945 UN Charter.

This process started with Kofi Annan's appointment as UN Secretary-General on 17 September 1996. In his appointment speech, Annan pledged to take steps towards reinforcing the effectiveness and efficiency of the organization. Annan's first opportunity to present his reform proposals came a year after his appointment in his 1997 report "Renewing the UN: A Programme for Reform."³ It included detailed suggestions for reform of the UN and announced the start of an in-depth dialogue on the issue.

In September 2000, the UN held the Millennium Summit, attended by a large number of Heads of State and Government, which resulted in the publication of the Millennium Declaration and Millennium Development Goals. Both documents contained a comprehensive list of pledges in the fields of human rights and development, including poverty reduction and realizing international safety and peace. An agreement was reached to work towards achieving the Millennium Development Goals by 2015, in addition to conducting an annual progress evaluation.

In 2002, in a step that aimed to link UN activities with the Millennium Development Goals, the UN Secretary-General issued a new list of reform propositions in his report "Strengthening of the United Nations: An Agenda for Further Change."⁴ Support for human rights occupied a prominent place in the report.

This 2002 report was followed by a number of initiatives with more specific proposals to reform the UN Commission on Human Rights within the context of wider reform of the UN mechanisms. These initiatives will be discussed in detail below to show the process that led to the final proposal to establish a Human Rights Council (to be discussed at the

³ UN Secretary-General Kofi Annan, "Renewing the UN: A Programme for Reform," UN Doc. A/51/950 (14 July 1997), available at

<http://daccessdds.un.org/doc/UNDOC/GEN/N97/189/79/IMG/N9718979.pdf?OpenElement>

⁴ Secretary-General Kofi Annan, "Strengthening of the United Nations: An Agenda for Further Change: Report of the Secretary-General," UN Doc. A/57/387 (9 Sept. 2002), available at

<http://daccessdds.un.org/doc/UNDOC/GEN/N02/583/26/PDF/N0258326.pdf?OpenElement>

September 2005 World Summit). A discussion of these various initiatives not only show the process towards creating a Human Rights Council but will also emphasize the shifts in Egypt's position since the idea of establishing a Human Rights Council was first proposed.⁵ This section will look in particular at: a) The Report of the High-Level Panel on Threats, Challenges and Change; b) The UN Secretary-General's Report "In Larger Freedom"; c) The Secretary-General's Speech before the Commission on Human Rights; d) The Plan of Action of the Office of the UN High Commissioner for Human Rights; e) Discussions on Reform by the Commission's Member States; and f) The Next Step.

a) Report of the High-Level Panel on Threats, Challenges and Change

In 2003, as one of the initiatives designed to improve the efficiency of the UN, the UN Secretary-General established the High-Level Panel on Threats, Challenges and Change [Panel]. This Panel was comprised of sixteen high-profile individuals from around the world who were charged with analyzing how the UN could better respond to and counter the most pressing global problems and challenges. The Panel's Egyptian member was Amr Moussa, Secretary-General of the League of Arab States, who acted in a personal capacity.

In December 2004, the Panel issued a report entitled "A More Secure World: Our Shared Responsibility."⁶ The report included a short section on the need to reform human rights instruments. This section appears a little detached and unrelated to the rest of the report, leading some commentators to suggest that the discussion of human rights was added after the completion of the first draft of the report.⁷ Regardless, the report made a number of proposals to help mitigate the crisis facing the Commission on Human Rights including reforming membership criteria and the process of selecting delegates, and suggesting the appointment of independent experts to assist with the functioning of the Commission.

The report emphasized in its introduction the significance of the crisis facing the Commission: "The Commission on Human Rights suffers from a legitimacy deficit that casts doubts on the overall reputation of the United Nations."⁸ This crisis is discussed in more detail later in the document, focusing particularly on the problem of membership, which the authors described as "the most difficult and sensitive issue relating to the Commission on Human Rights."⁹ The report stated that:

⁵ The following sections are based largely on International Service for Human Rights, "A Guide to the United Nations Reform Process," available at: www.ishr.ch

⁶ "A More Secure World: Our Shared Responsibility – Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change," UN Doc. A/59/565 (2 Dec. 2004), available at <http://www.un.org/secureworld/>

⁷ International Service for Human Rights, "A Guide to the United Nations Reforms Process," p. 2, available at www.ishr.ch

⁸ "A More Secure World: Our Shared Responsibility – Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change," UN Doc. A/59/565 (2 Dec. 2004), p. 14, available at <http://www.un.org/secureworld/>

⁹ Ibid., para. 285, p. 74

In recent years, the Commission's capacity to perform ... tasks has been undermined by eroding credibility and professionalism. Standard-setting to reinforce human rights cannot be performed by States that lack a demonstrated commitment to their promotion and protection. We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.¹⁰

Despite acknowledging the problems of membership, the Panel was unenthusiastic about existing proposals to solve this issue – such as establishing restrictive criteria for countries seeking to become Commission members. The Panel believed that such suggestions would further politicize the issue without contributing to a solution. Instead, the Panel proposed broadening the Commission's membership to include the entire member list of the UN. The Panel argued that this solution would prevent any country from pretending to have a good human rights record on the basis of having been elected to the Commission. Such universal membership would also, the Panel stated, increase the Commission's legitimacy and would ensure that the Commission focused more on substantive matters rather than allotting large portions of time to issues of membership.¹¹

The proposition to make membership universal was subjected to widespread criticism and was later dismissed. Indeed, the proposal was in conflict with another section of the report which found that expanding the membership of the UN General Assembly had had a negative impact on its ability to function effectively.¹²

In addition to proposing universal membership, the Panel included other suggestions to help improve the work and credibility of the Commission. For example, the report called for a return to the practice that had existed during the first half of the Commission's history where member states chose respected persons with experience and credibility in the field of human rights to lead these states' delegations in the Commission.¹³

The report also proposed the establishment of an advisory group or committee that answered to the Commission. This group would consist of fifteen independent experts appointed on the basis of their skills, and taking into consideration geographical distribution. It would advise the Commission, assist in research, set standards and elaborate upon certain concepts.¹⁴ The report did not, however, discuss whether this new group would interact with or simply replace the Commission's Sub-Commission on the

¹⁰ Ibid., para. 283, p. 74

¹¹ Ibid., para. 285, p. 74

¹² See Ibid., paras. 249-256, pp. 66-68 (discussing limited expansion of the Security Council membership and no expansion of veto power). Criticisms of the Panel's suggestion for universal membership include Human Rights Watch, "U.N.: Good Diagnosis, but Poor Prescription" (2 Dec. 2004), available at <http://www.hrw.org/english/docs/2004/12/02/switze9760.htm>

¹³ "A More Secure World: Our Shared Responsibility – Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change," UN Doc. A/59/565 (2 Dec. 2004), para. 286, p. 74, available at <http://www.un.org/secureworld/>

¹⁴ Ibid., para. 287, pp. 74-75

Promotion and Protection of Human Rights – a body comprised of twenty-six experts acting in a capacity similar to the suggested composition of the proposed advisory group. Overall, the proposition to establish a new advisory group was met with widespread opposition from a number of countries including Egypt. These countries feared that they would not be able to sufficiently control the appointment of the experts or their activities, unlike the members of the Sub-Commission who are nominated for membership by their own countries.¹⁵

The report concluded by proposing that member states should study the idea of upgrading the Commission on Human Rights to become a “Human Rights Council” that does not, as is presently the case, answer to the Economic and Social Council. Instead, the Human Rights Council would be a principal UN body on par with the Economic and Social Council and the Security Council. The Panel stated that such a step would reflect “the weight given to human rights, alongside security and economic issues, in the Preamble of the Charter.”¹⁶

b) The UN Secretary-General’s Report “In Larger Freedom”

On 21 March 2005, the UN Secretary-General issued his response to the High-Level Panel on Threats, Challenges and Change. This response appeared in the form of an important report entitled “In Larger Freedom: Towards Development, Security and Human Rights for All.”¹⁷

The report allotted limited space to human rights; however, it outlined the priorities of the UN as development, security and human rights. The report is divided into four main parts: “Freedom from Want,” “Freedom from Fear,” “Freedom to Live in Dignity,” and “Strengthening the United Nations.” Some of the propositions regarding human rights come under the heading “Freedom to Live in Dignity.” The discussion of the Commission on Human Rights is in Section V of the report, “Strengthening the United Nations.”

The Secretary-General began his discussion of the Commission on Human Rights by outlining its previous successes:

The Commission on Human Rights has given the international community a universal human rights framework, comprising the Universal Declaration on Human Rights, the two International Covenants and other core human rights

¹⁵ See the Oral Statement made by Egypt’s delegation at the 61st session of the Commission on Human Rights regarding the work of the Sub-Commission on the Promotion and Protection of Human Rights (15 Apr. 2005) severely criticizing the idea of creating an advisory board of independent experts. Available at: <http://www2.ohchr.org/english/bodies/chr/sessions/61/61audio.htm>

¹⁶ “A More Secure World: Our Shared Responsibility – Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change,” UN Doc. A/59/565 (2 Dec. 2004), para. 291, p. 75, available at <http://www.un.org/secureworld/>

¹⁷ “In Larger Freedom: Towards Development, Security and Human Rights for All – Report of the Secretary-General,” UN Doc. A/59/2005 (21 Mar. 2005), available at <http://www.un.org/largerfreedom/contents.htm>.

treaties. During its annual session, the Commission draws public attention to human rights issues and debates, provides a forum for the development of United Nations human rights policy and establishes a unique system of independent and expert special procedures to observe and analyse human rights compliance by theme and by country. The Commission's close engagement with hundreds of civil society organizations provides an opportunity for working with civil society that does not exist elsewhere.¹⁸

Overall, however, the Secretary-General reiterated the negative diagnosis of the Commission provided by the High-Level Panel on Threats, Challenges and Change. He placed particular emphasis on the crisis of membership:

Yet the Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole.¹⁹

The Secretary-General presented one clear recommendation: "to replace the Commission on Human Rights with a smaller standing Human Rights Council."²⁰ Only in this way, declared the Secretary-General, would the UN "take the cause of human rights as seriously as those of security and development."²¹ The creation of the Council would be an immediate measure and not a long-term one as proposed by the High-Level Panel on Threats, Challenges and Change.

The Secretary-General proposed that the Council should have a smaller membership than that of the Commission in its present form. These members should be directly elected to the Council by the General Assembly with a majority of two-thirds of the members. This membership would differ from the current system where elections are held within the Economic and Social Council according to the geographical location of its fifty-four members. While the Secretary-General did not set out specific criteria for Council membership, he emphasized that "those elected to the Council should undertake to abide by the highest human rights standards."²² Member states should determine whether the new Council would be a subsidiary body of the General Assembly or an independent organization on par with the General Assembly.

¹⁸ Ibid., para. 181, p. 45

¹⁹ Ibid., para. 182, p. 45

²⁰ Ibid., para. 183, p. 45

²¹ Ibid

²² Ibid., para. 183, p. 46

c) The Secretary-General's Speech Before the Commission on Human Rights and his Explanatory Note on the Human Rights Council

On 7 April 2005, the Secretary-General of the UN gave a speech in Geneva at the annual meeting of the Commission on Human Rights, where he expanded on his recommendation to establish a Human Rights Council.²³ In his speech, the Secretary-General reiterated the strengths of the Commission in its present form, and the successes it had achieved throughout its history. He also restated his conclusions from the report "In Larger Freedom" that the Commission was currently facing a crisis and that there were certain areas in particular where it was falling short. The Secretary-General emphasized that any new human rights body would have to maintain the strengths that had characterized the Commission's work. In this regard, the Secretary-General mentioned two specific points: the Commission's intimate relationship with civil society organizations, and its special procedures represented by Independent Experts, Special Rapporteurs and Working Groups. However, the Secretary-General also recommended that the Council should adopt new mechanisms so that it could function more effectively than the Commission.

Most significantly, the Secretary-General recommended, for the first time, that the new Council should have "an explicitly defined function as a chamber of peer review."²⁴ The main role of the Council's peer review mechanism would be

to evaluate the fulfilment by all States of all their human rights obligations. This would give concrete expression to the principle that human rights are universal and indivisible. Equal attention will have to be given to civil, political, economic, social and cultural rights, as well as the right to development. And it should be equipped to give technical assistance to States, and policy advice to States and UN bodies alike. Under such a system, every Member State could come up for review on a periodic basis. Any such rotation should not, however, impede the Council from dealing with massive and gross violations that might occur. Indeed, the Council will have to be able to bring urgent crises to the attention of the world community.²⁵

By subjecting all states on an equal basis to periodic supervision, the Council could eradicate the politicization and double standards that had existed at the Commission, where only certain, less influential, states were submitted to supervision.

On 14 April 2004, the Secretary-General presented an Executive Report to the UN General Assembly in which he attempted to answer the most important questions that

²³ United Nations, "Secretary-General Outlines Major Proposals to Reform UN Human Rights Machinery," Press Release, SG/SM/9808 (7 Apr. 2005), available at <http://www.un.org/News/Press/docs/2005/sgsm9808.doc.htm>

²⁴ Ibid

²⁵ Ibid

were raised concerning the details of the proposed Human Rights Council.²⁶ In this document, the Secretary-General justified the proposal to establish a new Council by saying that the proposed structure would “offer architectural and conceptual clarity, since the United Nations already has Councils that deal with two other main purposes – security and development.”²⁷

The Secretary-General focused on the importance of establishing a Council that was a standing body that was capable of meeting “regularly and at any time to deal with imminent crises and allow for timely and in-depth consideration of human rights issues.”²⁸ The permanent presence of the Council would “allow more time for substantive follow-up on the implementation of decisions and resolutions.”²⁹ Importantly, it would also allow member states “to come together and take action when serious human rights situations develop.”³⁰ In addition, by meeting on a regular basis, the Council could avoid the problems associated with the Commission’s “politically charged six-week session.”³¹ The Secretary-General proposed that the new Council should be based in Geneva, but with a strong presence in New York to allow it to better interact with the General Assembly, the Security Council, and the Economic and Social Council.³²

The Secretary-General reiterated his suggestion that members should be directly elected by a majority of two-thirds of the General Assembly, adding that:

Being elected by the entire membership of the General Assembly would make members more accountable and the body more representative. And being elected directly by the General Assembly – the principal United Nations legislative body – would also have greater authority than the Commission, which is a subsidiary body of the Economic and Social Council.³³

The membership of the new Council should, stated the Secretary-General, be smaller than the Commission in its present form because a “smaller membership on the Human Rights Council would allow more focused discussion and debate.”³⁴ The most prominent supporter of this recommendation is the United States, although it is opposed by a large number of states and NGOs. In addition to the Council continuing to play a central role in supervising and developing international legal human rights standards, the Secretary-General reiterated the importance of creating a potential peer-review mechanism that would allow for “universal scrutiny, that is, that the performance of all Member States in regard to all human rights commitments should be subject to assessment by other

²⁶ “In Larger Freedom: Towards Development, Security and Human Rights for All: Addendum : Human Rights Council – Explanatory Note by the Secretary-General,” UN Doc. A/59/2005/Add.1 (23 May 2005), available at <http://www.un.org/largerfreedom/contents.htm>

²⁷ Ibid., para. 1, p. 1

²⁸ Ibid., para. 4, p. 2

²⁹ Ibid.

³⁰ Ibid., para. 11, p. 4

³¹ Ibid., para. 4, p. 2

³² Ibid., para. 5, p. 2

³³ Ibid., para. 4, p. 2

³⁴ Ibid., para. 13, p. 5

States.”³⁵ The Secretary-General proposed that the Office of the High Commissioner could collect information that would form the basis for review of each country’s human rights situation in order to create “a system of peer review that is fair, transparent and workable, whereby States are reviewed against the same criteria.”³⁶ By ensuring in this way that states are scrutinized and held more accountable, Council membership would be converted from a privilege into a responsibility.

In conclusion, the Secretary-General called upon member states to agree to replace the Commission with the Council in the documents emerging from the September Summit, although details concerning its size, composition and formation would be deferred until after this date.

d) The Plan of Action of the Office of the UN High Commissioner for Human Rights

In his report “In Larger Freedom,” the UN Secretary-General asked the then United Nations High Commissioner for Human Rights, Louise Arbour, to present him with a plan of action clarifying how her Office could overcome its severe lack of resources and better achieve its goals.³⁷ In May 2005, the High Commissioner presented a document entitled “The OHCHR Plan of Action: Protection and Empowerment,”³⁸ which included wide-ranging and creative concepts for the future role of the Office of the High Commissioner, and for its relationship with the other UN bodies, including the Commission on Human Rights.

As in the other documents discussed above, the High Commissioner began by discussing the charges leveled at the Commission on Human Rights of “selectivity, double standards, politicization, and obstructive regional divisions.”³⁹ The High Commissioner supported the proposal to replace the Commission with a Human Rights Council noting that:

It is essential that a new body find effective means to carry out its supervisory responsibilities, and this will necessarily entail some system for measuring States’ human rights obligations against their actual practice. The present system for country scrutiny in the Commission is, all agree, unsatisfactory. At the same time, there must be some system in place for considering the actual human rights situation in countries.⁴⁰

The High Commissioner strongly supported the Secretary-General’s proposal to introduce a peer-review mechanism, both in the new Human Rights Council or in the Commission on Human Rights if the latter is preserved and reformed. She also emphasized the importance of reaching an agreement on the details of this peer-review

³⁵ Ibid., para. 8, p. 3

³⁶ Ibid

³⁷ Ibid., para. 145, p. 38

³⁸ The United Nations High Commissioner for Human Rights, “The OHCHR Plan of Action: Protection and Empowerment” (May 2005), available at <http://www2.ohchr.org/english/planaction.pdf>

³⁹ Ibid., para. 4, p. 6

⁴⁰ Ibid., para. 91, p. 22

mechanism, including its method of operation and the means of distinguishing it from states' obligation to present periodical reports to UN committees.⁴¹

e) Discussions on Reform

The reform initiatives presented above, especially the report of the High-Level Panel on Threats, Challenges and Change, and the Secretary-General's report, have been subject to numerous discussions by member states, and have therefore been modified from their original format.

On 12 April 2005, during the annual session of the Commission on Human Rights, the Commission's member states decided to devote half a working day to hold an unofficial consultation session on the proposals for reform of the Commission. A number of states and regional groups presented reports commenting on the suggestions for reform. Some NGOs were also given an opportunity to express their initial responses to the proposed reforms. However, the session ended without arriving at any conclusions. This lack of decision making was a result of the newness of the suggestions, and the limited time afforded to the delegations to form an opinion after discussing the proposed changes with their respective capitals.

During the session, the African group attempted to pass a resolution to form a governmental working group with open membership to convene for five days when the Commission was not in session in order to discuss and reach a decision about the proposals for reform. The Commission would then hold an extraordinary meeting for one day to discuss the findings of the working group. A number of states opposed this proposal on the grounds that the reform-related discussions already in session in New York would be confused and dissipated by the initiation of a parallel route in Geneva.⁴² However, the decision was finally adopted by a majority of thirty-four to fifteen, with four states abstaining.⁴³

However, when the resolution was brought to the Economic and Social Council in New York, it did not receive sufficient support; instead, the Council adopted a resolution calling upon the current chair of the Commission on Human Rights to organize another unofficial consultation session – lasting no longer than two days – to discuss the reform proposals and subsequently present a report on their discussions to the President of the Council, without calling for the Commission to convene.⁴⁴ This unofficial consultation session was held by the Commission in Geneva on 20 June 2005, and a report was

⁴¹ Ibid., para. 93, p. 22

⁴² International Service for Human Rights, "A Guide to the United Nations Reforms Process," p. 6, available at www.ishr.ch

⁴³ Office of the High Commissioner for Human Rights, "Proposed Reform of the Secretary-General in the Area of Human Rights," UN Doc. 2005/116 (22 Apr. 2005), available at ap.ohchr.org/documents/E/CHR/decisions/E-CN_4-DEC-2005-116.doc

⁴⁴ Economic and Social Council, "Reform Proposed by the Secretary-General in the Area of Human Rights," UN Doc. 217/2005 (9 June 2005), available at <http://www.un.org/docs/ecosoc/documents.asp?id=931>

presented to the President of the Economic and Social Council who presented it in turn to the President of the General Assembly.

Concurrently in New York, the General Assembly had convened four unofficial consultation sessions in April 2005, each devoted to discussion of a section of the Secretary-General's report. These sessions (in which Egypt was a participant, as will be seen below), as well as side discussions with member states, resulted in the first draft of the concluding document of the high-level summit which will be held in September. The document, distributed within the General Assembly to its members by its President on 3 June 2005, contained a compilation of the most important reform issues that will form the basis for future negotiations between member states. The document includes the proposed replacement of the Commission on Human Rights with a permanently convened Human Rights Council.⁴⁵

The General Assembly held more unofficial consultations on the draft throughout June and the second draft was published on 22 July.⁴⁶ After a new round of consultations, the final draft was issued on 5 August 2005. This draft outlines the most recent group of suggestions for UN reform, including the suggestion for forming the Human Rights Council.

The final draft contains numerous sections related to human rights. These include a pledge by Heads of State and Governments, who are scheduled to attend the Summit, to respect human rights and basic freedoms without discrimination, and to work towards strengthening the mechanisms of human rights within the UN. The overall goal is to ensure the enjoyment of all human rights: civil, political, economic, social and cultural. World leaders pledged in the document to strengthen and support the Office of the High Commissioner for Human Rights, and to reform the human rights treaty-body system.

The section concerning the Human Rights Council contained a large number of suggestions, including those proposed in the months prior to drafting the document. The latest text includes a pledge to form a permanent committee as a replacement for the Commission on Human Rights, while preserving the special mechanisms of independent experts, and upgrading it to become a body that answers to the General Assembly. Furthermore, it proposes that the General Assembly should decide within five years whether the Commission's replacement will become one of the UN's principal organs, equal to the General Assembly, the Security Council and the Economic and Social Council.

⁴⁵ See ReformtheUN.org, "General Assembly President's Draft Outcome Document" (June 2003), available at <http://www.reformtheun.org/index.php/pages/2>

⁴⁶ See ReformtheUN.org, "Revised Draft Outcome Document" (22 July 2003), available at http://www.reformtheun.org/index.php/united_nations/1217

The draft document describes the tasks that would be performed by the Human Rights Council which include:

- 1) supporting and protecting human rights by making recommendations to the General Assembly with a view towards developing international law in this field;
- 2) supervising programs of technical assistance and capacity-building for member states in this field;
- 3) coordinating with different UN mechanisms and bodies regarding human rights; and
- 4) discussing emergency or continuing human rights crises.

All of these duties are currently performed by the Commission on Human Rights during its annual session.

The final draft of the document states that the Human Rights Council should be established on a permanent basis, and should also include the new peer-review mechanism which would function in the manner suggested by the Secretary-General in his explanatory note to the General Assembly.

The draft document also suggests that the membership of the Council should be comprised of between thirty and fifty states, elected for a three-year period by two-thirds of the General Assembly members. The elections should take into account geographical balance and the state's contribution to strengthening and protecting human rights. Also, if states elected to member status have not been reviewed by the peer-review mechanism before their election, then they should agree to be evaluated under the peer-review system during their membership term.

f) The Next Step

A new round of consultations is scheduled to be held at the General Assembly in New York on 22 August 2005 to make final amendments to the concluding document for the September Summit. This process will eventually result in the publication of the final draft of the document. Consultations concerning the document are expected to last until the Summit convenes during the period from 14-16 September with participation by world leaders.

After the final document is ratified in September, consultations on the functioning, procedures and duties of the new Council will continue until the end of the General Assembly annual meeting on 31 December 2005, as will the debate on the transitional procedures to transform the Commission on Human Rights into the Human Rights Council.

V. THE EGYPTIAN GOVERNMENT'S POSITION REGARDING THE ESTABLISHMENT OF THE HUMAN RIGHTS COUNCIL

The Egyptian government has reacted negatively to the suggestion to form a Human Rights Council since this idea was first put forth in December 2004, both on an individual country basis and through regional groups where Egypt exercises notable influence. Despite some modifications to the Egyptian stance within the last six months, it has retained its original attitude of opposition, in principle, to most of the proposals. Egyptian officials have presented numerous reasons why they oppose the creation of the Council and these will be summarized below. However, the real reason underlying the Egyptian government's negative stance is clear: namely, the desire not to have an independent and effective international organization documenting human rights violations and protecting actual or potential victims.

The following section provides a review, analysis and commentary on the elements that comprise the Egyptian position. It looks in particular at Egypt's a) general opposition to the concept of establishing a UN Human Rights Council; b) attempts to resist the supervisory and protective function of the Human Rights Council; c) attempts to resist the independence and effectiveness of the Special Procedures; d) attempts to limit NGO participation; and e) attempts to derail the negotiations for establishing the Human Rights Council.

a) General Opposition to the Concept of Establishing a United Nations Human Rights Council

Egypt in general does not welcome the conversion of the Commission on Human Rights into a Human Rights Council.

Counselor Ihab Gamal el-Din, Head of the Human Rights Department, Egyptian Ministry of Foreign Affairs⁴⁷

This short statement sums up the Egyptian position regarding efforts to strengthen the position of the Commission on Human Rights within the United Nations so that it can enjoy wide-ranging powers and overcome its current deficiencies. Officials from the Ministry of Foreign Affairs began vocalizing this negative position when the Council was first suggested as a replacement for the Commission on Human Rights in the report of the High-Level Panel on Threats, Challenges and Change. Egypt therefore began resisting the formation of the Council even before the publication of the UN Secretary-General's report "In Larger Freedom." On 6 April 2005, Egypt's Permanent Representative to the UN in New York, Ambassador Maged Abdel-Fattah, stated before a UN General Assembly session that:

⁴⁷ EIPR interview with Counselor Ihab Gamal-el-din, Cairo, 10 July 2005, available on file at the EIPR

[T]he proposed new council appears to reduce the responsibilities of the Commission on Human Rights, and change the governmental nature of the process of international supervision in the field of human rights, especially since the scope of responsibilities of the proposed council, and its relation to other related organizations, are still mysterious.⁴⁸

As the ideas around the establishment of the proposed Council and its future powers began to materialize, the Egyptian position became more vocal. On 19 April 2005, after the publication of the Secretary-General's report, his subsequent speech before the Commission on Human Rights, and his explanatory report in which he presented a proposed mechanism for peer review, Ambassador Abdel-Fattah presented Egypt's statement to the General Assembly session devoted to the discussion of the human rights section of the Secretary-General's report. Abdel-Fattah said:

The initial reading of the supplementary note circulated by the S.G. leads us to conclude that such a council, with its suggested functions does not necessarily enhance our mutual efforts to promote better respect for human rights, for there is no guarantee that the same structural and functional problems pertaining to the Commission of Human Rights will not be automatically subsumed in the new structure, even if it were to take a peer review format.⁴⁹

The Egyptian Permanent Representative's official statement ended by emphasizing that "the choice to reform the Commission appears to be the best alternative at this stage, rather than establishing a new entity and performing exhausting labor to render it effective on a coordinatory basis."

The Egyptian position does not differ substantially from the stance of the regional groups to which Egypt is a member. The African group's statement, delivered by Ambassador Naela Gabr, Egypt's Permanent Representative to the UN in Geneva, before the meeting of the Commission on Human Rights on 12 April 2005, described the reforms proposed by the Secretary-General as "cosmetic."⁵⁰ Similarly, a paper issued by the representatives of the Organization of the Islamic Conference (OIC) described the proposed change from the Commission on Human Rights to the Human Rights Council as "simplistic and politically unsustainable."⁵¹

When asked by EIPR researchers about the reason behind Egypt's unwelcoming attitude towards the new Council, the Head of the Human Rights Department at the Egyptian Ministry of Foreign Affairs said that, "from the Egyptian viewpoint, the new Council will

⁴⁸ Statement of Ambassador Maged Abdel-Fattah, General Assembly Meeting No. 85, Session 59 (6 Apr. 2005), available at: <http://www.un.org/webcast/ga2005.html>

⁴⁹ Statement of Ambassador Maged Abdel-Fattah, Unofficial Consultations on the Third Section: Freedom to Live in Dignity of the Secretary-General's Report (19 Apr. 2005) available on file at the EIPR

⁵⁰ Statement by Ambassador Naela Gabr, Egypt's Permanent Representative, Unofficial Consultative Sessions regarding the Commission on Human Rights Reform made on behalf of the African Union (12 Apr. 2005) available on file at the EIPR

⁵¹ Paper by the OIC Working Group on Human Rights and Humanitarian Affairs Regarding the Reform of the UN Human Rights System (20 May 2005), available on file at the EIPR

lead to more politicization, not the reverse, and it will not solve the Commission's current problems."⁵² However, as the next section will show, the Egyptian stance regarding the Council is in line with its other positions regarding similar issues at the UN. Overall, Egypt seems less concerned with addressing the Commission's problems than with resisting the establishment of a new entity that enjoys the power to monitor states' implementation of their responsibilities to respect human rights and to protect individuals' rights from violation. A number of nations, including Egypt, have achieved no small measure of success in imposing their control over the Commission and ensuring that it has no real impact. Egypt appears concerned that the new Council will prove to be an entity that cannot be controlled or contained, and which will therefore directly impact Egypt's response to human rights issues.

b) Attempts to Resist the Supervisory and Protective Function of the Human Rights Council

A number of countries, including Egypt, are apprehensive of the new international initiative of moving human rights beyond mere moral promises and written agreements and into the area of real protection and effective implementation. Over the last fifty years, a number of international human rights treaties have been concluded that are legally binding on states parties. The human rights community is now focused on ensuring that these treaties are effective and that violations are prevented either before they occur, or responded to immediately. States such as Egypt clearly see the establishment of the Council as the embodiment of this worrisome trend towards protection and implementation. They have therefore attempted from the start to preserve the Commission in its current form with only minor changes. Failing to achieve this goal, they have striven to weaken the new entity and to strip it of any protective or supervisory role. Such motivations clearly underpin Egypt's negative official attitude towards establishing the UN Human Rights Council.

The Egyptian government accuses the Commission on Human Rights of politicization and double standards, and of singling out developing countries for condemnation of their human rights abuses. These criticisms are largely true, as the first part of this report has shown; in fact, there is universal agreement that these shortcomings do exist and that they constitute an impediment to the Commission's effective functioning. However, Egypt and other countries that fear the protective role of international human rights bodies, have never suggested any replacement system that would report on and condemn violations within states and respond as necessary. Indeed, Egypt and others have taken a stance that fundamentally opposes such rigorous monitoring and questioning of state action.

These states would rather see the role of any human rights body within the UN limited to specific tasks that do not involve supervision of states and protection of human rights. For example, they would prefer the Commission to focus on promoting human rights values and offering technical assistance and capacity-building in the field of human rights when requested by the state's government. Or they would encourage the Commission to conduct general discussions on the subject of human rights without mentioning specific

⁵² EIPR interview with Counselor Ihab Gamal-el-din, Cairo, 10 July 2005, available on file at the EIPR

conditions within states, or to write declarations, agreements and charters for ratification by the UN General Assembly. This important international organization would thus abandon any role in monitoring, preventing or opposing states' violations of their citizens' human rights. In this case, the Commission, or the Council once founded, would simply hold discussions and issue recommendations with no guarantee of implementation.

Taking this stance as its starting-point, Egypt and its allies have rushed to reject – or at least cast doubt upon – the suggestion of establishing a peer-review mechanism in the new Council, although it seems, at first glance, a logical solution to the problems complained of by Egypt and its allies.⁵³ If the problem is selectivity and double standards in choosing the countries whose human rights records are subject to review, the solution surely lies in subjecting all nations equally to periodic review, without criteria that might be politicized, and starting with the Council member states themselves.

What is even more baffling regarding the Egyptian position is that Egypt had no objections to the peer-review process when it was suggested under the umbrella of the African Union as part of the New Partnership for Africa's Development (NEPAD), which Egypt joined on 9 March 2004. Indeed, the Egyptian government even hosted the African Peer Review Summit in the resort town of Sharm el-Sheikh in April 2005. The summit was attended by President Hosni Mubarak who made a reference to the peer-review process in his opening speech as evidence that African nations had “started an irreversible process of political reform and democratisation.”⁵⁴ Why, then, would Egypt voluntarily join a peer-review group with such enthusiasm in the African Union and then reject it with equal enthusiasm at the UN?

When EIPR researchers posed this question to Counselor Ihab Gamal el-Din, Head of the Human Rights Department of the Egyptian Ministry of Foreign Affairs, he gave two reasons for this opposition: first, that this mechanism constitutes a duplication of the functions of UN human rights treaty bodies, to which countries are already obliged to present a periodical report on their implementation of the treaties; and second, that the integration of this mechanism in the African Union is still experimental and has not yet been proven effective. A third reason was offered by Egypt on behalf of the Arab group during the unofficial consultation session held by the Commission on Human Rights in Geneva on 20 June 2005 on reform of the UN human rights system, which pointed to “the possible difficulties in implementing the concept in a neutral, unbiased and non-politicized way.”⁵⁵

Egypt's first reason has been refuted by the Secretary-General in his explanatory note to the General Assembly concerning the Human Rights Council. According to the Secretary-General, the reporting procedures under human rights treaties serve a different

⁵³ See, for example, statement made by Ambassador Maged Abdel-Fattah, op cit. available on file at the EIPR

⁵⁴ Gamal Nkrumah, “Africa on the Move,” *Al-Ahram Weekly* (21-27 Apr. 2005), available at <http://weekly.ahram.org.eg/2005/739.fo1.htm>.

⁵⁵ Summary of unofficial consultation session presented by the Chair of the 61st session of the Commission on Human Rights, in accordance with ECOSOC decision 217/2005, available at www.ishr.ch

function from the proposed peer-review mechanism. The former arise because states chose to ratify treaties and thereby undertake certain legal commitments to protect human rights. Independent expert panels then undertake “close scrutiny of law, regulations and practice with regard to specific provisions of those treaties.”⁵⁶ These experts then make “specific and authoritative recommendations for action.”⁵⁷ In contrast, the peer-review mechanism would involve states voluntarily entering “into discussion regarding human rights issues in their respective countries, and would be based on the obligations and responsibilities to promote and protect those rights arising under the Charter [sic] and as given expression in the Universal Declaration of Human Rights.”⁵⁸ Rather than issuing “specific and authoritative recommendations,” the implementation of the findings of the peer-review mechanism “should be developed as a cooperative venture.”⁵⁹ Overall, the Secretary-General stated that the peer-review mechanism would complement, rather than replace, the role of treaty bodies.

As for the second reason, the EIPR does not view the novelty of the African Union’s peer-review mechanism as a convincing justification for opposing the implementation of a similar mechanism at the UN level. On the contrary, the UN’s adoption of this mechanism may be seen as complementary to that of the African Union, which came up with this idea as a basis for a process of self-criticism practiced by member states within a governmental institution, to ensure transparency, follow-up and continued motivation for development. Also, the implementation and success of the peer-review process within the new Human Rights Council would be a strong motivating force for African countries to make the new mechanism work within the African Union, whilst exchanging experiences between these two organizations.

As for the third reason, neither Egypt nor the Arab nations have presented any evidence to support their claim that the new peer-review mechanism will be biased or politicized, or that it will implement different review standards for large or developed nations. On the contrary, developing countries will have the ability to challenge any potential biases by ensuring that they themselves utilize the new mechanism to scrutinize the human rights records of both developed and developing countries. The developing countries could also set a good example and precedent by voluntarily submitting to periodical review.

Moreover, Egypt’s claim that it opposes the creation of the new Council and a peer-review mechanism in part because of the possibility of politicization and bias is a statement that is weakened by the way in which Egypt has, itself, acted within the Commission. The Egyptian government has participated in the politicization of the Commission on a number of occasions. For example, during the last session of the Commission in 2005, Egypt abstained from voting in favor of a resolution that demanded the US open the Guantanamo Bay detention center to UN human rights inspectors to monitor the situation of the detainees in the prison. The Egyptian government took this

⁵⁶ “In Larger Freedom: Towards Development, Security and Human Rights for All: Addendum: Human Rights Council – Explanatory Note by the Secretary-General,” UN Doc. A/59/2005/Add.1 (23 May 2005), para. 7, p. 3, available at <http://www.un.org/largerfreedom/contents.htm>

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Ibid

stance despite the fact that there are Egyptian prisoners detained at Guantanamo Bay without charge or trial. When EIPR researchers asked the Head of the Human Rights Department at the Ministry about the failure to support the resolution, he answered that the Egyptian government had taken this position due to “political considerations.”⁶⁰

The real reason behind the Egyptian government’s opposition to a system that calls upon all countries without exception to open their records to evaluation, criticism and recommendation is that one of the goals of this mechanism is to ensure that the countries seeking membership in the new Council have a genuine desire for positive interaction with the Council and for working towards strengthening and protecting human rights. The proposal scheduled for presentation to the heads of UN member states in September 2005 stipulates, so far, that a mandatory requirement of membership in the Council should be the review of a state’s human rights situation for the duration of its membership. This will mean, for the first time, that membership in the Council will be inseparable from responsibility, and will not offer privileges so much as impose obligations. Such requirements will make it possible to exclude countries that only wish to obtain membership to protect themselves from criticism and to undermine the Council’s independence and efficiency.

Overall, Egyptian resistance to the creation of an effective Human Rights Council was almost inevitable: the Egyptian government has long viewed the Commission on Human Rights’ supervisory and protective role with hostility. Under Item 9 of the Commission’s annual meeting agenda, entitled “Violations of Human Rights and Basic Freedoms Anywhere in the World,” the Commission is empowered to examine internal human rights situations within countries. Item 9 was one of the most important weapons in the Commission’s arsenal for bringing deplorable human rights conditions in a given country to the attention of the UN, and of the world, and pressuring the country in question to rectify the situation. Egypt, however, has persistently voted against any decision based on this Item, as it is opposed in principle to the issuance of resolutions concerning human rights within a given country. In this way, Egypt and its allies within the Commission managed to weaken and dilute this mechanism and limit its scope of application. At the last annual session of the Commission, Egypt’s permanent delegate to the UN in Geneva declared that Item 9 of the agenda was “the article that is most provocative of confrontation and political discord” and condemned the way in which the Commission placed “political pressure upon nations by defaming them in international assemblages.”⁶¹ Based on these objections, Egypt proceeded to vote against Commission resolutions condemning human rights violations in Belarus, Cuba and North Korea.

When the EIPR asked the Head of the Human Rights Department at the Ministry of Foreign Affairs whether Egypt was opposed in principle to a UN body observing the human rights situation and working towards protecting rights, the Egyptian official said he was frustrated with what he called “the litigation approach to international relations.”

⁶⁰ Ibid

⁶¹ Statement by Ambassador Naela Gabr, Egypt’s Permanent Representative to the UN in Geneva, “Article 9: Violations of Human Rights and Basic Freedoms Anywhere in the World” (23 Mar. 2005), available on file at the EIPR

This approach, he said, was evident from the over-emphasis on mechanisms of implementation and obligation.⁶² EIPR researchers took this answer as an affirmation of Egypt's opposition.

c) Attempts to Resist the Independence and Effectiveness of the Special Procedures

The special procedures of the Commission on Human Rights – consisting of Special Rapporteurs, Independent Experts, and Working Groups appointed by the Commission on Human Rights – are some of the Commission's most important procedures for monitoring human rights developments. Such monitoring is achieved through the experts' reports, field visits to states and documentation of individual complaints received year-round. The experts also participate in conferences and their activities attract the interest of the media.

The number of independent experts appointed by the Commission has increased as their role has become more important and necessary, so that they now number more than forty. In 2004, these experts presented over one hundred reports to the Commission on Human Rights, with information on human rights developments in thirty-nine countries which the experts had visited throughout the year. In the same year, the experts sent more than 1,300 reports to 142 countries that addressed information contained in 4,448 individual complaints.⁶³

Despite the weakness of these experts' monitoring procedures – traceable to the dearth of human and financial resources available to the High Commissioner for appointing experts, as well as the fact that they work on a volunteer, part-time basis – their valuable contribution to the Commission's work has become its most important aspect. This may be what has motivated all the initiatives for UN reform to emphasize that the proposed new Human Rights Council needs to preserve the special procedures system. The independence and professionalism of most of these experts have led to significant developments in international human rights law. Unfortunately, some countries have responded to these achievements by refusing to cooperate with the special procedures, and by doing all they can to weaken and limit the effectiveness of the experts.

Egypt has been one of those countries. Despite being relatively cooperative with the queries and correspondence of Special Rapporteurs and Independent Experts, it has never allowed any of them to visit the country to monitor the human rights situation and present recommendations for improvement to the government. One of the UN Special Rapporteurs who remains barred from entry to Egypt is the UN Special Rapporteur on Torture, who for nine years has repeatedly asked the government to allow him to conduct a field visit, with no response so far.

The negative Egyptian attitude to independent experts stems from the Egyptian government's erroneous belief that a country's reputation is damaged when experts

⁶² EIPR interview with Counselor Ihab Gamal-el-din, Cairo, 10 July 2005, available on file at the EIPR

⁶³ The United Nations High Commissioner for Human Rights, "The OHCHR Plan of Action: Protection and Empowerment" (May 2005), available at <http://www2.ohchr.org/english/planaction.pdf>

examine and present conclusions and recommendations on the human rights situation in a given country. The government therefore refuses to cooperate with UN human rights investigators who operate out of a sincere desire to improve the internal situation.

The government's refusal to allow a number of Special Rapporteurs to visit Egypt and study the human rights situation has not stopped the latter from devoting part of their reports to narrating and analyzing the complaints that they receive regarding human rights abuses in Egypt, and from including the Egyptian government's response to such complaints. In 2005, for example, complaints about the Egyptian government were mentioned in twelve of the reports produced by the Commission's investigators. These complaints covered abuses relating to torture, extrajudicial executions, the rights to health, housing, arbitrary detention, independence of the judiciary and lawyers, freedom of belief, freedom of expression, forced disappearances, violence against women, and the situation of human rights defenders.⁶⁴ This list provides a further explanation for Egypt's efforts to weaken special procedures within the Commission and in the new Human Rights Council.

Most prominent among these attempts to weaken special procedures was the joint paper issued by representatives of the OIC, led by Egypt, Pakistan, Iran, and Sudan. This paper addressed UN human rights reform and included a long list of proposed modifications to the human rights system within the new Council. One key concern was the desire to reduce or eliminate the effectiveness of UN independent experts. The paper suggested that the experts should focus more on international cooperation and capacity-building in the field of human rights, rather than "targeting countries." Other suggestions made in the paper made it clear that the overall aim of the OIC countries was not to improve the special procedures system but to dismantle it altogether. The paper, for example, called for: 1) the selection system to be restricted so that experts were only selected from regional groups; 2) the placement of complex restrictions upon acceptance of individual complaints with a view to reducing them and limiting the ability of individuals to ask for the intervention of independent experts; 3) the creation of rules that would prevent Special Rapporteurs contacting the press or other organizations; and 4) tighter regulation of the cooperation between the experts and the General Assembly.⁶⁵

This uncooperative position is not new to Egypt. Last year, Egypt voted in favor of nineteen modifications proposed by Cuba to the resolution on human rights and special procedures presented by the Czech Republic in 2004. As in the OIC joint paper, these nineteen modifications included a group of suggestions aimed at weakening the role of independent experts. However, these modifications did not receive sufficient votes to pass.⁶⁶

⁶⁴ See Reports from the 61st session of the Commission on Human Rights, available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=1&se=59&t=9

⁶⁵ Paper by the OIC Working Group on Human Rights and Humanitarian Affairs Regarding the Reform of the UN Human Rights System (20 May 2005), pp. 3-5, available at on file at the EIPR

⁶⁶ "Final report of the 60th session of the Commission on Human Rights" (Mar.-Apr. 2004), pp. 459-461, available at <http://www2.ohchr.org/english/bodies/chr/sessions/60/documents.htm>

It is noteworthy that the position of the OIC, which opposes the special procedures as outlined above, differs from the stance of the African group to which Egypt is also a member. In the unofficial consultation session held by the Commission on Human Rights in Geneva on 20 July 2005 on the subject of UN human rights reform, the African group emphasized “the importance of preserving the strengths of the Commission with regard to special procedures.”⁶⁷ It appears that Egypt has chosen, in this point in particular, to take the side of the extremist position held by the OIC, and refrained from adopting the constructive position of the African group towards special procedures.

In addition to opposing special procedures, the Egyptian government staunchly defended the role, and continued existence, of the Sub-Commission on the Promotion and Protection of Human Rights, a body answerable to the Commission on Human Rights, comprising twenty-six independent experts appointed on the basis of geographical distribution. Egypt forcefully rejected the preliminary suggestions to replace the Sub-Commission with a panel of experts.⁶⁸ The Egyptian position can be traced to the fact that the members of the Sub-Commission are nominated for membership by their own governments. Despite the fact that these experts are expected to work in their personal capacity after election and not as representatives of their governments, a great many of them are far less independent than the experts working under the special mechanisms.

One indication of a potential lack of independence was evident from the way in which the Egyptian delegate voted at the last annual session of the Sub-Commission on the Promotion and Protection of Human Rights, held in Geneva in late August 2005. The Egyptian delegate was one of only two members – out of twenty-six – who abstained from voting for a Committee decision to reaffirm the legal principle that the transfer of an individual to a country where s/he is at risk of torture is considered a breach of international customary law.⁶⁹

d) Attempts to Limit NGO Participation

It has been a matter of unanimous agreement amongst almost all regional groups, in their position vis-à-vis UN human rights reform, that the new Human Rights Council should preserve the relationship of close cooperation with NGOs that currently characterizes the Commission on Human Rights. The only group to break with this unanimity is the OIC, led by Egypt, Pakistan and a few other countries that are less influential when it comes to the Commission’s work.

⁶⁷ Summary of unofficial consultation session presented by the Chair of the 61st session of the Commission on Human Rights, in accordance with ECOSOC decision 217/2005, available at <http://www.ishr.ch/>

⁶⁸ See the Oral Statement made by Egypt’s delegation at the 61st session of the Commission on Human Rights regarding the work of the Sub-Commission on the Promotion and Protection of Human Rights (15 Apr. 2005) available on file at the EIPR

⁶⁹ United Nations, “Sub-Commission Adopts Texts on Human Rights Violations, Administration of Justice, Economic, Social and Cultural Rights and Prevention of Discrimination,” Press Release (10 Aug. 2005), available at [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/63A29C24D3F80877C12570F1004B628D?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/63A29C24D3F80877C12570F1004B628D?OpenDocument)

The OIC's paper on UN human rights reform called for a number of changes aimed at limiting NGO participation. The OIC, for example, wanted to reduce the number of oral statements presented by NGOs in the annual session of the Commission on Human Rights or in the new Council after its establishment, and to also reduce the number of items on the agenda where NGOs are allowed to give oral presentations. Furthermore, the OIC asked for a tightening of the restrictions on NGO attendance of Council hearings. The paper even called for punitive measures to be taken against NGOs that distribute papers or deliver statements "that use a language that does not respect UN restrictions."⁷⁰

Egypt and the OIC have therefore attempted to strictly limit the role of independent human rights organizations during Commission sessions. However, at the same time, they have emphasized that the participation of national human rights organizations, such as the Egyptian National Council for Human Rights, should be respected and reinforced. This stance is a clear indication that Egypt and the OIC prefer the participation of less independent entities in Commission sessions.⁷¹

e) Attempts to Derail the Negotiations for Establishing the Human Rights Council

After it became evident to Egypt and its allies within the Commission that they would not succeed in gathering enough opposition to the idea of replacing the Commission on Human Rights with a new Human Rights Council, these countries began to change their strategy. Egypt agreed to the concept of establishing a new entity – a change in position that could be seen, for example, from the resolution issued at the African Union summit at Sirte in Libya in July 2005, in which the Egyptian President participated and where Egypt agreed to the establishment of the new Council as a replacement for the Commission.⁷² However, while Egypt and its allies claimed to support the idea of a new Council, they attempted at the same time to postpone the discussion of all the details connected to its powers, functions, mechanisms of operation, and procedural rules until after the World Summit planned for September 2005 in New York.

On 3 August 2005, Amnesty International issued a statement warning that a small number of countries had suggested to the President of the UN General Assembly that he delete all references to the Council's scope of work, and establish a working group with open membership – answerable to the General Assembly – to conduct negotiations as to the scope of the work of, and all procedural matters pertaining to, the new Council. In its statement, Amnesty International warned against granting this request, stating:

This could mean indefinite delay and no guarantee that a new, stronger human rights body will be created that addresses the selectivity and excessive politicization of the Commission on Human Rights. A call to create an undefined

⁷⁰ Paper by the OIC Working Group on Human Rights and Humanitarian Affairs Regarding the Reform of the UN Human Rights System (20 May 2005), p. 8, available on file at the EIPR

⁷¹ Ibid

⁷² Assembly of the African Union, "Sirte Declaration on the Reform of the United Nations," 5th Ordinary Session of the Assembly, AU Doc. Assembly/AU/Decl.2(V) (5 July 2005), available at <http://www.africa-union.org/summit/JULY%202005/home.htm>

Human Rights Council without specifying essential elements may even lead to a weakening of the existing UN human rights machinery.⁷³

In addition to Egypt, the countries that signed this statement included Cuba, China, Malaysia, Russia, Belarus and Vietnam.⁷⁴ Given the record of human rights abuses in these countries, it is easy to guess motives in postponing the discussion of the details of the new Council until after the Heads of State Summit – an event that will attract intensive press coverage.

VI. CONCLUSION

It has become clear to the EIPR that the Egyptian Ministry for Foreign Affairs has taken, since the beginning of the year and over the past eight months, a series of negative initiatives with the aim of weakening the UN's protection of human rights and its supervision of the implementation of international agreements on human rights. This stance conflicts with Egypt's obligations to work towards the support of human rights under the UN Charter. Similarly, this stance is unworthy of Egypt's size, role and history as a founding member of the UN in 1945, and as a participant in the first meeting of the UN Commission on Human Rights in 1946. Egypt's current position also conflicts with the positive contribution made by the Egyptian delegate, Dr. Mahmoud Azmy Pasha, in drafting the Universal Declaration of Human Rights in 1948.

The Egyptian government has chosen to focus on protecting itself from criticism and international supervision, and has made every effort to strip the proposed Human Rights Council of anything that might ensure its independence and effectiveness. This stance will, unfortunately, have significant long-term ramifications: it will both negatively affect Egypt's international standing and will also severely undermine the international community's ability to prevent gross violations of international human rights law.

The human rights system is today in danger of suffering a genuine setback with governments and armed groups increasingly resorting to the use of violence and disregarding, in the name of the "war on terror," the standards that humanity has fought long and hard to establish. This challenge necessitates that we work harder than before to protect these standards, without which security and development cannot be maintained.

⁷³ Amnesty International, "UN: Proposed Human Rights Council Must Not be Stripped of its Essentials," IOR 40/024/2005 (4 Aug. 2005), available at <http://web.amnesty.org/library/Index/ENGIOR400242005>

⁷⁴ Ibid

VII. RECOMMENDATIONS

To the Egyptian Ministry of Foreign Affairs:

- Refrain from obstructing the process of establishing the UN Human Rights Council as a replacement for the Commission on Human Rights, which has lost credibility and can no longer perform its role, and instead, exert positive efforts to ensure that the new Council enjoys the powers that will allow it to perform its duty independently and efficiently;
- Refrain from objecting to the foundation of the proposed Human Rights Council with a supervisory role over the situation of human rights in all countries of the world, and protecting these rights from violations by means of drawing the attention of the international community to these violations, and taking steps to prevent and remedy them. Human rights treaties constitute legally binding regulations by which states must abide, and these regulations will be meaningless without an international governmental apparatus to supervise and guarantee their implementation;
- Ensure that the new Council will maintain the system of special procedures represented by Special Rapporteurs, Independent Experts and Working Groups, and cooperate with these experts by providing all forms of needed support for the performance of their duties, as well as issuing a standing invitation to them to visit Egypt, study the human rights situation, present recommendations to the government to improve these conditions, and refrain from any action that might cast doubt upon the integrity, impartiality or credibility of special procedures;
- Ensure that the new Council will apply the same regulations currently in force with regard to NGO participation in the work of the Commission on Human Rights – indeed, it would be preferable that these regulations were given greater flexibility to ensure increased and active NGO participation;
- Allow transparent public and media access to the details of the Egyptian position towards the issue of UN human rights reform before the date of the summit in September 2005 in New York;
- Consult with independent Egyptian NGOs on the Egyptian position towards the issue of UN human rights system reform prior to the September Summit and take the NGO opinions into consideration when formulating the Egyptian position at the summit.

To the National Human Rights Council:

- Take urgent steps to rectify the Egyptian official stance on the process of establishing a Human Rights Council, announce the National Council's position regarding the Egyptian government's negative actions, and work with the Egyptian Ministry of Foreign Affairs to implement the recommendations of this report.