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**EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:
TREATY BODIES; ADAPTATION AND STRENGTHENING OF THE
UNITED NATIONS MACHINERY FOR HUMAN RIGHTS**

**Joint written statement* submitted the Europe Third-World Centre (CETIM), a
non-governmental organization with general consultative status and the
American Association of Jurists (AAJ), a non-governmental organization with
special consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[9 February 2006]

*This written statement is issued, unedited, in the language(s) received from
the submitting non-governmental organization(s).

GRAVE AND IMMINENT THREATS TO THE UNITED NATIONS HUMAN RIGHTS SYSTEM

I. THE DECISION TO ABOLISH THE COMMISSION ON HUMAN RIGHTS¹

The United Nations “Summit” held in September 2005, approved in its Final Declaration to abolish the Commission on Human Rights and to replace it by a Council on Human Rights. The Council’s features are not defined in the Final Declaration, but the superpower and its followers both governmental and non-governmental want it to be reduced and exclusive, on the pretext that its members must be democratic and respectful of human rights.

How will the criteria to assess the degree of respect to human rights and democracy be established? And who will decide which States are best “marked”?

Any selection criterion would be arbitrary and, furthermore, unacceptable because it would be contrary to United Nations principles of universality and sovereign equality of all member States.

Of course, the Commission on Human Rights does deserve to be criticized for its excessive “politicization”. However it is the main interstate UN body which since its creation by the ECOSOC in 1946 deal with the human rights situation in the world and takes the initiative in drawing up high international law standards, together with its subsidiary body, the Subcommission for the Promotion and Protection of Human Rights.

One of the reproaches to make to the Commission is its selectivity, because sometimes it seems a tribunal aiming just at judging the poorest and weakest countries. This is attributable to pressures put on it by big powers, led by the United States that, with a perfect cynicism, instruct and mark the rest of states on human rights issues, instead of trying to stop being one of the worst in the class and instead start to practise what they preach.

However, when the Commission deals with key issues such as the examination of thematic Rapporteurs’ reports, in particular those regarding economic, social and cultural rights, the United States, unyielding opponent to recognize such rights (development is not a right but something that depends on private initiative and the market economy), stay in minority, when not absolutely isolated². For instance, at the Commission session of March-April 2005, the resolution on the realization in all countries of economic, social and cultural rights was approved by 50 votes in favour and the three abstentions of Saudi Arabia, Australia and the United States.

We do not see the progress in creating a Council on Human Rights “less numerous” and, therefore, more vulnerable to pressures of big powers, when, regarding human rights, there exists a quite complete system, relatively efficient, with several mechanisms:

¹ Emphasis added by us.

² United States representatives at international meetings oppose systematically to the recognition of human rights, amongst others, the right to housing, to food and to health.

- the High Commissioner for Human Rights, on a permanent basis and leading the whole UN human rights system;
- the conventional bodies (the seven Committees of Covenants and Conventions, that meet twice a year to examine Member States reports, some of which can receive individual complaints by the victims or their representatives)³;
- the Commission on Human Rights, composed of 53 Member States representing, more or less equitably, the diverse regions, with a periodic rotating system of its Member States and special procedures that range over practically all issues related to human rights⁴.
- The Subcommission for the Promotion and Protection of Human Rights, subsidiary body of the Commission, that meets yearly and carries out numerous studies and draws up proposals regarding civil, political, economic, social and cultural rights;

In addition, the Commission on Human Rights can hold extraordinary sessions in cases of urgency, as it has already five times since 1992⁵.

Abolishing the Commission could involve suppressing the Sub-commission and consequently liquidating works, studies, proposals, resolutions, researches and urgent actions on human rights violations that take place in the world⁶. This is why the United States of America and its governmental and non-governmental allies want to eliminate the Commission on Human Rights and replace it by a Council, whose features are being discussed and are still to be defined, which should be “exclusive” and “democratic”. This is the wish of the United States of America. Moreover, the United States of America pretend that permanent members of the Security Council should be nominated as permanent members of the Council on Human Rights. This situation would reproduce, at the human rights level, the world dictatorship of great powers, exerted from the Security Council, under the US leadership.

Non-governmental organizations with consultative status before the ECOSOC have

³ The two international Covenants on civil and political rights and on economic, social and cultural rights and the five international Conventions on the elimination of racial discrimination, on the elimination of discrimination against women, against torture and other cruel, inhuman or degrading treatment or punishment, on the rights of the child and on the protection of the rights of all migrant workers and members of their families.

⁴ The Commission on Human Rights has Working Groups in it (enforced disappearances, arbitrary detentions, mercenaries, the last one being of recent creation) thematic rapporteurs (education, food, indigenous populations, health, tortures, housing, summary executions, toxic wastes, etc.) that investigate on the ground, file complaints, question governments, carry out urgent actions, etc. Big powers would look at their disappearance willingly. There are also rapporteurs that deal with specific countries, always poor countries. It seems that nothing was to be reproached to rich countries regarding human rights.

⁵ Twice to deal with Yugoslavia and thrice to deal with Rwanda, Palestine and East Timor, respectively.

⁶ The government of the United States refuses to receive the visit of Mr. Jean Ziegler, special rapporteur of the Commission on Human Rights on the right to food. Professor Cherif Bassiouni, rapporteur of the same Commission on the situation of human rights in Afghanistan, who dared to include in his report acts of torture, ill treatment and killings committed by American armed forces in this country, was “awarded” by the Commission, under the United States pressure, with the non-renewal of his mandate.

quite wide possibilities to act before the Commission and the Sub-commission. Instead, before a Council, appointed by the General Assembly, their attributions are unknown and can be left considerably reduced.

Moreover, NGOs with lesser resources, as well as States in the same situation, would have problems in attending the meetings of the planned Council, if they are permanent and frequent.

Lastly, we must know if abolishing the Commission on Human Rights without modifying the Charter of the United Nations does not violate it, since article 68 states: *The Economic and Social Council “shall set up commissions in economic and social fields and for the promotion of human rights...”*.

It is essential to ask the UN Office of Legal Affairs for an opinion, given that it has, among others, the power to prepare legal opinions, studies and advice on the interpretation of the Charter.

II. THE PROJECT TO UNIFY THE COMMITTEES OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS.

Paragraph d) of the preliminary Summary of the Plan of Action by the United Nations High Commissioner for Human Rights⁷ states: “...d) *More synergy in the relationship between OHCHR and the various United Nations human rights bodies, an intergovernmental meeting to consider options for a unified standing human rights treaty body*” and paragraph 43 comes back to the same idea, although formulated in a way that does not seem to propose the unification, but the collaboration : ...“*The efforts of OHCHR, the treaty bodies, the Commission on Human Rights and special procedures will be more effective if all are strengthened and working more closely together*”.

If the proposal consists of unifying Committees in a sole body, it would be the promptest way to reduce to impotence the control of implementation of the seven Covenants and basic human rights Conventions and to contribute importantly to the task of demolishing the United Nations human rights system, in which the United States and other governments as well as their strategic allies in some “big” non-governmental organizations are set on.

Indeed, at present each Committee must examine states periodical reports, discuss reports with them, make recommendations, in some cases do the follow-up of such recommendations, study constantly the respective Covenant or Convention and draw general observations on its contents. Besides, five out of the seven Committees have procedures to receive and deal with complaints.

The Committees thus gather a particular specialization on its respective Covenant or Convention. It is apparent that carrying out such amount of tasks would be *impossible* for a single Committee. Moreover, in order to

⁷ See document A/59/2005/Add.3.

unify all Committees, it would be necessary to modify six Covenants and international Conventions because, except for the Committee of the Covenant on Economic, Social and Cultural Rights, the other six are previewed by their respective Covenants and Conventions.

On the other hand, there are States that are party to some of the Covenants or Conventions but not to others and the existence of a sole Committee would lead in fact to favour some Covenants and Conventions over others. The losers would undoubtedly be those with social connotations.

The Committees' work can evidently improve. They should be provided with more funds and more personnel, to overcome the shortage suffered presently in both aspects.

But it must be recognized that, in spite of the difficulties to be confronted, the work of Covenants and Conventions Committees is invaluable as regards monitoring of implementation of human rights Covenants and Conventions, carried out with a quite high degree of competence and independence.

It is necessary to state that projects to replace the Commission on Human Rights by an "exclusive" Council and to unify the Covenants and Conventions Committees under the pretext of "depoliticization" and "more effectiveness" tend in fact to neutralize the realization of the aims those bodies were created for, and to put them at the service of a unilateral direction, imposed by hegemonic powers.

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