

AJISS-Commentary

The Association of Japanese Institutes of Strategic Studies

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Institute for International
Policy Studies

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The Japan Institute of
International Affairs
(Secretariat)

RIPS

Research Institute for
Peace and Security

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Online Publisher:

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No.55. 23 January 2009

REFORM OF THE UN HUMAN RIGHTS MECHANISM: CURRENT STATE AND CHALLENGES

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The highlight of UN reform that got rolling in the fall of 2003 under the initiative of former Secretary-General Kofi Annan was supposed to be the reform of the Security Council as advocated by Japan and others. However, when the Security Council reform, which sat at the center of the UN's reform agenda, was stalled by the spring of 2005 due to disagreement among the member states, previously little-discussed reform of UN human rights mechanism suddenly came to the fore. Annan, who was compelled to produce results in the pending UN reform before his second five-year

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term expired at the end of 2006, put the reform of human rights mechanism before the Security Council reform because he considered it easier to achieve given the backing of the United States.

Hasty Reform

However, there is no other example like this in UN history, in which institutional reform was carried out so hastily without prior preparation and enough debate. More than two and a half years have passed since the Human Rights Council replaced the Commission on Human Rights in the spring of 2006, but exactly due to these shortcomings, many problems are still left unsolved, causing difficulty to various human rights activities carried on from the council's predecessor. In Geneva, the center of UN human rights activities, many of those concerned with human rights are expressing disappointment at the reform.

All this began with the high-level panel report released in December 2004 by 16 experts appointed by the Secretary-General. The report criticized that the Commission on Human Rights, which was entrusted with one of the central missions of the UN, the protection of human rights, was being highly politicized by bargains conducted during the commission's election campaigns. It then proposed to abolish the election and expand its membership (53 in total) to all the member states of the United Nations (192 in total) with the transformed human rights mechanism supported by an advisory committee consisted of 15 experts independent of their states.

Finally, the reported added, "in the longer term, Member States should consider upgrading the Commission to become a 'Human Rights Council' that is no longer subsidiary to the Economic and Social Council but a Charter body standing alongside it and the Security Council." The Secretary-General Annan jumped at this last sentence and recommended that the World Summit 2005 and UN General Assembly, both scheduled for the fall of 2005, discuss setting up a human rights council in his report to the General Assembly released in the spring of 2005.

Problems

Amid the stalemate of Security Council reform, the Secretary-General's proposal was openly welcomed by human rights NGOs and experts, who were working to push human rights into the mainstream of the UN agenda, and strongly supported at the World Summit 2005 and General Assembly, leading to its adoption by the overwhelming majority at the Assembly on March 15, 2006.

The hastily established Human Rights Council, however, left serious legal problems. No coordination was made yet with the Economic and Social Council, which is given by the UN Charter the exclusive authority to deal with the issues of human rights. Furthermore, although the Commission on Human Rights was established in accordance with a specific provision (Article 68) of the UN Charter, it was dissolved by a General Assembly resolution without an amendment to the Charter.


Another important issue left unresolved is participation of NGOs. The UN Charter states that the Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations (Article 71). NGOs granted with consultative status have played an important role in the work of the Commission and its main subsidiary body, the Sub-Commission on the Promotion and Protection of Human Rights. However, it remains unclear under the Human Rights Council who is in charge of granting NGOs consultative status.

Apart from these legal problems, various research, standard-setting and monitoring activities undertaken under the Commission on Human Rights are being stalled due to delay in decision-making at the Human Rights Council. As far as this author was concerned as Rapporteur, the following issues were affected and left pending: principles and guidelines on extreme poverty and human rights; principles and guidelines on discrimination based on work and descent; and research on discrimination against Hansen's disease.

How to Make It Effective?

Reform of the UN human rights mechanism thus contains many problems, but not everything is going in the wrong direction. One positive result

is that the council is meeting much more frequently than the old commission, allowing the UN to respond swiftly to new human rights situations. A “universal periodical review,” in which the council reviews the human rights situations of all UN member states, began in the spring of 2008, which was unthinkable during the commission’s era. A new advisory committee composed of 18 experts was also set up in 2008 to replace the Sub-Commission on the Promotion and Protection of Human Rights, giving hope that research activities conducted under the commission would resume, albeit selectively.

A review of the council is scheduled for 2011, five years after its establishment. The council must seize this opportunity to improve itself by solving above-mentioned legal problems so as not to let the highly controversial reform of UN human rights system end meaningless. I hope that Japan would take a leading role in this endeavor, given its emphasis in recent years on human rights, environment and poverty reduction as part of its value-oriented diplomacy. 

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