



Current developments in the negotiations on the United Nations Human Rights Council.

After nine long months of intense negotiations, the Human Rights Council might experience birth problems. Newly emerging difficulties in the negotiations around the Human Rights Council (HRC) heighten on the other hand the probability for a nearly full 62nd session of the Commission on Human Rights (CHR). Be it to make the best use of the closing session of the Commission, as the date for the first session of the new Council might become questionable again, or, as the US ambassador to the United Nations, John Bolton, has put it, to "remind everybody how bad it is" in order to "get on the track of real reform."¹

As a result of intense negotiations Jan Eliasson, president of the UN General Assembly (GA), finally had presented a draft resolution which seemed to be an acceptable compromise for the delegations of all member states. According to his statements, this draft is a product of thorough consultations with all interested delegations which would not meet his or any delegations expectations to a 100%. The importance of the draft, so Eliasson, was the fact that a compromise had been found which was acceptable for everyone.

This notion was to be proven wrong by the utterances of Ambassador Bolton. He called the document in a press conference a "failed draft." To correct the "many deficiencies" of the text, he said the US was prepared to engage in renegotiations now or push it off for several months. Would the resolution be brought to a vote in the coming days, as

planned by Eliasson, the US would have to vote "no". Bolton even mentioned the possibility of line-by-line negotiations, although such a complete opening of the text could weaken the resolution (and the new body) drastically as it would also be used by other nations who prefer not to see a very strong Human Rights Council.

As a consequence of the US' threat to vote against the resolution, the decision on the Council has been delayed. Due to these circumstances, the Commission, which was to start at the 13th of March, has suspended its session for one week to wait for the decision from New York which is expected within this week.

In the main points, the new draft resolution does not differ very much from previous drafts. It envisages a Council of 47 members² (split according to regions³) which would be a subsidiary organ of the General Assembly. The members would be elected by a simple majority of the General Assembly for a three year term with the possibility of one re-election. The main purpose of the Council, which is supposed to meet at least three times a year for together no less than 10 weeks, would be

² Many Western countries had called for a membership significantly smaller than the one of the 53 member Commission. Yet, considering the augmentation of UN member states since the creation of the Commission in 1947, a 47 member Council seems to be acceptable for all.

³ African Group 13 seats, Asian Group 13, Eastern European Group 6, GRULAC (Group of Latin American Countries) 8, WEOG (Western and Others Group) 7

¹ Press conference, Feb. 28th on www.state.gov.

the protection and promotion of all human rights. To react to emergencies the draft resolution proposes the possibility of extraordinary sessions, which have to be proposed by a member and be supported by 1/3 of the Council's membership. The system of Special Procedures is to be taken over from the Commission and should be reviewed by the Council in the first year after its opening session. A complaints mechanism is to be kept as well although an explicit mention of the so-called "1503 procedure" (individual complaint) is missing in the draft.

An important new regulation is the periodic peer review mechanism. This means that the human rights situation in all UN member states will be routinely reviewed, beginning with the members of the Council. This mechanism is an attempt to overcome the politicized nature and the much criticized double-standards of the Commission. To this end, states that want to be elected as members to the Council also have to lay open their human rights record prior to the election. Their commitment and contribution to the promotion of human rights shall be made a criteria for their election. Another novelty is that the GA, with a 2/3 majority, can suspend the rights of membership in the Council if a member commits gross and systematic human rights violations. This was not possible in the Commission. Another new aspect is the emphasis that is put on "the principles of dialogue and co-operation" to guide the work of the Council and the explicit call for respect of different cultures and religions.

But now the new developments in the negotiations make further changes of the draft very likely. Major points on which the draft differs from the US' position concern the membership of the Council. There had been rumours about the US accepting the compromise worked out by Eliasson, but now there seems to be a return to the former positions. The US still favors a smaller Council as well as stronger criteria for membership, as had been asked for by some nations. Also, they seem to hold on to their criteria of a 2/3 majority vote in the GA (opposed to the simple majority mentioned in the draft) for electing the members of the Council. The restriction to only one direct re-election for

the members of the Council is another perceived deficiency of the draft. Maybe even the demand for permanent seats for the "perm 5" of the Security Council will surface again. At the same time the transfer of the "Special Procedures", a system of independent experts and Rapporteurs, recently criticized several times by the US, might be targeted again. The US calls for a review and rationalization of the mandates, which by some are seen as the Commissions most efficient tool in the protection of human rights. So far, the US is very reluctant with concrete propositions, which makes the whole issue seem more like a tactic to delay the creation of the Council than a push for reform.

The European Union on the other hand strongly supports Eliasson's plan of bringing the draft resolution to a vote as it is – without any further changes. Nevertheless, it is not very likely that the resolution will be tabled with the knowledge of the US' opposition. The lack of any current statements from either side suggests that there are private negotiations going on to accommodate the US' concerns and move on to a vote. If no compromise on the base of the current draft can be reached this might be damaging for the United Nations in general and for the human rights community in particular. High-ranking officials (the Secretary-General, the High Commissioner for Human Rights) have spoken very negative about the still-existing Commission, in order to exercise pressure on the member states to decide soon about the new Council. After all the negative press the Commission will not have much political weight anymore. In the same way calls on member states to vote "in the coming days" on the draft resolution concerning the Council might now have negative impact, as it was always pointed out – especially by the Secretary-General - how any further delay would be damaging for the credibility of the United Nations. Indeed this turns out to be a truly difficult moment for the protection and promotion of human rights.

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