

THE 2005 WORLD SUMMIT: SOFT PROGRESS ON HUMAN RIGHTS

IN SEPTEMBER THE 2005 World Summit saw more than 170 government leaders descend upon United Nations headquarters in New York City to celebrate the 60th anniversary of the founding of the UN. Although the Summit's original purpose was to discuss progress on the Millennium Development Goals, the meeting largely focused on UN reform. Recent controversies, including the Security Council's splintering over the invasion of Iraq, the corruption in Iraq's Oil-for-Food program, and the questionable membership of the Human Rights Commission, have damaged UN credibility and prompted many governments to push for significant changes. Despite progress made at the Summit, it is unclear whether the UN will soon achieve effective reforms.

After intense, around-the-clock negotiations, the 2005 World Summit outcome document was finalized on September 20, 2005. The General Assembly (GA) has already adopted the document, which details a long list of affirmations and proposed changes to UN bodies. A majority of Member States and the public were disappointed, however, largely because they saw the outcome document as lacking the teeth to make substantial improvements. Swiss President Samuel Schmid spoke for many when he said, "Switzerland has worked hard to obtain more, but nonetheless the final result will be a glass that is half-full rather than half-empty." More vocal in his criticism, South African President Thabo Mbeki said,

We have not made the progress on the reform of the UN that we should have ... to empower the poor of the world to extricate themselves from their misery. Simply put, this means that the logic of the use of power is the reinforcement of the might of the powerful, and therefore the perpetuation of the disempowerment of the powerless.

Despite such criticisms, several key reform proposals involve the protection and promotion of human rights, an indication of the increasingly prominent status this issue has attained in the international community.

HUMAN RIGHTS COUNCIL

The outcome document creates a Human Rights Council (Council) that will replace its discredited predecessor, the Human Rights Commission (Commission). Countries with notoriously abysmal human rights records, such as Sudan, Libya, and Zimbabwe, have been elected to and have actively participated in the Commission, causing substantial public outrage, in large part because Commission members may block investigations into human rights abuses within their borders. Adding to Western disapproval of the Commission was the May 2001 election, when the United States was voted off the panel for the first time since its creation in 1947. In an April 7, 2005, speech to delegates in Geneva, UN Secretary-General Kofi Annan commented, "We have reached a point at which the commission's declining credibility has cast a shadow on the reputation of the United Nations system as a whole and where piecemeal reforms will not be enough."

Ideally, the new Council represents a step toward a world where gross human rights violations will be met with less impunity. In reality, however, the differences between the current Commission and the proposed Council are yet to be determined. The outcome document endows the Council with the task of "promoting the universal respect for the protection of all human rights and fundamental freedoms." With little additional guidance, the President of the GA is "to conduct open, transparent, and inclusive negotiations, to be completed as soon as possible during the sixtieth session, with the aim of establishing the mandate, modalities, functions, size, composition, membership, working methods, and procedures of the Council." Although central components such as the size and composition of the body remain unresolved, it is likely the Council will meet continuously and have significant NGO participation.

The Commission is currently a subsidiary of the Economic and Social Council, which elects Commission members. Comprising 53 states, the Commission sits for a six-week session once a year in Geneva. In his March 2005 report, "In Larger Freedom: Towards Development Security and Human Rights for

All," Annan suggests that the Council be a subsidiary body of the GA, that members be elected by a two-thirds majority vote, and that it have a smaller membership than the current Commission. This well-supported proposal seeks to keep egregious abuser states off the Council, but it failed in negotiations leading to the final outcome document, as did the clause excluding known human rights violators. Most Member States and NGOs have agreed, however, that the new Council should be a standing body that meets continuously throughout the year. In addition to ensuring more timely and effective decisions, frequent meetings could put an end to some nations' current practice of releasing political prisoners just before the six-week session, only to imprison them again thereafter.

NGOs often provide vital information about political prisoners and other disadvantaged populations to the Commission. This led many nations, including the United States, to advocate that NGOs maintain their important role as consultants and observers to the Council. NGOs have the independence to monitor and publicize human rights abuses more freely than some Commission members. Some groups offered recommendations for determining the new Council's membership. Human Rights Watch, for example, suggested that Council members be subject to a peer-review mechanism, while others advocate a more strict set of requirements to qualify for Council membership. James Paul, Executive Director of the New York-based Global Policy Forum has cautioned, however, that few would qualify if such a checklist existed.

It will be crucial for the Council to retain the positive aspects of the Commission, such as NGO participation, while ameliorating its serious flaws. For example, the Council should include more stringent membership controls and upgrade its status to that of a standing subsidiary body of the GA. It remains to be seen how the president of the GA will steer the negotiations toward these well-supported goals.

RESPONSIBILITY TO PROTECT

The 2005 World Summit outcome document announced the international com-

munity's "responsibility to protect" those whose governments leave them vulnerable to gross human rights violations. Commonly known as R2P, this doctrine obliges each Member State to protect its citizens and others within its jurisdiction from war crimes, genocide, ethnic cleansing, and crimes against humanity. It also calls for international diplomatic and humanitarian intervention, as well as the use of peacekeeping troops in situations where mass atrocities and gross human rights violations are taking place, and where peaceful means are inadequate to counter such abuses. Notably, the doctrine supports the collective intervention of the international community, rather than that of a single state or small group of states.

PEACEBUILDING COMMISSION

Although R2P does not specifically address post-conflict situations, Member States agreed to formulate an inter-governmental Peacebuilding Commission (PC). This advisory body will assemble relevant actors to coordinate the reconstruction and institution-building efforts for effective and integrated post-conflict development. Participants will include the country or

countries in question, regional governments, major contributors to the relief effort, UN experts, and international financial institutions. Each PC meeting will address a specific country or sub-region. The PC will also have a standing organizational committee that can refer situations to the PC and that will be composed of members of the Security Council, ECOSOC, top UN donors, and those states providing the bulk of military aid. To fund these initiatives, Member States asked the Secretary-General to establish a post-conflict Peacebuilding Fund, supported by voluntary contributions. The PC is scheduled to begin its work by the end of this year.

Additionally, Member States endorsed creating a standing police force that would provide start-up capability and general assistance to the policing component of UN peacekeeping missions. The idea grew from the need to have a rapid response team that would be able to assist operations in crisis. This police force is less powerful than the standing military force some member countries sought to establish, and questions remain regarding its constitution, funding, and size.

CONCLUSION: MAINSTREAMING HUMAN RIGHTS

THE UNITED NATIONS' new initiatives represent the international community's increased focus on mainstreaming human rights. The Human Rights Council, the Responsibility to Protect, and the Peacebuilding Commission signify a step forward in the protection and promotion of human rights around the world. Moreover, the decision of Member States at the 2005 World Summit to double the funding for the Office of the High Commissioner for Human Rights over the next five years is another good indicator of an increased commitment to defending human rights. The remaining question is whether the funding and political will exist to make these organizations as transparent, credible, and effective as possible. Critics fear that to make only cosmetic changes from a Commission to a Council, or to proclaim a specific responsibility and then fail to execute it, would not only defeat the reform efforts, but would further endanger current and future victims of gross human rights violations. **HRB**

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(May 8, 2003). The United States government is not the only government to oppose the use of the ATCA in claims against transnational corporations. In July 2005 the Toronto Star newspaper reported that the Canadian government had for the third time attempted to put pressure on U.S. authorities to have the *Talisman* case thrown out. See Sudan: The Passion of the Present, *Canada Asked U.S. to Intervene in Talisman Case*, http://platform.blogs.com/passionofthepresent/2005/07/canada_asked_us.html (July 7, 2005), <http://www.bloomberg.com/apps/news?pid=10000082&sid=aiVqEtJAcB10&refer=canada> (July 6, 2005).

⁸ *In re South African Apartheid Litigation*, 346 F. Supp. 2d 538 (S.D.N.Y. 2004).

⁹ EarthRights International, *In Our Court: ATCA, Sosa and the Triumph of Human Rights: A report about the Alien Tort Claims Act*, <http://www.earthrights.org/pubs/inourcourt.html> (July 2004).

¹⁰ *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289 (S.D.N.Y. 2003), as cited in Joseph, *Corporations* (Hart Publishing 2004). In *Presbyterian Church of Sudan v. Talisman Energy*, the court agreed that international criminal law was the appropriate source of law in determining whether the corporate defendant had aided and abetted the Sudanese government in committing war crimes and genocide.

¹¹ *Doe I v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002).

¹² Joseph, *Corporations* (2004).

¹³ Anthony J. Sebok, *Unocal Announces it will Settle a Human Rights Suits: What is the Real Story Behind its Decision?*, <http://writ.news.findlaw.com/sebok/20050110.html> (Jan. 10, 2005).

¹⁴ See Andrew Clapham and Scott Jerbi, *Categories of Corporate Complicity in Human Rights Abuses*, 24 *Hastings Int'l & Comp. L. Rev.* 339 (2001), for a discussion of the different types of complicity and the use of the terms "benefi-

cial" or "indirect" complicity. Note that the authors classify the *Unocal* litigation in this category rather than as an example of direct complicity based on a different understanding of the facts of the case.

¹⁵ Initially, Unocal's business partner French oil company Total SA was a co-defendant, but it was held in *Doe I v. Unocal Corp.*, 27 F.Supp.2d 1174 (C.D. Cal. 1998), that the California court did not have jurisdiction over the company.

¹⁶ Sebok, *Unocal Announces it will Settle a Human Rights Suits*, <http://writ.news.findlaw.com/sebok/20050110.html>.

¹⁷ For example, it was held in *Ralk v. Lincoln County*, 81 F. Supp. 2d 1372, 1380 (S.D. Ga. 2000), that the plaintiff could bring a claim under the ATCA for violations of the International Covenant on Civil and Political Rights.

¹⁸ *Presbyterian Church of Sudan v. Talisman Energy*, No. 01 Civ.9882, 2005 WL 2082847, at *2 (S.D.N.Y. Aug. 30, 2005).

¹⁹ *Talisman*, 374 F. Supp. 2d 331.

²⁰ Note, however, that the court refused to grant leave to appeal on this point, stating that the case would proceed whether or not secondary liability was accepted because the plaintiffs also alleged primary liability.

²¹ *Talisman*, 374 F. Supp. 2d at 340-341.