

From Commission to Council

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by David Matas

Is the United Nations Human Rights Council doomed to repeat the faults of the United Nations Human Rights Commission? The UN General Assembly, by resolution dated April 23, 2006, abolished the Commission and replaced it with the Council. The Commission had become so politicized, so preoccupied with damning Israel for every imaginary sin, so blind to real human rights violations, that it self destructed. The members of the Commission, by their behaviour, had pulled down the UN edifice over their heads.

There has been a concerted effort to avoid the faults of the past. Council members are elected by an absolute majority of members of the General Assembly instead of by a majority of those voting, the way Commission members were. The Commission had become a pole of attraction for the worst violators, doing their best to get elected in order to block the attention of the Commission to their violations. Many of the worst violators who had managed to get elected to the Commission had difficulty getting the larger number of votes needed to get elected to the Council with the new voting system. As a result, the Council does not have the accumulation of violators the Commission did. But its membership is far from angelic.

The Commission met once for six weeks in March and April. The Council is meeting three times throughout the year in general session for ten weeks in total, allowing for more topical reaction to events. Most importantly, the Council is to engage in universal periodic review, reviewing the human rights record of all member states of the UN. The Commission had no similar universal review.

It is almost impossible to sanitize the Council completely, to remove the anti-Zionist bias which infected the Commission. There are just too many states who have caught the anti-Zionist bug for the disease to be quarantined.

Anti-Zionism had become a tactic of choice for violators. Violators used anti-Zionism cynically to buy votes from the ideologically committed anti-Zionist states, to get elected and stay elected on the Commission. As well anti-Zionism was the preferred verbiage violators used to filibuster Commission proceedings in order to ensure that the Commission had neither the time nor the energy to turn its attention to real violators.

But anti-Zionism had behind it a good deal more than that. Its prime inspiration was the political agenda of the anti-Zionist states who wanted to condemn Israel for every human rights violation the human mind could fantasize in order to discredit and delegitimize the existence of the State of Israel.

Real violations where Israelis were the victims, including the wave of suicide bombings, were off the table. The Commission had become the living exemplification of the Clausewitz adage that diplomacy is the conduct of war by other means. Anti-Zionist states used the Commission

to fight their never ending wars against the existence of the State of Israel.

Removing the worst violators who were on the Commission from the Council weakened the anti-Zionist forces at the UN. But they were so numerous that the loss of those numbers was far from fatal.

The old Commission had 53 members. The new Council has 47 members. The Asian and African region have each allocated to them 13 members. The 57 state Organization of the Islamic Conference has 16 members on the Council, 7 in the Asian region and 9 in the African region. The Organization of Islamic Conference states, accordingly, have a majority of both the African and Asian region, and those two regions together, counting 26 states, have a majority of the Council. The Organization of the Islamic Conference states, in effect, controls the Council.

Not every Organization of the Islamic Conference state is anti-Zionist, let alone every African and Asian state. But the Organization of the Islamic Conference states tend to be driven by anti-Zionists and the African and Asian states are in turn heavily influenced by the Organization of the Islamic Conference states. Standing up for the right to self determination of the Jewish people just does not seem that important either within the Africa or Asia blocs or the Organization of the Islamic Conference. The result is an automatic anti-Zionist majority.

It was predictable that a new Council would be infected with the same obsession which undermined the old Council, the fixation on Israel. The issue became not how to get rid of it, an impossible dream, but rather how to manage it.

The first challenge was the agenda for the meeting. The solution Council states devised for the first session was an omnibus substantive item. States agreed to discuss five items in particular with the titles "situation of human rights in Palestine and the other occupied Arab territories"; "support for Ajuba Peace Agreement"; "avoiding incitement to hatred and violence for reasons of religion"; "promoting the human rights of migrants" and "human rights defenders". The chair added that any speaker could speak on any other human rights concern as the speaker saw fit. But the understanding of states was that the focus would be on the five listed items.

This solution was a step above the old Human Rights Commission which had a separate agenda item on Israel. But it was far from ideal. Of the list of five items, only two involve countries, Sudan and Israel. In Sudan, in the south in recent years, millions have been killed, and in the west the deaths have numbered in the hundreds of thousands amounting to a genocide. In Israel and the territories under its control, the deaths emanating from the conflict with Palestinians are incommensurably tiny in comparison. There are many other states with far greater death tolls either from armed combat or human rights violations or both.

Also note the difference in labelling. The Sudan topic for discussion has no reference to human rights; the title carries no suggestion that there may be human rights violations by the Sudanese government. The Israel topic, in contrast, by its reference to human rights, implies that respect for human rights is a concern. Indeed, many states, in their speeches, referred to the topic not as the situation of human rights in the occupied territories, but rather violations of human rights in the occupied territories.

As well, the territories under Israeli control are called occupied territories, suggesting that Israel should not be there. No part of the UN ever called those territories "occupied" when they were under the control of Egypt and Jordan even though those territories had the same status in international law then as they do now. The authors of the title are not prepared even to name and acknowledge the reality of Israel, leaving open the interpretation that all of Israel is occupied territory.

Though, in principle, the substantive speeches focussed on five topics and could have addressed any topic, the overwhelming bulk of the time was devoted to condemning Israel in the most vituperous terms. This agenda item became a replay of the Commission in microcosm. However, the fact that there no was separate Israel agenda item, it had to be admitted, was progress.

There were many rabid denunciations of Israel from Arab and Muslim states. But perhaps the most striking speech in this vein came from a state which was neither Arab nor Muslim, the speech of the representative of Cuba. Cuba devoted its whole speech on the agenda item dealing with substantive issues to denouncing Israel. The Cubans were so preoccupied with Israel they could not find even one word for the behaviour of the United States, usually a favourite Cuban whipping boy.

It looked like what was going on here was payback. From discussions I had with country delegations at the final Commission session a few months earlier in Geneva, I knew that Cuba had been actively trading away its support on matters which might be of interest to the countries addressed if those countries would in turn support Cuban election to the Council. Cuba, it seems, had horse traded its way onto the Council, offering what was necessary to get there. For the Organization of the Islamic Conference, what mattered was anti-Zionism. Cuba was more than happy to oblige.

This, of course, was exactly what had happened with the Commission. How many more violator states are now going to follow the Cuban example, swapping Council election votes for anti-Zionist denunciations? The Cuban speech was a bad sign.

It makes sense to have an agenda item in the new Council devoted to urgent newly developing human rights situations. But, for the anti-Zionists, whatever Israel did yesterday to defend itself is always the most urgent item on their agenda, requiring the attention and condemnation of the global community.

Would it be better if the Council were to avoid substantive issues at all? As a representative of a Jewish organization, I feel uncomfortable offering up the Jewish state as a punching bag just so that real human rights violations in other states can be addressed. The Human Rights Council should be addressing the situation in Sudan. But is it worth the price, beating up on Israel as the main event, just to have Sudan as a sideshow?

Answering that question, in the context of the Council, is pointless. The practical question we had to answer is not whether anti-Zionism can be sidelined, but rather how it can be managed.

Pouring anti-Zionism into an omnibus agenda item, given the current global political dynamic, was probably the best we could do.

For discussions on substantive issues, we could not say, so far so good. But we could say, so far, not as bad as it could have been, so far not as bad as the Commission.

Another touchstone was the renewal of mandates of thematic and country rapporteurs and working groups. The Council resolution on renewal of mandates proposed that all mandates established by the Commission be renewed for one year pending a review of the mandates. There is a footnote to this resolution which specially treats the mandate of the rapporteur for the situation of human rights in the Palestinian territories occupied since 1967. The footnote states "The duration of this mandate has been established until the end of the occupation (cf. CHR resolution 1993/2)", which will presumably be never, since the UN includes in Palestinian territories occupied since 1967 large swathes of Jerusalem, the Israeli capital.

There are some 43 rapporteurs. Five of them, including the rapporteur on Cuba, had indefinite mandates. None of the other four indefinite mandates is footnoted in the resolution.

The mandate of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 is arbitrary and discriminatory. The arbitrariness is highlighted by the phrase "occupied since 1967". Presumably the Commission was not trying to discourage the rapporteur from considering human rights violations before 1967. Rather the title of the mandate is meant to suggest first that the territories deserved the label "occupied" only since 1967, as if a change of state in control of the territories from Egypt and Jordan to Israel could change their legal status in international law. The title is meant to suggest, second, that there are other Palestinian territories occupied prior to 1967, presumably all of Israel proper.

John Dugard, the special rapporteur for the situation of human rights in the Palestinian territories occupied since 1967, by his one sided reports, has made a bad situation worse. The anti-Zionism of the Dugard reports as well as those of the rapporteur on the right to food Jean Zeigler raise the question of how to prevent the politicisation of the specialized mechanisms. Their politicization can not, like the Council or Commission before it, be excused on the basis that it is just the opinions of governments, which are inherently political.

One solution would be a more transparent selection process. Rapporteurs of the old Commission were chosen by its president after consultation with regional blocs. Candidates were nominated by states. The consultation took place behind closed doors. The result was just announced.

A more transparent process would be an open election, as there is now in the General Assembly for judges to the International Court of Justice. States could nominate candidates to oppose the worst of the rapporteurs, insisting on recorded votes for their selection. Another possibility is démarches to capitals to ask nominating states to avoid or withdraw nominations of politicised candidates.

The most promising reform from Commission to Council is the universal periodic review of the human rights record of all states. But how that will play out remains to be determined. The first

Council session passed a resolution referring the issue to an intersessional working group. For some states, like Russia and China, who can line up enough votes to prevent resolutions about them no matter what their human rights record, universal periodic review is the only hope for Council scrutiny. Universal review, because it is universal, avoids the bias and discrimination of selective resolutions.

However, universal periodic review is not as universal as it sounds. Israel would not be singled out. But the Palestinian authority would still escape scrutiny, since it is not a state. The universal periodic review needs to broaden its scope to include those non-state entities with UN observer status.

Should we abolish country specific mechanisms in favour of the universal periodic review? Abolition of country specific mechanism would resolve the problem the likes of John Dugard poses, but not the problem rapporteurs like Jean Zeigler pose, since Zeigler is rapporteur for a thematic mechanism. Zeigler is every bit as unfair to Israel as John Dugard, and then some. But, because he is a rapporteur for a thematic mechanism, he would remain in place even if all the country specific mechanisms were abolished.

The question whether the Council should abolish country specific mechanism is the same sort of question as whether the Council should avoid country specific discussions or refrain from country specific resolutions. We can give theoretical answers. But, with the current dynamic, these answers have no political reality. The country specific mechanisms will continue. Israel will continue to be the object of one of them. The only hope is that the mandate of the rapporteur focused on Israel becomes less biased than it now is, that a successor to Dugard will have less of an anti-Israel animus than Dugard has shown.

When the Council got round to considering resolutions, the mirage of managing the anti-Zionist states evaporated. The anti-Zionist tyranny which had dominated and victimized the Commission was not to be embarrassed nor constrained. They imposed a resolution on the Council requiring all the special mechanisms to gang up on Israel and the Council itself to condemn Israel in perpetuity.

The resolution, proposed by Pakistan on behalf of the Organization of the Islamic Conference states, is short enough that its operative parts are worth quoting in their entirety. There are only two paragraphs. The first paragraph says this:

"Requests the relevant special rapporteurs to report to its next session on the Israeli human rights violations in occupied Palestine".

Note that rapporteurs are not asked to determine whether there are human rights violations by Israel. The rapporteurs are told that there are human rights violations by Israel. The rapporteurs are instructed to detail those violations. Any conclusion by the rapporteurs that Israel is not violating human rights would violate the express instructions the resolution gives to the rapporteurs.

This sort of instruction violates the independence, integrity and credibility of the special rapporteurs. The rapporteurs are supposed to be experts exercising their own judgements. This

resolution violates the very concept of what a rapporteur should be.

This paragraph is reminiscent of the General Assembly resolution asking the International Court of Justice for an advisory opinion on the Israel security fence. That request did not ask the Court for an opinion whether the fence violated international law. Rather the request, in effect, asked the Court to tell the General Assembly what were the consequences of the violations of international law which the General Assembly had already decided that Israel had committed by building the fence.

If any rapporteur were to come back to the Council with a report that, in spite of the assumption in the resolution, Israel was not violating human rights, that report would be, for that rapporteur, a career ending move. The consensus around the appointment of that rapporteur would immediately disintegrate. Only rapporteurs who are prepared to rubber stamp the already formed opinion of the Council, formed before consideration of the facts and the reports of rapporteurs, could have a hope of continuation in their positions.

The form of the resolution has undermined the institution of the rapporteurs. It has discredited, from its inception, the reports of the rapporteurs on the human rights situation in Israel and the territories it controls. Any report the rapporteurs now bring back has to be dismissed out of hand as parroting the opinions of their political masters.

This has to be regrettable not only for those who are concerned about overall UN human rights mechanisms. It is also regrettable for the promotion of respect for human rights in Israel and the territories it controls.

Suppose it were indeed true that Israel has violated human rights of Palestinians in the territories Israel controls. How could anyone take seriously a report from a rapporteur about those violations, given the political orders this resolution issues to find such violations? When a person is told today to warn about a blazing fire tomorrow, it is all too easy to ignore the call "fire" when we hear it, even should there be a real fire.

The resolution does not ask the rapporteurs to report on Palestinian human rights violations; it is blatantly one sided. anti-Zionist Palestinians engage in terrorist attacks on Israel, including suicide bombing. Israel responds in self defence. The answer the new Human Rights Council has to this dynamic is to criticize Israel, in advance of any reports the Council has commissioned, for human rights violations, without uttering a peep about Palestinian behaviour.

It is apparent that what is being expressed here is not a concern for human rights, but blatant favouritism for one side in an armed conflict, the Palestinian side. The resolution mouths the vocabulary of human rights. But it endorses human rights violations by its silence on violations in support of the cause of denial of the right to self determination of the Jewish people.

It is instructive also to see who the co-sponsors of this resolution were. The resolution had twenty seven co-sponsors, including Iran, Syria, Sudan, Libya, Saudi Arabia, Pakistan, Cuba, Yemen and Tunisia, all serious human rights violators. Yemen, Iran, Syria, Libya and Sudan are not members of the Council. The rules of procedure nonetheless allow them to co-sponsor

resolutions.

This Council session was two weeks. The first week was a high level session devoted to speeches from dignitaries. The second week was business. The Iranian delegation to the high level first week session included prosecutor Saeed Mortazavi and Justice Minister Jamal Karimi-Rad. There are serious grounds to believe that Mortazavi is complicit in the torture and death of Canadian photojournalist Zahra Kazemi as well as many other grave violations. Karimi-Rad is detaining without charge in Iran Canadian philosopher Ramin Jahanbegloo. It is apparent that, when a state which sends to the Human Rights Council a delegation made up in this way, and then co-sponsors a human rights resolution, its concern is not human rights.

The second paragraph of the Pakistani/Organization of the Islamic Conference resolution says this:

"Decides to undertake substantive consideration of the Human Rights Violations and Implications of the Israeli Occupation of Palestine and other Occupied Arab territories at its next session and to incorporate this issue in its following sessions."

This paragraph has its own remarkable features. It is bad enough to condemn Israel for past human rights violations without regard to what the special rapporteurs might say. This paragraph condemns Israel for future human rights violations. It just assumes that Israel will continue to violate human rights into the indefinite future. What could be more biased than that?

The passage of this resolution means that, from its very first session, the work of the Council is to be distorted indefinitely. Israel was the only country subject to a resolution at the first session of the Council. The resolution not only singles out Israel now; it asserts that Israel will continue to be singled out for the indefinite future. Any hope that this Council might be less politicised than the last Commission is dashed immediately and definitively by the wording of this paragraph. With this resolution we can see that the creation of the Council amounted to little more than the pouring of old sour wine into new bottles.

The phrase "human rights violations and implications" of what the resolution calls the occupation is grammatically confused, but the intent is clear enough. The anti-Zionist movement has consistently taken the position that the very existence of Israel leads to human rights violations. The working draft declaration circulated before the Non-Governmental Forum of the World Conference against Racism held in Durban, South Africa in 2001 called the State of Israel, and not any of its specific practices or policies, as "this barbaric and inhumane project". To the authors of the resolution, human rights violations flow inevitably from the existence of Israel. The implication they wish to be drawn is that, to promote respect for human rights, Israel should cease to exist.

This is typical of anti-Zionist propaganda. Though anti-Zionists use the vocabulary of human rights, respect for human rights, as one can see from the cast of characters moving the resolution, is the principle furthest from their minds. Their real agenda is destroying Israel. The vocabulary of human rights is mobilized to discredit the existence of Israel.

The last thing the movers of this resolution are interested in is Israeli respect for human rights. For, if Israel really were in respect of all human rights standards, the human rights argument anti-Zionist states are attempting to use to undermine the existence of Israel would disappear. Anti-Zionist states have a vested interest in finding Israel to be a human rights violator in order to delegitimize and discredit its existence. That is why the resolution decides in advance of the reports of all rapporteurs, not only for this session but for sessions of the Council into the indefinite future, that Israel is and will be violating human rights.

The non-governmental organization UN Watch has called the Council, in light of this resolution, UN business as usual. Yet, in some ways it is worse than usual. As bad as the Commission was, as unbalanced against Israel as it became, as silent about real human rights violators as it turned out to be, the Commission never had a general session where it passed resolutions about Israel only and not about even one real human rights violator. But at this Council, Israel was the only country in the world subject of a resolution. There was no resolution on Sudan, no resolution on Iran, no resolution on Burma. At the Commission on Human Rights, it seemed that Israel was the worst violator of human rights on the planet, a bad enough result. At the Council, its first session left the impression that Israel is the only violator of human rights on the planet, an even worse result.

After this resolution passed the Council, the anti-Zionist states broke into applause. It was applause for infanticide. States were applauding at the murder of a new born baby, the brand new Council.

But the anti-Zionist states did not stop there. They wanted to tear the baby they had just killed limb from limb.

The resolution of the General Assembly creating the Council gave the states members of the Council the power to convoke a special session provided one third of the members of the Council were in favour. Because the Council has 47 members, one third amounts to 16 states. On the last day of the Council, 21 states handed a request to the president of the Council to convoke a special session on Israel under the UN's tendentious name of choice "the situation on human rights in Palestine and other occupied Arab territories".

The anti-Zionist states were not content to have the new Human Rights Council, at its first session, single out Israel to the exclusion of all other states. They wanted a session where the only subject of discussion would be Israel, where discussion of general human rights principles would be off the table, where Israel bashing would be all that there is.

The United Nations Information Service issued a press release indicating that the president of the Council, Ambassador Luis Alfonso de Alba of Mexico, was holding discussions with states about the timing of this special session. The Economic and Social Council is meeting for four weeks in Geneva starting July 3rd. The press release indicated that states were considering holding the special session during a lunch break of this other meeting. I suggest that a coffee break would be more appropriate.

Once this special session begins, I further suggest that states truly concerned with the suffering

of Palestinians address the cause of their suffering in a realistic manner. That cause is not the existence of Israel, but the refusal of anti-Zionists to accept the existence of Israel, and their determination to use any and all means, including terrorism, including suicide bombing, including the suffering of the Palestinian people, to express that refusal. When and if Palestinians, Arab states, and the Organization of the Islamic Conference states are prepared to accept the existence of Israel, Palestinian suffering would quickly and simply end. That has been true since the inception of Israel in 1948. It remains true today. That simple truth should be brought home by all rights promoting states at any debate or special session focussing on Palestinian suffering.

What is one to make of all this? For Israel, as bad as things were, they could have been worse. Worse would have been a president's consensus statement saying everything that was in the Pakistani/Organization of the Islamic Conference resolution. The resolution passed the Council with 29 states in favour, 12 against and 5 abstaining. For Israel to have 12 states out of 47 on its side, one quarter of the states, is a better UN result than Israel has seen in a long time. In the General Assembly, that would translate into almost fifty states voting with Israel.

Canada gave a clear principled statement in explanation of its vote against the resolution, calling the Pakistani/Organization of the Islamic Conference resolution, "disappointing", "unfortunate", "one-sided". Ambassador Paul Meyers said: "we do not accept the singling out of one specific situation by the Council".

Nazi propaganda Minister Josef Goebbels said:

"If you tell a lie big enough and keep repeating it, people will eventually come to believe it."

At the UN, the big lie is that Israel is a major human rights violator. Anti-Zionist states have repeated this lie so often over so many years that many people outside of those states had come to believe it. The naked way the lie was told at this Council made it easier for states to see through it.

Even if Israel could see a silver lining in the result, advocates of UN human rights reform were not so lucky. For the Council, the result was a disaster. States still have to go through the motions of creating this new Council. But the point of its existence has gone. If this is what the new Council is, we might as well have stayed with the Commission.

It is not as if the Council is useless. Even at its first session it did some good work, adopting the Convention for the Protection of All Persons from Enforced Disappearance and Declaration on the Rights of Indigenous Peoples. But that good work could have been done by the Commission. And the result is unnecessarily discredited by the politicization surrounding Israel.

The problem of the Council, plain and simple, is anti-Israel bias, anti-Zionism, antisemitism directed towards Jews as a people. Neither the Commission before it nor the present Council nor the World Court nor other organs of the UN have been able to get round it or over it. The foundering of the UN Human Rights Council over Israel at its very first meeting is a forceful reminder of the fact that this is the planet we inhabit.

The first UN Council on Human Rights meeting was a cold shower. In retrospect, anyone who thought that a new Council could avoid the problems of the old Commission was naive. Very few, if any, states thought that the Council could completely avoid anti-Zionism. But all too many thought it could be managed. The very first Council destroyed that illusion. There are just too many states for whom anti-Zionism matters too much and respect for human rights matters too little. The new Council has not brought us into a better world. But it has given us clearer picture of the world in which we live.

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