



## **UN COMMISSION ON HUMAN RIGHTS LOSES ALL CREDIBILITY**

*Wheeling and dealing, incompetence and “non-action”*

**Reporters Without Borders calls for drastic overhaul of  
how the commission works**

## **Commission on Human Rights goes from bad to worse**

With Libya as its chairperson and coinciding with the war in Iraq, expectations were low for the 59th annual session of the United Nations commission on human rights of 17 March - 27 April in Geneva (Switzerland). But it exceeded the worst fears, to judge from the way it functioned and the resolutions that were adopted. Even the most hardened observers have not yet recovered. It was a baptism by fire for the UN high commissioner for human rights, Sergio Vieira de Mello of Brazil, who voiced disappointment and incomprehension at the impossibility of overcoming the divisions within the commission and the readiness of members to block resolutions rather than compromise.

In his closing statement, the high commissioner echoed the widespread malaise: *“There really is nothing more serious than the protection of human rights. Yet at times I have felt that, in the course of competitive debate, delegates were losing sight of the noble goal of protecting human rights, in the very body whose duty it is to promote them.”* UN Secretary-General Kofi Annan was even more explicit when he openly chided the commission in a speech the day before: *“Divisions and disputes in recent months have made your voice not stronger, but weaker; your voice in the great debates about human rights more muffled, not clearer. This must change, if you are to play the role intended for this commission, and if the cause of human rights is to be advanced in the broad and universal manner that we all desire.”*

The war in Iraq clearly overshadowed the start of the session in mid-March, but the customary routine quickly reasserted itself. A range of irregularities and excesses over the past few years had foreshadowed the mounting dangers. After the fiasco of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, the hijacked airliner attacks of 11 September 2001 did nothing to help. The ensuing preoccupation with security and the offensive against every kind terrorism have stampeded over human rights norms, conventions, protocols and the Universal Declaration.

### **States that are both judges and defendants**

Judges and defendants at the same time, the commission's 53 member states have always indulged in their little diplomatic games for big political stakes. Blithely bending democratic procedures, authoritarian and totalitarian regimes have pulled off dazzling feats of sleight of hand. Draft resolutions calling Russia to order because of Chechnya or Zimbabwe and Sudan because of abuses against their own populations were dropped thanks to fleeting alliances. Iran also managed to slip through the net after the European Union decided not to propose a resolution on the grounds that a dialogue was now under way with Tehran.

A few days after going so far as to sentence 79 dissidents to heavy prison sentences and execute three ferry hijackers while the commission was in mid-session, Cuba got off with a painless resolution that simply asked it to receive a UN envoy. Cuba's crackdown elicited frowns and the high commissioner's condemnation, but President Castro's friends were never seriously discomfited. Returning favours, Algeria, China, Pakistan, Russia, Syria, Vietnam, Zimbabwe and Sudan rushed to regime's rescue.

On the other hand, a few countries without support in the commission such as Burma and Burundi received condemnations that were clearly deserved while the commission found easier targets by singling out Belarus, North Korea and Turkmenistan for the first time. One cannot of course forget Israel, which is invariably condemned and enjoys the dubious privilege of being the subject of a half-dozen resolutions each year for it alone.

The United States was back after a year of penitence, distinguishing itself by its cynicism and hypocrisy. Clearly treating its “adversarial partners” with care, the United States chose not to sponsor any resolution on China or Russia. China got away without any reproach at all, while Russia was pleased that the commission took note of “improvements” in Chechnya. There was an impasse on capital punishment. Amnesty International reported 1,526 executions and 3,248 death sentences in 67 countries in 2002. China, the undisputed champion, led the way with at least 1,060 victims, followed by Iran (113), the United States (71) and Saudi Arabia (48). The divided commission was unable to agree on the “immediate and worldwide” moratorium that supporters of abolition have been demanding for a long time.

The atmosphere was oppressive, there was active complicity from the commission’s Libyan chairperson, and the verbal excesses and dramatic hand-waving of Algerian ambassador Mohamed Dembri were worthy of caricature. Trapped by their own fears and a failure to stick to their principles, the democracies for their part offered the sad spectacle of impotence and a lack of political will.

And human rights in all of this? The “collateral damage” column includes Kurds, Tibetans, Uighurs, Moluccan Christians, Pakistani Ahmadis, Pygmies, Buddhist Chakmas in Bangladesh, the Papuans of Irian Jaya and indigenous everywhere. Look, they are nowhere to be seen. The UN commission that is supposed to defend and protect fundamental freedoms is sinking in a maelstrom of culpable insignificance where George Orwell’s newspeak reigns supreme. It remains to be seen whether there is any will to extricate the commission from this dead end, in a UN in crisis, and whether it will still be possible to rise to the challenge of the future of human dignity.

### **The high commissioner and the concerned but powerless NGOs**

The diagnosis is as grave as the crisis. In March 2001, the then high commissioner Mary Robinson sounded the alarm by drawing attention to the system’s “constraints and shortcomings.” Before handing over the following year, she reiterated her concern in a final speech to the commission. “Human rights are in danger,” she said, referring to the measures taken in the fight against terrorism. “The buildings that were destroyed on 11 September can be replaced, but if the pillars of the international system are damaged or destroyed, it won’t be easy to restore them.”

Her successor Sergio Vieira de Mello also noted that things are not well with commission. “What has happened with its role of protecting and promoting human right?” he asked, going on to acknowledge that its “use for political ends” was giving rise to a “very serious credibility problem.” Free to say what he really thinks since standing down in 1996, former UN secretary-general Boutros Boutros-Ghali is openly critical. In his view, the system’s main flaw is: “The double standards that deprive the commission of any credibility. In some cases, there is concern about human rights violations, in other cases they are ignored.”

The main human rights NGOs have issued repeated warnings over the years. Disarray, farce, fiasco, slim pickings – they could not find harsh enough words to describe the 58th session’s “disastrous outcome,” which Amnesty International thought was the worst ever. One assumed it had hit rock bottom and could sink no lower, but 2003 was beyond belief. The 59th session proved “even more disappointing than last year,” said a disillusioned Human Rights Watch. “An abusers club of governments hostile to human rights has further consolidated its position” within the commission, the US-based NGO said. The International Federation for

Human Rights (FIDH) deplored “the increase in negotiating and political bargaining that determined the behaviour and voting of the member states.” Amnesty International accused the commission of failing yet again in its duty to protect victims and said it had seriously undermined its credibility as a defender of human rights. The International Commission of Jurists deplored the year-by-year downward slide.

## **1. Libya as chair – an affront to human rights**

The unacceptable was reached on 20 January with the election of Libya – one of the least commendable of countries as regards human rights – as the commission’s chairperson for 2003. The news would have been hilarious if the subject were not so serious. After the downward drift of recent years, it was a major additional blow to the credibility of a body that proclaims itself to be “the conscience of the international community.”

Often accused of flagrantly violating basic freedoms, Col. Muammar Gaddafi’s Libya clearly did not deserve this honour. Libya is also a terrorist state and subject to UN sanctions – albeit suspended in 1999 – for its involvement in blowing up two civilian planes in the air, a Pan Am flight with 280 persons aboard over Lockerbie, Scotland on 21 December 1988 and a UTA DC-10 with 170 victims the following year. A special court in Paris convicted six Libyan citizens in the second of these two attacks, including the head of the intelligence services and Col. Gaddafi’s brother-in-law.

The “guide of the revolution” is on the Reporters Without Borders worldwide list of predators of press freedom, while Amnesty International reports that freedom of expression is severely curtailed in Libya by laws banning political parties and any criticism of the regime. Amnesty International also points to the several hundred political prisoners who are held without being charged or tried, the mistreatment and torture of detainees, disappearances and “racist violence.” In September 2000, 130 immigrants from black Africa were killed by Libyans in the latest of a series of recurring massacres. Since then, hundreds of thousands of black Africans who were part of an easily exploited labour force have been rounded up and expelled or have fled the country. This grim picture did not prevent Col. Gaddafi’s regime from becoming a commission member in 2001.

Once in the commission, Libya spared no effort to obtain its highest post. After preparing the ground by investing 4 billion dollars in Africa, the government assumed the cost of organising and transporting delegations from all over the continent to the foreign ministers’ meeting in Durban in July 2002. It was there that the African Union was born, replacing the Organisation of African Unity, and that Libya, rather than Algeria, was chosen as the continent’s sole candidate to chair the commission in 2003, when it was Africa’s turn to hold the post. At the same moment, the Libyan press itself reported that four convicted thieves underwent amputation of the right hand and left leg on 3 July 2002 after the supreme court approved this punishment. Amnesty International also reported that in 2002, as in previous years, death sentences were passed in Libya under legislation providing for capital punishment for activities that amount to no more than the exercise of the right of freedom of expression and association.

An exchange of favours? Vice’s homage to virtue? Either way, nothing ever emerged to thwart Col. Gaddafi’s machinations despite all the concerns expressed at the time by human rights organisations. Well aware of what was happening, one Africa diplomat commented,

deadpan: “What do expect, the Arabs used to sell us during the era of the slave trade, now they buy us.”

### **Libya forced to submit to a secret ballot**

For the first time in the commission’s history, a secret ballot was nonetheless demanded for the confirmation of Libya’s appointment. Previously, the choice of chairperson was always approved by acclamation. With the active support of the dictatorships represented on the commission, the African group’s choice was ratified by 33 votes to 3 (United States, Canada and Guatemala), with 17 abstentions, including France. Like France, the other European Union members also opted for a cautious neutrality under the pretext of “not offending the African states.” The Libyan foreign ministry spokesperson rushed to thank France publicly for this gesture. Relatives of the UTA crash victims may not have been so appreciative.

Exchanges of ministerial visits meanwhile quietly resumed between France and Libya, completing a return to normal relations. The French court of cassation on 13 March 2003 closed the file on Col. Gaddafi that had been opened in June 1999 for his presumed role in the UTA bombing. Although the bombing of the Pan Am 747 led to the conviction in Britain of the main Libyan culprit and a Libyan undertaking to pay \$10 million compensation for each victim, none of the six convicted in France for the UTA bombing are serving their sentence and the financial compensation envisaged is meagre. This point was made by relatives of the UTA crash’s 170 victims on 11 June outside the Hotel Georges V in Paris where the dictator’s son Al-Saadi Gaddafi, who heads the Libyan football federation, was giving a press conference to back his bid to lead the African football confederation.

### **A controversial chair**

With Najat Al-Hajjaji, the Great Socialist People’s Libyan Arab Jamahiriya’s ambassador to the United Nations, as its chairperson, the 59th annual session of the UN commission on human rights could hardly have had a more inauspicious beginning. Contrary to custom, Col. Gaddafi’s protégée had refrained several times from holding a press conference since her appointment two months earlier. She finally met with journalists on the day of the session’s inauguration, on 17 March, but it was primarily to announce that she had proposed to the UN secretariat that Reporters Without Borders should be immediately suspended as a consultative member. This was because, during her opening address, Reporters Without Borders representatives had scattered leaflets in the Palais des Nations assembly hall denouncing Libya’s assumption of the chair.

“The UN has finally appointed someone who knows what she is talking about!” the leaflets said, “What credibility will remain for a body headed by the representative of a country that abuses human rights every day. By putting Libya at the helm, the commission shows that it is ready to cover up the brutalities of some of its members through dirty deals.” Hajjaji was not amused. Without ever receiving a Reporters Without Borders representative, the committee responsible for NGOs subsequently announced its support for a one-year suspension. The decision must be ratified by the UN Economic and Social Council (ECOSOC).

A past master of political cant, Hajjaji thought she would be able to silence all the criticism by punishing a NGO that defends freedom of expression. She had already, in her opening speech, faithfully repeated Tripoli’s current line on the Middle East and Iraq, taking care not to allude to the misdeeds of Saddam Hussein’s regime any more than those of similar dictatorships. The previous year, Libya had joined Cuba in rushing to Saddam’s help when a resolution was being adopted on Iraq.

Hajjaji's performance at the press conference offered a clear demonstration – if any were needed – that a regime such as Col. Gaddafi's is an imposter as chair of the commission. She expressed thanks for the questions but each time she said she was unable to reply or was not familiar with the relevant conventions, and passed the buck to the high commissioner. Asked if it would not be appropriate to require a minimum of respect for human rights from commission members, she argued that this would exclude many countries, including her own. This "would not be democratic," she added, keeping a straight face.

And what about the example set by Libya as regards ratification? The chairperson had to be reminded that her government had still not signed the second optional protocol aimed at abolishing the death penalty, or the one about eliminating discrimination against women, or the document on the involvement of children in armed conflicts, or either the protocol or convention on the status of refugees, or the Rome statute creating the International Criminal Court. She nonetheless expressed the hope that her country would one day ratify all of these basic principles.

## **2. "Wheeling and dealing"**

Opening on the eve of the war in Iraq, the session felt its effects. As has been the case for several years with the Israeli-Palestinian conflict, the commission became the hostage of both sides in the war without having the least influence over the course of events. There was verbal denunciation of the US intervention, but the Iraqi crisis just accentuated the divisions and reduced the commission to near-paralysis.

In an open display of its differences, the commission on 27 March rejected a request for a special debate on the human rights and humanitarian situation in Iraq as a result of the war by 25 votes against, 18 for and 7 abstentions. Fearing the debate would turn into a free-for-all, Japan, Australia, Canada, Europe and several Latin American countries joined the United States in blocking the resolution, to the annoyance of the Muslim and African countries and such allies of the moment as Cuba and China. With the war in Iraq over, the commission was nonetheless able on the session's last day to adopt a resolution inviting all parties to the conflict to strictly respect their obligations under international humanitarian law. Sponsored by the United States and the European Union, the resolution also asked the international community to help establish free and democratic institutions in Iraq.

At the same time, the commission approved a one-year extension to the mandate of the special rapporteur on the human rights situation in Iraq, and asked him to provide the general assembly with a report on the new information about violations of human rights and international law by the Iraqi government over a period of many years. The resolution also expressed an energetic condemnation of the systematic, generalised and extremely serious violations of human rights and international law during Saddam's regime.

The first version of the resolution, which was revised several times, talked of a report "on the human rights situation in Iraq," a vague wording which would have allowed the rapporteur to also look at the behaviour of the Anglo-American coalition forces now controlling the country. But that was out of the question, as far as the United States was concerned. After much pressure from Washington, the commission finally decided to limit the rapporteur's mandate to crimes committed in Saddam's time. The United States was also firmly opposed to the deployment of human rights observers, which some NGOs demanded.

After bitter and laborious discussions, the Iraq resolution was adopted by 31 votes to 3 (Cuba, Malaysia and Zimbabwe) and 12 abstentions (including Russia, Democratic Republic of Congo, Syria, Vietnam, India and Pakistan). Seven countries including Algeria, China, Libya, Sudan and South Africa did not participate in the vote in a show of disapproval.

The focus on Iraq was at the expense of the many human violations that were ignored. In his address to the commission, UN secretary-general Kofi Annan had nonetheless warned against letting Iraq deflect attention from events elsewhere: “There are many places where violence, chaos, oppression and the violation of human rights have intensified in the last few weeks and months,” Annan said, mentioning the Ituri region in the Democratic Republic of Congo, “where hundreds of people have been butchered in cold blood within the last few weeks.” In some of these places, “the perpetrators may have hoped that their crimes would escape international notice, at a time when all eyes were focused on Iraq,” Annan added.

### **The alliance of dictators against democracies**

Annan could also have mentioned the executions and heavy sentences passed on dissidents in Cuba in mid-session, or the commission’s silence on violations in China and Tibet, Iran, Saudi Arabia, Nepal, Algeria and many other countries. He did point out that “the human rights crisis in Iraq did not begin with this war.” In this he was essentially agreeing the comment of the high commissioner, Sergio Vieira de Mello who had criticised the commission for having been unable to debate “a scandalous situation” for 25 years.

These observations by the UN’s highest officials highlight in their own way the slippery slope the commission is heading down. The commission has become a forum in which governments defend their record rather than examine them. After rejecting the system for a long time, repressive regimes have understood that the best way to protect themselves against any examination is to take part in it. So they participate more and more actively in the commission’s work and combine efforts to better undermine it from the inside. Rwanda’s Hutu regime, for example, was preparing the Tutsi genocide in 1994 at the same time as it got itself elected to the commission and to the UN security council. When the Mugabe regime in Zimbabwe was riding roughshod over the most fundamental rights in 2002, it not only managed to avoid a vote on a resolution about this, but it also succeeded in getting elected to the commission for 2003 thanks to the connivance of other dictatorial countries. And in the wake of chairing the commission in 2003, Col. Gaddafi’s Libya now expects to join the security council.

While the European Union adopts an increasingly cautious stance and the United States has had other concerns since its removal from the commission in 2002 for a year, the commission has been overrun by a group of countries with little concern for human rights. They include long established predators such as China and Russia, supported by such violators as Algeria, Cuba, Pakistan, Libya, Sudan, Syria and even Zimbabwe. The Muslim countries, many African countries and Vietnam orbit around this hard core.

By means of systematic obstruction, procedural ploys and tireless wheeling and dealing, this informal group of “like-minded” imposes decisions that often have nothing to do with human rights. So the commission continues its inexorable downward path with results that are more disappointing each year. Once again there was a bumper crop of documents in 2003. In its final communique of 25 April, the commission boasted of having adopted 86 resolutions, 18 decisions and three statements from the chair. A third of these documents were the subject of

a vote, the communique said. However, there should be no illusions about this bureaucratic superabundance, anymore than the fate of victims should be left to the whim of governments or determined by a vote that only serves their interests.

### **Russia, China and Iran have taken advantage of western cowardice and the fight against terrorism**

China and Iran lead the world in executions (1,060 for China and 113 for Iran out of a worldwide total of 1,526 in 2002, according to Amnesty International). But contrary to previous years, they did not even have to bare their teeth as no resolution on capital punishment was proposed. Careful not to throw any oil on the flames because of their invasion of Iraq, the United States gave up any idea of having China condemned. In the same way, it spared Russia by refraining from sponsoring the resolution on Chechnya. The European Union for its part refrained from targeting Iran on the grounds of the “dialogue” under way with Tehran. The desire for consensus had the effect of weakening the voice of the European democracies, including those of eastern Europe which had been much more active until recently.

Exploiting North-South splits and the ties forged in the fight against terrorism, Russia succeeded for the second year running in avoiding a resolution denouncing the atrocities of its troops in Chechnya. Two other resolutions from the European Union, one on Sudan and one on Zimbabwe, both backed by the United States, did not prosper. African and Islamic solidarity decided the outcome of these battles. Despite damning reports from humanitarian organisations of continuing slavery and the continuing use of cruel punishments such as whipping and amputation, the Sudanese government slipped through the net for the first time, thereby resulting in the end of the mandate of the special rapporteur for Sudan. In an even more effective display of mutual solidarity, the African countries ensured that a European resolution denouncing continuing human rights violations in Zimbabwe was consigned to oblivion.

Russia, China and Cuba rushed to the aid of Sudan and Zimbabwe to pay back favours received. Even more deplorable was the action of democratic countries that went so far as to ally themselves with the dictatorships. South Africa, Senegal and India made common cause with them on the Zimbabwe issue or by opposing the Sudan resolution. Forgetting the principles it claims to defend, Brazil voted against a European resolution on Chechnya. Human Rights Watch accused the commission of exonerating some of the worst human rights violators, who were protecting each other, it said. By getting off scot-free, governments that violate the conventions they have ratified are encouraged to violate them even more in the future.

Following a now well-established tradition, the agenda was once again largely given over to the Israeli-Palestinian conflict. Five resolutions were presented denouncing the human rights situation in Israel and the occupied territories. The agenda’s eighth item was solely about this subject while the following item was supposed to cover the rest of the world. The ten or so countries named in the ninth agenda item included Burma, Democratic Republic of Congo, Burundi and, for the first time, Belarus, North Korea and Turkmenistan.

### **Cuba - staunch defender of the dictatorships**

In order to pay back favours, Cuba went further and further in its support of the worst dictatorships. In the vote on a resolution condemning “serious, systematic and extensive human rights violations” in North Korea, Cuba was among the 10 diehards that unflinchingly



back Pyongyang, along with Algeria, China, Russia, Libya, Syria, Sudan, Vietnam and Zimbabwe. As regards Turkmenistan, the Cuban representative said he shared the indulgent view of the Organisation of the Islamic Conference on the situation there. On Belarus, he said “the information transmitted by the Cuban embassy in Minsk in no way corresponded to the allegations in the resolution.”

Joining China, Malaysia and Sudan in breaking the consensus on Burma, the Cuban delegate said that “the situation has greatly improved in Myanmar” and that the resolution constituted “interference in this country’s internal affairs, and a failure to respect its sovereignty.” Cuba also felt the need to distance itself from the resolution on human rights in Democratic Republic of Congo although it was passed with Kinshasa’s consent. It condemned the massacres in Ituri province and the continuing fighting, but the Cuban delegate said he would vote against it in the event of a ballot.

Under the heading of technical cooperation in the field of human rights, the commission adopted a series of somewhat timid resolutions on Somalia, Cambodia, Sierra Leone, Chad, Liberia and Haiti. For form’s sake, the Libyan chairperson also had a resolution of Afghanistan endorsed, as well as insipid statements on East Timor and Colombia. The latter contained no reference to decree 128 of January authorising the interior minister to grant an amnesty to members of illegal armed groups who had not yet been formally prosecuted or convicted.

As the trials in Indonesia of a number of officers implicated in the 1999 abuses in East Timor were drawing to an end, the commission missed a chance to condemn the government for not complying with its undertakings to bring all those responsible to trial. This omission just encouraged greater impunity. The commission also continued to turn a blind eye to the serious human rights violations in the Indonesian provinces of Moluccas, Aceh and Papua. Indonesia has been able to avoid any reprimand for its troops’ atrocities in East Timor thanks to the support of the Asian bloc and Islamic countries and the indulgence of the United States.

### **Islamic solidarity distorts the debate**

Representing nearly a quarter of the commission, the Islamic states form a sufficiently cohesive group for them to avoid any criticism on human rights. Most of them can treat women as second-class citizens, trample on the rights of minorities or maintain corporal punishments under the sharia without any sign of concern from the commission. Despite damning reports, Saudi Arabia remains untouchable, as does Algeria, where more than 200,000 persons died in an internal conflict over the past decade. Nonetheless, according to a report on the Arab world published in Cairo in July 2002 by the United Nations Development Programme, the countries of this region have the lowest level of freedom in the world and the situation of women is especially problematic.

A resolution on “combating defamation of religions” proved even more revealing. Presented by Pakistan on behalf of the member states of the Organisation of the Islamic Conference (OIC), it was adopted by 32 to 14 with 7 abstentions. It mentions only Islam, and the special rapporteur on contemporary forms of racism is asked to investigate only “the situation of the Muslim and Arab populations in various regions of the world,” although he was already asked to produce a report on this very topic for the commission’s 59th session. It is as if only Muslims are the victims of religious intolerance, and not Christians, Buddhists, Hindus, Jews, animists, other kinds of religious believers or atheists.

### **Special rapporteurs criticised**

The rapporteurs are no longer safe from condemnation by commission members. The current special rapporteur on racism, Doudou Diène of Senegal, took over in 2002 from Maurice Glélé-Ahanhanzo, a member of Benin's supreme court, who was summarily dismissed for referring in a report to a document which the OIC regards as a "blasphemy against the Koran." Among other attacks on special rapporteurs, Algerian ambassador Mohamed Dembri distinguished himself in 2003 by questioning the independence and impartiality of the special rapporteur on torture, Théo van Boven, because of claims that he was hired by an NGO. Dembri also accused him of taking unverified allegations as proven, and demanded his resignation. It should be pointed out that Algeria has never agreed to receive visits from the special representative about torture, executions or involuntary disappearances.

In his report, Van Boven had mentioned the amputation of limbs carried in some countries and cases of women being stoned to death for alleged adultery, especially in Sudan. Now that the mandate for Sudan has been terminated because the relevant resolution was rejected, only 10 of the UN's 193 member states are under investigation for human rights violations (Afghanistan, Burma, Burundi, Cambodia, Democratic Republic of Congo, Haiti, Iraq, Israel, Liberia and Somalia).

A large number of the many resolutions adopted did not contain any significant undertaking and were unlikely to have any consequences. This is the case with the resolution on the "right to freedom of opinion and expression," adopted without a vote, in which the commission "*voices its continuing concern at the extensive occurrence of detention, extrajudicial killing, torture, intimidation, persecution and harassment, abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, threats and acts of violence and of discrimination, often undertaken with impunity, against persons, including professionals in the field of information, who exercise the right to freedom of opinion and expression...*" As if it was sometimes worth saying what goes without saying. The resolution went on to urge all states "*to respect freedom of expression in the media and broadcasting, and in particular, to respect the editorial independence of the media, and to encourage a diversity of ownership of media and of sources of information...*" This was a fine lesson in hypocrisy as it did not require states to implement this catalogue of good intentions.

The same unanimity was obviously not reached on the death penalty, which is paradoxically a controversial issue in this body supposedly given over to ensuring respect for the basic right to life. A resolution presented by the European Union called for a moratorium in the implementation of the death penalty and invited all countries that had not yet done so to sign the second optional protocol of the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty. Most of the 28 countries backing the resolution came from Europe and Latin America. The United States voted against the proposal along with 17 other members of the commission including Islamic countries, China, Vietnam and Zimbabwe. Although it had just carried out three executions, Cuba preferred to abstain and did not participate in the vote.

### **17 members refuse to link human rights to democracy**

Seventeen of the commission's 53 members showed their true colours by abstaining in the vote on a resolution about "the interdependence between democracy and human rights," one that should have gone without saying. Just reaffirming the principles of the Universal Declaration and the International Covenant on Civil and Political Rights, the resolution declared that: "*the essential elements of democracy include respect for human rights and*

*fundamental freedoms, inter alia freedom of association, freedom of expression and opinion, and also include access to power and its exercise in accordance with the rule of law, the holding of periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people, a pluralistic system of political parties and organizations, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media.”* It was clearly too much for the 17 countries that abstained: Algeria, Saudi Arabia, Burkina Faso, China, Cuba, Gabon, Libya, Malaysia, Uganda, Syria, Democratic Republic of Congo, Pakistan, Sierra Leone, Sudan, Swaziland, Togo and Vietnam.

Curiously, 11 of those who abstained have adopted the covenant, but are apparently not ready to come to terms with the undertakings they have given. The Libyan representative defended his abstention on the grounds that the resolution was trying to “impose a single model of democracy.” Syria voiced concern that Israel was listed as one of the resolutions co-authors. China’s representative argued that there are “different forms of democracy.”

### **3. “Non-action” – a procedure used to maintain impunity**

If there is one term that sums up the system’s inability to achieve its goal of promoting and protecting human rights, it is “non-action.” As its name suggests, a “non-action” motion is a procedural device designed to avoid a vote on a resolution and to cut short any debate on an embarrassing issue.

The commission on human rights is one of the functional commissions of the Economic and Social Council (ECOSOC) and at first sight, the few words that constitute article 2 of rule 65 of their rules of procedure seem harmless and insignificant. Rule 65 is about the order of voting on proposals, and its second article says: “*A motion requiring that no decision be taken on a proposal shall have priority over that proposal.*” In other words, any delegation wanting to prevent discussion on a particular matter just has to present a procedural “non-action” motion which must be put to an immediate vote and, if approved, blocks any other proposal. This device has been used systematically by China since the Tienanmen square massacre in 1989 to put a stop to any criticism of its practices. Since then, others have made excessive use of this loophole.

#### **China never condemned thanks to “non-action” procedure**

The “non-action” motion is the grain of sand that causes the system to seize up and illustrates its malfunctioning and paralysis. In 2002, this device again allowed China to get out of trouble by 23 votes to 17 with 12 abstentions. Those voting with China included Algeria, Saudi Arabia, Libya, Qatar, Syria, Cuba, Russia, Indonesia, Pakistan and several African countries. On behalf of the European Union, Belgium tried in vain to argue that no country should be exempt from investigation by the commission. Canada for its part warned that a “non-action” motion would be tantamount to repudiating the commission’s mandate and its right to express a view on the human rights situation in any country. A wasted effort. China did not have to defend itself in 2003 as the United States abandoned any idea of supporting such a resolution because of its desire to get into China’s good books on account the Iraq crisis.

For a long time, China was the only country to keep using the procedural ploy of the “non-action” motion, but the example finally caught on. This was the case in 2002 before the vote on resolutions on Zimbabwe and the proposed optional protocol to the convention on torture.

Despite the worsening human rights situation, Zimbabwe extricated itself again in 2003 thanks to a “non-action” motion presented by South Africa, which also used this device to block a US amendment to the resolution on racism aimed at reintroducing a paragraph from the original version voicing concern about the rise in antisemitism and Islamophobia in various regions of the world. The European Union, which was responsible for the original paragraph, deplored its elimination as it would have reinforced the resolution’s scope. Passed by 26 votes to 24 with 2 abstentions, this “non-action” motion highlighted the after effects of the Durban conference on racism. Canada’s representative pointed out that the resolution made no sense without the paragraph denouncing antisemitism. But the Arab and Islamic countries had already obtained condemnation of Islamophobia in the resolution combating defamation of religions and they were not interested in seeing it reaffirmed in this resolution, especially in association with antisemitism.

South Africa accused the Europeans of “politicising” the commission. This pushed several countries into seizing the chance to reiterate their opposition to the “non-action” motion. As Ireland said on behalf of the European Union, the use of this device has resulted in the commission failing in its duty and undermines the transparency of its work. A way of fudging issues or burying one’s head in the sand, the device is part of deliberate strategy by members of the commission to increasingly obstruct its work and strip it of all substance.

Human rights organisations have complained about a resolution adopted at the initiative of Pakistan and Saudi Arabia which, under the pretext of improving the system, limits the work of the special rapporteurs, experts and working groups and facilitates interference by governments. Similarly, a resolution on the work of the sub-commission on the promotion and protection of human rights revealed a desire to limit the powers of its supposedly independent experts, who would often tackle matters generally ignored by the commission. While welcoming “the improved working methods of the sub-commission,” the commission reiterated its decision that the sub-commission “should refrain from including references to specific countries.” This means that, since 2001, the sub-commission has no longer been able to point its finger at governments known to trample on the most basic freedoms with impunity.

### **Assault on resolution about homosexual rights**

The peak of obstruction was reached when the commission considered a draft resolution on homosexual rights for the first time. Proposed by Brazil and sponsored by 19 other countries including the European Union and Canada, the draft resolution voiced “deep concern at the occurrence of violations of human rights all over the world against persons on grounds of their sexual orientation” and called on “all states to promote and protect the human rights of all people, irrespective of their sexual inclination.” In an effort to cause no offence, it eschewed such terms as “homosexual” or “lesbian” and did not criticise any government. Despite these precautions, it set off an unprecedented storm.

The resolution’s opponents immediately embarked on an all-out procedural guerrilla war. The Pakistani ambassador was one of the most determined. On behalf of the IOC, he described the resolution as “politically incorrect” and as a “direct insult to the 1.2 billion Muslims throughout the world.” Using points of order and amendments and enjoying the Libyan chairperson’s active complicity, the critics had the resolution postponed to the end of the session. On the eve of the last day, the Pakistani ambassador pulled a “non-action” motion out of his sleeve. Describing the resolution’s content as “unseemly” and “in open conflict with

Islam and its laws,” he said its adoption would have the effect of forcing many countries to violate human rights.

The “non-action” motion was rejected by 24 votes to 22 (the Islamic countries and most of the African countries, as well as China and India). But far from giving up, the opponents resorted to other ploys to delay a debate. Announcing that he would never let the commission “impose values we don’t share,” the Pakistani ambassador threatened to propose a hundred supplementary amendments, if necessary. When the resolution finally came up on the last working day, the Islamic countries first obtained a recess on the pretext of going to pray and then drew the commission into a pointless discussion, until the Libyan chairwoman finally proposed postponing consideration of the resolution until the commission’s 60th session in 2004. This was accepted by 24 votes to 17. The 10 abstentions included the United States, Russia, Ireland and four Latin American countries, apparently influenced by the Vatican’s calls for them to block the resolution. In Washington, the US State Department had let it be known that the United States would not support the resolution if it came to a vote because it did not consider the commission to be an appropriate forum. Brazil’s ambassador promised to try again next year. “This commission cannot have taboos, it is a place where sexual preference and human rights must be debated,” he said.

## **Conclusion**

The UN commission tasked with defending human rights, which are threatened throughout the world, has gone astray. The commission’s 59th session offered ample proof of this. More than ever, its 53 members indulged in their sterile games far from the realities they were supposed to be investigating. The United Nations commission on human rights is now just a caricature of itself, eaten away by systematic obstruction from the totalitarian and authoritarian countries that have overrun it.

As a result, the UN human rights system, with its norms and control mechanisms that were carefully devised in the course of half a century, is in the process of turning into an empty shell. Backed by the group of “like-minded,” China has been campaigning since the start of

the new millennium for the annual session to be reduced from six to four weeks. Some are even calling for sessions every two years. China and its sidekicks, with their equally restrictive view of human rights, also have their sights set on the human rights NGOs, whose outspokenness gives offence. Their first attempt at a solution has been to impose sham organisations, dubbed GONGOs (government-organised non-governmental organisations), alongside the real NGOs. Pushing to weaken the commission even more, Algeria and others have called for the complete elimination of country-based human rights investigations and firmly oppose resolutions naming countries under point 9 of the agenda.

While the democracies stand back and do nothing, putting human rights second to their immediate political interests, the commission continues its slow death. The regimes that are the biggest human rights violators are now more than ever fighting to get on the commission as the best way to avoid coming under close scrutiny. When 24 of the commission's 53 seats came up for renewal by ECOSOC at the end of April 2003, Cuba, Russia and Saudi Arabia succeeded in holding on to their seats, while countries that show hardly any more concern for human rights such as Congo, Egypt, Nigeria, Mauritania, Qatar, Nepal and Indonesia were among the new members.

One seriously wonders under these circumstances whether the UN commission on human rights, which claims to be "the conscience of the international community," has any future.

## **Recommendations**

- Reporters Without Borders shares the view of high commissioner Sergio Vieira de Mello that members of the commission should "set an example" by ratifying the international human rights instruments and implementing them. Reporters Without Borders therefore proposes that votes on the commission should only be given to states that have ratified the two international covenants on political, civil, social, economic and cultural rights.
- As one cannot be both judge and defendant, Reporters Without Borders recommends that, at the opening of every session, the office of the high commissioner should remind the commission of the status of ratifications and delays in the submission of the reports required from all countries that have ratified the covenants.
- As special reports and, in particular, fact-finding missions are essential in combating impunity, Reporters Without Borders proposes that any country refusing a special rapporteur access to its territory should be barred from voting at the commission.
- Since the "non-action" motion is contrary to the commission's principles, Reporters Without Borders recommends that provision for this procedure should be eliminated from the rules governing the functional commissions of the Economic and Social Council (ECOSOC).

- To put an end to the use of double standards and to promote the universality and indivisibility of human rights, Reporters Without Borders supports UN secretary-general Kofi Annan's call for the commission to tackle all sensitive issues frankly and give all countries equal treatment. Reporters Without Borders therefore proposes that the serious human rights violations committed in the Israeli-Palestinian conflict should be treated in the same manner as those in other countries.

- Finally, Reporters Without Borders recommends that the practical functions of the office of the high commissioner for human rights should be extended. In particular, it should be tasked with publishing, prior to each session of the commission, a report on the human rights situation worldwide, country by country, on the lines of the report of the United Nations Development Programme (UNDP).

. To restore the commission's credibility, Reporters Without Borders proposes that its chairperson should be an independent human rights expert chosen by the high commissioner in agreement with the United Nations secretary-general.