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FAX TRANSMITTAL

DATE: 15 April 2005

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A handwritten signature in black ink, appearing to be 'Parfait Serge Onanga-Anyanga', written over the 'FROM' field.

Kindly communicate the attached to all the Permanent Representatives  
to the United Nations.



THE SECRETARY-GENERAL

14 April 2005

Dear Mr. President,

I have the honour to transmit the attached explanatory note regarding the Human Rights Council as proposed in my report *In larger freedom: towards development, security, and human rights for all* (A/59/2005).

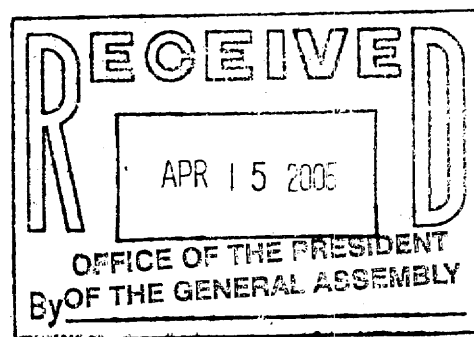
I should be grateful if this note could be brought to the attention of the members of the General Assembly.

Please accept, Mr. President, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'K. Annan'.

Kofi A. Annan

His Excellency  
Mr. Jean Ping  
President of the General Assembly  
New York



# United Nations Human Rights Council

Explanatory Note

April 2005

## The Secretary-General's Proposal

The establishment of a Human Rights Council would reflect in concrete terms the increasing importance being placed on human rights in our collective rhetoric. The upgrading of the Commission into a full-fledged Council would raise human rights to the priority accorded to it in the UN Charter. Such a structure would offer architectural and conceptual clarity, as the United Nations already has Councils that deal with two other main purposes, security and development.

The Commission on Human Rights in its current form has some notable strengths and a proud history, but its ability to perform its tasks has been overtaken by new needs, and undermined by the politicization of its sessions and the selectivity of its work. A new Council would help serve to overcome some growing problems – of perception and in substance – associated with the Commission, allowing for thorough reassessment of the effectiveness of the UN's inter-governmental machinery in addressing human rights concerns.

The Secretary-General proposed the establishment of a Human Rights Council in his March 2005 report entitled 'In Larger Freedom: Toward Development, Security, and Human Rights for All.' The proposal reads:

*"If the United Nations is to meet the expectations of men and women everywhere - and indeed, if the Organization is to take the cause of human rights as seriously as those of security and development, then Member States should agree to replace the Commission on Human Rights with a smaller standing Human Rights Council. Member States would need to decide if they want the Human Rights Council to be a principal organ of the United Nations or a subsidiary body of the General Assembly, but in either case it would be elected directly by the General Assembly by a two-thirds majority of members present and voting. The creation of the Council would accord human rights a more authoritative position, corresponding to the primacy of human rights in the Charter. Member States should determine the composition of the Council and the term of office of its members. Those elected to the Council should undertake to abide by the highest human rights standards."*

The Human Rights Council would be a standing body, able to meet regularly and at any time to deal with imminent crises and allow for timely and in-depth consideration of human rights issues. Moving human rights discussions beyond the politically-charged six-week session, it would also allow more time for substantive follow-up on the implementation of decisions and resolutions. Being elected by the entire membership of the General Assembly would make members more accountable and the body more representative. It would have greater authority elected directly from the General Assembly – the UN's principal legislative body – than the Commission, which is a subsidiary body of ECOSOC. Indeed, according to the Charter, responsibility for discharging the functions under ECOSOC, including the promotion of human rights, is ultimately vested in the General Assembly. A smaller membership would allow the Council to have more focused debate and discussions.

The Secretary-General believes the Human Rights Council should be located in Geneva, allowing it to continue to work in close cooperation with the Office of the High Commissioner for Human Rights. The World Food Council (1974-95) represents a precedent for a General Assembly-established standing Council sitting outside of New York. Similarly, the International Court of Justice at the Hague represents

a principal Charter body located outside New York. While based in Geneva, as a standing body, the Council would have the flexibility to “enhance” its presence in New York. Options include holding special sessions in New York or having specific sub-components based in New York, so as to better interface with the General Assembly, the Security Council, and ECOSOC.

The Secretary-General further elaborated on a proposed new key peer review function for the Council in his speech to the Commission on Human Rights on April 7, 2005:

*“It should have an explicitly defined function as a chamber of peer review. Its main task would be to evaluate the fulfillment by all states of all their human rights obligations. This would give concrete expression to the principle that human rights are universal and indivisible. Equal attention will have to be given to civil, political, economic, social and cultural rights, as well as the right to development. And it should be equipped to give technical assistance to States, and policy advice to states and UN bodies alike. Under such a system, every Member State could come up for review on a periodic basis. Any such rotation should not, however, impede the Council from dealing with massive and gross violations that might occur. Indeed, the Council will have to be able to bring urgent crises to the attention of the world community.”*

The peer review mechanism would complement not replace reporting procedures under human rights treaties. The latter arise from legal commitments and involve close scrutiny of law, regulations and practice, in regard to specific provisions of those treaties, by independent expert panels. They result in specific and authoritative recommendations for action. Peer review would be a process whereby states voluntarily enter into discussion regarding human rights issues in their respective countries. The basis would be the obligations and responsibilities to promote and protect these rights arising under the UN Charter, and as given expression in the Universal Declaration of Human Rights. Implementation of findings should be developed as a cooperative venture with assistance given to states in developing their capacities.

Key to peer review is the notion of universal scrutiny, that is, that all Member States performance in regard to all human rights commitments should be subject to assessment by other states. The peer review would help avoid, to the extent possible, the politicization and selectivity that are hallmarks of the Commission’s existing system. It should touch upon the entire spectrum of human rights namely, civil, political, economic, social, and cultural rights. The Human Rights Council will need to ensure that it develops a system of peer review that is fair, transparent and workable, whereby states are reviewed against the same criteria. A fair system will require agreement on the quality and quantity of information used as the reference point for the review. In this regard, the Office of the High Commissioner could play a central role in compiling such information and ensuring a comprehensive and balanced approach to all human rights. The findings of the Council’s peer reviews would help the international community better provide technical assistance and policy advice. Furthermore, it would help keep elected members accountable to their human rights commitments.

### **Issues to be Discussed Before the September Summit**

Member States will need to come to agreement on a number of issues in advance of the September Summit. Consultations with the High Commissioner would naturally be part of the process, and she is ready to assist. Specifically, the Secretary-General suggests the need for agreement regarding the Council on the following issues:

Mandate and Function: In addition to existing functions and responsibilities of the Commission under resolutions 1235 and 1503, the Council would consider the situation of all human rights in all countries based on the above peer review system. Until being thoroughly reviewed by the Council upon its

establishment, the thematic and country-specific procedure mandates, as well as the intergovernmental working groups and the Sub-Commission, would be requested to report to the Council. The Council would reconsider and refine or amend those according to its own terms of reference, together with its agenda of work and working methods. The proposed Human Rights Council is only one component of the UN human rights system, which includes the mandate of the High Commissioner, secretariat functions, and the treaty bodies. In determining the mandate and function of the Council, consideration should be given to functions that are best performed at an inter-governmental level, taking into account complementarity with other bodies and bearing in mind the Commission's experience. The Council should have the authority to recommend policy measures to other organs of the UN that can help in the process of implementation.

In addition to the proposed peer review outlined above, the Human Rights Council should also fulfill the following functions:

- Member States should be able to come together and take action when serious human rights situations develop. The Commission is able to do this by having the option to adopt specific country resolutions. While this capacity has attained an unhealthy degree of politicization - which the Council's proposed peer review function should address - the ability to address serious situations must be retained and revived. In addition, the Commission has the capacity to meet in extraordinary session, if a majority of members agree; this should be retained by the Human Rights Council the envisioned format of which would facilitate consideration of urgent situations outside of the framework of ordinary sessions. Furthermore, the High Commissioner would benefit from being able to call for action and support from a UN standing body with the authority of a full-fledged Council.
- A forum for dialogue among Member States, and involving civil society, on human rights issues, should be preserved. The dialogue would allow for constructive engagement on areas of disagreement and creative responses to deal with new and emerging issues. This may be especially true concerning new and emerging human rights problems where existing international standards are ambiguous. The role of NGOs is crucial to providing policy inputs and views from the field to Member States. Likewise, the increasing prominence and activism of both national institutions and NGOs has elevated their involvement in the human rights debate to the center stage.
- The proposed Human Rights Council should play a pivotal role in overseeing and contributing to the interpretation and development of international human rights law. International law and standards are central to the UN system for the protection of human rights; indeed, the body of international human rights norms developed to date by the Commission is, perhaps, its greatest legacy. As a standing body, the Council might find ways to overcome the delays currently faced by the Commission regarding some standard-setting activities. The establishment of a Council would also reinforce the critical work of the treaty body system, which has contributed significantly to the development of international law over the past twenty years, and could assist in the process of streamlining and strengthening the system to better carry out its mandate.

Composition: Instead of being elected by ECOSOC, the Council's membership would be drawn from a two-thirds vote by the General Assembly - similar to the Charter bodies. This would reflect the importance accorded to the body. Universality in voting would allow the body to be more accountable to the full membership of the Organization. Member States will need to decide on the length of terms, how Council members would be elected, and the rotation of members. If Member States choose to elect Council members on a regional basis, all regional groups should be represented in proportion to their representation in the UN.

Size: The Commission on Human Rights currently has fifty-three members, only one short of ECOSOC, which elects those members. Originally eighteen, the Commission's size has grown dramatically over the years. A smaller membership on the Council would allow more focused discussion and debate. Elevating the status of the Commission into a Council would increase the possibility for States to serve on one of the UN's three Councils.

Principal or Subsidiary Body: There are two options for creating the Human Rights Council, as a principal organ or as a subsidiary body of the General Assembly. Establishing the Council as a principal body of the United Nations would allow it to stand as a peer alongside both the Security Council and ECOSOC and would require a Charter amendment. Establishing the Council as a subsidiary body of the General Assembly would not require a Charter amendment. In either case, the high standard of UN Charter bodies and "important matters" of a two-thirds majority vote should be retained.

### Decision to be Taken

Upon consideration of the above issues, Member States could agree to endorse, in principle, the establishment of a Council in the September Summit's final declaration. Draft language provided in the Larger Freedom's annex reads:

*"Agree to replace the Commission on Human Rights with a smaller standing Human Rights Council, as a principal organ of the United Nations or a subsidiary body of the General Assembly, whose members would be elected directly by the General Assembly by a two-thirds majority of members present and voting."*

### Issues to Be Discussed After the September Summit

Further work on how the Council would fulfill the outlined functions above, as well as the details regarding size, composition, and establishment, would be dealt with in the post-Summit phase. Indeed, the fate of many of the Commission's existing functions, procedures, and working groups would be left to the Council to endorse, renew, or consider obsolete. The special procedures and NGO engagement are two aspects of the Commission that should continue with the Human Rights Council.

Another set of issues requiring further elaboration concerns the role and mandate of the Human Rights Council vis-à-vis the other components of the UN human rights system, in particular: the Office of the High Commissioner, other UN agencies and programmes dealing with human rights, the treaty monitoring bodies, the General Assembly, the Security Council, ECOSOC, and the proposed new Peace-building Commission. The creation of the Human Rights Council would reinforce and strengthen the human rights work of those other components. For example, the Council would provide an opportunity to rationalize the agenda of the General Assembly Third Committee with the work of the Council, as well as strengthen the General Assembly's ability to analyze and draw attention to continuing gaps in the implementation and main-streaming of human rights throughout the UN system. Similarly, the Council could assist in the establishment, support, and generation of contributions for various voluntary funds, especially to assist developing countries.