

# **REPORT**

## **SEMINAR ON THE UNITED NATIONS HUMAN RIGHTS COUNCIL**

**In collaboration with the Office of the High  
Commissioner for Human Rights  
OHCHR**

**Geneva, 26-28 July 2006  
Palais des Nations, Room XVII**



*We would like to thank the Federal Department of Foreign Affairs, the Canton of Geneva, the Karl Popper Foundation and the GIAN for their financial support, without which the Seminar would not have taken place.*

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## WELCOME STATEMENTS

### MR. BACRE NDIAYE

*Director of Human Rights Procedure Division, Office of the High Commissioner for Human Rights, Geneva*

#### **Introduction**

This is a timely Seminar, taking place less than a month after the first session of the Human Rights Council and its first emergency meeting. Moreover, this Seminar is taking place only a few days after the informal meetings to set up the system of the Universal Periodic Review and of the re-examination of the mandates with the purpose their reinforcement and less than two months before the second session of the Council, which will take place in September.

It is certain that the Council represents in itself a great hope and it is a duty of us all to deploy all our energy to accomplish with efficiency and serenity its objectives. In this regard, OHCHR aims to support the activities of the President, H.E. Ambassador De Alba, and the Bureau, including the Vice-Presidents, such as H.E. Ambassador Blaise Godet, sitting at the podium. We have been impressed by their sense of purpose, conviction, the seriousness and sincerity of their efforts, which allowed the Council to deal with all the basic matters necessary in its first session.

#### **Commending the Council**

After a long period of waiting, the Convention on Forced Disappearances and the Declaration on the Rights of Indigenous Peoples have been adopted; the intergovernmental groups have been extended to deal with the Right to Development, the Durban Conference follow-up, and the Economic, Social and Cultural Rights; the legal and technical frame, which would allow the Council to operate in its first year, have been established; the mandates, mechanisms, functions and responsibilities inherited from the Commission were assumed, and their reform for the purpose of reinforcement has been initiated; the mechanisms have been established to allow the discussion of fundamental questions including emergency matters; and the debates and discussions have been initiated with all actors especially civil society.

All these activities were impressive and deserve recognition. The opening ceremony and the High Level Segment should be placed as the high points of the historical inauguration of the Human Rights Council. The strong

assistance provided by the host country as well as its important contribution should be commended.

It is important to note that the deliberations conducted by the President of the Council and the direct assistance from the Vice-President, H.E. Ambassador Mohammed Loulicki from Morocco, are being conducted with a view to set up a system of Universal Periodic Review, which should constitute the major innovation of the Human Rights Council. This new system should overcome the deficiencies of the past and it should extend its impact on Human Rights to every State without exception. OHCHR will be an attentive partner in these deliberations.

### **What's left?**

Intense reflection and re-examination of the mandates and mechanisms of the Council, as indicated by the General Assembly, lie ahead of us. The President, in association with three Vice-Presidents, has started to work in the reform, reinforcement and rationalisation of the Special Procedures, the Sub-Commission and the 1503 Procedure. The results of this work are yet to be seen. We are convinced that the mechanisms and the international system for the protection and promotion of Human Rights will end up reinforced.

Indeed we all have great hopes and expectations and we trust that the international community and all those who have involved themselves with energy and conviction to set up the Human Rights Council will find the ways and means to overcome fear and need all over the world.



## **AMBASSADOR BLAISE GODET**

*Vice-President of the Human Rights Council and Permanent Representative of Switzerland to the United Nations Office in Geneva*

The creation of the Human Rights Council was seen by Switzerland as a major decision of the General Assembly that would have a long-lasting impact on the United Nations. Indeed, Switzerland is convinced that this new organ is in a better position than the former Commission to fulfil its mandate of protection and promotion of Human Rights at the multilateral level.

### **Reasons for Optimism**

First of all, unlike the Commission that was a subsidiary organ of the ECOSOC, the new Council is a subsidiary organ of the General Assembly of the United Nations. Its legitimacy will thus be reinforced as well as a potential increase in efficiency, as any decision of the Council will have more authority and credit than that of the Commission.

Secondly, the HRC will meet more frequently: three to four sessions per year of duration of ten to twelve weeks. This increased periodicity should improve the follow-up of the work of the Council. Furthermore, the Human Rights Council will have the possibility to summon an extraordinary session upon the request of sixteen States if the situation requires it. The Council already held its first extraordinary session on the situation in Palestine on 5 and 6 July.

Thirdly, the Council set up a Universal Periodic Review whereby each state will be scrutinised from the perspective of international law and the implementation of its conventional obligations. This mechanism will be applied to the members of the Council as well as the rest of the members of the General Assembly, thus putting each State on an equal footing. The Council should therefore not be accused of the selectivity and the double standards, which affected the former Commission. This mechanism should contribute to promote dialogue rather than confrontation as in the past.

Finally, Member states may be suspended should the majority of the members of the General Assembly present and voting decide so.

It is hoped that the members of the Human Rights Council will take part in the work of the Council in a constructive spirit with a view to improve the Human Rights situation in their country.

## **What needs to be done?**

The first two weeks of the Council's existence demonstrate a will to improve the situation. This work is only the beginning and much remains to be achieved such as:

1. Establishment of the Universal Periodic Review;
2. Revision of the mandates (simple and straight forward inheritance form the Commission or selection of mandates and if selection according to which criteria);
3. Definition of the future of the Sub-Commission;
4. Decision on the future of the 1503 Procedure;
5. Adoption by the Human Rights Council of its own rules of procedure;
6. Maintain an open and liberal policy towards the NGOs and facilitate their involvement within the Council.

## **Location of the Human Rights Council**

From a Swiss perspective and that of the « International Geneva », it is an immense privilege to be able to headquarter the Human Rights Council in Geneva. In five years time the various aspects of the functioning of the Human Rights Council will be assessed including whether the headquarters should remain in Geneva. The Swiss authorities will do their utmost to guarantee that the Human Rights Council be anchored in Geneva.

## **MR. RICARDO ESPINOSA**

*United Nations Liaison Officer to Non-Governmental Organisations, UNOG*

The partnership between the United Nations, non-governmental organisations and civil society is based on Article 71 of the Charter which allows civil society organisations to be associated with the work of multilateral diplomacy: Summits, international conferences, United Nations specialised agencies and programmes. It has now been confirmed that non-governmental organisations will be able to participate in the work of the Human Rights Council.

Referring to the rules of procedure, the consultative status granted by the ECOSOC sets out the participation of civil society organisations within the Council depending on the General Assembly. The norms governing the relationship between civil society and the Human Rights Council are set up by Member States and are in constant evolution. The issue of the non-governmental organisations' participation in the Human Rights Council will emerge again and the Human Rights Council will have to establish its own rules.

The experts appointed by the United Nations, as well as Member States largely acknowledge the importance of the contribution of non-governmental organisations. In fact, non-governmental organisations generate an abundance of information, experience, and expertise; for example, non-governmental organisations' contribution on the issue of labour and the fight against poverty during the ECOSOC High Level Segment. In addition, the Committee on Human Rights has saluted the non-governmental organisations for their professionalism as well as for their coordinating capacity. Expectations of non-governmental organisations are greater today than they were in the past. However, the more specialised non-governmental organisations are, the more effective their work is, and the closer their relationship is with Member States.

## BRIEFING AND INTRODUCTION TO THE SEMINAR

**MRS. BRUNA MOLINA FAIDUTTI**

*Deputy Secretary-General, WFUNA*

The World Federation of United Nations Associations (WFUNA) has organised this Seminar on the Human Rights Council, as a part of its annual programme. Within the context of its purposes and objectives in the area of education and dissemination of the principles and objectives of the UN Charter, including the programme of the Secretary General.

This year, the Seminar has been made possible through the contributions of a number of benefactors, to whom I must offer my thanks before we begin. I would like to thank the Karl Popper Foundation, the Geneva International Academic Network, the Federal Department for Foreign Affairs and the Canton of Geneva without whose support this Seminar would not have been possible.

WFUNA was established in 1946, soon after the adoption of the UN Charter in 1945 and it has, ever since, been devoted to the promotion and support of the UN Charter through its National Associations, many of whom are present in this room.

The purpose of this Seminar to demystify the competence and jurisdiction of the newly established Human Rights Council, as it was intended by the General Assembly in its Resolution 60/251, which contains the basic provisions for its functioning.

You may recall that over the last three years, WFUNA organised an annual Seminar on the Commission of Human Rights. As the proposal of the Secretary General to replace the Commission by a new Council on Human Rights was approved, our organisation followed all discussions and proceedings leading towards its establishment. Now, we are at the phase of its realisation and we need to know how the architecture of this new organ will be constructed for the protection and promotion of Human Rights.

Human Rights have been inscribed in most countries political agendas as one of the three main objectives; Peace and Security, Development and Human Rights across the board.

As we start building this new institution, which holds unprecedented expectations, the transition period is of a critical importance. This Seminar is intended to bring us up to date on where do we stand today in the area of its procedures, its future relations with other bodies, and how can it best serve on what the Charter calls “the people”.

We live in a world with unprecedented technological advances that should facilitate in transmitting knowledge about the UN System. At the same time, it is a world of uncertainties and challenges to Peace and Security.

# THE HUMAN RIGHTS COUNCIL: ITS CREATION AND AN ANALYSIS OF THE FIRST SESSION

**MR. ERIC TISTOUNET**

*Secretary of the Human Rights Council, OHCHR*

The opening ceremony of the Human Rights Council bore witness to the importance of the moment. Rather than just looking at the Human Rights Council as it is at the moment, awareness of the history of this reform is needed. This is a work in progress taking place on an incredible scale. There are great expectations for the Council to improve on the processes of the Commission.

## **Essential Elements of the Resolution 60/251**

The process of rebuilding the system began two years ago and we are at a key point in the transition from the Commission on Human Rights to the Human Rights Council. The essential elements of General Assembly Resolution 60/251 setting up the Council are as follows:

1. In paragraph 1, the Human Rights Council was established to replace the Commission on Human Rights. This runs contrary to the original idea, which was to improve upon the Commission on Human Rights. However, through this Resolution the Commission actually ceased to exist.
2. Paragraph 6 states that this body has the responsibility to start from the most basic level and improve. The Council has to assume the functions of the old body, review and when necessary make changes.
3. The Universal Periodic Review process mentioned in Paragraph 5e sets out that peers will periodically review every member of the Council, thus establishing the same rules for everyone. This is the greatest novelty of the Council established in reply to the politicisation, which was the main criticism of the Commission on Human Rights. The process will be carefully observed.
4. Paragraph 6 provides for the maintenance of the system of Special Procedures, Mechanisms and the Complaints Procedure, however it stresses the need for review and therefore for wider reform especially regarding the complaints Procedure 1503. This review should be completed within a year.

## **The First Session of the Human Rights Council**

Although there was severe scepticism in the weeks leading up to the first session of the Council, the session was an immense success because it was able to set up the architecture of the new body. The preparatory work undertaken before the start of the session certainly contributed to ensuring that everything ran smoothly and the inaugural ceremony was excellent.

### **Accomplishments of the First Session**

The first session dedicated part of its time to procedural matters. It saw the adoption of the Agenda enabling the Human Rights Council to function, the establishment of a programme of work for the year ahead and the formulation of a calendar.

However, the first session did not limit itself to discussion of procedure, as many feared. In the second week of the session, the Council tackled pressing issues, including the Abuja Process, racial hatred, migration, human rights defenders and the human rights situation in Palestine and other occupied Arab territories.

Resolutions were passed among which the resolution on the International Convention for the Protection of All Persons from Enforced Disappearances (2006/1), the resolution on the rights to development (2006/4) and a Declaration on the Rights of Indigenous People was adopted. It was also decided that the system of Special Procedures, for example the 1503 Complaints Procedure, would be maintained for a period of 12 months, thus ensuring that all processes be continued.

A fundamental issue was the emergency Session of the Council on the Occupied Palestinian Territories. This showed that the Council was able to respond immediately to an urgent situation through the means set out in Resolution 60/251 (paragraphs 2 and 3), whereas previously the Commission on Human Rights had an extremely complex procedure to follow in order to do this.

The Commission on Human Rights lasted for six-week only. The Human Rights Council on the other hand will have at least four sessions and will last at least ten weeks.

It is to be added that the establishing of the Universal Periodic Review and the reviewing of Special Procedures will both be consultative processes.

# THE MANDATE OF THE OFFICE OF THE HIGH COMMISSIONER AND THE UN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

**MS. FRANCESCA MAROTTA**

*Coordinator of the Methodology, Education and Training Unit, Research and Right to Development Branch, OHCHR*

## **Background of the Mandate of the High Commissioner**

In 1993, the Vienna World Conference generated the Vienna Declaration and Programme of Action. In December of the same year, the General Assembly adopted Resolution 48/141 establishing the post of High Commissioner for Human Rights to raise the profile of Human Rights. The High Commissioner is the principal United Nations officer responsible for Human Rights issues. Since July 2004, Canadian judge and former international prosecutor for the ICTY, Louise Arbour, has held this esteemed position. Former High Commissioners include: Mr. Sergio Vieira de Mello 2002-2003, Ms. Mary Robinson (1997-2002) and Mr. José Ayala Lasso (1994-1997).

## **What does the Mandate cover?**

The Mandate of the High Commissioner is comprehensive and complex, encompassing the prevention, protection and promotion of Human Rights. The following are aspects of the mandate covered by the General Assembly Resolution 48/141:

- ❑ To promote and protect all human rights for all (civil, political, economic, social and cultural rights including the right to development);
- ❑ To carry out tasks assigned to him/her by the competent bodies of the United Nations system in the field of human rights and make recommendations to them;
- ❑ To provide advisory services and technical cooperation for Human Rights;
- ❑ To coordinate United Nations Human Rights education and public information programmes;
- ❑ To play an active role in removing the current obstacles to the realisation of Human Rights;
- ❑ To play an active role in preventing the continuation of Human Rights violations;
- ❑ To engage in dialogue with all Governments with the view to securing respect for all Human Rights,



- To enhance international cooperation for the promotion and protection of Human Rights;
- To coordinate Human Rights promotion and protection activities throughout the United Nations;
- To rationalise, adapt, strengthen and streamline the United Nations Human Rights machinery.

The reform within the UN has strengthened the role of the High Commissioner. In 1997, in his Programme of Reform for a renewed UN, the Secretary General stressed that Human Rights are cutting across all UN substantive fields operation be it peace and security, economic and social affairs, development cooperation or humanitarian affairs. The integration of Human Rights has become an obligation in the UN system.

The 2005 report of the Secretary-General, "In Larger Freedom," indicated how the three pillars of the United Nations, development, security, and Human Rights were interlinked. The World Summit held at the end of 2005 was very important due to the Member States' commitments to strengthen OHCHR. This was very good news as OHCHR has to cover a huge mandate and meet high expectations with a limited budget and limited outreach in the field.

In regard to the Plan of Action, the High Commissioner has reformulated the vision of the agency and its mandate in terms of protection, beginning with knowledge of one's Human Rights, and empowerment, enabling state institutions to fulfil their responsibility to protect the Human Rights of their own people.

### **Challenges facing the OHCHR**

Today, we can observe progress in the acceptance of Human Rights obligations; however, there is a discrepancy between the law and the reality. The key challenges OHCHR identified as preventing the implementation of the protection, prevention and promotion of Human Rights are:

- Poverty
- Discrimination
- Conflict
- Impunity
- Democratic deficits
- Weak institutions

The gaps observed by the OHCHR are as follows:

- ❑ Knowledge gap
- ❑ Issues of capacity
- ❑ Problems linked to commitment
- ❑ Security

## **Strategies of OHCHR**

OHCHR has set up strategies of country engagement, leadership and partnership to enhance the protection and empowerment of Human Rights.

1. Country engagement of OHCHR is based on the assumption that a change in the system of Human Rights protection must happen at the country level. The advancement of Human Rights at the national level has to be undertaken by national institutions, civil society and the international system. Human Rights problems can be addressed through a set of tools developed by OHCHR: Country visits by the High Commissioner with a view to enhance advocacy and dialogue with governments, or field presence to improve Human Rights situations. Today, the OHCHR is present in about 40 countries but this figure is subject to change. Field presences may also take different format such as country offices, regional offices or Human Rights advisors deployed to UN offices in a country. OHCHR intervention depends on the situation and it may evolve from one form to another.

For example, the comprehensive mandate of OHCHR in Nepal covers monitoring the Human Rights situation, assisting the authorities and the communist party to improve the Human Rights situation, reporting to the High Commissioner on the situation, and developing capacity building activities. OHCHR field presence is always based on an agreement between OHCHR and the concerned government.

2. Leadership refers to OHCHR initiatives meant to support the national debate around Human Rights issues. In this perspective, OHCHR develops concepts, expertise, strategies, and research capacity to support advocacy. OHCHR has, for example, researched the conflict between the rule of law and Human Rights.
3. Partnership stems out of the need for the OHCHR to work with others to implement its mandate. Cooperation with the other UN agencies, civil society and NGOs is needed for them to streamline their work in Human Rights.

# APPLICABLE RULES OF PROCEDURE FOR THE HUMAN RIGHTS COUNCIL

MR. GUENNADI LEBAKINE

*Deputy Secretary of the Human Rights Council and Secretary of the Sub-Commission on the Promotion and Protection of Human Rights, OHCHR*

## What are the Rules of Procedure?

Technically, the issue of the Human Rights Council's Rules of Procedure seems rather simple: The General Assembly, in Resolution 60/251 has decided that the Human Rights Council will have to apply the Rules of Procedure established for committees of the General Assembly". This refers to rules 96 to 133 and rules 45 and 60 of the rules of procedure of the General Assembly (doc. A/520/rev.15).

The General Assembly specified that those rules should be used by the Human Rights Council "as {they are} applicable". The General Assembly also repeated in its Resolution, the rule 161, stating that those rules shall be applicable by the Council "**unless subsequently otherwise decided**" by the General Assembly or by the Human Rights Council itself. This leaves the Council **sufficient flexibility** to establish its own Rules of Procedure, which, at least theoretically might be different from those of the General Assembly.

The application of the General Assembly Rules of Procedure to the work of the Human Rights Council has not caused any problems until now, mostly because these rules are quite similar to the Rules of Procedure that were used by the Commission on Human Rights and the Economic and Social Council, in particular with regard to such areas as the conduct of business, consideration of proposals and the process of voting. Nevertheless there are a few important differences.

## Differences

1. Chapter XIII of the Rules of Procedure for the General Assembly relating to Committees of the General Assembly does not contain any provision to describe when and how the agenda of the Human Rights Council should be drawn up. It is important to make this distinction because the Rules of Procedure for the functional Commissions of ECOSOC applicable to the

Commission contained a detailed process of formulating a provisional agenda, including an indication of actors within the agenda.

2. Rule 108 of the General Assembly Rules of Procedure relating to the quorum is different from those of the Functional Commissions of the ECOSOC. It should be noted that, rule 108 of the General Assembly permits the opening of a meeting when only one quarter of the members are present; while rule 40 of the ECOSOC speaks of a majority constituting a quorum.
3. The famous rule 65(2) on a motion “requiring no decision” is not present in the General Assembly rules. However, the practice of the Third Committee has shown that another rule has been used for the same purpose: rule 116 on adjournment of debate.
4. The General Assembly rules are less specific on the issue of the right to reply, namely the timing of this exercise is not specified.
5. The Commission on Human Right’s twenty-four hour rule for submission of proposals and amendments (rule 52) is significantly “softened” in the General Assembly rule 120, which only speaks about “the day preceding the meeting”.
6. When referring to the Rules of Procedure in paragraph 11 of its Resolution 60/251, the general Assembly also decided that the participation of observers, including states and NGOs would be based on the arrangements and practices observed by the Commission on Human Rights. One such arrangement was the well-known ECOSOC Resolution 1996/31 on participation of NGOs, and this important resolution is directly mentioned in the General Assembly resolution. The situation is less clear with regard to what constitutes other arrangements and practices observed by the Commission on Human Rights.

### **Main Rules and Practices**

There exist several documents containing what were called the “main rules and practises followed by the Commission on Human Rights in the organisation of its work and the conduct of business” issued in 2001 and 2002 (also known as “CRP1” and “document 16”). There also exists doc 2003/118 containing recommendations of the Bureau of the Commission on Human Rights, on the working methods of the Human Rights Commission, that were subsequently

endorsed by the Commission on Human Rights and thus become a part of its jurisprudence.

An informal supplementation (non-paper) of such documents and decisions relating to the working methods and practices of the Commission on Human Rights was prepared and updated by the Secretariat (January 2006) and it is still posted on the extranet of the OHCHR concerning:

- ❑ Speaking time limits
- ❑ “Concerned” countries
- ❑ National Institution
- ❑ Accreditations
- ❑ Sitting arrangements for NGOs
- ❑ Parallel events
- ❑ Interactive dialogue with Special Procedures
- ❑ High Level segment

### **Criticisms and Responses**

Some may object to reinstating some of the practices and arrangements from the Commission on Human Rights saying that the Human Rights Council should move away from the old working methods of the Commission. Indeed, how the Council can improve upon the Rules of Procedure of the Commission is an important matter. It should be transparent, fair and impartial, enable genuine dialogue, result-orientated, allow for subsequent follow-up discussions, recommendations and their implementation and allow for substantive interaction with Special Procedures and mechanisms. The biggest challenge for the Council to achieve is to carry out the tasks as listed above and described by the General Assembly, without losing the positive experience of the Commission on Human Rights.

The process of developing the Rules of Procedure and working methods of the Human Rights Council will obviously not be an easy one. On a few occasions, the President of the Council mentioned his intention to apply the rules in a creative and innovative way. The safest way to interpret the decision of the General Assembly is to consult the Office of Legal Affairs in New York, which was done before the first session of the Human Rights Council in June 2006. The Office of Legal Affairs in New York was specifically consulted about the participation of NGOs and National Human Rights Institutions in the Human Rights Council. It was also consulted for an interpretation of paragraph 11,

where a difference in the English and French texts made the meaning of the text unclear. The Office of Legal Affairs confirmed that the English text is the proper version, and there have been some modifications of the French version.

# TOWARDS A UNIFIED HUMAN RIGHTS TREATY BODY CORPUS

MR. MARKUS SCHMIDT

*Team Leader, Petitions Unit, Treaties and Council Branch, OHCHR*

## The Composition of the Treaty Body System

The seven core Human Rights treaties set international standards for the protection and promotion of Human Rights. The Treaty Body system is composed of seven special organs, dedicated to the seven treaties. Each of the seven organs is made up of twenty-five experts who endeavour to monitor implementation by state parties and recommend further action. Many reforms have been made in the attempt to strengthen the Human Rights Treaty Body corpus. Though there have been fifteen years of failed attempts to achieve a reformed system, only now, with the new Human Rights Council is there a dynamic for change.

## Challenges

There are currently several challenges to the Treaty Body system that need to be faced:

1. There is a **considerable backlog of reports** to be dealt with by the Treaty Bodies. At the end of 2004, there were cumulatively 1450 overdue reports – more than seven per United Nations Member State.
2. There is a significant amount of **duplication of reporting requirements** among Treaty Bodies. The duplication occurs within the periodic reports of states to the different bodies, which often contain the same topics, as the result of the overlapping nature of Human Rights instruments. This has created particular problems for small States for which the reporting requirements are over-burdening.
3. The **working methods** of the different organs developed in an ad hoc manner and are therefore often different. It can be difficult for Member States to appear in front of many different organs in the same year.
4. The development and adoption of **new instruments** implies that further treaty bodies are in the process of being created. These instruments will have their own reporting requirements, which will also have to be considered in an overall standard setting.
5. The **individual complaint procedure**, which four treaty bodies deal with, also faces a considerable backlog.

Several proposals have been developed to streamline these problems.

### **Proposal for a Unified Standing Body**

The Secretary-General put forward the first proposal in his 2002 report *Strengthening the United Nations: An Agenda for Further Change*. The proposal suggested that state parties should be able to prepare one single report summarising their obligations, and present it to all organs. However, the proposal was widely rejected by states parties out of fear that this would mean watering down the report.

The second proposal came from OHCHR Consultations with all stakeholders held in Liechtenstein in May 2003. The proposal suggested that the states parties should prepare a common core document, and in addition would answer country specific questions explaining the actual situation. The Human Rights Committee would send a list of country specific questions to each member state, allowing reports to focus on prevalent issues. The Office of the High Commission organised training on targeted treaty reporting in Angola, East Timor, Panama and Nicaragua. There will be more training carried out in the future.

In March 2005, in his report *In Larger Freedom: towards development, security and human rights for all* the Secretary-General requested that “harmonised guidelines on reporting to all Treaty Bodies should be finalised and implemented so that these bodies can function as a unified system,” (para. 147). The High Commissioner took up this idea in her 2005 Plan of Action *An attempt to turn Rhetoric into Reality* taking both State Parties and the treaty bodies by surprise.

The proposal for the Human Rights Council suggested a unified standing body composed of independent experts. In autumn 2005, an informal consultation on this idea took place with the Treaty Bodies and the regional groups. A brainstorming session also took place two weeks ago, again in Liechtenstein, including all Member States, various United Nations Agencies, representatives of the Treaty Bodies and NGOs. The idea of a standing body was discussed at length. However, a majority of the Member States not would accept the concept of a unified standing body at this stage. The reaction of the Treaty Bodies was not wholly negative; two of the Treaty Bodies were against the proposal, while others were more balanced. Their fallback position was to create a standing body for individual procedures only, which would be legally easier to achieve.



## **Main concerns related to a Unified Treaty Body**

Discussing why the reactions have been so negative, there are two main concerns: First, if you create a unified standing Treaty Body you may lose the specificity of the seven bodies and their procedures.

Second, there is the fear that the new body might develop into an International Court on Human Rights. The NGO Human Rights Watch and the International Court of Justice declared last year that they are in favour of a unified standing Treaty Body, even if it were to become a Human Rights Court. It is legally possible to create such a Body, however the political will is missing.

**PROF. KIRK BOYD**

*University of California Santa Barbara*

## **TOWARDS A UNIFIED HUMAN RIGHTS TREATY BODY CORPUS**

### **What Are Rights?**

Rousseau's Social Contract begins with these words. "Man is born free, and everywhere he is in chains". The topic today, Towards a Unified Human Rights Treaty Body Corpus, sets us to thinking together about how to remove some of these chains. This can be accomplished through the application of the Mandate of Article 28 of the Universal Declaration of Human Rights.

The Universal Declaration and the Mandate of Article 28 comprise the current social contract, because they are the law that governs those who govern. It is a document that held in such high regard that many people have spent much of their lives trying to implement it, be it through classrooms, meeting rooms or in courtrooms.

Article 28 of the Universal Declaration of Human Rights states: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." The first three words are "everyone is entitled". The first word "everyone" – means every person, not only Americans, or only the West, or only the North, it means every person in every country. Next, "is" – this is the present tense. It means now. It does not mean

someday, or when one can get to it after 50 years. Finally, “entitled”, “to give a right or claim to”. When one is entitled to something, one has a right to it.

Therefore, every person in every country, today, has a right to an international order whereby the Universal Declaration is “fully realized”. The preamble of the Universal Declaration of Human Rights sets forth four fundamental freedoms that every person has a right to. They are: Freedom of Speech, Freedom of Religion, Freedom from Want and Freedom from Fear. It is important that we see these Four Freedoms for what they are: something that we are entitled to, not something that we beg to receive. The Universal Declaration of Human Rights is the machine. Elected government representatives must operate it. Article 28 is a mandate, not an aspiration.

Nowhere in our social contract does it say that the rich and powerful have more rights, or that those elected have more rights. For example, every person is entitled to Freedom of Religion and has a right to believe, or disbelieve, regardless of wealth or position. This is true for Freedom from Want.

Today, the international community is a breach of the social contract and it is time to enforce it. As the new Human Rights Council embarks on its mission, unification of the corpus of the treaty bodies should be one of its major goals – it is time to reunite civil and political rights with social and economic rights to the equal harmonious position they share in the Universal Declaration of Human Rights.

There are those in government who support the breach of contract, and want to make the breach worse through the denial of rights that all people are entitled to such as the right to a fair trial. The path to security is through more rights, not fewer of them -- the path to security is through all Four Freedoms.

Mandate of Article 28 can be fulfilled through the unification of the treaty corpus into a single document enforceable in the courts of all countries. The High Commissioner for Human Rights, and the Human Rights Council, can provide valuable leadership to accomplish this. This path is not new, 46 countries, today, are applying a single document, the European Convention on Human Rights in the courts of those countries.

The most effective system for the protection of international human rights is the European Convention on Human Rights and the European Court of Human Rights that enforces it. As it states in the Preamble to the European Convention,

these are the “first steps” toward the enforcement of the Universal Declaration, that is, the first steps toward the fulfillment of Article 28.

Considering the success of these first steps, what are the next ones? What is the optimal international social order so that the Four Freedoms are “fully realized?” The optimum international order exists when every time a person, in any country, suffers a violation of one of their Four Freedoms, then a lawyer can represent them and go into a local court to enforce their right.

### **Why Do Separate Treaty Bodies Fail?**

Markus Schmidt, one of the world’s best international human rights lawyers, and his colleagues are attempting daily to fulfill the Mandate of Article 28. This is exceptional work and it should be continued. It is difficult, however, for a lawyer to enforce rights for a client on another continent, especially when there is little law to rely upon. It is also difficult for people to believe they genuinely have rights when they must go to Geneva to enforce them.

The Universal Declaration of Human Rights was not written with the intent that it would be the document that would be enforceable in courts of law. Article 28 envisions that future documents will serve this purpose, and they have. The Twin Covenants on Civil and Political Rights and Economic and Social Rights were written with the Mandate of Article 28 in mind, and have been a valiant effort to fulfill the Mandate. But they have only partially succeeded, and they will never fully succeed. The fact that there are two Covenants represents the fragmentation that has occurred from a flawed separate, and unequal, framework. We should end this framework. We should not continue to pour all of our energy into a path that is a dead end.

For example, the optional protocol to the treaty on economic and social rights is valuable, but not nearly enough. Just look at all of the terrific work that has been done to implement economic and social rights and what has come of it? Not enough. There are massive disparities in wealth and that these disparities are only getting wider. The top 2% of people in America now have 70% of all wealth -- and these disparities are not only in the west or north, they are even greater, for example, in Central and South America.

The work done thus far on economic and social rights has been valuable. It has prepared us for this moment when we can establish an independent court system

outside the UN to enforce economic and social rights while we establish a reporting system for economic and social rights within the UN.

### **Criticisms of a Unified Treaty Body Corpus**

The most common negative response to the idea of unifying the treaty corpus into an International Convention built upon the European Convention is "Oh, the United States will never go along with that". So what? The United States would not go along with an International Criminal Court and yet, thankfully, it is a reality. The worldwide suffering of hundreds of millions of people due to the breach of the social contract cannot be allowed to go on with the new Council as it did before the Commission.

### **What Is Next?**

The next step after an International Criminal Court is an International Civil Court. With the expansion of the European Court of Human Rights into an International Court of Human Rights we will have this. Then, the Mandate of Article 28 will finally be fulfilled. The most powerful act the High Commissioner and the Council can do to make this happen is to bring our international community to Focus Together upon a document. By focusing together on something forward thinking and positive, instead of only finger pointing and recrimination, a new culture of cooperation can be created on the Council -- one different from that of the Commission for the past few years.

With the leadership of the High Commissioner and the Council, we can bring the thousands of Non-Governmental Organisations, such as the World Federation of United Nations Associations, university professors, and people from all professional backgrounds, including business, to Think Together about what the optimum wording for a unifying document is. These people and organisations, along with others who join them along the way, can Write Together to draft the document. This is the Business Plan for Humanity -- now that Capitalism has prevailed as the dominant economic model, as it should since it brings our ingenuity and productivity, we need a Plan to heighten its best, and soften its worst, tendencies.

### **The Future Moves of the Council**

To this end, the International Convention on Human Rights offers a draft of a document that unifies the treaty corpus and builds upon the European Convention. It is a draft, a starting point, not a finished document. Hopefully,

the High Commissioner and the Council will consider this document and that three steps will be taken.

First, that the Council should pass a resolution commending the European Convention on Human Rights and the European Court of Human Rights that enforces it, for taking "first steps" to integrate the Universal Declaration of Human Rights into domestic law and fulfil the Mandate of Article 28.

Second, a Working Group or a Special Rapporteur should be given a mandate to research how to fulfil the Mandate of Article 28 through a unifying document. This step is crucial because it would draw the attention and assistance of the non-governmental organisation community.

Third, the Council should pass a resolution declaring Human Rights Day, December 10 of each year, to be a day of Human Rights teaching in all schools in all countries so that students learn, on the same day, about rights that they all share. This would be an excellent continuation of the World Programme on Human Rights Education passed by the Commission. To help achieve this, ICHR has developed a curriculum including the booklet we looked at today, a ten minute film made by students for students, which shows the evolution of the Universal Declaration of Human Rights and the European Convention, and a lesson plan for the teacher to use, including a website, [humanrightsday.org](http://humanrightsday.org), where students go to leave a comment about what they would put into an International Convention as part of their homework assignment.

# COUNTRY SITUATIONS ADDRESSED BY THE HUMAN RIGHTS COUNCIL

**DR. WALTER KÄLIN**

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## **Introduction**

To what extent is the Human Rights Council entitled to address country specific human rights situations? How should the Council do this? In particular, in what circumstances is the Council authorized to undertake reviews of the human rights situation of a particular State and in which manner are these monitoring activities to be undertaken?

The basis for answering these questions is General Assembly Resolution A/RES/60/251 (hereinafter referred to as the Resolution). As we will see, it entitles the Council to deal with the situation of human rights in a specific country in six different contexts. The most important of these is the Universal Periodic Review. What are the five other ways to address country situations? In this context it is important to stress, from the outset, that addressing country situations should not be equated with condemning states for violations, although this is one way to deal with human rights problems in a specific country.

## **What Resolution 60/251 says**

The point of departure of each discussion on how the Council on Human Rights should deal with country situations are preambular paragraph (PP) 9 emphasizing “the importance of ensuring universality, objectivity and non-selectivity in the considerations of human rights issues, and the elimination of double standards” and operational paragraph (OP 4) providing that “the work of the Council” has to be “guided by the principles of universality, impartiality, objectivity [and] non-selectivity”.

A reading of UNGA Resolution 60/251 shows that the Human Rights Council, in addition to and outside of the Universal Periodic Review (UPR), is empowered to address country situations in the following circumstances:

*a) Situations of gross and systematic violations:* According to OP 3 of the Resolution the “Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon” [emphasis added]. This wording leaves no doubt that the Council is authorized to review situations of systematic violations not only thematically but also with a country-oriented perspective. At the same time, the term “should” indicates a certain obligation to do so. While the Council may not have, in addition to the periodic review of country situations, the capacity to address all situations of problematic human rights situations in a comprehensive manner, the guidelines of non-selectivity, objectivity and impartiality and the goals of avoiding double standards and politicization of its work make it necessary to engage comprehensively with all situations of gross and systematic human right violations, irrespective of the responsible State, the victims concerned, or the rights violated being civil and political or economic, social and cultural rights. - The main difference between dealing with gross and systematic violations and the UPR is the approach to be taken: While the UPR is focusing on the implementation of human rights obligations in a mid- or (especially where structural changes are needed) even long-term perspective, addressing gross and systematic violations is aimed at bringing short term relief to the victims.

*b) Other situations of violations of human rights (OP 3):* As the wording of paragraph 3 (“including situations of gross and systematic violations”) clearly indicates that the authority of the Council to address situations of human rights is not limited to gross and systematic violations of human rights, but rather includes situations of human rights violations in a general manner. Here too, the objectives of impartiality, universality and objectivity indicate that the Council may establish in advance criteria subject to which it will address a specific situation. These are mainly situations where capacity-building activities are called for outside the UPR or where special procedures raise issues related to a particular country (e.g. in the context of a report on a country mission).

*c) Situations where the Human Rights Council will promote human rights education and learning, as well as advisory services, technical assistance and capacity-building.* This has to happen in consultation and with the consent of the Members States concerned, (OP 5, sub-paragraph a).

*d) Situations where the Human Rights Council will promote the full implementation of human rights obligations undertaken by States* (OP 5, sub-paragraph d).

e) Situations where the Human Rights Council will contribute towards the prevention of human rights violations and respond promptly to human rights emergencies (OP 5, sub-paragraph f).

### **The Council's three country related mandates**

This overview shows that, in relation to country situations, the Council has three mandates:

1. A "*promotion*" mandate, i.e. the mandate to take measures to promote the protection of human rights in a given country, in particular through educational and capacity-building/technical assistance activities, which would support the implementation of the obligations and the commitments of the State concerned.
2. A "*protection*" mandate, i.e. the mandate to take steps aimed at protecting victims of human rights violations: The specificity of such a protection mandate in the Resolution is significant. It will be recalled that the "*protection mandate*" of the erstwhile Commission on Human Rights was the fundamental motivation for the establishment of the CHR's different agenda items of country situations. The inclusion of the protection mandate in the Resolution makes clear that the Human Rights Council is empowered to establish and/or maintain mechanisms that could implement approaches to protect actual or potential victims of human rights violations. Such approaches can only be possible with the direct consideration of country situations.
3. A "*prevention*" mandate, i.e. the mandate to take measures aimed at ensuring that human rights violations do not occur or re-occur. Here too, the provision of technical assistance and the like to the States under consideration play an important role. Moreover, the mere consideration by the international community, through the HRC, of a situation that is potentially at risk of violations would send strong signals of concern to the State concerned.

The Human Rights Council can decide to take up any of the types of the situations that the resolution provides for. In doing so, the Council's roles in the prevention of human rights violations, and the protection and promotion of human rights are actually complimentary and may even overlap. For example, the Human Rights Council may be able to prevent the further escalation of



violations in a country situation when addressing obvious or even gross and systematic violations of human rights. Similarly, the Council, by promoting human rights through any of its mechanisms, actually enhances the protection of human rights and prevents or reduces the risk of potential violations

### **Basis for the consideration of country situations**

Given the broad mandate of the Human Rights Council and the diverse country situations that the Council may decide to take up, the basis for the consideration of country situations would nonetheless be based on assessments of whether or not the Council can effectively make an impact for the improvement of a given situation. This would be necessarily be based on the Council's appreciation of the current compliance of a State with its human rights obligations as well as human rights commitments, including an assessment of the state of human rights violations occurring, which may or may not be gross and systematic.

Generally, the following non-exhaustive list may trigger the Council's consideration of a country situation:

#### *a) Urgent situations*

According to OP 3, the Council "should address situations of [...] gross and systematic violations, and make recommendations thereon." This wording makes clear that addressing situations of gross and systematic violations of human rights is one of the tasks the Council has to carry out itself and cannot delegate, e.g., to the 3rd Committee of the General Assembly. This does, however, not exclude the possibility for the Council to propose, as part of its recommendations, that the General Assembly and/or the Security Council also address the situation.

Situations of gross and systematic violations can be addressed during regular sessions of the Council if they are ongoing or if a new situation emerges while the Council is in session. In addition, OP 10 creates the possibility for holding "special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council". Such sessions should be considered if gross and systematic violations emerge in-between sessions (e.g. in the case of massacres, genocide and the like).

"Situations" of gross and systematic violations in the sense of OP 3 include:

- Country situations, where gross and systematic violations are still ongoing or just have finished at the time of their tabling in the Council.

Here, the basic purpose of the examination of the situation would be to immediately initiate or enhance the protection of human rights in that country and prevent the further deterioration of the situation; or

- Country situations, where there is a pattern of violations that risks to escalate into gross and systematic violations if the situation is not being addressed properly. Here, the Council would mainly act in a preventive manner.

Moreover, based on the principles of universality, impartiality, objectivity and non-selectivity, as well as inter-dependence, relevant human rights violations should be regarded as pertaining to civil, political, economic, social or cultural rights, including the right to development. These requirements also suggest that similar to the UPR the Council should base its assessment on relevant information that might include reports by special procedures, commissions of inquiry, or of the Secretary General to the Security Council.

The Resolution's emphasis on cooperation with States applies, in principle, also to situations of urgency, triggered by gross and systematic violations. This suggests a phased approach: The Council should try first to get the cooperation of the State concerned in assessing the facts, e.g. by allowing a joint mission of special procedures with mandates that are relevant in the particular situation or agreeing to another form of fact finding in the country concerned, and second to come to an agreement with it regarding measures to be taken to improve the situation (including, e.g. the establishment, with the agreement of the State concerned, of a system of in-country monitoring by OHCHR).

It has to be stressed, however, that cooperation cannot be a one-way street. If the State concerned refuses genuine cooperation, the Council is entitled to take measures that are appropriate in the circumstances of the case and may include the recommendation that Special Rapporteur undertake a visit, that the State concerned implement as a matter of priority and within a certain time-limit certain recommendations coming from the UN system, the appointment of a country Reporter or even the suggestion that the General Assembly or Security Council<sup>1</sup> look into the situation. In any case, situations of gross and systematic violations require a certain degree of continued monitoring by the Council, and resolutions or chairpersons' statements should contain a provision of the

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<sup>1</sup> According to Article 35 UN Charter, any UN Member State may bring any situation that is likely to endanger the maintenance of international peace and security to the attention of the Security Council or of the General Assembly. It is recognized today that situations of gross and systematic violations may amount to Article 35 situations.

automatic continuation of the Council's consideration unless there is a clear improvement in the actual situation. In addition to continuous monitoring, if the State concerned is a Member of the Council and is found to be committing gross and systematic violations of human rights, the Council may make a recommendation on its suspension from membership to the General Assembly (OP8).

*b) Situations for "capacity-building", i.e. human rights education, technical*

Such country situations would include any of the following:

- ❑ situations where the Human Rights Council deems that they would require provision of capacity building programmes;
- ❑ when the State requests for the assistance of the Human Rights Council in this regard.

In the consideration of these country situations, the Council would necessarily enter into consultations with the State concerned and, in the event of a decision to provide "capacity building", obtain the consent of the State.

Particularly where the State itself requests for the Council's assistance, the State may itself take up certain recommendations emanating from other parts of the UN human rights system (e.g. special procedures, treaty bodies). Here, the Council can provide the political weight to international cooperation in support of the implementation of a State's obligations and commitments.

*c) Situations raised by thematic special procedures*

Such situations may be raised by the thematic procedures in any of the following circumstances:

- ❑ where a thematic procedure, or group of them, brings the attention of Human Rights Council to a particular situation deserving the Council's consideration; or
- ❑ where a thematic procedure presents its report to the Council with respect to a specific country visit that it has undertaken.

The situations that thematic procedures may raise in the Council need not be urgent situations or situations where there exist gross and serious violations of human rights. They may even be situations where, eventually, the Council may

decide to consider for capacity-building purposes (see above b). Moreover, the Council's consideration of a report of a thematic procedure on a country visit that it has undertaken may include not only the thematic procedure's recommendations but also lessons learned or best practices that may be of use for the international community as a whole and interested States.

*d) Situations emanating from the considerations within the Universal Periodic Review mechanism*

The Human Rights Council, resulting from its consideration of a State within the Universal Periodic Review, may decide to continue the consideration of the situation of that country by virtue of the continuing urgency of the situation or because of capacity-building potential.

*e) Conclusion*

The Resolution entitles the Council to address country specific situations in very different contexts and for very different purposes. From a procedural perspective, it will be important to avoid procedures that are too complicated and to ensure that the agenda enables the Council to look at country situations in a comprehensive way allowing to combine, to the extent required by the circumstances, its prevention, promotion and protection mandates. Thus, country situations should be addressed in the following three contexts:

- ❑ Chairperson's statements or Council resolutions concluding the periodic review of a specific country;
- ❑ Chairperson's statements or Council resolutions concluding discussions about gross and systematic violations (OP 3) in a specific country during regular or special sessions.
- ❑ Chairperson's statements or Council resolutions concluding discussions about thematic issues when referring to conclusions and recommendations made by Special Procedures regarding one or several countries.

Country resolutions and corresponding Chairperson's statements should not be equated with singling out violators but should, to the extent justified by the concrete case, make use of the full possibilities given by the triple mandate to promote, protect and prevent. This means that resolutions could commend a State for its achievements and efforts to cooperate with the UN in dealing with

remaining problems; put the emphasis on encouraging it and addressing its capacity-building needs; condemn it for continuing violations and its unwillingness to improve the situation and to cooperate with the UN in this regard; or combine any of these elements.

### **The Future of the 1503-Procedures**

One particularly important aspect of how the Council should deal with country situations concerns the question as to whether the present 1503-procedure should be maintained, abolished or modified.

It is useful to recall how the complaints procedure originally created by ECOSOC resolution 1503 is structured in its present form<sup>2</sup>: First, the Working Group on Communications, consisting of members of the Sub-Commission on the Promotion and Protection of Human Rights meets annually immediately after the Sub-Commission's session to examine communications (complaints) received from individuals and groups alleging human rights violations and any government responses. Communications that are not manifestly ill-founded are being transmitted to the State concerned. If the Working Group identifies evidence of a consistent pattern of gross violations of human rights, it refers the matter to the Commission on Human Rights' Working Group on Situations. This Working Group, composed of five members nominated by the regional groups, examines the particular situations forwarded to it by the Working Group on Communications and decides whether or not to refer any of these situations to the Commission. Subsequently, it is the turn of the Commission to take a decision concerning each situation brought to its attention in this manner. All steps in the process are confidential until a situation is referred to the Economic and Social Council. However, since 1978, the names of countries under examination are made public, thus enabling ECOSOC to bring a pattern of abuses in a particular State to the attention of the world community.

It is clear that the procedure in its present form cannot be maintained. First, the Council no longer reports to ECOSOC. Second, and foremost, a confidential procedure such as this one is hardly reconcilable with the UPR. The main issue here is the relationship between the two procedures. The confidentiality of the 1503-procedure would be undermined if information discussed by the Sub-Commission's Working Group on Communications and the Human Rights' Working Group on Situations would be made public. At the same time, it would be unacceptable that in the case of States that are not considered under the 1503-procedure, everything could be discussed, while countries under scrutiny would

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<sup>2</sup> ECOSOC Resolution 2000/3 of 16 June 2000.

have the doubtful advantage of not being confronted with information examined under the confidential procedure.

For these reasons, the existing 1503-procedure should be replaced by a new mechanism dealing with complaints. There is a continuing need to deal with the large number of petitions and complaints the UN receives every year. As in the past, they should be screened by a working group consisting of independent experts and, if they are not manifestly ill-founded, transmitted to the governments concerned.

At the same time the working group should analyse this material in order to determine whether it indicates the existence of a consistent pattern of gross violations of human rights. Unlike in the past, these findings should be made public immediately and serve as part of the information that is made available to the Council in the context of the UPR. They can also serve as a basis for discussions about gross and systematic violations (OP 3) in a specific State during regular or special sessions.

## SPECIAL PROCEDURES AND THEIR RELATIONSHIP WITH THE TREATY BODIES

SIR NIGEL RODLEY

*Member of the Human Rights Committee and former Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*

### **Treaty Bodies**

In its first two decades, it was generally understood that the Commission's purpose was to promote Human Rights. As a political body the Commission would not judge or scrutinise the practices of Member States. Yet, Treaty Bodies were created to put in place procedures to make States accountable for their commitments undertaken under Covenants or Conventions. Only later did the Commission establish what have come to be known as its' "Special Procedures."

The Office of the High Commissioner for Human Rights (OHCHR) has been entrusted with servicing the two types of mechanism:

1. Treaties
2. Special Procedures.

### **Treaties**

At present seven fundamental Treaties deal with questions of human rights:

1. International Convention on the Elimination of All Forms of Racial Discrimination
2. International Covenant on Civil and Political Rights
3. International Covenant on Economic, Social and Cultural Rights
4. Convention on the Elimination of All Forms of Discrimination against Women
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
6. Convention on the Rights of the Child
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The seven Treaty Bodies have one function common to all of them, namely the review of periodic reports submitted by State Parties. This involves Constructive dialogue with State Parties leading to the adoption of concluding observations (areas of violation and suggestion for change.)

In addition, any individual who claims that his or her rights have been violated under a Covenant or Convention by a State party to that treaty, may bring a complaint before the relevant Committee, provided that the State has recognised the competence of the Committee to receive such complaints, this doesn't to the Covenant of Economic, Social and Cultural Rights or the Convention on the Rights of the Child Special country visits concerning Human Rights violations have been incorporated into the Convention on Torture and in a separate protocol, the Convention on the Elimination of Discrimination against Women.

Several of the Human Rights treaties (Convention Against Torture and the Convention on the Elimination of Discrimination Against Women) contain provisions for State parties to make complaints about alleged violations of Human Rights by another State party. But this process has never been used.

### **Special Procedures**

The System of thematic Special Procedures was started by the Commission on Human Rights in 1980. The Special Procedures were preceded by a working group that addressed Human Rights situations in the Occupied Territories of Palestine, South Africa and Chile, others followed. Special Procedures can refer to either a Special Rapporteur or Working Group mandated by the Commission on Human Rights to investigate a specific country situation or topic.

#### *Country mandates:*

Special Procedures monitor, advise, and publicly report on Human Rights situations in specific countries or territories.

#### *Thematic Mandates:*

The Special Procedures address Human Rights violations worldwide on thematic issues such as torture, killings and disappearances. The Commission used the system of thematic mandates to view Human Rights issues in a global rather than a country specific sense.

In terms of methods of work the reports of the Special Procedures are delivered in a written format. As a rule, there are no individual conclusions on cases, (its



Working Group on Arbitrary Detention is an exception). In comparison to the Treaty Body system, there is no reporting mechanism by States; most information is transmitted to the Special Rapporteur and Working Groups by NGOs.

Special Rapporteur can send urgent appeals to States, bringing to their attention information about a violation that is feared to be ongoing or about to occur. The intention is to ensure that the appropriate State authorities are informed as quickly as possible of the circumstances so that they can intervene to end or prevent Human Rights violations.

On site visits are particularly important for the Special Procedures to verify information. They are particularly used for addressing apparent systematic Human Rights violations within the mandate of each mechanism.

Cooperation between country mandates and thematic procedures is very common for cases dealing with the question of Torture, Disappearances and Summary Executions. It is important to know that the thematic mandates concern all the United Nations family whereas the treaty based mechanisms only affect those who have signed and ratified the Covenants and Conventions.

Finally, it should be stressed that in the implementation of all the above-mentioned mandates and mechanisms OHCHR is the central nerve of the operations, since it is the Secretariat that implements the decisions of the mandate holders.

It is not yet known whether the new Human Rights Council will set up a country specific system. The Council is composed of 47 Member States.

## **Relationships**

The functions of the Treaty Bodies do not, for the most part, overlap. The main area of possible overlap is in the realm of country visits that is a normal function of the Special Procedures and an occasional function of Treaty Bodies (CAT, CEDAW). Only CAT has so far used to the power. It has been its practice of the Special Rapporteur on Torture not to seek contemporaneous visits. Both systems draw on each other's reports and assessments.

## TREATY BODIES AND THE HUMAN RIGHTS COUNCIL

### MRS. WEDGEWOOD

*Member of the Human Rights Committee*

Drawing on her research and personal experience, Mrs. Wedgwood briefly introduced some relevant issues regarding the Treaty Bodies and the Human Rights Council.

### **The Human Rights Committee**

The Human Rights Committee's task is to supervise and monitor the implementation by States parties of their obligations under the Covenant on Civil and Political Rights. The Committee is composed of independent experts, nationals of State parties to the Covenant, not only jurists but also professors or specialists in specific fields. These people serve in their personal capacity, using their best judgment to assess situations.

The Committee works reasonably well. Every country is supposed to be examined by means of an in-depth dialogue every four to five years. The specific structure and substance of this dialogue is reflected in the concluding observations of the Committee filed after each examination. The States report on the measures they have adopted to give effect to the rights the Covenant affirms and on the progress made in the enjoyment of those rights.

In addition to the reporting procedure, the Committee may consider complaints from one State party, which deems that another State party is not giving effect to the provisions of the Covenant. This modality has never been used, and one infers that states find it difficult to accuse other states. However, the Committee also hears complaints from individuals under the Optional Protocol, and produces general comments to summarize its jurisprudence.

The Committee produces recommendations and not judgments, conscious of the importance of the normative work of the UN.

### **Criticisms**

Some countries think that the Committee does not take into account the needs and problems of each country, especially difficulties in transition to democracy

and post-conflict situations. Some countries have questioned the domain within which the Covenant is said to apply, including situations of armed conflict.

In order for Treaty Bodies such as the Human Rights Committee to succeed, it is important to assist countries that have difficulty in preparing reports, and to publicize the availability of the individual complaint procedures among the citizens of all countries joining the Optional Protocol.

Another complaint often heard regarding Treaty Bodies is linked to claims of their possible redundancy and overlapping jurisdiction: countries have to draft different reports for each different Treaty Body, thus making it difficult to follow-up and to comprehend multiple recommendations. However, the varied Committees also have value. There are constituencies that value the specificity of each Committee's work, and a fear that expertise would be lost from any merger of the bodies. There would also be significant legal problems in any merger.

## **Hopes for the Council**

Many people have high hopes for the new Human Rights Council. There is a unique chance for the Human Rights Council to become a more effective body than the politicized Human Rights Commission.

We need coherence in the system between the Council and the Treaty Bodies. Every country has constitutional dilemmas and local problems. In order to make the system usable it makes sense to speak in a universal voice.

We should understand that the Council is not a political weapon. The Council should avoid focusing its attention in a discriminatory way on a small set of countries or a single country. So, too, the regional caucuses that form the background of U.N. work must be open to all countries of the world, regardless of political disagreements.

It is important, in the transition period from the Commission to the Council, that the points of view of every region be taken into account. Although the position of the USA differs concerning the transition to the Council, it has a key interest in this regard. It is important to assure that members of the Council set a good example in maintaining Human Rights in their own states.

Louise Arbour believes that greater effectiveness will be reached through capacity building inside the countries, more personnel in the field and stronger

relationships with parliamentarians. It is important to set up a cooperative relationship between the two bodies, the Treaty Bodies and the Council: they should work in a constructive perspective not a competitive one.

In particular, the Concluding Observations of the Treaty Bodies would form a sensible basis and neutral starting point for the process of Peer Review of all countries by the Human Rights Council.

## THE COMPLAINTS PROCEDURE

**MS. DINA ROSSBACHER**

*Deputy Secretary of the Working Group on Communications, OHCHR*

### **General Assembly Resolution 60/251**

At this particular juncture, it is certainly not an easy task to talk about the Human Rights Council and the Complaint Procedure, as the future modalities of the procedure remains yet to be decided. General Assembly Resolution 60/251 establishing the Human Rights Council contains a number of provisions which relate to the complaints procedure. In operative paragraph 6 of the resolution the General Assembly: *“Decides ... that the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a ... complaint procedure; the Council shall complete this review within one year after the holding of its first session.”*

In concrete terms this means that first, the Commission’s 1503 complaints procedure has been assumed by the Human Rights Council, second, that the Human Rights Council will continue to have a complaints procedure and third, that the Council will review the procedure within one year.

### **The mandate of the 1503 procedure**

The 1503 Procedure was established in 1970 by Economic and Social Council Resolution 1503. It was named after this founding resolution and it kept its designation following the review of the procedure in the year 2000.

The 1503 Procedure is a confidential complaints procedure, meaning that all the deliberations of the 1503 Procedure are held in closed meetings and that the material considered will not be disclosed, unless otherwise decided.

The procedure has a universal applicability, as it can consider communications against any country and concerning any Human Rights violation on the basis of the Universal Declaration of Human Rights. More specifically, it deals with communications, which appear to reveal a consistent pattern of gross and systematic violations of Human Rights and fundamental freedoms. It is important to emphasize this specific characteristic of the procedure, hence

bearing in mind that it is not an individual complaint procedure but examines situations.

### **The functioning of the 1503 Procedure**

What happens to a communication and which bodies deal with it once it is received by the United Nations?

The 1503 Procedure consists of following four stages: The Secretariat, which, after the approval of the Chairperson-Rapporteur of the WGC transmits communications to countries concerned, the Working Group on Communications (WGC; *expert body*), the Working Group on Situations (WGS; *state representatives*), and finally the intergovernmental body, previously the Commission on Human Rights.

### **The Role of the Secretariat**

According to Economic and Social Resolution 2000/3, the Secretariat screens out manifestly ill-founded communications together with the Chairperson of the Working Group on Communications (the independent expert body), as e.g. there are a number of communications received every year, that do not relate to Human Rights violations, and therefore cannot be dealt with under the procedure. Out of the thousands of potential communications that are received every year, approx. 27,000 pass this stage of the initial screening. The Secretariat then transmits the copies of the communications to the Governments concerned for reply and acknowledges receipt to the author. Moreover, the Secretariat every month prepares summaries of the communications, which are compiled into the confidential monthly lists of communications.

### **Working Group on Communications**

All the communications that have passed the stage of the initial screening are transmitted to the Working Group on Communications. This is an independent expert body, which used to meet immediately after the Sub-Commission, and which consists of 5 of its members. The Working Group on Communication considers the admissibility criteria and the merits of the communications. For example, a communication is not admissible if it is anonymous, if it contains abusive language or if it is politically motivated. The author has also to clearly state the facts and the right that is allegedly violated and needs to demonstrate how local remedies have been exhausted.

The Working Group on Communication can either decide to discontinue a case or to keep it pending before it for another year, usually to continue the dialogue with the Government concerned. When it considers that the situation appears to reveal a consistent pattern of gross Human Rights violations, it will bring the communication to the attention of the Working Group on Situations.

### **Working Group on Situations**

The Working Group on Situations consists of five members of the intergovernmental body, previously the Commission, and it examines the situations referred to it by the Working Group on Communications as well as the ones it kept pending at previous sessions and those already before the intergovernmental body.

The Working Group on Situations may decide to discontinue a case or keep the situation pending in light of any further information, or it can refer the situation to the plenary of the intergovernmental body, previously the Commission on Human Rights. In this case the Working Group on Situations may make specific recommendations for action.

### **Commission on Human Rights**

The final stage of the procedure is the consideration at the intergovernmental level of a situation, which appears to reveal a consistent pattern of gross Human Rights violations. According to the modalities set out in the Economic and Social Council resolution 2000/3 the Commission used to examine situations in two closed meetings (only members). At the first meeting a discussion was held with the representatives of the concerned country, while at the second meeting action was taken on the recommendations of the Working Group on Situations or any new proposal or amendment to it.

The possible actions taken are the following: first, consideration of the matter may be discontinued, second, the situation may be kept under review in light of any further information received, third, the situation may be kept under review together with the appointment of an independent expert to study the situation. This option has been resorted to at several occasions, e.g. most recently an independent expert was appointed in 2005 on the situation in Uzbekistan. Finally, it may be decided to discontinue consideration of the matter and to take up the same matter under the public procedure.

## **Results and Recapitulation**

- 27,000 communications processed every year under the procedure.
- Between June 2005 and June 2006, more than 34,000 communications were processed under the procedure.
- There is a high level of cooperation by Governments with a reply rate of 89%.
- Situations in 84 countries have been considered at the Commission on Human Rights level.
- It remains the only procedure mandated to examine widespread patterns of Human Rights violations in any country of the world.

## **The Human Rights Council and the Complaint Procedure**

With the closure of the 62<sup>nd</sup> and final session of the Commission on Human Rights, which did not take any substantive decisions regarding the future complaints procedure, it became clear that the Council at its first session would have to take a number of actions to address the following issues with regards to the 1503 Procedure:

- First, the need to ensure continuity and to avoid a protection gap (as e.g. the Secretariat continues to receive communications and the General Assembly resolution establishing the Council does not set out the modalities of the future complaints procedure)
- Second, how to deal with the legacy of the Commission on Human Rights (i.e. how to deal with communications already processed under the procedure and which are at the various stages of the procedure. In particular how and when to examine the report of the Working Group on Situations of 2006 where the Working Group on Situations made specific recommendations for action on several situations to the Commission and how and when to examine the report of the independent expert under the 1503 Procedure)
- Third, how to undertake the review of the procedure within one year.

## **The first session of the Human Rights Council**

At its first session, the Council by decision HRC/1/Dec/102 decided to extend exceptionally for one year the 1503 Procedure and requested it to continue with the implementation of its mandate subject to the review. Therefore the Working Group on Communications will be held immediately following the Sub-Commission (from 28 August to 8 September 2006), which will consider all communications processed under the 1503 Procedure between June 2005 and end of May 2006. Moreover the Council adopted a draft framework of a programme



of work for the first year, according to which the reports of the 1503 Procedure will be considered at its September session (18 September to 6 October 2006). This will include the report of the Working Group on Situations of 2006 containing recommendations for action on the situations considered including the report of the independent expert on Uzbekistan. Finally the Council established a review mechanism, namely an inter-governmental Working Group with the mandate to formulate concrete recommendations on the issue of reviewing and where necessary improving and rationalizing all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including the 1503 Procedure and which will meet for 20 days. In addition this review process is complemented by informal consultations, which have already started.

### **The future Complaint Procedure**

The General Assembly resolution 60/251 does not set the modalities of the future complaint procedure. There are indeed various options for and opinions on the Council's future procedure. Some of the issues raised during discussions on the future procedure include: should the procedure continue to deal only with situations like patterns of Human Rights violations or could it consider individual complaints? Which bodies should examine the communications? Should it continue to be expert bodies, inter-governmental bodies or both and of how many stages should the procedure consist of? Confidentiality is another issue: should the procedure continue to be confidential, what about new models such as partial confidentiality or should it become public? What should be the relationship of the procedure with other mechanisms dealing with complaints, such as the special procedures and with the Universal Periodic Review mechanism.

# THE UNIVERSAL PERIODIC REVIEW MECHANISM

## AMBASSADOR PAUL MEYER

*Permanent Representative of Canada to the United Nations Office in Geneva*

### **Background of the Universal Periodic Review Mechanism**

At the 61<sup>st</sup> session of the Commission on Human Rights, in March 2005, the Canadian Foreign Minister had spoken of the need for a review mechanism. Throughout the summer of 2005, Canada, together with some other partners, developed a model peer review process. The concept of a Universal Periodic Review was finally approved by the General Assembly with the adoption of Resolution 60/251 (optional paragraph 5E). A very gratifying decision for Canada.

The terms of the Universal Periodic Review are to be worked out within 1 year. The June Council Session set up an open ended Working Group that has already convened an initial meeting. As an early contribution to the work of this body, the Canadian Mission has put together a non paper now accessible on the OHCHR website, [www.ohcr.org](http://www.ohcr.org).

### **Main themes of the Mechanism**

The main themes of this document indicating that the primary goal of the Universal Periodic Review is to improve the implementation of Human Rights standards by United Nations Member states. This process should engage the reviewed State through an open and interactive process. It should

1. Focus on the implementation of real world problems and concrete solutions;
2. Be built on existing information;
3. Engage and involve all the States;
4. Be carried out at regular intervals;
5. Be applied universally to all States;

The basis of the Universal Periodic Review should be the Universal Declaration of Human Rights. The commitments undertaken by the States through voluntary declarations should also be followed up.

The periodicity remains to be determined. A three-year cycle review exercise would represent the right frequency to be applied to all States. This would help to maintain the credibility of the procedure. However, considering that one hundred eighty two member states need to be reviewed, perhaps four different Working Groups comprised of eight to ten members of the Council to meet for eight to twenty days dedicating three hours of

review per state. This should allow for about 60-65 states to be processed each year. It would also allow the Universal Periodic Review to be completed in a two-week period outside the ten-week window for Human Rights Council. The results of the review would be transmitted to the Council.

## **How does it work?**

The six basic steps of the review process:

1. The OHCHR would compile a country dossier based mainly on the reports of Special procedures and Treaty Bodies
2. The country under review would then submit a statement explaining how he intended to face the highlighted problems
3. The Universal Periodic Review Committee would hold a three-hour interactive dialogue with the state concerned
4. The Committee Rapporteur would then submit a summary within two weeks to the Council
5. The State would then send a final written response
6. The Committee would then submit the summary of the file and the written response of the state to the Human Rights Council.

The follow-up procedure should encompass voluntary initiatives of the state to act on recommendations; technical cooperation programmes and further action by the Human Rights Council, through OHCHR or bilateral programs, should be available if a state so desires.

## **MR. DAVID LANZ**

*Student at the Graduate Institute of International Studies, Geneva*

## **Why was the Universal Periodic Review created?**

The Universal Periodic Review is a very important and promising feature of the HRC. He recalled that about two and a half years ago, people started to discuss the discreditation of the Commission. It was quite surprising that this issue came to the forefront so abruptly; however, politicisation within the Commission had always existed. Some recent examples were given to stress the politicisation and the selectivity of the late Human Rights body. The idea behind the concept of Universal Periodic Review was to have an institution whereby all states would

be subject to a review process that would add a layer of fairness and to set up a certain balance within politicised proceedings

## **Legal basis of the Universal Periodic Review**

General Assembly Resolution 60/251 defines the broad framework for the Human Rights Council and OP paragraph 5E lays out certain guidelines on how the Universal Periodic Review should work. *The Council shall, inter alia: (e) "Undertake a Universal Periodic Review, based on objective and reliable information, or the fulfilment of each State of its Human Rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review should be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such mechanisms shall complement and not duplicate the work of Treaty Bodies; the Council shall develop the modalities and necessary time allocation for the Universal Periodic Review mechanism within one year after the holding of its first session."*. The obligations of member states as mentioned in this OP refer to States' obligations considered by the international instruments in particular those that States have signed and ratified (hard law). Commitments may also include the voluntary pledges undertaken by States wishing to be elected to the Council. Such commitments also include soft law, e.g. resolutions of International Organisations or outcome documents of conferences, or policy guidelines adopted by a member State.

## **Who is Involved?**

Who are the actors that will be involved in the Universal Periodic Review process? The States will be reviewed, but who will be the reviewing entity? Three possible review scenarios are as follow:

1. The State representatives would carry out the reviews, but this would leave a great chance for the whole reviewing exercise to be politicized and selective;
2. Eminent persons with no ties to governments carrying out the review would guarantee a larger independence and a lesser degree of politicisation, but whether States would accept decisions made by maybe prominent Civil Society members remains doubtful.
3. The best option might be independent Human Rights experts selected by the States, as is the case for the Treaty Bodies, therefore balancing independent and state interests.

It is very important that Civil Society organisations have an input in the reviewing process: Article 5 (e) refers to the full involvement of the country concerned. The choice of the word “country” instead of the word “state” implies that it is referring to areas beyond the State control, especially Civil Society.

### **Reform and follow-up**

Part of the benefit of peer reviewing by an independent committee is that by submitting the result to the Council there would be a high body able to pronounce recommendations.

The Ambassador also mentioned a feature of the Resolution 251, whereby the whole resolution and the Human Rights Council will be up for reform in 5 years time, perhaps to be further empowered in new ways. He suggested that we start first with the new Council and make some improvements within this system.

The Universal Periodic Review follow-up process drawing up a parallel with the European Convention, which ensures that decisions by the European Court are followed up by a political body, the Council of Europe, that may put States under pressure in order for them to comply with their obligations. In this case, a link between the Universal Periodic Review and the Human Rights Council could be created in such a way that the review Committee’s recommendations be followed up by the Human Rights Council that would eventually intervene with respect to particular countries.

## THE CONTRIBUTION OF NON-GOVERNMENTAL ORGANISATIONS PANEL DISCUSSION

### **MR. WOLFGANG-AMADEUS BRUELHART**

*Head of the Human Rights Policy Section, Federal Department of Foreign Affairs,  
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### **MS. LAURA DOLCI-KANAAN**

*NGO Liaison Officer, OHCHR, Geneva*

### **MR. PETER SPLINTER**

*Amnesty International Representative to the UN, Geneva*

### **MS. ZHANG YUNFEI**

*Director of UNA-China, China*

### **DR. THEODOR RATHGEBER**

*Forum Human Rights, Germany*

### **WOLFGANG-AMADEUS BRUELHART**

Resolution 60/251 Paragraph 11, affirms the role of NGOs in the Human Rights Council, maintaining that NGO participation should be based on the practices that applied to the Commission on Human Rights “whilst ensuring their most effective contribution.”

Mr Lador, who has a mandate from Swiss Foreign Ministry, has currently consulted 20 different non-governmental organizations. The needs are: Legally, the issue of visas and the establishment of a Liaison Office; politically, enhancing participation within the Human Rights Council, the protection of Human Rights defenders, and a dialogue of exchange within civil society; logistically, improving facilities during Human Rights Council sessions and the

dissemination process; and finally financially, increasing funding to allow NGOs to participate in proceedings and contribute to establishing a Liaison Office.

### **LAURA DOLCI-KANAAN**

OHCHR has a Secretariat that services the HRC. The concept of civil society within the context of the new Human Rights Council is exemplified by the fact that the Secretariat supports the relationship between the Office of the High Commission on Human Rights and NGO participation. The importance of such participation is acknowledged in Resolution 60/251. For example, the participation of NGOs within The Economic and Social Council should be recognized and maintained.

The first session of the Human Rights Council saw the participation of NGOs as satisfactory albeit the uncertainties and concerns linked to this transitional period. During the Human Rights Council's general segment, as positively noted, the President offered civil society members the chance to speak, and four Human Rights defenders were heard. In addition, 50 NGO's offered written statements – although the agenda was very late - on country situations and forward looking on the machinery, as well as 78 oral statements. NGOs participated in all the segments of the session and 22 parallel events were organized.

The key factor is for NGOs to continue to enhance their participation. NGOs should secure a space in the new features of the machinery, such as the Universal Periodic Review. Moreover, NGOs should decide how they would like to see themselves in the new machinery of the Human Rights Council. Instruments such as the Extranet can help secure the participation of NGOs. It is important for the Bureau to know how NGOs see they could be supported and associated in the work of the Council when unable to be present. NGOs should continue to do what they do best: bring their expertise and their wealth of knowledge, as well as the role of bearing witness. These organisations are the eyes and the ears within the sphere of Human Rights.

### **PETER SPLINTER**

The contribution that NGOs can make to the HRC will be in many ways the same that they could make to the Commission Human Rights, although the context will be significantly different. The Council will meet at least three times a year

for not less than ten weeks, and it has already been decided that the Council will meet four times for 11 weeks between June 2006 and April 2007. The Universal Periodic Review is a completely new Human Rights mechanism that offers important opportunities for NGO engagement with the UN's principal Human Rights body.

The roles of NGOs, whether national or local, international or regional, includes:

1. Providing information and analysis about:
  - Particular Human Rights situations in countries; and
  - Particular Human Rights issues, e.g., torture or the right to education.
2. Raising new Human Rights issues that have not attracted the attention of governments; and
3. Drawing attention to Human Rights violations that governments are not addressing.
4. Bringing knowledge and expertise about:
  - UN processes and the Human Rights machinery, which are not always self-evident for diplomatic representatives new to Human Rights in Geneva; and
  - Drafting UN documents/resolutions, including the history and nuances of some words or phrases

NGOs can be, should be and usually are more direct than government officials in addressing issues. This occasionally make particular governments uncomfortable, but that is a small price to pay for the invaluable contribution that NGOs made to the Commission on Human Rights and can make to the Human Rights Council.

### **What is necessary to enable NGOs to continue to make their contributions to the Council?**

As Mr. Bruelhart has noted, the General Assembly has decided that the participation of NGOs shall be based on the arrangements and practices of the Commission on Human Rights. This decision is captured in operative paragraph 11 of General Assembly Resolution 60/251, which establishes the foundation for the participation of all observers, including both non-member governments NGOs, in the HRC. Operative paragraph 11 provides, in part:



The participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national Human Rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities;

### **What do these arrangements and practices of the Commission cover?**

ECOSOC resolution 1996/31 provides for NGO:

- ❑ Access to documents;
- ❑ Access to public sessions of the Commission and now the Council; [In passing, the rules of the General Assembly committees applicable to the Council require that meetings shall be held in public except in exceptional circumstances.]
- ❑ Submission of written statements which are circulated as UN documents; and
- ❑ Making oral statements.

However, the essential functions addressed in resolution 1996/31 cover only part of the full range of NGO participation in the work of the Commission on Human Rights. The *practices* of NGO participation at the Commission also included:

- ❑ Organisation of parallel events during the sessions of the Commission;
- ❑ Attendance and participation in negotiations on Commission resolutions;
- ❑ Active participation in the subsidiary bodies of the Commission, including, but not limited to, the standard setting working groups.

It is essential that both the letter *and the spirit* of operative paragraph 11 of General Assembly resolution 60/251 be fully respected. For this to happen, it is also essential that the methods and organisation of work of the Human Rights Council facilitate NGO involvement, including by ensuring that:

- ❑ The work of the Council is open and transparent;
- ❑ Information about the program of work and individual sessions is available publicly and sufficiently in advance for NGOs anywhere in the world to be able to contribute to the work of the Council, whether through

- attendance and direct participation in Council meetings or in other ways;  
and
- The Council's annual program of work be conceived, to the greatest extent practicable, taking into account the needs of NGOs not present in Geneva. Not all NGOs will wish to follow all discussions or activities of the Council. Sound planning by the Council in its program of work will assist NGOs to be present for those meetings of the Council of greatest interest to them. At least one meeting per year should be of sufficient length and content to make travel and participation worthwhile for a broad cross-section of NGOs as occurred during the annual session of the Commission.

We must also keep in mind that operative paragraph 11 of GA Resolution 60/251 is not meant and must not be seen as a requiring that NGO participation in the Council be just as it was in the Commission. Operative paragraph 11 is the basis for the Council to pursue the most effective participation of NGOs.

On paper the Council is not the Commission, and if it is to fulfil the expectations of governments and civil society alike, it must not become like the Commission in practice

New working methods and ways of doing business will be required for the Council, and this applies to NGOs as much as to Council members and other observers. If the Council is to be a more effective body than the Commission in protecting and promoting Human Rights, it will be important that it devotes more attention to action and less to rhetoric. This requires that less time be devoted to statements and repetitive boilerplate resolutions. NGOs, as well as governments, must find new ways, in addition to and in place of oral statements, to bring their information, concerns and ideas before the Human Rights Council. They must explore new ways of conducting business and ensuring that Council decisions are implemented and make a difference.

The Universal Periodic Review promises to be one of the great innovations of the Human Rights Council. One condition of ensuring that the promise is realized will be the enablement of NGOs, particularly national NGOs, to contribute substantively to the review of individual states as envisaged by operative paragraph 5(e) of resolution 60/251. Similarly, resolution 60/251 foresees a more substantial role for the Special Procedures in the work of the Council. NGOs must have an active role in Council's substantive interaction with the Special Procedures.

The Council presents not only new opportunities for better NGO contribution to and participation, but also new challenges. For instance, the fact that the Council will meet at least three times a year will pose challenges for the effective participation of NGOs that do not have a presence in Geneva. This challenge is not new; it already existed with the Commission, but now it must be met more frequently.

There will inevitably be a period during which NGOs, whether in Geneva, in the regions or at the national level will need to adjust to the new environment of the Council. The necessary adjustments must be approached calmly and deliberately, and with good will, means of ensuring effective NGO participation will be found. Hasty diagnosis of challenges and ill-considered solutions must be avoided. During the period of adjustment, NGOs will need to be attentive to efforts to restrict their participation in the Council. There have been efforts by some governments to test the inherited arrangements and practices for NGO participation. We have already seen a motion to conclude debate after all governments had spoken, but before any NGOs could speak. We have also seen proposals from some quarters to limit direct NGO participation in the Council's processes to develop the modalities for the Universal Periodic Review and to maintain a system of Special Procedures, expert advice and a complaint procedure. Fortunately the Council rejected these efforts and established processes that are to be open-ended, transparent, well-scheduled and inclusive with the participation of all stakeholders.

There have been statements and proposals from some quarters that, whether made innocently or maliciously, would set some NGOs against others. Among the most pernicious of these have been the suggestions that the Council gives an unfair advantage to NGOs from developed countries at the expense of NGOs from developing countries, as if NGOs are in competition with one another in the Council. While efforts must be made to meet any new challenges that the Council will pose for NGOs not present in Geneva, the suggestion that NGOs from developed and developing countries had adverse interests or are in competition with one another must be rejected as an ill-informed assessment of the situation. However, the adverse interests of independent and politically disinterested NGOs, whether from the North or the South, and the often highly-biased approach of government organised NGOs or GONGOs must be acknowledged and addressed. GONGOs must not be allowed to prejudice the interest and rights of independent NGOs.

## **What are some of the measures that can be taken to assist NGOs, particularly those not present in Geneva contribute effectively to the Human Rights Council?**

As mentioned earlier, it will be important that information about the activities of the Council is readily available to NGOs throughout the world. This must not be limited to information about only the formal activities, for which much information is already available, but must extend to the informal and the inter-sessional activity of the Council. Here NGOs can assist each other, with particular responsibilities falling to those Geneva-based NGOs in a position to follow the activities of the Council closely throughout the year. It will be important to strengthen the activities and resource base of those NGOs, such as the International Service for Human Rights, which already provide a most valuable service by making information about UN Human Rights activity in Geneva accessible to NGOs around the world. Similarly, the NGO Liaison Unit of the Office of the High Commissioner for Human Rights should be strengthened to enable it to improve and expand the already invaluable services that the Unit is providing to NGOs interested in following the work of the Council.

Innovative approaches to addressing the challenges of distance should be explored. For instance, regular web-casting sessions of the Council could be used to bring public debate in the Council to NGOs and the interested public generally outside Geneva.

[Mr. Bruelhart has spoken of the initiatives under consideration by the Swiss authorities to facilitate NGO participation in the Council.] Beyond those that he has mentioned, it is perhaps time for the broader UN membership to establish a voluntary trust fund for NGOs to help support financially the participation in the Council of those NGOs that require such support. Such a fund could be established along the lines of the proven United Nations Voluntary Fund for Indigenous Populations. It would provide a constructive response to concerns about the challenges faced by some NGOs from developing countries in travelling to Geneva to participate in the work of the Council.

The Human Rights Council presents new opportunities and challenges for NGO participation in the UN's principal Human Rights body. NGOs, governments and other stakeholders must be imaginative in seizing the opportunities. If they

are reflective and deliberate in meeting the challenges, those challenges will be successfully met.

### ZHANG YUNFEI

Zhang Yunfei, Deputy Director-General of the United Nations Association of China, indicates that the General Assembly Resolution 60/251 creating the Human Rights Council notes that the participation of and consultation with observers such as non-governmental organizations shall be “based on arrangements including the Economic and Social Council (ECOSOC) Resolution 1996/31 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities”. In other words, the participation of non-governmental organizations should be maintained throughout the transition from the Commission on Human Rights to the new Human Rights Council.

Non-governmental organizations have contributed significantly to the United Nations Human Rights system since the world body’s creation and have been active participants in all aspects of the work of the Commission on Human Rights. Inclusive arrangements for the participation of NGOs have been successfully applied to the new Human Right Council. During the first session of the Council non-governmental organizations made contributions in all segments. According to statistics from the Secretariat of the Council, about 600 participants from about 160 non-governmental organizations attended the first session. For the first time, non-governmental organizations were given the chance to speak for 3 minutes at the High-level Segment. They participated in interactive dialogues with states and were included in all informal consultations held in parallel to the Council’s main session. However, some non-governmental organizations voiced their complaints that the late consensus on the agenda prevented quite a number of non-governmental organizations from attending the first session and that the lack of information on how to organize the first session posed a problem for the participation and input of non-governmental organizations, especially those outside Geneva, were not able to attend the session.

The main interest and concerns of non-governmental organizations are as follows:

## **Special Procedures**

Some non-governmental organizations held the view that the Special Procedures have made significant contributions to promotion of the Human Rights. The Council's first session decided to extend all mandates of Special Procedures and other mechanisms inherited from the Commission, such as the Sub-Commission and the 1503 Procedure to ensure that there is no gap in Human Rights protection during this transitional period, while setting up a working group to review all mandates and mechanisms. Non-governmental organizations welcomed this and hoped that the review of the Special Procedures should be aimed at strengthening the system. At the same time, they expressed their enthusiasm and readiness to participate in the Interactive Dialogue with Special Procedures and have a voice in the review process.

## **Universal Periodic Review (UPR)**

Non-governmental organizations welcomed the establishment of the Universal Periodic Review mechanism, claiming that it was the most successful innovation of the new Human Rights Council and the most distinctive factor between the Commission on Human Rights and the Human Rights Council. They expressed the hope that non-governmental organizations would play an important role in the development of the modality of the Universal Periodic Review.

## **NGO Participation**

The first session did not have time to discuss the rules of procedure for the Council, including the rules for non-governmental organizations participation. Some NGOs raised the issue of legal status of the accreditation with Economic and Social Council, arguing that the Commission on Human Rights was one of the functional commissions of Economic and Social Council while the Council is a subsidiary body of the General Assembly. There is speculation as to whether the accreditation system needs to shift to a General Assembly-based rather than Economic and Social Council.

Various non-governmental organizations expressed their concern that some governments intended to restrict the non-governmental organizations participation by codifying the "usual" practices or rights and insisted that any modifications related to the rules for non-governmental organizations participation should enhance the participation of non-governmental organizations and build on the practices of the Commission as a minimum

baseline in an innovative manner, rather than reducing or limiting the participation of non-governmental organizations in any way. Some non-governmental organizations complained that there was little time or opportunity for genuine discussion between states and non-governmental organizations or between Special Procedures, states and non-governmental organizations. They pointed out that it was very important to develop more innovative and meaningful forms of interventions and interaction. Some non-governmental organizations argued that it was unfair to allocate 3 minutes to both the individual and joint statements.

Non-governmental organizations expressed their hope that the Council could consider holding expanded hearings and briefings at which non-governmental organizations could engage with Council members and that non-governmental organizations will be provided with early access to draft texts for negotiation. They suggested that non-governmental organizations be given more time for oral interventions, ensuring an opportunity for substantive input and to be involved in all discussions related to the rules and procedures of the Council during this critical time.

### **Unbalanced participation**

The Council will hold a minimum of three sessions of at least ten weeks in total across the year. The longer meeting time and more frequent meetings could, on one hand, create greater opportunities for non-governmental organizations to be better and deeper involved in the Human Rights issues. But on the other hand, the arrangements could pose greater challenges to those southern non-governmental organizations who lack financial and human resources. Even some member states expressed the same concern.

Generally speaking, there exists a sizable gap both in terms of number and energy between non-governmental organizations in the developed countries and their counterparts in the developing countries. Due to historical, economic and cultural conditions, non-governmental organizations emerged late in the developing countries and the limited resources always prevent them from representing themselves adequately. The extensive participation of numerous northern non-governmental organizations in the Human Rights field has reinforced the voice of the developed world. Looking at the list of participants at the Council's first session, you will find that there were very few non-governmental organizations from Asia and Africa. Many non-governmental

organizations in the developing world have showed their anxiety that the broader and deeper participation by non-governmental organizations in the Council will further widen the existing gap and intensify the marginalisation of the southern non-governmental organizations.

Efforts must be made to create a level playing-field for the southern non-governmental organizations. Therefore, the Council and the Office of the High Commissioner for Human Rights are called upon to take the responsibility of promoting capacity building for the southern non-governmental organizations and to allocate some amount of its budget to conducting training courses for them and financing them for their participation. A special fund can be instrumental in this regard. Some non-governmental organizations also suggested that the use of technological innovations may enable more non-governmental organizations to follow the Council's proceedings or make contributions to its work, such as web casting its sessions. And some non-governmental organizations even suggested holding one of the sessions every year in one of the regional centers of the United Nations on a rotation basis.

These ideas and suggestions are reasonable and helpful, they will, if adopted, contribute to balanced and better participation of non-governmental organizations in the Council's future endeavours.

#### **THEODOR RATHGEBER**

"We have a big chance to improve the mechanisms for protecting Human Rights, but there are risks, and we need a self-critical approach that includes non-governmental organizations." Non-governmental organizations possess certain undeniable strengths in that they are able to attract public attention both inside and outside the Palais because they serve as a platform. In addition, non-governmental organisations offer a good understanding of the situations on the ground, but there is a need to increase this capacity by bringing those from the ground to Geneva. Non-governmental organizations are able to monitor situations without ulterior motivations. The High Commissioner emphasised that "their independent scrutiny ensures that accountability is not a mirage". But NGOs must be accountable for what they are imparting. The risks – seen from NGO perspective – are the intentions a) to quit the examination of country situations; b) to deny the accreditation of speakers from the ground via NGOs; and c) to refuse NGO testimonies as a valuable source for information and evaluation.



The new Human Rights Council should rather extend participation of civil society groups and members. Its testimonies and sources should be recognized as authentic, and e.g. non-governmental organizations should have the chance to have a meaningful participation within interactive dialogues. With regard to the Universal Periodic Review (UPR), Forum Asia proposed a national focal point where OHCHR field officers summarize violations of Human Rights to be sent right to Geneva. Also, in the context of UPR, it is worth to consider special sessions to allow the participation of civil society groups, which have no consultative status submitting information. Non-governmental organizations can play an active role in this type of work and support the Special Procedures, the OHCHR and the National Human Rights Institutions.

Non-governmental organizations should go to the regional groups in order to discuss priorities for the regions; and in that way extending its approach on co-operation. At the methodological level, extensions are needed in terms of predictability with respect to the Council's sessions and agenda. The annual agenda should be accessible to NGOs in advance and be structured so as to ensure maximum participation and efficient organisation of work by NGOs. A second questions relates to the future accreditation of non-governmental organizations. Is the ECOSOC still the appropriate body and transparent enough? In addition, the Council might consider individual NGOs to be accredited for specific meetings relevant to their area of expertise. As already happened throughout the High Level Segment, the Council sessions should be accessible on the Web (or by radio) so as to permit NGOs to follow the debates at a distance.

Preparatory meetings of NGOs should be organised in order to facilitate and increase the participation of colleagues from the Southern Hemisphere. Based on experiences during the world conferences on Human Rights (1993) and on Racism (2001), NGOs built upon coalitions and networks from Asia, Africa, Eastern Europe and Latin America. In a future step, meetings on regional levels should be facilitated as well. In general, NGOs can improve its professionalism in terms of a better use of the gradual instruments for evaluating and assessing the Human Rights situation of a country – do not start right with the harshest instrument.

## Appendix 1: Programme of the Seminar



WORLD FEDERATION OF UNITED NATIONS ASSOCIATIONS  
FEDERATION MONDIALE DES ASSOCIATIONS POUR LES NATIONS UNIES



*A peoples' movement for the United Nations*

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# PROGRAMME

## Seminar on the United Nations Human Rights Council

In cooperation with the Office of the United Nations High Commissioner for Human Rights

*Geneva, 26 – 28 July 2006*

*Palais des Nations, Room XVIII*

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### Wednesday 26 July

8:00 **Registration**

10:00 **Welcome Statements**

Mr. Bacre Ndiaye, Director of Human Rights Procedure Division, Office of the High Commissioner for Human Rights, Geneva

Ambassador Blaise Godet, Vice-President of the Human Rights Council and Permanent Representative of Switzerland to the United Nations Office in Geneva

Mr. Ricardo Espinosa, United Nations Liaison Officer to Non-Governmental Organisations, UNOG

11:30 **Briefing and Introduction to the Seminar**

Mrs. Bruna Molina Faidutti, Deputy Secretary-General, WFUNA

*Lunch*

- 15:00 **Special Procedures and their Relationship with the Treaty Bodies**  
Sir Nigel Rodley, Member of the Human Rights Committee and former Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment
- 15:45 **The Human Rights Council: Its Creation and an Analysis of the First Session**  
Mr. Eric Tistounet, Secretary of the Human Rights Council, OHCHR
- 16:30 **The Mandate of the Office of the High Commissioner and the UN System for the Protection of Human Rights**  
Ms. Francesca Marotta, Coordinator of the Methodology, Education and Training Unit, Research and Right to Development Branch, OHCHR

### **Thursday 27 July**

- 10:00 **Applicable Rules of Procedure for the Human Rights Council**  
Mr. Guennadi Lebakine, Deputy Secretary of the Human Rights Council and Secretary of the Sub-Commission on the Promotion and Protection of Human Rights, OHCHR
- 11:00 **Towards a Unified Human Rights Treaty Body Corpus**  
Mr. Markus Schmidt, Team Leader, Petitions Unit, Treaties and Council Branch, OHCHR  
Prof. Kirk Boyd, University of California Santa Barbara

*Lunch*

- 14:00 **Country Situations addressed by the Human Rights Council**  
Prof. Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons
- 15:45 **The Treaty Bodies and the Human Rights Council**  
Mrs. Wedgwood, Member of the Human Rights Committee
- 16:30 **The Complaints Procedure**  
Ms. Dina Rossbacher, Deputy Secretary of the 1503 procedure, OHCHR

### **Friday 28 July**

- 10:00 **The Universal Periodic Review Mechanism**  
Mr. David Lanz, Student at the Graduate Institute of International Studies, Geneva  
Ambassador Paul Meyer, Permanent Representative of Canada to the United Nations Office in Geneva

**11:00 The Contribution of Non-Governmental Organisations to the Human Rights Council**

Mr. Wolfgang-Amadeus Bruelhart, Head of the Human Rights Policy Section, Federal Department of Foreign Affairs, Switzerland

Ms. Laura Dolci-Kanaan, NGO Liaison Officer, OHCHR, Geneva

Dr. Theodor Rathgeber, Forum Human Rights, Germany

Mr. Peter Splinter, Amnesty International Representative to the UN, Geneva

Ms. Zhang Yunfei, Director, UNA-China, China

*Lunch*

**15:00 Conclusion of the Seminar and Distribution of Certificates**

**17:30 Cocktail Reception at the Restaurant des Délégués, 8th floor, Palais des Nations**



Geneva International Academic Network



Graduate Institute of International Studies

## Appendix 2: List of Participants

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## Appendix 3: Resolution adopted by the General Assembly

United Nations

A/RES/60/251



General Assembly

Distr. general  
3 April 2006

Sixtieth session  
Agenda items 46 and 120

### Resolution adopted by the General Assembly [without reference to a Main Committee (A/60/L.48)]

#### 60/251. Human Rights Council

*The General Assembly,*

*Reaffirming* the purposes and principles contained in the Charter of the United Nations, including developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and achieving international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all,

*Reaffirming also* <sup>1</sup> the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, <sup>2</sup> and recalling the International Covenant on Civil and Political Rights, <sup>3</sup> the International Covenant on Economic, Social and Cultural Rights <sup>3</sup> and other human rights instruments,

*Reaffirming further* that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis,

*Reaffirming* that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms,

*Emphasizing* the responsibilities of all States, in conformity with the Charter, to respect human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language or religion, political or other opinion, national or social origin, property, birth or other status,

*Acknowledging* that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

<sup>1</sup> Resolution 217 A (III).

<sup>2</sup> A/CONF.157/24 (Part I), chap. III.

<sup>3</sup> See resolution 2200 A (XXI), annex. 05-50266

*Affirming* the need for all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, cultures and religions, and emphasizing that States, regional organizations, non-governmental organizations, religious bodies and the media have an important role to play in promoting tolerance, respect for and freedom of religion and belief,

*Recognizing* the work undertaken by the Commission on Human Rights and the need to preserve and build on its achievements and to redress its shortcomings,

*Recognizing also* the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization,

*Recognizing further* that the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings,

*Acknowledging* that non-governmental organizations play an important role at the national, regional and international levels, in the promotion and protection of human rights,

*Reaffirming* the commitment to strengthen the United Nations human rights machinery, with the aim of ensuring effective enjoyment by all of all human rights, civil, political, economic, social and cultural rights, including the right to development, and to that end, the resolve to create a Human Rights Council,

1. *Decides* to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly; the Assembly shall review the status of the Council within five years;

2. *Decides* that the Council shall be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner;

3. *Decides also* that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system;

4. *Decides further* that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development;

5. *Decides* that the Council shall, inter alia:

(a) Promote human rights education and learning as well as advisory services, technical assistance and capacity-building, to be provided in consultation with and with the consent of Member States concerned;

(b) Serve as a forum for dialogue on thematic issues on all human rights;

(c) Make recommendations to the General Assembly for the further development of international law in the field of human rights;

(d) Promote the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and

protection of human rights emanating from United Nations conferences and summits;

(e) Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session;

(f) Contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies;

(g) Assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights, as decided by the General Assembly in its resolution 48/141 of 20 December 1993;

(h) Work in close cooperation in the field of human rights with Governments, regional organizations, national human rights institutions and civil society;

(i) Make recommendations with regard to the promotion and protection of human rights;

(j) Submit an annual report to the General Assembly;

6. *Decides also* that the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and a complaint procedure; the Council shall complete this review within one year after the holding of its first session;

7. *Decides further* that the Council shall consist of forty-seven Member States, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable geographical distribution, and seats shall be distributed as follows among regional groups: Group of African States, thirteen; Group of Asian States, thirteen; Group of Eastern European States, six; Group of Latin American and Caribbean States, eight; and Group of Western European and other States, seven; the members of the Council shall serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms;

8. *Decides* that the membership in the Council shall be open to all States Members of the United Nations; when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto; the General Assembly, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights;

9. *Decides also* that members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership;

10. *Decides further* that the Council shall meet regularly throughout the year and schedule no fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council;

11. *Decides* that the Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and also decides that the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities;

12. *Decides also* that the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms;

13. *Recommends* that the Economic and Social Council request the Commission on Human Rights to conclude its work at its sixty-second session, and that it abolish the Commission on 16 June 2006;

14. *Decides* to elect the new members of the Council; the terms of membership shall be staggered, and such decision shall be taken for the first election by the drawing of lots, taking into consideration equitable geographical distribution;

15. *Decides also* that elections of the first members of the Council shall take place on 9 May 2006, and that the first meeting of the Council shall be convened on 19 June 2006;

16. *Decides further* that the Council shall review its work and functioning five years after its establishment and report to the General Assembly.

**72<sup>nd</sup> plenary meeting**  
**15 March 2006**

#### **Appendix 4: Membership of Human Rights Council by regional groups**

**African States:** Algeria (1 year), Cameroon (3 years), Djibouti (3 years), Gabon (2 years), Ghana (2 years), Mali (2 years), Mauritius (3 years), Morocco (1 year), Nigeria (3 years), Senegal (3 years), South Africa (1 year), Tunisia (1 year) and Zambia (2 years)

**Asian States:** Bahrain (1 year), Bangladesh (3 years), China (3 years), India (1 year), Indonesia (1 year), Japan (2 years), Jordan (3 years), Malaysia (3 years), Pakistan (2 years), Philippines (1 year), Republic of Korea (2 years), Saudi Arabia (3 years) and Sri Lanka (2 years)

**Eastern European States:** Azerbaijan (3 years), Czech Republic (1 year), Poland (1 year), Romania (2 years), Russian Federation (3 years) and Ukraine (2 years)

**Latin American & Caribbean States:** Argentina (1 year), Brazil (2 years), Cuba (3 years), Ecuador (1 year), Guatemala (2 years), Mexico (3 years), Peru (2 years) and Uruguay (3 years)

**Western European & Other States:** Canada (3 years), Finland (1 year), France (2 years), Germany (3 years), Netherlands (1 year), Switzerland (3 years) and United Kingdom (2 years)

