
HUMAN RIGHTS COUNCIL

Stalled momentum on country responses partly offset by thematic advances



Photo: Vikalpasi

Protesters in Katunayake, Sri Lanka.

The 18th session of the Human Rights Council (the Council), held from 12 to 30 September 2011, showed signs of stalling the positive momentum generally sustained throughout the 16th and 17th sessions. Not only did the Council fail to build on the positive efforts to follow up on the situations in several countries or find similarly robust responses to other situations, but there were also worrying institutional developments that reflected a re-emergence of the Council's old dynamics. Most telling in this regard was the renewal of Cuba's efforts, together with Pakistan and Sri Lanka, to limit the independence of the Office of the High Commissioner for Human Rights (OHCHR), with an attempt to push through a resolution on the staffing and budget of OHCHR. Taken together with the failure of the Council to once again take action on Sri Lanka, this session marked a reassertion from several States of their traditional positions and a return to the frustrations of earlier sessions.

There were, however, some notable achievements, not least the adoption of a resolution on reprisals, which sets up a panel on the subject to take place at the 19th session of the Council. In addition, the creation of a new Special Rapporteur on truth, justice, reparation, and guarantees of non-recurrence represents a definite step forward in the ability of the Council to address situations of serious human rights violations. Important developments on maternal mortality and morbidity and on the right to water and sanitation completed the generally positive record of the session in thematic terms.

During her first Council session, the new President, Ms Laura Dupuy Lasserre showed herself a capable Chair. As her term is slightly longer than previous Presidents, she may have more time to shape the role. However, it is too soon to make any definitive judgements on how strong she will prove to be in that position.

INSTITUTIONAL DEVELOPMENTS

Cuba's attempt to introduce a resolution on transparency in funding and staffing of OHCHR, cosponsored by Pakistan, Sri Lanka, Malaysia, Algeria, and Palestine, is the latest in a long line of efforts to position the Council in an oversight role over OHCHR. For instance, at the 7th session of the Council in 2008, Cuba introduced a resolution intended to 'rectify the geographical imbalance' of OHCHR. The resolution followed similar ones at the Commission on Human Rights and the General Assembly, and marked the continuation of the initiative into the Council. Despite opposition from several States that the General Assembly, and not the Council, is the appropriate body to deal with the issue of geographical balance in the UN secretariat, the resolution was adopted by a vote. Follow-up resolutions were introduced again at the 13th and 16th sessions of the Council, and in each case adopted by a vote.¹

Political efforts to provide the Council with an oversight function over OHCHR became more apparent during the 15th session of the Council. In a surprise move, Cuba presented an initiative to have the High Commissioner for Human Rights present her programme of work for the next two years (Programme 19) to the Council for its comments before it is passed onto

¹ Resolution 7/2: adopted by 34 to 10, with three abstentions; Resolution 13/1 adopted by 31 to 12, with three abstentions; Resolution 16/10 adopted by 31 to 13, with two abstentions. The regional and political divides on these votes are stark. Those voting against the resolution are consistently Western European and Others-Group (WEOG) members (with the exception of Japan, which abstained on Resolution 7/2 and voted against Resolution 16/10). The Republic of Korea and Chile have consistently abstained. Switzerland abstained on Resolution 7/2 but joined fellow WEOG States in voting against Resolution 16/10.

the Committee for Programme and Coordination (CPC).² Although Cuba withdrew its resolution in 2010, it was turned into a Presidential Statement, inviting the High Commissioner to present Programme 19 to the Council. The issue was again discussed in March³ but was postponed for technical reasons.

The resolution presented to the 18th session – deceptively named ‘transparency in funding and staffing of the OHCHR’ – requested the High Commissioner to include information about budget and staffing in her update to the Council.⁴ After several rounds of formal and informal negotiations, the resolution was ‘deferred’ but according to the Pakistani Ambassador ‘if by the time [of the next OHCHR report] we are unable to find a mutually agreed forum [to consider the issues of funding] we reserve the right to revisit this issue in the June [2012] session’. In return, a Presidential Statement was adopted, requesting that OHCHR include information on resources and expenses in the public OHCHR annual report, as is currently largely the case.

While the Council can and does request that the High Commissioner perform specific tasks relating to the promotion and protection of human rights, such as the request for her to report to the Council on her visit to Yemen, the High Commissioner must also be able to act independently in accordance with her strategic plan approved by the General Assembly and under the supervision of the Secretary-General. Requesting the High Commissioner to report on financial and management information in a political forum would divert attention from human rights issues. At a time when the High Commissioner has become more forthright in bringing serious geographic and thematic concerns to the Council’s attention, particularly in the context of the Arab Spring, these attacks on OHCHR’s independence are a reminder that several States within the Council continue to be uncomfortable with an independent OHCHR.

Three sets of mandate holders were appointed at this session: the Western European and Others Group (WEOG) member of the Working Group on mercenaries,⁵ the Independent Expert on Cote d’Ivoire,⁶ and the members of the Working Group on human rights and transnational corporations.⁷ The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Githu Muigai of Kenya, resigned his position during the session, owing to a new conflict of interest with his recent appointment

as Attorney-General of Kenya. A new mandate holder, Mr Mutama Ruteere from Kenya, was appointed at the resumed 18th session on 21 October.

Exchange of views with NGOs, NHRIs and mandate holders

The Annual Meeting of Special Procedures took place from 27 June to 1 July 2011. On 30 June an exchange of views was held between the mandate holders, civil society and national human rights institutions (NHRIs). The forum provided an opportunity for NGOs to raise their concerns and engage in dialogue with the UN special procedures. However, it is yet to be seen whether any concrete action will be taken.

Both mandate holders and civil society said they appreciated the regular cooperation between special procedures and NGOs. However, they raised issues related to the need to strengthen cooperation between States and special procedures, and in particular, to find ways in which to assess the level of such collaboration. Some NGOs regarded as problematic the lack of information special procedures have concerning what happens after a country visit takes place, and recommended that special procedures should follow-up more effectively with the respective governments.

The importance of addressing the issue of reprisals was also stressed during the debate. Mandate holders raised several issues, one of the most important being the need to improve communication between NGOs and special procedures, especially regarding the format in which NGOs submit information to OHCHR. Other recommendations were to strengthen regional cooperation with local NGOs that focus on specific issues and enhance the participation of mandate holders in regional organisations.

NGOs were invited to submit specific suggestions to mandate holders in writing. A compilation of concerns raised by NGOs at the meeting is available here <http://bit.ly/vIRMqH>. Although a variety of issues are discussed each year during the annual meeting of mandate holders, concrete follow-up is rare. The availability of a compilation of issues raised may serve as the starting point for further discussion and for assessing progress at annual meetings in future.

² See ISHR *Human Rights Monitor Quarterly*, Issue 3/2010 at <http://bit.ly/rr9KYk>. Cuba’s argument was that all other such parts of the UN strategic framework are reviewed by the relevant sectoral or inter-governmental body before being reviewed by the CPC.

³ <http://bit.ly/lleVI9>.

⁴ Much of the requested information is already available in the High Commissioner’s annual report at <http://bit.ly/njOvIk>.

⁵ Mr Gabor Rona (US/Hungary).

⁶ Mr Doudou Diene (Senegal).

⁷ Mr Michael Addo (African Group), Mr Puvan Selvanathan (Asian Group), Mr Pavel Sulyandziga (Eastern European Group), Ms Alexandra Guaqueta (Group of Latin American and Caribbean States), Ms Margaret Jungk (Western European and other Group).

THEMATIC DEVELOPMENTS

The initiative to set up a panel discussion on the issue of **reprisals against those who cooperate with the UN system** was one of the key positive developments at the session. Although the final resolution represented a compromise, the panel is nevertheless an important step forward and a much-needed attempt to increase the attention given by the Council to this critical issue. Original proposals to set up a permanent debate on the subject failed to find consensus support, but the panel debate could be the starting point for the Council to seriously begin to consider ways in which it can concretely improve protection for persons who cooperate with the UN.

A panel discussion held during the 18th session on the **promotion and protection of human rights in the context of peaceful protests** was keenly anticipated, given the circumstances in which it was created.⁸ The panel followed a failure by the Council to convene a special session on the common difficulties facing protestors across the Middle East and North Africa region, and was a final attempt to direct at least some of the Council's attention to these issues. The discussion was constructive, with a series of concrete recommendations made to the Council. However, a joint statement was made by China, on behalf of 32 States,⁹ which asserted the principle of non-intervention in international relations in matters that are within the domestic jurisdiction of any State. It has been rare for China to play such a visible coordinating role in the Council, but this joint statement falls within a recent more active approach observed from the Chinese delegation in Geneva in both formal and informal Council debates.

The joint statement presented by China also made reference to **internet freedom and human rights**, an issue that gained increasing prominence at this session of the Council. The issue is topical due to the extent to which online social media was used to organise activity during the events of the Arab Spring, and the disturbances that took place in the United Kingdom in August 2011. The joint statement, however, particularly noted the negative impact of social media, asking how such issues could be addressed, while also recognising its important role in promoting freedom of expression.

A resolution by Sweden set up a panel on freedom of expression on the internet, with a particular emphasis on finding ways to protect freedom of expression on the Internet in accordance with human rights law. The resolution was adopted by consensus, but in an indication of China's unease with the issue's increasing prominence at the international level, the State delegation forced a delay in the resolution's adoption. While the delegation claimed it had not been able to get

instructions from capital, China's dissociation from consensus, announced before the adoption, clearly shows how uncomfortable the State feels with the issue. Chinese efforts to counter advances at the Council on freedom of expression and the Internet should also be seen in the context of its push for an international code of conduct for information security at the General Assembly, which among other things reaffirms the sovereign right of States to regulate the Internet.¹⁰

The establishment of a **Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence** was one of the most positive developments of the session. The mandate will give the Council an additional tool to investigate serious human rights violations, in particular 'gross violations of human rights and serious violations of international humanitarian law'. It also tasks the Special Rapporteur with integrating a victim's perspective throughout his or her work. The mandate includes some information gathering on national situations, practices, and experiences of promoting truth, justice, reparations and guarantees of non-recurrence. It also includes making recommendations to address such violations. The appointment of the first mandate holder will take place at the next Council session, in March 2012, with applications solicited by midnight on 30 November 2011.¹¹

A resolution on 'regional arrangements' was adopted by consensus. It followed on from the last such resolution at the 12th session,¹² which had welcomed the regional efforts made by the member States of the Association for Southeast Asian Nations, through the establishment of the Intergovernmental Commission on Human Rights. This session's resolution expressed appreciation for the efforts made by the member States of the Organization of Islamic Cooperation (OIC) in establishing the Independent Permanent Human Rights Commission.¹³

A resolution presented by Egypt, to create a panel on the **promotion of human rights in a multicultural context** was adopted, against the opposition of some western States. As initially framed, this resolution had worrying echoes of the resolution on traditional values adopted at the 16th session of the Council, in that it simply asserted the value of multiculturalism in vague terms, and did not clearly articulate that culture could never be used as an excuse to infringe upon an individual's human rights. Although these concerns were addressed to some extent, some WEOG States chose to vote

8 <http://bit.ly/vLbUdk>.

9 China, Algeria, Bangladesh, Bahrain, Belarus, Bolivia, Congo, Cuba, Democratic People's Republic of Korea, Djibouti, Ecuador, Iran, Kuwait, Lao People's Democratic Republic, Malaysia, Mauritania, Myanmar, Namibia, Nicaragua, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Sri Lanka, Sudan, Tajikistan, Uganda, Venezuela, Vietnam, Yemen, and Zimbabwe.

10 See a letter to the Secretary-General from China, the Russian Federation, Uzbekistan, and Tajikistan, A/66/359 at <http://bit.ly/t3K0MI>. The preamble of the proposed code of conduct reaffirms 'that policy authority for Internet-related public issues is the sovereign right of States, which have rights and responsibilities for international Internet-related public policy issues'.

11 See <http://bit.ly/rm0X0F> for the application procedure of Special Procedures mandate holders. Deadline for applications is 30 November 2011.

12 <http://bit.ly/tGaAvG>.

13 OIC/IPHRC/2010/DR.STATUTE at <http://bit.ly/tM8aem>.

against the resolution on the basis that the concept of multiculturalism remained undefined.

A resolution on preventable **maternal mortality and morbidity** was adopted by consensus. It reaffirms the human rights-based approach to reduce preventable maternal mortality and morbidity, and requests OHCHR to convene a workshop to prepare concise technical guidance on how to apply a human rights-based approach to implement policies and programmes in this area.

COUNTRY SITUATIONS

In general, the 18th session's response to country situations represented a stalling of the more positive dynamic that started to emerge during recent sessions. States leading on country resolutions attempted to address situations by trying to engage concerned States cooperatively, working to get them on board with planned resolutions. This was exemplified by efforts to accommodate the Government of Sudan's reservations on the renewal of the mandate of the Independent Expert on Sudan. Accordingly, this and other country resolutions were tabled under Item 10, which focuses on provision to the State of technical cooperation and capacity building, on the premise that the State is ready to address the problems it faces; rather than Item 4, under which the Council can discuss situations of concern from a wider perspective than just provision of technical assistance. This shift coincided with Thailand introducing a resolution, adopted without a vote, on '**Enhancement of technical cooperation and capacity-building in the field of human rights**'. The resolution emphasises 'the need to promote a constructive and cooperative approach for the promotion and protection of human rights', and to 'enhance the role of the Council in promoting advisory services, technical assistance and capacity-building, particularly through discussions held under agenda item 10'. The resolution sets up an annual thematic discussion under Item 10, the first of which, to be held at the 19th session, will focus on technical cooperation in the context of the second cycle of the Universal Periodic Review.

While this approach resulted in all country resolutions being adopted by consensus, it also brought about a string of weak or non-existent responses to urgent country situations. The difficulty for many States – both members and observers – is to recognise that while a cooperative approach is commendable, its success depends on both parties being equally committed to improving the human rights situation. In particular, a cooperative approach will only work where concerned governments have proven themselves as willing partners not only in words, but also through taking concrete steps on the ground to improve the situation.

The previous Council session had seen positive steps in relation to **Yemen**, including requesting the High Commissioner to report to the Council on her visit to the country. However, at this session the Council failed to follow up on the recommendations made by the High Commissioner in her report to

establish an independent, international investigation. During the debate on the report, the Yemeni delegation rejected this recommendation, arguing it was inconsistent with the recommendation that Yemeni political parties seek to resolve their political differences through open and transparent dialogue. Instead, the delegation proposed establishing an independent and neutral national commission consisting of all political parties to undertake an evidence-based investigation into violations of human rights.

The perhaps overly cooperative approach to this situation is evident in the final resolution, cosponsored by Yemen. It acknowledges the Government's response to the High Commissioner's recommendations and takes note of the proposal to launch domestic investigations. The resolution's call for the High Commissioner to report on progress to the 19th session of the Council, while leaving the door open for a stronger response should the situation not be found to have significantly improved, may be too little too late for many on the ground.

Discussions on the renewal of the mandate of the **Independent Expert on Sudan** coincided with increasing international awareness of serious human rights violations in Blue Nile and South Kordofan. Reflecting these developments, there were calls for a strong mandate renewal. However, the final resolution is very weak. It notes the situation in these regions 'with concern', calling on parties to 'make every effort to immediately end violence and halt clashes', but does not call for any independent investigation. It also moves the mandate of the Independent Expert from Item 4 to Item 10, and gives him the mandate to 'engage with the Government of the Sudan with a view to identifying areas of assistance that will aid the Sudan to fulfil its human rights obligations'. This resolution removes the Independent Expert's role of monitoring and reporting on violations. Similarly, a resolution was also adopted on South Sudan, requesting OHCHR to assess the technical assistance needs of the new State and report back to the 20th session of the Council.

The response to the situation in **Sri Lanka** represented a major disappointment. Early in the session, the Secretary-General transmitted the report of his Panel of Experts on Accountability in Sri Lanka to the President of the Council.¹⁴ This marked a valuable opportunity for the Council to follow-up on its 11th special session on Sri Lanka, as it provided an avenue to address the recommendation to establish an international, independent mechanism to conduct investigations and complement the domestic Lessons Learnt and Reconciliation Commission (LLRC). The Council was strongly divided on the issue. Several States (including China, Cuba, Algeria, and the Maldives) expressed support for Sri Lanka's desire that the international community 'wait for [the LLRC] to finish its deliberations and come up with its conclusions in its own time'. However, States that might have been expected to

14 Available at <http://bit.ly/eq3uZb>.

speak out in favour of the findings of the Secretary-General's Panel of Experts were notably silent.

Canada's attempt mid-session to place the issue on the Council's agenda for the March 2012 session failed rapidly.¹⁵ After presenting a resolution that called for an interactive dialogue with the High Commissioner, to be held at the 19th session of the Council, Canada chose to withdraw its resolution after only one open informal discussion. This effectively blocked the way for other States to progress the matter, wasting the valuable opportunity created by the submission of the Secretary-General's report.

With human rights defenders around the world calling for the Council to address the situation in Sri Lanka, the gap between the strength of those calls and the operation of the Council was very apparent. Since no State was willing or able to take the matter forward, calls for action remained impotent.

The dialogue on the human rights situation in **Belarus** was similarly unconstructive and a demonstration of the old Council politics at work. Belarus and others (including the Russian Federation, Cuba, China, the Democratic People's Republic of Korea (DPRK), Venezuela, and Zimbabwe) dismissed the Council's focus on the country as politicised. Their criticism of country resolutions in general as 'ineffective tools' that are inevitably open to accusations of double-standards and bias, tainted the debate and turned their statements into self-fulfilling prophecies. The debate was divisive and ineffectual, and as expected, there was no reflection on how the space in the Council could be used to seriously address the human rights violations in Belarus. The State has still not allowed OHCHR access into the country, which was requested under Resolution 17/24 of June 2011 in order to provide a report on the situation to the Council in June 2012. Belarus stated bluntly that it would not cooperate with a politicised mandate.

In relation to **Burundi**, the mandate of the Independent Expert was brought to a formal end, following the establishment of a national human rights institution (NHRI). While the Independent National Human Rights Commission has been established, it is still encountering serious funding and political challenges. It is therefore impossible to discern at this stage whether it is functioning 'effectively' as required in the resolution. However, no State challenged the resolution. It will be interesting to see if the Commission will choose to provide updates to the Council – since it can participate like any NHRI in the Council's general debates on any issue – despite the absence of a dedicated report on Burundi.

Finally, the mandate of the **Special Rapporteur on Cambodia** was renewed for a further two years (exceptionally, given the usual one-year renewal of country mandates). A resolution calling for the General Assembly to readmit Libya as a member of the Council was adopted without a vote.

¹⁵ In the words of a seasoned Council diplomat the initiative 'disappeared before it appeared'.

Adoption of UPR outcomes

During its 18th session, the Council adopted the UPR outcomes of 16 states. The adoption of the report of the review of Papua New Guinea was postponed until the end of the Council's session due to the Government's request for more time to reach a decision on pending recommendations. At the last minute, however, the Council was able to adopt the outcome on Papua New Guinea, thereby safeguarding the 100 percent adoption rate of the first cycle to date.

The majority of States under review adopted the good practice of submitting a written addendum to the report, containing their views on recommendations, conclusions, voluntary commitments, and replies presented. Denmark, Palau, Somalia, Seychelles, and the Solomon Islands had left all their recommendations pending until the Council's adoption of the outcome process during the 18th session. While no State under review had immediately accepted all the recommendations, Greece distinguished itself by accepting 112 of the 124 recommendations.

Participation in the adoption process differed from country to country. Interest in the majority of State reviews was low, usually with intervention from four States and approximately six NGOs. Only for Somalia, Singapore and South Sudan was there a considerable level of interest, with more than 10 States and NGOs providing their comments for each of the reviews.

Recommendations in relation to the decriminalisation of same-sex conduct continue to be largely rejected. For instance, the Solomon Islands claimed that in order to amend legislation and decriminalise same-sex conduct, it would require further national consultations. On the other hand, Suriname indicated that its Constitution guarantees protection against discrimination and claimed that recommendations relating to sexual orientation and gender identity are already implemented.

In general, recommendations related to the ratification of international treaties, conventions, the fight against domestic violence, and promotion of gender equality and judicial reforms were accepted by most States under review. Additionally, the Seychelles emphasised its agreement to extend the requested invitations for visits of special procedures. Sierra Leone and the Seychelles also indicated that mainstreaming gender concerns and implementing national gender plans is an ongoing process and a priority.

PREVIEW OF THE NEXT COUNCIL SESSION

Most notably, at the next session of the Council, a panel discussion on sexual orientation and gender identity will be held. The panel discussion was called for at the 17th session of the Council.¹⁶ There will be room for civil society representation on the panel. Reflecting the inclusion of gender identity alongside sexual orientation in the resolution, it would be ideal to ensure that the speakers invited are able to represent the different concerns and challenges faced in both of these areas. South Africa, as the lead State on the resolution, will work with OHCHR to devise the panel. The study commissioned by that resolution, on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, is in the course of being drafted.

Other highlights of the 19th session will include the first report of the Special Rapporteur on the situation of human rights in Iran, the reports of the special rapporteurs on Myanmar and the Democratic People's Republic of Korea, the report of the Independent Expert on the situation of human rights in Cote d'Ivoire, and follow-up reports to Council resolutions on Libya, Syria and Yemen. The Special Rapporteur on human rights defenders will also present her annual report to the 19th session. Finally, the Council will appoint the mandate holder to the post of Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence.¹⁷

Syria: China and Russia veto efforts to end human rights abuses by Syrian authorities

On 4 October, the Security Council voted on a draft resolution presented by France, the UK, Germany, and Portugal. The draft resolution¹⁸ had condemned the violent crackdown against pro-democracy protesters by the Syrian authorities, and indicated the Security Council's readiness to consider imposing sanctions if the Syrian authorities ignored its calls. It had also emphasised an 'inclusive Syria-led political process' to resolve the crisis, which should aim at 'effectively addressing the legitimate aspirations and concerns of Syria's population.'

Nine of the Council's 15 members voted in favour of the draft text (Bosnia and Herzegovina, Colombia, France, Gabon, Germany, Nigeria, Portugal, the UK, and the US) and four States abstained (Brazil, India, Lebanon, and South Africa). Despite numerous concessions to the text by European States, it was ultimately vetoed by China and Russia.¹⁹ An overarching concern in negotiations was

the possibility of whether the resolution would lead the Security Council into military action, given the recent Libyan situation.²⁰ Russia and China also opposed any mention of future sanctions against Syria.

Earlier in the summer, the Security Council issued a presidential statement condemning the Syrian authorities for 'widespread violations of human rights, and use of force against civilians'. It called on the authorities to respect their human rights obligations, and to hold accountable those responsible for the violence (S/PRST/2011/16, 3 August). In August and September, the Security Council was briefed on the situation in Syria by the Secretariat, including by the High Commissioner for Human Rights on 18 August. This followed the release of the report of the fact-finding mission mandated by the Human Rights Council to investigate the violent repression in Syria (mandated by the Human Rights Council at its 16th special session on 29 April 2011). The High Commissioner encouraged the Security Council to consider referring the situation in Syria to the International Criminal Court, a call that remains unheeded. ■

16 A/HRC/RES/17/19 at <http://bit.ly/rqSK9k>.

17 See <http://bit.ly/t2h455>.

18 The draft resolution, S/2011/612, is available at <http://bit.ly/e69egO>.

19 It was the first double veto by Russia and China since July 2008 when they vetoed proposed sanctions against Zimbabwe. In January 2007, they also vetoed a resolution on Myanmar.

20 In Russia and China's view, the North Atlantic Treaty Organization's (NATO) military operation in Libya exceeded the mandate it had been given through the Security Council resolution in March 2011. Russia and China abstained in the vote on that resolution on Libya, which empowered a no-fly zone and 'all necessary measures' to protect civilians at risk from Libyan authorities.