

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COUNCIL, 5TH SESSION DAILY UPDATES, 15 AND 17 JUNE 2007

Overview	1
President's opening statement	2
Universal periodic review mechanism.....	2
Review of special procedures.....	3
Human Rights Council Advisory Committee	4
Agenda.....	4
Rules of procedure	5
Draft code of conduct on special procedures (third revision)	5
Key issues.....	5
Conclusion of 15 June.....	6
Summary of 17 June	7

Overview

The morning of the fifth day of the 5th session of the Council, States that had been unable to speak on Thursday 14 June due to time constraints took the floor to make comments on the President's draft text.¹ Almost unanimously, States expressed their deep appreciation for the President's efforts to facilitate consensus on institution building. States did, however, make many suggestions for improvement. The areas of the text that received the most suggestions for amendments were the universal periodic review (UPR) and special procedures sections, whilst almost unanimous agreement appeared to exist on the complaint procedure. Other parts of the text elicited suggestions, but there was a general sense that States were coming closer to agreement on many parts of the text.

The afternoon session continued with NGO statements on institution building on the basis of the President's text. Amongst the themes discussed were the participation of civil society and the UPR, special procedures, the agenda, and indigenous peoples. The Ambassador of Algeria then presented his explanation of the third revised draft code of conduct on special procedures on behalf of the African Group. The floor was open to suggestions for amendments to the text, and resulted in calls for considerable improvement, most notably in relation to sources of information, the security of mandate holders, and issues of accountability of both mandate holders and States.

¹ The President's draft text of 13 June and 17 June, as well as oral statements by States and NGOs can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

The President concluded the meeting by informing the Council that it would be necessary to meet on Sunday 17 June 2007 in order for the final text to be agreeable to all and ready for adoption on 18 June. The Council then met on Sunday to receive the final text and to hear a short statement by the President urging members to adopt the text as a whole. The alternative, he warned, was to withdraw the text in its entirety and for there to be no outcome from the institution-building process on 18 June. In effect, the text presented on Sunday constituted the final text to be adopted by the Council on Monday 19 June.

Informal discussions of the President's text

President's opening statement

The President opened the Friday morning session by explaining that the day would be dedicated to completing the list of speakers from yesterday. He then proposed that the deadline for making decisions or proposals should be 6 p.m. There were no objections to this proposal. The President then explained that there were to be no proposals on generalised aspects of the institution-building process, and that the Council would only focus on the President's text. The President noted that if any States did not agree with this process, and the document could not be accepted by consensus, the document would be withdrawn. He reiterated his point, stating that he would not accept any other proposals until the Council had rejected the current text. The President then emphasised that the Council should focus on refining and rounding out the proposal.

Universal periodic review mechanism

States that commented on the UPR were generally positive about the text. They did, however, suggest some improvements, such as:

- Many States declared that the reports prepared by each State should be the basis for the review. Algeria (African Group) declared that the national report should be drawn up on the basis of a standard uniform questionnaire.²
- Australia, the United States of America (USA), Israel, and Guatemala continued to reject the inclusion of international humanitarian law as a basis for review. The USA also raised the view that the question of funding of the UPR remained to be addressed by the Fifth Committee of the General Assembly in New York.
- Malaysia agreed that the level of development and specific situation in each country should be taken into account during the process. On the contrary, the Republic of Korea and Belgium aligned themselves with the statement of Germany, on behalf of the European Union (EU), that the same standards should be applied for the review because all human rights are universal. However, the specific situation and the level of development of the country should be taken into account when preparing the recommendations. Israel was concerned with these suggestions and clearly indicated that they should not be part of the criteria.
- Certain States reiterated their support for the inclusion of all stakeholders in the process. Algeria, on behalf of the African Group, the African Union and Ethiopia insisted that that the outcomes of inter-regional bodies be included into the compiled information. The Russian Federation specified that the contribution of all stakeholders should be governed by the relevant resolution given the fact that the selection of information can be subjective.
- Many States emphasised the need for the outcome of the UPR to be adopted by consensus.³ Several States expressed their concern about the differentiation between those recommendations accepted by States, and those rejected. It was suggested that this could result in a hierarchy, and that all recommendations should be dealt with equally.⁴
- The International Federation of Human Rights League (FIDH) emphasised that information submitted by civil society should be taken into consideration during the UPR. The International Service for Human

² Iran, Sri Lanka, Syria, Nicaragua, the Russian Federation, Venezuela, Guatemala, the Philippines, and Honduras.

³ Sri Lanka, Thailand, Nicaragua, and Venezuela.

⁴ The Republic of Korea, Chile, Honduras, and Australia.

Rights (ISHR) and FIDH added that civil society participation should also be guaranteed in the UPR Working Group, and ISHR emphasised the importance of understanding the necessity of including NGO information as a source of review, as often they provide more relevant information than that of States. On these grounds, they should be afforded greater prominence in the text.

- The Cairo Institute for Human Rights Studies (CIHRS) and the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) expressed similar sentiment. The International Indian Treaty Council urged that indigenous people's rights should be included as criteria under the UPR.

Review of special procedures

The core points raised around the review of special procedures remained the continuation of country or 'geographic' mandates, the process of 'rationalisation', and the creation of a 'consultative group' to assess candidates against fixed criteria.

- Tunisia emphasised that the mandate on the Occupied Palestinian Territories (OPT) is intended to be maintained until the end of the occupation. This was supported by many of the States who participated in the dialogue.⁵ Some States stressed the importance of the mandate whilst arguing that it should be classified as thematic rather than country-based.⁶
- The Palestinian delegation urged the President to refer to the mandate of the Special Rapporteur on OPT in the main body of his document as well as in the annex, instead of making reference to it in a footnote.
- The majority of States that discussed the new use of the term 'geographical mandates', favouring instead the use of the old term 'country mandates'.⁷ Egypt expressed concern that using the term 'geographic' would lead to difficulties when comparing mandates, and sought further clarification.
- Australia and the USA drew attention to the need for country mandates to be put on an even footing with thematic mandates. The USA referred to General Assembly *Resolution 60/251*, noting that it mandated the Council to examine country situations.⁸
- Venezuela called for country mandates to be eliminated if they were the result of a non-consensus based process. Thailand opposed outright the concept of country-based mandates.
- The Cairo Institute and EHAHRDP noted that country mandates were a crucial tool in areas where NGOs and human rights defenders were under attack. The International Commission of Jurists (ICJ) proposed that all country mandates should be extended for three years, and that the Council should be guided by the gravity of the human rights situation and the willingness of the government to work with the UN.
- The USA stressed the fact that the rationalisation of mandates should be based on review and that the OPT must come under the review like every other mandate.
- Al Haq understood that the text's mention of geographic mandates included country-specific mandates, and asked for further clarification on the matter.
- Regarding the review and rationalisation of special procedures, Israel and Thailand argued that the Council is mandated to review *all* special procedures mandates.
- The ICJ recommended that effective pre-screening could improve the independence and expertise of mandate holders, but it was important to ensure the pre-screening process was not politicised.
- Australia stipulated that mandate reviews should not be overly time consuming and should take place during normal Council sessions.⁹
- Comments were made on the nature of the consultative group to assess candidates against set criteria, with many questioning the additional role assigned to it in the text as an appeal mechanism for exclusion of nominated candidates from the public list.¹⁰ ISHR expressed support of the use of a consultative group of States as a pre-screening tool, provided that the work of the group was transparent in all aspects and that it reported comprehensively on any decisions. It opposed, however, that it assume the role of an appellate body.

⁵ Malaysia, Bahrain, Malaysia, Morocco, Egypt, and Iran.

⁶ Indonesia, Iran, and Syria.

⁷ Algeria, Egypt, Australia, and Chile.

⁸ Australia and the USA.

⁹ Norway and the Philippines.

¹⁰ Honduras and the USA.

Human Rights Council Advisory Committee

Similarly to Thursday 14 June, only a few States commented on the Advisory Committee:

- Israel suggested that all member States should be able to propose members, and the Republic of Korea stated that nomination should be open to all stakeholders.
- Venezuela and Cuba requested clarification regarding the language, ‘All member States can propose or endorse’.
- The USA and Israel favoured a smaller body for better flexibility and manageability.
- On the criteria for membership, the Russian Federation claimed that it would suffice if it were defined that any member would only act in its personal capacity. Egypt stated that it preferred going back to the previous wording, ‘members serving in their personal capacity’.
- ISHR also articulated that the election process was too narrow. One of the strengths of NGOs providing nominations is that they can draw upon the entire rule, and are not restricted to residents or nationals. It noted that if NGOs were unable to nominate candidates, that States should then have the ability to make nominations from the entire world and not be limited to nominating candidates from their own countries.
- Brazil highlighted its desire to maintain the former Sub-Commission’s Working Groups on indigenous peoples, contemporary forms of slavery, and minorities.

Complaint procedure

The complaint procedure appeared not to provoke as much discussion as many of the other sections of the President’s text, and many States, either by their silence or their vocal support, appeared satisfied with the procedure as it stands.

- Both India and the Philippines offered their support for participation by National Human Rights Institutions (NHRIs). Pakistan strongly emphasised that NHRIs should not be considered as effective local remedies as they are often not impartial enough.
- Turkey welcomed the way that the new text underlined the confidentiality of the procedures.¹¹ The Russian Federation was in agreement with Turkey and stressed that only the Council should have the capacity to make the procedure open, as opposed to the Working Groups of the procedure.
- Egypt strongly recommended that admissibility be established before being referred to the State concerned.¹²
- ISHR noted that the time periods provided were ‘loose’, and that three months for responses by States to allegations was adequate. The period of the complaints process should not be extended beyond 24 months.

Agenda

The majority of States thanked the President for his reflection of their preferences and concerns in the new agenda. States also reiterated the importance of a balanced, clear, and predictable agenda.¹³ Once again the topic of the Occupied Arab Territories was discussed by numerous delegations. States also made suggestions regarding items on the agenda, particularly Item 3 on ‘protection and promotion of human rights’. This Item details areas of rights that should be addressed at the Council. Of particular contention were the last two bullet points, namely ‘cross cutting human rights issues’ and ‘human rights situations that require the Council’s attention’.

- Tunisia strongly supported preserving point 7 as a stand-alone item, aimed at addressing the human rights situation in Palestine and other occupied territories. The State emphasised that priority must be given to this matter.¹⁴

¹¹ Sri Lanka

¹² Colombia, Sri Lanka, and Morocco.

¹³ The Russian Federation, Syria, and Colombia.

¹⁴ The Sudan (on behalf of the Arab Group), the Philippines, Algeria, Egypt, Malaysia, Indonesia, and Morocco.

- The USA, Israel and B'Nai Brith International reacted strongly to these statements. Israel claimed that Item 7 contradicted the principles outlined in the beginning of the President's text and cautioned that the Council could be repeating the mistakes of the Commission on Human Rights by paying a disproportionate amount of attention to one State. The USA highlighted this perceived inequality, noting that the sub-point of Item 3 'human rights situations that require the Council attention' is inclusive enough to address the situation in the OPT.
- The sub-points of Item 3, namely, 'cross cutting human rights issues' and 'human rights situations that require the Council's attention', were labelled as 'hazy' by the Russian Federation and 'inaccurate' by Venezuela. Both States were concerned that these points allowed for a subjective interpretation and stated that the Council needs to move away from such lack of clarity.¹⁵ Algeria claimed that the sub-points were duplicative and requested a new organisation, under which all activities would be split into two categories: 'norm setting in the human rights field' and 'implementation and follow up'.
- Both the FIDH and the ICJ expressed reservation about having any specific item on the agenda, and recommended that the agenda should create a broad and predictable framework
- Algeria requested that a separate item be given to 'racism, racial discrimination, xenophobia, and related forms of intolerance', emphasising that it warranted its own point, separate from the Durban Declaration.¹⁶ Brazil requested that some mention be made of gender in the sub-points.
- Pakistan and the Comisión Juridical para El Autodesarrollo de Los Pueblos Originarios Andinos strongly recommended the inclusion of an item on the right to self-determination, with Pakistan commenting that it was on the agenda of the former Commission on Human Rights.¹⁷ The International Indian Treaty Council suggested that there be a specific agenda item on indigenous peoples.

Rules of procedure

Only five States took the floor to address the rules of procedures and working methods.

- South Africa wanted to insert an item on the term of office of the Council, suggesting that its cycle begin on 1 January so as to be in line with other UN bodies.
- On the question of private meetings of the Council, the USA and Iran requested that this provision be deleted in order to allow for more transparency and inclusiveness.
- Iran supported the adoption of country-specific resolutions by a 2/3 majority. This was based on China's last-minute proposal during the Working Group but was not included in the President's text. Indonesia followed that there was a need for clear criteria in considering and adopting country-specific resolutions to prevent politicisation of the work of the Council.
- Al Haq made clear their view that the idea of a 2/3 majority required for country-specific resolutions was 'unacceptable'.

Draft code of conduct on special procedures (third revision)

The Algerian Ambassador presented the revised text of the draft code of conduct. He explained that there had been a total of 30 amendments to the text that was presented the previous day on 14 June 2007. He stated that this was a sign of the African Group's desire to reach a consensual agreement on the resolution.

The Ambassador explained that he had taken many of the proposals from the previous day on board, and that all of the amendments were in bold text, while the deletions were crossed out.

Key issues

¹⁵ The Philippines and Morocco.

¹⁶ Morocco and Egypt.

¹⁷ Algeria and India.

Communications with governments

The Ambassador included his proposal that mandate holders would address their communications to concerned governments through diplomatic channels unless agreed otherwise by individual governments and the Office of the High Commissioner for Human Rights (OHCHR). China asked that this be clarified to read that the mandate holders will contact diplomatic missions in Geneva.

Sources of information

The Ambassador amended Article 8 (b) to include a provision so that the confidentiality of witnesses would be protected if their testimonies could put them at risk.¹⁸ Brazil felt that this provision went in the right direction, but explained that there are many cases where people related to the witness are harmed, and preferred that the term ‘victims’ be employed instead. Switzerland preferred that the article deal with both witnesses and victims.¹⁹ The Algerian Ambassador proposed that the text simply read ‘individuals’ to cover all possibilities.

Security of mandate holders

Article 11(f), regarding official security protection during field visits, was subject to much debate. Brazil reiterated that their main concern was that a State’s offer to provide security would be transformed into a limitation of the work of mandate holders. It was of the view that in its current formulation the decision to provide security would not take into account the view of the mandate holder and would solely be based on the State’s assessment. Argentina suggested that the text read that mandate holders could have access to security upon their own request in consultation with the OHCHR and the host country.²⁰ The Algerian Ambassador felt that he could take the Argentinean proposal on board as it contained all of the necessary elements.

The Russian Federation however felt that it was important that States play a pre-eminent role in security assessments, as they are constantly changing.

Urgent situations

The delegation of Mexico felt that the text should be simpler, and proposed that the criteria for urgent situations should read ‘alleged serious human rights violations, either ongoing or imminent.’ The United Kingdom (UK) was concerned that the threshold for urgent situations was still too high

Accountability

Germany expressed disappointment that no change had been made in Article 15 on accountability of special procedures and noted that it had proposed adding ‘without prejudice to the rules or regulations of the United Nations’. Switzerland lamented the lack of any mention of State accountability in the Article. Canada proposed that the mention of State cooperation in the preambular paragraph of the enabling resolution could be moved into the code. The Russian Federation proposed that the word ‘mission’ be replaced by ‘mandate’. The Algerian Ambassador asked why this Article kept on coming up again and again. He stated that under UN regulations, the mandate holders are accountable to the appointing authority, and in this case the appointing authority is the Council.

Conclusion of 15 June

The President concluded Friday’s meeting by stating that he had no summary prepared as the Council had not yet reached the end of its work. He made clear that he had collected all suggestions, and would take on board

¹⁸ Proposed by Brazil.

¹⁹ Supported by Canada.

²⁰ Supported by Australia Brazil, Canada, Germany, Guatemala, Mexico, Switzerland, and the USA.

those that would aid in reaching a document acceptable to all. He declared that he would have a new document ready in all languages for presentation on Sunday at 12 a.m. The Ambassador of Morocco also informed the Council that the African Group would meet at 11 a.m. to agree upon a new draft code of conduct taking on board the suggestions provided, also to be presented for final consideration on Sunday 17 June.

The President ended by stating that the Minister of Foreign Affairs of Mexico would be present on Monday morning to witness what was to be a historic event, and he hoped that consensus could be found before this time on a document where all 'will be less than fully content but sufficiently satisfied'.

Summary of 17 June

The President opened the Sunday session by presenting his revised text and reading a statement concerning the process from this point on.²¹ He acknowledged that certain proposals had not been incorporated in the text, but he urged all delegations to refrain from repeating stances that have already been taken. Remaining in this tone of strictness, the President stressed the importance of acceptance of the text as a whole by all the Members of the Council without a vote. The alternative was a complete withdrawal of the text on Monday.

Before opening the floor to comments, the President touched on a few of the important issues that have been revised or added in his text, including:

- Specified terms for country-specific mandates
- A revision of the annexes for the review of mandates and the renewal of mandate holders
- A revision of the agenda to incorporate greater compromise
- An ongoing clarification of the issue of international humanitarian law as a basis of review in the UPR.

The African Group also provided its fourth revision of the draft code of conduct on special procedures at the end of the meeting, although it was not discussed at all before closure.

Only two delegations provided commentary during Sunday's meeting. China opened by reiterating their proposal for country resolutions to be adopted by a 2/3 majority, and noted its absence from the section of the President's text on the Council's rules of procedure. The DPRK then complained that the inclusion of the country mandate on DPRK "remains unbearable."

The President closed the meeting after just over half an hour in order to give ample time to the various delegations and regional groups to familiarise themselves with the final paper. Monday's meeting may see the imposition of time limits (4 minutes for regional groups and 2 for country delegations) in order to complete their work in a timely manner.

²¹ The President's revised text of 17 June can be accessed at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

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