

COUNCIL MONITOR

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Overview

The third day of the sixth session of the Human Rights Council (the Council) was dedicated to the conclusion of the informal meetings on pending issues relating to the institution-building process of the Council, and to unveiling the new universal periodic review mechanism (UPR) selection process. The morning began with two statements that had been postponed from the previous day, on the subject of technical requirements for

the candidatures of special procedures.¹ The remainder of the morning was then given to considering the status of the working groups of the former Sub-Commission (the Working Groups on Minorities, Indigenous Peoples, Contemporary Forms of Slavery, Communications and the Social Forum). Particular attention was paid to the existing protection gap created by the absence of the Working Group on Communications, with the President offering more immediate proposals to address the problem, including re-appointing on an *ad hoc* basis the former members of the Sub-Commission Working Group to continue their work until the appointment of the new members.

The afternoon meeting was reconvened in informal session for two simulations on the UPR: one demonstrating a mechanism which would select the order of States to be reviewed; the second presenting a system for selecting the group of three rapporteurs (troika) that will facilitate each review. Confusion ensued.

Technical and objective requirements for candidates for special procedures mandate holders - Continued

On 11 September, not all speakers were able to take the floor in the discussion on the technical and objective requirements for candidates for special procedures mandate holders. When the Council reconvened this morning, the President gave the floor to Malaysia and Amnesty International. Malaysia aligned itself with the statements made by Sri Lanka on behalf of the Asian Group and by Pakistan on behalf of the OIC.² Amnesty International reiterated that the requirements must ensure a gender balance among mandate holders and equitable geographic distribution, and suggested that candidates should submit a standardised form containing information on their sex and nationalities. In response to concerns raised by some States the day before, Amnesty International noted that fact-finding was an activity carried out in all countries by judges and academics, among others. It also recalled that the technical and objective requirements should be general, and reference to specific qualifications for particular mandates was redundant.

Discussion on the status of the Working Groups

The President opened the discussion of the working groups of the former Sub Commission by indicating that there was no non-paper on the issue as it was, ‘perhaps more than any other part of institution-building, a member-driven process’. A number of States made general remarks on the future of the working groups.

- Egypt, speaking on behalf of the African Group, regretted that the African Group had not been included in the consultations mentioned by the President on the initiatives under way by certain States regarding the future of the different working groups.
- Portugal, speaking on behalf of the European Union (EU), agreed with the President that it should be left to individual delegations to taken initiatives. India agreed, pointing out that decisions needed not necessarily be taken at the current session, and that the Council might decide to extend the timeframe for discussions.
- Brazil (along with several Latin American States) said that most of the working groups had initiatives that required careful follow-up, and should therefore be able to continue their work.³

¹ Malaysia and Amnesty International. For a detailed summary of the discussion on special procedures, see ISHR’s Daily Update of 10 September 2007 at http://www.ishr.ch/hrm/council/dailyupdates/session_006/11_september_2007.pdf

² These regional groups had in particular noted that the non-paper over-emphasised the academic qualifications of candidates and that some criteria may be biased against candidates from developing countries.

³ Supported by Argentina, Chile.

Working Group on minority issues

The President announced that the Austrian delegation was working on finding the most appropriate form for the Council to deal with minority issues in the future. The Austrian delegation confirmed that, given its traditional interests in minority issues within the United Nations framework, it had started informal consultations to explore innovative and flexible ways to address the issue while avoiding the shortcomings of the former Working Group.

- Austria will hold consultations on a draft text throughout next week, and plans to present its initiative on minority issues in more detail on Tuesday, 18 September when the Council is scheduled to continue the consideration of the former working groups of the Sub-Commission. The delegation signalled its readiness to talk to any delegations wishing to do so.
- India and Cuba supported the initiative and said they would consider it carefully.
- Egypt, speaking on behalf of the African Group, expressed its dissatisfaction with the process Austria had been following. It said that no one in the African Group had been aware of the consultations that were going on. It added that it had major concerns with the Working Group on minority issues, but did not go into detail as to what these concerns were.
- China complained that the Austrian initiative had only been circulated one day previously.⁴ It added that they were not sure if a Forum on Minorities would be useful to set up, since there was already a special procedure dealing with the matter.
- Algeria and China expressed reservations about the participation of minority representatives in the planned forum. China said it would be difficult to determine who could participate. Algeria said the participation of representatives ‘democratically chosen’ by their communities could become an explosive issue.
- Austria tried to clarify that its proposal was merely to assure the participation of all stakeholders, including NGOs from all regions in the Forum.

Working Group on Contemporary Forms of Slavery

President Costea explained that a cross regional initiative to transform the Working Group into a special procedure mandate was underway.⁵ He suggested letting the cross regional group continue its consultations, and that the Council could come back to the issue at a later stage.

- Cuba favoured the idea of transforming the Working Group into an individual special procedure mandate.
- Argentina enquired what would happen to the Voluntary Trust Fund on Contemporary Forms of Slavery if the Working Group were discontinued.⁶

Working Group on Indigenous Populations

On Thursday, 13 September, the General Assembly will consider the adoption of the *Declaration on the Rights of Indigenous Peoples*. Many States and NGOs had asked the President to postpone the Council’s consideration of the matter until the results of the deliberations in New York were known.

- Egypt (on behalf of the African Group) supported the establishment of a mechanism to strengthen the rights of indigenous peoples. Cuba favoured retaining the Working Group.

⁴ The text of that initiative has apparently been circulated to member States. At the time of writing, it has not been made available to NGOs, nor posted on the OHCHR extranet.

⁵ This had already been discussed at an informal meeting during the 4th session of the Council in March 2007. See the ISHR Daily Update of 28 March 2007, available at <http://www.ishr.ch/hrm/council>.

⁶ The purposes of the United Nations Voluntary Fund on Contemporary Forms of Slavery are to assist representatives of NGOs from different regions, dealing with issues of contemporary forms of slavery, to participate in the deliberations of the Working Group; and to extend humanitarian, legal and financial aid to individuals whose human rights have been violated as a result of contemporary forms of slavery. Funding is obtained by means of voluntary contributions from Governments, non-governmental organisations and other private or public entities. For more information see <http://www.unhchr.ch/html/menu6/2/slavery.pdf>.

- The Juridical Commission for the Autodevelopment of First Andean People (CAPAJ) pointed out that the Working Group had been addressing the reality of indigenous people for the last 24 years and should carry on its work. The representative underlined that the Working Group still had to finish several studies, and in particular had to follow-up on its recommendations.

Social Forum

President Costea said that while he was not aware of any concrete initiatives regarding the Social Forum, several delegations were trying to reach agreement on the most appropriate successor of the Social Forum.

- Egypt pointed out that the issues dealt with in the Social Forum such as globalisation and its impact on human rights were important, but that the functioning of the Social Forum needed to be enhanced.⁷
- Algeria said that the Social Forum had done useful work, in particular by ‘mainstreaming’ the concerns of developing countries, which had now also become the concerns of ‘advanced countries’.

Working Group on Communications

The subject of the status of the Working Group on Communications received the most attention from the President, as he emphasised that while no mechanism currently exists to address the issue, ‘communications continue to arrive as we speak’.⁸ He outlined that following talks with all relevant stakeholders, three core options appeared to have emerged:

- A nomination by the President of the five former members of the Sub Commission to resume work for the next six months until the establishment of the new Working Group on communications. The President noted that the ‘trend’ was towards pursuing this option.
- The nomination of two or more new independent experts for six months. The President expressed his own initial hesitation that criteria were not in place for such a new selection, and that training of new experts may take more time than was needed, thus being less efficient than the first option.
- That nothing be done until the creation of the new Working Group. While noting that ‘very few’ delegations had expressly supported such an approach, the President nonetheless ‘respectfully differed’ in opinion on the grounds that the backlog was already immense and would not go away.

He then declared he was ready to listen to the proposals of all present.

- Most States that took the floor favoured the first option, where the five former members of the Working Group would continue their work for six months, until the Advisory Committee set up the new Working Group on Communications.⁹
- China was of the view that option one would be a good way to close the protection gap and take advantage of the expertise the former members of the Working Group had acquired.¹⁰
- Some States were cautious to point out that option one should not be construed as a precedent for the future work of the Council.¹¹
- Portugal, speaking on behalf of the European Union (EU), said it wished to hold further consultations to find practical solutions for the problem of the protection gap and the backlog, and that this might include further consideration of the second option.

⁷ Cuba agreed with the importance of dealing with the impact of globalisation on human rights.

⁸ The text on institution building adopted in June requires that the Working Group on Communications be constituted by the newly created Human Rights Council Advisory Committee (the Advisory Committee). However, the criteria for eligibility to the Advisory Committee will only be decided upon at the current session of the Council. Once these criteria are set, consultations for members of the Advisory Committee will start. Once these members are elected, the Advisory Committee will then be required to constitute the Working Group on Communications. That means that on an optimistic timetable, the Working Group on Communications will start its work in March 2008

⁹ China, Pakistan (on behalf of the OIC), Cuba, Brazil, Saudi Arabia, Morocco, Guatemala, Chile, India.

¹⁰ Supported by Brazil and Morocco.

¹¹ Pakistan (on behalf of the OIC), Cuba.

- India initially suggested that the Council should only ensure that communications were forwarded to the State concerned. The consideration of the response by the State, and the decision whether the communication should be forwarded to the Working Group on Situations, should not be done until the new Working Group on Communications takes up its work in mid-2008 (at the earliest).¹² After hearing the majority of delegations speak in favour of option one, India also supported that option.
- Bangladesh expressed strong opposition to the second option of the appointment of two new experts.
- Mexico put forth an additional option, whereby the former members of the Working Group would continue to carry out their functions, but only in relation to the screening of communications and their transmission to the State concerned. The decisions on how to proceed with the communication after the initial stage would be left to the new Working Group on Communications.

Concluding remarks

The President of the Council thanked all delegations for the constructive discussion. He invited them to also reflect more generally about the relationship of the Working Groups with the Council as a whole, and not only with the Advisory Committee, should they be continued in some form.

Simulation of the universal periodic review (UPR) exercise

Opening of the session

The afternoon informal meeting was set aside for two UPR ‘simulations’. The first introduced a mechanism for determining the order of States to be reviewed under the UPR. The second presented a system for the selection the group of three rapporteurs (troika) that will facilitate each review.

The President opened the meeting and, after pressing that the demonstrations to follow were only simulations, gave the floor to the Secretary of the Council, Mr Eric Tistounet, to lead the session.

Mr Tistounet reported that the Secretariat has observed the prescriptions of General Assembly *Resolution 60/251* and Council *Resolution 5/1* “spirit and letter”.¹³ A small *ad hoc* UPR secretariat has already been assembled and will be expanded subject to the provision of UPR-specific funding from the General Assembly, reflecting equitable geographic representation. Mr Tistounet also assured the Council that the Secretariat’s work would be undertaken in “good faith” and restated the High Commissioner’s commitment to the UPR process.

Simulation on the order of States to be reviewed

Mr Tistounet told the Council that, in designing a mechanism on the order of review, the Secretariat had taken a “literal” reading of the relevant provisions in *Resolution 5/1*. He then commenced the first simulation and explained the operation of the proposed mechanism at length.¹⁴

On a step by step basis, the proposed mechanism works as follows:

¹² Supported by Bangladesh.

¹³ Referring to paragraphs 6, 7, 8, 9, 10, 11 and 12 of *Resolution 5/1* and paragraphs 5(e) and 9 of *Resolution 60/251*.

¹⁴ The Secretariat has prepared a draft note on the operation of the mechanism: “Main steps to be taken regarding the establishment of the UPR work programme (for the first year)”. The note is available on the OHCHR extranet. The OHCHR extranet can be accessed (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

Step one: States are tabled according to regional groups

- A table is created for each of the five regional groups. Each table lists all the States belonging to that group in English alphabetical order.
- Member States of the Council are flagged, as are States that have volunteered to be reviewed.

Step two: Each regional group table is reordered by the drawing of lots

- Bags are filled with the names of States from each regional group. The President will draw one State from each of the five bags.
- Each regional table will be reordered according to the State drawn from its bag. In the simulation, the Democratic Republic of the Congo (DRC) was drawn from the African Group bag. The African Group table was reordered in the following way:
 - The DRC became the alphabetical head of the table
 - The group was reordered in alphabetical order under the DRC, firstly by States whose terms ended in 2007, followed by States whose membership will end in 2008. Volunteers and remaining States followed
- A total of 16 States will be selected from across regions for the first review.¹⁵

Step three: Determination of the order of review

- The President will draw the names of the 16 States one-by-one from a bag. This will determine the order of review.

Discussion on the simulation

Almost all States that took the floor described the mechanism as complicated and complex. Some States were unwilling to support the proposed mechanism in its current form.¹⁶

Concern was voiced on the following issues:

- **Balance between member States and non-members in the review**

A number of States¹⁷ voiced concern at the projected balance between member and non-member States at the early stages of review.¹⁸ These States pressed that *Resolution 60/251* requires the Council to ensure that there is a mix of members and non-members in the order of review, and relates to the principle of equal treatment.¹⁹

Portugal and the UK acknowledged that achieving such balance at the early stages of the review process, while desirable, would be difficult to ensure given the priority of reviewing member States with one and two year terms. Mexico cited the incompatibility of one to three year membership terms with a UPR cycle of four years.

Pakistan proposed an alternative mechanism for determining the order of review: States with one year terms would be reviewed first; States with two year terms would be examined in the second year; and States with

¹⁵ The mechanism selected the top four African Group, five Asian Group, three Group of Latin American and Caribbean, two Western European and Other Group and one Eastern European Group states for examination.

¹⁶ Cuba and Pakistan.

¹⁷ Algeria, Cuba, Pakistan, South Africa, Russian Federation.

¹⁸ As previously mentioned, the mechanism prioritises the review of States whose term of membership expired in 2007 or expires in 2008.

¹⁹ Paragraph 9 of *Resolution 60/251* requires member States to be reviewed during their term of membership; paragraph 5(e) requires equal treatment of all States. Paragraph 8 of *Resolution 5/1* prescribes that the initial members of the Council, especially those elected for one or two-year terms, should be reviewed first, whilst also stating that a mix of member and observer States should be reviewed.

three years terms would be examined in the UPR's third year of operation. The reviews of non-member States would be interspersed throughout the three years.²⁰

In response, Mr Tistounet stated that balance in the review of members and non-members would improve with time, particularly once the current review backlog has been cleared. The President highlighted the fact that the Council is now in its second year and, despite the prescriptions of *Resolution 60/251*, has not yet reviewed any States.

- **Terms of membership that have ended and been renewed**

South Africa argued that, having been immediately re-elected upon completing a one year term, it never ceased being a member State and should therefore be reviewed on the basis of its current term of membership. Mr Tistounet dismissed this argument, asserting that *Resolution 60/251*²¹ clearly requires that all States elected to one and two year terms be reviewed first, regardless of the subsequent membership status.²²

- **Periodicity of review**

The Russian Federation raised an interesting point on the periodicity of review. It cited the possibility that States re-elected to Council membership at the end of a one year term may be subject to two reviews within a single four year UPR cycle.

Taking up this point, Amnesty International proposed that an interim arrangement be introduced exempting re-elected States from a second review with a single UPR cycle.

- **The review of least developed countries (LDCs)**

In answer to concerns expressed by States²³, Mr Tistounet told the Council that, under the proposed mechanism, LDCs were not likely to come up for review before 2009. He also assured the Council that information would be sent to LDCs to inform and assist them in their preparation for review.

The model for selecting the groups of three rapporteurs (troika)

Presentation of the model

Mr Tistounet gave a half-hearted presentation of the Secretariat's proposed model for selecting troikas. He conceded that not all the prescriptions of *Resolution 5/1*²⁴ have been met by the model, and that considerable work remains to be done.

The following explanations were offered:

- Each troika is made up of representatives of member States, each from a different regional group.

²⁰ Supported by China.

²¹ See paragraph 9.

²² Reportedly based on advice provided by the Office of the Legal Advisor.

²³ Including Bangladesh.

²⁴ Paragraph 16(d) states that 'a group of three rapporteurs, selected by the drawing of lots among the members of the Council and from different Regional Groups (*troika*) shall be established to facilitate each review, including the preparation of the report of the working group. OHCHR shall provide the necessary assistance and expertise to the rapporteurs.' Paragraph 17 states that 'the concerned country may request that one of the three rapporteurs be from its own Regional Group and may also request the substitution of a rapporteur on only one occasion'. Paragraph 18 provides that 'a rapporteur may ask to be excused from participation in a specific review process'.

- There will be 48 troikas, one for every State to be reviewed each year.
- While the majority of member States will have representatives on three troikas, three will have representatives on four troikas.
- The Secretariat has prepared a table allocating troika seats to regional groups.²⁵ Lots will be drawn to allocate member States to specific troikas.

One of the significant shortcomings in the current model relates to the possible replacement of a rapporteur at the request of the country under review. Another potential difficulty with the current model arises where a member of a troika does not want to participate in a particular review process. The model presented only allows for the replacement or substitution of an entire troika rather than individual members of it. This complicates and could well delay the assignment of troikas to country reviews.

Discussion on the simulation

The Russian Federation questioned how individual State representatives would be appointed to the troikas that their States are allocated. Egypt questioned why entire troikas, rather than individual State representatives on troikas, would have to be sacrificed where a request to be excused or replaced is made.²⁶ These questions went unanswered.

Next steps

Cuba posed the important question of how agreement would be reached on both proposed mechanisms before the scheduled deadline of Friday 21 September 2007. Insistent that the deadline would be preserved, the President stated that consultations would be held with States and with the Secretariat on each of the proposed mechanisms. He did not, however, elaborate on the time, venue or format of such consultations.

Other issues

The President announced that the statement of the High Commissioner for Human Rights scheduled to be delivered on 13 September would be followed by a debate and not by an interactive dialogue. He emphasised that the statement was not part of the annual report of the High Commissioner, which would be delivered at the March session.

At the beginning of the current session, the President had asked delegations to register with the Secretariat if they wished to speak on issues not explicitly mentioned in the programme of work.²⁷ He said that a large number of requests had been registered, and that he would try to rearrange the programme of work to take them into account. A revised version was distributed later in the day.²⁸ However, he said that this would require either a shortening of speaking time, or an extremely strict observance of time limits.

²⁵ Given the differing number of member States coming from each region, States from Asia and Africa will appear on more troikas than States from the other regional groups.

²⁶ Egypt suggested that in such cases, the next member State from the same regional group as the excused or replaced State, by order of troika, should fill the gap.

²⁷ See ISHR's Daily Update of 10 September 2007, available at <http://ishr.ch/hrm/council>.

²⁸ It is available on the OHCHR extranet, which can be accessed (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

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