

COUNCIL MONITOR

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HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE, 1ST SESSION SESSION OVERVIEW, 4-15 AUGUST 2008

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Introduction

The 1st session of the Human Rights Council Advisory Committee (the Advisory Committee) saw it grappling with its own identity as an independent expert mechanism kept on a tight rein by its parent body, the Human Rights Council (the Council).¹ A substantial part of the debates under each agenda item was dedicated to interpreting the requests from the Council and deciding on the appropriate response. Despite its lack of institutional framework, the Advisory Committee was able to produce some substantive recommendations for the Council's consideration. The Advisory Committee also demonstrated its openness to non-governmental organisations (NGOs) and expressed its regret at their limited presence at this session. The extent to which this new body can contribute to the promotion and protection of human rights, however, ultimately remains in the hands of the member States of the Council.

¹ For background information on the Advisory Committee and its membership, see ISHR's *Council Alert* for this session, available at www.ishr.ch/hrm/council/councilalert/council_alert_advisory_committee_1st%20session.pdf.

Overview of the proceedings

Opening statements

Ms Kyung-wha Kang, the Acting High Commissioner for Human Rights, and Mr Martin Uhomoibhi, the President of the Council, encouraged the Advisory Committee to actively take initiative and make recommendations to the Council. As a first step, they urged the experts to suggest ways in which studies and mandates pending from the predecessor, the Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission), should be concluded or continued. Although Mr Uhomoibhi did refer to the status of these studies as ‘unclear’, neither appeared to see the silence of the Council on these matters as a factor barring their discussion in the Advisory Committee. Both speakers also encouraged the Advisory Committee to engage with civil society.

Procedural matters

Election of officers

In their first private meeting, the members of the Advisory Committee decided on the principle of a rotating presidency, with three Vice-Chairpersons and a Rapporteur, each from different regional groups. Having been settled beforehand at the private meeting, all five officers were elected by acclamation. The bureau of the Advisory Committee is as follows:

Chairperson: Mr Miguel Alfonso Martínez (Latin American and Caribbean Group, GRULAC)

Vice-Chairpersons: Ms Mona Zulficar (African Group)

Ms Chung Chinsung (Asian Group)

Mr Vladimir Kartashkin (Eastern European Group, EEG)

Rapporteur: Mr Emmanuel Decaux (Western European and Others Group, WEOG).

It is notable that all but one member of the bureau, Ms Zulficar, were members of the Sub-Commission.

Appointment of members of the Working Group on Communications

The following experts were elected by acclamation to the Working Group on Communications:

Mr Shiqiu Chen (Asian Group)

Mr Decaux (WEOG)

Mr Kartashkin (EEG)

Ms Halima Embarek Warzazi (African Group)

Mr Martínez (GRULAC)

Rules of procedure and working methods

The rules of procedure followed during the 1st session of the Advisory Committee were largely based on those of the former Sub-Commission. Emphasis was placed, most heavily by the Chairperson, on collegiality and consensus decision-making. However, the Advisory Committee must learn to balance these values with the

time constraint that it is under.² Although all of the recommendations made at the session were adopted by consensus, the delicacy of the current approach was clearly demonstrated when Mr Martínez forced through the draft recommendation on the right of peoples to self-determination.³

A new method of work introduced at this session was the preparation of background documents and an oral introduction by the Secretariat in order to facilitate discussions on substantive issues. Despite this, the comments on most of the substantive topics remained general and, inevitably, the quality of debate in the plenary was relatively low.

During the discussions on this matter, Mr Kartashkin suggested that the Advisory Committee should have detailed rules of procedure to ensure clarity and thus prevent discussions on procedural matters from overshadowing the body's work.⁴ States,⁵ on the contrary, preferred that the Advisory Committee merely reiterate the provisions in *Resolution 5/1*. Following on from this, Mr José Antonio Bengoa Cabello suggested that, since the rules of procedure and working methods of the Advisory Committee must be in conformity with Council *Resolution 5/1*,⁶ they should be submitted to the Council for approval.⁷ Mr Latif Hüseyinov expressed his strong disagreement, arguing that this is an internal matter, and requires neither submission to nor approval by any other body.⁸

In the end, a drafting group with five members (one from each regional group) was set up to work inter-sessionally and present a document to be discussed and adopted by the plenary at its next session.⁹

Agenda and annual programme of work

The consensus was that the Advisory Committee is not yet in a position to decide its agenda or annual programme of work, as these depend largely on the tasks assigned to it by the Council. Therefore, no action was proposed on this point.

Although there has been no formal request to the Council, there is a general assumption among the members of the Advisory Committee that the next session will be held during the last week of January 2009. It is unclear whether this will be a continuation of the 1st session or a new session.

Status of studies mandated to be carried out by the Sub-Commission

In its last report,¹⁰ the Sub-Commission requested the Council to task the Advisory Committee with the continuation of a number of studies. However, the Council has yet to take any action on these. The members of the Advisory Committee and observers alike agreed that an explicit authorisation from the Council is necessary for it to continue the work pending from the Sub-Commission.

² According to Human Rights Council *Resolution 5/1* (18 June 2007), the Advisory Committee can meet up to 10 working days per year. Additional sessions may be scheduled with prior approval of the Council. Both Advisory Committee members and States were of the view that having two one-week sessions each year is preferable to the alternative of having one two-week session.

³ See below, p. 7.

⁴ Supported by Ms Chung.

⁵ India, Philippines, Bangladesh, Egypt.

⁶ Human Rights Council *Resolution 5/1* (18 June 2007).

⁷ Supported by Mr Miguel Alfonso Martínez, Mr Vladimir Kartashkin, Egypt, India.

⁸ Supported by Ms Warzazi.

⁹ The members of the drafting group are Mr Wolfgang Stefan Heinz (Western European and Others Group, WEOG), Ms Mona Zulficar (African Group), Mr Ansar Ahmed Burney (Asian Group) and Mr Latif Hüseyinov. The representative of the Latin American and Caribbean Group (GRULAC) is yet to be appointed. Ms Zulficar agreed to participate in the group provisionally, pending discussions with absent experts of the African group.

¹⁰ A/HRC/2/2·A/HRC/Sub.1/58/36, 'Report of the Sub-Commission on the promotion and protection of human rights on its fifty-eight session' (11 September 2006). Available at www2.ohchr.org/english/bodies/subcom/index.htm.

The disagreement among the members was on whether the Advisory Committee is in a position to recommend to the Council how it should proceed on this matter. Mr Decaux suggested that the Advisory Committee prepare a list specifying the status of each study, prioritising them by issue, and recommending follow-up action.¹¹ This ran counter to the position of several States,¹² which argued that such an exercise requires an explicit request from the Council. India pointed out that the final report of the Sub-Commission is not part of the official documentation of this session, thereby implying that it should not even be under discussion. Egypt added that by (de)prioritising issues, the Advisory Committee ‘would antagonise States that are traditionally supporters of the issue’. On a different point, Mr Jean Ziegler suggested that the Advisory Committee propose to the Council the publication of all completed reports.¹³ This discussion was continued in private and the outcome was in the form of two separate proposals to the Council. First, referring specifically to the two opening statements, the Advisory Committee submitted a shortlist of studies which it wishes to follow up.¹⁴ Second, it recommended that the Council authorise the publication of all the Sub-Commission studies which have not yet been published.¹⁵

Substantive matters

Human rights education and training

In its *Resolution 6/10*, the Council requested that the Advisory Committee ‘prepare a draft declaration on human rights education and training’ upon consultations with various stakeholders, including States, the Office of the High Commissioner for Human Rights (OHCHR), and civil society.¹⁶ Mr Martínez interpreted the task as being one of preparing ‘elements of a draft’.¹⁷ Switzerland, speaking on behalf of the co-sponsors of *Resolution 6/10*, clarified that the final outcome should be a draft declaration, but that the Advisory Committee should focus on preparing an interim report for March 2009.¹⁸ The propensity of some participants to limit the role to the Advisory Committee, also apparent in other discussions, is a cause of concern.

The Advisory Committee created a drafting group composed of five of its members (one representative from each regional group) to work on this issue.¹⁹ The group prepared a paper ‘containing the elements of the conceptual framework for further work and consultations’ for submission to the Council.²⁰

Right to food

In its *Resolution 7/14*, the Council requested that the Advisory Committee ‘consider potential recommendations for approval by the Council on possible further measures to enhance the realization of the

¹¹ Supported by Mr Chen, Bangladesh, France, Mexico, Germany, Argentina, International Movement against all Forms of Discrimination (IMADAR).

¹² Russian Federation, India, Egypt.

¹³ Supported by Mr Kartashkin, Egypt, Mexico.

¹⁴ A/HRC/AC/2008/1/L.17/Rev.2.

¹⁵ A/HRC/AC/2008/1/L.2. All draft recommendations can be accessed on the Advisory Committee extranet at <http://portal.ohchr.org> (fill out the form on www.ohchr.org/english/bodies/hrcouncil/form.htm to receive user name and password).

¹⁶ Para 1, Human Rights Council *Resolution 6/10* (28 September 2007).

¹⁷ Supported by India, Nigeria.

¹⁸ This was the interpretation of Mr Kartashkin, Ms Purification Quisumbing, Mr Shiqiu Chen, Mr Emmanuel Decaux, Ms Zulficar, Mr Shigeki Sakamoto.

¹⁹ The members of the drafting group are Mr Decaux (WEOG), Ms Halima Embarek Warzazi (African Group), Mr Kartashkin (EEG), Mr Héctor Felipe Fix Ferrero (GRULAC), and Ms Quisumbing (Asian Group).

²⁰ Annex, A/HRC/AC/2008/1/L.7.

right to food, bearing in mind the priority importance of promoting the implementation of existing standards'.²¹

Speakers drew attention to diverse aspects of the right to food which should be considered by the Advisory Committee, including areas which have so far been overlooked by the Council. Among these were hunger refugees,²² a convention on peasants' rights,²³ development,²⁴ and ensuring cooperation and coordination with the United Nations (UN) Special Rapporteur on the right to food to avoid duplication and to ensure coherence in their messages to the Council.²⁵ Taking a more cautious stance, France stressed that the Advisory Committee must stay within the mandate from the Council, and avoid 'confusing' it with 'other questions'.

A drafting group consisting of five members (one from each regional group) was constituted to work on this topic.²⁶ The group held consultations with representatives of the UN Conference on Trade and Development (UNCTAD) and the Office of the UN High Commissioner for Refugees (UNHCR). The drafting group prepared three draft recommendations for submission to the Council. First, it urged the Council to appeal to its member States to increase their voluntary contributions to enable the UNHCR to fulfil its mandate.²⁷ Second, it suggested that the Council launch an appeal to the UN Secretary-General and to States to 'make available their good offices so as to guarantee to hunger refugees the right to non-refoulement'.²⁸ Finally, it asked for the Council's approval to prepare studies on the current food crisis, hunger refugees, and rights of peasants. It also proposed to meet two days prior to the session of the Advisory Committee scheduled for January 2009 to review its draft reports.²⁹

Human rights of women

The members of the Advisory Committee were mainly concerned with the interpretation of the Council's request that it 'regularly and systematically integrate a gender perspective' into the implementation of its mandate.³⁰ Mexico, one of the co-sponsors of the resolution, clarified that the Advisory Committee is not being requested to carry out specific work in this area, but rather to adopt a specific methodology (that of integrating a gender perspective) in its work. Some of the members, however, were not satisfied with merely incorporating a gender perspective in their discussions, and made suggestions for studies which could be carried out.³¹

The Advisory Committee requested that the Council allow three of its members³² to prepare 'a set of draft guidelines on methods to operationalize gender mainstreaming at all levels (...) in the implementation of the Committee's mandate', as well as to 'identify proposals for concrete action in specific areas, special procedures or further measures needed to enhance substantive gender equality within the United Nations

²¹ Para 34, Human Rights Council *Resolution 7/14* (27 March 2008).

²² Mr Jean Ziegler.

²³ Via Campesina, welcomed by Mr José Antonio Bengoa Cabello.

²⁴ Nigeria.

²⁵ France, OHCHR.

²⁶ The members of the drafting group are Mr Ziegler (WEOG), Mr Bengoa (GRULAC), Ms Zulficar (African Group), Ms Chung Chinsung (Asian Group), and Mr Hüseyinov (EEG).

²⁷ A/HRC/AC/2008/1/L.14.

²⁸ A/HRC/AC/2008/1/L.13.

²⁹ A/HRC/AC/2008/1/L.15.

³⁰ Para 18, Human Rights Council *Resolution 6/30* (14 December 2007).

³¹ Ms Zulficar, Ms Chung, Ms Warzazi, Mr Decaux. Argentina was supportive of the idea of a compilation of best practices.

³² Ms Chung, Ms Quisumbing and Ms Zulficar.

system'.³³ The Advisory Committee's readiness to carry out more tasks than was originally requested by the Council is encouraging.

Promotion of a democratic and equitable international order

The Advisory Committee was mandated by the Council to pay due attention to its *Resolution 8/5* on the promotion of a democratic and equitable international order, and 'to make contributions towards its implementation'.³⁴ Mr Kartashkin proposed that, to make a substantive contribution, the Advisory Committee should identify those issues upon which agreement can be achieved and define concepts in a way which can be acceptable to all States.³⁵ This was opposed by Ms Warzazi, who argued that acceptability to the Council should not be an objective of the Advisory Committee's work. Ms Chung similarly pointed out that the Advisory Committee is in a position to make a contribution in a far less politicised manner than the Council, and suggested that it respond to the issue 'more actively'.³⁶ Failing to arrive at an agreement, the Advisory Committee decided to continue its deliberations on this matter at its next session.³⁷ This debate starkly demonstrated the tension that exists in the very mandate of this body, between acting as an independent think-tank and serving as a subsidiary mechanism which is tightly controlled by the Council.

Missing persons

In March 2008, the Council decided to hold a panel discussion on the question of missing persons at its September 2008 session³⁸ 'with a view to subsequently charging the Advisory Committee, at the same session, with the preparation of a study on best practices in the matter'.³⁹

The main debate in the Advisory Committee was on the distinction between missing persons and victims of enforced disappearance, and whether the mandate from the Council includes the latter. The majority of States that spoke were of the view that missing persons falls under international humanitarian law, whereas enforced disappearance is a question of international human rights law, and that the Advisory Committee should only deal with the question of missing persons.⁴⁰ The only State that differed from this view was Nigeria, which urged the Advisory Committee to study the situation of missing persons both in conflict and in peacetime.

Although some members⁴¹ were keen to begin working on this issue, the conclusion was that the most appropriate action is to request that the President of the Council extend an invitation to Mr Hüseyinov, who will be involved in the preparation of the study, to participate in the panel discussion in September 2008.⁴²

Human rights of persons with disabilities

There was a general consensus that the mandate from the Council on this issue⁴³ is similar to the one on incorporating a gender perspective, namely the mainstreaming of the consideration of the human rights of

³³ A/HRC/AC/2008/1/L.9.

³⁴ Para 11, Human Rights Council *Resolution 8/5* (18 June 2008).

³⁵ The suggestion of taking a modest approach was supported by Mr Decaux.

³⁶ Supported by Ms Zulficar.

³⁷ A/HRC/AC/2008/1/L.3.

³⁸ This is provisionally set to take place at 3pm on 22 September 2008. Check the website for the 9th session of the Human Rights Council (www2.ohchr.org/english/bodies/hrcouncil/9session) for the latest programme of work.

³⁹ Para 11, Human Rights Council *Resolution 7/28* (28 March 2008).

⁴⁰ Russian Federation, Mexico, France. Also Mr Hüseyinov.

⁴¹ Mr Hüseyinov, Mr Kartashkin, Mr Decaux, Ms Quisumbing.

⁴² A/HRC/AC/2008/1/L.8.

⁴³ Para 5, Human Rights Council *Resolution 7/9* (27 March 2008).

persons with disabilities in its work on all issues. This was confirmed by Mexico, a co-sponsor of the resolution. No recommendation was made to the Council on this matter.

Elimination of discrimination against persons affected by leprosy and their family members

At its session in June 2008, the Council requested that OHCHR prepare a report on measures taken by Governments to eliminate discrimination against persons affected by leprosy and their family members.⁴⁴ It furthermore requested that the Advisory Committee examine this report and ‘formulate a draft set of principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members, and to submit it to the Council for its consideration by September 2009’.⁴⁵

Mr Shigeki Sakamoto volunteered to work on this issue, and his initiative was endorsed by all the other members of the Advisory Committee.⁴⁶ The tasks to be carried out by Mr Sakamoto, as the Special Rapporteur, were outlined in a recommendation to the Council.⁴⁷

Other recommendations

The rights of peoples to self-determination

Responding to repeated calls by NGOs to address the issue of the rights of peoples to self-determination,⁴⁸ Mr Ziegler prepared a draft recommendation on this matter.⁴⁹ Mr Ziegler and Ms Zulficar explained that this document merely reflects the Advisory Committee’s interest in this issue and its decision to continue discussing it at its next session. They stressed that no concrete proposals are being made at this stage. However, some members expressed their concern that such a proposal is beyond the mandate of the Advisory Committee.⁵⁰ The General Assembly resolution⁵¹ referred to in the draft text requested that the Council, not its subsidiary bodies, give special attention to self-determination. Therefore, in their view, the Advisory Committee may not consider this issue without an explicit mandate from the Council.

In an attempt to resolve this impasse, Mr Bengoa proposed an amendment which states that ‘the Advisory Committee...decides to consider this matter only if the Human Rights Council addresses a petition on this matter to [it]’. Although this text was generally more acceptable to the members that had expressed concerns, there was still some feeling of unease. Mr Decaux expressed his reservation about using the term ‘decides’, as the Advisory Committee does not have the mandate to make any decisions. Ms Warzazi requested a short break to discuss this new text informally, asserting that if otherwise, she would formally propose that this issue be postponed until next year. Mr Martínez, however, passed over such comments and declared the recommendation adopted by consensus. Mr Hüseyinov expressed his strong objection to this rushed procedure and asked that the records reflect this. Mr Martínez dismissed his colleague’s statement and insisted that the Advisory Committee proceeded to the next draft recommendation in the interest of time. Mr Martínez’s heavy-handed chairing and his forcing through this document ‘by consensus’ dampened the collegiality that he champions.

⁴⁴ Para 4, Human Rights Council *Resolution 8/13* (18 June 2008).

⁴⁵ Para 5, *Ibid.*

⁴⁶ Japan expressed its encouragement and offered its support.

⁴⁷ A/HRC/AC/2008/1/L.8.

⁴⁸ Indigenous Council of South America, World Association for the School as an Instrument of Peace (EIP).

⁴⁹ A/HRC/AC/2008/1/L.16.

⁵⁰ Ms Warzazi, Mr Hüseyinov, Ms Quisumbing.

⁵¹ General Assembly *Resolution 62/14* (18 December 2007).

Official summary records

The Advisory Committee recommended that the Council request OHCHR ‘take the necessary steps to provide official summary records of all plenary meetings’ of the Advisory Committee and that the meetings be made accessible to a wider audience through the use of webcasting.⁵²

New bodies established by the Human Rights Council

The Advisory Committee designated three of its members to follow and brief the other members in January 2009 on the work of the other bodies subsidiary to the Council, namely the Social Forum,⁵³ the Forum on minority issues,⁵⁴ and the expert mechanism on the rights of indigenous peoples.⁵⁵

Concluding comments

The inaugural session of the Advisory Committee demonstrated its members’ desire for it to function as an active and innovative independent expert mechanism in spite of the restrictive mandate from the Council. The Advisory Committee has interpreted broadly the requests made to it by the Council and volunteered itself for further action. For instance, the experts debated at length whether the Advisory Committee should propose further action in relation to gender mainstreaming and missing persons. The States which sponsored the resolutions requesting action from the Advisory Committee have been largely supportive of such initiatives. However, there have also been others closely observing and reminding the Advisory Committee of its narrow mandate and of the requirement of prior approval by the Council of any action it wishes to take.⁵⁶ This polarisation among States is telling of the debates that may take place in the Council when it considers the recommendations from the Advisory Committee next month.⁵⁷

Moreover, the experts have been very open to contributions from observers, in particular NGOs. A case in point is Via Campesina’s proposal for a convention on peasant’s rights, which the Advisory Committee will explore further upon approval by the Council. The bureau held weekly meetings with NGOs and also introduced the practice of meeting separately with State delegations.

On the flip side, the level of NGO engagement with the Advisory Committee was very low. Few, if any, NGOs spoke under each agenda item and only two organised parallel events.⁵⁸ This was regrettable given the active solicitation of NGO contributions by the Advisory Committee and the favourable conditions for NGOs to engage in the discussions.⁵⁹ The members of the Advisory Committee reiterated their openness to NGOs on various occasions and responded directly to their concerns, including by drafting recommendations to the Council. Although the effectiveness of the Advisory Committee is yet to be demonstrated, this avenue for NGO input is largely untapped and merits further attention.

⁵² A/HRC/AC/2008/1/L.1.

⁵³ Mr Bengoa.

⁵⁴ Ms Zulficar.

⁵⁵ Mr Martínez.

⁵⁶ Such a conservative stance was also taken by some of the members.

⁵⁷ This is due to take place at 3pm on 16 September 2008. See footnote 39.

⁵⁸ Europe-Third World Centre (CETIM) and Association of World Citizens (AWC).

⁵⁹ For example, NGOs have up to 15 minutes of speaking time, can hand out written information in an informal manner, organise parallel events, and participate in the drafting groups.

The Advisory Committee has taken its first tentative steps towards establishing itself as an independent expert body. In its recommendations, it has conscientiously sought to balance two potentially conflicting priorities, real substantive contribution and acceptability to its parent body. The response of the Council to this first set of recommendations will be central to ascertaining the Advisory Committee's niche within the UN human rights system. This, in turn, will give NGOs an early indication of the value of engaging with this new body.

There is some uncertainty regarding the timing of the next session of the Advisory Committee. Although no formal request has been made on this issue, it is likely that it will be discussed in the Council when it considers its human rights bodies and mechanisms (item 5) at its session in September 2008.⁶⁰

⁶⁰ This is provisionally set to take place at 3pm on 16 September 2008. Check the website for the 9th session of the Human Rights Council (www2.ohchr.org/english/bodies/hrcouncil/9session) for the latest programme of work.

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