The Human Rights Council still to come

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How can the Human Rights Council be better in its second decade than in its first? Where should it be at the end of its second decade? International human rights expert Chris Sidoti, sets out five key proposals to make the Council more principled and effective in its work.

Can it really be ten years?

Ten years since the Human Rights Council’s first exciting, exhausting, excruciating year of institution building?

Ten years since the Council’s first President, the inspirational Ambassador Luis Alfonso de Alba, led days and nights of complex negotiations and barely acceptable compromises?

It feels like both a long distant memory and a still present nightmare. Looking back on the Council over the decade since then, I see it as having been significantly better than I had feared and expected but far, far less than it could and should be.

The Council was established to replace what by 2005 had become known as the ‘Discredited Commission on Human Rights’. There was never any proper assessment of the Commission and its work – both achievements and failures – before the tide of political opinion, led by the United States and certain leading international human rights non-governmental organisations, turned irrevocably against it. It was condemned for not being objective, impartial, apolitical, even handed and balanced in its work. As if any UN body constituted by States could be objective, impartial, apolitical, even handed and balanced. The rhetoric surrounding the establishment of the Council was that the Council would be, but of course it is not. Certainly it has not been as bad as the old Commission was in its worst years, but nor has it been as good as the old Commission was in its best years.

So how can the Council be better in its second decade than in its first? Where should it be at the end of its second decade? I have five suggestions, of equal significance for the Council’s future.

A focus on implementation
First, the Council’s priority for the second decade has to be implementation. This was said ten years ago too. In fact some said that the era of human rights standard setting was over and the era of standards implementation was beginning. Neither has proved to be correct. Some new standards were recognised as needed and more are still required. And implementation is still sadly deficient. While not closing the door to further standard setting, the priority now has to be implementation. That includes implementation of the Council’s own resolutions. A body that resolves endlessly to no effect quickly loses credibility and respect and the Council is well advanced along that path.

At each of its sessions the Council should have a report from the High Commissioner for Human Rights on the implementation status of its resolutions, identifying, in respect of each resolution, the obstacles to implementation. A status report updated three times a year would at least focus attention better on implementation. Then the Council should discuss what action to take to deal with obstacles to implementation.

**Getting serious about cooperation with the Council**

Second, the General Assembly and the Council need to take more seriously the obligation on UN member States to cooperate fully with the Council and the broader international human rights system. Cooperation has two dimensions for each State: respect for and compliance with international human rights standards at the domestic level, and positive engagement with the human rights system at the international level. These should be the guiding principles in electing States to membership of the Council and then in suspending States from membership of the Council.

If necessary, General Assembly resolution 60/251 that established the Council should be supplemented by new eligibility criteria for candidates for Council election and for the application of the current suspension provisions. It is ridiculous, when we look at the behaviour of States that have been members of the Council over the past decade, that the Council has exercised the suspension power on only one occasion, in the case of Libya.

**Strengthening the appointment of Special Procedures**

Third, the procedure for the appointment of Special Procedures mandate holders should be changed to involve non-political human rights experts rather than political diplomats. In the days of the Commission, mandate holders were appointed by the Commission’s chairperson personally. There was usually some consultation with States, non-governmental organisations, academics and other experts but an appointment was basically the individual decision of the chairperson in a completely opaque process. The process adopted by the Council, where the appointments are made with the endorsement of the Council itself following recommendations of a consultative group of five ambassadors, is certainly far more formal and regularised and less opaque. However, I have no doubt that, although there are some excellent mandate holders today, the average quality of mandate holders is lower under the present Council system than it was under the old Commission system. On average, mandate holders today are less expert and more innocuous than they were ten years ago.

The current system should be changed rather than scrapped. Two changes would greatly enhance the quality of mandate holders, while maintaining or even increasing the level of transparency in the process. First, replace the five ambassadors on the consultative group with independent human rights experts who have been nominated through a wide process, including past and present mandate holders and members of treaty monitoring bodies, and appointed by the Council President personally. Second, have the Council President personally make the appointments of mandate holders from short lists of highly suitable candidates produced by the consultative group of experts. In making appointments the President should report publicly on the process in a similar manner to the present reports of the consultative group and the President.

**Expert involvement in the Universal Periodic Review**

Fourth, the Universal Periodic Review (UPR) should involve experts. This was discussed during the Council’s institution building year and the way was left open for individual States to involve experts in their delegations in the UPR process. In practice this has not occurred. As a result, the UPR is more politicised than it should be and less effective than it could be.

The active participation of Council member States and other States in the UPR process has been one of the
reasons for its success. That should not change. However, there should also be a role for independent experts
to bring both greater knowledge and sharper focus to the process than diplomats bring. The way to do this is
to change the membership of the ‘troikas’ that support each review, replacing the diplomats with independent
experts taken from a panel of experts appointed for this purpose. The role of the ‘troika’ should also be
expanded to give it responsibility for identifying the most critical human rights issues in respect of each State.
The ‘troika’ should not limit the ability of States to raise whatever issues they wish to raise but it should assist
in prioritising issues and bring greater focus to the review.

**Ensuring the participation of rights holders and defenders**

Fifth, the Council must ensure and protect the full participation of human rights defenders in its processes.
Indeed, it should extend participation. In the institution building year the Council continued the procedures of
the old Commission for the participation of non-governmental organisations. However, the practice has fallen
far short of the agreed procedures. Many States have sought to silence the voices of defenders and some have
even threatened and intimated defenders at the Council sessions. Some Council Presidents have resisted these
pressures with determination, but others have been as weak as water.

The Council’s agreed procedures for NGO participation should be respected and enforced. In its first year the
Council spent significant time and effort in developing a code of conduct for Special Procedures but ignored
the far greater need for a code of conduct for States. The Council should develop and enforce a code of
conduct for States, both members and observers, to ensure that its own procedures are respected. It should
have an independent committee to consider allegations of violations of the code of conduct for States which
reports to the President and the Council on the results of its deliberations.

**The Council to come**

In many ways the Human Rights Council has come a long way in ten years. Nonetheless, it has a far longer
way still to go before it can claim to be effective and principled in its work. This is the Council that is still to
come.

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Board of Trustees of the UN Voluntary Fund for Technical Cooperation in the Field of Human Rights in 2011.
He served as Director of ISHR from 2003 to 2007, and is currently a board member. He has also served as
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