

HUMAN RIGHTS COUNCIL

Overview of the 1st session (Geneva, 19 to 30 June 2006)

The Human Rights Council: where are we now?

by Chris Sidoti and Nicholas Calacouras

The new Human Rights Council (the Council) held its first session from 19 to 30 June 2006, amid hope and scepticism. The session failed to live up to the rhetoric of a "new start" and a "new commitment" to human rights but it was certainly far better than many had feared. The pity was that the many accomplishments and good spirit of most of the two-week session were dissipated by the highly politicised, selective actions initiated by the member States of the Organisation of the Islamic Conference (OIC) during the last hours of the session.

The former Commission on Human Rights (the Commission) had been abolished and replaced by the Human Rights Council precisely because of its perceived politicisation and selectivity. General Assembly *Resolution 60/251* proclaimed a new working methodology of collaboration, objectivity, and even-handedness. The debates of the Council in the plenary generally reflected this. There was less heat, less provocation and less confrontation than in recent years. The informal consultations on draft resolutions running parallel to the plenary were different. There, the discussions sounded more like the rejected past than a new hopeful future.

Whether the new Council will be different from the old Commission remains an open question. Fortunately, however, its first session produced some very good results.

Setting the scene

Existing commitments of UN conference services in Geneva meant that only ten days were available for the first session of the Human Rights Council. A significant part of that time, almost four days, was allocated to the inauguration of the Council and the High Level Segment. The President of the General Assembly, Swedish Ambassador Mr. Jan Eliasson, and UN Secretary-General, Mr. Kofi Annan, led the inaugural meeting. It was a very low-key affair that seemed to reflect a concern not to make too much of what is still an unproven enterprise. The High Level Segment featured over 80 deputy presidents, deputy prime ministers, foreign ministers and vice ministers. There were many references to new beginnings, fresh starts, and hopes for the Council.

At the conclusion of the High Level Segment, in a significant initiative by the first President of the Council, Mexican Ambassador Mr. Luis Alfonso de Alba, four highly respected human rights defenders and activists were invited to address the plenary, expressing their visions for the new Council. They were complemented by a statement on behalf of the International Coordinating Committee of National Human Rights Institutions (NHRIs).¹

Tasks for the new Council

Much of the first session had to be devoted to the task of establishing the new Council. The General Assembly Resolution establishing the Council transferred to it all the mandates, mechanisms, functions and responsibilities of the old Commission and required that they be reviewed during the Council's first year. It also established a new system of universal periodic review (UPR) of all UN member States in terms of their performance of human rights obligations and commitments. The mechanisms for the UPR have to be developed by the Council within its first year. The Council also has the broad responsibility to develop its own modalities and agenda.

In addressing the transfer of mandates and mechanisms, the Council resolved to renew and extend all existing mandates and mandate holders, including members of the Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission), and the Commission's complaint procedure (the 1503 procedure), for one year, pending completion of the review². It established an inter-sessional, open-ended, intergovernmental Working Group to undertake the task of reviewing and where necessary, improving and rationalising all mandates of the Commission³. The Working Group has been authorised to meet for 20 days and must report to the Council at each session. Meantime, the Sub-Commission will meet for its final session from 31 July to 18 August.

¹ See ISHR's report: <http://www.ishr.ch/hrm/HRC/Session1/HLS.pdf>.

² A/HRC/2006/102 (30 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

³ A/HRC/2006/104 (30 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

Many States and observers expressed particular interest in the UPR mechanism. The modalities of this new mechanism are yet to be established, causing speculation as to the nature and frequency of each review. The Council created a second inter-sessional, open-ended, intergovernmental Working Group for this. This Working Group is authorised to meet for ten days to establish the modalities and time allocation⁴. ISHR will be following closely and reporting on this process. For timely information on the deliberations and decisions taken please visit ISHR's website at www.ishr.ch.

Both working groups are required to hold transparent and inclusive consultations involving all stakeholders, including NGOs and NHRIs.

Program of work

In establishing a program of work for the first year, many States and observers were faced with ensuring a proper balance between certainty and flexibility. The Council needs the capacity to address significant human rights issues as they arise but member States, NHRIs and NGOs, especially NGOs at the regional and national levels, need adequate notice of which matters will be discussed and when so that they may plan their contribution to and participation in the Council's work. There was also the view that in its first year the Council's agenda should be as flexible as possible to take into account the institution-building work it has to undertake. The Council decided upon a general framework for these first twelve months⁵, which was accepted on the understanding that it would not be used as a precedent for subsequent years.

The Council will meet three more times within its first twelve months of existence:

- The second session will be held from 18 September to 6 October and will be directed towards handling the legacy of the former Commission. All reports that were intended for the 62nd session of the Commission will be received and discussed by the Council then. It will also receive updates from the working groups established at the first session and from the High Commissioner for Human Rights (the High Commissioner) and will be able to consider a limited number of substantive matters. For further information on the reports intended to be considered by the 62nd session of the Commission, please see <http://www.ishr.ch/hrm/chr62/Summaries/Item-contents.htm>;
- The third session of the Council, from 17 November to 8 December, will focus more on the methods of work and the agenda for future sessions. Again it will receive updates from the working groups and from the High Commissioner. It will be able to consider a limited number of substantive matters;
- The fourth session, from 12 March to 6 April 2007, will make the final decisions on the process for the UPR and the review of mandates. It will also receive, discuss, and respond to new reports of the special procedures. The High Commissioner will present her annual report. The General Assembly Resolution provides that one of the Council's sessions each year should be the main session. In 2007, the March-April session is likely to be designated the main session and so will include a High Level Segment.

Standard-setting

While important institution-building work had to be done, the Council's first session was also marked by the adoption of two important new human rights instruments, after years of negotiations. First, the Council adopted by consensus the *International Convention for the Protection of All Persons from Enforced Disappearance*⁶. Then it finalised 21 years of work, first through the Sub-Commission and then through a Commission working group by adopting the *Declaration on the Rights of Indigenous Peoples*⁷. Regrettably this was not so consensual, with Council members Canada and Russia, supported by non-members Australia, New Zealand, and the United States, fighting adoption to the end and forcing a vote. The end vote was 30 in favour, two against with 12 abstentions. Both instruments were referred to the General Assembly for adoption later this year.

The Council also made progress on a possible new instrument, an Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights* to permit individual complaints under the Covenant. It extended the open-ended intergovernmental Working Group for two years with a specific mandate to prepare

⁴ A/HRC/2006/103 (30 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

⁵ A/HRC/2006/105 (30 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

⁶ A/HRC/1/2006/1 (29 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

⁷ A/HRC/1/2006/2 (29 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

a draft Optional Protocol⁸. The Working Group will meet for ten working days per year and will report back to the Council.

The Council took two other decisions by consensus in relation to human rights standards. The Working Group on the Effective Implementation of the Durban Declaration and Programme of Action was also extended for a further three years⁹. A report is to be presented to this Working Group at its next session, prepared by five experts appointed by the High Commissioner, on the “content and scope of the substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance”. The Committee on the Elimination of Racial Discrimination has also been requested to make recommendations to strengthen the implementation of the *Convention on the Elimination of Racial Discrimination*. The Council also renewed the mandate of the Working Group on the Right to Development for one year.

Substantive issues

Many feared that the Council was at risk of addressing only procedural matters during its first session, ignoring pressing or substantive human rights issues. In response to this, the Council dedicated a part of the work program to the discussion of five substantive issues: the situation of human rights in Palestine and other Occupied Arab Territories; the *Abuja Peace Agreements* in the Sudan; the human rights of migrants; the role of human rights defenders; and avoiding incitement to religious or racial hatred and violence through the promotion of tolerance and dialogue.

These discussions were intended to result in a Presidential Statement, reflecting a consensus on the issues. Instead the Council adopted resolutions on incitement to religious hatred¹⁰ and the human rights situation in Palestine and other Occupied Arab Territories¹¹. These resolutions dealt with very serious human rights issues. They could and should have been developed as consensus resolutions. But the sponsors, predominantly member States of the Organisation of the Islamic Conference, rejected the opportunity to have good, strong resolutions passed by consensus. As a result, unbalanced, deficient resolutions were passed on a vote of Council member States, with significant numbers voting against them.

Positively, the resolutions represent important endorsements of the system and functions of the special procedures, both thematic and country-specific mandates, and the concept of the new Council as a standing or permanent body that becomes seized of a matter and receives regular reports in relation to it. These are important precedents for the future.

The Council also adopted statements on hostage-taking¹² and on the entry into force of the Optional Protocol to the *Convention against Torture*¹³, both declaratory statements with little follow-up envisaged.

A last word

The first session of the new Human Rights Council was better than expected, though certainly not all that we could have hoped for. Much of its success is due to the astute management of the process by the President, Ambassador de Alba. The Council is fortunate to have him as its leader during this formative first year. Building this institution will be a long and complex task and its success is not assured. The work has only just begun.

⁸ A/HRC/1/2006/3 (29 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

⁹ A/HRC/2006/5 (30 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

¹⁰ A/HRC/2006/107 (30 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

¹¹ A/HRC/2006/106 (30 June 2006) available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=2&t=4.

¹² Initiative proposed by the Russian Federation.

¹³ Initiative proposed by Denmark.