

COUNCIL MONITOR

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HUMAN RIGHTS COUNCIL, INSTITUTION BUILDING PRESIDENT'S OPEN MEETING, 10 MAY 2007 FINAL COPY

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Overview

Ambassador Luis Alfonso De Alba, the President of the Human Rights Council (the Council), convened the first of a series of open consultations on the institution building process. At the end of the Working Group sessions, he had announced his intention to continue consultations on all outstanding issues on two parallel tracks. The first of these tracks is a series of informal, private, bilateral and multilateral meetings in which the President will consult with all delegations, regional groups and observers to identify and resolve pending issues. Parallel to this, public and open consultations will be conducted at least once a week to inform stakeholders of the progress of negotiations and provide opportunities to raise substantive issues in a more open forum. The remaining three open consultations are scheduled for 18, 24 and 25 May.

The President reiterated the commitment to have such open meetings at least once a week. He reminded that he had started a series of meetings with the regional groups, a process of bilateral consultations as well as meetings with the Office of the High Commissioner for Human Rights (OHCHR). The first open meeting was devoted primarily to further discussion of the pending issues in relation to the universal periodic review (UPR). The President asked delegations to concentrate on the UPR, saying that the other subjects were to be tackled at a later point. He briefly mentioned some proposals for the review of special procedures, but said more consultations were needed to concretise them.

He circulated a discussion paper on selected aspects of the UPR, saying that his current focus was on the preparatory stages of the review. On the whole, the paper was favourably received by delegations, although some made critical comments. In particular, the fact that the President's discussion paper does not define a role for independent expertise in the review process, the involvement of the OHCHR and the selection of rapporteurs gave rise to some debate. The President will now take the comments into consideration and revise the paper. In parallel, he will start to hold private meetings on the other aspects of the institution building. The next open meeting will take place on Friday, 18 May 2007.

International Service for Human Rights, 1 Rue de Varembe, P. O. Box 16, 1211 Geneva 20, Switzerland

Ph: +41 22 7335123, Fax: +41 22 7330826

E-mail: information@ishr-sidh.ch, Website: www.ishr.ch/hrm/council

Background

The Council at its first and third session decided to establish open-ended intergovernmental, intersessional Working Groups to discuss different aspects of its institution building.¹ The discussions in the Working Groups were facilitated by the Council's Vice-Presidents and other selected Ambassadors, appointed by the President. After the conclusion of discussions of the Working Groups on 27 April, the President took over the process from the Facilitators and has set out to bring the different strands of negotiations to a successful conclusion by 18 June 2007.²

The levels of progress the different Working Groups were able to achieve during their mandate period differed significantly from one group to the other.³ The discussion to develop the modalities of the UPR was relatively advanced at the end of the Working Group on UPR. During the wrap-up session of the Working Groups, the Facilitator for that Working Group had outlined several issues that needed further discussion. The first issue concerned the role of experts, in particular whether the UPR should be a purely intergovernmental process or involve experts. This issue also included a continuing debate over whether the rapporteurs of the mechanism should be representatives of member States or independent experts. The Facilitator also noted the possibility of appointing both an independent expert and a representative of a member State as joint rapporteurs. Other pending issues included whether the periodicity would be four or five years, and whether international humanitarian law should be used as a basis for review.

Universal periodic review (UPR)

Discussion paper on the UPR

The President opened the consultations by presenting a discussion paper on some elements related to the preparatory stages of the UPR. According to the discussion paper and the President's explanations, the review would be based on three types of documents. The first document would be a report prepared by the State, through a broad consultation process at the national level. Secondly, a compilation of information contained in reports of treaty bodies, special procedures and other relevant UN documents would be prepared by the Office of the High Commissioner for Human Rights (OHCHR). In addition, the Council "could also take into consideration"⁴ credible and reliable information from other relevant stakeholders. The compilation and the other information would be summarised, again by the OHCHR, to match the limit of 20 pages applied to the

¹ The first Working Group was tasked with developing the modalities of the universal periodic review mechanism. The second Working Group was tasked with formulating concrete recommendations on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities in order to maintain a system of special procedures, expert advice and a complaint procedure. This Working Group was divided into 3 segments (on the review of special procedures, on a complaint procedure and on an expert advisory body). The third Working Group was mandated to formulate concrete recommendations on the Council's agenda, its annual programme of work, its methods of work as well as its rules of procedure. It was divided in two segments (agenda and programme of work, as well as methods of work and rules of procedure). See the ISHR website for more background information and for reports of the meetings of these Working Groups: <http://www.ishr.ch/hrm/council>.

² Technically, General Assembly *Resolution 60/251* allows for the work to continue until 30 June 2007, since that is one year after the conclusion of the first session of the Council. However, because some members and the President will be replaced on 19 June 2007 it is agreed that the institution building must be completed by 18 June 2007.

³ See the ISHR Daily Highlight on the wrap-up session of 27 April 2007, available at http://ishr.ch/hrm/council/wg/wg_reports/highlights/wgs_highlights_27_april_07_wrapup.pdf.

⁴ Emphasis added.

State report as well. To take on that additional burden, a specific unit would be set up within the OHCHR to support the UPR.

The discussion paper sets out to tentative modalities of the interactive dialogue. In particular, the paper suggests allocating a reasonable timeframe between the review and the adoption of the report on each State “in *the* working group”.⁵ This would mean that there would be only one working group conducting the review.⁶

As a last element, the discussion paper addresses the preparation of the outcome. The President’s suggestion was to have a group of three rapporteurs from different regional groups, selected by drawing lots from the 47 members of the Working Group. The President explained that three rapporteurs would be less susceptible to polarisation of their work than two. Two rapporteurs could be seen as one of them attacking and the other defending the State under review. The paper also includes a provision on the OHCHR providing all necessary support to the rapporteurs.

The discussion paper is silent on the involvement of experts. The President pointed out that the use of the word ‘expertise’ could be useful to prevent polarisation of the debate. He added that while his discussion paper did not explicitly mention ‘expertise’ his formula did not exclude it either, and that the issue needed to be further explored.

Reactions by members and observers

Most States who took the floor were favourable to the President’s two-track approach, and they welcomed the opportunity of holding open informal consultations. The majority of interventions were directed at specific points in the President’s discussion paper. Some States, however, commented on points not raised in the paper. Australia stressed that the Working Group had not yet agreed on the inclusion of international humanitarian law as a basis for review, and that this should be further discussed. Sri Lanka (on behalf of the Asian Group) said that they could accept a periodicity of 5 years, and that decisions by the UPR should be taken by consensus.

Expertise

The inclusion of expertise in the review process enjoyed wide support, and many States regretted the absence of that point from the discussion paper.⁷ Argentina stressed that the UPR needed the support of independent experts, and that the issue was of vital importance and should be addressed as soon as possible. The Philippines agreed to have a role for experts, and stressed that they should assist the Council in drafting realistic and implementable recommendations. India on the other hand thought that the expertise provided by the OHCHR would be sufficient. A number of States supported the involvement of NGOs and other stakeholders in the process.⁸ However, some were of the opinion that this involvement should be restricted to the national level.⁹

Sources of information

Related to the question of NGO input, some States opposed the idea of having a single summary comprising both elements from the compilation of information by OHCHR as well as elements from other sources of information. Singapore pointed out that the three sources of information had to be kept separate.

⁵ Emphasis added.

⁶ This was also identified as an element of convergence in the Facilitator’s final non-paper. However, some States highlighted that it had not been finally agreed upon in the Working Group (Australia).

⁷ Argentina, Germany (on behalf of the EU), Norway, Philippines, Switzerland.

⁸ Algeria, Argentina, Brazil, Germany (on behalf of the EU), Iran, Singapore, Switzerland, USA.

⁹ Algeria (on behalf of the African Group), Iran, Pakistan (on behalf of the OIC).

Algeria (on behalf of the African Group) said that only the national report should be the basis for discussion, and that the other documents should only be background information.¹⁰ In a move to effectively exclude attention to treaty body and special procedures reports in the review, they also spoke against the preparation of a compilation by OHCHR. They argued that these reports were already available to interested States, and that the suggested compilation was redundant. Pakistan (on behalf of the OIC) argued that the additional information should not be treated as official documents and thus that they did not require translation.¹¹

OHCHR involvement

Pakistan (on behalf of the OIC) argued that since the role of the secretariat in preparing the documentation was more restricted than assumed in the discussion paper, a special UPR unit in the OHCHR was not justified.¹² Sri Lanka questioned the role of the OHCHR in preparing the summary, as well as the supportive role it was meant to play for the rapporteurs. The Ambassador of Sri Lanka asked whether the proposals by the President had the support of the High Commissioner, saying that she had had a different impression at a recent meeting of the Asian Group with the High Commissioner. The President replied that based on his conversations with the High Commissioner, he was under the impression that she was fully willing to comply with the needs of the Council. He added that the OHCHR would do what States asked it to do, but that it was necessary to clearly determine the role of the OHCHR, so that the budgetary implications could be assessed. Eric Tistounet from the Secretariat confirmed this view, saying that preparations to set up the UPR unit were underway, but that the OHCHR expected the necessary budgetary commitments from States. He added that the involvement of OHCHR needed to be clearly limited, in particular regarding the assistance provided to States in the preparation of their reports.¹³

Rapporteurs

A number of States supported the Presidents proposal of having three rapporteurs.¹⁴ Algeria (on behalf of the African Group) preferred to have only two rapporteurs, because they saw no value added in a third person. In the Algerian view, one rapporteur should be appointed by the State under review and the other by the President of the Council.¹⁵ Germany (on behalf of the EU) cautioned against creating ‘friendly and unfriendly’ rapporteurs. Some States expressed concern about the proposed selection by drawing of lots, asking for a more rational way of choosing the rapporteurs.¹⁶ The President defended his approach, saying he wanted no role for the President in the selection process. However, he promised to look into alternatives to the lottery. Sri Lanka suggested using a different terminology than ‘rapporteur’ to prevent any confusion with the ‘special rapporteurs’ of the special procedures system

Review of special procedures

The President said little progress had been made on the issue of the review of special procedures. He will hold further consultations this week and hopes to be able to present a discussion paper in a similar form as the one on the UPR for the open meeting on 18 May 2007. He said the consultations¹⁷ would focus on three issues:

¹⁰ This was supported by Bangladesh, Pakistan (on behalf of the OIC).

¹¹ Supported by Bangladesh.

¹² Supported by Bangladesh.

¹³ He said this in relation to the treaty monitoring bodies a worrying trend was observed, where States sometimes rely heavily on the OHCHR when drafting their reports.

¹⁴ Brazil, Philippines, Singapore.

¹⁵ Supported by Iran, Pakistan (on behalf of the OIC),

¹⁶ Algeria (on behalf of the African Group), Bangladesh, Iran, Pakistan, Singapore.

¹⁷ The first of the President’s closed consultations took place in the afternoon on Thursday, 10 May 2007.

- The selection of mandate holders
- The review, rationalisation and strengthening of the system
- The code of conduct

He underlined that neither the current system of appointment of mandate holders, nor an election system were good enough for the Council. With the help of the OHCHR, he intends to develop objective minimum criteria for mandate holders, even before drafting a roster. He was of the opinion that once such a roster was established, it needed to be published on the Internet. However, the roster should in the President's view not exclude *ad-hoc* candidates, if no suitable candidate was found on the roster. Regarding other strands of the negotiations on the institution building, he expressed his hope that the discussion on the selection of special procedures mandate holders could also move the discussion on the selection of experts for the expert advisory body forward. Turning to the review of individual mandates, the President said that since there had been no progress in the Working Group on this complex issue, it was neither desirable nor possible to complete the review before 18 June 2007. He had asked the OHCHR to look at time frames and modalities for the renewal of mandates. Finally, on the issue of the code of conduct, he said that specific discussions at expert level between various groups were underway. He reiterated that his role was to build bridges, but not "defend certain positions".

Not many States spoke on the review of special procedures. Sri Lanka, speaking on behalf of the Asian Group, spoke on all aspects of the institution building. On the review of special procedures, they said that the system must be comprehensively reviewed by 18 June, reiterating a position repeatedly voiced by India during the Working Group discussions. In this context, they emphasised that the relationship between the special procedures and the Council had to be defined and that duplicative mandates and mandates that had served their purpose should be discontinued. The USA argued that while a full review was needed, it would be difficult at the moment to decide on how to proceed with each mandate. On the code of conduct, Sri Lanka argued that provisions with criteria for admissibility of communications should be added to the African draft text. Australia stressed that they wished to see more open discussions on the code of conduct.

Other aspects of institution-building

Sri Lanka and Australia were the only States to comment on other institution-building issues. Regarding the complaint procedure, Sri Lanka argued that the confidentiality of the procedure had to be strictly observed and that the suggested time limits for replies (3 months) and for the entire process (24 months) were too short. On the rules of procedure, they recalled the Asian paper on that issue circulated in November 2006.¹⁸ On the agenda, Sri Lanka noted that the Asian Group wished to see separate agenda items on the right to development and the occupied Palestinian territories (OPT). Australia opposed a specific item on the OPT, suggesting instead a generic item allowing the Council to respond to all human rights situations "according to need." They also proposed a specific item on national human rights institutions (NHRIs).

¹⁸ The paper refers to operative paragraph 11 of General Assembly *Resolution 60/251* on NGO participation and adds that any changes to the ECOSOC accreditation process should be endorsed by the General Assembly.

COUNCIL MONITOR STAFF

Eléonore Dziurzynski, Communications Officer, Information Program

Michael Ineichen, Fellow, Information Program

Tony Morris, Information Program

Gareth Sweeney, Human Rights Officer, Information Program

Katrine Thomasen, Program Manager, Liaison, Coordination and Advocacy Program

Contributors

Elodie, Intern

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