

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COUNCIL WORKING GROUP ON AGENDA, ANNUAL PROGRAM OF WORK, WORKING METHODS AND RULES OF PROCEDURE 13-27 APRIL 2007

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Overview

The second round of discussions for the Working Group took place from 13 to 23 April, 2007, for a total of eight three-hour sessions. The morning meetings covered the agenda and programme of work, while the rules of procedure and methods of work took place in the afternoons. From the outset the discussion on agenda was divided on several issues and remained that way throughout. The issues generating consistent divisions included: whether any items dealing with substantive human rights should include 'cross-cutting human rights issues' and 'human rights situations requiring the Council's attention'; whether Palestine or the occupied Arab territories should be addressed as a separate agenda item; and whether a catch-all item such as 'Other issues' should be included. States aligned with the African Group and Non-Aligned Movement (NAM), who had earlier supported the more structured agenda, opposed the inclusion of 'cross-cutting issues', 'human rights situations requiring the Council's attention', and 'other issues', arguing that they sacrificed the predictability of the process and left loopholes open for politicisation.

States aligned with the European Union, who had earlier supported a more generic agenda, favoured the inclusion of 'cross-cutting issues' and addressing specific human rights situations. Norway led the group rallying around the 'Other issues' item, arguing that to fulfil its mandate, the Council needed the freedom to address issues arising that were not on the agenda. The EU countries and those aligned with them generally opposed a separate item for Palestine, arguing that the principle of non-selectivity would be breached if the Council dealt with one country under its own agenda item. They proposed instead to fold any item on Palestine into the item dealing with specific human rights situations.

At the end of the session, the camps were still divided on these issues. The Facilitator urged consensus and closed by trying to point out that the differences are not too large to find compromises. However, in the last draft he provided at the final non-substantive meeting on 27 April, he placed asterisks beside the issues that likely required more discussion, with cross-cutting issues, specific human rights situations, Palestine, and 'Other issues' all meriting such distinction.

The session made progress, however, on the less contentious issues. The group agreed that the Universal Period Review (UPR) should be a separate agenda item; that follow-up decisions to the Council was a necessary item; that the UN High Commissioner for Human Rights and the Secretary General would give reports at some point throughout the three sessions; and that the first item should tackle organizational and procedural matters. Although the programme of work could not be discussed much before the agenda items were more concrete, some general convergence resulted, with most countries accepting one four-week and two three-week sessions over the year. There were slightly varying opinions over when the sessions would start in June/July or September/October, but this wasn't a matter of crucial importance to delegations. Even so, the Facilitator refrained from assigning dates to the first two sessions in the 27 April non-paper, stipulating only that the 3rd session would be in March/April and would last for four weeks. A half-day organizational session was requested, and this idea made it into the 27 April non-paper. The Facilitator noted that he was pleased with some of their progress and looked forward to reaching additional consensus on other items. The discussions are slated to resume by way of informal consultations the 10, 18, 24 and 25 May 2007, in the hope that more progress might be made before the June session.

In the meetings on the methods of work and rules of procedure, the second session's most significant issues included the participation of observers, the modalities of adoption of country-specific resolutions, the rules for special sessions, the location for the meeting of the Human Rights Council, and the yearly cycle of the Council.

On the question of the modalities of participation of observers, the discussion remained fairly general. Instead of debating concrete modalities on how observers will take part in the sessions of the Human Rights Council, States confined themselves on whether the wording of paragraph 11 of General Assembly *Resolution 60/251* that established the Council was adequate and if reference to Commission on Human Rights *Resolution 2005/74* should be included to ensure that national human rights institutions (NHRIs) are covered. On the modality of adoption of country specific resolutions, China made a last minute proposal that divided delegations. It called for this kind of resolution to be co-sponsored by a third of the members of the Council and supported by a two-third majority of the members of the Council present and voting. On the rules for special sessions, discussion focused on the information to be provided with a request for a special session, such as the reason for the request. States were divided on this issue and the proposal by India that the request shall specify the issue to be addressed in the meeting was welcome. The Russian Federation made a significant proposal stating that observers *may* (instead of “shall”) contribute to the special session in accordance with the rules of procedures of the Council but no State reacted to it. The section regarding the rules of procedure is not included in the final non-paper that the Facilitator presented to the President of the Council. Finally, on the question of the yearly cycle, Portugal proposed that it start on the first Monday of July. This was challenged by South Africa and others on the basis that the yearly cycle should start in January so as to be in line with other UN bodies. On the issue of the location for the meeting of the Council, States did not reach agreement on whether allowing it to meet elsewhere than in Geneva. This would provide flexibility when necessary but would also entail costs for small delegations.

Agenda and programme of work

Background

It was not until the third session of the Human Rights Council (the Council), in November 2006 that the Council began a formal discussion of its agenda. The intercessional Working Group was established to “formulate concrete recommendations on the Council’s agenda, annual programme of work, methods of work and rules of procedure”.¹ The President of the Council appointed the Guatemalan Ambassador, H.E. Mr Carlos Ramiro Martinez Alvarado, as facilitator of a segment of the Working Group on the agenda and the programme of work ('the Working Group'). The **agenda** refers to items that will be formally discussed by the Council; and the **programme of work** refers to how the items on the agenda will be divided throughout the year. In other words, while the agenda defines what the Council will be discussing, the programme fleshes out when and how frequently issues will be discussed.

In the session from 15 to 19 January 2007², the Working Group heard two divergent positions, expressed in two non-papers, on the way the agenda and programme of work should proceed. Cuba, on behalf of the NAM, outlined their idea of a 'structured and specific agenda', wherein the agenda was explicit and the programme of work could be flexible enough to encompass the particular needs of each session. Examples of this structured approach included items on 'the realisation of the right to development'; 'economic, social, and cultural rights'; 'civil and political rights'; and 'racism, racial discrimination, xenophobia and related intolerance'.³ The NAM argued that such an approach would divide the Council's session in a 'fair and equitable manner', and allow efficient and productive operation. The most divisive issue was the proposal's inclusion of the situation of human rights in the occupied Palestinian territory and the occupied Syrian Golan as a standing agenda item. Portugal also criticized the categorization and separation of the different rights into

¹ For the President’s decision, see the draft report of the 3rd session of the Council at <http://www.ohchr.org/english/bodies/hrcouncil/docs/3session/A.HRC.3.L.11.pdf>.

² The ISHR report is available at: http://ishr.ch/hrm/council/wg/wg_reports/wg_rules.pdf.

³ The full agenda is available in the NAM's non-paper, which is available on the OHCHR extranet.

economic, social, civil, political, and others. This was seen as undermining the interconnectedness of human rights.

Germany, on behalf of the EU, proposed a 'generic agenda', which was flexible, and a programme of work that was more structured. While the NAM put specific emphasis on precise rights, the EU built their proposal around a permanent basic agenda, which they believed would prevent constant negotiation on its content. Their proposed agenda included 'urgent situations'; 'reports from Special Procedures and interactive dialogue'; and 'expert advice.' The EU also added a blanket item called the 'promotion and protection of human rights' where specific issues would change each session, with all the issues to be considered in a given year presented to the Council in the March session. The NAM thought such an agenda item replicated the mandate of the Council, and was therefore too broad and vague.

The Facilitator also contributed a non-paper,⁴ which he specified was not meant to reflect a compromise solution. Some of the delegations took it to be a consensus proposal and criticized / supported it as such, while others did comment specifically on points listed in the paper. The non-paper mainly tried to reconcile the EU's generic 'promotion and protection of human rights' item with the NAM's specific enumeration of rights. It was met with the same divisions regarding a catch-all item for 'other issues' and the best place for dealing with Palestine. NAM expressed their discontent that the Facilitator's non-paper seemed to favour the EU's proposal. They were specifically disappointed that there was no standing agenda item for the occupied Palestinian territories and the Syrian Golan. Cuba (on behalf of NAM) noted that their proposal held the support of the majority (118) of UN member States. China noted that consensus should be structured around the NAM's majority-supported proposal, alarming the German delegation. The session ended with perhaps more polarization than when it began.

On 15 March 2007 at the 4th session of the Council, Ambassador Martinez orally discussed his non-paper on the draft agenda of the Human Rights Council. He set out three options, A through C, for States to consider how they want to address specific rights.⁵ Some States repeated their desire for a structured agenda, including an agenda item for the occupied Palestinian territories and occupied Syrian Golan. Other specific suggestions included that the agenda of the Council should not repeat the political and selective structure of the former Commission [Brazil]; and that the High-Level Segment and High Commissioner's statement take place at only one session a year [Thailand]. On 21 March 2007, the Facilitator ran informal consultations to seek comments from delegations on this non-paper.

At the beginning of the 2nd session, Ambassador Martinez listed his agenda proposal by way of a revised non-paper, presenting general 'Item' headings followed by possible options regarding their content. Reproduced below are excerpts from the draft agenda:⁶

Item 1: Organisational and procedural matters

- Adoption of annual work programme
- Adoption of work programme of the session
- High-Level Segment
- Election of members of the Human Rights Council

Item 2: Presentation of reports

- Annual report of the UN High Commissioner for Human Rights; updates of that report

⁴ For a full listing of the item's in the Facilitator's non-paper, see either the OHCHR extranet, or ISHR's summary of the Working Group's first session (15-19 January 2007) at http://ishr.ch/hrm/council/wg/wg_reports/wg_rules.pdf.

⁵ Option A had a) economic, social, cultural rights; b) civil and political rights; c) right to development; and d) rights of peoples and specific groups and individuals; Option B had a) civil, political, economic, social, and cultural rights, including right to development; and b) rights of peoples and specific groups and individuals; and Option C has one heading 'Promotion and protection of human rights' with bullet points enumerating all the rights in Options A and B, as well as Cross-cutting rights and issues of interrelation of rights; co-operation with regional organizations in the field of human rights; and human rights situations that require the attention of the Council.

⁶ The complete draft agenda the Facilitator presented can be found on the extranet.

Reports of the Secretary General

Item 3: Three options for dealing with substantive human rights

Option A: economic, social and cultural rights; civil and political rights; right to development; rights of peoples and specific groups and individuals.

Option B: civil, political, economic, social, and cultural rights, including right to development; rights of peoples and specific groups and individuals.

Option C: Promotion and protection of human rights: economic, social and cultural rights; civil and political rights; right to development; rights of peoples and specific groups and individuals; cross-cutting rights and issues and interrelation of rights; cooperation with regional organizations in the field of human rights; human rights situations that require the attention of the Council.

Item 4: Human rights bodies and mechanisms

Expert advice body

Complaint procedure

National Human Rights Institutions

Item 5: Universal Periodic Review

Item 6: Four options for dealing with the human rights situations in Palestine.

Option (a): human rights violations in the occupied Arab territories including Palestine.

Option (b): human rights situation in Palestine and other occupied Arab territories:

(i) Human rights violations and implications of the Israeli occupation of Palestine and other occupied Arab territories;

(ii) right to self-determination of the Palestinian people.

Option (c): Human rights violations and implications of the Israeli occupation of Palestine and other occupied Arab territories.

Option (d): Foreign occupation and the right to self-determination: Palestine.

Item 7: United Nations conferences and summits: racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Plan of Action and of the Vienna Declaration and Programme of Action.

Item 8: Technical assistance and capacity building

Item 9: Follow-up of decisions of the Human Rights Council

Item 10: Other issues

As no informal consultations had taken place to provide initial feedback, the Facilitator had not modified this non-paper, and it provided a starting guide for the discussion during 13-23 April 2007.

The Facilitator's non-papers

The initial non-paper

During the Working Group's first meeting, from 10am to 1pm on 13 April 2007⁷, the Facilitator clarified some points on his non-paper. He asked that suggestions be given so that a new draft with more detail could

⁷ This preliminary discussion continued onto the morning of 17 April 2007 to exhaust the list of speakers that remained.

be distributed before the meeting on 17 April. Specific clarifications included officially eliminating the second option under the item dealing with substantive rights (Item 3, Option B), because it had not originated from either the NAM proposal or the EU proposal and therefore was not likely to garner any support; explaining that the four options for the item on Palestine (Item 6) could be adopted, developed, or altered; and assuring that the 'Other issues' item (Item 10) was a standard agenda item familiar to other United Nations bodies that allowed for all necessary business to be taken up. Delegations discussed the non-paper with the modifications mentioned by the Facilitator until the 2nd meeting, where the initial comments from delegations were adapted into a revised non-paper.

The revised non-paper

The Facilitator distributed his revised non-paper,⁸ including a draft agenda and a corresponding and complementary draft programme of work on 17 April after the speakers list from the previous meeting had finished. He noted it had been difficult to reflect all of the positions, and that he had tried to capture the value of each proposal. Items that required changing or merited discussion included:

Item 1: Organisational and procedural matters

The Facilitator deleted the HLS from the agenda, heeding suggestions to include it only on the programme of work. He also changed wording to reflect that elections referred to the Bureau and not the Council.

Item 2: Presentation of reports

He noted that the report of the High Commissioner was included on the agenda and not the programme of work

Item 3: Three options for dealing with substantive human rights

He clarified that mentioning specific human rights situations under the 'promotion and protection of human rights' option [Option C] was acceptable because General Assembly *Resolution 60/251*, which established the Human Rights Council, mentions such a need.

Item 4: Human rights bodies and mechanisms

He noted that he had left a place for NHRIs to report to the Council under this item, but was open to discussion about moving such reports according to theme, or any other schematic for which there was support.

Item 5: Universal Periodic Review

He stated that he saw no consensus for moving this under Item 4, as some delegations supported, so he had left it separate.

Item 6: four options for dealing with the human rights situations in Palestine

He deleted the two options that did not mention the self-determination of Palestinian people [options (a) and (c)].

Item 7: United Nations conferences and summits: racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Plan of Action and of the Vienna Declaration and Programme of Action.

⁸ This non-paper is available on the HRC extranet; registration required.

Here he separated the item into Item 7 and Item 7 bis. Thus, the Durban Declaration and Plan of Action was combined with the racism and related forms of intolerance as Item 7, and the Vienna Declaration and Programme of Action became Item 7 bis.

Item 8: Technical assistance and capacity building

Here, the Facilitator noted general agreement but added ‘co-operation with regional organisations in the field of human rights’ (from Item 3).

Item 9: follow-up of decisions of the Human Rights Council

The Facilitator noted general acceptance but left open the possibility to make it a sub-item.

Item 10: Other issues.

He cited divergent opinions and reiterated that he thought it was a standard agenda item that need not generate such controversy.

Comments on the non-papers

Item 1: Organisational and procedural matters

On Item 1, States began by expressing concern regarding the High-Level Segment (HLS). Australia, Cuba, Guatemala, Korea, and Mexico thought the HLS should be mentioned only in the programme of work. Algeria (on behalf of the African Group), Indonesia, Iran, and Saudi Arabia thought the HLS should be clarified as only meeting once a year. Argentina, Bangladesh, and Chile expressed concern that there should be a place for States without high level representatives to take part in the HLS. Further discussions clarified that the HLS should be discussed in the programme of work and then only at one session. Delegations also discussed that the reference to election of members listed in the item covering organizational and procedural matters [Item 1] should be clarified as election of bureau members and not Council members. The Facilitator agreed that the elections mentioned referred to members of the bureau. Some delegations still felt that the election of mandate holders for special procedures should be discussed as well. Bangladesh, Iran, India, and Mexico believed this was a necessary area of oversight, while Japan and Germany (on behalf of the EU) thought the Council did not have such oversight on these matters.

Item 2: Presentation of reports

The discussion began as a debate over which reports should be presented. Cuba (on behalf of NAM) and Iran thought this item presented an opportunity to introduce oversight of OHCHR by the Council, while Canada and France countered that such oversight should be handled in New York. Bangladesh and Guatemala thought the Secretary General's report should be discussed elsewhere and Bangladesh and Cuba (on behalf of NAM) believed that any reports other than the High Commissioner's should be dealt with when thematically relevant. The Russian Federation hoped that the High Commissioner's report would address administrative and financial issues at the OHCHR, but Australia, Canada and the USA were against this. In later meetings, China, Ecuador, Iran, the Philippines, and South Africa would join Russia in this position.

The Facilitator's revised non-paper cleared up much of the confusion of his initial open-ended non-paper, replacing the title ‘Presentation of reports’ with ‘Annual report of the Secretary General and the United Nations High Commissions for Human Rights’. The remaining discussion revolved around the frequency of the High Commissioner's report, with the different opinions including: whether there should be only one annual report [Turkey]; if so, whether he or she should give updates at each session [Switzerland said yes]; and whether updates should be dealt with in the this item or thematically [Germany (on behalf of the EU)]. In

the 2nd meeting, the issue did not garner as much discussion time as the more divisive items, and thus it was suggested by the Facilitator in his draft programme of work that the High Commissioner present her report at the main session, and update it in the remaining sessions. The session ended without much more debate on the topic.

Item 3: Untitled item dealing with substantive rights

The atmosphere surrounding this highly disputed item continued from the previous session. The core difference of opinion related to whether the Council should adopt a general or structured agenda. Algeria (on behalf of the African Group) led the delegations who supported the omission of specific human rights situations and cross-cutting issues [Option A].⁹ Mexico and Canada agreed that Option A would be acceptable if a bullet point were added to address human rights situations that arose, but Cuba (on behalf of the NAM), India, Iran and Morocco supported A only without modifications. Those aligned with the EU¹⁰ preferred Option C, and often argued specifically for maintaining mention of cross-cutting rights and human rights situations.

After the presentation of the revised non-paper and draft programme of work, which outlined Option C and included cross-cutting rights and ‘human rights situations that require the Council’s attention’ at every session, these were the subjects that dominated the discussion. Algeria¹¹ laid out the African Group’s position against ‘cross-cutting issues’ and specific mention of human rights situations by claiming that ‘cross-cutting issues’ was not an adequate term; that human rights are interdependent and cannot be separated; that such an approach would lead to a selective method of dealing with rights; and that such a term would be a ‘Pandora’s Box’, allowing debate on any issue, in turn undermining the predictability of the Council. They added that dealing with specific human rights situations opened the door for politicisation. They were concerned that the two issues had made their way into the programme of work.

The Facilitator explained that he was aiming for collective agreement, and hoped that the programme would continue the debate, but the positions expressed continued to fall along traditional fault lines, with original supporters of Option A remaining against cross-cutting issues and human rights situations, and original supporters of Option C defending the developments. Specific arguments included: that specific human rights situations would be dealt with under Complaints in Item 4 [Cuba]; and an aversion to a hierarchy of rights as it appeared in Option C [India]. On the other side of the issue, Norway and Germany (on behalf of the EU) led the delegations who argued for ‘cross-cutting’ human rights issues and specific human rights situations to be included. They reasoned that paragraph 3 of General Assembly *Resolution 60/251* mandated the Council to take up gross and systematic violations of human rights, so including an item that dealt specifically with this was necessary.¹² The split remained at the end of the session, with no consensus about Option A or C, but with the Facilitator trying to encourage discussion to break the deadlock.

A final debate on this topic related to the organisation of the programme of work. Some delegations expressed concern regarding how often rights would be considered. South Africa proposed that each session deal with another family of rights (economic, social, and cultural rights at one session, civil and political rights at the next, and rights of individuals and members of specific groups in the 3rd); they were supported by Norway in this. Switzerland thought all rights should be discussed at each session.

Item 4: Human rights bodies and mechanisms

⁹ They were joined by Azerbaijan, Bangladesh, Chile, Guatemala, Indonesia, Iran, Malaysia, and Pakistan (on behalf of the OIC).

¹⁰ Argentina, Australia, Canada, France, Korea, Mexico, Norway, Japan, and the USA.

¹¹ Algeria was joined by China, Cuba, Ecuador, India, Iran, Morocco, Pakistan (on behalf of the OIC), Philippines, Saudi Arabia and South Africa.

¹² Guatemala, Portugal and the USA supported this argument.

The discussion of Item 4 began with a debate over whether there should be a place for National Human Rights Institutions (NHRIs) to present themselves before the Council under this item. Germany (on behalf of the EU), India, Korea, and Mexico stated that they were necessary and should be included, but Bangladesh, China, and Iran noted that perhaps the Council wasn't the best place for them. Germany expressed concern that explicitly mentioning NHRIs in Item 4 would exclude the organizations from participating in other parts of the Council. The Facilitator clarified that NHRIs would still be welcome contributors throughout the process. Iran, Pakistan (on behalf of the OIC), and Russia all reiterated that they did not support NHRIs on the agenda because they were not mechanisms of the Council.

The discussion moved to which bodies and mechanisms would be included under this item. Most of the debate centred around whether to wait for the results from the Working Groups dealing with expert advice and complaints procedure before plugging them into the agenda and programme of work. For the fourth meeting, the Facilitator prepared questions to guide the discussion. He asked if the delegations agreed to maintaining the Expert Advice body and the complaints procedure under the item; whether they merited their own items; whether complaints should be dealt with under the programme of work; and whether an interactive dialogue with the President of the Annual Meeting of Chairpersons of Human Rights Treaty Bodies and the Chairperson of the Co-ordinating Committee of Special Procedures should appear under Item 4. Guatemala, Mexico and Switzerland thought that expert advice and complaints mechanisms should be separate items, and Iran said it was ambivalent. Guatemala, Mexico, Switzerland, and the USA hoped that the complaints procedure would be dealt with more than once a year, and Germany (on behalf of the EU) thought it should have a slot at each session.

Item 5: Universal Periodic Review

Discussions concerning the placement of the UPR under Item 5 began divisively. Many States felt that it was too early to decide until the Working Group on the UPR made further progress. Algeria (on behalf of the African Group), Indonesia, Iran, Russian Federation thought the UPR should be melded into Item 4 'Human rights bodies and mechanisms'. On the other hand, Argentina, France, Germany (on behalf of the EU), Mexico, and the USA thought it automatically merited its own item. When the Facilitator shared his revised non-paper, he explained that he left the UPR in a separate Item 5 because there was no consensus to do otherwise. Some delegations showed their opposition to the inclusion of a bullet engaging human rights situations under Item 3 by stating that the UPR would take care of special situations. Ecuador and Morocco still thought that this item should await the decision of the relevant Working Group. For the last meeting on 23 April, the Facilitator guided the discussion by assuming delegations could all agree that the UPR would be considered on the agenda, and asked whether it should appear once or twice on the programme of work. Guatemala, India, and Switzerland said it should meet twice a year, USA thought once a year was more feasible, and Cuba mentioned that three sessions might even be possible.

Item 6: Palestine / Occupied Arab Territories

This item generated a significantly polarized debate and was often tied with Item 3. In the first meetings, delegations aligned with the EU who supported Option C to Item 3 (which included 'cross-cutting human rights issues' and specific human rights situations) all opposed a separate Item 6,¹³ while the delegations aligned with the African Group, the NAM and the OIC who had supported Option A (the option with no mention of cross-cutting issues or specific human rights situations) supported option (b) under Item 6 (the more detailed option that specifically mentioned the self-determination of the Palestinian people).¹⁴ EU-aligned States that opposed a separate item argued that such a separation singled out certain issues, an act that was contrary to the principle of non-selectivity. These delegations believed that the issue could very effectively be dealt with in Item 3, under a bullet point for specific human rights situations. The NAM, OIC, or African Group-aligned States that approved of the item cited the longevity of the Palestinian conflict as an

¹³ See footnote 29.

¹⁴ These countries included India, Indonesia, Iran, Morocco, and Syria.

important human rights situation. These positions were repeated frequently throughout the meetings. The session finished with the issue unresolved, but with a separate Item 6 on the agenda and programme of work at the main session in March/April.

Item 7: UN conferences dealing with human rights

The discussion here began with a specific item on follow-up to the Durban Declaration and Plan of Action and Vienna Declaration and Programme of Action, as well as to the question of racism in general. Various positions emerged early on, with Argentina, Cuba, Indonesia, and Iran preferring the Durban Declaration implementation and Vienna Declaration to be split, and Algeria (on behalf of the African Group) seeing both the Durban and Vienna follow-up as a separate item from racism. Some States favouring a flexible agenda as in the EU's original non-paper, including Australia, Canada, France, Japan, Mexico, and the USA, noted that such inclusions were either not necessary as agenda items and could be dealt with elsewhere, or that a more general item such as 'UN conferences relating to human rights' would be more fitting. To accommodate these views, the Facilitator's non-paper split Item 7 into 7 (Racism, racial discrimination, xenophobia, and related forms of intolerance, follow-up and implementation of the Durban Declaration and Plan of Action) and 7 bis (The Vienna Declaration and Programme of Action) in his revised version, but this just highlighted that divisions remained. Germany (on behalf of the EU) renewed their call for a more generic item, which France proposed could be called 'UN Conferences and Summits principally dealing with human rights'. The countries supporting the specific mention, including Algeria (on behalf of the African Group) and Cuba (on behalf of the NAM), argued that specific mention of these conferences was necessary because they were important topics. Although the Facilitator had proposed discussion questions on Item 7 for the fourth meeting, specifically one question asking about a generic item with Durban and Vienna as sub-items, delegations maintained their earlier positions of favouring either a generic or specific approach to the item, as in line with the whole agenda. However, this issue was less problematic than other items, and on the Facilitator's last non-paper on 27 April he did not include an asterisk next to this item, suggesting that he believed it did not need further discussion.

Item 8: Technical assistance and capacity building

In the first meetings, Item 8 did not garner much discussion. Canada asked if it was only to be technical assistance. Switzerland noted that the substance of this topic was already dealt with in Item 3 Option C. In response to Chile's concerns that there was no space to deal with other issues necessary to fulfil the Council's mandate, the Facilitator included an item 8 bis as a topic for discussion for the fourth meeting. He asked if the delegations would agree to a title of "Effective implementation of resolution A/60/251," under which all items it contains would be discussed,¹⁵ however no consensus was reached about this. Germany (on behalf of the EU), Guatemala and Iran supported it and Morocco, Russia, and the USA opposed it. Apparently this divide encouraged the Facilitator to feel that this was not the direction the delegations wanted to take, and the 8 bis item did not appear on the final non-paper of 27 April.

Item 9: Follow-up decisions of the Human Rights Council

The Facilitator introduced this item as a result of the suggestions of many delegations. Algeria (on behalf of the African Group), Australia, Bangladesh, Canada, and Germany (on behalf of the EU) noted that they accepted the Item in the first meetings. Canada and Hungary thought it should be moved to earlier in the agenda, after Item 2. Australia commended the item, saying follow-up was necessary in the Council, while the Russian Federation criticised the item, suggesting it would lead to politicisation, along with China, who said it would spawn double standards. Despite these criticisms, the item remained on the agenda and programme of work in its current placement, occupying a slot at each of the three sessions.

Item 10: Other issues

¹⁵ The Facilitator mentioned his intention to add this item during the third meeting.

In the first discussion of the item, before the revised non-paper, opinions were equally divisive as on Items 3 and 6 (substantive human rights and Palestine). Algeria (on behalf of the African Group), Bangladesh, Indonesia, Iran, and Morocco said they could not accept such a general item. Australia, Austria, Chile, France, Germany (on behalf of the EU), India, Norway, the Republic of Korea, Switzerland, and the USA found such an all-encompassing item necessary to fulfil the mandate of the Council. Other delegations, including China, Cuba, and Saudi Arabia joined the opposition to this item when the Facilitator retained it on his revised non-paper, citing a lack of predictability and a desire to avoid political issues that might tend to get pulled in to a catch-all category. Another specific argument against an item for 'Other issues' was that its content was unclear [Indonesia, Iran, the Russian Federation, and Saudi Arabia]. Later in the session, States stopped giving any other argument for deleting 'Other issues' than that it was not unpredictable. Norway led the support to this item, arguing there must be a place for any substantive issue to be raised, as was the case in the Human Rights Commission. India, Switzerland, the United Kingdom, and the USA reiterated that it should be a substantive item. India added that another principle of the agenda was 'flexibility', and France suggested that while the first nine items would offer predictability, this one item could represent flexibility. India explained its vision for Item 10 as opening up sessions for business that was included on other session's programme of work, but needed attention outside of that time slot. The staunch positions of each side remained throughout the session, and it seemed unclear as to how consensus might be achieved. Unlike Item 3's Option C, which called for a bullet point about specific human rights situations, there was no defence that the Council was specifically mandated to take up a catch-all item. The most pervasive rationale was that such practice had been done in the past, which only presented another reason for the States against the item to argue against it. No definitive conclusion to the item remained, but the Facilitator left it on the agenda and programme of work as an item needing further discussion during the informal consultations in May.

Programme of work

As General Assembly *Resolution 60/251* establishing the Council requires it to hold at least three meetings a year for a total of at least ten weeks, the delegations also discussed how to organize this. The Facilitator worked from a very rough draft of a programme of work at the first meeting, which included just the first two agenda items in order to illustrate how some issues would stretch over all three sessions, and some elements of the agenda would appear only at one session. For example, the adoption of the annual programme of work would take place at the first session, and at the subsequent sessions only the sessional programme of work would be adopted. In the 2nd week, the Facilitator introduced a more complete draft programme of work, and specified that the first session would take place in June for two weeks, then two four week sessions in September-October and March-April. The UK proposed that the first session begin 19 June, with 18 June, the last day of the previous year, comprising of an organizational session. Switzerland and Germany (on behalf of the EU) urged that all sessions should discuss substantive issues, as that was a central failing of the Commission. The International Service for Human Rights (ISHR) suggested spacing the sessions equally throughout the year, in September, January, and May, with four weeks for the January session and three weeks for the others. Chile opted for the cycle to begin in October and end in June. Canada hoped that the main session would be 4 weeks and the other sessions 3 weeks each. Other countries agreed with having 3 equally spaced sessions a year.¹⁶

The draft combined the different arguments under discussion: for Item 3, it implemented Option C, but it was partially to explain how the additional elements encapsulated in that option would be laid out; Item 6 remained as an element at the third session; Item 2 included updates of the annual report of the High Commissioner in the first two sessions, and the annual report in the third session; and Item 7 and 7 bis were included in the 2nd and 3rd sessions. Of these issues, the most debated was Item 3, with India hoping all rights would be slotted in the programme of work at each session, and Iran upset that the draft outlined Option C.

¹⁶ Ecuador, Germany (on behalf of the EU) and Norway.

Working Methods and Rules of Procedure

Background

It was only at the third session of the Human Rights Council (the Council) in November 2006 that the Council formally discussed the question of agenda and working methods. The outcome was the consensual adoption of a President's decision to establish the intersessional Working Group to "formulate concrete recommendations on the Council's agenda, annual programme of work, methods of work and rules of procedure".¹⁷ H.E. Mr. Enrique A. Manalo, Ambassador of the Philippines, was appointed Facilitator of the Working Group on working methods and procedures.

The first session of the Working Group took place from 15-19 January 2007¹⁸ and discussions followed three main areas identified: institutional structure of the Council; innovative ways of working; and new outcomes. Among the elements that caused the most disagreement were the possible inclusion of new 'innovative mechanisms'¹⁹ into the Council's working methods; the form and role of open-ended as well as informal consultations on draft resolutions and on the organisation of forthcoming Council sessions; the form and working methods of special sessions of the Council; and the scope of adjustments needed to the General Assembly's rules of procedure.

While the general positions of regional groups was reasonably clear at the outset, many States still maintained that any substantive discussion of the working methods and rules of procedure could not take place without first agreeing to a fixed agenda for the Council. This helps to explain why the meetings of working methods finished two days earlier than originally scheduled while the meetings of the Working Group on agenda continued over five days.

Regarding **working methods**, there was widespread convergence that the President of the Council should hold organisational meetings, and on the need for at least one public open-ended consultation. In such "information sessions", the President of the Council would introduce resolutions which had been submitted. With regard to informal consultations of sponsors on draft resolutions, it was said that their number should be limited.

However, little agreement was found on any other issues, such as on the meetings of members of the Council on an exceptional basis, and the participation of non-members and civil society (even though NGO participation received strong support from many States). The issue of innovative mechanisms such as interactive dialogues on issues with special procedures, panel debates, seminars on issues and roundtable discussions championed by Canada was vigorously debated. Some States encouraged such inclusion whereas others hoped that they would not substitute existing mechanisms such as resolutions.

Concerning **rules of procedure**, States generally agreed for the need of transparency and effectiveness. However, they could not reach agreement on how to apply operative paragraph 11 of General Assembly *Resolution 60/251*,²⁰ and on the time limit for the completion of the Council's rules of procedures. On the one

¹⁷ For the President's decision, see the draft report of the 3rd session of the Council at <http://www.ohchr.org/english/bodies/hrcouncil/docs/3session/A.HRC.3.L.11.pdf>.

¹⁸ The report of the first session of the Working Group is available at http://www.ishr.ch/hrm/council/wg/wg_reports/wg_rules.pdf.

¹⁹ The proposal of 'innovative mechanisms' includes interactive dialogues with special procedures, round table discussions, seminars on issues and panel debates.

²⁰ Operative Paragraph 11 of *Resolution 60/251* that established the Council "decides that the Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and also decides that the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as

hand, some called for them to be finalized by the June 2007 session of the Council as *Resolution 60/251* states that the Council must finish all institution-building exercises within one year of its creation. On the other hand, others stated that the agenda, working methods and rules did not belong to this category and that there was no requirement from the resolution for them to be finalized within one year.

Two proposals were submitted relating to the organisation and working methods of **special sessions**, Point 9 of the JUSCANZ paper,²¹ which stated that “as a general principle, once a special session has been held on a given subject, no further special sessions should be convened on this same subject until a regular Human Rights Council session has taken up the issue”, was strongly criticized. On the other hand, the paper submitted by the Non-Aligned Movement, which recommended that participation of NGOs in special sessions would be left at the discretion of States of the Council, would arrive at very inconsistent outcomes for the role of civil society and NGOs in these sessions.

The Facilitator of the Working Group presented his non-paper at the 4th session of the Council on 15 March 2007.²² He highlighted areas of convergence (President’s open-ended consultations on resolutions, decisions, and other related business; the organisational session of the Council and organisational meetings of the President; informal consultations organised by the President and other informal consultations; and the date of the assumption of membership) and divergence (the role of the Bureau,²³ with certain States wishing to expand it as to include regional coordinators; spacing of meetings, and the number of sessions per year). He specified that more work was needed on the scope of rules and procedures. In response, certain States²⁴ that took the floor emphasized the importance of NGOs and NHRIs being included in the different procedures of the Council²⁵ and that rules for the participation of observers and civil society should be the same as they were at the former UN Commission on Human Rights.

The first informal consultations took place on 21 March 2007 and focused on working methods and their scope.²⁶ Most States agreed that the Bureau of the Council should only address organisational matters and should not take any decisions of a substantive nature.²⁷ A number of States reiterated their traditional views in supporting the reintroduction of the expanded Bureau²⁸ or not.²⁹

Most States expressed their view that the Council should not hold informal meetings that would be limited to its members. Observers and NGOs should be able to be present to avoid the secrecy of these meetings.³⁰ No agreement was reached about the holding of informal consultations of the Council. On the participation of observers, certain States asked that the current paragraph should use the language from operative paragraph 11 of General Assembly *Resolution 60/251*,³¹ and that the new rules should not be below the standards of the Commission.

well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities”.

²¹ This paper is available on the OHCHR extranet (fill out the form on the page to receive the user name and password) at <http://www.ohchr.org/english/bodies/hrcouncil/form.htm>.

²² A/HRC/4/122, 20 March 2007, available at <http://www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm>; ISHR’s daily update is available at http://www.ishr.ch/hrm/council/dailyupdates/session_004/15_march_2007.pdf.

²³ The Bureau comprises the President and four Vice Presidents, one of them serving as Rapporteur.

²⁴ Pakistan (on behalf of the OIC) and Brazil.

²⁵ Germany (on behalf of the EU) and Thailand.

²⁶ ISHR’s daily update is available at http://www.ishr.ch/hrm/council/dailyupdates/session_004/21_march_2007.pdf.

²⁷ Cuba, China and Brazil

²⁸ Iran and Egypt. Germany agreed to discuss this matter further.

²⁹ France, Belgium, Romania.

³⁰ Norway, Cuba, Brazil, the United States of America, Slovenia, Belgium, Canada and Thailand.

³¹ Mexico, France, Canada, and Brazil.

Informal consultations focusing on the rules of procedure were held on 28 March 2007.³² Among the issues under discussion were the question of location of the Council, the participation of observers and NGOs, and the manner in which decisions of the Council will be adopted. Rule 3 of the non-paper of the Facilitator³³ specified that the Council should meet in Geneva. However Russia, supported by Algeria, Mexico and Cuba, proposed to insert a wording to provide the necessary flexibility for the Council to meet elsewhere. The Facilitator stated that specifying that the Council shall have its headquarters in Geneva could be a compromise that it would appear in the next non-paper. A number of other States supported the involvement of NGOs and non-members in the Council but were divided on the modalities of their participation.³⁴ Certain States³⁵ insisted that observer States and NGOs should be treated differently, while others³⁶ favoured an open-ended formulation or to keep the wording of paragraph 11 as it was the result of careful negotiations in New York. Almost all States opposed the Facilitator's proposal that the Council could take decisions by a one third majority, and he announced that he would eliminate it.

Following these informal consultations, a revised non-paper³⁷ based on the inputs received was published. The discussion that took place in the April session of the Working Group was based on the April 2007 non-paper, structured as follows:

- I-Working methods
- II-Rules of procedure
- III-Special sessions

Following each meeting of the Working Group, the Facilitator prepared a new non-paper reflecting changes that took place during the discussion. The second non-paper³⁸ mostly modified points relating to rules for the conduct of special sessions (providing the reason for the request, the timeframe to convene a special session and observers and NGOs participation). The third non-paper³⁹ focused on changes on the rules of procedure following Portugal's proposal, in particular the yearly cycle and participation of and consultation with observers. The fourth and last non-paper⁴⁰ also reflects changes regarding rules of procedure, but focuses on the participation of observers and the modalities for adopting country specific resolutions.

Working Methods

This part of the non-paper was dealt with during the first (Friday 13 April 2007) and third (Friday 20 April 2007) meeting of the Working Group.

Scope of Working Methods (Elements of convergence)

In the first meeting, Pakistan and Tunisia opened by asking for further clarifications regarding "Organisational session of the Council and Organisational meetings of the President" and acknowledged that

³² ISHR's daily update available at http://www.ishr.ch/hrm/council/dailyupdates/session_004/28_march_2007.pdf.

³³ A/HRC/4/1222, 20 March 2007.

³⁴ The current non-paper includes a rule entitled "Participation of non-members of the Council" which is copied from operative paragraph 11 of General Assembly *Resolution 60/251* and reads "Participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolutions 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities."

³⁵ Iran, Algeria and Cuba.

³⁶ Australia, Azerbaijan, Germany, on behalf of the EU, and Cuba.

³⁷ A/HRC/4/122/Rev.1, April 2007.

³⁸ A/HRC/4/122/Rev.2, 17 April 2007.

³⁹ A/HRC/4/122/Rev.3, 23 April 2007.

⁴⁰ A/HRC/4/122/Rev, 27 April 2007.

organisational meetings would be helpful to prepare for the whole year. Therefore, Algeria⁴¹ suggested that such sessions should take place at the beginning of each Council year. Tunisia and Portugal suggested holding organisational meetings at the beginning of each session. The Russian Federation suggested deleting reference to these consultations being ‘open-ended’ as they found it superfluous.

Concerning the holding of open-ended consultations by the President on draft resolutions, decisions and other related business, where the President would introduce them, as well as their status of negotiations, the Facilitator followed the suggestion of Pakistan⁴² to change the heading in order to refer to them as “information meetings”. Canada suggested that these meetings be combined with the informative meetings on prospective resolutions, aimed at informing delegations of decisions/resolutions tabled or intended to be tabled.

Participation of observers

Many States⁴³ favoured a broad participation of NGOs, whereas India and Iran wished this issue to be further elaborated. In order to have more clarity, Algeria suggested that the wording of paragraph 11 of the General Assembly *Resolution 60/251* should be used. However, no agreement was reached between States. This question was also extensively dealt with in the section on rules of procedure, and is discussed in detail below.

Role of the Bureau and the question of an expanded Bureau

With regard to the existence of an expanded Bureau, views were divided. Algeria (on behalf of the African Group) and Iran favoured this idea in order to have transparency and clarity. Algeria argued that it would be the most appropriate link between the President, the Bureau and the member States. On the other hand, countries such as Germany (on behalf of the EU), India, Australia and the United States agreed on the current formulation of the paragraph and did not see the usefulness of an expanded Bureau. Switzerland agreed on having a Bureau dealing with procedural and organisational matters. However, it declared that it was the reason why the Commission had discredited itself. Indeed, in the last few years of the Commission’s functioning, the expanded Bureau supplanted the Bureau and it was difficult to get all the regional groups, consulted through their regional coordinator, to agree on the Agenda. As a way of compromise, the Facilitator suggested that the Bureau shall regularly communicate the content of its meetings through a universally available and timely summary report.⁴⁴

‘Innovative Mechanisms’

The aim of the proposal by Canada is to include other work formats such as panel debates, seminars and roundtables. Certain States such as Algeria, Iran, Egypt and Bangladesh declared that such work formats could only be used during sessions of the Working Groups because of an extremely tight schedule during the sessions of the Council. In contrast, the US and Thailand welcomed the Facilitator’s proposal because of the specific value it could add, and Germany (on behalf of the EU) insisted that proliferation of new formats should be avoided.

Informal meetings of the members of the Council on an exceptional basis

⁴¹ Supported by Chile and Egypt.

⁴² Supported by Algeria, India, Norway and Portugal.

⁴³ Chile, Argentina, Australia and the US.

⁴⁴ A/HRC/4/122/Rev.3.

Many States⁴⁵ objected to the wording proposed by the Facilitator⁴⁶ and wished for this provision to be deleted on the grounds that it was not inclusive enough. According to these States, there was no need to limit the scope of participation in these meetings. Bangladesh supported the formulation presented by the Facilitator because these meetings took place on an exceptional basis and all stakeholders could attend.⁴⁷ It suggested adding that these sessions would be closed when they deal with a case which is confidential under the 1503 procedure. The Facilitator regretted the lack of consensus on this issue.

High-Level Segment

Certain delegations, including Chile and Argentina, favoured having a general segment following the High-Level Segment, which would provide delegations without any high dignitary the opportunity to speak. Algeria and Tunisia insisted that they were attached to the solemnity of the High-Level Segment, and that any general segment should be distinct. Canada expressed its concerns that it could lead to delegations speaking twice, and suggested therefore that the general segment be for delegations not represented in the High-Level Segment.

Rules of Procedure

The rules of procedure were discussed during the second and the last meetings of the Working Group, which took place on Tuesday 17 April and Friday 23 April 2007 respectively. During the second meeting, Portugal submitted a proposal that was welcomed.⁴⁸ Therefore, the third revised non-paper that was discussed at the last meeting was drafted in accordance with this proposal.

Portugal's proposal was reflected in the first paragraph of the third non-paper, which stated that the beginning of the **yearly cycle** of the Council shall be the first Monday of July of every year. Although Turkey and Chile supported this idea from the start, South Africa did not agree and proposed that the yearly cycle start in January, unless there were compelling reasons to start in July so as to be in line with other UN bodies. Argentina and Canada agreed, but the latter delegation, supported by Portugal and the UK, reminded the Working Group that the Council year should correspond with the terms of its members. According to Canada, the other possibility is to move elections to August and start the yearly cycle of the Council the first Monday of September to get closer to the yearly cycle of the General Assembly that starts in September.

In the second meeting, most States⁴⁹ that intervened focused on the **place of the meeting** for the Human Rights Council and agreed to go back to the original version of the non-paper that provided for the Human Rights Council to meet in the United Nations Office in Geneva, as this is what is clearly provided for in *Resolution 60/251*. These States also argued that allowing the Human Rights Council to meet elsewhere would be problematic for small delegations because it would entail more expenses. Other delegations, including Algeria, Bangladesh and Indonesia, said they were flexible. The Russian Federation declared that it would like the option of another venue to be discussed, though it could support going back to the original version of the text. However, the issue was raised again during the fourth session of the Working Group, and this time, most States that took the floor⁵⁰ favoured the possibility of the Council meeting elsewhere if necessary. Seeing that there was no agreement, Bangladesh made a suggestion that was welcome: the Council shall be based in Geneva but may meet outside if it so decides.⁵¹ This is based on the wording of the first

⁴⁵ Norway, Germany (on behalf of the EU), Iran, Australia, the US, Argentina, Canada, Brazil, Chile, Turkey, the Russian Federation, Switzerland, Mexico and Portugal.

⁴⁶ "Informal meetings of members of the Council on an exceptional basis: Such meetings would be open, but only members would participate."

⁴⁷ Egypt and Thailand supported this point.

⁴⁸ Chile and Turkey supported it.

⁴⁹ Chile, France, Switzerland, Iran, Italy, Tunisia, Germany (on behalf of the EU) and Saudi Arabia.

⁵⁰ India, the Russian federation, Ethiopia, South Africa, Argentina and Bangladesh.

⁵¹ Supported by Canada, Pakistan, Switzerland and Liechtenstein.

paragraph of General Assembly *Resolution 60/251*. The Facilitator concluded by stating that he would further consult delegations as there had already been a long-lasting debate on the issue. He clarified, however, that he would use the language of the *Resolution 60/251* in his next non-paper.

As mentioned above in the section on working methods, the issue of **participation and consultation with observers** of the Council gave rise to animated debate. Most States⁵², were in favour of applying the wording of paragraph 11 of General Assembly *Resolution 60/251*.⁵³ However, the International Service for Human Rights, supported by Switzerland, India, Liechtenstein and Mexico highlighted that this paragraph can be divided into two parts. The first two lines refer to the Council applying the rules of procedure of committees of the General Assembly until the Assembly or the Council decides otherwise. The rest of this paragraph states that the participation of observers would be pursuant to arrangements and to the practice of the Commission. Therefore, the first two lines that have been added in the non-paper are general rules and do not deal with the participation of observers.. Placing these words under the heading “Participation of and Consultation with Observers of the Council” narrowed their application and distorted the meaning of General Assembly *Resolution 60/251*.

In addition, Australia, with the support of India, Liechtenstein, Mexico, Argentina and Germany (on behalf of the EU) proposed that reference to Commission on Human Rights *Resolution 2005/74* be included to cover the participation of National Human Rights Institutions (NHRIs). However, Algeria, on behalf of the African Group,⁵⁴ did not see any value of including this resolution as NHRIs are already covered by the reference to the practice of the Commission on Human Rights. Iran called for more defined rules as observers and NGOs do not stand on the same footing. The delegate of Iran also pointed to the fact that Commission on Human Rights *Resolution 2005/74* dealt with more than just the question of NHRI participation. A number of States, among them Egypt and Argentina, specified that the standards should not be lower than the practice of the Commission. In conclusion, the Facilitator said that he would carry out consultations with delegations on the inclusion of Commission on Human Rights *Resolution 2005/74*.

Most States agreed that **decisions of the Council** shall be made by a majority.⁵⁵ At the last meeting of the Working Group, China proposed a new initiative to require that resolutions relating to a specific country must be co-sponsored by a third of the members of the Council and supported by a special majority of two-thirds of the members of the Council present and voting. This had been proposed and rejected during the negotiation of General Assembly *Resolution 60/251*. It had not been presented during any of the discussions on previous non-papers on the rules of procedure. The initiative divided the meeting immediately. China’s proposal was supported by a handful of States.⁵⁶ It was nonetheless opposed by other States,⁵⁷ because this would go against current practice, and would distinguish between country resolutions and others, thus differentiating between human rights. Brazil said that it welcomed and was open to discussion on the issue. India said that nothing prevented the Council from considering the application of new rules for the vote. South Africa said that under the General Assembly’s rules a simple majority of the Council could decide to set a special majority of two-thirds for any category of decision and that the Council should vote on the issue. Debate on this initiative consumed all the remaining time of the meeting.

⁵² Germany (on behalf of the EU), South Africa and Bangladesh.

⁵³ “The General Assembly [...] *Decides* that the Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and also decides that the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities.”

⁵⁴ Supported by South Africa, Cuba, Bangladesh and Pakistan.

⁵⁵ India, Algeria, Iran, Cuba, Bangladesh, Germany (on behalf of the EU), the Russian Federation and Tunisia.

⁵⁶ Iran, South Africa, Bangladesh, the Russian federation, Algeria (on behalf of the African Group) and Cuba.

⁵⁷ Liechtenstein, Mexico, Japan, Belgium, Canada, Portugal, Australia, Argentina, Chile, Germany (on behalf of the EU) and Switzerland.

Among other issues dealing with the rules of procedure, the paragraph regarding organisational meetings was based on Portugal's proposal that provided for a formal organisational meeting to be held on the first working day of the yearly cycle of the Council States decided that they should take place on the first day of Council in order to avoid any gap.

Special Sessions

Debate on special sessions occurred on Friday 13 April 2007 and on Friday 20 April 2007. Discussion was based respectively on the Facilitator's non-papers A/HRC/4/122/Rev.1 and A/HRC/4/122/Rev.2.

Following Egypt's proposal a first paragraph was included in the second non-paper stating clearly that the **rules of procedure of special sessions** shall be in accordance with the rules of procedure applicable for regular sessions of the Council. According to Egypt, this allows for more clarity and would also solve the problem of participation of other stakeholders.

On the issue of the **procedure to be followed in requesting a special session**, the first Facilitator's non-paper provided that "The request for a special session of the Human Rights Council in accordance with the requirement established in OP 10 General Assembly *Resolution 60/251* shall be submitted to the President and to the Secretariat of the Council. The request shall specify the title of the meeting and include any other relevant information the sponsors may wish to provide, including the reason for the request [...]." States debated on whether or not a brief description of the request should be provided. A number of States⁵⁸ requested that the sentence "including the reason for the request" be deleted. Egypt suggested that it be replaced by "subject of the request", because it did not want this sentence to be interpreted as a justification. Algeria agreed and declared that if there was a letter from a State or a Regional Group asking for a special session, it would provide all the appropriate justifications. On the other hand, Germany (on behalf of the European Union) and Canada declared that it was good to know the reason for the request. Canada and the Facilitator specified that there was no need for the reason given to be long.

However, in the third meeting on Friday 20 April, States failed to reach agreement on this issue. Germany (on behalf of the EU), which was in favour of providing a brief description of the request at the first session, changed its position and suggested that the description of a human rights violation would instead be sufficient. India disagreed with this formulation because this could only concern country specific special sessions and not thematic ones. Egypt⁵⁹ also disagreed with Germany's proposal. It insisted that the text of reference was paragraph 10 of General Assembly *Resolution 60/251*, and this did not mention anything about human rights violations. It added that there was no need for a brief description of the request because if the title and the subject of the meeting were specified they would provide enough information.

However, two proposals by India and Cuba emerged at the third meeting, and were welcome. India proposed that "the request shall specify the issue to be addressed in the meeting and include any other information the sponsors may wish to provide." In order not to render the brief description of the request obligatory, Cuba suggested replacing "shall" by "may". India's proposal appears in the third revised non-paper published on 23 April 2007.⁶⁰

On the basis of a suggestion by Algeria,⁶¹ States agreed that special session **documentation should be available in an equitable manner**. After the discussion, the following sentence was agreed upon at the third meeting of the Working Group: "Special session documentation, in particular draft resolutions and decisions, should be made available in all official UN languages to all States in an equitable, timely and transparent manner."

⁵⁸ Cuba, on behalf of the NAM, Egypt, Iran and Algeria.

⁵⁹ Supported by Algeria (on behalf of the African Group), the Russian Federation and Iran.

⁶⁰ A/HRC/4/122/Rev.3.

⁶¹ Supported by Germany (on behalf of the EU9 and the Russian Federation).

The issue of a **time-limit to convene a special session** was also discussed.⁶² Together with Canada, Germany (on behalf of the EU) wished the word “in principle” to be inserted while referring to the first time-limit: “the special session shall be convened as soon as possible [...] but, in principle, not earlier than two working days [...]”. Canada emphasized that two working days were not enough to prepare for a special session, especially when capitals are located in a different time zone. Therefore, it suggested that a special session shall be convened [...] in principle, not earlier than four working days and not later than six working days.⁶³ Other States⁶⁴ declared that the proposal of the Facilitator⁶⁵ was accurate because it was specified “not earlier than two working days” and that in general States would have more than two days to prepare. France declared that the aim was that the Council could meet as necessary when there were urgent situations. Therefore, the timeframe should not be too tight. Other countries⁶⁶ shared this need of flexibility, whereas the Russian Federation disagreed and called on a clear timeframe. At the third meeting, in the light of previous discussions concerning the fourth paragraph, most States⁶⁷ agreed with the Facilitator’s proposal as amended by Germany (on behalf of the EU), that the special session shall be convened in principle not earlier than two working days and not later than five working days after the formal receipt of the request.

On the issue of **participation of observers and NGOs** in the special sessions, the Facilitator’s proposal was as follows: “Members of the Council, concerned States, observers States, specialised agencies, other intergovernmental organisations and national human rights institutions, as well as non-governmental organisations in consultative status shall contribute to the special session in accordance with the rules of procedures of the Council.”⁶⁸ On the one hand, certain countries⁶⁹ were in favour of deleting this paragraph as paragraph 1 of the second revised non-paper states that rules of procedures for special sessions are those applicable for regular sessions. On the other hand, certain delegations⁷⁰ wished to retain the formulation of the Facilitator because it stressed the participation of all stakeholders. However, the Russian Federation made a substantial negative proposal in suggesting the replacement of “shall” with “may”. However, no delegation reacted to this proposal. As there was no consensus on this issue the Facilitator decided to keep this paragraph in his third non-paper and incorporate the amendment suggested by the Russian Federation.⁷¹

On the holding of **open-ended special sessions**, a number of States⁷² agreed that there should not be any reference to “key concerned States”, as special sessions could also concern thematic issues.

Other issues

On the paragraph of the non-paper dealing with elections of the President and Vice President, certain States⁷³ wished that the footnote referring to the equitable geographical distribution in the election process be included in the main text. With regard to the term of office of the President and the Vice-Presidents, the Russian Federation, supported by Germany (on behalf of the EU), called for the impossibility of immediate re-election

⁶² The Facilitator’s first revised non-paper provided that “the special session shall be convened as soon as possible after the formal request is made, but not earlier than two working days, and not later than five days after the formal receipt of the request. The duration of the special session shall not exceed three days (6 working sessions), unless the Council decides otherwise.”

⁶³ Bangladesh agreed on this proposal.

⁶⁴ Cuba (on behalf of NAM) and Egypt.

⁶⁵ A/HRC/4/122/Rev. 1.

⁶⁶ Bangladesh and the US.

⁶⁷ Russia, Algeria, Pakistan, India, Switzerland, Bangladesh, Turkey and Canada.

⁶⁸ A/HRC/4/122/Rev.2, 17 April 2007.

⁶⁹ India, Argentina, Bangladesh, Pakistan, Turkey and South Africa.

⁷⁰ Germany (on behalf of the EU), Switzerland, Brazil, Canada, Cuba and the United Kingdom.

⁷¹ A/HRC/4/122/Rev.3, 23 April 2007.

⁷² Egypt, Iran, the Russian Federation, and Algeria. Amnesty International.

⁷³ Algeria, Turkey, Egypt Pakistan and Germany (on behalf of the EU).

to the same post. Other States⁷⁴ raised the issue of the role of a Vice President as a Rapporteur, paying due regard to equitable geographic distribution.

Conclusion and next steps

The session ended on 27 April 2007 with the closing remarks of Ambassador Martinez regarding the agenda and programme of work and Ambassador Manalo on methods of work and rules of procedure. Ambassador Martinez noted his satisfaction that progress was made on the agenda, and hoped the work could be built upon and completed as outlined in the mandate. While some items had fruitful discussion with notable progress, these were the less divisive issues such as organisational and procedural matters. Many of the convergences were not explicit, but the Facilitator distributed questions under certain items in the hope to elicit clarification and the meagre responses showed that his positions in the paper represented acceptable outcomes. For example, States such as the Russian Federation, who had repeatedly asked for the finances to be covered under Item 2 'Presentation of Reports', made no comments when newer versions of the non-paper did not reflect this. It was in this manner that Item 2 'Presentation of reports'; Item 8 'Technical assistance and capacity building'; and Item 9 'Follow-up of decisions of the Human Rights Council' ended without further discussions or difficulties. Item 4 'Human Rights Bodies and Mechanisms' and Item 7 dealing with the Durban Declaration and Plan of Action and Vienna Declaration and Programme of Action maintained some opposition at the end, although they were not as divisive as certain other items. The most contentious - Item 3 (substantive human rights), Item 6 (Palestine), and Item 10 (Other issues) - did not achieve consensus, despite the Facilitator's repeated calls to move past divisions and abstain from repeating immutable positions.

This session's work on the agenda and programme of work ended with the Facilitator trying to bridge the divide by asking specific questions on where positions could move closer together. He published a final non-paper on 27 April after the substantive discussions for the session had ended. He hoped that it could provide the basis for discussion during the President's informal consultations, and would reinforce that the majority of items did not need much more debate. In this non-paper, the Facilitator added a new Item 4, 'Right to development,' pushing all other items down one slot. While he had placed asterisks beside issues needing further discussion, such as cross-cutting human rights issues, human rights in the occupied Arab territories, and other issues, he did not find this new item to require more negotiation. The programme of work was not discussed in any detail since so much of its content depended on the outcome of the agenda.

Further discussions will take place through informal consultations the 10, 17, 24, and 25 May 2007. The Facilitator stated that he hoped the consultations would make progress before the June Council session.

Regarding the methods of work and rules of procedure, Ambassador Manalo acknowledged, acknowledged the positive and constructive spirit of the delegations in his presentation to the President of the Human Rights Council on Friday 27 April. He stated that his latest non-paper⁷⁵ reflects the status of the discussion as of the last meeting of the Working Group. He highlighted that the future working methods of the Council will be dynamic and adjusted through time, and that the process of adjustment would be transparent and predictable. He declared that general acceptance had been reached with regard to special sessions.⁷⁶ The rules of procedures will be based on practices of the Human Rights Council that are not included in other rules of procedure, and will be combined with those applicable to the committees of the General Assembly. With regard to pending issues, the Facilitator shared his view that agreement will be reached by June.

On the same day, the President of the Human Rights Council announced his intention to continue consultations on all outstanding issues of the various working groups on two parallel tracks. The first of these

⁷⁴ Ethiopia, Morocco and Pakistan.

⁷⁵ A/HRC/4/122/Rev.4.

⁷⁶ Note that this section is not included in the fourth non-paper A/HRC/4/122/Rev.4.

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 open consultations are scheduled for 10, 18, 24 and 25 May.

Annex

Significant positions on the agenda from the first and revised non-papers

	20 March non-paper	17 April non-paper
Item 1 Organizational and procedural matters	HLS should meet once a year: Algeria (African Group), Indonesia, Iran, and Saudi Arabia	Election of mandate holders for special procedures should be discussed: Bangladesh, Iran, India, and Mexico Against this: Japan and Germany (on behalf of the EU)
Item 2 Presentation of reports	Should implement oversight of OHCHR by the Council: Cuba (on behalf of NAM) and Iran Against this: Canada and France High Commissioner's report should be dealt with when thematically relevant: Bangladesh and Cuba (on behalf of NAM)	Section changed titles to "Annual Report of the High Commissioner..." There should only be the annual report: Turkey The High Commissioner should give updates at each session: Switzerland Updates should be dealt with thematically: Germany (on behalf of the EU)
Item 3 Substantive human rights	For Option A (no cross-cutting rights): Algeria (on behalf of the African Group), Azerbaijan, Bangladesh, Chile, Guatemala, Indonesia, Iran, Malaysia, and Pakistan (on behalf of the OIC) For Option C : Argentina, Australia, Canada, France, Germany (on behalf of the EU) Korea, Japan, Mexico, Norway, and the USA	For Option A (no cross-cutting rights): Algeria (on behalf of the African Group), Azerbaijan, Bangladesh, Chile, Guatemala, Indonesia, Iran, Malaysia, and Pakistan (on behalf of the OIC) For Option C : Argentina, Australia, Canada, France, Germany (on behalf of the EU) Korea, Japan, Mexico, Norway, Portugal and the USA
Item 4 Human rights bodies and mechanisms	NHRIs should present themselves to the Council: Germany (on behalf of the EU), India, Korea, and Mexico NHRIs should not present themselves to the Council: Bangladesh, China, Iran, Pakistan (on behalf of the OIC) and Russia.	Expert advice and complaints mechanisms should be separate items: Mexico and Switzerland Complaints procedure should be dealt with more than once a year: Guatemala, Mexico, Switzerland, and the USA
Item 5 Universal Periodic Review	The UPR should be part of Item 4: Algeria (on behalf of the African Group), Indonesia, Iran, Russian Federation The UPR should stay a separate Item 5: Argentina, France, Germany (on behalf of the EU), Mexico, and the USA	The UPR should take place once a year: the USA. The UPR should take place twice a year: Guatemala, India, and Switzerland The UPR should take place three times a year: Cuba (on behalf of NAM).
Item 6 Palestine / occupied Arab Territories	Did not support this item / believed it could be a part of Item 3: Argentina, Australia, Canada, France, Germany (on behalf of the EU), Korea, Mexico, Norway, Japan, and the	Same positions except: Mexico and Peru asked for compromise language instead of repeating their positions or taking sides.

	<p>USA</p> <p>Supported option (b) of this Item: Algeria (on behalf of the African Group), India, Indonesia, Iran, Morocco, and Syria</p>	
<p>Item 7 Durban and Vienna implementation and follow-up; Racism</p>	<p>The Durban Declaration implementation and Vienna Declaration should be separated: Argentina, Cuba, Indonesia, Iran</p> <p>Durban and Vienna follow-up as a separate item from racism: Algeria on behalf of the African Group.</p> <p>This should be a general reference to UN conferences dealing with human rights: Australia, Canada, France, Japan, Mexico, and the USA</p>	<p>This item was separated into 7 (Racism..., and follow-up to the Durban Declaration...) and 7 bis (the Vienna Declaration and Program of Action)</p> <p>Supported the new 7 and 7 bis: Algeria (on behalf of the African Group), China, Cuba (on behalf of the NAM), Ecuador, Guatemala, Iran, Morocco, Saudi Arabia,</p> <p>Remained for a more general mention of UN conferences: Germany (on behalf of the EU), Liechtenstein, the USA.</p>
<p>Item 8 Technical assistance and capacity building</p>	<p>Chile thought there should be space to deal with the effective implementation of GA <i>Resolution 60/251</i>.</p> <p>Switzerland thought the substance of this item was already dealt with under Item 3 Option C.</p>	<p><i>The Facilitator asked the delegations if they would consider an item 8 bis 'Effective implementation of resolution A/60/251'</i></p> <p>For 8 bis: Germany (on behalf of the EU), Guatemala, Iran</p> <p>Against 8 bis: Morocco, Russia, and the USA</p>
<p>Item 9 Follow-up of decisions of the Council</p>	<p>Accepted this item: Algeria (on behalf of the African Group), Australia, Bangladesh, Canada, and Germany (on behalf of the EU)</p> <p>Should be moved after Item 2: Canada and Hungary</p>	<p>Thought it would lead to politicisation: Russian Federation.</p> <p>Thought it would lead to double standards: China.</p>
<p>Item 10 Other issues</p>	<p>Against such a general item: Algeria (on behalf of the African Group), Bangladesh, Indonesia, Iran, and Morocco.</p> <p>Believed this was a necessary item: Australia, Austria, Chile, France, Germany (on behalf of the EU), India, Norway, the Republic of Korea, Switzerland, and the USA</p>	<p>Same positions as before.</p>

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The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at www.ishr.ch/hrm/council

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