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Overview

It was only at the third session of the Human Rights Council in November 2006 that the questions of agenda and working methods were formally discussed by the Council.¹ During the three sessions of 2006, the Council operated without a fixed agenda or methods of work. This provided interesting opportunities to develop new modalities, including the use of interactive dialogues with special procedures, the introduction of an open agenda item entitled ‘other issues’, and the introduction of an agenda item on follow-up to Council decisions.²

During the discussions at the third session, the Council had before it two non-papers by the European Union and the Asian Group, which offered divergent views on future methods.³ The Council was also provided with a non-paper by the Secretariat on issues relating to working arrangements. From the early discussions, it appeared that there were two diverging approaches. Several States called for a structured and thematically organised agenda, evoking memories of the former Commission on Human Rights’ (the Commission) agenda. Many other States however called for an agenda that was more flexible and not organised on a pre-set list of thematic issues that would have to be discussed at every session.⁴

The outcome of these discussions resulted in the adoption by consensus 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”.⁵ The first session of the Working Group took place from 15-19 January 2007 and was divided according to morning meetings, which addressed agenda and programme of work, and afternoon sessions, which addressed working methods and rules of procedure. The meetings are facilitated by the Ambassadors of Guatemala and the Philippines, respectively. The following review of the Working Group is subsequently divided according to agenda and programme, and methods and rules.

Agenda and programme of work

Background

The President of the Council has appointed the Guatemalan Ambassador, Carlos Ramiro Martinez Alvarado, as facilitator of a segment of the Working Group dealing with the agenda and the programme of work. On the first day of the Working Group, the facilitator sought to give clear definitions to both terms. The **agenda** refers to items that will be formally discussed by the Council. 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 tackled.

It became clear from the beginning of the morning meetings that States were split into two opposing camps, grouped around the two main proposals that had been submitted prior to the Working Group. A number of

¹ For a summary of these discussions, see ISHR’s Council Monitor Daily Update, 31 November 2006, at http://www.ishr.ch/hrm/council/updates/30_November_06.pdf.

² In compliance with OP 12 of GA resolution 60/251, which decides ‘that the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms.’

³ The text of all non-papers and statements are available at the OHCHR extranet, which can be accessed at www.ohchr.org/english/bodies/hrcouncil/form.htm (fill out the form on the page to receive the user name and password).

⁴ For a more detailed summary of these discussions, see Human Rights Council, 3rd Session Daily Update, 30 November 2006, at http://www.ishr.ch/hrm/council/updates/30_November_06.pdf

⁵ 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>.

States favour a 'generic' agenda as proposed by the European Union (EU),⁶ while others prefer a more structured and thematic agenda as put forward by the Non-Aligned Movement (NAM).⁷ The clear majority of countries that took the floor during the session were in favour of the NAM proposal.

After hearing some of the themes and topics discussed on the first day of the working group, the facilitator then presented a non-paper with a list of themes that had been previously mentioned by Working Group members.⁸ The facilitator reiterated several times that he was not presenting an agenda, but that this was a document to help guide the discussion.

The facilitator expressed his concern at many junctures throughout the session at the level of confrontation and mistrust in the assembly room. Along with many delegations, he stressed that since the Council is in an institution-building phase, it was essential that a consensus be reached. He therefore warned against speaking in terms of two opposing models. By the end of the session, the two groups were no closer to reaching a compromise, as was made abundantly clear with the discussion surrounding the Secretariat's progress report,⁹ presented on the last day of the session. Several countries that supported the NAM proposal were so unsatisfied that the report did not make reference to their numerical strength that they began alluding to a vote to resolve the impasse.¹⁰ However, others did feel that the two main proposals were not that far apart, and that there was room in the future to negotiate.

The Two Main Proposals

The debate about what kind of agenda would be adopted centred on what the balance should be struck between predictability and flexibility. The EU proposal tabled a document that intended to be more flexible than that of the former Commission on Human Rights, whose structure was described as 'broad' and 'generic'. The new proposal would instead permit for pressing issues to be brought up at any session, allowing the Council to react to current developments on the ground.

The other main proposal was that of the NAM. By proposing a much more structured and specific agenda, this did not allow for pressing issues to be introduced into regular sessions of the Council. This is due to the fact that its agenda was. These suggested proposals are discussed below.

Structured and Specific Agenda

Cuba, on behalf of the NAM, presented the group's non-paper¹¹, which presented an agenda divided under specific themes and issues, similar to the structure of the former agenda of the Commission on Human Rights. It consisted of specific items that covered all the major categories of rights; for example, civil and political Rights, as well as economic, social, and cultural rights were separate standing agenda items. Along with the other items on the agenda, these would be divided throughout the Council's sessions in a 'fair and equitable manner'. This would be done through the adoption of the programme of work, where the timing of agenda items would be discussed.

According to supporters of the NAM, the merits of this proposal were that it would provide for the structure and predictability in allowing for the Council to operate in an efficient and productive manner. Moreover, as pointed out by the Malaysian delegation, the predictability of the agenda would allow for stakeholders, such

⁶ EU and others, Switzerland, Canada, Guatemala, New Zealand,

⁷ Cuba on behalf of the NAM, Algeria on behalf of the African Group, Pakistan on behalf of the OIC, Indonesia, Malaysia, Bangladesh, Sri Lanka, India, Honduras, Iran, Venezuela, Morocco, China, Tunisia, Zimbabwe, South Africa,

⁸ The Facilitator's non-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>

⁹ Available at OHCHR extranet.

¹⁰ Syria, Palestine, Cuba.

¹¹ Available at OHCHR extranet.

as Non-Governmental Organizations (NGOs) and National Human Rights Institutions (NHRIs) to plan accordingly, and attend sessions where their areas of concern would be discussed.

Generic Agenda and its Programme of Work

Germany, speaking on behalf of the EU,¹² highlighted the main issues of their non-paper.¹³ The representative said that they share the terminology used by the Secretariat in its preliminary non-paper on issues relating to working arrangements¹⁴: a permanent basic agenda would prevent the Council from having to constantly re-negotiate its content; the programme of work in turn would translate that agenda into issues to be addressed at each particular session.¹⁵ The EU proposal was built around the overarching principles of predictability and flexibility. Predictability on the one hand would allow all stakeholders, including NGOs and national human rights institutions (NHRIs), as well as States to prepare effectively for the Council. Flexibility, on the other hand, is meant to provide the Council with the responsiveness needed to react to developments on the ground, and would encourage States to reflect at the start of the year on their priorities. The way to balance the requirements of predictability and flexibility is provided by the idea of a **basic agenda**.¹⁶ Indeed, Germany argued that a structured agenda might perpetuate the rigid and inflexible agenda of its predecessor.¹⁷ France firmly opposed the idea of listing specific issues, stating that a selective list was by definition restrictive. The United Kingdom reiterated France's comments, stating that a flexible agenda was needed to allow all delegations to be able to put forward any issues that are of concern to them.

Unlike the agenda of the former Commission, the agenda proposed by the EU does not include specific 'clusters' of issues. The agenda item 'promotion and protection of human rights' is intended to cover such specific issues. At the beginning of the Council's year, States could submit to the president the issues they wish to see addressed in the coming year. The Bureau would then be entrusted to fit these issues into a programme of work for the coming year, which would then be adopted by the Council. In preparing the programme of work, the Bureau would take account of the length of each session and the need to evenly distribute the issues among the different sessions.¹⁸ In this way, the Council would have the predictability that its members desire. It would also help free the Council from the rigidity of the Commission's practices, because emerging and pressing human rights issues could be raised under the proposed agenda item entitled 'urgent situations'.¹⁹ Norway stated that this would allow any human rights issue, be it thematic or country specific, to be raised at any session. This would ensure that the Council would be much more responsive to human rights situations on the ground. The EU sees the merit of this model in its light, and well-structured agenda, which could change from one year to the other and assure that the Council keeps an operational focus.²⁰

Reactions

¹² Germany took over the EU presidency from Finland on 1 January 2007. The Candidate Countries Turkey, Croatia and the former Yugoslav Republic of Macedonia, the Countries of the Stabilisation and Association Process and potential candidates Albania, Bosnia and Herzegovina, Montenegro, Serbia, as well as Ukraine and the Republic of Moldova align themselves with the EU declaration.

¹³ Oral statements made at the Working Group are available on the OHCHR extranet.

¹⁴ Available at OHCHR extranet.

¹⁵ The Secretariat has issued its own preliminary non-paper at the request of the President of the Council (available on the extranet). It defines *agenda* as being of significant importance for the legal and political distribution of work, whereas the *programme of work* is understood to designate the translation of the agenda into the tasks of the Council for each particular session.

¹⁶ The EU proposal enumerates 8 points for the agenda: report/update from the High Commissioner for Human Rights, urgent situations, reports from special procedures and interactive dialogue, promotion and protection of human rights, recommendations from the UPR and complaints mechanisms for decisions by the Council, expert advice and adoption of the report of the session. The High Level Segment would take place only during the main session.

¹⁷ Australia also felt that this would 'lock in' the Council to a model similar to the Commission. Japan also reminded the Working Group that there was a reason why the Commission was disbanded in the first place, and duplicating its practices would not be productive.

¹⁸ Supported by Australia, the Netherlands, Switzerland, Canada, the United States, Portugal, Norway, Italy, Japan in their oral statements.

¹⁹ The annual programme of work was supported by Chile.

²⁰ This point was particularly stressed by the United Kingdom.

The South African Ambassador, who was very vocal about his support for the NAM proposal, stated that the programme of work must be informed by the agenda. Cuba was particularly critical of the EU proposal, claiming that it was not an agenda, but was the reiteration of the mandate of the Council established in General Assembly *Resolution 60/251*. Cuba stated that the items on the agenda should be divided throughout the programme of work in an equitable and balanced manner. The UK and Germany, on behalf of the EU, assumed that the NAM proposal was suggesting that the Council would take up item (a) at the first session and work through all the items in a chronological order, thus, only taking up an issue once a year. Algeria and Cuba clarified that some items will certainly be taken up more than once, while others will only occur at one session. This alleviated some of the concerns, and the U.K. delegation stated that perhaps the two sides were not in fact that far apart.

The United Kingdom pointed out that the annual programme of work would guarantee predictability. The possible yearly reshuffling of the agenda meant that the Council could be made more operational, since it didn't have to consider the same resolution each year. The USA agreed with the EU proposal in that it would allow the Council to have a short and consistent agenda throughout the year, but would keep its ability to deal with emerging issues or urgent situations. Guatemala, while supporting the idea of a generic agenda, said that the issues treated should include civil, political, economic, and cultural rights and the right to development. Brazil, while noting good elements in the EU proposal, stressed that the Council should also include thematic agenda items.²¹

Canada, while not explicitly aligning itself with the EU proposal, shared many similarities. The Ambassador said that the agenda and the programme of work should reflect the new nature of the Council. It stressed that the Council needed to improve the implementation of its resolutions. Canada aims to achieve this by an additional agenda item entitled 'multi-stakeholder discussions on implementation challenges'. These would take the form of panel discussions, which could consider 'real world' challenges. Those supporting the NAM proposal generally rejected this form of interaction. Pakistan, on behalf of the OIC, was clear in rejecting such methods. Egypt attempted to give an explanation, stating that innovative mechanisms could be used to reduce the level of importance at which a situation is addressed.

The Portugal representative criticised NAM's categorisation of the issues, stating that separating them was not a good way to show the interconnectedness of human rights. He felt that a broad, all-encompassing agenda would be in line with the guiding principles of the Council, particularly those of flexibility and impartiality. Specific reference was made to South Africa's comments from the previous day about developed countries largely ignoring the right to development in their statements. The Portuguese ambassador claimed that it was unfair to say that developed countries were not concerned with poverty, highlighting that Portugal was an EU country that feels very strongly about economic, social, and cultural rights as well as the right to development, and puts them on an equal footing with civil and political rights.²² The Netherlands also added that the EU proposal will help to form linkages between these two related sets of rights.

Debate on Specific Issues

The NAM proposal naturally detailed specific agenda items of particular interest to its members. Firstly, many delegations strongly endorsed the inclusion of the right to development on the agenda.²³ South Africa's Ambassador stressed that this is a critical issue for developing countries, and that they cannot speak of human rights when human dignity is not addressed through combating poverty. Unlike the EU proposal, those in support the NAM agenda felt that the most effective way to tackle this issue was to have it as a separate, standing agenda item, while the EU felt that it would be better to have this covered under a generic agenda item entitled 'promotion and protection of human rights', which would cover all of the major categories of rights.

²¹ Including gender, children, racism and indigenous issues.

²² This was reiterated by the Ambassador from the Netherlands.

²³ Agenda Item (b)

Moreover, the NAM proposal also felt it would be more effective for economic, social and cultural rights and civil and political rights as separate agenda items. To the supporters of the proposal, this would ensure that both of these types of rights would get the fair and equal attention of the Council.

The most divisive issue on the NAM agenda dealt with the situation in the Occupied Palestinian Territory (OPT) and the Syrian Golan.²⁴ Many countries that endorsed the NAM non-paper made specific reference to this agenda item, stating that it is necessary to have it as a standing agenda item. Strong arguments were put forward defending its inclusion, like Cuba, who stated that it will not accept that this is anything else than a separate standing item for the OPT on the grounds that this was a unique situation that dealt with an ongoing foreign occupation, which they and others²⁵ described as one of the worst types of human rights violations. Cuba stated that, much like apartheid in South Africa, this is an issue that must be taken up by the Council until the situation in the OPT and Syrian Golan is resolved. Egypt and Iran added that they are not treating this as a political situation, but are viewing this only as a 'gross and systematic' violation of all human rights, which have been ongoing since 1967, and which had gotten worse over time. On those merits alone, they argued, it should be a standing item. Palestine added that not including this on the agenda would go against the Council's own L.15 resolution of the first regular session of the Council, which stated that the situation of the OPT must be dealt with by the Council. The Palestinian Ambassador also expressed his frustration that the situation in the OPT and Syrian Golan was included in the facilitator's non-paper as an issue that required further discussion. He argued that this issue did not warrant any further discussion, and that it must be included on the agenda until the situation is resolved.

On the other hand, the German delegation was not in favour of having any permanent, specific, standing items on the agenda. The United States delegation also stated it will establish a precedent of selectivity and politicization, which is what the Council is meant to avoid. The Dutch commented by saying that there was no consensus on this issue and suggested having an agenda item on foreign occupation. Canada warned that delegations should not try to score 'political points' while the Council was in an institution building phase.

Another NAM proposal of significant importance to its supporters was the inclusion of an agenda item on 'racism, racial discrimination, xenophobia, and related intolerance, as well as comprehensive follow-up to and implementation of the Durban Declaration and Program of Action.'²⁶ Many delegations that endorsed the NAM proposal stated that it was of the important that this be included on the agenda as a permanent item, and not something that could be included under 'promotion and protection of human rights' as in the EU proposal.

There was only one proposed amendment to the NAM proposal from those who endorsed it, coming from Algeria on behalf of the African Group. The Algerian delegation suggested that Article (f), concerning?, be changed so that it would only cover the 'Promotion and Protection of the Rights of Peoples, Groups and Individuals as enshrined in the United Nations Charter.'

The Russian Federation felt that it was important that the OHCHR present an administrative report, which would include financial details in order to ensure transparency. They argued that this was a good way to ensure that donors were not influencing the OHCHR. This was an idea that was also favoured by India, who claimed that they needed to know more about the way the OHCHR operates. However, the German delegation warned that the Council should not overextend itself.

On the issue of the rights of the child, two non-governmental organisations (NGOs) made statements. Save the Children, on behalf of six other NGO's advocated the allotment of two days of the Council's annual meeting time to discussion on the Rights of the Child. This time would amount to 4% of the Council's annual sitting time of ten weeks. The representative hoped this time would include an interactive dialogue with state parties, NGOs, the High Commissioner for Human Rights and representatives from the Committee on the Rights of the Child (CRC). In this way, the Council would provide a voice to all stakeholders, including children who make up more than 50% of the world's population. A representative from the Permanent Assembly for Human Rights Argentina then spoke of the necessity of providing a timetable of the Council's

²⁴ Agenda Item (g)

²⁵ Iran, Syria, Pakistan on behalf of the Organization of the Islamic Council, Egypt

²⁶ NAM Agenda Item (e), the Durban Declaration is available at <http://www.unhchr.ch/pdf/Durban.pdf>

agenda to national NGO's prior to the convening of sessions, so as to allow for their active participation in interactive dialogue.

The Indian Movement Tupac Amaru took the floor to support the position of NAM. It felt that the mandate of the Working Group was to develop a specific and clear agenda, and not a generic agenda as described in the EU proposal. It described the importance of NAM countries in the de-colonizing movement and their commitment towards the development of poor countries. It associated itself with South Africa's statement and added that ensuring the right to development was the only way of endowing the developing world with the capacity to implement human rights.

The International Women's Alliance representative took the floor to describe the headway they had achieved in bringing children's rights to be addressed in the CHR. She now asked that the Council retain the rights of the child on the agenda. She explained that children's rights cover all aspects of rights, from economic, social, and cultural rights to civil and political rights, in their own specialised way, and that they accordingly deserve special mention in the Council's agenda.

The Facilitator's Non-Paper

On the third day of discussion, the Facilitator distributed a document aimed at providing an overview of some positions and opinions expressed regarding the agenda and programme of work of the Human Rights Council (the Council).²⁷ The Facilitator clearly stated that this was a non-paper, and that it was not meant to reflect a compromise solution. However, most delegations agreed that a non-paper was the basis for reaching a consensus.

Delegations spent two sessions commenting on the non-paper. Although the Facilitator did state that this document was meant only as a guide with the list of ideas put forward, many delegations took it as a proposal in itself and criticised / supported it as such. For the most part, delegations repeated their positions regarding the two main proposals by the EU and NAM. However, several delegations did comment independently on the specific points listed in the paper.

The non-paper is comprised of three pages. Page one outlines the principles of the Human Rights Council and various characteristics the agenda should have. Page two outlines various themes that could appear under the agenda. Page three contained a list of specific topics for which one or more delegations expressed an interest.²⁸ It also listed three issues, which according to the facilitator required more discussion. These were the follow-up and implementation of the Durban Declaration and Programme of Action, the promotion and protection of the rights of persons, groups and individuals (sub-items), and the human rights situation in the Occupied Palestinian Territories and in the occupied Syrian Golan.

Comments on the Facilitators Non-Paper

Principles of the Agenda

The Facilitator's paper listed a number of principles as mentioned in *General Assembly Resolution 60/251*. These were: "Universality, Impartiality, Objectivity, Non-selectivity, Constructive dialogue and cooperation, Predictability, Flexibility, Transparency, Accountability, Balance, and Inclusiveness / Comprehensiveness". Generally speaking, there was no disagreement with the principles listed. However, there were calls from the African Group, represented by Algeria, to include the principles of "equity", "non-discrimination", and "international cooperation"²⁹. Morocco proposed the addition of the principle of the: "interdependence of human rights" and South Africa proposed the addition of the principle of "participation".

²⁷ This document is available on the Human Rights Council Extranet, at <http://portal.ohchr.org> (password required).

²⁸ Children, Gender / women, Indigenous, Racism, Xenophobia, Minorities, Migrants, Religious intolerance, Torture, Right to truth, Right to food, Poverty, Persons with disabilities, Human rights defenders, Administrative report of the OHCHR.

²⁹ This Islamic Republic of Iran associated itself with the inclusion of this principle.

Characteristics of the Agenda

This characteristics listed in the Facilitator's non-paper were: "Generic, Basic framework, Flexible, Broad/General, Functional, Main thematic chapters (with sub-categories), Inclusive". No delegation opposed the list of characteristics of the agenda. However, the discussion made it clear that the same words were interpreted differently by different delegations.

Items / Themes of the Agenda

The Facilitator listed 13 items that had been expressed by at least one delegation in prior discussions. The delegations that took the floor commented on the themes individually, often explaining how they fit or do not fit into the proposals they support.

1. Economic social and cultural rights
2. Civil and political rights
3. Right to development

The **first three items** listed referred to the three kinds of rights that NAM would like to see treated in a fair and balanced way. Several delegations did not agree with their separation. The German delegation, on behalf of the European Union (EU), stated that it did not see the value of splitting up those rights, particularly economic, social and cultural rights (ESCR) and civil and political rights (CPR) as these were interrelated. New Zealand added its voice, stating that it found that some issues would be difficult to categorise under a specific heading (e.g. children's rights). Accordingly, New Zealand proposed a solution similar to that of Norway, with item six serving as a heading for items one and two. Malaysia appreciated the fact that the rights were grouped separately, as in NAM's proposal. According to Malaysia this would enable the rights to be dealt with under an equal footing because they are interconnected and indivisible. South Africa stated that NAM's proposal took care of fears such as those expressed by New Zealand, but did not explain how. Mexico proposed that a separate item could be added to include the interrelationship between rights and reminded the Council of the proposal made by the delegation of Norway to merge items one, two, and three under the heading of item six.

Algeria, on behalf of the African Group, felt that **item three** should be renamed "implementation of the right to development" in order to emphasise the need for a real and substantive promotion of the right to development. The USA stated that it found that items one, two, and six provided ample space for all rights to be addressed.

Although in favour of the EU proposal, Norway called the Facilitator's non-paper a "realistic compromise". Accordingly, Norway proposed that these three items remain, but that they be placed as sub-headings under "promotion and protection of human rights" (**item six**).

4. Presentation of reports and interactive dialogue:
 - Report of the High Commissioner for Human Rights
 - Reports of the Special Procedures
 - Report of the expert advisory body
 - Report of the complaints procedure (confidential)

On **item four**, Mexico felt that the interactive dialogue should take place under a thematic debate. The Algerian delegation stated that the African Group was in favour of a distinction between the reports. However, in accordance with its preference for a detailed and structured agenda, it expressed its wish to see reports linked to specific items under the agenda. The delegation of the Islamic Republic of Iran supported this view and stated that it would also like to see the implementation of General Assembly *Resolution 48/141*³⁰ included in this item. It did not elaborate on its position regarding this resolution. Tunisia felt that the report of the High Commission for Human Rights should be considered separately. The United Kingdom delegation supported the inclusion of all the reports in item four, but, referring back to items one and two,

³⁰ This is the resolution establishing the Office of the High Commissioner For Human Rights.

stated that it would prefer for the Rapporteurs dealing with those rights to be present at the same Council sessions.

5. Universal Periodic Review

- Sessions for UPR
- Sessions for the presentation of the UPR reports

There was very little discussion concerning **item five** given that the Working Group on the Universal Periodic Review is still going on. Algeria, on behalf of the African Group, felt that for the moment the document should limit itself to mentioning that the UPR will be involved. The Islamic Republic of Iran also proposed waiting for the outcome of the Working Group. Colombia expressed the opinion that the UPR must be an essential part of the agenda but added that the Council should not pre-empt the results of the Working Group.

Although countries agreed that it was important that the Working Group not prejudge the outcomes of other Working Groups, many delegations felt that initial stage of UPR should be held outside of the ten weeks allocated to the Council by a subsidiary body. In order not to overburden its programme of work, New Zealand suggested that only two of the ten weeks of the Council be allocated for UPR reports and recommendations.

6. Promotion and protection of human rights

- NAM proposal (detailed)
- EU proposal (general)

On **item six**, Switzerland suggested renaming the heading to “specific items referring to the promotion and protection of human rights” so as not to create confusion with the overall mandate of the Council. This was part of a 10-point proposal for a structured yet flexible agenda.³¹ They stated that it would be inclusive and in line with the guiding principles of the Council. Nevertheless, Algeria, on behalf of the African Group, reiterated its position that it did not see the use of this item as it simply reflected the mandate of the Council. Algeria, siding with the NAM proposal, reiterated the need for specific themes to be listed in the agenda and to avoid such vague items.

7. Follow-up to recommendations

Although most members of the Working Group saw **item seven**³² on the facilitator’s agenda as necessary, many required further clarification on the issue. Algeria felt it was unclear as to whether we are talking about all of the resolutions and decisions of the Council or by Special Rapporteurs. Mexico stated that it was flexible on this point, and that this could be follow-up to recommendations of mandate holders, as well as decisions reached by the Council. South Africa added that the vagueness of **item seven** takes away from what the Council is intending to do. The Ambassador argued that the Council should only be responsible for following up its own decisions, and not those of Special Rapporteurs.³³

8. Procedural action (renewal of mandates, election of members of the expert body)

South Africa suggested that **item eight** on the facilitator’s non-paper, which dealt with procedural action³⁴, could be grouped in with the organizational session of the council, since it was primarily concerned with organizational issues. The Ambassador also suggested that this is when the adoption of the annual programme of work (**item eleven**) should take place during this period as well. Algeria suggested that this item should be moved up to the beginning of the agenda of the Council.

³¹ These 10 points were: 1) The adoption of the programme of work, 2) An update from the High Commissioner and an interactive dialogue, 3) Situations of current concern (to be announced in approximately one week prior to a session), 4) Reports from special procedures, 5) Specific issues on the promotion and protection of human rights, 6) Follow-up to decisions adopted by the Council, 7) Recommendations and decisions of the Universal Periodic Review mechanism, 8) Report and decisions of the individual complaints mechanism, 9) Report from expert advice body, 10) Adoption of the Council’s report for the session.

³² Follow-up to recommendations.

³³ This was also reiterated by the Malaysian delegation.

³⁴ Renewal of mandates, election of members of the expert body

9. Fostering of capacity building and assistance / technical cooperation

Tunisia was unclear about what the issue of fostering capacity building, assistance, and cooperation (**item nine**) will include. The facilitator responded that he could not say what will be included in technical cooperation yet, as some delegations feel this might include the Universal Periodic Review, a mechanism that has yet to be finalized.

10. High Level Segment

The item of the High Level Segment (**item ten**) was not touched on by many of the delegates, other than once again stating that this is to take place during the main session of the Council. The South African Ambassador even felt that this could be removed from the agenda, because it should be considered as more of an event that occurs during the main session.

11. Approval of the programme of work
12. Other issues / Emerging themes / Urgent situations
13. Adoption of the report of the session

The agenda item referring to other issues/emerging items/urgent situations (**item 12**) was originally proposed in the EU agenda proposal. Switzerland stressed the importance of this issue in ensuring flexibility, but offered that the wording could be made more neutral (topical/current items and situations).³⁵ Germany, on behalf of the EU, also reiterated the importance of this agenda item, as it would allow for any issue to be raised during any session. On the other hand, some were opposed to the inclusion of this item on several grounds. Firstly, the Philippines felt that clarification is needed because its inclusive nature could lead this item to be a channel for a 'flood' of issues to be brought before the Council, and might overburden its members. Venezuela argued that 'urgent situations' should not be included in the agenda, because this is the role of special sessions.³⁶ The South African Ambassador added that members should consider deleting this item altogether. He claimed that it does not need its own place on the agenda, since in any case, delegates can raise an issue that is of concern to them when they wish. He did not elaborate on how this was possible. Canada later responded to the Ambassador's comments by saying that if this was the case, then it puts in question the value of adopting an agenda at all. He then went on to say that such loose working methods would obviously be extremely chaotic.

Item 12 was a central point of disagreement between the EU and NAM and probably one of the main reasons no consensus was reached. All alternative proposals, including Norway and Switzerland's more structured proposals for an agenda, included either "other issues" or an item that left open the kind of themes that could be discussed. This was not accepted by any of the countries supporting the NAM proposal.

Number of Sessions/High Level Segment

Some countries also raised the issue about the number of sessions that the Council was to hold annually, and when the High Level Segment would be held. Under General Assembly *Resolution 60/251*, the Human Rights Council was to meet for 'no fewer than three sessions per year, for a total of no less than ten weeks'.³⁷ However, in its first year, the Council was scheduled to hold four sessions, and some felt that having this as the norm should be considered. New Zealand's delegation was flexible as to whether the Council would hold three or four sessions. Malaysia, on the other hand, felt that it would not be practical to hold a session in June as four sessions would put a strain on missions from developing countries, and because of the large amount of meetings and conferences in Geneva during this period.³⁸

³⁵ New Zealand also felt the title 'other issues' was adequate.

³⁶ Reiterated by Cuba, Russia

³⁷ OP 10 of GA Resolution 60/251

³⁸ Russia also supported this suggestion.

Other issues

Several other issues were also discussed during the course of the week. A significant issue had to do with the inclusion of country specific mandates. Pakistan on behalf of the OIC and the Islamic Republic of Iran both felt that **country specific mandates** were the main cause of selectivity and politicization in the former Commission, and that they should be removed. Norway, however, was quite clear in saying that it felt that it was important that the Council have the ability to take up any situation, be it thematic or country specific, at any time.

On the issue of when reports and recommendations of Special Rapporteurs should be presented, the NAM suggested that these be grouped with related thematic issues in the programme of work, rather than being grouped altogether. This element of the proposal was perhaps the only one that received praise from the EU.

Need for Consensus

Throughout the Working Group, the facilitator commented on the fact that there was a large amount of mistrust in the room, as well as a confrontational atmosphere, with groups choosing to group themselves around the NAM and EU proposals. Chile also commented that it has only heard delegates grouping themselves around the two proposals rather than trying to reach a consensus. They argued that the debate could be enriched if other proposals, such as that of Norway, were incorporated into the debate. The facilitator also highlighted the fact that more than two proposals have been put forward, and that referring to only two models had a polarizing effect.

South Africa's Ambassador stated that it would be a disaster if the Council could not reach a consensus on the agenda and programme of work. If the Council could not agree on this, he stated, then how could they agree on anything? This was a view that was reiterated by the facilitator and many of the delegations. However, from the first day, there had been reference to calling a vote on the matter. This was raised by the delegation of Palestine. Cuba, which tabled the NAM proposal, was also not shy about the need to 'be realistic' about trying to reach a consensus. They made reference several times to the fact the NAM proposal had the support of the majority of the Council's members, and 118 countries in total. Syria also stated that a vote would be the democratic way to decide the outcome of the agenda and programme of work. Even the delegate of South Africa, who stressed the importance of the need for a consensual agreement, stated that members must 'be realistic'. China added that the way forward was to build a consensus around the views of the majority.

However, Germany and many others were alarmed by these views, arguing that it would severely undermine the Council's credibility if they formed an agenda through vote rather than consensus. Canada reminded that the Council was in an institution-building phase, and that consensus is the only way forward.

Ghana alluded to the fact that both sides were 'speaking the same language but in different ways'. After receiving clarification from the Cuban and Algerian delegation that issues on the NAM agenda could be taken up more than once a year, Germany felt that the sides were not too far apart that a consensus could not be reached. However, in the closing moments of the session, it became clear that the sides were perhaps even more polarized and unwilling to change their positions than the first day of the Working Group.

Secretariat Progress Report

On the last day of the session, the facilitator presented a draft progress report that was prepared by the Secretariat. The facilitator outlined that this was only a draft, and that it was open for members of the Working Group to make suggestions to any mistakes. Most delegates found this document helpful, and a good summary of the general debate. Some delegations, such as Brazil, felt that several changes should be made, and informed the facilitator that they would forward these recommendations. Others, however, were

extremely critical of the document. The Palestinian Ambassador felt that the Secretariat's report did not reflect the realities of the discussion. The Ambassador had a bigger issue with Paragraph 14 of the report, when it stated that 'some delegations' had raised the issue of the 'Occupied Arab Territories'. By referring to the 'Occupied Arab Territories' rather than the Occupied Palestinian Territory and Syrian Golan, the Ambassador felt that this was done intentionally so as to avoid clarity. More importantly, he felt that it should state that it was, in fact, the 'vast majority' of delegations who felt that this should be considered as a standing agenda item.³⁹ He then felt that those countries who do not support the idea should be included in the paragraph. This was done obviously to isolate those who did not support the idea, such as the EU, the United States and Canada.

Although many of NAM's allies commented on this point, the harshest condemnation of the report came from the Cuban Ambassador. He arrived to the Working Group up with less than an hour to go in the session, specifically to voice his disapproval. He called the report 'an insult to our intelligence' and a 'shoddy piece of work', among other things. He reiterated the view of the Palestinian delegation that the report did not reflect the realities of the discussion, and that the EU and its allies' proposal were given precedence in the report, while the strength of the NAM was minimized, despite the fact that its members represent a majority in the Council and the General Assembly. He said that he would 'not bother' making recommendations because the report was riddled with errors and had to be re-written from scratch, and he refused to approve the adoption of this report under any circumstances. The Cuban Ambassador also made reference to the strength of the NAM, underlining the fact that they could have their proposal adopted without the EU's consent. It is fair to say that the closing moments left the Working Group with an atmosphere of clear polarization.

Although the Cuban Ambassador was correct in his summary that the report did not reflect the numerical support of the NAM relative, this was not a document beyond repair. The facilitator contended that the report was supposed to represent all of the proposals that were put forward. It could be argued that the Cuban delegation and their supporters were more upset by the fact that the NAM proposal seemed to get lost among the large number of proposals and suggestions put forward.

Conclusion

Neither side made any significant compromise during the session. Despite the acknowledgement by the German and Portuguese delegations that the sides were not that far apart, the members of the Working Group failed to capitalize on the small areas of convergence in order to move towards the consensus that so many have deemed to be crucial to the success of the Council. The Working Group is scheduled to meet again from 10-13 April 2007, after the fourth session of the Human Rights Council.

Working Methods and Rules of Procedure

Background

The afternoon meetings of the Working Group focused on the discussion of working methods and rules of procedure for the Human Rights Council (the Council). Debate was structured around the main themes of the non-paper prepared by the Facilitator, Ambassador of the Philippines H.E. Mr. Enrique A. Manalo⁴⁰. This was based on suggestions made by states at the last session of the Council and was intended to direct the discussion according to the three main areas identified: institutional structure of the Council; innovative ways

³⁹ The NAM non-paper had the support of 118 members, and a majority of the Council's members.

⁴⁰ The paper is available on the OHCHR extranet which can be found at www.ohchr.org/english/bodies/hrcouncil/form.htm. (fill out the form on the page to receive the user name and password).

of working; and new outcomes. Among the elements that caused the most disagreement were the possible inclusion of new 'innovative mechanisms'⁴¹ 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.

The general debate was conducted under the guidance of the provisions of General Assembly resolution 60/251⁴² which created the Council. Operative paragraph 12 of resolution 60/251 states that "the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms". In recalling this paragraph, many states highlighted the need to uphold the principles of transparency, fairness and impartiality in their work. At the same time, however, many took very different views on the precise meaning of genuine dialogue, a results-oriented body and substantive interaction. The atmosphere of the session moved between vague general outlines and non-commitments, depending on outcomes of the Working Group on agenda, and staunch and vocal opposition to certain proposals, particularly concerning the issue of special sessions.

Working Methods

Organisational meetings

The non-paper referred to the possibility of holding organizational meetings to be chaired by the President prior to regular Council sessions. There was widespread convergence on this point.⁴³ Germany on behalf of the European Union (EU) favoured holding at least one public pre-sessional open-ended consultation. South Africa, while supporting this idea, also raised concerns over the role of the President in such sessions. However they did not elaborate on these concerns.

Many states felt that such sessions were an appropriate forum for the discussion of organisational matters such as the election of members of the advisory council.⁴⁴ South Africa suggested that such sessions could be used to confirm office bearers for the ensuing year of the Council. Russia, on the other hand, dismissed such meetings as 'superfluous'. Argentina assumed a middle ground by stating that organizational meetings should be a part of the Council's regular sessions as opposed to creating the burden of additional meetings. Armenia stressed that organizational meetings should not be used for negotiations, but should remain purely informative in nature.

President's open-ended consultations

The Facilitator's non-paper included the proposal that the President of the Council conduct open-ended consultations with member and non-member states of the Council at an 'appropriate' time during plenary sessions to discuss resolutions, decisions and other business.⁴⁵ It was suggested that these meetings would take place after the deadline for the submission of resolutions for the purpose of assessing the status of

⁴¹ The proposal of 'innovative mechanisms' includes interactive dialogues with special procedures, round table discussions, seminars on issues and panel debates.

⁴² The full text of the resolution is available online at the OHCHR website at: <http://www.ohchr.org/english/bodies/hrcouncil/>.

⁴³ Canada, USA, India, China, Indonesia, Malaysia and Chile.

⁴⁴ Supported by Egypt, Portugal and the UK.

⁴⁵ This idea was tested at the second session of the Human Rights Council, where the President was required to hold an informal consultation during the session to address the volume of resolutions before the Council and the problem of time constraints.

negotiations. Such meetings would be of particular benefit to states with smaller delegations who are rarely involved in high-level negotiations due to limited staff capacities and finances.

There was a general consensus on the need for at least one public open-ended consultation.⁴⁶ However there was some confusion as to the intended outcome of such consultations. The Facilitator clarified that these open-ended consultations on resolutions should only constitute “information sessions”, where the President would introduce resolutions which had been submitted. Nevertheless, several delegations continued to stress that such consultations should not be held for the purpose of negotiation, but solely as organizational tools.⁴⁷

South Africa, Peru, and Indonesia expressed their belief in the prerogative of sponsor states to hold consultations on their own terms, rather than being forced to explain their resolutions in open-ended consultations. Algeria and Cuba spoke of the need to rationalize the number of consultations held, arguing that they limit the participation of developing nations who generally have smaller delegations. Their concern was that developing nations, who often have small delegations and are financially constrained, will not be able to attend all open-ended consultations held on various issues, and will therefore not be able to participate in discussions. It was believed that this would lead to inequality within the Council.

There was also discussion on whether such consultations could be chaired by the Vice-President of the Council, in place of the President, prior to Council sessions. To this end the Facilitator explained that these would also be purely informative sessions. India and Indonesia voiced their broad support for the idea. Norway opposed the chairing of the Vice-President over such consultations, arguing that only the main sponsors of resolutions had the power to convene sessions in which their proposals would be open for discussion.

Informal consultations of sponsors on draft resolutions

The question of open-consultations of the President on submitted resolutions led naturally to the question of informal consultations conducted by the main sponsors of resolutions, as was the practice at the Commission on Human Rights. The position was put forward by the UK and the USA that, although the sponsors of resolutions have the discretion to decide when, where and how often consultations will be held, it is in the interests of transparency that at least one public consultation be held, particularly if the genuine intention of the sponsors is to reach consensus on draft resolutions. The Asian Group suggested that the number of open-ended informal consultations should be limited as much as possible, and that delegations should be informed of those consultations at least five days in advance. Algeria and Cuba reasoned that the proliferation of informal meetings could pose a burden to the smaller missions of developing countries and that meetings taking place at the same time could not be equitably represented.

Meetings of members of the Council

The non-paper suggests maintaining the practice of closed meetings for members of the Council on ‘particular urgent issues of a non-substantive nature’. Several states expressed their strong opposition to the practice of these so-called ‘closed’⁴⁸ meetings, with many noting their concern that these consultations run contrary to the Council's goals of transparency and inclusiveness.⁴⁹ Chile argued that closed meetings should be an exception.⁵⁰ Germany on behalf of the EU stated that if closed meetings were held, there should not be any substantive negotiations during the meeting.

⁴⁶ Norway, the USA and the United Kingdom spoke to this end. The USA warned that it would be “inappropriate” for the President to use these consultations as a platform for negotiation.

⁴⁷ The USA, India, Australia, China, Indonesia, Malaysia, the Russian Federation and Chile.

⁴⁸ They are referred to as ‘closed’ because only member states of the council may attend.

⁴⁹ Australia, USA, Norway, China, Thailand, Islamic Republic of Iran, Argentina and New Zealand.

⁵⁰ Supported by Portugal

In contrast, India supported the convening of closed meetings, which it saw as an appropriate alternative to the 'Expanded Bureau'.⁵¹ India argued that closed meetings should not be limited to the discussion of non-substantive, organizational matters. In response to India's criticism of the Expanded Bureau, South Africa and Algeria spoke of the lack of accountability under the former Bureau. As the coordinator of the Africa Group, Algeria is particularly supportive of the Expanded Bureau which provides a greater role for regional coordinators.

Participation of non-members and civil society

The question of NGO participation in the context of the future working methods of the Council received strong support from many states.⁵² The EU in particular drew attention to what it described as their 'valuable expertise and input that will benefit the Council', extending to specialized agencies, other international organisations, national human rights institutions, and NGOs 'during regular meetings as well as special meeting so of the Council.' Algeria however continued to emphasise that the level of participation enjoyed by NGOs during the interactive dialogue with special procedures at the second session of the Council was an exceptional measure,⁵³ and should not be seen as a precedent for future practices of the Council. South Africa questioned how the Working Group would deal with the issue of the accreditation of NGO participants. The NAM paper, presented by Cuba, inferred that the interaction of NGOs at special sessions should be determined on a case by case basis, and was therefore not formalised in the manner of regular sessions.

Germany, on behalf of the EU, drew particular attention to paragraph 12 of General Assembly Resolution 60/251, which states that the methods of work must 'allow substantive interaction with special procedures and mechanisms.' They therefore further advocated for the strengthening of the role of special procedures in interactive dialogues and looking at new ways to utilise their knowledge and resources.

Thailand, Argentina, South Africa, Germany and the Islamic Republic of Iran also emphasized the important role of non-member states in the Council.⁵⁴ Iran suggested that observer states should have the same access to information as member states, without however providing any explanation of the type of information they were referring to.⁵⁵

Innovative Mechanisms

The Working Group vigorously debated the inclusion of so-called 'innovative mechanisms' such as interactive dialogues on issues with special procedures, panel debates, seminars on issues and roundtable discussions, in the Council's working methods. This idea was championed by Canada who chaired a successful panel debate on the issue of Afghanistan in a parallel event during the 3rd session of the Council in November 2006.

Germany on behalf of the EU welcomed the proposal, reiterating the success of Canada's panel discussion held to discuss the implementation of human rights in Afghanistan in November 2006. However Germany requested further details as to the form of such a mechanism. The USA, Iran, New Zealand and Chile all welcomed the use of the previously mentioned innovative mechanisms, but hoped these would not substitute existing mechanisms of the Council such as resolutions.

⁵¹ The previous practice of the Commission on Human Rights was to operate under an Expanded Bureau, directed by the regional co-ordinators, which would feed into the decisions of the Bureau of the Commission. To date, the Human Rights Council has operated without an Expanded Bureau, a practice that India supports.

⁵² USA, Norway, Brazil, Australia, Mexico, Germany on behalf of the EU, and Peru.

⁵³ For more information on this issue go to the draft report of the 2nd session which is available on the OHCHR extranet (fill out the form on the page to receive the user name and password). It is available at:

<http://portal.ohchr.org/portal/page/portal/HRCExtranet/2ndSession>.

⁵⁴ Iran is not a member of the Council, and given international criticism of that nation's hard lined leadership, their chances of gaining membership in the near future are very slim. By stressing the need to safeguard the involvement of non-members in the work of the council, Iran is attempting to preserve its own voice in the Council.

⁵⁵ Although Iran did not elaborate on the ways in which they are denied access to information as a non-member of the Council, they could have perhaps been referring to the possibility of 'closed' sessions of the Council which would apply to member-states only, or to the present system of communications under the 1503 procedure. In every other respect non-member states receive equal access to information.

Some states expressed concern towards such mechanisms.⁵⁶ While not directly opposing the use of such mechanisms, Cuba requested that the content and form of panels, round tables and seminars be clarified and discussed within the Working Group.

Rules of Procedure

Operative paragraph 11 of General Assembly *Resolution 60/251* stipulates 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”.⁵⁷ Several delegations expressed the need for transparency and effectiveness in deciding upon the rules of procedure for the Council. Mexico and the Russian Federation pointed out that although the General Assembly Committee rules of procedure would be used as a guide, *Resolution 60/251* also called on the Council to improve and innovate its mechanisms. In this respect, the Russian Federation cited the UPR and the participation of NGOs as aspects which distinguished the Council from other committees of the General Assembly, and therefore argued that it needed to provide its own additional rules on this basis.

Although the African and Asian Groups voiced their support for using operative paragraph 11 as a guide for the creation of new rules of procedure, they also appeared inclined towards utilizing the rules of procedure of the former Commission on Human Rights as the basis of reform. The delegate of South Africa was very direct in his preference for replicating the former Commission’s rules of procedure as a subsidiary body of the UN Economic and Social Council.⁵⁸

The Philippines on behalf of the Asian Group presented a working paper of draft rules of procedure.⁵⁹ The document incorporates elements of the rules of procedure laid out for the Council in General assembly resolution 60/251 as well as new rules formulated by the Asian Group. This consisted of an amalgamation of the General Assembly rules of procedure as applied to subsidiary bodies of the General Assembly, additional elements of General Assembly *Resolution 60/251*⁶⁰, new elements such as providing that the Council shall adopt a program or work at the beginning of each Council-year⁶¹, and elements carried over from the ECOSOC rules of procedure such as the election of the President and Vice Presidents to constitute the Bureau.⁶² There was very limited discussion on this paper; one of the reasons being that the Ambassador of the Philippines was Facilitator and it is therefore customary that the state remains relatively quiet. Egypt did however seek a general clarification regarding Rule 36 of the draft rules. This point specifies that the quorum for convening a Council session and taking decisions should be one third of the bodies’ members.

The issue of a time limit for the completion of the Council’s rules of procedures also gave rise to some concern, as the other Working Groups on the review of mandates and the universal periodic review must

⁵⁶ China and Algeria on behalf of the Africa Group.

⁵⁷ 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 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”.

⁵⁸ The rules of procedure were initially adopted by the Economic and Social Council in resolution 100 (V) of 12 August 1947 and were amended many times up to decision 1982/ 147 of 15 April 1982. The rules of the former Commission are available at <http://www.ohchr.org/english/bodies/chr/rules.htm>

⁵⁹ The full-text of the draft paper is available at the OHCHR extranet, which can be accessed at www.ohchr.org/english/bodies/hrcouncil/form.htm (fill out the form on the page to receive the user name and password).

⁶⁰ Rule 5,8 Philippines draft rules of procedure.

⁶¹ Rule 9, Philippines draft rules of procedure.

⁶² Rule 17, Philippines draft rules of procedure (Para 1, Rule 18, ECOSOC rules).

finalize their work by the June 2007 session of the Council.⁶³ South Africa was particularly adamant that it was required that the Working Group on agenda and the methods of work also finish its work within the first year of the Council, despite clarifications by Switzerland, the UK and others that General Assembly Resolution 60/251 does not require the agenda, working methods and rules to be finalised in one year. Iran suggested that the rules of procedure should be finalized by the end of 2007. Armenia, on the other hand, suggested that the drafting of the rules of procedure should even be pushed back to the second or third year of the Council.

Special Sessions

Two proposals regarding the convening of special sessions were submitted by JUSCANZ⁶⁴ and the Non-Aligned Movement (NAM).⁶⁵ Canada presented the JUSCANZ paper, which requests that special sessions be held 4 days after the submission of the request in order to allow sufficient time for preparation. Further, the paper requests that if the requesting state(s) intends to present a resolution, it be presented no later than 2 days before the convening of the session, and that at least one open-ended consultation be held on the text prior to the session. The paper calls for the involvement of the OHCHR in the session. Most controversially, point 9 of the JUSCANZ paper states 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”. Provided that three of the Council's four special sessions in 2006 focused on the issue of the Occupied Palestinian Territories (OPT), and that Canada has consistently exercised its vote against the outcomes of these special sessions, it would appear that this clause was included to shield Israel from the type of criticism it presently receives.

The NAM paper was presented by Cuba, and advocates that special sessions be convened no earlier than 2 days before the actual session, and no later than 5 days after the request. Even though the two papers share similar concerns regarding the need for sufficient preparation, Canada criticized NAM's allocation of only 2 days as ‘insufficient’. The NAM paper further requests that the session convene for a maximum time period of 3 days. The NAM paper makes no mention of interaction with the OHCHR, nor does it dictate that no further special sessions on a given subject can be held.

The JUSCANZ paper provoked particularly strong disagreement. Bangladesh criticized the paper as being “prescriptive” and “bureaucratic”.⁶⁶ The most contentious issue was point 9, concerning the holding of only one session per subject prior to that subject being addressed by a regular session of the Council. Several delegations states in opposition that a situation should be taken up according to its urgency, regardless of whether it has already been discussed in a special or regular session.⁶⁷ Bangladesh stated that the Council should not limit the number and frequency of special sessions. Similarly, Cuba argued that if the Council was made aware that a state had not implemented the recommendations of a previous special session, such a situation would warrant the convening of an additional special session on that same issue.

In more general debate on the form of special sessions, Algeria proposed that in the event that an urgent situation arose during a regular session of the Council, that session should be suspended in order to convene a special session. The regular session could resume once the urgent matter had been adequately dealt with. Brazil and the Islamic Republic of Iran both expressed the opinion that special sessions should be allowed to consider thematic issues, and therefore not be limited to the discussion of country specific situations. A representative of Human Rights Watch reminded the members of the Working Group that the provisions of GA Resolution 60/251 relevant to special sessions do not limit the content of such sessions to the discussion

⁶³ Resolution 60/251 which created the Council mandated that the Council must finish all institution-building exercises within one year of its creation. To read the full-text of this resolution go to the OHCHR website which is available at: <http://www.ohchr.org/english/bodies/hrcouncil/>.

⁶⁴ JUSCANZ represents Japan, USA, Canada, Australia, and New Zealand.

⁶⁵ The full text of these two draft papers are available on the OHCHR extranet which can be accessed at www.ohchr.org/english/bodies/hrcouncil/form.htm (fill out the form on the page to receive the user name and password).

⁶⁶ Supported by Australia.

⁶⁷ Supported by Cuba, India, China, Thailand.

of country situations. The Human Rights Watch representative recommended that the Council hold a special session on violence against children, where an in-depth debate free from the pressure of a regular session could be undertaken. Egypt raised the point that the Working Group might also be well-served in considering the question of cooperation with the outcomes of special sessions. This was relevant to the fact that Israel was uncooperative in the issuing of visas for the fact-finding mission to Beit Hanoun. It has also transpired that the high-level mission to Darfur, established by a decision of the Council's special session on Darfur on 12-13 December 2006, has been impeded by the refusal of the Sudanese government to grant visas for the mission. At the time of writing they have been reduced to meeting relevant parties in Addis Ababa.

On the role of NGOs in special sessions, Switzerland criticized paragraph five of the NAM paper, which states that "NGOs in consultative status could also contribute to the special session as decided by the Council". Switzerland stressed that this policy could lead to very inconsistent outcomes for the role of civil society and NGOs in special sessions, with their participation left to the discretion of certain states. The worry here is that NGO participation could be reduced. Currently, NGOs with consultative status are able to make statements in the general debate of the special session.

Terms of membership and the Council year

An interesting debate arose concerning clarification on the terms of membership for present Council members, with regards to the impending deadline for the institution building processes of the Council. The current 47 members of the Council were elected on 9 May 2006, and hold terms of between one to three years for the first round of membership, and thereafter for three years. The former Commission's 53 members were elected from the Economic and Social Council (ECOSOC), and also served three-year terms. However, there was some confusion as to when the term for current one-year members would expire. The Facilitator proposed that this matter be clarified with the aid of the legal advisor in New York. The UK suggested that membership become effective on the date of the election of new members. India suggested that terms expire by 19 June 2007 as this was the date marking the end of the Commission.⁶⁸ Egypt expressed their hope that the solution could be found in Geneva with the help of the Secretariat of the Council, rather than through a political negotiation.

The representative of Portugal pointed out that all the above proposals could lead to 'Kafkaesque' situations, where the members of the Council would change during the 5th session of the Council due to held from 18 to 29 June 2007.

The issue has since been clarified, and the Indian reading that membership ended on 19 June was the correct one. This means that there is a gap between the end of the one-year terms of membership (19 June) and the date when the Council must complete its implementation of General Assembly resolution 60/251 (30 June). It was discussed at the operational meeting of the Council on 16 February 2007 that the June session of the Council may be brought forward so that the conclusion of all work is completed before 19 June and the 'Kafkaesque' situation can be avoided. At the time of writing, this is still under negotiation.

Other issues

Algeria raised several other points in the Working Group's general discussion. First Algeria argued that the recommendations provided by the High Commissioner and Special Procedures in their reports to the Council deserved more attention. To ensure this, Algeria proposed that any presentation by mandate holders and the High Commissioner for Human Rights should be followed by a decision of the Council. They also recommended that these presentations be spread out over several sessions of the Council, rather than being confined to one plenary session. Algeria stressed that the reports be distributed to the Council 15 days prior to the session, in order to allow for adequate preparation.

⁶⁸ South Africa and Egypt supported this proposal.

Conclusions and next steps

The Facilitator is expected to present a working paper summarising the outcomes of the Working Group on methods of work and rules of procedure. Given the impetus of the Council to conclude its transitional work (although bearing in mind that General Assembly Resolution 60/251 does not require that the agenda and rules of procedure be finalised within one year) it is likely that intensive discussions will arise surrounding the outcomes discussed above. It is likely that these discussions will then inform the content of the next non-paper of the Facilitator for its forthcoming session on 10 to 13 April 2007. Certain states, most notably South Africa at the last session, wish to see all work finalised by the June session of the Council, whereas others, such as Switzerland, have emphasised that, in terms of time constraints, this process is the least prioritised of the institution building process. Furthermore, the significance of the issues surrounding methods or work and rules of procedure are likely to be overshadowed by the occurrences in the Working Group concerning the agenda and programme of work.

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