

COUNCIL MONITOR

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HUMAN RIGHTS COUNCIL WORKING GROUP ON REVIEW OF MANDATES: SPECIAL PROCEDURES HIGHLIGHTS, MONDAY 16 APRIL 2007

The Working Group continued its deliberations on the review of the system of special procedures and of individual mandates. The Facilitator of the Working Group, Ambassador Tomas Husak of the Czech Republic, worked from his earlier non-paper that he introduced orally at the Human Rights Council session on 15 March.¹

The Facilitator opened the meeting by indicating that the Working Group should first discuss the proposal for a Code of Conduct and then move to the review of individual mandates. However, the day's discussion took the review little further. Indeed for most of the day the Working Group was embroiled in procedural arguments; first, about whether to consider the Code of Conduct at this meeting, and second, how to conduct the review of mandates. After six hours of meeting, very little had been accomplished.

Code of Conduct

The African Group had proposed a Code of Conduct for special procedures many months ago and introduced a draft Code in March. It had been agitating for some weeks for an opportunity to discuss this draft but when the opportunity arose the convenor of the African Group, the Ambassador of Algeria, indicated that the Group had been taken by surprise and was not ready to proceed. This seemed inconsistent with previous calls for debate on the draft and left questions about what was happening within the Group in relation to it.

Last Friday, 13 April, the Coordination Committee of the Special Procedures produced a note on the proposal for a Code with an annex of possible elements for a Code. The Coordination Committee did not accept the need for a Code but indicated that, if there were to be one, it should be along the lines of the annex. The annex differs from the African Group draft in two very significant respects: it deals with general ethical principles, whereas the African draft also contains quite specific operational provisions; and it includes the responsibility of States to cooperate with the special procedures, whereas the African draft does not. In addition the note of the Coordination Committee suggests that, if there is to be a Code, it should apply to all the experts of the Council and not only to the Special Procedures.

With the unwillingness of the convenor of the African Group to introduce the Group's draft, the Facilitator invited a member of the Coordination Committee, Louis Joinet, to introduce the Coordination Committee's note and annex. Discussion then centred on this document.

¹ The revised non-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).

Much of the discussion was directed towards the question of whether the proposed Code should include States or be limited to Special Procedures.

- Most of the States that spoke and non-government organisations continued to question the need for a Code but accepted the decision of the Human Rights Council that the Working Group should prepare one.
- Most of the States that spoke supported the inclusion of States in any Code: the European Union and some individual EU members, Switzerland, Liechtenstein, Canada, Norway, New Zealand, Mexico and Japan.
- Non-government organisations identified non-cooperation by many States as the principal deficiency in the operation of the Special Procedures system and so also supported the need to include States in any Code: the International Service for Human Rights, the International Federation of Leagues of Human Rights and Amnesty International.
- Several Asian States opposed the inclusion of States in the Code: China, the Philippines, Bangladesh, Pakistan, Cuba and South Africa.
- Member States of the African Group generally did not participate in the discussion. Only South Africa spoke on the issue of State inclusion and Egypt addressed a technical point. The African draft will be discussed when this Working Group returns to the review of the special procedures on Wednesday 18 April.

Some States also raised the status of the Coordination Committee following a question on this issue by the United States. Russia, Bangladesh, South Africa, Iran and Malaysia then argued that the Coordination Committee had no legal status as it had not been established by the former Commission or the Council:.

Review of individual mandates

In the afternoon the Facilitator invited delegations to undertake the review of mandates on a case-by-case basis. His request was followed by a period of silence. Delegations were unsure how to respond. By implication most States seemed to consider that the Working Group was in no position to undertake such a review.

- Many referred to a table (the ‘matrix’)² produced by the Office of the High Commissioner for Human Rights providing basic information on each mandate. The table is more than 80 pages long and many States indicated that, although it was valuable, it offered little assistance in undertaking individual reviews of mandates. They called for the production of a “streamlined” matrix.
- Many suggested that the mandates be “clustered” into groups to assist an examination of mandates covering similar rights or issues but there was no agreement on what the clusters should be. Some proposed the traditional categorisation of civil and political rights and economic, social and cultural rights but others said that this categorisation was inadequate and would be unhelpful.
- Mexico said that the special procedures system should provide comprehensive, universal coverage of all human rights and it was concerned that the review process was not achieving this.
- The International Service for Human Rights took up this point and said that the appropriate approach to reviewing individual mandates was to use the Universal Declaration of Human Rights as a template, rather than artificial categories of rights, and then to look at the range of mandates against that template. That would also enable gaps to be identified. It would produce a review based on where the system should develop rather than where it was at present.

² The ‘matrix’ is a document entitled “*Basic Information on Special Procedures*” from 23 November 2006, prepared by the secretariat, which contains information on all thematic mandates. States intend to use that document as a basis for the review of individual mandates. The document can be viewed on the OHCHR website which is available at: <http://www.ohchr.org/english/bodies/hrcouncil/form.htm> (fill out the form on the page to receive the user name and password).

The Working Group asked the secretariat to produce a streamlined table but in the end gave it no guidance as to how this should be done.

Gaps

At the end of the day, the Facilitator referred to his non-paper's inclusion of areas requiring "improved focus" in the current range of special procedures. These included "the right to education, poverty, protection against discrimination, torture and racism, the right to food, to vote, to assemble and to associate". He invited indications of other gaps in the present range of mandates. States and non-government organisations responded: cultural rights (Russia, Iran), effective access to justice (Argentina), contemporary forms of slavery (Iran, United Kingdom), general issues of non-discrimination (Canada, Action Canada for Population and Development), right to fair trial (Canada, Switzerland), right to take part in government (Canada), humane treatment in detention (International Service for Human Rights), privacy (International Service for Human Rights, Action Canada for Population and Development, Switzerland), impact of sanctions on human rights (DPRK), peaceful assembly and association (Switzerland, Action Canada for Population and Development), environment rights (Action Canada for Population and Development) and human rights issues relating to violence (Action Canada for Population and Development). Israel said that mandates on specific situations needed to be comprehensive and balanced and enable the investigation of human rights violations by all actors.

The next discussion of the review of the special procedures system and mandates will take place on Wednesday 18 April. It will consider the African Group draft of the Code of Conduct, a shorter non-paper to be produced by the Facilitator and the streamlined table prepared by the secretariat.

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