

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COUNCIL WORKING GROUP ON REVIEW OF MANDATES: SPECIAL PROCEDURES HIGHLIGHTS, WEDNESDAY 18 APRIL 2007 FINAL VERSION

The Working Group continued its deliberations on the review of the system of special procedures and of individual mandates. The Facilitator, Ambassador Tomas Husak of the Czech Republic, presented a revised non-paper.¹ The Working Group then heard a presentation by Ms Soussan Raadi-Azarakhchi, the Chief of the Special Procedures Branch of the Office of the High Commissioner for Human Rights. She briefed the working group on the General Assembly's *Regulations governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission*² (the GA Regulations). This had been proposed by Argentina in the meeting on 16 April and was taken up by a number of States. The presentation of the African Group's draft code of conduct was postponed to later in the morning, following the Algerian Ambassador's request for additional preparation time. Finally, as requested on 16 April, the secretariat introduced a revised matrix of existing mandates, with the mandates clustered in two forms, one along the lines of the traditional categorisation of rights and the other in more rights-specific groups. Although the request had included streamlining as well as clustering, the new matrix was as long as the old, more than 100 pages in each version.

Discussion during the day was principally directed towards the approach the Working Group should take to the development of a Code of Conduct. By the end of the day, after meeting for six hours, no progress whatsoever had been made on any of the issues before the Working Group. The Working Group has only one day of discussion left on the review of the system of special procedures and of individual mandates, on 26 April.

The General Assembly Regulations

In her presentation, Ms Raadi pointed out that the GA Regulations are applicable to the special procedures mandate holders and address the conduct of special procedures mandate holders. They specify that mandate holders are accountable to the appointing body. They had not been explicitly endorsed by the Commission on Human Rights or the Council but this endorsement was not necessary for their application to mandate holders.

A number of States (Germany on behalf of the European Union, France) pointed out that the GA Regulations only address the obligations of mandate holders, not the obligations of States to cooperate with special

¹ The revised non-paper, dated 17 April 2007, 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). For the highlights of the discussions of the first meeting on the review of mandates, see http://www.ishr.ch/hrm/council/wg/specialprocedures/highlights/WGSPs_Highlights_16_April_07.pdf

² ST/SGB/2002/9, 18 June 2002.

procedures. Accordingly, they said, the gap that should be addressed in a Code of Conduct was the obligation of States to cooperate with the special procedures.

Ms Raadi was asked whether the Council as a sub-body of the General Assembly did have the authority to change the GA Regulations or adopt contradicting provisions. She explained that any code of conduct adopted by the Council would be a part of the report to the General Assembly and that body would then decide in the case of conflicting provisions.

More generally, States disagreed on the utility of discussing the GA Regulations. China pressed for the African Group to be given an opportunity to introduce its draft code of conduct, thereby stirring up a debate that further delayed the introduction of the latter.

The African draft

The Ambassador of Algeria introduced the draft Code of Conduct produced by the African Group.³ It had been released on 13 March but was not officially presented now. The presentation essentially consisted of arguments refuting the note on elements of a Code of Conduct by the Coordination Committee of Special Procedures, presented on Monday 16 April by M Louis Joinet on behalf of the Coordination Committee, and arguments against the sufficiency of the GA Regulations. The Ambassador stressed in particular that the African Group considers the GA Regulations to be overly general and that a specific code of conduct was needed to address the special procedures mandate holders. He emphasised that the code of conduct mentions the independence of the mandate holders several times, whereas the GA Regulations neglected that issue. In particular, he said the GA Regulations fail to address the question of the independence of mandate holders from non-governmental organisations. The Ambassador clarified a number of provisions in the African draft. In particular, he explained that provision 11(b) was not intended to prevent the mandate holders from having contacts with the media to explain the nature of their missions.

Reacting to the paper prepared by the Coordination Committee of Special Procedures, the African Group signalled its readiness to extend the application of the Code of Conduct to all experts of the Council, as the Coordination Committee had proposed.⁴

In the ensuing discussion for almost all the remainder of the day, States engaged in a procedural debate on which of the three texts (the Facilitator's non-paper, the draft by the African Group and the contribution by the Coordination Committee) should be the basis of discussion or whether the Facilitator should be asked to prepare a compilation draft.

A number of States urged the Working Group to proceed with consideration of the African draft article by article. Others opposed such an approach. The division was deep and along the same lines as earlier discussions of the Code of Conduct, with the African Group, Russia, China and some other Asian States supporting discussion on the basis of the African draft and the European Union, other Western Group States and many Latin American States opposing that approach.

There was division along the same lines on the issue of whether the code of conduct should include provisions on the obligation of States to cooperate with the special procedures. Liechtenstein pointed out that States have obligations under international law to cooperate with special procedures. Russia opposed this interpretation, suggesting that cooperation was only a moral obligation rather than a legal one. Bangladesh accused some States of using the inclusion of State obligations as a means of delaying the process and rejected any such obligations.

³ The African draft Code of Conduct is available at www.ohchr.org/english/bodies/hrcouncil/form.htm (fill out the form on the page to receive the user name and password).

⁴ See ISHR Daily Highlight of 16 April 2007, at http://www.ishr.ch/hrm/council/wg/specialprocedures/highlights/WGSPs_Highlights_16_April_07.pdf.

After the Working Group had debated the procedural issue for the better part of two hours, the Facilitator asked delegations to focus their interventions on substantial points and not debate further the procedural question or whether there should be a code. However, most delegations continued to focus on the status of the African Group text and there was no substantive discussion of any provisions of a code apart from the question of state obligation.

Nonetheless a few specific comments were made by some States and observers, although generally these were not taken up by others. Amnesty International said that, if there were to be a Code of Conduct, it should apply to all the experts of the Council, not only to the Special Procedures. Slovenia agreed with this.

There were also criticisms of special procedures and their work. Russia accused special procedures of taking instructions from foreign governments. When challenged on this by the International Service for Human Rights, Russia changed the allegation to relate to one special procedure only who was not named. Egypt said that the proposal to develop a Code had been provoked by the conduct of the special procedures at the 2nd session of the Council in September 2006. ISHR challenged this allegation too and asked for particulars but none were given. The Canadian HIV/AIDS Legal Network expressed grave concern at some States' language about "punishing" and "censuring" special procedures. It said that the Working Group had no clear common sense of what the problems were that needed to be addressed and so there were very divergent perspectives on what needed to be reflected in a Code.

During the discussion Russia said that the Human Rights Council might have to take action directly on the African draft. A little later Algeria on behalf of the African Group said that, if some States refused to discuss the African draft, "we'll find another way". These comments were obvious reminders of the numbers in the Council and threats to use those numbers to force a decision on a Code of Conduct without consensus.

The Facilitator said that it was clear that his discussion of the Code of Conduct in his non-paper was insufficient and so he would prepare a revised non-paper that takes account of the African draft Code, of other documents and of the oral comments during the discussion.

The revised matrix

The secretariat, based on the discussions of 16 April 2007, had prepared two versions of the matrix, clustered in several groups.

India asked that all delegations submit proposals in the next two weeks on how to rationalise the mandates.⁵ Argentina in principle agreed to a deadline but said two weeks would not be sufficient. India also suggested the establishment of small sub-groups, made up of at least one representative of each regional group, to work in parallel to the Facilitator on developing recommendations for rationalisation, based on the proposals received.⁶ Other delegations expressed their concern that establishing sub-groups would exclude most States and NGOs and so be contrary to the inclusive approach of the working groups.⁷

Mexico underlined the flexibility to be attained by the clustering approach, which in its view would enable the Council to cover all rights. It suggested that the thematic clusters be broken up in more detail, according to specific rights.

Argentina in a preliminary comment expressed doubts about the omission of civil and political rights as a group in the second version of the cluster.

⁵ Indonesia, Russia

⁶ Argentina, Russia.

⁷ Iran.

The final discussion of the review of the special procedures system and mandates through this Working Group is scheduled for Thursday 26 April.

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