

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COUNCIL, INSTITUTION BUILDING PRESIDENT'S OPEN MEETING, 24 MAY 2007

Overview	2
Background.....	2
The complaint procedure.....	3
Renaming the 1 st Working Group	3
Appointment of the 1 st Working Group	3
Members of the 1 st Working Group	3
Members of the 2 nd Working Group.....	4
Number of meetings of the Working Groups and Human Rights Council.....	4
Overall timeframe of the Complaint Procedure.....	4
Issues raised by States.....	5
The system of expert advice.....	6
Renaming the body.....	6
The size and composition of the body.....	6
Nomination and selection.....	7
Duration of the meeting.....	8
Issues raised by States.....	9
The rules of procedure for the Council	9
Round table seminars and informal meetings	9
Composition of the bureau	9
The annual cycle of Council sessions	9
The location of Council sessions.....	10
Decision-making by a 2/3 majority	10
Other aspects of institution-building.....	11
Conclusions and Next Steps	11

Overview

Ambassador Luis Alfonso De Alba, the President of the Human Rights Council (the Council), convened the third of a series of open consultations on the institution building process. At the end of the Working Group sessions, he had announced his intention to continue consultations on all outstanding issues on two parallel tracks. The first of these tracks is a series of informal, private, bilateral and multilateral meetings in which the President will consult with all delegations, regional groups and observers to identify and resolve pending issues. Parallel to this, public and open consultations have been being conducted at least once a week to inform stakeholders of the progress of negotiations and provide opportunities to raise substantive issues in a more open forum. The first two open meetings were devoted primarily to further discussion of the pending issues in relation to the universal periodic review (UPR). The final open session had been scheduled for 25 May. However, by the end of this third session, it became clear that the final session would not take place. The President felt that sufficient ground had already been covered for him to begin a drafting process without the need for a final meeting.

At this session, the President reiterated his commitment to holding open meetings at least once a week. This third session was devoted to the system of expert advice, the complaint procedure and the rules of procedure for the Council. For the first two of these subjects, the President produced one-page discussion papers to guide discussions.¹ The President asked delegations to concentrate on these subjects and in particular to focus on the issues outlined in his discussion papers. He insisted that other subjects were to be tackled at a later point.

Background

The Council at its first and third session decided to establish open-ended intergovernmental, inter-sessional Working Groups to discuss different aspects of its institution building.² The discussions in the Working Groups were facilitated by the Council's Vice-Presidents and other selected Ambassadors, appointed by the President. After the conclusion of discussions of the Working Groups on 27 April, the President took over the process from the Facilitators and has set out to bring the different strands of negotiations to a successful conclusion by 18 June 2007.³

¹ The papers were distributed in hard copy to those present at the meeting, but have not been made available to the public in any other form.

² The first Working Group was tasked with developing the modalities of the universal periodic review mechanism. The second Working Group was tasked with formulating concrete recommendations on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities in order to maintain a system of special procedures, expert advice and a complaint procedure. This Working Group was divided into 3 segments (on the review of special procedures, on a complaint procedure and on an expert advisory body). The third Working Group was mandated to formulate concrete recommendations on the Council's agenda, its annual programme of work, its methods of work as well as its rules of procedure. It was divided in two segments (agenda and programme of work, as well as methods of work and rules of procedure). See the ISHR website for more background information and for reports of the meetings of these Working Groups: <http://www.ishr.ch/hrm/council>.

³ Technically, General Assembly *Resolution 60/2five1* allows for the work to continue until 30 June 2007, since that is one year after the conclusion of the first session of the Council. However, because some members and the President will be replaced on 19 June 2007 it is agreed that the institution building must be completed by 18 June 2007.

The levels of progress the different Working Groups were able to achieve differed significantly from one group to the other.⁴⁵ Discussions on the Complaints Procedure had led to the establishment of some significant areas of consensus. However, there were still a number of areas requiring further discussion. These were mainly: the appointment and composition of the first Working Group of experts; the nature of the decisions of the 2nd Working Group of State representatives; the timeframe of the Procedure; measures to be taken by the Human Rights Council; and admissibility criteria for complaints. The conclusion of the discussions on expert advice had seen the main issues left unresolved. These included: the selection process; the size and composition of the body; the annual meeting time; and whether it would be a permanent standing body or could meet more flexibly. For the Working Group on Methods of Work and Rules of Procedure, pending issues included: votes required for decision making; whether the Council should be able to meet outside Geneva; and when Council sessions should take place.

The complaint procedure

The President introduced discussions on this topic by distributing a one-page discussion paper on the complaint procedure. He then summarised the contents of the paper and the current state of discussions. He reiterated the consensus that the structures of the 1503 Procedure should be retained, with small enhancements made. He stated his view that these enhancements would mainly be in the field of admissibility, and that this would be achieved by strengthening the work of the 1st Working Group. In light of this, he made the following proposals, which acted as a guide to discussions:

Renaming the 1st Working Group

Under the 1503 Procedure, the 1st Working Group was called the Working Group on Communications. However, the President proposed that it should now be renamed the Working Group on Admissibility to emphasise its strengthened functions in this area. A number of States welcomed this innovation.⁶ However, Egypt wished to clarify whether this meant that the 1st Working Group's responsibilities were now limited to *only* assessing admissibility, and whether this meant that the group would therefore lose its ability to dismiss cases if States cooperate immediately.

Appointment of the 1st Working Group

Towards the end of the discussions of the Working Group on the Complaint Procedure, the group was converging around the idea that the 1st Working Group would be appointed through a combination of nominations by regional groups and appointment by the President. However, at this meeting, the President proposed an entirely different model whereby the Council's system of expert advice would appoint the experts from its own members. This model would replicate the practice under the 1503 Procedure, where the former Sub-commission on Human Rights designated members of this 1st Working Group from among its own members. Only India responded to this proposal by broadly supporting the idea, but with the addition of a more extensive pre-screening process for members of the system of expert advice to sit on the 1st Working Group, because the work required for this group is a 'heavy burden'.

Members of the 1st Working Group

⁴ Throughout this report, the Working Groups will be called after the area of institution building that they dealt with, i.e. the Working Group of the Complaint Procedure, the Working Group on Expert Advice and the Working Group on Methods of Work and Rules of Procedure.

⁵ See the ISHR Daily Highlight on the wrap-up session of 27 April 2007, available at http://ishr.ch/hrm/council/wg/wg_reports/highlights/wgs_highlights_27_april_07_wrapup.pdf.

⁶ Brazil

Reflecting the consensus established in the earlier stages of talks, the President proposed that the 1st Working Group should be made up of five experts, representing the five regional groups of the Council. However, in a departure from positions expressed in previous public negotiations, he proposed that the Council's system of expert advice would decide the term limits and the terms of rotations of its own members sitting on this Working Group, with the recommendation that members should serve for no more than 2 consecutive years. This represented a significant departure, as when the question of term limits was last discussed in the February round of talks, the Facilitator of discussions, Ambassador Blaise Godet, identified convergence around the idea that members of the 1st Working Group would serve terms of three years, renewable once. In those talks, no States suggested a model for term limits similar to the President's 'no more than two consecutive years' model. Under the 1503 Procedure, members of the 1st Working Group were re-selected on a yearly basis, with rotation of members of the Sub-commission 'encouraged', but not compulsory. Japan spoke in support of the President's suggestion. However, only Algeria (on behalf of the African group), opposed the President's new proposal, suggesting that since the system of expert advice is to have terms of three years, it would make more sense to have terms in the 1st Working Group correspond to this.

Members of the 2nd Working Group

In line with converging opinion in the Working Group discussion, the President proposed that the 2nd Working Group of the Complaint Procedure would be made up of five State representatives, nominated by their regional groups and it would keep the same name as it had under the 1503 Procedure, the 'Working Group on Situations'.

Algeria (on behalf of the African group) commented that the President had not addressed the term limits for members of this working group. The President responded that he believed that terms should be one year, as was the case under the 1503 Procedure, but that this would be discussed further in future consultations.

Number of meetings of the Working Groups and Human Rights Council

Reflecting converging opinion in the Working Group talks, the President proposed that the 1st Working Group would meet twice a year, and the 2nd Working Group could meet once or twice, depending on the number of cases that needed to be studied. The President made it clear that although there were a number of States that supported the idea of the 2nd Working Group meeting twice a year, the door was not yet closed on the possibility of it meeting only once. The Human Rights Council would consider cases from the Complaint Procedure at only one of its three annual sessions. Bangladesh stated that it saw no reason for the 2nd Working Group to meet twice a year. Germany (on behalf of the EU) reiterated its established position that the Council should be able to address cases at every session if needs be, with a minimum of once a year. Canada argued that the Council should consider cases frequently in order to send a message to victims that the Council is not shirking its duties. ISHR argued that it should be remembered that increasing the number of meetings does not increase the workload, but simply spread the workload more evenly throughout the year. Therefore, both working groups and the Council should consider cases twice a year.

In addition to this discussion, a debate regarding the frequency of considerations by the Council emerged from discussions on confidentiality. When advocating that only the Council should be able to make cases public, Egypt claimed that however serious a case was and however much a State was not cooperating, it would only be a short time until the Council would have the opportunity to consider for itself whether to make the case public. In response to this, Germany (on behalf of the EU) argued that this implied that the Council would be able to assess cases more frequently than once a year. Egypt responded by expressing support for the proposal that the Council should assess cases once a year, except if the 2nd Working Group decides it should assess them sooner.

Overall timeframe of the Complaint Procedure

In the Working Group rounds of talks there was considerable debate over whether an overall timeframe or deadline could be imposed on the procedure. This unresolved debate was raised in this meeting by the President. He proposed that ‘the timeframe between the transmission of the complaint to the State concerned and its consideration by the Human Rights Council shall not exceed in principle 24 months’. This model echoes Argentina’s proposal in the April round of talks to lay down a flexible 24 month ‘timeline’. This model was welcomed by a number of States.⁷ However, Brazil and Canada preferred to use the word deadline, rather than the more flexible term ‘timeline’. The UK felt that the timeline could be reduced to 18 to 24 months and ISHR that it could be reduced to 18. Both of these delegations felt that since the timeline was flexible, it ought to be possible to shorten it. India maintained its now well established position that it is not feasible to impose any deadline on the Complaints Procedure, since both Working Groups have the power to leave cases pending.

Issues raised by States

In addition to these issues raised by the President, several States took the opportunity to bring up issues that they felt were important and remained unresolved.

Algeria (on behalf of the African group) reiterated its position from the April round of talks that all complaints submitted using **abusive language** should be deemed automatically inadmissible.

Algeria (on behalf of the African group) also raised the issue of how to define when a complaint has ‘exhausted all **domestic remedies**’ according to the admissibility criteria. This has been a controversial issue throughout discussions. Debate has revolved around first whether remedies provided by National Human Rights Institutions (NHRIs) should count as domestic remedies that must be exhausted, and second, whether *if* NHRIs are included in the definition of domestic remedies, this should be qualified by stating that the NHRI concerned must be deemed ‘efficient’ or ‘effective’. Algeria (on behalf of the African group) argued that there is no objective way to establish whether an NHRI is ‘effective’ or whether the remedies it provides are ‘unreasonably prolonged’.⁸ It added that it should not be for one mandate holder to decide. ISHR responded that there is already extensive case law establishing precedent to guide the definition of ‘domestic remedies’. Algeria (on behalf of the African group) countered that however many documents are available, one individual should not be able to judge the standard of a country’s NHRI ‘at the drop of a hat’.

A number of States commented on the issue of **confidentiality**. At the April round of talks, there had been a lack of consensus on whether the 2nd Working Group should have the power to decide whether a case must be addressed in public, or whether this power should be reserved for the Council. Algeria (on behalf of the African group), Pakistan (on behalf of the OIC), Iran, Syria, Egypt and Cuba reiterated their position that only the Council should have the power to lift confidentiality. China proposed emphasising the confidential nature of the Complaint Procedure by renaming it the ‘Confidential Complaint Procedure’.⁹ Germany (on behalf of the EU), Canada, France and Turkey reiterated their position that confidentiality should be dependent on cooperation, and that if a State did not cooperate, the 2nd working group should be able to decide that the Council will address their case in public. France added that non-cooperation is not a hypothetical scenario, but occurred repeatedly under the 1503 Procedure. The President responded that in these extraordinary cases of non-cooperation, it might be possible to ‘expedite’ the procedure, but that he did not believe that it was possible to go beyond that.

Brazil raised the ongoing debate concerning how to increase the **involvement of the victim** in the process, arguing that the text should incorporate a reference to closer participation with the victim. Germany (on behalf of the EU) and ISHR expressed regret that the text did not already incorporate such a reference, since in their view consensus had already been established on this.

⁷ Brazil, Republic of Korea, Turkey

⁸ These terms were discussed in the April round of talks.

⁹ Supported by Pakistan (on behalf of the OIC)

Germany (on behalf of the EU) also felt consensus had already been established that **members of the 2nd Working Group should be officially required to work in their own capacity**, rather than on behalf of States.

Bangladesh raised the issue of the **deadline for State responses** to communications.¹⁰ In the April round of talks, the Facilitator (Ambassador Blaise Godet) proposed that there should be a limit of 3 months for States to respond. Bangladesh opposed this at the time, and argued that 6 months would be more reasonable, particularly for developing countries who had limited resources with which to compile their responses. Both Bangladesh and Morocco reiterated this position at this session. The Facilitator responded that any papers published by the Facilitators of the Working Groups should not be seen as adopted, and that questions such as this remain open to discussion.

The USA suggested that **each complaint should be required to indicate a consistent pattern**, rather than a series of complaints identifying a pattern only when read together.

The system of expert advice

The President also produced a one-page discussion paper on the system of expert advice to the Council. This opened the following debates:

Renaming the body

At the April round of talks, delegations debated several options for the name of the organ, including ‘Expert Advisory Body’, ‘Expert Advisory System’, ‘Expert Advisory Board’ and ‘Expert Advisory Group’. Some delegations were uncomfortable with the term ‘body’ as they felt it had a connotation that the organ would be of a standing nature. At this meeting, the President proposed to call the expert group the ‘Human Rights Council Advisory Committee’ (the Committee). Most delegations did not comment on this proposal. However, Morocco stated that it had no problem with this name.

The size and composition of the body

The number of members

The President proposed that the Committee would be composed of between 15 and 18 members, to be decided on in future decisions. However, he also presented his own specific proposal that there would be 16 seats on the Committee allocated to the regional groups and one extra seat that would rotate between the African and Asian groups. This concept of a system of rotation was originally proposed by Algeria (on behalf of the African group) and India at the last session of the Working Group on the future system of expert advice. Of the 16, there would be four seats allocated to the African Group, four to the Asian Group, three to the Western European and Others Group, three to GRULAC, and two to Eastern Europe. The President also proposed that ‘due consideration should be given to equal representation by gender and to an appropriate representation of different legal systems as well as cultural diversity’, which echoed the Facilitator of the Working Group’s 27 April non-paper.¹¹ This proposal was supported broadly by Germany (on behalf of the EU) and Brazil. Cuba and China argued that the size suggested was too small, and that the delegation had always maintained that it should be comprised of twenty-one to twenty-three members.¹² They argued that

¹⁰ Supported by Pakistan (on behalf of the OIC)

¹¹ The full-text of the 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).

¹² Pakistan (on behalf of the OIC) supported a twenty-three member body.

this would allow for more diversity and representation among regions. Cuba also stated that it is a questionable line of reasoning to believe that a larger body could not be efficient or effective. However, Cuba added that it was open to accepting a smaller number if it reflected strict equitable geographic representation.

Geographic representation

Algeria (on behalf of the African group) led a large group of States in reiterating the importance of maintaining fair geographic representation in the Committee.¹³ Despite the President's statement that he knew that numbers could be manipulated, and that he wished to keep the discussion simple, there followed a complex debate over exactly what number of members of the Committee represents the fairest geographical distribution. Pakistan (on behalf of the OIC) and Bangladesh argued that the proposal put forward by the President was not representative, as the European group was over-represented (with three seats to the Western European and Others Group and two to Eastern Europe) and the African and Asian groups were under-represented in comparison to the number of seats they have in the Council (with four seats each). Algeria (on behalf of the African group) stated that it would rather that future discussions considered whether the Committee should be made up of *either* fifteen *or* eighteen experts, rather than between fifteen and eighteen members (as proposed by the President) as these numbers provide fair geographic balance, whereas 16 and 17 do not.¹⁴ India stated that of these two numbers, it preferred fifteen as it is an odd number. The President responded that his suggestion seventeen should still be considered as it solves a number of mathematical problems, and therefore future discussions will continue to revolve around all numbers between 15 and 18. France added that the number of members in the Council was not divisible, so a perfect solution would never be achieved.

Gender balance

Bangladesh opened this debate by stating that it did not see how gender balance could be ensured due to the availability and competence of women. The President responded by stating that his consultations suggest that the Council would not set a minimum level for gender balance. However, he stated that gradually moves would be made towards equality, although no quota is being set at this stage. South Africa cited the well-known proverb 'seek and ye shall find', suggesting if the Council were to seek out female experts, then they would surely find many qualified candidates.¹⁵ Canada found it strange that so much effort was being devoted to complex mathematical calculations dividing up seats among regional groups, but that the Council could not seem to decide that fifty percent of the members of planet should be assigned 50% of the seats on the Committee.

Nomination and selection

Who may be nominated?

The President proposed a number of **basic criteria for nominees**: significant expertise in relevant fields of human rights; high moral standing; professionalism; independence; and impartiality. In addition, he added that NGO members must be of directorate level, an idea that had not been discussed at previous sessions. No opinions were expressed either for or against these nomination criteria.

The President also made the more contentious proposal that **State officials holding legislative or executive office** should not be permitted to be nominated to sit on the Committee, an idea initially introduced by Canada at the previous session. In response to this, several States argued that officials holding executive office should not be excluded.¹⁶ Among these, Algeria (on behalf of the African group) and Pakistan (on behalf of the OIC) argued that in developing countries most people who have the right expertise and can afford to give up their

¹³ Supported by China, Bangladesh, and Pakistan on behalf of the OIC, South Africa, Cuba and Syria.

¹⁴ Supported by India.

¹⁵ Egypt, the International Federation of University Women and ISHR also spoke in favour of a gender balance.

¹⁶ Algeria (on behalf of the African group), Pakistan (on behalf of the OIC).

job to be an unpaid mandate holder are in the Government. India argued that officials holding legislative office should be not excluded, as they do not have to maintain the Government's position in the same way as a member of the executive. It added that many members of the treaty bodies exercising these functions have not been prevented from serving. In order to meet concerns regarding lack of independence from officials, Egypt argued that officials should be allowed to stand, as long as they agree to act in a personal capacity rather than on behalf of their Government.¹⁷ Egypt and the Russian Federation also proposed a solution whereby a State could nominate an official from the executive or legislative branches of Government on the condition that they give up their post once they are appointed.

In response to this debate, China and Algeria (on behalf of the African group) argued that if experts from State executive branches are not eligible, then **members of executive boards of advocacy organisations** should not be considered either, as they too have particular political goals that may diminish their ability to act independently. ISHR opposed this, making the case that those exercising legislative or executive functions would necessarily be unable to be independent by the nature of their position, but that a potential conflict of interest of an NGO candidate could be assessed on a case-by-case basis.

The President added that States should be able to nominate candidates **from any country in the UN**, not only their own. Pakistan (on behalf of the OIC) opposed this, arguing that across the UN system a State may only present candidates from its own country, as it would have the most amount of information on these experts.

Who may make nominations?

The President proposed that only States should be able to make nominations. Germany (on behalf of the EU) made the case that all stakeholders should be permitted to present candidates.¹⁸ Supporting this, ISHR added that would be particularly important for NGOs and national human rights institutions (NHRIs) to nominate candidates, especially if States are only going to be allowed to nominate from their own nationals. This is due to the fact that some of the best experts in the NGO sector are not popular with their own Governments.

How should candidates be selected?

With regard to the selection process, the President proposed that all UN member States would be 'encouraged' to hold consultations at the national level in order to incorporate the views of civil society, and the support from stakeholders would be recorded.¹⁹ A list of candidates would then be closed two months prior to an election. Several States expressed concern and surprise that the President's proposal assumed that elections would be used to choose candidates, as at the last round of talks there was no consensus on this issue.²⁰ Regarding the selection process, India argued that consultation exercises might not be 'feasible' and was concerned as to how they could be recorded. The President responded that details of the consultation process could easily be included in the information submitted with each candidature. On the other side of this debate, ISHR argued that it was not sufficient for States to be 'encouraged' to consult. They should be *required* to do so. Germany (on behalf of the EU) supported this position, stressing that the pre-selection process must be 'convincing'.

The President also reiterated the already well-established consensus that expert' would serve mandates of three years, renewable only once.

Duration of the meeting

¹⁷ This proposal was initially introduced by Mexico, in previous rounds of talks.

¹⁸ Supported by the Republic of Korea, USA and the United Kingdom.

¹⁹ Cuba advocated this in previous rounds of talks, arguing that this would be a sufficient pre-screening procedure.

²⁰ Canada, Republic of Korea, UK, USA.

The President proposed that the Committee would meet for ten working days per year. This was an idea that had received significant support at the last session. India and Japan supported a meeting time of ten working days annually.²¹

Issues raised by States

Several States raised issues that were not included in the President's discussion paper or oral explanations. At the beginning of the session, the President had stated that the status of the former Sub-Commission on Human Rights working groups would not be discussed at this time. However, Canada stressed that the status of these subsidiary bodies does need to be discussed at some stage, although it agreed that this need not be done before the end of the 5th session of the Council. Referring to the mandate of the experts, Brazil stated that experts should not only advise on substantive issues, but should also deal with organisational issues, since the Council is still working on institution building.

The rules of procedure for the Council

Although he did not present a discussion paper on this area of the institution building process, the President raised several points that had been discussed in his private meetings this week, and several States commented on relevant issues that they wished to highlight.

Round table seminars and informal meetings

The President proposed that round table seminars could be established on an *ad hoc* basis without holding parallel meetings. No delegations spoke either for or against this proposal.

The President also suggested that instead of continuing attempts to establish new modalities for informal meetings, the Council should use the relevant rules of procedure for the General Assembly. He added that under these rules, meetings are generally held in public, but private meetings may be called. When a private meeting is called, video recordings and press presence may be suspended. It is even possible to close the meeting to observers. He suggested that these mechanisms to close a meeting should be considered on a case-by-case basis. Finally, he noted that in the past, it has rarely been necessary to resort to holding private sessions. The USA argued that the Council should not be able to close its meetings to NGOs. It said that the Council already has a confidential procedure, in the form of the Complaint Procedure, and did not require more closed meetings. The President responded that the option of closed meetings has been available for 60 years, and he was only proposing to maintain the status quo.

Composition of the bureau

The President indicated general consensus around the idea that the composition of the bureau should be maintained according to the practice under the Commission, with one President and four Vice Presidents, one of which is designated a Rapporteur. The President added that a new bureau would have to be established very shortly, particularly since there is to be an organisational meeting in late June and therefore candidates for the Vice Presidency should be proposed as soon as possible.

The annual cycle of Council sessions

The President indicated that it had been accepted that **the beginning of the annual cycle of the Council** would be the first Monday of July each year. He added that since the first meeting of the General Assembly this year begins on the 20th June and the GA has decided not to change the date for elections, the cycle of the

²¹ Supported by Japan.

Council must stay the same for this year. Therefore, he was of the view that although the beginning of the cycle could be changed in future, any changes could not be put into effect until the 3rd cycle of the Council.²²

There was also debate on **how the Council sessions should be spaced throughout the year**. The President expressed his opinion that the first session of the year should be in September; the second between the end of November and the beginning of December; and the third session between March and April. This third session would be called the 'main' session, as it would include the high-level segment. He added that he did not believe it was practical to hold a meeting in June or July, as this is a very busy period in Geneva where many high level events take place. Brazil supported this position and noted that meetings of the Council should not coincide with meetings of the 3rd Committee of the General Assembly as the work of these two bodies should complement each other. The UK agreed with this logic, but argued that the dates suggested by the President leave an overly long gap between the March/April and September sessions. Instead it proposed holding sessions in September, February and May/June. ISHR urged that the sessions should be spaced as evenly throughout the year as possible. It seemed that the most immovable session was September, immediately before the Third Committee started its annual meeting in New York. Accordingly, the sessions of the Council should probably occur in September, January or February and May or June.

Under the practice of the Commission, there was one **organisational meeting** held annually preceding the annual session of the Commission. However, since the Council will now meet more than once per year, there has been some debate as to how many organisational meetings should take place. The President proposed introducing a system whereby there was an organisational meeting before each session of the Council, as well as one at the beginning of each annual cycle. No delegations spoke against this proposal.

The location of Council sessions

Throughout the working group stages of talks, there had been considerable discussion over whether the Council should be able to meet in other locations than Geneva. This debate was noted by the President, but not pursued. However, India, the Republic of Korea and Pakistan (on behalf of the OIC) advocated leaving the possibility open for the Council to be held at other locations. Specifically, the Republic of Korea suggested that the Council should be required to hold a session in Geneva at least once a year.

Decision-making by a 2/3 majority

Despite several appeals from the President to leave this thorny issue for a later date, a large number States expressed strong feelings on the subject. In previous rounds of talks, China had proposed that decisions on country mandates should have to be passed by a 2/3 majority, instead of a simple majority, which is the standard requirement for Council decisions. This was based on the precedent that decisions on 'important questions' in the General Assembly must be passed by a 2/3 majority. Cuba was the first to raise this issue at this meeting, stressing that the question must not be overlooked in discussions.

Once the debate was opened, China²³ took the opportunity to reiterate its arguments, stating that the abuse of country mandates was the single largest contributor leading to the demise of the Commission and that imposing a 2/3 majority vote might help to solve this problem. Several States responded by reiterating their position that all decisions should be taken by simple majority.²⁴ The Republic of Korea argued that 2/3 majority decision-making might paralyse the work of the Council. The UK argued that there was no precedent in the General Assembly for a 2/3 majority vote being used for country issues. China directly contested this, arguing that the General Assembly has used a 2/3 majority vote to decide on issues relating to former Italian colonies, the Tunisian question and South Africa. Germany (on behalf of the EU) argued that defining

²² Supported by the UK.

²³ China was supported by Iran, Pakistan (on behalf of the OIC), Egypt, Cuba, Syria, Saudi Arabia.

²⁴ Germany (on behalf of the EU) Republic of Korea, UK, USA.

‘important questions’ could ‘open a Pandora’s box’ of cherry picking between different issues. To illustrate this point, it argued that logically, if all ‘important questions’ had to be passed by a 2/3 majority, questions relating to the Occupied Palestinian Territories (OPT) would also have to be passed in this way as this is clearly a very important question.

Germany’s comment regarding the OPT sparked a whole new debate regarding the nature of the problem in OPT and whether decisions on this would indeed need to be submitted to a 2/3 majority vote, as Germany (on behalf of the EU) had suggested. Pakistan (on behalf of the OIC) initially argued that the OPT would not fall into the category of ‘important questions regarding human rights’ on the grounds that it is not a human rights issue, but a unique situation of occupation, and therefore should not be submitted to 2/3 majority voting. Switzerland countered this by arguing that if the OPT is not a human rights issue, it should not be addressed by the Human Rights Council at all. Following this, several States took the line that the OPT could not be seen as a ‘country situation’ and was therefore not comparable to the question of country mandates. Egypt and Cuba declared that the situation of OPT cannot be compared to any other country situation, but was a unique situation, as apartheid was. Saudi Arabia and Pakistan (on behalf of the OIC) reasoned that the occupation is a violation of human rights in itself, and therefore the OPT is a thematic issue and cannot be considered a country situation. China supported this line of reasoning, arguing that the Special Rapporteur on the OPT does not look at the human rights situation in Israel, and neither does he assess mainly human rights violations by Israel. Instead, he looks at the theme of the plight of a people affected by the occupation.

Russia proposed a compromise solution whereby all decisions would be taken by a simple majority, but that the Council could decide that a decision required a 2/3 majority using a simple majority vote.²⁵

Other aspects of institution-building

Although the President urged those speaking at the meeting to restrict their comments to the areas he had introduced, a number of States raised other issues from other areas that they felt were particularly pressing. South Africa wished to discuss the rationalisation of mandates. It suggested that it is not clear what will happen to the mandates that expire on 18 June. It added that it appears that there is not going to be an overall internal rationalisation of mandates, but that each one will be assessed as it expires. It asked the President specifically whether any internal rationalisation was going to occur in order to address problems of overlap. The President confirmed that rationalisation will take place over a period of 4 to 5 years, and said that this has already been discussed. Switzerland raised the issue of the UPR mechanism and reiterated the importance of involving all stakeholders in the process.

Conclusions and Next Steps

This session constituted the end of the public informal consultations, which had taken place previously on 10 and 18 May.

The President suggested that he now be given a few days or a week to finalise a number of bilateral consultations; continue consultations with Facilitators; and start a drafting exercise that will take into account the documents he circulated at this meeting. He added that he was not intending to revise the discussion papers he has presented, but compile elements of convergence taken from them with a view to developing a coherent document that will help identify a series of positions to adopt at the June session of the Council. He expressed his intention to circulate this document on the 4th June, stressing that it would not be a final

²⁵ Supported by China.

document, and that a more elaborate document would be submitted at the beginning of the next session of the Council.

France was concerned that more issues need to be discussed before the 4th of June and asked if more consultations could be held before then. The President explained that this would depend on his progress with the drafting work. He would continue to have bilateral consultations, but could not commit to a date for another public meeting at this stage.

China expressed concern that only part of the institution building process would be resolved before 18 June, which is the deadline set by *Resolution 60/251*. It opposed what it termed the ‘cherry picking’ of issues to be discussed. It added that details were missing and that these would need to be addressed as ‘the devil always lies in the details’. In response, the President urged all delegations to see the process he had outlined as a ‘gradual’ process where all issues would eventually be covered, rather than a selective one.

This session was followed by a short organisational meeting for the 5th session of the Council, due to meet from 11 – 18 June 2007. The content of this session will be covered in ISHR’s forthcoming Council Alert.

COUNCIL MONITOR STAFF

Gareth Sweeney, Human Rights Officer, Information Program

Michael Ineichen, Fellow, Information Program

Tony Morris, Information Program

Eléonore Dziurzynski, Communications Officer, Information Program

AUTHORS

Hannah Klein, Intern

Rami Chalabi, Intern

ABOUT THE PUBLICATION

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

SUBSCRIPTION

If you wish to receive the Council Monitor Daily Updates by e-mail during the Council session, please e-mail information@ishr.ch with 'subscribe' in the subject line. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

COPYRIGHT AND DISTRIBUTION

Copyright © 2007 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on or any use of this publication. We are however happy to correct any errors you may come across so please notify information@ishr.ch.