

A STOCK-TAKING OF THE HUMAN RIGHTS COUNCIL'S INSTITUTION-BUILDING PROCESS¹

The Human Rights Council (the Council) is, in its first year of work, supposed to carry out a series of key institution-building tasks that will determine its future capacity and functioning:

- Review the system of special procedures created by the former Commission on Human Rights (the Commission) with a view to improving and/or rationalising the existing mandates;²
- Review, improve, and where necessary rationalise the other mandates and mechanisms of the Commission, namely the Sub-Commission for the Promotion and Protection of Human Rights (the Sub-Commission) and the 1503 procedure, in order to maintain a system of expert advice and a complaint procedure;³
- Establish and implement a new Universal Periodic Review (UPR) mechanism under which all States will be reviewed on a periodic basis;⁴
- Develop its programme of work, its schedule of meetings, agenda, rules of procedure, and working methods.

The Council decided at its first session to review all the mechanisms and mandates of the former Commission of Human Rights in a single Working Group. It therefore created the Working Group on review of mechanisms and mandates and charged it with reviewing the special procedures, the Sub-Commission,

and the 1503 procedure.⁵ The Working Group was authorised to meet for 20 days in which it is expected to complete its discussions on all these issues and submit its recommendations to the Council. The Council created a separate Working Group to develop the modalities of the UPR mechanism.⁶ The Working Group was authorised to meet for ten days. During its third session in December 2006, the Council also created a third Working Group to formulate recommendations for the Council's future agenda, programme of work, methods of work and rules of procedure.⁷ All three Working Groups meet in between the sessions of the Council. Members of the Council, other States and observers, and non-governmental organisations (NGOs) and national human rights institutions (NHRIs) with the required accreditation can participate in the Working Groups' sessions. All three Working Groups submit interim progress reports to the Council when it meets for its sessions. Ambassador Luis de Alba,⁸ the President of the Human Rights Council, is the Chairperson of all three Working Groups but has appointed facilitators to lead discussions on different issues.

The Council has been given one year by the General Assembly to complete the review of the mechanisms and mandates of the former Commission and to develop the modalities of the UPR mechanism. The Council therefore has to complete these tasks by 30 June 2007. As the

¹ For the International Service for Human Rights' (ISHR) detailed *Council Monitor* reports on all the Working Groups, see www.ishr.ch/hrc/council.

² Paragraph 6, General Assembly Resolution 60/251.

³ Ibid.

⁴ Paragraph 5 (e), *ibid.*

⁵ Council Decision 1/104.

⁶ Council Decision 1/103.

⁷ Council Resolution 3/4.

⁸ Mexico's Permanent Representative to International Organisations in Geneva.

membership of the Council will change from 19 June 2007, it is more likely that the Council will try to complete these tasks before these changes take place.

REVIEW OF MECHANISMS AND MANDATES

⁹ ISHR has produced reports under the *Council Monitor* on the discussions at both sessions of the Working Groups on the future system of expert advice, the complaint procedure, and the review of special procedures. These reports are available at www.ishr.ch/hrm/council. Background documents such as the Facilitators' non-paper, contributions by States and NGOs, and oral statements made during the Working Group are available on the OHCHR extranet (fill out the form on the page to receive user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

¹⁰ This sub-section provides a brief overview of the main issues that have been discussed at the Working Group. For further information please see the detailed *Council Monitor* reports on the discussions at the Working Group, available at www.ishr.ch/hrm/council.

¹¹ For more information on the special procedures visit www.ohchr.org/english/bodies/chr/special/index.htm.

¹² Paragraph 7. For an overview of the main issues around the review of special procedures, see M. Abraham, *A New Chapter for Human Rights: A Handbook on Issues of Transition from the Commission of Human Rights to the Human Rights Council*, ISHR and the Friedrich Ebert Stiftung (2006), pp. 32 - 50 available at www.ishr.ch/handbook (download or browse Chapter 3).

¹³ Council *Resolution 2/1*.

¹⁴ Algeria (on behalf of the African Group), Saudi Arabia, on behalf of the Asian Group, Pakistan, on behalf of the Organization of Islamic Conference (OIC), Azerbaijan, Bangladesh, China, Colombia, Cuba, the Democratic People's Republic of Korea (DPRK), Egypt, Indonesia, Iran, Malaysia, Morocco, the Philippines, Singapore, South Africa and Tunisia.

¹⁵ Argentina, Chile, Mexico, Republic of Korea, Russian Federation, Slovenia and Switzerland.

¹⁶ Australia, Canada, Israel, Japan, Norway, Poland, Portugal, the United Kingdom (the UK), and the United States of America (the USA).

The Working Group on review of mechanisms and mandates has held two sessions so far. It met from 13 - 24 November 2006 and from 5 - 16 February 2007.⁹ It is scheduled to meet for a third and, as per the current schedule, final time from 16 - 27 April 2007. In the lead-up to the establishment of this Working Group, the Council held informal consultations to compile proposals and relevant information and experiences, and to facilitate open-ended discussions negotiations to begin within the Working Group. Three facilitators were appointed for discussions on the special procedures (Ambassador Tomas Husak, the Permanent Representative of the Czech Republic), Sub-Commission/system of expert advice (Ambassador Mousa Burayzat, the Permanent Representative of Jordan) and the 1503 procedure/complaint procedure (Ambassador Blaise Godet, the Ambassador of Switzerland).

Special procedures¹⁰

The former Commission set up various procedures and mechanisms that examine, monitor, and publicly report on human rights situations in specific countries or on specific human rights and issues. These procedures are all together referred to as the 'special procedures' of the Commission and there are currently 41 special procedures.¹¹ General Assembly *Resolution 60/251*, which created the Human Rights Council provided that the Council would 'assume ... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures...' The Council was, under the same Resolution, authorised to 'review and, where necessary, improve and rationalize all mandates' with the requirement that this review be completed within one year of the Council holding its first session (by June 2007).¹²

Many States that have participated in the discussions at the Working Group have used the review of special procedures as an opportunity to articulate a 'negative reform agenda', which aims at limiting the independence and working methods of special procedures. The proposals put forward include that the Council should directly elect mandate holders. They also suggest modifications to all aspects of the working methods of special procedures that currently benefit human rights defenders and victims of human rights violations: the ability to take up communications, to undertake country visits freely, and to publicise persistent or serious human rights violations with the help of the media. A large number of States have also supported proposals to draft a code of conduct for special procedures and for the draft manual developed by the special procedures, in which they have elaborated their working methods, to be reviewed by the Working Group and/or the Council.

What is most disturbing is that many of these proposals are being put forward on behalf of all States belonging to certain regional or other groupings. At present, many of these proposals, at least on paper, enjoy the support of a majority of the members of the Council. This was clearly demonstrated when Algeria, on behalf of the African Group, tabled a Resolution at the resumed second session asking the Working Group to review the Manual of special procedures and to draft a code of conduct. The Resolution,¹³ which was put to vote was supported by all members of the Council belonging to the African Group, almost all Asian States, and surprisingly also by Brazil and Ecuador.

Some States have articulated a 'positive reform agenda', which tries to address the challenges and limitations faced by special procedures. These proposals address the structural and other weaknesses that impair the work of special procedures: in particular the lack of cooperation and follow-up by States. In the final analysis, the Working Group will be judged on how far it is willing to act concretely to address these issues and strengthen the system of special procedures. Advocacy by NGOs and all stakeholders in the next two or three months will be key in breaking down regional groupings and to pressurise the Council to strengthen, rather than weaken, the strongest mechanisms of the former Commission on Human Rights.

Selection and appointment of mandate holders

A number of States suggested changing the current system of appointment of mandate holders by the President in consultation with the bureau and the regional groups. These States¹⁴ argued that it would be better if the Council directly elected mandate holders as this would increase their credibility. They also highlighted that this method was already being used successfully for the treaty bodies and was more in line with democratic values. Other States¹⁵ and Amnesty International however expressed their support for retaining the current system of appointment by the President. Finland, on behalf of the European Union (EU) and a few others,¹⁶ stated that the best way to ensure independence and expertise would be for the High Commissioner for Human Rights (the High Commissioner) to appoint mandate holders. Many of these stakeholders took the view that elections would politicise the process and would not be an appropriate method for ensuring the competence and independence of mandate holders.

Some of those who supported appointments suggested that a better system was needed for screening potential candidates to ensure that they met the criteria for appointment. Support was expressed in particular for the High Commissioner's proposal for an advisory panel, made up of representatives from States, the Office of the High Commissioner for Human Rights (OHCHR) and NGOs, which would develop standardised profiles for each mandate, outlining the requirements of the post in detail and assessing potential candidates against these criteria.¹⁷ Other measures to increase the transparency of the process, such as posting the curriculum vitae of potential candidates on the OHCHR's website were also put forward. Some States expressed their opposition to NGO representation on any pre-screening panel or on the roster.¹⁸

Various 'hybrid' proposals, combining elements of appointment and election have since then been put forward as a way of reaching a compromise on this issue.¹⁹ Brazil has suggested a mixed procedure where the President of the Council, after consultation with regional groups, should nominate five or six candidates for each position from the roster, followed by elections by

the Council. The Facilitator has suggested a variation of Brazil's hybrid model²⁰ as has Japan.²¹

Review, rationalisation and harmonisation of mandates

A number of States expressed the view that there had been a proliferation of mandates leading to unnecessary duplication and that special procedure mandates must therefore be rationalised by the termination or merger of some mandates.²² Some also felt that criteria should be developed for the establishment of new mandates and that mandates should be reviewed periodically.²³ Algeria (on behalf of the African Group) suggested grouping mandates by thematic areas such as 'economic, social and cultural rights' and 'civil and political rights'. It did not fully elaborate on this proposal but appeared to be recommending a 'working group' model for combining many of the existing special procedures.²⁴ Other States argued that overlaps were necessary because of the inter-related nature of human rights and many of them thought it was more important to address the gaps in the system.²⁵ Some States pushed for the Working Group to begin reviewing mandates individually even though no criteria had as yet been developed to carry out the review.²⁶ Strangely, when they were given the opportunity to review mandates individually during the second session of the Working Group, no State was willing or perhaps prepared to carry out this exercise. The entire debate on review and rationalisation was however used on a number of occasions to attack country-specific special procedure mandates, especially those that were created without the consent of the State concerned. Many States argued that the system of country mandates should be ended, that country situations should only be addressed through the UPR mechanism or special sessions, and for much stricter criteria for the creation of country mandates.²⁷ Belarus, Cuba and the Democratic People's Republic of Korea (DPRK) suggested that the country mandates set up to monitor the human rights situations in their countries should be terminated as part of the individual review of mandates.

Cuba recommended replacing the Working Group on Enforced Disappearances, the Working Group on Arbitrary Detention, and the Working Group on Mercenaries with individual rap-

17 Chile, Norway and Amnesty International. Germany, on behalf of the EU, also supported intensive pre-screening.

18 Algeria (on behalf of the African Group) and India.

19 Bangladesh, Cuba, Iran, Malaysia, the Russian Federation and Switzerland stated that there willing to consider the hybrid model as a step towards reaching a compromise.

20 Appointment of mandate holders by the President or High Commissioner, after the screening by the advisory panel, and conditional upon the 'approval' of the Council, leaving the Council the leeway to call for elections if they so desired.

21 Japan proposed that if the Council rejects the choice of the President, the President should go back to consultations, and come up with a new list of appointees, which could then be accepted or rejected by the Council. This proposal differs from the Facilitator's and Brazil's proposals in that there would be no option for the Council to ask for elections but only to ask the President to present another candidate.

22 Algeria (on behalf of the African Group), Brazil, Colombia, India, Iran, Pakistan, the Philippines, the USA.

23 Brazil, Colombia, India, Iran, Egypt and Venezuela. Norway thought that any criteria should be indicative and flexible.

24 Finland (on behalf of the EU) stated that they were not in favour of working groups, which they felt could be created outside the special procedure system.

25 Finland (on behalf of the EU), Argentina, Belgium, Chile, Mexico, Norway, Peru, Switzerland, and the UK.

26 China, Colombia, Cuba, Egypt, India, Iran, the Philippines, the Russian Federation and Saudi Arabia.

27 Algeria (on behalf of the African Group), Bangladesh, Belarus, China, Cuba, the DPRK, India, Iran, Malaysia, and the Indian Movement Tupac Amaru (an NGO).

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See *Manual of the United Nations Special Procedures*, available in English, French and Spanish at www.ohchr.org/english/bodies/chr/special/manual.htm.

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Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), Bangladesh, China, Egypt, India, Iran, the Philippines, Singapore, Sri Lanka, and Venezuela.

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Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), Saudi Arabia (on behalf of the Arab Group), Bangladesh, China, Colombia, Cuba, Egypt, India, Indonesia, Iran, Malaysia, the Philippines, the Russian Federation, Singapore, Sri Lanka, Tunisia, Venezuela, and the USA.

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Initial discussion paper on 'Enhancing the effectiveness of the special mechanisms of the commission on human rights' prepared by the Asian Group, Seminar on Enhancing and Strengthening Special Procedures, 12-13 October 2005, available at: http://portal.ohchr.org/portal/page?_pageid=1674.1&_dad=portal&_schema=PORTAL. The Asian Group proposal for instance suggests criteria for admissibility of communications such as the exhaustion of domestic remedies. It also suggested limits on the ability of special procedures to carry out country missions by co-ordinating with the receiving States on itinerary, activities, interviews and adoption of guidelines for interaction with the media.

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Human Rights Council *Resolution 2/1*.

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ST/SGB/2002/9, 18 June 2002.

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This view was supported by the Australia, Canada, Norway, the Republic of Korea, Slovenia, Switzerland and the UK.

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Canada, Chile, France, Norway, the Republic of Korea, Slovenia, Switzerland and the UK.

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Algeria (on behalf of the African Group), Bangladesh, China, Sri Lanka, and Tunisia.

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Finland (on behalf of the EU), Belgium, Canada, Chile, the Netherlands, and Switzerland.

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Norway.

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China and Iran.

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India and Malaysia.

porteurs focused on these issues but also stated that they were open to discussing this further. The Russian Federation also suggested terminating or merging the mandate of the Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights.

Regulating the work of special procedures

Some States proposed that the revised draft manual of special procedures,²⁸ which outlines the working methods of special procedures, should be developed by or with the involvement of the Working Group and/or Council.²⁹ Many of these States also called for a code of conduct that special procedures had to abide by, which would cover criteria for admissibility of communications, guidelines for interaction with the media, country visits, etc.³⁰ These States emphasised the need to ensure the accountability of special procedures and argued that a code of conduct would enhance the authority of special procedures in the discharge of their functions. The Philippines and Sri Lanka drew attention to the Asian Group non-paper that had been circulated in 2005 and the recommendations contained in this non-paper.³¹

These proposals took on far more significance after the Council adopted a resolution³² at the resumed second session asking the Working Group to review the Manual of special procedures and to draft a code of conduct. Algeria (on behalf of the African Group) announced that the African Group was preparing a draft code of conduct, which it would share with other States to get their input and hold informal consultations on. Germany (on behalf of the EU) maintained its position that it was not necessary for the Working Group to draft a code of conduct as the draft manual of special procedures and the *Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission*³³ adopted by the General Assembly in 2002 are sufficient for this purpose.³⁴ It also maintained that it was most appropriate for the special procedures, through their Coordination Committee, to develop the Manual in order to preserve their independence.³⁵ Pakistan (on behalf of the OIC), Bangladesh, Cuba

and the Russian Federation took the view that the Manual could not replace the code of conduct and that the Coordination Committee did not have the legal standing to take on a wider role.

Working methods

In the discussions around the code of conduct, as mentioned above, some States asked for the development of criteria for admissibility of communications, guidelines for interaction with the media, country visits, etc. Other issues that were highlighted included the need for a standardised format for communications, for mandate holders to check their sources of information carefully and to sign all letters of allegations personally, and to channel communications only through the diplomatic mission in Geneva.³⁶ A few States however focused on the need to improve submission of timely responses by States to communication and to ensure the protection of people who communicated with special procedures.³⁷ Norway also discussed the importance of terms of reference for country visits, which it stressed should not be subject to negotiation³⁸ though others took a contrary view on this issue.³⁹ Some States questioned the principle of 'unhindered access' during country visits that was referred to in the Facilitator's Paper.⁴⁰ Pakistan (on behalf of the OIC) suggested that guidelines should be developed for the content of special procedures' reports on visits to countries and that OHCHR field presences and UN country teams should not be involved in the preparation of visits.

Cooperation by and with governments

Many States took up the issue of standing invitations to special procedures, with some States and NGOs arguing that all members of the Council should extend standing invitations and this should also be part of the criterion for candidature for the Council.⁴¹ A few States suggested that information about States' cooperation with special procedures should be made publicly available on the OHCHR's website and that the Council should develop procedures to deal with non-cooperation.⁴² As with other issues, some States focused on cooperation by special procedures with States rather than by States with special procedures.⁴³ A few also took the view that standing invitations were not in themselves

a proof of cooperation and stressed the right of States to choose to invite special procedures or not.⁴⁴ In the second session of the Working Group, Pakistan (on behalf of the OIC), Colombia, India, and the Russian Federation argued that a distinction had to be drawn between follow-up on the recommendations of special procedures and follow-up to decisions of the Council. They stated that the recommendations of special procedures were not legally binding and it was up to States to take them up or not. India put forward a proposal that special procedures' recommendations should only be given effect to after they are adopted by the Council.

Relationship with the Council

Some States suggested that as the Council is meeting more frequently than the Commission, special procedures should be able to report more frequently to the Council.⁴⁵ A few States and NGOs suggested that special procedures should be able to brief the Council on urgent matters and act as an early warning mechanism to trigger action on human rights emergencies.⁴⁶ Proposals were also put forward to review follow-up on the recommendations of special procedures by States.⁴⁷ Other States focused on standardising reports by special procedures and argued that the regularity of access to the Council would be dependent on the agenda of the Council and subject to its approval.⁴⁸ A few States again emphasised the need for a relationship of direct accountability. The practice of interactive dialogues with the special procedures initiated at the second session of the Council received widespread support.⁴⁹ Algeria (on behalf of the African Group) however suggested that the participation of NGOs in these interactive dialogues, one of the best innovations of the new Council, had only been tolerated on an exceptional basis in the second and third sessions of the Council and could not be accepted in the future.

Relationship with other human rights mechanisms and actors

Some States and NGOs suggested that the reports and recommendations of special procedures should be used for the UPR and that this could also be a way of improving follow-up.⁵⁰ Some also suggested that special procedures

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Argentina, Canada, Norway, Slovenia, the UK, and ISHR.

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Canada, Finland (on behalf of the EU), the Netherlands, Slovenia, and New Zealand.

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Algeria (on behalf of the African Group), Iran, Malaysia, the Philippines, and the Russian Federation.

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China, Iran, and the Russian Federation.

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Finland (on behalf of the EU), Belgium, Iran, Norway, Switzerland, and the USA.

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Canada, Amnesty International, and the UK.

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Argentina, Brazil, Canada, Chile, Finland (on behalf of the EU), New Zealand, Switzerland and Action Canada for Population and Development.

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Algeria, China, Pakistan, and the Philippines.

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Argentina, Brazil, Canada, Chile, China, Egypt, Finland, India, New Zealand, Norway, the Philippines, the Republic of Korea, Slovenia, Switzerland, the UK, Amnesty International, and ISHR.

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Argentina, Brazil, Canada, Chile, Finland (on behalf of the EU), Japan, Mexico, Switzerland, the USA, Amnesty International and Action Canada for Population and Development.

be able to interact more closely with the UPR by making presentations and submitting additional information.⁵¹ A few States and a representative of the special procedures suggested that special procedures interact more closely with the complaint procedure.⁵² Other States however felt that there should be no direct contact between the special procedures, the UPR mechanism, and the complaint procedure and it was up to the OHCHR to disseminate information produced by one source to the other.⁵³ Some States also emphasised the importance of NGO interaction and contributions to the work of special procedures and the need to ensure the safety of NGOs who communicated with or met with special procedures.⁵⁴ Several States⁵⁵ spoke out against the Canadian proposal⁵⁶ that special procedures should be able to brief the Security Council when it considers issues relevant to their mandates. Surprisingly, in a negative turn of events, many States also expressed opposition to interaction between special procedures and UN Country Teams in the preparation for and facilitation of their visits to countries.⁵⁷ Ms. Leila Zerrougui, the Chairperson of the Working Group on Arbitrary Detention, contested these proposals stating that the UN field presences were the most credible sources of information for special procedures and offered valuable support to them during visits and that this interaction must be preserved.

Support from the OHCHR and funding

A few States highlighted the need for the OHCHR to make qualified, full-time personnel, from different regional groups, available to support the special procedures. Some also emphasised the need for equal support to be given to mandate holders working on economic, social and cultural rights.⁵⁸ The issue of funding was also taken up with calls for greater transparency for special procedures to be funded by OHCHR's regular budget.⁵⁹

Sub-Commission/future system of expert advice⁶⁰

The Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission) was the main subsidiary body of the former Commission on Human Rights (the Commis-

sion). General Assembly *Resolution 60/251*, which created the Human Rights Council (the Council), provides that the Council shall 'maintain a system of ... expert advice'.⁶¹ The use of the term 'system of expert advice' and the absence of any reference to the continuation of the Sub-Commission meant that the Council is not required, under the terms of the Resolution, to retain the Sub-Commission and can set up a new system of expert advice. During the discussions at the Working Group however, most States expressed support for a model that closely resembles the existing Sub-Commission. Others have put forward proposals for a new system of expert advice based on a roster of experts that the Council calls upon when necessary. A compromise between the two positions has been put forward for a smaller permanent body, which can draw upon additional experts as necessary. Most States have been opposed to the expert body studying situations in countries or to experts initiating studies without the consent of the Council. Both of these proposals could impact the way NGOs use the expert mechanism. Only some States have expressed support for retaining the Sub-Commission's Working Groups on Indigenous Populations and Minorities and its Social Forum. The working groups, in particular, are crucial spaces for participation of indigenous peoples and representatives of minorities and for NGOs that do not have ECOSOC accreditation to feed their views into the UN human rights system. If the Council decides not to maintain these bodies, alternate spaces will have to be created to facilitate the participation of a wider group of NGOs within the human rights system.

The Facilitator, Ambassador Mousa Burayzat, circulated a non-paper at the first Working Group session to facilitate the discussions on the future system of expert advice.⁶² His non-paper was drafted in the form of a multiple-choice questionnaire listing various options for the main issues related to the future expert body including its name, structure, size, method of selection of experts, mandate, relationship with the Council, etc. This format of presenting options that States had to choose from had the effect of limiting the discussions on these issues with States merely listing an option that they preferred without providing an explanation of why they supported an option. The pre-selected list of options also made it difficult for States who wished to suggest models that were not fully

⁵¹ Australia, Canada, Japan, and Chile.

⁵² Canada, Amnesty International, and Mr. Vitit Muntarbhorn.

⁵³ Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), India, Iran, Malaysia and the Russian Federation.

⁵⁴ Notably Canada and Norway.

⁵⁵ Pakistan (on behalf of the OIC), Bangladesh, Cuba, Indonesia, the Russian Federation, and South Africa.

⁵⁶ This was also supported by Human Rights Watch.

⁵⁷ Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), and Malaysia.

⁵⁸ Algeria (on behalf of the African Group) and Bangladesh.

⁵⁹ Bangladesh and Switzerland.

⁶⁰ This sub-section provides a summary of the discussions on the future system of expert advice. For further information please see ISHR's detailed *Council Monitor* reports on the discussions at the Working Group, available at www.ishr.ch/hm/council.

⁶¹ Paragraph 6.

⁶² The Facilitator's non-paper is available on the OHCHR extranet (fill out the form on the page to receive user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

captured by the Facilitator's list. The Facilitator developed a one-page note for the second session of the Working Group which, instead of identifying areas of convergence and those that required further discussion, was presented as a concept paper that could be used as the basis of negotiations. This non-paper generated a lot of controversy during the Working Group's session, with States suggesting that it should be better structured and address each issue of concern in a more systematic manner.⁶³ Some also expressed concern that the Facilitator's additional insistence that the discussion be focused only on the content of the concept paper was shutting off debate on certain issues.⁶⁴

Size, structure and composition

Germany and previously Finland (both on behalf of the EU) put forward a proposal for a radical departure from the structure of the current Sub-Commission. They suggested that instead of a permanent body, the Council should draw upon independent experts from a roster as required to carry out studies.⁶⁵ Most States however preferred to maintain a formally structured expert body on the lines of the Sub-Commission.⁶⁶ Some of these States wanted this expert body to be of the same size or slightly larger than the current Sub-Commission (26 to 28 members).⁶⁷ Others however expressed their support for a smaller body composed of ten to 16 members.⁶⁸ India put forward a compromise proposal for a standing pool of ten to 16 experts. The Council would have the flexibility to appoint experts individually or in groups as required but the entire group would meet for an annual two-week session in order to interact with each other and with NGOs. Germany stated that it was willing to discuss this proposal further.

Selection and terms of membership

Many States initially suggested that the Council should directly elect experts that serve on the body.⁶⁹ Some States however suggested that experts should be selected by or with the greater involvement of the High Commissioner.⁷⁰ Based on the proposals that were put forward, the Facilitator suggested a two-step selection proposal involving nominations by States and other stakeholders such as the High Commissioner, NGOs

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Algeria (on behalf of the African Group).

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Germany (on behalf of the EU).

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This was supported by Australia, Canada, Japan, Switzerland, and the UK.

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Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), Bangladesh, Cuba, Egypt, Iran, and Thailand.

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Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), Bangladesh, Cuba, Egypt, Iran, Morocco, Thailand, and Tunisia.

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Brazil, Canada, Ecuador, Finland (on behalf of the EU), Guatemala, India, Japan, Mexico, the Republic of Korea, the USA, and Zambia.

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Algeria (on behalf of the African Group), Bangladesh, Ecuador, India, Iran, the Republic of Korea, and Venezuela.

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Finland (on behalf of the EU), Australia, Canada, Japan, the Republic of Korea, and Switzerland.

and NHRIs followed by a pre-screening process and then elections by the Council.⁷¹ There was broad agreement amongst States that participated in the Working Group that members of the expert body should serve terms of three years, renewable once.

Mandate and functions

The Facilitator's Paper suggested that the expert body should be implementation-focused and its purpose was to provide advice to the Council. The main areas of contention were whether the expert body should be able to take up both thematic and country issues, whether it should be focused on 'protection' as well as 'promotion' of human rights, and if it should undertake studies only at the request of the Council. Some delegations felt that the functions and scope of the expert body should not be restricted and that it should have the capacity to take on thematic and country-specific issues.⁷² Many others however stressed that the expert body should only deal with thematic issues and not be able to take up country situations.⁷³ Some felt that the expert body should also be able to contribute to standard-setting.⁷⁴ Switzerland, Guatemala, Mexico and the UK took the view the expert body should also have a role in dealing with protection of human rights and addressing protection gaps.⁷⁵ Under the EU proposal for a roster, experts would no longer be able to initiate studies but could only do so at the request of the Council. This aspect of the proposal would negatively impact the work of NGOs who have in the past been able to advocate that the Sub-Commission initiate studies on emerging areas, issues which require clarifications or standard-setting. Finland (on behalf of the EU) stressed the importance of limiting the number of studies and enforcing clear sunset clauses⁷⁶ to ensure that studies and reports were finalised. A few States emphasised the importance of the Sub-Commission's Working Groups on Indigenous populations and Minorities and its Social Forum.⁷⁷

Relationship with other human rights mechanisms

Finland (on behalf of the EU) stated that the experts should informally interact with other human rights mechanisms to avoid duplication

of work. Algeria (on behalf of the African Group) and Colombia, Pakistan and Thailand insisted that the future UPR should not be dealt with by the future expert body and that this should be reserved only for the work of the Council. Bangladesh expressed that it was reluctant to consider the expert body's relations with the UPR at this stage, as the form of the UPR had not yet taken shape.⁷⁸

1503 procedure/ future complaint procedure⁷⁹

The Commission on Human Rights' (the Commission) main complaint procedure was the 1503 procedure,⁸⁰ under which it could receive communications (complaints) from victims or others acting on behalf of the victims regarding situations which 'reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms'⁸¹ in any country in the world.⁸² General Assembly *Resolution 60/251* provides that the Council shall maintain a complaint procedure.⁸³ This gives the Council the flexibility to develop a new complaint procedure. States have however not put forward any ideas for a new model for the complaint procedure or, for the most part, taken the opportunity to re-examine the role and scope of the complaint procedure within the overall architecture of the Council. All the States that have participated in the discussions at the Working Group have affirmed their support for maintaining most of the current features and scope of the 1503 procedure, with some variations.

The proposals that offer the most scope for improvement of the procedure are about providing more information to complainants about the outcomes of their complaints/progress of their complaint. The proposal about providing information to complainants on the outcomes of their complaint does enjoy broad support and may be adopted. Other positive proposals relate to using the procedure as an early warning mechanism; making the case public or taking other steps when the State in question refuses to cooperate; empowering the Council to decide on urgent measures of protection; and referring cases, which are not taken up by the complaint procedure, to other mechanisms. These proposals unfortunately do not

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Cuba, Algeria (on behalf of the African Group) and Pakistan (on behalf of the OIC) opposed this proposal.

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Finland (on behalf of the EU), Canada, Japan, and the Republic of Korea.

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Algeria (on behalf of the African Group), Bangladesh, China, Colombia, Cuba, Denmark, Egypt, Guatemala, India, Pakistan (on behalf of the OIC), Nigeria, the Russian Federation, Thailand, Tunisia, and Venezuela.

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Bangladesh, Iran, the Republic of Korea and Mexico.

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Egypt, Indonesia and Tunisia disagreed as they thought that protection of human rights was the prerogative of the Council.

76

A sunset clause is a provision which sets out the date a particular initiative or law will terminate unless specific action is taken to extend it further.

77

Algeria (on behalf of the African Group) and Switzerland.

78

This was supported by Japan, the Republic of Korea, and Venezuela.

79

This sub-section provides a summary of the discussions on the complaint procedure. For further information please see ISHR's detailed *Council Monitor* reports on the discussions at the Working Group, available at www.ishr.ch/hrm/council.

enjoy broad support. Some of the more negative proposals that have been put forward, which would adversely affect NGOs, are about increasing the minimum threshold⁸⁴ of violations that can be considered under the procedure; to restrict admissibility of complaints by asking for complainants to approach NHRIs in their countries first; and to restrict the ability of NGOs or others to submit complaints on behalf of victims of violations.

Scope and objectives

There was broad support for the option suggested by the Facilitator that the complaint procedure should be able to deal with all human rights contained in the *Universal Declaration for Human Rights* (UDHR) but with a high minimum threshold of violations.⁸⁵ Some of these States and ISHR however also suggested that the scope of the complaint procedure should not be restricted to the UDHR alone but instead be extended to 'all human rights', as had been the case under the 1503 procedure.⁸⁶ In relation to the threshold of violations, States discussed whether it should remain the same as the 1503 procedure: 'a consistent pattern of gross and reliably attested violations' or whether it should include an additional requirement that the violations also be 'systematic'.⁸⁷ Some States⁸⁸ and ISHR opposed the inclusion of this additional requirement arguing that this could restrict the application of the procedure. The Facilitator also suggested that the threshold be extended to 'gross or serious' violations but only Canada supported this suggestion. There was also a debate about whether the complaint procedure should play a preventive early warning element by identifying 'emerging consistent patterns' of violations. Though some delegations supported this suggestion,⁸⁹ the majority of those present⁹⁰ were opposed to the complaint procedure playing this kind of a role as they thought this would be incompatible with the procedure's objectives or would overburden the procedure.

Admissibility criteria

The 1503 procedure had always included a requirement that the complainant had to exhaust domestic remedies before their complaint could be considered under the proce-

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For further information and a discussion of the key issues see M. Abraham, *A New Chapter for Human Rights*, ISHR and FES, Geneva (2006), available at www.ishr.ch/handbook, pp. 33-50. For more information on the 1503 procedure visit www.ohchr.org/english/bodies/chr/complaints.htm. The list of States examined under the 1503 procedure is available at <http://www.ohchr.org/english/bodies/chr/stat1.htm>. ISHR has prepared a table on the outcomes of the 1503 procedure, based on available information and one comparing the 1503 procedure to other regional and international complaint procedures. Both these tables are available at www.ishr.ch/handbook/Annexes.

81

Paragraph 1.

82

The Commission would not address violations of an individual's human rights under this procedure. The procedure was intended, instead, to bring situations of massive human rights violations to its attention. The 1503 procedure was confidential and the Commission considered 'situations' in countries that come up under the procedure in a closed meeting. Complainants were informed if their cases had been taken up for processing under the 1503 procedure but were not given any further information on the proceedings themselves or the outcomes.

83

Paragraph 6.

84

The minimum threshold of violations is the level of severity that the violation would need to reach before it could be considered under the complaint procedure. Under the 1503 procedure, this threshold was set by the requirement that the situations considered under the procedure 'reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms' in any country of the world.

85

India, Chile, Uruguay, Japan, Argentina, Mexico, Iran, the Russian Federation, Azerbaijan, Algeria, Guatemala, the USA, the Philippines, and the Republic of Korea.

86

Chile, Uruguay, Mexico, Iran, Azerbaijan, Guatemala, the USA and the Republic of Korea.

87

This was supported by China, India, Japan, Ecuador, Egypt, the Russian Federation, Iran, Algeria, Azerbaijan, and Tunisia.

88

The USA, Canada, the UK, Ecuador, Argentina, and Norway.

89

Germany (on behalf of the EU), Argentina, Belgium, Canada, Mexico, the UK, and ISHR.

90

Algeria (on behalf of the African Group), Azerbaijan, Bangladesh, Bhutan, China, Columbia, Cuba, Ecuador, India, Indonesia, the Islamic Republic of Iran, Japan, Malaysia, Pakistan, on behalf of the OIC, the Philippines, the Russian Federation, South Africa, Spain, and USA.

91
Republic of Korea, Argentina, and India.

92
Germany (on behalf of the EU) argued against this requirement stating that while the complaint procedure deals with patterns of violations, the treaty bodies consider individual cases and therefore an individual violation could be addressed by both bodies.

93
Finland (on behalf of the EU), Algeria (on behalf of the African Group), Bangladesh, the Russian Federation, China, Iran, India, the Republic of Korea, Ecuador, Cuba, Venezuela, Azerbaijan, Pakistan, and Japan.

94
This was supported by the USA.

95
Finland and Germany (on behalf of the EU), Canada, Japan, and the Republic of Korea.

96
Pakistan (on behalf of the OIC), the Russian Federation, China, Iran, Morocco, and Malaysia.

97
This was supported by Bangladesh and Venezuela.

98
Germany (on behalf of the EU), the Republic of Korea, and Bangladesh.

99
Algeria (on behalf of the African Group), Cuba, Pakistan (on behalf of the OIC), the Russian Federation, and Venezuela.

100
China, Iran, Ecuador, Republic of Korea, Mexico, Japan, Algeria (on behalf of the African Group), and Azerbaijan.

101
Algeria (on behalf of the African Group), Japan, Mexico, the Russian Federation, and Germany (on behalf of the EU).

102
Finland and Germany (on behalf of the EU), Algeria (on behalf of the African Group), Bangladesh, Belgium, Brazil, Egypt, India, Japan, Mexico, the Philippines, the Russian Federation, Thailand, and the UK.

103
Algeria (on behalf of the African Group), Belgium, Bangladesh, Brazil, Japan, the Russian Federation, and the USA.

104
Germany and Finland (on behalf of the EU) and Mexico.

105
This was supported by Germany (on behalf of the EU) and the UK.

106
Bangladesh, China, Cuba, India, Iran, Malaysia, Pakistan (on behalf of the OIC), and the Russian Federation.

ture. In the Working Group, various States⁹¹ and the Facilitator suggested that this requirement should be maintained under the complaint procedure but should also extend to seeking a remedy from an NHRI, if one existed in the country. Algeria (on behalf of the African Group) and Pakistan (on behalf of the OIC) also suggested a new restriction that complaints should only be admissible if they were submitted directly by the victims. This would exclude NGOs and other organisations from submitting complaints, as they have been able to do for the last 35 years under the 1503 procedure. The Facilitator's Paper also suggests convergence around the requirement that the complaint should not already be dealt with by any special procedures or a treaty body.⁹² The other requirements of the 1503 procedure that the complaint should not be anonymous, contain abusive language or be based exclusively on mass media reports also appear to have broad support and are likely to be continued.

Stages of review and composition of Working Groups

Most States supported retaining the current system of a two-stage process of review; first by a Working Group made of independent experts and then by a Working Group composed of representatives of States.⁹³ Canada proposed a single Working Group consisting of five independent and qualified experts, one from each regional group, to provide recommendations to the Council to make the process faster and benefit victims.⁹⁴ There were also differences in views on the method of selection of members of both Working Groups. Some States thought the President should appoint the experts, on the first Working Group, from a roster of candidates maintained by the OHCHR.⁹⁵ Some other States however prefer that the President chooses the experts from the new expert advice system of the Council.⁹⁶ Algeria (on behalf of the African Group) originally supported election of the experts but then suggested that they be selected directly by the regional groups.⁹⁷ Similarly, some States preferred that State representatives who will serve on the second Working Group should be appointed by the President in consultation with the bureau⁹⁸ while some others suggested that they be directly selected by the regional groups.⁹⁹

As with the discussions on the special procedures and expert advice, many States supported the idea that experts on the first Working Group should serve a three-year term of membership, renewable once.¹⁰⁰ Some States also supported the suggestion that members of the second Working Group should be appointed only for one year and should not be able to renew their memberships.¹⁰¹

Involvement of the complainant

The most significant positive proposals that have been put forward relate to greater involvement of the complainants in the process. Under the 1503 procedure, complainants were informed if their cases had been taken up for processing but were not given any further information on the proceedings themselves or the outcomes or any opportunity to comment on the State's response to the complaint. Most delegations¹⁰² agreed that the complainant should have a greater involvement in the process or receive more information but there were disagreements about the extent to which the complaint should be involved. Some States preferred that the complainant only be given information about the final outcome of their complaints.¹⁰³ Others suggested that the complainant be kept informed at each stage of the process.¹⁰⁴

Frequency, outcomes and confidentiality of the process

Various proposals were put forward to reduce the time taken to review complaints including shorter deadlines for replies by States,¹⁰⁵ increased frequency of meetings of the Working Groups, and for the Council to consider the complaints more than once a year. There was support from a number of States for the Working Groups to meet more frequently but differences of opinion on whether both Working Groups should be able to do so. Many delegations also opposed the proposal for the Council to consider complaints more frequently, arguing that it should only do so once a year.¹⁰⁶

The Council could under the 1503 procedure decide on one of the following four courses of action¹⁰⁷ as an outcome: 1) discontinue reviewing the matter; 2) keep the situation under review

and wait for further information from the State or which may reach it through the 1503 procedure; 3) keep the situation under review and appoint a country special procedure mandate to monitor the situation and report back to the Commission; and 4) refer the matter to the public 1235 procedure, under which it could discuss the situation in the country publicly and take a variety of actions, such as adoption of a resolution, appointment of special procedure mandates, etc. There was broad support for retaining these options in the complaint procedure though some States suggested restricting referrals to the public procedure to situations where the 'State refuses to cooperate'.¹⁰⁸ Suggestions were also put forward for additional measures that the Council could take. These included recommending that the country be urgently reviewed through the UPR;¹⁰⁹ referring the State, when it refuses to cooperate or fails to comply with the Council's decisions, to the special procedures, treaty bodies, the General Assembly or any other relevant mechanisms¹¹⁰ or suspending its membership to the Council; recommending that the OHCHR provide technical assistance and capacity-building to the State concerned;¹¹¹ creating new special procedure mandates or fact-finding missions;¹¹² and deciding on urgent measures of protection.¹¹³

There was strong support for the need to maintain the confidentiality of the procedure but differences in views on when confidentiality could be waived. Most States expressed support for the proposal that the Council should consider complaints in a confidential manner, unless it decided otherwise.¹¹⁴ Some delegations suggested that if the concerned State did not cooperate with the Working Groups, the complaint should be made public and/or referred to the Council and discussed in its public meetings.¹¹⁵ Others argued against what they viewed as a 'punitive response' to non-cooperation stating that this went against the Council's spirit of cooperation.¹¹⁶

UNIVERSAL PERIODIC REVIEW MECHANISM¹¹⁷

The Universal Periodic Review (UPR) is a new mechanism that has been established under General Assembly *Resolution 60/251* (the Reso-

lution), which created the Council. The Council is expected, under Paragraph 5 (e) of the Resolution, to 'undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies'.¹¹⁸ The General Assembly did not set out the details of how the process will be carried but instead asked the Council to 'develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session' (by 30 June 2007).

The Council established a Working Group to develop the modalities of the UPR mechanism.¹¹⁹ The Working Group has at its disposal ten days (or 20 three-hour meetings) for the development of the UPR. The Working Group first met on 20-24 November 2006 and then met again from 12-16 February 2007. It is scheduled to meet for its final session from 16-27 April 2007. The Facilitator, Ambassador Loulichki, has been able to keep the discussions focused and has been able to advance the discussions by clearly identifying areas of convergence and requesting States to pay more attention to those that require further discussion. He has also advanced compromise proposals that States have given consideration to. The Working Group on the UPR, if it continues at its current rate of progress, seems on track to complete its work by 27 April 2007. This sets it apart from discussions on the three segments under the Working Group on review of mechanisms and mandates, in particular on the review of special procedures, which have a large number of issues still on the table that require further discussion and agreement.

The models for the UPR that appear to have support at the moment are for relatively 'light' reviews of States either by the Council or first by working groups made up of members of the Council. From the point of view of many NGOs, the aspects of the UPR that may be most important for their work have not received broad support from States: the possibility for all NGOs to

107
Paragraph 7 (d) ECOSOC *Resolution 2000/1*. Paragraph 6 (b) of ECOSOC *Resolution 1503* provided that the Commission could set up an *ad hoc* committee to investigate the situation but this provision has never been used.

108
Algeria and Iran.

109
This was supported by Finland (on behalf of the EU), Argentina, Belgium and the UK. Pakistan (on behalf of the OIC), the Philippines, Tunisia, Indonesia, Algeria (on behalf of the African Group), and Iran were opposed to this proposal.

110
Finland and Germany (on behalf of the EU) supported this proposal. Indonesia and Azerbaijan were opposed to this proposal.

111
Algeria (on behalf of the African Group), China, India and Malaysia emphasised that any assistance resulting from the complaint procedure must only be at the request of the concerned State.

112
This was supported by Finland (on behalf of the EU).

113
Argentina supported the proposal that the Council should be able to decide on urgent measures of protection.

114
Algeria (on behalf of the African Group), Argentina, Australia, Bangladesh, China, Ecuador, Guatemala, India, Japan, Malaysia, the Philippines, the Republic of Korea, and Sri Lanka. Cuba, Egypt, Iran and the Russian Federation thought that the complaint should always be considered in a confidential manner.

115
Germany and Finland (on behalf of the EU), Argentina, Belgium, Canada, Mexico, and the UK.

116
Algeria, Cuba, China, India, Indonesia, Iran, Malaysia, the Russian Federation, and Tunisia.

117
This sub-section provides a brief overview of the main issues that have been discussed at the Working Group. For further information please see ISHR's detailed *Council Monitor* reports on the discussions at the Working Group, available at www.ishr.ch/hrm/council.

118
Paragraph 5 (e), General Assembly *Resolution 60/251*.

119
Human Rights Council *Decision 1/103*.

120

ISHR pointed out that to avoid duplicating the work of treaty bodies, the UPR should assess the status of ratification, reporting performance of States, and follow-up to recommendations of treaty bodies.

121

Guatemala pointed out that the last criterion could create inequality in the review as not all States would stand for elections or make pledges.

122

There is very little support for using customary international law as the basis of the review.

123

Australia, China, Ecuador, Guatemala, India, Norway, and the USA were opposed to using these standards and commitments for the UPR.

124

Japan, Norway, and the Republic of Korea suggested that this requirement should be modified to avoid weakening the mechanism.

125

Bangladesh, China, Iran and Pakistan (on behalf of the OIC) suggested removing this reference. Belgium, Australia and Amnesty International felt it was important to clarify that the UPR should not be considered the appropriate mechanism for addressing urgent situations.

126

Algeria (on behalf of the African Group), Bangladesh, and Malaysia.

127

Germany (on behalf of the EU), Belgium, Chile, Japan, Liechtenstein, New Zealand, Poland, Switzerland, the UK, and Uruguay.

128

This was supported by Algeria (on behalf of the African Group) and Bangladesh.

129

Germany (on behalf of the EU), Argentina, Brazil, Colombia, Chile, Ecuador, the Maldives, Mexico, New Zealand, and Switzerland

130

Algeria (on behalf of the African Group), China, Cuba, India, Indonesia, Iran, Malaysia, the Russian Federation, Thailand, and the USA.

131

Canada and Norway.

132

Amnesty International, Human Rights Watch, and ISHR.

133

Argentina, Norway, and the UK.

134

This was supported by Germany (on behalf of the EU).

135

This was supported by China and Iran.

submit information directly to the UPR; involvement of independent experts in the review process; involvement of NGOs and NHRIs in the interactive dialogue with States; and concrete outcomes from the UPR such as setting up special procedure mandates, other fact-finding or monitoring mechanisms, or a presence of the OHCHR. There is support for the provision of technical assistance and capacity-building, but only with the consent of the concerned State. Disturbingly, some States have proposed that nationally based NGOs should only be able to participate in the UPR at the national level in the process by which the State puts together its self-assessment report. As the setting-up of the UPR has been depicted as one of the greatest innovations of the new Council, the entire reform process will be called into question if by the end of June 2007 the Council establishes a UPR that only provides for a superficial review of States, does not involve independent experts, NGOs and NHRIs in the process, and only provides for limited outcomes from the review.

Basis of the review

The Working Group has discussed what human rights obligations and commitments should be used as the basis of the review for the UPR. The Facilitator identified convergence around using the following international standards and commitments: the *Charter of the United Nations*, the *Universal Declaration of Human Rights*, human rights instruments to which the State is a party,¹²⁰ and voluntary pledges and commitments undertaken by States when seeking election to the Council.¹²¹ Some additional standards and commitments that have been suggested, but on which there is still disagreement, are customary international law,¹²² international humanitarian law, and obligations and commitments made at UN summits and conferences.¹²³

Principles and objectives

Paragraph 5 (e) of General Assembly *Resolution 60/251* forms the basis of the principles and objectives of the UPR. There was discussion on whether there should be a reference to the UPR not being 'burdensome to the reporting State or the agenda of the Council'¹²⁴ and to its 'not diminishing the capacity of the Council to

respond to urgent human rights situations'.¹²⁵ States also discussed whether the UPR should consider the country's level of development and other cultural, legal and religious specificities. While some States¹²⁶ supported this suggestion, others pointed out that it went against the principle of equal treatment.¹²⁷ Germany (on behalf of the EU) suggested that these factors should be considered while developing recommendations and focusing in implementation.

Periodicity and order of the review

Initial proposals for how frequently States should be reviewed (periodicity of the review) ranged from three to six years and beyond. Pakistan (on behalf of the OIC) suggested that the periodicity of review should depend on the level of development of the States and that developed countries should be reviewed every three years and developing countries reviewed every seven years.¹²⁸ The Facilitator suggested that the Working Group consider a periodicity of four¹²⁹ to five years¹³⁰ as a compromise between the different proposals. There was broad support for these options, despite some States¹³¹ and NGOs¹³² pointing out that General Assembly *Resolution 60/251* requires the Council to review members of the Council during their terms of membership (which runs for three years). A number of States spoke out against the proposal to stagger periodicity on the basis of the level of development of the State.¹³³

The options for choosing the order in which countries would be reviewed were drawing lots,¹³⁴ following an alphabetical order,¹³⁵ and States volunteering to be reviewed.¹³⁶ Brazil suggested using a combination of drawing of lots and following an alphabetical list and that one-thirds of the States that are reviewed annually should be Council members.

Information used for the review

There was broad support for the UPR to be based on a self-assessment report¹³⁷ by the State concerned, based on a standardised or individualised questionnaire developed by the Council,¹³⁸ and information compiled by the OHCHR¹³⁹ from reports of treaty bodies, special procedures and other UN documents. The Facilitator suggested

in his non-paper that there was also convergence on the view that States should be encouraged to prepare their report through a broad consultation process at the national level with all stakeholders. As a compromise between different views on information from additional sources such as NGOs, the Facilitator proposed that the Council could also take into consideration additional information provided by other relevant stakeholders. A number of States took the view that additional information from other stakeholders, including experts and NGOs, should only be collected at the national level.¹⁴⁰ Liechtenstein suggested that only ECOSOC accredited NGOs should be able to submit information. Others however highlighted the importance of receiving information directly from both international and national NGOs and other stakeholders and for the Council to consider this information.¹⁴¹

Some of the States who supported the option of using a working group to review information and make recommendations to the Council thought it would be useful for the State to submit a second, more specific questionnaire, based on the general recommendations of the working group.¹⁴²

Process of the review

The Facilitator suggested three models as possible options for conducting the UPR. All three models would rely on the information identified above. The main differences between the models are on whether the review would be carried out by the plenary of the Council, or first by a working group (the Facilitator gave States the choice between setting up two or four working groups) that would review the information and submit recommendations and conclusions to the Council.

A number of States expressed their preference for the review to be undertaken by the Council itself in a plenary session of three hours.¹⁴³ It was calculated that if there was a four-year cycle of review, 48 countries would be reviewed per year and this would take up five weeks of the Council's time. If there was a five-year cycle, 39 countries would be reviewed and this would require four weeks of the Council's time. Of the States supporting this option, only India suggested that additional time (outside of the minimum

136

The option of volunteering was supported by the Netherlands, which volunteered itself for the first round. Switzerland thought that this could upset the need for certainty in the order of the review.

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Argentina, Germany (on behalf of the EU), Norway questioned whether a self-assessment report was necessary as they were concerned that it could lead to delays and backlogs if States were late in submitting their reports.

138

There was a disagreement between States on whether the questionnaire should be a standard or individualised one or a combination of the two.

139

India and the Russian Federation thought that it would be better not to have a compilation of information by the OHCHR. Cuba and China stressed that no information from any country-specific special procedure should be included.

140

Algeria (on behalf of the African Group), Bangladesh, China, Indonesia, and Iran.

141

Germany (on behalf of the EU), Australia, Canada, Chile, the Maldives, New Zealand, Norway, the Philippines, the Republic of Korea, Switzerland, Amnesty International, and ISHR.

142

This suggestion was supported by the Republic of Korea who thought that the second questionnaire should also be returned to the working group rather than the Council. The USA opposed the suggestions for a second questionnaire.

143

Algeria (on behalf of the African Group), Bangladesh, Chile, China, Cuba, Guatemala, India, Indonesia, Iran, and Senegal.

period of ten weeks allocated to the Council) be set aside to carry out the UPR.¹⁴⁴ Algeria (on behalf of the African Group) proposed that a preliminary review could be carried out by a 'group of friends' or the regional group to help ensure that the plenary was not overburdened.¹⁴⁵

Germany (on behalf of the EU) and a number of other States¹⁴⁶ supported option 2; which provided for setting up four working groups made up of members of the Council who would review the information and submit their conclusions and recommendations to the entire Council for adoption in a plenary session. The working group's report would also include the comments of the State that was reviewed. Another option could also be for the State to submit responses to a second, more specific questionnaire, based on the recommendations of the working group. Under this scheme, three working groups would consist of 12 members of the Council each and the fourth working group would consist of the remaining 11 members. Each working group would only have to review 12 States per year if the periodicity of the review was set at four years and it was felt that this was a more manageable workload than any other system.

Option 3, which suggested setting up two working groups (each made up of 24 or 23 members of the Council) did not receive any support. However, some States suggested hybrids of the three options.¹⁴⁷ The Philippines suggested a single working group that would be responsible for conducting the review and drafting an outcome document for consideration by the Council in a plenary session. The USA also suggested channelling the contributions of all UN member States, rather than just members of the Council, through a core group of ten States.

Involvement of experts in the review

At the first session of the Working Group, various States and NGOs had highlighted the importance of involving independent experts in the UPR.¹⁴⁸ Others were however opposed to experts carrying out or facilitating the review for the Council as they perceived the process as an inter-governmental one or a 'peer review'.¹⁴⁹ The Facilitator suggested as a compromise during the second session of the Working Group that, in the two options for working groups he had identified,

it would be up to the member State to decide whether they wanted an independent expert or government delegate to be their representative. The USA continued to take the view that as the UPR was a 'peer review' mechanism, all those involved in the review should be government delegates.¹⁵⁰ Germany (on behalf of the EU) suggested that the working groups should be composed of representatives of States. It suggested however that it would be extremely useful for an independent expert to head the working group to present the information that was compiled and table a list of possible recommendations for the working group to discuss.¹⁵¹ Others suggested that experts should filter and process the information that was collected in the preparatory stages,¹⁵² act as sources of information themselves,¹⁵³ facilitate the discussions and be involved in the interactive dialogue,¹⁵⁴ and monitor follow up.¹⁵⁵

Participation of NGOs and NHRIs

Some States and NGOs argued for the inclusion of all stakeholders, including NGOs, NHRIs, and specialised agencies, at all levels of the process.¹⁵⁶ The UK asked for references to be made to the 'effective participation' of NGOs and Human Rights Watch stated that both international and national NGOs needed to be involved in the process. Algeria (on behalf of the African Group) however argued that NGO participation should be restricted to the preparation stages with NGOs contributing at the national level in broad consultations organised by the concerned State. It also took the view that international NGOs with ECOSOC accreditation could observe the proceedings undertaken by the Council but should not contribute directly.¹⁵⁷ Algeria and India felt that NGO participation would detract from the intergovernmental nature of the UPR process. Mexico pointed out that General Assembly *Resolution 60/251* does not specify that the UPR is solely an inter-governmental process.¹⁵⁸ Germany (on behalf of the EU) suggested that the UPR should be public to ensure the participation of all stakeholders.¹⁵⁹

Outcome of the review and follow-up

Most States agreed that the outcome of the UPR should include a summary of the proceedings and recommendations and conclusions. There

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Bangladesh and the Russian Federation were opposed to this idea.

145

Chile, Cuba, the Maldives, Mexico, Liechtenstein, and the USA opposed this proposal.

146

This option was also supported by Argentina, Australia, Belgium, Brazil, Canada, the Czech Republic, Liechtenstein, the Maldives, Mexico, New Zealand, Norway, the Republic of Korea, Sweden, Switzerland, and the UK.

147

The Philippines and the USA.

148

Finland (on behalf of the EU), Argentina, Chile, Cost Rica, Ecuador, the Netherlands, Norway, Peru, Switzerland, Amnesty International, and Human Rights Watch.

149

Algeria (on behalf of the African Group), Bangladesh, China, Indonesia and the USA.

150

This was supported by Algeria (on behalf of the African Group), Bangladesh, Cuba, China, Malaysia and the Russian Federation.

151

This was supported by Belgium, Canada, Sweden and the UK.

152

Germany (on behalf of the EU), Canada, New Zealand, Norway, Switzerland, the USA, and ISHR.

153

Australia and Belgium.

154

Colombia, Ecuador, Sweden, Switzerland and the UK.

155

Canada and Switzerland. Brazil, Norway, Uruguay and Turkey also supported the involvement of experts in the process.

156

Germany (on behalf of the EU), Norway, Poland, the UK, Uruguay, Amnesty International, and Human Rights Watch.

157

This was supported by Bangladesh and Indonesia.

158

This was supported by Human Rights Watch and ISHR.

159

This was supported by Thailand.

were differences in views on what the content of the outcome document should be. Most States rejected suggestions that the outcome document should include an assessment of the implementation of treaty body and special procedures' recommendations and their follow-up.¹⁶⁰ Many were also not in favour of the appointment of special procedure mandates, dispatch of fact-finding missions, investigation teams or commissions of inquiry as an outcome of the UPR.¹⁶¹ Most States also felt that technical assistance and capacity building should only be provided at the request of the concerned State.¹⁶²

Most States also agreed that the outcome document should be adopted by the Council in the plenary but there was disagreement on whether this always had to be by consensus. The Facilitator suggested that the decision-making process for the UPR should be the same as that for any other decision of the Council.¹⁶³

There was convergence that the outcome of the UPR, which was described as a cooperative mechanism, should be implemented by the State but disagreement on how far all other relevant stakeholders had a role in implementation.¹⁶⁴ A few States thought that the Council should have a standing agenda Item devoted to follow-up to the UPR at one of its annual sessions.¹⁶⁵ There was opposition from a number of States to suggestions to appoint a rapporteur to ensure follow-up¹⁶⁶ and that the concerned State should report to the Council on the implementation of the outcomes of the UPR.¹⁶⁷ Some States¹⁶⁸ supported a proposal to consolidate all UPR reports into a global report but many were opposed to this suggestion.¹⁶⁹

AGENDA, PROGRAMME, METHODS OF WORK, AND RULES OF PROCEDURE¹⁷⁰

General Assembly *Resolution 60/251* provided 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'.¹⁷¹ The Resolution also provided requirements for the working methods of the Council: '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'.¹⁷² In terms of participation of States that are not members of the Council, NGOs, NHRIs and other observers, the Resolution carried over the arrangements and practices of the Commission to the Council, while asking the Council to ensure 'the most effective contribution of these entities'.¹⁷³ In its first year, the Council has been operating on an agenda and programme of work tailored to its institution-building phase and which do not set a precedent for its permanent agenda and programme of work. Following discussions at its third session on its future working methods, the Council decided to establish a Working Group to formulate recommendations on its agenda, annual programme of work, methods of work and rules of procedure.¹⁷⁴ The Working Group has been authorised, under the Resolution, to meet for ten days. It met for the first time from 15–19 January 2007 and is scheduled to meet again from 10–13 April 2007.

The discussions in the Working Group were broken up into two distinct segments, one focusing on the agenda and programme of work and the other on the working methods and rules of procedure. The President of the Council appointed Mr. Carlos Ramiro Martinez Alvarado, the Ambassador of Guatemala, to facilitate the discussions on the segment on agenda and programme of work. He also appointed Mr. Enrique A. Manalo, the Ambassador of the Philippines, to facilitate the discussions on the working methods and rules of procedure.

Agenda and programme of work

The Facilitator, Ambassador Alvarado, clarified that the 'agenda' refers to the list of topics or 'Items' that will be discussed by the Council. The 'programme of work' contains information on how the Items on the agenda will be divided throughout the year and when and how frequently each Item will be discussed.

The debate centred around whether the Council should have a structured agenda with permanent agenda Items focusing on specific rights,

¹⁶⁰ Pakistan (on behalf of the OIC), China, Indonesia, Iran, Malaysia, and the Russian Federation.

¹⁶¹ Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), Bangladesh, Cuba, Indonesia, Iran, Malaysia, Norway, and the Russian Federation.

¹⁶² Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), China, Cuba, India, and Iran.

¹⁶³ This was supported by the UK and ISHR.

¹⁶⁴ Algeria (on behalf of the African Group), Cuba and the Philippines argued that the primary responsibility lay with the State. Cuba asked for a deletion of the reference to 'all relevant stakeholders'.

¹⁶⁵ India, Japan, and the USA.

¹⁶⁶ Algeria (on behalf of the African Group), Malaysia, and the Russian Federation.

¹⁶⁷ Germany (on behalf of the EU) suggesting making this optional rather than a legal requirement on States. Their suggestion was supported by India and the USA.

¹⁶⁸ Argentina, Brazil and Liechtenstein.

¹⁶⁹ Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), Canada, Japan, and Malaysia.

¹⁷⁰ This sub-section provides a brief overview of the main issues that have been discussed at the Working Group. For further information please see ISHR's detailed *Council Monitor* reports on the discussions at the Working Group, available at www.ishr.ch/hrm/council.

¹⁷¹ Paragraph 11, General Assembly *Resolution 60/251*.

¹⁷² Paragraph 12.

¹⁷³ Paragraph 11, General Assembly *Resolution 60/251*.

¹⁷⁴ Human Rights Council *Resolution 3/4*.

themes and issues,¹⁷⁵ on the lines of the agenda of the former Commission or a more flexible, generic agenda organised by broad topics and related to functions rather than pre-identified thematic issues.¹⁷⁶

Many of the countries that supported the structured agenda argued for the inclusion of separate agenda Items on economic, social and cultural rights, civil and political rights, the right to development, and racism, racial discrimination, xenophobia and related intolerance etc. Supporters of the generic agenda however suggested including a broad Item called 'promotion and protection of human rights' under which specific thematic issues could be addressed. They proposed that States could submit to the President the issues that they wished to discuss/address in the coming year and the Bureau would then evenly distribute these issues across the different sessions of the Council. They thought that this model would allow the Council to break away from the rigid and inflexible agenda of the Commission and allow all States to put forward issues that they considered to be of importance.

It was suggested by supporters of the generic agenda that emerging and urgent human rights issues, both thematic and related to specific countries, could also be discussed in any session under a proposed agenda Item on 'urgent situations'.¹⁷⁷ Some States however expressed strong opposition to having any country-specific agenda Items.¹⁷⁸ These and other States saw no contradiction between their position that there should be no country-specific agenda Items while still calling for a specific agenda Item on the situation in the occupied Palestinian Territories (OPT) and occupied Syrian Golan. They argued that this was not a country-specific agenda Item but instead dealt with the thematic issue of occupation. A few States were also opposed to the inclusion of an Item on 'urgent situations' altogether.¹⁷⁹

The Facilitator suggested that reports of the High Commissioner, special procedures, expert advisory body, and the complaint procedure could be considered under an agenda Item called 'presentation of reports and interactive dialogue'. A number of States thought that it would be better if the reports of special procedures were considered under the thematic issues that they

related to.¹⁸⁰ The Facilitator's Paper also mentioned the UPR as a separate agenda Item and some States thought that while the UPR should be on the agenda, it would be better to wait for the outcomes of the Working Group on the UPR before developing this agenda Item further.¹⁸¹ Most States also agreed with the proposal that there should be an agenda Item on 'follow-up to recommendations' but some argued that this should only cover follow-up to recommendations of the Council and not to those of special procedures.¹⁸²

Despite attempts, particularly by the Facilitator and by some delegations to highlight areas of convergence between the two proposals, the discussions remained fairly confrontational and polarised. This was not helped by Cuba, who felt that the summary of the meeting did not reflect the majority support for the structured agenda, threatening the Working Group by pointing out that they had the majority support required to adopt a proposal without the agreement of EU States.

Frequency of sessions and the main session

There was a discussion on whether the Council should hold three or four sessions with some taking the view that four sessions would place a strain on missions from developing countries.¹⁸³ There was broad agreement that the Council should hold a high-level segment during its main session, which many thought should be held in March–April to ensure continuity with the Commission.

Working methods and rules of procedure

A wide range of issues were discussed in the segment on working methods and rules of procedure. These included organisation meetings,¹⁸⁴ consultations on resolutions, participation of NGOs and observers, innovative mechanisms,¹⁸⁵ rules of procedure, and special sessions.

There was considerable discussion on the process of consultations and information on draft resolutions. Many States supported the Facilitator's proposal that the President of the Council

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Proposed by Cuba, on behalf of the Non-Aligned Movement (NAM) and supported by Algeria (on behalf of the African Group), Pakistan (on behalf of the OIC), Bangladesh, China, Honduras, India, Indonesia, Iran, Malaysia, Morocco, Saudi Arabia (on behalf of the Asian Group), South Africa, Sri Lanka, Tunisia, Venezuela, and Zimbabwe.

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Proposals for a generic agenda were put forward by Germany (on behalf of the EU) and Canada. This was supported by Guatemala, Portugal, the Netherlands, Switzerland, the UK, and the USA. The German proposal enumerated eight Items 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 for decisions by the Council; recommendations from the complaint mechanism for decisions by the Council; expert advice; and adoption of the report of the session.

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Norway stated that it was important that the Council should have the ability to take up any situation, be it thematic or country-specific, at any time.

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Pakistan (on behalf of the OIC) and Iran.

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Cuba, the Russian Federation, South Africa and Venezuela. The Philippines also sought clarification on what this Item would cover and expressed concern that it could overburden the Council.

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India and Algeria (on behalf of the African Group). The UK also stated that special procedures dealing with issues that would be considered under separate agenda Items should also be present when the Council discussed those issues.

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Algeria (on behalf of the African Group), Colombia and Iran.

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Algeria (on behalf of the African Group) and South Africa.

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Malaysia and the Russian Federation.

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These was broad support for the President holding organisational meetings before regular sessions of the Council but Argentina felt that these should be part of the session rather than an additional meeting and the Russian Federation dismissed these meetings as superfluous.

conduct open-ended consultations with all States during the session on all draft resolutions and decisions. It was clarified that the purpose of this meeting was not to conduct negotiations but to provide information on the status of negotiations. This kind of information session would benefit smaller delegations that could not participate in all consultations because of limited staff and resources. Most States supported holding at least one such public consultation but all States were opposed to using these consultations as a forum for negotiations.¹⁸⁶ States also spoke about informal consultations that are convened by sponsors of draft resolutions. A few States argued that while it was up to the sponsors to decide when, where and how consultations would be held, at least one public consultation should be organised in the interest of transparency and to facilitate the possibility of reaching consensus.¹⁸⁷ Algeria and Cuba stressed the need to limit the number of meetings, especially those occurring simultaneously, because of the burden this creates for smaller delegations from developing countries. Saudi Arabia (on behalf of the Asian Group) proposed limiting the number of informal consultations and suggested that delegations should be informed of the consultations at least five days in advance.

There was also an interesting division of opinion among States on the former 'expanded bureau' of the Commission.¹⁸⁸ India supported closed meetings of members of the Council on 'particular urgent issues of a non-substantive' nature because this could replace the expanded bureau of the Commission, which they were critical of. Algeria (on behalf of the African Group) and South Africa however expressed support for the expanded bureau. Several States were also opposed to closed meetings or thought that these should be held on an exceptional basis.¹⁸⁹

There was little substantive discussion on NGO participation, but a number of States stressed their general support for NGO participation.¹⁹⁰ Algeria (on behalf of the African Group) however stated that it viewed the level of participation by NGOs in the interactive dialogues in the second and third sessions as exceptional and that this should not constitute a precedent for the future.

The Russian Federation felt that the rules of procedure established for committees of the General

Assembly, which apply to the Council, need to be supplemented by additional rules because the Council has features such as the UPR and NGO participation that distinguish it from other committees of the General Assembly. States therefore discussed whether the rules of procedure for the functional commissions of ECOSOC that had regulated the work of the Commission should be used as a basis for developing further rules of procedure for the Council.¹⁹¹ The Philippines presented a working paper on draft rules of procedure, incorporating the current rules of the General Assembly that are applicable to the Council, elements of General Assembly *Resolution 60/251* that impact on the rules of procedure for the Council, and some new rules suggested by the Asian Group. There was very little discussion on this working paper, although it is likely to be of more relevance in the future.

Special sessions

Two proposals regarding the convening of special sessions were submitted by JUSCANZ¹⁹² and the Non-Aligned Movement (NAM).¹⁹³ The JUSCANZ paper proposes that special sessions be held four days after the submission of the request in order to allow sufficient time for preparation; if the requesting State(s) intends to present a resolution, it be presented no later than two days before the convening of the session, and that at least one open-ended consultation be held on the text prior to the session;¹⁹⁴ and calls for the involvement of the OHCHR in the session. Most controversially, nine of the JUSCANZ papers state 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'. The JUSCANZ proposal, and especially the suggested requirement that further special sessions only be held after a regular session has taken up the issue, came under strong criticism.¹⁹⁵ It was pointed out that this would effectively defeat the rationale of holding a special session at short notice to react urgently to a human rights situation. Egypt stated that if the Council was to be truly implementation-focused, it was also important to discuss how the Council could address non-compliance with decisions and recommendations adopted by special session.

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Most States welcomed the development of innovative mechanisms such as panel discussions, interactive dialogues with special procedures, etc. but Chile, Iran, New Zealand and the USA stated that these innovations should not substitute existing mechanisms of the Council, such as resolutions.

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The Asian Group proposal submitted by Saudi Arabia, Australia, China, Chile, India, Indonesia, Malaysia, Russian Federation, and the USA.

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The UK and the USA.

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The expanded bureau consisted of the Chairman, three vice-chairpersons, one rapporteur (who were all part of the bureau) and the coordinators of all the regional groups. The last few years of the Commission's functioning saw the expanded bureau supplanting the bureau and taking over its functions of organising the work of the Commission.

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Australia, Argentina, China, Iran, New Zealand, Norway, Iran, Thailand, and the USA. Germany (on behalf of the EU) stated that there should be no substantive negotiations during closed meetings if it was necessary to hold them.

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

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This was supported by South Africa, Algeria (on behalf of the African Group) and Saudi Arabia (on behalf of the Asian Group).

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JUSCANZ represents Japan, the USA, Canada, Australia, New Zealand, Iceland, Norway, Switzerland, Korea, and Andorra.

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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).

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India supported the suggestion of holding at least one consultation on the text of any proposed resolution.

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Bangladesh, Cuba, China, India, and Thailand.

The NAM Paper was presented by Cuba, and advocates that special sessions be convened no earlier than two days before the actual session, and no later than five days after the request. Even though the two papers share similar concerns regarding the need for sufficient preparation, Canada criticised NAM's allocation of only two days as 'insufficient'. The NAM Paper further requests that the session convene for a maximum of three 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 NAM proposal also suggests that the Council will decide on the contribution of NGOs, NHRIs and specialised agencies to special sessions.¹⁹⁶ This would move away from the current practice of the Council which is to allow NGOs, NHRIs and special agencies to participate in and make statements at special sessions.

It was also pointed out that special sessions can address both thematic and country-specific issues.¹⁹⁷

ASSESSMENT OF PROGRESS AND NEXT STEPS

The Council has until 30 June 2007 to complete the review of mechanisms and mandates and develop the modalities of the UPR. There is no deadline for the development of the agenda, working methods or rules of procedure but some States are arguing that these tasks also need to be completed in the same timeframe. As the new members of the Council take up their positions from 19 June 2007, many members are insistent that the process be completed before then. The Council had originally planned to hold its fifth session from 18 June 2007 but the President has announced that he would like to bring the session forward to the earlier half of June. The situation is complicated by the fact that there are very few or no conference facilities available in May and June in Geneva because of other meetings that are being organised over this period. The President is trying to resolve this issue with the help of conference services but at that time of writing, there is considerable uncertainty about when the Council will adopt the final outcomes of the institution-building process.

The discussions on the UPR have been proceeding within schedule and substantial progress has been made in identifying issues of convergence. Some of the main issues still need to be resolved but as the Working Group has only used five of its allotted days, it is reasonable to be able to expect it to complete its discussions in the remaining time. The discussions on the future system of expert advice and complaint procedure have been limited in scope, compared to the UPR and the review of special procedures, and States should be able to complete these. However, in the case of the discussions on the system of expert advice the Working Group will need to resolve the deadlock between States advocating a permanent body and those calling for an *ad hoc* system based on a roster. As the discussions on the complaint procedure have been structured around the current 1503 procedure and the differences in positions appear resolvable, it would be feasible for States to wrap-up their discussions by resolving the few main outstanding issues. The most critical aspect of the institution-building however remains the one that the least progress has been made on. In comparison to other segments, States have raised a wide range of issues in their discussions on the review of special procedures but agreement has been reached on very few of the main issues. Three tasks that could take up a significant amount of time and have not yet even been started: the individual review of mandates; drafting the code of conduct; and the review of the draft manual of special procedures. States will need to ensure that the system of special procedures is not jeopardised because of hasty decisions taken on issues that could seriously impact their functioning.

Each segment of the institution-building process has been discussed separately till now. A number of States have suggested however that no decision should be made on any segment in isolation and in the end decisions should be made on the overall architecture of the Council as a whole. Though this is important for maintaining the coherence of the system as a whole, it will also allow for States to negotiate and trade one aspect of the system with another. It is also likely, as with any other political decision at the Council, that the final negotiations will be conducted informally between groups of States.

¹⁹⁶ Switzerland expressed concern over this proposal.

¹⁹⁷ Brazil, Iran, and Human Rights Watch.

It will be essential that the final phase of the institution-building phase is focused on the coherence of the architecture of the Council, something that very few States have reflected on or raised till now. The current balance sheet of the discussions in this regard is not encouraging. Proposals calling greater inter-linkages between all the mechanisms of the Council and for greater use of independent experts in these mechanisms have limited support at the moment. Many States have opposed exchanges of information and linkages between the special procedures, complaint procedures, system of expert advice and the UPR. Many of the proposals are also aimed at undermining the independence and working methods of special procedures and controlling the system of appointment of all independent experts.

The Council was set up to improve the system of protection of human rights. The promise of reform cannot be fulfilled if we end this year with a weakened system of special procedures, a light UPR process and a complaint procedure and system of expert advice that do not provide sufficient spaces for NGO engagement. None of these outcomes are as yet inevitable and all stakeholders can and should concentrate their efforts to ensure that the final package that is adopted provides for a coherent and strengthened architecture for the protection of human rights. Though the Working Groups have been open to NGO participation, very few NGOs have had the resources to participate in these discussions. Over the next few months though the onus of decision-making will shift to national capitals. The success of the process will rely on the ability of NGOs to lobby governments to support positive proposals in the final negotiations and not simply toe the line of their regional groups. Without strong advocacy, though, it seems that those who were critical of the Council and its ability to 'redress the shortcomings of the past'¹⁹⁸ will be proved right.

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See address by Ms Louise Arbour, UN High Commissioner for Human Rights, to the first session of the Human Rights Council, 19 June 2006, available at the OHCHR extranet (fill in the form at www.ohchr.org/english/bodies/hrcouncil/form.htm to receive the user name and password).

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