

“The Human Rights Council at 10 – improving relevance, strengthening impact: The operation of the Council – how to better deliver on its mandate”

Informal draft report

Policy Dialogue

Permanent Mission of Mexico, Monday 9th February 2015

On 9th February, the Permanent Mission of Mexico hosted an informal Policy Dialogue, co-organised with the Universal Rights Group, to consider how to strengthen the Human Rights Council as it heads towards the 10th anniversary of its establishment. The meeting aimed to identify concrete steps that might be taken. It was also designed to feed into a retreat to be organised in May by Norway and Switzerland. Participants (states, OHCHR, NGOs - from all regions) focused on the question of how to improve the Council’s methods of work, outputs, effectiveness and impact in line with GA resolution 60/251, the institution-building package, and the outcome of the Council’s five-year review. In other words: how can the Council better deliver on its mandate?

Introduction

In 2006, member states took a significant step in strengthening human rights as one of the three pillars of the United Nations and established (with General Assembly resolution 60/251) the Human Rights Council as the UN's apex human rights body.

Since then the Council has grown significantly in confidence and stature, positioning itself as a relevant and influential political body in the multilateral arena. It has registered important achievements at both a thematic and a country-specific level. Regarding the former, the Council has continued international efforts to shape and set universal norms, both for economic, social and cultural rights, and civil and political rights. Regarding the latter, landmark steps have been taken such as the Council’s robust response to the human rights situation in Libya in 2010, which included suspending the country’s Council membership, and its efforts to establish accountability for violations in Syria and North Korea through the establishment of Commissions of Inquiry.

Established Council mechanisms, especially Special Procedures, have continued to expand in scope and sophistication, while a new mechanism – the Universal Periodic Review (UPR) – has seen the human rights record of every single UN member state scrutinised, thereby strengthening universality, inclusivity and dialogue.

While recognising these and other achievements, it is important to note that there are also areas where the Council has fallen short of its mandate and objectives, as set by UN heads of state and the GA. For example, the body has been criticised for focusing too heavily on general thematic issues and debate, while remaining silent on many serious human rights violations, including gross and systematic violations. Other critics point to deficiencies in the domestic implementation of resolutions, decisions and recommendations made by the Council and its mechanisms.



As the Council looks towards its 10th anniversary in 2016, it is important for stakeholders to be aware of the body's achievements but also to work together, through dialogue and cooperation, to address shortcomings. The Council remains a young body and the first decade of its existence – its 'formative years' – will make a major contribution towards determining its future relevance, effectiveness and impact. Like those policymakers who steered the adoption of resolution 60/251, the Council's institution-building package, and the outcome of the body's five-year review, the current generation of diplomats, NGO representatives and other stakeholders bear an important responsibility to use the milestone of the Council's 10th anniversary as an opportunity to step back and make an honest appraisal of the nascent body's achievements and challenges, and identify new and innovative solutions to equip it to better meet those challenges in the decades to come.

Informal draft report

The informal policy dialogue at the Permanent Mission of Mexico was the first of three such meetings designed to consider how to strengthen the Human Rights Council as it heads towards the 10th anniversary of its establishment and to feed into a retreat to be organised in May by Norway and Switzerland. Participants focused on the question of how to improve the Council's methods of work, outputs, effectiveness and impact in line with GA resolution 60/251, the institution-building package, and the outcome of the Council's five-year review.

General Assembly resolution 60/251 established the Council's mandate and objectives, most notably: to promote universal respect for the protection and promotion of all human rights for all, without distinction of any kind and in a fair and equal manner (paragraph 2); and to address situations of violations of human rights, including gross and systematic violations (paragraph 3). Resolution 60/251 also decided that the Council would promote human rights mainstreaming across the UN system, serve as a forum for dialogue on thematic issues, and make recommendations to the General Assembly for the further development of international human rights law. On the question of methods of work, UN member states decided that the Council's work should be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation. Finally, resolution 60/251 made clear that the Council must work to promote the full implementation of human rights obligations undertaken by states, and follow-up on relevant goals, commitments and recommendations.

The Council's institution-building package (IBP; resolution 5/1), adopted in 2007, sought to operationalize this mandate, setting a framework for the Council's methods of work that was subsequently refined by the outcome of the Council's five-year review (resolution 16/21).

Since the Council's establishment, there has been a significant increase in the breadth of the body's work and in its output. The work of the Council's mechanisms has also increased dramatically. Under the UPR, the human rights performance of every single UN member state has been reviewed, while the Special Procedures mechanism now encompasses 55 mandates, each reporting to the Council on an annual basis. The number of panel debates has also risen from 2 in 2007 to 23 in 2014, with 10 held during the 27th session alone, while OHCHR has been asked to compile and submit an increasing number of reports (over 450 have been commissioned since 2006) for the Council's consideration.

Turning to the substantive focus of this increased productivity, over 55% of resolutions adopted since the Council's creation have been on general thematic issues under agenda item 3, while, in comparison, country-specific resolutions under item 4 have comprised only 7% of its total output, and their range has been limited to just 12 situations.



How to improve on the Council's methods of work in line with its founding documents?

During the meeting, a broad range of views on key challenges, and how to address them, were expressed.

Some pointed out that, on paper, the Council has a strong mandate. All the elements are there: what the Council should do (e.g. promote universal respect for human rights, address situations of violations) and how it should do it (e.g. methods of work that are transparent, fair, impartial and enable genuine dialogue; that are results-orientated, allow for follow-up to recommendations and allow for substantive interaction with Special Procedures and other mechanisms; and that enable cooperation with states, regional organisations, NHRIs and NGOs).

It was also pointed out that, unlike the Commission, the Council set some basic criteria for membership: elections would be based on 'the contribution of candidates to the promotion and protection of human rights and their voluntary pledges;' and members should then 'uphold' the highest standards of human rights.

So, the international community created, in principle, a strong basis for an efficient and effective Council. But that leads to the question: how have we done in practice?

In terms of sheer numbers the performance looks good. The programme of work is fuller than ever. The number of resolutions and initiatives has seen exponential growth (114 texts in 2014, 76 in 2008); the number of side-events has sky-rocketed, as has the number of reports requested (85 for the March session) and panels (the September and March sessions each saw 10; and there are ever more Special Procedures mandates - 55 and 78 mandate-holders (with more in the pipeline).

But numbers alone do not determine success. States and NGOs must be honest: can we really meaningfully contribute to over 200 informal consultations per year, can we honestly read 80 reports before a session, can we meaningfully engage with Special Procedures when we have 3 minutes per clustered ID (so, in effect, around a minute per mandate-holder), and can we, or our capitals, really implement 114 texts per year?

In considering these questions, some participants emphasised the importance of measuring the qualitative impact of the Council rather than focusing on the quantitative output. With resolution 60/251, the IBP and the 5-year review outcome, all the ingredients for impact are there. We just need to implement better. If we do not, we risk the idea taking hold that the Council is a 'toothless tiger', good at producing paper but bad at matching expectation with action, and bad at holding states accountable against the standards we ourselves set.

Other participants underscored the importance of implementing 60/251, the IBP and the 5-year review outcome in a non-politicised way (or, at least, in a way that 'contains' politicisation). For example, the Council has become a forum for repeated monologues rather than meaningful dialogue. This, together with other factors such as the proliferation of panels, mechanisms, resolutions, has led to less interest in Room XX. New initiatives are often tabled (and 'owned') due to domestic political considerations rather than because they advance international human rights. Moreover, some participants questioned whether, once tabled, resolutions are now properly negotiated. There are so many ('with human rights becoming increasingly fragmented') that delegations struggle to attend open informals. Moreover during negotiations 'core groups nowadays take on board only a few suggested amendments, while only one amendment from the



floor has ever succeeded.’ All this increases the predictability and yet may reduce the quality of the Council’s output.

So what can we do? How do we better implement our mandate? ‘We don’t need to reinvent the wheel, we just need to get the wheel spinning in the right direction.’ Ideas discussed during the meeting included:

- Re-orientate the programme of work and methods of work towards follow-up, implementation and measurement of progress/results. For example, ‘only a small number of Special Procedures submit follow-up reports to the Council on implementation, and even when they do, the concerned state is not given sufficient time and space to engage with the mandate-holder.’ Likewise, according to one participant: ‘there is little or no space on the agenda for states to update the Council on steps taken to implement mechanism recommendations.’ It was noted that states might explore a better use of item 5 for such purposes. Others suggested developing platforms outside of the Council’s formal agenda – for example, inter-sessional roundtables or seminars. ‘It is vital for the Council’s credibility and future that we create more space for identifying and promoting good practice on implementation and exchanging national experiences.’
- States should have at their disposal, and should regularly consider and debate, information on levels of state engagement and cooperation with the Council and its mechanisms. ‘We should always remember that transparency and accountability are mutually reinforcing and help contribute to improvements in human rights.’ This is especially important for members of the Council. Others, however, noted that such information must not only exist, but must also be easily accessible. There must be space, either during or outside formal Council sessions, for states to consider and debate information on engagement and cooperation. It was pointed out that some states may lack the political will to cooperate with the Council and its mechanisms in a meaningful way. It is therefore important that information on cooperation is readily available to, and actively considered by, Council members.
- Provide OHCHR with necessary resources to assist with follow-up, support implementation, and fulfil capacity-building tasks. If human rights is indeed one of the 3 pillars then ‘it is time for the UN to put its money where its mouth is.’ ‘All states in Geneva need to send a strong message to their capital and to their colleagues in New York that we cannot have more human rights without more resources.’
- Maintain and strengthen access and engagement with civil society – often a key actor in following-up on mechanism recommendations and resolutions at local level. This should include being willing to listen to criticism, and affording space for victims during Council sessions. This also means opposing reprisal and intimidation against those cooperating with the Council and its mechanisms.
- In addition to civil society, make a more consistent and concerted effort to bring other ‘implementing partners’ round the Council table: other relevant international and regional organisations; parliaments; NHRIs; UNDP and Resident Coordinators; judges and lawyers; etc.
- ‘We should further strengthen the Council’s dialogue and cooperation with the High Commissioner, while fully respecting his independence.’ For example, ‘the High Commissioner’s annual report presented each session is extremely valuable, giving us a snapshot of what is happening around the world. Why not find a way of repeating the exercise inter-sessionally? For example, regular roundtable dialogues with the High Commissioner?’ Some said such roundtables might be mandated by the Council. Others said



the High Commissioner could simply organise regular informal briefings on situations or thematic issues of importance.

- To decrease the pressure on the agenda of the Council while improving meaningful dialogue and impact, states should make greater use of the ‘other formats of work’ included in the IBP, especially inter-sessional work formats like seminars, workshops and roundtables. In the 9 years of the Council’s existence, no one has ever put forward a resolution convening a roundtable: why not? ‘Such formats may allow us to bring national policymakers and implementing partners to Geneva to discuss implementation.’
- States should continue to support and build on initiatives, such as that sponsored by Norway and Turkey, aimed at promoting consideration of the multiannualisation of initiatives, or their merger or termination (including resolutions, annual panels, etc.) Consideration should be given to including ‘sunset clauses’ in relevant resolutions.
- It was also pointed out that, as per the IBP, it is not necessary to cover all 10 agenda items at every session of the Council. Consideration of some agenda items could take place, for example, only once a year.
- One participant suggested that delegations might begin negotiations on draft resolutions well in advance of a session.
- GA resolution 60/251 is very clear that a central part of the Council’s mandate is to respond to violations of human rights wherever they occur, and in a non-politicised and non-selective manner. URG’s recent report on resolutions places a question mark over whether the Council is fulfilling this mandate (though some at the meeting noted that violations are not only dealt with under item 4 – but also items 2, 7 and 10). A number of participants underlined that if the Council does not better address country-specific violations, or specific issues within countries (e.g. through ‘hybrid resolutions’), ‘if we let systemic abuses go unchecked or ignored, we sow the seeds of future instability’ and call into question the credibility of the Council. Others noted that ‘naming and shaming’ rarely works.
- After listening to different opinions on this matter, it was noted that states do not seem to disagree that the Council should, in principle, address violations, including in certain countries - but what is important is *the approach* taken by the Council. For example, initial Council interventions should be premised not on condemning, but on encouraging the state in question to engage. This means showing that the Council is there, at the beginning, to support states meaningfully address violations in their own country. It was noted that more ‘hybrid’ resolutions might help in this regard – e.g. the Council resolution on the rights of schoolchildren in Afghanistan. Only when a state refuses should more condemnatory interventions be used.
- Finally, a number of participants highlighted the importance of the work of the Council and the GA complementing one another rather than duplicating. One example offered was the fact that each year resolutions on freedom of religion and on religious intolerance are considered both in Geneva and New York. Is this really necessary? Perhaps GA resolutions on religious intolerance could take a different slant – e.g. by focusing on social integration. Concrete ideas in this area included: having the bureaus of the Council and the Third Committee meet to discuss complementarity and then issue, for example, PRSTs.

How can the Council improve its dialogue and cooperation with (and thus better leverage) its mechanisms, especially Special Procedures, to have influence and impact beyond Room XX?

The breadth and output of the Special Procedures mechanism has grown increasingly prodigious. A few facts:



- To date, there are 55 Special Procedures mandates (41 thematic, 14 country) and 78 mandate-holders.
- Special Procedures carried out 80 country visits in 2014 to 60 states and territories (a similar number to 2013).
- The mechanism issued a total of 553 communications to 116 states covering 1061 individual cases.
- In 2014, Special Procedures submitted 135 reports to the Council, including 64 on country visits, and 36 reports to the GA.
- They also issued 379 news releases and public statements, individually or jointly.

The key question then is how does the Council respond to these outputs and is that response adequate?

Looking first at **interactive dialogues**, participants stressed that because of the large number of mandates and the already busy programme of work of the Council, there is very little time for state and NGO interaction with individual mandates – on average one and a half minutes per state per mandate. When one considers the importance of Special Procedures, their status as the ‘eyes and ears’ of the Council, and their importance as a key ‘bridge’ between Geneva and the ‘real world,’ the inadequacy of such time allocation becomes evident.

Unfortunately, without either expanding the length of Council sessions, or lightening the programme of work of the Council (for example, by reducing the number of mandates or panels), it is difficult to see how this problem can be resolved. Some participants noted that while the interactivity of discussions is enhanced by the possibility for mandate holder to respond during interactive dialogues, further ways to improve the quality of the discussion should be explored (such as avoiding the repetition of similar statements). The Council might also explore other opportunities to enter into a dialogue with Special Procedures, for example by involving them in relevant country or thematic discussions, or in using them in the context of inter-sessional work formats.

Linked with the issue of interactive dialogues is the question of whether the Council is fully benefiting from, using and leveraging **reports** of the Special Procedures (roughly 45 per session). It was pointed out that these reports contain a wealth of information and can make a major contribution to drawing attention to emerging issues and to the elaboration of norms. This contribution is further strengthened by, for example, handbooks, guidelines, basic principles, draft declarations, etc., developed by Special Procedures. However, many states noted the difficulties inherent in (often small) delegations digesting the contents of over 40 reports prior to every session, and noted that they are able to analyse only a few (depending on their interest). This in turn raises questions as to the degree to which the reports are able to influence domestic policy. Others, however, argued that each report has a different audience, and that Special Procedures conclusions and recommendations are often taken up by other international, regional and domestic stakeholders including civil society and UN country teams. It was also noted that states should better take account of reports when drafting resolutions, especially resolutions following-up on texts that requested the report in the first place.

It was pointed out that much of the benefit of Special Procedures reporting is lost because of the untransparent and inaccessible **Human Rights Council website**. Some opined that the Council needs a redesigned, stand-alone website, with an associated communications strategy.



Improving **follow-up** has been identified as a priority by the Special Procedures mechanism. There are evolving good practices in this area, however resource and time constraints don't allow mandates to undertake follow-up activities in a systematic way. Moreover, the main responsibility for implementation lies with states. Participants noted positive developments in this regard – for example, a number of states have established 'national coordination mechanisms to follow-up on the implementation of UN human rights recommendations' (from all the mechanisms). 'It would be highly useful to find a way, through the Council, to create platforms for states to share experiences about such national implementing structures,' either under item 5 or inter-sessionally.

Cooperation between Special Procedures, states and civil society is essential to enable mandate-holders to fulfil their mandates. This is recognised in the Code of Conduct. There are some positive signs in this regard. There are now 110 standing invitations to Special Procedures (though not all states honour this commitment in a timely manner). Over the years, 167 states (86.5%) have accepted requests for country visits and have been visited by at least one mandate.

However, such numbers also, to an extent, mask deep challenges vis-à-vis securing cooperation of all states. For example, URG's recent policy report on Special Procedures shows levels of cooperation (e.g. receiving country visits) vary significantly from region to region, and from country to country. It was pointed out by one participant that there is an over-concentration of visits to countries with an 'open door' policy and too few visits to countries with a greater need but a less cooperative approach. Moreover, cooperation doesn't stop at the end of a mission. States and mandate-holders should continue to work together to implement recommendations. But 'too often Special Procedures recommendations go unheeded.' This in turn re-underscores the importance of systemised follow-up. It was also pointed out, during the meeting, that the response rate of states to Special Procedures communications remains low – 43% in 2014. Extreme non-cooperation can manifest itself as verbal attacks against mandate-holders.

Possible solutions/actions include: greater transparency (and thus accountability) around cooperation – for example through the provision of data by the Special Procedures system; finding a regular space during Council sessions (e.g. under item 5) to debate cooperation; and encouraging states to include a commitment to cooperate with Special Procedures in their pledges when running for membership of the Council – and then holding them against those commitments.

It was also pointed out that the Council can and should make better use of the Special Procedures to provide **early warning** on emerging crises.

Finally, discussion turned to the **number of mandates** and whether or not the system can cope with this number, or, conversely, whether 'the more the better.' Some asked: 'are 70+ deeply fragmented mandate-holders better suited to protect human rights than 20 strong mandates?' Others argued that the number is not an issue, saying there is nothing wrong in principle in expanding the system to meet new challenges and emerging issues – what is rather the problem is the lack of resources they receive. There was debate about the application of 'sunset' clauses. Those against such clauses pointed out that as country mandates are renewed every year and thematic ones every three years, states already have the opportunity to terminate them or modify them to respond to new developments. Those in favour pointed out that in the history of the UN, no thematic mandate has ever been discontinued (though two were merged). Other participants opined that the application of such clauses would depend on the mandate – e.g. if it had a specific norm-setting function that had been completed then it could be discontinued. There was agreement that efforts to resolve these questions would require concerted engagement by the



President and the Bureau. Some suggested that, at least one month prior to every Council session, the President could organise an informal consultation, with the main sponsors of any mandates coming up for renewal at that session, at which the sponsors (and perhaps the current mandate-holder) would have to set out their plans for the mandate (including offering a justification for its continuation or, conversely, the reason for its proposed termination). This would help avoid the current situation whereby thematic mandates are (in effect) renewed automatically by default.

It was also pointed out that the growing size of the mechanism highlights the need for better engagement and **dialogue between the Council and the Special Procedures as a system**. For example, through regular dialogue between the Council and the chair of the Coordination Committee, and between the Council Bureau and the Coordination Committee. Finally, participants again noted that many improvements could be brought within the *existing* framework provided by the Council's basic documents.

