



*Royaume du Maroc*



UNIVERSAL RIGHTS GROUP

**“The Human Rights Council at 10 – improving relevance, strengthening impact:  
The Council’s relationship with the wider UN system, including addressing the  
mandate-resource gap”**

Informal Draft Report

Policy Dialogue on Friday 24th April 2015, ‘Morocco Room’ (room S4)

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. While recognising its achievements, it is important to note that there are also areas where the Council may have fallen short of its mandate and objectives, as set by UN heads of state and the GA.

As the Council looks towards its 10<sup>th</sup> 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 10<sup>th</sup> 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 hosted by the Permanent Mission of Morocco was the third of three such meetings designed to consider how to strengthen the Council as it heads towards the 10<sup>th</sup> anniversary of its establishment and to feed into a retreat to be organised in May by Norway and Switzerland. Participants (states, OHCHR, NGOs - from all regions) focused on the issue of the Council’s relationship with the wider UN system, including addressing the ‘mandate-resource gap.’

In 2005, UN Secretary-General Kofi Annan proposed the establishment of the new UN Human Rights Council. This would, he said, ‘reflect in concrete terms the increasing importance being placed on human rights in our collective rhetoric. The upgrading of the Commission on Human Rights into a full-fledged Council would raise human rights to the priority accorded to it in the Charter of the United Nations. Such a structure would offer architectural and conceptual clarity, since the United Nations already has Councils that deal with two other main purposes — security and development.’



GLION HUMAN RIGHTS DIALOGUE

## **Bridging the ‘mandate-resource gap’: relationship with the Secretary-General, ACABQ, and Fifth Committee**

Since the establishment of the Council in 2006, there has been a prodigious increase in both the scope of its work and in its substantive output. The increasing number of Council resolutions adopted year-on-year ‘is one indicator of a growing interest in human rights and the Council.’ The growing output of the Council, together with a greater demand for human rights expertise from across the UN system and from states (it was noted that OHCHR now has 68 field presences) has served to place increasingly high expectations and demands on OHCHR. This in turn has obvious budgetary implications. And yet, despite a doubling of financial resources for the human rights pillar, proposed at the time of the 2005 World Summit and the establishment of the Council, the OHCHR today still receives only around 3% of the UN’s regular budget. (Set against this analysis, it was noted that despite this low figure, the regular budgetary resources of OHCHR still almost tripled from 64.1 million US\$ in the 2004-2005 biennium to 177.3 million US\$ in the 2012-2013 biennium).

The growing expectations placed upon, and output of, the UN’s human rights pillar, as set against this low level of regular budgetary support, has, according to some, served to create a ‘mandate-resource gap.’ It was noted, during the meeting, that for ‘five years in a row, the Office has run an extra-budgetary deficit,’ which is problematic because the OHCHR has become increasingly reliant on extra-budgetary voluntary contributions (of which 46% are earmarked). This in turn raises concerns about predictability and sustainability.

These trends are indeed a concern. So what is the solution? One speaker suggested a two-fold answer:

1. The first category of solutions might be called a ‘conventional’ or ‘classical’ approach and has the benefit of enjoying significant support among member states. This involves greater efficiency in spending available resources, ‘greater efforts by OHCHR to broaden and diversify the donor base’ (including non state sources like foundations and businesses), ensuring that voluntary contributions are predictable, multi-annual and, as much as possible, un-earmarked. (One participant suggested putting a ceiling of 20% on earmarked contributions.) Others, however, highlighted the difficulties inherent in widening the donor base when relatively few countries make significant contributions to the Office: ‘the top 4 donors give more than the next 16 combined.’ At the same time, to reduce ‘demand,’ ‘states should work together through cooperation and dialogue to rationalise the modes and methods of work of the Council.’ This should include changing the frequency and periodicity of resolutions, avoiding unnecessary duplication and repetition, and reconsidering the requested outputs of resolutions (‘do we really need so many reports, panels, new mandates,’ etc.)
2. The second set of possible solutions are ‘more vigorous and complex’ and relate to the idea of increasing the share of the UN’s regular budget for human rights beyond 3%. Here there is less agreement among states.

Another participant also focused in on the issue of financial resources for ‘mandated activities’ and suggested a possible solution. First of all, the question was asked: what are mandated activities and how much extra money are we talking about (i.e. to fully fund them through the regular budget)? It was noted that, after last year’s Glion Human Rights Dialogue, OHCHR is currently undertaking this assessment. (A number of participants underscored the importance of having access to this



assessment as soon as possible). Second, it was noted that the problem, at present, is not with all mandated activities. Indeed, most mandates created since the establishment of the Council have been allocated necessary funds by the ACABQ and the Fifth Committee. The problem, rather, relates to older mandates: ‘historically, many mandates were never fully funded (or funded at an unrealistic level - at least in terms of how the mandates have developed over the years).’ If the Council wants to close the ‘mandate-resource gap,’ dealing with these ‘woefully underfunded older Special Procedures mandates’ would be the place to start (e.g. in the past, Special Procedures mandates were allocated just 3 months per year of a single assistant – whereas today it is recognized that they need 1.5 full time staff – though the actual allocation by the GA continues to vary without explanation). A number of participants supported the suggestion that this could be done through a Special Procedures review process similar to that launched by the OHCHR for Treaty Bodies. The above-mentioned OHCHR assessment of the actual real cost of ‘all mandated activities’ would, in principle, provide the basis for such a review. Like the Treaty Body review, such a Special Procedures review could start as a process led by the High Commissioner and Special Procedures themselves, and later be enlarged to include states. (Notwithstanding, it was pointed out that any review of Special Procedures should be premised on better promoting and protecting human rights, rather than on dealing with financial legacies).

Another participant asked whether the organisational reform announced by the High Commissioner would not further increase the scope of these ‘OHCHR determined activities’ and thus place further strain on the human rights budget? In reply, it was noted that the restructuring is actually intended to *improve* cost-effectiveness, as well as bring the UN human rights system closer to the ground. The OHCHR has been able to include a small part of the reorganisation into its proposal for the 2016-2017 biennium, which the ACABQ will begin to review in June. The decentralisation away from Geneva and towards regional hubs is a budget-neutral move. A reduction in the staff in Geneva will provide savings to allow for a strengthening of the size and level of staffing in the regional hubs.

Others asked whether a further, for example, doubling of regular budgetary allocations for human rights would solve the issue in the long-term. Did the doubling in 2006 solve the problem? Would the same thing not happen again – i.e. activities will expand to match the new resources? ‘Even if we raised it again, OHCHR and some states would still say it’s insufficient. The current financial problems should rather be resolved by improving efficiency.’

In reply, it was argued that the objective of the 2005-2006 decision to double the budget allocation of the OHCHR was to fund the ongoing work of the High Commissioner, and yet in the end the vast majority of the increase in resources went instead to cover new mandates created by the Council.

It was also argued that, at a time of ‘zero growth in the regular budget,’ financial questions become a zero sum game, in other words more money for the human rights pillar must mean less for the other two pillars. And because ‘OP7 of GA resolution 48/141 establishing the mandate of the High Commissioner says that resources for the Office should not be diverted from development programmes (which currently receive around 19% of the regular budget),’ it is clear that any increase in human rights funding would mean cuts to the budget for peace and security.

Many other speakers agreed that, in a zero growth environment, politics around the UN budget is of course a zero sum game, and there is of course ‘competition for resources.’ This should not be surprising for anyone: ‘it’s the essence of life,’ according to one participant. ‘If you are a CEO, you constantly have to restructure and move your investments. The UN should be no different.’ If the UN wants to position human rights as an equal pillar, it needs to rebalance or redistribute its



investments away from security and development, and towards human rights. This will lead to a win-win situation in which, for example, a stronger emphasis on human rights today will help prevent crises (and thus recourse to the human rights pillar) tomorrow (i.e. prevention).

Based on this understanding of reality, some participants argued that states that advocate a strengthening of the human rights pillar should not be shy in making their arguments, and should be clear what they are demanding: is it 4%, 5%, 10%? And they should make the case strongly to the Secretary-General, to the ACABQ and to colleagues in the Fifth Committee. **‘Our commitments in Room XX must be matched by our commitments in the Fifth Committee.’**

Finally, it will help make that case if the Council can demonstrate that it is making an effort to improve its own efficiency and productivity, and if ‘Geneva’ can do a better job at showing the achievements and results of the human rights pillar. ‘We will not get more funds unless we can show we are using them better.’ In this regard, participants noted the importance of initiatives such as that of Norway and Turkey on working methods of the Council. Others pointed to the importance of ‘applying sunset clauses to mandates, as well as creating new ones.’ How can we say to New York that we are doing a good and important job, asked one, ‘when we have only 45 seconds to interact with Special Procedures during Council sessions? Its just not serious.’ On the question of rationalisation of resolutions and mandates, one participant proposed that, due to trust issues between delegations, the only approach that might work would be an ‘arithmetic tool.’

### **The Council’s relationship with the Third Committee and other relevant UN organs**

It was recognised that there is a growing sense that there is a problematic relationship between Geneva and New York. However, we shouldn’t focus too much on the tensions, but rather on the different strengths of the Council and the Third Committee and how those strengths can best complement one another. For example, the Third Committee has universal membership, yet the Council is smaller and more flexible, meets more regularly and can create mechanisms. Thus it’s not a question of whether one should defer to the other, but rather a question of how to better coordinate. (In all of this, it was noted by a number of speakers, states must recall that the Council is a subsidiary body – not a main body of the UN). Another speaker agreed with this analysis, saying there should be no ‘one size fits all’ approach to dealing with human rights issues (‘different strokes for different folks’ as one person put it). For some issues, the Council can address it first and then the GA can review and confirm. Other times, the GA might be better placed to take a primary role. What is important therefore is coordination – to ensure that the Council and the GA are not looking at the same issues, the same years and from a similar angle. Such duplication ‘clearly makes no sense.’

In this regard, one speaker suggested a ‘3 Cs’ approach:

1. **Capacity** (and competence) – delegates in the Council and in New York should be conscious of capacity constraints faced by both institutions and thus find synergies between the two. For example, it is widely recognised that the Council now has too many annual initiatives, too many annual resolutions, and too many interactive dialogues. So, where appropriate, why not better stagger initiatives between Geneva and New York? For example, one year a resolution on a certain subject could be run in the Council, but the next year the lead sponsor could take a different angle and run the resolution in the Third Committee. This has already happened with some resolutions. Another participant suggested that this could also happen for thematically similar resolutions. For example, one year follow-up resolutions to resolution 16/18 could be tabled in the Council, and the resolution on freedom of religion



could be tabled in the Third Committee. Then the following year, they swap. Another speaker, on the question of capacity, noted that the Third Committee necessarily played an important role during the time of the Commission because the latter met only once a year. Now the Council meets three times a year for 10 weeks, plus Special Sessions etc., so there is less need for the Third Committee to be as active.

2. **Coherence** – the Council should work to ensure that its outputs are consistent with and complement the work of other relevant parts of the UN system. For example, how can the Council's work on drugs and crime complement related UN efforts in Vienna; how can the Council's work on terrorism complement the work of the Security Council?
3. **Communication** – 'where communication fails, diplomacy fails.' Although we are the same states in Geneva and New York, there is significant room for improvement in terms of communication. We have seen improvements in this area – for example, more briefings by the Council President to the Third Committee, and more High Commissioner briefings to the Security Council. What more can be done?

Another participant noted that 'there always was a gap between Geneva and New York, and there always will be.' The key question is rather: is that gap widening or narrowing? It was argued that, on balance and despite some hiccups (e.g. resolution 24/24), the situation seems to be improving. For example:

1. The very first Council President had to struggle to be allowed to address the Third Committee from the podium and behind the nameplate of the Human Rights Council President, rather than behind the nameplate of his country (Mexico). That is no longer the case.
2. At the time of the first meeting of the intergovernmental working group on the Optional Protocol to the Convention on the Rights of the Child, some parts of the UN secretariat refused to provide interpretation without GA endorsement of the relevant Council resolution establishment the negotiation process. This no longer happens.
3. During the first five years of the Council, PBIs attached to Council resolutions often stated that costs should be absorbed 'within existing resources.' Today, this tends not to happen.
4. The way in which the Council deals with country situations is increasingly 'joined up' (including through language in resolutions) with the GA and the Security Council, e.g. the Goldstone report, Libya, Syria, and North Korea. As per the 'capacity' or 'competence' point above, states and NGOs should be aware of the limits of the Council, and thus where we need to bring the GA or the Security Council into the picture. Others however pointed out that the Council (as a subsidiary body) should not be calling on the Security Council or bodies like the ICC to take action.

These positive trends do not mean there are no longer problems: there clearly are. Resolution 24/24 was mentioned by a number of participants. Another example offered was the fact that of 8 GA resolutions 'taking note' of the Council's annual report, only two (2009 and 2011) have been adopted without a vote. Rather, overall, there appears to be an increasingly positive and constructive relationship between Geneva and New York, with regular visits of the Council President to New York, and regular visits by the Secretary-General, Deputy Secretary-General and President of the GA to Geneva.

One participant noted that such interaction has the added benefit of allowing for exchanges of best practice. For example, during Third Committee interactive dialogues with the Council President, there is a separation between statements of position and actual questions, and this is coordinated between delegations so that, for example, only around 7-8 states ask focused questions. This good



practice could be replicated in interactive dialogues in the Council.

Participants noted that, notwithstanding positive signs, questions remain and more remains to be done.

One issue is the overlap or duplication between human rights resolutions adopted in the Council and those adopted in the Third Committee. It was noted that, according to statistics by the Universal Rights Group, between 2012-2013, 7% of Third Committee resolutions had a functionally identical Council counterpart, while around 20% showed significant substantive overlap. Another participant noted that only 5 country situations are considered by both the Council and the Third Committee. It was argued that these are not huge numbers, and with extra effort by delegations, they can be improved further.

Turning to dual reporting, by (around 70% of) Special Procedures, to both the Council and the Third Committee, it was similarly argued that claims of duplication and confusion are overblown. By reporting to both the Council and the GA, a mandate holder can contribute 12 reports during the 6 years (2x3) of his/her mandate.

From a civil society perspective, it was pointed out that efforts to strengthen coordination and cooperation between Geneva and New York should focus on quality not quantity – how to better respond to the needs of victims. Such considerations should underlie efforts at rationalization in Geneva and New York. Duplication is not always a problem if New York's voice reinforces Geneva.

One area where things may have gone backwards since the Commission on Human Rights is on the question of mainstreaming – supposedly a core competence of the Council. According to a participant, the mainstreaming function of Council resolutions is often vague and less explicit than during the time of the Commission. In the past, resolutions called for and initiated very specific and targeted engagement with UN specialized agencies or departments like WHO or ILO. If we compare this to the Council, it is rare for resolutions to call on specialized agencies or other parts of the UN to take specific actions to mainstream human rights, and it is increasingly rare to see the head of specialized agencies in Room XX. The Council's mainstreaming panel is not working as well as it should.

During the meeting, a number of suggestions were made to improve the functioning of the Council vis-à-vis other parts of the UN:

1. It was suggested that more use could be made of technology to improve communication and coordination. For example, interactive dialogues in the Third Committee (such as with the Council President, or Special Procedures) could be transmitted to Room XX, thus allowing the Council to follow discussions. The same could also happen in reverse. 'At the moment, we can have the same conversations in Geneva and New York, because we simply don't know what they'd talking about at the GA.'
2. Another lesson the Council can learn from New York, specifically the Security Council, is the use of briefings. For example, if the High Commissioner visits country X, it is easier for him to then go and brief the Security Council than it is for him to brief the Human Rights Council. This makes no sense. Hence, state delegations in Geneva should revisit the idea of inter-sessional briefings on important situations and issues with the High Commissioner, or inter-sessional panels without outcomes, etc. Such briefings could be convened by the Council President.
3. States should reduce the number of panels per session thus increasing their visibility and impact.



4. The Council must improve on the delivery of its mainstreaming mandate. One participant noted that the 'Council cannot do everything.' It cannot, on its own, solve the world's challenges in areas as diverse as drugs, drones, disarmament, terrorism, food security, cultural rights, employment, etc. This means, in turn, that the Council must coordinate better with other 'lead' agencies and parts of the UN – i.e. it must mainstream human rights more effectively with ILO, WHO, UNESCO, etc. It was pointed out that having interactive dialogues with Special Procedures in New York, or human rights resolutions adopted in New York, can help mainstreaming – especially vis-à-vis UN organizations based in the US.
5. One participant proposed to hold a mainstreaming panel in New York and Geneva at the same time. This could be co-presided by the President of the GA and by the President of the Council, with panelists divided between the two cities. There would live transmission of this event on the web. This would ensure a higher level of engagement from all concerned.
6. One speaker said there is still room for deeper cooperation between the Council and the Security Council – e.g. to ensure a strong human rights component in peacekeeping missions. It was also noted that both the Council and the Security Council now establish commissions of inquiry – again it is important to make sure they are complementary.
7. And institutions in New York can also learn from deeper interaction with Geneva. For example, Geneva is more 'NGO friendly' than New York, and an exchange of best practice could be useful to improve matters in New York.

