

Informal retreat of the Human Rights Council in Berlin (21-23 May 2015)

Informal ‘food for thought’ on the efficiency of the Human Rights Council

Prepared by the Universal Rights Group

Introduction

General Assembly (GA) resolution 60/251, building on a 2005 UN summit decision, established the Human Rights Council (the Council) as the UN's apex human rights body. According to UN Secretary-General Kofi Annan, in a 2005 speech to the Commission on Human Rights, the establishment of the Council would represent a distinct break with the past and as a response to the human rights challenges of a new era. ‘For much of the past 60 years, our focus has been on articulating, codifying and enshrining rights. That effort produced a remarkable framework of laws, standards and mechanisms – the Universal Declaration, the international covenants, and much else. Such work needs to continue in some areas. But the era of declaration is now giving way, as it should, to an era of implementation.’

With resolution 60/251, States decided to establish the Council as a subsidiary organ of the GA and laid out its mandate, objectives and methods of work.

Regarding the latter, 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; promote the full implementation of human rights obligations undertaken by States; and work in close cooperation in the field of human rights with governments, regional organisations, national human rights institutions and civil society. Further emphasising these principles, paragraph 12 made clear that ‘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.’

The Council’s Institution Building Package (IBP; Council 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 (Council resolution 16/21).

Achievements and challenges?

Since the Council’s establishment, there has been a significant increase in the breadth of the body’s work and output. For example, in 2008 the Council adopted 76 texts, while in 2014 it adopted 112 (by comparison, the most texts adopted in a single year by the Commission on Human Rights was 98 - in 1993). The budgetary implications of this record number of texts in 2014 – 19 million



US\$ in new costs not already covered by the regular budget – was also the highest in the Council’s history.

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 (78 mandate-holders), each reporting to the Council (and many also to the Third Committee of the GA) on an annual basis. The number of panel debates has also risen from 2 in 2007 to 23 in 2014 - with around ten held at both the 27th and 28th sessions; the number of side-events has sky-rocketed (with almost 500 held in 2014); and OHCHR has been asked to compile and submit an increasing number of reports (the Council considered 207 reports in 2014).

These numbers are reflective of State and civil society enthusiasm for the Council and its work, but they also raise a number of important questions about the capacity, efficiency and effectiveness of the international human rights system. For example, can States meaningfully contribute to over 200 informal consultations per year; can States and NGOs read 80 reports before a session; can States engage in a ‘substantive interaction’ with Special Procedures¹ when they have only 3 minutes per clustered interactive dialogue (so, in effect, around a minute per mandate-holder); and do national policymakers really have the political will or the capacity to process and implement (where relevant) 114 texts per year as well as the increasing number of recommendations generated by the Council’s mechanisms?

Upon taking office, the current President of the Council, H.E. Mr Joachim Ruecker, identified making progress on efficiency as one of his three broad priorities for 2015 (alongside the inter-related goals of improving effectiveness, and strengthening the Council’s relationship with other parts of the UN system). Initial steps have already been taken – for example, State decisions on the biennialisation of resolutions are now reflected in the calendar of initiatives. By recalling and re-emphasising relevant provisions of resolutions 5/1 and 16/21, these and related efforts (such as the regular cross-regional statements on methods of work coordinated by Norway and Turkey) have already begun to bear fruit, though more remains to be done.

When considering further steps, it is important to recall that improving efficiency must not be seen as an end in itself. Rather, it should be seen as a necessary part of wider efforts to build a Council that is more relevant, more effective, and better able to fulfil its mandate as set down in GA resolution 60/251.

This informal ‘food for thought’ document aims to present some information on the quantitative evolution of the Council since 2006, and asks a series of questions about what States and other stakeholders can do, in a cooperative and consensus-based manner, to strengthen the body’s efficiency in line with its basic documents. The paper focuses, in particular, on two inter-related elements

¹ Paragraph 12, Council resolution 60/251, 3rd April 2006

within the wider 'efficiency basket' identified by the Council President: the Council's 'resolution system' and the Special Procedures mechanism.

Possible principles?

It is perhaps useful, at the outset, to consider the principles that should guide any effort to improve the efficiency – and thereby the effectiveness – of the Council. A few possible principles are listed below, as food for thought.

First, any steps taken should be consensus-based, voluntary and arrived at through inclusive dialogue and cooperation.

Second, any steps that might be taken should be firmly within the framework provided by the existing basic documents of the Council, namely GA resolution 60/251, Council resolution 5/1 and Council resolution 16/21.

Third, as already noted, consensus-based voluntary efforts to improve the efficiency of the Council should not be premised on reducing the quantitative output of the Council merely for the sake of it, but rather as a necessary part of, and basis for, strengthening the effectiveness of the body and thus of better promoting and protecting human rights. Any steps taken should strengthen, not weaken, the international human rights protection system, by reducing duplication while avoiding opening any 'protection gaps.'

Fourth, any voluntary steps should be consistent with the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, predictability, flexibility, transparency, accountability, balance, and inclusiveness. They should also be consistent with the objective of ensuring that the Council's methods of work are transparent, fair and impartial, results-orientated, enable genuine dialogue, allow for subsequent follow-up discussions to recommendations and their implementation, and allow for substantive interaction with Special Procedures and mechanisms.

Fifth, considering the voluntary nature of any changes that might be made, any informal discussions on a consensus-based rationalisation and improvement exercise must be premised on building and maintaining trust among delegations. As a key part of this, any changes should only be brought through dialogue, consultation and cooperation, involving all relevant stakeholders.

I. Strengthening the Council's resolution system

The exponential expansion of the Council's resolution system since 2006 and its consequences for the efficiency and effectiveness of the international system has been analysed in-depth in the Universal Rights Group's recent report on the subject.²

² <http://www.universal-rights.org/component/k2/ensuring-relevance-driving-impact-the-evolution-and-future-direction-of-the-un-human-rights-council-s-resolution-system>

However, while the nature of this growth and its consequences for the efficiency and effectiveness of the UN's human rights pillar is now more fully understood, identifying and implementing practical solutions has proved (and continues to prove) more difficult. There are a number of interconnected reasons for this:

- The sovereign right of UN member States, both members and observers of the Council, to table initiatives (e.g. resolutions) for consideration, and to 'decide on the periodicity of presenting their draft proposals' (consistent with paragraph 117 of the Institution Building Package).
- The strong sense of attachment (and ownership) of State delegations and NGOs to 'their' initiatives, and related wish to generate progress in a visible manner (this last point helps explain the popularity of panel discussions).
- A concern (linked to the 'trust' point raised above) that any decision to, for example, biennialise a resolution may leave a space on the Council's annual agenda to be filled by another state with a different position on the matter at hand.
- A determination that any decisions to rationalise the methods of work and output of the Council be *balanced* – both across issues (e.g. economic social cultural rights issues and civil and political rights issues) and between delegations.

With these points in mind, it is useful to consider a number of questions:

1. How can States and other stakeholders build on existing 'self-regulatory' or 'voluntary' initiatives, such as the cross regional statement on improving methods of work, delivered during each March session? If the goal of such exercises is to recall and reaffirm relevant provisions of GA resolution 60/251 and Council resolutions 5/1 and 16/21, then what other steps might help? For example, a voluntary pledge?
2. Should such a voluntary 'reaffirmation' exercise only cover the 'methods of work' paragraphs of resolutions 60/251, 5/1 and 16/21? Or should it also recall and reaffirm relevant 'review, rationalisation and improvement' (RRI) paragraphs on Special Procedures (e.g. paragraphs 54-58 of the IBP) and/or panel debates?
3. How can the Council build on the existing voluntary yearly calendar of thematic resolutions?³ What other information might be usefully included?
 - a. How to better reflect decisions to biennialise and triennialise initiatives, and encourage a wider range of sponsors to likewise reflect on the optimum periodicity of resolutions? For example, would it be useful to turn the voluntary calendar into a multi-year calendar?

³ Paragraphs 45-47 of Council resolution 16/21

- b. Would it be useful to also reflect other aspects of a given thematic initiative such as relevant Special Procedures mandates, relevant annual or biennial panels?
 - c. Would it be useful for the calendar to also contain information on similar or related resolutions tabled at the Third Committee of the GA? Would this help promote complementarity of thematic human rights initiatives in Geneva and New York (as per paragraph 117(e)(i) of the IBP)?
4. How can the Presidency and Bureau best support any steps that might be taken?

II. Special Procedures

Since the establishment of the Council, there has been a significant expansion in both the reach and the output of the human rights mechanisms (UPR, Treaty Bodies, Special Procedures). In principle, this is to be welcomed. The mechanisms are the principle means through which the international community seeks to implement, at local level, the norms agreed at international level – thereby bridging the ‘implementation gap.’ However, expansion also brings challenges – in particular related to the capacity of the system to manage the work of the mechanisms, and process/implement their output.

This is particularly the case with Special Procedures, the ‘crown jewel’ of the international human rights system. There are now 55 Special Procedures mandates and 78 mandate-holders.

Special Procedures are a vital mechanism – the UN’s independent ‘eyes and ears’, a developer of norms, and a recipient of petitions from the victims of violations. However, if one looks at the Council’s principal means of interacting with Special Procedures (consideration of annual reports, interactive dialogues, and consideration of the joint communications report) it is clear that there is likely to be a ‘pay off’ between the continued ‘widening’ of the mechanism in terms of more thematic mandates, and the ‘deepening’ of it in terms of its impact on international and national human rights policy and practice.

Regarding interactive dialogues, 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 to one and a half minutes per state per mandate. Mandate-holders likewise have insufficient time to respond to comments or questions. This has clear negative implications for the utility of the interactive dialogues and for the credibility of the Council.

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). The difficulties inherent (for States and NGOs) in digesting and acting upon the contents of so many reports prior to

every session are clear. This in turn raises questions as to the degree to which the reports are able to influence domestic human rights policy.

However, attempts to ‘review, rationalise and improve’ (RRI) thematic Special Procedures mandates face, if anything, even more challenges than is the case with the rationalisation and improvement of Council resolutions.

With GA resolution 60/251, States decided that the Council would ‘assume, review and, where necessary, improve and rationalise all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures...’ And yet, subsequent negotiations on the ‘review, rationalisation and improvement of mandates’ (RRI) during the institution-building process (2006-2007) resulted in only a vague assertion that such reviews ‘would take place in the context of the negotiations of the relevant resolutions,’ essentially kicking the matter into the political long grass. This failure mirrored similarly unproductive Special Procedures review and reform exercises, conducted by the Commission on Human Rights between 1998 and 2000, and in the context of broader UN reforms between 2002 and 2004.

In general, efforts to rationalise Special Procedures have come up against similar difficulties as efforts to rationalise resolutions (see above), including: strong State and NGO attachment to ‘their’ mandates; the relative lack of other types of Council mechanisms that might help (like Special Procedures) to keep an issue ‘on the agenda’; a concern that any RRI exercise would result in ‘important mandates’ being lost and thus the creation of protection gaps; and a wish that such an exercise be balanced (across initiatives and between delegations).

The importance of these difficulties is illustrated by the fact that since the Special Procedures mechanism first emerged in 1967, there has only been one occasion when a thematic mandate has been discontinued (the 2000 merger of the Independent Expert on structural adjustment policies and the Special Rapporteur on the effect of foreign debt).

With these points in mind, it is perhaps useful to ask a number of questions:

1. There has been much talk, over recent months, about the possibility of inserting ‘sunset clauses’ into resolutions establishing or renewing thematic Special Procedures mandates; but can this work in practice? Do thematic mandates already have in-built ‘sunset clause’ – i.e. the 3 year term limit?
2. The IBP is quite clear on how the review, rationalisation and improvement of Special Procedures mandates should happen in principle. Paragraphs 54 to 58 state that RRI should happen at the time of the renewal of each thematic mandate (paragraph 55); should focus on the relevance, scope and content of the mandates, having as a framework the internationally recognised human rights standards, the system of Special Procedures and GA resolution 60/251 (paragraph 56); and should always

strive to contribute to an overall *improvement* in the promotion and protection of human rights (guided by criteria set down in paragraph 58). Reiterating this last point, paragraph 57 makes clear that any decision to streamline, merge or possibly discontinue mandates should always be guided by the need for improvement of the enjoyment and protection of human rights.

However, in practice, is such a RRI exercise really taking place in the context of each thematic mandate renewal? Or are thematic mandates, in reality, renewed automatically by default?

3. What informal, voluntary, consensus-based steps can be taken to strengthen the RRI exercise in the context of each thematic mandate renewal (especially when the existing mandate-holder is reaching the end of his/her 2x3 year term)? Would an open informal 'RRI' consultation, organised sufficiently in advance of a given mandate renewal, help? How to make sure such an exercise would be regularised, consultative and inclusive? What should be the role of the Presidency and Bureau in supporting this effort?