

Glion Human Rights Dialogue 2018 (Glion V)

The place of human rights in a reformed United Nations

Policy Dialogue on: 'Reform of UN's human rights architecture'

09.00h-13.00h on Tuesday 24th April 2017

Permanent Mission of Mexico, *Chemin Louis-Dunant 15 (5th floor), 1202 Genève*

Background paper

Immediately after taking Office in January 2017, UN Secretary-General Antonio Guterres announced his intention to introduce wide-ranging reforms to the way the UN works and how it delivers on its mandate.

The Secretary-General's reforms focus on three key areas: UN management (secretariat); the development system; and the UN's peace and security architecture. Through these reforms, the Secretary-General aims to create a '21st century UN' that is better equipped to address the complex contemporary challenges facing humankind. This means reducing and eventually eliminating the fragmentation between the UN's three pillars, and striving for a more flexible and efficient Organisation.

In parallel to the Secretary-General's broad reform plans, member and observer States at the UN Human Rights Council, together with NGOs and NHRIs, have been engaged in discussions about how to strengthen the international human rights system's efficiency, effectiveness and impact. These reflections, in particular those driven by Dutch-led discussions on Council strengthening and (in the context of efficiency) a Council Bureau-led process of consultation, include proposed actions in the short, medium and long-term to improve the work and delivery of the human rights

pillar, and in particular of the Human Rights Council. They also seek to reflect upon and strengthen the interconnectedness of human rights with the other two pillars of the UN. Moreover, the next intergovernmental review of the Human Rights Council's status, which will decide whether it should become a main or remain a subsidiary body of the UN, is due to take place between 2021 and 2026.

'The 2021 review'

In 2005, UN Heads of State and Government at the World Summit decided (with GA resolution 60/1) to endorse the proposal of the-then UN Secretary-General, Kofi Annan, contained in his report 'In larger freedom: towards development, security and human rights for all,' to, inter alia, 'replace the Commission on Human Rights with a smaller standing Human Rights Council.'

In that report, Kofi Annan had left it to States to decide whether 'they want the Human Rights Council to be a principal organ of the United Nations or a subsidiary body of the General Assembly.' Notwithstanding, he perhaps made his own preference clear by placing his proposals under the heading 'The Councils' (i.e. placing the Human Rights Council alongside the Security Council, and ECOSOC) and stating that the new Council would 'accord human rights a more authoritative position, corresponding to the primacy of human rights in the Charter.'

The reforms proposed in the 'In larger freedom' report - to build a stronger UN edifice comprising three equal, interconnected and mutually reinforcing pillars - were firmly grounded in the ideals expressed in the UN Charter. The Charter clearly positions the promotion of human rights as core to the UN's purpose, principles and actions - alongside the maintenance of peace and security, and the realisation of socio-economic development. Beginning with the words 'We the Peoples' (i.e. individuals - not States), human rights are a permanent and prominent concern running through the entirety the UN's founding document - from the preamble to the purposes, and from the organisation's responsibilities to its foreseen tasks. The main reason why 'In larger freedom' was so powerful was that it recognised the disconnect between the prominence of human rights in the UN Charter, and the contemporary reality of human rights as the organisation's 'neglected pillar.'

Shortly after the adoption of GA resolution 60/1, in March 2006, the General Assembly passed resolution 60/251 formally establishing the new Council as a subsidiary organ of the General Assembly. It was also decided however that 'the Assembly shall review the status of the Council within five years,' (operative paragraph 1) and called on the Council to 'review its work and functioning five years after its establishment and report to the General Assembly,' (operative paragraph 16).

In March 2011, the Council completed the five-year review of its work and functioning. With resolution 65/281, the General Assembly decided to maintain the status of the Council as a subsidiary body 'and to consider again the question of whether to maintain this status...at a time no sooner than ten years [i.e. 2021] and no later than fifteen years' [i.e. 2026]. GA resolution 65/281 did not, however, on this occasion request the Human Rights Council to conduct a review

of its work and functioning.

Yet it is not unreasonable to argue that in order to undertake a meaningful and informed review of the Council's status starting in 2021, the General Assembly will need expert input from members and observer States of the Human Rights Council. If not, what would State delegations in New York use as the basis for their deliberations and, ultimately, their decision? Key questions that would be useful for States in the General Assembly to have answers to include:

- Has the Human Rights Council made progress in fulfilling the mandate given to it by the General Assembly through resolution 60/251?
- How has the institutional architecture built in 2006-2007, and amended in 2011, operated in practice? Does it need to be strengthened / reformed?
- Are the Council's implementation mechanisms delivering real-world change and impact? Are these mechanisms still 'fit for purpose'?
- What have been the key achievements of the Council, across both its human rights promotion and protection activities, and where has it had most impact? What lessons can be gleaned from those examples?
- Where are the main barriers to improved effectiveness?
- How does the Council engage/interact with other key parts of the human rights pillar, including the Office of the High Commissioner for Human Rights (OHCHR) and the Third Committee of the General Assembly? Are these relationships marked by coherence or confusion?
- As the Council continues into its second decade, what are the main challenges it faces in order to fulfil its crucial mandate, and what reforms must be considered in order to empower members to meet those challenges?
- What are the practical consequences of the fact that the UN's current institutional architecture (i.e. with two of the pillars represented by a main UN body, but not the third) is not consistent with the ideals expressed in the UN Charter (i.e. that a strong and effective UN edifice should comprise three equal, interconnected and mutually reinforcing pillars)? What are the consequences for the Council itself, and what are the consequences for the Council's interaction with other parts of the UN (e.g. the Third Committee/the General Assembly)?
- What are the budgetary consequences of the UN's subsidiary status, and what does this mean for the delivery of human rights on the ground, and, in turn, for sustainable development and for peace and security?

Key questions to be considered during the policy dialogue at the Mexican Mission include, *inter alia*:

1. What is the 2021-2026 review by the General Assembly? What would a status upgrade of the Human Rights Council mean? Does the review necessitate a preparatory exercise by the Human Rights Council?

2. What are the practical consequences of the Council's subsidiary status for the efficiency and effectiveness of the international human rights system, for UN-wide coherence, and for the enjoyment of human rights by individual people on the ground?
3. What are the practical consequences of the historic imbalances in the UN's regular budget for human rights, but also for peace and security, and for sustainable development?
4. In terms of the budgetary resources it does command, is the human rights pillar striking the right balance between protecting human rights, by investing in responding to situations of serious human rights violations and securing accountability on the one hand, and promoting human rights and preventing violations, by investing in capacity-building and resilience-building on the other?