

Glion Human Rights Dialogue 2019 (Glion VI)

'Towards 2026: Perspectives on the future of the Human Rights Council'

**Background paper for break-out group I:
'The contribution of the Human Rights Council to the General Assembly's 2021-2026 review of the Council's status'**

The Human Rights Council has secured a number of significant achievements since its establishment in 2006. It has continued much of the important work of the former Commission on Human Rights by, for example, providing a forum for debate, maintaining a system of Special Procedures, and widening the global framework of human rights norms and standards. At the same time, it has taken further steps to strengthen the relevance and delivery of the UN's human rights pillar, including by: building a powerful new peer-to-peer review mechanism (the Universal Periodic Review - UPR); focusing to a greater degree on supporting, and following-up on, the domestic implementation of States' human rights obligations and commitments; taking steps towards the effective prevention of human rights violations and crises; promoting accountability for serious violations through the creation of commissions of inquiry (COIs), fact finding missions and an independent investigative mechanism (IIM); and forging strengthened links with the UN's other two pillars – the development pillar and the peace and security pillar.

Yet the Council has also faced important challenges to the effective delivery of its mandate as set by the General Assembly (GA) in resolution 60/251.

The GA's upcoming review of the Council's status (due to take place between 2021 and 2026) offers a possible opportunity for State delegations and other stakeholders in Geneva to reflect on these achievements and challenges, and consider how the body and its mechanisms might strengthen their effectiveness and impact, both in their own regard and in combination with the other two pillars of the UN. Moreover, the '2021-2026 review' also offers a chance for the international human rights community to look ahead and reflect, not only on how the international community might better respond to *today's* human rights challenges, but also on how to respond to the new and emerging issues of *tomorrow*.

The 2021-2026 review

At the 2005 World Summit, UN Member States decided to strengthen the human rights pillar by creating the Human Rights Council in replacement of the Commission on Human Rights.¹ This decision was taken on the basis of proposals contained in the then UN Secretary-General's report 'In larger freedom: towards development, security and human rights for all.'² The report called for the establishment of a smaller standing Human Rights Council that 'would accord human rights a more authoritative position, corresponding to the primacy of human rights in the Charter of the United Nations.' The report left it to States, however, to decide whether they would want the new Council 'to be a principal organ of the UN or a subsidiary body of the General Assembly.'³

In March 2006, States adopted GA resolution 60/251 formally establishing the Council as a subsidiary organ of the GA. With this resolution, they decided that 'the General Assembly shall review the status of the Council within five years.'⁴ At the same time, the GA called upon the Council to 'review its work and functioning five years after its establishment and report to the General Assembly.'⁵

In March 2011, after completing the review of its work and functioning as requested in GA resolution 60/251, the Council adopted resolution 16/21.⁶ Subsequently, the GA recognised this outcome in resolution 65/281 and decided to maintain the status of the Council as a subsidiary body. It further decided '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].⁷

On this occasion however, the GA did not request the Council to conduct a (further) review of its work and functioning.

¹ GA resolution 60/1 on '2005 World Summit Outcome,' 24 October 2005, paragraphs 157-158

² In larger freedom: towards development, security and human rights for all; Report of the Secretary-General, A/59/2005, 21 March 2005, pp41-46

³ Ibid.

⁴ GA resolution 60/251 on 'The Human Rights Council,' 15 March 2006, operative paragraph 1

⁵ Ibid, operative paragraph 16

⁶ Human Rights Council resolution 16/21 on the 'Review of the work and functioning of the Human Rights Council,' 25 March 2011

⁷ GA resolution 65/281 on the 'Review of the Human Rights Council,' 17 June 2011

During Glion V in May 2018, States and other stakeholders had an early opportunity to look ahead to the ‘2021-2026 review,’ and consider the important question of whether and how the Council and ‘Geneva’ should contribute to the GA’s deliberations. While there was a broad acknowledgment during Glion V that the GA has not formally asked the Council to conduct a review, there was nonetheless a strong view that ‘Geneva’ *should* provide some kind of contribution to help inform the GA’s work. There was, however, no consensus over the preferred nature or form of that contribution.

On 28 March 2019, the current President of the Council, H.E. Coly Seck (Senegal), convened a first open informal consultation at the UN in Geneva seeking the initial views of States on how, if at all, the Council might usefully contribute to the GA’s review. As during Glion V, there was a strong sense that ‘Geneva’ *should* contribute. It was repeatedly noted that because knowledge, experience and expertise about the Council largely resides in Geneva, it would be necessary for delegations to the Council, as well as other Geneva-based stakeholders, to feed into the New York-based review. Moreover, while some States argued that it is probably too soon to begin a process in Geneva, others did choose to make concrete suggestions regarding the possible form of an eventual contribution (e.g.: an intergovernmental reflection of the degree to which the Council has been able to fulfil its mandate since 2006; a formal intergovernmental review of the Council’s work and functioning; or a process of consultations led by the High Commissioner/Secretary-General or their representatives, etc.) Notwithstanding, there also appeared to be a strong view that the Council should ultimately take its lead, in terms of any final decision on the timing, process and nature of its contribution, from the GA. This might come, for example, in the form of an informal signal from the President of the GA (e.g. in a letter to the President of the Council) or in a more formal GA decision (i.e. a resolution providing the Council with a specific mandate to act).

A ‘Geneva contribution’: what are the options?

Notwithstanding initial consideration of the 2021-2026 review in New York, it is important for State delegations and civil society in Geneva to give further (informal) thought to the following broad question: if, as seems the case following the Council President’s informal consultations on 28 March, there is broad agreement that ‘Geneva’ *should* contribute; and if, as seems likely, ‘New York’ does eventually request such a contribution; then what might a ‘useful contribution’ actually look like?

During the 28 March informal consultations, a number of options were put forward including, *inter alia*:

1. To conduct a formal intergovernmental review of the Council's work and functioning, similar to the one that took place in 2011 (even though the GA has not requested this). As with the 2011 process, such a review would be premised, *inter alia*, on modifying the Council's institution-building package (IBP). (There appeared to be limited support for this option during the President's informal consultations).
2. To conduct a 'lighter' process of reflection or self-assessment of the degree to which the Council has been able, since 2006, to fulfil the different parts of its mandate as set down in GA resolution 60/251. Where has the Council done well? What have been its key achievements? Where has it fallen short in fulfilling key aspects of its mandate? How might it change, adapt and strengthen its delivery in the future, in order to better promote and protect the enjoyment of human rights on the ground? This option is set out in more detail in a recent policy brief published by the URG and supported by Switzerland: [Vision 2021](#).
3. To request the High Commissioner/Secretary-General, or their representatives (e.g. appointed co-facilitators), to consult all stakeholders and produce a report covering questions similar to those outlined in point 2 (above).
4. To 'wait and see' what process the GA sets up for 2021-2026 and what kind of request or mandate it provides to the Council.