



Dialogue on Globalization

FACT SHEET
FES GENEVA

October 2007/N°7

Fine tuning the institution building The 6th Session of the UN Human Rights Council, 10-28 September

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Starting into its second year of existence, the UN Human Rights Council (HRC) seems to have found into a certain routine.

While member and observer states of the HRC keep repeating that the Council is still in its constituting phase and that no precedents should be set, substantive work is replacing the institution building tasks¹ of the first year little by little. Aside of reviewing some Special Procedures mandates, the program of work touched upon a number of substantial issues, including the open item 4 of "human rights situations that require the HRC's attention."

The "New Approach" of the Council

In the run-up to the session many member states talked about a so-called new approach of the Council. In order to break with the much criticized practice to "name and shame" human rights violators, it seemed they were aiming for a practice to merely "raise and praise" states with good or at least improving human rights records, depriving the HRC of its most effective "teeth" of public political pressure. Fortunately this did not fully materialize and the HRC was still able to give room to discussions on issues of concern, rather than getting lost in a mere enumeration of best practices.

Institutional Issues and Review of Mandates

A lot of the time of this session was devoted to institution building tasks, the reports of Special Procedures (SP) and the review of mandates. The resolution establishing the Council (A/RES/60/251) had transferred all mandates from the former Commission, calling for the HRC to "review and, where necessary, improve

and rationalize" them "within one year after the holding of its first session."² How exactly this revision was to be done was left to the HRC, which has been reviewing them rather on a case by case basis and not along a standardized procedure. Although many member states had made clear that the review of mandates could be done without the presence of the mandate holder and should not necessarily be attached to their report to the HRC, the secretariat ensured the presence of the holders of the mandates reviewed in this session. While some were presenting their reports, others were present to explain or defend their mandate but still spoke rather on the issue than on the technicalities of their mandate. Most of the mandates dealt with in the session - country specific and thematic - were renewed and even one new SP was created. Among the mandates addressed, only a decision on the mandate of the Independent Expert on the situation in the Democratic Republic of the Congo was deferred to the December part of the 6th session as was the consideration of the mandate of the Special Rapporteur on Sudan by way of a resolution tabled by Egypt.³ Other resolutions welcomed the work of the mandate holder, yet using ambiguous language about the continuation of their work. Follow-up resolutions determining the future of those mandates will be necessary.

The future of the former Working Groups of the Sub-Commission was decided by consensus. In general, the mechanisms are kept, but directly attached to the HRC in a slightly changed nature.

¹ For in-depth information on the institution building process see: FES /ISHR: A New Chapter for Human Rights, and FES Occasional Paper 33: Building the New Human Rights Council on: www.fes-geneva.org

² A/RES/60/251, OP 6.

³ Besides the delay of the resolution on the Sudan mandate, two other country specific mandates had been "discontinued": Belarus and Cuba managed to have "their" mandates terminated already before the start of the session.

A further institutional issue was the shaping of the Universal Periodic Review. During this session the order of countries to be reviewed under the UPR in the first cycle until 2011 was released and the first review session was scheduled for next February. Yet, due to long discussions and slow developments, it became certain that the review process will be postponed until April 2008. General guidelines for the preparation of the UPR as well as the technical requirements for SP mandate holders and the HRC Advisory Committee were determined in a follow-up resolution to HRC 5/1.⁴ Through this process, the institution building process is on its way to be finalized.

Substantial issues were raised during the session under several agenda items. Among other countries, the situations in Darfur (including an interactive dialog on the progress and final reports of the Group of Experts), Zimbabwe, Iran, Sri Lanka, Myanmar /Burma and Korea (DPRK), Belarus, Iraq, Cuba (all under item 4) and the situation in Palestine (with its own agenda item, no. 7), were topic of debates. The thematic discussions focused mostly on cultural rights, cultural heritage and the fight against racism, racial discrimination, Xenophobia and related intolerance. Germany and Spain raised the issue of access to water and sanitation in the HRC and at a side event which commented on the report given by the High Commissioner.

The integration of a gender perspective into the work of the Council was another issue of concern. Under the agenda item 8 (follow-up to the Vienna Declaration and Plan of Action) many States and NGOs took the floor in favor of this concept. Yet, practical suggestions were lacking and the item will have to be taken up again at the second part of the session for a resolution or decision on the topic.

NGO participation

NGO participation has seen an institutional upgrade from the practice of the Commission. By now, NGOs are allowed to speak at more occasions (e.g. interactive dialogues) and their importance has been reiterated by the bureau of the HRC. Yet, maybe due to the opposition to NGO involvement shown by some countries, maybe due to the practical restraints of session time, it seemed to many observers as if NGO participation would rather have declined. There are a number of factors which constrained meaningful participation of NGOs. First of all, it is the high level of unpredictability of the program of work of the Council. Daily changes of

the program made it difficult for observers to schedule their input in meaningful ways. While flexibility is an important feature of the new Council, it should not be used as an excuse for poor planning. The HRC needs to be flexible to react to violations of human rights as they occur – but it anyway only does so within one specific agenda item or by calling a Special Session.

The reports scheduled for a certain session should be kept at the dates announced and the topics dealt with at their time. Any higher degree of “flexibility” makes it impossible for NGOs which are not based in Geneva to time their appearance before the Council. NGOs with representatives in Geneva needed to be present at all time to make use of the speaking time when an item came up which they planned to address. This uncertainty about the schedule of a meeting extends also to parallel events which are usually organized by NGOs along the HRC session. They require logistical planning and cannot be changed at the last minute. When topics in the HRC are moved to another day, parallel events become meaningless because they will not find the targeted audience. As a result, many NGOs cancelled their planned events, hoping for better options at the next session.

Positive Signs

The high percentage of resolutions and decisions adopted by consensus can be seen as a positive sign of the political situation in the HRC.⁵ The consensus mode which had prevailed until the adoption of the institution building package does not exist any more, but still the effort to gain broad support for any resolution is obvious. This is remarkable especially in relation with country specific SP mandates which had been severely criticized in the time leading up to the session.

Additionally, the Council held its 5th special session on the human rights situation in Myanmar / Burma two days after suspending the regular one. While the session had been requested by EU member states, the resulting resolution, which strongly deplores the use of violence against peaceful protesters and urges the government to ensure full respect for human rights, was adopted by consensus.

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⁴ A/HRC/6/L.24.

⁵ Of 36 declarations, decisions and resolutions that the HRC had before it, most were adopted by consensus, only a few adopted by vote or deferred to the second part of the session.