

The Human Rights Council after the Review tangible changes or business as usual?

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The following text is a summary of the Workshop titled *The Human Rights Council after the Review: tangible changes or business as usual?* The Workshop was organised by Friedrich-Ebert-Stiftung, Forum Menschenrechte, and the German Institute for Human Rights at the World Council of Churches, Geneva, on 6 and 7 October 2011. It formed part of a series of annual workshops on the performance of the UN Human Rights system, co-organized by the three institutions. The presentations and discussions were made under Chatham House Rule.

Overview of the review process and its main outcomes

At the outset, the main outcomes of the Human Rights Council's (HRC) review process were outlined. The UN General Assembly (UNGA) decided in 2006, in Resolution 60/251, to review the HRC after five years (to be discussed in New York): the status of the HRC in the UN system, the evaluation of its work and functioning and the assessment of the newly created country review procedure, the Universal Periodic Review (UPR); to be discussed in Geneva. From the beginning, a large majority of states did not show any interest in using the review as an opportunity to fundamentally question the negotiated structure of the HRC (Resolutions 5/1 and 5/2 on the so-called Institution Building Package). To the extent that institutional structures

needed changing, the consensus principle would apply.

Judged in normative terms, there is no dramatic change. In particular, there is no robust approach like an independent system of triggers in order to better respond to situations of concern. Instead of fundamental reform, the status quo was protected by focusing on fine tuning individual aspects. For instance, the Council's meeting cycle shall in future begin with the calendar year and no longer in June while the Council's annual report to UNGA covers the period 1 October to 30 September. It was also stipulated that the next review process should take place in the next 10–15 years.

In order to upgrade the Advisory Committee, the Committee's first session is to be held directly before the traditional

March session of the Council. Other changes concern an annual podium discussion with all relevant UN bodies for the purpose of implementing human rights standards within the UN system, the temporal and textual streamlining of resolutions, greater use of information technology such as video-conferencing, improved access for disabled people to Council sessions and the establishment of a bureau for the HRC Presidency but funded within the existing budget. Previously, this task has been performed by a department of the Office of the High Commissioner for Human Rights (OHCHR). In relation to Special Procedures, the need to follow up their recommendations as well as for adequate funding is emphasised.

The UPR procedure underwent the biggest changes. According to Resolution 16/21 and Decision 17/119 the next cycle was extended to 4.5 years (previously 4 years) with 14 rounds of meetings (previously 12). Only 14 (no longer 16) states are examined in each UPR round. Hearings have been extended from 3 to up to 3.5 hours. The recommendations to states under examination are to be summarised thematically. States are to submit an interim report on a voluntary basis. The time available at a hearing is to be subdivided in such a way that all states that wish to speak may do so. Further changes concern time periods in relation to hearings and report formats.

The participation of National Human Rights Institutions (NHRIs) with »A status« was expanded. Firstly, they will have their

own section in the summary of the reports of (Non-Governmental Organisations) NGOs. Secondly, they will be granted the right to speak at the Council session on adoption of the UPR report immediately after the state to be examined. Otherwise, demands for a comprehensive inclusion of NGOs and their documents were not taken into account. Furthermore, NHRIs were granted the right to nominate their own candidates for special procedures mandates and – analogous to the UPR procedure – to be able to issue a statement in the interactive dialogue on a country situation directly after the government concerned.

The HRC adopted the report on its Review process by Resolution 16/21 with no request for a vote. In June 2011 the Council adopted the last agreements concerning the UPR procedure by Decision 17/119. In contrast to Geneva, the concluding Resolution A/65/L.78 of June 2011 by UNGA was put to a vote. Israel, Canada, the USA and Palau voted no, 154 states voted in favour, including the European Union. The reason for the no-vote was that there were no mandatory measures to guarantee the highest standards with regard to membership and Item 7 on the occupied Palestinian areas / Israel was kept on the agenda.

In addition, a brief analytical overview of the UPR first cycle was given considering the first nine sessions. There were a total of 14,435 recommendations, i.e. an average of 1600 per session, and approximately 100 per state while the

first states under review only got some dozens. About 71% of the recommendations were accepted, while the more sensitive and politically charged issues resulted in lower acceptance rates; e.g. only 20% of death penalty, 30% of sexual rights, and 50% of Special Procedures recommendations were accepted.

The West European and Others Group (WEOG) offered 41% of recommendations, while Asia, Africa, East Europe (EEG) and GRULAC (Latin America and the Caribbean) each made 13% to 16% of the total recommendations. Recommendations were mostly directed to Asia (31%) and Africa (27%). GRULAC, WEOG and EEG received 16%, 14%, and 12% respectively. 70% of the recommendations asked for actions although the high number of recommendations in rather general terms. Governments will have considerable room to interpret and deliberate compliance with.

Human rights procedures and actors in the context of HRC

A first discussion round dealt in particular with country situations and thematic issues after the review. One aspect referred to the question whether there are procedures and actors available in order to better address human rights violations by the HRC and its given structures. A second aspect concentrated on the HRC responses to the profound changes in the Middle East, and a third one on the interaction between HRC and UN Security Council (UNSC). Interestingly,

the confidential complaint procedure was not addressed being considered by now as useless. The interaction with UN Treaty Bodies was not discussed in this workshop for time reasons but would obviously be worth to be included in a next meeting.

Related to the first aspect, it was argued that the HRC performance on country and thematic issues in general is rather good, as there are currently eight country mandates and 34 thematic mandates of the Special Procedures. The recent 18th session of the HRC adopted 37 resolutions, seven of them on country situations. Some speakers underlined, that the HRC is intensively addressing major human rights violations. Reference was made to the Special Sessions as such – used as a main tool for country situations – and the de facto continuity of HRC meeting.

Others argued that despite that volume, there was a deeply felt anger about the HRC 18th session which was considered rather a drawback regarding country situations. As examples which did not get appropriate attention were noted Bahrain, Afghanistan, Iraq and the ongoing scandal on the detention centre in Guantánamo Bay. Civil society organisations In particular are still awaiting a statement by the European Union (EU) on Guantánamo. It was affirmed that there was indeed an increase of human rights activities by the HRC in 2011 but this might be due to the very extraordinary situations in the Middle East.

In this regard, some participants stated that those who like to see a better HRC performance would need to apply political pressure and convince friendly governments to undertake more and strategically planned démarches to the capitals of relevant countries. Although the HRC has by now a wide range of formats and tools for addressing human rights situations at its disposal, there is still room for better HR diplomacy. In addition, it was said that we should not expect one big solution but instead make tools available by doing and thinking in a long term perspective.

Special expectations were raised towards the EU and their generally outstanding capacity of dialogue and cross regional initiatives frequently shown within their political programs. At the level of the HRC, however, the EU has been lacking visibility and has initiated only a small number of dialogues on cross regional issues. The question was left for further discussion whether the current structure of coordination within the EU is still adequate compared to the needs of a more pro-active HRC engagement.

With regard to the Middle East, there was the overall observation, that the HRC consideration on Palestine and Israel will always be a kind of Litmus test in dealing with human rights situations by the HRC. However, whether Item 7 of the HRC agenda (*Human rights situation in Palestine and other occupied Arab Territories*) would be an appropriate mechanism remained controversial. Doubts remained because Item 7 fulfils

purposes beyond a human rights approach. Is it imaginable, for instance, that under Item 7 a discussion would address the realistic danger of the Palestine Autonomy and the Gaza Administration slipping into a police state? Or a discussion on a civilian monitoring over the security apparatus?

Beyond the ongoing problems with Item 7, the discussion revealed some already developed additional mechanisms exemplified alongside the recent responses to the crisis in the Middle East. The HRC conducted three Special Sessions (twice on Syria, once on Libya), asked the UNGA to suspend Libya from its HRC membership and held urgent debates on other countries. The observation was affirmed that in relation to the Arab spring, the HRC has become an active UN institution. In addition, both the resolution on human rights and transitional justice (Resolution 9/10 plus 12/11) as well as the Resolution 18/7 (September 2011) are expected to play a pertinent role towards North Africa and the Near East. HRC Resolution 18/7 appoints, for a period of three years, a new Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence of serious crimes and gross violations of human rights.

During the discussion, a differentiation was made in the handling of Syria and Libya. According to the observations, Libya has been more likely and properly addressed by the UNSC while with regards to Syria the HRC currently seems a more

likely platform for action given the veto by China and Russian Federation in the UNSC. Nevertheless, considering the entire region of North Africa and the Middle East, it is obvious that the HRC also shows lacunas; e.g. the reluctance to address the human rights situation in Egypt and Bahrain, and Yemen only in the very last moment.

Interaction between HRC and Security Council

In relation to the third aspect, the interaction between HRC and UNSC was particularly explored alongside the recent country situations in Libya and Syria. In general, the observation was shared that the UNSC has developed a human rights language, in particular in relation to the countries as Libya and Côte d'Ivoire, to the Goldstone Report as well as to the UNSC's references to the International Criminal Court (ICC). In addition, the UN High Commissioner for Human Rights (HCHR) was frequently invited – nearly every six months – to brief the UNSC on the situations in Syria, Libya and Côte d'Ivoire. Last, but not least, currently there are 14 peace keeping missions carried out with a human rights component. Compared to former HCHRs, Mary Robinson's first invitation was in 1999, the involvement in human rights by the UNSC substantially increased. Following such a practise, human rights addresses by the UNSC may become a norm.

However, as subsequently discussed, not all decisions by the UNSC with human rights language are guided exclusively by

human rights challenges but by other considerations. In this sense, it was noted that not only China and the Russian Federation show a rather hesitant behaviour, but also South Africa and Brazil have followed more than once their own agenda. It was reported that the UNSC was confronted with a double veto – China and Russian Federation – on a country situation only three times during its existence since the Cold War was over: January 2007 on Myanmar, July 2008 on Zimbabwe, October 2011 on Syria. It is noteworthy, that South Africa voted in the first two occasions against, and abstained on Syria. It was also mentioned that double standards will probably persist for a long time, and sometimes those countries simply mirror the performance of the USA and other Western countries.

Irrespective of such considerations, some of the participants identified something like a new momentum in the UNSC while others warned and argued that the HRC should not lose its genuine role within the UN system by disposing of pertinent instruments in order to address human rights violations. Indeed, the UNSC's involvement into human rights is not guaranteed at all and requires additional efforts. One of the suggestions in this sense was the idea to establish a regular meeting between the Presidents of both institutions, HRC and UNSC, in order to e.g. deliberate about the UNSC's future human rights involvement from a reactive to a rather preventive mode in close coordination with the HRC.

Universal Periodic Review

Under this topic it was discussed how to make best use of the second cycle of the UPR. It was already mentioned that there are some new elements as to the role of NHRIs, an extended session time for the HRC Working Group; a changed focus for the assessment, the request for an interim follow up. In addition to the already mentioned hesitance, the discussion revealed the reluctance of many states to particularly deal with the issue of sexual orientation, death penalty and the standing invitation for Special Procedures' visits. Within the Arab group, there is still the tendency to seek a soft approach, and in the current reform politics of Libya and Egypt, UPR does not play an important role. But in these countries, there is also little engagement by national NGOs and NHRIs.

The workshop listened to some best practices on government performance regarding UPR procedures. Within the UPR Working Group, the extended filibustering in former times was reduced. Governments fulfil the obligation of broad participation by stakeholders in conducting such consultations in town halls, parliaments, provincial meetings or making use of the new information technologies such as hotlines and websites. Some countries invited the UN Development Program (UNDP) in order to conduct such meetings with civil society actors.

Although it is still uncommon among states, an institutional trend in favour of a voluntary midterm report on the stage of implementation can be observed. Bahrain

was the first country which started this process. Meanwhile, there are five countries of WEOG and of GRULAC, three countries from Asia and one country from Africa (Mauritius) which complied with this request. Colombia presented even a second report and a third one is expected. As these midterm reports are on a voluntary basis, most of them demonstrate substance. Some NGOs followed and presented their parallel midterm report, too. The government of Canada initiated a side event on the issue of midterm reports in June 2011.

National Human Rights Institutions reportedly have been emphasising gender aspects, awareness raising on the outcome, drawing public attention to the status of implementation of the recommendations, reporting and monitoring. In addition, information was shared on steps to synchronise national action plans with UPR recommendations, to organise a comprehensive follow-up, to initiate a post UPR discussion including parliament, to map the status of implementation, and to finally integrate UPR into NHRIs' normal work. Examples were reported from South Africa, Kenya, Malaysia, Canada, Morocco. For the second cycle of UPR, it was proposed to include external funding for such activities in the set of recommendations, e.g. to be realised via the HRC agenda Item 10, technical assistance.

In sum, national experiences prompt the idea to aim for UPR recommendations to be included into a national action plan in order to transmit this mechanism into an

impacting tool. In the same way, the involvement of parliaments was suggested; the third theme of the workshop which follows below. Some participants proposed to involve regional caucuses and institutions into the second cycle as well as to link up UPR with the UN Treaty Bodies. The question what to do with not implemented recommendations, for some the answer seems to be quite easy: simply reiterate those recommendations.

Universal Periodic Review and the role of parliaments and parliamentarians

This theme focused on institutional actors like parliament and their interaction with NGOs, NHRIs and the media in order to increase the impact of the UPR outcome and its recommendations at the national level. Some examples illustrated the potentials of this involvement of institutional actors. In Australia, the UPR outcome has been discussed in parliament. In United Kingdom, the UPR documents were sent to the parliament, too. In Brazil, the Congress was involved in order to make the stakeholder consultation more formal and representative as well as to hold the government more accountable. The meeting of the stakeholders in Congress also attracted the Brazilian media. In Lebanon, it was the parliament which spread the information about UPR in the country, and some parliamentarians provided input into the national report. In Germany, parliamentarians have the opportunity to request the inclusion of UPR recommendations into the National Action Plan. In Canada, the involvement of

parliament contributed to the national implementation plan for UPR, including the adaptation of budgets. It was also stressed that parliaments vary considerably in their work and functions. Particularly in federal states, national and provincial parliaments may have a very different role by constitution which should be considered accordingly.

In relation to the role of parliaments within the UPR procedure, it was noted that there is literally no seat available for parliamentarians in the room where the HRC Working Group or plenary takes place. No seat, no voice: it may be taken as a symbolic characterisation of the current situation. In the same way it was noted, that the OHCHR offers a lot of capacity building programs for civil society stakeholders aiming at their better involvement into the UPR, while there is currently no such program for parliamentarians. In a sense, this is surprising as parliaments and parliamentarians are finally those who decide upon changes in law or introducing new legislation to fulfil UPR recommendations. In addition, their immunity provides parliamentarians with the opportunity to address issues which in countries like Sri Lanka might be difficult or dangerous to address by civil society actors.

As to first steps, suggestions were made to join the initiatives on including UPR recommendations into the National Action Plans, making use of regional coordination bodies or networks among parliamentarians. Regular meetings in

particular with NHRIs and the pertinent committees of the national parliament should take place on the UPR outcome and the implementation process of its recommendations. A third step might be to draft some guidelines for good practices.

HRC and its Sub-Organs

This theme dealt with the question how to better involve the sub-organs in a better functioning of the HRC. The HRC sub-organs – Advisory Committee, Social Forum, Forum on Minorities, Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) – face altogether the problem that they formally depend on HRC decisions and can rarely take initiatives on their own. Further, the sub-organs do not receive any support in substance by the OHCHR but mere technical conference assistance, and certain countries from South Asia, have been closely monitoring e.g. the Advisory Committee's work according to their understanding of rules. In the first years of existence of the Advisory Committee, their members never had any contact with the HRC Presidents. This has improved but shows the ranking. At the same time, the sub-organs have a certain advantage as their interaction comprises a broader spectrum of actors of civil society as NGOs without consultative status, academic institutions and international organisations at an informal level as the UN Conference on Trade and Development (UNCTAD) or the International Committee of the Red Cross (ICRC).

The experiences of stakeholders from different regions shared with the workshop certainly underlined the problem of lacking provisions for own initiatives. Examples of successful interaction of sub-organs were based on active engagements by HRC member states or a well coordinated lobby over years. Examples were given with regard to the lobbying by indigenous peoples or the initiative on the right to peace. If somebody would simply show up to one of the meetings of the sub-organs with a good idea, it would not be likely to get taken up. Even so, there is in none of the sub-organs any mechanism which would guarantee the implementation of their reports or recommendations. The report of the Social Forum from 2010 which recommended to the HRC to establish a new Special Procedures mandate on human rights and climate change was simply not discussed. Vice versa, a speaker stated that the sub-organs do not play any role in implementing sensitive human rights issues – as gender equality – at community level, stressing the gap between those worlds. Although such a commitment is not the genuine role of the sub-organs, its rather informal characteristics would be more appropriate. It was reported that e.g. representatives of indigenous peoples from Latin America do not attend EMRIP any longer which they consider as useless.

It was the common understanding of the participants that for the near future there will be no amendments allowing the sub-organs self-initiated debates and conclusions. Official studies and draft

declarations will remain the domain of HRC instructions. Informally, there might be a chance to establish a monitoring body in order to draw attention to the follow-up. But this requires a kind of networking or interaction between the sub-organs which currently does not exist. A second initiative to increase the attraction and impact of sub-organs may be based on informal exchanges of views on common subjects such as climate change, migration, extractive industries, land grabbing etc. and its impacts on each of the sub-organs' work. Currently, the discussion on traditional values and its relationship to human rights seems to attract attention of different actors and institutions. Finally, a simple shift in the time schedule may also help to better involve the sub-organs. The meeting time as such is extremely limited judged from the viewpoint of substantial discussion, and the Forum on Minorities normally meets at the end of the year, EMRIP during vacation time.

Conclusions

Participants affirmed that the HRC is a critical organ in their work which needs to be further developed but in evolutionary terms. The HRC will have a positive role in the long term while there is the need to also have an immediate impact. Within the given difficult conditions, diplomacy can be improved, regional or like-minded bloc thinking could be overcome and more cross regional initiatives established. The bloc formation along regional groups of states or informal interest-led groups has definitively disintegrated. The field of

actors can be expanded towards parliamentarians.

Emphasis should be given to the interaction between HRC and UNSC and training provided as the UNSC is a body with immense potential for change on the ground. During the second cycle of UPR many reform suggestions should be taken. The assessment on the starting question "*tangible changes or business as usual*" has both been answered in the affirmative. Good proposals which emerged during the review process, simply should be followed and tentatively implemented; such as developing triggers, shifting the HRC approach towards preventive measures, converting the commissions of inquiry or fact-finding missions into a stand by procedure. The Council already diversified its instruments for analysing and evaluating country situations supplementing the standards with »urgent debates«, OHCHR country reports to be debated at the next Council session, or to deploy ad hoc fact-finding missions. There are panel discussions on all topics which allow a discussion and sometimes an assessment of situations from a rather expert viewpoint.

In particular the emancipation of African states with regard to regional and interest groups, as well as the radical change in North Africa and the Middle East are promising signs which engender hopes that informal changes will have lasting effects and overcome HRC's mode of clinging to the imperfect.

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