



**Dialogue** on  
**Globalization**

**CONFERENCE REPORT**  
**FES GENEVA**

# The 8<sup>th</sup> Session of the UN Human Rights Council

Geneva, 2-18 June 2008

*FELIX KIRCHMEIER / MARIYA STOYANOVA*

The 8<sup>th</sup> session of the UN Human Rights Council (HRC) was held in Geneva from 2-18 June 2008. In this session, reports of Special Procedure mandate holders were heard, some mandates reviewed and previous issues and Special Sessions followed up. With those activities, whose substantive and political content will be presented in this report, the HRC continued on its practice following the resolution on institution building on the one hand and the need to pursue its substantive work on the other. But this session also consolidated emerging practices and a new function that will be with the HRC for the time to come: it continued the inclusion of panel sessions within the regular Council session, this time with one panel on violence against women and one panel on maternal mortality and it started taking up and adopting the first 32 outcomes of its Working Group on the Universal Periodic Review (UPR).

## Introduction

By completing the first two rounds of UPR, the Council could finally start into a more integrative phase, as it is from now on addressing all UN member states in this universal manner. Yet, the political mood of the session remained overshadowed by a number of issues, among them the leave of the current High Commissioner for Human Rights, Louise Arbour, which was by some taken as a sign of frustration as the Office of the High Commissioner (OHCHR) is experiencing actions of a part of the Council targeted to get a firm hold on the management and concrete work of this institution. Yet, there was no allusion of this in the statement by the High Commissioner (see below). Important political dispute arose around civil society involvement during the adoption of the UPR outcomes due to what could be considered as poor understanding of the institution building resolution (5/1) of the HRC by a group of countries.

On the other hand, political unity was displayed (despite continuing critical voices) around the much awaited Optional Protocol (OP) on the International Covenant on Economic, Social and Cultural Rights. This OP will contribute to bring ESC rights on a par with civil and political rights, installing for the first time a complaints mechanism for economic, social and cultural rights. At this session, the OP passed another step towards its realization: the HRC adopted the text without a vote and recommended it to the General Assembly for adoption and immediate opening for signatures.

## Update by the High Commissioner – Item 2

Starting her last update to the HRC, Louise Arbour expressed her gratitude to all members of the HRC. The prominent points of her ensuing statement related to the reform of the human rights machinery where she saw great progress e.g. through the new UPR process and the con-

structive linkages with treaty bodies and special procedures. She encouraged the Council to further strengthen the special procedures system, creating mandates wherever protection gaps are identified. She also commended the norm setting work of the HRC in regard to the Conventions on enforced disappearance, persons with disabilities and indigenous peoples as well as the link established between the Right to Development and the Millennium Development Goals, in which she saw great potential for the mainstreaming of this right.

Among issues of concern she addressed the lack of individual voices in the HRC, which were all too often subsumed in group statements, leading to a lack of clarity in some issues. Subjects that needed more attention by the UN human rights system included according to her the inequalities within and among states, and all kinds of discrimination. Violence against women and girls would have to be fought in its egregious cases, but also in the far more widespread “lower intensity” discriminatory practices. The same was to be considered for minorities and vulnerable groups.

Ms. Arbour also announced an expert seminar which will be organized by OHCHR on the tension between freedom of expression and incitement to hatred. The seminar shall explore admissible limits to freedom of expression while providing guidance on how to ensure the fullest respect for freedom of expression. This is of particular importance, given the debates that had surfaced in the previous HRC session, which culminated in a severe attack by a group of states on the mandate and indeed whole concept of freedom of expression.

Turning to country specific updates, Ms. Arbour criticized the xenophobic attacks in South Africa and intolerant attitudes and policies against migrants in Europe, notably Italy. She also called for sustained efforts in Somalia and Kenya

where OHCHR will soon deploy a mission to. Speaking on the responses to the natural disaster in China and Burma/Myanmar, she highlighted how long-standing international tolerance of human rights violations could lead to catastrophic results for victims who consequently cannot be reached by necessary international aid.

### **Reports and Review, Rationalization and Improvement of Mandates (RRI) – Item 3**

During its 8<sup>th</sup> session, 6 Special Procedures (SP) reported to the Human Rights Council: Mr. Walter Kälin, Representative of the Secretary General on the human rights of internally displaced persons (IDPs), who spoke about the protection needs of IDPs in disaster-affected areas; Mr. Leandro Despouy, Special Rapporteur (SR) on the independence of judges and lawyers, who spoke about his work to promote the right to fair trial and referred to his latest visits to the Democratic Republic of Congo (DRC), the Russian Federation, Fiji, and the Maldives; SR Mr. Vernon Muñoz Villalobos, who advocated the right to education in emergency situations (and related donor responsibility) and referred to his visits to Morocco, Malaysia and Bosnia and Herzegovina; and Ms. María Magdalena Sepúlveda, Independent Expert on the question of human rights and extreme poverty, who spoke about the work of her predecessor and the evolution of the mandate; Mr. Philip Alston, SR on extrajudicial killings; and Mr. John Ruggie, Special Representative of the Secretary-General on business and human rights.

The extension of the mandate of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises required intense debates. In the previous three years, John Ruggie, the current mandate holder, had managed to calm the political tensions on this issue which had culminated in the dismissal of the UN draft norms in 2005, yet the topic remains very controversial among states and certainly NGOs. Reacting to his latest report, delivered at this HRC session entitled *Protect, Respect and Remedy: a Framework for Business and Human Rights* (accompanied by an additional report on *Clarifying the Concepts of "Sphere of influence" and "Complicity"*) many delegations commended his academic approach to the issue while others called for more tangible results for the victims and a more targeted approach towards a legally binding international mechanism to monitor the (in-)actions of especially transnational corporations. Finally, the mandate was extended for another three years, embracing his suggestions

for the way ahead while strengthening its monitoring aspect.

As a follow-up to the report of John Ruggie, FES brought together NGO representatives and trade unionists in a strategy meeting. Against the background of the renewal of Mr. Ruggie's mandate, the participants discussed how civil society actors could strengthen the linkages between the work the ILO does on this matter and the Human Rights Council's approach. The issue remains problematic because of the danger of weakening existing ILO norms while opening up the scope to broader human rights concerns which are not covered by the ILO. (A full report of this meeting is available on our webpage.)

Mr. Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions, who is among the SPs whose mandate tenure fell under attack during the 8<sup>th</sup> session (see below), reported on his latest visits to the Philippines, Brazil, the Central African Republic and Afghanistan. In the case of Afghanistan, he voiced concern for the great number of civilians that fall victims during international peace-keeping operations and his disagreement with NATO on the subject. Based on his observations during country visits, Mr. Alston also recommended that the Council appointed a new special rapporteur to monitor the human rights situation of detainees. In the ensuing dialogue several states made comments, Indonesia and India among others, objecting to their inclusion in a list of states which have been pointed out by the SR as "States in which serious concerns over extrajudicial executions have been identified... [but] refuse to respond to requests to visit but the Special Rapporteur" in his report. During these statements, specific references were made to the Code of Conduct for SPs and later resurfaced during the informal discussions on the review of his mandate.

The Council also reviewed and extended the mandate of 8 thematic Special Procedures in this session, namely those dealing with judges and lawyers, torture, summary executions, migrants, human rights and transnational corporations, extreme poverty, trafficking, and the right to education. It became obvious already during the informal discussions by sponsor states that some states sought to undermine the credibility of certain mandate holders and through that possibly the independence of the special procedures system as a whole. Certain states, notably Singapore, India, and the Russian Federation, interrupted informal discussions on the mandate of the SR on extrajudicial executions to clarify that extending the mandate did not automatically ex-

tend its tenure by the current mandate-holder. NGOs evaluate this as a move by those states to create an avenue for dismissing certain “uncomfortable” mandate holders, and thus admonishing the rest, as a resolution demanding that “All mandate holders, on completion of their first term of three years, would require reappointment for the second term” was tabled by the Russian Federation and India a day before the end of the present session.

Following intense negotiations behind the scenes, the resolution was eventually dropped in exchange for a Presidential Statement<sup>1</sup> demanding that the President convey to the Council information communicated by states “concerning cases of persistent non compliance by a mandate-holder with the provisions of the HRC resolution 5/2, especially prior to the renewal of mandate-holders in office”. This Statement in effect operationalizes the Code of Conduct (worded in Resolution 5/2) which, as previously noted, has “the potential to be intrusive to their work [of the Special Procedures] and to be misused by States”<sup>2</sup>, as a mechanism for replacing mandate-holders following their first mandate (contrary to the established practice of keeping the same mandate holder). Furthermore, the Statement contains two important elements: 1) it allows any state (as opposed to HRC members only) to raise an objection to a particular mandate holder; and 2) an objection can potentially be raised at any time (as opposed to only at the end of the 1<sup>st</sup> mandate). This new provision, which essentially leaves SP mandate holders vulnerable to the whims of states, was already utilized (on the same day of its adoption) by Jordan, which announced their intention to submit information relating to the “non-compliance” of the current Special Rapporteur on torture (Prof. Manfred Nowak) with provisions in the Code of Conduct. For reference, Mr. Nowak visited Jordan in 2006 and referred to this visit in his last report to exemplify an occasion on which the practice of prolonged detention can amass to ill-treatment (women detained for their “protection” for up to 14 years because they are at risk of becoming victims of honour crimes”). By targeting some of the arguably most outspoken SP

mandate holders<sup>3</sup>, elected members of the Council send out a clear message to all SPs, effectively undermining their capacity to remain objective and independent. The outcome of Jordan’s intervention remains unclear as of now, however, as one NGO has pointed out, such complaints “must be substantiated by reference to the specific articles of the Code of Conduct that have allegedly been breached”<sup>4</sup>. Finally, under Item 3, the Council also heard an update by Olivier de Schutter, SR on the right to food, as follow-up to the Special Session on the worsening of the world food crisis, being the first special session on a thematic issue that the Council convened on 22 May 2008. His report centered on his attendance of the Rome high-level world conference on food security, where he had advocated the inclusion of a third, human rights dimension in the final Declaration adopted by the conference.

### **UPR – Adoption of the Outcomes, Item 6**

The first two sessions of the UPR Working Group (WG), held earlier this year, found their conclusion in the adoption of the outcomes by the plenary of the HRC. For the most, one hour was allocated to adopt the outcome on each of the 32 countries, and there was a clear intention not to re-open the debates which took place in the WG, but rather to give general (usually utterly positive) statements before moving to adopt the outcomes in form of decisions without a vote. Procedure-wise, the first day of this one-week exercise was needed to sound the political possibilities. At the consideration of the report on Bahrain, delegations were testing their leverage through points of order on a NGO statement that was considered by some (notably Egypt and Pakistan) as being out of order. The NGO delegate had addressed the human rights situation in the country and stated that not enough attention was given by the UPR report to the violations persisting in the country and to their underlying factors such as the current political system. Notwithstanding any evaluation of his statement, the NGO speaker had made use of the possibility to “make general comments before the adoption of the outcome by the plenary” as granted in resolution 5/1, para. 31. His right to do so was contested by delegations who pointed out that only statements on the procedure of the UPR should be allowed. Western

---

<sup>1</sup> Presidential Statement – 18/06/2008. Terms in office of Special procedure mandate-holders.

<sup>2</sup> Meghna Abraham. *Building the New Human Rights Council. Outcome and Analysis of the Institution-Building Year*. FES Dialogue on Globalizations, Occasional Papers No 33/August 2007.

---

<sup>3</sup> Both Philip Alston and Manfred Nowak are university professors and renowned human rights experts.

<sup>4</sup> Amnesty International, oral statement delivered on 18 June 2008.

states defended the NGO, reiterating that this was the only point in time during the UPR process where NGOs had the right to speak and therefore should be allowed to speak on any issue, relating to the UPR report. Germany defended the speaker, reminding the HRC that the topic of the debate was a human rights document and not "a weather forecast" and therefore human rights had to surface in the statement. The issue arose again several times through the week in a similar manner.

This move to delimit NGO participation in the UPR process also showed the necessity for and timeliness of the parallel event on lessons learned on civil society involvement in the UPR process which was organized by FES and CONGO at the end of the UPR week. (A separate report on the event and its conclusions for civil society strategies is available on our webpage.)

The mechanism itself and formalities and scope of the UPR will at this point not be elaborated any further, as this is done in depth in the publication by Theodor Rathgeber which is available on our webpage as well.

#### **Country-Specific Issues – Item 4, 7 and 10**

A number of country issues were brought up under Item 4 – Human rights situations that require the Council's attention - by the European Union acting as a political block: Belarus, China (with regard to Tibet), DPRK, Kenya, Myanmar, Somalia, Sri Lanka, Sudan, and Zimbabwe. These were also the most recurrent issues recalled in the statements of individual countries (predominantly WEOG) that followed. Germany focused in its statement on Zimbabwe as a country of particular concern. A slightly different set was prominent in NGO statements that followed under the same item: Afghanistan, Bangladesh, India, Iran, Pakistan, Sri Lanka, South Africa, Tibet, USA, Zimbabwe. Under Item 4, the Council also addressed the human rights situation in Myanmar as follow-up to its Special Session on the same (2 October 2007) and engaged in a discussion with Mr. Tomas Ojea Quintana, the new Special Rapporteur on the situation of human rights in Myanmar. A resolution condemning human rights violations in Myanmar and urging the state to cooperate with humanitarian organizations as promised during the UN Secretary-General's visit to Myanmar was subsequently adopted by the Council.

In their discussion of the Human rights situation in Palestine and other occupied Arab territories, the Council heard Ms. Louise Arbour, the outgoing HC, whose report reflected concerns over

violations from both sides of the conflict; and Mr. Richard Falk, the new SR, who suggested that his mandate was extended to monitor also abuses committed by the Palestinian side of the conflict. Several states, including Slovenia, speaking on behalf of the EU, expressed their support for the latter suggestion but no concrete action was taken in the course of the 8<sup>th</sup> session. Under Item 10 (technical cooperation) the Council also reviewed the situation of Haiti in a general debate with Mr. Louis Joinet, the outgoing IE, who stressed the importance of addressing the lack of a culture of political parties in this country.

#### **Panels**

In its Panel organized as follow-up to the Secretary-General's study<sup>5</sup> on violence against women (VAW), the Council focused on the question of integrating the issue into its full agenda (as commended by a General Assembly resolution) and on how to best contribute to the implementation of the report. Some of the most pertinent recommendations generated by the Panel were presented by Ms. Alejandra Sardá<sup>6</sup>, who suggested that a focal point on VOW, consisting of between 3 to 10 states is created by the Council; and that within the framework of the UPR states focus on the sharing of good practices and concrete action-oriented recommendations (avoiding repetition with the recommendations of other states). A point of order was raised by Egypt, criticizing the organizers (Chile and Jordan) with regard to the absence of Arab, African or Islamic experts among the panelists. Regrettably the panel also did not benefit from the participation of the Council's own Special Rapporteur on VOW who could have made valuable contribution to the discussion, given her close professional relationship with the Council.

In its second Panel on maternal mortality (MM) and human rights, the Council set out to discuss how to integrate the issue into its agenda, how to most effectively address MM through its various mechanisms and institutions, and how to best complement the work of other UN bodies. This Panel benefited from a better cultural and institutional (UNFPA & WHO) representation (as compared to the preceding panel on VAW), including Mr. Paul Hunt, the Special Rapporteur

<sup>5</sup> Ending Violence Against Women. From Words to Action. Study of the Secretary-General. United Nations, 2006.

<sup>6</sup> Member of Network Latin American and Caribbean Committee for the Defence of Women's Rights (CLADEM)

on the right to health, who pleaded with the Council for the creation of a “mechanism of independent, robust, accessible, transparent, effective, international accountability”. Guided by its moderator Mr. Francis Songane<sup>7</sup>, the Panel identified the following priorities: the recognition of MM as a human rights issue; the commitment to greater political will; the need for mainstreaming MM throughout the international system; the need to ensure accountability at both national and international level; the need to generate disaggregated data; the need for audits or reviews at the national level; a UPR that routinely encompasses MM, relevant SPs and treaty bodies that examine the issue, the creation of a simple accountability mechanism and enhanced international cooperation at the international level; and integrating MM into the HRC Agenda.

In addition to these, the Council engaged in two special events to mark the entry into force of the Convention on the Rights of Persons with Disabilities and the development of the Draft UN Guidelines for the Appropriate Use and Conditions of Alternative Care, which were also in the form of panel discussions. There was no formal follow-up decision by the Council following from the 4 panels during this 8<sup>th</sup> session.

### Other Issues – Items 1, 8 and 9

Several political blocks pursued their agenda during the discussion under Item 8, Follow-up and Implementation of the Vienna Declaration and Programme of Action (VDPA): the Organization of the Islamic Conference (OIC) advocated relativism and the acknowledgement of cultural diversity in dealing with human rights and announced their intention to develop further the notion of “religious defamation”; the group of Latin America and the Caribbean (GRULAC) spoke about their concerns with regard to repressive measures affecting the rights of migrants all over the world; and the European Union (EU) reaffirmed the universality of human rights and lamented the lack of ratification for all core human rights treaties<sup>8</sup>. Sparked by an NGO statement, the discussion turned into a heated debate over whether the Council was “ready” to discuss the notion of religion and symbols (on this occasion the Sharia law and controversial

practices such as stoning and female genital mutilation) in the context of human rights. Unable to go beyond this debate, the Council nevertheless permitted the speaker to continue (albeit several interruptions) provided that the statement refrained from making an evaluation of any set of legislation (i.e. Sharia), which was not the issue of this debate. Hinting to the overheated nature of the debate, the German delegate asked the President whether, given this question of mentioning religions and symbols, it was appropriate for Egypt to remark: “Islam will not be crucified in this Council!” Consequently, the President suspended the meeting for a few minutes to allow for calming stormy waters.

Under Item 9, Follow-up and Implementation on the Durban Declaration and Programme of Action, the Council heard a progress report by the Preparatory Committee (also known as PrepCom) of the Durban Review Conference, which will be titled “United Against Racism: Dignity and Justice for All” and will take place on 20-24 April 2009 in Geneva. The report also touched upon the modalities for NGO participation, identifying three groups, and with this a broader participation than at ordinary UN meetings: 1) NGOs with ECOSOC consultative status; 2) other NGOs who contributed to the Durban Conference in 2001; and 3) other NGOs who succeed in obtaining the permission of the PrepCom.

During this session a set of 7 new SP mandate-holders were appointed (Item 1): Mr. Frank William La Rue Lewy (freedom of expression), Mr. Anand Grover (right to health), Mr. Githu Muigai (contemporary forms of racism), Ms. Joy Ngozi Ezeilo Emekekwe (trafficking in persons), Ms. Maya Sahli (African descent), Ms. Shaheen Sardar Ali (arbitrary detention), and Mr. Michael Forst (human rights in Haiti). What might be a simple exercise did not go without complications as just before the official appointment, Egypt requested for a suspension of the meeting. In an explanation that came when the session was resumed, Guatemala accused the Council of having become as politicized as the former Commission since, after changing the nominee for the SR on the freedom of expression, a number of states inquired about his political and religious affiliation.

In addition to the new SP mandate-holders, the 5 new members of the Expert Mechanism on the rights of indigenous peoples (Ms. Catherine Odimba Kombe, Mr. Josè Mencia Molintas, Ms. Jannie Lasimbang, Mr. Josè Carlos Morales, and Mr. John Henrikson) and the Chairperson of the Forum on minority issues – Ms. Viktoria Mohasci,

<sup>7</sup> Secretariat for the Partnership for Maternal, Newborn and Child Health and Former Minister of Health of Mozambique

<sup>8</sup> Yet, non of the EU Member States have ratified the International Convention on the Rights of all Migrant Workers and their Families.

Member of the European Parliament and a well-known advocate of Roma rights – were appointed. Finally, the day following the official end of the 8<sup>th</sup> session, the Council welcomed Mr. Martin Ihoeghian Uhomobhi of Nigeria who will preside over its work for the next yearly cycle.

### Conclusion

Like in previous sessions, the Council, while having found into its mechanisms, continues to be a forum for political struggles that do not relate exclusively to different evaluations of human rights situations and issues. Whereas it has to be acknowledged that standard procedures, like the renewal of mandates or the appointment of mandate holders went relatively smooth, the UPR plenary week, being a first of its kind, made for a considerable amount of procedural entanglements. Maybe it was against this backdrop that a NGO speaker later asked the newly elected HRC president to make sure his team would be well prepared to decide procedural battles on the firm basis of the institution building package. Political cleavages also continue along the independence of Special Procedure mandate holders. Incidentally, states that try to diminish the role of NGOs continue their hostile positions on SPs, including announcements to use the Code of Conduct, adopted in resolution 5/2, in the politically motivated way that was feared by NGOs and some national delegations earlier.

For the HRC and UPR sessions to come, a conclusion for NGOs might be to harness them-

selves even better in terms of using procedural rules, politically proofreading their statements in anticipation of possible challenges by states. A priority for NGOs should also be what was pointed out by the outgoing High Commissioner: to keep defending the independence of the OHCHR and the rather independent procedures of the HRC itself. Without active engagement for their status, the political grip by the Council will become stronger, slowing down and hampering the progressive work done by those institutions.

Regarding the UPR, NGOs will have to stress the national importance of the process, using it as an additional tool for national campaigning. Positive examples have been set by NGOs and National Human Rights Institutions how to transport the Geneva process back into the country concerned (see separate report on UPR side event). Such practices should be strengthened, also to create a better transparency for national civil societies to inform them about the positions their governments are defending on the international level.

For FES, it will remain important to strengthen civil society involvement from all geographical regions in the UPR process and HRC sessions. Encouraging movements of civil society actors are too often neglected by national delegations, whose human rights work is conducted as “business as usual” and only a further way to fend off anything that is perceived as foreign interference in domestic matters.

### *About the authors:*

*Felix Kirchmeier is Program Officer for Human Rights at the Geneva Office of the Friedrich-Ebert-Foundation since 2006. In this capacity he published a number of reports and papers relating to the HRC and human rights topics. Felix holds a master's degree in political science from the University of Freiburg / Germany.*

*Mariya Stoyanova holds BA in history from the International University Bremen and a master's degree in human rights from the University of Sarajevo and the University of Bologna. She has been attending the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> session of the Human Rights Council as an NGO observer.*

More information is available on  
[www.fes.de/globalization](http://www.fes.de/globalization)

---

The views expressed in this publication are not necessarily the ones of the Friedrich-Ebert-Stiftung or of the organization for which the authors work.

Friedrich-Ebert-Stiftung  
Hiroshimastrasse 17  
10785 Berlin  
Germany  
Tel.: ++49-30-26-935-914  
Fax: ++49-30-26-935-959  
Roswitha.Kiewitt@fes.de  
[www.fes.de/globalization](http://www.fes.de/globalization)

Friedrich-Ebert-Stiftung, Genf  
6 bis, Chemin du Point-du-Jour  
1202 Geneva  
Switzerland  
Tel. 0041 22 733 3450  
Fax: 0041 22 733 3545  
E-mail: [fes.geneva@econophone.ch](mailto:fes.geneva@econophone.ch)  
<http://www.fes.de/globalization>