

COUNCIL MONITOR

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Overview

The Human Rights Council (the Council) will hold its 7th session from 3 to 28 March 2008. It will be the main session in the Council's second cycle, and with its duration of 4 weeks, it is closest in format to the annual 6-week sessions of the former Commission on Human Rights (the Commission). A draft programme of work has been distributed and is available on the Council's website.¹

Expectations for the 7th session are high. As with all previous sessions of the Council, it will have to continue the implementation of the institution-building package adopted in June 2007. At the same time, it is also commonly felt that the time is ripe that the Council focus more on substantive issues, which have been neglected in its first cycle.²

The Council held an organisational meeting on 18 February 2008 to discuss the upcoming session. President Ambassador Doru Romulus Costea of Romania illustrated a number of aspects of the programme of work, which was followed by comments by member States and observers including non-governmental organisations (NGOs).

¹ See <http://www2.ohchr.org/english/bodies/hrcouncil/7session/index.htm> for the programme of work and other documents related to the 7th session.

² For an overview of the Council's work in the 2006 and 2007 see *International Service for Human Rights, Human Rights Monitor 2006 and Human Rights Monitor 2007* (forthcoming), available at www.ishr.ch.

Programme of work

President Costea explained that the high-level segment scheduled for 3 to 5 March 2008 would be opened in the presence of the Secretary-General, Mr Ban Ki-moon and the High Commissioner for Human Rights (the High Commissioner), Ms Louise Arbour. Revealing tensions observed during earlier sessions, Egypt (on behalf of the African Group) felt that the address of the High Commissioner at the opening of the high-level segment was not needed, as the address by the Secretary-General would be sufficient. The speakers-list for the high-level segment contained 72 dignitaries (as of 18 February 2008) and would remain open until 25 February 2008. After the high-level segment, a general segment will allow other delegations including representatives of the International Coordinating Committee (ICC) of national human rights institutions (NHRIs) and four representatives of civil society to deliver statements.

The remainder of the programme of work is structured around the Council's agenda contained in the institution-building text.³

- Under agenda Item 3, promotion and protection of all human rights, 17 interactive dialogues with thematic special procedures are planned.
- Under Item 4, human rights situations that require the Council's attention, three special procedures reports will be discussed (the Sudan, the Democratic Peoples Republic of Korea, Myanmar) and the Council will consider follow-up to previous special sessions.
- Under Item 5, the Council will hear the report of the Working Group on Communications in a closed meeting.
- Under Item 6, universal periodic review, no session planned (see below).
- Under Item 7, human rights situation in Palestine and other occupied Arab territories, the Council will hear a report by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Mr John Dugard and consider follow-up to previous special sessions.
- Under Item 8, no reports are tabled. The Council will only hold a general debate.
- Under Item 9, reports of the Special Rapporteur on contemporary forms of racism and of the Working Group on African descent will be presented. The Council will also consider reports by the Working Group on follow-up to the Durban conference and of the Ad-hoc Committee on Contemporary Standards.
- Under Item 10, interactive dialogues with the special procedures on the Democratic Republic of the Congo (DRC), Cambodia, Somalia and Liberia will be held. It will also consider an oral report of the Voluntary Fund for Technical Cooperation in the Field of Human Rights (VFTC).

All agenda items will be considered, and a general debate is scheduled under each of them. During previous sessions, the segments of general debate proved to be useful opportunities for members and observers, including NHRIs and NGOs, to bring to the Council's attention a variety of issues. Related to the implementation of the institution-building text, the Council will conduct the review, rationalisation and improvement of 17 special procedures mandates.

Two special panel events are planned during the session. One will be held on 'human rights voluntary goals', an initiative sponsored by Brazil.⁴ President Costea suggested that the panel would be composed of one or two representatives from each geographical region. The second panel event will be dedicated to an 'intercultural dialogue on human rights.' It is the result of an initiative by the President, and aims at 'acquiring more knowledge and a better understanding of the ways in which the universal character of human rights is

³ See <http://www2.ohchr.org/english/bodies/hrcouncil/7session/agenda.htm>.

⁴ Human Rights Council *Resolution 6/26*.

perceived in various cultural environments’. According to the President, no decision should be taken following that panel, but the moderator will distil the outcome into a statement. More information on both panels will become available at a later stage.

Dialogue with the High Commissioner

In the relatively short existence of the Council, the practice has been that the High Commissioner presents her annual report during the main session. During sessions other than the main session, the High Commissioner usually delivers an update on her activities followed by comments from members and observers. Since the 7th session is the main session of the second cycle, a full day is scheduled for an actual interactive dialogue.

According to the programme of work, the interactive dialogue should focus on the High Commissioner’s annual report and on other reports produced by her office. However, during the organisational meeting, a number of States demanded that the President schedule time on the programme to discuss the ‘institutional relationship between the Office of the High Commissioner for Human Rights (OHCHR) and the Council.’⁵ In particular, some States claimed that the Council should have a more pronounced role in commenting on and contributing to the strategic direction of OHCHR through substantially influencing the elaboration of the High Commissioner’s *Strategic Management Plan* (SMP).⁶ Others strongly felt that the SMP should remain an internal document.⁷ Switzerland highlighted that whereas the High Commissioner had had the courtesy of sharing the document in a transparent way, there was no need for it to be approved by the Council. In a strong statement, the Ambassador of Switzerland went on to urge the Council to recognise the autonomy of OHCHR and acknowledge that it was not the ‘executive council’ of OHCHR.

Implementation of the institution-building text

Review of mandates

A significant portion of the programme of work is reserved for the implementation of the institution-building text, *Resolution 5/1* of 18 June 2008.⁸ In particular, the Council will continue the review, rationalisation and improvement of special procedures mandates it has inherited from the Commission on Human Rights. Currently, three days are set aside for this process that is often referred to as ‘RRI’.

During earlier sessions, the Council has had some difficulty in agreeing on the right procedure for these reviews. In a learning-by-doing approach during the 6th session (September and December 2007), the Council seems to have settled on modalities for the review. The main sponsor of the original resolution creating a particular mandate has the primary responsibility for the process. The State will usually introduce the mandate, and also hold consultations on a draft resolution aiming at the renewal of that mandate. The current mandate holder would have an opportunity to address the Council, commenting on what he or she thinks are the merits of the mandate. This is then followed by an interactive dialogue, in which members and observers

⁵ Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC), Algeria.

⁶ Algeria. The High Commissioner had presented the SMP for the biennium 2008-2009 in mid-January to States and NGOs. The SMP is available at <http://www.ohchr.org/Documents/Press/SMP2008-2009.pdf>.

⁷ Switzerland, Slovenia (on behalf of the EU).

⁸ The institution-building process as such came to a formal conclusion during the 5th session on 18 June 2007, when the Council adopted *Resolution 5/1*, the fruit of most the work done in the first year. The ‘institution-building text’ laid down the modalities for the UPR and for the continued review of special procedures. It also established a complaint procedure and a new Human Rights Council Advisory Committee (the Advisory Committee). Finally, the Council managed to settle on its own rules of procedure, and, more importantly, on a real agenda and programme of work. The institution-building text is also referred to as ‘institution-building package’, or *Resolution 5/1*. It is available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc. On the beginning of its implementation, see for example ISHR’s report on the first part of the 6th session of the Council, available at www.ishr.ch.

including NGOs can comment on the mandate. Replies by the mandate holder and the sponsoring delegation conclude the ‘RRI’ in the plenary. Past practice has shown that informal consultations and negotiations outside the plenary then continue to finalise the draft resolution. The interactive dialogue on the renewal of mandates usually has little influence on the text of the final resolution, but it does somewhat serve to forecast the direction in which the consultations are likely to go.

Selection of special procedures mandate holders

Towards the end of the 7th session, the Council will fill a number of vacancies of special procedures mandate holders.⁹ According to the compromise process for the selection of mandate holders established by *Resolution 5/1*, all stakeholders can submit suitable candidates to OHCHR for inclusion on the public list. From that public list, a consultative group composed of representative from each of the five regional groups of the Council, mandated to act in their personal capacity select candidates and present a short-list to the President of the Council.¹⁰ For most of the vacancies, the consultative group suggested several names, from which the President, after broad consultations with States and NGOs will select and appoint one mandate holder for each vacancy.

At this point, it is difficult to predict how the public part of this appointment process, scheduled for the morning of 25 March 2008 will be carried out. According to the institution-building text, the appointments by the President have to be ‘approved’ by the Council.

During the organisational meeting of 18 February 2008, Amnesty International expressed deep concern about the process the consultative group had followed to draw up the short list for the President. The institution-building text requires that the recommendations by the consultative group be public and substantiated.¹¹ However, the list presented to the President by the group merely contains names for each vacancy. The lack of substantiation, Amnesty International claimed, calls into question whether the general criteria of expertise, experience, independence and impartiality were taken into account in the selection. In addition, the fact that for some vacancies only one name was proposed, represents an ‘attempt to usurp [the President’s] functions by limiting [his] choice of candidates’. The Ambassador of Algeria, who is a member of the consultative group, responded by calling Amnesty International’s view a ‘gross misinterpretation of what the consultative group has been doing.’

The appointment process for two of the vacancies is still unclear. The Special Representative of the Secretary-General on human rights defenders and the Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia have both come to the end of their terms and need to be replaced by new mandate holders. In the past, the Secretary-General himself has appointed both of these mandate holders. However, although the consultative group has only a mandate to propose a short-list to the President, it has proposed candidates also for these two mandates. At present, it is unclear what will happen to that list and what the appointment process may be for these mandates.

Election of member of the Advisory Committee

The Council will also have to elect members of the newly established Human Rights Council Advisory Committee. President Costea announced that regardless of the number of candidates, the Council would hold a secret ballot (even if a clean slate should be proposed by any of the regional groups). This raised some

⁹ *Resolution 5/1* introduced term limits for special procedures mandate holders (two times three years). Currently, 14 mandate holders have exceeded their terms, one Special Rapporteur mandate was created in December 2007, and one mandate holder has resigned. A list of vacancies is published on the OHCHR extranet. The OHCHR extranet can be accessed (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

¹⁰ Available on the OHCHR extranet.

¹¹ Paragraph 50 of *Resolution 5/1*.

opposition by States who claimed that the elections should be done by acclamation.¹² The Secretariat justified the President's proposal with reference to elections to the Human Rights Council itself, which are not done by acclamation either. The issue was left pending and will be decided at a later stage.

Universal periodic review

The universal periodic review (UPR) was not discussed at length during the organisational meeting and the upcoming session does not provide space for discussion of issue related to this new mechanism. Despite this, the President gave a short update at the organisational meeting. He explained that the consultations on the selection of the 'troikas' were nearing consensus.

The UPR is expected to be one of the main achievements of the Council over the Commission. However, its start seems fraught with difficulties. One example of this is the late selection of the 'troikas', groups of three rapporteurs selected from among different regional groups. The troikas are tasked with facilitating the review for each State.¹³ Since the members of the troika have to prepare for the review of the State to which they have been assigned, it would seem important that the selection of troikas is done as soon as possible. During the organisational meeting, Pakistan (on behalf of the OIC) asked that it be a confidential process.

It is expected that this will take place before the start of the 7th session, but at the time of writing no further information on this is available.

¹² Pakistan (on behalf of the OIC) claimed that only elections to the Security Council and the General Assembly were held even if there was only one candidate per seat. For the Human Rights Council as a subsidiary body, acclamation should be the proper procedure in such a case. Supported by China.

¹³ The exact role and functions of the troikas is disputed, with many States arguing that this means that the selection of the troikas has to be delayed pending clarification of their role.

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