
CHAIR'S SUMMARY OF THE SEMINAR ON THE UN HUMAN RIGHTS COUNCIL

Lausanne, Switzerland, 15 May 2006

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INTRODUCTORY COMMENTS

On 15 May 2006, the Swiss Federal Department of Foreign Affairs (DFA) held its third "Seminar on the UN Human Rights Council" in Lausanne. Chaired by Ambassador Thomas Greminger, head of DFA Political Affairs Division IV, Human Security, the seminar brought together representatives of the Permanent Missions to the United Nations in Geneva and of their capitals, representatives of the Office of the UN High Commissioner for Human Rights, and human rights experts. More than 350 participants from nearly 140 countries attended the seminar. The Deputy High Commissioner for Human Rights, Mrs Mehr Khan Williams, addressed the participants at the opening of the seminar and identified those important questions on which decisions should be made in the near future. Federal Councillor Micheline Calmy-Rey, head of the DFA, addressed the meeting in the afternoon, recalling the importance of giving a new start to the Council, the excellent working basis provided by resolution 60/251 to achieve this objective, and the special responsibility incumbent on the delegations in Geneva to the creation of this new institution.

The aim of the seminar was to provide a platform for informal, substantive and cross-regional discussions on the remaining open questions concerning the Council, in particular its agenda and its working programme. The discussions were open and constructive. The seminar programme is enclosed.

SESSION I: CONTRIBUTIONS OF THE EXPERTS

Four experts were invited to address important open questions concerning the Council.

Nick Howen presented his thoughts on the architecture of the Council, in particular concerning the Presidency, the Bureau, and the roles of a subsidiary body of the Council, of a complaint procedure, and of the experts within this new body.

Ibrahim Salama commented on the review of the mandates, dwelling in particular on the role that a subsidiary body of the Council could play.

Walter Kaelin studied those paragraphs of resolution 60/251 concerning the treatment of human rights situations in specific countries, the mandates to address these situations, and the Council's room for manoeuvre on such questions.

Finally, reflecting on the international obligations of the States, Andrew Clapham presented four models for the universal periodic review mechanism which would take into account existing protection mechanisms.

The written contributions of these experts can be found in the annexe.

SESSION II: SUMMARY OF THE TEN WORKSHOPS

In order to launch and facilitate the workshop discussion, Wolfgang A. Bruehlhart, head of the DFA Human Rights Council Task Force, presented the Swiss non paper entitled: "General Outline of a Programme of Work of the Human Rights Council" (in the annexe), together with the five questions set out below.

1. What are the most important questions to address during the Council's first year?

The majority of the seminar participants agreed that the first year of the Council would be a transition year, and that emphasis should be given to the following priority questions :

- universal periodic review mechanism (OP 5e)
- review of mandates etc. (OP 6)
- rules of procedure
- roles of the President, the Bureau, civil society and the national HR institutions
- role of a subsidiary body of the Council

The seminar was also reminded of the importance of maintaining, during the first year, a balance between procedural and substantive questions (including the reports of the High Commissioner and of the special procedures).

Concerning the first session of the Council, the majority of participants also agreed that:

- provisionally to reconduct for one year all mandates inherited from the UN Commission on Human Rights in order to allow enough time to ensure their review;
- deal with the reports of the five working group (indigenous peoples; enforced disappearances; economic, social and cultural rights; right to development; implementation of Durban);
- define a formula for the High-Level Segment.

2. The Council will convene periodically. Which agenda items must appear at each session?

The idea was discussed of the High Commissioner presenting a report at the beginning of each session and, as a result, of a frequent dialogue between the Council and the High Commissioner, which would give greater visibility to the work of the Office of the High Commissioner for Human Rights. The idea was articulated of producing a formal report once a year and of holding informal dialogues (thematic or about situations) during the other sessions.

The idea of an interactive dialogue at each session with the special procedures was well received, with the provision to meet certain criteria and of ensuring a certain predictability of discussion subjects, in particular for the sake of small delegations and NGOs.

3. One important issue of the work programme for the Council's first year is the development of the modalities of the universal periodic review mechanism and the review of the mandates (OP 5e and 6). What is the best way to proceed and when should decisions be made?

The majority of the participants acknowledge the importance of addressing these two questions in the near future. The idea of creating two informal consultation procedures or working groups that will help with the preparation of decisions on the universal periodic review mechanism and the review of mandates by the beginning of 2007 was generally well received.

The question of the universal periodic review mechanism has provoked many reactions, questions and comments. The opportunity, given by OP 9 of res. 60/251, to examine during the Council's first year the 14 member states elected for one year was supported by some, but was considered too ambitious by others, who suggested waiting until an overall solution had been found. It would be difficult to reconcile OP 5e and 9 of res. 60/251. The wish was expressed to allow NGOs and experts to participate, specifying however that prime responsibility lies with the States. The mechanism must remain non-bureaucratic. The capacity-building needs of the States subjected to examination should be taken into account (OP 5e).

4. How many sessions should be held during the Council's first year, and when should they be held?

The proposal given in the non paper presented by Switzerland to hold four sessions during the first year was well received, in view of the many open questions that must be dealt with during this period. A certain amount of scepticism was, however, expressed regarding the possibility of holding one session of one week in January - too short for small delegations and NGOs. If a work programme of four sessions were to be adopted for the Council's first year (considering the extra work load of dealing with questions of procedure and of substance in parallel – transition year), this would not prejudice a subsequent work programme limited to three sessions per year.

For the large majority of participants, the Council's work should be predictable for delegation and take into account all rights. Some flexibility must however be maintained. It is important to avoid agenda conflicts with the activities of the General Assembly.

The question of knowing which would be the main session of the Council was also raised. The importance of intersessional work (model of the General Assembly), in particular the election of the President and of the Bureau before the beginning of the first session but after the election of the members in May was underlined, while keeping in mind that it will still be necessary to decide on the nature of the intersessional work (formal or informal). It is important to take into account the increase in the work load that this means for the delegations.

5. What kind of "ad referendum" agreement on the Council's work programme should be reached on 19 June 2006: only for the first session, only for the 2006 sessions, for the whole year of the Council (June 2006 – June 2007)?

The idea to establish in the near future a one-year work programme for the Council was well received. The great advantage of it would be to ensure a certain degree of predictability in the Council's work for the first year and allow the delegations to organise themselves. Some participants argued in favour of setting a work programme until June 2007, others judged this proposal to be less realistic. To be accepted, a work programme for one year should remain general and avoid too much detail.

6. Miscellaneous

The following proposals were voiced under the item 'Miscellaneous':

- No-one seemed to oppose the holding of a High-Level Segment during the first session, provided that it was not too long. Some ideas were aired regarding the revitalisation of the Segment.
- The Council's report should be presented in the Plenary and not in the 3rd Committee of the General Assembly;
- Future Council resolutions should only be presented once (along the lines of the work of the Security Council) ;
- The President of the Council, who should be designated soon, should conduct transparent and open consultations on establishing an interim Bureau. The designated President should formulate proposals concerning the future organisation of the Presidency (rotation, alphabetical order, drawing lots, etc.), settle the question of the regional co-ordinators, and conduct consultations on proposing an agenda for the first session before 19 June 2006;
- Criteria should be defined to convene special sessions, as also the modalities of such sessions;
- The activities of the Council must be open, transparent and oriented towards the implementation of the decisions and resolutions of the new body.

CONCLUSIONS

At the end of the seminar, the Chair Ambassador Greminger is convinced that the objective of the meeting, which was to provide a platform for informal, substantive and cross-regional discussions on the open questions concerning the Council, was accomplished. Following the reports of the workshops and the various informal discussions during the day, the following points seemed to the Chairman to constitute an emerging consensus :

- 1) Even if the activities remain informal until 19 June 2006, the available time should be used to appoint a President and a Bureau for the Council as soon as possible ;
- 2) The designated President should soon set in motion the facilitation work to ensure the adoption of a procedural and substantive agenda for the Council on 19 June 2006 ;
- 3) The designated President should soon start facilitation work to propose a work programme for the Council's first year (*road map*), which will probably be a transition year ;
- 4) There is no objection to the reconduction for one year of mandates inherited from the Commission on Human Rights. The purpose of this is to allow implementation of OP 6 of resolution 60/251 ;
- 5) The work for reviewing mandates and to develop a universal periodic review mechanism should start soon. Two approaches are possible: informal consultations or formal working groups.

This document, which has been drafted under the responsibility of the Chairman of the seminar, is a report on the discussions which took place in the workshops on the basis of the non paper distributed by Switzerland as a basis for the work of the seminar. The annex includes :

- the seminar programme;
- the introduction to the workshops and the non paper entitled: "General Outline of a Programme of Work for the Human Rights Council" ;
- the contributions of the experts who were invited to speak about the open issues.

Programme

**Séminaire sur le Conseil DH de l'ONU
Lausanne, Beau-Rivage Palace, 15 mai 2006**

***Seminar on the UN Human Rights Council
Lausanne, Beau-Rivage Palace, 15 May 2006***

Objectif : Discussion substantielle et transrégionale sur les questions ouvertes, en particulier ordre(s) du jour/programme(s) de travail du Conseil DH.

Objective : *Substantive cross-regional discussion on open issues, in particular agenda(s)/programme(s) of work of the HR Council.*

**Programme :
programme :**

Dès 8.00 Accréditations
From 8.00 *Accreditations*

8.30 Café et thé
8.30 *Coffee and tea*

09.00 **Mot de bienvenue de la part de l'Ambassadeur Thomas Greninger, Chef de la Division politique IV – Sécurité humaine, Département fédéral des affaires étrangères, Suisse**

09.00 ***Welcome address by Ambassador Thomas Greninger, Head of Political Affairs Division IV – Human Security, Federal Department of Foreign Affairs, Switzerland***

09:15 **Allocution de Mehr Khan Williams, Haut Commissaire adjoint aux droits de l'homme**

Address by Mehr Khan Williams, Deputy High Commissioner for Human Rights

SESSION I

09:30 **Présentation des thèmes suivants par des experts (15 minutes chacun) et discussion :**

Presentation of the following issues by experts (15 min. each) followed by discussions:

- Ø Architecture du Conseil DH : rôle de la Présidence, du Bureau, etc.
Nick Howen, Secrétaire général de la Commission Internationale des Juristes

*Architecture of the HR Council: role of the Chairperson, Bureau, etc.
Nick Howen, Secretary-General, International Commission of Jurists*

- Ø Révision des mandats et autres (selon OP6 de la résolution AG 60/251)
Ibrahim Salama, Ambassadeur et expert DH et ONU

*Review of mandates and others (based on OP6 of the resolution GA 60/251)
Ibrahim Salama, Ambassador and HR and UN expert*

- Ø Comment traiter les situations DH ?
Walter Kälin, Professeur et membre du Comité des droits de l'homme de l'ONU

*How to deal with human rights situations?
Walter Kälin, Professor and member of the UN Human Rights Committee*

- Ø Modèles pour le mécanisme d'examen périodique universel
Andrew Clapham, Professeur, Institut Universitaire de Hautes Etudes Internationales, Genève

*Models for the Universal Periodic Review Mechanism
Andrew Clapham, Professor, Graduate Institute of International Studies, Geneva*

SESSION II

11.15 **Présentation d'un non-paper sur les "Grandes lignes d'un Programme de travail du Conseil DH de juin 2006 à juin 2007"**
Wolfgang-Amadeus Bruelhart, Chef de la Task Force Conseil DH, Département fédéral des affaires étrangères, Suisse

11:15 ***Presentation of a non-paper on "General Outline of a Programme of Work of the Human Rights Council from June 2006 to June 2007"***
Wolfgang-Amadeus Bruelhart, Head of the Task Force HR Council, Federal Department of Foreign Affairs, Switzerland

- 11.45 Apéritif et Buffet Lunch
11.45 *Aperitif and Buffet Lunch*
- 13.30 **Ateliers sur le thème “Grandes lignes d’un Programme de travail du Conseil DH de juin 2006 à juin 2007”**
- 13.30 ***Workshops on “General Outline of a Programme of Work of the Human Rights Council from June 2006 to June 2007”***
- 15.30 **Allocution de la Conseillère fédérale Micheline Calmy-Rey, Cheffe du Département fédéral des affaires étrangères, Suisse**
- 15.30 ***Address by the Federal Councillor Micheline Calmy-Rey, Head of the Federal Department of Foreign Affairs, Switzerland***
- 15.45 Pause
15.45 *Break*
- 16.15 **Présentation des résultats des ateliers par des rapporteurs (5'/rapporteurs)**
- 16.15 ***Presentation of the results of the workshops by rapporteurs (5'/rapporteurs)***
- 17.15 **Synthèse des travaux par l’Ambassadeur Thomas Greminger**
- 17.15 ***Summary of the seminar by Ambassador Thomas Greminger***
- 17.30 **Fin du séminaire**
- 17.30 ***End of the seminar***

ANNEXE 2 : Présentation et non-papier sur les « Grandes lignes d'un Programme de travail du Conseil DH » / *Presentation and non paper on the "General Outline of a Programme of Work of the Human Rights Council"*

Presentation by Wolfgang Amadeus Bruehlhart

General Outline of a Programme of Work for the first year of the Human Rights Council

Lausanne Workshop 15 May 2006

Excellencies,

Ladies and Gentlemen

In the last weeks, a lot of brainstorming about the Programme of Work of the Human Rights Council was and is ongoing in each delegation and in each capital. Many ideas and non papers are floating. The Swiss Mission in Geneva and my team in Berne collected these ideas and non-papers in the last days and weeks. Today we are presenting our non-paper that includes ideas from other papers. Our non-paper has been prepared as well taking in consideration OP 10, 2, 3, 4, 5 and 6 of the Resolution 60/251.

We understand that our non-paper is "food for thought" for the discussions in the workshops this afternoon. The discussions in the workshops will be structured and the rapporteurs will ask you five questions which will present and guide these discussions.

In my introduction today I will present the same questions and give you my answers. My answers are based on our "Non Paper: General Outline of a Programme of Work of the Human Rights Council" that you will find in your documentation.

The first question is: Which are the most important issues for discussion during the first working year of the Council?

Excellencies, Ladies and Gentlemen

May I caution that we should not create unrealistic expectations, we should be very realistic, as my friend Pitso said last night. We have many open issues to resolve in the first year. We have to

- develop the modalities of the Universal Periodic review (OP 5e)
- review, and where necessary, improve and rationalize mandates, mechanisms, etc of the Commission on Human Rights (OP 6).

That means there is limited time available that will not allow the consideration of all issues during the first year. There is a need for all delegations to reflect on their own priorities. Self restraint is needed to avoid an overloaded programme of work for the first year. But this is perhaps, as well, an opportunity to find new ways to discuss issues.

The second question: As you know, the Human Rights Council will meet regularly. Which issues, therefore, should be discussed in each session?

I think it would be good if we could listen to the High Commissioner for Human Rights in each session. The High Commissioner could present a report on the latest developments and in an interactive dialogue we could ask her questions.

There should be as well as interactive dialogues with Special Procedures in each session.

In the working groups you will bring up perhaps other issues that could be discussed in each session.

Third question: As I said before, an important issue for the first year's Programme of Work is the development of modalities and necessary time allocation for the universal periodic review mechanism AND the review of mandates, mechanisms, functions and responsibilities of the Commission on Human Rights (OP 5e and 6).

How should this be carried out, and when, within the first year of the Human Rights Council, should it be decided?

We should start an intergovernmental consultative process on both issues in the first session. We should ensure that the process is inclusive and innovative.

One third of the members of the first HR Council will serve for a period of one year. To ensure the credibility of the Human Rights Council, the aim should be to undertake the first universal periodic review, especially for the members of the HRC that will serve only for a period of one year, in spring 2007. The modalities should be known by the beginning of 2007. For that reason, I propose in my tableau as one-week session in January 2007.

Fourth question: How many sessions should we have in the first year, and when?

Because of the many open issues we should have four sessions in the first year. Our non-paper proposes:

- a two-weeks session in June 2006
- a three-weeks session in September 2006 with the priority on thematic issues
- a one-week session in January 2007 to decide about the modalities on the Universal Periodic Review
- and a four-weeks session in March 2007 focusing on the first Universal Periodic Review of the 47 members of the Human Rights Council.

Last question: Should we reach an “ad-referendum agreement“ on the Programme of Work (and Agenda) by 19 June 2006:

- only for the first Session;
- only for the sessions in 2006; or
- for the first full year of Council?

Our preference is to adopt a provisional programme of work from June 2006 until June 2007 at the beginning of the first session to ensure transparency and genuine dialogue during the first year.

Excellencies, Ladies and Gentlemen

Lets have a fresh start as well on the programme of work of the Human Rights Council. Lets think out of the box. Lets have new ideas. That should be the spirit of the discussions for the workshops in the afternoon.

I am looking forward to listen to your ideas and thoughts about the programme of work. Thanks.

Non-paper „General Outline of a Programme of Work of the Human Rights Council“

The non-paper “General Outline of a Programme of Work of the Human Rights Council” has been prepared bearing in mind OP 10 (“no fewer than three sessions per year” and “no less than ten weeks” and “special sessions, when needed...”) and OP 2, 3, 4, 5 and 6 of the Res 60/251.

PRINCIPLES/ CRITERIAS FOR THE FIRST WORKING YEAR OF THE HUMAN RIGHTS COUNCIL

1. “The work of the Human Rights Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development” (OP 4). To achieve this aim, we should secure **a fresh start** to the Human Rights Council, **prepare a general outline of a programme of work** before the first session and do not prejudice forthcoming events, situations and priorities.
2. To ensure transparency and genuine dialogue, the members of the Human Rights Council should **adopt a provisional programme of work for the first working year of the Human Rights Council at its first session and not only for the first session or for the two first sessions.**
3. **The provisional programme of work from June 2007 until June 2008** should be decided **only in March 2007**, bearing in mind OP 10 and OP 2, 3, 4 and 5 of the Resolution 60/251 and the experiences of the first working year of the Human Rights Council.
4. **An important objective of the first year’s** Human Rights Council Programme of Work should be **to develop** the modalities and necessary time allocation for the **universal periodic review mechanism** and **to review and, where necessary, improve and rationalize mandates, mechanism, functions and responsibilities of the Commission on Human Rights** (OP 5e and 6). It should be done **“within one year after the holding of its first session”**.
5. **But:** One third of the members of the first HRC will serve for a period of one year. **For the credibility of the Human Rights Council, the aim should be to undertake a first universal periodic review**, especially for the members of the HRC that will serve only for a period of one year, **in spring 2007**. The modalities and necessary time allocation for the first universal periodic review should be known **at the beginning of 2007**.
6. “The Council will meet regularly throughout the year and schedule not fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks...” (OP 10). More sessions during the year opens new possibilities: in each session we should have more time for dialogue and more time for interactive dialogues with the **High Commissioner for Human Rights and with Special Procedures**.
7. Limited meeting-time available, because of the open issues of the Human Rights Council, will not allow the consideration of all issues during the first year. There is a need for all delegations to reflect on their own priorities for the first year. **Self-restraint** is needed to avoid a overloaded programme of work.

Non-paper „General Outline of a Programme of Work of the Human Rights Council“

June 2006 (2 weeks)	September 2006 (3 weeks)	January 2007 (1 week)	March 2007 (4 weeks)
Inauguration Ceremony (1/2 day)			
Opening of the session (1/2 day) Election of the President / Bureau Organisation of work and adoption of an agenda of the session and a provisional programme of work for the first year	Opening of the session and Organisation of work and adoption of the agenda	Opening of the session and Organisation of work and adoption of the agenda	Opening of the session and Organisation of work and adoption of the agenda
High Level Segment (7/ State) (3 days)			
Report of the High Commissioner for HR and interactive dialogue (1 day)	Report of the High Commissioner for HR and interactive dialogue (1 day)	Report of the High Commissioner for HR and interactive dialogue (1 day)	Report of the High Commissioner for HR and interactive dialogue (1 day)
Consultations with Special Procedures (1 day) on OP 6 (Review of mandates)			
	Interactive dialogue with Special Procedures (2 days)	Interactive dialogue with Special Procedures (1 day)	Interactive dialogue with Special Procedures (2 days)
Establishment (2 days) of an intergovernmental consultative process (according to the Res 60/251) on - Modalities for the Universal Periodic Review (OP 5e) - Review, and where necessary, improve and rationalize all mandates etc (OP 6)	Summary (2 days) from the intergovernmental consultative process on open issues of the HRC - Modalities for the Universal Periodic Review (OP 5e) - Review, and where necessary, improve and rationalize all mandates, etc (OP 6)	Formal decision on (1 day) - Modalities for the Universal Periodic Review (OP 5e)	Formal decision on (1 day) - Review, and where necessary, improve and rationalize all mandates, etc (OP 6)
Thematic issues on all human rights(2days) Reports of the CHR's Intergovernmental Working Groups	Thematic issues on all human rights (10days)	Thematic issues on all human rights (2 days)	
			Universal Periodic Review of the 47 Members of the HRC (3 States/ day; 2 ^{1/2} h each State) (16 days)
Adoption of the report of the session and the provisional programme of work for the next session	Adoption of the report of the session and the provisional programme of work for the next session	Adoption of the report of the session and the provisional programme of work for the next session	Adoption of the report of the session and a provisional programme of work 2007/08 Including adoption of the annual report to the GA

**Architecture of the Human Rights Council:
Role of the Chair and Bureau & the role of “experts”**

Nicholas Howen*

Presentation at the “Lausanne Group”, convened by the Swiss Federal Ministry of Foreign Affairs, 15 May 2006

I have been asked to speak about how the leadership of the Human Rights Council should be constructed, especially the nature of the Chair and Bureau of the Council.

Role of regional groups and the Bureau

The Bureau of the Commission on Human Rights was composed of a Chair, three Vice-Chairs, a Rapporteur and the five regional group coordinators. But this Expanded Bureau was only introduced following the 1999-2000 review of working methods of the Commission led by Ambassador Selebi from South Africa. This governance structure should not be seen as a *fait accompli*, as necessary or essential for the successor Council. On the contrary, it requires a dispassionate look at what governance structure would help to improve the functioning of the Council.

I believe there are at least two themes that have emerged, which should guide the way the leadership of the Human Rights Council is constructed.

First, the Council will need leaders and a leadership structure that are designed and able to facilitate, encourage and provoke innovative ideas that go beyond the precedents of the Commission on Human Rights. This will be especially important in the formative, first five years of the Council's life, as completely new and creative ways of working will have to be agreed.

Secondly, the Council will need a Bureau that deliberates and guides the conduct of business in the interests of the Council as a whole and not on the basis of a clash of five regional group positions. The composition of the new Bureau should soften the negative aspects of regional groupings. The structure should encourage a diversity of views, cross-regional thinking and deliberations. Deliberations within the Bureau should be based a little more on the merits of an idea and a little less on often political positions hammered out behind closed doors by regional or other groups.

Regional consultations, interests and positions will remain an important element in the way Council members decide and vote on whether to take action on country and thematic issues. This is the reality of the way in which inter-governmental bodies in the United Nations are constructed and operate. However, recognizing the legitimate role of regional groups in an inter-governmental forum is also consistent with recognizing that the Bureau of the Council should be above such divisions and be able to facilitate and guide with unquestioned integrity and authority, in the interests of the whole. (It is also consistent with encouraging more cross-regional initiatives such as the very positive discussions convened by the “Group of Five” – Chile, India, Norway, Russian Federation and South Africa.)

As a subsidiary body of the General Assembly, the Human Rights Council could now look more explicitly to some of the best practices in the General Assembly. Rule 103 of the GA Rules of Procedure require that each Main Committees of the GA "shall elect a Chairman, two Vice-Chairman and a Rapporteur". The same Rule says that other committees "shall elect a Chairman, one or more Vice-Chairmen and a Rapporteur".

* Secretary-General, International Commission of Jurists (ICJ)

We should also recall the integrity and legitimacy of the consultations carried out by two General Assembly Co-Chairs, from South Africa and Panama, in the lead up to the adoption of GA Resolution A/60/25 establishing the Council. They acted on behalf of, and assisted, the President of the GA. They did not seek to represent the views of their regional group. Similar processes will be very much needed as the new Council is shaped, as member states turn the still very general GA resolution into practical mechanisms and methods of work.

The Bureau of the Council could look as follows:

1. In addition to the Chair, the Bureau could consist of two Vice-Chairs, and one Rapporteur. The Council should not have an Expanded Bureau.
2. The Vice-Chairs would serve in their personal capacity, as does the Chair. Their role would be to assist the Chair and to serve the interests of the Council as a whole and not to represent the interests and positions of the regional groups from which they come.
3. It would still be healthy and necessary to ensure rotation of regional groups in the Bureau. The Chair of course will come from a different regional group each year. In addition, one method could be for at least one of the two Vice-Chairs to be selected from a different regional group each year.
4. To ensure greater predictability, continuity and experience, one of the Vice-Presidents could take over the Chair in the following year.
5. More thought will be needed on whether and how to enhance the rather arcane function of Rapporteur.

The Council clearly is not able formally to elect the Chair until the first session opens on 19 June. However, if there is consensus around a Chair-designate, this person could immediately act as a facilitator, or be part of a group of "friends of the Council", consisting of both Council members and non-members. They could facilitate informal and wide consultations over the next five weeks, at least on the nature of the Bureau and the Agenda for the first and subsequent session. This facilitation should draw equally on ideas from members of the Council and non-members, as all Member States of the United Nations have an equal stake in how the fundamentals of the Council are created over the next year and beyond.

Role of expert advice in the “architecture” of the Council – the Sub-Commission

Another theme emerging in the architecture of the Human Rights Council is the utility of separating out the political decisions that the Human Rights Council must take on any particular country or theme, from the prior provision of objective, professional and technical assessments and advice. For example, existing or specially commissioned experts may be asked to provide assessments or overviews of existing recommendations, in preparation for a review of a state under the universal periodic review.

On thematic issues, the question is what to do with the Sub-Commission on the Promotion and Protection of Human Rights? From where should the Council obtain its “expert advice” as envisaged in operative paragraph 6 of the GA resolution?

In the short-term, the Sub-Commission should be instructed by the Human Rights Council to convene a final session. This session would make recommendations to the Human Rights Council on the work it has completed and work that is still in progress and express views on how the Council could best obtain “expert advice”.

In the longer term, what should be the fate of the Sub-Commission? Some have proposed that the Sub-Commission should be abolished and that the Council should instead use independent experts, *ad hoc*, to consider specific issues. The argument is that this would provide stricter quality control (other objections reflect political sensitivities regarding the substantive results of the Sub-Commission’s work). However, the objections to the Sub-Commission tend to mix up legitimate concerns about the quality and independence of members of the Sub-Commission with the deeper, underlying question of the need for such a body.

I believe there will continue to be great value from collegial, collective deliberations by truly independent experts. In assessing human rights thematic gaps and needs and making recommendations, such a body can be driven more by objective human right concerns and less by the necessary political considerations that states take into account. The collegial and collective nature of the body is both an internal check and balance and can significantly improve the final outcome of its work, beyond the capacity of any single expert. We should recall that several of the Commission on Human Rights' standards and mechanisms originated in initiatives of the Sub-Commission, including those on human rights defenders, enforced disappearances, reparations and impunity.

The Sub-Commission has been weakened over the years by a lack of consistency in the level of expertise, the lack of independence of some of its members and the fact that a small number have served on the Sub-Commission for decades.

A new expert body under the Council could have the following characteristics:

1. The number of experts could be limited to perhaps 15-20, with the ability to co-opt other experts as necessary for short periods on very specific issues where necessary.
2. The body should have a broad representation from all regions and legal systems and with varied professional backgrounds.
3. It is vital that the members are unquestionably independent of government, so no member should hold any position or function that is subject to the hierarchical structure of the executive authority of the state (the formula used for the Committee envisaged under the draft Convention against enforced disappearances).
4. The Human Rights Council could select experts from a revived OHCHR roster of candidates, which would already vet experts for basic competence and independence.
5. The term of membership should be limited to a maximum of two mandates of three years each.
6. The body should not have authority to consider country situations, as this is clearly the role of the Human Rights Council.
7. The body should be an action-oriented 'think-tank', able to contribute to the development, refinement and advancement of international human rights law, especially identifying gaps.
8. The body would play a technical and analytical role, with some right to initiate studies that arise out of its own collective deliberations. States will remain in the driving seat, deciding whether to act on the recommendations of the body.

**Horizons for enhanced human rights protection under the "new" Council:
Proposals for the unfinished business**

Dr. Ibrahim Salama *

I - Introduction

1. I start from the premise that NGOs and human rights experts should enhance their contribution to the success of the current process of creating a Human Rights Council. Their voices should be solicited and listened to especially in light of the fact that the GA resolution 251/60 bears the scars of the intensive and controversial New York intergovernmental negotiating process. Like in all similar negotiations, member states were exchanging "packages" of concessions which led to the Human Rights Council. Such an approach is not necessarily conducive to conceiving an efficient institution within a coherent human rights system that would really make a difference drawing on lessons of the past and aspiring to realize a common, coherent and workable vision for the future.

2. However, diplomacy is not only the art of producing "positively ambiguous" outcomes. Fortunately, it also has the creative dimension of clarifying texts through practice, so as to ensure coherence and address ambiguities. This is the principal task ahead of us as a human rights community.

3. Allow me therefore at the outset to express my sincere gratitude for the Swiss government for the organization of this timely event in such an inter-active, informal and hopefully productive setting.

4. This paper, which contains my own personal views, attempts to analyze some fundamental issues which undermined the credibility of the CHR and will determine the fate of the Human Rights Council. GA resolution 251/60 did not address most of these issues. Member States need to undertake this unfinished business. The following proposals, of which the operative side is in bold, are meant and suggest concrete solutions to the unsolved problems and unaddressed issues related to the transition towards the Human Rights Council as well as its functioning.

5. The list of issues I covered is far from being exhaustive. The sub-items of this paper touch upon the following: Efficiency **of the Human Rights Council** - Participation - Responsiveness - Credibility - Suggested framework and criteria for the admissibility, consideration and adoption of country specific resolutions - **Universal periodic review** - Treaty Bodies - Determination of priorities - Follow up of the Council's resolutions - The Sub-Commission on the Promotion and Protection of Human Rights - A proposed Human Rights Consultative Committee - Links between the proposed HRCC and other components of the human rights system - Role and methods of work of the proposed HRCC - Membership of a proposed HRCC - Standards-setting working groups - Periodic review of the Human Rights Council's Working Methods - Balance between ESCR's and CPR's mandates and Mandates – Mandate holders.

II – Efficiency of the Human Rights Council

6. There is no efficiency without credibility, no credibility without efficiency, and neither can be achieved without legitimacy. Efficiency is the ultimate goal of any system, it preconditions its capacity to achieve its goals. I do not share the view that the CHR was totally inefficient. ***Its' work was marred by practices that undermined its efficiency and credibility. It is also true that the CHR did not always employ the best working methods. However, the CHR's over-all record in standard-setting made a very positive and lasting impact on the human rights movement and situation almost everywhere.***

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Note: The opinions expressed in this paper are those of the author.

The special procedures system, though requiring substantial reform, also contributed to creating new dynamics, establishing dialogue and denouncing, preventing and addressing human rights violations.

7. Most, if not all, of those who initiated the idea of replacing the CHR by a Human Rights Council based their claim on the lack of efficiency of the CHR, hence the need for a smaller "standing body" which is expected to become a principal UN organ with selected membership, enhanced monitoring capacities, and some undefined but closer links with the Security Council, assuming that those elements would guarantee the missing efficiency of the UN human rights system. **However, a more efficient body will not be the product of a simple combination of the preceding elements.** These elements could constitute useful additions provided that objectivity and legitimacy prevail. **The deeper roots of efficiency are to be found in the legitimacy of the actions of that body and its credibility in the eyes of its addressees.** These two overriding principles precondition the body's actual capacity to reach its audience and make a difference in the human rights situation on the ground. That is why the first decisions and practices of the new Human Rights Council will be crucial in determining its future.

III - Participation

8. Weak popular participation in human rights policy and decision making is a serious problem at both national and international levels. States' international human rights policies are rarely among the top priorities for parliamentary review. Given the subject matter and the need for real change in the coming new era for the human rights movement, **I suggest that the new Council recommends to all member states to include representatives of their NHRI's, civil society parliamentarians and qualified human rights experts into their respective delegations to the Council.** Beyond symbolism, the aim of this proposal is to help stimulate a new momentum through the involvement of all local actors in dialogues, debates and consultations related to human rights decision-making at the international level. **This, in my view, would have a direct and unprecedented positive impact on the human rights situation at the national level.**

9. **Such a new momentum would also sow the seeds of ameliorating the quality of the debate within the Council.** In fact, **we cannot reform the international human rights system without involving its main stake-holders at the national level. This is a major historical shift that we can achieve.** Participation of local NGOs as part of States' public delegations will ensure that the debates of the Council are anchored in realities and the outcome is geared towards its true destination. Such a mixed composition of states' delegations would lead to open national debates on states' national and international human rights policies which should not remain exclusively an inter-governmental process. Participation is the essence of the human rights movement and should also be at the centre of its decision making. **The spirit of such an approach is not captured in the current outline of the new Human Rights Council but can be introduced to the system to mark the new era and make its first steps more credible and promising.**

IV- Responsiveness

10. **The responsiveness of any human rights system to crisis situations depends largely on its capacity to mobilize the necessary political will of its actors and operationalize its mechanisms with integrity and determination.** In this context, and though the present modalities for convening special sessions under the CHR should have been sufficient to address crisis situations in a timely and adequate manner, the current trend to further simplify such modalities in the Human Rights Council is a welcome one. **However, this cannot replace the necessary political will.** For instance, in the cartoon crisis I don't see why no member state, regional group or mechanism called for an urgent meeting with governments or at least among the relevant mechanisms to study the crisis. Such an initiative could have contained the situation in time. It could have saved human lives and prevented a vicious circle of political manipulation and excessive inflammatory reactions creating an environment conducive to large scale human rights violations particularly against foreigners, migrants and minorities. How could we explain the fact that the relevant mechanisms were not called upon to study the human rights issues involved and provide the system, in time, with expert views on what needed to be clarified, said or done so as to prevent such a regrettable incident from spinning out of its initial proportion and context, which in my view does not exceed a disagreement on the content and scope of responsibilities associated with the freedom of expression.

V - Credibility

11. The main factor that will determine the future of the human rights system is credibility, especially in times of crisis. **Credibility can only be restored and maintained if double standards are eradicated.** Against conventional wisdom, I don't think this issue can be approached only as a matter of political will. I can even assert with confidence that states will always have a "political will" to serve their respective national interests. Those interests occasionally do require double standards, and no country is an exception to this fact. **I therefore believe that the issue of double standard should rather be approached from an institutional perspective.** The rules defining the competence, scope, decision making and powers of the new Human Rights Council should aim at making it more difficult for states to exercise their usual and I dare to say understandable selectivity. New approaches and working methods can be conceived to stimulate equal emphasis on all human rights issues and equal attention to all human rights situations and violations.

VI- Suggested framework and criteria for the admissibility, consideration and adoption of country specific resolutions

12. **The best solution in my view for overcoming politicization and selectivity applied through country specific resolutions, is to reduce the monopoly and exclusiveness of the role of member states with regard to country resolutions.** States enjoy the exclusive right to introduce a resolution, consider it, and vote it. **I suggest that the middle stage, i.e. consideration of country resolutions, should not be a pure state prerogative with absolute discriminatory power.** States should be required to abide by a number of rules and objective criteria, which in my view can restore an eroded credibility of the CHR that kept deteriorating for too long. **I suggest that the new Human Rights Council elaborate criteria for the admissibility of country resolutions** such as not allowing a resolution to be introduced before the concerned country has been reviewed within the universal periodic review procedure, and given sufficient time - within a year of the initial review - for the implementation of the recommendations of the review mechanism. And finally, if a state's policies and practices continue to be subject of concern, **as established by the relevant treaty bodies and mechanisms of the new human rights system**, only then, in light of such facts established beyond doubt could a decision be taken by the new Human Rights Council. Such a resolution should only pass if it enjoys the support of the absolute majority of the membership of the Human Rights Council (affirmative votes of half of the membership plus one). **The fact that I did not suggest a two thirds majority**, is that it would render the adoption of country resolutions within my proposed framework very difficult. **On the other hand, I excluded the simple majority** as it significantly undermines the legitimacy of a country resolution when not even half of the membership approve it. **Such a comprehensive set of criteria constitute a framework which leaves no doubt as to the integrity of political motivations of country resolutions.** The usual "viruses" of the human rights system, selectivity and double standards, can thus be reduced to a minimal level.

VII- Universal periodic review

13. The newly introduced procedure of "universal periodic review" of the human rights situation all over the world is an important positive step in this direction. But it is not a sufficient guarantee of objectivity, fairness and comprehensiveness as long as country situations and resolutions, remain a matter of discretion that can be misused for political motives whenever the accusing country or group of countries can ensure the required majority.

14. **The proper functioning of such a system can only be achieved by reforming the special procedures system and raising the profile of Treaty Bodies** and the relevance of their findings to become the principal bases for any country specific debates and resolutions. **The "universal periodic review" should neither replace nor duplicate the tasks of Treaty Bodies.** Avoiding duplication in this respect is not a difficult task to achieve and should be the main concern when the new Council starts defining the scope, role and outcome of its "universal periodic review". **The worst case scenario is not impossible to occur: weakening the Treaty Body and special procedures systems while creating an even less credible alternative. The only way to avoid such a scenario is by ensuring that the universal periodic review procedure will serve as a follow up to the Treaty Body and special procedures recommendations concerning the state under review.** This would enhance the added value of the universal periodic review procedure, ensure its smooth insertion and complementarity within the human rights system and avoid its potential negative impact on the Treaty Bodies and special

procedures. ***In case a country is not part to a specific human rights treaty, its terms of reference in this area should be all universally agreed human rights norms and standards as established in customary law and reflected in the relevant CHR and Council's resolutions.***

VIII - Treaty Bodies

15. The reform of Treaty Bodies is therefore a prerequisite for the efficiency of the whole human rights new system. ***I personally am not convinced that a unified treaty body is the solution. I think that such an approach would result in losing the main attribute and principal advantage of the current Treaty body system: focus and specialization.*** This, in turn, will deprive the human rights community from an essential and strategic tool of progressive development of international human rights law. General comments and specific observations of various Treaty Bodies are fundamental means of establishing objective facts, providing correct and neutral legal analysis of these facts and formulating recommendations, by experts, as a remedy to human rights violations. Enhancing the role of various Treaty Bodies and avoiding their duplication, or contradiction, by the universal review procedure should therefore be among the first issues for consideration by the new Human Rights Council.

IX – Determination of priorities

16. ***One of the most fundamental weaknesses of the human rights system under the CHR is the huge number of resolutions passed every year.*** The human rights system cannot go on strangling itself and losing credibility by passing resolutions that only its producers can remember. ***My suggestion in this respect, among many other possible and necessary streamlining measures, is to define in advance a maximum number of resolutions by the Council per year*** so that they can be implemented and followed up. I suggest that a simple and quick voting procedure be established at the beginning of each Council's session to determine the 30 or 40 resolutions – in addition to procedural decisions - to be admitted for negotiations per year in case member states present more drafts than the agreed number. ***Moreover, most resolutions can and should be biennialized in order to allow time for the practice to inspire future draft resolutions and enrich them with emerging trends and standards.***

17. Another important way to reduce the number of the Council's resolutions and at the same time ensure both its legitimacy and impact is ***to require a two thirds majority*** not only for the adoption of country resolutions, in addition to other conditions mentioned in paragraph 12, but ***also for the establishment of any new thematic mechanisms, special procedures or working groups.*** The importance and far reaching implications of such issues justify in my view the requirement of a qualified majority.

X - Follow up of the Council's resolutions

18. Assuming that the above mentioned proposals are acceptable, it would then be useful ***to establish a permanent item on the agenda of the Council: follow-up on previous resolutions.*** Only then it would be humanly possible for ***the OHCHR to prepare a single page per resolution,*** not an additional report, highlighting what has been done to implement it, what may need to be done and the impact assessment of that resolution, in order to guide its future drafts in an objective manner. ***Only then could the Council resolutions be different from many CHR resolutions and becomes an efficient tool to promote and protect human rights in a concrete and meaningful manner.***

XI - The Sub-Commission on the Promotion and Protection of Human Rights

19. The future role of the Sub-Commission on the promotion and Protection of Human Rights deserves much more attention than what seems to have been the case till now. If Treaty Bodies are the "quasi - judicial" organ of the human rights system, the successor body of the current Sub-Commission constitutes its "quasi - legislative" tool. ***The Human Rights Council, as an "executive" human rights body cannot function properly, and indeed cannot function at all, without both a strong legally based monitoring mechanism by Treaty Bodies and a solid, independent, representative and efficient Think Tank.*** I would like in this respect to refer to the suggestions made by the Sub-Commission itself during its last session (document E/CN. 4/Sub. 2/2005/L. 48). These suggestions are the result of deep thinking reflecting a wealth of ideas and variety of views within the membership of the Sub-Commission. I regret the fact that these suggestions were not even mentioned during the process of negotiations leading

the establishment of the new Council by GA resolution 251/60. ***I suggest that this document constitute the basis for discussions by member states as to the future of the Sub-Commission.***

XII- A Proposed Human Rights Consultative Committee (HRCC)

20. There is no doubt that the Sub-Commission had an invaluable contribution to the work of the CHR and a lasting impact on the human rights movement. There were also shortcomings. ***Reform is the solution, not dismantlement.*** The successor body to the Sub-Commission has obviously to be renamed, but its functions should remain essentially the same. ***What should change in my view are three things: the way experts are selected, the methods of work of the new body and its links with the other components of the human rights system*** which I suggest that the Sub-Commission's successor body be renamed as the ***Human Rights Consultative Committee (HRCC)***. This in my view is the nearest title to the functions of this body. "Protection of Minorities" was the narrow scope from where the Sub-Commission emerged, and "Promotion and protection of Human Rights", its current title, was in my view a very large title that applied to every other unit within the system, it therefore lacked focus and specificity.

XIII- Links between the proposed HRCC and other components of the human rights system

21. Another practical objective of this proposed new title is to avoid linking the future consultative body only to the Human Rights Council. ***An advisory body should interact in its consultative capacity with all components of the system.*** Otherwise it would be under-exploited and the whole system becomes fragmented. Treaty Bodies, OHCHR, special mechanisms, member states and also NGO's ***should all be encouraged to formally and institutionally interact with the proposed HRCC*** on regular bases, to seek views, compare notes and brainstorm on issues of common interest. ***The views of the HRCC are of a consultative nature, but seeking those views should be mandatory*** to all the components of the new human rights system within their respective mandates. ***To establish such a multi-purpose and multi-layered missing link between all the components of the human rights system we need to formally introduce such links within the new methods of work for both the HRCC and the Human Rights Council.***

XIV- Role and methods of work of the proposed HRCC

22. One of the new required methods of work, in light of my own experience, is ***to create internal division of tasks within the members of the proposed HRCC*** so that each group of experts follow thoroughly the work of specific parts of the system or certain human rights wherever they are dealt with in the system. The proposed HRCC should thus act in clusters or "chambers" in addition to its plenary collective action. This proposal insures in my view a deeper level of expertise, better follow - up and a higher degree of coherence within the future human rights system. From a result and even a business oriented perspective ***the proposed HRCC should serve as a "research department" within an enterprise, a "research department"***. All sectors of that enterprise should benefit from their "research department" and not only the governing board.

23. ***I also suggest that the HRCC exercise an even wider scope of responsibilities than the Sub-Commission with a clear "duty of initiative" expressly stipulated and inherently included within its mandate.*** This is the only way to guarantee a voice of the victims of human rights violations. This does not mean at all that I support a country specific mandate for the proposed HRCC. A Think Tank that is a Think Tank and "thematic" defense of "specific" victims is possible, necessary and compatible with the nature, scope and competence of an elected and representative group of independent experts. Beyond legal fictions, such a group of independent experts would constitute the only body within the UN system that defends human rights by independent human beings.

24. The HRCC which I claim can play a much more strategic role with numerous direct benefits to member States within the Human Rights Council. I believe that an elected representative expert body of the highest technical quality ***can provide the best possible periodic impact assessment of the new Human Rights Council's resolutions*** with a view to detect protection gaps and suggest possible complementary standards for the Council's consideration. ***The more we rely on a technical advisory body of the highest possible quality and independence the less politicization would occur and re-plague the whole system. Compared to individual special procedures, the collective thinking of the HRCC is more conducive to deep analysis and creative outcomes.*** This is the function of a Think Tank and a "research department" which should not be locked in an "ivory tower". Such a function would

also establish the necessary ***principle of “independence within the mandate” of the HRCC. The dynamic links between the Human Rights Council and the HRCC should also extend to all other components of the new human rights system.***

25. Such new methods of work for the proposed HRCC should include many other reforms which can best be conceived if based on the historical experience of the Sub-Commission with a view to maintain the points of strength and reform the areas where shortcomings are undeniable. The main points of strength are representativity of various legal systems and cultures of the world, as well as the legitimacy emanating from election of members. On the other hand, possessing of the necessary expertise and qualifications, combined with the degree of independence of members of the Sub-Commission are two areas where many observers recently formulated some reservations which I understand to some extent. This brings me to the mode of selecting members of the proposed HRCC.

XV - Membership of the proposed HRCC

26. As for the selection of members of the proposed HRCC, it is obvious in my view that replacing the current selection mode, i.e. election, by nomination would be a clear and unjustifiable set back that would deprive the new consultative body of its moral authority. This would even undermine the credibility of the Human Rights Council itself. ***This would be a grave mistake in my view.*** On the other hand, ***elections as regulated so far do not define enough parameters for states when they present candidatures.*** This explains in my view the fact that the current election modalities, with all my due respect, do not always provide the human rights system with the most qualified members in terms of credentials and independence. Being ambassador myself gives me even clearer "locus standi" to confess that it is not always easy to occupy a governmental function and remain an independent expert in the full sense of both terms. However, such a combination is not impossible if certain conditions are rightfully conceived and fully respected. For example, I can confirm that since my election as a member of the Sub-Commission my government never even tried, directly or indirectly, to influence my decisions or to interfere in any manner with my work. There are many other similar examples. ***This means that there is no inherent contradiction between a governmental background and independence of mind.***

27. To start with, we should remember why we need to keep allowing, within specific conditions, holders of governmental functions to be candidates to the membership of the proposed HRCC. There are two main reasons in my view; first we have to admit that ***most developing countries lack sufficient numbers and expertise in human rights issues in both its national and international dimensions.*** A second reason is simply the fact that ***there are objective parameters within which a holder of governmental position may also be an independent expert.*** Among these parameters ***I can suggest the following indicators:*** the extent to which the person in question develops a "parallel career" establishing his own demonstrable credentials as a genuine human rights expert, and not as a "governmentally designated expert" simply by ministerial decree. The genuine nature of an expert is never an ambiguous or controversial fact to establish. Experts publish books, write articles, teach, lecture, participate in and contribute to seminars and workshops, etc.

28. Member states may wish to consider a number of minimal and clear principles in this respect: independence of the experts is fundamental, this independence should be scrutinized, the "eligibility" criteria to be a candidate for the proposed HRCC can and should be worked out and monitored by the Human Rights Council. In my view, enforcing such eligibility requirements should not be left to member states individually, they cannot be a party and a judge. ***States should not practice trade-offs, and exchange support among their respective candidates on purely political basis and “group solidarity” considerations.*** Member states should have the freedom of implementing such requirements on their own national candidates, on the condition that the same requirements be verified by a sort of ***“accreditation procedure”***, a simple technical procedure to be agreed upon in order to ensure respect by member states of the criteria that they themselves would have agreed to for the membership of the proposed HRCC.

29. A concrete suggestion in this respect is to mandate the Sub-Commission to prepare its own succession by preparing an analytical paper on the past Sub-Commission achievements, the unfinished tasks and the lessons learned by the Sub-Commission of its own long history. The Human Rights Council may wish to give guidance in this respect while leaving to the Sub-Commission the task of elaborating a detailed "options paper" on its own succession which will then be considered by the new Human Rights Council. The suggestions of the Sub-Commission should also address the question of the future work of

its successor body: the proposed HRCC. Undoubtedly the HRCC cannot be micro-managed in advance. However, drawing lessons from the past can best be achieved if done by those who went through these experiences, ie, members of the Sub-Commission while it still exists during its coming and assumingly last session. That is why I consider the Sub-Commission meeting in August 2006 of utmost substantive and institutional importance.

XVI - Standards-setting working groups

30. I elaborated to a certain degree of detail on the future functions currently exercised by the Sub-Commission because I am a member of that body. And for the same reasons, as I am honored to chair the Intergovernmental Working Group on the Right to Development, I would like to touch upon the question of the CHR's working groups. In fact there is not much to say in his respect, except that we cannot have a general rule. These mandates should be addressed on a case by case basis. Each standard setting exercise has its own merits, history, dynamics and politics. The human rights potential of each of these exercises and the expected added value of its continuation should in my view be the only criteria to decide if and how a standard setting exercise should be re-conducted under the auspices of the Human Rights Council. I would like, in this respect, to emphasize a working group which has been terminated prematurely in 1999, which is the WG on the review of human rights mechanisms. Ambassador Ann Anderson chaired this WG in a very fair and objective manner. And it was purely due to political considerations that this exercise was not extended to the natural scope of its own logic: methods of work of the CHR. ***I therefore suggest that the working methods of the Human Rights Council be among the first issues under its consideration and even a permanent item on its agenda.*** A number of reforms are both feasible and fundamental:

- a- Requiring reasonable time frames to present draft resolutions.***
- b- Biennialization of certain resolutions.***
- c- Fixing a maximum number of resolutions per year.***
- d- Prohibiting parallel consultations which amounts to non-participation and thus breaches a fundamental principle of human rights and sheds doubt over the genuine universality of its outcome.***
- e- The proposal outlined in sub-paragraph (d) above, would allow the provision of interpretation which is necessary for respecting the principle of equality between the official languages of the United Nations.***

XVII- Periodic review of the Human Rights Council's Working Methods

31. Contrary to appearances the working methods of the CHR are not an issue of the past. The fact that the CHR no longer exist does not reduce the importance of drawing lessons from its era. ***I therefore suggest the establishment of a procedure for a constant review of the working methods of the new Human Rights Council, precisely to avoid the accumulation of mistakes that lead to abolish the CHR.*** A major feature of the human rights system that we unfortunately don't seem to fully grasp its consequences is that the system grows fast and that this growth has legal and political implications, undetermined and unaddressed, even beyond the human rights system. Mandates are numerous and increasing and they impact on each other as well as on the work of other organizations within and beyond the UN system. The issue of coherence of norms and policies between different areas of international organizations has therefore a methodological dimension that the Human Rights Council should address.

32. Moreover the principles of indivisibility, inter-relatedness and the requirement of equal emphasis on all human rights necessitate that we adopt a standard "***coherence verification procedure***" to detect overlapping, loopholes, gaps, contradictions and/or missing links within the new human rights system and hopefully beyond that system as well. Otherwise, the state of "***intergovernmental schizophrenia***" can only get worst. ***Yet this exercise in my view does not require a permanent working group, but just a state of mind and a periodic procedure of verification constantly alerted to the risks of incoherence. The negotiations on the new Council did not address such issues, despite the fact that those are among the most important lessons drawn through past experiences within the CHR.***

XVIII - Balance between ESCR's and CPR's mandates

33. **Another related issue is the question of balance between ESCR's and CPR's. We have to admit that this fundamental principle, based on the interdependence and inter-relatedness of all human rights, is not yet fully respected.** I have always shared the view that **balance is not merely a question of numbers.** It is essentially a matter of equal attention to the requirements of promoting and protecting all human rights without distinction. I would add that the progress recently achieved within the Working Group on the RtD, which I am honored to chair, is by itself an important tool to ensure a holistic and balanced approach to all human rights.

34. In light of my personal experience in relation to ESCR's and the RtD, I can state that part of both the real and the perceived imbalance in the international attention accorded to both sets of rights is not attributable only to the lack of political will or to a "westerner predominance" on human rights politics and institutions. **Part of the responsibility lies within the camp of developing countries** as most of them are late in giving ESCR's and the RtD effect at the national level, while they can and should do so. I, nevertheless, also concede that ESCR's and the RtD are relatively more technically difficult to promote and protect than CPR's. **Such reflections and lessons drawn from our common heritage of the failures, polemics and achievements within the framework of the CHR should guide our first steps under the auspices of the new Human Rights Council with respect to the renewal and establishment of mandates. Failure to do so will lead us to repeat past mistakes, this time in a much more explosive and controversial international environment.**

35. **To avoid such worst case scenario we need to raise and exhaust the technical potential of our mechanisms as opposed to the usual unavoidable human rights politics.** Compared to all other fields of international law, human rights law enjoys huge relative advantage: monitoring treaty bodies, independent expertise and special mechanisms. Yet, amazingly enough, the human rights community seems to ignore its huge technical assets and to yield to **the reflex of politicizing issues. This means, in clear terms, the reflex of serving national political interests at the expense of human rights values.** Politicization of human rights issues is therefore a "natural trend" instinctively wedded to human nature. Once again **the cartoon controversy is a clear example of the devastating consequences of inactive mechanisms.** This inactivity created the vacuum for politicization, manipulation and inflammatory street reactions. This crisis also establishes a case for the need for "complementary standards" in relation to the responsibilities associated with the freedom of expression as well as the need for a more efficient and responsive human rights system capable of crisis management and geared towards preventing violations before they occur.

36. In a recent paper I presented to the WG on the follow up to the Durban Declaration and Program of Action, titled: "Contribution of ESCR and the RtD to combating racism in a globalization era." (E/CN.4/2/2006/WG.21/Misc.8) I started by answering the question of why are developing countries generally apprehensive towards globalization. And I can raise the same question with respect to developing countries general attitudes towards international human rights mechanisms during the CHR's era. In my view the major reason why many, if not most, **developing countries are apprehensive and doubtful towards international human rights mechanism, is the fact that, rightly or wrongly, they don't feel sufficiently and properly represented at all levels including:**

- a- Decision making, not in terms of possession of a vote in the CHR, but in terms of actual overall participation at all stages of the process – including initiative taking – due to the lack of human and financial resources, as well as the necessary expertise and institutional capacity.
- b- Inadequate representation in the OHCHR.
- c- Imbalance in allocation of resources to different mandates and activities, exacerbated by earmarked voluntary contributions from developed countries to the OHCHR.

37. **These are examples of fundamental problems which we all unfortunately choose not to address or are unable to address for a variety of reasons.** Without addressing these issues, honestly and efficiently, I don't see where would be the major positive differences between the CHR and the Human Rights Council.

XIX – Mandate holders

38. I will not elaborate on all relevant aspects of this question; I will just underline one fundamental element in my view: the choice of mandate holders. I am almost certain that if we compare numbers and nationalities of mandate holders we may find the South sufficiently well represented. However, as I stated earlier, **balance is not only a question of numbers**. It is much more substantive and nuanced than this. **The reason why we require balanced geographical representation in all human rights fields is essentially to ensure the representation of various value systems, legal traditions, different cultures and religions**. These are the main four sources of human rights notions in the world. **If these sources are not equally drawn upon, some human rights notions risk losing their universality**. The world is not North, West, East or South. The world is all these together. It is all of us, in our diversity, weakness and strength. Unless and until all regions and various cultures of the world are fully associated and genuinely represented and equally participate at all levels and stages of human rights decision-making, **human rights, although universal in essence, may be reduced, due to the institutional weaknesses of the international human rights system, to a legal fiction rather than tangible reality founded in a favorable socio-cultural context**.

39. Beyond legal and legalistic reasoning, we need to enhance what I call the **“cultural legitimacy”** of international human rights norms, standards, instruments and mechanisms. **Such cultural legitimacy is not meant to be a “waiver” of state’s human rights obligations through a reformulation of what I take the liberty of calling a “cultural particularity pretext”**. In order to achieve such cultural legitimacy, which deeply roots legal enforceability of human rights norms, we need, inter alia, more use of local expertise in technical cooperation programs, culturally-sensitive human rights education programs, “non imposition of cultural values, which is in itself a universal value, and more balanced nominations of mandate holders who genuinely represent their legal traditions, different cultures and value systems.

40. What do I mean by **“genuine representativity”** of one’s culture? I know it is a sensitive issue but I will not hesitate to call things by their names. I have nothing against double nationality and I admire people who have had the chance of getting multi-faceted formation in variable cultural environments. I myself belong to a category of lucky people who have been formed in different cultures and therefore should stand a better chance of fully understanding those with whom they don’t necessarily share the same values. Yet, I don’t believe that anyone can genuinely represent a culture, a value system or a legal tradition unless he or she is a practitioner of human rights in his or her own national environment. And if I translate this idea into a concrete criteria **I would strongly advise that when a person is nominated to represent a region, that he or she be chosen among those human rights experts who predominantly work at the national level and within local society organizations**. I don’t mean that international NGO’s cannot or should not collaborate and support their local counterparts. I do believe that such collaboration is a positive element, an aspect of international cooperation and an unavoidable result of globalization. All I am claiming is that local realities should not be subsumed in an internationalist approach in a manner that allows universal values to hide and even distort national and even local realities, approaches and values. **The more locally sensitive we become the more genuine universality we can achieve. The battle of universality is not a legalistic statement to be taken for granted, it is a permanent challenge to ensure genuine universality in the minds of people not through ratification instruments**.

How to Deal with Country Situations Outside the Context of Universal Periodic Review

Dr. Walter Kälin

1. Overview

A reading of UNGA Resolution 60/251 provides that the Human Rights Council, in addition to and outside of the Universal Periodic Review (UPR), is empowered to address country situations in the following circumstances:

a) *Situations of gross and systematic violations*: According to OP 3 of the Resolution the “Council should address situations of violations of human rights, including *gross and systematic violations*, and make recommendations thereon” [emphasis added]. This wording leaves no doubt that the council is authorized to review situations of systematic violations not only thematically but also with a country-oriented perspective. At the same time, the term “*should*” indicates a certain obligation to do so.

b) *Other situations of violations of human rights* (OP 3): As the wording of paragraph 3 (“*including situations of gross and systematic violations*”) clearly indicates, the authority of the Council to address situations of human rights is not limited to gross and systematic violations of human rights, but it rather includes “situations of human rights” in a general manner.

c) *Situations where the Human Rights Council will promote human rights education and learning, as well as advisory services, technical assistance and capacity-building*. This has to happen in consultation and with the consent of the Members States concerned, (OP 5, sub-paragraph a)

d) *Situations where the Human Rights Council will promote the full implementation of human rights obligations undertaken by States* (OP 5, sub-paragraph d)

e) *Situations where the Human Rights Council will contribute towards the prevention of human rights violations and respond promptly to human rights emergencies* (OP 5, sub-paragraph f).

This overview shows that, in relation to country situations, the Council has three mandates:

- A “*protection*” mandate, i.e. the mandate to take steps aimed at protecting victims of human rights violations: The inclusion of this mandate in the resolution makes clear that the Human Rights Council is empowered to establish and/or maintain mechanisms aimed at protecting actual or potential victims of human rights violations. This can only be possible with the direct consideration of country situations.
- A “*promotion*” mandate, i.e. the mandate to take measures to promote the protection of human rights in a given country, in particular through educational and capacity building/technical assistance activities.
- A “*prevention*” mandate, i.e. the mandate to take measures aimed at ensuring that human rights violations do not occur or reoccur. Here, too, the provision of technical assistance and the like to the States under consideration play an important role.

The Human Rights Council can decide to take up any of the types of the situations that the resolution provides for. In doing so, the Council’s roles in the prevention of human rights violations, and the protection and promotion of human rights are actually complimentary and may even overlap. For example, the Human Rights Council may be able to prevent the further escalation of violations in a country situation when addressing obvious or even gross and systematic violations of human rights. Similarly, the Council, by promoting human rights through any of its mechanisms, actually enhances the protection of human rights and prevents or reduces the risk of potential violations

With regard to all three mandates it is important to recall that the resolution underlines that the over-all work of the Human Rights Council shall be governed by the principles of “universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation” (paragraph 4) and to

emphasise that these principles apply to the Human Rights Council's consideration of country situations as well.

2. Basis for the consideration of country situations

Given the broad mandate of the Human Rights Council and the diverse country situations that the Council may decide to take up, the basis for the consideration of country situations would nonetheless be based on assessments of whether or not the Council can effectively make an impact for the improvement of a given situation. This would be necessarily be based on the Council's appreciation of the current compliance of a State with its human rights obligations as well as human rights commitments, including an assessment of the state of human rights violations occurring, which may or may not be gross and systematic.

Generally, the following non-exhaustive list may trigger the Council's consideration of a country situation:

a) Urgent situations

Urgent country situations to be addressed either during a regular session or an extraordinary session according to OP 10 would necessarily include any of the following:

- country situations where there are clear gross and systematic violations, in which case the Council is obliged to address as provided by the resolution;
- country situations where there is a pattern that the violations would escalate into a pattern of gross and systematic violations.

They may be new or emerging situations of violations of human rights, or situations with a continuation of such circumstances. The basic purposes would be to prevent the further deterioration of the situation and to immediately initiate or enhance the protection of human rights in that country.

Moreover, based on the principle of universality, impartiality, objectivity and non-selectivity, as well as inter-dependence, relevant human rights violations can pertain to civil, political, economic, social or cultural rights, including the right to development. The requirements of impartiality, objectivity and non-selectivity suggest that the Council, in such situations should base its assessment on information that might include reports by Special Procedures, commissions of enquiry, or of the Secretary General to the Security Council and other relevant actors including NGOs..

The Resolution's emphasis on cooperation with States applies, in principle, also to situations of urgency, triggered by gross and systematic violations. This suggests a phased approach: *First*, the Council should try to get the cooperation of the State concerned in assessing the facts, e.g. by allowing a joint mission of Special Procedures with mandates that are relevant in the particular situation, and *second* to come to an agreement with it regarding measures to be taken to improve the situation. It has to be stressed, however, that cooperation cannot be a one-way street. If the State concerned refuses genuine cooperation the Council is entitled to take measures that are appropriate in the circumstances of the case.

The Council's consideration of urgent situations would result, inter alia, in recommendations that deal with the urgency or the continuation of such situations. It would necessarily include a monitoring element and a provision of the automatic continuation of the Council's consideration unless there is a drastic improvement in the actual situation.

b) Situations for "capacity-building", i.e. human rights education, technical cooperation and advisory services

Such country situations would include any of the following:

- situations where the Human Rights Council deems that they would require provision of capacity building programmes;
- when the State requests for the assistance of the Human Rights Council in this regard.

In the consideration of these country situations, the Council would necessarily enter into consultations with the State concerned and, in the event of a decision to provide "capacity building", obtain the consent

of the State. Moreover, it would include situations where the Human Rights Council may call on for reform without being condemnatory.

c) Situations raised by thematic special procedures

Such situations may be raised by the thematic procedures in any of the following circumstances:

- where a thematic procedure, or group of them, brings the attention of Human Rights Council to a particular situation deserving the Council's consideration
- where a thematic procedure presents its report to the Council with respect to a specific country visit that it has undertaken.

The situations that thematic procedures may raise in the Human Rights Council need not be urgent situations or situations where there exist gross and serious violations of human rights. They may even be situations where, eventually, the Human Rights Council may decide to consider for capacity-building purposes (see above b). Moreover, the Council's consideration of a report of a thematic procedure on a country visit that it has undertaken may include not only the thematic procedure's recommendations but also lessons learned or best practices that may be of use for the international community as a whole and interested States.

d) Situations emanating from the considerations within the Universal Periodic Review mechanism

The Human Rights Council, resulting from its consideration of a State within the Universal Periodic Review, may decide to continue the consideration of the situation of that country by virtue of the continuing urgency of the situation or because of capacity-building potential.

e) Conclusion

The Resolution entitles the Council to address country specific situations in very different contexts and for very different purposes. From a procedural perspective, it will be important to avoid procedures that are too complicated and to ensure that the agenda enables the Council to look at country situations in a comprehensive way allowing to combine, to the extent required by the circumstances, its prevention, promotion and protection mandates. Thus, country situations should be addressed in the following three contexts:

- Chairperson's statements or Council resolutions concluding the periodic review of a specific country;
- Chairperson's statements or Council resolutions concluding discussions about gross and systematic violations (OP 3) in a specific country during regular or special sessions.
- Chairperson's statements or Council resolutions concluding discussions about thematic issues when referring to conclusions and recommendations made by Special Procedures regarding one or several countries.

3. The Future of the 1503-Procedures

One particularly important aspect of how the Council should deal with country situations concerns the question as to whether the present 1503-procedure should be maintained, abolished or modified.

It is useful to recall how the complaints procedure originally created by ECOSOC resolution 1503 is structured in its present form^{*}: First, the Working Group on Communications, consisting of members of the Sub-Commission on the Promotion and Protection of Human Rights meets annually immediately after the Sub-Commission session to examine communications (complaints) received from individuals and groups alleging human rights violations and any government responses. Communications that are not manifestly ill-founded are being transmitted to the State concerned. If the Working Group identifies evidence of a consistent pattern of gross violations of human rights, it refers the matter to the Commission on Human Rights' Working Group on Situations. This Working Group (composed of five members nominated by the regional groups) examines the particular situations forwarded to it by the Working Group on Communications and decides whether or not to refer any of these situations to the Commission.

^{*} ECOSOC resolution 2000/3 of 16 June 2000.

Subsequently, it is the turn of the Commission to take a decision concerning each situation brought to its attention in this manner. All steps in the process are confidential until a situation is referred to the Economic and Social Council. However, since 1978, the names of countries under examination are made public, thus enabling ECOSOC to bring a pattern of abuses in a particular country to the attention of the world community.

It is clear that the procedure in its present form cannot be maintained. First, the Council no longer reports to ECOSOC. Second, and foremost, a confidential procedure such as this one is hardly reconcilable with the UPR. The confidentiality of the 1503-procedure would be undermined if information discussed by the Sub-Commission's Working Group on Communications and the Human Rights' Working Group on Situations would be made public. At the same time, it would be unacceptable that in the case of States that are not considered under the 1503-procedure, everything could be discussed, while countries under scrutiny would have the doubtful advantage of not being confronted with information examined under the confidential procedure. For these reasons, the existing 1503-procedure should be abolished.

However, there is a continuing need to deal with the tens of thousands of complaints the UN receives every year. As in the past, these complaints should be screened by experts and if they are not manifestly ill-founded transmitted to the governments concerned, and this stage of the procedure should remain confidential. At the same time complaints should be analysed in order to determine whether they indicate the existence of a consistent pattern of gross violations of human rights. Unlike in the past, these findings should be made public and serve as part of the information that is made available to the Council in the context of the UPR. They can also serve as a basis for discussions about gross and systematic violations (OP 3) in a specific country during regular or special sessions.

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Speaking Notes for Lausanne III

The Complementarity of Universal Periodic Review in the New Human Rights Council

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The UN Human Rights Council is set to develop a new procedure for protecting human rights known as 'universal periodic review'. The General Assembly's resolution tells us very little about what this new procedure should look like. There is, however, one clear requirement for the new review mechanism: it must *complement* the existing treaty monitoring arrangements. The resolution states that the new universal periodic 'shall complement and not duplicate the work of treaty bodies'.

This short intervention takes the importance of complementarity as its starting point and seeks to set out the complementarity challenges that will have to be answered in the design of the new mechanism. We can start by separating three different complementarities: first the complementarity between the obligations undertaken by a state under the treaties it has ratified and the state's other obligations and commitments; second the complementarity between the treaty body reporting process and the new review process; and third the complementarity involved in choosing the order in which states should be reviewed. Let us look at each of these in turn.

The complementarity between treaty obligations and other human rights obligations and commitments.

The General Assembly resolution states that the new Council shall review 'the fulfilment by each State of its human rights obligations and commitments' in a way that complements rather than duplicates the work of treaty bodies. States have human rights obligations under the treaties they have ratified as well as under customary international law. The review mechanism will therefore have to go beyond a simple examination of a state's treaty obligations and consider its fulfilment of the customary international law of human rights. It is likely that any such exercise would take into account most of the rights in the Universal Declaration of Human Rights of 1948. This was indeed the vision set out by the UN Secretary-General when he outlined the detail of a review mechanism in April 2005.¹

But the General Assembly did not stop with a demand that a state's obligations be reviewed; it also included a reference to a state's 'commitments'. These commitments must go beyond legally binding obligations and include promises made in the context of 'soft law' Declarations, World Conferences and Summits. Some government representatives assume that the expression 'commitments' covers promises made in the context of UN Declarations, such as for example the UN Declaration on Violence Against Women (1993), as well as pledges such as those undertaken in the Vienna Declaration and Programme of Action (1993) or at the 2005 Summit. Interestingly, the United Kingdom's candidature referred to 'commitments' undertaken at the Durban Conference.²

One might also foresee that the two references to the right to development in the General Assembly resolution indicate that the Council is to enhance the promotion and protection of this right, indeed this was the proposal of the Secretary-General.³

The expression 'commitments' found in the resolution was given further meaning by the High Commissioner for Human Rights and the UN secretariat. High Commissioner Louise Arbour wrote to the *International Herald Tribune* that 'Candidates for membership will have to make commitments to human rights.'⁴ The 'Backgrounder' prepared by the UN's Department of Public Information states:

When voting for members of the Council, member states will take into consideration a candidates' contribution to the promotion and protection of human rights. Upon election, new members will commit themselves to cooperating with the Council and to upholding the highest standards in the promotion and protection of human rights. Candidates to the Council would also submit voluntary pledges and commitments with regard to the promotion and protection of human rights. These expectations did not exist for the Commission on Human Rights.⁵

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As many will have already noticed, candidate states have made commitments to: co-operate with the special rapporteurs, submit reports to the UN treaty bodies on time, and to work with the Office of the High Commissioner for Human Rights in a constructive way with regards to any technical cooperation of field operations that might be envisaged for that state. Universal periodic review will complement the existing mechanisms for monitoring as it should consider these new commitments which are unlikely to be reviewed in any other process.

To summarize complementarity implies that the new mechanism will have to look at (i) customary international law obligations, (ii) commitments undertaken in the context of UN Declarations and Conferences (iii) additional promises regarding cooperation with the UN made in the context of elections to the new Human Rights Council.

The complementarity between the treaty body reporting process and the new review mechanism

Clearly the normative reach of the process is going to go beyond the treaty obligations of states, but how can the process avoid duplicating the treaty body process with regards to those rights that are already examined as treaty obligations. There is a real concern that states not be subjected to yet more human rights reporting obligations. The Deputy Permanent Representative of China explained in the explanation of vote on the General Assembly's resolution that 'the universal periodic review to be developed by the Council may overlap with the work of human rights treaty bodies and special mechanisms, thus increasing report burdens for developing countries.'⁶ Smaller states are concerned that they will be expected to prepare human rights reports when there are insufficient resources available to their civil service to meet the increasing demands for this sort of reporting.

It seems, therefore, that the review mechanism has to get away from the idea of self-reporting by states. Similar review mechanisms in other contexts rely on expert evaluations, sometimes undertaken as the result of in-country consultations. The review processes in the World Trade Organization, the International Labour Organization, the Organization for Economic Co-operation and Development, or in African Peer Review Mechanism are seen as quite resource intensive for the secretariat and experts involved. So far, there is no indication of who will step in to provide the expertise and evaluations necessary for a meaningful review process. So far, governments have been at pains to ensure that the Human Rights Council's new review mechanism neither drains their own resources, nor monopolizes the time of the new Human Rights Council. The Presidency of the European Union in the explanation of vote expressed their position as follows:

The universal periodic review is a novelty which will submit all of us, beginning with the members of the Council, to scrutiny – no exceptions. The details remain to be developed by the Council itself. For the EU it is essential that this review has the possibility of further follow-up as appropriate. In order to avoid that this procedure will overburden the agenda of the Council the time allocated for this review will have to be in addition to the current provision of no less than 3 meetings of no less than 10 weeks per year. This will permit the Human Rights Council to focus on all relevant issues.⁷

The fear here is that universal periodic review could undermine the regular work of the Council and eat up the resources available.

I will briefly outline a few models that are emerging during discussions between delegations in Geneva. These models are not really competing at this stage, and different elements are likely to be extracted from these and other models as the open-ended negotiations get underway to create the new mechanism. Nearly all models currently being floated assume that the actual 'dialogue' with the country would last no longer than 2.5 to 3 hours and the underlying principle is that all states would be reviewed with regards to all rights.

Model one, represents a minimal approach whereby a plenary meeting of the Council examines the obligations and commitments of a state against the existing recommendations of the treaty bodies, the special rapporteurs and additional material prepared by the Office of the High Commissioner for Human Rights.

Model two, suggests the appointment of 47 members of a Sub-Council by the Council members themselves (these members might be government experts as is the case in other inter-governmental review processes). This Sub-Council would meet in about 4 chambers (each chamber reflecting regional balance and a diversity of legal systems and traditions) capable of reviewing states and developing conclusions or 'Outcome Documents' which would then be transmitted for adoption by plenary sessions of the Council. This might include ideas for follow up with the Council and the UN system.

Model three suggests that the Council would elect or appoint a ten member Peer Review Committee possibly chaired day-to-day by a human rights expert. The exchange between the Committee and the State is transmitted to the Council. The calculation is that 30 days of dialogue at 3 hours per state would mean that 60 states could be processed per year with every state in the world being reviewed every three years.

Model four envisages that the Council Bureau would appoint an independent expert from a roster prepared by the Office of the High Commissioner for Human Rights. That 'session rapporteur' would visit the country and prepare a background note on the human rights situation. The Office of the High Commissioner would also prepare a background note based on existing treaty body reports, special rapporteurs and OHCHR field presences. The 'session rapporteur' would prepare questions for the Human Rights Council to pose during a three hour review process. This model foresees a review of every state every five years.

It would be premature to detail what sort of outcomes are envisaged, these may evolve over time depending on the challenges thrown up in each context. Several people have suggested that the outcomes should go take the concept of a 'co-operative mechanism' seriously and make suggestions for follow-up cooperation with various parts of the UN system.

So much for the architecture of the review process, what about the information to be utilized? The question of the information to be available in the context of the review is again complicated by the need to complement rather than duplicate the existing processes.

First, one has to consider the role of the existing special procedures. Without duplicating their current work the review process will have to rely on these experts to provide up-to-date information on key human rights issues. This suggests that, as it becomes known that a state is coming up for review, the special rapporteurs and other experts would prepare relevant background material. Rather than duplicating the existing work this would make the work more systematic.

Second, without rehearsing all the technical details of treaty compliance, the main recommendations of the treaty bodies could be followed in the context of the periodic review. Again this would mean a co-ordinated submission from the treaty bodies prepared for the occasion of a state's periodic review. This would involve complementarity to the extent that the report represents not only a timely follow-up to the existing treaty-body dialogue but could also address questions of a state's non-adherence to a particular treaty. In some cases the Office of the High Commissioner for Human Rights could be involved in follow-up discussions on how to overcome obstacles to ratification of certain treaties that the government wished to ratify. Similarly non-implementation of critical recommendations relating to these treaty obligations are likely to be central to the review process.

Third, there will be situations where the human rights issues in question are not properly covered by either the reports of the special procedures or the existing work of the treaty bodies. In such situations there will need to be some expert input in preparing the background paper for the periodic review session of the Council. It is worth recalling that the comparable review processes in other contexts all rely heavily on expert input in preparing the background papers for any review. It has also been pointed out that a key innovation in the context of periodic review is the implication that national human rights institutions will be heavily involved in the review process. In particular the phrase in the resolution which states that the review shall take place with 'the full involvement of the country concerned' suggests that periodic review can not be confined to an exchange between diplomatic representatives on the Council. The resolution demands the review consider a country's 'capacity-building needs'. To have a truly 'cooperative mechanism' in this regard there will have to be some evaluation of the actual capacity building needs of a country which goes beyond simply findings of compliance or non-compliance with international obligations.

To summarize, it is suggested that a meaningful review process will have to be designed to go beyond an off-the-cuff debate between state representatives in the context of a Council session. It also makes little sense to ask governments to self-report on their own human rights records (they already do this for a large range of obligations through the treaty body process). The question that remains wide open at the moment is what sort of preparatory process is most appropriate.

The complementarity involved in choosing states for review

As we have seen states are committed to everyone being reviewed. The Resolution decided that members of the Council will be reviewed 'during their term of membership'. It has been pointed out that this means that the 14 states that will leave after one year's membership should be reviewed in the next 12 months. The priority will then turn to the next set of states that whose term would be up within the following next 12 months, and so on. This review was seen as part of the price of membership. But the commitment to *universal* review means that review has to reach even those states that do not wish to be members or who stand and fail in the elections. The idea of prioritizing the states with the 'worst' records would not seem appropriate as this would plunge the review process, and the Council, back into the selectivity and politicisation that was said to have ruined the reputation of the Commission. The idea of drawing lots for the target countries seems fair, but clearly represents something of a missed opportunity. Perhaps the best suggestion so far is that periodic review be organized in such a way that candidate states offer themselves for periodic review. In this way the electors to the Council will be able to compare not only the human rights record of the candidate state but also review the pledges and commitments that the candidate is prepared to make in this context.

Final Remarks

Thinking about universal periodic review in terms of these *three complementarities* may be helpful in avoiding duplication and developing a constructive review process that covers all human rights issues in all states. The models presented here provide ideas, some of which may be reorganized into the eventual universal periodic review process, we are still a long way from agreement on what this process will look like. But we do know that it should not be another layer of treaty body reporting and examination, it has to complement this existing process in multiple ways. In fact, it may also be helpful to consider the universality of periodic review as comprising *two universalities*: the universality of all states be subject to review and the universality of all rights being included in the review.

Notes

¹ 'The peer review mechanism would complement but would not replace reporting procedures under human rights treaties. The latter arise from legal commitments and involve close scrutiny of law, regulations and practice with regard to specific provisions of those treaties by independent expert panels. They result in specific and authoritative recommendations for action. Peer review would be a process whereby States voluntarily enter into discussion regarding human rights issues in their respective countries, and would be based on the obligations and responsibilities to promote and protect those rights arising under the Charter and as given expression in the Universal Declaration of Human Rights. Implementation of findings should be developed as a cooperative venture, with assistance given to States in developing their capacities.' Explanatory note para. 7. Initially transmitted by the Secretary-General to the President of the General Assembly on 14 April 2005, with the request that it be brought to the attention of the members of the General Assembly. For the whole document see <http://www.un.org/largerfreedom/add1.htm#sg>.

² 'We will continue to implement National Strategies to increase race equality and community cohesion in Great Britain and Northern Ireland, in accordance with commitments undertaken at the 2001 Durban World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance' United Kingdom Voluntary Pledges and Commitments on Human Rights. Available at <http://www.un.org/ga/60/elect/hrc/uk.pdf>.

³ The Human Rights Council 'should have an explicitly defined function as a chamber of peer review. Its main task would be to evaluate the fulfilment by all States of all their human rights obligations. This would give concrete expression to the principle that human rights are universal and indivisible. Equal attention will have to be given to civil, political, economic, social and cultural rights, as well as the right to development.' Speech to the Commission on Human Rights, 7 April 2005. See <http://www.un.org/largerfreedom/add1.htm#sg>.

⁴ Letter of 20 March 2006. See <http://www.iht.com/articles/2006/03/19/news/edletmon.php>

⁵ http://www.un.org/News/dh/infocus/hr_council/hr_q_and_a.htm#q4.

⁶ Statement by Ambassador ZHANG Yishan, Permanent Representative of China to the UN, after the adoption of the draft resolution on Human Rights Council, 15 March 2006. See <http://www.china-un.org/eng/xw/t240623.htm>.

⁷ Statement by Ambassador Gerhard PFANZELTER, Permanent Representative of Austria to the United Nations, on behalf of the European Union, 15 March 2006. See http://europa-eu-un.org/articles/en/article_5800_en.htm.