



Quaker United Nations Office

13 Avenue du Mervelet
CH-1209 Geneva, Switzerland

Tel +41 (22) 748-4804
Fax +41 (22) 748-4819
Email rbrett@quno.ch

ENHANCING AND STRENGTHENING THE EFFECTIVENESS OF THE SPECIAL PROCEDURES OF THE UN COMMISSION ON HUMAN RIGHTS

(Geneva, 12-13 October 2005)

Rachel Brett

Item I: The role and functions of the special procedures system

“The author can attest to the importance of these so-called special procedures in securing the enjoyment of greater freedom, based on his experience as a victim of violations and a defender of human rights in his own country.”¹

Who was this ‘author’? As he indicates, he had himself been a victim of human rights violations as well as a human rights defender. By the time I first met him he was the Ambassador to the UN in Geneva of his country, Chile. Subsequently, Roberto Garreton went on to himself serve as one of the special procedures, and to work for the OHCHR.

I welcome this opportunity for a discussion about enhancing and strengthening the Special Procedures, and specifically to raise some issues which do not come up in the normal course of events.

There is much that we could celebrate – looking back – in terms of achievements:

- (a) understanding of issues;
- (b) standard setting;
- (c) country-specific analysis and recommendations; and
- (d) helping to resolve/address individual or group situations.

Different individuals, organisations and governments will identify their own highlights in terms of achievements, but there are plenty to choose from.

¹ Roberto Garreton, Special Rapporteur on the situation of human rights in the Democratic Republic of Congo (UN document A/52/496, para.237)

What ‘system’?

But, there are a lot of ways the system could be improved. For a start it is not yet a **system**. We are at a very important point when we are moving from a collection of individual mandates, each created *sui generis* and *ad hoc*. The challenge is how to create a system without losing the benefits of the current flexibility and individuality.

Some key Issues

In this short presentation, I plan to touch on only three key issues: the questions of expertise, of reports, and of consideration of reports.

Car owner or garage?

Expertise: when you want your car checked, you may go to another car owner, but more usually you go to a garage because it has expertise in cars and what goes wrong with them. It is the same with the special procedures – the essence of their value is in the independent human rights expertise of the mandate holders. When we were only looking for a small number every few years, the current informal system was workable. Now that the numbers and spread of issues is much greater, clearly we need to be able to find many more people with expertise – and it goes without saying, from different countries/regions, legal traditions, etc and women as well as men. We need to broaden the pool of candidates/mandate-holders. The broader the range of people who become mandate-holders, the more important does the process for providing them with a proper introduction to the special procedures system – what it is and how it operates – since these are not self-evident even to many who work around the UN! This is also part of the process of developing the special procedures as a system and should be an ongoing task for the special procedures themselves in conjunction with the OHCHR – for example to update the Manual for special procedures mandate holders. At the same time, the special procedures and the OHCHR should consider ways of addressing the problem of well-qualified experts being precluded from serving as mandate holders because of financial constraints.

Gloss or Glossary?

Reports: In relation to reports bureaucracy has overtaken functionality. This is an opportunity to re-think the purpose of reports and, therefore, the kind of reports that should be made and to whom.

The idea of asking for a report on a year’s activity with analysis of issues, cases, situations and country visits in the current minimalist format once a year is frankly ludicrous. For a start, any Government that has received a visit from one of the Special Procedures should be asking for a full, timely, in-depth analysis of the findings, with specific recommendations, etc.

As the Government of Mozambique pointed out at this year’s Commission on Human Rights, “This report [of the Special Rapporteur on the Right to Health] constitutes a reference document for the international community at large and the Commission on Human Rights in particular,

about the challenges that the Government of Mozambique is faced with in its quest to provide the full enjoyment of human rights for its people.”²

It may be possible to produce such a report in 20 pages in relation to some issues in some countries but it is unlikely to be adequate for others. Brevity is a virtue but not at the expense of substance and quality.

Recognising the reality of the paper overload, reports for the Human Rights Council could still be limited in length – those referring to country visits could in effect be an executive summary of the key findings and recommendations.

At the same time, the special procedures should produce a report of any country visit for the Government concerned and the OHCHR that is of the length necessary, at least in the UN language of that country (thus only requiring translation into one language, when the language of the mandate-holder was not that of the country concerned), and which would be made available to the Government and to the OHCHR as soon as completed, and would also then be posted on the OHCHR website, and would thus be available for the Council.

Create and ignore

Presentation/Discussion: The current system is both an absurdity and an insult. Very busy, expert, professionals give time *pro bono*, are asked to write reports which few people actually read, and are required to travel to Geneva and/or New York to make a presentation of a few minutes on their year’s work, issues of concern, etc etc, followed by a short discussion or longer speeches by a few governments – or with no such discussion because there is “no time”, or the agenda item is being taken at a different time. It is time we moved from the ‘create and ignore’ approach to something more serious.

The minimum requirements – building on the current “inter-active dialogue” - are that each mandate has:

- (1) a **fixed time** at which they and others can be assured that they will present their report and have a discussion on it;
- (2) a **reasonable amount of time for their presentation** – say 15 minutes;
- (3) a time for a **proper discussion** between the mandate holder and government representatives, and representatives of independent national human rights institutions – say a minimum of 45 minutes. (This is for the thematic reports, not the country visits.)

This could take place at the time of the annual meeting of the Special Procedures, when all the mandate holders would in any case be in Geneva, and although it would add some time on to their stay, it would, therefore, not require additional journeys to Geneva with the added time and expense that this would entail. (See in this regard the Romanian proposal for a Special Segment for the Special Procedures).

In addition, there should be the possibility of having **groups or panels** of special procedures to address and discuss issues of broader/common concern. Linked with this, should be the ability of

² Report of the Special Rapporteur on his Mission to Mozambique contained in UN document E/CN.4/2005/51/Add.2

the special procedures to act as a body – building on the current processes which have already started through the annual meeting of the special procedures – to **identify trends or issues of concern** which cut **across mandates** or which are **not currently addressed by mandates**. The special procedures should therefore be able to bring such issues to the attention of the Commission/Council, and to propose ways in which they could be addressed, for example, through the creation of a new special procedure mandate.

In relation to **country reports** by special procedures – whether country rapporteurs/representatives/independent experts or reports of country visits by thematic special procedures – these should be taken separately from the thematic reports and should be considered in a timely fashion after the completion of the report of the country mission, rather than waiting until a fixed annual point for their consideration. Equally, however, adequate time for presentation and discussion at a fixed time known sufficiently in advance to enable attendance and participation are essential.

In conclusion, of course one can choose to ignore the diagnosis and recommendations of your garage about the state of your car, but this is not normally advisable.

I hope that the issues identified and the ideas presented will stimulate discussion at this and subsequent sessions of this seminar.

12 October 2005