



Righting Historic Wrongs

First Session of the UN Human Rights Council
(19-30 June 2006)



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Quaker United Nations Office

The Quaker United Nations Office

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Further Information

For a thorough exploration of the issues arising from the transfer from Commission on Human Rights to Human Rights Council please see:

A New Chapter for Human Rights, International Service for Human Rights and Friedrich-Ebert-Stiftung, 2006

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Introduction: ‘Historic’ was, inevitably, the word on everyone’s lips as the UN Human Rights Council started its first session. From the opening by the President of the UN General Assembly, Jan Eliasson - under whose firm guidance the resolution on the Council was adopted - and UN Secretary-General Kofi Annan and throughout the High Level Segment that followed.

The Human Rights Council is the inter-governmental body created by the UN General Assembly Summit Outcome Document and Resolution 60/251 to replace the Commission on Human Rights. It has 47 members¹ divided amongst the UN’s five regional groups with Africa and Asia each having 13 seats, Latin American and the Caribbean 8 seats, the Western Group 7 seats, and the Central and Eastern European Group 6 seats.

The Council elected as its President the Mexican Ambassador Luis Alfonso de Alba, and decided to have four Vice-Presidents one of whom would also act as Rapporteur.²

High Level Segment: Most of the speeches in the High Level Segment rather better than those heard at previous sessions of the Commission on Human Rights, while a small number were outstanding. The Minister of Foreign Affairs of Ghana (the State elected to the Council with the highest number of votes) stated their commitment to democratic accountability, respect for human rights and the rule of law combined with a refreshingly honest acknowledgement of “long periods of authoritarian, military rule in the years after independence, which were characterised by widespread violations ... senseless killings of innocent persons, unexplained disappearances, mass detentions, and arbitrary seizures of private properties”.³ A similar commitment based on experience of past human rights violations was expressed by Chile, but Mrs Paulina Veloso (Minister of the Presidency) went on to testify to the importance of the Special Procedures of the former Commission on Human Rights – in particular the Special Rapporteur on Chile and the Working Group on

¹ The initial members are: Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, Cameroon, Canada, China, Cuba, Czech Republic, Djibouti, Ecuador, Finland, France, Gabon, Germany, Ghana, Guatemala, India, Indonesia, Japan, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Switzerland, Tunisia, Ukraine, UK, Uruguay and Zambia. One-third of the membership is elected every year by an absolute majority of the UN General Assembly (not just those present and voting), with a limit of two consecutive three-year terms for any State. The initial members have staggered terms in order to ensure an orderly rotation in the future.

² Vice-Presidents: Ambassadors Tomáš Husák (Czech Republic), Mohammed Loulichki (Morocco), Blaise Godet (Switzerland) and Musa Burayzat (Jordan), the latter also being Rapporteur. The Presidency will rotate around the five UN regional groups in the following order: Central and Eastern Europe, Africa, Western European and Other Group, Asian Group, and then back to Latin American and Caribbean.

³ Statement by the Minister for Foreign Affairs of the Republic of Ghana, Nana Akufo-Addo, MP, to the High Level Segment of the First Session of the Human Rights Council, Monday 19th June 2006, Geneva

Disappearances – from her personal experience faced with the disappearance of her husband:

“Although their action did not lead to any practical result in this case, the effort of the Commission to claim the rights of the disappeared, together with the condemnation on behalf of the international community produced a dissuasive impact which may have limited the number of disappearances. At those moments of loneliness and anxiety, the care of the Commission was a great support to me, which gave me the strength to keep confidence in people, in human rights and in the community that defends them.”⁴

A welcome innovation was the opportunity for some speakers from ‘civil society’, chosen by non-governmental organisations (NGOs): Arnold Tsungu (Zimbabwe Lawyers for Human Rights), Nataša Kandić (Humanitarian Law Centre, Belgrade), Sunila Abeysekera (Inform, Sri Lanka) and Marta Ocampo de Vásquez (Mothers of Plaza de Mayo, Argentina). These human rights defenders bore witness to the reality of human rights violations faced by many people. Following this, at the President’s proposal, the Council observed a minute of silence in honour of the victims of all forms of violations of human rights in all regions of the world. NGOs also participated in all other aspects of the Council’s work including the interactive dialogues and consultations.

Convention on Disappearances: The experience of the Mothers of Plaza de Mayo was a *leitmotif* of the whole session because of the subsequent adoption, by acclamation, of the text of the International Convention for the Protection of All Persons from Enforced Disappearances, in the presence of the Foreign Minister of Argentina,⁵ thus ‘righting’ the legal deficit, the historic injustice and denigration of the Mothers (the ‘Mad Women’ as they were designated at the time), and paying tribute to the persistence of the mothers and families of the disappeared in their quest for accountability and to deter further disappearances. Anyone who doubts the continuing importance of this Convention⁶ only has to read its total prohibition in all circumstances without any exceptions on arrest, detention, abduction or any other form of deprivation of liberty followed by refusal to acknowledge or concealment of the fate of the person. Historical also that this Convention was adopted by the *first resolution* (2006/1) of the Council given that the first country special procedure of the Commission on Human Rights (as noted by the Chilean Minister) was on Chile, and the first thematic procedure was the Working Group on Disappearances – set up specifically because of the then situation in Argentina.

Declaration on the Rights of Indigenous Peoples: The Human Rights Council righted another historic wrong when it adopted (2006/2) the draft Declaration negotiated between governments and representatives of indigenous peoples over the last 11 years. Although 500 years have elapsed since the Conquistadores Cortez and Pizarro led their incursions which did such damage to the indigenous peoples of the ‘New World’, this was the first UN human

⁴ Statement by Mrs Paulina Veloso, Minister of the Presidency of Chile, at the High Level Segment of the First session of the Human Rights Council, Geneva, 19 June 2006

⁵ Argentina’s abstention on the Indigenous Declaration was less impressive.

⁶ The draft Convention has to be adopted by the UN General Assembly and then gain the requisite number of ratifications before it can enter into force.

rights agreement on this subject.⁷ Much credit goes to the descendants (on both sides) from those conquests, Peru, Mexico and Guatemala having been the driving force in bringing this process to completion. The contentious nature of the relationship between indigenous peoples and those who live alongside them was demonstrated by the fact that this draft declaration was adopted by vote.

Canada's Shame: Short-term political expediency seems to have been the basis for Canada's change of position from supporting to opposing the draft declaration – encouraged by Australia, New Zealand and the USA, none of whom are on the Council and thus needed a Council member who could be persuaded to call a vote after the failure of a blocking move to gain support. Canada and the Russian Federation were the only States to vote against adoption.⁸ It is perhaps worth recalling that Canada and the USSR were amongst the very small number of States who, in 1948, did not vote for the Universal Declaration of Human Rights in the Third Committee of the General Assembly. By the time that Declaration was voted in the General Assembly plenary, Canada had been shamed into changing its position. Perhaps Canada will again follow this path and vote in favour of the Indigenous Declaration at the General Assembly. The UK, meanwhile, voted in favour of the draft Declaration (together with all other EU and associated countries), whilst firmly stating “national minority groups and other ethnic groups within the territory of the United Kingdom and its Overseas Territories do not fall within the scope of indigenous peoples to which this Declaration applies”.⁹

Although the vote was, inevitably, only by the States members of the Council, acknowledging the exceptional process by which the draft Declaration had been prepared in collaboration with indigenous peoples' representatives, the President exceptionally allowed an indigenous representative to speak following the adoption.

Optional Protocol to the Covenant on Economic, Social and Cultural Rights: One of the historic anomalies in the human rights canon has been the existence of an individual complaints procedure under the Covenant on Civil and Political Rights from its beginning but no such procedure under the other Covenant. While completing two standard-setting exercises, the Council has at last mandated (2006/3)¹⁰ the beginning of a third one, by establishing an open-ended intergovernmental Working Group to draft a protocol to the Covenant on Economic, Social and Cultural Rights to create a complaints procedure.

Other unfinished business from the Commission was the renewal of the mandate (for one year) of the **Working Group on the Right to Development** (2006/4) and of the Intergovernmental Working Group (2006/5) on the **Effective Implementation of the**

⁷ There are two International Labour Organisation Conventions on indigenous peoples

⁸ The draft Declaration was adopted by 30 votes (Azerbaijan, Brazil, Cameroon, China, Cuba, Czech Republic, Ecuador, Finland, France, Germany, Guatemala, India, Indonesia, Japan, Malaysia, Mauritius, Mexico, Netherlands, Pakistan, Peru, Poland, Republic of Korea, Romania, Saudi Arabia, South Africa, Sri Lanka, Switzerland, UK, Uruguay, Zambia) to 2 (Canada, Russian Federation), with the other 12 abstaining or absent. Although Algeria, on behalf of the African Group, had stated their full support for the Declaration (27 June 2006), only 4 of the 13 African Council members voted for it in the actual vote.

⁹ Explanation of vote on the draft United Nations Declaration on the Rights of Indigenous Peoples, Geneva, 29th June 2006

¹⁰ Unless otherwise specified all resolutions and decisions were adopted without a vote.

Durban Declaration and Programme of Action (renewed for 3 years). The Council also requested the OHCHR to select 5 highly qualified experts to study substantive gaps in the current international standards with regard to combating racism, racial discrimination, xenophobia and related intolerance, and, in consultation with the human rights treaty bodies and the relevant special procedures to produce “concrete recommendations on the means or avenues to bridge these gaps”. It also requested the Committee on the Elimination of Racial Discrimination to recommend measures to strengthen implementation of that Convention.

High Commissioner for Human Rights: Louise Arbour, the High Commissioner, presented and discussed her report,¹¹ and subsequently also she and her Deputy, Mehr Khan Williams, presented the Office’s technical assistance and in-country work. The highlight of the latter was the work of the OHCHR office in Nepal and its important role in supporting the return to democracy and enhancing the protection of human rights in that country. This was a point which warmly endorsed by the representative of Nepal and which had been highlighted by the Deputy Prime Minister and Minister of Foreign Affairs of Nepal in his statement to the High Level Segment. Similarly, Guatemala supported the establishment of the OHCHR office in their country. As with all the other ‘inter-active dialogues’ there is plenty of scope for further development of the inter-active nature of these exchanges.

Discussion of Issues: At the request of various governments, the President agreed that this inaugural session of the Council would also set aside a short period of time for discussion of 5 substantive issues (States, observers and NGOs were not precluded from raising other issues):

- The situation of human rights in Palestine and other occupied Arab territories;
- Support for the Abuja Peace Agreements: backing efforts for the strengthening of the promotion and protection of human rights;
- Avoiding incitement to hatred and violence for reasons of religion or race through the promotion of tolerance and dialogue;
- The human rights of migrants in the context of the High-Level Dialogue on International Migration and Development during the 61st session of the General Assembly in September 2006; and
- The role of human rights defenders in promoting and protecting human rights.

The period for discussion was short, and the expected outcome was a President’s Statement. However, this failed to materialise because resolutions were tabled on two of the issues. The most unfortunate effect of this was that no official outcome was recorded of the other three issues. This was particularly regrettable, as noted by Brazil on behalf of the Latin American and Caribbean countries, because it had been hoped that the section of the debate on human rights and migration could have been forwarded to the High-Level Dialogue, and would have helped to draw attention to the need to consider human rights in relation to all aspects of migration (including the causes of migration as well as the treatment of migrants). This would have been a timely reminder of the importance of human rights which is currently missing from the debate.

¹¹ Originally prepared for the UN Commission on Human Rights: E/CN.4/2006/10 and Add.1, Corr.1-2, Add. 2, and E/CN.4.2006/119)

However, given the dire situation in Palestine at the time of the Council's meeting, it was not perhaps surprising that a separate resolution was presented calling attention to that situation and asking for it to be taken up at the Council's September session, with the reports and participation of relevant special procedures. Indeed, by the end of the Council session, a request had already been lodged for a first Special Session of the Council to be held as soon as possible on the situation in Palestine.¹²

The other resolution was on incitement to racial and religious hatred, presented by Pakistan on behalf of the Organisation of the Islamic Conference. Unfortunately, this draft included terminology about 'defamation of religions' which does not fit within the human rights framework because it seeks to protect religions as such and not individuals (who are the subjects of human rights protection) and which had been contentious in the Commission on Human Rights. The resolution was adopted by 33 to 12 with one abstention (Djibouti absent). It requests the Special Rapporteurs on freedom of religion or belief and on contemporary forms of racism, and the High Commissioner to report on this phenomenon and its implications for the Covenant on Civil and Political Rights' prohibition on "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (Article 20, paragraph 2). It is to be hoped that the Special Rapporteur on Freedom of Opinion and Expression will also report on this issue and its implications, and participate in a discussion of it at the next session of the Council.

Whatever the frustrations about process, both these and all the other texts adopted by the Council with the exceptions of the statements on hostage-taking (proposed by the Russian Federation) and on the entry into force of the Optional Protocol to the Convention against Torture (proposed by Denmark),¹³ were action oriented as well as being commendably brief. One of the criticisms of the Commission on Human Rights was its adoption of a large number of declaratory resolutions; whatever the importance of these two subjects it is unclear why the Council needed to make statements on them.

Procedural Aspects: In addition to the significant substantive achievements at its first session, the Council had the considerable tasks of establishing its own processes, agenda, and a range of other technical issues including the means of creating the 'Universal Periodic Review' (a new feature of the UN human rights system whereby the human rights of all States will be reviewed).¹⁴ The Council assumed the mandates¹⁵ of the Commission's Special Procedures (both country and thematic), and has to decide on the future of the Sub-Commission and the complaint procedure. (The existence of all of these was extended for a year pending review by the Council). As a first step, the Council invited the Chair of the Coordinating Committee of the Special Procedures (Vitit Muntarbhorn), the Vice-Chair of

¹² It was also a pity that because of their frustration over procedure, the EU felt it necessary to call a vote and vote against this resolution – surely if such a vote was considered necessary at all, abstention would have been an adequate response. On the other hand, it is also regrettable that the sponsors of the resolution did not work for the consensus which should have been achievable on their text. The resolution was carried by 29 to 12, with 5 abstentions (Djibouti absent).

¹³ The Optional Protocol entered into force on 22 June 2006. It establishes a system of national or international mechanisms for visiting places of detention with a view to preventing torture.

¹⁴ All Council members must be reviewed during the course of their membership.

¹⁵ General Assembly resolution 60/251 in fact refers to the Council assuming and reviewing 'a system of special procedures, expert advice and a complaint procedure'.

the Sub-Commission (Ibrahim Salama), and also the Chair of the Human Rights Treaty Body meeting (Christine Chanet), in order to hear from and exchange views with them. Although the human rights treaty bodies do not come under the authority of the Council, the Universal Periodic Review is explicitly required by the General Assembly resolution to complement and not duplicate the work of the Treaty Bodies.

The Council also adopted a framework programme of work for its first year; one of the major differences from the former Commission on Human Rights is that the Council is to meet at least 3 times a year for at least 10 weeks. The next sessions are planned for 18 September to 6 October 2006 (when the reports of and inter-active dialogues with the various Special Procedures will take place); 27 November to 8 December 2006; and 12 March to 6 April 2007. In the meanwhile, the Sub-Commission and its working groups will meet between 31 July and 18 August.

Conclusion: Taken all round, this was an impressive start to the new Human Rights Council. Much, of course, remains to be done. The first year of its work will remain a transitional one as the Council reviews its inheritance from the Commission and establishes new procedures. That so much was achieved in a bare 2 weeks is astonishing and a real tribute to the vision, skill and determination of its President as well as the willingness of its membership to work intensively over long hours. That not everything was exactly what anyone would have wanted is hardly a surprise. Few expected so much from a first brief session that most had anticipated would be largely formal and procedural. Many challenges remain as the Council takes its next steps – not least the demands on the time of its members and other (governmental and non-governmental) participants - but the President stated his commitment to lead the inter-sessional processes personally and in an open, transparent and inclusive manner, calling on assistance from others as necessary. Nethertheless, the seed has been planted and is sprouting. It remains to be seen how long it will take to grow to fruition, and what kind of plant it turns out to be.

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