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Fifth Session of the UN Human Rights Council

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The fifth session of the UN Human Rights Council (HRC) taking place from 11 to 18 June was the last session in the first cycle of the Council's operation. Its program of work included interactive dialogues with special procedures mandate holders and follow-up to previous decisions of the Council. The focus of the fifth session laid on meetings dedicated to the institution-building process, which was supposed to be completed by 18 June 2007 as mandated by GA resolution 60/251.

Reports and Interactive Dialogue

The following reports of special procedures mandate holders and up-dates by the High Commissioner were heard¹:

- Regarding *the mission to Central Asia*, the High Commissioner stressed in particular the support of the Government of Kyrgyzstan for the planned establishment of an OCHR regional office in Bishkek, as well as the conditions of detention, ill-treatment and torture, and the curtailment of democratic rights across Central Asia.

As regards the *Democratic Republic of the Congo (DRC)* and *Burundi*, the High Commissioner still saw a risk of the situations sliding back into conflict, human rights challenges remaining high.

- The Special Rapporteur on the *independence of judges and lawyers* emphasized that attention must be paid to the current circumstances that affect the independence of the judiciary, due

process and the rule of law. Relevant factors that regard include the judging of civilians in military courts and laws passed in the context of the fight against terrorism or to protect national security. He suggested that the Council should establish a mechanism to draft an international declaration with the purpose of ensuring the observance of human rights and the rule of law during states of emergency. He also reported his *mission to the Maldives*, noting that the emergence from a colonial past had made it difficult to modernize legal institutions. With regard to the *Democratic Republic of Congo (DRC)* he cited accessibility to justice as a serious problem and suggested that as the DRC had recently adopted a new constitution, it should establish the rule of law and democracy and face the crimes of the past at the same time.

South Korea and the United States of America (USA) criticized the scope of the Rapporteur's report, suggesting that it exceeded the boundaries of the mandate. The International Commission of Jurists (ICJ) stated that constitutional paralysis and unilateral actions by the executive were damaging the independence of Sri Lanka's judiciary and questioned the effectiveness of the rule of law in Fiji Islands.

The Rapporteur responded that a future visit to Sri Lanka would be extremely useful and noted that although the Fiji Islands were no longer in a state of siege, they had not yet returned to the rule of law.

- The Special Rapporteur on *racism, racial discrimination, xenophobia and related intolerance* was in particular concerned about the growing

¹ The reports are available at:
<http://ohchr.org/english/bodies/hrcouncil/5session/reports.htm>

xenophobia, anti-Semitism and Islamophobia in the Russian Federation.

The Russian Federation called into question the impartiality and the objectivity of the Rapporteur in claiming that the report was politically motivated and the information provided by the Russian authorities was not fully noticed.

The Special Rapporteur retorted by asking whether the code of conduct for special procedures, as proposed by certain member States and supported by Russia, would require the Special Rapporteur to hide the reality when he sees it.

- The Special Rapporteur on the *Right to food* stated that every five second, one child dies from malnutrition, and that 854 million people in the world are permanently malnourished. He argued that the primary reason for malnutrition especially in Africa is agricultural dumping by the European Union, which provides heavy subsidies to its farmers, that undercuts local African farmers. Thus, the EU is causing famine and malnutrition in Africa and in the end leads to families fleeing on small boats to seek refuge in Europe, which monitored its borders in a 'military manner'. The Rapporteur recommended drawing a distinction between economic refugees and famine refugees; the latter should be granted a temporary refugee status. The assessment of a 'state of necessity' could be done by the United Nations World Food Programme, which keeps monthly statistics of areas where the population is in danger of starvation. The EU did not respond directly to the accusation and recommendations of the Rapporteur, but diverted in stating that food prices in Zimbabwe were escalating because of the economic problems, and that the Government was distributing food on the basis of political affiliation.
- The Special Rapporteur on *the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes* on the enjoyment of human rights stressed that the new laws in industrialized countries have forced closing of domestic landfills, thereby creating more exportation of the material to poor and remote areas. He called on nations to help provide clean-up crews and health warnings in war torn areas.
- The Special Rapporteur on *adequate housing* as a component of the right to adequate standard of living declared that the HRC should recognize the right to adequate housing as a human right,

test and adapt the indicators on the right to housing, incorporate the guidelines on forced eviction in States' domestic law and revisit the 2006 recommendations on women and housing. Concerning Australia he stated, that there are still problems as homelessness, discrimination and poor living conditions for indigenous people.

- The independent Expert on the question of human rights and *extreme poverty* stated that poverty can be identified in three forms: income poverty; human development poverty; and social exclusion. The latter was less well noted and constitutes a new element following EU practice.
- The report of the Special Rapporteurs on country mandates included the situation of human rights in Belarus, Cuba, Cambodia and Haiti. The report on *Belarus* was based on visits in neighboring countries, because the authorities rejected the mandate and refused to cooperate with the Rapporteur. He was concerned about a systematic violation of civil and political rights, i. e. allegations of cases torture, excessive use of force by State authorities, trials behind closed doors, disproportionate punishments, severe restrictions on the freedom of expression, arrests of opposition leaders as well as infringements on freedom of religion. Further, trade unions are restricted, Roma people are disproportionately victims of violence and the elections did not correspond with human rights standards. As positive he stated the recent invitation extended to the Special Rapporteur on trafficking in persons, the release of some political prisoners, and a better treatment of NGOs and the media. Nevertheless there is no turning-point in the human right situation in Belarus in sight and he remarked that "Reporters without Borders" assigned Belarus rank 152 among 168 countries.

Concerning *Cuba* the Personal Representative of the High Commissioner was likewise not allowed into Cuba nor had any contact with Cuban authorities, therefore the mandate had reached an impasse.

The concerned countries as well as groups like the Non Aligned Movement (NAM) and Pakistan on behalf of the Organization of the Islamic Conference (OIC) and other countries (China, the Russian Federation, India and others) used the reports on Belarus and Cuba for a large-scale attack against the country mandates and pleaded for the abolition of the mandates and a restrictive "Code of Conduct" for the

Special Rapporteurs. The Special Rapporteur on Belarus responded that the abolition of his mandate would not help to abolish the violation of human rights, but would terminate the modest support for the victims.

- The Independent Expert appointed by the Secretary-General on the situation of human rights in *Somalia* was not able to visit the country due to the precarious security situation and thus presented merely an update of the situation. He mentioned that the holding of a national reconciliation congress was a positive first step within the broader framework of reconciliation. As a serious problem he pointed out the situation of internally displaced persons, who are subjected to threats, assault and rape, as well as gender-based violence, due to the lack of fair trial guarantees.
- The Council heard further the follow-up on decisions of the Council relating to *Israel / the Occupied Palestinian Territories, Lebanon, Beit Hanoun and Darfur*². Concerning Beit Hanoun Archbishop Desmond Tutu implored upon the Council in a touching manner that true peace can only be realized for all when the human rights of all are recognized and respected (“true peace and security will never come from the barrel of a gun, but only when human rights of all are recognized and respected”). According to the African concept of “Ubuntu”, Israel and Palestine only together could realize true peace, security and prosperity. The Archbishop received a standing ovation from the room. Although he had not been allowed to enter the Gaza region, his report enumerated several recommendations, including that the process toward peace be undertaken within the framework of the law and guided by the UN Charter, international humanitarian law, and international human rights law; that the people of Gaza should be afforded protection under the Fourth Geneva Convention; that Israel should indicate publicly the steps to ensure Beit Hanoun does not happen again. Joint mechanism should be established with representation from both Israel and Palestine to move towards peace. Concerning the follow-up on Council Resolution S-2/1 on Lebanon, the Ambassador of Lebanon welcomed the view, as expressed by High Commissioner that “stronger action needs to be taken to reduce the effects of the cluster munitions on

the lives and livelihoods of civilians”. He concluded that although the report did not “prescribe therapies” it represented an advanced and transparent version of ongoing work and progress made so far. Israel responded in saying the report could replace the word ‘Lebanon’ with ‘the North of Israel’ and constitute an accurate description of what Israel faced in the wake of last summer’s conflict. The report on Darfur was mandated by the last regular session in March 2007 and aimed to ensure the effective follow-up and implementation of resolutions and recommendations on Human Rights. In the following debate the first report was received – even by the Sudan – positively.

Completion of institutional-building

The HRC had been given one year by the General Assembly to complete the review of the mechanisms and mandates of the former Commission and to develop the modalities of the Universal Periodic Review (UPR) and full field its task last minute.

After 14 hours of negotiations the Council reached an agreement on its future procedural framework. It should be noted, however, that especially Canada, disagreeing with parts of the final package, declared its dissatisfaction with the procedural steps taken in the adoption of the text.

• Universal Periodic Review (UPR) mechanism

Heart piece of the adopted text is the UPR, a new mechanism to be based on objective and reliable information, reviewing the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.

Thus, each State will be reviewed in cycles of four years. This implies the consideration of 48 States per year. All member States of the Council shall be reviewed during their term of membership, as well as observer States should be reviewed.

Following the efforts of the EU and the non-governmental organizations (NGO’s), the UPR now provides for some involvement of NGOs, national human rights institutions (NHRIs) and the Office of the High Commissioner of Human Rights (OHCHR) in the process, but only to a limited degree: Many states (including OIC, China, India) had stressed that the UPR had to be a State-driven, intergovernmental exercise, and had underlined the importance of the cooperative nature of the UPR, demanding that the outcome of the review must be adopted by

² resolutions S-1/1: OPT, S-2/1: Lebanon, S-3/1: Beit Hanoun

consensus and with consent of the concerned State, its objectives being the enhancement of the State's capacity and technical assistance. The outcome document now allows drawing a distinction between recommendations that are adopted with or without the consent of State concerned, but allows both kinds.

- **Special Procedures**

The core controversial points around the review of special procedures remained the continuation of country or 'geographic' mandates.

For Western States and NGO's like Amnesty International and Human Rights Watch keeping the country mandates was crucial for the credibility of the Council.

Other States (mostly members of NAM), strongly requested the abolishment of country-specific resolutions, China speaking out for the insertion of a rule according to which the adoption of country-specific resolutions would require a 2/3 majority.

After intensive negotiations the rule was not incorporated as such, the formula found now asking proposers of a country resolution to "secure the broadest possible support for their initiatives (preferably 15 members), before action is taken". In the end, most country mandates were maintained; however, the mandates on Belarus and Cuba were discontinued.

While thematic mandates will be established for three years, country mandates will be created for one year only. Individual mandate holders' tenure in a given function, whether thematic or country mandates, will be no more than six years.

- **Code of Conduct**

The rules of procedure were completed by a Code of Conduct for mandate holders of special procedures, a project initiated by the African Group and agreed upon after intensive negotiations with especially the EU. The new Code now reiterates calls for impartiality and political objectivity of the mandate holder, which in general is positive but might become dangerous to their independence depending on the interpretation by concerned countries. Further, the Code requests mandate holders to prepare their visit with the mission of the respective country in Geneva and cross-check their information with the authorities of the state concerned, without defining the time frame in which a

state has to respond to the questions of the mandate holder. It also will be possible for the country visited to decide on the ground of "security reasons" to supply official security protection to the mandate holder, meaning that a government representative could be present all times which might strongly infringe upon the independence of the mandate holder and impact upon the kind of information she or he could receive.

- **Agenda**

On the Agenda, some highly controversial issues will remain. Those are the specific agenda item on the Occupied Palestinian Territories (critique by Western states: "singling out of one situation", but an absolute demand by OIC, Arab Group etc), and on the other hand the possibility to address also other and new country situations (as wished for by Western States, now possible under Item 4: "Human rights situations that require the Council's attention").

- **HRC Advisory Committee**

As 'think-tank' to the council shall be established a HRC Advisory Committee, composed of 18 experts as a successor of the former "Sub-Commission". The time allocated for meetings has been restricted to 2 weeks per year and the Advisory Committee will be required to only take up issues as mandated by the Council, discouraging independent efforts and investigations.

- **Complaint Procedure**

The Council also established a confidential Complaint Procedure very similar to the Commission's so-called "1503-Procedure", to deal with "consistent patterns of gross and reliably arrested violations" of human rights. Compared to the former procedure, it will allow for more information about the stage of the complaint and offer a slightly higher degree of transparency.

- **Conclusion**

Thus, in the end, the consensus reached in the institutional building process was marked by compromise; an outcome called a "significant achievement" by the EU and appreciated by NGOs given the difficult political circumstances that accompanied the creation and shaping of the Council.

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