

UNA-UK participants: Lord Hannay of Chiswick (Chair) and Natalie Samarasinghe (Head of Communications)

Overview

“Promoting and defending human rights should be at the heart of Britain's foreign policy and at the heart of a process to reform the United Nations”; by participating in this hearing UNA-UK hopes to support this introductory statement to the March 2008 Conservative Party Human Rights Commission report.

We are seeking to provide recommendations for strengthening relevant UN bodies and mechanisms – the Human Rights Council, the Special Advisers on genocide prevention and the responsibility to protect, the International Criminal Court and, by extension, the Security Council – to ensure that egregious human rights violations are prevented and ‘those most responsible’ brought to justice.

Human Rights Council

The Human Rights Council (HRC) replaced the much-maligned Commission on Human Rights in 2006. It has a number of new features which are intended to address the shortcomings of its predecessor:

- slightly trimmer membership (reduced from 53 to 47) now elected by absolute majority by the General Assembly (GA)
- candidates are required to submit ‘pledges’ and prospective candidates’ human rights contributions should be considered
- members can be suspended for gross violations of human rights by a two-thirds GA majority
- the Council meets at least three times a year for a minimum of ten weeks, and has the ability to convene more easily in special sessions
- a new universal periodic review mechanism (UPR) under which the human rights records of all countries will be regularly reviewed

Are these new features making a difference?

- **Politicisation** and selectivity still dog the Council – embodied by the undue focus on Israel/OPT. Half of the Council's special sessions were on that region, which also has a standing item on the Council's agenda. While consideration of human rights abuses in the region is of course permissible and within the remit of the Council, the resultant HRC resolutions – most recently on the Goldstone Report – were one-sided.
- **Resolutions** on other situations – notably Sri Lanka and Darfur – have also fallen far short of what would have been desirable. Yet, there are some positive signs. In October the Council broke ground by adopting a resolution on a country that was not already on its agenda – Honduras. The resolution on Burma's political prisoners and the decision to extend the mandate of the Special Rapporteurs on Cambodia and on Somalia were also positive.
- The trimmer membership has exacerbated the impact of ‘**voting blocs**’. This is not only an issue of numbers but also coordination - the Organisation of Islamic Conference, for example, has acted much more coherently as a bloc than, for example, the Western European and Others Group (WEOG). This has led to the adoption at the Council's most recent session of a dubious resolution on traditional values, and to the abandonment of a proposed expert on elimination of discrimination against women.
- Another shortcoming is that the Council's election procedures are not exacting and do not prevent human rights abusers from attaining **membership**. Membership is for two terms (a maximum of six consecutive years), and this effectively means that certain countries that may not have been elected otherwise, will invariably sit on the Council. There have been some successes (e.g. Sudan did not stand, Belarus and Sri Lanka were not elected) but e.g. Saudi Arabia was elected earlier this year.
- There are no clear processes for dealing with **non-compliance** with HRC resolutions (e.g. aborted fact-finding mission to Darfur) or for referrals to bodies other than the GA, which adopts the HRC's programme.

- The **Universal Periodic Review** process is well under way. 80 countries have already been reviewed and 16 more are currently under consideration. On a procedural note, the consideration of UPR in separate sessions has been extremely beneficial. In terms of outcomes, predictably, those countries with a stronger human rights record and civil society have so far produced better reports. But as a peer review mechanism, this new feature is functioning reasonably well.
- The Council still has a large backlog of work, inherited from the Commission and put on hold during the institution-building process.

Recommendations

The General Assembly will be reviewing the Human Rights Council in 2011. The UK should begin preparing now – in consultation with NGO stakeholders – its position, giving full weight to:

- strengthening the UPR, including by applying lessons learned from its review;
- ensuring that the Office of the High Commissioner for Human Rights (OHCHR) is given the resources necessary to service the Council, UPR and the Special Procedures;
- ensuring effective follow-up of resolutions
- countering politicisation and selectivity, e.g. by working with others to remove the standing OPT agenda item
- preventing excessive bloc voting and abusers from attaining membership
- improving NGO participation in the Council's work
- considering whether the HRC should be made a principal organ of the UN

The UK should also seek to ensure that the 2011 review is not hijacked and used as an opportunity to revisit the basics (e.g. the composition of the HRC) – this would not only waste time but may well produce far worse results. It will be equally important to ensure that the Open Ended Working Group on the 2011 review does not occupy excessive amounts of time on the HRC agenda.

In order to facilitate the above aims on an ongoing basis, the UK should:

- seek to be a shining example for UPR, e.g. by:
 - actively seeking to implement recommendations and bolster its own human rights record (for example, through ratification of outstanding human rights treaties such as the Convention on Enforced Disappearances and the Migrant Workers Convention)
 - improving public scrutiny of the outcome of its review and progress made in implementation (perhaps a parallel inward-looking report to the FCO annual human rights publication)
 - involving NGOs, especially those that submitted information to UPR in the process
 - honouring its stated intention to submit a 'half-way' update to the Council
 - expanding UK assistance to other states, for example, by holding more bilateral capacity-building sessions or by developing a UPR 'template'
- use its position on both the HRC and the Security Council to promote formal and/or informal channels of referral/information-sharing between the two bodies, e.g. through regular briefings of the Security Council by High Commissioner for Human Rights (which has not happened since 2007) or the President of the HRC, or closed-door meetings with special procedures
- make full use of the procedures under the EU Lisbon Treaty to work for greater EU unity on policy matters
- work creatively to improve the HRC's composition and to reduce politicisation, e.g. by:
 - urging WEOG to field several candidates to encourage others to prevent clean-slate elections
 - striving for stronger coordination of WEOG and EU positions whilst fostering cross-regional groupings based on issues (e.g. partnering with Latin American countries on disappearances) to break down the influence of regional blocs. The success of the resolution adopted at the last HRC session on freedom of expression – which was drafted by the US and Egypt – shows the value of this type of collaboration
- encourage OHCHR to explore methods of increasing developing-country NGO participation (i.e. through web/video evidence for those unable to travel to Geneva)

International Criminal Court

The International Criminal Court (ICC) began operating in 2002 and considers war crimes, crimes against humanity, and genocide when national courts are unable or unwilling to do so. To date, the prosecutor has opened investigations in Sudan, the DRC, Uganda and the Central African Republic, and 13 arrest warrants and one summons to appear have been issued. Four individuals are in ICC custody in The Hague. Another, Bahr Idriss Abu Garda - who is charged with war crimes in connection with an attack on African Union peacekeepers in Darfur - has appeared voluntarily during pre-trial proceedings. In addition to President al-Bashir, warrants remain outstanding for two other individuals involved in Darfur, for leaders of the Lord's Resistance Army in northern Uganda and for a former DRC rebel commander.

ICC members will review the Rome Statute in May 2010. They will also consider amendments to it and take stock of international criminal justice.

Recommendations

The UK should:

- use its influence in the EU and at the UN to strengthen the ICC, so that persistent violators of human rights and international law are brought to justice, regardless of their political status
- continue its support for the independence of the ICC
- continue to encourage further respect for, and acceptance of, the ICC's jurisdiction in accordance with the Rome Statute
- encourage states that have yet to do so, in particular the United States, to accede to the Statute at the earliest possible time.

At the review conference, the UK should support (and encourage others to support):

- re-affirmation of the central role of the ICC in securing international criminal justice in the absence of action by national courts, underscoring its independence, the obligation of states parties to cooperate fully with it, and the need to understand that justice should not be denied for some because it is not yet possible for all
- proposals to expand the reach of the ICC with the aim of eventual universal jurisdiction
- adequate resourcing of the ICC, not only in The Hague but also in the countries in which it is operating
- procedures to ensure that the judges elected during the review meeting are the best qualified candidates (and to prepare accordingly for the election of the next prosecutor)
- the creation of a permanent working group to address such issues as concluding witness relocation and sentence enforcement agreements
- attendance at side meetings on issues including the victim strategy and the Trust Fund for Victims

Responsibility to Protect/Prevention of Genocide mandates

At the 2005 World Summit, heads of state adopted the 'responsibility to protect' (R2P). Since then, there have been important normative advances. R2P has been refined and clarified through the work of Ed Luck, who is Special Adviser to the UN Secretary-General with a focus on R2P. His work can be summed up as 'three pillars, four crimes'. The four crimes covered are: genocide, war crimes, crimes against humanity and ethnic cleansing. The three pillars, defined cautiously by the UN Secretary-General and Ed Luck in their 2009 report are: the primary responsibility of states to protect their civilians from these crimes, the responsibility of the international community to provide assistance to states in doing so, and – if the first two pillars fail – its responsibility to take 'timely and decisive' action. R2P has also been referenced in Security Council resolutions (Resolution 1674 on the Protection of Civilians in Armed Conflict and Resolution 1706 authorising UN peacekeeping troops to Darfur).

Despite repeated reassurances that military intervention is effectively the last option in the panoply of actions that can be taken as part of the last pillar, R2P still causes confusion and controversy. Opponents, like the president of the last GA session, have argued that it is an interventionist doctrine that will be supplied selectively. [It is important to note that some R2P advocates have also diluted the principle by demanding it be applied to situations arising from natural disasters and climate change].

This has been mirrored by the GA's reluctance to fund Ed Luck's work (when he was eventually appointed in 2008 it was as a 'general' Special Adviser with a focus on R2P). Funding has still not been forthcoming and during this session's consideration of the report, states again questioned whether R2P had actually been endorsed in 2005.

There is also legitimate confusion internally and externally on the overlap between his role and the role of the Special Adviser on the Prevention of Genocide. Genocide is one of the four R2P crimes, and both mandate-holders appear to be concentrating on developing norms.

While this is certainly part of the mandate of the Special Adviser on the Prevention of Genocide – who is tasked with collecting and coordinating existing information on situations that may escalate and acting as an 'early-warning mechanism' – it is clear that his role in making recommendations to the Security Council is not yet functioning as it should.

Recommendations

The UK should:

- continue to strongly support these two mandates and advocate full funding and support by the GA
- push at the GA for a timetable for the eventual merger of these two offices
- use its role on the Security Council to encourage informal, closed-door meetings and briefings with both advisers
- seek, where appropriate, to 'name-check' R2P in relevant Security Council and Human Rights Council resolutions where there is an emphasis on the 'preventive' pillar of R2P
- stress the principle of 'sovereignty as responsibility' in bilateral relations, e.g. by ensuring that aid programmes are sensitive to R2P (there are, for instance, the positive effects of targeted assistance to poor and minority groups in enhancing equality but these can produce negative effects by exacerbating differences between groups)
- increase its 'rule of law' assistance to improve judicial processes
- introduce R2P-related criteria in EU membership processes and support peer learning, such as the African Peer Review Mechanism

Security Council

Although reference to the Security Council has been made several times, and although UNA-UK supports enlargement of the Security Council, it would not be prudent to link reform of other UN bodies to this all-too elusive goal.

Instead, we recommend that the UK should:

- seek to improve formal and/or informal channels of referral and information-sharing between the Security Council and the Human Rights Council, ICC and special advisers and procedures
- encourage the Security Council to consider gross violations of human rights (such as ethnic cleansing) as a threat to international peace and to make reference to R2P where appropriate
- strive for P5 agreement to refrain from using the veto in the consideration of situations involving any of the four R2P crimes, and in any consequent action by the Security Council
- work to bolster the human rights component of peacekeeping missions
- initiate discussions on processes by which peacekeeping missions can report on genocidal developments and be ready to take action