

2011 Review of the UN Human Rights Council

Recommendations submitted to the UK Foreign & Commonwealth Office

by the United Nations Association of the UK



December 2010

"Human rights are at the very heart of Britain's foreign policy. We cannot have a foreign policy without a conscience, and we cannot achieve long-term security and prosperity unless we uphold our values. We have to be resolute and determined in standing up for those who are denied the rights and freedoms we enjoy, while striving to be an inspiring example of them ourselves."

Rt Hon. William Hague MP
Secretary of State for Foreign & Commonwealth Affairs
Message for Human Rights Day, 10 December 2010

"UNA-UK attaches the greatest importance to the need for the UN to work more effectively in the field of human rights where the performance of far too many member states remains lamentable. For that reason we hope that the British government will give a high priority in the 2011 review to bringing about practical improvements and to avoiding any back-sliding."

Lord Hannay of Chiswick
Chair, United Nations Association of the UK
17 December 2010

About the United Nations Association of the UK

The United Nations Association of the UK (UNA-UK) is the UK's leading source of independent analysis on the United Nations and a grassroots membership organisation with a UK-wide supporter base.

UNA-UK seeks to increase knowledge of the UN and to stimulate thought and debate about how to make it stronger, more credible and more effective. Monitoring the progress of the UN Human Rights Council is one of UNA-UK's policy priorities, straddling two of the Association's programmes: the promotion and protection of human rights, and the development of UN governance and institutional reform. To this effect, UNA-UK seeks to:

- Influence decision-makers in the UK to pursue foreign policies that further these aims
- Increase the 'buy-in' of other key states
- Encourage opinion-shapers to engage with UN institutional developments
- Carry out research and consultations on reform processes and options
- Generate public support for human rights and UN institutions

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A career diplomat, he entered the Foreign & Commonwealth Office in 1959, serving *inter alia* in Tehran, Kabul, Brussels and Washington before being appointed ambassador and permanent representative to the European Communities (1985-90). From 1990 to 1995, he was ambassador and permanent representative to the United Nations.

Following his retirement from the diplomatic service, he was British Special Representative for Cyprus (1996-2003), and a member of the UN Secretary-General's High-Level Panel on Threats, Challenges and Change, which submitted its report in December 2004. The report included recommendations on improving the effectiveness of the UN Commission on Human Rights, the Human Rights Council's predecessor.

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Contents

| | |
|--|---|
| Introduction | 4 |
| Institution Building Package (IBP): oiling, not reinventing the wheel | 6 |
| Becoming a principal organ: a ‘red herring’ at present? | 6 |
| Strengthening composition: small steps to improve the Council’s membership | 6 |
| Special Procedures: better support and better protection | 7 |
| Universal Periodic Review: turning participation into results | 8 |
| <i>The UK as an example</i> | |
| Improving the effectiveness of the Council | 9 |
| <i>Breaking down the blocs</i> | |
| <i>Countering selectivity</i> | |
| <i>Improving the quality of resolutions</i> | |
| <i>Agenda item 7</i> | |
| <i>Practical change on the ground</i> | |

Introduction

UNA-UK welcomed the establishment of the UN Human Rights Council (HRC) in 2006 to replace its much-maligned predecessor, the Commission on Human Rights. Though instrumental in developing the international human rights system of treaties and norms – from the 1948 Universal Declaration of Human Rights to the 2006 Convention on the Rights of Persons with Disabilities – the Commission had become so mired in politicisation that it all too often held back from addressing violations as its members used it to deflect criticism of their own human rights performance. Calling for its reform, then-UN Secretary-General Kofi Annan said: "unless we re-make our human rights machinery, we may be unable to renew public confidence in the United Nations itself."

What replaced the Commission was more 'make-over' than re-make. UNA-UK, like many others, would have preferred to see a Human Rights Council with fewer members, with stricter criteria for countries with poor records, and with tougher electoral procedure for choosing members. But a number of substantive improvements were instituted, notably the capacity of the Council to meet all year round, the provision for a peer-review mechanism enabling the scrutiny of all UN Member States, membership criteria intended to make it more difficult for countries with particularly poor records to gain election, and the enhancement of the status of the body within the UN system.

The Human Rights Council has now been in existence for nearly five years, and is due to be reviewed in a two-stage process: from October 2010 a working group consisting of members of the Council will begin reviewing its functioning. In spring 2011, the General Assembly will consider the status of the HRC within the UN system, including addressing the question of whether it should become one of the UN's principal organs.

So how has the Council fared to date? Some of these innovations have indeed paid off:

- Where there have been election contests for the allotted regional places, the states with the better human rights records have generally been successful, and countries such as Belarus and Sri Lanka have not been able to muster enough votes for election. Egregious offenders, like Zimbabwe and Sudan, that were members of the Commission have not attempted standing for the Council. Others, like Iran, have withdrawn their candidacies.
- Universal Periodic Review (UPR), the Council's peer-review process, has so far had 100% participation by states under scrutiny – a far better turnout than for treaty body reviews. Through this process, the Council has scrutinised the records of all the permanent members of the UN Security Council and made scores of recommendations (though China, for instance, rejected all of the recommendations made during its review).
- The HRC has benefitted from having more frequent sessions and has used its ability to consider pressing issues by adopting resolutions on countries not already on its agenda (e.g. Honduras in 2010) and through holding 13 'special sessions', notably (though often ultimately disappointingly) on Burma in 2007, the Democratic Republic of the Congo in 2008, Sri Lanka in 2009 and Haiti in 2010.
- It has also made creative use of these sessions to debate thematic challenges such as human rights issues arising out of the global food and financial crises, and has taken an innovative approach to issues such as maternal mortality and water and sanitation.
- NGOs have also seen advocacy and participation opportunities grow, through formalised submissions of shadow stakeholder reports for UPR, webcasting of sessions and improved provision of information through the HRC website and extranet.

The Council has also continued its standard-setting role, adopting two international human rights treaties, creating new Special Procedures on contemporary forms of slavery and on freedom of association, and adopting sound resolutions on countries including North Korea, Somalia and Guinea, and on issues ranging from arbitrary detention to the right to health. Perhaps most importantly, the HRC has avoided two of the developments commentators feared the most: heavy restrictions on the Special Procedures, the most responsive and independent part of the UN's human rights machinery, and the undue absorption of Council time in UPR. The reviews take place outside the Council's regular sessions, none of the thematic Special Procedures have been discontinued and at its last session, the HRC voted to continue the mandate of the Independent Expert on Sudan.

However, many of the problems that dogged the Commission remain:

- **Selectivity:** HRC members continue to focus disproportionately on Israel, with six of its 13 special sessions and a permanent standalone agenda item relating to that country, whilst not addressing the ongoing concerns over human rights in states such as Zimbabwe.

- **Politicisation:** the HRC's members continue to give priority to political factors, trumping impartiality in the UPR process and special sessions and resulting in inadequate resolutions on countries such as Sri Lanka and Darfur, and in political 'bartering' for creating and extending the mandates of Special Procedures.
- **Bloc voting:** voting on regional lines is not purely a matter of the numerical superiority of certain regions but also of coordination, e.g. the Organisation of Islamic Conference (OIC) has acted as a bloc more effectively than the Western European and Others Group (WEOG).
- **HRC members have poor human rights records:** current election procedure does not prevent abusers from attaining members, a situation exacerbated by the fielding of 'clean slates' by regional groups.
- **Lack of follow-up:** despite the welcome shift to reporting to the UN General Assembly, rather than the Economic and Social Council, the HRC still lacks processes for dealing with non-compliance with resolutions (e.g. the aborted fact-finding mission to Darfur), for implementation of UPR recommendations, and for tracking progress.
- **A packed agenda:** in addition to the time the Council has devoted to institution-building, it is still bogged down by a backlog of work inherited from the Commission.

In addition, the HRC brings with it new challenges:

- The Office of the High Commissioner for Human Rights (OHCHR), already under-resourced, now faces rising budgetary and staffing pressures through the increase in sessions, follow-up actions (e.g. fact-finding missions) and the UPR.
- The increased number of sessions has also increased the burden on smaller missions in Geneva and developing-country NGOs.
- There are questions surrounding potential duplication of work between the HRC and the 3rd Committee of the General Assembly's, between the UPR process and the treaty bodies, and between the OHCHR and the HRC Advisory Council which is supposed to act as a think tank to the Council.

UNA-UK has been monitoring these developments carefully, undertaking advocacy with the British Government and others to support the creation of the Council, participating in the FCO external stakeholders group, briefing Parliamentarians, and giving oral and written evidence to the Conservative Human Rights Commission (in 2007, 2009 and earlier this year) with a copy sent to the government and FCO.

One of our primary concerns is that the review of the HRC should not be used to revisit the fundamental issues thrashed out in 2007 and consolidated in the Council's Institution Building Package but rather focus on areas where change is desirable and feasible. This includes avoiding the perennial pre-occupation with the Council's membership composition to the detriment of improving its ability to address human rights violations promptly and effectively, wherever they occur. In order to achieve this, UNA-UK set the following priority areas for the 2011 Human Rights Council Review, endorsed by our Annual Conference in 2009:

- *strengthening the UPR and instituting follow-up processes*
- *supporting and enhancing the Special Procedures*
- *countering politicisation and selectivity*
- *improving the quality and effectiveness of resolutions*
- *ensuring that the OHCHR is adequately resourced to service the HRC, UPR and Special Procedures*
- *avoiding duplication and creating channels of communication/referral with other UN bodies*
- *preventing excessive bloc voting and abusers from attaining membership*
- *facilitating NGO participation, especially from developing countries*

Now that the review process is underway, UNA-UK's work with the Conservative Human Rights Commission completed and taking into account a wide-ranging debate on the HRC in the House of Lords earlier this month, UNA-UK is pleased to present its recommendations for the HRC review, based on these priorities.

The UK is well-placed to take forward these recommendations, having played an instrumental role in the development of the current international human rights framework and of the Human Rights Council, and continuing to play a constructive role on the Council. British Foreign Secretary William Hague has repeatedly re-affirmed his commitment to making the UN's Human Rights Council more effective, and to the wider project of human rights for all.

Institution Building Package (IBP): oiling, not reinventing the wheel

Initial position papers by Human Rights Council members and documentation pertaining to the first session of the Working Group on the Council's review indicate that there is little appetite to re-visit the fundamentals of the HRC (with the notable exception of Council membership). This is to be welcomed. The Council devoted much of its first year to the development of a comprehensive Institution Building Package, which fleshed out the modalities of new features such as UPR, and it is critical that this five-year review does not usurp more of its time through attempts to re-open the debate on its basic characteristics. There are, however, a number of areas that do require attention:

- The IBP would benefit from a substantive section addressing non-compliance of states with and follow-up to Council resolutions. This would ideally include clear channels of information-sharing between the HRC and the UN Security Council, and regular interaction, public and private, of the High Commissioner for Human Rights and Special Procedures with the Security Council.
- The mandate of the HRC Advisory Committee (which is supposed to act as a 'think tank' and has responsibility for the complaints process via its two Working Groups) should be reviewed to ensure that it is not duplicating research being undertaken elsewhere, and that its election processes are suitable, especially with regard to those who will serve on the Working Group reviewing complaints.
- The complaints procedure itself also merits review. Currently handled by two Working Groups of the HRC Advisory Committee, the processing of complaints is extremely slow and most complaints are dismissed with no explanation to the complainants. Those few that have reached the HRC have not been acted on. Rather than the Working Groups, which at present consist of HRC members, complaints might be better handled by a revolving troika or, better still, a panel of independent experts such as a group of Special Rapporteurs.

Becoming a principal organ: a 'red herring' at present?

The elevation of the Council to a subsidiary body of the General Assembly rather than of the Economic and Social Council has given it a higher profile. Whilst eventual elevation to principal-organ status is desirable – not least because it would bring the UN's three pillars, peace, development and human rights, closer in terms of status within the Organisation – given the HRC's current flaws and the difficulty in amending the UN Charter, this should not be a key issue during this five-year review. Amendment of the UN Charter is likely to occur only as part of a wider reform package.

- More is to be gained from developing formal and informal channels of referral and information-sharing between the HRC and Security Council, e.g. through regular briefings of the Security Council by the High Commissioner for Human Rights (which has not happened since 2007) and closed-door meetings with Special Procedures. More use should also be made of the Arria procedure which provides for informal contacts with the members of the Security Council.
- The relationship of the HRC to other bodies, notably the 3rd Committee of the UN General Assembly, also needs to be clarified. The 3rd Committee examines human rights questions, including reports of Special Procedures (which are unrelated to their reports to the HRC), and discusses a range of issues, such as the elimination of racism, and indigenous rights, which the HRC also considers on a regular basis.
- The current lag-time between HRC sessions and presentation of resolutions to the General Assembly needs to be shortened. At present, the HRC holds a minimum of three sessions per year, as well as ad hoc special sessions. Often the decisions arising from these sessions have programme budget implications, but as the General Assembly only considers the HRC report once a year, decisions on funding can be delayed for up to 15 months. It is therefore also recommended that a contingency fund, administered by the OHCHR, be established to enable urgent funding needs to be met.

Strengthening composition: small steps to improve the Council's membership

Fresh debates on the composition of the Council will likely be protracted and might well produce little improvement. Agreement on criteria to trim membership would prove difficult – to paraphrase former UN High Commissioner for Human Rights Sergio Vieira de Mello: for some to accuse others of having a poor human rights records is a bit like fish criticising each other for being wet. The current composition of the HRC is based on geographic distribution of seats and actually reflects more closely the make-up of the UN than the Commission on Human Rights, a logic that is difficult to dismiss. In any case, a small Council consisting of squeaky-clean, mostly westernised states laying down the law for the rest of the world is not likely to advance the cause of human rights worldwide.

Changes to the election processes and requirements might prove more fruitful, such as:

- Making it mandatory for HRC candidate states to follow the format for pledges recommended by OHCHR (currently voluntary guidelines), which includes:
 - Listing international human rights instruments to which the state is already party and indications of intent to ratify further instruments and to withdraw reservations,
 - Cooperation with Special Procedures, including extending standing invitations, responding to communications and implementing recommendations,
 - Cooperation with treaty bodies, including timely submission of reports, and
 - If the state has previously served on the Council, a history of cooperation on the HRC, including voting records.
- In addition, UPR and follow-up should be taken into account and, where possible, international and local NGOs should be consulted.
- The fielding of 'clean slates' for elections by regional groups should be discouraged.
- Finally, and this will be more difficult to attain, raising of the election threshold to a $\frac{3}{4}$ majority in the General Assembly. This would likely amplify the positive trend to date that in contested elections, the better-performing state generally succeeds.

Special Procedures: better support and better protection

The Special Procedures, described as the 'jewel in the crown' of the UN human rights system, have survived what many considered to be the most serious challenges: the review of mandates and production of a 'code of conduct'. With the exception of a few country mandates, most have been extended – including that of the Independent Expert on Sudan – and new thematic mandates have also been created. Though far from ideal, the 'code of conduct' does not fundamentally change the way Special Procedures operate.

However, the rapporteurs and independent experts still face considerable challenges. Non-compliance of states is one of these, as is the continued differentiation between country-specific and thematic mandates in terms of term-limits and ease of appointment. Resources, both financial and in the form of support for their work, are in short supply and under more pressure since the Council was created, given OHCHR's new functions with regard to servicing UPR, more frequent HRC sessions and the follow-up to them. At present, just two per cent of the UN's regular budget is allocated to OHCHR and of that, seven per cent is made available to the Special Procedures. It is therefore recommended that:

- A pooled voluntary fund for Special Procedures be created. This would enable OHCHR to distribute funds where needed; increase provision of support such as media training or psycho-social support; and might help to widen the pool of developing-country candidates, many of whom cannot afford to stand for a role that has no funds to support it (Special Procedures do not receive salaries and at present, many are attached to academic centres that effectively subsidise their work in the form of research assistants and office space). On a related note, member states should not 'earmark' OHCHR funding.
- The 'code of conduct' should include a section on the obligations of states, for example, to issue visas, provide protection and access, and respond to reports and letters of concern. Requiring HRC candidates to issue standing invitations to all Special Procedures – see section above – would also help.)
- Term-limits for country-specific mandates (currently one year) should be raised to three years, the limit currently applied to thematic-mandate holders.
- Better use could be made of the vast body of research produced by the Special Procedures. In 2009 alone they conducted 73 field visits to 51 countries and prepared more than 150 reports. A unified public database of reports, communications and responses would be a beneficial resource to UN and civil society organisations.

Universal Periodic Review: turning participation into results

As a peer-review mechanism, UPR is working reasonably well. So far, all states have attended their session and nearly all submitted the written report required (which is by no means the case for the periodic reports states are obligated to submit to treaty-monitoring bodies). The process has also seen significant commitments emerge, notably Saudi Arabia's pledge to abolish the guardianship system for women and Vietnam's pledge to limit the crimes for which the death penalty is applied (though it remains to be seen whether these will be implemented). The UPR process is, however, far from perfect.

The quality of the review – in particular the questioning by the 'troika' of states leading it – has varied greatly depending on the troika countries and their relationship to the state under review. As a result, serious human rights concerns have been ignored or glossed over. This has led to several NGOs pushing for increased civil society participation in the review. At present, NGOs can participate in the working-group stage and can contribute to a 'stakeholder' report which, along with the state and the OHCHR reports, forms the basis for the review. However, the OHCHR and stakeholder reports do not form part of the state questioning during the review. While this has the potential to be an effective process in countries where a vibrant civil society exists, more could be done to improve NGO participation in developing countries.

The quality of recommendations has also been inconsistent – for instance, several recommendations have been so vague as to be meaningless, e.g. for a country to adhere to the obligations it has committed itself to. States are not obliged to accept all or indeed any of the recommendations (China rejected all 70 recommendations made during its review) and many have cited, *inter alia*, domestic legal provisions as a reason for not implementing an international human rights treaty. There are no clear follow-up processes to the UPR, other than the next review in four years' time.

General suggestions to improve UPR are:

- Developing a set of 'minimum standard' questions that must be asked during all reviews. During the review, particular attention should be paid to recommendations from other UN bodies, which are summarised in the OHCHR report, and recommendations made should be focussed, grouped where appropriate, and action-oriented.
- Asking states to provide written explanations for each rejected recommendation. Ideally, states would be obliged to provide these explanations prior to the adoption of the HRC report.
- Formalising the voluntary commitment that many states have made to providing interim updates on progress. (A best-practice document on national follow-up processes might also be useful.)
- Devoting the second 'cycle' of UPR towards assessing implementation of previous recommendations as well as any other arising human rights issues.
- Finding creative ways to build NGO capacity in states where civil society is weak. This could include a support fund, technical assistance and training, and should also address the (financial and other) difficulties faced by NGOs and human rights defenders in traveling to Geneva for sessions (e.g. video conferencing). The participation of local NGOs in UPR will go some way to countering the oft-expressed view that certain human rights issues are 'Western' and that local actors are not concerned by them. The UK should play bilaterally an important role in strengthening NGOs in states where civil society is weak.

The UK as an example

UNA-UK feels that the UK, as one of the first batch of states to be reviewed and with its unique relationships within the EU, the Commonwealth and beyond, has a role to play in leading on best practice. The UK should:

- Actively seek to implement recommendations and bolster its record through ratification of outstanding human rights treaties, such as the Migrant Workers Convention, International Convention for the Protection of All Persons from Enforced Disappearance and various optional protocols.
- Improve public scrutiny of the outcome of its review and progress made in implementation (perhaps through a parallel inward-looking report to the FCO online human rights report), and establish a formalised process involving NGOs prior to and after each four-year review.
- Submit a half-way progress report.

- Explore ways to support capacity-building and protection for NGOs from developing countries, particularly those where civil society organisations are threatened, to increase their participation in the UPR process. Support to Least-Developed Countries that typically have only small if any representation at the UN in Geneva could also be considered.

Improving the effectiveness of the Council

There has been some improvement in the Council's performance with regard to responding to emerging situations, cross-regional sponsorship of resolution and states not voting in line with their blocs. However, overt politicisation, selectivity and rigid bloc voting remain the biggest challenges to the functioning of the HRC and the quality of its resolutions. The slight reduction in the number of members, from 53 in the Commission to 47 in the Council, has actually exacerbated the problem, as states that tend to prefer non-interference have a majority. In addition to raising the standards for election to the Council, a number of steps could be taken to mitigate this.

Breaking down the blocs

- In addition to seeking ways to foster cross-bloc partnerships, a requirement for resolutions to be sponsored by members representing at least three blocs could be introduced.
- States that vote in favour of e.g. the extension of a Special Procedure mandate, as Uganda, Zambia, Gabon and the Maldives did in the case of the Independent Expert on Sudan, despite pressure from their blocs, should be rewarded, possibly in terms of technical assistance. At minimum, their cooperation should be noted and included in the UPR process.

Countering selectivity

UPR has arguably gone some way towards alleviating selectivity, making sure that even the most powerful countries are scrutinised at least every four years. Other suggestions are:

- The creation of regional Special Procedures, to combat the general reluctance to create and extend country-specific mandates.
- Setting evidentiary thresholds for holding Special Sessions. These sessions could also be triggered by e.g. three or more Special Procedures.

Improving the quality of resolutions

- Minimum standards for issues that must always be raised (e.g. crimes against humanity, genocide, war crimes and ethnic cleansing) and criteria for 'congratulatory' resolutions should be developed to avoid resolutions like those on Darfur and on the final stages of the Sri Lankan conflict, which praised both governments concerned for upholding human rights, in the teeth of substantial evidence to the contrary.
- At present, expert input into the Council is limited to OHCHR staff and Special Procedures, as the Working Groups and Advisory Council consist purely of states. The appointment of expert 'rapporteurs' or voluntary guidelines for HRC membership advising candidates to appoint human rights experts as head of their delegations might also improve the quality of the resolutions.

Agenda item 7

The presence on the HRC agenda of a standing item (agenda item 7) on the Occupied Palestinian Territories (OPT) has been contentious from the outset. While the human rights situation in the OPT rightly deserves attention, it is not appropriate that it alone should be singled out whilst grouping together all other situations under a single item (agenda item 3).

One possibility might be to split agenda item 3 into regional sub-headings. This might go some way to ensuring that the option of discussing the OPT (which would no doubt be raised) remains, but also that there is a better geographic spread of pressing situations discussed, in addition to the routine review of all countries every four years under UPR.

Practical change on the ground

The HRC is limited in terms of action it can take to influence matters on the ground. It can issue resolutions that are approved *en bloc* by the General Assembly, which considers its reports once a year. These resolutions have symbolic value (e.g. the Sri Lankan government has made much of the Council's endorsement of its conduct during last year's hostilities) but are not legally-binding. At best, they can establish a fact-finding mission, which can be rejected by the state in question. It is the work of the Special Procedures and OHCHR that arguably has most impact on the ground.

- In addition to support for OHCHR in Geneva and the Special Procedures, integration of HRC work with UN country teams – particularly human rights leads – could be formalised.
- More emphasis could also be placed on 'carrots' such as technical advice and capacity building. Training for governments, the development of national human rights institutions and civil society would greatly help Special Procedures and fact-finding missions, would enhance the assistance NGOs could provide to local human rights defenders and victims of violations, and would likely improve the quality of the 'stakeholder' UPR submissions as locally-owned grievances and recommendations are more likely to reflect what is needed. This would not only broaden the range of actions the HRC can take but would help to glean more support from those developing-country states that have hitherto been reluctant to support any form of intervention.

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