



60th
anniversary
of the
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United Nations heading for failure

Décember 2008
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United Nations heading for failure on 60th anniversary of the Universal Declaration of Human Rights

As the world marks the 60th anniversary of the Universal Declaration of Human Rights on 10 December, Reporters Without Borders looks at the record of the Geneva-based Human Rights Council, the main UN body concerned with such matters. Two and a half years after it was set up amid the ruins of the Commission on Human Rights, the Council is far from keeping all its promises.

The UN Human Rights Council is doing little better than its predecessor, the now-abolished Commission on Human Rights, which was completely discredited over the years, especially when it named a Libyan as its president. The Council has the failings of all UN bodies, where member-states are both judges and judged. States with repressive governments are elected to the Council and thus tasked with ensuring respect in other countries for rights they themselves are abusing on a daily basis. Until this absurd situation is ended, the United Nations cannot be said to be fulfilling its goal of protecting human rights.

If the UN does not manage to end it, the Council will fail in its mission. The Universal Periodic Review, though a good step forward, will not make up for these weaknesses.

Reporters Without Borders looks at the battle between the interests of governments and recognition of victims of human rights violations.

First year mainly concerned with building the Council's structure

So much fuss for so little change. Is there any hope still for the new Human Rights Council, inaugurated in Geneva on 19 June 2006 with overwhelming approval of the UN General Assembly (and only the US, Israel, and two small Pacific states against) to replace the Commission on Human Rights? The Commission, set up in 1946 and holding annual six-week sessions in Geneva, was criticised for becoming a prisoner of power-struggles between member-countries. The new

Council was supposed to revive interest in human rights at the UN.

But right from the start, deals and under-the-table machinations tarnished an institution supposed to stand up for the first principles of the Universal Declaration of Human Rights. The Council was still just an idea when the jockeying for position that undermined the old Commission began to discredit it. Cuba and its allies, especially in Asia and Africa (including China, North Korea, Zimbabwe and Sudan), and Belarus immediately accused the United States and its friends (notably the European Union countries) of trying to set up a human rights council to serve their own purposes.

The US criticised the UN secretary-general for making too many compromises and refused to join the new Council. The first 47 Council members (including Algeria, Saudi Arabia, Azerbaijan, Bangladesh, China, Cuba, Nigeria, Pakistan, Russia and Tunisia) were elected on 9 May 2006.

"Ten countries that violate the rights of journalists and free expression on a massive scale," Reporters Without Borders said at the time, deploring the "wheeling and dealing customary during elections for the former Commission" and noting that they were responsible for 90% of executions in the world in 2005.

The new Council, dominated by member-countries of the Islamic Conference Organisation (17 of the Council's 47 members elected in 2006), has not managed to overcome the divisions that plagued the Commission and has fallen into the same trap as the Commission.

Was the following an act of provocation? As delegates made opening speeches at the Council's first session, Teheran prosecutor Said Mortazavi, who is accused of ordering the arrest and mistreatment of many journalists, was to be seen in the delegation of Iran (an observer-country and not a Council member). He is said to have authorised his agents to torture Iranian-Canadian journalist Zahra Kazemi to death in June 2003. She had been arrested as she was taking photos of a student protest in Teheran. The stir created by the presence of Mortazavi in Geneva, even though small and short-lived, was enough to sow doubt among those who still believed in the chances of a "United Nations of human rights."

Cut off the dragon's head and...

At the Council's second session in Geneva in September 2006, when Christine Chanet, representative of former UN Commissioner for Human Rights Louise Arbour, presented a report on rights violations in Cuba, the Cuban ambassador, Juan Antonio Fernandez Palacios, denounced it as "fit for the wastepaper basket" and attacked the European Union for having secret prisons in member-countries in the name of the US fight against terrorism.

Very soon after the Council was set up, it began to creak, with political alliances, threats and blackmail gumming up the machinery and in-depth discussions. The front-line between the two blocs, which had undermined the Commission, was drawn.

Among the first obstacles were "the world's most urgent human rights situations," those considered the most serious and chronic and a new category aimed at increasing the Council's responsiveness. Arab countries, backed by African and some Asian countries, considered Palestine the top priority, while European and most Latin American states disagreed.

The Palestinian drama risked being forgotten, the top-priority supporters said. But how could the Council justify holding three special sessions on the Middle East in less than a year while the people of Darfur, Chechnya, Burma

and many others suffered silently, the Europeans and Latin Americans retorted.

And what about the proclaimed UN desire to become a serious instrument to promote human rights and not just reflect the political scheming of various countries?

The Arab-Muslim alliance of states said that unless Palestine and "racial hatred" (Islamophobia, in fact) was put at the centre of discussions they would boycott a resolution about indigenous peoples, for which some NGOs had been waiting for 20 years. Many Muslim countries had no illusions about the effect of its decisions but they saw the new Council as a new way to defy the UN Security Council where they did not have as much influence. So it was not very surprising that differences brushed aside in New York would erupt in Geneva.

Independence of UN experts in danger

When the Council started work in 2006, 13 countries were being monitored by a UN special rapporteur – Burma, Cambodia, the Palestinian territories occupied by Israel, Somalia, Haiti, Cuba, Liberia, Belarus, Burundi, North Korea, Democratic Congo, Sudan and Uzbekistan.

There were 28 "thematic" special rapporteurs at the time, assigned to investigate enforced disappearances, extrajudicial executions, torture, freedom of religion or belief, sale of children, arbitrary detention, freedom of opinion and expression, racism, slavery, independence of judges and lawyers, violence against women, toxic waste, right to education, extreme poverty, migrants, right to food, adequate housing, terrorism, transnational firms, physical and mental health, minorities, indigenous peoples, mercenaries, human trafficking, internally displaced persons, human rights defenders, foreign debt and international solidarity.

The main change from the old Commission was the Universal Periodic Review (UPR), assessing respect for human rights around the world and created to beef up existing procedures. But some states are using it to try to

abolish country rapporteurs and reduce the number of thematic mandates and their effect. This has led to a row with Western countries, who are pushing hard to renew these mandates.

The threat to the UN experts from the African bloc and their friends (Islamic and Asian countries, including China, along with Cuba and Russia) has also involved a bid to impose a very restrictive “code of conduct” on special rapporteurs that would seriously reduce their independence and freedom to talk to the media. It would also remove the obligation of countries to work with them.

The UN experts, all volunteers, have traditionally been named by the UN secretary-general, the UN High Commissioner for Human Rights or the president of the old Commission. But the African proposal would require them to be elected by member-states of the Council, thus strongly polarising the choices.

Under the code of conduct, countries would have a veto on the rapporteurs’ sources of information and thus push aside inconvenient conclusions by NGOs to escape accusation. This is what Sudan and other African states are doing to oppose UN intervention in Darfur.

China also reportedly wants special country rapporteurs to be appointed by a two-thirds majority, which means “rogue” states would be protected. So rapporteur Adrien Séverin would not have been able to call five times for a change of regime in Belarus, and rapporteur for Uzbekistan Michèle Picard would not have been able to show, through witnesses, that the only prison in the country barred to the International Red Cross is a torture centre.

All these intricate debates and attempts to obstruct show how enormous the battle is. “If we lose on the code of conduct, it’s the end of the UN system,” according to one Western diplomat.

The 41 special rapporteurs have come up with a “handbook” to counter imposition of the African-proposed code of conduct. “This is really all about which version of the truth

will prevail, the country’s or the UN’s, as represented by the rapporteur,” says Frenchman Louis Joinet, the dean of UN experts. “When I denounced in Geneva arbitrary detentions and persecutions, I was accused of siding with terrorists. Yet three of these ‘subversives’ went on to become presidents of their own country – Christos Sartzetakis in Greece, Xanana Gusmão in Timor Leste and Jorge Sampaio in Portugal. In each case I, not the governments, was speaking the truth.”

The dominant alliance eventually managed to impose a code of conduct but it has been greatly watered down and UN experts and NGOs say they can live with it.

Three thematic mandates (indigenous peoples, arbitrary detention and right to food) and two country mandates (Burundi and Haiti) have been renewed and a new mandate created for fighting new forms of slavery.

China and Burma hardly touched

The worst rights violators – notably China, Burma, Russia, Tunisia and Saudi Arabia – have hardly been challenged in the nearly three years of the Council’s existence.

China opened its borders to a human rights expert for the first time in September 2007 after accepting UN conditions. Special rapporteur for torture Manfred Nowak returned from his mission and praised the opening, but he stressed that inhuman treatment was still widespread in China and elsewhere. After this one mission, China was not further called to book by the Council, even though human rights organisations reported increased rights violations as the Olympic Games approached.

The same thing happened with Burma. The Council finally held a special session on the country in October 2007, after alarming reports of torture and summary executions. The military regime opened its doors slightly in December and special rapporteur Paulo Sergio Pinheiro was able to present a report to the Council on his visit there. But Burma quickly shut down again and the UN is still on the outside.

Iran and Uzbekistan escape sanctions

Iran and Uzbekistan have been the target of countless individual complaints through a confidential procedure inherited from the old Commission known as "1503," allowing people all over the world to petition the UN. About 20,000 cases are filed every year with the Council and sorted into categories of abuses. When the number of complaints shows violations are massive and systematic, the Council can name a rapporteur to investigate on the spot and if the recommendations to the government concerned are not followed up, secrecy is lifted and the country is publicly criticised.

This is the theory. But throughout the life of the Commission, the operation of 1503 was marred by deals between countries. A famous example was when the Argentine military dictatorship persuaded Russia, a buyer of Argentine wheat, to obtain a freeze on complaints filed by victims of President Jorge Videla. So Argentina was never challenged, despite 30,000 people disappearing there. Iran and Uzbekistan were the first country cases dealt with by the new Council, but deals meant they were secretly absolved and the cases closed in March 2007, once again undermining the Council's credibility. The next year, a confidential report condemned the situation in Turkmenistan but again things fizzled out and the case was dropped.

The UPR going through its paces

The Universal Periodic Review, the Council's major weapon and the only UN mechanism requiring every country without exception to be judged by its peers raised fears at first, with NGOs pushed aside, filming of Council sessions banned and self-assessments and deals made between member-states. But with time, safeguards meant excesses were limited.

The first countries to be examined, in April 2008, put the new machinery to the test. They included Bahrain, Tunisia, Morocco, Indonesia, the United Kingdom, India, Brazil, Algeria and South Africa.

The UPR involves three reports available before the case is examined – one by the country itself, one from the UN (rapporteurs and treaties signed) and a collection of NGO reactions.

The Council's dominant African and Arab alliance (backed by most Asian and Islamic states, along with Russia and Cuba) wanted the procedure based only on the country's report, which UN High Commissioner for Human Rights Louise Arbour openly opposed. She said civil society (and therefore NGOs) were better placed to expose rights violations, assess progress made and suggest improvements if needed. A country presenting a tame report about itself could thus be more criticised by other countries, tougher recommendations made and its excuses countered.

But the worst offenders against human rights and freedom of expression have not yet been examined in this way, so it is too early for a clear verdict on the UPR. What will happen when these countries are looked at? Colombia, Turkmenistan, Uzbekistan, Israel (for its behaviour in the Palestinian Territories) will be judged in December 2008, and Cuba, China, Russia and Saudi Arabia in March 2009. These sessions will show how far the UPR can go, before the very worst dictatorships, such as North Korea and Burma, are in the dock.

Human rights held hostage by religion

"The Council's internal workings, its coalitions and alliances, its speeches, its negotiated documents and terminology are killing off freedom of expression and it has become an ideological battleground against its founding principles," said a group of French intellectuals (including Elie Wiesel, Georges Charpak, Alain Finkielkraut and Claude Lanzmann) in a March 2008 statement called "The UN against human rights" at the height of the row in the Council over Islamophobia.

A new split appeared in the old Commission after the 11 September attacks as hunt went on for terrorists accused of acting in the

name of Islam. It has steadily increased under the new Council. Tempers are also rising as the follow-up conference on racism, "Durban II", approaches in Geneva in April 2009. Canada and Israel have already dissociated themselves from it.

The Islamic countries, backed by most African states, want Islamophobia recognised as one of the worst forms of religious insult and say that, following 9/11, the definition of racism should be broadened to include xenophobia, racial profiling and religious discrimination. The EU countries are strongly against such a system, where religions compete for "most-persecuted" status.

Doudou Diène, former special rapporteur on contemporary forms of racism, highlighted in his 2007 report the seriousness of denigrating religion, of anti-Semitism, hatred of Christianity and especially Islamophobia. This was seen by Western observers as a bid to draw wider support for including discrimination against religion in the definition of racism.

Guatemalan Frank La Rue, appointed rapporteur on freedom of expression in October 2008, also recognised that in the modern world Islam could be unjustifiably seen as a source of terrorism. It was a worrying stereotype, he said, but noted that the problem was not denigrating religion but discrimination against people because of their religion.

The majority bloc on the Council have managed to incorporate this notion in several major resolutions, including one on freedom of expression seen as crucial by Western countries.

Kofi Annan's warning about Darfur

UN secretary-general Kofi Annan told the Council on 29 November 2006 it should "avoid disappointing people" as it took over from the Commission and not let itself be split between north and south, between developed and developing countries. He called for a special Council session on the conflict in Darfur and said the Arab-Israeli dispute, which the Council had devoted three special

sessions to, should not "monopolise attention at the expense of others where there are equally grave or even graver violations" of human rights.

His call came after endless talk and indecision between countries about whether to send a special mission to Darfur. At the same time, Luis Moreno-Ocampo, prosecutor of the International Criminal Court (ICC), presented at The Hague a thick file of evidence about massacres and rape of civilians in Darfur. He notably accused Ahmad Muhammad Haroun, a former interior minister, and Ali Kosheib, commander of the Janjaweed militias.

The Council decided at a special session on Darfur in December 2006 to send a mission of five experts to assess the situation there.

Council president Luis Alfonso de Alba named 1997 Nobel Peace Prize winner Jody Williams (co-founder of the "Nobel Women's Initiative") as head of a high-level mission to Darfur in January 2007 along with Sima Samar, special rapporteur on human rights in Sudan, but Sudan refused to let them in and the mission had to do its report from outside the country.

Eight African countries on the Council (Cameroon, Senegal, Nigeria, Ghana, Gabon, Zambia, Chad and Mauritius) declared their opposition to Sudan in March 2007 when a Council group backed Sudan by calling Williams' report invalid. The eight said the situation was too serious to hide behind procedural arguments. It was the first time the Council's political alliances had bowed to humanitarian interests.

United States in a bad position

A US delegation was called to answer detailed questions before the UN Committee against Torture (part of the Council) about Iraq, Guantánamo, Afghanistan, secret prisons and other matters in May 2006. Every country has to be questioned every four years and for the first time, the US was called to account before an international body about its detention and interrogation methods at home and abroad.

This harsh indictment was highly symbolic, as the US was obliged to respond to accusations made in the media and backed by UN experts.

Four months later, US officials explained to 18 Council experts about the many abuses linked to the anti-terrorist Patriot Act and the notorious military commissions set up by President George Bush to replace the military courts in trials of alleged terrorists. The US supreme court had declared the commissions illegal but the ruling was rejected by the Bush administration.

Putting the world's most powerful country in the dock at the UN in Geneva encouraged Arab and Islamic countries in their goal of making Geneva a counter-balance to the UN Security Council in New York. The US meanwhile continued its efforts to discredit the Human Rights Council by refusing to join it.

A few successes however

Luis Alfonso de Alba, a former Mexican ambassador to the UN, was elected first president of the Human Rights Council by its 47 members in May 2006 and spent his first year building its structure. He was an experienced diplomat who had campaigned for abolition of the death penalty, for protection of an individual's rights in the fight against terrorism and for the rights of immigrants and the handicapped, and had the advantage of coming from a developing country.

All this gave him immediate legitimacy with non-Western countries. He was a skilled negotiator who maintained a dialogue between everyone throughout his term, without losing sight of his goal of making the Council a forum for victims and thus giving maximum say to NGOs.

Two major treaties were adopted in the first year, the International Convention for Protection of All Persons from Enforced Disappearance (a basic judicial instrument adopted by consensus) and the Declaration on the Rights of Indigenous Peoples (approved by a large majority).

For several moments during a Council session on 29 June 2006, wars and machinations were

stilled by emotion as Marta Ocampo de Vasquez, a Plaza de Mayo mother, told how Argentine soldiers seized her daughter and son-in-law one night in 1976. "There were taken away like thousands of others and never heard of again," she said. "They went into a black hole and never came back." The dramatic words were heard in silence before the Council unanimously approved the Enforced Disappearance Convention, which was the fruit of 25 years of civil society campaigning and work with governments.

The convention gave a legal identity to tens of thousands of people who vanished under dictatorships in Spain and Latin America. It also sent a strong signal to countries like Algeria, the Philippines and Russia, where the wound of Chechnya is still open, that impunity now has its limits. New possibilities appeared for UN investigation of secret torture centres set up in the name of fighting terrorism. The convention also established "the right to the truth" for families of disappeared people and governments thus agreed to pay compensation to the families and punish those responsible for the kidnappings.

The "de Alba package"

Applause filled the Council hall at one minute before midnight on 19 June 2007 as an unusually late Council session completed a year of work by finally passing by consensus a number of measures outlining the main structure of the Council. De Alba had accomplished his mission.

The so-called "de Alba package" involved four parts of the Council that had been debated over the previous year – the future of the special rapporteurs, the close examination of countries' records (the Universal Periodic Review), the confidential 1503 procedure and the new shape of the Council's sub-committee. It also included the Council's agenda and a list of all the themes and countries for which a special rapporteur had been named.

But mysteriously, without any consistent explanation, Cuba and Belarus were not on the list. Day-long negotiations had produced the abolition of special rapporteurs for the two countries.

Western countries were reassured by the selection process agreed on for reviewing the mandates of country or thematic special rapporteurs, who were not to be elected by the Council, as the dominating alliance wanted, but picked by the UN General Assembly from a list of candidates submitted by the Council president.

Amnesty International's UN representative, Peter Splinter, was sceptical however and said some things were not clear in this method and that rapporteurs could still be named more because of politics than competence.

The original idea was to appoint independent experts for the UPR but the de Alba compromise was to pick them through a draw of three reviewing country candidates. The country to be reviewed could veto one of the three and ask for a country from its own region. One Western diplomat was concerned that de Alba had yielded far too much ground over the UPR and said it left little room for independent experts and civil society and made too many concessions to state sovereignty.

The compromise package was also criticised for the prominent place of rights in Palestine and the Occupied Territories. In the middle of a list of 11 themes linked to building the Council's structure, this issue has its own paragraph, a clear sop to the Islamic Conference Organisation and recalling the selectivity of both the old Commission and the Council, which held three special sessions on the Israeli-Arab conflict in the space of only a few months. One observer said this confused principles with a special situation, however serious it might be."

China's request, strongly opposed by EU countries, that resolutions be approved by a two-thirds rather than a simple majority, was not granted and Beijing finally dropped it. Diplomats said the political cost to China of breaking a Council consensus would have been too great only a year before the Beijing Olympics.

Romanian ambassador Doru Romulus Costea succeeded de Alba at midnight on 19 June 2007 and was then succeeded as presi-

dent in September 2008 by Nigeria's Geneva ambassador, Martin Ihoeghian Uhomobhi.

Recommendations

The Human Rights Council is made up of countries, like the United Nations itself, so it will inevitably be a battleground of their interests. By abolishing the Commission on Human Rights, the UN took the risk of having to renegotiate all the instruments put in place by the Commission, while only resolutions involving countries drew criticism for lack of impartiality (only diplomatically isolated countries were criticised while others escaped because of their diplomatic ties).

By examining country situations every four years, the Universal Periodic Review procedure is meant to remedy this double-standard practice. Time will tell if it works.

The "special procedures" (independent thematic or country investigators, a priceless source of information) have been diminished by renegotiation of the Council's instruments. Meanwhile, NGOs do not have a big enough voice to counterbalance the weight of countries.

The use of human rights by countries for their own purposes will not end until the UN Security Council and the whole system of world governance is reformed and enlarged. This issue has been highlighted by the present economic and environmental crisis.

Reporters Without Borders recommends immediate:

- Introduction of eligibility rules for Human Rights Council membership based on a country's respect for human rights and its signing and implementation of major international treaties.
- Strengthening of the powers of the special rapporteurs and their expansion to several priority countries, such as Uzbekistan.
- Simplification of the so-called 1503 procedure so that complaints filed with the United Nations are examined and cannot be rejected by countries criticised.

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Liens utiles :

- Human Rights Council
<http://www2.ohchr.org/english/bodies/hrCouncil/index.htm>
- Office of the UN High Commissioner for Human Rights
<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>
- Third Committee of the UN General Assembly
<http://www.un.org/ga/third/index.shtml>
- Independent website on the Universal Periodic Review
<http://www.upr-info.org/>
- Human Rights Tribune
<http://www.humanrights-geneva.info/spip.php?page=sommaire&lang=en>
- Geneva Academy of International Humanitarian Law and Human Rights
http://www.adh-geneve.ch/web_en/