

## CETIM ADVISES YOU THE FOLLOWING READINGS

### Changements climatiques. Impasses et perspectives

Joint publication Vol. XIII (2006) n°2

Global warming is a threat to the entire planet particularly the most vulnerable populations from the South who have already felt the first effects of climatic disturbances. At the 2005 in Montreal, the United Nations Conference on Climatic Changes tried to obtain the guarantee that the Kyoto Protocol would continue past 2012. However the world's realization of this danger enters into conflict with national interests and therefore the measures that were taken to limit the effects of greenhouse-gas emissions remain derisory. The fault lies with the dominating logic of economical productivism and the short-term interest of those sectors that benefit from the present situation. On one hand, the North - with the USA out in front - refuses or finds ways to get around any true questioning of its model of society. On the other hand the emerging industrial countries refuse to allow their own economic development to be hindered. Some solutions that have been put into effect - quotas allocated on the basis of the balance of power - remain, nevertheless, tied to the market mechanisms that deny equity and the historical responsibility of the major polluters. Other means based on initiatives coming from cities and communities aiming at improving energetic efficiency and implementing clean technologies exist. In the meantime the Southern countries also demand that those countries that are mainly responsible for global warming pay for the damage caused by helping them to adapt to the inevitable climatic changes. Up until the present the Northern countries have turned a deaf ear. Nevertheless a new partnership between Northern and Southern countries is essential in order to prevent the worst and to heal the first climatic throes.

Price: CHF 22.50 / 15 €, 209 pages, ISBN : 2-84950-101-8, edition CETRI (Belgium), 2006, can be ordered from CETIM.

## GET YOUR FRIENDS TO JOIN CETIM!

### Etat des résistances dans le monde 2006

Joint publication

This joint publication aims at highlighting the emergence and the development of social and civic conflicts opposing neo-liberal policies and arbitrary politics in countries within the five continents. Thirty-five local authors either researchers or militants have written articles in a concise style allowing the reader to delve into often little known realities from countries such as Argentina, Kenya, Indonesia, Russia... in order to identify the actors, the stakes, the results and the future of these resistances. For its third instalment (the 1st in 2002 and the 2nd in 2004) this project from the *Centre Tricontinental* was published jointly with *Le Monde diplomatique* in the form of *Manière de voir* December 2005-January 2006 (N° 84).

Price: CHF 18.- / 12 €, 98 pages, coedition CETRI (Belgium) and Le Monde diplomatique (France), 2006, can be ordered from CETIM.

### La Banque Mondiale: le coup d'Etat permanent. L'agenda caché du Consensus de Washington

By Eric Toussaint

A behind the scenes look at geopolitics and international finance. Contrary to what many people believe the World Bank's mission is not to reduce poverty. Rather than fighting poverty, the World Bank reproduces it. The World Bank and its twin the IMF are instrumental in the subordination of debt-ridden countries, whereby defending in the interests of the major industrial powers. From their very beginning, both these institutions have been very reticent to include the respect for human rights in their mandate. Instead they have systematically supported the politics of dictatorships that most frequently led to the violation of fundamental human rights. It is necessary to clear-sighted in order to establish that the development model proposed by the World Bank and the IMF has not led to an improvement in the living conditions of the populations targeted. Now, with Paul Wolfowitz, one of the major ideologues of the American neo-conservatives and the man who promoted the invasion of Iraq, as its president, the situation at the World Bank can only get worse. This book helps the reader to understand the major forces that influence the policies of the international financial institutions.

Price: CHF 27.- / 18 €, 310 pages, ISBN CETIM: 2-88053-045-8, coedition CADTM (Liège, Belgium) / Syllepse (Paris) / CETIM, 2006, can be ordered from CETIM.

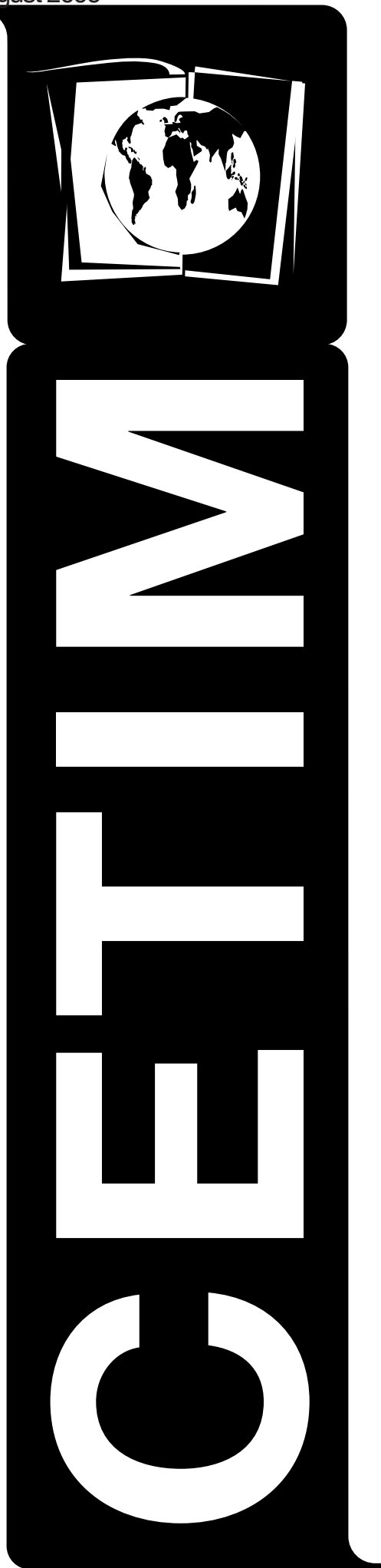
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## EDITORIAL

Strong criticism has been voiced in recent years of the main United Nations body for human rights - the Commission on Human Rights (CHR) - which has now been replaced by the Human Rights Council. Since its formal establishment on 15 March 2006, a debate rages over the role and powers of the new Council. This issue of CETIM's bulletin is devoted entirely to these issues.

It should be noted first of all that efforts are entirely focused on the universal periodic review of all UN Member States in terms of their human rights performance. Although the mechanisms for such evaluations are not yet established, the current debate reveals very different visions of the role and objectives of the Council. For some, human rights violations must be punished; others advocate above all, dialogue and cooperation in order to prevent violations.

The perspective that is adopted in relation to universal, periodic evaluation will probably determine the future of the Council. But this will not be known until the ad hoc Working Group, set up by the Council, presents its conclusions. All this will take a long time and risks paralysing protection mechanisms at international level.

In this regard, what role could the Council play? As it is not a conventional body, it cannot assume the tasks of a tribunal nor of a quasi-judicial body. On the other hand, it could ensure the follow up of recommendations of treaty bodies (the committees responsible for overseeing the implementation of international conventions on human rights) and special procedures of the CHR (Special Rapporteurs, Independent Experts and Working Groups), at the same time as continuing the normative work of its predecessor.

This being so, it should be noted that the reform undertaken has left a number of questions unanswered: how should violations at global level by agencies such as the IMF, the World Bank, WTO and TNCs or even UN peace missions, be dealt with - either directly or indirectly? As major actors on the international scene, these agencies determine to a significant extent, the enjoyment of human rights. On this question, silence remains unbroken. Until recently, the CHR has avoided even modest control of the activities of transnational corporations, considered by its subsidiary body the Sub-Commission for the Promotion and Protection of Human Rights<sup>1</sup>.

<sup>1</sup> Norms on the responsibilities of transnational corporations and other business enterprises with regards to human rights (2003).

## The New Human Rights Council: What is at stake?

Ever since the elimination of the Commission on Human Rights (CHR) and the creation of the Human Rights Council confusion reigns over the future of the mechanisms for the protection of human rights at the international level.

Indeed in spite of the creation of the Human Rights Council by the UN's General Assembly last March and in spite of its first session held June 19<sup>th</sup> until June 30<sup>th</sup>, many questions remain unanswered. Amongst these are:

- What perspectives do the new Council offer?
- What does "a universal periodic review" mean?
- What is the future for human rights?

These questions need thinking about. They are examined here in relation to the presentation of the new Human Rights Council and the discussion that took place regarding these different points.

### Presentation of the new Human Rights Council

On March 15<sup>th</sup> 2006, the General Assembly voted resolution 60/251 to create the new Human Rights Council<sup>1</sup>, responsible for the promotion of universal respect and defence of all human rights. In addition it has the mission to examine violations of human rights and to make recommendations concerning them. It also retains the mandate to develop international law in the field of human rights.

The Council is a subsidiary body of the General Assembly. Its 47 members are elected by an absolute majority of the General Assembly for a period of three years, reeligible immediately and for only one more term.

Amongst the criteria for election to this new organ are contributions made to the defence and promotion of human rights as well as full cooperation with the future Council. Moreover each member must submit to a review by its peers on matters concerning human rights in its own country<sup>2</sup>.

A member of the Council which is guilty of gross and systematic violations of human rights could be suspended by a two-thirds majority of members present and voting of the General Assembly.

The Council, based in Geneva, is to hold no fewer than three annual sessions lasting at least ten weeks. A special session can be called with the support of one third of the membership.

### 47 Member States of the Council

Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, Cameroon, Canada, China, Cuba, Czech Republic, Djibouti, Ecuador, Finland, France, Gabon, Germany, Ghana, Guatemala, India, Indonesia, Japan, Jordania, 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, United Kingdom, Uruguay, Zambia.

### The intended objectives of the new Council

The Council aims at "dialogue" and "constructive cooperation" in the promotion and defence of all human rights, including the "universal periodic review" (see below).

However there is no agreement as to the implementation of this objective. From the Council's very first session which took place in June (19<sup>th</sup> to 30<sup>th</sup>) 2006, two currents opposed each other, the Western block and the Organization of the Islamic Conference. The Western block wanted to avoid treating any emergency situation or fundamental issue- with the exception of the two international instruments adopted by the Council (see below) as well as procedural questions, in order to avoid any confrontation that could tarnish the image of this newly created organ. Whereas the Organization of the Islamic Conference, backed by the majority of the council's members adamantly wished to address the situation in Palestine; this position prevailed with the adoption of a resolution and the convocation of the Council's first special session<sup>3</sup> on July 5<sup>th</sup>.

In such a situation, one cannot help noticing the paradox or the incoherence of the Western block, which had campaigned in favour of a "permanent" organ that could be convened at any moment in order to treat such urgent questions and to deal with human rights in any country. The Western block's refusal to introduce this question during the Council's very first session is just not defensible. And it is because of this refusal that the Council was unable to adopt an agenda until the end of the first week, the session lasting only two weeks in all.

One must also criticize the Organization of the Islamic Conference, in particular the Southern countries, for mentioning only the situation in Palestine. Indeed it was not the only question



## NEXT CETIM PUBLICATION

### LA SANTÉ POUR TOUS!

We have the pleasure of proposing a subscription offer for our new publication in French, *LA SANTE POUR TOUS! Se réapproprier Alma Ata* (Health for all! Reclaim Alma Ata).

This book was produced in collaboration with members of the People's Health Movement (PHM) international network. Health is today sacrificed on the altar of North/South relations and 25 years of neoliberalism have been disastrous in this respect. The goal of health for all, proclaimed at the Conference of Alma Ata in 1978 implies the mobilisation of health professionals, but also social movements, around the determining political and economic factors of health, factors that are often neglected but which are as essential as access to health care.

The book presents different examples and proposes key points for the elaboration of alternative policies and propositions for numerous struggles which could at last assure health for all.

Issue date: November 2006

Pages: approx. 380

Format: 115\*170 mm

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For book orders (more than 10) subscription offers with an exceptional discount, contact us directly.

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### SUBSCRIPTION BULLETIN

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the ratification of human rights treaties<sup>12</sup>. One must add as well the numerous commitments made by States during the different UN summits as well as those made by the Council Member States during their election in May.

But the tendency for the moment is for the Council Member States to undertake this review themselves. In this case, there is a risk of falling back on the system of the former Commission that consisted in the condemnation of countries. As we have already pointed out on several occasions, one can have doubts about the credibility of an intergovernmental organ that makes decisions about its members, given that the very States that vote are to be both judges and judged. The politicization of such debates would be unavoidable. This is why the task of reviewing should be entrusted to a group of experts as is the case for other such conventional bodies.

Concerning the procedure of the review, a number of valid arguments plead in favour of it being public. Moreover, only a few delegations have mentioned the possibility of the review being confidential.

Concerning “objective and reliable information”, everyone agrees that this subject is open to very diverse interpretations. One could easily envisage that an annual report on the human rights situation of the Member States of the United Nations be presented to the Human Rights Council by a permanent commission of independent experts, such as the one that exists at the ILO<sup>13</sup>. Such a commission of experts should work in close coordination with the special procedure (renewed by the Council) as well as with the conventional bodies. It should have recourse to the Office of High Commissioner for Human Rights and the specialized subsidiary agencies in the UN system. It should also receive information from NGOs.

In the final analysis, the follow up of this universal review is just as important as the review itself. There are different opinions on this subject. Some, in fact, would like the Council to adopt resolutions at the end of the review. This is the view of the Western block. Others would prefer “technical support” in the case of breach of duty of a State with regard to its human rights obligations. This is the position held by the Southern States. This second group draws on the notions of “dialogue” and of “cooperation” mentioned in the General Assembly’s resolution (§5.e and f)- and fears that the Council could be used as a court of inquisition. It will be interesting to see how the Council will get out of this dilemma between denunciation-condemnation and cooperation-dialogue in preventing violations of human rights...

For the moment, all these questions remain

open, while others (the length of the review, the number of countries to be reviewed by year, the participation, the nature of the reports required, the modalities of the practical steps of the review, etc) await replies. The Council is going to have to decide on these issues following the conclusions of its working group.



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About the war in the Middle East...

## What future for human rights?

As the conclusions of the two working groups recently created by the Council are not predictable, everything remains open and subject to negotiation.

However, there may be a reversal of progress during the revision of the mandates inherited from the CHR, given that certain States are hostile to those mechanisms despite the fact that they functioned well and were the strength of the CHR.

One may doubt as well the efficacy and usefulness of the universal periodic review if the States themselves carry out their own evaluation of human rights.

In particular, the establishment of this new body will take some time and the General Assembly has granted the Council a five-year delay to review, if relevant, its functioning in light of its practice. All that may well create a gap in the field of human rights for a relatively long period and a paralysis of the UN human rights safeguard mechanisms. Particularly since the High Commissioner for Human Rights has launched his own consultations for the reform of conventional bodies. As a result, the whole architecture of the UN system for human rights protection is, in effect, under construction!

<sup>11</sup> 170 votes in favour, 4 against (The United States, the Marshall islands, Israël and Palau).



## Brief presentation of the former Commission on Human Rights

Created in 1946, the Commission on Human Rights (CHR) was the main UN body in charge of human rights until this year. One of the Commission’s major tasks was the elaboration of human right standards. It is the Commission that is at the origin of the Universal Declaration of Human Rights adopted in 1948. It also established standards for civil and political rights, for economic, social and cultural rights, for the right to development, the elimination of racial discrimination and torture, the human rights of children, the rights of human rights defenders, etc.

Subsidiary body of the ECOSOC, the CHR was composed of 53 Member States elected by the ECOSOC in accordance with the principle of equitable geographic distribution for a four-year, renewable, term. The Commission held annual six-week meetings in Geneva. During these annual sessions, it examined reports presented by its so-called “Special Procedures,” i.e., Special Rapporteurs, Independent Experts, Working Groups and by its subsidiary body, the Sub-Commission for the Promotion and Protection of Human Rights. Those reports deal with practically all forms of human rights, from racism to freedom of opinion and expression or the fundamental rights of women, children, migrant workers, minorities, displaced persons, indigenous people, etc. It should be specified that these special procedures constituted the strength of the Commission in that they contributed to the implementation of human rights.

Over the past decade, economic, social and cultural rights have come to the fore at the Commission on Human Rights, which was reflected by the creation of such mandates as the ones dealing with the right to food, housing, education, etc. In this context, several reports, most of them very interesting, were presented to the Commission on Human Rights. For their part, the experts of the Sub-Commission also carried out various studies in the field, e.g. on globalization and the impact of international trade and investment policies (including the famous MAI, the Multilateral Agreement on Investment) on the enjoyment of human rights.

It must be highlighted that certain Special Rapporteurs also presented reports on the situation of certain countries condemned by the Commission. This attracted most media coverage and gave a rather negative image of this UN body as alliances were being formed

<sup>2</sup> In fact this examination is valid for each UN Member State.

<sup>3</sup> Note that the Council had its second special session on August the 11<sup>th</sup>, 2006. This session concerned the violations committed by Israel in Lebanon.

<sup>4</sup> 30 votes in favour, 2 against ( Canada and Russia), with 12 abstentions ( Algeria, Bahrein, Bangladesh, Ghana, Jordan, Morocco, Nigeria, Philippines, Senegal, Tunisia, Ukraine) cf. Resolution A/HCR/Res/2.

<sup>5</sup> These concern mandates coming from the former HRC : special reporters, independant experts, Ad-hoc work groups and the Sub-Commission for the promotion and the protection of human rights, a subsidiary organ of the HRC.

<sup>6</sup> On this subject, see the recent CETIM publication (available on our web site [http://www.cetim.ch/en/publications\\_details.php?currentyear=&pid=131](http://www.cetim.ch/en/publications_details.php?currentyear=&pid=131)).

<sup>7</sup> The following sessions of the Council are to take place from the 18th of September until the 6th of October, the 27th of November until the 8th of December and the 12th of March until the 6th of april 2007. During these sessions the Council will examine the reports on special procedures, the High Commisioner on Human Rights’ annual report , diverse reports coming come its services as well as the reports of the two Working groups mentioned above (cf refer to the decision of the HRC, A/HRC/1/Dec/1005).

<sup>8</sup> See the declarations of different delegations during the first session of the CHR.

<sup>9</sup> Cf. § 5 e) of Resolution 60/251 of the General Assembly.

<sup>10</sup> idem.

<sup>11</sup> On this subject see the joint written declaration of the CETIM and the AAJ which was presented at the first session of the HRC, A/HCR/1/NGO/27, [http://cetim.ch/fr/interventions\\_details.php?iid=265](http://cetim.ch/fr/interventions_details.php?iid=265).

<sup>12</sup> During the unofficial consultations thst took place on August th 2nd 2006, a consensus seemed to be reached by the participating delegations.

<sup>13</sup> The ILO Commission of Experts concerning the Application of Conventions and Recommandations is a valuable antecedent. It is made up of 20 independant experts coming from different geographical regions, from different judicial systems and from different cultures.

## WHO ARE WE?

Through its publications and its work with the UN, the CETIM denounces the maldevelopment in general, ecological as much as economic and social, and promotes an exchange of critical views from both Southern and Northern societies. The CETIM is focuses in particular on respect for, implementation and promotion of economic, social and cultural rights, as well as issues related to the right to development.

on considerations other than human rights to obtain or avoid condemnation.

The critiques formulated against the Commission that have led to its suppression

The main critique formulated against the Commission on Human Rights was the difficulty in condemning States for violating human rights and, hence, a loss of credibility of this body. The main task of the Commission, though, was not to formally condemn States. However, because of that, a whole part of the important work carried out by the Commission was completely forgotten, from investigation missions to the work carried out by Rapporteurs and independent experts or the elaboration of international standards.

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### New publications on human rights

Beginning in 2005, CETIM publishes a series of educational brochures on basic human rights as well as critical analyses of diverse themes discussed in the United Nations.

Available in three languages (French, Spanish and English), the main objective of these brochures is to contribute to the training of leaders of social organisations and movements, in particular in the South, and to inform them about what is at stake in the themes discussed within the UN human rights bodies.

The primary recipients are expected to be brokers within their own organizations as well as within the broader networks within which they often operate. Drawing upon this teaching material, local groups may draft documents adapted to their own particular situation. They can also translate them -informing CETIM- partially or completely in their national languages.

The three brochures already published have found an audience not only in social movements and NGO's, in countries of the South as well as those of the North, but also within governmental institutions and delegations. These brochures are “The Right to Food,” “Transnational Corporations and Human Rights” and “The Case for a Protocol to ICESCR”.

We want to emphasize that the brochure “The Right to Food,” has been translated (or is being translated) to Arabic, Portugese and certain African languages (Lingala, Swahili, Kikongo).

All these publications can be downloaded and printed for free directly from our web- site: [www.cetim.ch](http://www.cetim.ch) and/or the paper version ordered from CETIM since we still have a few free copies for organizations and movements from southern countries.

This year, besides the brochure “The Right to Health” which is now being distributed, two other brochures will be edited. These brochures will be about people displaced in their own countries and the right to development.



worth the Council's attention, even if one can understand the extreme urgency of this situation and its ramifications. Its strategic and ideological aspects go far beyond the borders of one tiny State - in its surface - and another State “under construction” equally tiny in its surface, but constantly shrinking because of the activities of the first state. Other situations are worth examination, beginning with the serious violations of human rights (torture, executions, secret detentions) committed by the United States in the context of its “war” on terrorism.

**THIS BULLETIN IS ALSO AVAILABLE IN FRENCH AND SPANISH**

The decisions of the first session of the Council

Aside from the passing of the resolution on Palestine mentioned above and the resolution concerning the two international instruments elaborated by the former Commission on Human Rights (CHR), the Council's decisions have been mostly procedural.

Concerning the two international instruments, the Council adopted the Convention on forced disappearance and the Declaration concerning Indigenous Peoples. The adoption of these two documents has taken more than a decade. While the first instrument received the Council's consensus, the second divided the Council and was only adopted after a vote<sup>4</sup>.

As for the others decisions, as was expected, the Council extended all the mandates concerning special procedures<sup>5</sup> for a period of one year, with the exception of the Working group to consider options regarding the elaboration of an optional protocol to the International Covenant on economic, social and cultural rights, which was given an extension of two years in order to finish its mandate<sup>6</sup>.

Furthermore the Council created two working groups, one in charge of the revision, should it take place, of the mandates coming from the former CHR and the other in charge of establishing the modalities for the “universal periodic review”. In addition, the Council adopted a work program for its first year<sup>7</sup>.

What are the Council's limitations?

It is too earlier to say if the Council will be as effective as the former Commission on Human Rights. In spite of all the criticism, often unjustified, that was directed against it, the Commission played an important role in the elaboration of international norms in the field of human rights. These norms today are a part of the international law that can be referred to, and that countries are to respect and apply.

First of all we can see that the number of Member States has been reduced, in spite of the arrival of new independent countries. One would have thought that the number of Member States should rather has been increased.

In addition the staggering of the Council's different sessions over the year will create additional difficulties for many governmental and non-governmental delegates, particularly those for the South who be up able to attend due to lack of funds and availability of their rare experts. Such a situation carries the risk of marginalizing certain subjects to be adressed by the Council and there is already talk of a “main”<sup>8</sup> session (main compared to what?) to be held, out of the three ordinary sessions in the year.

The universal periodic review

The Council plans “to undertake a universal periodic review based on objective and reliable information of the fulfilment by each State in its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”<sup>9</sup>. However the General Assembly leaves it to the Council to decide upon the modalities of the review<sup>10</sup>.

Among the numerous questions raised by this procedure, we mention the following<sup>11</sup>:

- What are the obligations of those States which have not ratified all the international instruments in the field of human rights?
- Who will carry out the review?
- Will the review be public or confidential?
- What exactly does “objective and reliable information” mean?
- What will be the follow up of this review (for example will the Council adopt any resolution at the end of the review)? Etc.

In our opinion, it would be logical for this review to be based on obligations stemming from the Charter of the United Nations, the Universal Declaration of Human Rights and the specific obligations contracted by each State following