

# **Critical Report n° 1**

## **Issue: Human Rights Council**



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## **THE HUMAN RIGHTS COUNCIL AND ITS MECHANISMS**

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### **INTRODUCTION**

The respect of human rights and fundamental freedoms, without distinction of race, sex, language or religion, is one of the purposes of the United Nations (Art. 3 of the Charter). Thus, in 1946, the U.N. established the Commission on Human Rights (v. Annex 1), which drafted the *Universal Declaration of Human Rights* and which has progressively codified these rights, while creating numerous human rights protection mechanisms at the international level.

The existence of such a body is of the greatest importance, not only for the promotion and the protection of all human rights, but also for the establishment of new norms in this area, involving the participation of all countries in all their diversity, so that human rights may really be universal.

In this regard, civil society organizations have a crucial role to play. In this time of globalization and anti-terrorist policies, human rights violations have become blatant. These organizations must, more than ever before, remind governments of their human rights obligations. They must also assume their proper role within the U.N. and make their demands heard so that the new norms being established will serve the cause of equality and justice.

In 2006, the Commission on Human Rights was replaced by the Human Rights Council (the Council).

This transformation process has greatly upset the working mechanisms of the U.N.'s principal human rights body. Moreover, the Council has essentially devoted its first two years to setting up rules of procedure and its own mechanisms.

For most human rights militants and governmental delegations, the Council is still something of an unknown entity that must still prove its worth.

This report, the first of a new series of CETIM critical reports, presents this new U.N. body and its mechanisms, sheds a critical light on its workings to date and explores some of the misgivings concerning its future, while providing in the annexes the reference texts of this document for those wishing to pursue the subject further.

## **I. THE HUMAN RIGHTS COUNCIL**

Established by General Assembly resolution 60/251 of 15 March 2006, which adopted it by a roll-call vote<sup>1</sup>, the new Human Rights Council has been given the mandate of promoting the universal respect and defense of all human rights. It is also to examine human rights violations and make recommendations in this regard, while continuing to develop international human rights law.

The Council is to seek "dialogue" and "constructive cooperation" in the promotion and defense of all human rights, including within the frame work of the "Universal Periodic Review" (v. Chapter I.A.1).

The Council is a subsidiary body of the General Assembly, unlike the former Commission on Human Rights, which was under the Economic and Social Council (v. Annex 1). It is composed of 47 member states (the Commission had 53) elected by absolute majority by the General Assembly for three years and eligible for immediate reelection once.

Among the criteria for election to this new body are the contributions to the defense and promotion of human rights and full cooperation with the Commission. Moreover, each member must submit to a review by its peers regarding its respect of human rights in its own country (the Universal Periodic Review, v. Chapter I.A.1).

A member of the Council that commits serious and systematic human rights violations can be suspended by a majority of two-thirds in a vote by the General Assembly.

Based in Geneva, the Council holds three sessions per year, for an overall minimum of ten weeks (instead of the six consecutive weeks that the Commission used to sit, at the same time every year).

The annual cycle of sessions starts on 19 June and ends on 18 June of the following year.

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<sup>1</sup> 170 in favor, 4 against (Israel, the Marshal Islands, Palau, the United States) and 3 abstentions (Belarus, Iran, Venezuela).

The Council must present an annual report to the General Assembly.

It should be noted that for a resolution to be presented on a particular country, it must be supported by at least 15 members of the Council.

Also, the Council, at the request of a third of its members, can call a special session on a situation considered urgent. Thus, between July 2006 and January 2008, the Council held six special sessions (on Darfur, on Lebanon, on Myanmar and three on Palestine/Israel).

Finally, the General Assembly has set a deadline of five years for the Council to review its workings, and, if necessary, to revise them in accordance with its experience.

### The Council's Agenda

The agenda is divided into three parts (principles, agenda and working program) and comprises ten items: 1. organizational and procedural matters; 2. the annual report of the High Commissioner for Human Rights and reports of the High Commissioner and the Secretary-General; 3. promotion and protection of all human rights, civil, political, economic, social, cultural, including the right to development; 4. human rights situations that require the Council's attention; 5. human rights bodies and mechanisms; 6. the Universal Periodic Review; 7. the human rights situation in Palestine and other occupied Arab territories; 8. follow-up and implementation of the Vienna Declaration and Program of Action; 9. racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Program of Action; 10. technical assistance and capacity-building.

Item 3 deals with civil and political rights as well as social and cultural rights, and the right to development is completely subsumed in it. It is questionable whether the Council will be able to deal with its 41 current mandates under a single agenda item and if the objective is not to marginalize the special procedures, or at least some of them.<sup>2</sup>

It is also worth noting that the right to self-determination, the foundation of international human rights law<sup>3</sup> is not on the agenda, apart from the mention of the right to self-determination of the Palestinian people (Item 7) and a strange reference figuring in the sub-section of Item 3, "Rights of peoples, and specific groups and individuals". The same goes for the rights of women, whereas these items used to be part of the Commission's agenda.

Item 4 of the agenda – which allows the Council to examine the situation of human rights anywhere in the world – risks giving rise to the same tensions as those that prevailed in the Commission, whereas, the Council can manifestly not be transformed to act as a tribunal nor as a quasi-judicial body.

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<sup>2</sup> V. Chapter I.A.2. and note 8.

<sup>3</sup> The first common article of the two international human rights covenants as well as Art. 1, § 2 of the United Nations Charter deal with this right; further, there are 1960 General Assembly resolution 1514, which is the authority on this subject, and General Assembly resolution 60/251 that created the HRC.

### NGO Participation

The participation of NGOs is governed by ECOSOC resolution 1996/31 and by the practices established by the former Commission.

In spite of these rules, the NGOs' margin of maneuver has been reduced in practice, as illustrated by the case of the Universal Periodic Review (v. below), during which NGOs will not have the right to be heard.

## **A. Human Rights Council Mechanisms**

After a year of uncertainty, tension and intense negotiations, the Council finally adopted, on 18 June 2007, a document entitled "Institution Building of the United Nations Human Rights Council", establishing a basis for its working mechanisms.<sup>4</sup> Although this decision was taken somewhat hastily<sup>5</sup>, it was confirmed on the following day by a vote, and only the member requesting the vote (Canada) opposed it.<sup>6</sup>

As this document results from a consensus, there are gaps. But before proceeding to the analysis of its contents, it is important to understand that from the beginning there was the danger of an institutional crisis affecting the entire UN operations on human rights had this process not come off.

### **1. Universal Periodic Review (UPR)**

The Universal Period Review is the new mechanism by which the Council intends to evaluate all the U.N. member states' human rights performance. The procedure adopted by the Council governing this mechanism provides for the review of 48 countries per year by the Council. As will be seen in detail below, the Council thus becomes a working group, with the holding of three sessions lasting two weeks each (v. below), then it reverts to its regular plenary sessions. Those Council member states that were elected for a term of one or two years will be the first to be reviewed. It was agreed that voluntary contributions would be solicited in order to enable countries from the South, especially the "least advanced" ones, to participate in the UPR (v. Annex 6).

The UPR is to be based on the United Nations Charter, the Universal Declaration of Human Rights, the international human rights instruments that the state in question has ratified, the voluntary obligations and commitments undertaken by the state, in particular when presenting its candidacy for election to the Council, and applicable international humanitarian law.

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<sup>4</sup> V. Resolution 5/1 and its annex (V. Annex 3).

<sup>5</sup> The negotiations continued on 18 June 2007 until midnight, at which point the mandate of the first chair (Luis Alfonso de Alba, Mexico) and its bureau ended. However, if a decision had not been made at that time, the compromise, however imperfect, would probably not have been achieved, considering that the next day, a new team was to conduct the negotiations and that many delegations were not satisfied with this compromise.

<sup>6</sup> Moreover, Canada is one of the seven countries that subsequently, last December (2007) in the General Assembly, voted against the approval of this document. (v. A/RES/62/219, adopted on 22 December 2007, 150 for, 7 against – Australia, Canada, Israel, Marshall Islands, Micronesia, Palaos, United States – and one abstention – Nauru.

The review will be based on: a report<sup>7</sup> presented by the country under review, which is “encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders” before drafting the report (maximum 20 pages); a report compiled by the high Commissioner for Human Rights on the basis of information from U.N. bodies (maximum 10 pages); and a document (maximum 10 pages) containing “credible and reliable information provided by other relevant stakeholders”, also compiled by the High Commissioner. The NGOs are welcome to contribute to this last document.

A group of three rapporteurs (called the “troika”), selected from among the Council members by geographic distribution, will “facilitate” each review.

The content of the final document adopted by the Council upon completion of the UPR will take into account the following elements: a) an objective and transparent evaluation of the human rights situation in the country under review, including both positive new practices and also new difficulties encountered by the country; b) best practices; c) a particular emphasis on the enhancement of cooperation for the promotion and the protection of human rights; d) an offer of technical assistance and of means for capacity-building, in consultation with, and with the consent of, the country under review; e) voluntary commitments and pledges by the country under review.

The country under review is to be involved in the drafting of the final document; the recommendations are to be implemented not only by the country in question but also by “other relevant stake holders”; and the Council will deal with “cases of persistent non-cooperation” should the need arise.

Even though the dates of the first reviews are fast approaching (v. below), the Council (as it was going to print in mid-February 2008) had not yet appointed the troikas for each country to be reviewed and is undecided over the role they are to play.

It would be premature to judge a mechanism that has not yet been put to the test; however, it is obvious that the governments will be both judge and jury in this procedure, and its effectiveness is thus in doubt.

The list of the 48 countries to be reviewed in 2008:

| <b>1<sup>st</sup> session<br/>(7-18 April)</b> | <b>2<sup>d</sup> session<br/>(6-16 May)</b> | <b>3<sup>d</sup> session<br/>(1-12 December)</b> |
|--|---|--|
| South Africa                                   | Benin                                       | Barbados   |
| Algeria  | Republic of Korea                           | Bahamas  |
| Argentina                                      | France                                      | Botswana   |
| Bahrain  | Gabon                                       | Burkina Faso                                     |
| Brazil   | Ghana                                       | Burundi  |

<sup>7</sup> Criteria concerning the “general guidelines” for the national reports were adopted at the 6<sup>th</sup> session (v. Annex 5).

|                |             |                      |
|----------------|-------------|----------------------|
| Ecuador        | Guatemala   | Cap Verde            |
| Tunisia        | Japan       | Colombia             |
| Morocco        | Mali        | United Arab Emirates |
| Indonesia      | Pakistan    | Israel               |
| Finland        | Peru        | Liechtenstein        |
| India          | Romania     | Luxemburg            |
| Pays-Bas       | Sri Lanka   | Montenegro           |
| Philippines    | Switzerland | Serbia               |
| Poland         | Tonga       | Turkmenistan         |
| Czech Republic | Ukraine     | Tuvalu               |
| United Kingdom | Zambia      | Uzbekistan           |

## 2. Special Procedures

The special procedures are the thematic mandates (currently 31)<sup>8</sup> and the country mandates (10)<sup>9</sup> established by both the former Commission and the Council. The thematic mandates focus on studying a specific area of human rights, while the country mandates focus on monitoring the human rights situation in a given country or region. Both result in a report to the Council by the mandate holder (special rapporteur, independent expert, special representative of the Secretary-General, working group), which the Council then publicly reviews.

The Council defined the regulations governing the special procedures in June 2007 (v. Annex 3). According to these regulations, the thematic mandates are set at three years and the country mandates at one year. The Council seeks the following qualifications for the mandates holders: competence, experience, independence, impartiality, personal integrity and objectivity. Mandate holders may exercise their mandate for up to six years and may not hold more than one mandate at a time.

<sup>8</sup> They fall into four categories: 1. *Special Rapporteurs* on: the right to food; the right to education; the right to adequate housing; the right to health; independence of judges and lawyers; extrajudicial, summary or arbitrary executions; freedom of religion or belief; the promotion and protection of the right of freedom to opinion and expression; torture and other cruel, inhuman or degrading treatment or punishment; the protection of human rights and fundamental freedoms while countering terrorism; violence against women; the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights; trafficking in persons, especially in women and children; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the human rights of migrants; the human rights and fundamental freedom of indigenous peoples; sale of children, child prostitution and child pornography; 2. *Independent Experts* on: minority issues; human rights and extreme poverty; international solidarity; the effects of economic reform policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights; 3. *Special Representatives of the Secretary-General* on: the situation of human rights defenders; internally displaced persons; transnational corporations and other business enterprises; 4. *Working groups* on: arbitrary detention; enforced or involuntary disappearances; the use of mercenaries as a means of violating the rights of people to self-determination; people of African descent; situations; the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights; the right to development, the effective implementation of the Durban Declaration and Program of Action.

<sup>9</sup> Burundi, Cambodia, Democratic Republic of Congo, Haiti, Liberia, Myanmar, North Korea, Occupied Palestinian Territory (since 1967), Somalia, Sudan.

Although NGOs may nominate candidates and individual persons may nominate themselves, the selection procedure is very rigorous: 1. the High Commissioner establishes a public list; 2. a consultative group (comprising five persons, chosen by the members of the Council on the basis of geographic distribution) examines the list and makes recommendations to the Council chair; 3. the Council chair “presents to member States and observers a list of candidates”, which will then be examined by the Council.

The council has been focusing on the “review, rationalization and improvement” of all the existing mandates starting with its 6<sup>th</sup> session (September 2007), renewing 11 of them (v. Chapter I.B).

Further, the Council has adopted an “ethical behavior and professional code of conduct” for special procedures mandate-holders.<sup>10</sup> This instrument may turn out to be very useful in guiding the persons appointed, in providing a framework for their relations with all the stakeholders and in building confidence between the governments and the mandate-holders as well as in reinforcing the legitimacy of these latter. However, special care should be taken that it not be used to muzzle the mandate-holders or reduce their margin of maneuver. In spite of the efforts of the drafters, the code risks posing practical problems during the trips of the holders into the field. In fact, they will be more restricted than in the past by having to strictly follow the laws and rules of the country being visited strictly, by being escorted by government officials, and by the submission, prior to publication, of the report to the government in question for commentaries.

### **3. Advisory Committee**

Replacing the former Sub-Commission for the Promotion and Protection of Human Rights, the new Advisory Committee comprises 18 independent experts, elected by the Council (elections are to be held during the 7<sup>th</sup> session, in March 2008). They will have a three-year mandate, renewable once, and will sit for two weeks per year, and are encouraged to communicate between sessions, individually or as a team. They are barred from holding more than one mandate simultaneously.

The Advisory Committee will be under strict supervision of the Council and will conduct studies and inquiries according to predefined rules. This assistance will be rendered only on demand of the Council.

It is formally “prohibited” for the Advisory Committee to set up subsidiary bodies. Thus, with the passing of the Sub-Commission, its sessional working groups such as the working group on transnational corporations and the one on the administration of justice, have been interred. As for the Sub-Commission’s four inter-sessional working groups (indigenous peoples, minorities, slavery and the Social Forum), except for the Social Forum, they have been renewed with a change of mandate (v. Chapter I.B).

With its reduced membership (18 members, as opposed to 26 in the Sub-Commission), the Committee is less representative. It has less working time (two

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<sup>10</sup> V. Resolution 5/2 and its annex (v. Annex 4).

weeks instead of three for the Sub-Commission, which originally had four), and, above all, it is muzzled, for it can take no initiatives nor adopt any resolutions.

#### **4. Complaints Procedure**

Like the former Commission, the Council has been provided with a complaints procedure. Thus, any citizen (or group of persons) from any country can write to the Council to denounce any “gross and reliably attested” human rights violation.<sup>11</sup>

The Council’s new complaints review procedure retains the essence of the former procedure, called the 1503 procedure.<sup>12</sup> However, the Council is to examine the complaints it receives “as frequently as needed, but at least once a year”. For this reason, if complaints manage to get through the triple filter (secretariat and two working groups), the Council can examine them in the course of the year, unlike the Commission, which sat only once a year.

It is to be emphasized that the Council has made provisions for electing, later on, the members of the two working groups provided for in this procedure.<sup>13</sup> There will be a first group, called the “communications” group, comprising five independent experts, designated by the Advisory Committee (v. above) and a second group dealing with “situations”, comprising five representatives of Council member states. In both cases, this designation will be carried out according to U.N. equitable geographic distribution. The members of the first group will have a three-year mandate, renewable once. Those of the second group, on the other hand, will have a one-year mandate, also renewable only once. The two working groups will make their decisions “in so far as possible”, by consensus. By default, decisions will be made by a simple majority.

Moreover, the confidentiality of this procedure will not be as great as in the past, for the Council reserves the right to recur to a public review if, for example, the country in question does not cooperate.

## **B. Renewed Mandates**

The following mandates were assessed and renewed by the Council at its sixth session (September-December 2007).

### *Special Rapporteur on the Right to Food*

By a resolution adopted without a vote<sup>14</sup>, the Council, saluting “the valuable work and commitment of Mr. Jean Ziegler during his tenure as the first mandate holder to

<sup>11</sup> All communications may be sent to the following address: Treaties and Human Rights Council Branch, UNHCR-UNOG, CH-1211 Geneva 10, Switzerland; fax: +41 (0)22 917-90-11; e-mail: CP@ohchr.org.

<sup>12</sup> The former procedure was set up following the adoption of resolution 1503 (XLVII) by ECOSOC, 27 May 1970, hence the name.

<sup>13</sup> In a decision adopted without a vote, the Council decided to “request”, provisionally, the members of the former Working Group on Communications to fill in for the as yet unelected members of the new complaints procedure working group on communications, but within the framework of the new procedure, until the new working group is set up. (V. decision 6/101, 27 September 2007)

<sup>14</sup> A/HRC/6/RES/2, 27 September 2007.

achieve the realization of the right to food”, extended the mandate of the Special Rapporteur on this question for three more years. By the same resolution, the Council requested Jean Ziegler to submit “a comprehensive final report on his findings, conclusions and recommendations, after more than six years as mandate holder on the right to food” to the seventh session (March 2008).

This decision was in line with the proposal made by the CETIM and many other NGOs. In fact, in a joint statement, the CETIM, while paying tribute to the exemplary work carried out by Jean Ziegler, requested the renewal and the strengthening of the mandate of Special Rapporteur on the Right to Food.

*Special Rapporteur on the Right to Health*

Through a resolution adopted without a vote<sup>15</sup>, the Council extended, for three years, the mandate of the Special Rapporteur on the Right to Health.

*Special Rapporteur on the Right to Adequate Housing*

Through a resolution adopted without a vote<sup>16</sup> the Council extended for another three years, the mandate of the Special Rapporteur on the Right to Adequate Housing. It requested him to submit “a comprehensive final report on his findings, conclusions and recommendations” to the seventh session of the Council (March 2007).<sup>17</sup>

*Independent Expert on Protection of Human Rights while Countering Terrorism*

Through a resolution adopted without a vote<sup>18</sup>, the Council extended for three years the mandate of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.

*Special Rapporteur on Indigenous Peoples*

Through a resolution adopted with a vote<sup>19</sup>, the Council renewed, for three years, the mandate of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples.

*Expert Mechanism on the Rights of Indigenous Peoples*

Through a resolution adopted without a vote<sup>20</sup>, the Council decided to create an expert mechanism on the human rights of indigenous peoples. Comprising five independent experts – with the stipulations that the Council should take into account that, “in the selection and appointment process, the Council give due regard to experts of indigenous origin” – this mechanism will have a strictly thematic competence that will be essentially based on studies and research, from which will be drawn recommendations for the Council. It will meet for three days the first year then five days for the following years.

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<sup>15</sup> A/HRC/6/RES/29, 14 December 2007.

<sup>16</sup> A/HRC/6/RES/27, 14 December 2007.

<sup>17</sup> Like Mr Ziegler, the Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, must give up his mandate, for he has already served two terms of three years, the maximum allowed by the Council for a mandate holder.

<sup>18</sup> A/HCR/6/RES/28, 14 December 2007.

<sup>19</sup> C/HCR/6/RES/12, 28 September 2007.

<sup>20</sup> A/HRC/6/RES/36, 14 December 2007.

The CETIM, with a group of NGOs, militated for maintaining an expert mechanism on indigenous peoples. However, this new mechanism has nothing to do with the Working Group on Indigenous Peoples<sup>21</sup> that it is supposed to replace and that had a very broad mandate.<sup>22</sup> In the course of the 24 years of loyal service, it had become a coordination mechanism for international action in favor of indigenous peoples. The new mechanism set up by the Council seems thus guided by the concern of giving a “pledge” to indigenous peoples rather than by the rationalization of mechanisms and the real needs of these peoples. Moreover, for the first time, the sponsors of a resolution (Brazil and Bolivia) disassociated themselves from it after it had been adopted.

### Special Rapporteur on Contemporary Forms of Slavery

Through a resolution adopted without a vote<sup>23</sup>, the Council decided to “to appoint, for a three-year period, a Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, to replace the Working Group on Contemporary Forms of Slavery”.

While maintaining a mandate on this question is, in and of itself, important, it should be noted that this mandate constitutes a regression compared to the previous mandate, which involved five experts from differing backgrounds and which made it possible for the victims and their defenders to testify directly before the working group.

### The Social Forum

Through a resolution adopted without a vote<sup>24</sup>, the Council decided that the Social Forum, which had come into existence in the form of a working group of the Sub-Commission, “shall continue meeting every year” for three days, each day being devoted, respectively, to 1. poverty and human rights; 2. the social dimension of globalization; 3. a debate on mandate-holders (maximum four) on economic, social and cultural rights and the right to development, in particular with the independent expert on extreme poverty and the one on international solidarity.

It is noteworthy that the Social Forum is to be open to all, including “small groups” that do not enjoy consultative status with the U.N.

### Internally Displaced Persons

Through a resolution adopted without a vote<sup>25</sup>, the Council decided to extend for three years the mandate of the Special Representative of the Secretary-General for the Human Rights of Internally Displaced Persons.

### Forum on Minority Issues

Through a resolution adopted without a vote<sup>26</sup>, the Council decided to replace the

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<sup>21</sup> Thus was a subsidiary body of the Sub-Commission, created in 1982 by ECOSOC. (V. resolution 1982/324, 7 May 1982.)

<sup>22</sup> This working group had two main purposes: 1. review new facts from the national level regarding the promotion and protection of indigenous peoples’ human rights; 2. elaborate international norms on the rights of indigenous peoples.

<sup>23</sup> A/HRC/6/RES/14, 28 September 2007.

<sup>24</sup> A/HR/6/RES/13, 28 September 2007.

<sup>25</sup> A/HRC/6/RSE/32, 14 December 2007. For more information on this subject, see the CETIM brochure *Internally Displaced Persons*, June 2007: [www.cetim.ch/en/publications\\_details.php?pid=144](http://www.cetim.ch/en/publications_details.php?pid=144).

<sup>26</sup> A/HRC/6/RES/15, 28 September 2007.

Working Group on Minorities with a Forum on Minority Issues in order to “provide a platform for promoting dialogue and cooperation on issues pertaining to persons belonging to national or ethnic, religious and linguistic minorities, which shall provide thematic contributions and expertise to the work of the independent expert on minority issues.” The Forum will meet every year for two days and will be convened by the independent expert on this question, who will also guide its work.

It is deplorable that the Working Group on Minorities, a subsidiary body of the Sub-Commission, should be reduced a support body for the work of an independent expert – whose mandate has not yet been evaluated by the Council. The Working Group in question had a broad mandate, was open to minorities of various countries and had both the function and ambition of providing a setting for dialogue between these peoples and their governments, which is not always possible in their home countries.

#### Special Rapporteur on Religious Discrimination

Through a resolution adopted by a voice vote<sup>27</sup>, the Council decided to extend for three years the mandate of the Special Rapporteur on Freedom of Religion or Belief.

## **II. LIMITS AND PERSPECTIVES OF THE HUMAN RIGHTS COUNCIL**

It is still too early to evaluate the effectiveness of the Human Rights Council against what the Commission on Human Rights achieved. In spite of the criticisms – often unjustified – leveled at the Commission, it greatly contributed to the elaboration of international human rights norms (v. Annex 1). These norms are today part of international law, and one can cite them and demand that governments observe them.

It will be noticed first of all that the number of countries on the Council is less than on the Commission, whereas with the arrival of new independent states, the tendency should be rather toward an increase.

Spreading out the sessions of the Council over a year poses further problems for many governmental and non-governmental delegations, in particular those from the South, who cannot attend sessions owing to lack of funds and availability of their rare experts. Such a process risks marginalizing certain themes dealt with by the Council, since a single, “main” session (but according to what criteria?) is planned out of three regular ones in the course of any single year.

The debate on the role and the goals of the Council has brought to the fore vastly differing views. For some, human rights violations should be sanctioned; for others, dialogue and cooperation should prevail above all in order to prevent violations.

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<sup>27</sup> A/HRC/6/RES/37, 14 December 2007, adopted by 29 in favor, non against and 18 abstentions (Azerbaijan, Bangladesh, Cameroon, China, Djibouti, Egypt, Gabon, Indonesia, Jordan, Malaysia, Mali, Nigeria, Pakistan, Qatar, Saudi Arabia, Senegal Sri Lanka, South Africa). The Islamic Conference Organisation deplore in particular part 9a of the resolution, which recognizes “the right to change religion or belief”. Thus the vote and high rates of abstention on this resolution.

The practices adopted by the Council in the context of the Universal Periodic Review will probably be determinant for its future (v. Chapter I.A.I).

In such a context, what role can the Council play? Not being a conventional body, it cannot assume the tasks of a tribunal or quasi-judicial body. On the other hand, it can assure the monitoring of the recommendations of the conventional bodies (the committees that monitor compliance with the international human rights conventions) and of those of the special procedures (v. Chapter I.A.2), while continuing the normative work of its predecessor.

However, one must admit that, up until now at least, the Council's practices do not inspire confidence. For example, certain mandates recently renewed show a distinct regression compared to those of the Commission (v. Chapter I.B). The Council also has experienced great difficulty in the execution of the decisions taken during its special sessions, in particular those regarding the situation in Palestine/Israel, whereas the U.N. member states initially expressed the desire to endow the Council with a higher status, and making human rights a priority.

Other matters of capital importance for human rights remain unresolved. It should be noted that the transformation undertaken has ignored a major, burning human rights question: how to deal with human rights violations committed – directly or indirectly – on the international level by entities such as the IMF, the World Bank, the WTO, transnational corporations or even the U.N. and NATO peace-keeping missions, all major actors on the world-wide stage? They are – in theory – and must be – in practice – accountable for their actions. On this subject, there is only silence.

The now defunct Commission had avoided the modest control over the activities of transnational corporations envisioned by its subsidiary body, the Sub-Commission on the protection and promotion of human rights<sup>28</sup>. And, to this day, the Council has not taken any initiative in this area.

In spite of this less than inspiring tableau, one must remember that history teaches that there is always a lapse between the theory and the practice. It is to be hoped that human rights militants, experts, NGOs and social movements will be able to create for themselves a sufficient margin of maneuver to allow for the promotion of human rights and to push governments to honor their commitments.

## **ANNEXES**

- 1. A Brief Presentation of the Former Commission on Human Rights*
- 2. General Assembly Resolution 60/251, 15 March 2006, creating the Human Rights Council*
- 3. Resolution 5/1 instituting the Council's mechanisms*
- 4. Resolution 5/2 regarding Code of Conduct for Special Procedures Mandate-holders*

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<sup>28</sup> *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*, E/CN.4/Sub.2/2003/12/Rev.2: [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En).

5. *Decision A/HRC/6/DEC/102 defining the general guidelines for the Universal Periodic Review and technical and objective requirements for eligible candidates for mandate holders*
6. *Resolution A/HRC/6/RES/17: 1. to establish a Voluntary Trust Fund to facilitate the participation of developing countries, particularly least developing countries, in the Universal Periodic Review mechanism; 2. to establish a Voluntary Fund for Financial and Technical Assistance to provide a source of financial and technical assistance to help countries implement recommendations emanating from the Universal Periodic Review*
7. *Lists of Council member states in 2006/2007 and 2007/2008*
8. *Relevant addresses*

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N.B. The Annexes allocated in separate files.