

## The Human Rights Council:

### Is it filling its mission as the World's premier human rights protector?

By Thomas Colerick

*"It is the collective effort of states from all regions that will make the difference in the lives of those suffering from human rights violations. Victims of abuses need the Council to look into and monitor their situations, and to advocate for their protection when their rights are violated by their own governments. Embattled human rights defenders need the support for their work that international attention can provide. This is the heart of the Council's mission. It is during the most difficult times that victims and human rights defenders will look to the Council, and when the Council needs to be prepared and ready to respond. No regional group or state alone can define the direction that the Council will take, but the Council's collective response will be shaped by the individual action of its members."*

- Human Rights Watch, September 2011

Established by General Assembly resolution 60/251<sup>1</sup> on 15 March 2006 and concluding its first session on 30 June the same year, the Human Rights Council has now been in existence for five-and-a-half years. This posting brings you up to date on the achievements of as well as challenges to the Council as seen from the perspectives of different stakeholders including civil society, UN Officials and UN Member States.<sup>2</sup> It provides a thorough update on the main issues discussed within the Council and other stakeholders, including the 5-year review of the Council, which includes the special procedures, the Universal Periodic Review and the participation of civil society in the Council's work, together with an analysis of the progress made – or lack of the same in some cases. This posting provides an update of the Center's 2008 article, *"The establishment of the Human*

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<sup>1</sup> [http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf)

<sup>2</sup> For an analysis of the transition from the Commission to the Council see the Center's 2008 publication *Managing Change at the United Nations*

*Rights Council*” by Nana Yeboah.<sup>3</sup> It assumes that the reader is already familiar to some extent with the Human Rights Council.<sup>4</sup>

It should be noted that the United Nations Office of the High Commissioner for Human Rights, several independent experts and NGO representatives, Member State delegates to the UN in New York and Geneva, and other sources officially affiliated with the Council were interviewed for this Chapter.

## **Governance chronology of the HRC**

The following chronology on the development of the Human Rights Council provides an initial overview from its birth in 2006 to date. It includes resolutions with vital importance for the Council, sessions and Council elections:

- **15 March 2006** – The General Assembly adopts, by a vote of 170 in favor, 3 abstentions and 4 against, resolution 60/251 setting up the Human Rights Council. The date of the first session is set for 19 June 2006, to be preceded by the abolition of the Human Rights Commission on 16 June 2006. The members of the Council shall serve for a period of three years and shall not be eligible for immediate re-election after two consecutive terms.
- **9 May 2006** – The Assembly elects the first group of 47 members of the Council.<sup>5</sup>
- **19-30 June 2006** – The Council holds its inaugural session in Geneva.
- **17 May 2007** – The Assembly holds the 2<sup>nd</sup> election of members to the Council electing Madagascar, South Africa, Angola, Egypt, India, Indonesia, Philippines, Qatar, Slovenia, Bosnia and Herzegovina, Nicaragua, Bolivia, Netherlands and Italy to become members.<sup>6</sup>

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<sup>3</sup> <http://www.centerforunreform.org/node/308>

<sup>4</sup> For an introduction to the Human Rights Council and its different mechanisms and features visit the Council’s webpage at <http://www2.ohchr.org/english/bodies/hrcouncil/>

<sup>5</sup> For a complete list of members now and then see the annual reports of the Council: [http://www2.ohchr.org/english/bodies/hrcouncil/annual\\_reports.htm](http://www2.ohchr.org/english/bodies/hrcouncil/annual_reports.htm)

<sup>6</sup> In accordance with paragraph 7 of General Assembly resolution 60/251 “the Council shall consist of forty-seven Member States, which shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly; the membership shall be based on equitable geographical distribution, and seats shall be distributed as follows among regional groups: Group of African States, 13; Group of Asian States, 13; Group of Eastern European States, 6; Group of Latin American and Caribbean States, 8; and Group of Western European and other States, 7.”

- **21 May 2008** – The Assembly holds the 3<sup>rd</sup> election of members to the Council electing Zambia, Ghana, Burkina Faso, Gabon, Japan, Bahrain, Republic of Korea, Pakistan, Slovakia, Ukraine, Chile, Brazil, Argentina, France and United Kingdom.
- **18 June 2008** – The Council adopts the institution-building package (Council resolution 5/1)<sup>7</sup> including the system of expert advice, the new complaint procedure, the special procedures and the Universal periodic review.<sup>8</sup>
- **12 May 2009** – The Assembly holds the 4<sup>th</sup> election of members to the Council electing Senegal, Mauritius, Nigeria, Cameroon, Djibouti, Jordan, Kyrgyzstan, Bangladesh, China, Saudi Arabia, Russian Federation, Hungary, Mexico, Uruguay, Cuba, Norway, Belgium and United States of America.
- **13 May 2010** – The Assembly holds the 5<sup>th</sup> election of members to the Council electing Angola, Libyan Arab Jamahiriya, Mauritania, Uganda, Malaysia, Maldives, Qatar, Thailand, Poland, Republic of Moldova, Ecuador, Guatemala, Peru, Spain and Switzerland.
- **11 May 2011** – The Assembly holds the 6<sup>th</sup> election of members to the Council electing Benin, Botswana, Burkina Faso, Congo, India, Indonesia, Kuwait, Philippines, Chile, Costa Rica, Peru, Czech Republic, Romania, Austria and Italy.
- **14 June 2011** – The Assembly adopts a final Resolution (A/65/L.78), by 154 votes to 4, following the 5-year review of the Human Rights Council.
- **30 September 2011** – The Council completes its 18<sup>th</sup> regular session.
- **2 December 2011** – The Council completes its 18<sup>th</sup> special session – in this case on the situation of human rights in Syria.

## The Council: From 2008 to present

The following section describes some of the main issues discussed in relation to the Council since 2008.

### The 5-year review process: The Debate

When the Human Rights Council was established in 2006,<sup>9</sup> the General Assembly decided to review its work and functioning after five years.<sup>10</sup> Officially, the review was expected to cover the Council's

<sup>7</sup> <http://www.ishr.ch/about-the-council>

<sup>8</sup> <http://library.fes.de/pdf-files/bueros/genf/04769.pdf>

<sup>9</sup> <http://www.centerforunreform.org/node/308>

<sup>10</sup> As stated in Resolution 60/251

working methods, substantive achievements and challenges and reporting arrangements to the GA.<sup>11</sup>

According to Felix Kirchmeyer<sup>12</sup> of the *Friedrich Ebert Stiftung* in Geneva, who follows the work of the Human Rights Council closely, the review process was for the most part a disappointment to many human rights NGOs, due to the unwillingness to change by many actors: “Early on, a majority made sure we would only talk of a review, not a reform.” NGOs had hoped for the development of a Council able to more effectively protect the victims of human rights violations.

### **Trigger mechanism**

One greatly anticipated mechanism of the review was the establishment of a so-called trigger mechanism in which an urgent human rights issue in a country would be moved onto the agenda officially, independently of particular political configurations. There was a lot of discussion on who should have the authority to do this. Attention was focused on the High Commissioner for Human Rights, the UN Secretary-General, the UN Special Envoy for the Prevention of Genocide or a group of at least five special procedure mandate holders, collectively or individually.

### **Membership**

Another discussion focused on the Council’s membership. In this area, according to Dr. Rathgeber of the German Forum Human Rights, who was an official observer for the Commission of Human Rights, and then for the Human Rights Council and has followed the UN human rights work closely since 2003, there were proposals to review voluntary pledges when putting forward a candidacy in an institutionalized, public procedure. Furthermore, it was suggested that countries with which the UN Security Council was dealing or which were accused of serious human rights violations should be excluded from being put forward as candidates. Lastly, Council members should have ratified at least half of the key human rights covenants without reservation and have issued a standing invitation to special procedure mandate holders and cooperated with them demonstrably.<sup>13</sup>

### **The Universal Periodic Review**

There were also proposals put forward regarding the Universal Periodic Review (UPR). In this case, several proposals were aimed at improving national circumstances. One proposal to allow NGOs to

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<sup>11</sup> For a more thorough introduction to the Council review, the process and the scope, see International Service for Human Rights, *Human Rights Monitor Quarterly*, Issue 2, 2010 and Issue 2, 2011, at: <http://www.ishr.ch/quarterly/previous-editions>

<sup>12</sup> Mr. Felix Kirchmeier is a Senior Program Officer of the Friedrich Ebert Stiftung in Geneva working with human rights and development. He has followed the work of the UN Human Rights Council closely since 2006.

<sup>13</sup> See this paper’s section *The election process* for further information

participate in the three-hour review hearing on a country was met with little support, probably because states and even some non-state actors feared that countries with critical human rights records would refuse to submit to inspection if the process was no longer confined to their state peers. Other proposals were composed of ideas to integrate national human rights institutions (NHRIs)<sup>14</sup> and NGOs in the process in informal ways such as informal meetings between the *troika*<sup>15</sup> and these groups, and a greater role attributed to NHRIs in monitoring the implementation of the recommendations from the UPR. The development of the UPR is dealt with in much more detail in the separate section of this paper dedicated to it.

### The Special Procedures

#### FACT BOX

The term special procedures, refers to the mechanisms established by the Council to address either specific country situations or thematic issues in all parts of the world. Special procedures' mandates usually call on mandate holders<sup>16</sup> to examine, monitor, advise and publicly report on human rights situations both in specific countries or territories, or on major phenomena of human rights violations worldwide, which come under thematic mandates. There are currently 8 country mandates and 33 thematic mandates.<sup>17</sup> Most special procedures receive information on specific allegations of human rights violations and send urgent appeals or letters of allegation to Governments asking for clarification. In 2010, a total of 604 communications were sent to Governments in 110 countries.

Concerning the special procedures the discussions mainly surrounded their independence. Whereas a position paper by the Russian Federation and a meeting in Algiers in February 2010 intended to tighten up the code of conduct for special procedures, the independence of the special procedures was emphatically defended by reformers.<sup>18</sup> Non-state actors demanded that the code of conduct for governments be tightened to oblige them to cooperate with special procedures mandate holders. The Ambassador of Finland presented several ambitious proposals to the second

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<sup>14</sup> Paris Principles compliant National Human Rights Institutions stand out as partners that are central to national human rights protection systems and are important counterparts for OHCHR. They should play a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level; a role which is increasingly recognized by the international community. Further information at <http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>

<sup>15</sup> The group of mediators in the UPR process consisting of three Council members.

<sup>16</sup> See <http://www2.ohchr.org/english/bodies/chr/special/index.htm>

<sup>17</sup> For examples see *ibid.*

<sup>18</sup> <http://library.fes.de/pdf-files/iez/07625.pdf>

meeting of the review's Working Group, including a strong section on the need for State cooperation with special procedures. During the meeting, however, the Non-Alligned Movement, the Organization of Islamic Cooperation and the African Group, made continuing efforts to weaken the proposal's text. For instance, they requested that language saying States be 'urged' to cooperate with special procedures be replaced by 'encouraged'. They also opposed a proposal, backed by Japan and the US, that the Office of the High Commissioner for Human Rights compile statistics on cooperation by States with special procedures.<sup>19</sup>

### **Outcome**

From October 25, 2010 to February 24, 2011, Member State delegations, UN Officials and other stakeholders invested significant time and energy in the review of the Council and the GA has now adopted the final resolution.<sup>20</sup> The outcome of the review of the work and functioning of the Council was adopted by consensus at the 16th session of the Council in March 2011. Many States, including Hungary on behalf of the EU, Nigeria on behalf of the African Group and Argentina, Brazil, Japan, and Switzerland, expressed dissatisfaction with the outcome. However, only the US disassociated itself from the document. The US's key concern was with the agenda and program of work of the Council, in particular with Item 7 on the situation of human rights in Palestine and other occupied Arab territories. The US held that singling out one country situation on the agenda is a severe detraction from the supposed objective and non-selective approach of the Council.<sup>21</sup> Mr. John F. Sammis, the representative of the United States of America said: "The gravest of the Council's structural problems remains its politicized standing agenda item 7, on Israel. During this review, no Member State has been able to explain how item 7 is consistent with the principles clearly outlined in resolution 60/251, which established the Human Rights Council, namely, impartiality, non-selectiveness and balance." (A/65/PV.100).

According to the independent experts interviewed for this chapter, the review did not bring forward any fundamental changes as compared to the 2007 institution building: "The most striking characteristic relates to the observation that NAM and OIC<sup>22</sup> from the very beginning of the review process insisted that no change of the Institutional Package of 2007 would be necessary, maximally

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<sup>19</sup> International Service for Human Rights, *Human Rights Monitor Quarterly*, Issue 2, 2011, p. 9, at: <http://www.ishr.ch/quarterly/previous-editions>.

<sup>20</sup> A/RES/65/281, at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/529/40/PDF/N1052940.pdf?OpenElement>

<sup>21</sup> International Service for Human Rights, *Human Rights Monitor Quarterly*, Issue 2, 2011, p. 10, at: <http://www.ishr.ch/quarterly/previous-editions>

<sup>22</sup> Non-Alligned Movement and Organization of Islamic Cooperation

some fine-tuning, and if any change would be proposed, it should follow the rule of 2006/2007, i.e. subject to consensus. As WEOG<sup>23</sup> benefited that time from the consensus agreement being in a minority position, now it became obvious that NAM and OIC felt unsure about the majorities in the HRC. Subsequently, the most substantial reform proposals – such as triggers – did not come through,” according to Dr. Theodor Rathgeber of the German Forum Human Rights.

In its investigation of the Council’s operations from July 2010 to June 2011, Human Rights Watch concluded that: “The review was a missed opportunity because it failed to address problems that had prevented the Council from responding promptly and effectively to situations of gross violations of human rights.”<sup>24</sup>

Mr. José Luis Díaz, Head of Office of Amnesty International and its representative at the United Nations, told the Center that the 5-year review didn’t achieve what it could have achieved. Amnesty International was especially disappointed with the missing amendments to the election process: “The selection process right now is not satisfying. Currently, there is no competition for the seats in the Council in some regions. We wanted to see competition in the election process and to have real discussions with the candidates on how they plan to promote and protect human rights as potential members of the Council. This is something that the review did not bring about. A competitive election process is foreseen in the resolution establishing the Council; if that were implemented, I believe we would have the best possible members of the Council.”

According to Human Rights Watch, the process was in general characterized by the reluctance of a large group of delegates, particularly those from Russia, China and the Non-Aligned Movement, to even consider proposals that would have enhanced the ability of the Council to respond to violations in a non-selective way. Innovative proposals from other states such as Argentina, Chile, Mexico, and Peru that suggested giving more authority to the High Commissioner for Human Rights to add issues to the Council’s agenda for its action, were neglected. Nor was a proposal by the Maldives that would have allowed states wishing to do so to brief the Council on their domestic situation incorporated.

The final outcome, adopted by consensus in Geneva, set out only limited changes. Among the changes that did make it into the final document, resolution 16/21, were the following: a decision to

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<sup>23</sup> Western European and Others Group

<sup>24</sup> Human Rights Watch, “*Keeping the Momentum*”, 22 September 2011, p. 30, at <http://www.hrw.org/publications/reports>

review the way in which states sign up to speak during the Universal Periodic Review of a country; the decision to increase the UPR cycle from four to four and a half years, in order to allow for an increase of time allotted for each review; and the agreement that the Council will explore the use of information technology as a means of improving accessibility and participation by all stakeholders.<sup>25</sup> Another development concerns the participation of NHRIs in the UPR. NHRIs now have their own section in the summary of the reports of the NGOs and, they will also be granted the right to speak at the Council session on adoption of the UPR report directly after the Member State in question speaks.

There were no fundamental changes in regard to the special procedures apart from the novelty that NHRI's were granted the right to nominate their own candidates for special procedure mandates.

Thus, it is probably fair to say that the reform process suffered from a lack of political will to make suggested changes. However, according to Michael Ineichen of the International Service for Human Rights in Geneva,<sup>26</sup> the review has definitely not been a mere waste of time: "The review process has been important in the sense that it has highlighted where the weaknesses of the Council are and remain. And in that sense it left a door open to try to further develop the Council in those areas." What are these areas? "Mainly it is the Council's ability to respond to urgent and chronic human rights situations in specific countries in a timely manner."

However, there is another perspective from which one can assess the review. It is clear that quite a few stakeholders, particularly civil society actors, feared that the review would result in a weakened Council – for instance in regard to the independence and the code of conduct of the special procedures, on which there were attempts to limit its mandate further. In this light, preservation of the existing mandate should perhaps be regarded as a victory.

### **The Universal Periodic Review**

"Taken as a whole, the key determinant of whether the Human Rights Council represents an improvement over the Commission is the UPR. If the UPR functions well this may outweigh the

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<sup>25</sup> Ibid.

<sup>26</sup> Mr. Ineichen is the manager of the International Human Rights Defenders Program at the International Service for Human Rights' Geneva Office. His primary area of work relates to monitoring and advocacy around the Human Rights Council and all aspects of the institution building.

losses in other areas but if it does not, there can be little doubt that the institutional design of the Council does not represent a significant improvement over that of its predecessor.”<sup>27</sup>

These are the words of human rights law and policy specialist Meghna Abraham, who closely followed the institution-building process of the Human Rights Council. Whether she is right or not, there is no doubt that the Universal Periodic Review mechanism, under which the Council is required to review the fulfillment of the human rights obligations and commitments by all UN member States,<sup>28</sup> was met with great expectations from many sides, including UN Secretary-General, Ban Ki-moon: “The Universal Periodic Review has great potential to promote and protect human rights in the darkest corners of the world.”<sup>29</sup>

For the time being, the first four-year cycle of the UPR has been finished: its last session ended on 14 October 2011.<sup>30</sup> As Human Rights Council President, Laura Dupuy Lassere of Uruguay stated when she presented the 2011 Annual report of the Council, human rights situations in the 193 member states had now been considered by the Council, with most States represented by ministers at their reviews, which is a milestone. And when the General Assembly at its 66<sup>th</sup> session addressed the very same report it was certainly clear that most states across different regions regard the UPR as a positive, universal mechanism, which provides for participation by all stakeholders. However, member states’ approach to understanding the UPR seems to vary. Whereas some states, such as India, Sudan and Russia, commended the importance of the mechanism and the results of the first cycle, other states, such as the EU, emphasized the need to focus on implementation of recommendations and follow-up. In addition, Mexico along with other countries stressed that: “resources are needed so that countries can implement recommendations from the first cycle during the second.”<sup>31</sup>

Reflecting on whether the UPR has led to actual human rights improvements on the ground *in the darkest corners of the world*, Michael Ineichen, International Service for Human Rights told the Center: “In terms of actual improvements in human rights afforded to citizens, I think it’s still early

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<sup>27</sup> <http://library.fes.de/pdf-files/bueros/genf/04769.pdf>

<sup>28</sup> The Universal Periodic Review mechanism was created under General Assembly Resolution 60/251 – Para 5 (e): [http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf)

<sup>29</sup> <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

<sup>30</sup> On 21 September 2007, the Human Rights Council adopted a calendar detailing the order in which the 193 UN Member States will be considered during the first four-year cycle. See the UPR homepage: <http://ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> or <http://www.upr-info.org/>

<sup>31</sup> <http://www.un.org/News/Press/docs/2011/ga11167.doc.htm>

to judge. The second cycle of the UPR will start next year and that will be based on an assessment of follow-up and implementation of recommendations and accepted commitments from the first cycle. So this will give us a more comprehensive picture of what changes have occurred as a result of the UPR.”

Whereas it is still unclear which concrete changes on the ground have or will result from the UPR, there seems to be wide agreement among the experts that the UPR has provided at least an unprecedented public scrutiny of the human rights records of all Member States. Moreover, the UPR is also credited with a few other innovations:

- Public scrutiny is strengthened in the sense that through the UPR, information on a given country submitted by states, the UN system and NGOs now can be found at one central place.
- A strengthened national debate which is undertaken already in the preparation of the review – among NGOs, but in many cases also between the Government and NGO
- Involvement of civil society actors (NGOs, NHRIs) has improved and the UPR has definitely provided a real opportunity for those actors to get organized and formulate their questions more concretely and regularly.
- Some states pledged within the UPR scrutiny to ratify human rights standard conventions or to establish NHRIs in accordance with the Paris Principles<sup>32</sup> (e.g. Bahrain and Morocco).
- For many NGOs in Asian countries the UPR discussions have been the first time they have met with their government on that level and on such a subject. This has not automatically improved the situation on the spot but increased the means to hold a government accountable.

On the other hand, according to José Luis Díaz of Amnesty International, it is clear that the current practice of the mechanism leaves room for improvement: “One way it could have a greater effect is if the public were more familiar with the process. Some countries are abiding by the recommendations derived from the review; others are not. Whether countries are participating in the process in good faith is definitely something to look at. The local public should be involved in answering this question, if possible. The central question being: is the country applying the recommendations it accepted? The process has great potential, but it hasn’t yet realized this potential.”

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<sup>32</sup> The Paris Principles relate to the status of National Human Rights Institution, see: <http://www2.ohchr.org/english/law/parisprinciples.htm>

According to the International Service for Human Rights many suggestions relating to the UPR were presented during the Council-review working group sessions, these included: appointing a legal expert to ensure recommendations made are in accordance with international human rights law; having the High Commissioner verbally present the compilation report and the stakeholders report from the Office of the High Commissioner for Human Rights (OHCHR); and making midterm reporting and the submission of implementation plans compulsory. None of these recommendations made it into the outcome document. Instead, States were merely encouraged to submit midterm reports and implementation plans.<sup>33</sup>

When the Human Rights Council President recently addressed the General Assembly she mentioned that the second cycle of the UPR is key to the success of the entire mechanism, because it will allow an examination of the process and its results.<sup>34</sup> On this basis, it is probably premature to attempt to assess the value of the Universal Periodic Review as a promising human rights mechanism until the second cycle is underway. A cycle which, as previously mentioned, has now been extended to four and a half years instead of four years, allowing 14 instead of 16 countries to be considered per session, which also will give an additional 30 minutes to address every single country case.

### **Participation of civil society in the Council's work: The Debate**

"The Council is an extremely transparent body. I have never worked for another UN organization where even negotiations, fine-tuning, draft resolutions and decision texts are subject to public discussion. That is a significant feature of the Council."

- Public Information Officer, OHCHR

If the Council is to achieve its goal of protecting and promoting human rights worldwide, accountable and transparent cooperation with "the recipients", that is civil society, is key.

One UN Official, speaking anonymously, told the Center that the 5-year review of the Council did not bring all the changes they had hoped for in this field. However, she mentioned several areas in which civil society has the opportunity to influence the Council's work. One such opportunity is the side-events during the Council sessions in Geneva, where NGOs can raise concerns that need not be on the Council's agenda. According to an expert from the NGO community those informal discussions are vital, because a fair amount of the Council's work has actually happened in informal

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<sup>33</sup> International Service for Human Rights, *Human Rights Monitor Quarterly*, Issue 2, 2011, p. 13, at: <http://www.ishr.ch/quarterly/previous-editions>

<sup>34</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11578&LangID=E>

settings. The UN Official added that inside the Council, civil society also plays an important role. For instance during the UPR review of States, NGOs can take the floor in the ending of the session, albeit only a maximum of four organizations can do so. This is also the case during the thematic debates in the Council.

Another very important role of NGOs occurs at the local level in terms of follow up work where NGOs play a crucial role as monitors and also as conveyers of information to the Council and specific delegations. The monitoring of the implementation of accepted UPR recommendations is an especially important challenge where NGO participation is indispensable. On this topic the UN Assistant Secretary-General of Human Rights, Ivan Šimonovic, said that civil society is, “highly important to real life of human rights on the ground.”<sup>35</sup>

The UN Official also mentioned that the role of NHRIs is a growing one and that she has seen more countries committed to establishing NHRIs. She also noted, however, that it is crucial that the UN continue to work to improve channels to receive civil society’s inputs.

Apart from mentioning the important role of civil society in terms of achieving human rights results on the ground, Mr. Šimonovic also emphasized that NGOs play vital roles in the UN’s two mechanisms to monitor human rights: the Special Procedures and *peer reviewing* (the UPR). The Special Procedures mandate holders are usually from civil society – typically academics, and in terms of the UPR, the shadow reports submitted by civil society are vital. To exemplify this he said Japan recently submitted a UPR midterm report on the basis of civil society initiatives. In general, he thought civil society helps to mainstream human rights.

The independent experts and NGO representatives interviewed for this chapter generally agree that the inclusion of civil society in the Council’s work is good, especially when compared to other UN organs, and that the transmission from Commission to Council has not weakened it, as some had feared it would. In this regard Mr. Ineichen made this assessment: “I think civil society participation is still at a reasonably and comparatively really good level. The Council bases its civil society participation on the same ECOSOC resolution and rules and practices of the Commission it replaced. So in that formal sense it is exactly the same.” However, the same expert also stressed that nothing should be taken for granted in this case, “this is an area of constant struggle between those states that oppose more civil society participation and those that support it.”

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<sup>35</sup> During a panel discussion at the UN in New York, arranged by the Permanent Mission of Costa Rica to the UN on the role of civil society in enhancing the work of the Human Rights Council, 2 November 2011.

### **Civil society participation in the Council as compared to the Commission**

While it is impossible to assess how the Commission would have developed in this field (and in general), one independent expert, Dr. Theodor Rathgeber, told the Center that: “The participation of civil society organizations in the HRC’s work is still an outstanding factor within the UN system”, and moreover that: “the influence of civil society participation has rather expanded than declined as compared to the Commission.” Supplementing this notion, Mr. Ineichen expressed the view that: “Civil society participation has become more strategic. At the time of the Commission there may have been more participation in terms of quantity but not necessarily in terms of quality.”

Felix Kirchmeyer of the Friedrich Ebert Stiftung in Geneva described the inclusive procedures NGOs had received in actual practice: “HRC presidents have been giving good speaking time to NGOs, i.e. by allotting a certain time for NGO statements, which does not just come at the end of the States’ speakers list, and thus might be cancelled if the session runs too long, but does interrupt it to give a certain time to NGOs before ending the session. Also informal discussions on resolutions etc. are usually open to civil society participation.”

### **Room for improvement**

On the basis of the research done for this article it is clear that civil society has a host of participation possibilities and that NGOs contribute to holding governments accountable. At the same time, however, there are some areas where additional improvements regarding NGO participation can be made as suggested by this list:

- Human Rights Watch has expressed the belief that ECOSOC accreditation is flawed, which means that there is no process to weed out the so-called GONGOs (Government-Organized Non-Governmental Organizations) who are not independent.<sup>36</sup>
- Human Rights Watch also emphasizes that it is important to bring firsthand victims to the Council in Geneva because they can report back on the performance of their Governments. However, it is a challenge for many NGOs mainly from Southern countries to participate in Geneva throughout the year due to high expenses. The practical obstacles can result in late or even missing engagement.
- There is a need for an urgent response mechanism to protect NGOs working with the UN in the field.

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<sup>36</sup> This opinion was pronounced by Global Advocacy Director of Human Rights Watch, Peggy Hicks, during the Panel at the UN in New York on the role of civil society in enhancing the work of the Human Rights Council, 2 November 2011.

- Although there is general agreement among UN Officials as to the crucial role of civil society actors in realizing human rights, not all governments worldwide share this view or accord NGOs the access they need to undertake this role. To overcome these obstacles, several respondents from the NGO community would like to see a yearly report on how Member States cooperate with the Council.
- Civil society organizations are weaker in countries where human rights violations are grave. There is a need to support these organizations further.
- Looking forward, effective civil society participation requires Member State delegates and UN Officials who are committed to accountability and transparency. This will continue to be an ongoing challenge and play an important role in protecting human rights worldwide just as it does today.

In terms of UN reform in general, it is perhaps relevant to ask how good practices established by the Council in Geneva in this field can be translated to operations at headquarters in New York.

## Other features

Other developments in the Council worth noting include: the changes experienced as a result of the “Arab Spring”; increasing cross-regional cooperation; and the creation of the Office of the President of the Human Rights Council.

### **A more active and dynamic Council? – The case of Libya**

On February 25 2011 as a response to the situation in Libya the Council convened a special session on the country. During this session the Council condemned the gross and systematic violations of human rights. Moreover, the Council took an unprecedented move in unanimously calling upon the UN General Assembly to consider suspending Libya’s membership in the Council.<sup>37</sup> The Assembly did so subsequently and Libya’s membership was suspended.<sup>38</sup> This move would not have been possible during the time of the Commission, and it shows that at least in some cases, the Council is a dynamic and constantly developing body, which is willing to take unprecedented action on urgent matters. According to Human Rights Watch the work of the commission of inquiry in Libya established by the Council also played a key role in setting the stage for the investigations of the

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<sup>37</sup> A/HRC/RES/S-15/1

<sup>38</sup> On 18 November 2011 UN Member States voted overwhelmingly to re-admit Libya as a member of the UN Human Rights Council after Colonel Gaddafi’s regime had been toppled and Libya committed to promote and protect human rights, democracy and the rule of law.

International Criminal Court (ICC), which in turn led to the issuing of arrest warrants for Libyan leader Muammar Gaddafi, before his death, and other involved individuals.<sup>39</sup>

### **Increasing cross-regional cooperation on decisions and resolutions**

The Council's will to take action and respond to urgent situations where human rights are being violated, varies considerably from session to session often depending on the membership composition, amongst other factors. During certain discussions, particularly the country specific ones, a divide between what is commonly referred to as developed and developing Member States in the Council, is visible.

However, during the recent sessions we have witnessed a tendency to conduct more cross-regional cooperation in the Council in which some countries tend to break away from their traditional group ties. According to Felix Kirchmeyer, "This goes especially for some African countries, who don't necessarily go with what was previously quickly claimed as a common position of the 'African Group'." The cross-regional cooperation is particularly true in regard to the thematic mandates adopted by the Council, and sometimes in decisions involving country specific mandates, although consensus on these latter issues seems harder to reach. According to observer Dr. Rathgeber, some countries from GRULAG (Mexico, Uruguay) and WEOG (Switzerland, Norway) are trying to overcome this kind of division through cross-regional initiatives that seem to work, although the entire process is just in its early stages. The Council's public information officer provided an example from practice: "Cross-regional cooperation is indeed what we have been witnessing in the Council, more so than ever now. For example we had a recent decision taken on defamation of religions, which actually gained support from representatives from the five different regional groups, and this is particularly significant given the very heated debate on a very sensitive subject. This is one example of how the cross-regional approach reached a good solution in the end to an issue that had been discussed in the Council for quite some time."

Mr. Ineichen expressed the view that this cooperation has the potential to unlock and create synergies and cross-regional trust that can be useful in more difficult discussions: "I think it is harder to reach an understanding on country-specific situations simply because there are more political issues involved. So I think the forging of cross-regional initiatives has to be done through thematic efforts and then those cross-regional initiatives and groups can be used to also address more difficult issues, such as country-specific discussions."

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<sup>39</sup> <http://www.hrw.org/reports/2011/09/22/keeping-momentum>, page 11 (accessed November 9, 2011)

### **A potentially fruitful institutional development**

The June 2011 session of the Council saw the adoption of a decision (17/118),<sup>40</sup> establishing the Office of the President of the Human Rights Council, bringing to fruition a long-envisaged institutional change at the Council. The decision calls for appointment of three staff members to support the president in the fulfillment of his or her tasks. This development will have to be monitored over time to see if it brings forth the expected improvements.

## **Challenges and Criticisms of the Council**

Future challenges to the Council are many and some of these, such as the follow-up on the implementation on UPR recommendations, threats to the independence of the Special Procedures, and the wider inclusion of civil society, have already been mentioned. There are also diverging views on which challenges are the most important. Although this section does not attempt to address the challenges exhaustively, it discusses a range of them and presents the different views various stakeholders expressed to the Center.

### **The election process**

One thing, which is commonly regarded to be a challenge to the Council's credibility by several actors, including the European Union, Amnesty International, Human Rights Watch and some other human rights groups and Member States, is the election process of Council members. During the annual Council review debate in the General Assembly on 2 November 2011, Thomas Mayr-Harding, Head of the delegation of the European Union, stated, "Serving on the Human Rights Council entails important responsibilities, which should guide both the election of members and their conduct during their tenure",<sup>41</sup> and at the same occasion the EU encouraged all to pay more attention to the human rights record and commitment of States.

Mr. Díaz of Amnesty International told the Center: "Our position on elections is based on the resolution that established the HRC, which clearly foresees competitive elections for membership. This requires that there should be more candidates than vacant seats for each region.

The practice of presenting 'clean slates', where the number of candidates matches exactly the number of seats available for a region is inconsistent with the spirit of General Assembly resolution 60/251, which clearly contemplates contested elections."

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<sup>40</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/148/90/PDF/G1114890.pdf?OpenElement>

<sup>41</sup> <http://www.un.org/News/Press/docs/2011/ga11167.doc.htm>

At a panel discussion on 2 November 2011, Peggy Hicks, Global Advocacy Director of Human Rights Watch, pronounced a similar view. The election process of members to the Council will continue to be a discussion topic because of its bearing on the Council's credibility – at least from the perspective of the above-mentioned stakeholders.

### **A challenge to keep the car running**

Several respondents mentioned that the Council has developed in a promising way in response to the emerging democratic movements in Northern Africa. But will the Council keep the momentum generated by those happenings to further strengthen human rights as a main priority on the International Community's agenda, or is human rights just on everybody's lips today but not tomorrow? Unfortunately, according to a wide range of NGOs the first signs that emerged in answer to this question was a decrease in urgent responses to human rights violations during the Council's 18<sup>th</sup> session in September 2011. The Council failed to take action on situations in Yemen, Sudan, South Sudan, and Sri Lanka and its debates were not reflective of the seriousness of these situations.<sup>42</sup> However, a UN Official working at the OHCHR disagrees, "I would not agree with that assessment. In fact, the 18<sup>th</sup> session was quite successful for a number of reasons. We did indeed adopt more than 30 resolutions. But it is of course about the words and meanings behind those resolutions – not the quantity. In the latest session a lot of important themes and country situations were addressed, as was the case in the previous sessions. To name a few concrete examples, we had important decisions taken on Syria, Sudan and Libya."

Is action on some situations but not others sufficient? Is lack of resources, time or politics the cause? Whatever the answer to these questions, one thing is clear; the Council needs to continuously demonstrate its effectiveness by consistently responding to urgent or chronic situations in a strong and unified manner in the future.

### **Relationship between the Council and the Office of the High Commissioner for Human Rights**

One controversial institutional issue debated during the past year was the issue of the relationship between the Council and the OHCHR. The controversy was sparked by a Cuban initiative in September 2010, which called on the High Commissioner to formally present OHCHR's strategic framework to the Council before its submission to the General Assembly. The draft resolution would have altered the relationship between the two institutions by attempting to give the Council certain oversight functions over the OHCHR. A recent NGO statement responded to this issue, "We deeply regret the continued attempts by a small group of States to undermine the effective and

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<sup>42</sup> <http://www.ishr.ch/human-rights-council-ngo-statements>

independent functioning of the UN's lead institution on human rights protection."<sup>43</sup> According to Mr. Ineichen from the International Service for Human Rights this is: "a worrying institutional development. Cuba, Sri Lanka, Pakistan and some others are trying to exert more influence over the work of OHCHR both in terms of allocating funds and the substantial issues; thematically and on specific country situations. The independence of OHCHR has been an ongoing battle for a long time, but each time it gets pushed a little bit further."

Public information Officer at the OHCHR, Rolando Gomez, acknowledged these attempts: "I am aware of the efforts and there were draft resolutions. The efforts are made to undermine the role of the office. But indeed this is not the first time it has happened. Obviously it is something we take seriously. There may be moves by certain States to undermine our efforts, and we are mindful of that, but we go ahead nevertheless conducting our work to the best of our ability."

However, the Cuban initiative, which met the resistance of several states, was not agreed upon and instead the Council adopted a decision that left it to the High Commissioner to compile state views to her office's management plan and did not formalize the process through which OHCHR's strategic framework would be submitted to the Council. Nonetheless, this is an issue that is likely to re-emerge and which therefore requires careful monitoring by groups interested in preserving the powers of the OHCHR.

### **The Council's controversial Positions**

Politicization resulting from the diverse views of Member States' concerning human rights presents an ongoing challenge to the fulfilling of the Council's missions. Indeed, the so-called 'bloc voting' was an evident feature of the Council's predecessor, the Commission of Human Rights. Obviously, the interesting question in this regard is whether this unfortunate situation has improved?

A recent interactive dialogue held by the Council in response to an oral report made by the High Commissioner on the situation of human rights in Belarus illustrates the diverging opinions in the Council.<sup>44</sup> The dialogue was characterized by unmistakable disagreement primarily between EU States on the one hand, and Belarus with support from Venezuela, Cuba, Russia, China, the Democratic People's Republic of Korea and Zimbabwe, on the other. The EU called on the Government of Belarus to immediately adhere to the provisions of resolution 17/24, which

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<sup>43</sup> <http://www.ishr.ch/council/376-council/1161-test-1>

<sup>44</sup>

<https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/18thSession/OralStatements/High%20Commissioner-15.pdf>

condemns the human rights violations in the country, but the States cited above strongly opposed the adoption of such resolutions and targeted this aspect of the Council's work as being politicized and involving double standards.<sup>45</sup>

According to all the Center's sources the politicization of the Council's work is a constant challenge – and the above-described situation is often seen. In this regard, Mr. Kirchmeyer mentioned that continued engagement with open-minded states from all regions is necessary – that is, he explained, States, which engage in decisions and resolutions in the Council need to keep an open mind even though their group might hold a contrary position. He added that: “Capacity building and support for small and understaffed ‘Southern’ delegations are also important to enable them to build their own opinions, which may differ from a bloc approach.”

One UN Official interviewed for this chapter also agreed that politicization is a challenge, but at the same time he thought there have been remarkable improvements: “I think by and large it has been overcome. Perhaps not entirely, there are always examples of confrontations. But what's important to notice is that there is more of a spirit of negotiation. There were perhaps more of a divide in the past and a rift between certain regions, and it does exist to a certain extent now – I don't want to present any illusions about it, but certainly that is largely a thing of the past.”

## **A comment on the original 2008 chapter**

Chapter Five of the Center's 2008 publication *Managing Change at the United Nations* deals with the Human Rights Council and the discussions surrounding its establishment.<sup>46</sup> One of the concluding remarks in this Chapter Five finds the continued American non-involvement in the Council troubling. In March 2007, the US State Department stated that for the second time in a row, the US would not bid for a seat on the Council due to the body's lack of credibility, its repeated attacks on Israel and failures to confront other serious rights abusers.

This situation has changed during the last couple of years. There has been an increasing amount of American involvement in the Council, especially since it sought and was elected to become a member in May 2009. One of the experts interviewed for this paper claims, “I would not see an

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<sup>45</sup> <http://www.ishr.ch/council/376-council/1150-belarus-criticises-politicisation-of-the-council-during-interactive-dialogue-on-the-country>

<sup>46</sup> The full chapter is accessible at <http://www.centerforunreform.org/node/308>

American non-involvement today. In the first year, it stayed 'hidden' and had others voice its concerns, but since its first term of membership in the HRC the USA has stayed an active player and are very vocal (and as long as the topic isn't Israel, quite progressive) in the HRC." José Luis Díaz of Amnesty International, also recognized the importance of the return of the US, stating that: "When an important player in the international community like the US is represented, the work of the Council becomes more relevant and influential."

Several independent sources also credited the change in the US Presidency for the country's involvement in the Council. Whereas the Bush administration contributed with funding and as an observer to the Council, the Obama administration is actively serving on the Council. The replacement of George W. Bush by President Barack Obama was according to Dr. Theodor Rathgeber of the German Forum Human Rights a precondition that any good outcome can be expected from the US involvement into the HRC, in the sense that the Bush-administration would very probably have impacted the Council's performance in a further negative, more polarizing, more troubling way.

The 2008 chapter also quoted some experts who expected that the Council might become the seventh principal organ of the UN after its five-year incubation period. However, the status on this discussion, according to the sources interviewed by the Center for this paper, is that the Council's status will not change. Dr. Rathgeber expressed the following view: "I do not see any serious reflections on that subject. As this requires an amendment of the UN Charter, such a decision will not only follow genuine human rights considerations but will be embedded in a larger UN reform process."

## **Future of the Human Rights Council**

On the basis of the performance of the Council during the last few years, one expert envisioned the future of the Council by focusing on its potential, and the majority of the Center's sources agree on this: "I don't have a crystal ball but if you look at the UN human rights architecture over the last 10-15 years, I think there is a tendency of more space for civil society and therefore more accountability provided through the UN. So I think the potential definitely is there - the Council does have the potential to become more effective. At the same time the Council remains a political body that is composed of States. At the end of the day it hinges on progress in each of the Council's

Member States. The future challenges are the same as the whole UN system faces in terms of its effectiveness, efficiency and the way it is often held back by both the bureaucracy and the political nature of the work. But as the space for NGOs and ideas about human rights expands worldwide I think the Council will follow this trajectory.”

While it is crucial to constantly pay attention to the above mentioned challenges, the independence shown by African States from their regional and interest groups, as well as the radical changes taking place in North Africa enable us to hope for an influential and active future for the Council.

In terms of the Universal Periodic Review there seems to be an agreement that the second cycle of the UPR, beginning in 2012, is key to the success of the entire mechanism, because it will allow an examination of the process and its results. Indeed, it will be interesting to see whether this mechanism can realize its full potential.