

The United Nations and Global Protection of Human Rights:
Assessment of the Human Rights Council

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Introduction

Since its inception, the United Nations (UN) has been committed to the universal respect for human rights—a mission clearly stipulated as one of the main purposes and principles of the UN Charter, alongside peace and development. The Charter stipulates the promotion and encouragement of human rights and fundamental freedoms in Article 1 and contains other specific human rights provisions such as Articles 54, 55, and 68. The provision of human rights is indication of a higher level of development. A rich source of norms of public international law concerning human rights has been founded at the universal and the regional level. Moreover, the UN—in particular, the General Assembly (GA) and its third Committee, the Economic and Social Council (ECOSOC), along with ECOSOC's subsidiary functional committees, such as the UN Commission on Human Rights (CHR)—has played a leading role in establishing and implementing the norms.

In recent years, the UN Charter-based bodies on human rights have been witnessing changes. The decision to replace the CHR with the new UN Human Rights Council (HRC) was made by the UN Member States at the 2005 World Summit and at the 60th session of UN GA held on 15 March 2006⁽¹⁾, and the HRC was formed on 19 June 2006. According to the former UN Secretary-General, Kofi Annan, “The creation of the Council would accord human rights a more authoritative position, corresponding to the primacy of human rights in the Charter of the United Nations.”⁽²⁾

This article aims to explore three key issues that have emerged from the recent institution building toward HRC: First, it will examine the real achievements of the UN in the area of the global promotion and protection of human rights: second, it will consider the main criticisms regarding the CHR: and finally, the article will try to evaluate the recent institution building. This takes a look at the newly introduced mechanisms, the Universal Periodic Review (UPR), the review of rationalization of the pre-existing Special Procedures, and the HRC Advisory Committee.

1 Brief Overview of the UN Human Rights Machinery and its Achievements: 1946–2006

The CHR was established as a charter-based body in 1946 for the promotion of human rights⁽³⁾. Its first achievement was the setting of standards for a number of important international human

* This article is based on my presentation at the 8th Korea-Japan Seminar on the United Nations, "Global Issues and the United Nations", 5-6 September 2008, in Seoul, Republic of Korea.

(1) UN Doc. A/60/251, 3 April 2006.

(2) UN Doc.: Report of the Secretary-General, *In larger freedom: towards development, security and human rights for all*, (A/59/2005), 21 March 2005, para.183.

(3) Terms of reference of the CHR were set by ECOSOC Res. 6(I), 16 February 1946 and 9(II), 21 June 1946.

rights instruments. The CHR drafted the Universal Declaration of Human Rights (UDHR), which was finally adopted by the GA on 10 December 1948 as “a common standard of achievement for all peoples and nations.”⁽⁴⁾ Subsequently, it drafted the International Covenant on Civil and Political Rights and its Optional Protocols and the International Covenant on Economic, Social and Cultural Rights and other core human rights treaties. In 1993, at the World Conference of Human Rights in Vienna, the international human rights were affirmed as “universal, indivisible and interdependent,”⁽⁵⁾ thereby enabling these rights to be widely accepted as standards that should be observed by all governments.

As the international human rights standards grew, the CHR committed to expand the UN human rights activities beyond standard setting and entered into the stage of human rights protection by establishing other human rights bodies and implementation machineries⁽⁶⁾. The Sub-Commission on the Promotion and Protection of Human Rights (which changed its name from the Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1999)—originally was established in 1947 as a subsidiary body of the CHR—was mandated to conduct a study guided by the UDHR on the basis of which the Sub-Commission made numerous recommendations of new standard setting⁽⁷⁾. Since 1967, on the basis of ECOSOC Resolution 1235 (XLII), the CHR and the Sub-Commission have publicly responded to the human rights violations in specific countries. ECOSOC Resolution 1235(XLII) established a creative protection mechanism known as “Special Procedures” through which experts called Special Rapporteurs observe and analyze gross and consistent patterns of human rights violation thematically or by country. Since 1970, the 1503 Procedure came into being. Through 1503 Procedure, the CHR confidentially responds to “gross and consistent patterns of human rights violations reliably attested,”⁽⁸⁾ with close cooperation of independent experts who investigate on the basis of information obtained from direct information contained in communications from victims and NGOs around the globe. Without ECOSOC Resolution 1235’s Special Procedures and 1503 Procedure, apartheid in South Africa and enforced involuntary disappearance in Latin American military authoritarian countries would not

(4) Preamble in the UDHR, GA Res. 217A(III) of 10 December 1948.

(5) Paragraph 5 in Vienna Declaration and Programme of Action Adopted by the World Conference of Human Rights in Vienna on 25 June 1993.

(6) There are other important functional committees of the ECOSOC besides the CHR, concerning human rights. The Commission on the Status of Women has set numerous standards, monitoring the role in the field of women’s human rights. Another of the ECOSOC’s functional committees, the Commission on Crime Prevention and Criminal Justice, has been successful in securing a number of international human rights standards in areas such as law enforcement, prisoners’ rights, victim protection, criminal procedure, and juvenile justice. The Commission for Social Development has made substantial efforts for setting standards and monitoring the rights of persons with disabilities.

(7) Resolution of the CHR at the fifth meeting E/1371, Chapter IV(1949).

(8) ECOSOC Resolution 1503(XLVIII) of 27 May 1970.

have been addressed nor directly criticized, and effective action against them would not have been taken by the CHR.

Other activities have also been conducted besides standard setting and protection through the monitoring mechanisms. In support of the Secretariat, the Office of High Commissioner of Human Rights (OHCHR), the CHR provided technical support and training, as well as field presence through the OHCHR field offices. The OHCHR plays an important role in the field by way of information gathering and producing responses to human rights issues in cooperation with governments and civil society. The OHCHR also tries to promote human rights world wide through human rights education and to mainstream human rights within the UN activities in order to develop the different bodies of UN concerning human rights.

The CHR's overall achievement for the 60 years was remarkable in terms of the global promotion and protection of human rights. However, some key disadvantages have manifested in the form of limitations in enforcement and the inevitable conflict concerning assertion of domestic jurisdiction of the sovereign states. Nevertheless, clear global goals were first laid down in international human rights instruments, and then the gradual implementation of such goals were universally materialized, in principle, in various monitoring mechanisms of implementation machineries⁽⁹⁾, an example of such a machinery is the Special Procedures and the 1503 Procedure. Various implementation measures foster the globalization of human rights by influencing States to maintain their practices along the lines of the international human rights standards.

Another important achievement of the human rights machineries was the integral functioning of the CHR and the Sub-Commission in collaboration with independent experts and NGOs. It is obvious that the UN is an intergovernmental organization; hence the process essentially depends on the consent of the Member States. It necessarily involves certain drawbacks, such as showing reluctance to ratify human rights treaties or refusing visit of human rights investigation of Special Procedures or 1503 Procedures. Interestingly, the CHR was initially comprised of 18 nongovernmental individuals⁽¹⁰⁾. However, it soon became a governmental body like the GA and the ECOSOC, and gradually expanded to 53 members in 1992. The Sub-Commission was unique; it was composed of 26 individual and alternate experts with equitable representation in various regions. The Sub-Commission, as an expert body, conducted a study guided by the UDHR and made various recommendations on human rights violations in specific countries and on new standard-setting. While using of Special Procedures and the confidential 1503 Procedure, Special Rapporteurs and Independent Experts were decisive for these tasks. NGOs held a consultative

(9) The CHR and the Sub-Commission deal with questions on the violation of human rights in any part of the world under agenda item 9.

(10) Eleanor Roosevelt of the US and Rene Cassin of France were well-known members of the CHR.

status, and their involvement has long been indispensable at several levels, including standard-setting, fact-finding, and developing implementation machinery. The primary role of NGOs is as an active intervener on behalf of the oppressed⁽¹¹⁾. The CHR as a subsidiary functional committee of the ECOSOC, had played the central role in the international human rights regime organized as a community of three different foundations: States, individual experts and NGOs.

2 The Establishment of the HRC and the Shortcomings of the CHR

(1) Report of the High-level Panel, December 2004 ⁽¹²⁾

Discussions of institutional reforms can be traced back to the Report of the High-level Panel on Threats, Challenges and Change. The Panel's main purpose was to provide new assessments of future challenges in peace and security, and recommend changes of effective collective action, namely, the reform of the Security Council. The Panel was also asked to conduct a thorough assessment of the existing machinery including the principal organs of the UN.

In this report, the Panel criticized the CHR as its tasks were “undermined by eroding credibility and professionalism”⁽¹³⁾, lack of “demonstrated commitment”⁽¹⁴⁾ to the promotion and protection of human rights and for its double standards. The Panel recommended several proposals for the reform of the CHR, such as expanding universal membership of the CHR and restructuring it by including delegation heads who have the professional qualifications and experience necessary for human rights work. The Panel proposed that “in the longer term, Member States should consider upgrading the Commission to become a ‘Human Rights Council’ that is no longer subsidiary to the ECOSOC but a Charter body standing alongside it and the Security Council”⁽¹⁵⁾.

The Panel also touched upon the OHCHR's funding situation. The Panel identified “a clear contradiction between a regular budget allocation of 2 percent for this Office and the obligation under the Charter of the United Nations to make the promotion and protection of human rights one of the principal objectives of the Organization”⁽¹⁶⁾.

(11) William Korey, *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine*, Palgrave Publishers, 1998, pp. 2-3.

(12) UN Doc.: Secretary-General, Note of the Secretary-General, A/59/565, *More Secure World: Our Shared Responsibility: High-level Panel on Threats, Challenges and Change*, 2 December 2004, paras.282-291. The Panel of 16 individual members was chaired by the former prime minister of Thailand, Mr. Anand Panyarachun.

(13) *Ibid.*, para.283.

(14) *Ibid.*, para.283.

(15) *Ibid.*, para. 291.

(16) *Ibid.*, para. 290.

(2) Report of the UN Secretary-General, March 2005

Three months after the Panel's report, the UN Secretary-General, Kofi Annan, in his report in March 2005 titled "In larger freedom: towards development, security and human rights for all," proposed the need for "a smaller standing Human Rights Council to replace the existing the UN Commission on Human Rights."⁽¹⁷⁾ He wanted to mainstream human rights in the whole UN system and strengthen the OHCHR's capacity.

His statements of the shortcomings of the CHR were on the same line with that of the Panel.

"The Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole".⁽¹⁸⁾

However, the Secretary-General did not adopt the Panel's recommendations of first reforming the CHR with enlarged to universal membership and then considering the possibility of upgrading it in the long run: rather, he sought for a "dramatic" institutional change to establishing the HRC with smaller than CHR in membership, in a very short time-range.

(3) The 2005 UN World Summit Outcome

In September 2005, the UN World Summit decided to endorse the creation of HRC as proposed by Kofi Annan in his 2005 report. There was no detailed explanation for the shortcomings or failure of the CHR over the 60 years; instead it highlighted their "commitment to further strengthen the United Nations human rights machinery."⁽¹⁹⁾

The Summit Outcome mandated the HRC to "address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote effective coordination and the mainstreaming of human rights within the United Nations system."⁽²⁰⁾ A detailed institution building of the HRC has been left to the GA.

In the Summit Outcome, the Member States resolved to strengthen the OHCHR "through

(17) UN.Doc.: Report of the Secretary-General, A/59/2005, *Ibid.*, already appeared in note (2). Paras.181-183.

(18) *Ibid.*, para.182.

(19) 2005 World Summit Outcome, United Nations World Summit, 16 September 2005, para. 157. UN Doc: Draft Resolution referred to the High-level Plenary Meeting of the GA at its fifty-ninth session (A/60/L.1), 20 September 2005.

(20) *Ibid.*, para.159.

doubling of its regular budget resources over the next five years.”⁽²¹⁾

(4) The UN GA Resolution 60/251

The UN GA Resolution 60/251 establishing the HRC was adopted on 15 March 2006. According to the preamble, the GA recognizes “the need to preserve and build on the achievements of the CHR and to redress its shortcomings,” and “also the importance of ensuring universality, objectivity and non-selectivity in consideration of human rights issues, and the elimination of double standards and politicization.”⁽²²⁾ Here again, the main accusations faced by the CHR are its politicization and selectivity. Therefore the main reasons for the creation of the HRC were to overcome aforementioned shortcoming of the CHR and the commitment to strengthen the UN human rights machinery. The resolution recommended that the CHR conclude its work at the sixty-second session and dissolve itself on 16 June 2006.

A. Status and Election, and Suspension of Membership

The HRC was established as a subsidiary organ of the GA and its first session was held on 19 June 2006. A resolution states that the GA shall review the status of the HRC within five years and the review of the HRC will start in 2011.

The size of the Council was determined as comprising 47 State representatives—slightly smaller than the 53 members of the CHR—on the basis of geographical distribution. The seats of the different regional groups are as follows: African group, 13; Asian group, 13; Eastern European group, 6; Latin America and Caribbean group, 8; Western Europe and other groups, 7. The majority seats are occupied by the Asian and African groups, thereby making the developing members influential in number.

It was decided that the members are to be elected by majority vote at the GA. The election of the members is to be held directly and individually by a secret ballot, consequently eliminating the regional group electoral process⁽²³⁾. The members shall serve for a period of three years and shall not be eligible for immediate reelection after two consecutive terms (six years); hence the members shall forgo permanent membership. The qualifications and requirements for attaining membership will be raised. The candidates shall pledge their contribution for the promotion and protection of human rights before the GA. The elected members shall uphold the highest standards in the

(21) *Ibid.*, para. 124. The total number of OHCHR staff members grew to 942 (484 (51%) were based in the field, 442 (47%) in Geneva, and 16 (2%) in New York). OHCHR, *2007 Report: Activities and Result*, OHCHR, April 2008, p. 16.

(22) UN GA Res. A/60/251, Preamble, paras.8-9.

(23) The election of members to the CHR is one of the main criticisms proposed by the US, which is one of the key players in the reform process. However she did not run for the election of the first membership of the HRC.

promotion and protection of human rights, fully cooperate with the HRC and be reviewed under the UPR mechanism during the term of their membership. At the same time, the GA, by a two-thirds majority of the members present and voting, may suspend the rights of membership in the HRC of a member who commits gross and systematic violations of human rights. The elections of the first members of the HRC took place on 9 May 2006⁽²⁴⁾.

B. Meetings and Functions

The HRC, based in Geneva, shall meet regularly throughout the year and schedule no fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council.

The HRC's functions are described in operational paragraphs 2-5 of Resolution 60/251. First is the function of promotion: The Council promotes universal respect for the protection of all human rights and fundamental freedoms for all, without discrimination. It also promotes human rights education and advisory services; technical assistance and capacity-building; and promotes the full implementation of human rights obligations and follow-up⁽²⁵⁾. Second is the function of recommendation: The Council makes recommendations on situations of human rights violations, including gross and systematic violations⁽²⁶⁾. The Council also makes recommendations to the GA for further standard-setting of international human rights law⁽²⁷⁾ as well as for the promotion and protection of human rights⁽²⁸⁾. Third is the function of reporting: The HRC undertakes a new reporting procedure among all UN Member States through the UPR mechanism.

The HRC assumed the function of the CHR according to the paragraph 6 of A/60/251, including those of special procedures and 1503 complaint procedure. At the same time, the HRC will review, improve and rationalize the mandate maintained from the CHR.

C. Partnership with Other Actors

The roles of NGOs in the human rights promotion and protection are emphasized in

(24) The following countries are the elected members: Algeria, Argentina, Azerbaijan, Bahrain, Bangladesh, Brazil, Cameroon, Canada, China, Cuba, Czech Republic, Djibouti, Ecuador, Finland, France, Gabon, Germany, Ghana, Guatemala, India, Indonesia, Japan, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Switzerland, Tunisia, Ukraine, United Kingdom, Uruguay, and Zambia. (<http://www.ohchr.org/english/bodies/hrcouncil/membership.html>.)

(25) UN GA Res. 60/251, paras. 2, 5(a), and 5(d).

(26) UN GA Res. 60/251, paras. 2-3.

(27) *Ibid.*, para. 5(c).

(28) *Ibid.*, para. 5(i).

preamble, paragraph 11. In addition, in preamble, paragraph 7, A/60/251 put emphasis on regional organizations, NGOs, religious bodies and the media for their role in promoting tolerance in religion and belief. As shown in the operational paragraphs 6 and 11, non-State observers, such as experts, NGOs, other intergovernmental organizations including specialized agencies, and national human rights institutions(NHRI), participate and play a consultative role at the meetings. The HRC seems to enlarge the partnerships to not only experts and NGOs in consultative status of ECOSOC, but also to the local NGOs, the NHRI, media and other entities.

Observing the overall process of the HRC's establishment one can state that the main reason for the change brought about is because of the accusations of politicization, double-standards, and selectivity in the work of the CHR. The confrontation and criticism among Member States dominated rather than encourage international cooperation towards the promotion and protection of human rights, perhaps especially through country specific resolutions. The High Level Panel had proposed thoroughly reforming the CHR to bring about improvement. However, the Secretary-General, Kofi Annan, took a strong stance in favor for institutional change, and the Member States supported his initiative, abolishing the CHR and creating a new Council. Although this option seemed easier, the results are not promising. The HRC is facing challenges in institution building as well as in taking effective measures toward human rights violations worldwide: such challenges may decelerate the actions toward the prevention of the human rights violations. The materialization of institution building and the substantial efforts by the HRC are necessary for the acceleration instead of deceleration of global human rights protection.

3 Institution-Building of the HRC and some Commentary

On 18 June 2007, one year after the first meeting of the HRC⁽²⁹⁾, the HRC adopted resolution 5/1 on institution-building of the UN HRC to guide its future work⁽³⁰⁾. The resolution provides

(29) During its first year in 2006, the HRC held three regular sessions and four special sessions. United Nations, Report of the Human Rights Council: first session(19-30 June 2006), first special session(5-6 July 2006), second special session(11 August 2006), GAOR 61st session Supplement No.53(A/61/53) and United Nations, Report of the Human Rights Council:second session(18 September-6 October and 27-29 November 2006), third session (29 November-8 December 2006), fourth session(12-30 March 2007), fifth session (11-18 June 2007), first organizational meeting (19-22 June 2007), third special session (15 November 2006), fourth special session(12-13 December 2006), GAOR 62nd session Supplement NO.53(A/62/53). In 2007, it held three regular sessions and two special sessions with one organizational meeting. OHCHR, 2007 Report: Activities and Results, *Ibid.*, pp.20-25. HRC, fifth session 11-18 June 2007, A/HRC/5/21 7 August 2007, sixth session 10-28 September and 10-14 December 2007, A/HRC/6/L.11 5 October 2007, seventh session A/HRC/7/L.11 28 March 2008.

(30) The HRC Resolution 5/1 of 18 June 2007 contains institution building of the UN HRC in its Annex, which was originally submitted by the President of the Council.

for the development of modalities and time allocation for the Universal Periodic Review (UPR) mechanism, the establishment of an expert advice which replaces the Sub-Commission and preserves the system of Special Procedures. Here is a brief look at the current development and formation of the HRC with brief commentary.

(1) The Universal Periodic Review (UPR)

The UPR has already started the review for the first 16 countries of its first session in 7-18 April 2008. Japan was under consideration of the UPR in its working group's second session in 5-16 May 2008. The conclusion was adopted at the HRC's regular session of June 2008.

The UPR is envisioned as follows in GA Resolution 60/251.

“(5)(e)Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.”

The HRC resolution 5/1 of Institution-building developed the modalities of the UPR. The basis of the review is (a)UN Charter, (b)UDHR, (c)Conventions to which a State is party, (d)Voluntary pledges and commitments made by States and international humanitarian law. The review ensures universal coverage of all human rights. The process is cooperative and promotes intergovernmental dialogue (so-called ‘peer review’). The specific flow of the process is as follows: Objective and reliable information is submitted as the base of the review. This information consists of (a) a national report (20 pages), (b) a compilation prepared by the OHCHR containing reports and concluding observations and comments to the States of Treaty Bodies and Special Rapporteurs, etc., (summarized in 10 pages)⁽³¹⁾ and (c) a summary of stakeholders, such as NGOs, NHRI, human rights defenders, academic institutions, research institutes, regional organizations as well as civil society representatives (summarized in 10 pages). A group of three rapporteurs from different Regional Groups (troika) will act as facilitators of each review and transmit issues or questions to the State. The review itself will be conducted by the UPR Working Group (UPR WG) comprising of 47 Member States and observer States. Stakeholders may attend this review process. The review at the UPR WG should be an “interactive dialogue” between the States concerned and the Council States. The troika prepares the report of the UPR WG which contains a summary of the review process as well as conclusions and/or recommendations. After the review, the report will be adopted

(31) Preparation of such information should be on the basis of the “General Guidelines on the Preparation of Information,” adopted by the HRC at its 6th session on 27 September 2007.

at the WG. After a reasonable time frame has passed since the adoption of the report by the WG, the outcome of the review will be adopted at the plenary of the Council. The outcome of the review will be a report consisting of a summary of the proceedings of the review process, conclusions and /or recommendations, and the voluntary commitment of the State concerned. Before the adoption of the outcome, the States concerned should be offered the opportunity to present replies to issues or questions. Observers, including stakeholders, will have the opportunity to speak. The tentative period of review is a four-year cycle with 48 States involved each year. The allocated time for each review at the UPR WG is three hours. After the abovementioned review process, which is to be held at the UPR WG and the plenary, the outcome should be implemented by the State and will be the focus of subsequent follow-up.

A review of Japan was held during the second session of the 10th meeting of the UPR WG, at held on 9 May 2008. Djibouti, France, and Indonesia acted as the rapporteurs (troika) to facilitate the review of Japan. Denmark, France, Latvia, the Netherlands, Sweden, and the UK transmitted a list of questions to Japan through the troika. On the basis of the Japanese national report, a compilation prepared by the OHCHR, and a summary from stakeholders, 42 delegations made statements on various aspects of the human rights situation in Japan. Through the interactive dialogue at the session, 26 recommendations were made concerning Japan, including recommendation for ratification of pending conventions and optional protocols; establishment of NHRI and other human rights violations concerning the specific groups of people, such as women, children, indigenous peoples, refugees; or violations concerning specific themes, such as the death penalty⁽³²⁾. At the plenary, Japan responded to the recommendations and made a positive voluntary commitment with regards to almost half of the 26 recommendations⁽³³⁾.

The first comment to the UPR is concerning its main principles and features— “cooperation based on an interactive and constructive dialogue” rather than confrontation and politicization. As far as Japan is concerned, the review was conducted in a cooperative and constructive manner. The contents of the statements by Member States were positive as they concerned and even contributed to the improvement of human rights situations of their peer States. This happened mainly because of the overall constructive attitude of the Member States, which was supported by the well-documented source of information prepared by OHCHR. Moreover, the overall priority assigned to human rights has increased as compared to the past. Second, it is not always easy to avoid politicization since the Council is a political body by nature: However, the bases for performing a review are clear, such as UDHR and compilations of expert bodies and mechanisms and summary

(32) Human Rights Council, A/HRC/8/44, 30 May 2008, Report of the Working Group on the Universal Periodic Review: Japan.

(33) Comments by Japanese Bar Association, ‘Japanese response towards the review of the UPR at the Plenary of the Human Rights Council’, 13 June 2008.

of stakeholders in addition to a national report. This adds to the objectivity of the review process. Third, the whole process of interactive dialogue and the outcome and recommendations are rather abstract when compared to the reporting procedure of the human rights treaty bodies. However, in the case of Japan, the review covered a whole range of issues that Japan faces, although not in details. This might be a merit for grasping the whole map of the assignment of human rights promotion and protection. Fourth, even though it is a non-binding process, conducting such a review publicly, subject to the pressures from peers, mobilized certain constructive reactions from Japan. This was because as a member of the HRC, Japan was forced to project a certain positive image. Lastly, under the UPR, the HRC uses the abovementioned term “stakeholders.” The contribution of a wide range of non-state actors is encouraged. The NHRI has emerged as an important pillar. Civil society, including NGOs, constitutes the other important pillar. It is important to note that with regard to civil society, in addition to powerful international NGOs with consultative status, many others actors such as regional and local NGOs, academic institutions, private companies, labor unions, etc., can contribute to the UPR process. The UPR will be used as an opportunity to mobilize internal dialogue between various stakeholders and the State.

(2) Special Procedures

The HRC assumes the function of Special Procedures and examines all existing mandates. All thematic mandates (28 themes) were extended, and review process is undertaken at the HRC. All but two country mandates (10 countries)⁽³⁴⁾ were also extended, in spite of the dissenting view from developing countries. The Coordination Committee of Special Procedures is also maintained.

The mandate holders, i.e. Special Rapporteurs, Special Representatives, Independent Experts, or members of Working Groups, play a variety of important roles for human rights protection: investigation for study and reporting of the human rights situations by country or by theme, conducting visits to the countries, advocacy, awareness raising and partnership with NGOs. Although responding to individual complaints seems to be difficult, it is effective for protecting individual victims. The mandate holders also make several interventions such as written submission to specific governments, urgent appeals on behalf of alleged victims of violations and joint statements.

The HRC adopt two resolutions concerning Special Procedures, resolution 5/1 relating institution-building and resolution 5/2 relating to the code of conduct of special procedures mandate-holders. Resolution proposed the principle of review, and the improvement and rationalization of the processes related to the functions of special procedures in order to avoid narrowing by the political decision making. As stated above, most of the processes were renewed or

(34) Country special rapporteurs for Cuba and Belarus were abolished.

are under the review process. Another important issue is the selection and appointment of mandate holders. The HRC proposes general criteria for nominating, selecting and appointing mandate holders: expertise, experience in the field of the mandate, independence, impartiality, personal integrity, and objectivity. The nomination process is rather open as compared to the practice of the CHR. Governments, Regional Groups, International Organizations (including OHCHR), NGOs, and other human rights bodies and individuals can nominate a candidate. However, the process of selection is to become more stringent. Before a decision is made by the Council regarding selection, a governmental consultative group would be established to propose a list of eligible candidates. This consultative group might become more influential for the selection of the mandate holders.

While the UPR involves national reporting with peer reviews through cooperation and dialogue, the HRC should resort to other tools such as country or thematic Special Procedures, especially in the case of gross violation of human rights. The investigation of mandate holders, including country visits, will be an important source of information for the compilation prepared by the OHCHR together with the general observations of the human rights treaty bodies. This information will serve as the reference base for the UPR. It implies that the report of the Special Procedures will carry more weight than it did earlier and States will treat the visits and recommendations of the mandate holders of Special Procedures more seriously. The UPR and Special Procedures will act as complementary processes and mutually reinforce each other. In order to make special procedures more effective, the qualifications of the experts are important. Open nomination and careful but not politicized selection shall be welcomed. Although Special Procedures have been credited as a major achievement of the past, one concern is whether or not having one or groups of rapporteurs to investigate serious cases of international human rights abuses is too burdensome for mandate holders to accomplish their functions. Alternate rapporteurs might be one solution to eliminate the excess burden. Complete support from the OHCHR for each mandate holder and strengthening the support capacity of the OHCHR are indispensable.

(3) The HRC Advisory Committee

By its resolution 5/1 the HRC established the HRC Advisory Committee(Advisory Committee) as a subsidiary body of the HRC, slightly smaller than the size of the Sub-Commission⁽³⁵⁾, 18 made of experts who will act in personal capacity. There are guidelines of selection and nomination of Council members. On selection and nomination, non-state entities have no right to nominate the candidates but States should consult NHRI and civil society organizations. Some considerations for the election is that candidates should not be government officials and they should be gender balanced with appropriate representation of different civilizations and legal systems. The Advisory

(35) The member of the Committee was elected at the HRC. The geographic distribution is 5 African States, 5 Asian States, 2 Eastern European and other States and 3 Western European and other States.

Committee shall convene up to two sessions for a maximum 10 working days. The first session of the Council was held from 4 to 15 August 2008.

The Advisory Committee is described as a “think tank” that has the same function as the Sub-Commission. However, the scope of the work is sharply focused on research. The function of the Advisory Committee is “to provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice.”⁽³⁶⁾ The Advisory Committee “shall not adopt resolutions or decisions”⁽³⁷⁾ and shall conduct their “think tank” role under the approval of the Council.

Member States and observers include States that are not members of the Council, specialized agencies, other intergovernmental organizations and the NHRI, as well as NGOs. Further, “in the performance of its mandate, the Advisory Committee is urged to establish interaction with States, NHRI, NGOs and other civil society entities in accordance with the modalities of the Council.”⁽³⁸⁾ It also does not have the power to adopt a country-specific resolution. The Advisory Committee will adopt a draft report and within the report, the Committee can only include the recommendations to the Council.

In its first session, the Advisory Committee dealt with the requests to the Advisory Committee from the HRC, such as the UN Declaration on human rights education and training⁽³⁹⁾. The Advisory Committee then discussed following matters related to; institution building, such as rules of procedures and methods of work; status of studies mandated to be carried out by the Sub-Commission; agenda and annual programme of work, including new priorities; and the appointment of the members of the WG on Communication.

The Advisory Committee is requested to be a genuine “think tank” rather than a political decision maker and forum of discussion of a particular country’s human rights situations. It studies the different themes of human rights and advises the HRC from the viewpoints of independent experts.

Conclusion

The discontinuation of the CHR and the Sub-Commission is not because of the failure of the

(36) HRC Resolution 5/1 Annex Part III, para. 75.

(37) *Ibid.*, para.77.

(38) *Ibid.*, para.82.

(39) Followings are the other requests by the HRC: Integrating the human rights of women throughout the UN system, human rights of persons with disabilities, right to food, missing persons, promotion of a democratic and equitable international order, elimination of discrimination against person affected by leprosy and their family member. (The HRC Advisory Committee, Annotations to the Provisional Agenda, Prepared by the Secretary-General, A/HRC/AC/2008/1/1/Add.1, 30 July 2008.)

60-year old history of the UN human rights machinery but an outcome of political decision making through the Secretary-General and Member States. The mere creation of the new HRC will not guarantee an immediate change in the global human rights situation. However, as the High Level Panel pointed out, the reform of the UN human rights machinery is necessary in order to ensure that the UN is effective in this field. Such a change will have to be implemented through a new institution.

The HRC is a political organ, hence, politicization and the North-South split undermines the effective promotion of human rights. However, the HRC adopted the principle of constructive international dialogue that will prevent selectivity, double standards, and excessive antagonism. The confrontational approach was a major shortcoming raised and condemned by countries, High Level Panel and former Secretary General Kofi Annan. It is a problem of the tendency of certain States which protect each other and only giving praise during the session of the UPR working group. As already stated, the HRC has created objective criteria and guidelines to uphold, such as the UN Charter, UDHR and other human rights treaties, in various aspects of monitoring in its institution building. This will improve transparency and impartiality. The effort to remove politicization should be strongly continued through the every future sessions of the HRC.

The process of institution building ensured the contribution of various stakeholders including the NHRI, NGOs and civil society institutions other than NGOs, such as academic institutions, etc. Various terms such as; genuine dialogue, substantive interaction, and interactive dialogue are used. The process of reform expands the number of participants involved in human rights, who are then not limited to the NGOs in consultative status with ECOSOC. The UPR will mobilize interactive dialogue among States and among other participants. The UPR does not mandate but internal interactive dialogue between States and civil society is also very important and both international and internal dialogue contributes to the transparency of human rights.

Experts both mandate holders under Special Procedures and experts under human rights treaty bodies are also expected to act as professionals and their work and observations shall be effectively utilized by other mechanisms such as the UPR. This reinforcement of the works of experts both under UN human rights mechanisms and human rights treaty bodies is expected to be effective even though experts works are formally recommendatory.

The UN should be the central arena where States can discuss global issues related to human rights protection rather than focus on their domestic matters. Further, it should serve as the forum where States openly explain the cause and obstacles to their own human rights issues and share views with different stakeholders or with experts. The credibility of the UN is the key to realizing such a forum. The commitment and the professionalism of States representatives, professional and advisory role of experts and consultative role of stakeholders are indispensable for making the UN a truly credible human rights forum.

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