



## **Report on Wilton Park Conference WP805**

### **HOW TO ADVANCE THE HUMAN RIGHTS AGENDA**

**Friday 20 January - Sunday 22 January 2006**

#### **Introduction**

1. The UN World Summit of September 2005 provided a mandate for substantial consolidation of the UN's human rights action, recognising human rights as one of the three "pillars of the UN system". Its proposals included the creation of a new body, the Human Rights Council, and strengthening of the treaty monitoring system. With a call for the doubling of the regular budget of the Office of the High Commissioner for Human Rights (OHCHR) over the next five years, the Summit acknowledged the need for resources to implement the Plan of Action of the OHCHR<sup>1</sup>. Experts met at Wilton Park between 20 and 22 January 2006 to examine how the Summit's provisions can best be implemented to advance the human rights agenda.

#### **Establishing the Human Rights Council**

2. The Summit sought institutional human rights reform through the creation of a Human Rights Council (HRC) "to further strengthen the United Nations human rights machinery", replacing what many have seen as a discredited UN Commission on Human Rights (CHR). Negotiations to give effect to this commitment continued among government delegations in New York in early 2006. Some see the HRC, as presently envisaged, differs from the CHR by: working on the basis of cooperation and dialogue; instituting a universal periodic review; and holding more than one session annually, thus enabling it, inter alia, to respond more promptly to gross

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<sup>1</sup> OHCHR Plan of Action: Protection and Empowerment, Geneva, May 2005

violations of human rights when they occur. It will also work to a new agenda, and its members are elected by the General Assembly, gaining the HRC legitimacy. Issues on which governments disagree include: the membership of the Council, particularly size and whether HRC membership should be governed by criteria, such as a demonstrated commitment to cooperate with human rights mechanisms, thereby protecting the credibility of the HRC; how the HRC will deal with country-specific issues; and the periodicity and duration of its meetings.

3. Some argue that governments have failed to-date to show sufficient leadership in promoting a robust HRC which will, in practice, strengthen human rights protection. Governments did not endeavour to build inter-regional alliances to support the establishment of the HRC, and create a sufficiently collective or multilateral approach, as was done when the position of the High Commissioner for Human Rights was established. Some underline the importance of having respected international figures speak out to gain more public support and ownership of the proposed HRC; they are critical that the debate so far has been largely confined to government circles. At the same time, some believe non-governmental organisations (NGOs) have not mobilised as actively as they could to lobby for an HRC with integrity. NGOs, in the North and South, also need to establish broad advocacy alliances to bring influence to bear on governments. NGO networks at the national level should be engaged, although some consider the time for NGO campaigning has already passed. Several argue the High Commissioner for Human Rights needs to have a stronger presence and role in the ongoing negotiations, to encourage a more informed debate, since the government representatives engaged in the discussions are not necessarily well grounded in the procedures and practice of the UN's human rights activity. The High Commissioner's advice on transitional arrangements would also be important. In short, there is a prevailing sense that in-depth preparation for the establishment of the HRC has been inadequate.

4. Some question the wisdom of criteria for HRC membership, since 'all are sinners'. Others believe there is a need to introduce criteria for disqualification, or otherwise find ways to block some countries from membership, for example if a country is under examination by UN procedures for links with terrorist activity. Members of a new HRC need to have a sense of their collective responsibility for

protecting human rights, for example by undertaking this commitment publicly through a ceremony when assuming office. If they should visit in the field, as UN Security Council members have begun to do, it may help local civil society exercise some accountability.

5. Many emphasise the importance of the standing nature of the HRC, providing, *inter alia*, for a rapid response to human rights violations. Yet some caution that its additional meetings should not only be used for urgent situations; there is a need for the HRC to meet periodically without raising the political temperature to encourage a different way of approaching its business. For some countries, however, regular meetings of the HRC would constitute a strain on resources and impede their access and contribution to it. At the end of the day, some believe the important issue is not how often it will meet, but what it will deal with and how it will conduct its work.

6. Assuming agreement in the ongoing negotiations during February, what needs to be done to get the HRC up and running? Some suggest there is no need to elaborate in advance a detailed agenda for the HRC; rather than looking at what items to eliminate from the CHR's agenda, the Council needs to be much more open, and the agenda should not dictate the working methods. It could, for example, have five basic elements: promotion and protection of human rights, with no distinction between civil/political and social/economic rights; follow-up, a particular weakness of the CHR having been its inability properly to examine its decisions from a previous session; standard-setting; periodic review; and other issues. The HRC could work on substantive items from the outset, setting up working groups in parallel to look into procedural issues. Should the HRC be first convened in June, it could conduct an inter-active dialogue with the Special Procedures machinery, which meets at that time. Some point to the need to ensure a balance between specific and general debates at the HRC; there is currently a disconnect between the debates held at the CHR and the resolutions adopted, and this should be remedied. Some suggest there are a range of options for addressing country-specific action, not all punitive, and these need to be considered holistically rather than maintaining the current focus on adopting country-specific resolutions.

7. While most agree there is no alternative but to reach agreement on the HRC as soon as possible, and a window of opportunity currently exists until late February, others suggest a two-tier strategy is needed. Mid 2006 could be used as a period for considered reflection on some key issues relating to the HRC's work, including: its relationship to the Office of the High Commissioner for Human Rights (OHCHR), and the maintenance of the High Commissioner's independence; its relationship to UN development and other agencies; its role in peacebuilding; and how, as the political body in the human rights pillar, it will not only set but maintain standards. Some emphasise there are important human rights issues for discussion at the forthcoming session of the CHR; for continuity and to avoid a gap in protection, it would be necessary to conduct a full CHR session.

8. If the HRC is to embody a new approach, many suggest NGO participation should be re-visited with a view to increasing its effectiveness. Some believe that the large gathering of NGOs, and attendant side events, during sessions of the CHR is significant and should be maintained; while supporting a continuing strong role for NGOs in the UN's human rights work, a few question whether this is the best formula. Some express concern there has been little opportunity for national NGOs to make an impact at the CHR, with attention focused on their major international counterparts. Others see an urgent need to examine whether ECOSOC Resolution 1235, providing for NGO accreditation, is properly implemented; if the criteria for accreditation are followed, there would more independent and fewer government-organised NGOs (GONGOs); the politicisation of this process should end. With the establishment of a HRC, NGOs could be encouraged to make fewer statements, as should governments; voluntary measures among NGOs to this effect are currently in place. Governments should be willing to discuss all business openly, with NGOs present, rather than resorting to closed meetings for considering issues deemed especially sensitive. Some suggest that, in line with the 2004 Cardoso report on the UN 's relations with civil society, expanding the stakeholders involved in the UN's human rights activities, with greater involvement of parliaments, the corporate sector and civil society groups may help to create new thinking. Much more of what is often constructively debated at national level needs to be discussed in the HRC.

9. Whatever form the Council may take, some warn against regarding this body as a universal panacea for all that is wrong with the current international approach to promoting and protecting human rights. There are already large expectations that the HRC must restore the UN's human rights credibility. Such expectations need to be managed; and the establishment of the HRC needs to be accompanied by other measures, in particular to create improved public perception and understanding of the entire international human rights programme. NGOs can play a crucial role in 'popularising' the current reform process, in particular so that a new body can relate directly to what happens on the ground, and its deliberations are not confined to those persons who walk the corridors of UN buildings in New York and Geneva.

### **What are the prospects for treaty body reform?**

10. Treaty body reform has been debated for several years, since the treaty monitoring system has perhaps become a victim of its own success; an increasing number of states parties to conventions during the past decade has imposed strains on the system. The discussion has, however, been recently galvanised by the proposal of the High Commissioner for Human Rights, in her Plan of Action, suggesting the present system could be consolidated through the creation of a unified treaty body. Some member states regret the High Commissioner expressed a preference before conducting a broad consultation on the various options.

11. There is widespread agreement that existing treaty monitoring bodies do not function as effectively as they should: some states find it burdensome to report separately to different treaty bodies, often on similar or overlapping issues – some new treaties may repeat, or enlarge, obligations contained in the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR); reports are delayed, or are often inadequate when submitted; the committees have insufficient time to consider the reports properly; the Concluding Observations adopted by the treaty bodies sometimes lack the precision needed to guide reform efforts, and weak implementation at the national level discredits the treaty body system as a means for improving human rights; the fragmentation created by several bodies makes access to these difficult for rights' holders, as well as for NGOs and others aiming to interact with them; and the bodies lack visibility.

12. There are differing views as to whether the best way forward is to 'tinker' with the current system, or go for wholesale reform. Those in favour of a unified treaty body argue the advantages are: simplification of the reporting process for states parties, with only one report required over a specified period of years – although there may be greater pressure on states parties to prepare a better standard of report; greater coherence and consistency in jurisprudence; a single body would have more authority, since it speaks with one voice, and it could devote more attention to implementation, leading to better integration of human rights in decision-making processes at national level (in legislation, the executive and judiciary); increased visibility, with greater public awareness, media interest in human rights issues and enhanced participation of civil society, as well as government and non-governmental dialogue at national level – in short, the creation of a national constituency. Dealing with only one structure would assist a 'joined-up' approach from governments, with the relevant government departments contributing as appropriate, a more difficult task to coordinate when reporting to several bodies. UN agencies which try to assist governments in reporting and implementation functions would similarly find it advantageous to relate only to one body. A unified treaty body could expand the number of country visits undertaken, and conduct these more professionally. A single body could more easily meet in different regions, generating a different impact and dynamics. If a Peer Review should be instituted under a Human Rights Council (see below paragraph 22), it could more easily relate to a unified treaty body, following up and providing political 'clout' for the country-specific recommendations and observations. Finally, it is anticipated there would be considerable financial savings with a unified body. Could a unified treaty body pave the way for the eventual creation of a World Court of Human Rights? Some consider the creation of a universal human rights court would align the international level with the existing practice in several regions. It could offer the opportunity for addressing not only the responsibility of states, but also of international organisations or business enterprises.

13. Many believe, however, that radical reform is a non-starter because of the treaty amendments required to institute a unified treaty body system. A more attractive option, not requiring treaty amendment, may be to consolidate in one body,

the Human Rights Committee, the monitoring of the ICCPR and ICESCR, and communications thereto. Already, some 95% of states parties have ratified both treaties. Some believe the process towards the Optional Protocol to the ICESCR thus provides an historic opportunity which should not be missed. Entrusting the Human Rights Committee with the new Optional Protocol for complaints would maximise the skills of human rights experts already familiar with considering complaints through an adversarial written procedure, although the Committee would need to broaden its expertise to cover the new rights assigned to it, through new membership. The Economic and Social Council (ECOSOC) could then adopt a new resolution to entrust the Committee with responsibility for dealing with states parties reports under the ICESCR. In this way, practically all substantive human rights would be monitored by one and the same body, corresponding to the interdependence and indivisibility of all human rights. A number of benefits attached to an 'amalgamated' treaty body should ensue, such as consolidated reports and improved implementation at national level. Further coordination of the treaty monitoring system could be achieved by introducing overlapping membership between the 'amalgamated' committee' and the remaining five specialised committees, as well as timing the sessions of the specialised committees in relation to meetings of the 'amalgamated' committee. Such consolidation could, perhaps, in time lead to a fully unified treaty body.

14. Without either a unified treaty body or 'amalgamated' monitoring of the ICCPR and ICESCR, a number of measures could be taken to overhaul the mechanisms of existing treaty bodies and improve their work. These would include changing the practice in periodic reporting, with more focussed lists of issues and prioritising areas of concern in dialogue with states parties. Concentrating on only a handful of concerns could result in greater attention for the real issues and more effective follow up by both states parties and the treaty monitoring body. Developing the idea of a common core document and a consolidated report could be further tested, among a range of states. A common core document could be more easily and regularly updated. Some warn, however, that treaty bodies would need to be vigilant to ensure that a consolidated document does not become too general and less thorough. For others, the existing system of a core document, renewed over a cycle, with treaty-specific parts, works well. There is, however, a need for reporting

guidelines to be streamlined. Recommendations from the treaty bodies could be improved at all phases of consideration of a state party's report, including the initial information sources on which they are based, the review of the report, drafting of Concluding Observations, their dissemination and follow up. Some treaty body recommendations are part law and part policy, and consideration could be given to making them more creative and targeted in terms of the implementation guidance given to state parties. Building the capacity of some states parties could also receive greater attention. The OHCHR is critical to all phases of the reporting procedure, including for publicity, promoting understanding of the recommendations, supporting implementation and assessing 'best practices'. Unifying the secretariats of the existing treaty bodies in the OHCHR may help in this, as well as ensuring they are well-resourced. Some express concern that at present there is little sharing of information or coordination. Inter-committee collaboration could also be strengthened, through developing joint urgent procedures, joint follow up procedures, joint in-country missions and joint general recommendations. The role of NGOs could be reinforced, including by standardisation of rules for their participation on the basis of the best policy and practice which currently exists. Finally, many feel the quality of membership in existing committees remains divergent and more attention could be given to the criteria for nominees at national level.

15. To carry forward treaty body reform, the OHCHR is currently developing a concept paper on the challenges facing the existing system and how a unified treaty body could address them. The paper will be circulated widely for review during 2006.

### **Strengthening the Office of the High Commissioner for Human Rights (OHCHR)**

16. With the release of the Plan of Action, the High Commissioner for Human Rights set out her strategic vision of how the OHCHR will focus on implementing human rights, and addressing the critical deficits that have prevented their realisation. The General Assembly's approval of the first tranche of the five-year doubling of OHCHR's regular budget added some 91 new regular posts to the current 177 regular budget posts. A Strategic Management Plan for 2006/2007 will shortly be made public to provide information on how the new resources will be allocated.



17. While there is widespread support for the increased regular budget for the OHCHR, there are difficult decisions to be taken, and different views, on its use. Some caution against governments attempting to micromanage the process. Strengthening the management of the OHCHR is seen by many as a priority; this should help the OHCHR obtain delegation of authority for expenditure, a factor severely impeding its efficiency, for example, in the rapid deployment of personnel in the field when faced with a human rights crisis. The current slowness of OHCHR to deploy personnel in crises has been criticised by some member states. Assigning staff to support the policy of country engagement outlined in the Plan of Action is also a priority; while some contend this requires capacity building in both OHCHR's Geneva headquarters, for developing analysis and strategies, and in the field, others call for the bulk of additional resources to be allocated to in-country activities. It is suggested that this would enhance OHCHR's capacity to provide early warnings to prevent conflict, to dispatch fact-finding missions to trouble spots, to boost the number of non-emergency staff in the field and to increase technical assistance and training in countries around the world, thereby having greatest direct impact on the improvement of human rights conditions on the ground. The realisation of social and economic rights comprises another area where some feel there is understaffing and a credibility gap in the work programme of the OHCHR. Others are sceptical whether there is sufficient political will to develop significantly work on the right to development and the OHCHR's role in achieving the Millennium Development Goals (see also paragraph 20 below). For the OHCHR to have substantive input into major UN policy decisions, including closer consultation with the UN Security Council and contributing towards the work of the recently established Peacebuilding Commission, several support strengthening the New York Office of the OHCHR through providing it with a post at Assistant Secretary-General level. This could also help raise the OHCHR's profile with UN agencies, and provide leverage for OHCHR's field presences. In short, there are lobbies for various components of the UN's human rights work, including special procedures and their coordination, treaty bodies and the rights of women; without intent to neglect any of the OHCHR's responsibilities, the High Commissioner will need to identify strategic priorities on the basis of the Plan of Action.

18. Some point to the need to expand the geographical composition of the staff of the OHCHR. While accepting the desirability of this, others caution patience; this will not occur rapidly, since some of the new posts will be used to regularise temporary staff whose expertise and experience should not be lost. Nevertheless, an influx of new staff will warrant attention to training needs. While the Plan of Action introduces a greater coherence to the OHCHR's work, some question whether this is reflected in the Office's structures: does one part of the Office know what others are doing? Internal coherence is not only a matter of structures, but mindset and cultural change. Some also suggest that OHCHR should endeavour to introduce rotation of staff, so that persons serving at headquarters could also gain field experience. Finally, despite the Summit's agreement to increase the regular budget, consistent support from governments and others will be required in the coming years to ensure the necessary sums are made available in the next two biennium budgets. Many underline the continued importance of voluntary contributions, however small, from a broad range of governments and others to support the OHCHR's work.

### **Implementing human rights**

19. There is widespread concurrence that implementation of human rights rests at the national level; international organisations have a role in monitoring, advocacy and in providing technical cooperation, which is perhaps better described as capacity-building. Some see a degradation in the present human rights environment, with the predominance of security considerations, the undermining of civil and political rights resulting from the inadequate attention to social and economic rights and the prevalence of double standards. Human rights protection strategies need to be more assertive; the international community should not only assist in reinforcing the political will of governments but insist.

20. While the World Summit resolved to strengthen "the effective enjoyment by all of all human rights", addressing economic and social rights through concrete action remains a major challenge. Some express concern that there is not yet universal recognition that poverty constitutes a human rights violation. The Summit's emphasis on mainstreaming human rights should provide momentum, although the political rhetoric needs to be supported by political will and assigning priorities. The right to development, though evolving but slowly, has a place on the UN's agenda; it

has, however, had little impact on the work of the international financial institutions most closely linked to the international economic system. Some suggest the OHCHR may have an opportunity to engage the World Bank on gender inequality and women's human rights. Social movements in some parts of Latin America and Asia are becoming a powerful tool for asserting social, economic and cultural rights although without reference to conventional human rights thinking; some suggest they warrant further analysis to examine how such social action can be melded with a human rights culture as a vehicle for empowerment.

21. Some advocate legal strategies for pursuing economic, as well as civil and political rights. Judicial protection requires a diligent judiciary in which human rights are mainstreamed; in some countries, judicial protection of constitutional rights, such as freedom of assembly, is being undermined by security practices. Some suggest the OHCHR could play a greater role in working with judiciaries; it could, for example, organise an exchange of experiences among judges on constitutional rights and counter-terrorism measures. Human rights should be protected in extraordinary circumstances. A climate of impunity should be challenged, and victims need access to procedures for redress. National human rights institutions are not playing their rightful role as a protection mechanism; they need independence, to have the powers necessary to act and sufficient resources, which is one factor that can constrain their independence. Regional strategies may offer more potential; the European Union's guidelines on protection of human rights defenders are comprehensive but need to be fully implemented; the Inter-American Court and Commission on Human Rights can order interim measures for physical protection.

22. In the context of the establishment of the HRC, some have proposed a peer, or periodic, review mechanism to contribute towards improved implementation of human rights by all UN member states. Its supporters believe this would: enhance transparency and accountability in the implementation of human rights; assess country-specific human rights implementation on a regular basis, including the challenges faced; and identify needs and opportunities to assist states through capacity building. While an inter-active dialogue among peers applying in an equal manner to all states may help to depoliticise discussions at the HRC, there is some scepticism whether there can be agreement on the procedures to follow to make the dialogue meaningful.

23. Bilateral dialogues between governments on human rights can also provide a vehicle for improved implementation of human rights. Such dialogues should be open and reciprocal, acknowledging the strengths and weaknesses of both sides. The goals should be clear, precise and realistic. Some suggest that dialogues could be usefully expanded between countries in similar situations, to encourage them to learn from each other.

### **The importance of OHCHR's field presences**

24. There is strong support for the policy outlined in the Plan of Action for the OHCHR to have an increased field presence to contribute towards the effective implementation of human rights. With considerable growth in the number of field presences, there is a need to obtain greater uniformity in mandate, which should cover both the promotion and protection of human rights; the High Commissioner should not compromise in this respect. The modalities of engagement will, however, differ depending on the needs of the country. Since field presences are often largely funded by voluntary contributions, donors should not seek to drive the establishment of a field presence in a specific country, its work programme or priorities. Some contend that if the OHCHR is adequately to fulfil its mandate, the working methods of field presences will need to be improved, including through the development of a centralised system of human rights measurement; field presences should be provided with the necessary tools for conducting human rights assessments, to include collecting relevant data to allow for planning, monitoring and evaluation. At headquarters, the Office should be better equipped to give guidance to field offices, identify areas of concern and the right people to do the job. Training should be enhanced, including on the methodology for fieldwork.

25. OHCHR's field presences can play a crucial role in integrating human rights into all UN programmes. To be able to do so they need to work cooperatively with the agencies that constitute the UN country team, and with the UN Resident Coordinator. While governments have been supportive of OHCHR's increased field presence, as set out in the Plan of Action, some agencies have yet to welcome this development. Some perceive agencies as unnecessarily hesitant, or even reluctant, to address human rights issues with governments. Others acknowledge there are structural difficulties; an agency's presence is governed by a Memorandum of

Understanding with the host government, which may well deter it from adopting a rights-based approach. The OHCHR is trying to tackle inter-agency relations through discussions with the UN Development Group, by relevant training of Resident Coordinators and developing training material; realistically this will take time to have impact. Some suggest that since governments sit on the governing boards of agencies they should encourage agencies to 'buy in' on human rights; what is needed is for government departments dealing with human rights to coordinate properly with their counterparts supervising UN agencies so that the same supportive message is communicated about OHCHR's field presences.

26. Field presences also need to cooperate successfully with national and local civil society, expressed in the notion of 'partnership' in the Plan of Action. An OHCHR field presence should not only work with local organisations, but build the political space to enable local actors themselves to act.

27. A strong OHCHR country presence is important for the effective functioning of the special procedures and the treaty bodies. In addition to providing country-specific information in preparation of a special procedure's mission, or the hearing of a report by a treaty monitoring body, the country presence is crucial in providing follow up. Some suggest that to convince agencies of the value and coherence of the OHCHR's field presence, their initial focus should be to help agencies contribute towards the work of Special Procedures and treaty monitoring bodies, areas in which the OHCHR can demonstrate its expertise.

28. It may take time to establish an OHCHR country presence, and, in some instances, may not be feasible. For such situations, a presence in the region could be considered. For a regional presence to be meaningful, some suggest it should also have a mandate to conduct monitoring as well as technical cooperation activities.

### **The future human rights challenge**

29. The institutional human rights reforms emanating from the World Summit have received much attention. Conceptually, the Summit's recognition of the legitimacy of the "responsibility to protect" was one of its most important achievements, with wide-

ranging implications. For the first time, the international community acknowledged that serious human rights violations – in and of themselves – require an international response, regardless of whether or not such violations constitute a threat to international peace and security as classically understood.

30. The OHCHR Plan of Action describes poverty as “the gravest human rights challenge in the world”. It identifies five other current human rights challenges, arising from general situations, patterns or contexts that contribute to abuse. These are: discrimination; armed conflict and violence; impunity; democracy deficits; and weak institutions. All require long-term and high-level attention.

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