

SEVENTEENTH ANNUAL STUDENT HUMAN RIGHTS CONFERENCE

UN Human Rights Council: Ten Years On Morning Session

The HRC at Ten: Looking to the future whilst learning from the past

Dr Rosa Freedman, Senior Lecturer at Birmingham Law School, University of Birmingham

Dr Freedman began by explaining her choice of topic. She stated that a lot has occurred over the past decade since the HRC's creation, with both positive and negative aspects. She argued that the body itself has changed so much it is almost unrecognisable. Dr Freedman established that, as a critical scholar, she desires not to simply undermine the HRC, but to use such criticisms to strengthen it. Her work mainly focusses on human rights bodies and looks in particular at regionalism and politicisation, which she defines as the politics that occur within the HRC that have nothing to do with human rights. She underlined that the bodies she looks at are political by their very nature, and that there are many perspectives to be considered.

According to Dr Freedman, the HRC was created under a broad reformist agenda in order to replace the, said to be failing, UN Commission on Human Rights (the Commission). Whilst the latter had been previously successful, it was becoming evident that it was no longer working as it should. There were many proposals for what should replace the Commission, however the HRC model prevailed, despite the fact that it was more similar to the Commission than originally intended. She argued that it is still a body that does not represent the entirety of the UN and that it is still too big to get anything done without political matters occurring 'behind the scenes'.

Dr Freedman noted that the HRC has enjoyed many successes, including: protecting vulnerable groups, expanding human rights law into more areas than previously considered and developing new mechanisms for protection. However, whilst these mid or long term successes deserve commending, the more immediate failures have overshadowed them. According to Dr Freedman there are three main headings of failure of the HRC. These are: (i) the way that country specific focus has been politicised, (ii) attention paid to vulnerable groups and (iii) politicisation.

Speaking of country mandates under the UN special procedures system (as opposed to thematic mandates), Dr Freedman admits there are cases when these are necessary and used the example of North Korea. However, she explained that the greatest problem with country specific mandates is not the States that are chosen, but rather the States that are not. In particular she expressed the opinion that certain powerful States use other States as pariahs to detract attention from their own human rights record. Dr Freedman argued that some States in need of a specific focus, such as Russia and China, have not been the subject of country specific mandates because other countries do not want to upset trade or political relations with them. A further problem she considered greater than simply ignoring countries, is that some States with country specific mandates, like Sri

Lanka and Sudan, have incredibly severe violations of rights, but their allies protect them, which sets a dangerous precedent. Dr Freedman considered that this is an area where lessons have not been learnt over the past decade and which is possibly worse at the HRC than the Commission.

Dr Freedman went on to criticise— in contrast to her earlier statement — the HRC’s lack of care for vulnerable groups. Clarifying she reiterated that the HRC has been strong in creating mechanisms for certain vulnerable groups (particularly for the elderly), however there are other vulnerable groups who are not protected, and may have even been oppressed by the work of the HRC. She provided LGBT persons as the most obvious example. She stated that at one point there seemed to be a push for rights for LGBT persons (who in many countries lack the protection of basic rights such as the right to life or freedom from torture) particularly by South Africa, but politicisation occurred which circumvented the issue and eventually the conversation became dominated by the concept of “traditional family values”. Dr Freedman also explained that migrants’ rights are ignored. She argued that as migrants cannot protest or vote without fear of deportation they have a weaker position in society than groups like the elderly and there is no political capital to be gained by giving them rights — so they do not receive them.

The third major failing of the HRC identified by Dr Freedman is its politicisation and credibility. The Commission was losing respect due to lack of professionalism. Diplomats would interrupt and insult each other and display low behaviour. Dr Freedman argued that in this regard the establishment of the HRC has not improved on the Commission. Instead she described instances of political ‘point scoring’, diplomats banging shoes on the tables, and generally exhibiting poor behaviour — all whilst being webcast for anyone to see. She stated that this then gets reported on by NGOs and ends up in the media, lowering the credibility of the HRC. This in turn stops States from wanting to finance the HRC.

According to Dr Freedman, two new mechanisms have been created to help overcome the failures of the Commission. The first is the Universal Periodic Review (UPR). In theory every country is scrutinised on its human rights practices every four years. Whilst noting the positive aspects of the UPR, Dr Freedman criticised the mechanism by saying that in practice States can choose what is scrutinised, who is allowed to respond and what questions are asked, which she concluded rendered the process ineffective. The second mechanism is the special sessions that can be convened at any point to respond to a specific crisis. Whilst a good idea in theory, again Dr Freedman considered it to be let down by the practice. She noted how it has been used to excessively criticise certain States that are ‘easy’ to scrutinise — but it has ignored others that may need a special session.

Dr Freedman concluded her presentation by providing several recommendations. She expressed the view that the HRC should recognise its limitations. At the five year review, the HRC addressed only small procedural issues. It was Dr Freedman’s view that instead the substantive problems should be tackled and solutions should be identified. She also recommended that the HRC should do far more to universally scrutinise rights and argued that the four year cycle is not frequent enough. Her next recommendation was that appointments to special procedures should stop being political and experts in the field should instead be chosen. She further recommended for there to be more ways for individuals to be able to petition the HRC — even if the result is not binding. Dr Freedman argued that the ‘people on the ground’ need to be at the centre of what the HRC does. Finally, she argued that Member States that act in a politicised manner, who act because they want results unrelated to human rights, should be ostracised by their peers.

The Special Procedures of the HRC: strengths and weaknesses

Mr Karim Ghezraoui, Chief Officer a.i, Special Procedures Branch, United Nations Office of the High Commissioner for Human Rights

Mr Ghezraoui began his talk by establishing that his presentation was from a practitioner's point of view as opposed to an academic's and invited the audience to contrast the two. He then went on to discuss the history of the UN special procedures mechanism. He explained that after WWII, when the Commission was established, there was no mandate, or willingness, to address allegations of, or questions about, human rights violations. For twenty years the Commission's main goal was to draft conventions and instruments – including the Universal Declaration of Human Rights.

Mr Ghezraoui went on to explain that a number of States later became independent and joined the UN and Commission, including many from Africa and Asia. The apartheid in Southern Africa was discussed and decided to be something that the Commission needed to address. This led to the establishment of the Working Group of Southern Africa. Mr Ghezraoui submitted that this Working Group was the first special procedure with a country (or region) mandate, and was comprised of five members. He then explained that it was not until 1980 that the Commission did another special report, this time a thematic mandate on disappearances. Therefore the architecture of special procedures (country specific and thematic) was already becoming clear.

According to Mr Ghezraoui, from the 1980s to the present day, the amount of mandates has rapidly increased. Most mandates surround civil and political rights but there was a growing push from the mid-1990s (led mostly by Southern States) to include economic, cultural and social rights. He stated that there are now around 41 thematic mandates for a variety of rights and around 14 country mandates. Mr Ghezraoui noted that some critics have argued this is too many, that the system is ad-hoc and, therefore, these mandates often overlap. Mr Ghezraoui explained that, whilst specific country mandates can be discontinued, no thematic mandate ever has.

Mr Ghezraoui went on to explain the process behind the special procedures system. He described that when the HRC establishes a mandate they appoint either a special rapporteur, an independent expert or a working group to be in charge of the mandate – these are the mandate holders. Whilst working groups were initially preferred, they were found to cost too much, so now an individual is usually chosen. Mr Ghezraoui stated that almost anyone can be nominated to be selected as a mandate holder. Candidates are shortlisted, interviewed and then a recommendation is given to the President of the HRC who can accept or decline them (though if declined they must give reasons as to why they did not accept the recommendation).

Mr Ghezraoui explained that mandates are usually rather vague and therefore give a lot of autonomy to the mandate holder. Mandate holders are not UN staff and continue their previous job simultaneously. Mr Ghezraoui expressed the view that this is probably the reason why two thirds of mandate holders are academics (though lawyers and non-governmental organisation staff are appointed too), as academics are more likely to have greater autonomy.

In terms of their duties, Mr Ghezraoui noted that mandate holders are responsible for producing reports twice a year: once to the HRC and once to the General Assembly. They must undertake missions to relevant countries and subsequently report on their findings. Mr Ghezraoui made clear that mandate holders may not always have the cooperation of the State in question (particularly in the case of country specific mandates). In this situation, he explained that the mandate holder may instead have to visit neighbouring countries and meet citizens at the borders of the country in question to gather testimonies. In these situations, according to Mr Ghezraoui, the country that is being reported on will often say that the information is biased and false as gained from outside of the country. He described a further problem with thematic mandates. In theory the mandate holder can go to any country in the world to research – but will only go to those countries that respond and

allow them to. Mr Ghezraoui argued that it is improbable that these are the countries where a thematic mandate holder needs to be researching.

Mr Ghezraoui explained that one of the benefits of special procedures is that they address individual evidence. Very few mechanisms allow individual complaints without ratification of optional protocols. He went on to say that mandate holders meet with all parts of society, including: authorities, national institutions, NGOs and individuals. They also visit places relevant to their mandate. Mr Ghezraoui stated that it is important that the mandate holders have the freedom to meet with people, travel freely and visit places without limitations. Relating to this point he emphasised that it is important for all mandate holders to have a minimum standard applied when negotiating with States they are visiting. He argued that the benefit of special procedures over the UPR is that they can visit places without as much 'warning', consequently giving States less time to prepare. In addition, mandates are more flexible than the UPR.

Mr Ghezraoui also picked up a problem with mandate holders as to which countries are visited and how these are often the same ones. On paper it looks like mandate holders can go to all countries, but in practice this is not so. Another issue is that some countries are happy to extend invitations to certain mandate holders, but not to other ones. Therefore, it looks like the State is engaging with the HRC, but really it is only covering itself.

According to Mr Ghezraoui, there is a strategy in place that aims to solve this problem. A Committee of five mandate holders is elected by mandate holders. Their task is to coordinate the work of all the mandate holders, they can therefore discuss and strategize about which mandate holders should go to which country based on needs. Mr Ghezraoui stated that this coordination has led to the Committee becoming perceived as a spokesperson for all of the mandate holders.

Another challenge addressed by Mr Ghezraoui is that there is no obligation for States to implement the recommendations made in the special procedure reports. Often the States who receive these recommendations do nothing. However, Mr Ghezraoui emphasised that this does not mean that special procedures are ineffective and should be discontinued. Instead of concentrating on a State's lack of reaction, there should be reflection on the engagement with numerous citizens who tell their stories. Mr Ghezraoui gave the example of Chile and El Salvador where those who are now in power were once victims, as shown in previous country mandate reports. He went on to argue that whilst States may not follow recommendations, these can help with the dynamics of the country as a whole and help individuals, for example, to receive asylum.

To conclude, Mr Ghezraoui reiterated that whilst country mandates have been discontinued, thematic mandates never have been. He explained that this causes issues, particularly in terms of repetitive mandates. He argues that countries sponsor certain resolutions that establish mandates because at a national level the country's constituents are pushing for that resolution. To not allow a mandate due to repetition would make it look like the country had failed to get their constituents rights addressed at the international level. Mr Ghezraoui noted that this is why there are repetitive mandates.

Report by Alice Gould, LLB Candidate, Law with European Law.