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**Mission permanente de la Suisse auprès de l'Office des
Nations Unies et des autres organisations
internationales à Genève**

**OPEN-ENDED SEMINAR
ON THE REVIEW
OF THE HUMAN RIGHTS COUNCIL**

Summary Report

under the responsibility of the Chair

Montreux, 20 April 2010

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Introduction

The open-ended Seminar on the Review of the Human Rights Council was organized by Switzerland and took place on 20 April 2010 in Montreux. Around three hundred representatives of Permanent Missions to the United Nations in Geneva, experts from the Human Rights Council and the Office of the High Commissioner for Human Rights, as well as civil society actors (NGO, academia) participated in the event.

The Summary Report of this Seminar was prepared under the sole responsibility of Switzerland. In line with the non-conclusive nature of the Seminar, the Summary Report reflects the views, questions and suggestions as expressed by participants during the event in a strictly factual and objective manner, without offering any form of assessment or conclusions.

The chapters of the Summary Report follow the structure of the Seminar's Programme:

- 1. Lessons learnt from the Institution-Building Package negotiation process*
- 2. Review Process*
- 3. Tools of the Human Rights Council to address situations of violations of human rights*
- 4. Human Rights Council Mechanisms: Universal Periodic Review*
- 5. Human Rights Council Mechanisms: Special Procedures*
- 6. Human Rights Council Mechanisms: Advisory Committee*
- 7. Human Rights Council Mechanisms: Complaints Procedure*
- 8. Agenda and Programme of Work*
- 9. Working methods*

With a view to rendering the Summary Report more easily readable and useful in the preparation of the Review of the Human Rights Council, its authors adopted the following methodology:

- Views and suggestions expressed by participants at any time during the seminar are mentioned under the chapter related to the relevant, specific topic.*
- Each chapter is divided into sub-chapters with a view to facilitating its readability.*
- To the extent possible, chapters distinguish between general comments and specific suggestions with regard to a given issue.*
- It should be recalled that the Seminar was held in accordance with the Chatham House Rule¹.*

The Seminar's programme and list of participants are annexed to this Summary.

Switzerland expresses its gratitude for the important work and contributions of this Seminar's panellists, moderators and rapporteurs, as well as to all participants for their engagement and readiness to dialogue in mutual respect.

¹ "When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed".

1. Lessons learnt from the Institution-Building Package negotiation process

1.1. Commission on Human Rights

Participants started the discussion by reflecting on why the Commission was perceived as having failed:

- Excessive politicization, selectivity and double standards;
- Polarization between Western countries and developing States;
- Unequal treatment of Human Rights and uneven responses to similar situations;
- A campaign against the Commission orchestrated by Western media.

It was also mentioned that the Commission was abolished without serious analysis of its qualities and shortcomings.

1.2. Institution-Building Package negotiation process

The following elements were described as positive lessons learned from the negotiation process:

- An atmosphere of mutual respect and cooperation;
- Willingness to compromise and to work towards consensus;
- Effective division of labour between the work of the facilitators and the fine-tuning by the President of the Human Rights Council;
- Broad inclusion of stakeholders, negotiations in cross-regional settings;
- Committed leadership by the President and all Bureau members;
- The existence of a deadline.

Among the less positive elements mentioned:

- National Human Rights institutions and the Special Procedures could have been more involved;
- The link between the Human Rights Council in Geneva and the General Assembly in New York was not sufficient.

1.3. Institution-Building Package

With regard to the result of the negotiation process, participants commented that:

- No delegation felt fully satisfied with the result, but all delegations felt included in its negotiations and adoption;
- The Institution-Building Package is a good compromise despite a few shortcomings;
- Resolution HRC 5/1, while not the lowest common denominator, is a low one nonetheless.

2. Review Process

Participants expressed the following questions with regard to the forthcoming Review process:

- Definition of the word "*status*" of the Human Rights Council (OP 1 of A/RES/60/251)? Should the Council also participate in the discussion of the status? If yes, what action should the General Assembly take in order to make such participation possible?
- For the General Assembly to review the status "within 5 years" means which timeline? 15.3.2011 or end of 2011?
- Meaning of "*work and functioning*" of the Human Rights Council (OP 16 of A/RES/60/251)? For the Human Rights Council to review its work and functioning "5 years after its establishment" means which timeline? March 2011 or June 2011?

- What should the General Assembly do after receiving the Human Rights Council's contribution?
- Should the Council's review of the modalities and periodicity of the *Universal Periodic Review*, which is supposed to take place after the first UPR cycle (OP 14 of HRC res 5/1), be fully included in the review process - or parallel to it?

According to HRC res 12/1, the Working Group on the Review chaired by the Council's President will report to the Human Rights Council on the progress achieved further to its two sessions (25-29.10. 2010 and 1 week in February 2011):

- Which *topics* should be considered during the Review, how should they be clustered and under which heading(s)?
- Should the Human Rights Council designate *facilitators*? How many and entrusted with which issues? Should other avenues be explored?
- Should the President and/or the facilitators convene regular and informal meetings?
- How should the various informal, preparatory meetings (of Mexico City, Wilton Park, Paris, Algiers, Montreux, Rabat and Seoul) feed into the Review process?
- Wouldn't it be important to trigger the contributions of civil society and subsidiary HRC organs or mechanisms in the process?

In response to the questions above, the following views and suggestions were expressed:

2.1. General

- The Institution-Building Package should not be reopened, just adjusted and improved.
- The process should be a *Review* and not a *Rebuilding*.
- Many achievements shall be maintained, and the delicate balance achieved should not be endangered.
- All stakeholders participating in the Review of the Human Rights Council need to be bold, forward-looking and to address the challenges.
- A common understanding should be established on:
 - the Review's timelines in Geneva and New York;
 - the definitions of the Human Rights Council's "work and functioning" and "status", and the link between them, as well as
 - the Council's and General Assembly's respective roles in this context;
 - the relation between the Review and the Universal Periodic Review after the completion of its first cycle;
 - the issue of possibly re-opening the Institution-Building Package and the opportunity of having facilitators (and how many), as well as
 - the Open-Ended Working Group's modalities.
- All Human Rights should be treated equally, and double standards and politicization should be eliminated.
- The Council's toolbox/mechanisms should be bolstered and sharpened with a view to expanding its scope of action.
- The Council should take full advantage of discussion opportunities, including inter-sessional briefings, special sittings during sessions, Presidential Statements and fact-finding missions.
- NGO participation should be enhanced.

2.2. Sequencing of the reviews in the Human Rights Council and the General Assembly

- The review's two-track process should be conducted in the spirit of improving the United Nations' human rights dimension, enhancing its capacity and increasing its effectiveness. It should be consensual, transparent, objective and pragmatic, aimed at strengthening the spirit of constructive dialog and cooperation.
- The fact that it is up to the General Assembly to change the basic parameters of the Human Rights Council does not prevent the latter from recommending to the General Assembly some changes to the review's outcome document. There are no formal obstacles preventing the Human Rights Council from proposing to the General Assembly, at the earliest, a substantive recommendation on its own status, with the understanding that dealing with such an issue falls outside the Open-Ended Working Group's mandate.
- The General Assembly should postpone considering the Human Rights Council's status until the review of its work and functioning is completed, in order to avoid duplication and any misunderstanding between Geneva and New York. To this end, it was suggested that the Human Rights Council make a recommendation to the General Assembly.
- There is a need to ensure reciprocal information between Geneva/New York and coordination between the two processes. The Human Rights Council President stated that he would assume his role in this context².
- In order for the Human Rights Council to regularly inform the General Assembly on the review process' progress, the former should receive reports from its President on that of the Open-Ended Working Group's work. This report should be included in the HRC sessions' reports to the General Assembly.
- The two New York facilitators could come to Geneva to witness the review process.
- The relationship and the division of labour between the Human Rights Council and the General Assembly should be elaborated upon. These issues, and in particular the latter's procedure for considering the former's annual report (by the GA Plenary? by the Third Committee? split allocation on an ad hoc basis between the two bodies by the General Committee?) are questions also linked to the Human Rights Council's status.
- There should be complementarity of work between Geneva and New York, and overlap should be avoided.
- With regard to new mandates decided by the Human Rights Council, structure of the relations between, and relative responsibilities of, Geneva and New York should be improved and clarified, in order to ensure the necessary financial means in a timely fashion.

2.3. Human Rights Council: Open-Ended Working Group

- The transparent and all-inclusive consultations to be conducted by the President of the Council on the review's modalities should primarily focus on the its scope, its methods and the format of a possible outcome, but also on the agenda of its first session in order to enable the President to prepare a well structured programme of work aimed at collecting opinions from States on substantive issues.
- The main discussion could be pursued in an informal setting after the first session of the OEWG, and the second session could finalize the outcome document.
- A new resolution could be adopted by the Council at a later stage, if additional time is needed to complete the OEWG's work.

² The President of the Council spoke in his official capacity (exception from the Chatham House Rule).

2.4. Outcome Document of the Review Process

- Despite the fact that the Human Rights Council has been refining its work and functioning over the past three years through decisions, resolutions, presidential statements, precedents and practice, grey areas still exist which should be identified and filled in.
- This should be done within a single consolidated document drafted by the Working Group, adopted by the Human Rights Council and endorsed by the General Assembly as a supplementary document to the Institution-Building Package, while the latter should not be reopened but completed through detailed elaboration and interpretation, with possible additions.
- There is a need to have a contribution from the civil society for the 2011 Review.

3. Tools of the Human Rights Council to address situations of Human rights violations

3.1. General

Emphasis was placed by many interventions upon the importance of cooperation, dialogue and engagement with a view to ensuring a sustainable improvement of the Human Rights situation inside a country.

The discussion focussed on the tools at the disposal of the Human Rights Council to address situations of human rights violations: Do we lack tools or not? Do we use them in an effective way? How do we identify the appropriate tool to address a specific situation? Is a trigger mechanism needed in order to make use of them? If so, what kind of trigger mechanism?

In addition, the following views and suggestions were expressed:

- The overarching goal must be kept in mind, namely to improve the Human Rights performance inside a country. If this is the goal, and not finger-pointing and manipulation, technical cooperation is key, as well as constructive dialogue with and engagement from the country concerned.
- Human Rights mainstreaming is key when it comes to improved performance and this should also permeate the work of the United Nations.

3.2. Tools at the Human Rights Council's disposal

- We do not lack tools, but rather that we do not use all the tools at our disposal, as reflected both in A/RES/60/251 and in the Institution-Building Package (Paragraphs 111, 114 and 118 of resolution 5/1). The possibility of using the tools at the Human Rights Council's disposal, such as briefings, panels and presidential statements should be explored now, rather than waiting until 2011.
- All the tools at the Human Rights Council's disposal could be gathered under a common rubric.
- What is the role of the High Commissioner for Human Rights in this regard?
- Could the President of the Council take initiatives, such as calling for a briefing or organizing a panel? Should the President's role remain strictly organizational?

3.3. Approaches to Human Rights situations

- There is a need for a more gradual approach to situations of Human Rights violations. Are there innovative ways to increase the Human Rights Council's attention to a country situation without resorting to a Special Session?
- Lowering the number of signatures required for a Special Session was suggested. Others warned against a proliferation of Special Sessions. Such sessions must indeed remain special.

- There is today too little focus on prevention, including making better use of the UPR in this respect. Human rights education and training are key in this regard. Financing for the promotion of Human Rights is a potential investment in peace and stability. Today this pillar of the United Nations system receives little financial support. Institutional Human Rights capacity building is needed in many countries.
- Attention needs to be paid to the underlying drivers that may trigger situations of Human Rights violations such as instability, conflicts and poverty. Cooperation with regional groupings and mechanisms could be useful in this regard.
- Early warning needs to be improved when it comes to potential situations of Human Rights violations: Can an Ad hoc half-day panel session be an example of an innovative approach? Can the Special Procedures be used for the purpose of identifying and conveying such signals?
- The Council must deal more effectively with long-neglected situations as well as emergencies.
- There is also the need to address the aftermath of a situation of Human Rights violations by focusing on victims. The Human Rights Council has done little in this respect so far.
- The scope of Agenda item 4 should be broadened with a regional focus.
- There should be stronger integration of regional aspects for the purpose of promoting tangible results. Complementarities should be developed between the work of the Human Rights Council and the Human Rights work going on at the regional level.
- We should consider country visits by Members of the Human Rights Council for the purpose of fact-finding.
- Establishment of a group composed of five independent experts with a standing mandate to address urgent and chronic Human Rights situations by engaging with governments, conducting field missions, making recommendations and reporting to the Human Rights Council.
- Have countries commit to voluntary pledges of cooperation with the Human Rights Council, should a situation of Human Rights violations occur.
- Focus on all victims whenever and wherever. Credibility equals equitable approach.

4. Human Rights Council Mechanisms: Universal Periodic Review

4.1. General

Participants gave a positive assessment of the UPR. The full involvement of the States under review, at every stage of the process, was considered as the precondition of an effective UPR. The implementation of the accepted recommendations clearly also needs the engagement of the States. On this matter, mention was made of the importance of civil society's work, which cooperates with the authorities in the human rights field.

It was mentioned that the Council's effectiveness would be judged based on how much the UPR will impact on Human Rights conditions on the ground.

The following suggestions were made with regard to necessary improvements of the UPR:

4.2. Interactive dialogue

- The dialogue's quality should be improved. The troika could help promote a deeper discussion.
- More expertise is needed from the OHCHR, Treaty bodies and Rapporteurs.

4.3. List of speakers

- The issue of the long speakers' list for the interactive dialogue should be resolved as soon as possible. Different proposals to this end were presented with a view to solving the problem for the second cycle of the UPR:
 - Extend the interactive dialogue from three to four hours or to unlimited time;
 - Extend the cycle to 5 years (thus allowing the examination of 13 States instead of 16 per UPR Session);
 - Vacate two weeks of ordinary Council sessions (out of ten) and give them to the UPR Working Group for a 4th Session per year (12 States per UPR Session).

4.4. Recommendations

- Recommendations should be implemented by the State, and technical improvements are needed in order to have a more user-friendly system.
- Recommendations formulated by Member States should be realistic, pragmatic and first and foremost implementable. To this end, recommendations should be streamlined, clarified and synthesized.
- The number of recommendations should be kept to a manageable quantity. The proliferation of recommendations could entail the undesirable effect of blurring priorities rather than enhancing protection.
- It should be clear which recommendation(s) the country has accepted and which it has not.

4.5. Role of the Troikas and reports of the Working Group

- The Working Group's reports should be streamlined and their recommendations organized in clusters by subject and theme.
- Should the Troika play a “mediator” role and present concrete proposals on possible clustering / merging of recommendations? Or should it only present the compiled list of recommendations as formulated by Member States, without intervention?
- Introduce guidelines for the report's format or charts for recommendations. Establish best practices for reporting.
- The working language of the Troika could be other than English in order to best communicate with the delegation of the country under Review.
- Interpretation could be provided during the meetings with the Troikas.

4.6. Implementation of the recommendations

- Although responsibility for implementation rests primarily with States, national stakeholders could help Governments in this task.
- While States need to respond to the UPR's recommendations as well as those of the Special Procedures and the Treaty bodies, overlap or duplication of requests should be avoided.
- The implementation of the (accepted) recommendations is very much linked to the technical assistance. The UPR Fund created for this is still empty.
- Responsibility falls upon both the State under review (which should not hesitate to ask for technical assistance) as well as the State formulating a particular recommendation (which should be ready to provide it in order to help the State in implementing the accepted recommendation).
- With regard to monitoring implementation, some participants stressed the importance of a sort of “mid-term” review. Item 6 of the Council's Agenda provides the adequate framework. The voluntary character of such a “mid-term” review was pointed out.

4.7. Second cycle of the UPR

- The second cycle should focus merely on implementing the accepted recommendations;
- Both the general picture of the situation of human rights, as well as the implementation of the accepted recommendations, should be part of the next UPR cycle, in conformity with General Assembly resolution 60/251 and resolution 5/1 of the Human Rights Council.

5. Human Rights Council Mechanisms: Special Procedures

5.1. General

Participants stressed that Special Procedures play a vital role in the United Nations' human rights machinery, and affirmed the need for mandate holders' independence. The system delivers real "value added" for the United Nations human rights system. The complementarity of the Special Procedures' work and the Treaty bodies' activities was underlined.

The following concerns were expressed with regard to how the Special Procedures carry out their mandates:

- Special Procedures should always aim to help and to persuade countries to improve their human rights performance, rather than seek to condemn them.
- The mandate holder's focus should be on technical assistance.
- Special Procedures should not politicise their role or their work.
- Some mandate holders do not fully understand the complexities of a situation, particularly in armed conflict.
- Mandate holders are too ready to speak to the media.

Participants also made the following suggestions:

- The creation of an Advisory Committee of Magistrates, an independent body of experts that could adjudicate on concerns raised by Member States.
- The need to avoid a disciplinary route vis-à-vis the Special Procedures, noting the linkage between accountability and independence.
- The need to review, renovate and rationalize the Special Procedures in order to improve their effectiveness in line with the code of conduct.
- The more contentious mandates could be converted into Working Groups, rather than one individual having to deal with sensitive matters alone.
- More time is needed for interactive dialogues.
- The need for greater interaction with the rest of the United Nations and coordination between the Rapporteurs themselves.

5.2. Cooperation by States

- Cooperation is a two-way process, and States need to ensure that they cooperate fully with Rapporteurs. This is also underlined in the Code of conduct.
- Cooperation by States should be a key element in the assessment when a State seeks Human Rights Council membership.
- The idea of a code of conduct for States was voiced. It was argued that the extent of State cooperation was too vaguely defined.
- Standing invitations to Special Procedures should be extended as well as cooperation over written communications.
- The Council could establish benchmarks for what "cooperation" means in practice, and the Council should address persistent non-cooperation by States.

5.3. Country Mandates

- Country mandates are too selective as only very few situations are dealt with.

- Country mandates are still necessary to deal with situations concerning grave violations. The balance in the Human Rights Council between thematic and country Special Procedures is about right.
- A “due process”-type approach to country situations was also suggested: Instead of proceeding immediately to a country resolution establishing a mandate holder, more time should be taken by the Council to listen to the views of experts – e.g. United Nations Agencies.

5.4. Selection Process

- The selection process for mandate holders should be reviewed, the Human Rights Council should have a greater role in drawing up short-lists of candidates, and an interview process for the HRC might be established.
- Mandate holders are sometimes swayed by the media or political interests.

5.5. Resources

- The issue of resources for the Special Procedures needs to be addressed.
- The issue of the transparency of current resources provided was raised, and some participants expressed concern about unequal funding, and under-funding.
- It was suggested that mandate holders should be paid to ensure equality.

6. Human Rights Council Mechanisms: Advisory Committee

A member of the Advisory Committee briefed on its priorities for the Review. The Committee felt it important that it be granted the right to initiate work and make suggestions to the Human Rights Council. Further, the Advisory Committee also considered that it was under-resourced, and needed a Secretariat to support its work. Additionally, the member proposed that civil society be regularly invited to the Advisory Committee's meetings.

Some participants who responded to these ideas supported them; others questioned them.

7. Human Rights Council Mechanisms: Complaint Procedure

- The Procedure is completely useless and therefore should be taken out from the instruments of the Council.
- It is a possible “early warning mechanism” for the Council, although its effectiveness should and could be improved; but it would be damaging to “throw out the baby with the bath water”.

8. Agenda and Programme of Work

8.1. General

- The Council's mandate to mainstream Human Rights within the United Nations system (General Assembly resolution 60/251) and the need for better coordination and use of synergies with other parts of the United Nations system were highlighted.
- It was proposed to organise a half-day panel to interact on specific Human Rights related themes with United Nations Agencies and to have a standing interagency task-force.
- The fact that the HRC meets on a quasi permanent basis was seen as an advantage although the following negative aspects were identified: heavy workload;

repetitiveness; lack of predictability; less visibility in the media and public opinion; problems related to the yearly budget process in New York.

The following suggestions were made to address the situation:

8.2. Distribution and Number of sessions

- Reduce the number of regular sessions from three to two, by eliminating the September session.
- Suppress one regular session and redistribute that session time, for example by organizing monthly mini sessions.
- Schedule two five-week sessions during the first half of the year, one focussing on thematic debates, and the second focussing on negotiations of resolutions.
- Disassociate the adoption of UPR reports from the regular sessions, for example by scheduling two substantive four-week sessions and one two-week session for the adoption of UPR-reports or one substantive six-week session and two two-week sessions for the adoption of UPR-reports.

8.3. Distribution of Agenda Items

- Redistribute the agenda items over the three sessions as follows: one thematic session, one country-specific session, one session dedicated to subsidiary bodies (UPR and agenda item 5).
- Address specific sets of rights in each session in order to increase predictability for NGOs and small delegations.
- Increase time for interactive dialogues while minimizing the time for general debates, which are repetitive. Give experts more time in the context of interactive dialogues and dedicate more time to substance.
- The High Commissioner should present her annual report at the main session and focus her subsequent presentations in the Council on updates.
- The importance of a more predictable and less repetitive agenda, also in order to improve the preparation for the negotiation of resolutions.

On the agenda as such, the following opinions were expressed:

- Not to reopen the agenda because it constitutes a compromise.
- To streamline agenda items 4, 7 and 10 in order to have a unified approach to country situations.

8.4. Improving the visibility of the Human Rights Council

- Sessions could be organized in New York or in other regions.
- Press conferences could be organized in Geneva and New York.
- Use of media Rapporteurs could be envisaged.

8.5. Budget of the Human Rights Council

- Maintain the current periodicity and duration of regular sessions, but add a fast track approval in the GA for the decisions adopted in the September session that have financial implications.
- Establishment of a contingency fund.
- Bring the annual cycle of the Human Rights Council in line with the budget year of the United Nations.
- Dedicate time to budget issues in the programme of work of the Council.

8.6. Special sessions

- The need for early involvement of the concerned country.
- Define Human Rights emergencies as the purpose of special sessions.
- Schedule mini-sessions to follow-up to special sessions.

9. Working methods

9.1. General

The atmosphere in the Council is perceived as being too polarized and confrontational between groups. Participants emphasized the need to work in cross-regional formats.

Interest was expressed for new instruments, such as:

- presidential statements, press statements;
- briefings without formal outcomes;
- panels: there are too many and thus a need for better coordination among the main sponsors prior to the session.

9.2. Role of the President

- Participants recognized the important role of the Council President and stressed that he/she requires a full time staff in order to contribute to a solid institutional memory. Others underlined the procedural role of the President and Bureau.
- The need for a permanent legal adviser was expressed.

9.3. Introduction of resolutions

- The formal introduction of the resolutions in the Plenary should take place well ahead of their adoption, as is the practice in Third Committee.
- The organizational meeting should be better used, namely to share information on all resolutions and initiatives.
- Biannualization and triannualization of resolutions was encouraged.
- Resolutions should be action-oriented, brief and bring added value.

9.4. Documentation

- Documentation needs to be available on time, and its volume reduced.
- Reducing the number of pages of all reports by 10% was proposed, reserving the possibility of further reducing their length. Within 5 years 50% of the documentation could be made available only in electronic format.
- The suggestion was voiced, of making a list of available documents, and issuing them in paper only on demand.