

Human Rights on the Defensive?

The Future of the Commission
on Human Rights in the
Context of United Nations
Human Rights Protection

Jochen Motte / Wolfgang S. Heinz (eds.)



Deutsches Institut
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Introduction

*I*n recent years the human rights community witnessed increasingly serious political difficulties in the work of the UN Commission on Human Rights (CHR), which seem to question the results of the 1993 UN Vienna conference and may lead to a setback for human rights as a whole. With the events of September 11th 2001, the war against Iraq in 2003 and the ongoing crises in the Middle East, the work of the Commission has become more and more politicised and, consequently, paralysed. Other worrying developments include the regionalisation of decision-making by voting along regional lines, the growing influence of countries which in principle oppose the concept of human rights and consider it as an instrument of the West, and, last but not least, the lack of financial resources. All of these developments beg the question of whether the CHR is still able to serve as an instrument which can effectively address human rights violations worldwide and call on member states to fulfil their obligations with the necessary authority.

Forum Human Rights, the national network of German human rights NGOs, and the German Institute for Human Rights, a national human rights institution, felt the urgent need to discuss the future work of CHR together with a number of experts who have been following developments at the Commission for several years. On October 20th and 21st 2003, they conducted in Berlin a public panel discussion and a workshop with the theme “Human rights on the defensive? The future of the Commission on Human Rights in the context of United Nations human rights protection”.

This document presents a summary of the discussions and contributions of the following experts who attended the consultation: Ms Maria Franciska Ize-Charrin from the Office of the High Commissioner for Human Rights; Mr Walter Lewalter, former German ambassador in Geneva and head of the German delegation to the Human Rights Commission until 2003; Mr Peter Prove, from the office for International Affairs and Human Rights at the Lutheran World Federation in Geneva; Ms Silvi Sterr, former Forum Human Rights observer at the CHR and presently international secretary of the Women's International League for Peace and Freedom; and Ms Gabriele Juen, Executive Officer at the Amnesty International European Union Office, Brussels.

The Commission on Human Rights is the supreme body for human rights protection and promotion. We hope that through our discussions and recommendations we can contribute to the strengthening of the work of the Commission so that it is able to fulfil its task more effectively.

Finally, we wish to thank all who have contributed to realise this publication and to document the above mentioned workshop. Especially we like to thank Dr. Theodor Rathgeber who co-ordinated the documentation and editing process and the Friedrich-Ebert-Stiftung who offered financial support and hosted the workshop.

Jochen Motte
Forum Human Rights

Wolfgang S. Heinz
German Institute for
Human Rights

Walter Lewalter

The Future of the Commission on Human Rights in the Context of United Nations Human Rights Protection

A contribution to the Panel Discussion

Are human rights on the defensive? Why is it that this question comes to mind? Developments in the last two years have produced a lot of scepticism and gloom not only about the Human Rights Commission, but the whole UN system and its ability to promote and protect human rights. I see mainly two reasons for this development:

- The aftermath of September 11, 2001 brought to the fore tendencies to address terrorism by combating the phenomenon rather than its root causes. It overshadowed the ongoing developments in the international system for the protection of human rights to the extent that human rights seemingly became less relevant in these times of crisis.
- The ability of Libya, via the mechanisms of African solidarity, to impose its presidency upon the Human Rights Commission drew general attention to the problems inherent in a co-operative system of human rights protection. The horse-trading going on in the Human Rights Commission, as in other major UN bodies, received all the limelight. We started to ask ourselves if states with notorious human rights deficiencies such as Syria and Cuba should in fact be sitting in a body whose mission is to develop and implement human rights.

Consequently we feel the future of the Human Rights Commission, of human rights in the UN system in general, is at stake. Will they survive these challenges? I believe they will and here is why. Despite critical developments in recent years, the Human Rights Commission has made progress in its normative role, internal functioning and – taken together with the High Commissioner for Human Rights – in crisis management:

- After difficult negotiations, two additional protocols to the Convention on the Rights of the Child and an additional protocol to the Convention against Torture have been adopted.
- The World Conference against Racism reflected the existing international confrontation. Nevertheless, Durban marked an important step in combating racism and its causes.
- The Review of the working methods of the Commission has certainly not solved its major structural problems, but did generate sufficient consensus to improve its functioning. As a result, the Commission managed to finish its agenda in 2002 and in 2003 despite major international confrontation spilling over into the proceedings of the Commission.
- The Commission has addressed, though under feverish convulsions, the human rights dimension of each of the major international crisis situations, e.g. Palestine, Chechnya, Afghanistan, Iraq and, even if not at the first attempt, the war against terrorism.
- The Commission has supported a higher profile and involvement of the High Commissioner. Here, I wish to pay tribute to both Mary Robinson and Sergio Viera de Mello for their absolute dedication to the cause of human rights. If we consider how long it takes the Secretary General to appoint a new High Commissioner, we can measure the importance of the post and the category of the man who lost his life in the service of the UN.

On balance, I think the Human Rights Commission has become quite operative in recent years and has even established itself as a security valve in situations in which the Security Council, for obvious reasons, did not proceed. Thus, I would not accept any scepticism and gloom about the Commission's role, which would be but the psychological consequences of the present ups and downs of international politics. I would rather point to long-term trends in the field of human rights. In this respect, I should like to offer two observations:

Firstly, I want to argue that the universality of human rights is more generally accepted than it was ten or fifteen years ago. At the time of the Vienna Conference I was serving as Ambassador in Jakarta. I remember that on the road to Vienna many Asian governments were upbeat about the special Asian values supposedly leading to a human rights system different from the one laid down in the Covenants. Since Vienna, this line of thought has been waning over the years, as has the one on so-called internal affairs supposedly being exempt from international scrutiny. In the Human Rights Commission we have seen the Chinese delegation face detailed argument on the human rights situation in China. And over the years Russia, in arguing its case on Chechnya, has increasingly acknowledged that this situation is not exempt from international scrutiny.

This process, which could well be termed globalisation of human rights, has its drawbacks. Governments with weak human rights records feel it is in their interest to be members of the Commission when their case is on the agenda. But how can we shy away from involving them? If we want to spread the sense of ownership in the human rights system around the world, we then have to admit these co-owners with respective bargaining powers. And we should be more confident, because in the Commission the supporters of human rights have had repeated success in creating positive

coalitions. But of course, we have to be careful that human rights do not become distorted as more and more countries appropriate them.

My other observation concerns the rift between human rights doctrines developed in the Commission, its subsidiary organs, in the treaty bodies and in the academic community on the one hand and a growing trend towards legal positivism in some Governments on the other. By legal positivism I mean the unwillingness to accept any human rights obligations except the ones to which they are expressly subject in international instruments. For a German trained in the spirit of our constitutional jurisprudence the mainstreaming of human rights is commonsense. But we have to admit that seen from the perspective of the Anglo-American legal system it is much less evident that conclusions can be drawn from the human rights covenants for concrete matters before the Security Council, the General Assembly or other organisations such as the WHO, WTO or WIPO. The debate on the relevance of human rights in the fight against terrorism is only one example of that phenomenon, although an important one. The phenomenon is wide-spread in the field of ESC-rights and here it is the third world, which has been on the offensive, at least up to now. Some countries in the northern hemisphere are showing growing reservations about what they regard as an overextension of legal obligations. Caution has to be applied lest this trend should develop into an open and generalized repudiation of majority decisions in the field of human rights.

As can be concluded from my last two observations, I do see substantial challenges ahead. The covenants and additional legal instruments are solid foundations upon which to build. The growing feeling that all sides have vested interests in the human rights system keeps the building together. The academic community and the NGOs have found their respective roles to make human

rights progress. Above all, the Commission must remain the forum of the struggle for observation and promotion of human rights by all means, legal and political. The exposure of human rights violations to the international public has a beneficial effect in itself even without immediate sanctions attached. In some countries it encourages and empowers the forces that, from within, work for the correction of the violations by means of the democratic checks and balances. With respect to other countries it mobilises and legitimises outside pressure. Hence, we should not belittle the instruments we have, however imperfect and disputable they may well be. Much has still to be achieved. But a lot would be lost, if we were to despair.

Peter Prove

What Future for the Commission on Human Rights?

During the 59th session of the Commission on Human Rights (which took place in March /April 2003) I was lobbying as representative of one of the Western European countries to gain his delegation's support for bringing a diplomatically sensitive new issue before the Commission. He was very willing, in principle, to lend his support to this cause, but after having discussed the matter with a few other key delegations over the ensuing couple of days he returned with a pessimistic assessment. It would be almost impossible to introduce a contentious new issue in the Commission, he said. The Commission on Human Rights was, in his view, no longer the best place in which to raise difficult human rights problems. You should try the General Assembly. It was much easier in New York. We have had much more success there recently, he said.

A colleague and I approached the delegation of the then Presidency of the European Union on the same issue. The existing draft of the most relevant thematic resolution then under negotiation in the Commission already contained a paragraph listing some recent General Comments by one of the human rights treaty bodies. However, the most recent General Comment – which happened to cover 'our' issue – was missing from the list. How about including a reference to the new General Comment in the Commission's resolution, we asked. Oh no, they said; this part of the text is taken directly from the previous General Assembly resolution on the same thematic focus. Yes, we acknowledged, but the new General Comment was adopted after the previous session of the General

Assembly. Surely it makes sense at least to update it in the light of subsequent developments. In principle, yes, they agreed. But any new language will put the chances of achieving consensus in the Commission at risk, so we can't do that. Thanks for coming.

A third and final reflection on the last session of the Commission. As discussion opened on item 9 of the Commission's agenda – the so-called 'country item' – the representative of South Africa delivered a statement on behalf of the African Group denouncing the "politicization of the Commission". "The country-specific resolutions" presented under item 9 "ended up dividing the Commission along the North-South divide". "The exercise of naming and shaming", he said, "was an embarrassment to the credibility and dignity of the Commission and should be discontinued forthwith."

This statement was delivered on 1 April, but it was no joke. It was the start of a series of complaints that the discussion under item 9 amounted to unfair finger-pointing by Western democracies at less-developed countries. India, Algeria, China, Costa Rica, Malaysia and Cuba all questioned or even condemned the Commission's methods of scrutinizing country-specific human rights situations.

The Indian representative said that this agenda item "caused dismay and negatively impacted the Commission's credibility and effectiveness", since it had become "an instrument for advancing the political objectives of those who controlled the purse strings. This impression was reinforced when the Commission was used for selectively condemning those who were out of favour with the powerful, while others guilty of far more serious violations were protected, essentially because they were viewed as allies." "To avoid politicization and to promote durable solutions, instead of condemnation" he said, "the Commission must focus on dialogue, persuasion, introspection and technical cooperation. The annual ritual of handing out report cards or sitting in judgement over

others did not move the Commission towards its desired goal. Naming and shaming through country-specific resolutions only served to create acrimony and confrontation.” The Malaysian representative concurred, describing item 9 as “infamous”, and “the cause of the politicization of the Commission.” It had been, he said, “the avenue for the developed countries of the West to push for the adoption of politically-motivated country-specific resolutions vilifying developing countries”.

Of course, complaints of ‘selectivity’ and ‘politicization’ in the Commission are hardly new. They have been a constant refrain for at least as many years as I have been observing the Commission’s proceedings. Neither are they entirely unfounded. It is a fact that certain politically and economically powerful States have managed by and large to avoid proper examination of human rights violations in their own territories or resulting from their actions or omissions, have protected their clients and allies from criticism, and have used the Commission to pursue their own political agendas. However, it is also true that other States have been more than happy to leap on this perceived imbalance and ‘politicization’ as a justification for avoiding any effective examination of their human rights records.

The late High Commissioner for Human Rights, Sergio Vieira de Mello, was absolutely correct when in his closing remarks to this year’s session of the Commission he suggested that “the word ‘politicization’ and its variants should be retired from active service”. He pointed out that “most people in the Commission worked for governments or sought to affect the actions of governments. That was politics. For some to accuse others of being political was a bit like fish criticizing one another for being wet. The accusation hardly meant anything anymore. It had become a way to express disapproval without saying what was really on our mind. The Commission could use plainer speaking. This, rather than charges

of politicization, would truly help the Commission get beyond politics to the strengthening of human rights in all countries.”

It is worth recalling that the Commission on Human Rights is a functional commission of the UN Economic and Social Council (ECOSOC). [Article 68 of the Charter empowered ECOSOC to “set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.” The Commission on Human Rights was duly established by ECOSOC in its resolution 5 (I) of 16 February 1946. By that resolution (as amended by Council resolution 9 (II) of 21 June 1946) the Commission was mandated to submit proposals, recommendations and reports to ECOSOC regarding an international bill of rights; international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters; the protection of minorities; the prevention of discrimination on grounds of race, sex, language or religion; and any other matter concerning human rights. The Commission was also expected to undertake special tasks assigned to it by ECOSOC – including the investigation of allegations concerning violations of human rights – and to “make studies and recommendations and provide information and other services at the request of the Economic and Social Council” (Council resolution 5 (I), sect. A, para. 3). By resolution 1979/36 of 10 May 1979, ECOSOC added the following provisions to the terms of reference of the Commission: “The Commission shall assist the Economic and Social Council in the coordination of activities concerning human rights in the United Nations system.”]

The [recapitulation of the specific responsibilities of the] Commission [helps to underline the extent to which it] was supposed to be a technical, rather than political, body. The political role belongs, in principle, to the General Assembly. My exchange with the Western European diplomat who referred me

and my difficult human rights issue to the General Assembly illustrated a striking reversal in these roles. Now the Commission is the political/politicized body, and the General Assembly is seen, if not exactly as a technical body, at least as a body in which such issues can be addressed more technically and easily – relatively speaking. In addition, the reaction of the representative of the European Union Presidency demonstrates a developing tendency by the Commission to follow precedents established at the level of the General Assembly, rather than to propose and to lead. And the open attack on the methodology of ‘naming and shaming’ foreshadows the neutralization of the most powerful and demonstrably effective of the weak instruments available for advancing the cause of human rights – identification and embarrassment.

It is also noteworthy, though perhaps premature to draw conclusions from the fact, that for the first time in many years this year’s Commission registered a decline in the number of NGOs taking part. Many governments who have expressed concern at the increasing numbers and influence of NGOs in the Commission may be somewhat cheered by this statistic. But if NGOs were ever to desert the Commission, much of its remaining relevance to the lives of ordinary people would also disappear, and it would become even more insulated from reality.

So, things are not altogether well with the Commission. However, for the time being – and with apologies to Mark Twain – reports of the Commission’s demise have been greatly exaggerated. The Commission is still the peak international, and the only truly multilateral, human rights forum. If we didn’t have it, we would have to invent it. It brings together government representatives, independent experts, national human rights authorities and civil society in a format – though still inadequately and dysfunctionally realized – that does not exist elsewhere.

The challenge for the future is to re-invent the Commission – even to re-imagine it – so that it serves better the purposes for which it was originally intended. The successive rounds of reforms that the Commission has already undertaken have tinkered with the edges of the problems, but they have failed to address the fundamental issues that any right-thinking person would immediately identify when first confronted with the working methods of the Commission.

For example, the basic modes and conventions of traditional diplomatic exchange that have been imported into the Commission are ill-suited for its functional role in addressing pressing issues of human rights around the world. People unburdened by long familiarity with the system typically find the form of exchange in the Commission to be, at best, remote from reality, and at worst, slightly ludicrous. A different and more focussed form of debate is necessary, rather than the diplomatic standard of one prepared statement after another.

The construction of the Commission's agenda bears more resemblance to the geological processes of sedimentary layer formation than to the dynamic evolution of international affairs. A different form of agenda-setting is required, that responds to the circumstances and needs of the moment, rather than reflecting the ancient history of the Commission.

And the modes of civil society involvement in the Commission's proceedings also need to be comprehensively re-examined. For too many of the numerous NGOs that now attend the Commission, the be-all-and-end-all of their involvement is the delivery of rhetorical statements, often repetitive, and sometimes to an inattentive audience. The enormous expertise and energy of civil society should be better used by the international community, as an essential and integral part of the Commission's processes rather

than an inconvenient obligation. The mechanisms of civil society participation could undoubtedly be enhanced and optimized in order to strengthen the work of the Commission.

In considering future reforms of the Commission and its processes, guidance should be drawn less from how things have been done before, and more from the original purpose of the Commission and the present circumstances and needs of the peoples of the world.

Peter Prove

The Debate on Reform of the Commission on Human Rights from the Perspective of NGOs

In my previous statement, I emphasized the extent to which the Commission is in need of thorough reform. Now let me couple that message with a word of caution. As badly as the Commission needs more comprehensive reform, the current international political ‘mood’ in relation to human rights would tend towards weakening, rather than strengthening, the Commission and other international human rights bodies and mechanisms. For this reason, many of the more reflective minds in the international human rights community have deliberately avoided suggesting further major reforms at this time. The risks are too great that some states, anxious to weaken the Commission and the other international human rights mechanisms, would leap on this opportunity. It may be better to continue tinkering with the edges, until the wheel of political and public opinion has turned once more in favour of human rights. In the meantime, NGOs will be key contributors to the struggle to maintain and optimize the existing human rights structures and mechanisms despite the hostile political environment.

I have elsewhere described the current state of NGO participation in the Commission on Human Rights as privileged, but dysfunctional. It is generally agreed that NGOs have a greater level of access to and participation in the proceedings of the Commission on Human Rights than in any other part of the UN system. NGOs enjoy only lightly restricted access to the chamber and to the delegations attending the CHR. They have well-entrenched and accepted

rights of addressing the Commission, both in writing and orally, and they make extensive use of these rights to identify human rights violations and violators in often very direct language. Each NGO may address the Commission under each agenda item (although there are limitations on the overall number of statements a given NGO may make during one annual session of the Commission). NGOs have historically exercised considerable influence in relation to the suggestion and formulation of new standard-setting instruments in the Commission. Since the widening of ECOSOC consultative status provisions in 1996 to allow and encourage the granting of consultative status to national level NGOs as well as international NGOs, the Commission is the UN body that has attracted the greatest numbers of new NGOs.

The dysfunctionality flows directly, in large part, from the privileged access arrangements themselves. With the increasing numbers of NGOs wishing to speak at the Commission, the pretext and pressure for reducing NGO speaking times has grown. In last year's session, which suffered a particularly severe time crunch, NGO statements were reduced at times to 1 minutes each. It's quite impossible, in my view, to make meaningful use of such a short speaking time. Even the now common 3 minute NGO speaking time is barely usable.

Accordingly, the focus for some NGOs in any discussion of reforming the working methods of the Commission has tended to be on preserving their speaking times from further reduction. This is, of course, a very narrow perspective. A broader perspective on the current situation will admit that much NGO statement-making in the Commission has become increasingly rhetorical and formalized, and as NGO statements have increased in number, more and more repetitive as well. The expedient of encouraging NGOs to make joint statements can only ever be a partial answer to this problem.

Another factor affecting the numbers, as well as the quality, of NGO interventions in the Commission, is the emergence of ‘GONGO’ – or ‘government NGO’ – phenomenon. GONGOs act as advocates for government policy and/or to counter criticism by other NGOs. Typically they are financed (normally indirectly) or otherwise encouraged by their government. It is notoriously difficult to define precisely the characteristic features of a GONGO, but anecdotal evidence suggests that they are appearing in rapidly increasing numbers at the Commission. The GONGO phenomenon is a direct consequence of the expanded consultative status arrangements, since the establishment of NGO ‘proxies’ for governments is much less feasible at the international level than at the national level. It is difficult to see how this challenge to the legitimacy and effectiveness of the independent NGO voice can be contained while direct access to the UN system by national NGOs is retained.

Many NGOs with long experience of the Commission associate their interests as NGOs more broadly with the health of the system as a whole. In their interventions in relation to the working methods of the Commission they have therefore focussed as much on the Commission’s interaction with its own special procedures (special rapporteurs, independent experts, working groups etc.) and on the contribution of national human rights institutions, as on speaking times for NGOs.

The experiments undertaken by the Commission in relation to ‘interactive dialogues’ with its special rapporteurs and other special procedures certainly raise one practical avenue for improving the working methods of the Commission. Previously, the reports submitted annually to the Commission by each special rapporteur etc. were presented in what amounted to just another in the long series of often unconnected statements. The sort of discussion format that the Commission experimented with this year – a discussion actually focussing on the submitted report/s

and engaging the relevant mandate-holder in a dialogue – provided a positive though incompletely realized example of how the system could work better in the future. It would be preferable if all the business of the Commission could be transacted in a similar interactive dialogue format, but perhaps that is too much to hope for.

In recent years an increasing number of Heads of Government, Heads of State and other dignitaries have attended to make statements to the Commission at its annual sessions. Their participation is a positive sign, insofar as it reflects the growing importance of the international discourse on human rights, and hopefully fosters a stronger awareness and commitment at the national level. However, NGOs have certainly felt that the increasing number and random distribution of such high level statements throughout the Commission's annual session has unduly interrupted the Commission's work. The introduction of a 'high level segment' in which statements by visiting dignitaries should, in principle, be grouped together was therefore a welcome innovation at the 2003 session of the Commission. The first week of the six-week session was set aside for this purpose. However, I would have preferred a parallel high level segment, allowing the functional/technical work of the Commission to proceed at the same time.

NGOs have also become increasingly concerned by the amount of time that is wasted on 'rights of reply'. States have, in practice, enjoyed relatively unrestricted rights of reply, sometimes resulting in unedifying 'ping-pong matches' between geo-political rivals such as India and Pakistan. A positive reform could involve the limitation of the number of rights of reply to one per member State per agenda item, with such rights of reply to be held to the end of each such agenda item.

Another issue brought to a sharper focus during this year's session of the Commission was the previously taboo subject of criteria for membership of the Commission. At present, the only formal criterion for membership of the 53-member Commission is to be a UN member State. The question of what other criteria might be appropriate for membership in the future was publicly raised by High Commissioner de Mello in his opening statement to this year's session of the Commission. The issue also had a higher profile this year in the context of widespread concern over the election of Libya as Chair of this session.

NGOs and others have made a number of suggestions for possible criteria. Suggestions have included being a party to the main international human rights treaties, accepting the complaints mechanisms under them, and issuing Standing Invitations for country visits by all the Commission's special procedures. As Rachel Brett of the Quaker United Nations Office has remarked:

These are all actions which *all* UN Member States should be encouraged to take, and those who seek to become members of the Commission should feel a particular responsibility to do so, or to provide an explanation why they are unable or unwilling. However, whether they should be *criteria* for membership depends on the concept of the role of the Commission. It also, it must be said, depends on political realities: any of these criteria would exclude the USA from membership, as well as China and many others.

Jan Bauer, another longtime observer of the Commission, has pointed out that if the main criteria usually proposed by NGOs were applied in combination, only one State – Azerbaijan – would have qualified for membership.

Furthermore, Rachel Brett notes that:

Even if such criteria were established, all these, though important, are “formal” requirements that do not in themselves demonstrate the degree either of real cooperation and compliance with the mechanisms or of the situation of human rights in the country. Colombia has become notorious as a State which accepts all requests for visits, has now issued a Standing Invitation, is a party to human rights treaties, but over the years has shown little willingness to address the human rights crisis in the country.

An alternative approach to criteria for membership would be to transform the Commission into a universal body – in which all UN member States would participate. This would, according to Rachel Brett, “prevent the competition for seats amongst States thus reducing the imbalance in terms of those with poor human rights records seeking membership in order to protect themselves, and would enable all States to participate fully rather than precluding some from doing so.” Such an approach would, however, represent a final abandonment of the original concept of the Commission as a ‘functional’/technical body.

In any event, I think that almost all NGOs would agree that the discussion on criteria for membership of the Commission, as difficult as it might be to resolve, is an essential one for the future credibility of the Commission.

The search for elusive criteria is a search that NGOs might also have to undertake in relation to their own activities in the Commission. The privileged level of access that NGOs enjoy in the Commission has proved to be too much of a temptation for some who favour ‘direct action’. This year, a well-known and well-respected NGO distinguished itself by showering delegates from the

gallery with leaflets protesting against Libya's election to chair the Commission, and last year we were treated to the spectacle of a male 'streaker'. Such incidents tend to add fuel to the fire of those governments who wish to curtail the presence and level of access of NGOs in the Commission.

'Disciplinary action' against 'naughty' NGOs is in the hands of the ECOSOC Committee on NGOs, which consists of 19 UN member States (including several not known for their friendliness towards NGOs). The Committee on NGOs has the power to suspend or withdraw consultative status (as well as of granting it, or not, in the first place). However, there is nothing like a set of standards for NGO behaviour against which the relative seriousness of a particular 'offence' can be judged. (Nor, for that matter, is there an adequate set of criteria for the initial granting or rejection of consultative status.) Therefore, the process of disciplinary action (as well as of the original consideration of applications for consultative status) is highly subject to the vagaries of political influence and manipulation.

I believe that it will be necessary for NGOs, sooner rather than later, to grasp the nettle of proposing standards of NGO behaviour, in the form of a code of conduct (and to suggest possible criteria for granting consultative status in the first place). The alternative is that those standards (and criteria) might end up being formulated and imposed by external action and without effective input from the NGO community.

In this context, let me express my concern about the currently ongoing review of UN-civil society relations mandated by the Secretary-General. It seems to me that, both because of the prevailing political animus against NGOs, and because of the particularly high level of access that NGOs enjoy in the Commission compared to most other parts of the UN system, there is a high risk that this review could result in the closer regulation of the 'anomalous'

privileges of NGOs in the Commission. I think that it is therefore incumbent upon us, and urgently so, to contribute constructive proposals to this discussion, rather than to ignore it and hope it will go away – and generally to respond to the accusations of unaccountability and non-transparency with which NGOs are more and more frequently attacked.

A final point I would like to make relates to the one sub-commission of the Commission on Human Rights - the Sub-Commission on the Promotion and Protection of Human Rights. This body of independent experts has been the original parent of many of the standard-setting instruments that now make up the canon of international human rights law. It has also been much more forthright, in some instances, than the Commission itself in addressing serious country situations. The fact that the Sub-Commission was stripped of the power to pass country resolutions some years ago no doubt has something to do with this history of forthrightness. Nonetheless, the Sub-Commission continues to try to expand the reach of human rights protection. One recent example of its initiative and willingness to court controversy is the formulation of the draft norms on the responsibilities of TNCs and other business enterprises with regard to human rights. However, partly through governmental and civil society indifference and partly as a result of deliberate efforts to undermine it, the Sub-Commission is facing a real threat to its future existence. I hope that all NGOs interested in the health of the UN human rights system will respond with renewed interest in and support for the trail-blazing work of the Sub-Commission.

Remarks on Recent Developments in the Field of Economic, Social and Cultural Rights

In trying to put forward some reflections on recent developments during and after the 59th Commission on Human Rights (CHR) of this year, let me start with some positive moments: The interactive discussion between the Special Rapporteurs on Economic, Social and Cultural Rights and the member states of the CHR was definitely a highlight of the last Commission. Another plus was achieved, by Special Rapporteurs to Education, Food and Housing, also a Special Rapporteur on the Right to Health, and seeing Paul Hunt introducing his programme and his willingness to co-operate with non-governmental organisations (NGOs). Also the achievement of a Social Forum at the Sub-Commission is a step forward that needs to be protected. Last not least, the CHR is opening up a whole new field beginning the discussion about cultural rights. We are very much at the beginning with this group of rights, but I am sure that it is a field worthwhile investigating in all its aspects.

Optional Protocol to Economic, Social and Cultural Rights

It was encouraging to see – and a considerable achievement – how more than 100 NGOs (including Amnesty International and the International Commission of Jurists) organised themselves to promote the optional protocol, bringing a draft resolution to the table, the lobby work being well prepared as well as being extremely well coordinated during the Commission. In the end, however, there was a great feeling of disillusionment. The NGO coalition had three draft versions: one progressive, one that was more modest,

and then a final very much reduced one. Not even this final reduced version could make it. As well as this, the weak report from the independent expert, Mr. Hatem Kotrane, did not exactly bring the issue forward. The result of the discussion of the states was crushing: there will be a working group for one year that will discuss the relevant options. And if drafting an optional protocol is an option, the mandate of a working group could be discussed. Which means that, in a way, we are right back at the beginning. After all those years and the general comment of the Committee on Economic, Social and Cultural Rights on these rights, we thought that it was generally understood by now that there would be an optional protocol and the only question would be how to achieve it. Of course it is a success in a way that the NGOs managed to keep such an issue – definitely not the favourite of many governments – on the table for such a long time. On the other hand, progress is now more than due. For the next session of the CHR the questions are: how can NGOs approach governments before the CHR to prepare the issue properly? And regarding the EU, how can the British and the Swedish governments be moved to acceptance or at least tolerance of an optional protocol? And how can we hinder other European governments from hiding easily behind those two that have been more openly opposed? Beside that, we should not underestimate the reluctance and doubts of developing countries in this matter. They are not the natural allies that one imagines them to be. Many are afraid that such a protocol would again force them into a very difficult situation as they could be asked to guarantee services and achievements they simply cannot guarantee, given the economic pressures they face. So NGOs urgently need to work with those countries and promote support for the protocol. We should ask ourselves which Asian country could be won over first, and how to reach countries that hold a key position in the African group.

Norms on Responsibilities of Transnational Corporations with regard to Human Rights

The most important innovation comes from the Sub-Commission – a body that has been deprived of a lot of its possibilities and one that requires more attention and promotion by NGOs. The Sub-Commission agreed on a code of conduct for transnational corporations and is recommending that the CHR adopt that code. The norms contain, for example, the right to equality of opportunity and the right to a safe and healthy working environment. They do not exempt governments from their responsibility for human rights. David Weissbrodt, the chairman of the Sub-Commission, says that to rely on the free will and voluntary respect of companies for such rules will not work. There are enough examples of ILO recommendations that could be adopted by free choice – or not. These have been permanently ignored. To achieve the implementation of the norms, regular reports of corporations are required, which would then be assessed by a body of international experts. Funds must be set up to guarantee the possibility of recompensation in case of violations. In the end, the codex needs to be accepted by the General Assembly to make it a binding instrument of international human rights law. However at this point, the code faces strong resistance, not only from the US but also from the EU. Therefore, the recommendation would be that the NGOs work with the norms as a point of reference in specific cases as well as in general discussions, and use the time to promote this code of conduct in a more general way in the public domain. Bringing it onto the table for adoption at the next session of the Commission seems premature at this stage. More preparation would be necessary to have the code passed. Bringing it in now would mean killing it, in other words: removing it from the table for a long time.

Small arms and human rights

One of my personal favourite recent achievements is the fact that Barbara Frey has been appointed as an Independent Expert of the Sub-Commission to elaborate more on the relation between small arms and human rights violations. This, of course, is also a hot issue, as it impinges on the profit interests of the National Rifle Association as well as, for example, those of Heckler and Koch in Germany. NGOs that have been working in the field of small arms for a long time have dealt with this matter with particular care. It would probably be wise at this point not to make too much of a public issue of small arms, but just to try to guarantee that the study can progress and be finalised properly.

There is a parallel process in the field of disarmament – mostly totally unrelated to the human rights' perspective. There are a number of highly specialised NGOs whose work helps to provide an understanding of some of the difficulties involved. The international community meets regularly (recently in New York, chaired by Japan), to negotiate the reduction of small arms. But there has been almost no progress in this process. The discussion got stuck somewhere with technical details on how to register such arms. The implementation of the existing, though not necessarily sufficient, plan of action is almost non-existent, as it encounters serious obstacles. Helpful diplomats are happy when they are able to achieve a relatively friendly atmosphere for a constructive exchange of views. China, the Russian Federation and the US are not all eager to discuss disarmament of small weapons. NGOs are now trying to focus on the humanitarian dimension of the problem.

The question arises, of course, as to what do we do in a few years time. At some point we must come into the open and lay the results and questions openly on the table. But in the meantime, we could use our time to think quietly as to how we can best organise

that moment and face up to hostile and powerful commercial lobbyists. It would be a question of having that bit of fortune at the right time – as we did regarding instruments used for torture – to turn a relevant text into a resolution. This will, however, be more difficult in the field of small arms.

Food, Housing, Education, Health, Abolition of poverty, Structural adjustment, Debt, and Development

In recent years, we have managed to push through Special Rapporteurs on the right to food, housing, education, health and an independent expert on extreme poverty as well as independent experts on the right to development and on structural adjustments/debt. All in all, that marks definite progress in the field of economic, social and cultural rights. However, the required implementation is not yet in sight – though of course, I am aware, that implementation is *the* big issue in the whole field of human rights. Special Rapporteurs personify a very important human rights instrument to collect a large amount of relevant information, raise general public awareness of those issues and work constructively on governments and with UN agencies and NGOs. If Jean Ziegler could convince governments to follow the recently achieved guidelines on food, we would be one huge step further. And although the NGO community in Geneva was unhappy that Paul Hunt was not present at the Sub-Commission, his research on violence and health offers real hope that some important clues can be found. Brazil's initiative for better and cheaper medication for third world countries opened up new dimensions in the fight against Aids/HIV and other diseases. The right to education should also earn our attention since – as Katarina Tomasevski rightly says – it contains and impinges on all human rights: civil and political as well as economic, social and cultural rights. Education is, together with the right to water, under strong pressure from profit-oriented lobby groups. Both areas are targeted as “new markets”

and a number of interested corporations put pressure on governments to get these areas out of government and community control quickly. The EU, especially, is pushing in GATS and WTO processes to get these fields opened up for unrestricted business. For human rights NGOs it is a matter of urgency for these developments to be monitored and analysed and to seek to prevent the emergence of structures that are very likely to endanger human rights. In both of these areas, education as well as water, new NGO coalitions could be built up, integrating new and old partners.

Search for new Special Rapporteurs

The CHR will have to replace *nine* Special Rapporteurs and experts this coming year, including those on mercenaries, extreme poverty, toxic waste, the right to development and education. It would be very important for NGOs to look around and discuss with their constituencies and among them who would make suitable candidates! For the EU, good proposals should come on to the table on time so that they could be incorporated already during COHOM rounds in preparation for the CHR.

Right to water

It would be a big step forward, in my opinion, if a Special Rapporteur on the right to water at the level of the CHR could be achieved. We have an expert now on the Sub-Commission. But this is not enough, and right now also not very promising, as the first report of El Hadji Guisse, in which he summed up by saying that his study of African examples of privatisation of water revealed the extremely negative impact of privatisation, has not been particularly strong. Most resistance against a right to water comes from the EU, as the French and German water corporations already now never let an opportunity pass to lobby and put pressure on their governments. On the other hand, the governments

are always prepared to accept and welcome the companies' line of argumentation.

But water, which is becoming an increasingly scarce resource, is a central question for the survival of humanity. For some time now, large armies have also been involved in war "games" on the issue of water! Water already plays a prominent role in a number of conflicts and wars, and it is becoming more and more important strategically. Many experts refer to it as the "oil of the future".

If we are able to achieve good solutions for the problem of water, we will then also have made considerable progress in seeking to prevent armed conflicts. Strengthening partnerships with Greenpeace and other groups that concentrate more on environmental issues could help human rights NGOs to gain a better understanding of the issue and to build a stronger coalition at the same time. Maybe there is a chance to put together a broad coalition for fair and pioneer water management?

Change through trade?

The work of all Special Rapporteurs clearly reveals a connection to the attitude of governments in other rounds of negotiation that proceed under the heading of "trade": GATS, TRIPS, WTO in general. The EU is a major player in these negotiations. From a human rights perspective, I would recommend linking up with those NGOs that closely follow the processes around the WTO. Often, the selfsame diplomats are negotiating human rights one day, and then, a few days later, trade issues; and if the matters are linked they rarely come out in favour of human rights. Seen from the perspective of limited resources, it is, of course, vital to use existing and effective specialisation and avoid doubling the work.

It might also be worthwhile – besides working with the CHR – to pay some attention to other UN bodies and agencies, e.g. UNCTAD. The forthcoming UNCTAD conference in Sao Paulo is trying, for example, to introduce human rights aspects through round tables on the issues of “gender and trade” and “trade and poverty”. All of you who are following those issues closely know that Jean Ziegler and Miloon Kothari work closely with the FAO and Habitat, and that Hunt co-operates with the WHO. There is a certain amount of regular and successful co-operation. Nevertheless, to check where human rights are dealt with explicitly or implicitly in the huge UN system would probably provide sufficient raw material for a lengthy research project.

Beyond all that, I recommend that the connections between human rights and the Millennium Goals (MDGs) be used! The MDGs can be used very effectively for public relations work and as benchmarks for implementation, to see where we are and whether there is any kind of movement at all. The state parties have agreed on these goals, and it’s crucial that NGOs monitor if and how governments are meeting their duty to give reports on progress!

One major problem case is the right to development. Seen in comparison, we do not see too much progress or engagement from the industrialised states. However, overlapping in the field of education, food, health etc. could be used, as the expert, Sengupta, has recommended. We can only emphasise again and again that favourable international framework conditions is also required to support developing countries. Otherwise no government can guarantee economic, social and cultural rights (ESC rights), regardless of how motivated she might be individually. To a certain extent, the Brazilian initiative has demonstrated how that can be done! A convention on the right to development might be a useful instrument to keep up discussion of this neglected issue. A stronger commitment of EU countries is necessary, if current problems are ever to be solved.

Use Treaty Bodies!

The Special Rapporteurs, Ziegler and Kothari, also give good examples of how to work constructively with the Committee on Economic, Social and Cultural Rights. Both were present at the meeting in May and their issues were given prominence on the agenda. I would recommend that this possibility be used more and more strongly now. That is the chance for NGOs to work on the implementation of human rights. Human rights activists cannot only be brought to the Commission itself, they can also be invited to the sessions of the Committee – which means that the work is much more focused – to the specific session when relevant countries are monitored. It is vital to give input to the Committee and to publish shadow reports, if at all possible, to monitor what the Committee and specific governments negotiate. And maybe, more than now, we should organise informal meetings and public events that deal with the achievements or shortcomings of governments in the field of economic, social and cultural rights.

Besides the General Comments of the Committee, we should provide ample and useful arguments e.g. on the right to water, the right to education, to food, health or the action plan for primary education. I am not sure if it is obvious to everybody that the Committee once gave recommendations and commented on the impact of economic sanctions and economic, social and cultural rights. My general recommendation is to make widespread use of the publications and recommendations of this expert group. This is true also for the optional protocol. It seems the German government accepts the expertise of the Committee and uses it for orientation. Thus it could be very helpful not just to use the very good comment with respect to the question of the optional protocol, but also to use the chance for brainstorming with respect to arguments and strategy with some members of the Committee.

Possibilities for action

After the last two, very disappointing sessions of the CHR, one could rightly ask: What can we do at all with, this structure? As we work under the shadow of the fight against terrorism and a worldwide stagnating economy (except maybe China), is it not totally unimaginable, to hope for progress in the field of ESC rights?

I think we should not neglect the possibilities – and maybe obligations – we still have. There are a lot of small things that need to be done. It is vital to provide the Rapporteurs with material, not only those Rapporteurs working on ESC rights, but also the few remaining on country situations. Information and material on ESC rights should also be fed into the 1503 procedure. The country profiles the secretariat is currently working on will be a very helpful instrument in this regard. Events with Special Rapporteurs and/or around their reports /findings /urgent actions help to instigate public debate.

The question of financial resources and infrastructure for Rapporteurs should also be brought to the governments and the public, as we all know that the Office of the High Commissioner obviously does not even have minimal resources. The staff working for the Rapporteurs is usually: a) totally overloaded with work and b) has also constantly to look for “real” work, as they usually only have limited contracts for short-term periods.

Mary Robinson recommended the strengthening of institutions in the field, and the necessity of this can easily be confirmed by experiences from the field. NGOs should also pay some attention to that, as without good institutions, it is certain that governments, especially those in developing countries, simply do not have sufficient means to control and guarantee human rights. A potential

means of strengthening could be through national human rights commissions, which are becoming more and more established in an increasing number of countries. This is a positive development. However, we know that the quality of the work of these commissions varies greatly. Hence, NGOs would have to examine to what extent close constructive co-operation is possible, and to what extent critical monitoring would be necessary.

Concluding questions

Some people recommend to go to the Third Committee of the General Assembly in order to get human rights issues accepted. I think it is worthwhile considering this possibility. But firstly, it is necessary to be aware, that this does not guarantee success, and, secondly, that it takes on a completely different significance, for governments, and mainly for the public, if it comes from the GA or from the CHR. Also, the question arises, if this would not actually devalue the CHR, especially as a certain crisis cannot be overlooked.

We started to collect instances of human rights violations in the context of ESC rights, and this is to be regarded as a positive and necessary development that needs to be continued. But could we also see, how we could put together a collection of best practices? Would that not be an ideal opportunity to convince governments that it makes sense to protect ESC rights?

Of course, it is necessary for you to continue monitoring Germany's practice in human rights in its general foreign policy. We have striking examples, especially from the sector of trade and finances, from multilateral and bilateral relations, that Germany has repeatedly been practising a contradictory and damaging policy towards third world countries. This needs to be changed, otherwise it would not be surprising, if Germany's human rights policy was

not taken seriously, as it is contradicted by positions taken in other fields. Last, but not least, the forthcoming international discussion on human security provides another opportunity to promote ESC rights!

Summary Report of Discussions

Humans Rights on the ‚Defensive‘?

The UN Commission on Human Rights (CHR) is currently moving from standard setting, which has been the main success of the Commission in the past, towards new efforts focusing on implementation, both of human rights norms and on a follow up to the recommendations of the Special Procedures. In 2003 alone there have been 35 such Special Procedures to enhance the national protection system. So when discussing the CHR and raising the question of whether Human Rights are on the defensive, the double nature of the Commission must be taken into consideration: being a body for complaints and at the same time a body for integration of all countries into the human rights system. By its mere definition, human rights are inherently uncomfortable for governments and especially endangered when situations become difficult for these governments. Even in a stable country like Germany there have been events of racism and a discussion in 2003 on the possible admissibility of torture under extreme circumstances. Additionally, the question of whether Human Rights are on the defensive is linked to the particular problems that have surfaced since September 11, especially the new focus on terrorism and the risk for human rights in combating these new concerns because the fight against international terrorism tends to minimize or even ignore international human rights law.

At the level of the CHR, human rights are often found to be on the defensive because the impression exists that the CHR does not take into account real crises; political manipulation by USA and

Russia which undermines the Special Procedures is another issue. Doubts about the universality of human rights are increasingly expressed by certain countries of the South, predominantly from Asia, and these voices are important when regional country groups turn into voting groups. These countries refer to a specific regional or cultural background to reject the legal obligation to adhere to universal human rights; thereby they roll back the Vienna achievements of 1993. The Northern countries – Western and other countries group (WEOG) do not make life easier for these countries because some of the procedures add up over time; for example, the introduction of individual complaints procedures or the introduction of a visiting mechanism contained in the optional protocol on torture. Obviously, Non-Governmental Organisations (NGOs) do not need to share this view of Western governments – they instead believe that it is indeed possible to strengthen the procedures like scrutinizing, monitoring, and follow up – but they also accept that these have to take into consideration real world arguments. With respect to the Working Group on norms on responsibility of transnational corporations and other business enterprises, there is a very strong opposition against these norms in both the North and South. The German government stated clearly that this will not be accepted by the CHR at this moment, which is also the position of the European Union (EU).

“Politicization” and country resolutions

Most controversial is the term ‘politicization’, which appears to mean something self-evident because it is politics that governments are dealing with. Nevertheless, the term politicization actually refers to the fact that the Commission has become a political forum for the discussion of sensitive issues, such as the internal situation of countries. Currently, those country resolutions which are not supported by consensus contribute to the difficult atmosphere apparent at the Commission. For several years a strong and clear

tendency to move away from country resolutions has been growing, although there is not yet a formal request to abolish “item 9” (see contributions by Walter Lewalter and Peter Prove). Amnesty International presented a proposal to carefully reorganize the country items in order to regroup them with the goal to bring closer together the discussion on item 3, 8, 9 and 19.

Regional blocs, like the African Group, are more and more adamant to prevent country resolutions directed towards one of their neighbouring states. Even strong human rights violators escape from resolutions year after year. On the other side, Western states are also accused of using double standards and said to be biased. It is worth mentioning that according to many observers Latin America is a continent moving towards greater respect for human rights, and Latin American votes often make the difference. This regional group also discusses a project to establish something like a human rights institute, which would rate the human rights performance of countries instead of tabling resolutions. This would require offering cooperation and technical assistance which the Office of the High Commissioner on Human Rights (OHCHR) is not able to implement because of financial restraints. Its total budget of about 66 million US Dollars per year is, compared with agencies like UNICEF that get about 800 million US Dollars per year, shamefully small.

At the same time, country resolutions are still considered, predominantly by NGOs and civil society, to be a core function of the Commission because of its protection role. Country resolutions permit it to address severe human rights violations in a comprehensive way and to step up multiple actions directed at violators. According to one suggestion NGOs should set among themselves some criteria for when to propose country resolutions to government delegations. One criterion could be to strengthen the existing methods to address countries with a high level of human

rights violations. Unfortunately, most NGOs no longer believe in the confidential „1503-procedure“. Therefore well prepared material is less and less available with regard to country situations under this confidential procedure. However, about 80% of the resolutions did stem from the 1503 procedure: Sudan, Equatorial Guinea, Iran, and Iraq, to name a few. In recent years countries like Sierra Leone, Liberia and Chad have been the subject of 1503 and it has began to turn into a more public procedure. NGOs must consider whether they want to use this channel which has proved to often result in a public resolution at the very end. There is nothing that upsets a government more than to receive the same complaints through different channels.

Although the Sub-Commission on the Promotion and Protection of Human Rights, a body of independent experts, was stripped of its power to pass country resolutions some years ago, it continues to try to expand its human rights protection work. But the Sub-Commission needs renewed interest in and support for its efforts.

Another alternative to changes in the actual procedure might be to improve the approach taken to country resolutions. If a concerned government does not show any willingness to cooperate, that might provide the basis for a country resolution. This means – looking at the level of states and mechanisms to mediate conflicts – to establish confidence building measures which include constructive engagement, open dialogues, use of bilateral channels, early interaction and transparency. If after all these methods a country objects to information compiled from treaty bodies, Special Procedures reports and CHR resolutions, country resolutions will then be the appropriate measure.

With regard to follow up, the High Commissioner for Human Rights is currently focusing on 16 countries in order to prepare country profiles working with Special Rapporteurs and treaty

bodies, to identify a major list of issues that could be the tools for the UN country teams to work at the national level. The reorganisation of already existing mechanisms is one of the major possibilities to carry out a follow up.

Membership of the Commission

A focus during the session in 2003 was the previously taboo subject of criteria for membership of the Commission and much was said about Libya as President. First, what was not publicly said at the Commission, was: that the EU obviously feels comfortable cooperating with the Libyan government in terms of European border control. Secondly, many 'progressive' governments like Russia, China, Saudi Arabia or Syria have been members of the Commission for years. Indeed, there is a growing discrepancy between the high expectation towards the Commission and its poor practice. So, the discussion on criteria for membership of the Commission – at least for the presidency of CHR – will be essential for its future credibility. The then High Commissioner Sergio Vieira de Mello publicly raised this question in his opening statement to the session in 2003.

At present, the only formal criterion for membership of the 53-member Commission is to be a UN member state. NGOs and others have made a number of additional suggestions. Many agree that all member states eligible for Presidency should be party to the main international human rights treaties, accepting the complaints mechanisms, and issuing standing invitations for country visits by all the Commission's Special Procedures. But even such criteria would be formal and might not demonstrate real cooperation and compliance with the mechanisms; like submitting reports to treaty bodies in time or implementing conclusions. Colombia has become notorious as such a state which accepts all requests for visits, being a party to human rights treaties,

but has shown little willingness to properly address the human rights crisis in the country (see contribution by Peter Prove).

Reforms at institutional level

Perhaps the current political mood in relation to human rights tends more towards weakening rather than strengthening the human rights mechanisms. Thus many observers in the international human rights community deliberately avoided to suggest further major reforms at this time until the wheel of political and public opinion has turned once more in favour of human rights (see contribution by Peter Prove). In the meantime, the focus is on existing human rights structures and mechanisms that could be optimized.

In this regard, not all developments at the CHR went from bad to worse. Since 1998 the CHR itself has started some reforms with regard to its organization of work (see contributions by Walter Lewalter and Peter Prove). The reform of 1998 changed the agenda with a more specific agenda which now addresses women, indigenous peoples and other vulnerable groups. Later, the rotation of Special Procedures every 6 years was implemented. Another reform resulted in the creation of the “Expanded Bureau” which is made up of the chair, three vice-chairs, the rapporteur and the five coordinators of the regional groups. The Expanded Bureau digests most of the difficult procedural issues before they are brought to the plenary. During the intersessional period, the Expanded Bureau is the key to the preparation of the working groups.

In 2002, the Commission again decided to initiate a thorough review of the enhancement of its working methods. This process resulted in document E/CN 4/2003/118 which was adopted by the Commission. The Commission in 2003 introduced changes like the High Level Segment and the Interactive Dialogue of Special Rapporteurs. At the OHCHR, a new branch has been established

since the 1st of May 2003 in order to strengthen the Special Procedures. The OHCHR also has developed guidelines to be given to the Special Rapporteurs which they are to follow when on a mission, defining cooperation they should maintain with the staff of the OHCHR and with the media as well, and how they should focus on the follow up to their concluding observations. For the first time in UN history, a compilation of the executive summaries of Special Procedures' reports was available on the OHCHR website.

Additionally, the 59th session of the CHR adopted five new country resolutions. In the thematical area, for the first time the topic of terrorism and the impact of counter terrorism were addressed in the General Assembly resolution sponsored by Mexico (see contribution by Silvi Sterr). According to that resolution, human rights contribute to security and stability and as such these are not only a military issue. NGOs need to address this based on concrete country situations showing that impunity has undermined stability.

The 60th session in 2004 will again fine-tune some working methods of the Commission. One discussion will focus on time management. Over 3.500 participants are expected and time pressures will therefore increase. The right of reply of member states has been a notorious time restriction. Statistics from the 59th session reveal that rights of reply took 7 hours 20 minutes; that means about one working day. Thus the right of reply might be better exercised at the end of the item, not the end of each meeting. Also, format, length and periodicity of resolutions will probably be discussed to focus on what is really innovative, and on what has been added during the session of the Commission. Finally, the participation of national human rights institutions will be considered in a special segment, hopefully at the beginning of the session. One of the options is to invite regional human rights organisations and commission to address the Commission during the High Level Segment.

Coherency of human rights policy – the European Union

Frequently, German government officials present the EU as merely a minor actor because of the number of votes in the CHR (WEOG holds 10 out of 53 votes at the Commission). It was necessary to remind these officials that before and after the session of CHR there are still 46 weeks left for EU foreign policy to address, via its bilateral relations, its dissatisfaction with countries that have not taken responsibility for human rights concerns, such as blocking the initiatives forwarded by the EU, non-cooperation in technical assistance, or by refusing to follow the recommendations of the Commission and Chairman statements. The question of consistency between various EU policies is an old one.

Especially revealing was the Zimbabwe initiative. It took the EU an incredible amount of time to come to the conclusion that they should present this resolution. But no high level approach to any key actors in the African group was undertaken until it was too late. Subsequently, the resolution proposed by the EU could not win the majority of votes. The question arises, what to do? If certain African countries in this case have not performed well in the CHR, should the EU deny them development support, a long-term activity which one cannot switch on and off? Although, there is no simple answer, it was mentioned that the bilateral dialogues and multilateral negotiations offer ample opportunities to address human rights issues much more prominently and to call countries to responsibility.

When discussing coherency, the internal inconsistency of the EU also attracts attention. The new optional protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment found harsh opposition among EU members. The idea of an optional protocol to the UN Covenant on ESC Rights faces a similar division of opinion, as does the project of a convention on the right on development. The EU is reluctant

to come up with its own alternative resolutions and leaves it to developing countries to be actively involved in these discussions.

On the other hand, it was acknowledged that many initiatives in Geneva were brought forward by the EU, particularly country resolutions with special emphasis on civil and political rights. In addition, the EU is more and more engaged with the UN system and its backing of international law. One of the latest developments was a joint declaration of EU and UN in terms of joint crisis management. So it is still crucial to address the EU in the decision building process on human rights.

Role of NGOs

As Peter Prove pointed out, NGOs have a more extended level of access to and participation in the proceedings of the CHR than in any other part of the UN system. One of the most noble tasks of NGOs is to accuse, and they do. According to the statistics of the 59th session of the Commission during 2003, 31% of the time allocated for the general debate was used for NGO statements. This compares with 31,5% of time used for statements by members of the Commission and 28% of the time on the interactive dialogue with Special Procedures. Only 10% was used by observer states and other observers.

Professionalization of NGO work

However, the discussion revealed that NGOs can be more influential if they would concentrate on well investigated cases and if they would bring the right people to testify. It was also repeatedly underlined that NGOs need a more organized presence in the CHR. This was exemplified during the preparation process for the conference on women's rights in Geneva, where NGOs met every day and discussed what would be discussed in the inter-governmental body next day. In the evening they came up with

some suggestions and handed the paper to the chair. When the chair managed to incorporate some of these points into the governments' decision, NGOs became operative. Although there was agreement among the participants that NGOs' communication with governments like Germany improved a lot and governments needed to get feed back from NGOs, the role of the NGOs themselves was also challenged in order to empower them with some input into the issues of the Commission.

One of the options addressed the question of professionalizing, although this sword cuts both ways. The rules of the Commission require a certain language and knowledge which are not common to every NGO. Some of them need a week in Geneva to learn the UN jargon. But is that helpful in any way? It was questioned whether every grass roots NGO needs to spend the time for this kind of investment or, even worse, would this merely cause them to lose their authentic voice. How to create a situation where NGOs raise their voice in their unique style and at the same time address their concerns in a proper way? One possibility is the training programme of the International Service for Human Rights and the network of FIDH (Fédération Internationale des Droits de l'Hommes) which provide support for expertise on the technicalities and a better understanding of the work of treaty bodies, the importance of concluding observations etc.

In addition to the discussion of time management (see contributions by Walter Lewalter and Peter Prove), the participants dealt with the question of whether it will be necessary for NGOs to grasp the nettle of proposing standards of NGO behaviour in the form of a code of conduct, in order to avoid where those standards might end up being formulated and imposed by external action (see contribution by Peter Prove). In this context, concern was expressed about the current review of UN-civil society relations mandated by the UN Secretary-General. Because of the prevailing political

animus against NGOs, and because of the particularly high level of access that NGOs enjoy in the Commission, there is a high risk that this review could result in a more rigid regulation of the ‘anomalous’ privileges of NGOs in the Commission. It therefore seems to be urgent for NGOs to contribute constructive proposals to this discussion rather than to simply ignore it.

Joint statements and networking

There was a general agreement that the impact of NGOs to the Commission could be improved via joint statements. But at the same time it was obvious that NGOs – like governments and states – do not have a monolithic constituency and, therefore, there are practical constraints to this strategy which must be recognised. First, there is no common NGO position. It does happen that common positions might be found among some NGOs, but this is not automatic. Second, a large number of NGOs asked for consultative status specifically for direct access to the UN system. It is just not realistic to think that these NGOs would then minimize their profile in joint statements. This has to be remembered when striving for better coordination and enhancing those coalitions. Third, there is a need to vastly improve the presence of local NGOs to further engage human rights defenders of Southern countries in the advocacy work on Southern issues. That requires more preparatory work and coordination.

The key challenge seems to involve networking. At the national level, Forum Human Rights was encouraged as a highly developed system of networking at the German level. At the level of Geneva, CONGO (Coordination of NGO) was mentioned. CONGO is an entity which has a long and distinguished history with the UN system. Now, however, it exists more or less as only a rump organization and the practical problem for CONGO now is that it simply does not know which of the NGOs will attend the session of the

Commission. Additionally, some NGOs from the South have recently rejected CONGO as merely part of the Northern system. But CONGO still enjoys high appreciation at the UN.

Another point regarding networking related to the European level. In Brussels a few NGOs who work on the CHR will organize a meeting at the EU parliament, as an informal hearing on the CHR. A number of NGOs will be invited to pursue country concerns and to address these issues in the presence of delegates of the European Council and EU parliamentarians.

Beyond that, networking should be extended to broader policies on democratization and conflict prevention, linked to groups that work on trade issues, financial sectors or in the disarmament field. Cooperation with national human rights institutions should be of importance, as these are seen as an emerging actor in the field of international human rights work and also at the Commission. In Asia and in Africa there some very interesting commissions are emerging.

Conclusion and expectations

All participants underlined that on a number of key issues, Germany and the European Union have exercised an essential leading role in promoting human rights issues. Now, however, it is expected that the EU or at least the German government would play a more pro-active role within the Western Group in order to extend human rights standards that may bring it into conflict with other members of this group. This means, that NGOs – better coordinated and professionalized – will remain a major driving force on issues on the CHR agenda; particularly with regard to country resolutions.

Human rights can never be taken for granted and will be a never ending job.

Member Organizations

Aktion Courage –
SOS-Rassismus
Postfach 2644
53016 Bonn
www.aktioncourage.org

Aktion der Christen für die
Abschaffung der Folter (ACAT)
Postfach 11 14
59331 Lüdinghausen
www.acat-deutschland.de

Aktionsgemeinschaft Dienst
für den Frieden (AGDF)
Blücherstr. 14
53113 Bonn
www.friedensdienst.de

amnesty international
PF 58 05 64
10414 Berlin
www.amnesty.de

Bischöfliches Hilfswerk
MISEREOR
Mozartstr. 9
52064 Aachen
www.misereor.de

BAFF (Bundesweite AG der
Psychozialen Zentren für
Flüchtlinge und Folteropfer)
c/o XENION
Roscherstr. 2 a
10629 Berlin

Bundesfachverband Unbegleitete
Minderjährige Flüchtlinge e.V.
PF 81 02 44
90247 Nürnberg
www.bundesfachverband-umf.de

Deutsche Gesellschaft für die
Vereinten Nationen (DGVN)
Poppelsdorfer Allee 55
53115 Bonn
www.dgvn.de

Deutsche Kommission
Justitia et Pax
Kaiser-Friedrich Str. 9
53113 Bonn
www.justitia-et-pax.de

Deutsche UNESCO-Kommission
Colmantstr. 15
53115 Bonn
www.unesco.de

Deutsche Welthungerhilfe
Adenauerallee 134
53113 Bonn
www.welthungerhilfe.de

Deutscher Frauenrat
Axel-Springer Str. 54a
10117 Berlin
www.frauenrat.de

Deutscher Gewerkschaftsbund
(DGB)
Postfach 110372
10833 Berlin
www.dgb.de

Diakonisches Werk der EKD
(Evangelische Kirche
Deutschland)
Postfach 101142
70010 Stuttgart
www.brot-fuer-die-welt.de

FIAN
Overwegstr. 31
44625 Herne
www.fian.de

Friedrich-Ebert-Stiftung
Godesberger Allee 149
53170 Bonn
www.fes.de

Friedrich-Naumann-Stiftung
Karl-Marx-Str. 2
14482 Potsdam-Babelsberg
www.fnst.de

Gemeinschaft für
Menschenrechte im
Freistaat Sachsen
Postfach 120609
01007 Dresden
www.gms-dresden.de

Gesellschaft für bedrohte
Völker
Postfach 2024
Düstere Str. 20a
37010 Göttingen
www.gfbv.de

Gesellschaft zum Schutz
von Bürgerrecht und
Menschenwürde
Weitlingstr. 89
10317 Berlin
www.gbmev.de

Gustav-Heinemann-Initiative
Franz-Groedel-Str. 5
61231 Bad Nauheim
www.gustav-heinemann-initiative.de

Heinrich-Böll-Stiftung
Rosenthaler Str. 40/41
10178 Berlin
www.boell.de

Humanistische Union
Haus der Demokratie und
Menschenrechte
Greifswalder Str. 4
10405 Berlin
www.humanistische-union.de

Internationale Gesellschaft für
Menschenrechte (IGFM)
Borsigallee 16
60388 Frankfurt
www.igfm.de

Internationale Liga für
Menschenrechte
Greifswalder Str. 4
10405 Berlin
www.ilmr.org

Internationales Katholisches
Missionswerk missio e.V.
Goethestr. 43
52064 Aachen
www.missio-aachen.de

Kindernothilfe
Düsseldorfer Landstraße 180
47249 Duisburg
www.kindernothilfe.de

Kommission für Menschenrechte
Rosshaldeweg 4
79110 Freiburg

Lesben- und Schwulenverband
in Deutschland
Wilmanndamm 8
10827 Berlin
www.lsvd.de

Medica Mondiale
Hülchrather Str. 4
50670 Köln
www.medicamondiale.org

Missio München
Internationales Katholisches
Missionswerk
Pettenkoferstr. 26
80336 München
www.muenchen.missio.de

Missionszentrale der
Franziskaner
Postfach 200953
Albertus-Magnus-Str. 39
53177 Bonn
www.mzf.org

Nationaler Geistiger Rat der
Baha'i e.V.
Am Köllnischen Park 1
10179 Berlin
www.bahai.de

Nürnberger
Menschenrechtszentrum
Adlerstr. 40
90403 Nürnberg
www.menschenrechte.org

Ökumenische Bundes-
arbeitsgemeinschaft
„Asyl in der Kirche“ e.V.
Berliner Freiheit 16
53111 Bonn
www.kirchenasyl.de

Pax Christi
PF 1345
61103 Bad Vilbel
www.paxchristi.de

Pro Asyl
Postfach 160624
60069 Frankfurt
www.proasyl.de

Reporter ohne Grenzen
Skalitzer Str. 101
10997 Berlin
www.reporter-ohne-grenzen.de

TERRE DES FEMMES
PF 2565
72015 Tübingen
www.terre-des-femmes.de

terre des hommes
Deutschland e.V.
Postfach 4126
49031 Osnabrück
www.tdh.de

Vereinte Evangelische
Mission / VEM
Rudolfstr. 137
42285 Wuppertal
www.vemission.org

WUS – World University Service
Deutsches Komitee e.V.
Goebenstraße 35
65195 Wiesbaden
www.wusgermany.de

Guests:
EKD (Evangelische Kirche
Deutschlands)
Herrenhäuserstr. 12
30419 Hannover
www.ekd.de

FORUM MENSCHENRECHTE



FORUM MENSCHENRECHTE (FMR; FORUM HUMAN RIGHTS) is a network of more than 40 German non-governmental organizations (NGOs) who are committed to better and more comprehensive protection of human rights – worldwide, in specific regions of the world, within countries and also within the Federal Republic of Germany. The Forum was established in 1994 following the International Human Rights Conference in Vienna.

Our objectives:

- to monitor critically the human rights policy of the German Government and the German Bundestag (parliament) at both the national and international level;
- to implement joint projects with the aim of improving the protection of human rights worldwide;
- to create an awareness about human rights issues amongst the German public at large, to draw attention, when required, to human rights violations in Germany and to work for their resolution;
- to guarantee an exchange of all relevant informations on human rights issues between the member organizations
- to support local, regional and national NGOs in the international aspects of their work and to promote an international network of NGOs in general.

How we work:

Various working groups of the Forum are responsible for preparing joint statements and information material and for organizing campaigns, public meetings and forums of experts. The FORUM MENSCHENRECHTE is closely cooperating with NGOs at both the European and international level.

FMR-activities are coordinated by a panel of eight persons elected by the affiliates of the Forum, representing the entire spectrum of member organizations. Members of the coordination panel of the FMR are since January 2004:

Daniel Bogner, Deutsche Kommission Justitia et Pax

Günter Burkhardt, Pro Asyl

Ute Hausmann, FIAN

Barbara Lochbihler, Amnesty International

Jochen Motte, Vereinte Evangelische Mission

Ingeborg Rürup, Humanistische Union

Andreas Selmecki, Diakonisches Werk

Beate Wagner, Deutsche Gesellschaft für die Vereinten Nationen

The FMR-Secretariat has its seat in the “Haus der Demokratie und Menschenrechte” in Berlin. The Forum funds its activities through contributions from its affiliated organizations.



Deutsches Institut
für Menschenrechte

German Institute for Human Rights

The German Institute for Human Rights, Berlin, founded in 2001, is a national human rights institution (NHRI) according to UN criteria. It focuses on human rights issues in Germany.

Its intention is to contribute to the prevention of human rights violations and to the promotion and protection of human rights. Functions of the institute include information and documentation, applied research, policy advice und human rights education within Germany.

The Institute co-operates with international and national partners, especially with the European und UN human rights system. It sends delegates to meetings of, among others, the UN Commission on Human Rights and cooperates with other NHRIs, governmental and non-governmental institutions with the goal to improve the UN human rights system

Deutsches Institut für Menschenrechte
Zimmerstr. 26/27
10969 Berlin
Tel. +49 30 259 359 0
Fax. +49 30 259 359 59
info@institut-fuer-menschenrechte.de
www.institut-fuer-menschenrechte.de

