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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15  
MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"**

**Second session of the intersessional open-ended intergovernmental working group to  
develop the modalities of the universal periodic review mechanism established pursuant to  
Human Rights Council decision 1/103**

**SUMMARY OF THE DISCUSSION ON UNIVERSAL PERIODIC REVIEW PREPARED  
BY THE SECRETARIAT**

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## Introduction

1. By its resolution 60/251 of 15 March 2006, the General Assembly (GA) established the Human Rights Council (Council) and decided that it shall, inter alia, “undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation of the universal periodic review mechanism within one year after the holding of its first session” (paragraph 5(e)).
2. At its first session held from 19 to 30 June 2006, the Council, by its decision 1/103 of 30 June 2006, decided to establish an intersessional open-ended intergovernmental working group (Working Group) to develop the modalities of the universal periodic review mechanism (UPR). The Council decided that the Working Group shall have at its disposal ten days (or twenty 3-hour meetings) of fully serviced meetings and that it shall allow sufficient time and flexibility for the development of the UPR mechanism. The Council also decided that informal consultations could begin immediately through an open-ended consultative process in order to compile proposals and relevant information and experiences, and to facilitate open-ended discussions appropriately scheduled by the Chairperson of the Working Group with the involvement of all stakeholders.
3. Pursuant to this decision, the President of the Council appointed the Permanent Representative of Morocco and Vice-President of the Council, Mr. Mohammed Loulichki, as Facilitator of the Working Group. Also pursuant to this decision, four rounds of open-ended intersessional informal consultations on UPR were held on 21 July, 2 August, and on 7 and 8 September 2006. At the first part of its second session held from 18 September to 6 October 2006, following the Facilitator’s oral report on progress made since the convening of the above-mentioned informal consultations, the Council held a general debate on UPR.
4. The Working Group met in its first formal session from 20 to 23 November 2006. It held four meetings and concluded its work in a meeting convened by the President of the Council on 24 November 2006. The Working Group proceeded in accordance with a programme of work containing six elements for discussion previously announced by the Facilitator and on which all previous written and oral contributions had been submitted: i) The terms of reference/basis of review; ii) The objectives and guiding principles of review; iii) Periodicity and order of review; iv) The process and modalities of review; v) The outcome of the review; and vi) Follow-up to the review.
5. Further to the Working Group’s discussions (summary prepared by the Secretariat contained in document A/HRC/3/CRP.1), the Facilitator prepared preliminary conclusions highlighting areas of emerging agreement as well as areas requiring further discussion on the above-mentioned six elements (document A/HRC/3/3). The preliminary conclusions were considered by the Council at its third session on 4 December 2006.

## I. ORGANIZATION OF WORK

6. The Working Group met in its second session at the United Nations Office at Geneva from 12 to 15 February 2007. It held five meetings during the session and proceeded in accordance with the programme of work prepared by the Facilitator (see annex I).

7. The session was attended by representatives of States members of the Council, observer States of the Council, observers for non-member States of the United Nations and other observers, as well as observers for United Nations entities, specialized agencies and related organizations, intergovernmental organizations and other entities, national human rights institutions (NHRIs) and non-governmental organizations (NGOs).

8. The Working Group had before it a non-paper prepared by the Facilitator on the basis of his preliminary conclusions and on the discussions held to date. In his opening remarks, the Facilitator stated that the non-paper built upon the emerging elements of convergence previously identified in the above-mentioned preliminary conclusions, and outlined, wherever possible, compromise proposals as well as specific issues requiring further discussion and consideration. With reference to the three options on modalities annexed to the non-paper, the Facilitator noted that they were based on all such proposals previously put forward by all stakeholders and were intended to advance the discussions in the Working Group.

## II. GENERAL OBSERVATIONS ON THE NON-PAPER

9. At its 1st and 2nd meetings, on 12 February 2007, the Working Group heard statements and general observations on the non-paper by the representatives of: Algeria (on behalf of the Group of African States); Argentina; Australia; Bangladesh; Brazil; Canada; China; Colombia; Cuba (on behalf of the Non-Aligned Movement); Ecuador; Germany (on behalf of the European Union); Guatemala; India; Indonesia; Iran (Islamic Republic of); Japan; Libyan Arab Jamahiriya; Malaysia; Mexico; Pakistan (on behalf of the Organization of the Islamic Conference); Philippines; Republic of Korea; Romania; Russian Federation; Senegal; South Africa; Switzerland; Thailand; Tunisia; Turkey; United Kingdom of Great Britain and Northern Ireland; United States of America; Uruguay; as well as the representative of Amnesty International. The views expressed will be reflected in the relevant chapters of the present summary.

10. The Facilitator's non-paper was generally acknowledged as an accurate reflection of discussions to date and as a good basis for future discussions. Delegations stated that GA resolution 60/251, in particular paragraph 5(e), should serve as the point of reference for the establishment of the UPR mechanism and accordingly, reaffirmed the elements contained therein. In this regard, statements were made highlighting, inter alia, the importance of universality and equal treatment, the cooperative nature of the mechanism, as well as the need to avoid selectivity, double-standards and politicization. Specific comments were also made on the other elements contained in the non-paper.

11. Delegations affirmed the importance of UPR as one of the central new elements of the Council. Views were expressed that the UPR mechanism should be established by consensus. Views were also expressed that the Working Group should focus on developing the general framework for UPR, while the mechanism could be reviewed, and if necessary adjusted, based on the experience gained following the first review cycles.

### III. BASIS OF REVIEW

12. At its 2nd meeting, on 12 February 2007, the Working Group discussed the basis of review. Support was expressed for the elements of convergence listed in the non-paper, namely the United Nations Charter; the Universal Declaration of Human Rights; human rights instruments to which a State is party; and voluntary pledges and commitments made by States, including those undertaken when presenting candidatures for election to the Council. It was also stated, however, that the Working Group should not attempt to identify a prescriptive list of instruments or standards as GA resolution 60/251 provided the necessary basis and guidance in this regard.

13. With specific reference to paragraph 5(e) of that resolution, the view was expressed that UPR should not entail a second substantive assessment of compliance with treaty obligations as this would duplicate the work of the human rights treaty bodies. In this regard, it was proposed that UPR should instead examine the relationship between the State under review and the instruments to which it is party, including the status of ratification or accession; the status of reservations, if any, entered by the State to specific instruments, and any action undertaken to withdraw them; as well as any action undertaken to follow-up and implement the concluding observations of relevant treaty bodies. It was also expressed that obligations arising from treaties to which States are not party should be explicitly precluded from UPR since States were neither obligated to fulfil them nor had made commitments to do so.

14. Also with specific reference to paragraph 5(e), reservations were expressed on the inclusion of voluntary pledges and commitments as a basis of review as these may not apply equally to all States and thus, would not be consistent with the principles of universality of coverage and equal treatment of States. It was moreover stated that not all countries will stand for election to the Council in the future, thus pledges and commitments made in this regard would not apply to all. Mention was also made of the need to consider the context in which such pledges and commitments were made in order to identify clear criteria for evaluating their implementation and follow-up.

15. Different views were expressed on the Facilitator's compromise proposal to include obligations arising from international humanitarian law instruments (IHL) as a basis of review. It was stated that many aspects of IHL were relevant to human rights and reference was made to a 2003 advisory opinion of the International Court of Justice in this regard. It was therefore asserted that the Council should not be prevented from addressing IHL obligations, particularly in situations of armed conflict and foreign occupation. Others, referring specifically to paragraph 2 of GA resolution 60/251, argued that only human rights instruments were applicable to the work of the Council. It was also argued that the Council should not review States' compliance with IHL as it was not equipped to assess detailed and specific issues in this regard and as other bodies, namely the International Committee of the Red Cross, were mandated to do so. Suggestions were made to include a direct reference to the Geneva Conventions or to only include obligations arising from IHL instruments to which a State was party. Clarification was also requested on which IHL provisions were applicable and relevant to human rights.

16. At the 4th meeting, on 14 February, the Facilitator responded to the questions posed on the relevance and applicability of IHL to human rights. He noted that similarities between these two distinct branches of international law included the common objective to preserve life and human dignity in all circumstances and various core provisions, such as the right to life; the prohibition

against torture and other cruel or degrading treatment; and the prohibition against slavery. Differences highlighted included: the origins and development of these two branches of law, as well as the bodies established to monitor compliance; the scope of application (IHL applied to situations of armed conflict, while human rights law was applicable at all times); as well as the possibility of derogations (permitted under human rights law and not for IHL).

17. Reservations were expressed on the reference to commitments arising from United Nations conferences and summits (listed as an element requiring further consideration in the non-paper). It was noted that there were too many conferences and summits to include and that attempting to identify or achieve agreement on a list would be difficult. It was also noted that other United Nations bodies, such as the Economic and Social Council (ECOSOC), were already mandated to undertake follow-up to conferences and summits. Additionally, it was argued that the respective outcome documents or agreements did not achieve universal support in some cases and that such outcomes were mainly 'aspirational' in nature and thus could not constitute a basis of review.

18. It was pointed out that the reference to voluntary pledges and commitments was sufficiently broad to cover those emerging from United Nations conferences and summits. It was also proposed that specific references be made instead to the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993, the Durban Declaration and Programme of Action adopted at the World Conference against Racism in 2001, and/or the outcome to the World Summit in 2005.

19. Statements were made on the need to include in the non-paper other elements contained in the Facilitator's preliminary conclusions as additional bases of review, such as national constitutions, legislation and domestic laws; international customary law; and existing information, including the conclusions and recommendations of treaty bodies and special procedures. Other proposals were made to include references to national, religious and cultural specificities and level of development, as well as to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

#### **IV. THE PRINCIPLES AND OBJECTIVES OF REVIEW**

20. Also at its 2nd meeting, the Working Group discussed the principles and objectives of UPR. Delegations reaffirmed the importance of a number of elements contained in paragraph 5(e) of GA resolution 60/251: cooperative mechanism; objective and reliable information for review; universality of coverage and equal treatment of States; full involvement of the country concerned; as well as complementarity and non-duplication with other human rights bodies.

21. General views were expressed that UPR should improve the implementation of human rights obligations, standards and commitments by all States. Elaborating on the need to consider the capacity-building needs of States under review, it was asserted that UPR should assist in identifying areas where technical assistance could be provided with the consent of the State concerned. Views were also expressed that UPR should promote genuine dialogue and international cooperation in the field of human rights.

## **i. Principles**

22. Support was expressed for the elements of convergence listed as principles of review. Additionally, the importance of specific elements was underscored and there were proposals for modifications to the language contained in the non-paper. It was also suggested that UPR should draw upon the experiences of other review mechanisms, such as the African Peer Review Mechanism of the New Partnership for Africa's Development. It was further suggested that the section on principles and objectives would be better placed at the outset of the non-paper.

23. Referring to the promotion of the universality, interdependence, indivisibility, and interrelatedness of all human rights as an important principle of review, views were expressed that balance in the treatment of all human rights, including the right to development, should be specifically emphasized.

24. The need to establish a light, manageable and efficient review process was affirmed. Noting the potential resource and labour intensive nature of the mechanism, views were expressed that UPR would necessarily entail an additional burden to States, the Council and the Office of the High Commissioner for Human Rights (OHCHR). In this regard, it was asserted that this factor should not be used to justify non-cooperation by States. Accordingly, drafting suggestions were made to emphasize that UPR should not be 'overly' burdensome.

25. Delegations affirmed that UPR should be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner. Drafting suggestions were also made to include a reference to impartiality and to incorporate the notion that UPR should avoid confrontation, politicization, double-standards and selectivity. Views were also expressed that UPR should not be a forum for 'naming and shaming' and for imposing country-specific resolutions or mandates.

26. Delegations also affirmed that UPR should be an intergovernmental process, one that is driven by Member States of the United Nations and not only of the Council. Accordingly, drafting suggestions were proposed to clarify the language contained in the non-paper.

27. On a related discussion, different views were expressed on the Facilitator's compromise proposal on ensuring the adequate participation of all relevant stakeholders. Further clarification was also sought on the types of stakeholders involved and on the exact scope and nature of their participation in the review process. Others noted, however, that the compromise proposal only envisaged the bare minimum of participation. In this regard, it was proposed that a reference be made to ensuring the effective contribution of stakeholders so as to be consistent with the language contained in paragraph 11 of GA resolution 60/251.

28. At the 4th meeting, on 14 February, the Facilitator provided clarification to questions asked on the participation of stakeholders. He noted that relevant stakeholders (although such a listing was not intended to be exhaustive) could include observer States of the Council, NGOs, NHRIs, other intergovernmental organizations, and United Nations entities, agencies, funds and programmes. He also noted that different modalities for participation could be established for different stages of the review process: preparatory; conduct of the review; decision-making; implementation and follow-up to outcomes, etc. Such issues were put to the Working Group for further discussion.

29. Different views were put forward in this regard. It was argued that only NGOs at the national level should contribute to the preparatory stage of the review process – more specifically, in the preparation of the State self-assessment report to be submitted to the Council. In this regard, it was stated that national-level NGOs would be best placed to provide information on a country under review. Additionally, it was considered that NGOs (in particular those with ECOSOC consultative status) and NHRIs should submit written information on a country under review but would only be present as observers in the interactive dialogue. It was noted that UPR was an intergovernmental, State-driven exercise (as stated in the non-paper).

30. Others, however, made reference to regional and international NGOs, with or without ECOSOC consultative status, United Nations agencies, funds, programmes and other entities, as well as representatives of treaty bodies and special procedures mandate-holders, and asserted that such stakeholders should participate in all stages of the review process, including in the interactive dialogue with the State concerned. It was also proposed that UPR should be open to the media, especially in the country concerned, and that the review should be broadcast live to ensure full transparency and the full participation of the country concerned.

31. In general, views were expressed that the modalities for the participation of all stakeholders should not be determined by the Council at a later stage, as in the compromise proposal in the Facilitator's non-paper, but discussed, developed and agreed upon by the Working Group as soon as possible.

32. Under elements requiring further consideration in the non-paper, different positions were held on the Facilitator's compromise proposal that UPR should, without prejudice to the elements provided for in the basis of review, take into account the level of development and specificities of countries. It was asserted that UPR should examine the constraints faced by a country in fulfilling its international obligations. It was noted that addressing the specific challenges faced by countries in different circumstances would ensure the provision of appropriate remedies or support. A suggestion was made to include this element as a basis of review. Suggestions were also made to include an explicit reference to cultural and religious specificities and backgrounds. It was argued, however, that if development levels and specificities were to be included as a principle of review, the extent to which such factors would be considered in different stages of the review process should be clarified and well-defined.

33. Referring to the need to ensure universality of coverage and equal treatment of States, other views were expressed that the same format and process of review, and in particular the basic standards underlying the review, should be applied equally to all States. Additionally, it was proposed that development levels and specificities should more appropriately be taken into account when assessing capacity-building needs and when developing outcomes and recommendations. It was also noted that States could highlight specificities or development constraints in their responses to the questionnaire. Accordingly, suggestions were made to modify the Facilitator's compromise proposal, in particular to utilize the language contained in paragraph 5 of the Vienna Declaration and preambular paragraph 4 of GA resolution 60/251.

## **ii. Objectives**

34. Support was expressed for the objectives of the review as outlined in the non-paper. Comments and drafting proposals were also made on several specific elements. Concerning the

reference to the fulfilment of States' human rights obligations and commitments as an objective of review, it was noted that UPR was intended to be a cooperative mechanism and that States should be assisted in this regard. A suggestion was therefore made to modify the language contained in the non-paper accordingly. Further, it was noted that UPR should lead to an assessment of all developments and situations faced by the State and thus, the deletion of the word 'positive' was proposed.

35. It was emphasized that the enhancement of the State's capacity and technical assistance should only be achieved either upon request or in consultation with the State concerned. Accordingly, drafting changes were proposed to the language contained in the non-paper.

36. Support was expressed for the proposal that UPR should not diminish the Council's capacity to respond to urgent human rights situations. Suggestions were also made for it to be included as a principle of review. Others, however, held that UPR should not deal with urgent human rights situations. With reference to paragraph 10 of GA resolution 60/251, it was noted that the Council had special sessions and other means to do so. Suggestions were therefore made to delete this reference entirely.

37. Delegations affirmed that UPR should lead to the encouragement of full cooperation and engagement with the Council, other human rights bodies and OHCHR. A suggestion was made to add the words 'in a well-defined and clear manner'. Additionally, suggestions were also made to delete the reference to OHCHR as its relationship with UPR was yet to be defined.

## **V. PERIODICITY AND ORDER OF REVIEW**

38. At its 3rd meeting, on 13 February 2007, the Working Group discussed the periodicity and order of review. Statements were made in support of the elements of convergence identified in the non-paper. Delegations affirmed that members of the Council would be reviewed during their term of membership and suggestions were made to retain the language of GA resolution 60/251, thus replacing "should" be reviewed by "shall" in the non-paper. Delegations also spoke in favour of the initial members of the Council to be reviewed first, especially those elected for one or two year terms.

39. The need for clear criteria in determining the order of review and for ensuring the predictability of the review process was emphasized. Also stressed was the need to respect equitable geographic distribution in the selection of countries for review as well as for having a mix of member and observer States of the Council. In this regard, a ratio of one-third members and two-thirds observers was specifically proposed for any given review cycle. Views were also expressed affirming that the order of review should reflect the principles of universality and equal treatment, while a suggestion was put forward to also take into account the specificities of countries. It was moreover argued that the same modalities for selection should be equally applied to both member and observer States.

40. Different views were expressed on the method to be used for determining the order of countries to be reviewed. Preferences expressed ranged from alphabetical order (in one of the official languages of the United Nations), drawing of lots, and volunteering (with the argument that such a sign of cooperation by a State should not be rejected). Random selection from among

regional groups was also proposed. It was asserted, however, that such options as drawing of lots or volunteering would not ensure predictability.

41. On the first element requiring further consideration, delegations reflected on the two options on periodicity proposed in the non-paper, with some indicating that they were open or flexible on the issue. In this regard, concerns were expressed over logistical difficulties in meeting the requirement that all Council members should be reviewed during their three-year term of membership (as stated in paragraph 9 of GA resolution 60/251). Those in favour of a five-year cycle maintained the need to provide sufficient time for the country concerned to both prepare for the review and implement the recommendations of the preceding review. Further, it was stated that longer cycles would allow UPR to focus on broader, systemic and institutional issues and would allow States to make any necessary adjustments to policies and programmes. A five-year cycle was also considered more realistic in terms of the workload and resource constraints of States, the Council and OHCHR. Those in favour of a four-year cycle stressed that a shorter cycle would allow for more effective and timely reviews, thus assisting States to identify capacity-building needs and allowing the Council to react more quickly in providing appropriate outcomes. This was seen as better suited to meet the objectives of the UPR. It was also noted that the recommendations emerging from UPR should be concrete and realistic, and thus, should be implementable within four years. Further, those who had previously expressed a preference for a three-year cycle indicated that they could accept the compromise proposal of four years.

42. The second element requiring further consideration, different periodicities for developed and developing countries, was also discussed. Delegations pointed to the need to take into account national capacities and potential difficulties, particularly in the case of the least developed countries, in preparing for the review and in meeting UPR obligations. Others made reference to the principles of universality and equal treatment set out in paragraph 5(e) of GA resolution 60/251 and considered that the periodicity of review should be the same for all countries. It was also pointed out that development levels and specificities would be taken into account during the actual review and that the outcomes and recommendations would be tailored to address specific capacities and meet specific needs.

43. Finally, a proposal was made to establish more frequent review cycles (as a means of follow-up) for countries facing particular challenges. Additionally, it was proposed that a mechanism be established to allow States to report or make available information on progress made prior to their next scheduled review.

## **VI. THE PROCESS AND MODALITIES OF REVIEW**

44. Also at its 3rd meeting, the Working Group considered the process and modalities of review. The discussion in this chapter is necessarily linked with that held by the Working Group on the three options on modalities annexed to the non-paper (at the 5th meeting, on 15 February 2007). When relevant, views expressed in that discussion will therefore be reflected in the present chapter (see also chapter IX – options on modalities).

45. The Facilitator emphasized the specific elements requiring further consideration listed in the non-paper, namely the use of a standardized versus an individualized questionnaire, the conduct of UPR in plenary or in working groups, and the involvement of experts in the process.