



General Assembly

Distr.
GENERAL

A/HRC/1/SR.19
14 July 2006

Original: ENGLISH

HUMAN RIGHTS COUNCIL

First session

General segment

SUMMARY RECORD OF THE 19th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 June 2006, at 3 p.m.

President: Mr. GODET (Switzerland)
(Vice-President)

later: Mr. DE ALBA (Mexico)
(President)

CONTENTS

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

Review of mandates and mechanisms

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GE.06-12870 (E) 110706 140706

The meeting was called to order at 3.10 p.m.

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF
15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" (agenda item 4)
(continued)

Review of mandates and mechanisms

1. Ms. ELLISON KRAMER (Observer for Austria), speaking on behalf of the European Union, the acceding countries Bulgaria and Romania, the candidate countries Croatia, The former Yugoslav Republic of Macedonia and Turkey, the countries of the stabilization and association process and potential candidates Albania, Bosnia and Herzegovina and Serbia, and, in addition, Liechtenstein, the Republic of Moldova and Ukraine, said that the European Union supported the proposal to establish an open-ended intersessional working group to hold consultations on the reform of the system of special procedures. The participation of all stakeholders, including the special procedures, non-governmental organizations (NGOs) and national human rights institutions should be ensured at all stages of the consultations. The working group should also draw on the expertise of the Office of the United Nations High Commissioner for Human Rights (OHCHR).
2. Increased cooperation from States was essential for enhancing the capacity of the special procedures, and greater synergy should be developed between the special procedures and the entire United Nations system for the protection of human rights. Her delegation welcomed the proposals made by the Chairperson of the Coordination Committee of the Special Procedure Mandate Holders. It was of the utmost importance that the special procedures should be able to continue to implement their mandates effectively and without interruption during the review process, and should have the opportunity to participate in all sessions of the Human Rights Council during its first year.
3. The establishment of a system of expert advice should begin with an analysis of the achievements and shortcomings of the Sub-Commission on the Promotion and Protection of Human Rights. The expert advice system could consist of an action-oriented think-tank that allowed for interactive discussion. The experts should be independent and recognized in the field of human rights, and should serve a maximum of two consecutive terms. Efforts should be made to adopt more flexible working methods that allowed for the timely consideration of inputs from the experts. Close cooperation with NGOs should be continued. While there was a clear need for a complaints mechanism within the framework of the Council, the methods and functions of the existing 1503 procedure should be reviewed and improved.
4. Ms. DEMPSTER (New Zealand), speaking also on behalf of Australia and Canada, said that the review of mandates and mechanisms should result in a more effective system with clear objectives and outcomes, and best use should be made of scarce resources. The mechanisms to be reviewed reflected a broad range of issues and priorities. The review process should give an idea of where the areas of overlap and duplication were. When considering ways to strengthen the effectiveness of the human rights system, the Council should bear in mind the need to cooperate with other elements of the United Nations system, since it could learn from the good practices of other bodies and ensure that its work was complementary to efforts elsewhere. For example, it could develop a standing capacity to investigate urgent situations or hold in-country

meetings of groups of Council members. OHCHR was enhancing its capacity to assist States, and those States and the High Commissioner should brief the Council on positive developments in order to enable it to decide how best to assist States in the promotion and protection of human rights during crises.

5. Although, over the years, there had been many differences of opinion concerning the use of country mandates, the Commission on Human Rights and the General Assembly had reaffirmed by majority decisions the international community's desire to continue to use that tool. Country-specific mandates had enhanced the delivery of targeted assistance to States in need, through support for technical cooperation. Although her delegation was prepared to consider new methods of examining the worst human rights situations and providing assistance to States, it could not endorse calls to end country mandates altogether. The review should not be used to go back on previous agreements but rather to safeguard the credibility and effectiveness of the Council.

6. Ms. SETYAWATI (Indonesia) said that there should be no protection gaps during the transitional period between the Commission on Human Rights and the Human Rights Council. The Council should consider the reports of all special procedures and organize interactive dialogues with all mandate holders. Continued support should be provided for all mandates and mechanisms, and the mandates of the special procedures should be extended for one year without distinction of any kind. The special procedures formed part of the backbone of the international human rights protection system and were critical for monitoring the observance of human rights standards and addressing violations.

7. In order to establish a new system of expert advice, comprehensive data should be acquired on the profile of the existing Sub-Commission on the Promotion and Protection of Human Rights, its achievements, unfinished tasks, best practices and lessons learned, as well as challenges and obstacles to the full implementation of its mandate. The existing selection process and operational modalities required significant improvement in order to establish a clear role for a professional group of independent experts. Her delegation supported the proposal to establish an intersessional working group to review and improve mandates, and also supported OHCHR in its commitment to providing the working group with appropriate background information.

8. Mr. CERDA (Argentina) said that OHCHR should present an overview of existing mandates that would serve as the basis for a comparative study on whether any rationalization was required. The 12-month review period provided the Council with an opportunity to identify any shortcomings in the system of special procedures and to assess the need for new mandates to fill existing gaps.

9. As the independence of mandate holders was the system's key to success, it was essential to ensure that the appointment process was free from political influence. Candidates should be selected solely on the basis of their background and qualifications.

10. In its review of the system, the Council should draw on the experience of existing mandate holders. In that context, he welcomed the preliminary remarks made by the Chairperson of the Coordination Committee earlier in the session.

11. The Council should undertake an assessment of the work of the Sub-Commission before setting up the proposed expert consultative body. It was essential to avoid the sparring that had been a regular occurrence in the Sub-Commission. The new body should be given a margin of discretion with respect to emerging issues and the appointment of its members.

12. With regard to the confidential 1503 procedure, Argentina considered that the existing two-stage procedure involving the Working Group on Communications and the Working Group on Situations should be replaced by a single group of high-level experts who would advise the Council on possible courses of action. OHCHR should consider organizing a seminar on the subject, at which former members of the two working groups could share their expertise.

13. Mr. HUGUENEY (Brazil) said that the review of mandates and mechanisms provided an opportunity for the Human Rights Council to rationalize the treaty bodies, special procedures, the 1503 procedure and the Sub-Commission on the Promotion and Protection of Human Rights. Membership of the treaty bodies and the Sub-Commission could be renewed, and the issues that they dealt with could be examined. Care must be taken to ensure that the reform of the United Nations human rights system did not make the individual mechanisms more fragile and less effective.

14. Ms. KORUNOVA (Russian Federation) said that her delegation disagreed with delegations that had called for the extension of the mandates of all special procedures, since that would be contrary to paragraph 6 of General Assembly resolution 60/251. The improvement and rationalization mentioned in paragraph 6 of the resolution were not synonymous with increasing the authority and intrusiveness of the special procedures. During the review, the Russian Federation would oppose any attempt to combine some of the posts in United Nations expert human rights bodies. The proposals on the review of the existing practice of appointing special rapporteurs and independent experts should be studied in greater detail. The Russian Federation was not opposed to the initiative to nominate candidates for those posts on the basis of rotation among the regional groups, and to appoint candidates through a system of voting, since that would increase the effectiveness of the Council's monitoring function and would go far to solve problems relating to the politicization of individual special procedures. Her delegation was in favour of a moratorium on the establishment of new special procedures during the Council's review of mandates and mechanisms.

15. An expert body with functions similar to those of the Sub-Commission should be established as a subordinate body of the Council, with the task of studying pressing international human rights issues. Elements of the work of the Sub-Commission, such as the prohibition on the tabling of country resolutions, should be maintained in order to avoid politicization. Her delegation welcomed the consensus on the need for an open-ended intersessional working group to review the mandates of the special procedures.

16. Mr. JAZAIRY (Algeria), speaking on behalf of the African Group, said that the Human Rights Council should extend the special procedures mandates that would expire in the forthcoming year. He stressed the need to maintain the role played by the Sub-Commission and its mechanisms that had been of particular relevance, as well as the need to extend the Sub-Commission's mandate pending review and to extend the mandates of the current members of the Sub-Commission. His delegation supported the proposal to enable the Sub-Commission to hold a full session as planned.

17. Mr. ZIN (Malaysia) said that his delegation agreed that the terms of office of mandate holders, including the members of the Sub-Commission and its mechanisms and the 1503 procedure, should be extended for one year in order to prevent a protection gap from occurring during the transition from the Commission to the Council. His delegation supported the proposal to establish an intersessional working group to review, improve and rationalize all mandates, mechanisms and functions inherited from the Commission. The intersessional working group should cooperate with the working group on the universal periodic review mechanism, since their work would be related. The Sub-Commission and its working groups should be given sufficient time to undertake the tasks that the Council entrusted to them. Efforts should be made to ensure the continuity of all the work of the Sub-Commission, which should not be lost during the transition to the successor expert advisory body that the Council would establish.

18. Mr. LABIDI (Tunisia) said that the former Commission's mandates and mechanisms, including the Sub-Commission, should be extended for one year pending a review by an open-ended governmental task force, which would seek to enhance their effectiveness and ensure that they adopted an objective and impartial approach and gathered reliable information from a wide range of sources. As stated in General Assembly resolution 60/251, mandate holders should be guided by the principle of universality and adopt working methods that were transparent, fair and impartial.

19. Mr. MINAMI (Japan) said that his delegation supported the extension of the mandates of the special procedures for one year. During the review process, it was imperative that the highest standards of impartiality, objectivity, independence and expertise were maintained. The new expert advisory body should be more streamlined and efficient than the existing Sub-Commission.

20. Mr. RODRÍGUEZ CUADROS (Peru) said that his delegation was in favour of renewing the mandates of all special procedures and of the Sub-Commission for one year. In legal and doctrinal terms, the purpose of the Council's human rights mechanisms and procedures was to prevent and punish human rights violations, counter impunity and compensate and rehabilitate human rights victims. Peru would be submitting a document to the Council setting forth its views on the subject.

21. As a key component of the United Nations human rights system, the special procedures should be strengthened. Their relationship with the Council should be less formal, and there should be a public and transparent interactive dialogue of at least one hour in each case so that the recommendations of the special procedures could be endorsed by the Council and used in the universal periodic review. There should be clear-cut rules for avoiding selectivity and discrimination.

22. The confidential 1503 procedure should be replaced by a non-confidential procedure handled by the successor body to the Sub-Commission, since complaints should not be dealt with by representatives of States but by an independent body of experts. The special procedures should develop sectoral mechanisms for handling complaints, since that approach had proved highly productive in the Working Group on Enforced or Involuntary Disappearances.

23. Links between the special procedures and the universal periodic review mechanism should be established in the interests of legitimacy and objectivity. To that end, he fully supported the convening of an intersessional working group.

24. Mr. FERNÁNDEZ PALACIOS (Cuba), referring to the statements on behalf of the European Union and by New Zealand on behalf of Canada and Australia, said that General Assembly resolution 60/251 referred in its paragraph 6 to the maintenance of “a system” and not “the system” of special procedures. The Assembly was well aware that the system had been foundering for years on account of political manipulation, selectivity, double standards and country-specific resolutions. If New Zealand’s statement to the effect that it was unable to endorse calls to end country mandates meant that the vices that had discredited the Commission were to be maintained, the Council would not bring a breath of fresh air but a thunderstorm into its working methods. One of the Council’s primary tasks should be to eliminate country-specific resolutions, which were often pushed through by means of political and economic pressure. While Cuba would approach the question in a spirit of dialogue, it would oppose any attempt to perpetuate discriminatory practices.

25. While the European Union was in favour of maintaining all the special procedures, it wished to eliminate the Sub-Commission in one fell swoop. That was totally unacceptable. He assured the States concerned that the Sub-Commission would meet for its scheduled session and would take whatever decisions it saw fit. The Council would then have an opportunity to review the situation.

26. Ms. KOHLI (Switzerland) said that the review of the mandates of the special procedures must be transparent and must include consultations with all relevant stakeholders, including NGOs and the special procedure mandate holders. Consultations with the mandate holders at the next session of the Human Rights Council in September 2006 would provide an important opportunity to ensure that they were continuing to work in an objective manner.

27. Ms. DONG Zhihua (China) said that the criteria for candidates for special procedures mandates should be based on professional and personal qualities, expertise and experience, integrity, independence and impartiality. Given the limited resources of OHCHR, the number of mandates should be examined and, if necessary, reduced. A manual of operations for the special mechanisms should be prepared with a view to improving their coherence and efficiency. The manual should provide a standardized procedure for mandate holders to address allegations of human rights violations, interact with the media and conduct country visits. Mandate holders should provide standardized reports based on credible and reliable information. Those reports should be sent to the States concerned before they were made public. Any comments received from the Government in question should be duly annexed to the report. Mandate holders should always personally sign any communications that they sent to Governments. Governments should not be obliged to respond to communications that were not signed by a mandate holder.

28. The Sub-Commission on the Promotion and Protection of Human Rights should be transformed into a subsidiary expert advisory body under the Human Rights Council. There should be no duplication of work between the Council and the advisory body, which should focus its work on the thematic studies requested by the Council. The 1503 procedure was an important channel for individuals and groups to express their concerns about alleged human

rights violations. That procedure must remain confidential. China supported the establishment of an open-ended working group to review the mandates and mechanisms with the participation of all stakeholders.

29. Ms. McKEE (Observer for the United States of America) said that the Council had a historic opportunity to review and strengthen human rights mechanisms. Care should be taken to avoid overlapping or duplication of mandates. With regard to the Sub-Commission, she said that a body whose mandate was to advise Member States on the best ways of protecting and promoting human rights should focus on implementation.

30. The Council should reserve for itself all the tools it needed to promote human rights, including, as a matter of last resort, country mandates.

31. Ms. TAN (Observer for Singapore) said that the review of mandates and mechanisms afforded an excellent opportunity to reduce politicization and selectivity. The High Commissioner for Human Rights had referred to the difficulty of coordinating the work of a growing number of rapporteurs, and the credibility of the special procedures had been undermined by unaccountable mandate holders who had exceeded the scope of their mandates and internationally agreed norms. It was therefore time to take a critical look at each mandate to determine its usefulness and to avoid overlapping. The Asian Group had proposed establishing a system of peer review of mandate holders and developing a manual containing a code of conduct, which would ensure that the scope of each mandate was respected.

32. The Sub-Commission had played an important role as an independent think tank and technical advisory body. Its successor should continue to play that role while avoiding the Sub-Commission's shortcomings.

33. Just as the Council was mandated to review its performance every five years, so also the mandates and mechanisms should be regularly reviewed to ensure that the human rights machinery was running as smoothly as possible.

34. Mr. CHOE Myong Nam (Observer for the Democratic People's Republic of Korea) expressed support for the establishment of an open-ended intersessional working group, which should be given the same status and receive the same resources as the working group on the universal periodic review mechanism. His delegation was in favour of extending all mandates, on an exceptional basis, until the review was completed.

35. It was important for the Council to eliminate politicization, double standards and selectivity. Special procedures in general and country-specific mechanisms and resolutions were particularly susceptible to politicization and lacked credibility and legitimacy. As a manifestation of hostility and a violation of sovereign rights, they represented an obstacle to the genuine promotion and protection of human rights and had been largely responsible for the demise of the Commission. In order to ensure that the Council avoided that pitfall, the working group should give priority to a review of politicized country-specific mandates.

36. Mr. MANAPAN (Observer for Thailand) said that, in order to avoid duplication, it was important to have clear guidelines on the rationale and criteria for establishing new mandates. Duplication of mandates placed an unnecessary burden on OHCHR and jeopardized the credibility of mandate holders.

37. Mandate holders should have a common set of guidelines on working methods to ensure that they adopted more systematic and less ad hoc approaches to their work. The guidelines could also serve as a reference for States in their interaction with mandate holders.
38. Mandate holders should exchange expertise and information among themselves and make full use of the information available from relevant United Nations agencies and country teams. The teams could also assist mandate holders in understanding the situation in individual countries.
39. All decisions taken on the review of mandates should be based on a thorough assessment of the potential consequences. In that regard, Thailand supported the extension of the mandates of all special procedures for a transitional period of one year and the establishment of an intersessional working group to carry out the necessary review.
40. Mr. de Alba (Mexico), President, took the Chair.
41. Ms. FORERO UCROS (Observer for Colombia) said that the proliferation of special procedure mandates called for action to streamline the system and weed out mandates that were not absolutely essential.
42. The selection process for mandate holders should be reformed. Mandate holders should be provided with a manual of duties and responsibilities. They must in all circumstances be impartial and objective and must never exceed the terms of reference of their mandate. Contradictory recommendations by different mandate holders regarding country situations created difficulties for States that wished to implement the recommendations. Moreover, rapporteurs sometimes dealt with subjects that were beyond the scope of their mandate, duplicating the mandates of other rapporteurs or treaty monitoring bodies.
43. Colombia supported the establishment of an intersessional working group to analyse, revise and rationalize the mandates. Its work should be coordinated with the establishment of the universal periodic review mechanism. In order to ensure consistency and avoid duplication, the Council should have a global vision of the desired outcome of the two processes.
44. Ms. AJAMAY (Observer for Norway) said that any review process must be based on an overall objective or vision. The mandates should not be viewed in isolation but as part of a system. The review should therefore consider both possible overlaps in the existing system and the gaps that remained to be filled. The number of mandates should be viewed in the light of overall human rights challenges. It was also of the utmost importance to preserve the independence of the special procedures.
45. Norway supported a two-track review process with both informal and formal mechanisms, including the establishment as soon as possible of an intersessional working group open to all stakeholders. It was important to have input from the special procedures themselves and from civil society, NGOs and human rights defenders. Background documents and analyses from the Office of the High Commissioner would also be welcome. The review process should also consider ways of further strengthening the cooperation of States and the assistance of OHCHR.

46. Mr. MARTABIT (Observer for Chile) said that if the special procedures were to continue to contribute to the improvement of specific human rights situations, States must show the political will to cooperate with them, including by implementing their recommendations. The review of mandates and mechanisms afforded an opportunity to strengthen the system of special procedures while maintaining their main characteristic as an independent source of knowledge.

47. The review of mandates must be aimed at improving the thematic and formal coherence of the system. It should identify areas that were not yet covered by thematic procedures and should eliminate duplication and define the place of the special procedures in the Council's overall structure and in the universal periodic review mechanism. The review must take into consideration the progress made by the Coordination Committee of the Special Procedures Mandate Holders and the results of the seminar held by OHCHR in October 2005.

48. Mr. JAHROMI (Observer for the Islamic Republic of Iran) said that the review process should start with mechanisms whose mandates were due to expire within one year. A country whose human rights situation was reviewed under one procedure should not be simultaneously subjected to other procedures. The mandates and mechanisms of the Commission could be clustered by themes, which could be incorporated in the agenda of the Council. Issues such as economic, social and cultural rights, the right to self-determination, violations of human rights in Palestine, the right to development, racism, defamation of religions and foreign occupation should be included in the Council's agenda. In drafting its agenda, the Council should draw on General Assembly resolution 60/251 and the agenda and work accomplished by the Commission over the past 60 years. It should draft its agenda through consultations, avoiding selectivity.

49. Ms. AREVALO-CARPENTER (Women's International League for Peace and Freedom), speaking also on behalf of seven other NGOs, said that the establishment of the Council had opened up new possibilities for more effective participation by civil society. The Council should associate NGOs in the universal periodic review and in the review of mandates and mechanisms. It should also improve access of NGOs to its sessions and to intersessional consultations, for example through the use of webcasting, regional meetings of the Council and the creation of a voluntary fund to allow grass-roots NGOs to attend its sessions. The Council should consider adopting mechanisms used in other United Nations forums for NGO participation, and should establish formal arrangements for interaction between special procedure mandate holders and civil society.

50. Ms. GRANGE (Human Rights Watch and the International Federation of Human Rights Leagues) said that there was not set formula for rationalizing the special procedures system, and the Human Rights Council must bear in mind that special procedures played many roles: they provided independent information on human rights violations, monitored crises, formulated recommendations based on expert advice, afforded protection and remedies to victims, and addressed non-compliance. While the Council should try to avoid overlaps, it should also identify gaps in human rights issues covered by existing mandates.

51. The activities of the special procedures should include more country visits, more interaction between mandates, more joint initiatives and more coordination. The Council should provide more follow-up, greater visibility and increased human resources for the special procedures. Special rapporteurs, independent experts and working groups should be able to call

on the Council to place an issue on its agenda. The findings of the special procedures should form an integral part of the universal periodic review mechanism. The Council should extend for one year the mandates of those special procedures that would expire in 2006.

52. Mr. SALDAMANDO (International Indian Treaty Council), speaking also on behalf of the Indigenous World Association and the Foundation for Aboriginal and Islander Research Action, expressed support for the extension of the mandates of the Sub-Commission on the Promotion and Protection of Human Rights and its working groups, and of the special procedures, including the mandate of the Special Rapporteur on indigenous peoples. The Council's agenda should include an item on indigenous issues.

53. The Council should extend the mandate of the Working Group on Indigenous Populations, which served as a model of how States and civil society could work together in a spirit of partnership. Over the years, the Working Group had helped to form an international community of indigenous peoples, which met regularly to network, to learn and teach, and to grow and develop. The Working Group should be allowed to complete its planned activities and to finish and publish its standard-setting activities on cultural heritage and free, prior and informed consent.

54. Mr. PIAL MEZALA (International League for the Rights and Liberation of Peoples) said that his organization supported the proposal to establish an open-ended working group to hold consultations and open and transparent discussions on the review of mandates and mechanisms. It was important to avoid selectivity and politicization in the work of the Council and to ensure that rationalization was not used as a pretext for eliminating certain "awkward" subjects and mechanisms. During the review process, the Council must avoid creating a gap in the protection of victims of human rights violations. It must therefore extend the mandates and mechanisms established by the Commission on Human Rights, including the Sub-Commission on the Protection and Promotion of Human Rights and its various working groups.

55. Mr. SOTTAS (World Organization Against Torture) said that, in 1993, the World Conference on Human Rights had rejected the cultural relativism that had previously been used by Governments to justify practices that were incompatible with human dignity. The prohibition of torture and cruel, inhuman or degrading treatment was no longer questioned: it was a norm of *jus cogens* that formed an integral part of the jurisprudence of regional courts and of ad hoc international criminal tribunals.

56. The absolute nature of the prohibition of torture had been challenged by the very States that had advocated its recognition in the first place. In confronting terrorism, those States had called into question the absolute prohibition of torture, taken an overly restrictive approach to the definition of torture and tolerated practices that violated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Their new political relativism had been used not only to justify intolerable practices but had also provided a pretext for a resurgence of cultural relativism.

57. The Council must ensure that mechanisms consisting of independent experts considered each theme or country situation in an objective, impartial and non-selective manner. Such experts must have the means to take stock of violations, issue recommendations and assess their implementation by the States.

58. Mr. SPLINTER (Amnesty International) said that the Human Rights Council should establish a coherent, harmonious and effective system of special procedures in order to enable them to assist it in promoting universal respect for the protection of all human rights. In particular, the Council should ensure that it had access to the information and analysis of the special procedures and that it used them both in its regular work and in the universal periodic review. It must develop measures for consistent follow-up of the requests and recommendations made by the special procedures. The review of mandates and mechanisms must improve cooperation between Governments and the special procedures: the special procedures must have access to countries and territories, and Governments must be responsive to the observations and recommendations of the special procedures. The Council must enhance the special procedures' ability to respond to serious human rights violations. The review should result in a rigorous identification and selection process for mandate holders, ensuring that they met the highest standards of expertise, independence and objectivity. The review must also contribute to the strengthening of professional support and increasing resources in order to enable the special procedures to operate effectively.

59. Mr. PARY (Indian Movement "Tupaj Amaru") said that the objective of the review should be to make human rights bodies more democratic and open to NGOs and victims of human rights violations. In reviewing the working groups and the intergovernmental bodies, the Council should endeavour to ensure objectivity, transparency and independence. The review should be entrusted to independent experts, who would report to the Council. It was of crucial importance to eliminate selectivity, politicization and double standards, which had undermined the credibility of the Commission on Human Rights. The Council should maintain the many useful instruments that had been established by the Commission.

60. Mr. LITTLECHILD (International Organization of Indigenous Resource Development) said that, during the fifth session of the United Nations Permanent Forum on Indigenous Issues in May 2006, the Global Indigenous Caucus had adopted two resolutions that set out recommendations concerning the work, mandates and mechanisms of the Human Rights Council. In particular, the Caucus had urged the Council to maintain a distinct agenda item on the human rights of indigenous peoples, to allow indigenous peoples' organizations to address the Council, and to ensure that the situation of indigenous peoples would be a distinct point of consideration in the assessment of countries' human rights records. The Council should continue to use independent experts to develop and monitor human rights standards. In its first year, the Council should establish a permanent expert group on indigenous peoples' human rights, which should be composed of two experts from States members of the Council, two special rapporteurs, and two experts nominated by indigenous peoples.

The meeting rose at 5 p.m.