Introduction

The United Nations (UN) was established to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Would the new Human Rights Council (HRC) do a better job in achieving this goal compared to its predecessor, the Commission on Human Rights (CHR)? If both are intergovernmental bodies, how could the HRC be less politicised and more objective than the CHR? The aim of this chapter is to explore the horizons for enhanced human rights protection under the “new” HRC through its yet undefined “expert advice”, and to submit institutional re-engineering proposals to this effect.

Obstacles to enhanced human rights protection under the HRC

The General Assembly (GA) resolution 251/60, which established the HRC, bears the scars of the typically controversial New York intergovernmental negotiating process. Like in previous similar exercises, Member States ended up exchanging “packages” of concessions which determined the features of the HRC. Such an approach is not conducive to conceiving a truly new human rights system, drawing on lessons of the past and aspiring to realise a shared workable vision for the future.

However, a coherent and workable vision for the future is still possible to elaborate. The “genetic code” of the newly established HRC could still be handled to make it a more rational and stronger institution than the CHR. Diplomacy can be more than just the art of producing a “positively ambiguous” outcome that everybody can accept, without having to change much on the ground. Member States and the human rights com-

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munity at large are the owners and founders of the HRC, which has been established only in principle, while its institution-building is still a work in progress. Although it may still be too early to judge, there are good reasons to question, in light of the first two sessions of the HRC, whether the ongoing efforts are heading in the right direction. Any observer of the HRC would quickly get the impression that only the names have changed, while actors, attitudes and results remain unaltered. There are many reasons for such a disappointing state of affairs. The first reason is that the decision to establish the HRC was not preceded by genuine, inclusive and transparent dialogue involving all stakeholders. GA resolution 251/60 raises more questions than answers. Two separate debates are conducted in parallel, although they are clearly linked: reviewing human rights Charter-based mechanisms and treaty body reforms. Business as usual under the HRC is undermined, and undermining the institution-building process, delegates are mentally overstretched between two processes that are incompatible in nature and require different levels of thinking. Finally, one has to admit that some Member States, from different regional groups, may not believe in or act towards a more objective international human rights system.

Potential added value of the Human Rights Council

Despite the preceding negative factors, one should be positive and future looking and not lose time debating the conditions and rationale of GA resolution 251/60. Now that the HRC has been established, the human rights community should focus its efforts on maximising its added value. Ineffectiveness and selectivity were the main weaknesses attributed to the CHR, both are a result of politicalisation. However, is it possible to blame political entities for lacking political will to end politicalisation? I therefore believe that the issues of double standards and selectivity should rather be approached in a realistic manner and from an institutional perspective. Human rights politics will always haunt the human rights scene; the question is how to minimise its negative impact. Indeed, the rules, methods and modalities of the HRC can and should make it more difficult for Member States to exercise their usual and, I dare say, understandable selectivity. New approaches and working methods can be conceived to stimulate equal emphasis on all human rights issues and equal attention to all human rights situations and violations. A higher level of expertise, rationalised special procedures, complementarity and creative institutional reengineering between various elements of the human rights construction and deeper involvement of national human rights institutions and non-governmental organisations are the key tools to achieve this strategic objective: making the HRC the backbone of a truly stronger and more meaningful international human rights system of promotion and protection.

There are three major areas where I would identify the highest potential of added protection value under the HRC as compared to the CHR: “the universal periodic review” (UPR); the new “expert advice”; and the review of human rights mechanisms to reform and rationalise them. The three areas should be viewed in a comprehensive, preventive and capacity-building oriented approach.