Chapter 5

Strengthening Cooperation: The Key to Unlocking the Potential of the Special Procedures

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Abstract

How to strengthen cooperation between Special Procedures and the UN membership has been a constant source of debate and negotiation since the establishment of the first mandate in 1967. Over the intervening years, many ideas have been generated. Unfortunately they have rarely been acted upon or implemented. Building on the author’s experience as a diplomat and as head of a human rights think tank, this short chapter looks at the current situation of state cooperation with Special Procedures. In so doing, it identifies where the key problems lie, analyses reform efforts of the past 50 years, and describes contemporary steps being taken at the Human Rights Council to strengthen cooperation in line with that body’s founding documents.

Keywords

Human Rights Council – States – mandate holders – cooperation – reforms – strengthening the system

I Introduction

Mandate holders’ ability to secure cooperation and the related willingness of a State to work with Special Procedures are among the most important structural determinants of the mechanism’s influence and impact.1 The tools that mandate holders have – such as undertaking missions, engaging in

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interactive dialogues with States, and communicating with governments about allegations – can only effectively be leveraged if States and mandate holders cooperate with one another. Mandate holders cannot force States to give them access or to implement their recommendations; rather they have to rely on persuasion or on mobilising international pressure. Given the nature of Special Procedures, it is unsurprising that, throughout the system’s history, the need for cooperative relationships with States has remained constant.

II From Promotion to Protection

As has been widely noted, ‘the Charter nowhere explicitly provides authorisation for the political organs of the United Nations to assume monitoring competences in the field of human rights’. Rather, the Charter sets out that the UN would seek to ‘achieve international cooperation… in promoting and encouraging respect for human rights’. It took almost 20 years after the Charter’s adoption for the UN to move towards a more robust and protection-focussed approach to human rights, and the development of Special Procedures was a fundamental component of that change. The system’s creation directly contravened the idea of non-interference in domestic affairs, as set out in article 2.7 of the UN Charter. Buergenthal insists that by taking this step the UN began ‘to pierce the veil of national sovereignty’ in order to respond to serious cases of human rights violations.

Over the following decades, Special Procedures continued to assist with the movement from promotion to protection of human rights. That movement relied on individual mandate holders taking steps unprecedented in terms of interfering in States’ affairs. Abdoulaye Dieye, Special Rapporteur on human rights in Chile, paved the way for mandate holders directly to consider

3 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 1.3.
4 For more on the creation of the Special Procedures system, see Domínguez-Redondo’s contribution to this collection.