

Senate



Sénat

CANADA

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

**Standing Senate Committee
on Human Rights**

The Honourable Raynell Andreychuk, P.C.
Chair

The Honourable Mobina S.B. Jaffer
Deputy Chair

June 2008

Ce rapport est aussi disponible en français

Available on the Parliamentary Internet:
www.parl.gc.ca
(Committee Business – Senate – Reports)
39th Parliament – 2nd Session

TABLE OF CONTENTS

MEMBERS ii
ORDER OF REFERENCE iii
CHAPTER 1 – INTRODUCTION TO THE STUDY 1
 A. The Committee’s First Report..... 1
 B. A Year Later – The Follow Up 3
CHAPTER 2 – A YEAR IN THE LIFE OF THE HUMAN RIGHTS COUNCIL 5
 A. Fifth Session..... 5
 B. Sixth Session 7
 C. Fifth Special Session 11
 D. Sixth Special Session 12
 E. Seventh Session 12
CHAPTER 3 – INSTITUTION-BUILDING PROCESS COMPLETED: 21
 THE COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS..... 21
 A. The Universal Periodic Review 21
 1) The Committee’s Observations 21
 2) The Committee’s Recommendations for Canada 24
 B. Special Procedures 26
 1) The Committee’s Observations 26
 2) The Committee’s Recommendations for Canada 27
 C. Bloc Politics 28
 1) The Committee’s Observations 28
 2) The Committee’s Recommendations for Canada 30
 D. Canada’s Isolated Position 33
 1) The Committee’s Observations 33
 2) The Committee’s Recommendations for Canada 36
 E. Global Impressions 37
APPENDIX A : WITNESSES HEARD 41

MEMBERS

The Honourable Raynell Andreychuk, P.C., Chair of the Committee

The Honourable Mobina S.B. Jaffer, Deputy Chair of the Committee

The Honourable Senators:

Roméo Dallaire

Yoine Goldstein

Noel A. Kinsella

Sandra M. Lovelace Nicholas

Jim Munson

Donald H. Oliver

Vivienne Poy

Ex-officio members of the committee:

The Honourable Céline Hervieux-Payette (or Claudette Tardif) and Marjory LeBreton
(or Gerald Comeau)

Library of Parliament Research Staff:

Laura Barnett

Clerk of the Committee:

Jessica Richardson

ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Wednesday, November 21, 2007:

The Honourable Senator Andreychuk moved, seconded by the Honourable Senator Tkachuk:

That the Standing Senate Committee on Human Rights be authorized to examine and monitor issues relating to human rights and, inter alia, to review the machinery of government dealing with Canada's international and national human rights obligations;

That the papers and evidence received and taken on the subject and the work accomplished during the Thirty- seventh Parliament, the Thirty-eighth Parliament and the First session of the Thirty-ninth Parliament be referred to the Committee; and

That the Committee submit its final report to the Senate no later than December 31, 2008.

The question being put on the motion, it was adopted.

Paul C. Bélisle
Clerk of the Senate

CHAPTER 1 – INTRODUCTION TO THE STUDY

A. The Committee's First Report

In May 2007, the Standing Senate Committee on Human Rights (“the Committee”) issued a report entitled *Canada and the United Nations Human Rights Council: At the Crossroads*.¹ That report published the Committee’s preliminary findings in its study on the United Nations Human Rights Council, a body that was established in Geneva in June 2006 to replace the Human Rights Commission.

The Committee undertook this study under its on-going mandate to examine issues relating to human rights, and, inter alia, to review the machinery of government dealing with Canada’s international and national human rights obligations. The Human Rights Commission had been one of the primary fora for human rights protection in the UN system and the new Council was just beginning its institution-building process. Against that backdrop, the Committee continued its examination of Canada’s role on the new Council to assess Canada’s actions with respect to the institution-building process and whether this new body was an improvement upon its predecessor.

After hearing from witnesses both in Ottawa and Geneva, the Committee concluded that it was too early to pass conclusive judgment on the Council. Certainly the political problems that plagued the former Commission still exist in the new body – voting patterns and commentary at the Council revealed that it had become a proxy for larger international geo-strategic conflicts and even more politicized.² However, until the mechanisms and procedures under discussion in the institution-building process were agreed to and implemented it could not be irrefutably stated that the Council was a failure. Nearly all witnesses appearing before the Committee expressed disappointment mixed with cautious hope about the future.

¹ Standing Senate Committee on Human Rights, *Canada and the United Nations Human Rights Council: At the Crossroads*, May 2007, available at: <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep12may07-e.pdf>.

² For a full description of the UN Human Rights Commission and the process that led to its replacement by the UN Human Rights Council, see Chapter 2, Parts A and B of *Canada and the United Nations Human Rights Council: At the Crossroads*.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

In order to give life to this hope, the Committee came to a number of conclusions as to how the Canadian government could most effectively bring its influence to bear in helping to shape the evolution of a viable and sustainable Council. With respect to the bloc politics stymieing work at the Council, the Committee noted that, rather than being outmanoeuvred by them, Canada needed to focus on dealing with countries with which it has not traditionally allied, and form cross-regional alliances. Presently, Canada is isolated. As such, the Committee emphasized that the Canadian government needs to work to enhance credibility and leadership in its role as a member of the Human Rights Council. To achieve this goal, the Committee recommended that the Canadian government put into place a Canadian ambassador for human rights. Such an ambassador could ensure that Canada has the capacity to undertake elevated diplomatic initiatives and fully evolve into its bridge-builder role on the Council. The ambassador could essentially play the role of focal point within the Canadian government to concentrate on human rights as part of Canadian foreign policy. Ultimately, a human rights ambassador would significantly enhance Canada's role and capacity at the Council, raise the profile and standing of human rights as a foreign policy issue, and re-focus Canada on the necessity of implementing its international human rights obligations in domestic law.

The Committee's primary recommendations with respect to the Council itself emphasized that the Canadian delegation bring focus to bear on the development and implementation of the Council's procedures, mechanisms, and rules during the institution-building process. The Council's working groups on implementation of the Universal Periodic Review (UPR) and Special Procedures were a crucial part of this process. The Committee encouraged the Canadian government to work towards ensuring that these mechanisms became powerful, credible and effective features of the Human Rights Council that were accompanied by effective follow-up and implementation. The Committee also recommended that the government press the Council to establish an accountability mechanism to ensure that fact-finding missions created by the Council receive full support from Council members, both in terms of fulfillment of mission mandates and in terms of follow-up to mission recommendations. Canada will face its

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

first evaluation under the UPR in 2009 – it must prepare itself early to face this challenge and lay the groundwork for other Member states by establishing solid best practices in the coming year.

B. A Year Later – The Follow Up

Two years into the Human Rights Council, the Senate Human Rights Committee continued to monitor its progress, as well as various initiatives undertaken by the Canadian government. The Committee began hearing from government officials and human rights advocacy groups in February 2008 in Ottawa and then undertook a fact-finding mission to Geneva during the seventh session of the Council in March 2008. In Geneva, the Committee heard from officials at the Canadian mission, various countries' ambassadors to the United Nations, a number of advocacy organizations, and officials from the Office of the UN High Commissioner for Human Rights (OHCHR), including outgoing High Commissioner, Louise Arbour.

This report is the product of those discussions: an analysis of how the Human Rights Council has progressed since its formation in June 2006 as well as an overview of the positions taken by Canada in the past year. In this report, the Committee provides recommendations to the Canadian government on how best to maximize its position on the Council, as well as how to help work towards the establishment and maintenance of strong Special Procedures and UPR system.

The Council may still be in its formative years, but most of its institution-building mechanisms are now in place. The Committee remains concerned that the ongoing and deep politicization of the Council may have made it an unworkable mechanism for the promotion of international human rights. The time for Canada to play a strong role and push for change is now.

CHAPTER 2 – A YEAR IN THE LIFE OF THE HUMAN RIGHTS COUNCIL

In order to effectively analyze the evolution of the UN Human Rights Council over the past year, the Committee found it useful to provide a brief summary of events, resolutions and other actions taken by the Council since publication of the Committee's original report in May 2007. Specific voting patterns are detailed in the footnotes.

A. Fifth Session

The fifth session of the Human Rights Council was held between 11 and 18 June 2007. During this session, the Council adopted the institution-building package that had been negotiated over the previous year, and which established operating procedures for the Council as a formalized institution, including frameworks for the Universal Periodic Review and Special Procedures. Significant controversy centred around the institution-building package – many members were concerned that although the larger institutional framework was acceptable, country mandates for both Belarus and Cuba had not been renewed, and that the package included a separate agenda item specifically focussing on the human rights situation in Palestine and Other Occupied Arab Territories; this, despite the fact that another agenda item already referred to “human rights situations that require the Council's attention”.

Witnesses from the Canadian Department of Foreign Affairs told the Committee that despite these concerns, there was enormous pressure at the Council to have the institution-package adopted on consensus³ as many felt that this was the best institutional framework that the Council was likely to achieve in the circumstances.⁴ The negotiations to work out the details of the institutional framework had already taken one year and many were concerned that if it did not pass on consensus the whole process could be opened up again for renegotiation. Nevertheless, the Canadian government was strongly opposed to the separate agenda item on human rights in Palestine and the non-renewal of the two country mandates and wanted to voice these concerns in a powerful manner.

³ Adèle Dion, Director General, Human Security and Human Rights Bureau, Department of Foreign Affairs and International Trade Canada, testimony before the Committee, 11 February 2008.

⁴ Olaf Henricson-Bell, Human Rights Watch, testimony before the Committee, 25 March 2008.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

Canada attempted to call a vote on the institution-building package to prevent it from being adopted on consensus, but was outvoted on this challenge, 46 to 1. The package was later adopted by the Third Committee of the General Assembly in November and confirmed by the General Assembly in December, with Canada and a handful of others voting against it both times.⁵

In addition to the institution-building package, a code of conduct for Special Procedure mandate holders was also adopted on consensus during the Fifth Session. Sponsored by Algeria on behalf of the African group of member states, the code of conduct emphasized that mandate holders must be independent UN experts who seek to establish facts based on objective information from credible sources. They must be guided by principles of discretion, transparency, impartiality, and even-handedness; and must show restraint and discretion so as not to undermine the independence of their mandate. The code also stated that mandate holders must assess all complaints in order to judge that the communication submitted is not manifestly unfounded or politically motivated, that the language used is not abusive, that the communication is submitted by a person or group claiming to be a victim or by those acting in good faith who claim to have direct or reliable knowledge of violations substantiated by clear information, and that the communication is not based exclusively on reports disseminated by the media. Canada and a number of other states had initially opposed such a code of conduct, fearing it was simply a means of monitoring and controlling the Special Procedures by states that wanted to avoid scrutiny, and that a code would affect the independence and credibility of mandate holders. These states had at one point argued that an adequate code of conduct already existed in the 2002 General Assembly Regulations Governing the Status, Basic Rights and Duties of Officials, other than Secretariat Officials, and Experts on Mission,

⁵ 16 November vote:

Against: Canada, Australia, Israel, Marshall Islands, Micronesia, Palau, United States
Abstentions: Equatorial Guinea, Nauru, Switzerland

21 December vote:

Against: Australia, Canada, Israel, Marshall Islands, Micronesia, Palau, United States
Abstentions: Nauru

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

and that the proposed code would add no value to the existing framework. Nevertheless, the code was ultimately adopted on consensus at the Fifth session.

Finally, the Council adopted a number of resolutions on consensus during this session, including two introduced by Pakistan on behalf of the Organisation of the Islamic Conference (OIC): a follow-up to the report of the Commission of Inquiry on Lebanon requesting that the UN High Commissioner for Human Rights extend support to the Lebanese government's activities and programs; and a follow-up to resolutions from the First and Third Special Sessions on the Occupied Palestinian Territory, calling for implementation of those resolutions. Canada disassociated itself from the consensus on this latter resolution, commenting that the original resolutions had not been "even handed and objective. The Council's original decisions are flawed because they do not accurately and objectively reflect the situation."⁶ Another resolution co-sponsored by Germany (on behalf of the European Union) and Egypt (for the African group) followed up on the tepid resolution from the Fourth Session on the human rights situation in Darfur. This resolution welcomed the report submitted by the Experts Group on Darfur, and requested the Group to continue its work and submit a final report in due course.

B. Sixth Session

The sixth session of the Human Rights Council was held between 10 and 28 September, and 10 and 14 December 2007. During this session, the Council adopted a number of resolutions on consensus, including resolutions on:

- Cultural rights and property during armed conflict – condemning the destruction of cultural property during armed conflict and urging states to pay particular attention to this situation in occupied territories.
- Protection of cultural heritage – calling on states to prevent the intentional destruction of cultural heritage.

⁶ Government of Canada, *Explanation of Position*, 14 June 2007.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

- Integrating the human rights of women in the UN system – urging member states to work towards improvement of the status of women in the UN system, including the full participation of women in higher levels of decision making; and ensuring that Special Procedures and other human rights mechanisms at the Council use a gender perspective in their work.
- The Final Report of Darfur Group of Experts – expressing concern that many of the Group’s recommendations had not been fully implemented and that perpetrators of human rights and humanitarian law violations had not yet been held accountable, urging the Sudanese government to investigate all allegations and bring perpetrators to justice, and calling on all parties to end acts of violence against civilians. The mandate of this Group of Experts was transferred to the Special Rapporteur on Sudan.
- Technical assistance – requesting the Office of the UN High Commissioner on Human Rights to increased funds to Burundi for technical assistance, and urging the international community to provide the government of Burundi with the means to allow it to better consolidate human rights, peace and security.
- The elaboration of voluntary human rights goals to commemorate the 60th anniversary of the Universal Declaration of Human Rights. It should be noted that witnesses from the Department of Foreign Affairs told the Committee that Canada and its allies are wary of this resolution, as they were concerned that such an elaboration of goals risks re-opening existing human rights that were already interpreted as customary norms.⁷
- The human rights situation in Palestine and other occupied Arab territories – calling for implementation of the resolutions from the First and Third Special Sessions, and for the dispatch of an urgent fact-finding mission to the area.

⁷ Dion testimony; Robert Sinclair, Deputy Director, Human Rights Section, Human Rights, Gender Equality, Health and Population Division, Department of Foreign Affairs and International Trade Canada, testimony before the Committee, 11 February 2008.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

Canada disassociated itself from this consensus for the same reasons as those expressed with respect to the earlier resolution from the Fifth Session.⁸

A number of other resolutions were adopted on division, reflecting the same voting patterns that had become evident in the first year of the Human Rights Council's existence. These included resolutions on:

- Human rights and international solidarity, introduced by Cuba – requesting the Independent Expert on human rights and international solidarity to continue preparation of a draft declaration on the right of peoples and individuals to international solidarity. This resolution was adopted by a 34 to 12 vote, with Canada against.⁹
- Human rights and unilateral coercive measures, introduced by Cuba on behalf of the Non-Aligned Movement – urging countries to stop adopting or implementing unilateral coercive measures that are not in accordance with international law, objecting to the extraterritorial nature of measures threatening the sovereignty of states, and condemning the use of political or economic pressure against developing countries. This resolution was adopted by a 34 to 11 vote, with Canada against.¹⁰
- The elaboration of international complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination, introduced by Egypt on behalf of the African group – deciding to convene the inaugural session of Ad Hoc Committee of the Human Rights Council on the Elaboration of

⁸ Government of Canada, *Position Statement*, 13 September 2007.

⁹ Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Ukraine, United Kingdom.

Abstentions: Switzerland.

¹⁰ Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Romania, Slovenia, Switzerland, United Kingdom.

Abstentions: Republic of Korea, Ukraine.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

- Complementary Standards in early 2008. This resolution was adopted by a 32 to 10 vote, with Canada against.¹¹
- Preparations for the Durban Review Conference, introduced by Egypt on behalf of the African group – requesting the Chairperson of Preparatory Committee for the Durban Review Conference to present a report to UN General Assembly discussing progress made in preparation for the Conference. This resolution was adopted by a 33 to 10 vote, with Canada against.¹²
 - A global call for action against racism, racial discrimination, xenophobia and related intolerance, introduced by Egypt on behalf of the African group – deciding to realign the work of the OHCHR’s Anti-Discrimination Unit to focus exclusively on racism, racial discrimination, xenophobia and related intolerance, and to change the Unit’s name to the Anti-Racial Discrimination Unit. This resolution was adopted by a 28 to 10 vote, with Canada against.¹³
 - Religious and cultural rights in the Occupied Palestinian Territory, introduced by Pakistan on behalf of the OIC and the Group of Arab States – calling on Israel to respect cultural and religious rights and to allow Palestinian worshippers unfettered access to religious sites. This resolution was adopted by a 31 to 1 vote.¹⁴ Canada was the sole state to vote against this resolution, stating that although Canada agreed with the resolution in principle, the document failed to acknowledge Israel’s security concerns.¹⁵

¹¹ Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Netherlands, Romania, Slovenia, Switzerland, United Kingdom.

Abstentions: Japan, Republic of Korea, Ukraine, Uruguay.

¹² Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Netherlands, Romania, Slovenia, Switzerland, United Kingdom

Abstentions: Japan, Republic of Korea, Ukraine.

¹³ Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom.

Abstentions: Brazil, Guatemala, Mexico, Peru, Uruguay.

¹⁴ Against: Canada.

Abstentions: Bosnia and Herzegovina, Cameroon, France, Germany, Guatemala, Italy, Japan, Madagascar, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom.

¹⁵ Government of Canada, *Position Statement*, 20 September 2007.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

In addition to these resolutions, the Council also adopted a decision on guidelines for preparation of information for the UPR, technical and objective requirements for candidates for Special Procedures mandates, and membership on the Council's Advisory Committee; created a new mandate on Contemporary Forms of Slavery; and created an expert mechanism on the rights of indigenous peoples to replace the former Human Rights Commission's Working Group on Indigenous Populations. Witnesses from the Canadian mission in Geneva noted that Canadian government experts were very involved in the negotiation and design of this Working Group.¹⁶ Finally, the Council extended mandates for the Special Rapporteurs on the right to food, the human rights of indigenous people, adequate housing, the promotion and protection of human rights while countering terrorism, the right to physical and mental health, and on human rights in the Sudan; the Independent Experts on Burundi and Liberia; the Working Group on arbitrary detention; and the Special Representative of the UN Secretary General on Internally Displaced Persons. In a resolution introduced by Portugal, the mandate of the Special Rapporteur on Freedom of Religion and Belief was also extended by a 29 to 0 vote, with 18 abstentions, and Canada voting for the resolution.¹⁷

C. Fifth Special Session

The Council's Fifth Special Session was held on 2 October 2007, called by Slovenia on behalf of the European Union (EU), and resulted in the adoption of a consensus resolution condemning the violent repression of peaceful demonstrations in Myanmar, and urging the government of Myanmar to respect human rights, release political prisoners and lift restraints on peaceful political activity. The resolution also called on the Special Rapporteur on human rights in Myanmar to visit to Myanmar and to report back to the Council.

The Special Rapporteur duly reported back to the Council during the conclusion of the Sixth Session in December, having found that Burmese security forces used

¹⁶ John von Kaufmann, Permanent Mission of Canada in Geneva, testimony before the Committee, 25 March 2008.

¹⁷ Abstentions: Azerbaijan, Bangladesh, Cameroon, China, Djibouti, Egypt, Gabon, Indonesia, Jordan, Malaysia, Mali, Nigeria, Pakistan, Qatar, Saudi Arabia, Senegal, South Africa, Sri Lanka.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

excessive force against civilians and that there were no signs that the government was implementing the Human Rights Council's resolution. In a resolution co-sponsored by Canada, the Council expressed concern about the situation in Myanmar, urged the government to implement the recommendations contained in the Special Rapporteur's report, and requested the Special Rapporteur to conduct a follow-up mission, while urging cooperation from the government of Myanmar. However, to date, the government of Myanmar has not allowed the Special Rapporteur back into the country.

D. Sixth Special Session

The Council's Sixth Special Session was held on 23 to 24 January 2008, called by Pakistan on behalf of the OIC and Syria on behalf of the Group of Arab States, and resulted in the adoption of a resolution on human rights violations emanating from Israeli military attacks and incursions in the Occupied Palestinian Territory, particularly in the Occupied Gaza Strip. The resolution was adopted by a 30 to 1 vote.¹⁸ Canada was the sole state to vote against this resolution, expressing concern that it did not take into consideration the respective roles and responsibilities of all parties, particularly with respect to the protection of civilians; and regretting that the resolution focused on Israeli actions without addressing the rocket attacks targeted at Israeli civilians and failed to acknowledge Israel's security concerns.¹⁹ As with many other resolutions on the human rights situation in the Middle East, Canada's basic position was that the resolution was unbalanced.

E. Seventh Session

The seventh session of the Human Rights Council was held between 3 and 28 March 2008. During this session, the Council adopted a number of resolutions on consensus, including resolutions on:

¹⁸ Against: Canada

Abstentions: Bosnia and Herzegovina, Cameroon, France, Germany, Ghana, Guatemala, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom.

¹⁹ Government of Canada, *Statement on UNHRC Special Session on Gaza*, 23 January 2008.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

- The right to food – expressing concern that women and girls are disproportionately affected by hunger, food insecurity and poverty; encouraging states to fight inequality; stressing the importance of fighting hunger in rural areas; urging states to combat the root causes of disproportionately high levels of hunger and malnutrition among indigenous populations; expressing the need to develop national protection mechanisms for people forced to leave their land because of hunger or disaster; stating that international policies should not have a negative impact on the right to food in other countries; and calling on states to respond to food crises occurring across Africa, and to promote policies and projects that have positive impact on right to food.
- Protection of human rights while countering terrorism – urging states to respect obligations with respect to the prohibition on torture.
- Human rights and arbitrary deprivation of nationality – recognizing that arbitrary deprivation of nationality on racial, national, ethnic, religious, political or gender grounds is a violation of human rights; calling on states to refrain from taking discriminatory measures or implementing legislation that would arbitrarily deprive a person of their nationality and to adopt legislation to avoid statelessness; and calling on states to consider ratifying the Convention on Reduction of Statelessness and the Convention relating to the Status of Stateless Persons.
- Missing persons – calling on states that are parties to armed conflict to take all measures to prevent persons from going missing and to account for those reported missing in times of conflict.
- Human rights and extreme poverty – stating that the fight against extreme poverty must remain a high priority for the international community and inviting the OHCHR to organize a seminar on draft guiding principles.
- The effects of climate change on the enjoyment of human rights – requesting the OHCHR to conduct an analytical study of the relationship between climate change and human rights.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

- The human rights of persons with disabilities – encouraging Human Rights Council mechanisms to integrate the perspective of persons with disabilities into their work and requesting the OHCHR to prepare a thematic study to enhance awareness and understanding.
- The rights of the child – calling on states to implement the Convention on the Rights of the Child and to protect and promote the rights of the child and non-discrimination against children.
- Human rights in Myanmar – expressing concern about systematic violations of human rights and fundamental freedoms of the people of Myanmar and urging the government of Myanmar to receive follow-up mission by the Special Rapporteur.
- The situation of human rights in Sudan – urging the Sudanese government to continue cooperating with the Special Rapporteur and expressing concern at serious ongoing violations of human rights and international humanitarian law in some parts of Darfur. Although agreeing to the consensus, Canada expressed disappointment that this resolution “falls short [and] does not accurately reflect the gravity of the human rights situation in Sudan, and particularly in Darfur. Nor does it adequately address impunity...”²⁰
- The right of Palestinian people to self-determination – reaffirming the right of Palestinian people to self-determination; expressing support for the two state solution and for the need for respect and preservation of the territorial unity and integrity of the Occupied Palestinian Territory, including East Jerusalem. Canada disassociated itself from this consensus, stating that Canada recognized the Palestinian right to self-determination and reiterated its support for an independent and viable and territorial contiguous Palestine State as part of a lasting peace settlement, but that this resolution did not lead to the improvement of the situation on the ground.²¹

²⁰ Government of Canada, *General Comment on the Resolution Entitled “Situation of Human Rights in Sudan*, 20 March 2008.

²¹ Government of Canada, *Explanation of Vote After the Vote*, 28 March 2008.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

A number of other resolutions were adopted on division, again reflecting bloc politic voting patterns. These included resolutions on:

- Combating defamation of religions, introduced by Pakistan on behalf of the OIC – expressing concern at attempts to identify Islam with terrorism, violence and human rights violations; at the intensification of campaigns of defamation of religions and ethnic and religious profiling of Muslim minorities post-911; at recent incidences of stereotyping of religions, their adherents and sacred persons in the media and by political groups; and at laws designed to monitor Muslims; and urging states to prohibit the dissemination of racist and xenophobic material aimed at any religion or followers that constitutes incitement to hatred or violence. This resolution was adopted by a 21 to 10 vote, with Canada against.²² Although it did not make a comment in this instance, Canada has spoken out consistently against proposed resolutions condemning the defamation of religions, noting that Canada disagrees with the focus on only one religion, that freedom of religion is an individual right and not a right belonging to a religion, and the fact that these resolutions do not address the issue of freedom of expression.
- From Rhetoric to Reality: A global call for concrete action against racism, racial discrimination, xenophobia and related intolerance, introduced by Egypt – urging governments to issue formal apologies to victims of historic injustices. This resolution was adopted by a 34 to 0 vote, with 13 abstentions.²³
- The composition of OHCHR staff, introduced by Cuba – emphasizing the issue of geographic balance in the composition of OHCHR staff. This resolution was adopted by a 34 to 10 vote.²⁴ Canada voted against the resolution, stating that

²² Against: Canada, France, Germany, Italy, Netherlands, Romania, Slovenia, Switzerland, Ukraine, United Kingdom.

Abstentions: Bolivia, Brazil, Gabon, Ghana, Guatemala, India, Japan, Madagascar, Mauritius, Mexico, Peru, Republic of Korea, Uruguay, Zambia.

²³ Abstentions: Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom.

²⁴ Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Netherlands, Romania, Slovenia, Ukraine, United Kingdom.

Abstentions: Japan, Republic of Korea, Switzerland.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

- although it appreciated such efforts, the General Assembly rules of procedure stated that a resolution had already been adopted to address geographical imbalances at the OHCHR. There was no point in duplicating this work.²⁵
- Occupied Syrian Golan, introduced by Pakistan on behalf of the OIC and the Group of Arab States – stating that Israel’s decision to impose its laws, jurisdiction and administration on the occupied Syrian Golan was null and void and without international legal effect; and calling on Israel to desist from changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan. This resolution was adopted by a 32 to 1 vote.²⁶ Canada was the sole state to vote against this resolution, stating that although the government recognized that the Golan Heights were occupied territories and did not recognize permanent Israeli control over the territories occupied in 1967, the government had serious concerns that the resolution did not provide a balanced assessment of the human rights situation and did not contribute to a peaceful and fair resolution to the conflict.²⁷
 - Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem and the occupied Syrian Golan, introduced by Pakistan on behalf of the OIC – expressing concern at the Israeli plan aimed at expanding the Israeli settlement of Maale Adumim and building the wall around it, at Israel’s announcement that it will retain the major settlement blocks in Occupied Palestinian Territory, and at the expansion of Israeli settlements and the construction of new ones in the Occupied Palestinian Territory; and urging Israel to reverse its settlement policy in occupied territories and to stop expansion of existing settlements. This resolution was adopted by a 46 to 1 vote.²⁸ Canada was the sole state to vote

²⁵ United Nations Office at Geneva, “News and Media: Human Rights Council Extends Mandates on Human Rights and Foreign Debt, Human Rights and International Solidarity and Minority Issues,” 27 March 2008.

²⁶ Against: Canada.

Abstentions: Bosnia and Herzegovina, Cameroon, France, Germany, Guatemala, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine and United Kingdom.

²⁷ Government of Canada, *Human Rights in the Occupied Syrian Golan*, 17 March 2008.

²⁸ Against: Canada.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

against this resolution, stating that the government supports Israel's right to defend its citizens and territory, but opposes unilateral action such as the Israeli settlements and the barrier that aggravates social and economic conditions and prejudices the outcome of the settlement of final status issues and the creation of independent and viable Palestinian state. However, the Canadian delegation stated that this resolution is not an accurate and balanced assessment of the human rights situation and does not refer to Palestinian obligations. As such, it does not contribute to search for peaceful and fair solution to conflict.²⁹

- The role of good governance in the promotion and protection of human rights, introduced by Poland – welcoming the OHCHR's reports on good governance; inviting states to ratify the Convention Against Corruption and to promote transparency, accountability, prevention and enforcement; and requesting the OHCHR to prepare a report on anti-corruption, good governance and human rights. This resolution was adopted by a 41 to 0 vote, with 6 abstentions.³⁰

In addition to these resolutions, the Council also created a new mandate for an Independent Expert on human rights obligations related to access to safe drinking water and sanitation. The goal of this mandate is to identify, promote and exchange views on best practices related to access to safe drinking water and sanitation and to prepare a compendium of best practices. Introduced by Germany and Spain, this resolution was adopted on consensus; however, Canada, Russia and Nigeria expressed some concerns about the resolution, Canada noting that access to safe drinking water and sanitation is not considered a human right, but that it impacts on the enjoyment of human rights. The Canadian delegation emphasized that this resolution did not create a human right on the right to water.³¹

A number of mandates were also extended on consensus: Special Rapporteurs on the situation of human rights defenders; the sale of children, child prostitution and child

²⁹ Government of Canada, *Explanation of Vote*, 17 March 2008.

³⁰ Abstentions: Bolivia, China, Cuba, Nicaragua, Russian Federation, Sri Lanka.

³¹ Government of Canada, *Explanation of Position*, 3 March 2008.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

pornography; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; violence against women; human rights in Myanmar; Independent Experts on minority issues, and on human rights in Somalia; and a Working Group on enforced and involuntary disappearances. A consensus decision was also made not to renew the mandate on the Democratic Republic of the Congo; however, Canada, the European Union and Switzerland expressed disappointment at this decision.³²

Other extended mandates proved more divisive. Cuba introduced a number of resolutions to extend the mandate of the:

- Independent Expert on the effects of foreign debt and other international financial obligations of states on full enjoyment of human rights. This resolution was adopted by a 34 to 13 vote, with Canada against.³³
- Independent Expert on human rights and international solidarity. This resolution was adopted by a 34 to 13, with Canada against.³⁴
- Working Group on the use of mercenaries as means of violating human rights and impeding exercise of the right of people to self-determination. This resolution was adopted by a 32 to 11 vote, with Canada against.³⁵

Canada introduced a resolution to extend the mandate of the Special Rapporteur on freedom of opinion and expression; however, two amendments changed the text, instructing the Special Rapporteur to report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination, and noting the importance for all forms of media to repeat and to deliver information in a fair and partial manner. This amended resolution was adopted by a 32 to 0 vote, with 15

³² Government of Canada, *General Comment*, 19 March 2008.

³³ Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom.

³⁴ Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom.

³⁵ Against: Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands Republic of Korea, Romania, Slovenia, United Kingdom.
Abstentions: Switzerland, Ukraine.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

abstentions.³⁶ Canada voted against both amendments and then abstained on the overall text, stating that the amendments were not the best way to address issues of religious and racial discrimination. Diplomats in Geneva emphasize to the Committee that although individuals have rights to freedom of religion, religions themselves do not have rights. Canada's statement at the Council went on to note that religious and racial discrimination were not part of the Special Rapporteur's mandate – these amendments would duplicate the mandate of other Special Procedures and would over-extend, and therefore weaken, the mandate of this Special Rapporteur.

A resolution to extend the mandate of the Special Rapporteur on human rights in the Democratic People's Republic of Korea was introduced by Slovenia on behalf of the EU and was adopted by a 22 to 7 vote, with Canada in favour.³⁷

³⁶ Abstentions: Bosnia and Herzegovina, Canada, France, Germany, Guatemala, Italy, Japan, Netherlands, Philippines, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom.

³⁷ Against: China, Cuba, Egypt, Indonesia, Malaysia, Nicaragua, Russian Federation.

Abstentions: Angola, Azerbaijan, Bangladesh, Cameroon, Djibouti, Gabon, Guatemala, India, Mali, Mauritius, Nigeria, Pakistan, Philippines, Qatar, Senegal, South Africa, Sri Lanka, Zambia abstained.

CHAPTER 3 – INSTITUTION-BUILDING PROCESS COMPLETED:

THE COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The UN Human Rights Council can no longer be called an institution in its infancy. On the brink of its third year, the Council has spent two years building on its history as the Human Rights Commission, and its institution-building process is ostensibly complete – the guidelines are established and must now be followed through. With this context in mind, the Senate Committee examined the guidelines and expectations for the Universal Periodic Review, the functioning of the Special Procedures, and heard from many witnesses about the bloc politics that are profoundly at play on the Council, as well as Canada's position within them. This chapter discusses those observations in some detail, and provides the Committee's recommendations for the Canadian government as it seeks to help the institution become a functioning institution dedicated to human rights compliance. Ultimately, the Committee is concerned that the deep and open politicization of the Human Rights Council is making it an unworkable mechanism for the promotion of human rights in the international sphere. As such, the Canadian government and others faces a critical time for developing an institution that operates as a positive mechanism for the promotion and implementation of human rights.

A. The Universal Periodic Review

1) The Committee's Observations

Although the formal guidelines for the UPR are now well-established, the UPR process in itself began in April 2008. The Committee's hearings, both in Geneva and in Ottawa, were conducted in February and March; thus, the Committee's comments in this section are necessarily restricted to its impressions of the guidelines themselves and witnesses' expectations of the UPR, as opposed to the functioning of the UPR itself.

As established by the UPR guidelines, each state is to be reviewed every four years. Reviews will be conducted during three hour sessions before one working group composed of the 47 members of the Council. This working group will be provided with

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

40 pages of documentation for the review: 20 of which will be submitted by the state under review, 10 of which will be compiled by the OHCHR, and 10 of which will be summarized by the OHCHR from civil society reports. A panel of representatives from three Member states chosen randomly from different regional groups (referred to as a “troika”) will then be responsible for issuing concluding comments and recommendations.³⁸

The Committee notes that these guidelines did not necessarily live up to all expectations. Canada had originally pushed for states to be reviewed every three years, while others had hoped that the full Council would not be responsible for undertaking the reviews.³⁹ Paula Schriefer, of Freedom House, commented that the UPR guidelines were “watered down”, and placed too much emphasis on “intergovernmental consensus and inclusiveness over rigorous standards and specificity.”⁴⁰ The Committee is concerned that the troika process is weak and could mean that the review will be wholly dependent on political will.

Despite such frustration, the Committee found that expectation was high for the UPR among the witnesses who hoped that it would be an important positive change that could transform negative perceptions of the Council. The UPR might not be a complete revolution, but Louise Arbour, UN High Commissioner for Human Rights commented that it would “bring a sense of fairness and universal treatment.”⁴¹ Alex Neve, Secretary General of Amnesty International Canada noted that if the UPR is

done well, it could, in an unparalleled manner, mean that the Council would actually have the means to promote human rights in all

³⁸ However, the state under consideration retains the right to reject the choice of these troika members. For more information about the UPR, see Office of the UN High Commissioner for Human Rights, “Universal Periodic Review”, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

³⁹ See Chapter 3, Part D of *Canada and the United Nations Human Rights Council: At the Crossroads*.

⁴⁰ Paula Schriefer, Director of Advocacy, Freedom House, testimony before the Committee, 25 February 2008.

⁴¹ Louise Arbour, UN High Commissioner for Human Rights, testimony before the Committee, 26 March 2008.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

countries consistently, objectively, transparently and constructively, something that eluded the Commission for more than six decades.⁴²

Officials at the OHCHR in Geneva emphasized that they in fact, had already seen UPR-driven change prior to the commencement of the UPR reviews. Arbour called the effect of the UPR already “earth shattering,”⁴³ as her office saw states scrambling to ratify treaties, submit reports to the treaty bodies, and implement initiatives at the domestic level in advance of their review.

The OHCHR and non-governmental organizations appearing before the Committee in Ottawa and Geneva commented on the UPR’s potential to stimulate national-level debate and consultation as states prepared their reports, opening up space for smaller specialized NGOs to also have a voice where they might usually be overshadowed by larger NGOs such as Amnesty International or Human Rights Watch. The Committee notes that before the UPR had even gotten off the ground, Zambia had undertaken nine domestic consultations, and Indonesia was also undertaking its own consultation process. Witnesses emphasized that the more such consultations take place, the more information will be accessible, and the harder it will be for states to paint a rosy picture to cover up the reality on the ground.⁴⁴

However, numerous witnesses cautioned that the Human Rights Council will have to proceed carefully with the UPR to ensure that it lives up to these expectations – success will be a matter of political will. Ibrahim Salama at the OHCHR told the Committee that the UPR is “both a challenge and an opportunity,”⁴⁵ while Louise Arbour expressed fear that the whole process could simply become a “club of self-

⁴² Alex Neve, Secretary General, Amnesty International Canada, testimony before the Committee, 11 February 2008.

⁴³ Arbour testimony.

⁴⁴ Arbour testimony; Ibrahim Salama, Director, Treaties and Council Branch on Universal Periodic Review, Office of the UN High Commissioner on Human Rights, testimony before the Committee, 26 March 2008; Jean-Paul Hubert, Interim President, Rights and Democracy, testimony before the Committee, 11 February 2008; Lloyd Lipsett, Senior Assistant to the President, Rights and Democracy, testimony before the Committee, 11 February 2008; Peter Splinter, Representative to the UN in Geneva, Amnesty International, testimony before the Committee, 25 March 2008.

⁴⁵ Salama testimony.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

congratulators.”⁴⁶ Paula Schriefer noted that “there is a danger that the UPR will evolve into a meaningless process in which human rights abuses are glossed over during a far-too-friendly conversation among states.”⁴⁷ Some at the OHCHR even expressed fear that the UPR process could be interpreted by some states to be an appeal process from the UN treaty bodies’ concluding observations.

The Committee notes that certainly, there is a “great deal of state nervousness”⁴⁸ about the UPR, as pointed out by Peter Splinter of Amnesty International in Geneva. Many states are attempting to tighten the UPR rules and keep the process as confidential as possible. In the final run, those who promote the UPR hope to at least “lower the denial level,” as noted by one diplomat in Geneva, if nothing else.

2) The Committee’s Recommendations for Canada

In terms of Canada’s work on the UPR, in March 2008 Canada had already been designated as a troika review member for Indonesia and was meeting with the other states – both those on the troika and the state under review – in preparation for the process.⁴⁹ Canada itself is to undergo its own review in 2009. In preparation, Adèle Dion told the Committee that the Department of Foreign Affairs planned to host an information session in spring 2008 for civil society. This session will be followed by more detailed workshops and consultations with NGOs on the early lessons of the UPR. Canadian diplomats in Geneva told the Committee that Canada will prepare its report for the UPR with the Department of Heritage Canada, as is the norm with the preparation of reports to the UN treaty bodies, and that Canada has stated that it will not refuse the choice of any state chosen to be on the troika reviewing Canada.

OHCHR officials, Canadian diplomats and NGOs emphasized to the Committee the clear importance of national dialogue and consultations for countries heading into their UPR review. Cynthia Gervais of Rights and Democracy noted that for it to be

⁴⁶ Arbour testimony.

⁴⁷ Schriefer testimony.

⁴⁸ Splinter testimony.

⁴⁹ Marius Grinius, Ambassador, Permanent Mission of Canada in Geneva, testimony before the Committee, 25 March 2008.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

successful, the UPR needs to be a national process more than anything else, and Sandeep Prasad of Action Canada for Population and Development suggested that Canada should set a standard for other states with its own preparation for the UPR, making its preparations as transparent and as open to dialogue as possible.

The Committee notes that 2009 is quickly approaching; yet, despite some preparation by federal officials, no concrete process appears to have been put in place to prepare Canada for its review. Now is the time to bring Canada's federal, provincial and territorial ministers responsible for human rights together to establish clear guidelines and practices for the not-so-distant future.

In terms of the review troika itself, Alex Neve told the Committee that the work of troika members will be critical and that the process surrounding their review must be strong. A number of NGOs noted that Canada's work on the troikas will be an opportunity to establish best practices. Canada will need to be proactive in its approach – an “energetic participant”⁵⁰ that asks difficult questions – to ensure the success of the process. Witnesses suggested that not only should Canada fight to keep the UPR and troika an open and transparent process, but it should also consider appointing a strong human rights advocate or expert when Canada is called to work on a troika in order to get the process out of the political system in into the human rights field.⁵¹

In his testimony, Alex Neve also told the Committee that Canada must work to ensure that the UPR does not undermine or conflict with other UN human rights review processes, such as the treaty body process, and must push for commitment for real follow-through on troika recommendations. In this respect, Sandeep Prasad noted that voluntary commitments made by Canada may also serve a standard setting role.

⁵⁰ Schriefer testimony.

⁵¹ Olaf testimony; Neve testimony; Schriefer testimony; Splinter testimony; Salama testimony; Sandeep Prasad, Human Rights Advisor, Action Canada for Population and Development, testimony before the Committee, 25 March 2008.

RECOMMENDATION 1

The Committee recommends that the Government of Canada immediately develop procedures for its involvement in the Universal Periodic Review process:

a) Canada's federal, provincial and territorial ministers responsible for human rights should meet immediately to agree upon a process to prepare Canada for its 2009 UPR review. This process should be open and transparent, and include consultations with civil society and parliamentarians. The Ministers of Heritage and Foreign Affairs should then appear before the Standing Senate Committee on Human Rights to outline decisions made and steps taken with respect to Canada's preparations.

b) Canada should file the report received from the UPR process in Parliament, accompanied by details of actions that the government intends to take to address these recommendations by way of follow-up.

RECOMMENDATION 2

The Committee recommends that the Government of Canada develop a proactive policy with respect to its involvement on future UPR evaluating committees (troikas). This policy should include the appointment of an independent human rights expert as Canada's representative on the troika, and promote early and transparent consultations between troika members and the state under review.

B. Special Procedures

1) The Committee's Observations

Unlike the Universal Periodic Review, the Special Procedures became a fundamental feature of the UN Human Rights Commission and continue to be one of the most important mechanisms of the Human Rights Council today. Alex Neve emphasized their on-going significance to the Committee, noting that the Special Procedures emerged relatively unscathed from the institution-building process, despite the code of conduct

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

that was put in place. As noted in the previous chapter, a large number of mandates were extended over the last year, although, regrettably, the mandates for Belarus, Cuba and the Democratic Republic of the Congo were dropped.

Looking to the future, Rachel Brett of the Quaker United Nations Office noted that the key to success for the Special Procedures will be in the appointment of new mandate holders. The quality of candidates' appointed will be a strong indicator of the potential for the mechanism's on-going success of the Special Procedures. A corollary to this issue is the breadth of representation among candidates. Alex Neve told the Committee that there is currently a very low number of female nominees for mandate holder positions. This may be an issue of some significance for the continued recognition of the Special Procedures as a legitimate mechanism in the coming years.

2) The Committee's Recommendations for Canada

In terms of Canada's work with the Special Procedures, Alex Neve noted that the government has generally taken a neutral perspective with respect to the choice of individual candidates, neither voicing its support for strong candidates, nor putting its support behind Canadian nominees. Nevertheless, Canada took at least one strong recent stand during the Seventh Session, opposing the nomination of Richard Falk as mandate holder on the situation of human rights in the Occupied Palestinian Territories, Ambassador Marius Grinius stating that:

Canada has serious concerns about whether the high standards established by the Council, particularly in regard to impartiality and objectivity, will be able to be met by this individual. It is with disappointment, therefore that Canada dissociates itself from any Council decision to approve the full slate.⁵²

Without any reference to this particular action (which occurred more than a month after he made his comments to the Committee), Alex Neve encouraged Canada to actively engage in the choice of candidates for mandate holder positions, calling on the government to assess which candidates are strongest and to voice this opinion to the

⁵² Ambassador Marius Grinius, *Statement by the Canadian Delegation*, 26 March 2008.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

Council. He said that this could be an important means of helping to ensure that the best and most representative candidates have the strongest support, while detracting from those candidates that the government feels could cause damage to the reputation of the Special Procedures.

Finally, Neve emphasized that in order to safeguard the independence of the Special Procedures, to ensure that gaps in human rights coverage are filled, and to facilitate cooperation among various governments, **Canada should actively participate in on-going exchanges with respect to the review, rationalization and improvement of Special Procedures.**

RECOMMENDATION 3

The Committee recommends that the Government of Canada actively engage in the selection of candidates for mandate holder positions by underscoring competence as the primary criterion for nomination, emphasizing the need for gender balance, promoting the nomination of Canadian experts, and encouraging the development of a roster of experts from around the world.

C. Bloc Politics

1) The Committee's Observations

One fact became glaringly apparent to the Committee as it continued to monitor the Human Rights Council – the bloc politics that marred both the former Human Rights Commission and the first year of the Council's work have not diminished. **Bloc politics are destroying the legitimacy of the Council and distorting its work. Canada and the European Union states continue to be pitted against members of the Organisation of the Islamic Conference the Group of Arab States, and the Non-Aligned Movement (NAM)** (as described in Chapter 3, Part C of *Canada and the United Nations Human Rights Council: At the Crossroads*). The outcome of this political battle is more than evident in the fact that the human rights situation in Palestine and other

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

Occupied Arab Territories was put on the Council's permanent agenda, and that more than half of the Special Sessions have been held on issues surrounding Israeli actions. NGOs in Geneva told the Committee that the "bully" factor has become a fact of life on the Council, with OIC and NAM member states having the majority of Member states and essentially controlling much of the agenda.

Witnesses appeared to universally agree that **the problem for Canada is that the OIC, Group of Arab States and NAM appear to be able to work across regional groupings to find consensus on issues and vote as a block, while Canada, the EU and other like-minded states have been unable to find the same consistency of voice.** One diplomat in Geneva noted that although not all member of the OIC or Group of Arab States necessarily agree with Pakistan (leader of the OIC) and Egypt (leader of the Group of Arab States), these states nonetheless generally let the leaders make decisions for them as long as their own prominent individual concerns are not compromised. Another diplomat told the Committee that one of the great improvements of the Human Rights Council over the former Commission is the fact that the Council sits so frequently. However, this very fact is problematic for smaller, developing world countries that may not be able to have a permanent presence at the Council, and certainly cannot be present at all the negotiating tables at once. In such a scenario it is often easier for some countries to let the leaders speak on their behalf.

Diplomats noted that the EU is attempting to rectify this situation, seeking to lead by building consensus with other blocks of nations and struggling to find solidarity among its own member states. However, the search for consensus can be a time consuming process, and, unlike the OIC, Group of Arab States, or NAM, it often takes the EU a long time to get to the bottom line on resolutions or statements. The consultation process is getting better, but the problem is still not resolved, leaving Canada in a frequent search for allies.

Noting the work being undertaken by the EU but the difficulties that it is having in finding speedy consensus, Canadian diplomats, government officials and NGOs in

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

Geneva commented on the strong opportunities for Canada to find its own place as a leader and cohesive bridge builder. Canadian diplomats emphasized that Canada is doing its best to leap into the breach, to work with moderates and to find co-sponsors across regions in order to find broader acceptance for resolutions. Adèle Dion commented that Canada is trying to “break down that instinct to vote as a bloc”⁵³ by reaching out on an issue by issue basis as opposed to emphasizing voting bloc membership – trying to identify issues in which Canada may have views in common with members of other regional groupings. In doing so, Dion noted that Canada is working bilaterally in capitals throughout the world, negotiating with ambassadors, high commissioners, foreign ministries, ministers and parliamentarians.

2) The Committee’s Recommendations for Canada

Ultimately, most witnesses noted that it must simply be accepted that the Human Rights Council operates in a political environment – political voting is part of the Council’s very make up. The key is to work with that reality and to try to develop the best Council possible within that environment.

Echoing recommendations made in the Committee’s 2007 report, various NGOs told the Committee that the first step to making the Council a success is to focus on bridge-building. This point was also emphasized by Canadian officials in Ottawa and Geneva. **Paula Schriefer commented that**

vigorous diplomacy and smart politicking rather than retreat are the only approaches to influence a naturally political body like the Council... Our chief criticism of the Council is not that the Council itself is flawed or hopeless. In fact, if you look at the composition of the Council and the majority of democracies that occupy seats, there is no reason why it should not be functioning better, other than that we have not been skilful in working as a group with other democracies to push the right issues.⁵⁴

Bridge-building means going beyond traditional Western allies to also working closely with developing countries or others that may not always share the same world view. Olaf

⁵³ Dion testimony.

⁵⁴ Schriefer testimony.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

Henricson-Bell of Human Rights Watch in Geneva emphasized that Canada must speak to all members of the various regional groupings, not just the leaders, and attempt to demonstrate to them that the dynamic proposed by their leader is not necessarily real or helpful to their cause. Paula Schriefer noted that Canada would have an advantage in adopting this approach, as it has the “legitimacy and diplomatic savvy”⁵⁵ to potentially bring other states to Canada’s point of view.

Jean-Paul Hubert of Rights and Democracy, Rachel Brett and Canadian diplomats in Geneva provided the Committee with examples of various regional organizations that Canada belongs to whose membership also includes a wide array of members of the OIC, Group of Arab States and NAM and could thus serve as a forum for Canada to carry out this role: The Francophonie, the Commonwealth, the Organization of American States, Asia-Pacific Economic Cooperation, the Inter-Parliamentary Union, and the UN Democracy caucus. They commented that Canada should be taking a leadership role in working through these organizations to reach out to such states in order to build consensus and support for individual resolutions and the broader work of the Human Rights Council. Certainly it is true that the Francophonie recently held a seminar on the Universal Periodic Review that included many members of the OIC. Such seminars are ripe opportunities for Canada. As noted by Jean-Paul Hubert, “We must convince people whom we sit next to in those clubs of our points of view, seeking their support and bringing them to vote, think and act like we do.”⁵⁶

Some witnesses emphasized the important role for parliamentarians in making such linkages work, highlighting the important opportunities that are available to discuss Canada’s position on the Council when working with parliamentary associations and parliamentarians from other countries. Parliamentarians frequently engage in parliamentary diplomacy at various forums around the world. Louise Arbour told the Committee of the deep respect that she had developed for organization such as the Inter-Parliamentary Union during her tenure as High Commissioner. This is an important

⁵⁵ Ibid.

⁵⁶ Hubert testimony.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

avenue for the government to explore when attempting to develop a position or consensus at the Human Rights Council

One suggestion that particular captured the Committee's attention was the idea of creating internships to help train students from smaller developing countries that currently lack the capacity to fully participate at the Human Rights Council. The Canadian International Development Agency could provide funding for capacity building internships, training individuals from other countries to help smaller countries build resources in Geneva and at the Council in the longer term.

In order to break down bloc voting patterns and encourage greater cooperation between Member states, the idea was also raised that Canada should encourage the various regional member groupings to propose more states for nomination than the seats available at the Council. In the past, three of five regional groups have worked together to only nominate one state for the one seat available, thus pre-ordaining membership on the Council.

RECOMMENDATION 4

The Committee recommends that the Government of Canada develop new strategies for working towards strong human rights promotion at the UN Human Rights Council by:

- **Utilizing the international and regional organizations to which Canada belongs to build consensus and support for individual resolutions and the broader work of the Human Rights Council;**
- **Fostering parliamentary diplomacy by calling on parliamentarians and, in particular, the speakers of the House of Commons and Senate, to promote Canada's positions at the Human Rights Council in the course of their work with parliamentary associations and other forums; and**
- **Encouraging development of a policy that would see the various regional Human Rights Council member groupings propose more states for nomination than seats available at the Council.**

RECOMMENDATION 5

The Committee recommends that the Government of Canada fund internships for students from the developing world to provide them with international relations and diplomacy training.

D. Canada's Isolated Position

1) The Committee's Observations

Yet, despite its attempts to be a leader and bridge-builder among nations, the Committee heard that Canada's principled approach to certain issues at the Human Rights Council has earned it criticism from many, as well as an increasingly marginalized position among nations.

Canada's adoption of a strong "position of principle"⁵⁷ has become apparent in a number of areas: in the government's challenge to the institution-building package at the Fifth Session, the Third Committee and the General Assembly; in the government's supportive position on Israel; and in Canada's withdrawal from the Durban Review Conference. Canada's voting pattern on all resolutions concerning Israel have clearly marked the Canadian government as standing on its own. Diplomats in Geneva pointed out that Canada has now voted four times against resolutions on its own while Canada's traditional allies have instead generally chosen to abstain from the vote. In a paper submitted to the Committee, Adèle Dion notes that Canada has consciously taken a position that calls for "for fair-minded resolutions on Israeli-Palestinian issues at the UN and oppose[s those] that unfairly single out any one party."⁵⁸

As part of this approach, Canada has withdrawn from activities surrounding the 2009 Durban Review Conference⁵⁹ that follows up on the 2001 Durban World Conference Against Racism, an event which provoked numerous allegations of discrimination against Israel at the time. Canada is currently the only Human Rights

⁵⁷ Dion testimony.

⁵⁸ Adèle Dion, *Opening Statement*, document submitted to the Committee, 11 February 2008.

⁵⁹ The Human Rights Council is acting as the Preparatory Committee for the Durban Review Conference.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

Council member to have withdrawn from the process. Alex Neve highlighted the controversy surrounding Durban when he noted to the Committee that “There is no question that Durban is a difficult, contentious, ugly process at the UN level.”⁶⁰ In 2001, there was significant pressure for Canada to withdraw from the conference with the United States and Israel, but Canada decided to stay. Some saw this as a positive way to approach the issue at the time. Alex Neve commented that Amnesty International

commended Canada for staying in, for rolling up their shirt sleeves and trying, right up to the dying moments, to salvage something, to build the bridges, to improve. They made it very clear in the statements they made at the end of the conference what the problems were and disassociated themselves with aspects of the closing declaration, et cetera. We feel that was the route to go.⁶¹

Since the original Durban Conference, witnesses told the Committee that the preparatory process has been similarly politicized, and Louise Arbour commented that the Durban process is a “huge banana peel”⁶² that can easily cause a lot of damage. Canada announced that it would not participate in January 2008, highlighting Canada’s concerns that the process leading to Review Conference “has been divisive, and sets a troublesome tone for the Conference itself.”⁶³ Instead, Dion told the Committee that the Canadian government is looking for other ways to obtain its objectives, such as through ensuring that Special Procedures mandates on issues that will arise at the conference – such as freedom of expression – are strong and comprehensive.

Canada’s decision to withdraw from the Durban proceedings was greeted with mixed reviews from witnesses, with Louise Arbour calling Canada’s position “puzzling.”⁶⁴ Paula Schriefer supported the government’s decision, commenting that “There needs to be a sign among countries that really care about these issues that there is very little legitimacy in this type of process.”⁶⁵ Others also commended this honest and

⁶⁰ Neve testimony.

⁶¹ Ibid.

⁶² Arbour testimony.

⁶³ Dion testimony.

⁶⁴ Arbour testimony.

⁶⁵ Schriefer testimony.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

upfront position compared to the more diplomatic position adopted by EU states that have opted to condemn actions leading up to Durban while remaining within the process. However, other witnesses saw Canada's decision as regrettable; Peter Splinter emphasizing that by abandoning the Durban process ("packing up its marbles and going home"⁶⁶) Canada has effectively given away all power that it had to shape the decisions that will be taken within it.

Beyond Durban specifically, John Fisher of Arc International, Alex Neve and Sandeep Prasad expressed fear that Canada's broader tough position will make it infinitely harder for Canada to act as the bridge-builder that it wants to be, noting that Canada's recent voting record at the Human Rights Council has effectively marginalized it within the international community. As commented by Jean-Paul Hubert,

It looks bad if we are the only country voting one way, even though we may be convinced as Canadian citizens that we are right. It does look bad. It does make people fear we are losing friends, which we need. To please one, you displease 20. That is not the way to do it.⁶⁷

Canadian diplomats in Geneva noted that Canada's recent isolation has had a negative impact on its ability to influence other matters. The OIC and other states have retaliated against Canada on other issues as a result of some of the principled stances that Canada has adopted on issues surrounding Israel. Witnesses commented that in some ways, Canada's approach has exacerbated the bloc politics already at play. Even some NGOs are no longer turning to Canada because Canada is being shunned by other states. Ultimately, John Fisher emphasized that it is not Canada's actual position that is the problem, but the "lack of flexibility that Canada has brought to the negotiations;"⁶⁸ noting that while Canada becomes increasingly isolated, Norway is taking on a more significant bridge-building role as an EU outsider.

⁶⁶ Splinter testimony.

⁶⁷ Hubert testimony.

⁶⁸ John Fisher, Co-Director, Arc International, testimony before the Committee, 25 March 2008.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

2) The Committee's Recommendations for Canada

The Committee is well aware that making recommendations about how Canada should best approach issues surrounding Israel, racism and discrimination is difficult. The Committee has heard points of view on both sides of the spectrum. However, ultimately, as already stated in this Committee's earlier report, the Committee found it difficult to argue with witnesses who favoured Canada's traditional approach. Louise Arbour emphasized that the "world looks to countries like Canada for articulation of the middle ground,"⁶⁹ and that the government's current position is difficult to reconcile with the image that Canada traditionally has of itself. As expressed by Peter Splinter: "Canada should be Canada."⁷⁰ He commented that Canada's position with respect to Israel is not problematic, but "it is the tone with which the message is delivered."⁷¹ Alex Neve noted that

It is a more careful tactical consideration of, when it comes to Israel, how to find the balance between expressing strong views but still moving forward in a way that we can forge the kinds of alliances and build the bridges that are necessary...⁷²

He said that instead, Canada should be working on a case-by-case basis, getting back to the "basics."

The Committee's basic comment that adopting honest opinions is a positive approach, but Canada's need to use the Council as a vehicle for promoting human rights should not be lost in this balance. Canada must continue to protect and uphold the values that it holds dear, but should not become known as a state that is never willing to negotiate.

RECOMMENDATION 6

The Committee supports the Government of Canada's decision to withdraw from the Durban review process, and recommends that the Government of Canada

⁶⁹ Arbour testimony.

⁷⁰ Splinter testimony.

⁷¹ Ibid.

⁷² Neve testimony.

remain open to re-joining the process only if significant changes demonstrate that participants are focussing on objective, balanced and appropriate measures for the promotion of human rights.

E. Global Impressions

Although the Committee agrees with diplomats in Geneva that it was too much to expect that the Council would be a revolutionary breakthrough for politics and human rights in UN system, it must also note that very little has changed for the better since *Canada and the United Nations Human Rights Council: At the Crossroads* was released last year. **Special Procedures have not been substantially eroded and the UPR shows a great deal of promise, but the Committee nonetheless found that optimism has diminished between this year and last.**

On many levels, the Committee agrees with witnesses like Alex Neve who said that the Council was not “beyond salvation,”⁷³ and Jean-Paul Hubert, who said that he remains optimistic because “it cannot be worse than what we had before. We have to give it a chance... We have to watch it go for a while. Leopards do not change their spots. We know that, and the foreign policies of countries do not move easily.”⁷⁴ The Council remains an opportunity to make inroads on human rights issues and to shine a spotlight on areas of particular concern.

As noted by Adèle Dion, the Committee sees that there has been some maturing on the Council over the last year, and that the Council is slowly shifting from its burdensome institution-building process to address real human rights issues. The Committee heard it echoed repeatedly that the Special Session held on the human rights situation in Myanmar was somewhat of a saving grace for a Council that seemed destined to only ever use its Special Sessions power to focus on issues in the Middle East. The follow-up to the situation in Darfur also seemed to follow this positive trend. Finally, the Committee had an opportunity to see the power of public shaming at work while

⁷³ Ibid.

⁷⁴ Hubert testimony.

Canada and the United Nations Human Rights Council: A Time for Serious Re-Evaluation

attending the Human Rights Council during the Tibet crisis with China. Certainly the hope, as expressed by Dion, is that the Council will move from being a primarily reactive body to being both reactive and proactive. This shift should be particularly facilitated with the UPR underway.

However, the Committee has not been won over. The Human Rights Council remains a deeply troubled institution that, in the Committee's view, spends more time throwing obstacles in the way of effective human rights promotion than in fulfilling its role as the primary human rights mechanism in the international system. The Committee is very concerned that the advances made in the last two years are not enough, and without strong initiatives taken by Member states to work towards building consensus and objective, balanced resolutions, the Human Rights Council is destined to flounder.

In order to facilitate Canada's role in making the Human Rights Council a more viable and legitimate institution into the future, the Committee wishes to reiterate an important recommendation made in its earlier report and call for a Canadian ambassador for human rights to be put into place,⁷⁵ as has already happened in France, the Netherlands, Norway, Spain and Sweden. As emphasized by a number of witnesses, Canada needs human rights experts in Geneva as a reinforcement for the diplomats already working to promote Canada's foreign policy abroad. Such an ambassador could boost both the profile and effectiveness of Canada's human rights efforts at the Council by ensuring that Canada has the capacity to undertake elevated diplomatic initiatives and fully evolve into its role on the Council. The ambassador could essentially play the role of focal point within the Canadian government to concentrate on human rights as part of Canadian foreign policy. A human rights ambassador would significantly enhance Canada's role and capacity at the Council, raise the standing of human rights as a foreign policy issue, and re-focus Canada on the necessity of implementing its international human rights obligations in domestic law.

⁷⁵ For further discussion of this recommendation, see Chapter 4 Part A(4) of *Canada and the United Nations Human Rights Council: At the Crossroads*.

RECOMMENDATION 7

The Committee recommends that the Government of Canada put into place a Canadian ambassador for human rights, based in Canada, to work in coordination with relevant federal departments. The ambassador should be Canada's permanent representative to the Human Rights Council and coordinate Canada's negotiations on human rights issues in a consistent manner across all international forums.

Ultimately, the Committee recognizes that, no matter how stymied it is by politics, the Human Rights Council is an essential human rights institution that is likely to remain a part of the international system well into the future. In order to make it as effective and legitimate as possible, the Committee encourages the Canadian government to give human rights policy a privileged position as part of its domestic and foreign policy agenda.

In 2006, Canada was elected to the Human Rights Council for a three year term. As that term draws to a close, the Committee encourages the Canadian government to focus on its human rights agenda as part of a re-evaluation of its position with respect to the Council. The government should undertake an assessment of progress made at the Council in the last years to determine how Canada can best manage its role on the Council to help it become an effective mechanism for the promotion of human rights.

RECOMMENDATION 8

Bearing in mind growing unease – as well as academic and other criticism – suggesting that Human Rights Council Members are using the Council to further political agendas as opposed to universal human rights standards, the Committee recommends that the Government of Canada assess progress made at the Council.

APPENDIX A : WITNESSES HEARD

February 11, 2008

Foreign Affairs and International Trade Canada

Adèle Dion, Director General, Human Security and Human Rights
Bureau;

Robert Sinclair, Deputy Director, Human Rights Section, Human
Rights, Gender, Equality, Health and Population Division

Amnesty International Canada

Alex Neve, Secretary General

Rights and Democracy

Jean-Paul Hubert, Interim President;

Lloyd Lipsett, Senior Assistant to the President.

February 25, 2008

Freedom House

Paula Schriefer, Director of Advocacy (by videoconference)

APPENDIX A : WITNESSES HEARD

Fact Finding Mission to Geneva

Tuesday March 25, 2008

Canadian Permanent Mission to the United Nations

Marius Grinius, Ambassador and Permanent Representative to the

Office of the United Nations

Terry Cormier, Minister and Deputy Permanent Representative

John von Kaufmann, Counsellor (Human Rights)

International Commission of Jurists

Mr. Lukas Machon

Human Rights Watch

Mr. Olaf Henricson-Bell

Amnesty International

Mr. Peter Splinter

Quaker United Nations Office

Ms. Rachel Brett

Action Canada for Population and Development

Mr. Sandeep Prasad

Arc International

Mr. John Fisher

Rights and Democracy

Ms. Cynthia Gervais

APPENDIX A : WITNESSES HEARD

United Nations Human Rights Council

Ambassador Warren Tichenor, United States of America

Ambassador Nicholas Thorne, United Kingdom

Ambassador Li Baodong, Peoples Republic of China

Ambassador Sérgio de Abreu e Lima Florêncio, Brazil

Ambassador Andrej Logar, Slovenia (Chair of European Union)

Ambassador Doru Romulus Costea, Romania (Chair of Human Rights Council)

Wednesday March 26, 2008

Office of the High Commissioner for Human Rights

Jane Connors, Senior Human Rights Officer, Treaties and Council Branch on Treaty Bodies

Mr. Ibrahim Salama, Director, Treaties and Council Branch on Universal Periodic Review

Louise Arbour, High Commissioner for Human Rights