

UNITED
NATIONS

A



General Assembly

Distr.
GENERAL

A/HRC/3/SR.7
8 January 2007
ENGLISH
Original: FRENCH

HUMAN RIGHTS COUNCIL

Third session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 4 December 2006, at 10 a.m.

President: Mr. DE ALBA (Mexico)

later: Mr. LOULICHKI (Morocco)
(Vice-President)

CONTENTS

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

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Council at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.06-15337 (E) 061206 081207 NY.07-61736 (E)

b) REVIEW AND INSTITUTION-BUILDING

The meeting was called to order at 10.10 a.m.

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" (agenda item 2) (*continued*)

b) REVIEW AND INSTITUTION-BUILDING (A/HRC/3/3 and A/HRC/3/CRP.1)

1. The PRESIDENT invited the Council to consider the progress reports of working groups, beginning with the preliminary conclusions by the Facilitator of the Intersessional Open-ended Intergovernmental Working Group to develop the modalities of the universal periodic review mechanism established pursuant to Human Rights Council decision 1/103. Exceptionally, a symbol (A/HRC/3/3) had been assigned to that document to allow for its translation into the official languages of the United Nations. In future, however, another procedure would be necessary for the translation of such documents, although the present rule would be difficult to change in that it was applied system-wide. Document A/HRC/3/CRP.1 set forth the outcome of work by the facilitators during formal or informal meetings held since July 2006. Documents submitted by facilitators of working groups were a first step towards the elaboration of informal documents that would serve as a basis for negotiations and be finalized at the end of the third session. Their aim was to identify elements of convergence and elements requiring further reflection by the Council. Such documents were not therefore the result of a consensus and were the sole responsibility of the facilitator. The Secretariat would circulate a calendar of meetings showing the provisional dates set for meetings of working groups and, if the Council so desired, a document on the Council's agenda and methods of work.

2. Mr. LOULICHKI (Facilitator of the Intersessional Open-ended Intergovernmental Working Group to develop the modalities of the universal periodic review mechanism) reported on the activities of the Working Group since the second session of the Council. Having completed its work on 23 November 2006 after four productive meetings, it had submitted its preliminary conclusions on 24 November 2006 at a meeting convened by the President. The conclusions were the outcome of the Working Group's discussions and of the interactive dialogue conducted during informal meetings. They comprised elements of convergence and areas requiring further reflection on each of six elements: the terms of reference/basis of review; the objectives and guiding principles of review; periodicity and order of review; the process and modalities of review; the outcome of review; and follow-up to review. The conclusions contained in the document were the result of his own assessment and were not the responsibility of the Council. Credit for the outcome achieved, however, was due to all Working Group participants for having moved beyond statements of a general nature to concentrate more thoroughly on analysing the elements of each cluster. Many complex issues, both conceptual and practical, were nevertheless still to be addressed, since General Assembly resolution 60/251 provided only the basic outlines for the universal periodic review mechanism, leaving much room for interpretation. He was, however, satisfied with the progress achieved. He hoped that the joint work efforts would continue to be inclusive, transparent, results-oriented and constructive and urged all Council members to make an active contribution to that shared enterprise. Rather than addressing the six elements individually, he would prefer to receive views and comments from delegations on the conclusions as a whole or on any one of them separately, as they chose. Instead of making general comments, they should, in arguing their position, state whether they agreed with the elements of convergence or believed that any of the elements requiring further consideration could be listed with the elements of convergence.

3. The PRESIDENT, taking up the suggestion of Mr. Loulichki, invited participants first to make general comments on the Facilitator's report and secondly to discuss the various elements which it contained.

4. Mr. GONZALEZ ARENAS (Uruguay), speaking also on behalf of Argentina, Chile, Costa Rica, Ecuador, Panama, Paraguay and Peru, said that the elements of convergence presented by the Facilitator were, undoubtedly, important. However, the norms of international humanitarian law and customary law were no less important as bases for the universal periodic review, from which they should not therefore be excluded. The universal periodic review should adopt a victim-based approach to human rights violations and respect standards relating to gender equality and child rights. In addition, wide participation by NGOs in the preparatory stages and in the dialogue on the modalities of the universal periodic review should be guaranteed, provided that the sovereignty of member States of the Council in adopting decisions remained intact. The review should take place every three years, as any longer interval would make it impossible to respond to developments in the human rights situation of the countries concerned. It should last for three hours and take the form of an interactive dialogue that included all stakeholders. In the interests of impartiality and objectivity, it would be essential to work with an independent expert. The review process should use reliable and diverse sources of information originating from the country reviewed and from NGOs, regional organizations, national institutions or the United Nations system. Where necessary, the 1503 procedure should be applied and the principle of confidentiality respected. The mechanism should be adequately self-financed from the regular budget of the United Nations.

5. Ms. SUIKKARI (Finland), speaking on behalf of the European Union, said that the acceding countries of Bulgaria and Romania associated themselves with her statements, as did Croatia, Turkey, The former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Montenegro, Serbia, Iceland, Ukraine and the Republic of Moldova. It was essential to make good use of the information available, in particular conclusions and recommendations of treaty bodies and special procedures, in order to avoid burdening the review process and duplicating the work of existing mechanisms. It was also important to ensure that the universal periodic review was not an additional assessment of compliance with obligations arising from human rights treaties; it should be an assessment of compliance with the recommendations of bodies established pursuant to such treaties. Where information on the human rights situation in a specific country was lacking as a result of that country's failure to cooperate with treaty bodies or special procedures, recourse should be had to other sources of information, including the Office of the High Commissioner for Human Rights, United Nations teams on the ground, national human rights institutions and NGOs. In the event of conflict between a State's legislation and its international human rights obligations, or where specific obligations under international customary law and international humanitarian law were duplicated, the facts should be included in the universal periodic review. The review was not the only means available to the Council in considering country situations and care should therefore be taken to ensure that it did not hamper the functioning of other mechanisms. Moreover, given the vital importance of transparency to guaranteeing the credibility of the process, the review should take place in public and the participation of all stakeholders, including NGOs, should be assured, in accordance with the rules. The final outcome document of the review should be adopted by the Council in plenary and efforts should be made to reach consensus, although without prejudice to the promotion and protection of human rights. The Council should have a choice of different options in elaborating the final document and be mandated to dispatch a

special rapporteur or special mission to examine the situation in a particular country. The aim was not to put a country under the spotlight but to seek its cooperation with a view to strengthening its promotion and protection of human rights. It was premature to discuss the creation of a fund for capacity-building in the context of the review. It would be more sensible to explore ways of using existing financing mechanisms to the best advantage.

6. Mr. JAZAÏRY (Algeria), raising a point of order, requested continuation of the practice of the Commission on Human Rights with regard to substantive discussions whereby delegations speaking on behalf of a regional group were allowed to take the floor for ten minutes instead of five.

7. The PRESIDENT stated that the rule applicable for the current session would stand.

8. Mr. REYES RODRIGUEZ (Cuba) said that the universal periodic review was possibly the most important element in the institution-building of the Council and that its success would depend on its efficiency and legitimacy. The six elements identified by the Facilitator of the Working Group provided extremely useful food for thought. Cuba broadly shared the Facilitator's analysis of the elements of convergence, although it did not believe that the basis for review should be limited to obligations freely undertaken or commitments made by States when presenting their candidature to the Council. Other important commitments were in fact made at international conferences, including that by developed countries to give 0.7 per cent of their gross domestic product (GDP) to official development assistance.

9. Objectivity and impartiality were of fundamental importance to the universal periodic review, as was the availability of information from a wide range of sources, with preference given to information provided by States and by mechanisms of the universal system of human rights protection. Concerning the periodicity of the review, Cuba believed that a five-year interval between cycles was adequate. The review itself should last three hours and be conducted within the framework of the Council's sessions. In the situation of last resort where an agreement was put to the vote, an absolute majority should be required in order to confer full legitimacy on the decisions of the Council.

10. Mr. JAZAÏRY (Algeria), speaking on behalf of the Group of African States, said that he would prefer the term "status of progress" to "preliminary conclusions" for describing the work of the Facilitator. It would also be preferable if future reports by working groups were to cover the substance of discussions or the final outcome to be approved by members in order to avoid situations in which the final product from working groups was treated as a working document. The review should not be used to add more reporting obligations on States (section II.A of the preliminary conclusions), although discretion would be necessary, as certain States had seized upon that pretext to avoid participation in the universal periodic review. He commented that the last three lines of section V.A (Format of the outcome) should be combined into a single phrase (Outcome document including recommendations and decisions, summary of the proceedings and conclusions of the Human Rights Council). In his capacity as the representative of Algeria, he said that he fully supported the statement made by the representative of Pakistan on behalf of the Organization of the Islamic Conference.

11. Mr. BOYCHENKO (Russian Federation) said that the universal periodic review process should be instituted by consensus alone if selectivity, confrontation and double standards were to

be avoided from the outset. In accordance with General Assembly resolution 60/251, participation in the review mechanism was based on the principle of review by peers – in the present case, the member States of the Council. Other stakeholders should be permitted to attend the interactive dialogue, but not to participate in it or in elaborating the outcome document. There was nothing discriminatory involved; information provided by NGOs, for instance, often served as a basis for the conclusions of treaty bodies. The new procedure had been conceived to replace the politicized procedures of the former Commission on Human Rights and the Russian Federation would not therefore accept proposals for the nomination of country-specific experts or special rapporteurs or even for the dispatch of missions. The Council would henceforth have other means of putting effective pressure on a country, such as special sessions. There was no point in attempting to regulate every detail of how the universal periodic review operated, given the differences between countries in certain areas. It would therefore be preferable, as far as possible, to adopt a global approach in developing the modalities for the review. He requested the Secretariat to provide a cost estimate for the universal periodic review mechanism for each of the options thus far proposed. He also wished to know if accounts had been submitted to the financial bodies of the United Nations for the corresponding expenditure for 2007 and the following biennium.

12. Mr. RAHMAN (Bangladesh) said that the Working Group had achieved progress, but that much remained to be done in developing the modalities of the universal periodic review mechanism. Its work should nevertheless continue to be based on paragraph 5 of General Assembly resolution 60/251, which set forth the components of that mechanism. To do otherwise would simply complicate the Council's task and make it more difficult to reconcile positions. The universal periodic review should focus on the obligations and commitments of States in the wider sense, rather than on specific legal provisions and norms. The mechanism should be cooperative and ensure the full participation of the country reviewed. Bangladesh fully supported the statement made by the representative of Pakistan on behalf of the Organization of the Islamic Conference.

13. Mr. AMIRBAYOV (Azerbaijan) welcomed the transparency and inclusiveness of the process of establishing the universal periodic review mechanism. In the interests of an effective mechanism, the activity of the Working Group should essentially be the subject of consensus. The universal periodic review should be based on the Charter of the United Nations, the Universal Declaration of Human Rights and commitments of States arising from treaties to which they were party, as well as on obligations and pledges made by the State reviewed. The modalities should be based on the principles articulated in General Assembly resolution 60/125 and the review should be driven by Council members, who, in accordance with paragraph 9 of that resolution, should themselves be reviewed under the universal periodic review mechanism during their term of membership.

14. The review should be based on the report by the State reviewed, reports by treaty bodies and information from other United Nations sources and civil society. The report by the State reviewed should be drafted on the basis of a standard questionnaire produced by the Working Group and approved by the Council. The final document from the review should be in the form of a summary of the work undertaken, including recommendations by the Council. The follow-up of the review should specifically lead to the establishment, at the request of the State reviewed, of technical cooperation programmes and to a progress report on that State's follow-up

of the Council's recommendations. Lastly, the review should commence as soon as its modalities were adopted by the Council, preferably by consensus.

15. Mr. LI Nan (China) said that the conclusions presented by the Facilitator were sound bases for the future activities of the Working Group. China attached great importance to the universal periodic review mechanism, which would bring freedom from the partiality, politicization and selectivity that had characterized the former Commission, provided that the principles enshrined in General Assembly resolution 60/251 were respected in both letter and spirit.

16. The universal periodic review should not be burdensome for the Council or add more reporting obligations on States. China was in favour of a three-year review cycle and three-hour meetings within the framework of Council sessions. The work should be summarized in a document adopted by consensus and follow-up measures should be implemented, essentially at the initiative of the States reviewed.

17. Mr. VIGNY (Switzerland) said that he fully supported the President's approach concerning progress reports by the Working Groups on the universal periodic review and on the review of mandates. He also agreed with the chosen title of "preliminary conclusions" for the contribution of facilitators to those Working Groups. The preliminary conclusions presented by Mr. Loulichki were a significant contribution to the work of the Council. In that regard, Switzerland had submitted to the Working Group a full model for the universal periodic review. Concerning the elements listed as requiring further consideration, his delegation hoped that each of the six elements on which the Working Group's activities were based would be discussed in an informal meeting.

18. Ms. BERAUN (Peru) said that she supported the statement made by the representative of Uruguay on behalf of various countries, including Peru, which had submitted a joint paper on development of the universal periodic review mechanism. The conclusions presented by the Facilitator of the Working Group provided useful details of the elements of convergence identified. She agreed with most of those elements and wished to underscore aspects essential to the universal periodic review mechanism. First, the mechanism should be aimed at daily improving the enjoyment of human rights for all, particularly victims. That aim should be included among the elements of convergence and also among the principles on which the universal periodic review was based. Secondly, the document setting out recommendations and decisions should play a part in ending the reported violations, as well as in preventing fresh violations and strengthening the social and institutional capacities of the country concerned in order to ensure the effective enjoyment of human rights. Thirdly, the mechanism should ensure the inclusion of all stakeholders, including NGOs and national human rights institutions, and be marked by objectivity and transparency.

19. Mr. FUJISAKI (Japan) said that it was important to balance the principles on which the universal periodic review was based, namely, non-politicization, non-selectivity, transparency, interactive dialogue, efficiency and results orientation. The Facilitator's preliminary conclusions demonstrated his capacity to present very complex issues in a simple and succinct manner. He had two comments to make, however, on the document presented. First, although the universal periodic review should not add reporting obligations on States, he agreed with the Algerian representative that the Council was entering a new era in which its members were required to provide new information in the interests of ensuring its transparency. Secondly, with regard to

the section on content of the outcome, and more particularly the phrase “provision of technical assistance and capacity-building”, Japan, while not officially proposing an amendment, believed that it should state that such provision was available “where needed”.

20. Mr. KHAN (Pakistan), speaking on behalf of the Organization of the Islamic Conference, said that he endorsed the three basic principles outlined by the Facilitator of the Working Group, namely, that: the Council should establish a credible, effective and manageable universal periodic review mechanism; that such a mechanism should by definition be an evolving process; and that there should be a link between the universal periodic review and the other review processes available to the Council. He had further remarks to make concerning the Facilitator’s preliminary conclusions.

21. First, the universal periodic review should be based on the Charter of the United Nations, the Universal Declaration of Human Rights and other human rights instruments ratified by the country reviewed. Commitments made should not have the same weight as legal obligations undertaken. The Organization of the Islamic Conference had also proposed that the level of development of the State reviewed should be taken into account, together with its religious and cultural specificities. As for armed conflict situations, they should be examined in the light of international humanitarian law.

22. Secondly, the Organization of the Islamic Conference agreed with the objectives and guiding principles of review listed in the report. He noted, however, the statement in the report that the universal periodic review should count among a number of tools at the disposal of the Council. He asked which other measures were envisaged and whether recourse to a parallel procedure would be detrimental to the universal periodic review, which should not, moreover, be burdensome to States reviewed or duplicate other procedures.

23. Thirdly, with regard to periodicity and the order of review, he reiterated the proposal of the Organization of the Islamic Conference, which offered two possibilities. The first was a five-year cycle of review for all Member States of the United Nations. The second was a staggered examination based on the level of development of the country reviewed. Developed countries would be reviewed every five years, as would most developing countries, and least developed countries every seven years. The universal periodic review should be conducted during Council sessions and the composition of any working group established should not be limited.

24. Fourthly, concerning the process and modalities of review, the Organization of the Islamic Conference concurred with the elements of convergence drawn up by the Facilitator. If, however, the review were to be open to observers and NGOs, it should be conducted by member States. The basic information document should also be provided by the State reviewed and within a set time frame. It should cover the institutional infrastructure, any religious and social specificities of the country concerned and the role of the media and civil society. The questionnaire should be standardized and approved by the Council, but could be adapted to circumstances. The Council was fully competent to develop such a questionnaire itself. Efforts should be made to ensure that the process remained cooperative.

25. Fifthly, the outcome of the review should be in the form of a summary record containing an outline of the proceedings and also recommendations, which should be adopted by consensus. The sharing of best practices in order to encourage cooperation and the promotion of human

rights was an extremely interesting idea. The country reviewed should fully share in the drafting of conclusions and in the process of their adoption.

26. Sixthly, the follow-up of review should comprise the implementation of commitments undertaken by the State and any technical cooperation measures decided. It should also give rise to a progress assessment at the time of the next periodic review. Recommendations should be implemented by the States concerned and by other civil-society actors.

27. Mr. Moon-hwan KIM (Republic of Korea) said that he wished to comment on some of the elements outlined by the Facilitator as requiring further consideration. First, bearing in mind the available time and resources, the universal periodic review should be conducted intersessionally in chambers or committees comprised of Council members. Secondly, while all stakeholders, in particular NGOs and national human rights institutions, should be included in the entire review process, participation in the interactive dialogue should be exclusively limited to Council members, with non-members, NGOs and national human rights institutions authorized to take part as observers. Thirdly, in accordance with the principle of equal treatment, the same modalities should be applied to all States, including with regard to periodicity. The level of development and specificities of countries could also be taken into consideration as an additional element at each stage of review. Fourthly, regardless of the form taken by the universal periodic review, its effectiveness would primarily depend on the willingness of States to be reviewed and on their cooperation. In that regard, the Council should have at its disposal appropriate means, including, where necessary, coercive means, to encourage countries that did not cooperate to do so. Lastly, Japan attached great importance to the adoption of effective and coherent follow-up measures. Countries could be asked to report on progress achieved in implementing recommendations and on the obstacles encountered in that regard. Follow-up of the universal periodic review should also be included on the agenda of the Council's regular sessions.

28. *Mr. Loulichki (Morocco), Vice-President, took the Chair.*

29. Mr. CHERIF (Tunisia) said that he endorsed the statement made by the representative of Algeria on behalf of the Group of African States and that made by the representative of Pakistan on behalf of the Organization of the Islamic Conference. The question of the universal periodic review was of strategic importance to the establishment of the Council, as its success would depend on correct application of the procedure adopted for that review. Concerning the preliminary conclusions of the Facilitator, the agreement on a number of elements was welcome. It should also be recognized, however, that a long list of elements of divergence still remained. Without the spirit of cooperation, no consensus would be achieved. The work of the Council should be guided by General Assembly resolution 60/251, which was the basic reference on the subject. The universal periodic review should be conducted in the context of a constructive, cooperative and freely agreed dialogue, and on the basis of objective and reliable information. Practices whereby parties were condemned without being afforded the means to improve their human rights situation should therefore be avoided. Since the Council's mandate provided that the preparatory work could extend until June 2007, time should be taken to consider the subject in depth. Any hasty decisions adopted without consensus would be counter-productive.

30. Mr. CERDA (Argentina) said that he endorsed the joint paper dated 16 November and the statement made by the representative of Uruguay on behalf of eight Latin American countries. The document presented by the Facilitator was a good basis for the continuation of negotiations.

The universal periodic review should be conducted in three stages: first, preparation of the review; secondly, the review itself; and thirdly, follow-up of the outcome.

31. Preparation of the review was of fundamental importance, since it was at that stage of the process that all information on the country reviewed was gathered and that all human rights issues to be examined were determined. The review itself should enable all countries, whether or not Council members, to discuss those issues with the country concerned. Experience showed that, in the interest of a well-conducted debate, information submitted by any party should be concise. Participation in the discussions by other stakeholders, in particular NGOs and mandate-holders of special procedures, was desirable. The outcome of the universal periodic review should be action-oriented, to which end he proposed that the independent parties involved be given additional time to produce their conclusions and recommendations. In view of the large amount of information to be considered, it was not necessarily essential that conclusions be adopted at the same regular session of the Council during which the review was conducted. The Council's agenda should include an item that would ensure the systematic follow-up of conclusions. Given its status as the principal tool for monitoring human rights, the universal periodic review had to be both effective and reliable. Lastly, Argentina, in conjunction with other countries, would be submitting a draft decision for the Council to consider the cost of the universal periodic review. If the review mechanism were to live up to the expectations of the General Assembly, it should be adequately self-financed from the regular budget of the United Nations.

32. Ms. HSU King Bee (Malaysia) said that the document containing the preliminary conclusions genuinely reflected the discussions of the Working Group on the universal periodic review and provided a good account of the elements of convergence and of those requiring further discussion. She hoped that the universal periodic review would be a mechanism free of selectivity and politicization. The process should not be that of a legal body and the review should be based on obligations and commitments undertaken at the time of accession to treaties and covenants. A re-examination of national legislation was unnecessary, although such legislation should nevertheless be taken into account to ensure that the State was compliant with its obligations, while at the same time keeping sight of the legal, cultural and sometimes religious specificities of certain countries. The review should also be practical; where two legal systems existed side-by-side, as in the case of Shariah law and traditional legislation, for example, the Council had no mandate to make recommendations that conflicted with the policy or decisions of a democratically elected Government. With regard to the application of international customary law, her delegation maintained its reservations, since there was no agreement as to the definition of that concept. Her country saw the universal periodic review as an intergovernmental process. It should be conducted during a regular session of the Council, which would make it more transparent, less burdensome and less demanding, bearing in mind the lack of human and financial resources in developing countries. A multilevel review would have the drawback of making it very difficult for certain bodies to participate.

33. Mr. RIMDAR (Nigeria) said that States should be fully encouraged to cooperate and that a country's level of development and specificity must be taken into account. He shared the Pakistani view that the review should be conducted every three years for developed countries and every five years for developing countries, with due regard for their level of development and logistical capacities. Unless benefiting from technical assistance, least developed countries should be reviewed less frequently. Concerning modalities, States should provide an

information document based on a specific questionnaire. Information could also be gathered from the Office of the High Commissioner for Human Rights. His delegation supported the proposal of the Group of African States concerning regional preparation. The process should be conducted in plenary and allow for an interactive dialogue among member States alone. Conclusions should be submitted in the form of a document containing recommendations and decisions, which should be elaborated with the full participation of the States concerned. The adoption of that outcome document should allow States to respond to the questions asked of them and the document should be circulated. The State reviewed should be primarily responsible for the follow-up and implementation of recommendations and decisions. Those relating to capacity-building or technical assistance, however, should be implemented by the relevant stakeholders or by the international community. The Council should include on its agenda an item devoted to follow-up of the universal periodic review. His delegation was also in favour of a general report at the end of each stage.

34. Mr. MARENTEK (Indonesia) expressed the hope that a more formal report by the Working Group on the universal periodic review would be produced shortly, as the preliminary conclusions of the Facilitator were contained in an informal and non-binding document. The modalities of review should be specific. Thanks to the Facilitator, the elements of convergence outnumbered those requiring further discussion. Indonesia supported the statement made by Pakistan on behalf of the Organization of the Islamic Conference agreeing with the elements of convergence, in particular the six elements that should guide discussions. For the review to be effective, States must respect their treaty obligations and commitments. The universal periodic review was designed to become a support mechanism founded on dialogue and mutual respect.

35. Mr. HAIDARA (Senegal) said that he had noted the various proposals relating to the conclusions of the universal periodic review and the manner of their adoption. His delegation favoured their adoption by consensus, since the review was an exercise based on dialogue and cooperation. He advocated a constructive approach to conclusions and recommendations, with the emphasis on practical solutions that would have a significant impact on human rights situations at the national level. At the end of the first cycle of assessment, any gaps and inadequacies in the mechanism could be analysed with a view to improving the functioning of the review.

36. Mr. MAHAWAR (India) said that, on examining the preliminary conclusions, his delegation had noted the two differing viewpoints concerning the main objective of the universal periodic review. The first was that the review should serve as a mechanism for identifying cases of human rights violations by States and proposing remedial measures. That viewpoint focused solely on those responsible for the violations and was based on the idea that, for fear of public censure, States were not generally inclined to take additional measures or develop cooperation with the international community for the promotion and protection of human rights. His delegation endorsed the second viewpoint, according to which the review was an exercise in cooperation and not confrontation, based on the presumption that most States were committed to the promotion and protection of the human rights of their peoples. Often, however, States were unable to fulfil their obligations owing to lack of capacity and would willingly take remedial measures if persuaded by their peers to take steps to that end and if also provided with technical assistance. Those who held the first view might ask what would become of perpetrators or States which failed to cooperate. The Council was in the process of elaborating a new complaint procedure and the emerging consensus was that such a mechanism should concern itself with

confirmed situations involving gross violations. The Council also had the option of convening special sessions in order to consider situations that called for immediate measures. The review could also serve as a facility for the sharing of best practices in which opportunities for technical cooperation were identified. Furthermore, if the review were to identify areas for cooperation and offer its backing for such cooperation by providing the necessary resources, it would be going one step further than treaty bodies and thus give added value. His delegation saw the universal periodic review as a peer review that differed from a review by treaty bodies composed of experts.

37. Mr. MACEDO (Mexico) said that it was essential to identify the normative framework that would allow negotiations to start. It was unnecessary for the Working Group to discuss the degree of constraint by certain norms or whether international customary law was part of that system, as those issues had already been debated by the bodies concerned. The mechanism should take account of the international human rights obligations of States, as identified by the competent bodies. Rather than forming part of that normative framework, internal law should instead be part of the review procedure in order to determine the extent to which the State had fulfilled its obligations and brought its legislation into line with its international commitments. A clear distinction should be made between the normative framework of the universal periodic review and the subject of the review. He expressed his support for the Working Group in its efforts to find the best possible solution to avoiding any duplication of reviews carried out by treaty bodies.

38. Mr. FLORENCIO (Brazil) said, with reference to the basis of the universal periodic review, that he supported all the identified elements of convergence. As far as the elements requiring further discussion were concerned, the review should also be based on international humanitarian law. Existing information, including conclusions and recommendations by treaty bodies and special procedures, could be useful to the review, which should complement and strengthen both. He did not believe that the review should be a uniquely intergovernmental process; he instead favoured a hybrid system combining individual experts responsible for preparatory work and an interactive dialogue with States. The experts could develop a questionnaire for transmission to States at least two months prior to review. On the basis of the replies, the experts would then produce a list of items to be discussed during the interactive dialogue. The report by the team which prepared the review should be submitted to the Council for consideration by member States. On the matter of principles, he said that the review should be among the array of tools at the disposal of the Council. The review should also be inclusive of all stakeholders, including NGOs, and it would be unrealistic not to consider the level of development and specificities of countries reviewed. Level of development would directly affect a State's capacities to implement recommendations emanating from the review. It should not be used, however, as a pretext by the country to avoid fulfilment of its human rights obligations. He expressed Brazil's unreserved support for the statement made by the representative of Uruguay on behalf of various Latin American States.

39. Mr. MARTINEZ ALVARADO (Guatemala) said that dialogue was the starting point for building the universal periodic review. The review should be an intergovernmental exercise, which did not mean that NGOs could not make a contribution; on the contrary, he hoped that NGO stakeholders would serve as useful sources of information. The review should not, however, resemble a tribunal that judged and sanctioned countries.

40. Mr. UTRERAS (Observer for Chile) said that he supported the statement made by the representative of Uruguay on behalf of various Latin American countries. Doubts remained over whether recommendations by treaty bodies and special procedures should be included in the bases of the review, which should complement and not duplicate the work of treaty bodies. In that regard, it was essential to take into account paragraph 12 of General Assembly resolution 60/251, which stated that the methods of work of the Council should allow for substantive interaction with special procedures and mechanisms. He did not believe that interaction was possible unless the review considered information provided by special procedures. With regard to principles, he was surprised that the elements requiring further consideration included the notion that the review should count among an array of tools at the disposal of the Council, since it could add value only to the extent that other mechanisms existed. On the subject of periodicity, the establishment of longer cycles for developing countries would discriminate against their inhabitants, as it would afford them fewer opportunities of international assistance for the exercise of their rights. Concerning the questionnaire, he favoured both a standard and a specific questionnaire developed by an expert once preliminary information had been gathered.

41. Mr. ARISTEGUI LABORDE (Observer for Spain) said that he associated himself with the comments made by Finland on behalf of the European Union. With regard to the bases of the universal periodic review, it was essential that the review should benefit from any reliable information that was likely to give an accurate and up-to-date picture of the human rights situation in the country concerned. The analysis of such information and the exposure to other views should enable the State to make progress in such a way as to take into genuine consideration the viewpoint of victims of human rights violations. Consistency between a State's internal law and its international commitments was paramount.

42. Mr. ALAEI (Observer for the Islamic Republic of Iran) said that the universal periodic review should focus on the actions of States both within and outside their national boundaries. Customary law should not enter into the picture, subject as it was to varying interpretation by different legal systems and schools of thought. The main objective of the review should be to eliminate the political selectivity that had undermined the credibility of the former Commission. The review should be a cooperative mechanism based on an interactive dialogue and full participation by the country concerned. Council members should also be subject to review during their term. His country did not favour the establishment of sub-committees or chambers to conduct the review, which should take place in plenary in order to ensure transparency. States should be the principal sources of any information gathered and dialogue should take place in public, be inclusive of all stakeholders and be based on responses to the questionnaire or on the report by the State. Reports by treaty bodies and information from special procedures should be used as additional information. The effectiveness of the review would depend on its follow-up. The Council's recommendations on the country reviewed should be adopted by consensus and the views and replies of the State concerned should be included in the outcome document. Such State should also have been involved in the drafting and adoption of that document. Lastly, the Council should avoid any repetition of the experiences which had weakened the Commission, such as the introduction of sanctions and other similar measures, as they would lead to confrontation, double standards and politicization, thereby running counter to the spirit of cooperation that should characterize the universal periodic review.

43. Mr. ALI (Observer for the Sudan) said that he endorsed the statement made by the representative of Algeria on behalf of the Group of Arab States and that made by the

representative of Pakistan on behalf of the Organization of the Islamic Conference. The universal periodic review should respect the letter and spirit of General Assembly resolution 60/251, which would appear to be the only means of avoiding selectivity, the main cause of the former Commission's failure. As indicated by the Facilitator in his preliminary conclusions, the Charter of the United Nations, together with the Universal Declaration of Human Rights and all international instruments to which the State reviewed was party, should serve as the basis for the universal periodic review. The Council should also review the human rights situation in countries on the basis of objective and reliable information within the framework of an interactive dialogue. NGO participation in the universal periodic review should be governed by the relevant provisions adopted by the General Assembly and the Economic and Social Council. Consequently, only NGOs holding consultative status with the latter would be permitted to take part in the review of the human rights situation in any country.

44. In order to avoid the pitfalls of the former Commission on Human Rights, the universal periodic review should not result in the adoption of country-specific resolutions. Recommendations emanating from the review should also be focused on cooperation and technical assistance. Lastly, the Sudan was ready to assist the Working Group tasked with developing the modalities of the universal periodic review in settling those issues which remained outstanding.

45. Mr. SAT JIPANON (Observer for Thailand) said that he wished to make three comments on the modalities of the future process of universal periodic review. First, the Swiss proposal concerning the preparatory stage of the review was worth retaining, as it had the advantage of affording the Council and States reviewed the time needed to prepare for the actual review. In his opinion, the review should be conducted during plenary meetings of the Council, which offered the best way of avoiding selectivity and guaranteeing transparency. In its review, the Council should be guided by the principles of dialogue and cooperation and organize close consultations with the State concerned. Observers and representatives of national human rights institutions, United Nations specialized agencies and NGOs holding consultative status with the Economic and Social Council should join in the review. Secondly, the outcome document should be in the form of a summary record of the proceedings and the Council's conclusions should be adopted by consensus. The content of those conclusions should be rooted in fact with a view to promoting real improvements in the human rights situation in the State reviewed. In its conclusions, the Council should also essentially identify problems specific to a given country and means of helping it to strengthen its capacities and boost technical cooperation. Lastly, it was essential to ensure follow-up of the outcome of the universal periodic review. In that regard, countries which were not in a position to implement the Council's recommendations owing to limited resources should be able to benefit from assistance provided by the Office of the High Commissioner for Human Rights and by United Nations coordination teams.

46. Mr. GAN (Observer for Singapore), commenting on pending issues relating to the modalities of the universal periodic review, said that further consideration should first be given to the proposal for the review to serve as a mechanism for the implementation of recommendations by special procedures. In such a case, the content of those recommendations should first be examined and the appropriateness of their application to all States questioned, bearing in mind religious, racial and cultural diversities. Some delegations had advocated short intervals between review cycles to allow the Council, in the context of the universal periodic review procedure, to consider gross and systematic human rights violations. His country did not

share that view; the Council had at its disposal other mechanisms for examining such violations, such as the convening of special sessions and complaint procedures. On the other hand, a mechanism for considering institutional matters and capacity-building needs in all member States was still lacking. Further thought should therefore be given to that issue. Secondly, States should be included in the preparatory work for the universal periodic review in order to satisfy the principle of cooperation. It was inappropriate to confer upon the Office of the High Commissioner for Human Rights the task of producing the entire document that would serve as the basis for reviewing the human rights situation in a specific country. Thirdly, it was also inappropriate to provide for measures against States that attached no importance to the outcome of any universal periodic review relating to them, since to do so would run counter to the principle of cooperation. In that regard, it should not be forgotten that the Council's recommendations were not legally binding.

47. Ms. OVERDAD (Observer for Denmark) said that she aligned herself with the statement made by the representative of Finland on behalf of the European Union. Reports submitted by States to treaty bodies should form the basis of the universal periodic review, together with conclusions and recommendations adopted by those bodies and reports by special procedures. It was unhelpful to add reporting obligations to those already placed on States. The Office of the High Commissioner should be given the task of compiling the necessary documentation, which would guarantee the independence and transparency of the process. As for the objectives of the universal periodic review, her country welcomed the consensus on the need to promote respect by States for their human rights obligations in a spirit of transparency and cooperation. The follow-up of Council recommendations should be based on capacity-building and technical cooperation. In that connection, her country favoured the establishment of a dedicated fund that would complement existing mechanisms.

48. Mr. ACHARYA (Observer for Nepal) said that he attached particular importance to consensus on the modalities of the future universal periodic review. He also stressed the need to take into account certain of the principles articulated in General Assembly resolution 60/251, namely, non-politicization, objectivity, non-selectivity, the establishment of cooperative mechanisms based on interactive dialogue and, lastly, full participation by States in the review of their human rights situation. Concerning the basis of that review, the conclusions and recommendations of treaty bodies should be used in the interest of avoiding any duplication of the Council's work with that of treaty bodies. With regard to the objectives and principles of review, he saw no reason not to explore means other than the universal periodic view for considering the human rights situation in countries that failed to cooperate with the Council. Furthermore, any assessment of human rights situations should take into account the levels of development in the countries concerned. As for the modalities of the universal periodic review, he advocated the establishment of working groups or sub-committees and said that the outcome decision should be adopted in plenary. Lastly, concerning the periodicity of review, the Council should demonstrate flexibility by also bearing in mind the varying levels of development of the countries reviewed.

49. Ms. FORERO UCROS (Observer for Colombia) said that the Facilitator's preliminary conclusions aptly reflected the discussions of the Working Group to develop the modalities of the universal periodic review and would be useful to future debates on the subject. She hoped that international humanitarian law would be integral to the basis of that review; full examination of the human rights situation in a country in armed conflict would be difficult unless the

opportunity to consider possible violations of the principles of international humanitarian law was available. She further hoped that the Working Group would seek to maintain the distinction between the conclusions and recommendations of treaty bodies, which were binding on the States Parties concerned, and recommendations by special procedures, which were more concerned with general guidelines. On the subject of the periodicity of review, she supported a review of the human rights situation in observer States. Lastly, the outcome document adopted as a result of the universal periodic review should set out all commitments and pledges freely undertaken by the State reviewed.

50. Mr. SMELLER (United States) said that he welcomed the efforts of the Working Group to develop modalities for the future universal periodic review. As for the preparation of that review, he supported the establishment of working groups to develop short factual questionnaires. Comprising two members of each regional group, such working groups should conduct an interactive dialogue with each State in the initial stages of the universal periodic review process on the basis of the questionnaire and information from various sources, including treaty bodies, NGOs and other stakeholders. The process should be coordinated by the Secretariat, which would be responsible for producing a summary of the discussions. The outcome document of the review should not be compiled by experts but by the member States of the Council themselves, in accordance with the peer review system. The universal periodic review should not culminate in the systematic adoption of specific recommendations or decisions in plenary sessions, if only for practical reasons. In that regard, the purpose of the review was to have a detailed and frank dialogue aimed at identifying areas for technical assistance or capacity-building.

51. Ms HOCH (Observer for Liechtenstein) said that she welcomed the progress achieved by the Working Group to develop modalities for the universal periodic review. Important issues nevertheless remained pending with regard to the full implementation of General Assembly resolution 60/251. The principles of universality and equality in the consideration of human rights issues in countries were crucial and should therefore be applied to the entire process, including the preparatory stage. She commended the Working Group on its agreement to include the Universal Declaration of Human Rights among the international instruments on which the review should be based, as it would allow coverage of the full range of rights and fundamental freedoms, irrespective of the human rights treaties ratified by a particular country. While agreeing that the Council should consider the levels of development and specificities of each country in its outcome document, her country attached particular importance to the establishment of a single review procedure. The question of review cycles essentially lay in whether the universal periodic review should be conducted in plenary sessions or in smaller committees. Crucially, the review should not unduly encroach on the time available for fulfilment of the Council's functions and should not be burdensome on Council members. It would therefore be preferable if the review were conducted by four committees working in conjunction intersessionally. The modalities of the interactive dialogue had not yet been considered in depth. In that regard, a "troika" comprising member States of the Council from specific regional groups could be appointed, with responsibility for preparing the dialogue, presiding over the review of human rights situations in countries and summarizing the discussions. Such a solution would also enable the other Council members to take part in the review. Lastly, as far as the purpose of the review was concerned, it was essential to avoid all duplication of work carried out by other United Nations bodies.

52. Ms. HEINES (Observer for Norway) said that the preliminary conclusions by the Facilitator would be extremely useful to further exchanges on the modalities of the universal periodic review. She supported the view of the Russian representative that all decisions relating to that future mechanism should be adopted by consensus, given that the universal periodic review was to be applied over the long term and to all member States of the international community. General Assembly resolution 60/251 enshrined a number of guidelines for the establishment of that new mechanism and specifically underlined in its preamble the need to strengthen the United Nations human rights machinery. To that end, Norway favoured the establishment of a mechanism that would strengthen cooperation by States with all system-wide mechanisms for the protection of human rights. Indeed, no effective mechanism yet existed for dealing with the apathy of some States towards the promotion and protection of human rights. She hoped that the universal periodic review process would bridge that gap.

53. Mr. SALAZAR (Observer for Venezuela) thanked the Facilitator of the Working Group to develop the modalities of the universal periodic review for his preliminary conclusions, which brought out the points on which the Working Group agreed and disagreed. He wished to make some general comments and would address the pending issues in more detail during future meetings of the Working Group. It was essential that the universal periodic review be based on an interactive dialogue with States in which civil-society entities working for human rights were also included. Concerning the periodicity of review, his country favoured a three-year cycle. Equally important was the need to give States time to respond, where necessary, to the list of issues identified by the Council for consideration. The universal periodic review should allow the State concerned to assess its human rights commitment and identify areas in which it could benefit from technical assistance for capacity-building. Venezuela also believed that the universal periodic review should be based on the principles of transparency and fairness. The Universal Declaration of Human Rights should certainly be among the instruments constituting the basis of the review to be conducted by the Council. Wider discussion of the issue was consequently essential. Indeed, the Council should base its review on the widest possible range of information.

54. Mr. THORNE (United Kingdom) said that he supported the statement made by the representative of Finland on behalf of the European Union and the preliminary conclusions of the Facilitator. The future process of the universal periodic review would enable the Council to avoid the pitfalls of the former Commission on Human Rights, provided that attention was devoted to the important issues still pending. First of all, the universality of the review of human rights situations in countries should be guaranteed. The universal periodic review should therefore apply to all countries within the framework of a genuine interactive dialogue. In that regard, in the initial stages of the review process, data on the means pursued by States with a view to fulfilment of their human rights obligations should not be gathered by representatives of member States of the Council alone but also by independent experts. Such a system would appear to be the most appropriate way of avoiding the trap of politicization and selectivity. More thorough consideration should therefore be given to modalities for the involvement of independent experts in both the collection and review of data.

55. Mr. FATTORINI (Movement against Racism and for Friendship among Peoples), speaking also on behalf of Centre Europe-Tiers Monde, the Women's International League for Peace and Freedom, the International League for the Rights and Liberation of Peoples, and the International Catholic Child Bureau, said that the Council should ensure that participation in its work by

NGOs was not restricted. The participation of such experts as jurists, sociologists and economists was also indispensable. The limits of the special procedures mechanism had been demonstrated and it was consequently set to disappear. The resources freed as a result should permit the establishment of an expert group equivalent in number to two thirds of Council members. It could be divided into three working groups with the capacity to analyse between 18 and 22 countries per year.

56. Mr. BAZEROLLE (International Commission of Jurists) said that the ability of the new universal periodic review to promote and protect human rights in accordance with the principles of universality, impartiality and objectivity articulated in General Assembly resolution 60/251 would strictly depend on the architecture of that new institution. The main challenge would be to avoid politicization, double standards and undue use of political influence within the context of the universal periodic review. While it seemed inevitable that the Council would base its decisions concerning a particular country on political considerations, the review of a country's compliance with its human rights obligations should at the very least be based on independent technical expertise that was impartial, objective and free of all political pressure. For that reason, it was essential to make a clear dividing line between the assessment of the human rights situation in countries and means put in place by those countries to comply with their human rights obligations and political decisions taken by member States of the Council. Recommendations adopted by the Council as a result of the universal periodic review should also comprise a range of measures tailored to the specificity of each human rights situation.

The meeting rose at 1 p.m.
