



**FUNDERS LEARNING VISIT
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Introduction to the UN and its Human Rights Mechanisms

Tuesday, May 4, 2010, 10:00-12:30 pm

Facilitator: **Mark Thomson**, Association for the Prevention of Torture

Speaker: **Andrew Clapham**, Geneva Academy of International Law and Human Rights

Andrew Clapham introduced the session by recounting the history of its venue, Villa Moynier. The house belonged to the Packard family, who helped the organization of local villagers to help care for wounded soldiers as neutral parties in 1863. In 1864, the First Geneva Convention conference was held in this room, inaugurating the first international humanitarian laws and the Red Cross.

He then proceeded to an overview of the UN system:

Charter-based mechanisms, or “non-conventional mechanisms” are protections that grew up under the UN Charter rather than stemming from any of the human rights treaties – so they do not relate back to any of the human rights committees, and they apply to all Member States of the UN. These mechanisms are older than treaty-based protections, and were put into use out of necessity before the Conventions were instituted, since the UN began receiving human rights complaints almost as soon as it was created.

- **The Human Rights Council (UNHRC)** replaced the UN Commission on Human Rights (UNCHR, or Commission) in 2006, because the Commission was perceived as ineffective because it was overly politicized. The Commission had political abilities and dealt with issues in different countries, but its agenda was decided by member countries. Therefore a country could block itself from the Commission’s agenda by getting enough countries to vote with it (eg, China succeeded every year in preventing a sufficient number of votes to bring a resolution, so they never came before the commission, along with other large countries like the US).

Combination of factors created will for change:

- The Libyan chair of the Commission was considered emblematic of its problems – they were fair and kept order, but there was a perception that the Commission focused only on Israel.
- Also a lot of outrage when the US was voted off the Commission in 2002, and there was a perception that the Commission focused only on Israel – US didn’t engage in horsetrading to retain its spot.

- The Commission complaints mechanism (Resolution 1503) allowed NGOs to prepare a dossier for the Commission, and the Commission then decides if they'll take action (eg, send an expert to the country to write a report). But procedure was written by Argentina and had so many confidentiality clauses that it was easy to veil things and keep them off public agenda.
- Block of countries (Zimbabwe, Cuba, Saudi Arabia, Libya, Eastern Europe) blocked any action.

New body (UNHRC) has many important changes:

- 47 governments instead of 53, much more difficult to get elected (need 90-95 votes instead of only 27).
 - Now for first time, Iran didn't get enough votes last year, nor did Sri Lanka or Belarus.
- Same complaints mechanism (1503)
- New **Universal Periodic Review (UPR)** – radical change:
 - Every single country in the world gets reviewed.
 - Every other state gets to review you, even countries not on the Council.
 - Reviewed per standard of complete UDHR, not just treaties the state has signed.
 - Review is done by state, Human Rights Commissioner, and civil society issues.
 - Only 20 pages – very condensed material, concern could be watered down.
 - UN produces document, High Commissioner does 3 hour review (with NGO material at top of mind), then peer review by governments.
 - NGOs don't get to participate on the floor anymore – previously, they could but there was so much NGO input that no one listened. Realized would have more force if questions were raised by other governments.
 - Then list of recommendations made, UN doesn't take a position.
 - All states look at all other states – eg, Ghana said in Luxembourg they should take better care of immigrants and women.
 - Troika system: start with 3 government reps chosen by lot, and then country under review can reject one country, or potential reviewer can reject performing review.
 - Helps reduce bias, but can be too much power in 3.
 - Glorified postbox – information comes in and out, but no action taken.
 - Some pushing troika to have a bigger role, but key is experts, not ambassadors who have no expertise in country. Ideally experts should have larger role in making recommendations.
 - Extent to which NGO points get onto record
 - States can make points in plenary and they go on record, webcast etc.
 - 1503 is different kind of civil society input – neither option perfect.
 - Third option is for NGO to bring complaint in front of treaty bodies.
 - Outcome – huge list of recommendations for country.
- Special procedures:
 - Human Rights Council can appoint independent expert on specific countries or thematic experts (eg on disappearances or torture). Experts typically human rights professors, not paid, not a normal treaty body.

- Covers all human rights themes, but one group not covered is normal prison detainees (not tortured) for rights such as healthcare and visitation.

Treaty-based mechanisms are mechanisms that stem from the text of a treaty. They take force only after ratified by states, but have binding force on states that sign. Most recent is the Convention Against Torture.

Rome Statute (ICC) was signed while Clinton was President, but US has no intention to ratify the treaty. Other treaties not ratified by US: ESCR Covenant, Rights of the Child, CEDAW (Women), Persons with Disabilities

Ratification means a country is legally bound to follow terms of treaty – if not, other countries can complain or sue. This happens rarely (countries don't like taking other states to court) but may be changing because treaties are being violated in small scale wars.

- New confidence in court: Court of justice ruled Uganda has to pay reparations to DRC for violations – massive amounts of money, and Security Council can enforce judgments.
- In past, when US condemned for actions in Nicaragua, US vetoed from Security Council.

When ratify treaty, changes domestic system – becomes a part of state's laws.

Forcing a state to prosecute – ie torture conventions and disappearance: Senegal and UK forged extradition and prosecution of Pinochet, Chucky Taylor convicted in US – only a few prosecutions, but huge effects, more global human rights network to prosecute violators. Compliance with treaties is examined in periodic reviews done collectively by elected experts (human rights professors), not governments.

Reviews are valuable because states care what other governments think. Problems with review process - no interest generated, and NGOs present to provide information, but no one expert with background or interest on the country under review. Experts and NGOs can't keep up with all reviews on all countries.

Review process is up for review – one option is to combine all 136 experts from all treaty bodies into one super standing body of around 20, but would lose specialization

- Now have UPR – fed by output of reviews, not perfect, but more interactive. Governments are generating interest, and NGOs are migrating to UPR.

Treaties may also allow for complaints from individual victims

- Underused, only ~1000/year – many don't know; must exhaust domestic remedies first
- Many complain to European Commission b/c binding, compensation – more build up treaty bodies, more governments will pay attention

Becoming an expectation for countries to make pledges for improvement to get elected to HRC – NGOs can use as leverage to hold states to promises – eg UK (disability issues), Maldives

- Works only if competition for spots, concrete pledges to set up and spend etc.

Questions and Answers:

Q: What should NGOs consider when deciding where to focus efforts?

A: Depends on NGO, country (some on Commission, some not), and what big issues are in that country.

Q: How seriously is government taking UPR?

A: US is taking very seriously (ministries involved, civil society). Switzerland created national human rights institution like other countries.

Q: Controversial issues of special rapporteurs like sexual orientation, death penalty?

A: Current mood is this is not a human rights issue, but special rapporteur on extrajudicial executions, wrote long report of sexual orientations. Any rapporteur can build in thematic issues. Sexual orientation, same sex marriage red hot issue on HRC, used by some countries to get things stopped.

Q: Scale of _____ and opportunities?

A: Thousands working around world, 200 million budget, setting up field operations, big unknown story. Almost a UN agency. Can work in partnership with High Commissioner for regional training. Far more active player than 15 years ago.