

Why Are Special Human Rights Procedures So Special?

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There was a stretch of turbulence and hostility against the United Nations' so-called special procedures for human rights. But this system of independent experts, known at the UN as "special rapporteurs," and working groups appointed by the Human Rights Council to monitor problems around the world, now seems to have emerged from adverse times.

Indeed, supporters of an active international posture on human rights quietly but firmly seized the initiative from those opposing intervention, as measures to defend existing special rapporteurs and to set up new mandates were adopted by the Human Rights Council by persuasive majorities or even consensus. While this bodes well for the system's future, chronic lack of cooperation from governments, inadequate resources and weak implementation continue to pose major challenges.

The creation of the Human Rights Council in 2006 brought new efforts by countries leery of UN scrutiny to rein in mandates for monitoring thematic and country-specific situations and make recommendations. From a humble, almost accidental beginning in the early days of the UN's Office for Human Rights, the precursor to the UN Office of the High Commissioner, special procedures evolved into a useful way to raise awareness of compelling human rights crises in the 1970s and 80s, notably those stemming from apartheid in South Africa and the military governments of Chile and Argentina.

They were so useful that some countries started putting up roadblocks and criticizing their performance in the halls of Geneva and elsewhere. In a few cases, criticism of a particularly rambunctious special rapporteur may have been justified, but by and large these experts fulfilled their mandates with courage and finesse. In 2006-07, the early phase of the new Human Rights Council gave those who opposed the independence of the special procedures system a chance to weaken it.

New Review Program as Alternative?

Some nations insisted that country-specific rapporteurs were no longer needed in light of the new Universal Periodic Review, which assesses the human rights obligations of each UN member. While this argument has failed to gain much traction, some nations succeeded in creating a code of conduct to limit the scope of special procedures activity. A series of vitriolic attacks accusing special rapporteurs of violating the code of conduct ensued, which acted as a cover to avoid serious discussion of their findings. This perhaps marked the low point for what Secretary-General Kofi Annan once called "the crown jewel" of the UN human rights system.

The current five-year review of the council, mandated upon its creation by the General Assembly, gave both friends and opponents of the special procedures another chance to battle. After months of consultations and negotiations, the competition is so far a draw: an effort by Algeria, Pakistan and others to start a legal committee to “enforce” the code of conduct was defeated, partly by a French counterproposal to establish a code of conduct instead for countries.

Over the last two years, a group of countries led largely by the U.S. began a disciplined campaign to strengthen and expand the special procedures as a way to show the council’s value by doing rather than debating. Numerous country-specific mandates were extended, for example, Myanmar, North Korea and Sudan; while 19 thematic mandates were renewed. Notably, two new mandates were established by consensus: a special rapporteur on freedom of assembly and association, an initiative led by a coalition composed of the U.S., Indonesia, Nigeria and others; and a working group to examine laws that discriminate against women.

Iran Rapporteur a Major Step

In the realm of special procedures, however, the high-water mark was probably the creation of a special rapporteur on Iran in March 2011, the first new country-specific mandate initiated since the council began. After three years of campaigning, human rights advocates in and outside Iran had persuaded key swing countries like Brazil, South Korea, Senegal and Zambia to join more predictable votes from Western and Latin American nations to adopt the resolution by a sizable margin of 22-7 with 14 abstentions.

The tide turned against Iran for a combination of reasons: deterioration in its human rights situation, continued condemnation by the Security Council for its nuclear program and bungled efforts by Tehran to burnish its international reputation. Whether Iran allows the independent expert to visit or not, the new rapporteur will be able to shine a spotlight on abuses there, even if only through interviews with exiles and activists in third countries, a tactic other rapporteurs have used when dealing with intransigent officials in North Korea and Myanmar.

The main challenge the system faces is this kind of weak or nonexistent cooperation with special rapporteurs, who have a UN mandate but are not paid employees of the organization. An 18-month study I conducted at the Brookings Institution on the impact of the special procedures on human rights at the national level found that too many governments ignore or deny the experts’ findings or block access to the country or to victims.

National cooperation was particularly bad when it came to responding to written charges of violations: more than 50 percent of communications received no reply while only 18 percent generated some positive movement. Yet even when they are kept from visiting a country, these UN experts amplify the voices of a beleaguered community of human rights defenders, mobilize advocacy and publicize testimony.

Filling in a Blank Sheet

In sum, the Brookings report found persuasive evidence that the special procedures deserve recognition as unique instruments. They prompt governments to re-examine and correct actions that violate human rights across a broad range of categories. By shedding light on issues like the fate of people who have disappeared, mistreatment of political prisoners, fair access to health services and violence against women, these monitors tackle the hard issues and elevate them to the highest levels of political power. That creates a public record that some would like to hide, increasing pressure for remedies and perhaps, most important, giving a voice to victims.

Some governments respond through legislative or executive action, and often in ways that directly benefit the victims. In Cambodia, the UN’s monitor intervened to obtain better treatment and ultimately freedom for a journalist accused of defamation. In Afghanistan, the UN expert persuaded authorities to release hundreds of illegally detained prisoners. In Georgia, Indonesia, Spain and Colombia, UN experts uncovered unacceptable conditions for the displaced, abused women, prisoners and innocent civilians and influenced governments to take action. Some rapporteurs conduct follow-up visits or inquiries but no formal follow-up mechanism exists.

Prospects are good that with more resources and continued exertion, the special procedures can still punch above their weight. One positive signal is the continued appointment of highly regarded experts for some of the most sensitive mandates. Maina Kiai, a human rights activist from Kenya, for the mandate on freedom of assembly; Juan Méndez, a leading expert in international human rights law and former victim of torture, for the mandate on freedom from torture; and Christof Heyns, a South African human rights law professor for the mandate on extrajudicial executions are a few examples. The selection process managed by the Human Rights Council president is more open and consultative than before, giving an opportunity for advocates of civil society to press candidacies.

Difficulties on Gaza Report

The politics of appointment, however, can get tricky, as was seen dramatically this year and last year when Richard Goldstone, a South African jurist who is Jewish, chaired a special fact-finding mission on Israel’s military operation in Gaza launched in December 2008.

After a path-breaking report accusing both the Israelis and the Palestinians of major violations of human rights and humanitarian law, including deliberate targeting of civilians by Israel, Goldstone met a storm of criticism from defenders of Israel. In a bizarre twist, Goldstone rescinded the most controversial finding in April 2011 in a Washington Post op-ed article, a step he took without approval and in opposition to the conclusions of his three colleagues on the panel. While this is unlikely to result in any particular action by the council, it demonstrates the power that these mandates hold in the court of national and international public opinion. ■