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Contemporary legal challenges: EU – Hungary – Croatia



Hungary-Croatia
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SUNICOP

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**Tímea Drinóczi, Mirela Župan,
Zsombor Ercsey, Mario Vinković (eds.)**

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Pécs – Osijek

2012

**Contemporary Legal Challenges:
EU – Hungary – Croatia**

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2012

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Foreword

The Proceedings ‘Contemporary Legal Challenges: EU – Hungary – Croatia’ are the results of a successful and fruitful cooperation between the respective faculties of law in Osijek and Pécs, which was established within the framework of the Sunicop project (Strengthening University Cooperation Osijek – Pécs). The Proceedings represent the top efforts made by Croatian and Hungarian scientists for the purpose of creating a common regional research area in the field of law, which was one of the main objectives of the project. The content of the Proceedings covers a wide range of current issues falling into the scope of different legal disciplines and the number of authors and their contributions (i.e. 70 authors and 33 contributions) as well as the quality thereof show that the cooperation between the two cross-border faculties has indeed strengthened in comparison with the year 2011, when the previous proceedings were published, which marked the completion of the Eunicop project (Establishing University Cooperation Osijek – Pécs). Therefore, the publishers and the authors deserve our sincere congratulations. In less than a year, Croatia is scheduled to become the 28th member state of the European Union. During the presidency of the EU, Hungary played a key role in finishing EU – Croatia accession negotiations. In February 2012, the Hungarian Parliament was among the first ones to ratify the Treaty of Accession of the Republic of Croatia to the European Union. Hungary and Croatia, as two neighbouring and friendly states, will also develop their future relations on their common European path. In such context, there is still much room for cooperation in the field of legal science. The application of the *acquis communautaire* in practice is one of the challenges for further comprehensive legal analyses, since the harmonisation of a legal system with the *acquis* is not sufficient for the realisation of its *ratio legis*. In times of economic crisis and frequent attacks on universal values such as human dignity, freedom, equality and solidarity, the role of scientists in improving the function of the legal system and the protection of fundamental human rights and freedoms is becoming increasingly important. Hence, future both individual and group study visits of Hungarian and Croatian scientists in the field of law should be directed in that way. Their previous cooperation awakens optimism. By supporting and co-financing projects of the two faculties of law within

the Hungary – Croatia Cross-Border Cooperation Programme, the European Union has given a chance to both Osijek and Pécs to assert themselves as regional centres of legal science. Actual results, including these Proceedings, are certainly encouraging and provide an excellent foundation for future scientific endeavours along the way of promotion and affirmation of European values.

Zagreb, 5 August 2012

Prof.dr.sc. Ivo Josipović
President of the Republic of Croatia

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Preface

Human activities are becoming borderless and the importance of the role of law in this area is unquestionable. Contemporary legal challenges obviously raise different and at the same time similar problems clearly and manifestly apparent in each state in various fields of law. In order to govern the legal effects of globalization, cooperation has no alternative. It entails the approximation of legal regulations and establishes joint operations in order to solve, among others, cross-border issues and matters having EU relevance.

Projects of cooperation between two neighbouring faculties (Pécs and Osijek) represent a bridge to a new and improved way of conducting research. That is why the Faculty of Law, University of Pécs and the Faculty of Law of Strossmayer University have found it inevitable to continue common research and student exchange program, institutionalized by EUNICOP project, in the framework of SUNICOP (Strengthening University Cooperation Osijek – Pécs, SUNICOP HUHR/1001/2.2.1/0003) project. SUNICOP, similarly to EUNICOP, is a one-year-long common research and curriculum development project being co-financed and supported by the European Union through the Hungary-Croatia IPA Cross-border Co-operation Programme and by the two participating law faculties. The SUNICOP project is operated in various interrelated areas and through different activities. One of these activities was the conference called ‘Contemporary Legal Challenges: EU – Hungary – Croatia’, organized by the Faculty of Law of Strossmayer University on 16-18 February 2012. The conference, where knowledge gained during the joint research activities was shared, successfully brought together researchers, and various fields of law were dealt with.

This volume contains all contributions written and presented in English during the conference. Two additional volumes, which include the Hungarian and Croatian versions of all conference materials, are published on the website of the project as well.

Pécs – Osijek, 13 July 2012

The editors

Adrienne Komanovics^{*}
Nives Mazur-Kumrić^{**}

The Human Rights Council and the Universal Periodic Review: A novel method of promoting compliance with human rights

‘[...] peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, [...] development, peace and security and human rights are interlinked and mutually reinforcing [...]’.

Resolution 60/251 of the GA of 3 April 2006

I. Introduction

In 2006, the new Human Rights Council came into being, replacing the Commission on Human Rights. While the Commission undoubtedly achieved a lot in standard-setting, in its last years it had to face allegations of politicization, selectivity and the use of double-standards. The HRC was intended to offer a fresh start to international human rights protection.

The objective of this paper is twofold. Firstly, it aims at giving a brief description of the key flaws of the Commission and the efforts to overcome these deficiencies by the newly established Human Rights Council. The article also endeavours to undertake the analysis required to understand the so-called Universal Periodic Review (UPR) better, a mechanism set up to complement the work done by treaty bodies. In doing so, the achievements as well as the shortcomings will be addressed. Following the analysis of the UPR coverage of Croatia and Hungary, the paper concludes with the summary of the new modalities to be applied in the second cycle of the UPR (2012-2016).

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II. The Human Rights Council and its predecessor, the Commission on Human Rights

1. The UN Commission on Human Rights

The UN Commission on Human Rights was founded in 1946 and for several decades served as a one of the key actors in standard-setting as well ensuring compliance with human rights. Whereas the Commission was soon engaged in the drafting of conventions and declarations,¹ it had originally no power to take any action over petitions.² Subsequently, however, the Commission's mandate was broadened: it was given wide-ranging ability to investigate human rights abuses. Its mandate included the power to appoint special rapporteurs (or working groups) with either thematic or country mandates,³ as well as the use of the so-called 1503 procedure (complaint procedure).⁴

Be that as it may, the Commission gradually lost credibility and legitimacy. Politicization, declining credibility and professionalism, selectivity and double standards tarnished the reputation of the Commission. The major criticism levelled at the Commission was that,

¹ L. Rahmani-Ocora, 'Giving the Emperor Real Clothes: The UN Human Rights Council', 12 *Global Governance* (2006) 15; J. Vengoechea-Barrios, 'The Universal Periodic Review: A New Hope for International Human Rights Law or a Reformulation of Errors of the Past?', 12 *Revista Colombiana de Derecho Internacional* (2008) 103; M. Viégas-Silva, 'El nuevo Consejo de Derechos Humanos de la Organización de las Naciones Unidas: Algunas consideraciones sobre su creación y su primer año de funcionamiento', 12 *Revista Colombiana de Derecho Internacional* (2008) 41; J. Matiya, 'Repositioning the international human rights protection system: the UN Human Rights Council', 36 *Commonwealth Law Bulletin* (2010) 314. This standard setting started with the adoption of the Universal Declaration of Human Rights (1948) under the chairmanship of Eleanor Roosevelt, chairing the Commission on Human Rights between 1946 and 1951.

² ECOSOC Resolution 75(V)1947.

³ Thematic special procedures are mandated to investigate the situation of human rights in all parts of the world, irrespective of whether a particular government is a party to any of the relevant human rights treaties. In the case of country mandates, mandate-holders are called upon to take full account of all human rights (civil, cultural, economic, political and social).

⁴ M. Davies, 'Rhetorical Inaction? Compliance and the Human Rights Council of the United Nations', 35 *Alternatives: Global, Local, Political* (2010) p. 451; M.S. Edwards, et.al., 'Sins of Commission? Understanding Membership Patterns on the United Nations Human Rights Commission', 61 *Political Research Quarterly* (2008) 391; Vengoechea-Barrios loc. cit. n. 1 p. 104, Viégas-Silva, loc. cit. n. 1, at p. 42.

due to the relatively loose criteria for gaining *membership*, it was at times made up of undemocratic and repressive States.⁵ As Kofi Annan, the then Secretary-General of the UN put it, States sought membership ‘not to strengthen human rights but to protect themselves against criticism or to criticize others’.⁶ In addition, the permanent members of the Security Council were virtually guaranteed a permanent seat in the Commission notwithstanding flagrant human rights violations.⁷

Loss of credibility of the Commission derived also from the *selective use of country-specific resolutions* and country specific scrutiny in general.⁸ The public discussions of alleged human right violations in many instances led to the adoption of resolutions condemning the human right practices of certain countries in a highly confrontational manner.⁹ In addition, there was the issue of the ‘no action’ motion, whereby any delegation wishing to prevent discussion on an issue could block the Commission from taking action.¹⁰ Another problem related to the lack of meeting time: the Commission held only one annual session for a six-week period which meant that the Commission was not able to deal effectively with crisis situations.¹¹

To elevate attention to human rights and to address shortcomings of the Commission, the General Assembly decided to replace the discredited Commission with the Human Rights Council in April 2006.

⁵ Davies, loc. cit. n. 4 p. 452. See also Rahmani-Ocora, loc. cit. n. 1, at p. 16, Edwards et al., loc. cit. n. 4, at p. 391, Matiya, loc. cit. n. 1, at p. 316.

⁶ UN Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All 2005. A/59/2005.

⁷ Consider Tibet, the Tiananmen Square massacre, Chechnya or Guantanamo Bay.

⁸ E. Domínguez Redondo, ‘The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session’, 7 *Chinese Journal of International Law* (2008) 722-723; Rahmani-Ocora, loc. cit. n. 1, at p. 16; Vengoechea-Barrios loc. cit. n. 1, at p. 104, Viégas-Silva loc. cit. n. 1, at p. 44, Matiya, loc. cit. n. 1, at p. 316.

⁹ Davies loc. cit. n. 4, at p. 453. See also H. Hannum, ‘Reforming the Special Procedures and Mechanisms of the Commission on Human Rights’, 7 *Human Rights Law Review* (2007) 85; J.H. Lebovic and E. Voeten, ‘The Politics of Shame: The Condemnation of Country Human Rights Practices in the UNCHR’, 50 *International Studies Quarterly* (2006) pp. 861-888.

¹⁰ Domínguez Redondo loc. cit. n. 8, at p. 723, Matiya loc. cit. n. 1, at p. 316.

¹¹ Rahmani-Ocora loc. cit. n. 1, at p. 16.

2. The Human Rights Council

Following a long process of negotiations, the Human Rights Council was agreed upon by the General Assembly.¹² The original purpose of the reform plan was to upgrade the status of the Commission, to make it a principal organ of the UN. Thus, human rights, in institutional terms, would have got their proper place next to the other two pillars (peace and security, and development) as one of the three pillars of the UN.¹³ Notwithstanding the fact that this ambitious plan failed, a new, more authoritative human rights body was created.¹⁴ The linking of the Council to the General Assembly guarantees the topic of human rights enhanced impact, visibility and legitimacy in the UN system.

The principal features of the *appointment* of the Council members are the following. First of all, its membership was reduced from 53 to 47 seats. The members of the Council serve for a period of three years. In order to prevent quasi-permanent membership, Council members shall not be eligible for immediate re-election after two consecutive terms. The membership is based on equitable geographical distribution. A certain filtering system has been introduced: States that join the Council must commit themselves to human rights and submit to review themselves. Thus, the status of ratification of the international human rights treaties and the observance of democracy is taken into account.¹⁵ For this reason, the candidacies of Belarus (2007), Sri Lanka (2008) and Azerbaijan (2009) were each defeated, while Iran withdrew its bid in 2010.¹⁶ Members of the Council are elected by the majority of the

¹² UN General Assembly, resolution A/RES/60/251, March 15, 2006. Four States voted against (US, Israel, the Marshall Islands and Palau); three abstained (Iran, Venezuela, Belarus). See Y. Terlingen, 'The Human Rights Council: A New Era in UN Human Rights Work?', 21 *Ethics & International Affairs* (2007) p. 168.

¹³ Rahmani-Ocora loc. cit. n. 1, at p. 16; Terlingen loc. cit. n. 12, at pp. 169 and 170, Viégas-Silva loc. cit. n. 1, at p. 40.

¹⁴ The Council is a subsidiary body of the General Assembly. Furthermore, a new Advisory Committee, replacing the former Sub-Commission on the Promotion and Protection of Human Rights, was set up as well to assist the Council and act as a 'think tank' providing it with expertise and advice on thematic human rights issues and the revised Complaints Procedure mechanism.

¹⁵ Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to the Human Rights Council. See <http://www2.ohchr.org/english/bodies/hrcouncil/docs/pledges.pdf>.

¹⁶ See <http://www.demcoalition.org/pdf/pdf/DCP%202009-2010%20HRC%20Report.pdf>.

members of the General Assembly. Finally, the General Assembly, with a two-thirds majority, has the right to suspend the rights of membership in the Council of any member that commits gross and systematic violations of human rights. The example was set by the suspension of membership of Libya.¹⁷

The Council was given a *broad mandate*. A large degree of continuity was retained by the preservation of the 1235 and 1503 procedures, which were regarded as one of the major contributions of the Commission to the protection of human rights.¹⁸ However, the so-called Universal Periodic Review, an innovative system for assessing the human rights records of all States was introduced.¹⁹ A further innovation is that the Council has a *more regular meeting schedule* than its predecessor: the Council meets in at least three sessions a year, each of which lasts at least ten weeks. To address emergency situations, the Council may hold special sessions.²⁰

One year after holding its first meeting, on 18 June 2007, the Council adopted Resolution 5/1 setting forth the framework of its functioning, such as the modalities of the UPR, the special procedures and the complaint procedure, agenda and framework for the programme of work, methods of work, rules of procedure, and establishing a new Advisory Committee, which replaced the former Sub-Commission on the Promotion and Protection of Human Rights.

III. Universal Periodic Review: general aspects

As noted above, the UPR was introduced in 2006 as part of major reforms of the United Nations human rights system. The salient features of the review are the following.

¹⁷ The Libyan Arab Jamahiriya was suspended by General Assembly Resolution A/65/265 adopted on 1 March 2011. See <http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm> or

http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/265&Lang=E.

¹⁸ Viégas-Silva, loc. cit. n. 1, at pp. 43 and 52-55. See also Annex to HRC Res. 5/1, II. (Special Procedures) and IV. (Complaint Procedure).

¹⁹ HRC Resolution 5/1, Annex, Section IB.1.

²⁰ As of December 2011 there have been eighteen extraordinary sessions: four in 2006; one in 2007; three in 2008; four in 2009; two in 2010; and four in 2011. See <http://www2.ohchr.org/english/bodies/hrcouncil/>.

1. Basis of the review

The UPR assesses the extent to which governments respect human rights including their obligations as set out in the Charter of the United Nations; the Universal Declaration of Human Rights; the human rights treaties that have been ratified by the country; voluntary pledges and commitments made by the State; and international humanitarian law that applies to the country.²¹

2. Preparation for the review

Since the Council had to establish a clear difference between the reporting mechanisms of human rights treaty bodies and the UPR,²² the UPR is not exclusively based on national reports, but complemented by reliable information submitted by other relevant stakeholders.

The State report of maximum 20 pages describes the normative and institutional framework, the major achievements and challenges in the promotion of human rights, the key national priorities and initiatives to improve the human rights situation and, beginning in the second cycle of review in 2012, information on the follow up of previous reviews. The national report is submitted to the UPR mechanisms six weeks prior to the review in the UPR Working Group.²³

The Office of the High Commissioner is responsible for the preparation of the other two reports not exceeding 10 pages, containing a recapitulation of actual UN information on the State under review, as well as a summary of third-party stakeholder interests. *The UN information* is generally compiled from the documents prepared by the treaty bodies, the UN High Commissioner for Refugees, the ILO Committee of Experts, as well as that of the special rapporteurs created under the special procedures. *Stakeholders*, such as regional intergovernmental organizations (e.g. Council of Europe, OSCE), NGOs, women's groups, national human rights institutions, labour unions, church groups are invited to send their submission to the Office of the High Commissioner in one of the six official UN languages. The

²¹ HRC Res. 5/1, Annex I.A 1-2.

²² In para 5(e) UNGA Resolution 60/251 states that 'such a mechanism shall complement and not duplicate the work of treaty bodies'.

²³ On the content of these reports, see HRC Decision 6/102 of 2007, A/HRC/DEC/6/102, setting forth a series of guidelines for the States. See http://ap.ohchr.org/documents/E/HRC/decisions/A_HRC_DEC_6_102.pdf.

deadline for NGO submissions is usually around 5-6 months in advance of the relevant UPR session.²⁴

3. Review in the Working Group of the HRC

The next phase, including the interactive dialogue and the adoption of the outcome report, takes place in Geneva. Review is prepared by groups of three States (troika), drawn by lot, who act as rapporteurs. The State under review may request that one of the Rapporteurs be from its own Regional Group and may also object to a selected Rapporteur; however, it may do so only once. The States selected as part of the troika may request to be excused from a particular country review, in which case another State will be selected.²⁵ There is no set limit to the number of times a Rapporteur may request to be excused.²⁶ The troika is mandated to facilitate the interactive dialogue: they relay questions submitted in advance to the state under review, they are responsible for drafting the outcome report, and they are one of the main targets for NGOs to ensure that their recommendations are integrated.

The review of all UN Member States takes place in the *UPR Working Group*, composed of the 47 Members of the Council, and chaired by the President of the Council. Each Member of the Council will decide on the composition of its delegation to the UPR Working Group, which may include human rights experts. A key part of the review is the *three-hour interactive dialogue* in the Working Group between the State under review and other UN Member States. During the dialogue, Member States are able to raise questions and make recommendations to the State under review. NGOs may only attend the dialogue, but may not take the floor.²⁷

²⁴ See also Technical guidelines for the submission of stakeholders' information to OHCHR (as of 1 July 2008). <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TechnicalGuide.aspx>.

²⁵ E.g., Pakistan declined to serve on the troika reviewing India (2008). See Domínguez Redondo loc. cit. n. 8, at p. 727.

²⁶ On the list of troikas, see <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>.

²⁷ The three hours dedicated to the review start with the statement of the State under review (SuR), presenting its report. In the next phase (two hours), Members of the HRC (three minutes to each speaker) and Observer States (two minutes to each speaker) can ask more questions and make recommendations. Accordingly, the average number of speakers can be 40-45. The dialogue is closed by the concluding

Following the dialogue, a report is compiled by the Troika Rapporteurs, the UPR Secretariat, and the State under review. The report includes a record of issues raised during the dialogue and lists the recommendations made by other States with an indication of which of these enjoy the support of the State under review.

The outcome report is adopted in two stages. The first stage takes place in the UPR Working Group, while the second is in the Council plenary. The report is adopted by consensus in the UPR Working Group at least 48 hours after the interactive dialogue. The report summarises the presentation of the State under review, the issues and questions raised together with the responses, as well as a list of recommendations. The reviewed State may indicate which recommendations it supports and these will be identified as such in the report. Other recommendations will be noted in the report. In practice, however, this is not always the case: in some instances the State under review does not provide a clear answer or consider many recommendations as ‘already implemented or in the process of implementation’.

4. Plenary session of the HRC

At a subsequent regular session, the Council plenary adopts the final outcome of the review, including further responses from the State under review. Up to one hour is set aside for the adoption of each *outcome report*. Unlike in the Working Group session, during the plenary session relevant stakeholders may participate and can make general comments.²⁸

5. Follow-up mechanism

The outcome of the review should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders. The implementation of these recommendations serves as a basis on which the subsequent review is carried out. In cases of persistent non-

remarks of the SuR. The SuR’s overall speaking time throughout the session of the WG is of 60 minutes.

²⁸ The one hour available for the consideration of the UPR is organized as follows: the SuR will have up to 20 minutes, Member States and observer States of the Council will have up to 20 minutes, and finally stakeholders will have up to 20 minutes to make general comments. See Eighth Session of the Human Rights Council. Universal Periodic Review Segment (9-13 June 2008), <http://www.upr-info.org/IMG/pdf/NV-UPR.pdf>. See also Amnesty International, <http://www.amnesty.org/en/library/asset/IOR41/033/2008/en/1478d09a-7dcc-4225-a317-15cdb770b946/ior410332008en.html>.

cooperation with the UPR mechanism, the Council will ‘address’ such situations. Fortunately, this has not yet been the case since the level of cooperation by States in the review process has been good: all the UN Member States have actually participated in the UPR.

IV. State under review: Croatia

Croatia was reviewed on 8 November 2010 within the framework of the 9th session of the first UPR cycle.²⁹ The UPR troika was constituted of representatives of Pakistan, the USA and Burkina Faso.³⁰

1. The three reports

National report. The National Report of the Republic of Croatia was drawn up by the Working Group established by the Croatian Government in accordance with the UPR procedure while the preparation was coordinated by the Ministry of Foreign Affairs and European Integration, the Ministry of Justice and the Government Office for Human Rights.³¹ The introductory lines of the Report include a positive evaluation of the normative and institutional framework for the protection and promotion of human rights in Croatia. This framework was denoted as ‘highly developed’, providing an explanation that it was adjusted to all required international standards, particularly to those which needed to be incorporated in the Croatian legislation within the process of the accession of Croatia to the European Union. As the greatest challenge in this field, better and more efficient implementation of the existing normative framework and strengthening administrative and financial capacities of the institutional framework are emphasised.³² The human rights protection in Croatia represents the highest value in the constitutional order. The legal framework of this protection includes the Constitution, the national legislation, and the international instruments for the protection of human rights to which Croatia is a

²⁹ The Tentative Timetable for the 9th Session of the UPR Working Group (1-12 November 2010). <http://www.upr-info.org/-Sessions-.html>.

³⁰ UPR-troikas – Ninth Session of the Working Group (1-12 November 2010). http://www.upr-info.org/IMG/pdf/List_troikas_9th_session.pdf.

³¹ Paragraph 3 of the National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1 – Croatia (A/HRC/WG.6/9/HRV/1), 12 August 2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/HR/A_HRC_WG.6_9_HRV_1_Croatia_eng.pdf.

³² Para 5.

party.³³ The latter were explicitly mentioned in the Report, particularly the fact that Croatia is a party to 88 instruments of the Council of Europe (CoE) to whose monitoring mechanisms regularly submits reports.³⁴

The recent programme of human rights protection in Croatia is defined in the National Program for the Protection and Promotion of Human Rights 2008-2011 whereas the Operational Plan for its Implementation was adopted in 2010, the purpose of which refers to development and monitoring of the implementation of the goals, measures and activities from the National Program. The Report stated the *priorities* of the human rights protection in Croatia. These were: the Croats living abroad, detained and missing persons in Croatia, rights of active participants and victims from the Homeland War, right to a fair trial, victim/witness protection, freedom of the media, right to access to information, religious rights and freedoms, right to work, special protection of the family, children, youth, care for particularly vulnerable groups of citizens, right to healthy life and environment, combating corruption, trafficking in human beings, security and human rights, and mine clearing in the areas covered with land mines remained from the Homeland War.³⁵ The areas of human rights protection relating to combating racial and other discrimination, gender equality, domestic violence and violence against women, rights of the child, and rights of persons with disabilities, trafficking in human beings, migrants and asylum seekers were characterized by significant progress.³⁶ A special role in increasing the level of human rights protection was also performed by the 2008 Anti-Discrimination Act³⁷ and the National Anti-discrimination Plan 2008-2013.³⁸ On the other hand, some fields

³³ Paras 6 and 7. Pursuant to Article 141 of the Constitution stipulating as follows: 'International agreements concluded and ratified in accordance with the Constitution and made public and which are in force, are part of the internal legal order, ranking above laws in their legal effect'.

³⁴ Para 9.

³⁵ Para 21.

³⁶ Para 22.

³⁷ Anti-Discrimination Act, *Official Gazette* of the Republic of Croatia 85/08.

³⁸ Paras 28, 30, 36, 38, 48, 56, 61, 83. In the context of raising the level of the human rights protection in Croatia, the following documents and initiatives deserve due attention: the National Policy for the Promotion of Gender Equality 2006-2010, the Strategy for the Development of Women Entrepreneurship 2010-2013, the National Strategy for Protection from Domestic Violence 2008-2010, the National

required appropriate interventions in order to raise the level of human rights protection, notably when it comes to the protection of the rights of persons deprived of liberty, some aspects of the right to education that concern the education for human rights and the right to free legal aid.³⁹

Among the most important *challenges* for Croatian authorities and the society as a whole, one had to single out the issue of refugee and displaced persons return and their housing⁴⁰, the issue of war crimes (particularly the fate of the missing persons⁴¹ and cooperation with the International Criminal Tribunal for the Former Yugoslavia⁴²) and the issue of protection of the rights of national minorities.⁴³

*UN Summary Report.*⁴⁴ Regarding the scope of international obligations assumed through ratification, accession or succession of the most relevant universal human rights treaties, Croatia can be awarded a positive mark. However, Croatia is still not a party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and the International Convention for the Protection of All

Plan of the Activities for the Rights and Interests of Children from Year 2006 until the Year 2012, the National Strategy for Equalising the Opportunities of Persons with Disabilities 2007–2015, The third National Plan Against Trafficking in Persons (2009-2011), and the National Strategy of Health Care Development 2006-2011.

³⁹ Para 23.

⁴⁰ Paras 93, 94, 95, 96, 97, 98, 99. Croatia provided 700,000 displaced persons and refugees with accommodation and put great efforts in their return and restoration of their homes. So far, Croatia has repaired or rebuilt 146,000 housing units, which has ensured the return of 500,000 members of households of reconstruction beneficiaries. About 80% of these beneficiaries are Croatian citizens of Serb national origin.

⁴¹ Para 100. In terms of consequences of the war, even today as many as 1899 persons are still considered missing.

⁴² Para 101.

⁴³ Para 104. Despite an adequate legislative framework for protection of national minorities and efforts of the government to implement it efficiently in practice, violation of the rights of the Serbs and the Roma has still been registered.

⁴⁴ Compilation prepared by the office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council Resolution 5/1 – Croatia, A/HRC/WG.6/9/HRV/2, 13 August 2010, p. 2. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/HR/A_HRC_WG.6_9_HR_V_2_Croatia_eng.pdf.

Persons from Enforced Disappearance (CED; which was signed in 2007, but not ratified).⁴⁵

When it comes to the *implementation of international human rights obligations*, the UN specified several problematic areas as follows:

- *Equality and non-discrimination*. The first place in the list of vulnerable groups is held by women due to obvious inequalities between women and men in many areas, particularly in the labour market (e.g. sexual harassment and discriminatory practices that exclude pregnant women or women with small children from employment). Problems may also arise from societal prejudice against certain minority groups, such as the Roma and Serb minorities. Finally, the reluctance of some local authorities to implement laws and policies on non-discrimination, particularly with regard to returnees turned out to be controversial too.⁴⁶
- *Right to life, liberty and security of the person*. The UN expressed its concern due to the fact that no prosecution or conviction for alleged crimes of torture had taken place; about reports of physical and verbal attacks against members of ethnic minority groups; about continuing poor conditions in detention facilities, including overcrowding and inadequate access to medical care; about the use of enclosed restraint beds in psychiatric and related institutions; about the alleged failure of the state to address the issue of violence and bullying between children and young adults placed in social care institutions; about incidents of domestic violence and impunity due to a low conviction rate; about relatively high number of deaths and injuries among children due to traffic and domestic accidents; about trafficking in women and children for sexual and other exploitative purposes; and about the flaws which have been noticed with respect to the Juvenile Courts Act which do not include the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.⁴⁷
- *Administration of justice, including impunity and the rule of law*. The crucial issues seem to have been continuing substantial

⁴⁵ List of international treaties from the domain of human rights protection ratified by Croatia see in: Compilation prepared by the office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the Annex to Human Rights Council Resolution 5/1 – Croatia (A/HRC/WG.6/9/HRV/2), 13 August 2010 p. 2.

⁴⁶ Paras 15-18.

⁴⁷ Paras 19-27.

backlog of court cases, and delays in court proceedings; the full implementation of juvenile justice standards; the reported failure of Croatia to carry out prompt and impartial investigations and prosecute perpetrators in connection with torture and ill-treatment which reportedly occurred during the 1991-1995 armed conflict; reports that many potential cases of war crimes remained unresolved and that the selection of cases had been disproportionately directed at ethnic Serbs; and the fact that Croatia still had not located and turned over to the ICTY the necessary records concerning military shelling by the Croatian forces during the 1995 Operation Storm so as to allow the Tribunal's investigation to proceed.⁴⁸

- *Right to privacy, marriage and family life.* The main concerns include the fact that Roma girls tend to be married at an early age and that many children are placed in institutions where they grow up deprived of the nurturing and support that a family setting could provide.⁴⁹
- *Freedom of expression, association and peaceful assembly, and right to participate in public and political life.* The following issues were qualified as highly critical by the UN: acts of intimidation and attacks on journalists that have not been properly investigated and the underrepresentation of women in legislative and executive bodies.⁵⁰
- *Right to work and to just and favourable conditions of work.* In this field, the issues referred to the scale of unemployment in Croatia, particularly in areas with large numbers of returnees and the high unemployment rate among women.⁵¹
- *Right to social security and to an adequate standard of living.* Here the focus was on poverty and social exclusion of single-parent households; poor living conditions in the Areas of Special State Concern and other isolated communities; child poverty; the increasing number of cases of drug abuse, as well as alcohol and tobacco consumption by adolescents; and the lack of a

⁴⁸ Paras 28-32.

⁴⁹ Paras 33-34.

⁵⁰ Paras 36-37.

⁵¹ Paras 38 and 40.

- comprehensive and just solution for former occupancy tenancy rights (OTR) holders.⁵²
- *Right to education and to participate in the cultural life of the community.* The UN was concerned about the different access to education for children belonging to minorities and vulnerable groups; about the very centralized education system and the poor quality of equipment and school facilities in many parts of the country.⁵³
 - *Minorities and indigenous peoples.* Croatia was rebuked for low representation of members of ethnic minorities in local and regional government, all public bodies, including the judiciary and human rights coordination bodies at county level, and that some ethnic groups, in particular persons of Roma and Serb origin, continue to face difficulties obtaining the documentation necessary to acquire citizenship.⁵⁴
 - *Migrants, asylum-seekers, refugees and internally displaced persons.* The key issues in this field appeared to be the obstacles faced by returnees, in particular members of the Serb minority, with regard to repossession of their property, access to reconstruction assistance, as well as reintegration into Croatian society; and some shortcomings in the asylum system both in legislation and its implementation.⁵⁵

*Stakeholders' Report.*⁵⁶ The content of the Stakeholders' report corresponds to a great extent to allegations in the UN Summary Report and also refers to the scope of international obligations, constitutional and legislative framework, institutional and human rights infrastructure, policy measures, and to situations related to promotion and protection of human rights on the ground.⁵⁷ What is also worth mentioning is a datum

⁵² Paras 42-46.

⁵³ Paras 49-50.

⁵⁴ Paras 52-53.

⁵⁵ Paras 54 and 57.

⁵⁶ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the Annex to Human Rights Council resolution 5/1 – Croatia, (A/HRC/WG.6/9/HRV/3), 10 August 2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/HR/A_HRC_WG.6_9_HR_V_3_Croatia_eng.pdf.

⁵⁷ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the Annex to Human Rights Council resolution 5/1 – Croatia (A/HRC/WG.6/9/HRV/3), 10 August 2010.

of the Ombudsperson of the Republic of Croatia stating that in terms of discrimination complaints the body received in 2009, the most frequent form was discrimination based on nationality (31 per cent) followed by gender, social status, social origin and disability.⁵⁸ The Commissioner for Human Rights of the Council of Europe gave his comments to the complexity of procedure for obtaining the Croatian citizenship, which, in his opinion, should have been simple and prompt and complemented by an efficient system of free legal aid. In this context, he also suggested Croatia should ratify the European Convention on Nationality and the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.⁵⁹ It is important to mention that part of his observations referred to employment and education of Roma, advising Croatia to act in full compliance with the European Court of Human Rights' judgment in the case of *Oršuš and others* (2010).⁶⁰

2. Interactive dialogue⁶¹

During the interactive dialog in November 2010, 46 delegations made oral statements.⁶² The dialog was preceded by presentation of the key features of the legal framework for human rights protection in Croatia, during which the State Secretary for European Integration laid down some of the protection priorities. For instance, it was said that Croatia paid special attention to promoting tolerance and combating all forms of discrimination, to promoting reconciliation in a post-war society in the region, to full cooperation with the International Criminal Tribunal for the Former Yugoslavia and to domestic war crimes trials, to refugee issues, to minority rights (esp. the Roma), to gender equality and children rights, etc.⁶³

The content of the objections made by some states during the dialog mostly referred to the areas of human rights protection which had been depicted as problematic in the aforementioned three reports. *Algeria* encouraged Croatia to implement measures regarding the high rate of

⁵⁸ Para 17.

⁵⁹ Para 20.

⁶⁰ Para 59.

⁶¹ Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review – Croatia*, Geneva, 1-12 November 2010. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/HR/A_HRC_WG.6_9_L.1_1_Croatia.pdf.

⁶² Para 5.

⁶³ Paras 8-21.

child mortality as a result of traffic accidents⁶⁴ while *Cuba, Brazil, South Korea, the USA, Slovenia and the UK* required explanation with respect to supplementary measures or programmes to create better conditions for minorities.⁶⁵ In terms of national minorities, *Poland and Norway* expressed their concern about their low representation in local and regional governments, *Finland* objected to the poor status of the Roma whereas *the Republic of Korea* warned about their limited ability to acquire citizenship.⁶⁶ *Poland and the Russian Federation* focused their enquiries on steps to be taken to facilitate returnees' repossession of their property, access to reconstruction assistance and reintegration into Croatian society.⁶⁷ *Indonesia* objected to the high incidence of domestic violence⁶⁸ while *Canada* singled out the flaws of the cooperation with the ICTY.⁶⁹ *Belgium and Egypt* regretted the lack of visibility of and follow-up to the work of the Ombudsperson.⁷⁰ *Austria* noted concerns regarding poor conditions of detention as well as an inefficient judiciary.⁷¹

3. Report adopted by the HRC plenary

Out of the total of 116 proposed *recommendations*, Croatia accepted 111 of them while 2 of them were rejected and 3 of them are still pending.⁷² The two recommendations which could not be accepted relate to the access to citizenship (as it was incompatible with domestic legislation since it had set requirements going beyond the international standards); and on free legal aid (which remained open to interpretation owing to its drafting). Furthermore, Croatia only partially accepted recommendations referring to ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

⁶⁴ Para 22.

⁶⁵ Paras 24, 32, 39, 40 and 43.

⁶⁶ Paras 25, 37, 41 and 42.

⁶⁷ Paras 25 and 27.

⁶⁸ Para 26.

⁶⁹ Para 29. Notably, Canada noted concerns over the fact that key documents had not yet been located and made available to the Tribunal and concerns over discrepancies between accused of Serb and Croat origin in war crimes cases.

⁷⁰ Paras 31 and 33.

⁷¹ Para 38.

⁷² According to the available update dating from July 2011. Responses to Recommendations, Croatia, Adoption in the Plenary, 17 March 2011. http://www.upr-info.org/IMG/pdf/recommendations_to_croatia_2011.pdf.

and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. In terms of the former Convention, Croatia was of the view that an effective system for migrants' rights should be seen as an integral part of the wider European human rights framework. Although Croatia still has not made a final decision on whether to sign or ratify the respective convention or not, the broad legislative framework for migrant protection has already been enacted. With respect to the latter international treaty, the inter-agency working group was in the process of formulating recommendations with regard to its signature and possible ratification. All the other postponed recommendations were accepted without any objection.⁷³

V. State under review: Hungary

Hungary was reviewed on 11 May 2011. France, Gabon and Ukraine was selected as the group of rapporteurs (troika) to facilitate the review of Hungary.⁷⁴

1. The three reports

*National report.*⁷⁵ It has to be pointed out at the outset that, due to the timescale of the UPR, the first national report could not deal with the provisions of the new constitution. Hungary was in the process of redrafting its constitution at the submission of the report (16 February 2011). The situation is partly similar with regard to the extremely debated media law, attracting intense criticism from national and international sources.⁷⁶ Since these important acts were passed in April

⁷³ Report of the Human Rights Council on its sixteenth session, Paras. 614-617. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.2.doc>.

⁷⁴ All the documents are available on <http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CHUSession11.aspx>. – Please note that Hungary served as a member of the Human Rights Council in 2009-2012.

⁷⁵ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 – Hungary. A/HRC/WG.6/11/HUN/1, 16 February 2011.

⁷⁶ See e.g., the Opinion on the New Constitution of Hungary, adopted by the European Commission for Democracy Through Law (Venice Commission) at its 87th Plenary Session (Venice, 17-18 June 2011), <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29016-e.pdf>, and the Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media, Strasbourg, 25 February 2011. CommDH(2011)10, <http://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289>.

2011 and the last two months of 2010, respectively, stakeholders did not have the possibility to reflect on it.⁷⁷

In its report, Hungary referred to various *challenges*, including segregation, violence against women, the legal gap in the regulation of homebirth and the issue of forced sterilization. Clearly, one of the principal issues was the Roma community: the gradual removal of disadvantages concerning them in the fields of economy, employment, culture, health care, living conditions and social services. Another major difficulty relates to the conditions of detention where Hungary has a relatively poor record, including overcrowding in detention facilities, the situation of the mentally ill, the use of excessive force and abusive language during arrests and interrogations.⁷⁸

The reader of the national report cannot be but astonished at *the lack of reference* to other important issues. By way of example, the national report ostentatiously fails to address the anomalies of the health care system, including the disproportionate territorial distribution of health care facilities; access to the health services; long waiting lists or the so-called gratitude money.⁷⁹ Similarly, the controversies surrounding the withdrawal of the private tier of pensions are omitted.⁸⁰ On a positive note, Hungary indicated its willingness to uphold a standing invitation for mandate holders of human rights special procedures, and stated that it was keeping the deadlines with respect to the submission of periodic reports to the UN human rights treaty bodies.⁸¹ In addition, Hungary made the commitment to ratify the Optional Protocol to CAT.⁸²

⁷⁷ Civil organizations submitted their contributions in November 2010, i.e. six months before the review actually took place. The Hungarian media legislation, consisting of Act CIV of 2010 on the freedom of the press and the fundamental rules regarding media content (9 November 2010), and Act CLXXXV of 2010 on media services and mass media (21 December 2010), were passed later. Similarly, the new Constitution was adopted by the Hungarian Parliament on 18 April 2011. The new Constitution shall take effect on 1 January 2012.

⁷⁸ See paras 15-16, 24, 27, 28, 38-54 and 58-70, respectively.

⁷⁹ In Hungarian 'hálapénz' which is a symbol of the everyday corruption in a non-market based health care. The name itself is misleading as the money would not always be given after the medical service; in many cases it is used to bribe providers to offer better care and services.

⁸⁰ Para 97.

⁸¹ Unfortunately, on factual grounds we cannot agree with the Hungarian government's contention on timely submission of national reports. Hungary is and has been late with the submission of several periodic reports. See

*UN Summary Report.*⁸³ As far as *the scope of international obligations*⁸⁴ is concerned, Hungary has a good performance. Albeit Hungary is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance (CED), it intends to ratify OP-CAT. Treaty bodies have encouraged Hungary to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and the Optional Protocol to ICESCR. The major *substantive issues* of concern highlighted by the UN report are the following.

- *The situation of women.* The report noted the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society; the occupational segregation of women and men in the labour market; the wage gap between women and men, the discrimination in hiring women of childbearing age or mothers with small children; domestic violence and spousal rape; and the fact that women continue to be underrepresented in public and private spheres of life.⁸⁵
- *The Roma population.* The problems include discrimination with respect to education, employment, health and housing, disproportionately high levels of extreme poverty; segregation of Roma children in schools; overrepresentation of Roma among the inmates; and the widespread anti-Roma statements by public figures and the media.⁸⁶
- *Migrants, asylum-seekers, refugees.* The report noted the poor living conditions of asylum-seekers and refugees, the strict administrative detention regime, the problems of integration of refugees and the fact that Hungary does not ensure with full respect the principle of *non-refoulement*.⁸⁷

<http://www.ohchr.org/EN/countries/ENACARegion/Pages/HUIndex.aspx> Menu item: Reporting Status.

⁸² Paras 102-104.

⁸³ Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1. A/HRC/WG.6/11/HUN/2, 21 February 2011.

⁸⁴ The core international human rights instruments can be accessed on <http://www2.ohchr.org/english/law/index.htm#core>.

⁸⁵ Paras 10-13, 21-32 and 46.

⁸⁶ Paras 30, 41, 43, 48, 55, 58-61.

⁸⁷ Paras 25-28, 68-71.

- *Torture and administration of justice.* Here the report mentioned the alleged ill-treatment by custodial/prison staff and the limited number of investigations carried out in such cases; prison overcrowding; the fact that pre-trial detainees under and over 18 years are accommodated in the same cell; and that a high number of persons with an *ex officio* defence counsel remains without actual assistance from their attorney in the investigation phase.⁸⁸
- *Social security and adequate standard of living.* The report noted the inadequate level of the net minimum wage and social benefits; the poor mental and physical health status of the population; the inequalities experienced with respect to the health care system, the high suicide and abortion rate.⁸⁹

*Stakeholders' Report.*⁹⁰ Not surprisingly, the stakeholders' report,⁹¹ to a large extent, reiterates the issues collected in the UN Summary Report. Thus, the Hungarian Helsinki Committee contended that the new Government started to prepare a new Constitution without giving proper reasons on why it was necessary. The report noted the inadequate handling of racially motivated crimes. The independent medical examination of persons who claimed to have been ill-treated by officials was not guaranteed, the free defence attorneys usually did not make efforts in the underpaid cases. NGOs pointed out that the Public Service Broadcasting Television and Radio and the National Media and Telecommunication Authority were not independent from the government with respect to the nomination process and financing. CoE CPT stated that Hungary did not amend the legislation to ensure access to a lawyer as from the very outset of deprivation of liberty, as recommended by CoE CPT in 2005.⁹²

⁸⁸ Paras 19-30, 37-38.

⁸⁹ Paras 50, 52, 54-57.

⁹⁰ Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1. A/HRC/WG.6/11/HUN/3, 28 January 2011.

⁹¹ See

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRHUStakeholdersInfoS11.aspx>.

⁹² Paras 2, 9, 16, 33-34 and 42.

2. Interactive dialogue⁹³

During the interactive dialogue, which took place in May 2011, forty-eight delegations made oral statements.⁹⁴ The questions posed were answered solely by the Minister of State for Social Inclusion at the Ministry of Public Administration and Justice. The concerns raised by the States focused on the issues identified earlier.⁹⁵ Several countries raised the issue of *the new Constitution*.⁹⁶ Pakistan inquired how Hungary intended to build national consensus on it, Slovakia referred to provisions of the new Constitution that Hungarian citizens not residing in Hungary may participate in Parliamentary elections, whereas Germany asked about the Government's plans to seek international expertise regarding the new Constitution.⁹⁷ Various countries expressed their hope that the implementation of the newly adopted Constitution would be in accordance with Hungary's international obligations.⁹⁸ France observed that the new constitution did not explicitly prohibit death penalty, and discrimination on grounds of sexual orientation.⁹⁹ Germany, as well as Italy, raised the issue of the *competence of the Constitutional Court*. Hungary argued that the recently introduced restrictions are due to the serious economic situation, and are of a minor and temporary nature.¹⁰⁰

⁹³ This chapter is based on the following two sources: (1) Human Rights Council: Draft report of the Working Group on the Universal Periodic Review. Hungary. Eleventh session, Geneva, 2-13 May 2011 (Unedited version). Accessible at http://www.upr-info.org/IMG/pdf/a_hrc_wg.6_11_1.15_hungary.pdf; and (2) <http://www.un.org/webcast/unhrc/archive.asp?go=110511#am1>.

⁹⁴ Nine countries (Sweden, Belgium, the Czech Republic, Denmark, Slovenia, Switzerland, the UK, Netherlands and Norway) submitted advance questions to Hungary.

⁹⁵ E.g., the situation of the Roma, the lack of a NHRI, domestic violence, migration, prison overcrowding, racially motivated violence, the situation of migrants and asylum-seekers. In his answer, Mr. Balog, Head of the delegation, announced the evidently very optimistic 'breaking news' (his very own words!) that the Government would create 100 thousand jobs for the Roma within 4 years. In addition, the delegation informed about the target set by the Government to reduce the occupancy of prisons by 39 per cent.

⁹⁶ Ecuador, Pakistan, Slovakia, Brazil, Norway, Germany, Sweden, the UK and the Holy See.

⁹⁷ Paras 38, 45 and 59, respectively.

⁹⁸ Ecuador and Norway, paras 35 and 57, respectively.

⁹⁹ Para 31.

¹⁰⁰ Paras 58, 59 and 84.

Brazil, Austria, Australia, Germany, the Netherlands, the US, Belgium and Mexico expressed concerns regarding *the new media legislation*: they argued that the new media law still contained elements incompatible with international human rights standards and asked if the Government was considering revising the media legislation in the light of those concerns. Norway was concerned about possible restrictions in the freedom of the press by mandatory content requirements and ‘public morality’ standards, whereas Italy and the UK were interested in the provisions aimed at guaranteeing the independence and impartiality of the Media Authority and Media Council.¹⁰¹

3. Report adopted by the HRC plenary¹⁰²

A total 148 *recommendations* were made, out of which 122 was accepted, and 20 rejected by Hungary.¹⁰³ Hungary *rejected* to accede to the ICRMW,¹⁰⁴ and to revoke the condition which requires from a minority group to have lived in the county at least one hundred years in order to be considered a national minority.¹⁰⁵

Many of the *recommendations accepted* are relatively weak, requiring a low level of commitment. More robust obligations include accession to OP-CAT and CED, creating a NHRI in accordance with the Paris Principles, the adoption of measures to combat discrimination, a plan of action to prevent racist attacks, the continuity of the standing invitation for mandate holders of human rights special procedures, the undertaking to ensure the implementation in practice the prohibition of corporal punishment in schools and to ensure that detention of children under 18 should be separated from adults.¹⁰⁶

¹⁰¹ Paras 47, 49, 54, 57-59, 61, 63-65, and 74.

¹⁰² At the time of going to press, only the draft report of the HRC plenary is available. See Report of the Human Rights Council on its eighteenth session. Advance Unedited Version, A/HRC/18/2 (10 October 2011). <http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-2.pdf>. The relevant paragraphs are 594 to 621.

¹⁰³ Thus, approximately 82.4 per cent of the recommendations is accepted, and 17.6 per cent rejected.

¹⁰⁴ Recommended by Egypt, Argentina, Iran, Guatemala, Algeria.

¹⁰⁵ Recommended by the Russian Federation.

¹⁰⁶ Para 94.

VI. The way forward

1. General Overview

It is beyond any doubt that the Human Rights Council's previous and current activities have so far determined a starting point for evaluation of the successfulness and efficiency of the Universal Periodic Review. It has been six years now since the Council was established, but it has neither achieved results to remember nor met the expectations of its supporters. However, it has not failed in its mission to such a great extent. Like its predecessor, the Council has focused on setting international standards of human rights protection and their codification. When it comes to activities of the latter, it has, for instance, completed the 20-year long negotiations on the United Nations Declaration on the Rights of Indigenous Peoples (2007)¹⁰⁷ and requested preparation of a draft declaration on the right to education on human rights. Moreover, its agenda has included a number of complex and recent issues related to the area of international human rights protection such as islamophobia, religious hatred and violation of human rights in the context of climate change, poverty, external debt and solidarity. Finally, the Council has proceeded with, in a more efficient way with respect to its predecessor, the investigation of violation of human rights in particular countries. In this context, the leading role has been played by the Universal Periodic Review itself.¹⁰⁸ Today, the UPR seems to be 'the most important procedural innovation introduced by the Council'.¹⁰⁹ Although the mission of the Council was initially supposed to be based on the principles of transparency, inclusiveness, de-politicization, and non-selectivity,¹¹⁰ its previous activities indicate that the Council has not succeeded in meeting these great expectations¹¹¹.

¹⁰⁷ United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295).

¹⁰⁸ T. Buergethal, et al., *Međunarodna ljudska prava u sažetom obliku* [International Human Rights in a Nutshell] (Rijeka, Faculty of Law of the University of Rijeka 2011) p. 115.

¹⁰⁹ H. J. Steiner, 'International Protection of Human Rights', in M. D. Evans, ed., *International Law* (New York, Oxford University Press 2010) p. 791.

¹¹⁰ I. Brownlie, *Principles of Public International Law* (New York, Oxford University Press 2008) p. 558; H. J. Steiner, et al., *International Human Rights in Context – Law, Politics, Morals* (New York, Oxford University Press 2007) p. 807.

¹¹¹ M. Schmidt, 'United Nations', in D. Moeckli, et al., eds., *International Human Rights Law* (New York, Oxford University Press 2010) p. 395.

Being based on objective and reliable information, and on constructive dialogue, the UPR represents a fairly realistic assessment of ‘the fulfilment by each state of its human rights obligations and commitments in a way that it ensures universality of coverage and equal treatment’.¹¹² Still, the first reviews dating from 2008 and 2009 were mostly focused on selected issues such as the issue of protection of women’s and children’s rights in Indonesia’s review¹¹³ whereas later reviews reveal efforts to provide for a full overview of the prevailing human rights situation.

Although it is hard to cater for a unique and objective evaluation of the successfulness of this innovative mechanism after its first cycle, one can still single out several preliminary observations. Firstly, the UPR has disclosed that during its course, most UN member states have been willing to get involved into a constructive and open dialogue with the Council. Only few states have tried to manipulate the dialogue diverting the attention from substantial to minor issues of human rights protection. Secondly, outcome reports of the Council have involved numerous recommendations to states referring to a number of issues of human rights protection. Although being numerous, thorough and explicit, many recommendations have hardly been applicable in practice due to their extremely vague content. Besides, the Council has, with regard to the number of recommendations, been selective and by the time the number of recommendations has grown, so in the end some states (e.g. Algeria, China, Pakistan, the UK, Ukraine and the UAE) have explicitly rejected some of the recommendations. The experience with the UPR has shown that this mechanism does not contradict other monitoring procedures of the UN treaty bodies. On the contrary, it is compatible with them.

In Schmidt’s opinion, present perceptions of the successfulness of the UPR allow one to be ‘cautiously optimistic’. Although the monitoring mechanism of the UPR is complex and as such it is subject to scepticism, it may develop into a platform for the improvement of human rights protection at a national level. In order to achieve that, states need to show strong political will.¹¹⁴

¹¹² Ibid.

¹¹³ R.K.M. Smith, *Textbook on International Human Rights* (New York, Oxford University Press 2010) p. 62.

¹¹⁴ E.g., activities of the Committee on the Elimination of Racial Discrimination, Human Rights Committee, Committee on Economic, Social and Cultural Rights,

2. New UPR modalities for the second cycle

The Resolution of the General Assembly 60/251 of 3 April 2006 resulting in the establishment of the Human Rights Council called upon the Council to review its work and functioning five years after its establishment and report to the General Assembly.¹¹⁵ In compliance with this request, the Council adopted, at its 12th session held in September 2009, a resolution aimed at establishment of an open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council.¹¹⁶ The Working Group has so far held two sessions, one in October 2010 and the other in 2011, which first resulted in adoption of the Report of the Open-Ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council on 7 March 2011¹¹⁷ and then in adoption of a resolution of the Human Rights Council entitled 'Outcome of the Review on the Work and Functioning of the Human Rights Council' on 25 March 2011.¹¹⁸ The latter defined various new modalities for the Second Cycle of the UPR. Written proposals for the UPR are contained in states papers, NGO papers, requests of National Human Rights Institutions and others.¹¹⁹ In the end, following all the preliminary action, the 17th session of the Human Rights Council held

Committee against Torture, Committee on the Elimination of Discrimination Against Women, Committee on the Rights of the Child, Committee on the Rights of Migrant Workers, Committee on the Rights of Persons with Disabilities, etc. M. Schmidt, loc. cit. n. 111, at pp. 396-397 and 405.

¹¹⁵ Point 16. Resolution adopted by the General Assembly, Human Rights Council (A/RES/60/251), 3 April 2006.

¹¹⁶ Resolution adopted by the Human Rights Council, Open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council (A/HRC/RES/12/1), 12 October 2009.

¹¹⁷ Report of the open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council (A/HRC/WG.8/2/1), 7 March 2011.

¹¹⁸ Resolution adopted by the Human Rights Council, Review of the work and functioning of the Human Rights Council (A/HRC/RES/16/21), 12 April 2011.

¹¹⁹ E.g. Office of the High Commissioner for Human Rights non-paper on the HRC review – 15 October 2010 and Commonwealth Secretariat submission to HRC Review. See Compilation of written proposals for the UPR review. http://www.upr-info.org/IMG/pdf/Compilation_of_proposals_by_issues.pdf. For more details on concrete proposals of particular states see: Compilation of statements on the UPR made under item 4.1. http://www.upr-info.org/IMG/pdf/Compilation_statements_UPR-26-27-10-2010.pdf.

on 17 June 2011 included adoption of a decision referring to the follow up to the Human Rights Council Resolution 16/21 with regard to the Universal Periodic Review.¹²⁰ This document sets out the purpose of the UPR with an emphasis on quality and efficiency increase. Hence, Article I of this Decision stipulates that the order of the review established for the first cycle shall be maintained for the second and subsequent cycles, whereby 14 states shall be reviewed during each session of the Working Group.

Article II provides for General Guidelines for the Preparation of Information under the UPR, which reaffirms the provisions of three previous documents related to the UPR: General Assembly Resolution 60/251 of 15 March 2006, and of Human Rights Council Resolution 5/1 of 18 June 2007 (containing the institution-building package) and Resolution 16/21 of 25 March 2011 (containing the outcome of the review of the work and functioning of the HRC). On that occasion, the Human Rights Council pointed out that the second and subsequent cycles of the review should focus on, inter alia, the implementation of the accepted recommendations and the development of human rights situations in the State under Review. The General Guidelines for the drafting of the three reports that form the basis of the review identify seven areas relevant for human rights protection.¹²¹ These areas have been slightly modified with respect to the previous Guidelines in order to give a greater emphasis on the need for states to report on the implementation of recommendations.¹²²

Article III regulates the issues of the duration of the review in the Working Group on the UPR in a way that ‘the duration extended to three hours and thirty minutes for each country in the Working Group, so as to be within existing resources and with no additional workload, during which the State under Review shall be given up to 70 minutes to

¹²⁰ Decision adopted by the Human Rights Council, Follow-up to the Human Rights Council resolution 16/21 with regard to the universal periodic review (A/HRC/DEC/17/119), 19 July 2011.

¹²¹ For the list of seven areas see: Draft decision presented by the President of the Human Rights Council, Follow up to the Human Rights Council Resolution 16/21 with regard to the Universal Periodic Review (A/HRC/17/L.29), 17 June 2011.

¹²² New UPR Modalities for the Second Cycle. http://www.upr-info.org/IMG/pdf/new_upr_modalities_second_cycle.pdf.

be used for initial presentation, replies and concluding comments [...].¹²³

The decision also regulates the issue of the list of Speakers in the Working Group on the UPR while Article IV. stipulates that 'the established procedures, which allow 3 minutes speaking time for Member States and 2 minutes for Observer States, will continue to apply when all speakers can be accommodated within three hours and thirty minutes available to Member and Observer States'. If all the speakers cannot fit in the foreseen time of three hours and thirty minutes, the speaking time shall be reduced to 2 minutes for all. Moreover, 'if all speakers still cannot be accommodated, the speaking time will be divided among all delegations inscribed so as to enable each and every speaker to take the floor'. In other words, every state shall be given a chance to speak, so the ultimate possibility can be reduction of the time available to speakers to two minutes per speaker or 140 minutes will be divided by the number of speakers.¹²⁴ The speakers are obliged to strictly adhere to the specified time limits and if they exceed the speaking time, their microphones will be cut off. Due to that fact, most speakers try to bring out their most important theses at the beginning of their speeches. The list of speakers is defined on the Monday of the week preceding the beginning of the UPR Working Group session while for each review states take the floor in alphabetic order, bearing in mind the fact that the beginning of the list is drawn by lot. Although the rules for defining the order of speeches are precisely laid down, states can, by mutual agreement, change their positions.

Furthermore, Article V of the decision sets out the rules on voluntary funds, according to which 'the Secretariat is requested to revise the terms of reference of the Voluntary Fund for participation in the UPR and to provide an annual written update to the Human Rights Council, starting from the 18th session, on the operations of the funds and the resources available to it'.¹²⁵ It has been foreseen that the General Assembly of the UN establishes, for that purpose, a board of trustees

¹²³ Decision adopted by the Human Rights Council, Follow-up to the Human Rights Council resolution 16/21 with regard to the universal periodic review. Unlike the State under Review (SuR) which was allotted 70 minutes, other States were given 140 minutes.

¹²⁴ New UPR Modalities for the Second Cycle.

¹²⁵ Decision adopted by the Human Rights Council.

pursuant to the UN rules, taking account of equitable geographic representation.

Other relevant provisions of the Resolution A/HRC/RES/16/21 determine that the second and subsequent cycles will last 4.5 years, that there will be 14 sessions per cycle and that 14 states will be reviewed per session (nine states in the first week and five states in the second week). The first session of the second cycle will be held in June 2012 and the second one in October 2012. Unlike in the year 2012, for which only two sessions are scheduled, from 2013 on the sessions will be held in January, May and October. States are obliged to present their standpoints, clearly and in writing, on all received recommendations to the Council. On such occasions, states are encouraged to supply the Council with a midterm update on follow-up to accepted recommendations. Special attention is paid to National Human Rights Institutions (NHRIs) with A status, which have the right to set forth their standpoints immediately after state representatives and the observations of the former will be included into the summary of other stakeholders' information. In the end, NGO's are also enticed to provide their information on the follow-up to the preceding review.

Annex I of the Decision reveals that Croatia will be in the 138th and Hungary in the 174th place during the Second Cycle of the UPR.¹²⁶

VII. Conclusion

The establishment of the Human Rights Council in 2006 is symbolically called 'the dawn of a new era' in the area of human rights protection. In fact, since its very beginnings, high expectations were put on the Council's implementing and enforcement mechanisms. This particularly refers to the UPR which has, although being more recent, met all the expectations since most states involved in the review process depict it as constructive.

The UPR of the Human Rights Council have contributed to affirmation of human rights within the framework of the UN, the mission of which, pursuant to its founding treaty – Charter, includes reaffirmation of faith in fundamental rights (the preamble), respect for human rights (Article 1) and obligation of member states to take both joint and separate action to ensure respect for and observance of human rights and fundamental

¹²⁶ From the chronological point of view, Croatia will be reviewed at the 22nd session of the Second Cycle in 2015 while Hungary will be reviewed at the 25th session of the Human Rights Council in 2016.

freedoms for all (Articles 55 and 56). This mechanism should represent a 'peer review' of activities of UN member states related to human rights protection and an instrument for detection of areas in states under review, which require external advice or assistance, so that these states could correct these irregularities in their approach to human rights. The future of the UPR was highlighted in a majestic and visionary manner in a speech of UN Secretary-General Ban Ki-moon dating from 2007, in which he considered this mechanism to 'have a great potential to promote and protect human rights in the darkest corners of the world'.¹²⁷

¹²⁷ Universal Periodic Review, <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.