

HUMAN RIGHTS

Interview with Luis Alfonso De Alba*

Ambassador Luis Alfonso De Alba was the first president of the United Nations Human Rights Council and held this mandate from 19 June 2006 to 18 June 2007. During that period the Council was entrusted by the General Assembly with the task of designing the new institutions of the international human rights system, while at the same time fulfilling its mandate to protect and promote human rights. Ambassador De Alba joined the Mexican foreign service in 1981 and since 2004 has been the permanent representative of Mexico at the United Nations and other international organizations in Geneva. Throughout his career he has participated in numerous multilateral meetings, both at global and regional levels. Among other posts, he was chairman of the Council of the International Organization for Migrations (IOM) at its 88th and 89th sessions (November 2004 to November 2005) and presided over the Disarmament and International Security Committee (First Committee) of the General Assembly during its 59th Session (2004).



The former UN Commission on Human Rights was considered to be politicized and was criticized as being inefficient. Has there been progress with its successor, the Human Rights Council?

The Human Rights Commission made a number of important contributions to the promotion of human rights, not only in terms of instruments and mechanisms, but also in developing a common view of the importance of human rights as something for all of us to protect. The heritage of the Commission should not be underestimated, misunderstood or forgotten. However, the Commission, in the last five or ten years, was indeed hindered by increased politicization.

The Commission was politicized in the sense that the human rights cause was being used as a political tool rather than as a means of changing the situation

* The interview was held on 24 July 2008 by Tony Pfanner, Editor-in-Chief of the *International Review of the Red Cross*.

for victims. States were much more interested in condemning or avoiding condemnation for political reasons than in identifying any areas where improvement was needed. The Commission was also politicized in terms of selectivity. Some countries were subjected to special review, special procedures and appointments of special rapporteurs or experts, while other countries with an equal and sometimes even worse level of human rights violations never got a review. At the end there were only Western countries putting developing countries on the spot.

Is the Council's response to that lack of impartiality the Universal Periodic Review?

Yes and no. There are two separate issues. We need to deal with all human rights in all places and under all circumstances. You need a balanced approach to all issues and mechanisms, and equal treatment. To avoid selectivity, we assume that there is no perfect country, that every single country has something to do to improve the human rights situation. The Universal Periodic Review (UPR) responds to this as the fulfilment of each state's human rights obligations and commitments are examined. It's a very long and time-demanding exercise. The soonest we are able to complete a first review of all 192 states is in four years' time, hence in 2011.

But it doesn't mean that you treat countries with different problems with the same medicines. You can approach states on a fair basis, but you should not treat crises or extreme violations with the same tool. If you have a crisis or emergency you cannot wait for the Universal Review process to deal with it. We now have the possibility of dealing with crisis situations in any session of the Council and even through the special sessions, which have been developed in a different way from that of the Commission. The Commission organized only five special sessions in 60 years. In the Council, however, there have already been seven special sessions in two years.

Four of seven special sessions of the new Council concerned the Middle East and Israel.

You may say three in the same context, no more than that. Three dealt with the situation in Palestine and one was a follow-up session thereto. One special session was quite different because it dealt with the invasion of Lebanon. But even so, there were four sessions on the Middle East. We had another one on Darfur, one on Myanmar and, finally, one thematic session on the world food crisis.

It has become much easier to call for a special session, because now a lower number of member states – only one third of the members of the Council – requesting that session is needed. But there is also a new approach to the special sessions. We opened the possibility of having thematic sessions, not only sessions on a country situation. And for these special sessions we developed a different approach. We highlight less the importance or gravity of a situation, and instead try to develop a quick reaction. The speed with which we react may allow us to take much more of a preventive approach, rather than just deploring what has happened.

The United States announced that it has withdrawn entirely from the Human Rights Council and resigned from its observer status, and the US Senate voted to cut off funding to the Council. How has the withdrawal of the United States affected the Human Rights Council?

As far as I recall, the United States supported the Council becoming a main body of the United Nations System. Their position from the start of negotiations on the resolution that established the Council was that they wanted to have a much smaller body than the present 47-member Council. We have addressed the concerns of the United States to a large extent, because we have agreed to reduce the membership and have made additional changes. It is more difficult to become a member today in terms of the amount of support that states need to be elected to the Council. States must receive a qualified majority of the vote. We are also asking each country to campaign solely on the basis of their contribution to the promotion and protection of human rights and the voluntary pledges and commitments they have made thereto. Finally, the General Assembly may suspend the rights of membership in the Council of any member that commits gross and systematic violations of human rights.

This was, at the time, an appropriate package to meet the concerns of the United States when taking into account the views of other countries who promoted alternative ideas, for instance, universal membership. Nonetheless, the United States has been extremely helpful in building the Council, and I can say openly that they shared quite a lot of the institution-building package. At the last moment, however, they went against it. I hope that the United States will give up on the reduced size of the Council and will look much more at its functions. We shall be reviewing the Council in three years and I hope that by then they will have a different approach to it.

One of the reasons for the resistance of the United States is that the Middle East took on too much importance. The UN Human Rights Council, like its predecessor, has been criticized mainly by Western countries for focusing too much on Israel.

First, the Council does not deal with Israel or with the situation in the Middle East in the same way that the Commission did. We have made an effort and it's reflected in the way we address this issue in the agenda. Previously, the Commission used to address Israeli violations only and did not address violations committed by Palestinians and other parties. In the Council, we talk about human rights situations in the whole Middle East, which is much wider, and about violations committed by any side. These are substantive changes that have been accepted by consensus by all members of the Council, including the members of the Organisation of the Islamic Conference (OIC).

The second element is that we have probably reacted too quickly, but without sustained efforts to reconcile positions at the beginning. But that was in a particular situation and context. It was the very beginning of the Council, and a crisis like the invasion of Gaza was developing during its first session. We were

discussing a paper that included a section on the Middle East and we were close to getting a consensus. The Western group was totally on the defensive and a group of countries, particularly the OIC member states, had a new tool in their hands: as few as 16 members could call for a special session. We hadn't even finished the first session of the Council and they were already calling for the first special session. And immediately after, they called for the second one in August 2007. The ambassador of Pakistan, who co-ordinated the OIC, acknowledged publicly a few months later that not enough efforts were made to reach a consensus.

The Council still seems to be politically divided and there remains a strong tendency towards bloc-building. How could these divisions be overcome?

Bloc-building is an issue that affects the United Nations as a whole, not only the Human Rights Council, and it is going to be very difficult to bypass. The European Union also faces a huge contradiction regarding blocs. On the one hand, it is a great achievement by Europe to have a common policy on human rights. On the other hand, this common policy forms a bloc position that obviously reflects the lowest common denominator.

Blocs are also a good tool for small countries that do not have the necessary resources to work individually on several issues at the same time. The group positions formed by these small countries can present very important coverage, in one sense an offensive coverage.

The only way the importance of the bloc position can be diminished is by developing among the various countries an individual sense of responsibility for the future of human rights. This has to include the biggest and the smallest countries in the Council. And you need to develop cross-regional ties and an overall sense of responsibility, which we have, to a certain extent, done at the Council. The institution-building package, because of the rule of consensus, forces us to do that. We were forced to identify countries in each of the regions that could interact with other regions and start developing this sense of responsibility, first individual responsibility and then a sense of collective responsibility.

Another much-disputed issue was the resolution on 'defamation of religions'. Again, some Western countries alleged that the resolution stifled expression and claimed that rather than promoting individual rights, the resolution was in particular referring only to Islam. Do you fear that human rights could lose their universal value, restricted by religious or cultural considerations?

There is a danger. I would like to see the issue much more in terms of dialogue between civilizations on religious issues. If you put this as a religious issue, it does not really reflect what it is – it's not a problem between religions or between human rights and any of the religions. However, it is also very much linked to stereotypes and developments in the context of the fight against terrorism.

To deal with human rights and religion, I think you have to take into account all the religions, all the attitudes. But this being said, it is a problem inasmuch as a number of countries did immediately support the OIC on those grounds. They feel threatened, and we need to reduce that feeling. Because they felt

threatened, they immediately stayed together and took a very tough position. The mandate of the Special Rapporteur on Freedom of Expression and the paragraph that was included do not promote freedom of expression, but aim at avoiding excesses of freedom of expression that may have negative effects on racial or religious discrimination. It is a very good proof of the danger of division in the Council.

Do you believe that many countries perceive human rights as a threat to their development, to their culture?

There is no country, whether developed or developing, that is not careful in dealing with human rights. Human rights involve a relationship between citizen and state, and every state has some kind of an apprehension towards human rights. This is not an issue like development, where one can argue that the government has taken the wrong or the right decision. Although human rights is still an issue you can argue with the government, it often involves the state trying to argue against its own citizens whenever it comes to fundamental, basic rights. The only way out is to say that there are some values which are not necessarily universal. However, we have always accepted that there are some universal values by accepting the Universal Declaration, by adopting universal solutions, by developing the system, so there is an inherent contradiction there.

In terms of substance, few would call into question the relevance of human rights. In the implementation of human rights, however, there are different approaches.

There are governments that are obviously committed to human rights and others that are not so committed. However, besides the willingness comes the capacity to implement. There are some governments that show political commitment but no ability to implement. They don't find the right solutions or don't have the necessary human, financial or legal resources to implement their human rights obligations.

What makes a difference is that we have all accepted that there are minimum standards of what we interpret as universal values that *must* be implemented. We have all accepted that there are no excuses regarding these values, and they must be achieved everywhere. What we thus need is to go to the next level, to make sure that these values are actually implemented and put into practice. This is why the idea of dialogue and co-operation in the Council is so important.

Do you think that the shift in approach from condemnation to collaboration has been successful?

Member states, NGOs (non-governmental organizations) and even the Secretariat are still divided. Most believe today that the dialogue and co-operation will be a much better use of resources than 'name and shame'. However, we still have to digest properly what dialogue and co-operation means. There are still a lot of voices that say that dialogue and co-operation is not going to work because it will allow extreme violations to continue, or will delay the solutions because it will take

much longer to get things changed. I believe that dialogue and co-operation are the modern approach and that it does not need to be soft. It is a collaborative approach that will recognize whenever there is a window of opportunity to make changes on the ground, and not just to name and shame.

How do you view participation of NGOs in the new process?

I put this dialogue approach to the NGOs immediately after the meeting we organized with human rights organizations, as a further step they could utilize. From an NGO perspective, naming and shaming continues to be a tool, but stopping there doesn't help much in advocating human rights. If they go a step further and engage with the country, they are part of the process of finding solutions. To promote human rights, you have to develop institutions and education systems, and you have to promote the legislative measures needed to improve the situation. It's not enough just to put a country on the spot.

Today, participation of civil societies in the Council needs to be seen in comparison with what it was at the Commission. Now it means interaction with the special procedures, special rapporteurs and other mechanisms; it means opportunities to interact during each session of the Council. That is a huge improvement. The civil societies, or NGOs, are present in every single session of the Council and are meeting and interacting with governments. No longer are NGOs relegated to a section of the agenda to which governments could go, or not, to see what the NGOs think about a particular issue.

Yet NGO participation in the Universal Periodic Review is very limited.

Civil society participation in the Universal Periodic Review itself is quite different. The proposal for the UPR started with the idea of a peer review. That was the original idea promoted by Canada. By definition, peer review does not include the NGOs. So we had to develop that concept and allow civil society participation in the exercise. We eliminated the 'peer' reference and we got something that is quite advanced. The UPR is conducted on the basis of three documents, one introduced by the civil society, one introduced by the government under review and the third one introduced by the Office of the High Commissioner for Human Rights. This is a landmark in the history of the United Nations, as we gave official status to the inputs of the NGOs. They now have at least 20 minutes in the plenary session. I wanted to have more interaction with civil society at the working group level, but that was not possible, so there is currently no NGO interaction there.

Is there a difference in the Human Rights Council between those states that have a regional human rights court system, such as those in Europe, the Americas and Africa, and other states that may perhaps only be exposed to human rights claims in the Human Rights Council?

Being a national of one of the countries that also has a regional human rights system at the inter-American level, I believe it can be positive in terms of the level of development around a state's institutions and legislation to be forced to introduce legislative and other procedures that some other countries do not need or

have. In that sense it's easier to work with states within a regional human rights system. At the same time, the European Court or the Inter-American Court is much more associated with cases, not with policies. The Human Rights Council conversely deals much more with policies rather than cases.

Obviously, you will have countries that have much more developed institutional frameworks, mainly legal ones, than others. But all states are committed to solving fundamental problems, and that's what we need to strengthen. The major differences between states would instead be because of culture, because of religion, because of the way they perceive human rights.

In the special sessions, most of the situations coming up were war-related – Sudan, the invasion of Lebanon, Israel and the occupied territories and so on. These are situations of armed conflicts governed by international humanitarian law. Many states are reluctant to deal with humanitarian law in a human rights forum.

Some states argue against dealing with international humanitarian law in the Council, assuming that a clear-cut distinction can be made between human rights and humanitarian law. But the majority recognize that there is an inter-linkage and it's very difficult to argue that in a conflict situation human rights are not as relevant. Humanitarian law specifically addresses armed conflict and gives fundamental rules to protect the rights of the victims of such situations. The human rights perspective widens the approach. That's why we are making constant reference to the promotion and protection roles for both branches of the law. In an armed conflict like Darfur, for instance, to draw a distinction between a violation of human rights law and humanitarian law is not always possible. You have to preserve the authority of the legally binding framework of humanitarian law, but also use the political pressure that the human rights machinery brings in. I'm not a lawyer, but human rights could only benefit from the international humanitarian law perspective. Conversely, I don't see how the discussion of armed conflicts and humanitarian law may harm the latter's implementation. A problem would arise if you diminish the capacity of existing treaties to follow up or to implement their obligations.

However, we have an institutional package problem. It is related to the Universal Periodical Review. We need to take into account the principles of international law, including humanitarian law, in doing the review.

The creation of the Human Rights Council also affected the United Nations as a whole. What adjustments are to be made? How do you see the relationship between the Office of the Human Rights Commissioner and the Council developing?

We are at the very beginning of this adjustment. This is the element on which we have probably advanced the least so far. The first year was basically spent gaining institutional knowledge, institution building and dealing with crises. The fact that we were able to agree by consensus on such a package is a very important sign. Nobody imagined that that was going to be possible, not even me. We now have a

body that meets much more frequently – which is quite demanding for governments – and which meets in a much more open way. The level of participation of civil society is also completely different now.

The Council without a strong Office of the High Commissioner would face a lot of difficulties, and vice versa. Both depend on each other. The Office provides secretariat services to the Council, which are important. It's going to be extremely important that the Office provides support for the implementation stages of the UPR. We have to agree on what the Office does to follow up in each of the countries to accomplish the objectives, to follow up the recommendations and so on.

The Office basically has three areas in which it works. One is the relationship with the Council and substantive support for the Council. The second is field operations, including the regional and local offices. The third is the relationship with all other UN entities, including the Secretary-General, the Security Council and so on. I would say that the relationship with the Commission used to be probably 10 per cent, compared with 40 per cent for field operations and half for the work for the other UN entities. Today it should be the other way round: the Office should be devoted to the relationship with the Council and much less to the field operations and the other UN bodies. Because of the different dynamic that the Council has taken on, and the need for the Office to get into more substantive work, I would even recommend forgetting about the conference services and facilities. With regard to supporting the Human Rights Council, the Office should devote all its resources to substantive aspects.

Politically it is also important, because the High Commissioner remains a visible figure. The Commissioner needs to be a promoter of human rights, without forgetting that the post is that of an international civil servant. The link with the governments is not an NGO job, nor is the Office a tribunal. This balance in the Office is important both in terms of how the Office should be structured to support the Council more, and how the relations, the personal relations between the High Commissioner and the Council, are developed. Today there are different tendencies. A few countries would like to see the Council as a governing body to the Office – that's one extreme. The other extreme would be to say that the Office is independent and autonomous and should not be linked to the Council, or at least not closely linked. Both extremes are impossible to sustain. The resolution that established the Office of the High Commissioner doesn't speak about independence; it is not an autonomous Office but part of the UN Secretariat.

Are the activities of the Council duplicated by those of the Third Committee (Social, Humanitarian and Cultural Affairs Committee) of the General Assembly?

One position held is that the Third Committee could be discharged altogether of human rights because the Council replaces it on this issue. Another less extreme position, which I would be more comfortable with, holds that there is a need for a division of labour between the Council and the Third Committee. We can take

advantage of two facts relating to the Third Committee. The first is that it meets in New York, which is closer to the political bodies of the United Nations, such as the General Assembly, the Security Council and the Secretary-General. The second point is that the Third Committee has universal membership, which the Council does not have. Taking into account those two elements, you can envisage a division of labour by which you can identify features that may be better dealt by the Third Committee than by the Council.

Even so, they are often the same persons in the Council and the Third Committee.

No, most of them are not. Only very few developed countries send the same people to deal with human rights. Most of the countries have different delegations and different approaches. Sometimes you get the impression that you are dealing with two different countries, because there are some delegations that do not communicate between Geneva and New York.

You have to identify the issues that the Third Committee should address, and it's primarily with mainstream government officials. What is happening is that some countries – at the beginning it was above all the African Group, but today it includes several Western countries – would like the Third Committee to be in control of the Human Rights Council, to be kind of a second and controlling layer, able to modify positions of the Council. However, this would amount to reducing the Council's authority and would drastically limit the possibility of it becoming a main organ of the United Nations in the future.

Are human rights becoming one of the pillars of the international system?

The political decision to transform human rights into one of the three pillars of collective action is taken, but its implementation is still not certain. It came from the more than 150 heads of state who met at the 2005 World Summit at UN Headquarters in New York, and was confirmed by the General Assembly of the United Nations. The three-pronged approach to collective action hinges on the idea that there can be no development without security, no security without development, and neither development nor security without the universal application and protection of human rights. This is a political commitment with a lot of implications. And the newly created Council should promote effective co-ordination and the mainstreaming of human rights within the UN system.

However, the timing for the promotion of human rights was not ideal in terms of realities on the ground. On the one hand, the more universal approach to human rights and the level of development of the political relationship between states allowed the agreement to be reached on transforming human rights into collective action. On the other hand, with the fight against terrorism and concerns surrounding migration and other issues, it was not necessarily the best time for promoting human rights. Some of the promoters of human rights that have helped develop those principles are on hold, or sometimes even in reverse. Right now there are coexistent negative and positive elements. Nonetheless, it is very important to use this opportunity to promote human rights universally. There is no longer only

a group of countries pushing for an ideal. Instead there is now understanding among the international community as a whole that without human rights you cannot have peace and security and you cannot have development.

If human rights were gradually to become a pillar of the international system, this may conflict with other pillars such as peace and security, not to mention international criminal jurisdiction. Do you fear even bigger political interference in the Human Rights Council?

There is always some degree of conflict. You have to consider it in terms of opportunities, using one tool or another as appropriate. Whenever you have a conflict, you want to promote peace and security and an agreement in that particular country or region. An indictment by the International Criminal Court of one of the main players, for instance, is an issue that can only be solved in accordance with the Rome Statute, which may make exceptions, and that the Security Council could delay. We have agreed to this and it is binding on all human rights players. In the human rights field, however, you have a little more flexibility because you can, to a certain extent, consider time and opportunity. This is the main difference we were talking about when we were debating Darfur with the High Commissioner. As a member of that tribunal you don't have a choice. It is in black and white: there is a crime to pursue and you have to do that. With regard to human rights, it's not so absolute. You have to consider the medium- and long-term perspective. At the end, as regards human rights you are not talking only about the issue of responsibilities, but about collective rights that may be very much involved.

What is your vision of where human rights will be in ten years?

I hope peace and security will increasingly prevail, bringing more development. I also wish that human rights will become a stronger feature and a pillar equal to that of peace and security. However, the provision of peace and security is aided by a number of tools that have been developed in the Security Council, and it would be very difficult to develop similar tools for human rights. What has encouraged me is that human rights are becoming an issue of concern for everybody and are no longer an issue promoted or pushed only by a certain group of countries. Now all members of the United Nations are very much aware of the importance of human rights.

While some states may be doing much more than others in ensuring rights and others are going backwards in terms of protection, there is, generally speaking, a growing sentiment that a world of peace and progress is inconceivable without human rights. To go from the Universal Declaration of Human Rights, where a group of very eloquent people from a limited number of countries imagined what should and should not be done, to a time where 192 countries with different cultures and traditions are all committed to some minimum standard of behaviour in terms of the relationship between the citizen and the state, is a major achievement.

What we need now is to speed up the process. The tools are there, but because of the lack of US participation and some difficulties we still face at procedural levels, the process may take quite a long time. I'm afraid that in three years we may not yet be ready to take the next step as we envisaged two years ago. In other words, we are going in the right direction but progress is still much slower than expected.