

Introduction

During the Western European Middle Ages, there was no rational medicine. Surgery was the province of barbers, executioners and bath-keepers. Dissecting dead bodies was not authorized and those who tried to behave as scientists had no other choice than to carry on their anatomical research in secret. Ideas about biology were certainly odd and surely not even remotely connected to reality. It was considered that, for instance, women had more water in their bodies than men and thus, if there were frequent rains during pregnancy, the baby was more likely to be born female. In the same vein, the liver was supposed to secrete yellow bile, the spleen black bile and the heart blood. Contrary to Greek philosophers, it was taught that the brain was merely a phlegm-secreting gland. Persons with disabilities were regarded as possessed by evil spirits and medicine was carried out using exorcism, consecrated bells, relics, readings of holy texts and even torture.¹

Fortunately for all concerned, reason emerged from the darkness of time and over the forthcoming centuries the doctrine of the Middle Ages was seriously challenged and progressively abandoned, the antique knowledge came back to light and breakthroughs were achieved with the study of anatomy, which started flourishing in the seventeenth and eighteenth centuries.

Several centuries later, in a totally different set of circumstances, the general discourse about the Human Rights Council and its mechanisms was opened to interpretation, theories, concepts and conclusions or recommendations, without necessarily a deep and thorough knowledge of what the Council is all about, how it operates and why certain procedures were established or practices developed and others not. The vast magnitude of the Council's activities is often neglected

¹ See for instance the teaching of St Thomas Aquinas. More generally, see 'A Short History of Medicine' by Erwin Ackerknecht.

and, at times, rudimentary statements are offered with no particular effort to shed light on its activities as well as its role and responsibilities. As a result, whatever the outcome of such efforts, it may be marred by imprecision, inaccuracy and inappropriateness.

Should this be the result of well-understood and self-proclaimed – or not – political bias, there is surely not much that can be done about it and the following 300 or so pages will not serve any purpose. However, more often than not, it is the consequence of the complexity and opacity of the Council's working methods, which are marked by a frequent resort to uncodified precedents.

There exist a vast array of practices, tools and mechanisms which have been progressively and patiently established by the Council. Facing successive human rights crises in a highly politically charged environment, the Council developed its practices with a high level of flexibility. It used every possible entry point or sleight of hand in order to reach a goal which otherwise would never have been achieved.

Given the practical impossibility of reaching a general consensus on a broad range of matters resulting from the high level of polarization between all concerned, it did so with persistence and determination, adjusting its working methods, creating numerous new processes, envisaging multiple areas of development and working tirelessly on all matters which it had to tackle on a step-by-step strategy. Despite its relatively young age, or because of it, it never displayed any form of reluctance to conceive new tools or instruments.

When improvements could not be agreed upon, new avenues were explored; when precedents could not be resorted to, it envisaged new ones; when no existing mechanism or tool was available, it simply created new ones. It did so with patience and realism, always keeping what existed and leaving a large space for interpretation and a margin of manoeuvre for future consideration.

Quite understandably, it reached these goals by resorting to a vast array of legal and policy means. Sometimes it altered its procedure in a clear and comprehensive manner, but in the vast majority of cases, it did so in an extremely pragmatic manner, adopting decisions, resorting to practices initiated or proposed by the successive Presidents and their Bureaux, and agreeing informally to setting up new procedures proposed by concerned stakeholders.

Given this fragmentary approach, it is extremely hard to grasp fully what the Council is all about, what it did, when it did so, and obviously why and how it privileged one circumvoluted and complex method rather than a much simpler and obvious one.

In such a context, it should also be pointed out that any piece of information on the Council is scarce and hard to identify or isolate. Despite the very transparent approach privileged by the Council from its inception, elements of information are spread in multiple media, from the Council's reports, resolutions, decisions or Presidential Statements to the minutes of the Bureaux meetings, the letters by or to the Presidents, the webcast archives, the Council website or Extranet, or even worse, a well-formed but unwritten practice.

The purpose of *The UN Human Rights Council: A Practical Anatomy* is thus to study meticulously the structure of the Council and its mechanisms with a view to enabling the readers to formulate opinions and recommendations and propose informed decisions. In a manner not entirely different from a biological anatomy, such an approach requires a simultaneously macroscopic and microscopic approach, describing the detailed procedures and overall context, the specific and the general, the trends and the underlying factors.²

- The first chapter (by analogy, 'the body') describes in a nutshell what the Council is all about ('The Human Rights Council in a nutshell').
- The second chapter ('the skeleton') aims at dissecting the multiple functions of the Council by resorting to a fractional analysis of the Council's predecessor, the Commission on Human Rights, and developing what the author refers to as a 'Human Rights geology'. This describes the various mechanisms and procedures that were layered one on top of another over time. Since the Council continues to resort to every single one of them, understanding of

² Readers are advised to consult books and essays on the Human Rights Council such as: *The UN Human Rights Council* (Routledge, Abingdon), *The Law, Policy and Politics of the UN Human Rights Council* (Brill-Nijhoff, Leiden) and *Contemporary Human Rights Ideas: Rethinking Theory and Practice*, all by Bertrand Ramcharan (Routledge, Abingdon); *The United Nations Human Rights Council: A Critique and Early Assessment*, by Rosa Freedman (Routledge, Abingdon); *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council procedures*, by Cherif Bassiouni and William Schabas (Intersentia, Cambridge); *The Legal Nature of International Human Rights*, by Michael K. Addo (Brill-Nijhoff, Leiden).

this process is of crucial importance ('The Human Rights Council functions').

- The third chapter ('the nervous system') envisages the specificity of the Council governance with large known and unknown responsibilities assigned to its President and Bureau ('The Human Rights Council governance: the role and functions of the President and his/her Bureau').
- In the fourth chapter ('the organs'), an account is made of all of the Council's stakeholders, including those which are seldom met in the work of other universal or regional intergovernmental bodies. It studies how they may – or may not – interact with the Council and its mechanisms ('The Human Rights Council stakeholders').
- The fifth chapter ('the circulatory system') details the complex structure of the Council's sessional or intersessional activities. Given the exponential increase in the Council's activities and its inventiveness, it is a rather complex endeavour to cluster them and underline their various *modus operandi* ('The structure of sessional and intersessional activities').
- The way the Council adopts its decisions or acts upon procedural motions is studied in the sixth chapter ('the digestive system'). Although this may seem the simplest of all efforts since, after all, the Council is following the General Assembly's Rules of Procedures, the irrepressible nature of its inventiveness makes it significantly more complicated ('The Human Rights Council voting procedure and procedural motions').
- The seventh chapter ('the respiratory system') envisages how the Council has attempted to and is still attempting to reform itself, reviewing constantly its work and functioning and stimulating more efficient and effective working methods ('The change management process as it applies to the Council and previously the Commission).
- In guise of what can only be considered, by necessity, an imperfect conclusion, the author dwells upon the positive outcomes of the Council's work, the impact of an ever-expanding number of mechanisms and bodies, and the fluctuating nature of the frustrations which intergovernmental human rights trigger. Since science

is a never-ending process, there is a moment when humility obliges questions to be left to others – particularly the readers – to address, now or in the future, and this will be how the *Anatomy* will end.

It is the author's sincere hope that *The UN Human Rights Council: A Practical Anatomy* will provide the readers with the necessary information to develop an awareness and understanding of the Council and its mechanisms and thus enable him/her to reach conclusions and pass judgements, whatever they may be.