

# NEW YORK MONITOR

International Service for Human Rights



Human Rights Monitor Series

## NEW YORK UPDATE GENERAL ASSEMBLY, 62<sup>ND</sup> SESSION RACIAL DISCRIMINATION 7 NOVEMBER – 21 DECEMBER 2007

OVERVIEW .....	1
Statement of the Chairperson of the Preparatory Committee for the Durban Review Conference .....	3
Statement of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.....	4
<i>Draft resolution on the Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance.....</i>	<i>7</i>
<i>Draft resolution on the Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action .....</i>	<i>9</i>
The budgetary implications of the resolution.....	12
<i>Draft Resolution on the Report of the Human Rights Council on the preparations for the Durban Review Conference.....</i>	<i>14</i>
LOOKING FORWARD .....	15
BACKGROUND .....	15

### Overview

The theme of racial discrimination was dealt with by the Third Committee under agenda items 68(a) and 68(b).<sup>1</sup> The latter item, relating to the follow-up to the Durban Declaration and Programme of Action proved to be very controversial as a result of strong resistance from the US and Israel to any follow-up on what they regarded as inherently flawed initiatives.<sup>2</sup> Nonetheless, the Committee considered three reports and voted to adopt three resolutions related to the theme of racism.

<sup>1</sup> 68(a) refers to 'Elimination of racism and racial discrimination,' and 68(b) to 'Comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action.' At its 61<sup>st</sup> session, the GA recommended convening a Durban Review Conference in 2009 (resolution 61/149).

<sup>2</sup> The 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the Durban Conference) was held from 31 August to 8 September 2001. It dealt with several controversial issues, including compensation for slavery and the actions of Israel. The language of the DDPA was strongly disputed in these areas, both in the preparatory meetings in the months that preceded the conference and during the conference itself. The US and Israel withdrew from the Conference after failing to agree a common text with other countries.

Opposition was strongest in relation to the resolution proposed by Pakistan<sup>3</sup> that requested the S-G allocate almost \$6.8 million from the UN's regular budget to facilitate regional preparatory conferences and the Durban Review Conference. The US argued that other bodies<sup>4</sup> were following up on the DDPA and this money could be better spent at the country level, rather than on another conference. In the Third and Fifth Committees and the GA plenary the US also objected to the overall direction and procedures leading up to the conference. Although the European Union (EU) supported the review conference, it opposed the resolution due to concerns that the text undermined what had been agreed by States in other fora, and doubts as to whether those States sponsoring the resolution genuinely wanted an inclusive follow-up conference in 2009.<sup>5</sup> Despite the consistent opposition from the US, Israel and EU, this resolution was eventually adopted in the two Committees and the GA plenary.<sup>6</sup> The second resolution that welcomed the Report of the HRC on Preparations for the Durban Review Conference and endorsed its decisions was also adopted despite opposition from the US.<sup>7</sup>

The two other reports before the Committee dealt with: the steps taken by the international community over the last year to implement the DDPA (noted by the Committee in a decision without a vote);<sup>8</sup> and the work of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.<sup>9</sup>

The Committee's interactive dialogue with the Special Rapporteur also generated some heated debate, particularly between the Special Rapporteur and the representative of France, who took exception to the Special Rapporteur's criticism that recent comments by the French President had contributed to the global trend towards the political legitimisation and mainstreaming of racism. The interactive dialogue also exposed divergent views among Committee members about how rights to freedom of expression and association should interact with rights in relation to non-discrimination and freedom of religion, and the extent to which the state has a role in regulating this interaction.<sup>10</sup> The debate about these matters carried over into the third resolution titled 'the inadmissibility of certain practices that contribute to fuelling contemporary forms of racism.'<sup>11</sup> Although this resolution was also adopted by both the Committee and the GA plenary,<sup>12</sup> the US

---

<sup>3</sup> The resolution (A/C.3/62/L.65/Rev.1) began with a very different title but along with the body of the text, this was revised to 'Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action'. Associated with this resolution is document A/C.3/62/L.90 which contains the programme budget implications. Both are available at <http://www.un.org/ga/third/62/propslist.shtml>. The original title of the resolution was 'from rhetoric to reality: a global call for concrete action against racism ....'.

<sup>4</sup> These bodies included the Committee on the Elimination of All Forms of Racial Discrimination, Human Rights Committee, and ILO.

<sup>5</sup> These included concern that the text contradicted earlier decisions of the Third Committee and consensus decisions that had been made by the Preparatory Committee of the Review Conference.

<sup>6</sup> The Third Committee vote on A/C.3/62/L.65/Rev.1 was 110:45:6. Japan was one of the States abstaining, due to concerns about the large budget required to hold the review. In the Fifth Committee it was 94:40:6. In the GA it was 105:46:6. Those countries consistently abstaining in all three bodies were Lichtenstein, New Zealand, Norway and Switzerland.

<sup>7</sup> See draft resolution A/C.3/62/L.66 regarding the Report of the HRC on the preparations for the review conference on the implementation of the DDPA (A/62/375). Available at <http://www.un.org/ga/third/62/docslst.shtml>

<sup>8</sup> Report of the S-G on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the DDPA (A/62/480), available at <http://www.un.org/ga/third/62/docslst.shtml>

<sup>9</sup> Note by the S-G transmitting the interim report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/62/306), available at <http://www.un.org/ga/third/62/docslst.shtml>

<sup>10</sup> For example the representative of Libya asked whether States should exclude extremists from both sides when trying to foster debate between different civilisations. Whereas the Russian Federation stated that it is unacceptable to use the principle of freedom of speech to legitimise racism, given that this is a non-derogable right. The US opposed any State intervention in the operation of freedom of speech, including in relation expressing an opinion on religion.

<sup>11</sup> A/C.3/62/L.61. Available at <http://www.un.org/ga/third/62/propslist.shtml>

<sup>12</sup> The vote in the Third Committee was 122:1:52. The vote in the GA was 130:2:53. The States who voted against the resolution in the GA were the US and the Marshall Islands.

voted against it and WEOG States abstained, on the grounds that curtailing freedom of expression cannot be justified as a legitimate means of eliminating racism.<sup>13</sup>

### **Information before the Committee**

On 7 November 2007, the Committee considered one report under agenda item 68(a) and two reports under agenda item 68(b):

- Note by the Secretary-General transmitting the interim report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, submitted under agenda item 68(a);<sup>14</sup>
- Report of the Human Rights Council on the preparations for the review conference on the implementation of the DDPA, submitted under agenda item 68(b);<sup>15</sup>
- Report of the Secretary-General on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the DDPA, submitted under agenda item 68(b).<sup>16</sup>

### **Introduction of the Report of the Secretary-General on the total elimination of racism, racial discrimination, xenophobia and related intolerance**

The representative of the New York Office of the United Nations High Commissioner for Human Rights (OHCHR), Mr. Craig Mokhiber, delivered a statement to introduce the last of these reports. He explained that it collates information received from Member States on various measures they have undertaken to implement and follow-up on the Durban Declaration and Programme of Action (DDPA),<sup>17</sup> which resulted from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the Durban Conference) that was held from 31 August to 8 September 2001.<sup>18</sup> The representative reiterated the mild rebuke made by the Secretary-General in the conclusion of this report, namely that an increased number of communications from States, UN bodies, NGOs and other stakeholders would allow for a more comprehensive assessment of progress achieved and the challenges that remain to be addressed.

### **Statement of the Chairperson of the Preparatory Committee for the Durban Review Conference**

The Vice Chairperson of the Preparatory Committee for the Durban Review Conference, Ambassador Glaudine J. Mtshali (South Africa), presented the report of the first session of the Preparatory Committee on behalf of the Chairperson (Ms Najat Al-Hajjaji). The Vice Chairperson reminded Member States that delegates at the Durban Conference had fought hard to achieve a consensus outcome, and 170 countries unanimously adopted the DDPA. It was the first time the international community had openly confronted the wrongs of the past, including the genesis of racism and racial discrimination in colonialism and slavery. The follow up conference was intended to 'unite the global community in a determined struggle' against racism and 'give new impetus and strengthen commitments to implement the DDPA fully'.

The Ambassador went on to report on the work done by the first session of the Preparatory Committee, which took place from 27-31 August 2007 in Geneva. She noted that the Committee had reached consensus on the

---

<sup>13</sup> The EU also objected to the manner in which the Nuremburg Tribunal was referred to in PP3. It explained that the fight against neo-Nazism should not be used to undermine fundamental freedoms and human rights. The vote in the Third Committee was 122:1:52 and in the GA it was 130:2:53. The Marshall Islands joined with the US to vote against the resolution in the GA.

<sup>14</sup> A/62/306. Available at <http://www.un.org/ga/third/62/docslist.shtml>

<sup>15</sup> A/62/375. Available at <http://www.un.org/ga/third/62/docslist.shtml>

<sup>16</sup> A/62/480. Available at <http://www.un.org/ga/third/62/docslist.shtml>

<sup>17</sup> The Durban Declaration and Programme of Action is available at <http://www.un.org/WCAR/durban.pdf>

<sup>18</sup> For more information on the Durban Conference, see <http://www.un.org/WCAR/>

objectives of the Review Conference, as well as sources of funding and preparatory activities. Although the conference will be held in early 2009, it is yet to be decided where it will take place. Further, the Committee decided to request the Secretary-General to provide the necessary resources for both the regional preparatory meetings and the conference itself.

### **Statement of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

On 7 November 2007, the Special Rapporteur, **Mr Doudou Diene**,<sup>19</sup> presented his report to the Third Committee.<sup>20</sup> He began his presentation by highlighting several major challenges in combating racism:

- A rise in racist and xenophobic violence, as shown by the increase in the targeted killing of ethnic, cultural, and religious minorities;
- The political normalisation and democratic legitimisation of racism and xenophobia as many right-wing political parties run on increasingly racist platforms and then take advantage of democratic processes to achieve political power and legitimacy by joining ruling coalitions. This is eroding the political and ethical determination to combat racism and discrimination, at the highest levels, as evidenced by recent public statements by the President of France, a Nobel Laureate and others;<sup>21</sup>
- State-sanctioned stigmatisation and criminalisation of individuals who are the principal victims of racism and xenophobia, namely immigrants, asylum seekers, and minorities;<sup>22</sup>
- A rise in religious defamation, including racial as well as religious hatred.

The Special Rapporteur then presented his recommendations to assist the international community to combat racism. He called for:

- Stronger political will to reject racist platforms and the other initiatives that 'normalise' racism;
- A renewed commitment to implement the DPPA;
- Promotion of the link between the fight against racism and the construction of an egalitarian multiculturalism;
- More inter-faith dialogues and dialogue between cultures to counter anti-Islamism, anti-Semitism and other forms of religious discrimination; and
- Greater vigilance by States to balance freedom of religion and freedom of speech.

The Special Rapporteur then turned to his most recent country visits to the Baltic States (Lithuania, Latvia, Estonia)<sup>23</sup> and the Dominican Republic.<sup>24</sup> The Special Rapporteur stated that his trip to the Baltic States was motivated by two factors. First, he wanted to observe how these countries were dealing with their complex historical heritage, as they each contain numerous ethnically diverse communities. Second, he wanted to observe the manner in which they were preparing to deal with the probable arrival of non-European migrants

---

<sup>19</sup> The mandate of the Special Rapporteur was created by *Resolution 1993/20* of the former Commission on Human Rights. It was most recently renewed by *CHR Resolution 2005/64* for a period of three years, and will expire in 2008. Mr Diene was appointed to the position in 2002 (see E/CN.4/RES/2002/68). More information is available at <http://www2.ohchr.org/english/issues/racism/rapporteur/index.htm>

<sup>20</sup> A/62/306. Available at <http://www.un.org/ga/third/62/doclist.shtml>

<sup>21</sup> French President, Nicolas Sarkozy, delivered a speech in Dakar on 26 July 2007 in which he said that Africans had not played their part in history. Nobel Laureate, Dr Watson has written about the intellectual inferiority of people of African descent.

<sup>22</sup> The Special Rapporteur cited France's adoption of legislation to introduce DNA testing for family reunions as an example of the stigmatisation of immigrants. He also mentioned recent comments by the (then) Australian Minister for Immigration and Citizenship, Mr Kevin Andrews, who publicly singled out Sudanese immigrants as a group that had problems integrating into Australian society, and as a result, Australia would reduce its intake of Sudanese refugees in 2007-08.

<sup>23</sup> The Special Rapporteur visited the Baltic States from 16 to 28 September 2007.

<sup>24</sup> The Special Rapporteur visited the Dominican Republic from 22 to 29 October 2007.

and refugees following their entry into the European Union. He was mindful of the challenge these States face as they seek to maintain their national continuity, whilst also respecting the rights of minorities.

With respect to his visit to the Dominican Republic, the Special Rapporteur noted the prejudice against Haitians and those of Haitian or African descent that was evident, particularly among the elite. He also observed a non-recognition of the existence of racism by the State. This resulted in a deep divergence in the opinions and perceptions concerning the existence of racism between the authorities and the elite on one hand, and civil society and the concerned communities on the other. This was due in part to the country's history, which included periods of slavery and colonisation, occupation of the Dominican Republic by Haiti, and racism during the regime of Rafael Trujillo. The Special Rapporteur concluded his presentation by stating that reports on these country visits would be made available at the Human Rights Council in 2008.

### Interactive Dialogue

After his presentation, the Special Rapporteur engaged in a dialogue with the representatives of Portugal (on behalf of the European Union), Italy, the Russian Federation, Israel, the United States, Chile, the Libyan Arab Jamahiriya, China, Mexico, Ecuador, Jamaica, the Dominican Republic, Cuba, France and Haiti. In the Committee's subsequent general discussion, a number of States also commented on matters that were discussed with the Special Rapporteur, and some of these are also included in this section.<sup>25</sup>

Several delegations commented on, or asked the Special Rapporteur to elaborate on his recommendation that States take greater responsibility for protecting an individual's right to express opinions on religion, and to dissent.<sup>26</sup> Libya, for example, asserted that it is important to exclude extremists from discussions in order to advance dialogue between different civilisations. It also expressed the need for sensitivity when approaching the relationship between freedom of expression and religion. The US explained that the term 'defamation of religion' is one it finds highly problematic, because in its view, it should not be illegal to express a view on a religion, even if it is a negative view. In some religious States, the concept of defamation of religion has been incorporated into domestic laws to curb criticism of the State, which jeopardises a range of fundamental freedoms including freedom of assembly and expression, and the operation of a free press.

In response, the Special Rapporteur stated that freedom of expression is a fundamental human right and should be defended. However promotion of the right to freedom of expression should not lead to incitement of racism or racial hatred. The Special Rapporteur went on to urge States to apply the international covenants that permit restrictions on freedom of expression with care, and to closely examine specific cases where they are considering the introduction of restrictions, rather than developing laws arbitrarily. Although laws to combat racism are needed and important, States should not view legislation as the solution to racism and discrimination. Rather, States need to develop the political will to stamp out racism wherever it occurs – whether it be by senior political leaders, media commentators or intellectuals. In addition, States need to address the root causes of racism, which are culturally based. Legal reform, coupled with promoting awareness of cultural diversity, needs to be strengthened and a logical starting point for such activity is the Durban Review Conference. The political strategy from the Durban Conference must be rigorous, and complemented by a cultural strategy to combat racism. The Special Rapporteur also warned against States using the mantra of education, advising that Apartheid would not have been overturned by education alone. Governments need to review *how* they teaching students about racial tolerance.

The Special Rapporteur again drew the Committee's attention to the growing international trend to legitimise racial discrimination through political process. He stated that numerous right wing groups have been running on platforms of racism and have had some electoral success or have become part of government alliances. This is extremely troubling as these political groups try to implement their discriminatory policies under the guise of democracy.

---

<sup>25</sup> These States included: the Commonwealth of Dominica (on behalf of CARICOM), Bangladesh, Zimbabwe (on behalf of the Southern African Development Community, SADC) and South Africa.

<sup>26</sup> These States included the US, Russia, Chile, Libya.

The Special Rapporteur went on to elaborate on his introductory remarks concerning the normalisation of racist remarks by political leaders and prominent figures. He was particularly concerned by comments made by Dr. James Watson, the co-discoverer of the structure of DNA, who was quoted as saying he was “inherently gloomy about the prospect of Africa” as “all our social policies are based on the fact that their intelligence is the same as ours—whereas all the testing says not really.”<sup>27</sup> The Special Rapporteur expanded on his concerns regarding the remarks of French President, Nicolas Sarkozy, during a speech on Africa on 16 July 2007,<sup>28</sup> in which he told African intellectuals that they have not entered history nor moved towards the future. The representative of France disputed this claim and rebuked the Rapporteur for twice criticising the Head of State of his country. He stated that Mr. Sarkozy had reaffirmed in speeches and actions that he has taken up the fight against racism and xenophobia. France has long been a country that has welcomed waves of immigration around the world and welcomes diversity. The Special Rapporteur then reiterated his concerns about the racist message of the President's remarks, adding that they had 'dealt a serious blow' to the fight against racism as racist groups have taken them up to fuel their arguments.

Several delegations picked up on the Special Rapporteur's remarks about the criminalisation of ethnic groups and migrants, and commented on how this is impacting on their nationals.<sup>29</sup> Mexico for example expressed appreciation at the Special Rapporteur's recommendation that policies related to migrants needed to be consistent with international standards, not just with security-based concerns.

Cuba raised the controversy surrounding the Durban Review Conference and asked how the international community can move forward to reach a consensus outcome in 2009. The Commonwealth of Dominica, St Lucia and Jamaica also expressed their concern about the historical revisionism that is emerging in relation to the Durban Declaration, which had referred to the transatlantic slave trade as a crime against humanity. During the subsequent general discussion, some States urged the Secretary-General to secure adequate funding to hold the review conference<sup>30</sup> and others stressed the need for the international community to ensure the review process was built on consensus.<sup>31</sup> The Special Representative acknowledged the existence of a campaign to discredit the Durban outcomes. However he reiterated the fact that racial, religious and ethnically-motivated violence, both physical and verbal, is on the rise globally, and concerted global action to address this negative trend is urgently required.

Portugal (on behalf of the EU), asked if the Special Rapporteur could provide statistical data to document the rise in racist violence. In response, the Special Rapporteur recommended that the Office of the High Commissioner for Human Rights (OHCHR) establish an observatory to count, verify, and classify (using scientifically-developed criteria) various racial acts taking place. It could be similar to the European Monitoring Centre on Racism and Xenophobia (EUMC) that was set up in Vienna in 1997.<sup>32</sup> The Special Rapporteur pointed out that individuals are not just being verbally attacked, but also physically abused and even killed.<sup>33</sup> Again, these trends only served to underscore the need for States renew their commitment to implement the DDPA.

---

<sup>27</sup> For more information see [http://news.independent.co.uk/sci\\_tech/article3067222.ece](http://news.independent.co.uk/sci_tech/article3067222.ece)

<sup>28</sup> For more information see [http://en.wikipedia.org/wiki/Nicolas\\_Sarkozy#African\\_speech](http://en.wikipedia.org/wiki/Nicolas_Sarkozy#African_speech)

<sup>29</sup> These States included Mexico, Jamaica, Cuba, Italy and Ecuador. The latter referred to an incident in Spain where an Ecuadorian adolescent was attacked in a subway train, and asked the Government of Spain to ensure that the perpetrators will be punished.

<sup>30</sup> These States included South Africa and Zimbabwe (on behalf of SADC). South Africa emphasised the 'critical need' to fund NGOs to ensure effective participation both in the preparatory meetings as well as the conference itself.

<sup>31</sup> These States included the Republic of Korea and South Africa.

<sup>32</sup> The EUMC was established in Vienna as an independent body of the European Union in 1997. On the basis of the data collected, the EUMC studied the extent and development of the phenomena and manifestations of racism, xenophobia, anti-Semitism, Islamophobia and related intolerance. The EUMC analysed their causes, consequences and effects; worked out strategies to combat racism and to highlight examples of good practice regarding the integration of migrants and ethnic and religious minority groups in the EU Member States. In March 2007, the EUMC was replaced by the European Agency for Fundamental Rights, which has a broader. For more information see <http://fra.europa.eu/fra/index.php>

<sup>33</sup> He cited several examples of hate crimes, including the young Malian woman who was killed in Belgium. For more information see <http://news.bbc.co.uk/2/hi/europe/4765855.stm>

Most States spoke in very positive terms about the Special Rapporteur and the value of his work.<sup>34</sup> However, the Dominican Republic stated that the Special Rapporteur's report about his official visit was biased and reached false conclusions about the true situation there. It categorically rejected the statement that racial discrimination exists in the Dominican Republic, pointing to the fact that 80 percent of its population is of black descent, and over one million Haitians live side-by-side with Dominicans. In response, the Special Rapporteur noted that the Government of the Dominican Republic had launched a campaign to discredit his visit and the Senate had adopted a resolution to reject the visit. He criticised comments by the Archbishop of the Dominican Republic, who had publicly discouraged any official investigation of allegations of racism, and expressed his concern at the 'violent rejection' among the Dominican elites of any allegations of the existence of racism in their country. The Special Rapporteur clarified that he was not suggesting that the Dominican Republic is racist, but as in most Western countries, racism existed in its society. Denial of this reality was at the heart of the problem and needed to be confronted by all Dominicans.

Both Israel and Jamaica asked the Special Rapporteur to elaborate on his collaboration with UNESCO in relation to education and awareness-raising initiatives for students about combating racism. The Special Rapporteur said that he has been working closely with UNESCO for the past thirty years in the areas of religion and education. He stated that racism and racial discrimination are not necessarily attributed to a lack of education, as they are often culturally embedded. Finally, the Special Rapporteur stressed the importance of international cooperation in combating the cultural attitudes that encourage discrimination.

***Draft resolution on the Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance***<sup>35</sup>

This Resolution:

- Recalls* the Charter of the Nuremberg Tribunal and the Judgement of the Tribunal, which recognised the SS organisation and all its integral parts, including the Waffen SS, as criminal and declared it responsible for many war crimes and crimes against humanity;<sup>36</sup>
- Expresses concern* over recurring attempts to desecrate, demolish or remove monuments erected in remembrance of those who fought against Nazism during World War II, as well as to unlawfully exhume or remove the remains of such persons (new paragraph);<sup>37</sup>
- Notes with concern* the increase in the number of racist incidents in several countries and the rise of skinhead groups ...as well as the resurgence of racist and xenophobic violence targeting ethnic, religious or cultural communities and national minorities;<sup>38</sup>
- Reaffirms* that such acts may be qualified to fall within the scope of activities described in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and that they may represent a clear and manifest abuse of the rights to freedom of peaceful assembly and of association as well as the rights to freedom of opinion and expression;<sup>39</sup>
- Stresses* that such practices fuel contemporary forms of racism ...and contribute to the spread and multiplication of various extremist political parties (new paragraph);<sup>40</sup>
- Urges* Governments and NGOs to cooperate fully with the Special Rapporteur.<sup>41</sup>

<sup>34</sup> For example, the Russian Federation described the Special Rapporteur's mandate as one of the more important special procedures. The Commonwealth of Dominica (on behalf of CARICOM) concurred with several of the Special Rapporteur's recommendations and applauded his important work. Zimbabwe (on behalf of SADC) expressed its 'sincere appreciation' for the 'impeccable manner' in which the Special Rapporteur is conducting his deliberations. South Africa and Bangladesh welcomed his report and shared many of the concerns highlighted in it.

<sup>35</sup> A/C.3/62/L.61. Available at <http://www.un.org/ga/third/62/propslist.shtml>

<sup>36</sup> PP3.

<sup>37</sup> OP3.

<sup>38</sup> OP4.

<sup>39</sup> OP5.

<sup>40</sup> OP7.

<sup>41</sup> OP12.

Sponsored by the **Russian Federation**, this year's text builds upon previous resolutions<sup>42</sup> by incorporating new language in two operative paragraphs to reflect concerns expressed by the Special Rapporteur in his most recent report. For example, operative paragraph 4, which '[n]otes with concern the increase in the number of racist incidents in several countries and the rise of skinhead groups,' now extends that concern to cover 'the resurgence of racist and xenophobic violence targeting members of ethnic, religious or cultural communities and national minorities'. The Special Rapporteur's concern at the spread and increasing legitimisation of extremist political parties is also noted in new operative paragraph 7.

Other new language incorporated in this year's resolution is contained in operative paragraph 3. This expresses concern about attempts to desecrate and remove remembrance monuments, or unlawfully exhume the remains of those who fought against Nazism in WWII.

A further change, which strengthens the text, is contained in operative paragraph 12. Previously the text had 'invited' States and NGOs to cooperate with the Special Rapporteur in giving effect to the resolution, whereas now it 'urges' the parties to do so. This is a reflection of the level of support that the Special Rapporteur enjoys amongst the Member States.

Other changes to the text were not substantive or weakened its effect. A particular case in point was operative paragraph 5, where last year's text was weakened by the insertion of the word 'may' so that it reads: 'reaffirming that racist acts *may* be qualified to fall within the scope of activities described in article 4 of the ICERD, and that they *may* represent a clear and manifest abuse of the rights to freedom of peaceful assembly and of association as well as the rights to freedom of opinion and expression.' This subdued language was opposed during the informal consultations by several countries, including the US and EU, but was retained in the final draft.

Another point of contention during the informal consultations was preambular paragraph 3. Despite new language being inserted,<sup>43</sup> concerns that several delegations held about the wording in previous years, namely the inaccurate citations of the Judgement of the Nuremberg Tribunal, again were not addressed. This contributed to the decision of several States, led by the EU, to abstain from the vote.<sup>44</sup>

### *The vote*

The Third Committee took action on the resolution on 21 November 2007. The representative of the Russian Federation said that the text was an extremely important one due to the recent rise in extremist hate groups, including neo-Nazis and skinheads. He noted that the UN was created to combat such overt racism and that the resolution was being tabled approximately sixty-two years after the first Nuremberg trial.

Turkmenistan emphasised that racism has been increasingly defended and renewed throughout the world. It also noted that many racist groups have used freedom of expression as a means to legitimise their racist ideologies, but that this right is not meant to insult others nor is it a justifiable cause for violence. Other States were urged to support the text.

The Chair advised that a vote had been requested on the draft, and when asked, said that the representative of the United States had made the request.

In explanation of the vote before the vote, the representative of Portugal (on behalf of the EU) expressed the EU's abhorrence towards all forms of racism, including Neo-Nazism, and the need for cooperation amongst States to defeat it. However, the EU did not regard the text as a serious response to contemporary forms of

---

<sup>42</sup> The resolution mentions A/RES/60/143 (available at <http://www.un.org/Depts/dhl/resguide/r60.htm>) and A/RES/61/147 (available at <http://www.un.org/Depts/dhl/resguide/r61.htm>)

<sup>43</sup> The new language in PP3 specifically refers to the Waffen SS as being one of the integral parts of the SS organisation.

<sup>44</sup> In addition to the EU's abstention, Australia, Canada, Japan, Norway, New Zealand, Switzerland and several Pacific States also abstained.

racism and racial discrimination, because as in previous years, it maintained a 'selective and unsubstantiated focus.' It failed to comprehensively address the human rights concerns raised by racism, particularly the need to address the resurgence of racist and xenophobic violence, as noted by the Special Rapporteur. The EU was also concerned that the resolution did not adequately emphasise the need for State responses to racism to comply with international law, and to guard against undermining human rights and fundamental freedoms. These factors, coupled with the inaccurate citations of the Judgement of the Nuremberg Tribunal, resulted in the EU abstaining from the vote.

The representative of the United States echoed the EU's sentiments with respect to the need to balance fundamental freedoms with States measures to combat racism. The resolution failed to distinguish between actions and statements that, while offensive, might be protected by freedom of expression on the one hand, and actions and statements that incited violence, which should be prohibited, on the other. Rather than curtailing free expression, the US advocated vigorous public debate as the best way of challenging 'deplorable ideologies' such as Neo-Nazism, and would therefore vote against the resolution.

The result of the vote on the resolution was: 122 supported, 1 opposed (US), and 52 abstained. The General Assembly subsequently adopted the resolution<sup>45</sup> on 18 December 2007 by a vote of 130 in favour to 2 against (US and Marshall Islands), with 53 abstentions. Last year, the resolution was also adopted by the Third Committee with 107 votes in favour, 3 against (Japan, Micronesia, and the United States), and 53 abstentions; followed by the adoption of the resolution<sup>46</sup> at the General Assembly (121-4-60).

***Draft resolution on the Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action***<sup>47</sup>

This Resolution:

- Recalls* GA resolution 61/149<sup>48</sup> of 19 December 2006, in which the Assembly decided to convene in 2009 a review conference on the implementation of the DPPA;<sup>49</sup>
- Reaffirms* its commitment to eliminate all forms of racism, racial discrimination, xenophobia and other forms of related intolerance against indigenous peoples and ... notes the attention paid to these objectives .... in the UN Declaration on the Rights of Indigenous Peoples;<sup>50</sup>
- Acknowledges and supports* the initiative led by the States members of the Caribbean Community and other member States for the establishment of a permanent memorial at the UN to the victims of slavery;<sup>51</sup>
- Welcomes* the report of the Preparatory Committee for the Durban Review Conference on its organisational session, and underlines that the Preparatory Committee shall at its first substantive session discuss the organisation of the work of the Durban Review Conference, the venue, date, duration and precise level of participation;<sup>52</sup>
- Calls upon* Member States that are in a position to do so to offer to host the regional preparatory conferences in their regions and to ensure the widest possible participation in these conferences;<sup>53</sup>
- Decides* that the intersessional working group of the Preparatory Committee shall commence negotiations with a view to consolidating the draft outcome document of the Conference;<sup>54</sup>

<sup>45</sup> A/RES/62/142. Available at <http://www.un.org/ga/62/resolutions.shtml>

<sup>46</sup> A/RES/61/147. Available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

<sup>47</sup> A/C.3/62/L.65/Rev.1. Available at <http://www.un.org/ga/third/62/propslist.shtml>

<sup>48</sup> A/RES/61/149. Available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

<sup>49</sup> PP2 of A/C.3/62/L.65/Rev.1.

<sup>50</sup> OP25 of A/C.3/62/L.65/Rev.1.

<sup>51</sup> OP30 of A/C.3/62/L.65/Rev.1.

<sup>52</sup> OP50 of A/C.3/62/L.65/Rev.1.

<sup>53</sup> OP51 of A/C.3/62/L.65/Rev.1.

<sup>54</sup> OP52 of A/C.3/62/L.65/Rev.1.

- |  |
|--|
| <ul style="list-style-type: none"><li>□ Requests the S-G to allocate adequate funding from the regular budget of the UN for the regional preparatory conferences and the Durban Review Conference, including the funding of delegations from least developed countries and NGOs, particularly from developing countries;<sup>55</sup> and</li><li>□ Requests the S-G to submit a report on the implementation of this resolution to the GA's 63<sup>rd</sup> session.<sup>56</sup></li></ul> |
|--|

Sponsored by **Pakistan** (on behalf of the G-77 and China), this resolution was controversial for several reasons. Firstly it was introduced quite late in the session<sup>57</sup> and contained significant budgetary implications that States needed time to consider. Secondly and more controversially, the resolution attempted to re-open the decisions of the Preparatory Committee. For example, it directly requested funding from the UN's regular budget to hold the Review Conference as well as an unspecified number of regional preparatory conferences, neither of which were decisions of the Preparatory Committee.<sup>58</sup>

The resolution was watered down when it was adopted in the Third Committee. Ultimately the Preparatory Committee was requested to *discuss* the allocation of funding from the regular budget, and the Secretary-General was requested to allocate funds from the regular budget to facilitate the participation of the special procedures in the meetings of the Preparatory Committee and the regional preparatory conferences.

Other important arrangements for the Durban Review Conference that were adopted include that:

- the first substantive session of the Preparatory Committee for the Review Conference (scheduled for April 2008) shall discuss the organisation of work of the Conference as well as the date, venue, duration and level of participation;<sup>59</sup>
- the primary objective of the intersessional working group of the Preparatory Committee is to commence negotiations on the draft outcome document of the Conference;<sup>60</sup>
- funding for the regional preparatory conferences should be made available to delegations from least developed countries and NGOs, 'in particular those from developing countries';<sup>61</sup> and
- States are asked to volunteer to host the regional preparatory conferences and ensure 'the widest possible participation' in them.<sup>62</sup>

It is important to note that many of the initiatives put forward in the original, streamlined text proposed by Pakistan were also controversial and not incorporated in the revised draft of the resolution that was considered by the Third Committee.<sup>63</sup> Thus despite the addition of a new section regarding arrangements for the Review Conference,<sup>64</sup> the text that was adopted bears a much a closer resemblance to last year's GA resolution,<sup>65</sup> both in terms of its length and its content.

<sup>55</sup> OP53 of A/C.3/62/L.65/Rev.1.

<sup>56</sup> OP54 of A/C.3/62/L.65/Rev.1.

<sup>57</sup> The first version of the text (A/C.3/62/L.65) was released on 13 November 2007, and the revised version (A/C.3/62/L.65/Rev.1) on 27 November 2007.

<sup>58</sup> *Decision 1/12* of the Preparatory Committee (as contained in A/62/375) only requested the S-G to 'provide the necessary resources for the preparations for the Durban Review Conference and to *consider providing*, as appropriate, the necessary financial and technical assistance for the convening of regional preparatory meetings' [emphasis added]. In other words, the Preparatory Committee's decision did *not* specify where the S-G should draw the money from, and merely asked that he *consider* funding the regional preparatory meetings. Last year in *Resolution 61/441*, the GA requested the HRC to undertake preparations to convene the Durban Review Conference, and the HRC subsequently decided that it would act as the Preparatory Committee (HRC *Resolution 3/2*, OP1).

<sup>59</sup> OP50 of A/C.3/62/L.65/Rev.1.

<sup>60</sup> OP52 of A/C.3/62/L.65/Rev.1.

<sup>61</sup> OP53 of A/C.3/62/L.65/Rev.1.

<sup>62</sup> OP51 of A/C.3/62/L.65/Rev.1.

<sup>63</sup> A/C.3/62/L.65, available at <http://www.un.org/ga/third/62/propolist.shtml> This text has only 7 preambular paragraphs and 22 operative paragraphs, in contrast to the revised draft (A/C.3/62/L.65/Rev.1), which has 11 preambular paragraphs and 55 operative paragraphs.

<sup>64</sup> These are contained in a new section V of the resolution headed 'Convening the Durban Review Conference' which begins at OP50 of A/C.3/62/L.65/Rev.1.

<sup>65</sup> A/RES/61/149. Available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

During the informal consultations, the tensions that surfaced during the Durban Conference six years earlier were still evident.<sup>66</sup> From the outset, the US expressed its objection to a review conference and, in concert with the EU, pushed hard to revert to last year's agreed title on the grounds that the new title was not appropriate language for a resolution of the General Assembly. They were successful in this regard, and the revised text did not feature Pakistan's more provocative title, which was drawn from a recent Human Rights Council resolution.<sup>67</sup>

The contentious nature of recent Council resolutions regarding the Durban Review Conference prompted the EU and others to make several proposals to soften Pakistan's draft text. For example in operative paragraph 2 of the original text, the EU wanted to only 'take note' of the report of the Preparatory Committee of the Review Conference; however the final text 'welcomed' the report.<sup>68</sup>

Efforts to remove some of the more contentious elements of the Pakistan's original proposal enjoyed greater success. These amendments also sought to remove the false impression that recent Council resolutions enjoyed consensus. This included Switzerland's objection to preambular paragraph 4 of the original text, which recalled Human Rights Council *Resolution 3/2* on preparations for the Review Conference, which 12 Council Members had opposed.<sup>69</sup> Similar voting patterns applied to Council *Resolutions 6/22*<sup>70</sup> and *6/23*,<sup>71</sup> and specific references to these resolutions in preambular and operative paragraphs of the draft GA resolution were also deleted.<sup>72</sup> So too were operative paragraphs 1 and 5 of Pakistan's original proposal, which expressed the GA's 'profound disappointment' that the major commitments undertaken in the DDPA remained unfulfilled, and 'noted with serious concern that ....there is evidently no commitment for financial support to the Durban Review Conference from voluntary sources'.

In addition to the arrangements for the Review Conference, the only other new language of note was incorporated in two operative paragraphs of the resolution. The first was in operative paragraph 25, which 'reaffirms' the GA's commitment to eliminate racism against indigenous peoples, and 'notes the attention paid' to this objective in the recently adopted Declaration on the Rights of Indigenous Peoples. This is one of eight other resolutions adopted during this session of the GA which acknowledges the recently adopted Declaration, and indicates the GA's interest in promoting its implementation.<sup>73</sup> New language was also incorporated in operative paragraph 30, which 'acknowledges and supports' the initiatives of Caribbean States that have been leading an initiative to place a permanent memorial at the UN to the victims of slavery and the transatlantic slave trade. This was a commitment in the Durban Declaration, and contributions from other States are 'urged' to ensure it is fulfilled.

---

<sup>66</sup> The Durban Conference dealt with several controversial issues, including compensation for slavery and the actions of Israel in the Occupied Palestinian Territory. The language of the DDPA was strongly disputed in these areas, both in the preparatory meetings in the months that preceded the conference and during the conference itself. The US and Israel withdrew from the Conference after failing to agree a common text with other countries.

<sup>67</sup> The original proposal submitted by Pakistan (A/C.3/62/L.65) bore the same title as HRC *Resolution 6/22*, namely 'From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the DPPA.'

<sup>68</sup> The text of OP2 in A/C.3/62/L.65 became OP50 of A/C.3/62/L.65/Rev.1.

<sup>69</sup> Along with Switzerland, the following States voted against the resolution: Canada, Czech Republic, Finland, France, Germany, Japan, Netherlands, Poland, Republic of Korea, Romania and the UK. Overall the Council vote was 34:12:1.

<sup>70</sup> PP5 (A/C.3/62/L.65) 'recalled the importance of HRC *Resolution 6/22* of 28 September 2007, in which the Council regretted the lack of political will to translate the Durban commitments into concrete action and tangible results.' Resolution 6/22 was adopted by a vote of the Council (28:13:5). OP14 (A/C.3/62/L.65) also referred to this HRC resolution, and was deleted from the revised text.

<sup>71</sup> PP6 (A/C.3/62/L.65) 'took note of HRC resolution 6/23 of 28 September 2007, in which the Council looked forward to the GA's providing political guidance and taking further decisions ....to ensure a smooth and successful Durban Review Conference'. Resolution 6/23 was adopted by a vote of the Council 33:10:3.

<sup>72</sup> The only reference to HRC resolutions in the final text is paragraph, PP4 (A/C.3/62/L.65/Rev.1) which 'notes' all the relevant resolutions and decisions of the CHR and HRC in relation to follow-up on the DDPA and calls for their implementation.

<sup>73</sup> A total of 9 resolutions in the Third Committee specifically refer to the *Declaration on the Rights of Indigenous Peoples*. Details of the individual paragraphs of the resolutions are provided in the *New York Monitor* update on Indigenous Issues at the GA's 62<sup>nd</sup> session, available at <http://www.ishr.ch>

On a positive note, strong language expressing the GA's 'full support and appreciation' for the work of the Special Rapporteur's work and its support for the continuation of the mandate, was maintained.<sup>74</sup> Language requesting the Special Rapporteur to 'continue giving particular attention to the negative impact of racism' on minorities, immigrant populations, asylum-seekers and refugees was also retained.<sup>75</sup> However, Pakistan's original proposal to 'welcome' the report of the Special Rapporteur and 'call on States' to implement its recommendations was not accepted, and the less effusive language to 'take note' of the recommendations and 'urge Member States ...to consider implementing them' was reverted to.<sup>76</sup>

### **The budgetary implications of the resolution**

The programme budget implications (PBI) of this resolution, initially 'estimated at approximately \$7.2 million' were set out in a separate document.<sup>77</sup> Most of this figure would be required to cover three areas of expenditure: firstly employing additional UN staff to support the intersessional working group; conference services for both the open-ended intergovernmental working group that reports to the Preparatory Committee, and the regional preparatory conferences; and travel requirements for the special procedures and others to attend the Preparatory Committee and regional preparatory conferences.

The size of the estimated cost of the Durban Review process was not the only point of contention. In addition, the US, Canada and the EU objected to the fact that they were being asked to approve budget estimates before 'essential aspects' of the Review Conference were determined, such as when and where it would be held, or the number of regional preparatory meetings required.<sup>78</sup> Until the actual budgetary implications were known, the US, Canada and the EU were unwilling to make any funding decisions.

These controversies meant that consideration of the resolution by the plenary was delayed to allow time for debate by both the GA's Advisory Committee on Administrative and Budgetary Questions (ACABQ) and its Fifth Committee. In the end, the Fifth Committee recommended that the budget estimates be revised down to just under \$6.8 million. This was due in part to the Committee's decision that only roughly \$800,000 would be needed to cover the travel requirements of representatives from least developed countries, national human rights institutions and NGOs, and that these expenses could be met from available UN resources.<sup>79</sup>

However it is important to note that the Fifth Committee only recommended that the plenary 'take note' of these 'preliminary estimates.' It is only prepared to make budgetary recommendations to the GA plenary after the Preparatory Committee has determined arrangements for the Review Conference and submitted 'detailed information on the financial implications' to the Fifth Committee for its consideration.<sup>80</sup> As the first substantive meeting of the Preparatory Committee is not until April 2008, all financial decisions and the allocation of resources for the Review Conference are effectively on hold.<sup>81</sup>

### *The vote*

The Third Committee took action on the resolution on 28 November 2007. The representative of Pakistan (on behalf of the G-77 and China) advised that the title and the text of the resolution had undergone extensive revisions as a result of the informal consultations. Pakistan explained that in putting forward a new title for

---

<sup>74</sup> OP41 (A/C.3/62/L.65/Rev.1).

<sup>75</sup> OP48 (A/C.3/62/L.65/Rev.1.)

<sup>76</sup> OP47 (A/C.3/62/L.65/Rev.1).

<sup>77</sup> A/C.3/62/L.90. Available at <http://www.un.org/ga/third/62/propslist.shtml>

<sup>78</sup> According to the EU, 'these are essential aspects that must be determined before provisions relating to the funding of the Conference are adopted.' See 'EU Presidency Explanation of Vote – UN 3<sup>rd</sup> Committee: Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance', available at <http://www.europa-eu-un.org/home/print.asp?1=1&lg=5>

<sup>79</sup> See A/C.5/62/21. Available at <http://www0.un.org/ga/acabq/reports.asp?type=session&desc=A/62>

<sup>80</sup> Paragraph 16 of A/C.5/62/21.

<sup>81</sup> As set out in PP3 of HRC *Resolution 6/23*, the Preparatory Committee is tentatively scheduled to meet for two substantive decisions: the first being from 21 April – 2 May 2008, and the second from 6-17 October 2008.

the resolution it had sought to test whether the gap between the rhetoric and reality in relation to the elimination of racism and discrimination was still to be bridged.

The representative of Israel acknowledged that racially motivated violence remains an extremely serious global challenge, but was concerned that the politicised nature of the resolution did nothing to address this and related challenges. Further, the slanderous, racist, and harmful rhetoric that was directed at Israel at the Durban Conference undermined this type of international conference being held in the future. Not only did these efforts to demonise Israel force it to withdraw from the conference, they now motivated it to oppose any moves to organise a follow-up conference. Israel called for a vote and advised that it would vote against the resolution.

The representative of the US echoed Israel's criticisms about the Durban Conference and agreed that the flawed nature of the conference rendered the present resolution inherently problematic. The US added that it felt that Durban follow-up activities were duplicating work done by other bodies<sup>82</sup> and it was therefore not appropriate for the Secretary-General to re-direct scarce resources to fund it. Further, the Human Rights Council could better direct its efforts at addressing emerging human rights abuses, and States should focus on domestic initiatives to implement their existing commitments to combat racism.

The representative of Portugal (on behalf of the EU) delivered a detailed explanation as to why the EU, with regret, was not able to support the resolution. Portugal reiterated the EU's full commitment to fighting racism and reminded the Committee of its active participation at the Durban Conference, as well as its ongoing support for the implementation of the DDPA. However, the EU believed that the framework for the Durban Review Conference that had been agreed to in last year's GA resolution had not been adhered to,<sup>83</sup> and was particularly concerned that the commitment to consensus decision-making had been broken. It pointed to a string of recent Council resolutions which it felt contradicted the letter and the spirit of last year's GA's resolution,<sup>84</sup> and which the EU had also felt compelled to vote against. Further, the EU found it both 'surprising and disconcerting' that the Third Committee had recently endorsed the decisions of the Durban Preparatory Committee<sup>85</sup> but was now taking action on a resolution that contradicted some of those decisions.<sup>86</sup> The EU therefore questioned whether it was worth delegations going to the effort of reaching consensus decisions on this matter, and whether the main sponsors of the resolution before the Third Committee were genuinely interested in keeping the Durban follow-up process on a cross-regional consensus basis. The EU concluded by advising that it would vote against the resolution.

The representative of Armenia said his delegation had participated actively at Durban and attached importance to the full implementation of the DPPA. He felt, however, that the conference would only succeed if adopted by consensus. Since this was not going to be the case, Armenia was forced to abstain from the vote.

---

<sup>82</sup> The US referred to the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the International Labour Organisation.

<sup>83</sup> See A/RES/61/149. The EU understood this resolution to provide that the Review Conference would be conducted at a high-level meeting in the framework of the General Assembly; it would focus on implementation of the DDPA and not seek to reopen any part of those documents; its preparation by the Human Rights Council would not entail the creation of new mechanisms; and it would be conducted in a manner that preserved the broad, cross-regional consensus achieved at Durban.

<sup>84</sup> These were *Resolution 3/2* and *Decision 3/103* (both dated 8 December 2006) available at <http://ap.ohchr.org/documents/E/HRC/resolutions/A-HRC-RES-3-2.doc>, plus *Resolutions 6/21, 6/22 and 6/23* (adopted by a vote of the Council on 28 September 2008), which the EU considered inconsistent with the recent decisions adopted by the Durban Preparatory Committee. Available at [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=10&se=69&t=11](http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=69&t=11)

<sup>85</sup> The decisions were endorsed through the Third Committee's adoption of A/C.3/62/L.66, discussed in the next section of this Update.

<sup>86</sup> The EU argued firstly that L.65/Rev.1 changed the Preparatory Committee's decision regarding holding international, regional and national meetings in preparation for the Review Conference. Secondly, the draft resolution contained language that could be construed as prejudging the special procedures' review process underway in the Human Rights Council. Thirdly, paragraphs of L.65/Rev.1 dealing with budgetary arrangements for the Review Conference and its preparatory meetings contradicted Preparatory Committee decision 1/12 because the draft resolution contains a new request for the allocation of adequate funding from the UN regular budget, before the Preparatory Committee has taken a decision in respect of the Review Conference's format, venue and duration. See 'EU Presidency Explanation of Vote – UN 3<sup>rd</sup> Committee: Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance', available at <http://www.europa-eu-un.org/home/print.asp?1=1&lg=5>

The Committee then voted on the resolution and agreed to its adoption with 119 States in support, 45 opposed, and 6 abstentions.<sup>87</sup> Last year, the resolution was adopted in the Third Committee with much stronger support from Member States (174:2:3).<sup>88</sup>

In an explanation after the vote, Japan advised it had abstained because States were not given enough time to consider the significant budget implications of the text, and it wished to promote the UN's adoption of sound financial management practices.

At the request of the US, a vote on the budget for the Durban Review Conference was also taken in the Fifth Committee on 21 December 2007. The resolution proposing that the plenary 'take note of additional budgetary requirements of up to \$6.79 million'<sup>89</sup> was adopted by the Committee with 94 States in favour, 40 against and 6 abstentions.<sup>90</sup> Speaking in explanation of the vote after the vote, Canada expressed its 'serious reservations' about the estimates for the Review Conference and its dissatisfaction that the Fifth Committee had not been provided with the detailed information needed to make an informed decision.

As a result of the delays caused by the controversy surround its significant budget implications, the resolution<sup>91</sup> was among the last considered by the GA plenary on 22 December 2007. The US again took the floor to reiterate its criticisms of the Durban Conference and its objections to any follow up mechanism. However the plenary voted to adopt the resolution (105:46:6). Last year's vote on this resolution<sup>92</sup> (179:2:4) differed significantly with very few votes in opposition or abstention, indicating that States are moving further away from consensus on this matter.

***Draft Resolution on the Report of the Human Rights Council on the preparations for the Durban Review Conference***<sup>93</sup>

This Resolution:

- Recalls* Human Rights Council decision 6/105 of 28 September 2007, in which the Council invited the Preparatory Committee for the Durban Review Conference to submit its reports to the General Assembly;
- Bears in mind* that the modalities of the Review Conference have yet to be finalised;
- Welcomes* the Report of the Preparatory Committee on its first session, in particular the decisions adopted by the organisational session of the Preparatory Committee; and
- Endorses* the decisions adopted by the organisational session of the Preparatory Committee.

The resolution was put forward by **Angola** (on behalf of the African Group). It proposes that the General Assembly welcome the report and endorse the decisions of the Preparatory Committee that were contained in its report to the Human Rights Council.<sup>94</sup>

*The vote*

Although the representative of Angola asked all delegations to approve the draft by consensus, the US called for a recorded vote. The US argued that neither the resolution nor the report it relates to had been subject to discussions or informal consultation prior to being presented to the Committee. Further, it was concerned that the resolution would result in the inappropriate use of UN resources on costly and unnecessary regional

<sup>87</sup> Those States abstaining were Armenia, Japan, Lichtenstein, New Zealand, Norway, and Switzerland.

<sup>88</sup> The two States in opposition were Israel and the US, and the three in abstention were Australia, Canada and the Marshall Islands.

<sup>89</sup> See paragraph 15 of A/C.5/62/21.

<sup>90</sup> Those abstaining were Japan, New Zealand, Norway, Iceland, Lichtenstein and Switzerland. Those against included the EU, Australia, Canada, US, and the Republic of Korea.

<sup>91</sup> A/RES/62/220. Available at <http://www.un.org/ga/62/resolutions.shtml>

<sup>92</sup> A/RES/61/149. Available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

<sup>93</sup> A/C.3/62/L.66. Available at <http://www.un.org/ga/third/62/proplist.shtml>

<sup>94</sup> See A/62/375. Available at <http://www.un.org/ga/third/62/doclist.shtml>

preparatory meetings. It also objected to the request that the Secretary-General provide funding for the preparatory meetings from within the UN general budget, and expressed its dissatisfaction with the overall direction and procedures leading up to the Durban Review Conference.

The representative of Israel expressed his government's distress about the events of the 2001 Durban Conference, which it believed had only served to fuel racist sentiment against Israel and its people. As a result, Israel would vote against any resolution that promoted the Durban Conference as an example of the international commitment to combat racism or promote tolerance, and would not support a review conference.

The Committee then voted on 20 November 2007 to adopt the resolution with 169 States in support, 2 against (Israel and the US), and 4 abstentions (Australia, Cambodia, Canada, and Fiji). On 28 December 2007 the General Assembly also voted to adopt the resolution<sup>95</sup> with 177 in favour, 3 against (US, Israel, Marshall Islands) and 3 abstentions (Norway, Canada, Australia).

## LOOKING FORWARD

The Special Rapporteur's mandate will be reviewed by the Human Rights Council in 2008, but given the strong support he received from a broad cross-section of States, its renewal appears likely. During the seventh session of the Council in March 2008, the Special Rapporteur will also present the reports relating to his official visits to Lithuania, Latvia, Estonia, and the Dominican Republic.

The real challenge ahead for the international community is to avoid further politicisation of the process that will culminate in the Durban Review Conference in early 2009. This is essential if States are to join with Brazil in offering to host regional preparatory conferences, and if a broad cross-section of States and participants from all regions are to make the effort to participate in those meetings, as well as the Review Conference itself. The amount of funding made available to assist delegations from least developed countries, NGOs from developing countries and representatives of national human rights institutions to participate in these meetings will also be a significant factor in determining their success.

The pressure is now squarely on the Preparatory Committee to negotiate a host of important arrangements, not least of which is the venue, the timing and the level of participation at the Review Conference. How these matters are dealt with, and the extent to which consensus decisions are possible, will impact significantly on the credibility of, and interest in, the Durban review process. However it is of great concern that consensus on the Durban Review Conference appears to be diminishing at this critical juncture, rather than building.

## BACKGROUND

The General Assembly is the main deliberative organ of the United Nations (UN). It is composed of representatives of all member States and has a general mandate to discuss and make recommendations on any matters within the scope of the United Nations Charter. Under Article 13 of the Charter, the General Assembly is specifically mandated to 'initiate studies and make recommendations for the purpose of ... assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. The regular session of the General Assembly runs from the beginning of September to the end of December. Each year the GA addresses over 150 agenda items, which are considered either in the plenary or in one of its six committees.<sup>96</sup> The Third Committee (Social, Cultural, and Humanitarian) addresses most agenda items relevant to human rights defenders, including advancement of women, children's rights, the rights of indigenous peoples, the elimination of racism, and human rights questions. Numerous special procedures also report to the Third Committee on a number of these issues and engage in an interactive dialogue with States. The Fifth Committee (Administrative and Budgetary) is also particularly relevant to human rights defenders since it evaluates and approves the budgetary requirements arising out of the work of the other five committees. After completing their work, the Third and the Fifth

---

<sup>95</sup> A/RES/62/143. Available at <http://www.un.org/ga/62/resolutions.shtml>

<sup>96</sup> Information on the main committees of the General Assembly (GA) is available at <http://www.un.org/ga/maincommittees.shtml>

Committee, as well as the other three main committees, submit draft resolutions to the General Assembly for final adoption.

## **NEW YORK MONITOR STAFF**

**Michelle Evans**, Representative to the UN, New York

**Vanessa Jackson**, Human Rights Officer, New York

## **Contributors**

**Krishna Murali**, Intern

## **ABOUT THE PUBLICATION**

The New York Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments in the UN in New York.

## **SUBSCRIPTION**

If you wish to receive New York Monitor reports by e-mail when they are published, please e-mail [information@ishr.ch](mailto:information@ishr.ch) with 'New York Monitor' in the subject line. To see the New York Monitor reports online, please visit [www.ishr.ch](http://www.ishr.ch). Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

## **COPYRIGHT, DISTRIBUTION AND USE**

Copyright © 2008 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders. ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

## **DISCLAIMER**

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify [information@ishr.ch](mailto:information@ishr.ch)