

HUMAN RIGHTS COUNCIL

Consensus re-established on freedom of religion and belief, but divisive appointments to special procedures taint 14th session



Nuns in Kerala, South India. The resolution on freedom of religion or belief was adopted without a vote at the Human Rights Council's 14th session in June 2010.

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The 14th session of the Human Rights Council took place from 31 May to 18 June 2010. The session marked the end of the Council's 4th year, and ended with mixed results. Positive developments could be seen in several thematic areas (a large joint statement on maternal mortality, a consensus resolution on freedom of religion or belief, and a discussion of decriminalisation of consensual sexual conduct). However, the response to country situations, although somewhat improved with new resolutions on the human rights situation in Kyrgyzstan and school children in Afghanistan, was still weak. What tainted the session most was the divisive appointment of several special procedures that saw a regrettable departure from the established practice of Council endorsement of the President's appointments. The lack of respect for the authority of Ambassador Van Meeuwen, the Council's President was perhaps of little surprise. His influence seemed limited throughout his tenure but during the 14th session, as his term was coming to an end, his political capital diminished further. This was also plainly obvious when States refused to discuss his suggested 'road map' for the review of the Council.¹

INTERACTION WITH THE HIGH COMMISSIONER

The dialogue with the High Commissioner for Human Rights (the High Commissioner), Ms Navanethem Pillay on 31 May 2010, was overshadowed by the attacks of that morning by Israeli forces on a humanitarian aid flotilla heading for the Gaza Strip. Discussion of the key points of her update to the Council, including the Millennium Development Goals Summit to be held in September 2010, the upcoming 25th anniversary of the Declaration on the Right to Development in 2011, and a number of country-specific situations, including Sri Lanka, Thailand, and Nigeria, was limited as a result.²

While many States expressed their continuing support of the independence of the Office of the High Commissioner for Human Rights (OHCHR),³ Algeria reiterated its call for OHCHR to undertake more in-depth consultations with concerned countries prior to establishing field offices.⁴ The African Group also stated that the Council should be given a say in all matters of policy, a reference to the current negotiations in New York of Programme 19, the UN's policy framework for its human rights activities.⁵

Several States took the opportunity to offer their views on the upcoming Council review, some calling for the Council to be strengthened (Pakistan, on behalf of the Organization of the Islamic Conference (OIC), UK), with several States insisting that this should not involve 're-opening' the institution-building package⁶ (Pakistan on behalf of the OIC, China, Brazil, Indonesia, Azerbaijan), and others requesting that the review process should not detract from the Council's on-going work (China, Austria, Azerbaijan).

1 See the article on the Council review process in this edition for more information.

2 See ISHR 'Opening of Council's 14th session marked by Gaza flotilla incident', 6 June 2010: <http://bit.ly/9cZREx>.

3 Lithuania, Morocco, New Zealand, Spain.

4 See *Human Rights Monitor Quarterly*, 'Human Rights Council', April 2010, Issue 1, p.2: <http://bit.ly/aBbany>.

5 For a summary of the General Assembly's most recent discussion (2008) on Programme 19 and a more detailed explanation of what Programme 19 is and how it is developed, see ISHR's New York Monitor, 63rd session, Human Rights Council report and the Office of the High Commissioner for Human Rights and annex on p. 17: <http://www.ishr.ch/new-york-monitor/general-assembly>.

6 The institution-building package is the basis for the Council's work, *Resolution 5/1*: <http://bit.ly/dwLzZ>.

For more information on the institution-building process at the Council see: www.ishr.ch/institution-building.

APPOINTMENT OF SPECIAL PROCEDURES

The appointment process saw some improvement at this session compared to previous sessions as the Consultative Group presented a much improved report on the recommended candidates for the special procedures to the President.⁷ However, the process in the Council was marked by regional factionalism, open politicisation, and a disturbing lack of respect for the authority of the President of the Council. Nigeria (on behalf of the African Group) raised objections to the President's list of appointments to the special procedures. This resulted in a three-hour suspension of the session, during which the African Group and the OIC successfully got the appointments changed for the Independent Expert on Burundi and the Special Rapporteur on freedom of religion or belief.⁸ However, attempts to also replace the new Independent Expert on the right to education with a candidate from Uganda, failed. This blatant political horse-trading seriously damages the integrity of the appointment process and poses a real risk to the system of special procedures. It is hoped that the next President will be able to withstand such political pressure and ensure that his appointments enjoy the necessary support. Regrettably, the appointments did not include a single woman, although the Council's institutional framework (*Resolution 5/1*) requires due consideration be given to gender balance. Overall, they also resulted in a reduction of the number of women mandate holders (two of the mandates were previously held by women), bringing the overall number to 19 out of 51.

New mandate holders

Working Group on enforced disappearances: Mr Ariel Dulitzky (Argentina/US)
 Working Group on mercenaries: Mr Faiza Patel (Pakistan)
 Special Rapporteur on freedom of religion or belief: Mr Heiner Bielefeldt (Germany)
 Special Rapporteur on extrajudicial executions: Mr Christof Heyns (South Africa)
 Special Rapporteur on the right to education: Mr Kishore Singh (India)
 Independent Expert on Burundi: Mr Fatsah Ouguergouz (Algeria)
 Special Rapporteur on toxic waste: Mr Calin Georgescu (Romania)
 Special Rapporteur on the DPRK: Mr Marzuki Darusman (Indonesia)

THEMATIC DEVELOPMENTS

At its June 2010 session the Council held interactive dialogues with 22 special procedures along with five thematic panel debates.⁹

Human rights defenders: reprisals and the killing of Floribert Chebeya

The Council's discussion of the Secretary-General's report on reprisals against those who have cooperated with the UN human rights system revealed a lack of urgency amongst States.¹⁰ Of the 14 States mentioned in the report, eight had failed to provide any information about steps being taken to hold the perpetrators accountable, while the replies received in the other six cases were generally unsatisfactory. India and Israel denied the allegations without any attempt to investigate them. Sri Lanka stated that it would not tolerate attacks against human rights defenders but then questioned the legitimacy of those defenders. Kenya committed itself to an investigation into the killing of two human rights defenders,¹¹ but over one year after their deaths the Secretary-General has yet to receive any information about such an investigation.

7 The Consultative Group is made up of a representative (in practice an Ambassador) from each of the five regional groups, acting in their personal capacity. The Consultative Group proposes a list of candidates that possess the highest qualifications for the mandates to be filled.

8 The President had nominated Mr Alain Didier Olinga (Cameroon) as the Independent Expert on Burundi and Ms Ambiga Sreenevasan (Malaysia) as the Special Rapporteur on freedom of religion or belief.

9 For brief summaries of key interactive dialogues see www.ishr.ch/council. For a list of special procedures reports considered, see ISHR's Council Alert for the 14th session: <http://bit.ly/abBoET>. The Council held panel discussions on trafficking, the protection of journalists in armed conflict, maternal mortality, toxic waste, and a full day panel on women's human rights and education.

10 A/HRC/14/19: <http://bit.ly/be3rVN>.

11 Oscar Kamau Kingara, a Kenyan human rights defender, and his assistant, Mr John Paul Oulu, of the Oscar Foundation Free Legal Aid Clinic, were killed in March 2009. Mr Kingara had provided information to the UN Special Rapporteur on extrajudicial executions, Mr Philip Alston, during his recent official visit to the country. This case was discussed at the 11th session of the Council, see p.8: <http://bit.ly/d6RQeB>.

Defrosting of relations between Security Council and High Commissioner

The High Commissioner for Human Rights addressed the Security Council on 7 July 2010 when it held an open debate on the protection of civilians in armed conflict. This was the first time the High Commissioner has addressed the Council since Ms Louise Arbour, the previous High Commissioner, did so in May 2007 (see ISHR's Human Rights Monitor 2007, p. 79, at <http://bit.ly/dqZ8Gn>). The High Commissioner was invited to address the Security Council on the same topic in November 2009, but was unable to attend.

Although the High Commissioner was invited under a thematic topic, this did not prevent her from speaking directly about several country situations and suggesting responses to the Security Council. In her most recent remarks she:

- detailed her concerns about the situation in Afghanistan, the Democratic Republic of the Congo (DRC), Guinea, Haiti, Kyrgyzstan, Gaza, Sri Lanka and the Sudan (Darfur)
- welcomed the Security Council's action to establish commissions of inquiry to hold perpetrators of human rights abuses accountable, but noted that 'more use can be made of such mechanisms,' and stressed the need for national processes to be 'credible, independent and impartial'
- encouraged the Security Council to make greater use of information gathered by her Office and the special procedures of the Human Rights Council, pointing out that their monitoring of human rights situations can 'sound an alarm when situations are at risk of degenerating into violence'.

* See meeting record (SPV.6354) available at: <http://bit.ly/aeUc3z>

DRC: Security Council begins controversial troop withdrawal

On 28 May 2010 the Security Council unanimously adopted *Resolution 1925*, under which the UN peacekeeping mission in the Democratic Republic of Congo (DRC), MONUC, will be reduced by 'up to 2,000 UN military personnel' by 30 June 2010. MONUC will also be replaced by a new UN stabilisation mission called MONUSCO, which will commence its one year mandate on 1 July 2010. The protection of civilians remains the top priority of the UN mission, and specific language regarding the need to protect civilians from 'all forms of sexual and gender-based violence' remains.

Further withdrawal of troops will depend on 'the evolution of the situation on the ground' as well as the achievement of three objectives:

- the completion of ongoing military operations in North and South Kivu as well as Orientale provinces
- improved Government capacity to protect the population effectively, and
- the consolidation of State authority throughout the territory

The resolution represents a compromise between the DRC's call for a complete withdrawal of troops by mid-2011, and the concerns of all 15 members of the Security Council that this timeline was 'premature'.

In a concession to the DRC and in recognition that much of the western part of the country is now relatively stable, MONUSCO's 20,000 military personnel will be concentrated in the east where the human rights situation remains highly volatile. However, given the unpredictable nature of events in the country and general instability in the region, MONUSCO

There was also a low level of State engagement with the report during the general debate, with just four States addressing the subject.¹² Given that human rights defenders are important allies of the Council in bringing to its attention situations on the ground, this lack of interest points to a deeper lack of concern with the effectiveness of the Council in upholding the rights of individuals. Those States that spoke called for more visibility to be given to attacks against human rights defenders as a means to combat impunity.

Killing of prominent human rights defender in the DRC

The Council's debate on reprisals coincided with the killing of a prominent human rights defender in the Democratic Republic of the Congo (DRC). Floribert Chebeya was the Executive Director of the NGO Voix des sans Voix. NGOs called for a credible, impartial, and independent inquiry to investigate the circumstances of his death and the disappearance of his driver Fidèle Bazana Edadi. On the initiative of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Philip Alston, the Council held a minute of silence in memory of Mr Chebeya, which went some way towards increasing the visibility given to attacks of this nature. The killing of Mr Chebeya drew widespread condemnation and concern during the Council's debate on situations requiring its attention (Item 4). A large number of States called for additional information surrounding his death, and an independent, impartial and transparent investigation. In exercising its right of reply, the DRC noted that the director of the police has been suspended, and that four forensic experts from the Netherlands would be joining the chief prosecutor in conducting an autopsy.'

Sexual orientation: resistance to discussion

The issue of sexual orientation and human rights came up in several debates during the session. The report of the Special Rapporteur on the right to health, Mr Anand Grover, focused on the criminalisation of consensual sexual relations, orientation, sex work, and HIV/AIDS transmission.¹³ In particular the report examined the way in which the criminalisation of same-sex relations and same sex-orientation impedes the equal realisation of the right to health.

The discussions revealed the continuing high level of opposition from many States even to raising the issue of sexual orientation at the Council. Some argued that in focusing on an issue that does not have universal support, Mr Anand had overstepped his mandate.¹⁴ Pakistan (on behalf of the OIC) accused the Special Rapporteur of bias and criticised him for having focused on a 'negligible group'. South Africa advanced the view that the Special Rapporteur should have focused more on other marginalised groups, and Bangladesh argued that lesbian, gay, bisexual, and transgender persons are not marginalised at all and that the Special Rapporteur was trying to 'invent' a new marginalised group. Pakistan ended its statement by warning the Special Rapporteur that it would monitor his future activities and take 'appropriate action' if he continued to disrespect the Code of Conduct for special procedures.¹⁵

Similar comments were made in the interactive dialogue with the Special Rapporteur on racism, Mr Muigai.¹⁶ In his report he had noted that the identity of a person is influenced by 'multiple components, such as gender, age, nationality, profession, sexual orientation, political opinion, religious affiliation and social origin'.¹⁷ Several States, including South Africa, Egypt, and the Sudan, objected to the inclusion of sexual orientation as part of an individual's identity. South Africa even claimed that the Special Rapporteur had 'demeaned the legitimate plight of the victims of racism'.

Joint study on secret detention

After initially being scheduled for consideration at the 13th session of the Council, the 14th session finally saw the presentation of the joint study on 'global practices in relation to secret detention in the context of countering terrorism'.¹⁸ The report had earlier been blocked on

12 Norway, Spain on behalf of the EU, Sweden, and Switzerland.

13 See <http://bit.ly/9I02Pa>.

14 Algeria, Botswana, Egypt, Iran, Nigeria (on behalf of the African Group), Pakistan (on behalf of the OIC).

15 Code of Conduct for Special Procedures: <http://bit.ly/ayp03Q>.

16 A/HRC/14/43: <http://bit.ly/9LaFm1>.

17 A/HRC/14/43: p.7: <http://bit.ly/9LaFm1>.

18 A/HRC/13/42: <http://bit.ly/dsVmeu>. The study was undertaken by the Special Rapporteur on the promo-

grounds that, since it had been undertaken on the initiative of the mandate holders rather than at the request of the Council, it should not be considered before all the Council's outstanding requested reports had been dealt with.¹⁹

Despite the delay, the fact that the report was considered at all upheld the principle that the special procedures are able, on their own initiative, to take up any issues that fall within their mandate. Nevertheless some States, such as China, continued to claim that it was in breach of the Code of Conduct for the special procedures to take up any matters beyond those that the Council directly requested them to look into.

A broad range of States²⁰ expressed concern about the way in which information had been obtained for the study, particularly the use of anonymous sources, and questioned the accuracy of some of the cases included in the report. The Russian Federation went so far as to state that the use of anonymous information was in breach of the Code of Conduct, since it did not allow States to investigate the complaints made. Algeria made reference to the requirement that special procedures must 'rely on objective and dependable facts based on evidentiary standards that are appropriate to the non-judicial character of the reports and conclusions they are called upon to draw up',²¹ but ignored the further requirement that special procedures should not name individuals where to do so would place those individuals in danger.²² The authors of the joint study noted that this was a real issue as many of those they had spoken to feared for their safety in providing information for the study.

Although many States expressed the view that the investigation of secret detention was important, there is currently no indication that any State is willing to follow up on the suggestion of Mr Scheinin, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, that the Council should adopt a resolution on the study's recommendations. This clearly calls into question just how committed States really are to combatting the practice of secret detention.

Extrajudicial executions

The presentation of the annual report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,²³ saw strong opinions voiced on both sides of a divided dialogue.

In response to his call for an international inquiry into human rights violations committed during the armed conflict in Sri Lanka, the State condemned what it described as the Special Rapporteur's lack of professionalism and integrity in the execution of his mandate. The DRC 'categorically rejected' the report on his visit to that country, alleging that it lacked objectivity and was 'stuffed with insinuations'. The US criticised Mr Alston for the late submission of the report on targeted killings. It claimed that as a result it was unable to respond to his concerns about the expansive interpretation of the right to self-defence used by the US in its fight against terrorism, and particularly the issue of drone killings carried out by the US Central Intelligence Agency (CIA). The Russian Federation stated that the late submission of reports was 'clearly another example of a flagrant violation of the code of conduct for special procedures'. It said that it would address this during the review of the Council's work and functioning.

In return, Mr Alston was highly critical of the unconstructive way in which these States participated in the dialogue. He also highlighted two more general issues regarding the interaction of

will also 'keep a reserve force capable of redeploying rapidly elsewhere in the country.'

A concerning omission from MONUSCO's mandate is any explicit requirement that its support to the Congolese military forces (FARDC) be 'strictly conditioned on FARDC's compliance with international humanitarian, human rights and refugee law and on an effective joint planning of these operations.' This had been a critical safeguard in MONUC's 2009 mandate (*Resolution 1906*, para.22). The Special Rapporteur on extrajudicial executions, Mr Phillip Alston, has repeatedly alerted the Security Council to the obvious risk to its own reputation and that of the UN as a whole if it allows UN military forces to cooperate with senior Congolese military commanders who are known to have committed war crimes and other serious abuses against civilians.*

Prior to MONUSCO's creation, the Special Rapporteur recommended that MONUC's conditionality policy be made public, strictly adhered to, and its implementation monitored by a mechanism independent of the UN.

*Report of the Special Rapporteur's mission to the DRC, (A/HRC/14/24/Add.3), 1 June 2010, available at <http://bit.ly/9CGglq>.

Chad: Security Council caves into demands to leave by 31 December

Security Council *Resolution 1923*, adopted on 25 May 2010, sets out a timetable for the rapid, but phased withdrawal of both military and civilian personnel working with the UN Mission in the Central African Republic and Chad (MINURCAT).

tion of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances.

19 For more information on the debate see ISHR's Council Alert for the 14th session: <http://bit.ly/bfWQrS>.

20 Canada, Ethiopia, the EU, Nepal, Nigeria on behalf of the African Group, Pakistan, Romania, Sri Lanka, Syria, the UK and the USA.

21 Code of Conduct for Special Procedures, Section 8c: <http://bit.ly/ayp03Q>.

22 Code of Conduct for Special Procedures, Section 8b: <http://bit.ly/ayp03Q>.

23 A/HRC/14/24: <http://bit.ly/aXNXnn>. Mr Alston also presented thematic reports on targeted killings, election-related violence and killings and police oversight mechanisms. Of these the report on targeted killings received the most attention from the Council.

By 15 July, MINURCAT's military component will be reduced from 3,300 to 2,200 troops, with the final withdrawal commencing on 15 October 2010. By 31 December, MINURCAT will cease to exist and in its wake, full responsibility to protect civilians and assist refugees and internally displaced persons (IDPs) in eastern Chad will revert to the Government of Chad.

In an effort to minimise the impacts on civilians, the Security Council requested that the Chadian Government and the Secretary-General establish a joint high-level working group to make monthly assessments of the situation on the ground with respect to the protection of civilians. This working group will continue to operate beyond the lifespan of MINURCAT, with an oversight responsibility in respect of Chad's achievement of three benchmarks that were developed by the Secretary-General (para.3 of *Resolution 1923*).

The resolution was adopted unanimously in face of the Government of Chad's intractable position and despite concern from members of the Security Council and civil society more broadly that the authorities lack the capacity to fill the security vacuum that MINURCAT's departure will leave. The future remains particularly uncertain for humanitarian organisations operating in eastern Chad, which fear that a reduced UN troop presence will heighten their exposure to attack, and may force them to suspend operations altogether.

For more background on recent Security Council discussions on the DRC and Chad, see ISHR *Human Rights Monitor Quarterly*, April 2010, at: www.ishr.ch/quarterly.

States with the special procedures. He called for the communications procedure to be reorganised, and underlined the need for more creative measures to be found to encourage cooperation of States with the special procedures, particularly in accepting country visits. The dialogue marked the end of Mr Alston's tenure of the mandate, and despite the volatile discussion there were many expressions of appreciation for his work.

Freedom of expression: a more constructive approach

In comparison with discussion of the first report²⁴ of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Frank La Rue, the interactive dialogue at this session was relatively positive.²⁵ One of the main themes of Mr La Rue's report was permissible limitations that could be put on freedom of expression. The applicability of defamation of religion as a basis for limiting freedom of expression continued to generate deep disagreement among States. While Mr La Rue expressed serious concern about discrimination on the basis of religion, he also made it clear that he continues to believe that the phenomenon should not be countered by restricting freedom of expression. On the other hand, Algeria, Azerbaijan, Bangladesh, Egypt, Iran, Nigeria (on behalf of the African Group), and Pakistan (on behalf of the OIC) held to their argument that defamation of religion constitutes incitement to discrimination, hatred, or violence, in violation of Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR). Bangladesh was particularly critical of Mr La Rue for holding to his position, which they claimed prevented the possibility of dialogue. But there were indications, such as the more diplomatic language used by States that have previously been very critical of Mr La Rue, and the requests from both sides for increased understanding, that future interactions between the Special Rapporteur and the Council on this issue may be more constructive.²⁶

Resolutions adopted

The negotiations around the resolution on the renewal of the mandate of the Special Rapporteur on freedom of religion or belief also indicated a more conciliatory approach to the issue of freedom of religion. Pakistan threatened to withdraw from the negotiations unless language condemning incidents of incitement to religious hatred, discrimination, intolerance and violence was included. However, it withdrew amendments calling on the Special Rapporteur to examine such incidents and to ensure respect for places of worship, after the EU took its concerns on board. This ensured that the resolution was adopted without a vote.

Other resolutions adopted at the 14th session included a resolution to renew the mandate of the Special Representative of the Secretary-General on internally displaced persons, under which the title of the mandate will change to Special Rapporteur to conform to the Council's new standardised appointment process. The Council also adopted a resolution on 'accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention',²⁷ without a vote. The resolution was sponsored by Canada, and focuses on preventing violence against women as part of a series of three resolutions to be tabled over the next three years. The other two will focus on protection and remedies. The resolution urges States to adopt a series of specific measures aimed at preventing violence against women.

In the resolution on the right of peoples to peace,²⁸ the Council requests the Human Rights Council Advisory Committee to draft an international declaration on the right of peoples to peace. This resolution was adopted by vote with opposition from the EU and Western States

24 The first report, discussed at the 11th session of the Council in June 2009, had generated heated controversy due to the perception of some that Mr La Rue had not fulfilled his mandate, specifically allegations that he had ignored the amendment to his mandate introduced by Pakistan, on behalf of the OIC, in March 2008 calling on the Special Rapporteur to report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination. During this year's dialogue however, this issue was only directly raised by Egypt. For more information see ISHR news piece, 'Heavy criticism against Special Rapporteur on freedom of expression', <http://bit.ly/9BxEQ9>.

25 A/HRC/14/23: <http://bit.ly/aS0Dbp>.

26 This follows the reduction in support for Pakistan's traditional resolution on 'defamation of religion' at the March 2010 session of the Council: <http://bit.ly/aEiG4V>.

27 A/HRC/RES/14/12: <http://bit.ly/bCgLO8>.

28 A/HRC/RES/14/3: <http://bit.ly/bwUuBg>.

who argued that it is overly focused on inter-State relations rather than the rights of individuals, who are at the core of the Council's mandate.²⁹

A new resolution was introduced by Ukraine on the role of prevention in promoting and protecting human rights.³⁰ Attempts by the EU, led by Hungary, to introduce more substantive elements into the resolution, including indicating the elements of the obligation of States to prevent human rights violations, failed. The final version simply calls on OHCHR to convene a workshop on the conceptual and practical implications of the concept of prevention.³¹

Other developments

Other noteworthy moments included the presentation, at the panel debate on maternal mortality, of a joint cross-regional statement under the leadership of Burkina Faso, Colombia, and New Zealand, with the total support of 108 States. This is a record for the number of supporters for a statement in the Council. The previous record, of 85, was also set for a statement on maternal mortality, at the March 2009 session.

A panel debate was held on the protection of journalists in armed conflict. While States expressed concern regarding the threats to journalists working in inherently dangerous situations, there was little attempt during the discussion to make a link between the vulnerability of journalists and their role as human rights defenders. There was, however, a call from Canada for a follow-up panel on the targeting of journalists during peace time, an acknowledgement that it is the role that journalists play that places them in danger, not just the sometimes dangerous situations in which they work.

COUNTRY-SPECIFIC DEVELOPMENTS

No debate on the situations in Burundi and the Sudan

Regrettably, the Independent Experts on the human rights situations in Burundi and the Sudan, respectively, were unable for personal reasons to present their reports to the Council.

The Council's failure to organise for the Independent Expert on the situation of human rights in Burundi to brief it before leaving the mandate was disappointing. The current mandate holder, Mr Akich Okola, will be replaced in July 2010 (see text box on new mandate holders). The resolution creating the mandate only asks the Independent Expert to report to the Council after the establishment of an independent national human rights institution.³² As a result, Mr Okola has not appeared before the Council since September 2008. Burundi held elections in June 2010, and the Independent Expert visited the country in May 2010.³³ Under these circumstances, it seemed most appropriate that the Independent Expert should report to the Council on his recent mission to the country, and present a last update to the Council on developments since 2008. Despite an exceptional invitation from the President of the Council to Mr Okola to report to the 14th session, the interactive dialogue did not materialise. It seems that the Independent Expert was not able to attend due to scheduling conflicts.

The Independent Expert on the situation of human rights in the Sudan, Mr Mohamed Chande Othman, was unable to present his report for medical reasons. While some efforts were made to explore whether another mandate holder could present the report on his behalf, they seemed to have failed. In the end the Council decided to postpone the consideration of the report to September, and to exceptionally extend the mandate until then.³⁴ Given that the Independent Expert's report, among other things, dealt with the recent general elections in the Sudan, it was particularly unfortunate that the Council could not consider it in a timely manner.

Security Council inaction on Kyrgyzstan

In contrast to the Council's timely response to the deaths and humanitarian crisis in Kyrgyzstan, the Security Council was unable to formally take up the matter. At the request of some members, the Security Council was briefed about the situation by the UN Secretariat in closed meetings on 14 and 24 June. Both meetings were held under an existing agenda item to avoid Kyrgyzstan being added to the Council's formal agenda. This approach was due to the Russian Federation's insistence that the outbreak of violence in Kyrgyzstan was an internal matter that did not threaten international peace and security. This view was shared by China and several other Council members, even after 100,000 people fled Kyrgyzstan to seek refuge in Uzbekistan.

Although no official statement was issued, the June President of the Security Council, Ambassador Claude Heller of Mexico, commented to the media on 14 June that he and others had 'expressed concern about the risk of the internationalisation of the crisis'. However, they supported the efforts of the Secretary-General and the Organisation for Security and Cooperation in Europe (OSCE), and believed any follow up on the situation was best handled by them.

The situation is yet to stabilise, and there is concern that tensions may flare again with elections scheduled in October. The Government of Kyrgyzstan may well seek the UN's assistance to hold the elections, which would provide the Security Council an opportunity to consider the situation anew.

29 The resolution was adopted 31 in favour, 13 against, three abstentions

30 A/HRC/RES/14/5: <http://bit.ly/c3YuJ5>.

31 For a list of all resolutions adopted at the 14th session of the Council see: <http://bit.ly/bD7sSg>.

32 See A/HRC/RES/9/19 for the mandate of the Independent Expert. The Independent Expert has undertaken missions to Burundi in January and December 2009 and in May 2010.

33 See the UN press release on the visit at: <http://bit.ly/bix5t3>.

34 A/HRC/DEC/14/117: <http://bit.ly/bRPKJT>. As a country mandate, the mandate on the Sudan needs to be renewed every year.

Security Council condemns deaths on Turkish flotilla and calls for credible investigation

An emergency meeting of the Security Council, held on 1 June 2010 at the request of Lebanon and Turkey, resulted in a presidential statement (PRST)* that condemned the loss of life and injuries during the Israeli military operation onboard the Turkish convoy sailing to Gaza.

In contrast to the resolution adopted in the Human Rights Council, the Security Council used more neutral language. It backed the Secretary-General's call for a 'full investigation into the matter' and itself called for a 'prompt, impartial, credible and transparent investigation conforming to international standards'. Significantly, the requirement that the investigation be 'independent' did not make it into the statement, despite this being the topic of lengthy closed-door discussions. The statement also renewed the Security Council's repeated calls for the free flow of goods, people and humanitarian aid into Gaza.

Israel's subsequent appointment of a five-member Committee of Inquiry, which included two international observers, was endorsed by the US as a 'serious and credible investigation'. However the UN Secretary-General argued the contrary, and instead proposed an independent panel of a similar size, with one representative each from Israel and Turkey, to be led by former New Zealand Prime Minister Geoffrey Palmer. Whilst Turkey has welcomed this proposal, the Secretary-General is yet to convince Israel to cooperate with an investigation that would meet the terms set by the Security Council.

During the general debate on situations requiring the Council's attention, several States nevertheless expressed concern about irregularities during the recent elections and other rights violations.³⁵

New initiative on Somalia

The Council decided, at the initiative of the African Group, to hold 'a stand-alone interactive dialogue' on Somalia at the 15th session in September 2010.³⁶ The dialogue will have input from the High Commissioner, the Independent Expert on the situation of human rights in Somalia, and the Special Representative of the Secretary-General for Somalia. It will focus on the status of technical cooperation and capacity-building programmes in the country and how to enhance the effectiveness of UN efforts to support human rights promotion and protection there. Some NGOs have lobbied for a special briefing on Somalia for quite some time and finally seem to have been successful in achieving almost that. It will be interesting to see whether this new initiative will bring about the needed improvements to the human rights situation.

New country resolutions

The Council adopted two new resolutions on country situations. They were both initiated by the US with the support of the countries concerned.

The Council adopted a resolution on technical assistance and cooperation on human rights in Kyrgyzstan, which strongly condemns the human rights violations that took place after the elections on 7 April 2010, calls for a full and transparent investigation, and requests OHCHR to continue to provide technical assistance.³⁷ In this case, the Council demonstrated its capacity to respond in a timely manner to human rights crises. The Russian Federation objected to the presentation of this resolution under Item 10, stating that it went far beyond a call for technical assistance and would have been more appropriately introduced under Item 4, which focuses on situations requiring the Council's attention. While a distinction is often drawn between the more critical resolution texts presented under Item 4 and the 'softer' texts under Item 10, this division is in practice not clear-cut and seems rather artificial.

The Council also adopted a resolution addressing attacks on school children in Afghanistan. It urges all parties in Afghanistan to take appropriate protective measures and encourages governments and relevant UN and international agencies to respond to Afghanistan's requests for assistance. It also requests the High Commissioner to give increased focus to the situation of girl school children in Afghanistan in her reports to the Council. In its general comments the US noted that this resolution demonstrates the ability of the Council to address serious human rights concerns. However, some NGOs criticised the resolution for being too narrow and not addressing the broad range of serious human rights issues in that country.³⁸

Occupied Palestinian territories

The urgent debate on the Israeli attack on the aid flotilla heading to Gaza organised during the first days of the session proved that the Council can be more responsive to urgent human rights situations. However, the Council's initiative to address this incident provoked mixed State reactions. It was not surprising that the US, Italy, and the Netherlands had reservations and ultimately voted against the resolution condemning the Israeli attack.³⁹ The resolution also decides to dispatch an international fact-finding mission to investigate violations of international law.

Norway and Switzerland later expressed hope that the Council would also respond to other pressing situations in the future. Human Rights Watch and Amnesty International went further,

35 Spain, France, Norway, UK, Slovakia, Austria, Sweden, Ireland, Czech Republic.

36 HRC/DEC/14/119: <http://bit.ly/cC4Xzu>.

37 A/HRC/RES/14/14: <http://bit.ly/bHWhwp>. The resolution was adopted without a vote.

38 See for example, Human Rights Watch, UN: Rights Council Condemns Violations in Kyrgyzstan, at <http://bit.ly/b1110J>.

39 A/HRC/RES/14/1: <http://bit.ly/9968Lq>. The resolution was adopted by 32 votes in favour, three against, and nine abstentions. France, Burkina Faso, Belgium, Hungary, Japan, the Republic of Korea, Slovakia, Ukraine and the UK abstained.

expressing concern about double standards used by some States that called for the urgent debate but opposed action on other critical situations. The US asked the Council to take a more balanced approach to addressing violations by considering human rights situations around the world, and not pay disproportionate attention to the Israel-Palestine situation.

The Special Rapporteur on the situation of human rights in the occupied Palestinian territories (OPT), Mr Richard Falk, presented his annual report to the Council focusing on follow-up to the Goldstone report, settlements, and the blockade on the Gaza Strip. Mr Falk stated that despite making formal requests for a visit to the OPT, there was no indication that Israel would allow a visit or reconsider its policy of not cooperating with the Special Rapporteur. He noted that he would be arranging a visit to the Gaza Strip through Egypt in order to better assess the humanitarian needs and try to understand first hand the human rights implications of the blockade. Mr Falk also regretted that the same States that have been critical about non-cooperation by Myanmar and the Democratic People's Republic of Korea (DPRK) with the special procedures have remained 'utterly silent' regarding Israel's lack of cooperation. Much of the Council's debate focused on the Goldstone report.⁴⁰ Other issues presented by the Special Rapporteur received little attention during the debate, a fact regretted by the Special Rapporteur.

Members appointed to the Committee of Independent Experts to monitor investigations into violations in the Gaza conflict

The High Commissioner announced the appointment of the members of the Committee of Independent Experts to monitor investigations into violations in the Gaza conflict established at the 13th session in follow-up to the Goldstone report's recommendations. The Independent Experts are Mr Christian Tomuschat (Chair), Mr Param Cumaraswamy, and Justice Mary McGowan Davis. They are tasked to 'monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side' in implementing the recommendations of the Goldstone report.'

Debate on country situations requiring Council attention

The Council held a general debate on 'human rights situations that require the Council's attention' (Item 4). The debate, in which around 30 States and more than 60 NGOs took part, was clearly polarised.⁴¹ In addition to a broad survey of human rights violations across many regions, the debate also witnessed allegations of 'politicisation' of the Council. The situations raised were largely similar to those brought to the Council's attention at previous sessions. Not surprisingly, the situation in Iran was among those receiving most attention,⁴² with States expressing concern at the lack of impartial, transparent, and independent investigations into alleged violations following the 2009 elections. However, these concerns are still not translating into any Council action to address the situation.

Many States⁴³ also expressed concern over the situation of journalists and human rights defenders, and the lack of an independent mechanism to investigate human rights violations committed during the final phase of the armed conflict in Sri Lanka. Since the failed special session on Sri Lanka in May 2009, States are unwilling to take any initiatives to address that situation.⁴⁴

Other situations, either generally or in relation to specific concerns, requiring the Council's attention included: Belarus, Burundi, China, Cuba, the DPRK, racial and religious discrimination in several European countries;⁴⁵ discrimination against Roma and Muslim minorities in EU countries;⁴⁶ Fiji, Guatemala, Myanmar, Pakistan, Syria, Thailand, the US,⁴⁷ Venezuela, Vietnam, and Zimbabwe. ■

40 A/HRC/12/48: <http://bit.ly/ZnAwH>.

41 For more information, see <http://bit.ly/bcbV3p>.

42 Spain, France, Norway, Japan, UK, Slovenia, Slovakia, USA, Netherlands, New Zealand, Denmark, Austria, Australia, Sweden, Ireland, Israel, Canada, Czech Republic, Luxembourg <http://bit.ly/cg6GfN>.

43 Spain, Norway, Japan, Slovenia, Slovakia, Switzerland, Sweden, Ireland, Czech Republic.

44 For more information, see <http://bit.ly/b8FWCN>.

45 Pakistan.

46 China.

47 China, Iran.

Rather, after being accused of war crimes and possible

crimes against humanity in the Goldstone Report, the Human Rights Council's investigation into the Gaza military operations in late 2008, Israel appears resistant to any UN-sponsored investigation.

*A PRST reflects the consensus of the Council's 15 members, but is not legally binding.

Sri Lankan Government attempts to evade accountability

In June 2010, in response to the Government's failure to undertake their own accountability processes, the UN Secretary-General appointed a three member panel to advise on 'accountability issues' in post conflict Sri Lanka. The panel will not investigate individual allegations of misconduct during the conflict, but advise the Secretary-General on best practices to implement the commitment on accountability made in a joint statement with the Prime Minister of Sri Lanka in May 2009. The panel has met with opposition from the Government of Sri Lanka.

The Minister for housing led a group of hundreds of pro-government protesters that surrounded the UN's Colombo office, harassed staff and forced its closure. The Secretary-General described the Sri Lankan authorities' tacit support for the protesters and failure to ensure the UN could continue its work in the country as 'unacceptable' and recalled the UN's most senior official in the country. He also shows no signs of caving into pressure from the powerful 118-member Non-Aligned Movement, which has condemned the advisory panel as an infringement on Sri Lanka's sovereignty and beyond the legal mandate of the Secretary-General.