

COUNCIL MONITOR

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Overview

The Human Rights Council (the Council) did not meet in plenary in the morning. Instead, States discussed informally the draft resolutions to be tabled at this session. The afternoon was dedicated to a panel discussion on missing persons, as decided in Council *Resolution 7/28*. Speakers reiterated the importance of taking a holistic approach to this issue and emphasised that the focus should be on reinforcing existing mechanisms rather than creating new ones. State-specific comments, made in spite of the moderator's caveat, led a number of delegations to exercise their right of reply.

During the day, France, on behalf of the European Union (EU), convened informal consultations on its draft resolution on the 'situation of human rights in Sudan'. The majority of States that spoke endorsed the resolution and strongly supported the extension of the mandate.

Panel discussion on missing persons

In its *Resolution 7/28*, the Council decided to hold a panel discussion on missing persons, and also requested 'the High Commissioner [for Human Rights] to prepare a summary of the panel's deliberations with a view to subsequently charging the Advisory Committee, at the same session, with the preparation of a study on best practices in the matter'.¹ The panel was moderated by Ambassador Luis Alfonso de Alba, and comprised of six speakers working in the legal and academic fields, as well as representatives of civil society.²

¹ Paragraph 11, A/HRC/RES/7/28. Available at www2.ohchr.org/english/bodies/hrcouncil/7session/final_resolutions.htm.

² The members of the panel were Dr Vefaeddin Ibayev, Judge of the Supreme Court of Azerbaijan, Ms Karine Minasyan, Director of the Human Rights Center for Prisoners of Wars, Hostages and Missing in Action, Ms Cordula Droege, Legal Adviser, Legal Division of the International Committee of the Red Cross, Mr Marco Sassoli, Professor, Geneva Academy on Human Rights and

Opening statements

In her introductory remarks, Ms Kyung-wha Kang, Deputy High Commissioner for Human Rights, urged that in its consideration of missing persons, the Council include discussions on victims of forced disappearances and families of those who are missing. She stressed the material deprivation and economic destitution which often touches the family members of missing persons. Ms Kang drew attention to the fact that the majority of cases of disappearances remain unreported because of fear of reprisal or because of lack of cooperation. Furthermore, she noted that victims of enforced disappearance are often subjected to extrajudicial killings, torture, arbitrary detention, and other acts which ‘may amount to crimes against humanity’. Ms Kang called on States to ‘honour the 60th anniversary’ of the *Universal Declaration of Human Rights* by ratifying all core international human rights treaties, including the *International Convention for the Protection of All Persons from Enforced Disappearance*.³ Ms Kang also highlighted the need to put an end to discrimination and impunity to tackle enforced disappearances.

The opening statements by the panellists reiterated many of the points raised by Ms Kang. These included the interrelationship between missing persons and enforced disappearances, the need to take into consideration the rights of the family members of missing persons⁴ and the need for cooperation to resolve cases.⁵ The panellists also focused on the importance of taking a holistic approach to this issue, including by involving a wide range of governmental and non-governmental actors,⁶ as well as action through various national, regional, and international mechanisms.⁷ Several panellists encouraged the Council to make more efforts in creating political will to address this issue.⁸ Dr Vefaeddin Ibayev specifically welcomed the draft resolution on the right to truth by Argentina.⁹ The panellist generally agreed that far fewer people will go missing if international humanitarian law and international human rights law are fully respected in situations of armed conflict.¹⁰

Interactive dialogue

Echoing the opening statements, Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), argued that the issue of missing persons would not exist if international humanitarian law and human rights law are fully implemented domestically.¹¹ Morocco emphasised the importance of education and training in these two areas of law. In her concluding remarks, Ms Kathyne Bomberger agreed and added that training individuals to collect and record information at grave sites should also be a priority for governments.

Cyprus was concerned in particular about the ‘state of limbo’ that families suffer when no information is known. Pakistan and Azerbaijan raised particular concern about women and children who are significantly affected by this. Greece recommended adequate reparations to victims and their families. The NGO Al-Hakim drew the panel’s attention to the particular situation of Muslim women, who cannot remarry unless death of

International Humanitarian Law, Mr Michel Veuthey, Professor, Vice-President of the International Institute of Humanitarian Law, Ms Kathyne Bomberger, Director-General of the International Commission on Missing Persons.

³ Available at www2.ohchr.org/english/law/disappearance-convention.htm.

⁴ Ms Droege, Dr Ibayev, Ms Minasyan, Mr Sassoli, Mr Veuthey, Ms Bomberger.

⁵ Ms Droege, Ms Minasyan, Mr Sassoli.

⁶ Ms Minasyan, Mr Veuthey, Ms Bomberger.

⁷ Ms Droege, Dr Ibayev, Ms Minasyan, Mr Sassoli, Ms Bomberger.

⁸ Ms Minasyan, Mr Sassoli, Ms Bomberger.

⁹ A/HRC/9/L.23, available at www2.ohchr.org/english/bodies/hrcouncil/9session/resolutions.htm.

¹⁰ Ms Droege, Dr Ibayev, Mr Sassoli, Mr Veuthey.

¹¹ Supported by Pakistan, France, Greece.

her husband is officially declared. Ms Bomberger replied that domestic laws should grant citizens the right to remarry,¹² while Mr Marco Sassoli said that this is a practical issue inherent in the right to information.

States affirmed their support for the *International Convention for the Protection of All Persons from Enforced Disappearance*,¹³ while the International Movement against Discrimination and Racism (IMADR) urged States to ratify this Convention. Moreover, several States and one NGO emphasised the importance of the passing of the draft resolution on the right to truth, tabled at the present session by Argentina.¹⁴ In response, Mr Sassoli reminded the Council that the right to truth already exists, but is not being implemented.

The Advisory Committee on Human Rights of Morocco, a national human rights institution, reiterated the need for technological advancement to aid investigations. Ms Bomberger agreed and stated that advancements have occurred. Mr Sassoli stressed that this is not a technological issue, but a political one. Ms Droege added that this is a humanitarian problem and a question of political will, a theme that was also raised by Azerbaijan. Greece stated that the best method of combating the issue of missing persons is to end causes of international armed conflict. Mr Michel Veuthey agreed that establishing peace would alleviate the situation.

Other remarks raised included the need to share best practices and encourage the participation of civil society, mentioned by Morocco. Mr Veuthey agreed, recognising that civil society is closest to this phenomenon, especially at the local level. Ms Bomberger stated that this requires organisations to work directly with victims and their families. The European Union for Public Relations raised its concern for the treatment of civilians and stressed the need for prompt and impartial investigations.

Concluding remarks

In their concluding remarks, the panellists reiterated their call for the better implementation of existing law and machinery to address the issue of missing persons.¹⁵ They also repeated the necessity of involving civil society, especially families of victims, in initiatives on this matter.¹⁶ Mr Marco Sassoli cautioned about the importance of proceeding step by step, taking into account political considerations. Dr Ibayev underscored the need for supervisory mechanisms for the international law norms, and suggested that the Human Rights Council Advisory Committee be given ‘a mandate for special machinery designed to discuss this subject and to ensure supervision and monitoring as to the implementation of these requirements’. Mr de Alba expressed his satisfaction with the discussion that had taken place, declaring that it had cleared some uncertainties and brought greater awareness on the issue of missing persons.

Rights of reply

Despite Mr de Alba’s repeated warnings throughout the dialogue to only speak generally on the topic, a number of States and NGOs commented on specific situations. Such remarks predictably led a number of delegations to exercise their right of reply. These statements, in turn, incited other delegations to partake in the standard exchange of accusations. Algeria, Syria, Sri Lanka, and Morocco exercised their rights of reply.

Informal consultations

Sudan

¹² Echoed by Dr Ibayev.

¹³ Cyprus, Greece, Argentina.

¹⁴ Cyprus, France, Azerbaijan, Argentina, Latin American Committee for the Defence of Women’s Rights

¹⁵ Mr Veuthey, Mr Sassoli, Ms Droege.

¹⁶ Ms Droege, Mr Veuthe.

France (on behalf of the EU) convened informal consultations on its draft resolution on the ‘situation of human rights in Sudan’. The draft resolution addresses the substantive issues related to human rights in the Sudan and seeks to extend the mandate of the Special Rapporteur on the Sudan for another year.

The discussion remained very general with no specific comments on the text. The majority of States that spoke endorsed the resolution and strongly supported the extension of the mandate.¹⁷ Notably, Chile explained how it had benefited from the first country specific special procedures mandate in the 1980s during the dictatorship in that country. However, Egypt (on behalf of the African Group) and the Sudan expressed serious reservations about the approach. Egypt (on behalf of the African Group) explained that it did not want to see any protection gap. At the same time it argued that the Sudan is ‘over-monitored’ with the presence of peace-keeping missions and OHCHR monitors. It noted that the African Group had proposed a number of alternatives to the Special Rapporteur’s mandate but that none had been acceptable to the EU. These included that the President of the Council or the High Commissioner for Human Rights would take over the responsibilities of the Special Rapporteur. It also suggested that a new mechanism could be set up next year to follow up on the recommendations of the Experts Group on Darfur.

Egypt (on behalf of the African Group) and the Sudan argued that the resolution did not adequately reflect the situation on the ground. There were a number of achievements in the Sudan as a result of the Government’s cooperation. It underlined the importance of reaching consensus and of avoiding confrontation and politicisation. The Sudan threatened an end to its cooperation and constructive dialogue with the Council if some States continued to insist on extending the mandate. But it stated that it would be open to any mechanism that would continue to ensure its cooperation. Australia commented that a lack of cooperation was not a compelling reason to change the format of the mandate, and that it should continue to be a Special Rapporteur.e

Sudan argued that the mandate had been extended for one year in December 2007 and would naturally end after one year. In response, Australia noted that the natural end of the mandate is not December 2008 but when the situation has improved. It also underlined that the Council’s response to the situation in the Sudan is a test case for its credibility.

¹⁷ Norway, Australia, New Zealand, Canada, Chile, United Kingdom.

COUNCIL MONITOR STAFF

Paul Dziatkowiec, Human Rights Officer
Eléonore Dziurzynski, Communications Officer
Michael Ineichen, Human Rights Officer
Yuri Saito, Fellow
Gareth Sweeney, Deputy Manager
Katrine Thomasen, Manager International Programme

Contributors

David Björnhage, Intern
Lauren Gecuk, Intern
Birte Mackeprang, Intern
Marita Swain, Intern
Rebecca Whelan, Intern

ABOUT THE PUBLICATION

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