

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

ANALYTICAL OVERVIEW HUMAN RIGHTS COUNCIL, 9TH SESSION

Overview	1
OHCHR and the Council	2
Universal periodic review	3
Interaction with thematic special procedures	4
Follow-up to the special session on the global food crisis	7
Racism, racial discrimination and related intolerance	7
Country focus	9
Advisory Committee	16
Other significant discussions and outcomes	17
Next steps	22

Overview

During its 9th session, the Human Rights Council (the Council) focused on the remaining reviews, and extension, of several country mandates. As in the past these discussions were often divisive and highly politically charged. The mandate of the Independent Expert on Liberia was discontinued without much discussion after the main sponsor (the United Kingdom) decided that the mandate had run its course. The renewal of the mandates on Burundi and the Sudan proved very difficult. Although they were both extended their future remains uncertain especially in light of the extension of the mandate for only six months in the case of the Special Rapporteur on the Sudan, and for the Independent Expert on Burundi until the establishment of a national human rights commission. The Council also extended the mandate of the Special Rapporteur on Cambodia and the Independent Expert on Haiti.

The Council also completed the review of its thematic special procedures and extended the mandates of the Special Rapporteur on toxic waste and the Working Group on people of African descent. The only special procedures mandate that has not been subject to the ‘review, rationalisation and improvement’ process is the Special Rapporteur on the occupied Palestinian territories. With the institution-building process finally concluded, the Council should be able to fully turn its attention to substantive human rights issues. However, institutional issues may continue to afflict the Council’s work as some States continue to seek to weaken the Council. At this session, the Council adopted what appeared to be an unnecessary decision on the format of the reports emanating from the universal periodic review in an attempt to put to rest the controversial adoption of these reports at its previous session.

The Council adopted 26 decisions and resolutions with only three going to a vote.¹ Consensual decision-making has characterised the Council's work from its first days and proved its merit, and necessity, during the institution-building phase. However, its shortcomings have also been demonstrated by several decisions based on the lowest common denominator. This was particularly seen at this session's decisions on the mandates on Burundi and the Sudan. Members of the Council must start demanding more than the lowest common denominator from the Council's decisions to fulfil its mandate of promotion and protection of human rights.

OHCHR and the Council

The new High Commissioner for Human Rights, Ms Navanetham Pillay addressed the Council for the first time after taking up her post on 1 September 2008. She committed herself to an open and frank relationship with the Council. Many States welcomed this commitment.² While States recognised that this was not the time to discuss in detail the relationship between the Office of the High Commissioner for Human Rights (OHCHR) and the Council, many already addressed this topic. It seems that Ms Pillay will not have much respite before having to confront a topic that has been plaguing the Council's debates for quite some time. It is expected that the session of the Third Committee of the General Assembly currently under way in New York will discuss the human rights component (Programme 19) of the UN's proposed strategic framework for the period 2010-2011.³ It is thought that this could provide a trigger for the debate on the relationship between the Council and the OHCHR in the General Assembly. At this point it is not known when the issue will reappear in the Council's debate but it can be expected to be discussed as early as the March 2009 session.

The High Commissioner asserted that 'impartiality in the operation of the system' and universal and equal application of human rights standards without political considerations are of greatest importance to the effective functioning of the human rights system. She also emphasised that all States must 'wholeheartedly participate in, give effect to, and take full ownership of human rights processes and agendas'. In this regard, she specifically warned that differences of view in relation to the Durban Review Conference should not be a pretext for inaction in the fight against racism. She urged those States that have distanced themselves from the review conference to reconsider their position, and pledged to do everything possible to bring everyone to the table. Many States welcomed the High Commissioner's strong commitment to the review conference.

Ms Pillay drew on her personal experiences in apartheid South Africa and as a judge dealing with war crimes in relation to many of the topics she addressed, including racism, gender inequality, and prevention of genocide. Few States commented on these issues while many NGOs focused on specific challenges to the international human rights system and the full enjoyment of human rights everywhere, including discrimination against lesbian, gay, bisexual, and transgender persons, the situation of women, terrorism, freedom of expression, and racism and the Durban Review Conference.

Not surprisingly, Ms Pillay did not make any reference to particular human rights situations of concern in this first address. It will be interesting to see how the High Commissioner will approach country situations of concern in the future as this remains one of the most sensitive issues in the Council. Notably, Ms Pillay suggested that the High Commissioner is in a unique position to assist governments in the promotion and protection of human rights, including through the expansion of field offices. She explained that it is at the country level that OHCHR can more easily cooperate with governments and provide protection to victims.

¹ Resolutions on human rights and unilateral coercive measures, on human rights and international solidarity, and on follow up to resolution S-3/1: human rights violations emanating from Israeli military incursions in the occupied Palestinian territory and the assault on Beit Hanoun.

² South Africa, China, Indonesia, India, Philippines, Malaysia, Bangladesh.

³ Contained in A/63/6 (Programme 19). The strategic framework is the principal policy directive of the United Nations, which serves as the basis for programme planning, budgeting, monitoring and evaluation, with effect from the biennium 2010-2011.

OHCHR country engagement strategy and offices drew many comments from States. Some expressed general or region-specific support for OHCHR's presences around the world.⁴ Others were more conservative with Egypt (on behalf of the African Group) suggesting that country engagement strategies should be developed through a structured and transparent process with States, ideally following a study by an independent expert.

In commenting on her broader vision for the work of OHCHR, Ms Pillay stated that guided by the principles of impartiality, integrity and independence, she would follow in the footsteps of her predecessors in shaping the Office as a 'springboard for the betterment and welfare of all'.

Universal periodic review

Selection of order of review and troika members

The Council decided the order of review of States for the 4th, 5th and 6th sessions of the universal periodic review (UPR) and selected the troikas for the 3rd, 4th and 5th sessions.⁵ Unlike the first drawing of lots in February 2008,⁶ there were no particularly notable configurations among the troikas drawn.⁷ Among the more notable trends during the selection of troikas by the 48 countries under review was the overwhelming tendency of Asian States to request that a member of their own regional group be represented in the troika, as is permitted under the selection process. For their part, the members of the Western European and Others Group upheld their pledge not to demand to draw one troika member from their own group, not to reject any troika member for its own review or refuse to act as a troika member for any State under review. African States were split in their approach,⁸ while Latin American and Caribbean countries tended toward not requesting a member of its regional group, with the exception of Cuba and Belize.

Following the first two rounds of the UPR, which exposed the absence of a real 'facilitating' role for the troika members in the UPR process, as intended by the institution-building package, the second round of troika selections played out as a purely formal exercise.

Presidential statement on UPR reports

The session also saw the Council's adoption of a Presidential statement to 'ensure the smooth adoption of future reports relating to the universal periodic review'.⁹ This statement was the outcome of negotiations facilitated by the Ambassador of Mexico, Mr Luis Alfonso de Alba, following a lack of agreement on the format of the Council's report of the 8th session. At the core of this disagreement was the manner in which the consideration of UPR reports would be summarised.¹⁰

⁴ Italy, United Kingdom (UK), Switzerland, Austria, New Zealand, Australia.

⁵ For a review of the selection process, see ISHR's *Daily Update* of 8 September 2008 at http://www.ishr.ch/index.php?option=com_docman&task=doc_download&gid=61&Itemid=

⁶ See 'Resumed Organizational Meeting Regarding Selection Of Troikas For The Universal Periodic Review, 25 February 2008' for an explanation of the process and a summary of the selection of troikas for the 1st and 2nd sessions of the UPR, available at www.ishr.ch.

⁷ Notable configurations included Egypt, Russian Federation, Bangladesh as the troika for the United Kingdom, and the objection of Pakistan to being a troika member to the review of India.

⁸ With Botswana, Burundi, Burkina Faso, Cape Verde, Mauritius, Chad, Congo, and Comoros requesting a troika member from Africa and Cameroon, Djibouti, Nigeria, Senegal, and the Central African Republic not making such a request.

⁹ President's statement on follow-up to President's statement 8/1, available on the OHCHR extranet, at <http://portal.ohchr.org/>. The OHCHR extranet can be accessed (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

¹⁰ See note of the Facilitator to the President, 28 July 2008, on the OHCHR extranet, at <http://portal.ohchr.org/>.

The Presidential statement decided that the report of the session of the Council adopting the outcome of the reviews would comprise of a summary of the views expressed by the State under review, a summary of the views expressed on the outcome by Member and observer States of the Council, and a summary of general comments made by other relevant stakeholders. It was decided that this section would be limited to 3,210 words per country reviewed. In a concession to Egypt (and presumably the African Group), it was also agreed that statements ruled out of order would be dealt with ‘according to the rules of procedure of the Council’. It was further decided that ‘written views on conclusions and/or recommendations, voluntary commitments, and replies presented by the State under review’ after the session of the Working Group would be included as an addendum to the report of the UPR Working Group, also limited to 2,635 words. Following the acrimony around the adoption of the report of the 8th session, the adoption of the President’s statement, hopefully, brought a welcome conclusion to finalising the various procedural elements of the UPR process.

General debate on the UPR

The general debate on the UPR was overshadowed by disputes over the scope of debate under Item 6 (universal periodic review), and whether the debate could be used to provide updates on the implementation of UPR recommendations. Egypt (on behalf of the African Group) and Pakistan, on behalf of the Organisation of the Islamic Conference (OIC) were forceful in insisting that ‘no efforts should be made to create new layers of review or follow-up’¹¹ while India and Nigeria emphasised that the periodicity of review was every four years and no less. China urged the Council to ‘faithfully implement’ the institution-building text and refrain from ‘re-interpreting’ it by transforming the general debate into ‘another debate on country situations’. Switzerland and Romania, on the other hand, used the space provided to outline initiatives already undertaken in follow-up to their reviews, while Mexico detailed its preparation for its upcoming review in February 2009. Aside from interventions favouring this approach, several NGOs also used the space under Item 6 to request that UPR recommendations be specific and action-oriented, that more sincere efforts be made to engage with civil society (particularly in Asia), and that the UPR process should be rooted at the national level.¹²

There was no clear outcome to the debate on the scope of Item 6, and this debate is likely to continue in subsequent sessions of the Council. A broad general debate under Item 6 to assess the development of the UPR mechanism as a whole and any developments related to the UPR process, including follow-up is necessary for the effective functioning of the process. The institution-building text clearly provides, under a section dealing with follow-up to the UPR, that the Council should have a standing agenda item to discuss the UPR. Nevertheless, it is apparent that a group of States continue to seek to weaken the Council’s mechanisms, including the UPR, in complete disregard of the institution-building text.

Interaction with thematic special procedures

During the session the Council held interactive dialogues with six thematic mandates and reviewed two mandates (the Working Group on people of African descent and the Special Rapporteur on toxic waste). It also appointed four new mandate holders.

Toxic waste

The Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Mr Okechukwu Ibeanu, presented his report to the Council, including on his visit to Tanzania in January 2008.¹³

¹¹ See ISHR’s *Daily Update* of 17 September 2008.

¹² Human Rights Watch, Forum Asia and Amnesty International respectively.

¹³ A/HRC/9/22. For more information on the debate, see ISHR’s *Daily Updates* of 9 and 10 September 2008.

States and NGOs expressed their concern about the disproportionate effect that illicit movement and dumping of toxic waste have on the environment and on the enjoyment of human rights, particularly the right to health, in developing countries.¹⁴ Several speakers supported the renewal and expansion of the mandate of the Special Rapporteur to cover any movement of toxic waste,¹⁵ and also called for more resources to be made available to this mandate.¹⁶

Indigenous people

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Mr James Anaya, presented his first report to the Council as well as mission reports to Brazil and.¹⁷ He stressed that human rights of indigenous people were no different to the basic human rights of all human beings. The report focused on an analysis of the *United Nations Declaration on the Rights of Indigenous Peoples* and the application of relevant international human rights instruments to the situation of indigenous peoples. He listed indigenous languages, transnational corporations, and recognition of legal systems as three areas of particular interest for his future work.

Several States and NGOs focused on violence against indigenous women and protection of indigenous children.¹⁸ Some States took the opportunity to highlight the progress they have made in improving the situation of indigenous people. However, several NGOs contradicted the States' positive self-assessment.¹⁹

States also inquired about the cooperation between the Special Rapporteur and other UN bodies, in particular the newly established Expert Mechanism on the rights of indigenous peoples.²⁰ Mr Anaya assured that he had refrained from developing concrete plans of action to avoid any overlap and announced that he would attend the session of the Expert Mechanism in early October 2008.

Sale of children

Ms Najat M'jid Maala, the Special Rapporteur on the sale of children, child prostitution and child pornography, presented her first report to the Council.²¹ She focused on the methodology that will guide her mandate. She declared that she will integrate a gender and HIV/AIDS dimension into her work. Ms Maala announced the three thematic studies she will undertake, namely on child pornography, the sale of children's organs, and the sale of children for the purpose of adoption. These areas of study were welcomed by several States.²² The Special Rapporteur also underlined the importance of follow-up for improving the situation on the ground – noting that visits and reports could not be an end in themselves, and required further action, for example through the UPR mechanism.

Contemporary forms of slavery

Ms Gulnara Shahinian, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, presented the first report of this newly established mandate to the Council.²³ She presented three main areas on which she intends to focus: forced labour, domestic labour, and child labour. Ms

¹⁴ Pakistan (on behalf of the OIC), Bangladesh, Nigeria, Ghana, Kenya, FIDH.

¹⁵ Bangladesh, Algeria, FIDH.

¹⁶ Pakistan (on behalf of the OIC), Bangladesh, FIDH.

¹⁷ A/HRC/9/9. For more information on the debate, see ISHR's *Daily Updates* of 9 and 10 September 2008.

¹⁸ Canada, Guatemala, Kenya, New Zealand Human Rights Commission, International Federation of Human Rights Leagues.

¹⁹ Colombian Commission of Jurists, Centre on Housing Rights and Evictions, Commission of the Churches on International Affairs of the World Council of Churches.

²⁰ Canada, Philippines, Peru.

²¹ A/HRC/9/21. For more information on the debate, see ISHR's *Daily Update* of 10 September 2008.

²² France (on behalf of the EU), Sweden, Nigeria, Uruguay.

²³ A/HRC/9/20. For more information on the debate, see ISHR's *Daily Update* of 10 September 2008.

Shahinian stressed that cooperation is the key to the effective development of strategies to combat slavery at national, regional and international levels, in conjunction with raising awareness and enhancing knowledge of the modern forms of slavery. Egypt (on behalf of the African Group), supported by Pakistan (on behalf of the OIC), urged Ms Shahinian to include forced prostitution in her focal areas.

International solidarity

Though Mr Rudi Muhammad Rizki, the Independent Expert on human rights and international solidarity was unable to present his report to the Council,²⁴ it was read on his behalf. In his statement, Mr Rizki, urged States not to ‘conflate international cooperation with international development assistance’, as the latter is just one part of the former. The Independent Expert recalled that he had been mandated to prepare a draft declaration on the rights of peoples and individuals to international solidarity. To this effect, the report contains also a draft questionnaire for States, international organisations and NGOs with which the Independent Expert intends to identify ‘basic parameters of the principle of international solidarity and human rights’. Pakistan (on behalf of the OIC) requested that the Independent Expert provide more clarity about the questionnaire attached to his report, and suggested the Council should have a dialogue on this issue to ensure a common understanding of the issues involved.

A resolution requesting the Advisory Committee to provide input to the elaboration of the draft declaration on international solidarity was adopted by vote; 33 in favour, 13 against, and no abstentions.²⁵ The EU expressed its long-standing opposition to the concept of international solidarity in the context of human rights law.

African Descent

The Council reviewed the mandate of the Working Group of experts on people of African descent, which was created in 2002 as a follow-up mechanism to the 2001 World Conference against Racism held in Durban. South Africa (on behalf of the African Group) as the main sponsor of the mandate pointed out that the Working Group was of continued relevance, and called for a renewal of the mandate for a further three years. In the following short interactive dialogue all delegations that took the floor supported the extension of the mandate. However, France (on behalf of the EU) pointed out that although the Working Group was mandated to undertake country visits, it had only visited Belgium. It called on the Working Group to visit a broader range of countries, since discrimination against people of African descent happens in all regions of the world. Brazil called on the Working Group to continue its high level of interaction with NGOs in its work.

The draft resolution extending the mandate of the Working Group for a further three years was adopted by consensus.²⁶ In the past the EU did not support the resolution as it believed that all persons are equally entitled to protection from discrimination. The EU joined consensus on the text since it now specifies that any measures adopted must be applicable to all persons.

Appointment of the mandate holders

The President presented his nominations for the appointment of outstanding mandate holders. These were: Ms Monorama Biswas (Bangladesh) and Ms Mirjana Najcevska (Macedonia) to the Working Group of experts on people of African descent; Mr Olivier de Frouville (France) to the Working Group on enforced or involuntary disappearance; and Ms Catarina de Albuquerque as the Independent Expert on the issue of human rights and safe drinking water. These were approved by the Council without any comment from States. Amnesty

²⁴ A/HRC/9/10.

²⁵ Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Slovakia, Slovenia, Switzerland, Ukraine, UK voted against.

²⁶ Resolution 9/14.

International commented that the Consultative Group had improved its working methods considerably.²⁷ It drew particular attention to the information provided by the Consultative Group on each candidate, and about the inclusion of a list of considered candidates as annexes to the report. Amnesty International encouraged the Consultative Group to further improve the selection process by elaborating specific criteria for each mandate, taking into account the views of outgoing mandate holders, and to consider the need for gender balance across the entire special procedures system.

Follow-up to the special session on the global food crisis

In follow-up to the Council's special session held in May 2008,²⁸ Mr Olivier de Schutter, the Special Rapporteur on the right to food, presented his report 'on the impact of the global food crisis on the protection of the right to food, and required remedies from a human rights perspective'.²⁹ Mr de Schutter stressed that the issue at hand is accessibility to food, not its availability. He declared that 'solutions to the food crisis will only be sustainable if our strategies are grounded on human rights' and that States bear the primary responsibility for the crisis.

Regarding the causes of the crisis, States mentioned speculation,³⁰ agricultural subsidies,³¹ and biofuels.³² Practically all States and NGOs stressed the need to increase international cooperation to deal with the crisis. Egypt (on behalf of the African Group) referred to States' 'legally binding obligation to international cooperation and assistance', while Pakistan (on behalf of the OIC) described the current level of aid to developing countries as 'seriously inadequate'.³³ Other States went further, calling for a system of global governance to better realise the human right to food, including through reassessing the international trade mechanisms.³⁴ There was general agreement on the need for greater coordination within the UN system and on the role of the Council in promoting a human rights perspective in relation to the UN's response to the world food crisis.³⁵ The follow-up was little more than a repeat of the statements made at the special session. The resolution adopted at this session, however, contributed new recommendations such as investment in agriculture, and stressed the need for States to meet the food needs of their own populations, especially vulnerable groups.³⁶

Racism, racial discrimination and related intolerance

Racial discrimination was discussed in relation to the regional preparatory meetings for the Durban Review Conference to be held in April 2009 and in the context of the report of the Special Rapporteur on racism.

Brazil and Nigeria reported on the regional preparatory meetings for the Durban Review Conference held by the Group of Latin American and Caribbean States (GRULAC) in Brazil in June 2008 and by the African Group in Nigeria in August 2008.³⁷ GRULAC members especially expressed their concern for the rights of

²⁷ Please see *Resolution 5/1* for details on the selection process.

²⁸ ISHR's report on the special session is available at www.ishr.ch/hrm/council/cmreports/specialsessions/7_special_session.pdf.

²⁹ Para 8, A/HRC/S-7/1, available at www2.ohchr.org/english/bodies/hrcouncil/specialsession/7/index.htm.

³⁰ Cuba, Egypt (on behalf of the African Group), Luxemburg.

³¹ India, Pakistan (on behalf of the OIC), Venezuela, Algeria.

³² India, Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), Yemen.

³³ Supported by Saudi Arabia.

³⁴ Indonesia, Morocco, Chile.

³⁵ Cuba, India, France (on behalf of the EU), Republic of Korea, Brazil, Mexico, Senegal, UK.

³⁶ *Resolution 9/6*.

³⁷ For more information, see <http://www2.ohchr.org/english/issues/racism/DurbanReview/regional.htm>.

indigenous people, people of African descent, migrant workers, and individuals whose rights are violated on the ground of sexual orientation or gender identity. At the regional meeting in Nigeria, States discussed prevention and education strategies, and reiterated the importance of effective cooperation between Governments, NGOs, and civil society at large in the identification of good practices to combat discrimination. In the ensuing general debate, Egypt (on behalf of the African Group) urged all regions that have yet to do so to organise regional preparatory meetings. Many States listed areas of concern that, in their view, ought to be addressed at the Durban Review Conference. These included migration,³⁸ genocide,³⁹ and fascism.⁴⁰ The most prominent theme was religious intolerance,⁴¹ in particular Islamophobia. A number of delegations insisted on the need to redress the balance between freedom of religion and belief on the one hand, and freedom of expression on the other hand.⁴² Algeria repeated its appeal to the High Commissioner to consider appointing an executive director to prepare the Durban Review Conference.

Mr Githu Muigai, the new Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, presented his report on ‘the manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights’ prepared by his predecessor Mr Doudou Diène. The report contains a summary of Mr Diène’s work presented to the Council in the past, most recently during the 6th session of the Council in September 2007. The report calls for the focus to shift from the idea of ‘defamation of religions’ to the legal concept of ‘incitement to national, racial and religious hatred, hostility and violence’, which is grounded in international legal instruments. Mr Muigai affirmed that a ‘legal response alone is far from sufficient’ to eliminate hate speech and incitement to violence and that ‘the best strategic response to hate speech is more speech’. He called for a strengthening of education and information about cultural differences to help combat intolerance and discrimination and promote diversity.

The interactive dialogue with the Special Rapporteur and the following general debate showed clearly the different view points in relation to the delineation between freedom of expression and incitement to national, religious and racial hatred. The interactive dialogue focused primarily on the concept of ‘defamation of religion’ and the relationship between the right to freedom of expression and the right to freedom of religion and belief. There was a familiar divide between States that emphasised the need to limit freedom of expression to prevent racial and religious intolerance, and others that did not accept ‘a right to have a religion free from criticism or ridicule’.⁴³ The majority of States agreed that intolerance had to be combated, but views on the ways to achieve this differed.

Pakistan (on behalf of the OIC) and others felt that there is currently a legal vacuum, which creates a favourable environment for intolerance.⁴⁴ They called for the legal gap to be filled with further legislation at the international and domestic levels to reduce intolerance, prejudice and xenophobia. Some States emphasised the dangers of unlimited freedom of expression. Egypt, in its national capacity, argued that ‘legal pretexts’ were being used to not seriously deal with ‘defamation of religions’. It was notable that the African Group did not make a group statement on this issue.

In contrast, other States argued that sufficient legislation was already in place and that there was no need for new standards.⁴⁵ Several States also welcomed the suggested change of focus away from the concept of defamation of religions towards the legal concept of incitement to religious hatred.⁴⁶

³⁸ Brazil, Indonesia.

³⁹ South Africa, Rwanda.

⁴⁰ Russian Federation, China.

⁴¹ Democratic Republic of the Congo (DRC), Holy See, Libya, Iran, Syria, China.

⁴² DRC, Libya, Iran, Syria.

⁴³ Australia.

⁴⁴ Azerbaijan, Kenya, Venezuela.

⁴⁵ France (on behalf of the EU), Belgium, Australia.

Despite the fundamental disagreement about the best way to approach the issues, all States welcomed the seminar on the links between articles 19 and article 20 of the ICCPR organised by OHCHR, which took place on 2 and 3 October 2008.⁴⁷ It is hoped that the seminar could bring a greater common understanding among States of the scope of these provisions.

Country focus

For the first time the interactive dialogues with country specific mandate holders were grouped together, namely with the Independent Experts on the situation of human rights in Burundi, on Somalia and on Liberia, respectively. This resulted in less time for each dialogue and was a regrettable departure from past practice. Hopefully this procedure will not be followed in the future. Rather, the Council should consider extending its usual practice of individual interactive dialogues with country mandates to the thematic special procedures as well. Regrettably, two of the mandate holders (the Independent Experts on Liberia and on Burundi) could not be present due to the significant delay in holding the dialogues, which several States deplored. If the interactive dialogues are intended to allow mandate holders to clarify their reports for all stakeholders, and to receive guidance on the focus of their future work, it is essential that they be present during the entire dialogue.

The Council reviewed the mandate on Cambodia and considered the situation in Burundi, Liberia, Haiti, the occupied Palestinian territories, and the Sudan. It extended the mandates on Cambodia, Haiti, Burundi and the Sudan by consensus. While consensual decision-making has become well-established as the norm in the Council's work, the desire to reach a political agreement often runs counter to the needs reflected in the recommendations of the Council's independent experts and expressed by human rights defenders. This was amply demonstrated by the decisions to only extend the mandates of the Independent Expert on Burundi 'until the establishment of a national human rights commission' and of the Special Rapporteur on the Sudan for nine months.

Burundi

The Independent Expert on Burundi, Mr Akich Okola, whilst emphasising the positive cooperation of the Government, recalled a worsening human rights situation in the past year. He mentioned an increase in armed attacks, slow progress in transitional justice, high rates of sexual violence, and sluggish progress in fighting impunity. He urged the Government to establish, as soon possible an independent national human rights commission to fill the void in protection that exists at present. In its response to the Independent Expert, Burundi underlined the active efforts by the Government and argued that poverty is the only cause of human rights violations. Burundi supported the extension of the mandate of the Independent Expert 'until the independent national human rights commission is in place', asking that the mandate holder master at least one of the official languages of Burundi. All speakers were in favour of the mandate's renewal. Egypt (on behalf of the African Group)⁴⁸ again insisted that the mandate could only be extended with the support of the Government of Burundi.

During the general debate, Ghana noted an overall deterioration in the situation in Burundi and urged the Government to implement the recommendations of the Independent Expert, investigate human rights violations and bring perpetrators to justice, and establish a national human rights institution. Ghana, argued that the Council must continue to monitor the situations in Burundi, Somalia and Liberia.

⁴⁶ France (on behalf of the EU), Chile, Belgium.

⁴⁷ For more information, see http://www2.ohchr.org/english/issues/opinion/articles1920_iccpr/index.htm.

⁴⁸ Supported also by Kenya and the Democratic Republic of Congo.

The draft resolution for technical assistance and capacity building in Burundi extending the mandate of the Independent Expert was adopted by consensus.⁴⁹ The resolution, breaking precedent and the provisions of the institution-building text,⁵⁰ renews the mandate for technical assistance and capacity building only until such time as an independent human rights commission is created. The resolution provides that the national human rights commission should be established in accordance with the Paris Principles, which would guarantee a broad and independent mandate. However, the extension of the mandate ‘until the establishment of a national human rights commission’ is a dubious condition. It neglects the often difficult transitional phase when such a new body is created and the time it takes for it to become an effectively functioning institution. The assessment of whether the national commission is complying with the Paris Principles should naturally be carried out by the International Coordination Committee of national human rights institutions in the context of its accreditation process.

This outcome reflects the tenuous compromises that are made in the difficult negotiations of country-specific resolutions. The Independent Expert will report to the Council again at its 12th session in September 2009.

Cambodia

The Council reviewed the mandate of the Special Representative of the Secretary-General for human rights in Cambodia. Japan, as principal sponsor, urged the renewal of the mandate. It was extended without a vote for a further year.⁵¹ The mandate’s title was changed to ‘Special Rapporteur’ in line with similar decisions on other mandates⁵² and presumably to conform with the institution-building text’s appointment process for mandate holders.⁵³

Japan introduced the mandate by acknowledging the positive developments to combat the culture of impunity and restore the rule of law since the removal of the Khmer Rouge, namely through the Khmer Rouge tribunals. It stressed, however, that human rights challenges remain, including in relation to the fair distribution of land.

The Special Rapporteur, Mr Yash Ghai, drew attention to the democratic deficiencies in the 2008 elections, and the tense relations and difficulty of achieving cooperation with the Cambodian authorities. He quoted remarks made about him by high ranking public officials that he considered highly offensive and even racist.⁵⁴ Mr Ghai’s resigned from his mandate at this session, apparently as a direct result of these tensions.

Cambodia proudly recalled its democratic elections and its movement towards democracy. Differing views of the elections were evident in the interactive dialogue. While some States commended the peaceful elections,⁵⁵ France (on behalf of the EU) expressed its concerns that the recent elections did not comply with international standards, and that more needed to be done to relax restrictions on freedom of expression and combat impunity. Numerous NGOs mentioned the lack of independence of the judiciary, forced evictions, detention without charge, crumbling freedom of expression and non-compliance with international obligations.⁵⁶

The tone of informal consultations on the draft resolution suggested difficulties in reaching consensus with Cambodia on the extension of the mandate. The Cambodian delegation strongly pleaded with the international

⁴⁹ Resolution 9/19.

⁵⁰ Resolution 5/1, para. 60

⁵¹ Resolution 9/15.

⁵² See ISHR’s Analytical Overview of the 8th session, available at www.ishr.ch.

⁵³ See Resolution 5/1, paras. 47-53.

⁵⁴ According to Mr Ghai’s statement he had been called ‘deranged’, ‘lazy’, ‘uncivilised and lacking in Aryan culture’, and Kenyans had been referred to as ‘rude and savage’.

⁵⁵ Republic of Korea and Malaysia.

⁵⁶ Amnesty International, Human Rights Watch, Asian Legal Resource Centre, FIDH, COHRE.

community to ease its scrutiny and allow Cambodia to be a member of the Council. Japan sought to keep the negotiations non-adversarial and argued that the exercise was not finger pointing but an attempt to assist Cambodia in upholding human rights. The final resolution emphasises the progress that has already been achieved, despite limited agreement on the scope of these gains.

Haiti

The Council adopted a Presidential statement on the human rights situation in Haiti.⁵⁷ The decision extends the mandate of the Independent Expert for a further two years until 2010. This was a welcome departure from the usual one-year renewal of country mandates. The resolution urges the cooperation and financial support of the international community for the full realisation of human rights in Haiti. It also acknowledges the obstacles to development in Haiti, in particular the environmental damage and consequent food shortages caused by successive hurricanes. Canada and France (on behalf of the EU) welcomed the extension of the mandate.

Liberia

The Independent Expert on the human rights situation in Liberia, Ms Charlotte Abaka, in presenting her annual report⁵⁸ gave a positive account of progress. However she recalled grave civil rights violations, a lack of trust in the police and judiciary, and many gender-related crimes.

Due to the delay in the programme, the interactive dialogue took place several days later and without the presence of Ms Abaka. It was held in conjunction with the dialogues with the Independent Expert on Somalia and Burundi, respectively and consequently the situation in Liberia received less attention. Egypt (on behalf of the African Group) praised the human rights commitment of the Government. This contrasted with comments by Zambia questioning whether the lack of progress reflected a lack of political will to address human rights problems. Several speakers expressed particular concern about a new law reintroducing the death penalty, which the Independent Expert had highlighted.⁵⁹

The draft resolution on technical assistance and capacity building to Liberia, presented by France (on behalf of the EU) was adopted by consensus.⁶⁰ It does not renew the mandate of the Independent Expert but requests OHCHR to pursue its technical assistance in consultation with the authorities of Liberia and to report to the Council on progress made at its 12th session in September 2009.

The mandate of the Independent Expert was originally sponsored by the United Kingdom. The discontinuation of the mandate appears to be based on the EU's assessment that the human rights situation has improved sufficiently for the mandate not to be needed. The decision not to seek an extension may also relate to an unwillingness to confront the African Group on a particularly divisive and politically sensitive issue. Such a confrontation was inevitable on the mandates on the Sudan and Burundi.

Occupied Palestinian territories (Beit Hanoun)

Archbishop Desmond Tutu, who headed the mission, presented the final report of the High Level Fact Finding Mission to Beit Hanoun,⁶¹ after significant delays attributed to the lack of cooperation by the

⁵⁷ *Presidential statement 9/1.*

⁵⁸ A/HRC/9/15.

⁵⁹ France (on behalf of the EU), Amnesty International.

⁶⁰ *Resolution 9/16.*

⁶¹ The mission took place from 26 to 30 May 2008.

Government of Israel. During the interactive dialogue a number of States criticised the actions of the Government of Israel in hindering the work of the fact-finding mission.⁶²

Archbishop Tutu urged for an independent international inquiry into the human rights violations in Beit Hanoun. He concluded that the lack of a proper investigation was ‘morally and legally absolutely unacceptable’ and that what occurred in Beit Hanoun possibly constituted a war crime. He also called on the international community to implement the recommendations in the report, as its present silence ‘begets complicity’.

Israel contended that the report legitimised the Hamas stronghold, while Palestine heralded the report and defined the attack on Beit Hanoun as a war crime, which had to be addressed by the International Court of Justice and the International Criminal Court.

During the interactive dialogue a number of States concurred with Palestine that the attack in Beit Hanoun constituted a war crime,⁶³ and affirmed that Israel had stifled any inquiry into the event.⁶⁴ Algeria sought a strengthened approach urging for the report to be brought to the consideration of the General Assembly, while other States called for an immediate public investigation,⁶⁵ and reparations for victims.⁶⁶ Several States warned that the Council’s credibility was at stake in addressing this situation.⁶⁷

While Egypt (on behalf of the African Group) lauded the report’s ‘meticulous legal analysis’, France (on behalf of the EU) expressed ‘serious reservations’ about several of its conclusions, including the legal evaluation of the bombardment and the responsibilities attributed to the international community. As the one notable diverging voice it was particularly regrettable that the EU did not explain what those ‘reservations’ were.

The text of the draft resolution on human rights violations emanating from Israeli military incursions in the occupied Palestinian territories and the assault on Beit Hanoun⁶⁸ was orally revised by Pakistan before its adoption in an attempt to get the support of countries that had expressed reservations about the endorsement of the report’s conclusions. The draft resolution calls on all concerned parties to ensure the ‘full and immediate implementation’ of the reports’ recommendations. Nevertheless, it was adopted by vote,⁶⁹ 32 in favour, nine against⁷⁰ and with five abstentions.⁷¹

The five EU countries that voted against the resolution⁷² regretted the lack of open-ended consultations on the draft resolution, and explained that they were unable to ‘endorse’ the recommendations of the High Level Mission or to ‘ensure their implementation’. These countries, as well as Canada, characterised the resolution as ‘unbalanced’ and ‘one-sided’.

The debate and adoption of the resolution once again revealed disagreements between regional and other groups about how to respond to the human rights situation in the occupied Palestinian territories. Archbishop

⁶² Pakistan (on behalf of the OIC), Malaysia, Sudan.

⁶³ Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), Cuba (on behalf of NAM).

⁶⁴ Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), Cuba (on behalf of NAM), New Zealand, Sudan, Morocco, Saudi Arabia, Algeria, Bangladesh, Iraq, Sri Lanka, Sudan, Mexico.

⁶⁵ Cuba (on behalf of NAM), Pakistan (on behalf of the OIC), Algeria, Saudi Arabia.

⁶⁶ Bangladesh, United Arab Emirates and Sri Lanka

⁶⁷ Algeria, Syria.

⁶⁸ Resolution 9/18.

⁶⁹ The Netherlands called for a vote.

⁷⁰ France, Germany, Netherlands, UK, Slovenia, Slovakia, Italy, Canada, Japan.

⁷¹ Bosnia and Herzegovina, Cameroon, Republic of Korea, Switzerland, and Ukraine.

⁷² Netherlands on behalf of France, Germany, UK, Slovenia, Slovakia and Italy.

Tutu reminded the Council that the 19 dead in the attack on Beit Hanoun should not be considered statistics. He stressed that the Council was not supposed to concern itself with politics, but that its role in the world would be enhanced if people could see that it is interested in human rights.

Somalia

The Independent Expert, Mr Shamsul Bari, reported on the difficulties resulting from the weak rule of law and escalating violence in Somalia following his visit to the country and to the Horn of Africa from 28 June to 12 July 2008.⁷³ He recommended the deployment of peace-keeping troops to protect citizens given the Government's current inability to do so. Mr Bari urged for the inclusion of civil society in the peace process. Notably, Mr Bari suggested that the Council could hold a special session⁷⁴ to consider the situation in Somalia 'from a multi-dimensional perspective' and complementing the debate in the Security Council about deploying a peace-keeping force.

In response, Somalia echoed Mr Bari's concerns and requested the long-term engagement of UN peace-keeping forces to restore the rule of law and secure peace for its citizens. It attributed the present climate to a number of factors including the relationship between traditional laws and modern statehood as well as environmental factors. Somalia also appealed to the international community to support a long-term engagement of a comprehensive UN peace-keeping force to fully restore peace by enforcing the rule of law.

The interactive dialogue reflected support from the international community to strengthen efforts to implement the Djibouti Peace Agreement signed in June 2008. Several speakers encouraged the deployment of UN peace-keeping forces.⁷⁵ Ethiopia criticised the report for singling out Ethiopian troops for unjustified criticism while Yemen criticised it for neglecting the issue of Somali refugees.

Sudan

The Special Rapporteur on the Sudan, Ms Sima Samar, presented a grim report of her most recent visit to Darfur, Khartoum, and in southern Sudan in July 2008.⁷⁶ While she had recorded some positive development many interlocutors reported an 'overall deterioration' of the situation. Ms Samar mentioned among others the recruitment of child soldiers, arbitrary arrests, impunity, restrictions on freedom of expression and association, and inhumane detention conditions. Few previous recommendations have been implemented and she called on the Government to ensure impartial, transparent and comprehensive investigations into human rights violations, full and unimpeded access for UNAMID and UNMIS to all parts of the country, including prisons and detention centres, and facilitate humanitarian access. Ms Samar urged the Council to continue to closely monitor the situation in the Sudan.

The Sudan stated that its positive actions are not being adequately commended by the Council. Furthermore, it expressed regret at the omission of its comments from the Special Rapporteur's report, which were subsequently circulated amongst the members of the Council.

The interactive dialogue reflected the Council's division in relation to country mandates in general and the situation in the Sudan in particular. What emerged were two distinct accounts of the human rights situation in the Sudan. On the one hand, the Special Rapporteur, several NGOs⁷⁷ and a group of States spoke of

⁷³ The full report was not available at this session due to time constraints in ensuring its translation.

⁷⁴ The proposal for a special session was first made by Human Rights Watch in March 2008.

⁷⁵ Egypt (on behalf of the African Group), UK, Human Rights Watch.

⁷⁶ A/HRC/9/13, A/HRC/9/13/Add.1 (Report on the status of implementation of the recommendations compiled by the Group of Expert on Darfur).

⁷⁷ Amnesty International, Human Rights Watch, International Court of Jurist (ICJ)s, International Federation Of Human Rights Leagues (FIDH), World Organisation Against Torture (OMCT)

continuing serious human rights violations, including impunity, sexual and gender based violence, restrictions on freedom of expression and freedom of association, recruitment of child soldiers, and attacks on humanitarian workers. Several States voiced concerns that the Special Rapporteur was only granted limited access to particular regions and not all accompanying staff were issued visas, suggesting the Government did not fully cooperate.⁷⁸ Those States also spoke in favour of extending the mandate of the Special Rapporteur until the full implementation of her recommendations. Burkina Faso, Zambia and Uganda urged the Government to implement the recommendations of the Special Rapporteur and, in the case of Zambia, also those of the Experts Group on Darfur.

On the other hand the Sudan and several supportive States highlighted improvements in the situation, which they argued were not adequately acknowledged by the international community.⁷⁹ Throughout the session the Sudan did its utmost to portray a positive image of the human rights situation, including through several briefings by the Permanent Mission. Several States stressed the need for political solutions and dialogue with the Government and called on the international community to support the Sudan through technical and financial assistance. Egypt (on behalf of the African Group) stated that it wanted to see an end to the ‘proliferation of human rights mechanisms’ on the Sudan referring to the presence of OHCHR and the country’s examination under the UPR in 2011. It argued that the UN mandate was hindering regional and domestic mechanisms. However, Egypt (on behalf of the African Group) concluded that it would consider terminating the mandate although it would seek a consensual outcome. This was particularly interesting in light of the statement by the Sudan that the country concerned did not support the mandate. It seems that the African Group’s very principled position against country mandates that are not supported by the country concerned is less strict in relation to this mandate which many States from other regions, and probably even from within the African Group, would like to see maintained. Zambia specifically stated that any decision on a country mandate should be considered on a case-by-case basis and that there were ‘gaps’ in the promotion and protection of human rights in the Sudan.

The draft resolution on the human rights situation in the Sudan was adopted by consensus after numerous last minute oral revisions.⁸⁰ These significantly weakened the text, which was originally tabled by France (on behalf of the European Union). During the negotiations the African Group and the EU agreed to co-sponsor the draft resolution and it was noteworthy that the text was ultimately introduced by Egypt (on behalf of the African Group).

The resolution extends the mandate of the Special Rapporteur until June 2009 (for a period of around nine months), a serious departure from the one year duration stipulated by the institution-building text. France (on behalf of the EU) underlined that this decision would not constitute a precedent for future decisions on country mandates in general or on the mandate on the Sudan in particular. However, it seems to be doing just that. In an environment of what seems to be a growing momentum towards eliminating country mandates, this is a particularly regrettable decision. Not surprisingly, the Sudan welcomed the ‘partial renewal’ as a step in the right direction. The extension of the mandate in June 2009 is likely to be extremely difficult and the exact duration of the mandate (whether until the beginning or end of June) could become a contentious issue. Since the special session on Darfur in December 2007, the Council has lost much of the momentum gathered in response to the human rights situation in both Darfur and in the Sudan in general, as a result of sustained resistance to any Council action by several members of the African Group and the OIC in particular.

⁷⁸ UK, Ireland, Costa Rica.

⁷⁹ Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC), Burkina Faso, Jordan, Saudi Arabia, Bahrain, Tunisia, Qatar, Iran.

⁸⁰ *Resolution 9/17.*

Turkmenistan and the Maldives (Complaint Procedure)

Following closed session discussions on the complaint procedure, the President announced that the Council will no longer consider the human rights situation in the Maldives, but will continue its consideration of the situation in Turkmenistan. Human Rights Watch convened a parallel event addressing the human rights situation in Turkmenistan. It highlighted concerns about human rights violations and argued that the examination of Turkmenistan under the universal periodic review (UPR) mechanism in December 2008 would be inadequate to fully address the situation.

General debate on human rights situations

A number of country situations were raised by States and NGOs during the general debate on Item 4, human rights situations that require the Council's attention.

The human rights situation in the Sudan was again discussed in a similar way as the dialogue with the Special Rapporteur on that country.

The Russian Federation and Georgia blamed one another for instigating the recent conflict in South Ossetia. Georgia urged that an international inquiry be undertaken to examine the facts. The Russian Federation criticised what it saw as 'double standards' in relation to the parties to the conflict. Lithuania, Latvia, and Poland sided with Georgia while Kyrgyzstan, Kazakhstan and Belarus welcomed the role of the Russian Federation in stabilising the situation in the Caucasus. Belarus explicitly blamed Georgia for its 'provocation'. Romania, Poland and the UK as well as Human Rights Watch and the International Commission of Jurists supported the proposal for a UN fact-finding mission to Georgia.

Other situations addressed included Myanmar,⁸¹ the Democratic Peoples Republic of Korea (DPRK),⁸² Iran,⁸³ Sri Lanka,⁸⁴ Democratic Republic of Congo (DRC),⁸⁵ Zimbabwe,⁸⁶ Belarus,⁸⁷ Uzbekistan,⁸⁸ Eritrea,⁸⁹ Somalia,⁹⁰ France and Germany⁹¹, UK,⁹² and Canada.⁹³ India⁹⁴, Jammu and Kashmir,⁹⁵ Nepal,⁹⁶ China,⁹⁷ Republic of Korea,⁹⁸ Bolivia.⁹⁹

⁸¹ France (on behalf of the EU), Japan, UK.

⁸² France (on behalf of the EU), Japan, UK.

⁸³ France (on behalf of the EU), Netherlands, Canada, UK, Belgium, Bahai International Community, Fédération Internationale des Droits de l'Homme.

⁸⁴ France (on behalf of the EU), Canada, Ireland, Netherlands.

⁸⁵ France (on behalf of the EU), Switzerland, Netherlands, UK, Belgium.

⁸⁶ France (on behalf of the EU), UK, Switzerland, Canada, Ireland, Netherlands, Amnesty International, World Organisation Against Torture (OMCT), Human Rights Watch, International Commission of Jurists.

⁸⁷ Canada, UK, Poland, Lithuania.

⁸⁸ By the Netherlands, who expressed concerns about restrictions on the freedom of expression, while acknowledging the release of political prisoners.

⁸⁹ The Netherlands noted the detention of thousands of political prisoners without access to due process, violations against religious minorities, torture, and the absence of press freedom.

⁹⁰ Netherlands. FIDH called for a special session of the Council on Somalia to establish a commission of inquiry comprised of several special procedures.

⁹¹ Iran expressed particular concern about the situation of ethnic, racial, and religious minorities, and the prevalence of Islamophobia.

⁹² Iran expressed concern about counter-terrorism legislation, and the UK's treatment of detainees in Afghanistan and Iraq.

⁹³ Iran was concerned about the treatment of indigenous peoples.

⁹⁴ Franciscans International and the World Lutheran Federation, Libération.

⁹⁵ Pakistan, European Union of Public Relations.

Cuba raised concerns about the use of secret prisons and torture in the context of the ‘war on terror’, while the Russian Federation expressed concerns about the situation in Afghanistan and Iraq,¹⁰⁰ and suggested that the Council consider re-establishing special procedures for these countries.¹⁰¹ The proposal to reinstate the Special Rapporteur on Iraq was also supported by Human Rights Watch.

A high number of States took the floor to exercise rights of reply, including counter replies in the case of Georgia and the Russian Federation, India and Pakistan, Ethiopia and the Netherlands, Morocco and Algeria, and Japan and the Peoples Democratic Republic of Korea, and Zimbabwe and France.

Advisory Committee

In his oral report to the Council, Mr Miguel Alfonso Martínez, the Chairperson of the Human Rights Council Advisory Committee (the Advisory Committee), presented an update on the inaugural session held in August 2008. He assured the Council that the Advisory Committee acted ‘with full respect’ of its mandate as defined in Council *Resolution 5/1*. Nevertheless, States took this opportunity to remind the Advisory Committee that it must work in conformity with General Assembly *Resolution 60/251* and Council *Resolution 5/1*, which gave it a limited mandate.¹⁰² For instance, France (on behalf of the EU) emphasised that all actions of the Advisory Committee had to be ‘channelled through the Council’, while India stressed that the Advisory Committee must not adopt resolutions or decisions. India furthermore deplored that, in spite of a ‘clear directive from the Council’, the Advisory Committee ‘by and large followed the same measures as the Sub-Commission [for the promotion and protection of human rights]’ and insisted that this ‘needs to be rectified’.

However, States and NGOs also commented on the substantive issues dealt with by the Advisory Committee, welcoming its treatment of, among others, the right to food,¹⁰³ human rights education and training,¹⁰⁴ and studies pending from the Sub-Commission.¹⁰⁵ Some NGOs also encouraged the Council to task the Advisory Committee to work on linguistic rights.¹⁰⁶

⁹⁶ Society for Threatened Peoples in a joint statement on behalf of the Asian Forum for Human Rights and Development, the Asian Indigenous and Tribal Peoples Network, the Mouvement contre le Racisme et pour l’amitié entre les Peoples.

⁹⁷ International Commission of Jurists, Society for Threatened Peoples in a joint statement on behalf of the Asian Forum for Human Rights and Development, the Asian Indigenous and Tribal Peoples Network, Mouvement contre le Racisme et pour l’amitié entre les Peoples.

⁹⁸ Forum Asia and Lawyers for a Democratic Society.

⁹⁹ Chile, on behalf of the Latin American and Caribbean Group (GRULAC) supported an appeal by the Government of Bolivia to investigate recent killings in the Pando region, and urged OHCHR to continue to monitor the situation and provide technical support to the Government.

¹⁰⁰ Arab Lawyers Union, International Organisation for the Elimination of All Forms of Racial Discrimination, Human Rights Watch.

¹⁰¹ Belgium made the point that civilians in Iraq and Afghanistan continued to be affected by violence, and that both country situations were characterised by the absence of the rule of law.

¹⁰² France (on behalf of the EU), Pakistan (on behalf of the OIC), India, Switzerland, Russian Federation, Nigeria, Morocco.

¹⁰³ Pakistan (on behalf of the OIC), Egypt, on behalf of the African Group, Brazil, Cuba, Republic of Korea, Chile, Angola. Brazil supported the recommendation that ‘the Human Rights Council and the Secretary-General make available their good offices so as to extend the right to non-refoulement to hunger refugees’ (Advisory Committee *Recommendation 1/6*). Chile supported the proposal for a study on the rights of peasants (Advisory Committee *Recommendation 1/8*).

¹⁰⁴ Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), Switzerland (on behalf of Croatia, Italy, Morocco), Cuba, Morocco, International Organization for the Right to Education and Freedom of Education (joint statement).

¹⁰⁵ Pakistan (on behalf of the OIC), Cuba, Republic of Korea, Russian Federation, Nigeria, Angola, International Movement Against All Forms of Discrimination and Racism (IMADR). Indonesia endorsed the Advisory Committee’s proposal that these studies be followed-up, but insisted that the Council should first re-examine them.

¹⁰⁶ European Bureau for Lesser Used Languages, International Pen.

During the first session, members of the Advisory Committee seemed to assume that their recommendations would be considered by the Council at this session.¹⁰⁷ However, during the debate some States indicated that the Council would not take any decisions related to the Advisory Committee until the Council's next session in March 2009, when the Advisory Committee will submit its full report on the first session. Nevertheless, given the urgency of some of the recommendations, the Advisory Committee submitted three draft decisions for consideration by the Council at this session.¹⁰⁸ India strongly questioned this procedure and the draft decisions were postponed until March 2009.¹⁰⁹ The Council, however, adopted two resolutions directing the Advisory Committee to proceed with its work on missing persons¹¹⁰ and international solidarity¹¹¹ respectively.

The Council's decision to only consider recommendations from the Advisory Committee once a year has exposed a contradiction inherent in its *Resolution 5/1*. On the one hand, the members of the Advisory Committee are encouraged to communicate inter-sessionally. On the other hand, any additional sessions must have the prior approval of the Council. In the present case, the Advisory Committee had requested that the Council authorise some of its members to meet in January 2009,¹¹² a decision which the Council plans to consider in March 2009.

Other significant discussions and outcomes

Migrants

A draft resolution on 'human rights of migrants',¹¹³ tabled by Mexico and Guatemala, was adopted by consensus. In presenting the text, Mexico reiterated that the rights to life, non-discrimination, freedom, health and education, among others, should not be constrained by national boundaries. Predictably, the co-sponsors list comprised States that could broadly be defined as 'sending' States, whereas Western (and receiving) States were notably absent.

The issue of migration surfaced under various agenda items during the session. In the general debate on 'promotion and protection of all human rights' (Item 3), France (on behalf of the EU) justified the EU's recently agreed '*common standards and procedures for the return of illegal immigrants*' (the 'return directive') as being founded on 'solidarity, mutual trust and shared responsibilities'. Other States¹¹⁴ were critical of the EU policy. Under 'follow-up and implementation of the Vienna Declaration and Programme of Action' (Item 8), States¹¹⁵ again criticised the EU's directive, which they considered discriminatory against migrants from developing countries. France (on behalf of the EU) stressed that Europe welcomes more migrants than any other region, but had, at the same time, to counter irregular migration that could lead to trafficking and other criminal activity. Brazil pointed out that only 'through a full appreciation of the reciprocity of migration' could the principle of 'shared responsibility' work. It appears that there is little agreement on the meaning or practical implementation of the concept of 'shared responsibility'.

¹⁰⁷ The recommendations of the Human Rights Council Advisory Committee (the Advisory Committee) are included in A/HRC/AC/2008/1/L.11. See also see ISHR's 'Analytical overview of the 1st session of the Advisory Committee', available at www.ishr.ch.

¹⁰⁸ 'Realization of the right to food in United Nations refugee camps', 'Drafting group on the right to food: programme of work', and 'Official summary records'. All available on the OHCHR extranet, which can be accessed (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

¹⁰⁹ See ISHR's *Daily Update* of 24 September 2008, available at www.ishr.ch.

¹¹⁰ *Decision 9/101*.

¹¹¹ *Resolution 9/2*.

¹¹² *Advisory Committee Recommendation 1/8*.

¹¹³ *Resolution 9/5*.

¹¹⁴ Chile (on behalf of the Latin American and Caribbean Group, GRULAC), Bolivia.

¹¹⁵ Egypt (on behalf of the African Group), Cuba (on behalf of the NAM).

Indigenous peoples

The Council adopted a resolution requesting the Expert Mechanism on indigenous peoples to make proposals to the Council in 2009 and to prepare a study in 2009 on lessons learned and obstacles to the implementation of the right to education for indigenous peoples with the input of all relevant stakeholders.¹¹⁶

Protection of the human rights of civilians in armed conflict

Egypt tabled a resolution on ‘protection of the human rights of civilians in armed conflict’.¹¹⁷ Most of the discussion during the negotiations focused on paragraphs that touched on the interplay between human rights law and international humanitarian law (IHL). In this regard, the USA argued that the Council did not have a mandate to deal with issues governed by IHL. It should be recalled that the USA is otherwise not actively taking part in the Council’s work after it announced its ‘disengagement’ in June 2008.

Another key point of debate was a paragraph calling on all States involved in armed conflict to facilitate the work of ‘any’ future mechanisms that the Council may establish in response to human rights violations in armed conflict. While this idea attracted opposition from several States,¹¹⁸ Norway, Denmark, Belgium and Japan accepted the reference as long as it did not prescribe which kind of mechanisms the Council could establish. In this context, it should be recalled that, following special sessions of the Council on the human rights situations in Darfur and the occupied Palestinian territories, both the Sudan and Israel, respectively, were accused from some quarters of obstructing the work of the Council’s mechanisms that had been established for such purposes.

Despite the controversial negotiations, the resolution was adopted without a vote.¹¹⁹ In presenting the resolution, Egypt emphasised the vulnerability of certain groups in armed conflicts, such as women and children, and stressed that civilians were entitled to a high degree of protection – which, in turn, had to be guaranteed by international humanitarian law and be complemented by human rights law. The resolution requests OHCHR to convene an expert consultation and report to the Council on the outcome at the June 2009 session. The Council will then consider whether to request the Advisory Committee to elaborate a study on this topic.

It is noteworthy that the protection of civilians in armed conflict is a theme that the Security Council has been grappling with since the late 1990s, but which it last discussed in 2006.¹²⁰

Human rights and transitional justice

Switzerland presented a draft resolution on ‘human rights and transitional justice’¹²¹ reflecting recent developments in transitional justice, such as the establishment of the UN Peacebuilding Commission. The resolution, which was adopted by consensus, emphasises, among others, the key role of women in transitional justice and calls on OHCHR to enhance its leading role on this issue, based on close cooperation with national authorities. It also requests OHCHR to submit to the Council an exhaustive study on the subject, which is likely to be discussed in September 2009.

¹¹⁶ *Resolution 9/7.*

¹¹⁷ A/HRC/9/L.21. This follows Commission on Human Rights *Resolution 2005/63* on the same topic.

¹¹⁸ Slovenia, UK, Turkey, Canada, USA, Switzerland.

¹¹⁹ *Resolution 9/9.*

¹²⁰ See Security Council Report 2008 No. 2, 14 October 2008, Protection of Civilians.

¹²¹ *Resolution 9/10.*

India stressed the central importance of State consent for any OHCHR transitional justice work and the importance that the Council, rather than OHCHR, play a leadership role on such issues. Algeria suggested the creation of a panel or working group on the issues of transitional justice.

Human rights voluntary goals

Brazil tabled a resolution on ‘human rights voluntary goals’,¹²² an initiative that had proven controversial in previous discussions. Brazil sought to elaborate a set of voluntary human rights goals in time for the 60th anniversary of the *Universal Declaration of Human Rights* (UDHR),¹²³ and thereby to devise guidelines to achieve a more effective implementation of the UDHR. Some States had approached the idea with caution.¹²⁴ As revealed during the March 2008 panel discussion on voluntary goals, early concerns included fears that: mixing the concepts of ‘voluntary commitments’ with the celebration of the UDHR could lead to a misinterpretation that the rights enshrined in the UDHR are themselves ‘voluntary’; that the idea of ‘goals’ could lead to the prioritisation of rights; and that combining development and human rights could imply conditionality on human rights protection. To add to an already controversial debate, States suggested that the goals also include the following elements: the concept of ‘defamation of religions’, the right to development, discrimination based on sexual orientation, and a moratorium and eventual abolition of the death penalty.

During the negotiations of the draft resolution, some of the more contentious issues discussed included the possible inclusion of references to the death penalty, standing invitations to special procedures, removing unilateral coercive measures, and increasing allocations of development assistance. Developing countries largely supported goals relating to the latter two proposals,¹²⁵ while European and other Western States opposed them.¹²⁶ Some States opposed any explicit reference to the withdrawal of reservations to the core international human rights treaties.¹²⁷ China and Cuba urged Brazil to delete specific references to the UPR.¹²⁸ Despite the opposition of many States to a specific deadline for the implementation of the voluntary goals,¹²⁹ the final text ‘invites States to report on the status of the implementation of these human rights voluntary goals on the occasion of the seventieth anniversary of the Universal Declaration’ (2018). In addition, discussions on potential references to the right to development and related issues proved divisive.

The final version of the draft resolution omitted explicit references to the death penalty, discrimination on the basis of sexual orientation, defamation of religions, and unilateral coercive measures. Cuba noted that

¹²² *Resolution 9/12*. This followed Council *Resolution 6/26* which had decided ‘to initiate an open-ended intergovernmental process in order to elaborate, on a consensual basis, a set of human rights voluntary goals...’ *Resolution 6/26* had envisaged the elaboration of goals relating, among other things, to universal ratification of the core international human rights instruments; creation of national human rights programs and national human rights institutions; definition of targets and actions in the field of capacity-building and human rights education; and definition of targets and actions to eliminate discrimination.

A panel discussion was subsequently held during the 7th session of the Council on the issue of voluntary goals. For further details see ISHR’s *Daily Update* of 5 March 2008, at www.ishr.ch.

¹²³ 10 December 2008.

¹²⁴ For further details see ISHR’s *Daily Update* of 5 March 2008, at www.ishr.ch

¹²⁵ Egypt, Cuba, Bangladesh, Algeria.

¹²⁶ Italy (on behalf of the EU), Canada, Portugal, USA, Switzerland, Netherlands, Austria, New Zealand.

¹²⁷ Egypt, Singapore, South Africa, Algeria. These States argued that reservations allow for the universal ratification of such treaties.

¹²⁸ In the end, the agreed language read as follows: ‘The Human Rights Council...[i]nvites States, *if they deem it appropriate and where relevant*, to report on the progressive implementation of the human rights voluntary goals...in...the context of their review under the universal periodic review mechanism’.

¹²⁹ Singapore, China, Cuba, the Republic of Korea, Bangladesh.

significant gaps existed in the draft, particularly ‘third generation rights’ such as the rights to development¹³⁰ and to a clean environment, and group rights. Nevertheless, the resolution was adopted without a vote.

UN guidelines for the appropriate use and conditions of alternative care for children

Council *Resolution 7/29*, adopted at the 7th session of the Council, had encouraged the advancement of draft guidelines for the appropriate use and conditions of alternative care for children. Subsequently, Brazil had hosted a special event on this issue at the Council’s 8th session in June 2008.¹³¹

At this session, Brazil presented a draft resolution,¹³² which requests the circulation of the draft guidelines, and invites States to make all efforts to enable the adoption of the guidelines at the Council’s March 2009 session. The resolution was adopted by consensus. Among the more notable State interventions, Bangladesh and Indonesia, while appreciating the significance of the issue, urged that the drafting process become more inclusive, transparent and intergovernmental. It is unclear when the draft guidelines will be considered for adoption by the General Assembly.

Effective implementation of international human rights instruments

Canada presented a draft resolution on the ‘effective implementation of international human rights instruments’,¹³³ which aims at strengthening the treaty body system. The resolution was adopted without a vote. It urges States, among other things, to ratify the core human rights instruments, meet their reporting obligations, follow up effectively on treaty bodies’ concluding observations, and encourage the involvement of civil society in preparation and follow up.

Notably, the text also encourages treaty bodies to improve and harmonise their working methods, ease the reporting burden on States, and ensure more effective follow up. It urges OHCHR to use modern technologies, such as webcast, to strengthen the treaty body system’s visibility. The resolution also requests the Secretary-General to report to the Council annually on the implementation of the resolution, and to include recommendations to further improve the effectiveness, harmonisation and reform of the system.

It is to be hoped that the support garnered for this resolution will add genuine impetus to efforts aimed at improving the effectiveness of the treaty body system.¹³⁴ Regrettably, the resolution did not reflect some of the important substantive recommendations made during the last annual meeting of the treaty bodies, in particular in relation to strengthening the independence of the members of the treaty bodies.

Commemorative session for the 60th anniversary of the UDHR

¹³⁰ Though the resolution, in a more indirect reference, calls for the ‘[c]reation of favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of all human rights, including the right to development.’

¹³¹ For further details, including on the elaboration of the draft guidelines, see ISHR’s *Daily Update* of 6 June 2008, available at www.ishr.ch

¹³² A/HRC/9/L.26. *Resolution 9/13*.

¹³³ *Resolution 9/8*. See also other resolutions on this topic, namely UN General Assembly *Resolution 57/202* (18 December 2002), Commission on Human Rights *Resolution 2004/78* (21 April 2004), and Council *Resolution 2/5* (28 November 2006).

¹³⁴ In this context, see also the [joint NGO submission](http://www.ishr.ch/lca/statements_general/treaty%20bodies/joint_ngo_icm_7.pdf) to the recent Inter-Committee Meeting of treaty bodies of June 2008, which proposed key reforms that could assist in improving and harmonising the treaty bodies’ working methods. The text is available at http://www.ishr.ch/lca/statements_general/treaty%20bodies/joint_ngo_icm_7.pdf

The Council decided to convene a one-day commemorative session on the occasion of the 60th anniversary of the Universal Declaration of Human Rights during the week of 8 December 2008.¹³⁵ It is expected that the Secretary-General will attend the event.

Panel discussions

Gender integration

The Council held its annual panel discussion on the integration of a gender perspective into the work of the Council with a focus on the work of the special procedures on 12 September 2008. Although the debate was characterised by much rhetoric and few concrete outcomes it was useful in giving further momentum to specific proposals for how to advance this issue within the Council.

The panel was moderated by the Ambassador of Colombia, Ms Clemencia Forero Ucros, and included Mr James Anaya, Special Rapporteur on the situations of human rights and fundamental freedoms of indigenous people, Ms Najat M'jid Maala, Special Rapporteur on the sale of children, child prostitution and child pornography, Ms Gulnara Shaninian, Special Rapporteur on contemporary forms of slavery, including its causes and consequences and Mr Sandeep Prasad, of Action Canada for Population and Development and the Sexual Rights Initiative, as a representative of civil society. The High Commissioner for Human Rights, Ms Navanethem Pillay delivered the opening statement. The High Commissioner's main concern related to the need to repeal laws that discriminate against women.

Among others, the panellists suggested that the special procedures share best practices, OHCHR develop a set of standards, the UPR be used to examine laws and policies regarding women, the creation of a 'reference framework' based on international human rights standards regarding the integration of a gender perspective, and the inclusion of guidelines on gender mainstreaming in the *Manual of the United Nations Human Rights Special Procedures*, and the creation of a gender focal point of States within the Council.

States recognised the Council's progress in integrating a gender perspective through including references to this theme in numerous resolutions, in the work of special procedures mandates, and by ensuring a better gender balance in the appointment of mandate holders. In this context, a number of States¹³⁶ recommended that the Council appoint more women from developing countries as mandate holders. No one commented on the Council's failure to elect an equal number of men and women to the Advisory Committee.

Notably, France asked the High Commissioner to make proposals for how the Council could address laws that discriminate against women. Ms Pillay in response supported the consideration of a new 'special mechanism of whatever nature' and underlined that such a process should be driven by member States. The former High Commissioner had supported a new special procedures mandate, a proposal that was supported by Human Rights Watch and Amnesty International during the debate.

Morocco and New Zealand suggested that a brief summary of the conclusions and recommendations of previous debates be made available for the next debate. Morocco also recommended that OHCHR compile good practices. This was a welcome development that should be applied to all of the Council's panel discussions.

Missing persons

¹³⁵ Decision 9/102.

¹³⁶ Pakistan (on behalf of the OIC), Nigeria and Algeria.

A panel discussion on missing persons took place on 22 September 2008. The panel was moderated by the Ambassador of Mexico, Mr Luis Alfonso de Alba, and comprised of six speakers working in the legal and academic fields, as well as representatives of civil society.¹³⁷ The Deputy High Commissioner for human Rights, Ms Kyung-wha Kang, opened the panel and urged that the discussion also focus on victims of enforced disappearances.

Several States and observers spoke of particular regional conflict situations despite numerous requests to keep the discussion general, resulting in a rather heated debate.

Recognition of the interrelationship between missing persons and enforced disappearances was underlined by several speakers. There was general agreement that the problem of missing persons is a result of lack of implementation of international humanitarian law and international human rights law.¹³⁸ The panellists highlighted the need to take a holistic approach and called for implementation of existing law and reinforcing existing mechanisms.

The Council decided to ask the Advisory Committee to prepare a study on best practices in relation to missing persons to be submitted to its 12th session in September 2009.¹³⁹

Other outcomes

The Council also adopted resolutions on human rights and transitional justice,¹⁴⁰ the right to the truth,¹⁴¹ the right to development,¹⁴² and by vote on human rights and unilateral coercive measures.¹⁴³

Next steps

The next session will take place from 2 to 27 March 2009. It is expected that the Council will have a fuller discussion of its relationship with OHCHR. The High Commissioner will also present her annual report.

The Council will hold interactive dialogues with a large number of thematic special procedures.¹⁴⁴ The Council will also receive reports from several country mandates, including the Special Rapporteur on the DPRK, the Special Rapporteur on Myanmar, the Special Rapporteur on Cambodia and the Independent Expert on Somalia. As already mentioned the Council will also consider the extension of the mandate of the Special Rapporteur on the Sudan.

¹³⁷ 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 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.

¹³⁸ Pakistan (OIC), France, Greece.

¹³⁹ *Decision 9/101*.

¹⁴⁰ *Resolution 9/10*.

¹⁴¹ *Resolution 9/11*.

¹⁴² *Resolution 9/3*.

¹⁴³ *Resolution 9/4*. The resolution was adopted by 33 in favour, 11 against, and two abstentions.

¹⁴⁴ Special Rapporteur on the right to food, Independent Expert on access to safe drinking water and sanitation, Special Rapporteur on adequate housing, Working Group on arbitrary detention, Special Rapporteur on freedom of religion or belief, Working Group on enforced or involuntary disappearances, Special Rapporteur on freedom of expression, Independent Expert on minorities, Special Rapporteur on human rights defenders, Representative of the Secretary-General on IDPs, Working Group on mercenaries, Special Rapporteur on counter-terrorism, and the Special Rapporteur on trafficking.

Furthermore it will hold panel discussions on the right to food, its annual interactive debate on the rights of persons with disabilities, and an annual full-day meeting on the rights of the child.

The Council will also receive the reports of the Advisory Committee on its first two sessions and its progress on a draft UN declaration on human rights education and training, the reports of the complaint procedure, the Social Forum, the Expert Mechanism on Indigenous Rights, and of the Forum on Minority Issues.

Finally it will consider the report of the Working Group on UPR on its 3rd session, which will cover the reviews of Bahamas, Barbados, Botswana, Burkina Faso, Burundi, Cape Verde, Colombia, Israel, Liechtenstein, Luxembourg, Montenegro, Serbia, Turkmenistan, Tuvalu, United Arab Emirates, and Uzbekistan.

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 Thomassen, Manager International Programme

Contributors

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

ABOUT THE PUBLICATION

The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at www.ishr.ch.

SUBSCRIPTION

If you wish to receive the Council Monitor Daily Updates by e-mail during the Council session, please e-mail information@ishr.ch with 'subscribe' in the subject line. 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.