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HUMAN RIGHTS COUNCIL, 6TH SESSION (COMPLETE) SESSION OVERVIEW 10 – 28 SEPTEMBER 2007 (FIRST PART) AND 10 – 14 DECEMBER 2007 (SECOND PART)

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Introduction

The 6th session of the Human Rights Council (the Council) was split in two parts. The first part was held from 10 to 28 September 2007, and the second part from 10 to 14 December 2007. ISHR has previously published a session overview covering only the first part of the session. This is an updated version of our previous report, taking into account the developments and decisions taken at the second part of the 6th session.

During the sessions of the Council, ISHR reports on a daily basis on key developments in the main United Nations (UN) human rights body. These *Daily Updates* are published each day during the Council, reporting on the previous day.¹ The current overview analyses the developments after the end of the session placing the events in a larger context. As the details of the discussions are contained in the *Daily Updates*, this overview will not repeat those, but rather comment on the broader lines, and on the outcome of the session.

During the second part of the 6th session, on 10 December 2007, the Council suspended its formal session for a celebratory event on the occasion of the 60th anniversary of the *Universal Declaration of Human Rights* (UDHR). While the UDHR only turns 60 on 10 December 2008, the event marked the beginning of the yearlong celebrations. The event was intended to commemorate the 59th anniversary of the UDHR and to raise awareness about human rights in the run-up to the 60th anniversary of the UDHR in 2008. UN Secretary-General, Mr Ban Ki-moon, delivered a recorded video address, which was followed by statements by the High Commissioner for Human Rights, Ms Louise Arbour, Mr Seregi Ordzhonikidze, Director-General of the United Nations Office in Geneva (UNOG), and Mr Doru Romulus Costea, Ambassador of Romania and President of the Council. Many States then used the opportunity to comment on the importance of the UDHR.²

Background

The Council met from 10 to 28 September 2007 and from 10 to 14 December 2007 for its 6th session. The 6th session was the first session in the second cycle of the Council. From the start, it was confronted with relatively high expectations. In the first year of its existence, the Council had spent most of its time on the institution-building tasks it had been given by General Assembly *Resolution 60/251*, which established the Council. Accordingly, little time had been devoted to substantive work, and many perceived this as a gap in the protection of human rights that the Council should close as soon as possible. However, despite the many hours spent on institution building during the first year, the final ‘institution-building package’ adopted at midnight on 18 June 2007 did not settle all of the Council’s institutional questions.³ It required the Council to still discuss and decide on a number of important issues that were not resolved in the institution-building text.

Once again, therefore, the Council faced several challenges simultaneously. On the one hand, it had to finish a number of crucial and pressing institution-building tasks. Decisions had to be taken notably in the area of the review of special procedures, the universal periodic review (UPR), the Human Rights Council Advisory Committee (the Advisory Committee) as well as the functioning of one element of the complaint procedure (Working Group on Communications). On the other hand, it had to focus more on its substantive work. A number of interactive dialogues with special procedures were scheduled for the 6th session. The human rights

¹ They are available in print form outside the Council hall, or as PDF on our website www.ishr.ch/hrm/dailyupdates. You can also subscribe to our Council Monitor distribution list to receive the *Daily Updates* and other update reports related to the Human Rights Council on a regular basis. To subscribe, write to information@ishr.ch.

² Please check ISHR’s *Daily Update* of 10 December 2007, available on www.ishr.ch/hrm/dailyupdates.

³ The institution-building text is also referred to as ‘institution-building package’, or, in official terms, ‘*Resolution 5/I*’. It is available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc.

situations in Darfur, the occupied Palestinian territories, and in many other locations, were awaiting the Council's follow up and attention. And finally, a number of thematic questions had to be debated, since substantive work had been on hold for most of the institution-building year.

A third and independent challenge was the new agenda and programme of work that would be 'tested' for the first time at the 6th session. In its first year of existence, the Council had operated under a procedural agenda, comprising only one substantive item – the 'Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled "Human Rights Council"'. The new agenda was adopted as part of the institution-building package. It represents a compromise between proposals for a generic and flexible agenda, and others for a detailed and predictable agenda.⁴ On the basis of the agenda, the President of the Council developed a programme of work for the second cycle of the Council. Prior to the first part of the session, many non-governmental organisations (NGOs) feared that a too tight programme of work would not allow other important issues to be addressed, that – according to the institution-building text – should have space under the relevant agenda items.

To sum up, not only had the Council a new agenda to implement, the programme of work was filled with substantive issues to consider but also had to accommodate significant amounts of time set aside for institution-building questions. Thus, it promised to be a session fraught with unpredictable changes, adaptations and time constraints.

The splitting in two of the 6th session was a practice repeated from the previous year, when the 2nd session of the Council could not be completed in time, and was resumed in December 2006. It added a different dynamic to the session. Not all decisions necessarily had to be taken in the first part, but could easily be postponed to the second part. On a few issues, the first part of the session served for States to propose initiatives that were then concretised and refined over the course of the two months between the two parts. This was, for example, the case of a resolution by Brazil on 'voluntary human rights goals' and another one by Chile on the mainstreaming of a gender perspective in the work of the Council.⁵ On a more negative side, it certainly also allowed others to continue lobbying for proposals that could not be considered conducive to better promotion and protection of human rights, in particular in relation to country situations.

Completion of the institution building

The 6th session was expected to implement a number of elements of the institution-building package adopted in June 2007. The Council was to:

- Commence the review, rationalisation and improvement of special procedures mandates.
- Adopt technical and objective requirements for eligible mandate holders for the special procedures.⁶
- Adopt technical and objective requirements for the submission of candidatures for the Advisory Committee.
- Adopt general guidelines for the submission of information to UPR.
- Determine the order of the review for the UPR and find modalities for the selection of 'troikas'.⁷
- Provide for an interim solution for the Working Group on Communications of the complaint procedure.

⁴ See A/HRC/6/1, 31 July 2007.

⁵ See A/HRC/RES/6/26 and A/HRC/RES/6/30 respectively.

⁶ *Resolution 5/1*, paragraph 41.

⁷ The so-called 'troika' is a group of three rapporteurs, selected by drawing of lots from among Council members and from different regional groups. Their role is to facilitate each review, including the preparation of the report of the UPR Working Group.

- Decide on the future of the working groups of the former Sub-Commission on the Promotion and Protection of Human Rights.

Most of these expectations were met, although some with questionable success. In particular, decisions related to the UPR and the selection of the troikas were not taken. This additional delay in the start of the Council's new flagship mechanism is likely to be detrimental to the effective functioning of the mechanism.

Review of special procedures mandates

The system of special procedures was meant to be reviewed during the first cycle of the Council. However, despite many weeks of meetings in working groups and in the Council plenary, no individual special procedures were reviewed in the first year. Instead, the institution-building text provides for each mandate to be reviewed 'in the context of the relevant resolution' and according to the Council's programme of work.⁸ The Council was therefore given the task of reviewing each mandate during the course of the second and third cycle. What had not been discussed in any detail or agreed in the lead-up to the adoption of the institution-building text was the way in which special procedures mandates should be reviewed, let alone what concrete criteria would be applied during such a review. When the 'assessment of mandates' appeared on the programme of work for the 6th session, it was therefore difficult to predict how this review, rationalisation and improvement of mandates would work in practice.

The Council reviewed several thematic and country specific mandates during its 6th session. It reviewed the following mandates:

- Special Rapporteur on freedom of religion or belief (decision postponed to the second part of the session).
- Working Group on arbitrary detention.⁹
- Special Rapporteur on the right to food.
- Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.
- Independent Expert on the situation of human rights in Burundi.
- Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti.
- Representative of the Secretary-General on internally displaced persons (second part).
- Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (second part).
- Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (second part).
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (second part).
- Independent Expert on the human rights situation in Liberia (second part).
- Special Rapporteur on the situation of human rights in the Sudan (second part).¹⁰

The following mandates were scheduled for review, but were postponed:

⁸ Traditionally, States would present 'their' substantive resolution during the session of the Commission on Human Rights. Since the Council meets more regularly (at least three times per year) than the Commission, issues will be spread over the year. The provision that mandates should be reviewed 'in the context of the relevant resolution' therefore means that, ideally, mandates are reviewed at the same session as the substantive debate on the issue in question takes place.

⁹ The resolution renewing this and all other mandates are available on the OHCHR extranet under <http://portal.ohchr.org/portal/page/portal/HRCExtranet/6thSession/DraftResolutions>. To receive the user name and password to access the extranet, navigate to www.ohchr.org/english/bodies/hrcouncil/form.htm and fill out the form on the page.

¹⁰ The mandate of the Special Rapporteur on the situation of human rights in the Sudan had originally been scheduled for the first part of the 6th session, but was postponed to the second part.

- Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC).¹¹

As there was no clear process or criteria for the conduct of the review, the Council embarked on a ‘learning by doing’ process. The institution-building text had merely defined that mandates had to be reviewed in the context of the relevant resolutions. At the beginning of the session, President Costea outlined how he intended the review to be conducted. He did not set out all the details, but rather proposed a very general three-stage process, indicating that not all three stages had to take place during the same session. The first stage would be an assessment of the mandate in a plenary meeting of the Council during which sponsors and other States could express views on it. In a second stage, the mandate holder would present their final or annual report. The third stage would involve the adoption of a resolution determining the future of the mandate. When and in what form this resolution was to be discussed or adopted was left entirely to the interested States.

Following this methodology, one of the original sponsors of each mandate usually introduced the mandate. This was mostly a historic account of the work of the mandate, including the State’s interpretation as to why the mandate should be retained. This was followed by a presentation by the current mandate holder if present, and an interactive dialogue with the participation of members and observers of the Council, including NGOs. In parallel to this substantial ‘assessment’ of the mandates in plenary, the sponsors of each mandate held informal consultations to draft resolutions renewing the respective mandate. However, it seemed that the outline of the review process given by the President did not provide sufficient guidance for the drafting of resolutions. This was reflected in the wide variation in the style and format of drafts put forward.

The substance of the mandates in question was not extensively discussed in the Council. What did give rise to controversy was the overall process of the review, as well as the most appropriate style and format of the resolutions renewing the mandates. In this regard, two different approaches were tested.

- The first, chosen by Portugal, on behalf of the European Union (EU), for the draft resolution renewing the mandate of the Special Rapporteur on freedom of religion or belief, was a substantial resolution dealing with freedom of religion or belief in general, with one operative paragraph renewing the mandate.
- A second, different, approach was chosen by Mexico and Guatemala for the draft dealing with the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Without discussing in detail the rights of indigenous peoples, they relied on a considerably shorter and procedural draft resolution to renew the mandate of the Special Rapporteur and to determine the future focus areas of the mandate.

Many States favoured the second, more procedural approach.¹² In informal consultations and in the plenary, some States called for common, standardised words to be included in all resolutions dealing with the renewal of mandates. In particular, they called for inclusion of a reference to the *Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council* (the Code of Conduct), which was adopted together with the institution-building text in June.¹³ Others were opposed to the inclusion of such language, suggesting it could reopen the agreement reached on the institution-building package.¹⁴ At the end of the first part of the 6th session, a compromise solution was found. A preambular paragraph referring to the Code of

¹¹ To be reviewed during the 7th session in March 2008.

¹² Pakistan (on behalf of the OIC), Russian Federation, South Africa, China.

¹³ *Resolution 5/2*, contained in document A/HRC/5/21. States that wanted a reference to the Code of Conduct included Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), Russian Federation, China.

¹⁴ Canada, Australia.

Conduct was added to all resolutions renewing a special procedure mandate.¹⁵ The controversy around the inclusion of the Code of Conduct was a stark reminder of the often bitter negotiations seen in the lead-up to the institution-building agreement.¹⁶

During the discussions about the renewal of several of the above-mentioned mandates, Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), criticised the process of review. It argued that the review of mandates should follow a well-structured process, including a set of minimum criteria for reviewing all mandates. Pakistan said that the ‘the outcome of the review, rationalisation and improvement of all special procedures should be consolidated to develop a full, holistic picture’. Accordingly, it suggested that more time had to be devoted to determining the process of review, and no decisions could be taken at this point.

This was a somewhat surprising change of position. In the institution-building working group in 2006 and early 2007, NGOs had advocated strongly for clear criteria for the review, in order to preserve the coherence of the entire system of special procedures; a demand that had been rejected by many States, including Pakistan. Rather than a genuine concern for the system of special procedures, this change seemed to be a tactic for delaying the review of mandates and prevent mandate holders in general from taking up their work in an efficient and forward-looking fashion.¹⁷

This analysis was supported by events during the last two days of the first part of the 6th session. Before taking decisions on the renewal of the first special procedures mandate, the Council suspended its formal meeting. The suspension was initially intended to last ten minutes, but finally took the better part of two hours. The results of the negotiations behind the scene were interesting in the light of the delay-tactic described above. Quite obviously, there had been a trade off between different interests. All resolutions renewing special procedure mandates were considered with priority, before all other resolutions tabled. Every resolution renewing a mandate was revised by the relevant sponsors, to include the preambular paragraph on the Code of Conduct.¹⁸ The consideration of the mandates on freedom of religion or belief and the mandate on the Democratic Republic of the Congo (DRC) were postponed to a later stage. In return for these concessions, the other mandates were then renewed by consensus.¹⁹ While questionable in content, this was an important compromise, as the Council finally took clear decisions on the future of special procedures mandates, and enabled the mandate holders to take up their work again with more confidence and with the Council’s clear endorsement.

Country specific mandates

The review of country specific mandates was expected to be one of the most controversial issues of the 6th session. In the institution-building text, the Council had renewed all special procedures mandates, with two notable exceptions. The mandates of the ‘Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba’ and the ‘Special Rapporteur to establish direct contacts with

¹⁵ The common preambular paragraph reads ‘Recalling the resolutions 5/1 ‘Institution-building of the United Nations Human Rights Council’ and 5/2 ‘Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council’ of 18 June 2007 and stressing that the mandate holder shall discharge his/her duties in accordance with these resolutions and their annexes’.

¹⁶ See for example ISHR reports on informal consultations convened by the African Group during the 5th session of the Council http://www.ishr.ch/hrm/council/wg/specialprocedures/11_june_coc.pdf and on the institution building working groups http://www.ishr.ch/hrm/council/wg/wg_reports/wg_sps_03_advance_copy.pdf.

¹⁷ More specifically, it may have been also an attempt at delaying the renewal of the mandate of the Special Rapporteur on freedom of religion or belief.

¹⁸ See fn. 15.

¹⁹ Working Group on Arbitrary Detention, Independent expert on human rights and international solidarity, Special Rapporteur on the right to food, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Independent expert on the situation of human rights in Burundi, Independent expert appointed by the Secretary-General on the situation of human rights in Haiti.

the Government and with the people of Belarus' had been discontinued as part of the political agreement struck in the institution-building text. The controversy related to country-specific mandates was illustrated by a number of progressive changes to the programme of work for the 6th session. On a draft programme of work circulated prior to the 6th session, no country mandate was scheduled for review.²⁰ On the draft published at the beginning of the session, four country specific mandates were scheduled for review.²¹ Attempts at restricting at least some of these mandates were to be expected.

The prime example of this was the mandate of the **Special Rapporteur on the situation of human rights in the Sudan**. The Special Rapporteur also chaired the Experts Group on Darfur,²² a circumstance that added additional complexity to the review of the mandate on the Sudan. It was no surprise, therefore, that the first attack on this mandate occurred during the consideration of the report by the Experts Group on the human rights situation in Darfur.²³ The negotiations and ultimately the resolution renewing the mandate of the Special Rapporteur have to be seen in the light of the resolution terminating the mandate of the Experts Group.²⁴ The mere existence of the Experts Group reinforced the arguments of those States that were always critical of the mandate of the Special Rapporteur on the situation of human rights in the Sudan. In particular Egypt (on behalf of the African Group) argued that since the Experts Group enjoyed such high levels of cooperation from the Government of the Sudan, the Special Rapporteur's mandate was no longer needed.

Prior to the resumed 6th session in December, consultations between the European Union and the African Group on the future of both the Experts Group and the Special Rapporteur on Sudan were held. On 11 December 2007, the EU decided to table two resolutions renewing both mandates, and called open-ended informal consultations on its drafts. On 12 December 2007, one day before the review of the mandate was scheduled on the programme of work, Egypt and others expressed disagreement with this process, and with the substance of the drafts.²⁵ The review in the Council plenary was held in a very tense atmosphere. Egypt, even though a co-sponsor of the resolution renewing the mandate, aggressively questioned Ms Sima Samar, the Special Rapporteur on the situation of human rights in the Sudan. The representative even interrupted the Special Rapporteur during her statement, which is not a usual diplomatic practice in the Council.

Egypt was of the view that the Council should acknowledge the efforts of the Sudan and end the proliferation of mechanisms on the Sudan. It claimed that the Council needed to streamline the various mechanisms, in particular since the Sudan would also be subject to the universal periodic review (UPR). The final result was different, but no less troubling, than what was expected after the first part of the 6th session. Instead of terminating the mandate of the Special Rapporteur, as had been suggested by Egypt before, the Council decided to terminate the mandate of the Experts Group. Looking at the result, it is clear that Portugal (on behalf of the EU) finally conceded to the pressure from Egypt (on behalf of the African Group).

The Council took this decision despite the view expressed by the Experts Group that while the cooperation between the Experts Group and the Government of the Sudan was good in procedural terms, it has not yielded

²⁰ Version of 24 August 2007.

²¹ The mandates on Haiti, Burundi, Democratic Republic of the Congo, the Sudan.

²² The Experts Group is presided by the Special Rapporteur on the situation of human rights in the Sudan and composed of the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on the situation of human rights defenders, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on the question of torture, and the Special Rapporteur on violence against women, its causes and consequences. See *Daily Update* of 24 September 2007.

²³ The Experts Group was mandated by Human Rights Council *Resolution OM/1/3*. It had presented a report two days previously, see ISHR's *Daily Update* of 11 December 2007, available at www.ishr.ch.

²⁴ Since these drafts have yet to be adopted, a further analysis of the impact the enlarged mandate will have on the Special Rapporteur's work seems premature.

²⁵ See ISHR's *Daily Update* of 12 December 2007.

any tangible results in terms of implementation of substantive commitments by the Government of the Sudan. As a compromise, the functions of the Experts Group have been folded into the mandate of the Special Rapporteur. Warnings by NGOs and States that such an approach might overburden the Special Rapporteur, and result in less focus on the situation in Darfur *and* in the rest of the Sudan, have been in vain.

At its 4th special session in December 2006, the Council showed some political will to contribute to the improvement of the human rights situation in Darfur. However, a year down the line and after much back and forth between the Council and the Government of the Sudan, much of the progress was lost. The Special Rapporteur's mandate still exists, but has been weighed down by tasks that could have been entrusted to others, at least for another six months. The situation on the ground has not changed significantly, despite all the reporting, the dialogues and the efforts by the Experts Group.

The consideration and review of the mandate of the **Independent Expert on the situation of human rights in the DRC** was postponed to March 2008.²⁶

On a more positive note, the mandate of the **Independent Expert on the human rights situation in Burundi** was renewed by consensus. This was not least a consequence of the strong support shown by the Government concerned. When the mandate on Burundi was reviewed, its Minister for national solidarity, human rights and women's rights, Ms Immaculée Nahayo addressed the Council, strongly appreciating the work of the Independent Expert. In view of that unequivocal support from the highest level, Egypt (on behalf of the African Group) chose 'not to oppose' the renewal of that mandate. Previously, Egypt had expressed strong reservations against country specific mandates in general, and mandates on African States in particular. It had also been rumoured that Egypt and other States in the African Group were intending to advocate the abolishment of the mandate on Burundi. An equally positive case was the renewal of the mandate of the **Independent Expert on the situation of human rights in Liberia**. For the resumed 6th session, Liberia sent its Ambassador to France, Mr Dudley McKinley Thomas to address the Council.²⁷ He announced that Liberia was joining the main co-sponsors of the resolution, the EU, Ghana, Senegal and Cote d'Ivoire, in seeking an extension of the mandate for one year. Even though the Ambassador was not present for the adoption of the draft resolution renewing the mandate, the unequivocal support by the Government of Liberia seemed to convince even those States that had earlier advocated the termination of all country specific mandates for Africa. The African Group, like for the mandate on Burundi, decided 'not to oppose' the renewal of the mandate on Liberia.

Similarly, the mandate of the **Independent Expert on the situation of human rights in Haiti** was also renewed. The mandate had received strong support from the concerned country, Haiti. However, the cases of Burundi, Haiti and Liberia were used by a number of States to assert that 'the express will of the country concerned'²⁸ was vital for the continuation of any country mandate.²⁹ While it is certainly welcome and useful if the concerned States support the mandates assisting their countries, this recent interpretation of the support shown by Burundi, Haiti and Liberia could well lead to an unwritten rule that the express support of the country concerned is required. Such a requirement would likely run counter to the institution-building text and the spirit of the negotiations leading to its adoption.³⁰ It remains interesting to see how country mandates will be handled in the future.

²⁶ Also at the request of Egypt (on behalf of the African Group), supported by Sri Lanka.

²⁷ Liberia does not have a permanent representation to the UN in Geneva.

²⁸ Egypt (on behalf of the African Group).

²⁹ Egypt (on behalf of the African Group), Algeria.

³⁰ Rule 117 (d) of the institution-building text specifies that 'Proposers of a country resolution to have the responsibility to secure the broadest possible support for their initiatives (preferably 15 members), before action is taken'. During the negotiations, proposals were made to require a decision on country resolutions by either consensus or a two-thirds majority. Rule 117 (d) therefore reflects the agreement by the Council that no such special requirements are needed, and that therefore the support of the country concerned is, while desirable, not required.

Technical and objective requirements for mandate holders

Resolution 5/1 requests the Council to draft guidelines to be applied by the Office of the High Commissioner for Human Rights (OHCHR) when drawing up a public list, or roster, of eligible candidates for the special procedures mandate holders, so called ‘technical and objective requirements for special procedures mandate holders’.³¹ The creation of a roster is an important step in the new and improved appointment process. In itself, the roster promises to be a contribution to enhancing the transparency and outreach of the appointment process, and thereby the quality of mandate holders. The ‘technical and objective requirements’ will determine who is eligible to be included on the roster, and who needs to be screened out already at this initial stage of the process.

The review of the system of special procedures was one of the most complex and difficult parts of the institution-building process. Perhaps as a result of this, President Costea chose to facilitate the negotiation of the technical and objective requirements himself. The first non-paper was released just two days prior to the first part of the 6th session.³² During the first three days of the session, the Council met in informal meetings to discuss the requirements, and two revised versions of the non-paper were released subsequently. The third revised version was then adopted.³³

During the informal consultations, most States criticised the detailed nature of the first non-paper. This criticism is reflected in the finally adopted version, which is considerably more general than earlier versions. Examples of this are the educational qualifications and the professional expertise required from eligible candidates. While the first version asked for a university degree in human rights, the adopted text merely requires ‘relevant educational qualifications or equivalent professional experience in the field of human rights’. In regard to the professional expertise necessary to perform the functions of a special procedures mandate holder, the first non-paper required ‘at least 10 years of work in the field of the mandate or related fields’, but the final text demands ‘knowledge of international human rights instruments, norms and principles’ and ‘proven work experience in the field of human rights’.

The discussion during the informal consultations reflected the concerns shared by many States that these criteria could discriminate against candidates from developing countries.³⁴ This is a legitimate concern. However, the Council decided in *Resolution 5/1* to ensure that ‘highly qualified individuals who possess established competence, relevant expertise and extensive professional experience’ are selected. By watering down the technical and objective requirements, notably by excluding minimum requirements in terms of professional experience, the Council has not sufficiently ensured this. On the contrary, the requirements adopted might allow for the inclusion on the roster of candidates that are not qualified enough for serving as special procedures mandate holder, regardless of their national origin. The general nature of the requirements will make it difficult for OHCHR to exclude unqualified candidates from the roster.

Since the Council started the review of special procedures in late 2006, attempts at undermining the independence of the work of special procedures have been observed. The call for more ‘general’ requirements continues in the direction of potentially weakening the system of special procedures. Claiming that 10 years of work in the field of human rights is too demanding a requirement seems like a mockery of the capacity of

³¹ See paragraph 41.

³² All non-papers are available on the OHCHR at <http://portal.ohchr.org/portal/page/portal/HRCExtranet/6thSession/OpenEndedInformalConsultations>. See fn. 9 on how to access it.

³³ In a decision taken under Items 1, 5 and 6 combining the technical and objective requirements for special procedures mandate holders, for the advisory committee and guidelines for the preparation of information under the UPR. A/HRC/DEC/6/102, 27 September 2007. Also available on http://www.ishr.ch/hrm/council/sps/technical_requirements.pdf.

³⁴ These concerns were raised by many States, including Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC), Turkey, Cuba.

developing countries to offer well-qualified candidates. As Mexico pointed out, in the past, many well-qualified and experienced candidates came from developing countries.³⁵ Rather than a genuine concern for the inclusion of candidates from developing countries, the aim seems to be to allow lesser-qualified individuals to be appointed as mandate holders. Persons with less experience and qualifications are less likely to be independent and efficient.

The impact the technical requirements will have on the quality of the roster is still unknown. The Secretariat has called on all stakeholders to submit suitable candidates for the inclusion on the roster.³⁶ A lot depends on the way the Secretariat will apply the technical and objective requirements to the nominations it receives, and of course on the candidates put forward.

Advisory Committee

The Human Rights Council Advisory Committee (the Advisory Committee) was established by *Resolution 5/1* as the successor to the Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission). Similarly to the procedure followed for the selection of special procedures, the 6th session of the Council was requested to adopt ‘technical requirements for the submission of candidates’.³⁷ In July, President Costea had appointed Ambassador Alicia Martín Gallegos of Nicaragua to facilitate the discussions on these requirements for the Advisory Committee. She submitted a non-paper to the Council, which was discussed in both informal and formal plenary meetings.³⁸ At the close of the first part of the 6th session, the Council adopted these requirements as well.³⁹

Many States argued in favour of very general criteria. As was the case for the requirements for special procedures mandate holders, there was considerable opposition to the inclusion of academic qualifications.⁴⁰ Despite this opposition, and in marked contrast to the final version of the technical requirements for eligible candidates for special procedures, the final version of the requirements for the Advisory Committee still contains a reference to ‘academic studies in the field of human rights or related areas’.⁴¹ It was, however, agreed that *in lieu* of academic studies, ‘experience and exposure to leadership roles in the human rights field at the national, regional or international level’ could also be accepted.

With regards to the experience required, the requirements for the Advisory Committee set a slightly higher standard than those for special procedures mandate holders. ‘Substantial experience’ is required, and a minimum threshold of at least five years was retained in the final document. The members of the Advisory Committee will be elected by the Council in secret ballot, while the special procedures mandate holders are appointed through a complex procedure, that balances State involvement and a significant role by the President of the Council. It is likely that the fact that the Council will have the final say has made States less worried about the prospect of well qualified, independent persons running for election.

³⁵ President Costea gave this statistical backing. He said from a rough calculation, 15 of the current mandate holders were from developing countries; 14 of them have more than 17 years experience, and all of them have PhD degrees.

³⁶ Non-governmental organisations, governments, regional groups operating within the United Nations human rights system, international organisations or their offices, and other human rights bodies can nominate candidates for special procedure mandate holders. Individual nominations are also possible. The Secretariat of the Human Rights Council has invited candidatures to be submitted for eligible candidates to the following addresses: By email: hrcspecialprocedures@ohchr.org; By post: HRC Secretariat, c/o Orest Nowosad, Office of the High Commissioner for Human Rights, Room PW 4-093, Palais des Nations, 8-14 Avenue de la Paix, CH-1211 Geneva 10; By fax: +41 (0) 22 917 9011.

³⁷ See paragraph 67 of *Resolution 5/1*.

³⁸ See ISHR *Daily Updates* of 10, 18 and 19 September 2007, available on www.ishr.ch/hrm/council/dailyupdates.

³⁹ See fn. 33.

⁴⁰ The initial version of the non-paper referred to positively considering candidates with post-graduate degrees.

⁴¹ Paragraph III. A.1., see fn. 33.

Another slight difference between the requirements for the Advisory Committee and the special procedures relates to the independence from government influence. The institution-building text provides that for both the Advisory Committee and the special procedures, individuals holding decision-making positions in government will be excluded. While the requirements adopted for the Advisory Committee repeat this provision,⁴² the requirements for the special procedures remain silent on this point. However, the institution-building text clearly established this exclusion criterion for both the Advisory Committee and the special procedures.

Universal periodic review

A further major institution-building task to be accomplished in the first part of the 6th session was the operationalisation of the universal periodic review (UPR). This included in particular the adoption of guidelines for the submission of information and the establishment of the order of the review.

Throughout the discussion on the various aspects of the UPR, a number of States expressed concern about the proposed timing of the first meeting of the Working Group on the UPR. Pakistan (on behalf of the OIC) suggested that the first session of the UPR working group should only be held after the March 2008 session of the Council, to allow States to undertake national consultations with stakeholders.⁴³ Accordingly, the first session of the UPR working group was postponed, and is now scheduled from 7 to 18 April 2008.⁴⁴

Finally, the question of the UPR Voluntary Trust Fund was discussed briefly. Pakistan (on behalf of the OIC) pushed for the early establishment of this fund, to facilitate the participation of developing countries in the UPR. Egypt (on behalf of the African Group) tabled a draft resolution establishing two different funds. The first, the 'Voluntary Trust Fund for the universal periodic review', aims to facilitate the participation of developing countries in the UPR. The other fund, the 'Voluntary Fund for Financial and Technical Assistance', is intended as a source of financial and technical assistance to help countries implement recommendations emanating from the UPR. The resolution was adopted without a vote.⁴⁵

Guidelines for the submission of information

Arguably, the newly established UPR mechanism is already late in taking up its work.⁴⁶ The institution-building text requested the Council to elaborate guidelines on the submission of information for the UPR, a task that had to be finalised at the 6th session. Ambassador Mohammed Loulichki of Morocco, who had also facilitated the working group to establish the basic modalities of the UPR, was again appointed as the Facilitator for leading the negotiations on the UPR guidelines. Ambassador Loulichki produced his first non-paper in early August. This head-start was clearly reflected in the relatively advanced state of the formal and informal debates during the 6th session of the Council.⁴⁷ Already in the first meeting, the text was described as 'close to agreement'.⁴⁸ States welcomed the general and flexible nature of the UPR guidelines, and only commented on some details of the text. The version finally adopted only saw cosmetic changes compared to earlier drafts.⁴⁹

⁴² Section C. of the technical and objective requirements for the submission of candidatures

⁴³ This was supported by other States, including Egypt (on behalf of the African Group), Cuba.

⁴⁴ See the provisional calendar for meetings related to the Council (version of 24 September 2007), available on the OHCHR extranet at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. See fn. 32 for instructions how to access it.

⁴⁵ A/HRC/RES/6/17, 28 September 2007.

⁴⁶ General Assembly *Resolution 60/251* provides that all members of the Council have to undergo the UPR during their term of membership. For the one-year members, the first term already expired in June 2007, without them being reviewed.

⁴⁷ See ISHR *Daily Updates* of 11 and 19 September 2007.

⁴⁸ Mexico, Russian Federation, Switzerland.

⁴⁹ The guidelines were adopted together with the requirements for special procedures and the advisory committee, see fn. 33.

A particular concern raised by NGOs was the lack of an explicit reference in the guidelines to the contribution of NGOs and national human rights institutions (NHRIs) in the preparation of the report. The original draft was slightly amended and now suggests that information provided by the State for the UPR should contain a ‘description of the methodology and the broad consultation process followed for the preparation of information’. Despite this indirect reference to a ‘broad consultation process’ the UPR guidelines remain very much State focused. The guidelines also seems to have lost some specificity compared to the institution-building text. The latter encourages States to prepare information through a broad consultation process at the national level with all relevant stakeholders. This inclusive formulation suggests that States also consult actors in the preparation of the information that may have different views on the realities in their country. Like for the requirements for the Advisory Committee and special procedures discussed above, it will be useful, if not necessary, to read the UPR guidelines in conjunction with the institution-building text.

Order of the review

The second crucial step in getting the UPR underway was the determination of the order in which countries would be reviewed. In a first draft calendar circulated prior to the session, the first session of the UPR working group was scheduled for February 2008. Even though it has now been postponed, the Council had to urgently select countries for at least the first session, so that preparations could start.

According to the institution-building text, the order of the review is to be determined by drawing of lots, while respecting a range of criteria.⁵⁰ Based on these criteria, the Council Secretariat prepared a voting procedure, which was presented and ‘simulated’ in the first week of the 6th session of the Council. Despite the purely technical nature of the process, a number of States commented extensively on the procedure. The main concern of many States was the balance between member States of the Council and non-members in the review. The institution-building text requires that ‘a mix of member and observer States’ should be reviewed. Mr Tistounet, the Secretary of the Council, pointed out that the balance of members and non-members would change over time, depending on which States would be elected in the future. The review of least-developed countries and the difficulty they would face in preparing for the UPR was also a concern of many States. However, one of the criteria for selecting States for the UPR is that initial members have to be reviewed first.⁵¹ Mr Tistounet said that it was not likely that a least-developed country would be up for review before 2009.

After a second ‘simulation’ of the selection process, and minor changes to the procedure,⁵² the Council agreed on the method for determining the order of the review for the first cycle, and the selection was finalised. Please consult the ISHR website’s section on the UPR for a list of all States to be reviewed in the first cycle. Note that the order of review has only been determined for the first three sessions (2008). For the sessions from 2009 to 2011, the Council will have to determine the order of review for each session at a later stage.⁵³ There will be three sessions of the UPR Working Group per year, reviewing 16 countries per session.

⁵⁰ Such as the provision mentioned above that members are to be reviewed during their term, and that initial members had to be reviewed first, that volunteers had to be taken into account, that an equitable geographic distribution should be respected, and that a mix of members and non-members should be reviewed in each session of the UPR. See *Resolution 5/1*, section I. C.

⁵¹ When the first members of the Council were elected by the General Assembly, one third of them were elected for one year only. Another third was given two-year terms, and the rest three-year terms. This rule was introduced to stagger the membership, and prevent the situation that all members of the Council had to be re-elected at the same time.

⁵² It was decided to review the members whose term expires in 2007 or 2008 first, and review the other members in the last year of their term. This allowed to ‘fill-up’ the three sessions of 2008 with non-members, thereby improving the mix.

⁵³ In the second session in May 2008, two least-developed countries will be reviewed (Benin, Mali), and in the third session four (Burundi, Burkina Faso, Cape Verde, Tuvalu).

One full UPR cycle lasts four years. At this stage, it is unclear if the order of the review for the following cycles will be adapted or not after the initial cycle when the Council will review its work.⁵⁴

The role of the troikas

During the debate about the procedure for determining the order of the review, the Council also discussed the method to select the so-called ‘troika’. The troika is a group of three rapporteurs⁵⁵ that is intended to facilitate each review, including the preparation of the report of the working group. The rapporteurs will be selected by the drawing of lots. However, a State can reject one of the rapporteurs, and may request that one of the three be selected from its own regional group. The inclusion of these additional criteria makes the process of selecting rapporteurs a complex one. A few States raised questions about the process. Clearly, the system of selecting rapporteurs needs further refinement. The modalities for selecting the troikas were not sufficiently developed by the Secretariat by the beginning of the 6th session, and consultations on this issue were continuing until the resumption of the session in December. Some States indicated that they wished a decision to be taken as soon as possible after the end of the first part of the 6th session, in order to start their preparations and staff planning for 2008.

Between the first and second parts of the session, on 26 November 2007, the Council held an organisational meeting to prepare the resumed session. The President of the Council informed members about continuing informal meetings related to the selection of the troikas for the UPR. Initially, the President intended to draw the lots on 26 November 2007 during the organisational meeting. However, following a request by the African Group, the Bureau of the Council decided to postpone the drawing of lots. Despite the fact that the programme of work for the resumed 6th session did not provide room for the selection of troikas, the issue dominated the debate during the organisational meeting. Pakistan (on behalf of the OIC) explained that the members of each troika could not be designated before the role of the troikas had been clarified.⁵⁶ Others were critical of the postponement and urged the President to keep the delay as short as possible.⁵⁷ Despite the apparent lack of clarity or even agreement on the role of the troikas, many States pledged that they did not wish to renegotiate or reopen the institution-building package adopted in June.⁵⁸ However, it seemed that there was no shared understanding on the precise meaning of ‘not reopening the package’.

Although it was expected prior to the session that the role and the selection of the troikas would move forward during the resumed 6th session, no new development took place during the session. At the end of 2007, therefore, this crucial piece in the functioning of the UPR was still missing and would only be determined during the March 2008 session of the Council.

Working Group on Communications

⁵⁴ General Assembly *Resolution 60/251* requests the Council to review its work and functioning after five years. As it happens, this will coincide with the end of the first reporting cycle, and theoretically the Council could decide to change and adapt certain parts of its work.

⁵⁵ The rapporteurs for the UPR should not be mistaken for the ‘Special Rapporteurs’ that are part of the system of special procedures.

⁵⁶ Other States shared this view: Egypt (on behalf of the African Group), Algeria, China, South Africa, Morocco, Russian Federation, India, Bangladesh, Ghana, Ethiopia.

⁵⁷ United Kingdom (on behalf of the Western European and others group, WEOG), Canada, Portugal (on behalf of the EU), Peru, Switzerland, Mexico, Uruguay, Argentina, Japan, Republic of Korea, Turkey, Italy. Uruguay announced that it would not make use of its right to reject any member of the troika reviewing Uruguay, or refuse to be a member of any troika it was asked to be a part of.

⁵⁸ Pakistan (on behalf of the OIC), United Kingdom (on behalf of WEOG), Canada, Portugal (on behalf of the EU), Switzerland, Japan, Bangladesh, Nicaragua.

The institution-building text requires that the Working Group on Communications be constituted by the Advisory Committee. However, since the criteria for eligibility to the Advisory Committee were only decided at the first part of the 6th session, the search for members of the Advisory Committee was lagging behind. Only once the members of the Advisory Committee are elected, it can constitute the Working Group on Communications. That means that on an optimistic timetable, the Working Group on Communications will start its work in August 2008.⁵⁹ Because there is a huge and growing backlog of communications accumulated since the last session of the Working Group on Communications in 2006, the Council had to decide on an interim arrangement.

States quickly found agreement on the way forward. Accordingly, the Council decided without a vote that the President would nominate the five former members of the Working Group to continue their work for six months, until the Advisory Committee sets up the new Working Group on Communications.⁶⁰ An alternative proposal involving the nomination of two or more new independent experts for six months was briefly discussed, but was discarded. Indeed, given the difficulty with the selection of mandate holders for special procedures, it would have been very difficult for the Council to agree on appointing new independent experts within an appropriate time frame.

The Working Groups of the Sub-Commission

The Sub-Commission had held its last session in August 2005. Throughout the first cycle of the Council, the future of the various working groups established by the Sub-Commission was unclear and disputed. It was decided in June 2007 that the Council would discuss at its 6th session the most appropriate mechanisms to continue the work of the Sub-Commission working groups.⁶¹ Several States therefore took initiatives in regard to the working groups, and held consultations throughout the first part of the 6th session.

Based on an initiative by Austria, a new **Forum on minority issues** was established as the successor to the Working Group on minorities.⁶² The Forum would facilitate participation by States, non-governmental organisations (NGOs) and all other stakeholders, and also be used to provide thematic input to the Independent Expert on minority issues. The tailoring of the new Forum and its inbuilt coordination with the work of the Independent Expert is an example of how the review of the different mechanisms of the former Commission could contribute to strengthening the coherence of the human rights system. It will be important to consider this when reviewing the mandate of the Independent Expert at the March 2008 session.

The Working Group on contemporary forms of slavery was replaced by a special procedures mandate. On the initiative of the United Kingdom, the Council created its first new special procedures mandate, the **Special Rapporteur on contemporary forms of slavery**. In examining and reporting on all forms of slavery, the Special Rapporteur is requested to focus principally on aspects of contemporary forms of slavery that are not covered by existing mandates of the Council.⁶³ This formulation leaves quite some leeway to the mandate holder to determine, which ‘forms of contemporary slavery’ are not currently covered. Such an approach relieves the Council from spelling out all areas of focus and can thereby contribute to filling gaps in human rights protection. However, it also risks depriving mandate holders of specific guidance in carrying out their functions.

⁵⁹ The annual session of the Advisory Committee is likely to take place from 4 to 15 August 2008.

⁶⁰ This was favoured by many States, including China, Pakistan (on behalf of the OIC), Cuba, Brazil, Saudi Arabia, Morocco, Guatemala, Chile, India.

⁶¹ See paragraph 84 of *Resolution 5/1*.

⁶² A/HRC/RES/6/15 was adopted by consensus.

⁶³ A/HRC/RES/6/14 was adopted by consensus.

Regarding the **Working Group on indigenous populations**, the Council was not able to find a solution during first part of the 6th session. Instead, it decided to request OHCHR to convene an informal meeting prior to the resumed 6th session in December 2007 to exchange views on the most appropriate mechanisms to continue the work of the Working Group.⁶⁴ At the resumed session, the Council established an ‘expert mechanism on the rights of indigenous peoples’ to ‘provide the Council with thematic expertise on the rights of indigenous peoples’.⁶⁵ The new expert mechanism will ‘consist of five independent experts’, in the selection of which the Council will ‘give due regard to experts of indigenous origin’. Notably, Bolivia who was the main sponsor of the resolution was so unhappy with the final text that it withdrew its co-sponsorship after the adoption of the resolution. On the other hand, the International Indian Treaty Council, in a statement on the occasion of the closing of the session, expressed its appreciation for the new mechanism, saying it was a good basis for the next steps.⁶⁶

The **Social Forum** will be preserved thanks to a Cuban initiative. It will continue to meet on a yearly basis to deal with issues of poverty and globalisation. The participation of various stakeholders, including ‘grass-roots organisations’ should enable them to enter into an interactive dialogue with the UN human rights machinery.⁶⁷ The participation of organisations and individuals who are in very close contact with the realities of every-day human rights work was a significant contribution to the Social Forum. The approach taken by the Social Forum to NGO participation, which is now being preserved, could serve as a model for the wider UN system.

Substantive developments

In addition to the time and energy devoted to the completion of the institution-building process, the Council also paid considerable attention to substantive human rights issues. As indicated, the 6th session was the first Council session to operate with a detailed and substantive agenda. While previous sessions had also dealt with a range of substantive issues, they had done so under the heading of ‘Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled ‘Human Rights Council’’.⁶⁸

In comparison with the agenda of the Commission on Human Rights (the Commission), the Council’s new agenda is shorter and more coherent.⁶⁹ It is designed to allow for some measure of predictability, which should facilitate the planning and preparations of all stakeholders. However, it also contains sufficiently broad agenda items, allowing the Council to react to pressing situations and discuss broader issues without artificial distinctions, such as under Item 3 on the ‘Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.’ By treating all human rights thematic issues under one agenda item instead of under separate ones, the Council is likely to be able to pay more attention to cross-cutting issues.

At the beginning of the 6th session, President Costea indicated that he had received several requests from delegations wishing to make general comments under specific agenda items. The programme of work available at the beginning of the session did not make space for general debate under each item. While the

⁶⁴ The draft decision was submitted by Bolivia. A/HRC/RES/6/16 was adopted by consensus. That meeting took place from 6 to 7 December 2007.

⁶⁵ A/HRC/RES/6/36.

⁶⁶ See ISHR’s *Daily Update* of 14 December 2007.

⁶⁷ A/HRC/RES/6/13 was adopted by consensus.

⁶⁸ See the ISHR website www.ishr.ch/hrm for overviews of previous sessions.

⁶⁹ M. Abraham, *Building the New Human Rights Council. Outcome and analysis of the institution-building year*, Friedrich Ebert Stiftung, pp 12-13. The paper is available at <http://library.fes.de/pdf-files/bueros/genf/04769.pdf>.

opportunity for general comments on each agenda item was a welcome initiative by the Presidency, it also created difficulties. On one hand, it allowed States and NGOs to draw attention to important points such as country situations not listed on the programme of work under Item 4, or the specific needs of vulnerable groups under Item 3. On the other hand, more pressure was placed on the already tight schedule. Because debates spilled over more and more to the following day, the programme of work became rather unpredictable. This made it difficult for NGOs to know when to contribute their expertise to the work of the Council, as the programme of work kept changing.⁷⁰

In a way, the general debate under each agenda item is an extension of the practice started in the first year of the Council of the ‘related debate’. The related debate usually took place after the interactive dialogues with special procedures mandate holders, and was used to comment on issues relevant to the general themes and situations covered by the special procedures, but not dealt with in the reports presented. By extending the general debate to all agenda items (and not only the presentation of special procedures reports), the Council has added flexibility to its programme.

Dialogue with the High Commissioner

Under agenda Item 2, ‘Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the United Nations High Commissioner for Human Rights and the Secretary-General’ the Council heard a brief update from Ms Louise Arbour. Formally, the updates from the High Commissioner for Human Rights (the High Commissioner) delivered at the 6th session do not form part of the annual report, which will be delivered to the March 2008 session of the Council.⁷¹ Ms Arbour commented on the institution-building process, focusing in particular on the need for the UPR to begin at the earliest opportunity. She updated the Council on her recent visits to Indonesia, Iran and the Great Lakes region in Africa. Turning to the work of regional and national offices of OHCHR, she informed that there was considerable progress with the offices in Colombia, Bolivia, Panama City, Togo, Dakar and Kyrgyzstan, as well as the deployment of advisors to Indonesia, Kyrgyzstan, the Maldives, Ecuador, Guyana, Georgia, Somalia and Rwanda. She noted, however, that there were some difficulties in Egypt with setting up a regional office and the ‘continued delay with the planned deployment of a Senior Human Rights Adviser to Zimbabwe’. She also announced upcoming visits to Sri Lanka, Afghanistan and Brazil.

Country engagement strategy

A controversial point in relation to the High Commissioner’s country engagement strategy was the planned establishment of a regional office for North Africa in Egypt, which was discussed at both parts of the 6th session. Pakistan (on behalf of the OIC) asked that OHCHR consult all countries in the region before setting up a regional office. Egypt’s remark revealed the now well-established fault lines of this debate, when it stated that the OHCHR should have more field presences in ‘developed countries’ instead of only in ‘developing countries’.⁷² Many countries called for the consent of the concerned country when setting up a field office,⁷³ with China going further and suggesting that OHCHR technical assistance should be given upon requests from States on a voluntary basis. During the second part of the session, several States welcomed the opening of the new regional office for West Africa in Dakar, Senegal.⁷⁴

⁷⁰ During the three weeks of the first part of the 6th session, 6 different versions of the programme of work were circulated. See <http://ohchr.org/english/bodies/hrcouncil/6session/ood.htm> to download the versions.

⁷¹ The update report was heard on 13 September 2007. See ISHR *Daily Update* available at www.ishr.ch/hrm for details.

⁷² Supported by Algeria.

⁷³ China, Philippines.

⁷⁴ Portugal (on behalf of the EU and other States), Egypt (on behalf of the African Group), Republic of Korea, Senegal, USA.

The visit to **Sri Lanka** planned between the first and second part of the 6th session was welcomed by many. During the first part of the session, several States saw the invitation from the Government of Sri Lanka as a positive gesture and a sign of good will and openness. Sri Lanka asserted that the planned visit is only one example of the positive engagement of the Government with the international system and a result of a policy of openness and constructive engagement at a difficult time. The delegate warned against anything that could derail this constructive engagement. Throughout the session, Sri Lanka was active in keeping up this image, for example by distributing folders presenting its view on the human rights situation in Sri Lanka to all delegations in the plenary and through several parallel events. During the second part of the session, speakers highlighted issues of concern such as the abduction of civilians, including humanitarian workers, detentions, enforced disappearances, violations against journalists and human rights defenders, the recruitment of child soldiers, the lack of adequate investigation into abuses, torture, extrajudicial executions, and other forms of violence occurring in the country.⁷⁵ Many States also welcomed the broad access to Sri Lanka that was granted to the High Commissioner on her visit to the country.⁷⁶

One of the main issues of contention was the setting up of an OHCHR field presence in Sri Lanka, which would have a broad mandate to monitor and publicly report on the situation of human rights in the country. The Ambassador of Sri Lanka said agreement had yet to be reached with OHCHR regarding the establishment of a field presence in the country. While pledging its cooperation, Sri Lanka also aggressively defended its national institutions, and stated that its negotiations with OHCHR and other international bodies would always be informed by its determination that its national institutions and processes should be ‘supplemented and supported’ by international assistance, but ‘never supplanted or substituted by the non-national’.

During the second part of the session, the situation in **Pakistan** also gave rise to some debate. States and especially NGOs joined the High Commissioner in expressing concern about the deteriorating situation since the imposition of emergency rule. Comments regarding the High Commissioner’s visit to **Afghanistan** and **Brazil** and on her remarks about the deteriorating situation in **Iraq** were also made.⁷⁷

Relationship between OHCHR and the Council

Many States commented on the relationship between OHCHR and the Council. A number of States welcomed the dialogue with the High Commissioner and OHCHR, saying such dialogue was essential for the work of both entities. Some States used the opportunity to raise a contentious issue that had not been raised by the High Commissioner herself, the relationship between OHCHR and the Council. While prior to the 6th session a number of States had suggested to ‘institutionalise’ the relationship,⁷⁸ during the 6th session it became clear what was actually meant by such institutionalisation. The Russian Federation said that there was a need to improve the work of OHCHR and to strengthen transparency and accountability. Pakistan (on behalf of the OIC) called for institutional checks and balances. What had seemed a legitimate call for dialogue with the High Commissioner turned into an attempt at micromanaging the work of OHCHR.

This analysis was confirmed by a resolution introduced by Egypt (on behalf of the African Group) and adopted by a vote at the first part of the session.⁷⁹ The resolution purported to focus on the effective implementation of the commitments made at the Durban Conference to fight racism.⁸⁰ However, it is

⁷⁵ Portugal (on behalf of the EU and other States), Canada, France, Sweden, USA, Amnesty International, International Commission of Jurists, Human Rights Watch.

⁷⁶ Portugal (on behalf of the EU and other States), Philippines.

⁷⁷ See ISHR’s *Daily Update* available at www.ishr.ch/hrm.

⁷⁸ During organisational meetings of 25 July and 24 August 2007. States that raised this point included Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), China.

⁷⁹ http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_22.pdf.

⁸⁰ The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001.

revealing that the first paragraph of the resolution ‘decides to realign the work and name of the Anti-Discrimination Unit in the Office of the United Nations High Commissioner for Human Rights’ to ‘anti-racial discrimination unit’. By deciding to change the name of a unit within OHCHR the Council does not appropriately further the fight against racism. Rather, it attempts to interfere with the work of OHCHR by trying to micromanage its work. It does so not only against General Assembly *Resolution 48/141* of 1993, which puts the High Commissioner ‘under the direction and authority of the Secretary-General’,⁸¹ but also against the established practice of the Commission. Indeed, while the High Commissioner’s mandate also is to ‘carry out the tasks assigned to him/her by the competent bodies’, the practice was that the Commission merely set the framework within which the High Commissioner would carry out the mandate.

This trend continued during the second part of the session. While many States were strongly supportive of the work of the OHCHR,⁸² others used the opportunity of the dialogue with the High Commissioner to attempt to undermine its independence and effectiveness. Several countries argued for the Council to have more ‘oversight’ over the work of the OHCHR.⁸³ The *Strategic Management Plan of OHCHR for 2008-2009* was also discussed by some States.⁸⁴ Egypt (on behalf of the African Group) requested that comments from member States be reflected in the plan.

Promotion and protection of all human rights

Item 3 on the Council’s agenda is devoted to the ‘promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development’ and was expected to be inclusive and broad enough to provide room for a wide range of human rights concerns to be addressed. The opportunity for States and observers, including NGOs, to provide general comments on each agenda item acted as a catalyst to use this potentially wide agenda item in a creative way.

The bulk of the work done under Item 3 were the interactive dialogues with special procedures mandate holders. As noted in previous reports, the modalities of the interactive dialogue have allowed for greatly improved interaction of special procedures with members and observers of the Council, including with NHRIs and with NGOs.⁸⁵ As during previous sessions, the interactive dialogues with special procedures proved to be substantive and useful exchanges, going to the heart of the Council’s work. A summary of the issues covered in these dialogues is contained in ISHR’s *Daily Updates* for the respective days.⁸⁶ This overview does not cover the substance in detail. During the 6th session, the Council held interactive dialogues with the following special procedures:

- Special Rapporteur on freedom of religion or belief, Ms Asma Jahangir.⁸⁷
- Independent Expert on human rights and international solidarity, Mr Rudi Muhammed Rizki.⁸⁸
- Special Representative of the Secretary-General for children and armed conflict, Ms Radhika Coomaraswamy.⁸⁹

⁸¹ See paragraph 4.

⁸² Portugal (on behalf of the EU and other States), Canada, Republic of Korea, Netherlands, France, Indonesia, Norway, New Zealand.

⁸³ Pakistan (on behalf of the OIC).

⁸⁴ Egypt (on behalf of the African Group), Philippines, Norway.

⁸⁵ See for example session overviews of previous sessions of the Council and the Human Rights Monitor 2006, available at www.ishr.ch.

⁸⁶ The *Daily Updates* are available on www.ishr.ch in the Council Monitor section.

⁸⁷ 13 September 2007.

⁸⁸ 13 September 2007.

⁸⁹ 21 September 2007.

- Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC), Mr Titinga Frédéric Pacéré.⁹⁰
- Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr Rodolfo Stavenhagen (second part).⁹¹
- Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr Martin Scheinin (second part).⁹²

Other reports considered under Item 3 included the following:

- Report of the High Commissioner on equitable access to safe drinking water.⁹³
- Report of the Secretary-General on human rights and unilateral coercive measures.⁹⁴

During the time set aside for general debate under Item 3, many different issues were raised.⁹⁵ These included the ratification of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, the implementation of the Millennium Development Goals, the abolishment of the death penalty, the role of the Council in early warning and prevention and the right to self-determination. In the context of the latter, the situations of Jammu and Kashmir and of the Western Sahara were raised. Some States also commented positively on the work of special procedures not presenting reports at the current session, including those on health, food, housing and education.

The segment of general debate was also used for substantive contributions with a very wide range of issues discussed.⁹⁶ In light of the inclusive formulation of Item 3, Action Canada for Population and Development raised the structural issue of protection gaps within the system of special procedures, suggesting that the Council should define areas for which new mandates should be created, and identify areas where initial exploration could be undertaken by one or more existing mandate holders. The Canadian HIV/AIDS Legal Network recalled the Council's responsibility to address persistent human rights violations against marginalised groups and looked forward to a discussion of human rights violations based on gender identity and sexual orientation at a future session of the Council.

During the second part of the session, the Council discussed the 'rectification of the legal status of the Committee on Economic, Social and Cultural Rights' (the Committee).⁹⁷ Mr Philippe Texier, Chairperson of the Committee, presented the view of the Committee that it had not felt any disadvantage due to its different status over its 20 years of existence. He noted that there are three options to 'rectify' the status of the Committee, as outlined by OHCHR in a separate document,⁹⁸ of which the Committee prefers that of an additional protocol to the *Covenant on Economic, Social and Cultural Rights* (the Covenant). In that regard, he pointed out that the Council should avoid merging the rectification of the status of the Committee with the elaboration of an optional protocol to the Covenant allowing for individual communications to be considered by the Committee. Most States in principle favoured the rectification of the status of the Committee, but many

⁹⁰ This report was considered under Item 10, technical assistance and capacity building, 25 September 2007.

⁹¹ 12 December 2007.

⁹² 12 December 2007.

⁹³ Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, A/HRC/6/3.

⁹⁴ A/HRC/6/2.

⁹⁵ See ISHR's *Daily Update* of 17 September 2007, available at www.ishr.ch.

⁹⁶ See the 'Framework for the programme of work' section of the institution-building text (section V.C, see fn. 3).

⁹⁷ The Committee on Economic, Social and Cultural Rights, unlike the Human Rights Committee and other treaty bodies, was created by ECOSOC *Resolution 1985/17*, and not by the treaty it is mandated to supervise. Therefore, its members are elected by ECOSOC instead of by the States parties to the Covenant, which would be more logical.

⁹⁸ Documents A/HRC/6/20 and 21

seemed concerned that the process of doing so would be difficult. Some cautioned that any damage to the Covenant should be avoided.⁹⁹

The Chairperson of the Working Group on the drafting of an optional protocol, Ms Catarina de Albuquerque, presented an update report on the 4th meeting of the Working Group held from 16 to 27 July 2007.¹⁰⁰ There was overall support for the optional protocol, and the strong support for a ‘comprehensive approach’ seemed to foreshadow the negotiations during the 5th session of the Working Group planned for early 2008.

Human rights situations that require the Council’s attention

Item 4 on the Council’s agenda is devoted to human rights situations that require the Council’s attention. During the 6th session, this item was exclusively used to consider country specific situations. However, it should not be excluded that other situations than geographical situations could be brought up under this item.¹⁰¹ Prior to the session, many NGOs were concerned about the relatively short time allocated to Item 4 in the programme of work.¹⁰² Initially, the programme of work for the first and second part of the session detailed only the follow up to *Resolution OM/1/3* on Darfur for discussion. Given the complex nature of that situation, there was a concern that the entire three-hour slot would be used for discussing Darfur, and that no time would be available for other situations requiring attention. However, thanks to the practice of allowing general debate under each agenda item on issues not explicitly covered in the programme of work, the Council ended up spending an entire day on Item 4.¹⁰³ Despite the opposition by a number of States to using Item 4 to raise country situations not foreseen in the programme of work, many situations were covered.¹⁰⁴

During the second part of the session, the Council also dealt with the follow-up to *Resolution S-5/1* on the situation of human rights in Burma/Myanmar. Based on the practice established in the first part of the session, provision was made for a general debate to be held under this item as well.

Darfur

As follow-up to *Resolution OM/1/3* adopted at the organisational meeting immediately following the 5th session, the United Nations Experts Group on Darfur (the Experts Group) presented an interim report on the situation of human rights in Darfur to the first part of the session.¹⁰⁵ The discussion of that report was

⁹⁹ Switzerland, Belgium.

¹⁰⁰ 11 December 2007.

¹⁰¹ China suggested to also focus on the death of children of curable diseases, deterioration of the livelihood of poor farmers in the south due to agricultural subsidies in advanced countries, the loss of lives in militarily occupied areas, religious hatred affecting Muslims, and the rights of indigenous peoples.

¹⁰² The programme of work allocated one three-hour slot for the consideration of Item 4.

¹⁰³ See ISHR’s *Daily Update* of 24 September 2007, available at www.ishr.ch.

¹⁰⁴ Discussion under Item 4 was divided between States supporting and opposing the use of Item 4 to consider country situations. Supportive States included Portugal (speaking on behalf of the EU, Croatia, Macedonia, Georgia), Japan, Switzerland, Germany, France, UK, Canada, Netherlands, Australia, New Zealand, United States of America (USA), Denmark, Sweden, Belgium, Pakistan. Others were opposed to a wide application of Item 4, saying this would lead to resurrecting the practice of ‘naming and shaming’ observed in the times of the Commission. These States included Cuba, Sri Lanka (speaking on behalf of the Asian Group), China, Egypt (speaking on behalf of the African Group). The Democratic Republic of the Congo and Lesotho also criticised the use of Item 4 by a number of States to address the human rights situation in Zimbabwe.

¹⁰⁵ The Experts Group was established by the Council in its *Resolution 4/8*. It is presided by the Special Rapporteur on the situation of human rights in the Sudan and composed of the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on the situation of human rights defenders, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on the question of torture, and the Special Rapporteur on violence against women, its causes and consequences. See *Daily Update* of 24 September 2007.

relatively constructive, focusing on the Government of the Sudan's cooperation with the Experts Group. However, as anticipated in the context of the review of special procedures mandates, the discussion on Darfur was used to attack the mandate of the Special Rapporteur on the situation of human rights in Sudan. Since the conflict in Darfur was 'only' a local conflict, and the Government of the Sudan was already cooperating with the Experts Group, some States felt it was time to abandon the mandate of the Special Rapporteur.

The Experts Group submitted its final, more comprehensive report to the second part of the 6th session of the Council.¹⁰⁶ Similarly to the findings of the interim report, the Experts Group concluded in its report that the process of cooperative engagement with the Government had worked well in procedural terms but that so far, few recommendations had actually had a measurable impact. The Experts Group called on the Council to continue the process of assessing the implementation of the recommendations in accordance with the indicators and timeframes developed by the Experts Group. The Experts Group suggested the renewal of the mandate to analyse results and impacts of the recommendations by 20 June 2008.

The Council's reaction to the report of the Experts Group was, once again, divided. Many States felt that the cooperation between the Experts Group and the Government of the Sudan was sufficient progress. Some even claimed that the situation in Darfur had improved, clearly contradicting the views expressed by members of the Experts Group and the High Commissioner earlier in the session. Other States continued to express concern about the situation in Darfur.

In terms of the conclusions to draw from the findings and recommendations by the Experts Group, the Council was equally divided. Referring to the Special Rapporteur on the human rights situation in the Sudan, Egypt (on behalf of the African Group) and Pakistan (on behalf of the OIC) argued that there should be no duplication of international mechanisms. Others followed the argumentation by the Experts Group, that the two mechanisms are complementary and equally important. However, despite the overall positive echo the work of the Experts Group found in the Council, and despite the fact that the need to continue the mandate became apparent in these discussions, the Council ultimately decided to trade-off the mandate of the Experts Group for the concession to keep the mandate of the Special Rapporteur.¹⁰⁷

Burma/Myanmar

During the first part of the 6th session, comments related to Burma/Myanmar under Item 4 were only made in passing, and no detailed discussion took place. Since the situation deteriorated in Burma/Myanmar over the course of the first part of the session, States and NGOs used the opportunity to voice their concerns under Item 8 on the implementation of the Vienna Declaration and Programme of Action (see below). Following the first part of the 6th session, a special session on Burma/Myanmar was called for and held on 2 October 2007.¹⁰⁸ The resolution passed at the special session mandated the Special Rapporteur on the situation of human rights in Myanmar, Mr Sergio Paulo Pinheiro, to report back to the resumed 6th session in December 2007.¹⁰⁹

Following the special session, the Special Rapporteur was able to visit the country, for the first time since 2003. However, in his report to the second part of the 6th session, Mr Pinheiro stated that he had found no significant signs that the Government was implementing the operative paragraphs of Council *Resolution S-5/1*.¹¹⁰ The Government of Myanmar, despite having agreed to a minimum level of cooperation by letting Mr Pinheiro visit, rejected the report outright, calling it 'intrusive and filled with unfounded, sweeping

¹⁰⁶ See ISHR's *Daily Update* of 11 December 2007

¹⁰⁷ See above, 'Country specific mandates'.

¹⁰⁸ See ISHR's report on the 5th special session, available at www.ishr.ch.

¹⁰⁹ Human Rights Council *Resolution S-5/1*.

¹¹⁰ See ISHR's *Daily Updates* of 11 and 12 December 2007.

generalisations'. Despite this bitter reaction by the concerned country, all States welcomed the report. Accordingly, a resolution was adopted asking the Government of Myanmar to follow-up to and implement all recommendations contained in the Special Rapporteur's report. Notably, the resolution was adopted by consensus despite the clear opposition by the Government of Myanmar, and despite earlier calls by some members of the Council against country specific mandates in general and in particular those that are not supported by the country concerned.

Other situations

In addition to Darfur, States and NGOs during the first part of the session commented on the situation of human rights in Belarus, Burundi, China, Colombia, Cuba, the Democratic Peoples Republic of Korea (DPRK), the Democratic Republic of the Congo (DRC), Egypt, Fiji, Gabon, Haiti, Iran, Iraq, Jammu and Kashmir, Myanmar/Burma, occupied Palestinian territories, Pakistan, the Philippines, the Russian Federation, Sri Lanka, the Sudan (in general), the United States of America, Uzbekistan, Western Sahara and Zimbabwe. For a summary of the often detailed comments on these situations, please refer to ISHR's *Daily Update* of 24 September 2007.

Some States also raised general 'situations' not directly related to a single specific country situation, thereby underlining the broad scope and flexible nature of Item 4. The United States of America (US) expressed concern at the many attacks on well-established human rights principles and the organisations working to protect these principles. It stated that **human rights defenders** are working to protect the rights of others but increasingly also have to protect themselves against attacks and intimidation. Amnesty International expressed concern at the erosion of human rights law as a result of the '**war on terror**', in particular enforced disappearances, unlawful transfers of detainees (rendition), and secret detention. It stated that these practices had been committed by or with the complicity of several States, including the US, Egypt, Jordan, Morocco, Pakistan, Syria, Tanzania, and countries of the EU. It also mentioned the use of diplomatic assurances despite the use of torture and ill-treatment in countries to which the individual had been returned. The International Association of Schools of Social Work (IASSW) was concerned about **extreme poverty** as a violation of human rights and noted the importance of human rights education in eradicating poverty.

Human rights bodies and mechanisms and UPR

Agenda Item 5 (human rights bodies and mechanisms) and Item 6 (universal periodic review) were not fully operational at the 6th session. As mentioned above, the remaining parts of the institution-building work were addressed in both informal and formal plenary discussions; the formal part of these discussions took place under Item 5 and 6 respectively. Since the key developments are covered in the first section of this overview, they will not be repeated here. However, it will be interesting to see how Items 5 and 6 will be used in future sessions of the Council.

Item 5, 'human rights bodies and mechanisms', is likely to be reserved for hearing reports of the various bodies established by the Council, including the Advisory Committee. This item also holds potential for improving the coordination between different bodies of the UN concerned with human rights. For example, it would be positive to see a regular and systematic engagement of the Council with the Coordination Committee of Special Procedures established in 2005.¹¹¹ This will be important, in particular in relation to the adoption of the *Code of Conduct* for special procedures. At the 4th session of the Council, the Coordination Committee reported that the special procedures had begun to 'concretise their mechanisms of accountability' and that the Coordination Committee will play a role in the implementation of the *Code of Conduct*. For the Coordination Committee to play this role, a regular slot in the Council's agenda would be useful.

¹¹¹ <http://www.ohchr.org/english/bodies/chr/special/ccspecialprocedures.htm>.

Naturally, Item 6 will be devoted to the consideration of the report by the UPR Working Group to the Council plenary. *Resolution 5/1* specifies that ‘additional time of up to one hour will be allocated for the consideration of the outcome by the plenary of the Council’.¹¹² According to the current calendar of meetings for 2008, the June session of the Council will have to consider the outcome for 32 countries.¹¹³ This means that more than half of the two-week session in June would be devoted to Item 6.¹¹⁴

During the second part of the session, a parallel event was organised jointly by Switzerland, Brazil, Morocco and the Philippines, which will all be reviewed in the first session of the UPR. The event was intended to serve to share best practices in terms of consulting civil society in preparation for the UPR.¹¹⁵

Human right situation in Palestine and other occupied Arab territories

Agenda Item 7, ‘the human rights situation in Palestine and other occupied Arab territories’, has been a controversial item from its inception. Placed on the agenda of the Council following the calls by a large number of States, it was heavily contested towards the end of the institution-building process. The opposition to the said item, headed by Canada, was so strong that it nearly undermined the consensual adoption of the institution-building package in June. Canada had contested the adoption of the institution-building package, because the agenda contained one item (Item 7) on one particular country situation.¹¹⁶

Under these circumstances, it came as no surprise that the discussions under Item 7 were very politically charged.¹¹⁷ States and NGOs in support of Palestine accused Israel of being the sole perpetrator of human rights violations in the Palestinian and the other occupied Arab territories. Israel, along with some other States and a large number of NGOs perceived the whole discussion to be ‘Israel-bashing’ and a manifestation of the selective approach of the Council. Without judging on the merits of Item 7, or on the appropriateness of its prominence on the agenda, it is regrettable that the debate was held in such a tense climate. The approach taken by both sides distracts the Council from what it should and could achieve with its country specific work, and in particular to improve the human rights situation in Palestine and other occupied Arab territories.

On several occasions in its first 18 months of existence, the Council has shown that difficult and politically sensitive issues can be tackled in a constructive way. This can be said of the approach taken to Darfur, where a cross regional call for a special session, and a consensus driven approach led to an innovative solution with the establishment of the Experts Group.¹¹⁸ A further positive step was the special session on Burma/Myanmar and the *Resolution S-5/1* passed by consensus.¹¹⁹ Arguably, that resolution has at least contributed to the decision by the Government of Myanmar to allow the Special Rapporteur on the situation of human rights in Myanmar to visit the country. Even though the political and historical context in the occupied Palestinian territories is profoundly different from these two examples of constructive cooperation, these examples show that the Council can contribute positively to concerted efforts by other mechanisms of the UN and the international community as a whole to find workable solutions to serious human rights situations. It is hoped that the Council will soon be able to move past divisive rhetoric.

¹¹² Paragraph 22 of *Resolution 5/1*.

¹¹³ Each session of the UPR Working Group will review 16 countries. The 1st session will be held in April, and the 2nd in May 2008.

¹¹⁴ 32 times one hour divided over a normal 6-hour day would require 5.5 days to consider all outcome reports, if the time is strictly observed.

¹¹⁵ See ISHR’s *Daily Update* of 10 December 2007.

¹¹⁶ See ISHR’s report on the adoption of the institution-building package, available at http://ishr.ch/hrm/council/dailyupdates/session_005/18_20_june_2007.pdf.

¹¹⁷ Item 7 was discussed on 20 September 2007.

¹¹⁸ See the discussion of the interim report by the Experts Group in the preceding section.

¹¹⁹ See ISHR’s report on the special session, available on www.ishr.ch.

However, despite the polarised nature of the debates, a number of States called on both sides of the conflict to observe human rights and humanitarian law. Many specific violations of human rights allegedly perpetrated by Israel and Palestinians were mentioned, in particular by well-known international NGOs.

Follow-up to the Vienna Declaration

Panel discussion on gender integration

Agenda Item 8, the ‘follow-up to and implementation of the Vienna Declaration and Programme of Action (VDPA)’, was discussed in an innovative way.¹²⁰ Rather than the usual series of statements by States normally featuring in a Council debate, an interactive discussion on the integration of a gender perspective into the work of the Council was held.¹²¹ Given the importance the VDPA attaches to gender equality, the topic was well chosen and allowed for a useful and quite practical discussion with the participation of a panel of experts, States and civil society representatives. Such an open and constructive approach is certainly welcome to soften the often lengthy and bureaucratic ways of the Council, and may set an important precedent. The specific focus on a theme may also enable the Council to take significant steps forward.

The gender integration panel was a mix of State representatives, UN officials, special procedures mandate holders and NGO representative. Ambassador Maria Nzomo of Kenya moderated the panel, composed of Ms Kyung-wha Kang, the Deputy High Commissioner for Human Rights; Mr Miloon Kothari, the Special Rapporteur on adequate housing; Ms Radhika Coomaraswamy, the Special Representative of the Secretary-General on children and armed conflict; and Ms Charlotte Bunch, executive director of the Centre for Women’s Global Leadership. Each of the panellists was given the opportunity to address the Council and respond to questions raised. The time set aside for the panel was separated into three segments, each of them comprised of input by the panellists, reactions by States and by NGOs. This allowed for a more meaningful and focused discussion, as it enabled more interaction between the various stakeholders.

In terms of substance, wide ground was covered in the discussion about gender mainstreaming. The discussion focused on a clarification of the definitions of gender and gender mainstreaming. It then moved on to a stock-taking of what had already been done within the framework of the Council to address the issue. Ambassador Nzomo noted that agreement had been found that a two-track approach was appropriate. On the one hand, gender needed to be integrated into the whole UN system, through special attention during efforts at institution building such as the one currently experienced by the Council. In that regard, a forward-looking perspective was the systematic integration of gender in the UPR. This would range from the inclusion of ‘genderised information’ in State reports and OHCHR summaries, to the need for specific gender experience in State delegations coming to the UPR Working Group.

General debate

The general debate under Item 8 was a good example of the utility of a broad agenda item, and of the opportunities this presents for raising a wide range of issues and situations. The main themes drawn from the consideration of the Vienna Declaration, apart from the gender integration panel, were the universality, indivisibility, interdependence and interrelatedness of all rights. However, far from academic excursions into

¹²⁰ The Vienna Declaration and Programme of Action (VDPA) is the outcome document of the World Conference on Human Rights in 1993. It recognises that all human rights are inherent, universal, indivisible, inter-related and interdependent and that the promotion and protection of all human rights are legitimate concerns of the international community. The VDPA sent a clear commitment from the international community, and called on all UN mechanisms to integrate the equal status of men and women into all its activities.

¹²¹ This panel took place on 20 and 21 September 2007. See ISHR’s *Daily Update* for more details.

the text of the Vienna Declaration, States and NGOs equally used these themes to focus specifically on country specific¹²² and thematic¹²³ issues of concern to them.

Some States and NGOs recalled the focus of the Vienna Declaration on mechanisms for the promotion and protection of human rights. In particular, the role of NHRIs and of the special procedures was highlighted. As a concrete suggestion, ISHR proposed to use Item 8 to hold a regular dialogue with the Coordination Committee of the special procedures mandate holders to discuss system wide issues, concerns and challenges.

Two resolutions were tabled under Item 8. The first, sponsored by Belgium, Armenia, Mexico and Senegal requests OHCHR to organise a workshop in 2008 to exchange views and good practices regarding regional arrangements for the promotion and protection of human rights and was adopted without a vote.¹²⁴ The other was tabled by Chile and co-sponsored by a large number of States and aims at integrating the human rights of women and a gender perspective throughout the UN system. Its consideration was postponed to the resumed 6th session in December 2008 where it was adopted without a vote.

Racism, racial discrimination and xenophobia

Agenda Item 9, ‘racism, racial discrimination, xenophobia and related forms of intolerance: follow-up to and implementation of the Durban Declaration and Programme of Action’, was discussed on two occasions and considered the following reports and statements:

- Report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Doudou Diène.¹²⁵ He had been asked by Council *Resolution 4/9* to prepare a report focusing on defamation of religion, and in particular the implications of Islamophobia on the enjoyment of all human rights.
- Ms Kyung-wha Kang, the Deputy High Commissioner for Human Rights, introduced the High Commissioner’s report on combating defamation of religions.¹²⁶
- Oral statement by Ambassador Najat Al-Hajjaji of the Libyan Arab Jamahiriya (Libya), Chairperson of the Preparatory Committee for the Durban Review Conference (the Preparatory Committee) detailing the work of the first session of the Preparatory Committee.¹²⁷
- Ambassador Juan Martabit of Chile, the Chairperson of the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action (the Working Group) gave a brief update on the first and second parts of the Working Group’s 5th session.¹²⁸

¹²² Including the situation in Burma/Myanmar at the time (The first part of the sixth session coincided with the military crackdown in Burma/Myanmar, which violently repressed peaceful demonstrations. For more information, see also ISHR’s report on the 5th special session, available at http://www.ishr.ch/hrm/council/other/cmreports/specialsessions/ss_myanmar_2_october_2007.pdf) and Fiji.

¹²³ Including alternative care for children.

¹²⁴ A/HRC/RES/6/20.

¹²⁵ 14 September 2007.

¹²⁶ The High Commissioner had been requested by the Council to prepare a report on defamation of religion in Council *Resolution 4/9*. The report is contained in document A/HRC/6/4, 4 September 2007.

¹²⁷ The Preparatory Committee for the Durban Review Conference held its organisational session in Geneva from 27 to 31 August 2007. It held nine meetings during the session. For the draft report on the session visit http://www.ohchr.org/english/issues/racism/groups/prep_committee_durban/docs/prepcomdraft.doc.

¹²⁸ The Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action is one of the three mechanisms established to follow up the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001. The Intergovernmental Working Group was established by Commission on Human Rights *Resolution 2002/68* and approved by the Economic and Social Council in its *Decision 2002/270* of 25 July 2002. See <http://www.ohchr.org/english/issues/racism/groups/>. The 5th session of the Working Group was divided into two parts in conformity with Council *Decision 3/103*. The first part took place between 5 and 9 March 2007; the second part was convened from 3 to 7 September 2007.

Item 9, and in particular the discussion of the two reports on defamation of religions and of the report by the Preparatory Committee, once again revealed the fault lines in the Council, albeit not as clearly as during the discussion on Item 7. The consideration of defamation of religion through the prism of racial discrimination appears to be the result of an alliance of forces in the Council, led by Pakistan (on behalf of the OIC) and Egypt (on behalf of the African Group).

The usefulness of this approach is questionable. The report by Special Rapporteur Doudou Diène was indeed a valuable contribution, in that it analyses, among other things, the often hostile climate faced by Muslims living in ‘western’ countries. This could be credited to those States who advocated for *Resolution 4/9* that requested the report.¹²⁹ The report also cautions against the establishment of any hierarchy in the discrimination against different religions. Sadly, as observed during the first part of the 6th session, the focus of the debate and the political alliances necessary to treat the defamation of religion under the heading of racism lead to the *de-facto* establishment of such a hierarchy. This is regrettable in two respects. First, as already indicated, it runs counter to the express recommendations of the Special Rapporteur. Second, and this is more worrying from an institutional point of view, this trend once again makes the Council the playground for politics rather than serious human rights discussions. The ‘fusion’ of defamation of religion and racism seems to be not only the result of an alliance of the OIC and African States, but also a factor strengthening that alliance. This polarises the discussions of the individual issues, and curtails the Council’s ability to address both religious and racial intolerance in an effective and comprehensive way. It almost seems that the discussion itself, rather than its content, has become the main objective.

Not only the links between defamation of religions and racism lead to disagreements. The entire consideration of Item 9 was polarised. A measure of this are the resolutions passed. All three draft resolutions tabled under Item 9 were tabled by Egypt (on behalf of the African Group).¹³⁰ All of them were passed by a vote, following the call for a vote by Slovenia (on behalf of the EU members of the Council). Clearly, the Council is divided on this issue, and it seems that until now, neither side has been willing to make concessions.

Technical assistance and capacity building

Only one report was considered under Item 10, technical assistance and capacity building, the report by the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC).¹³¹ Mr Titinga Frédéric Pacéré’s presentation was followed by an interactive dialogue along the same lines as interactive dialogues under Item 3, with the participation of States and observers of the Council, including NGOs.

High level contributions

Dispersed over the course of the three weeks of the session in September, two Ministers addressed the Council. The Assistant Minister of Foreign Affairs of the Republic of Serbia, Ambassador Feodor Starcevic delivered a statement on behalf of the Chairperson of the Committee of Ministers of the Council of Europe,

¹²⁹ *Resolution 4/9* was adopted by 24 votes in favour (Algeria, Azerbaijan, Bahrain, Bangladesh, Cameroon, China, Cuba, Djibouti, Gabon, Indonesia, Jordan, Malaysia, Mali, Mauritius, Mexico, Morocco, Pakistan, Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka and Tunisia) and 14 against (Canada, Czech Republic, Finland, France, Germany, Guatemala, Japan, Netherlands, Poland, Republic of Korea, Romania and Switzerland) with 9 abstentions (Argentina, Brazil, Ecuador, Ghana, India, Nigeria, Peru, Uruguay and Zambia).

¹³⁰ *Resolutions 6/21, 6/22 and 6/23.*

¹³¹ 26 September 2007.

and highlighted the intention of the Council of Europe to engage regularly with the UN human rights mechanisms.¹³² He welcomed the opportunity provided by the UPR in particular.

H.E. Mr Abdullah Shahid, Minister of Foreign Affairs of the Maldives, also addressed the Council. He announced that the Maldives would sign the *Convention on the Rights of Persons with Disabilities* in October 2007. For 2008, he suggested that the Council could hold a debate on human rights and climate change, to address the relationship between climate change, environmental degradation, and human rights.

Conclusion and next steps

The Council will meet again in March 2008. Between the end of the 6th session, and the 7th session in March, there are a number of elements for the UPR that need to be finalised. Most probably, the President of the Council will hold consultations with all interested actors, including regional groups, NGOs and NHRIs on these questions.

¹³² 14 September 2007.

ANNEX – Table on resolutions and decisions

First part of the session (10 to 28 September 2007)

Title	Main Sponsor	Preliminary and Final resolution number	Voting result / Remarks
Item 1: Follow-up to Human Rights Council resolution 5/1	Submitted by the President	A/HRC/6/L.24, Final: A/HRC/DEC/6/102	Adopted without a vote
Item 1: Arbitrary detention	Submitted by France	A/HRC/6/L.30, Final: A/HRC/RES/6/4	Adopted without a vote, as revised
Item 1: Services consultatifs et assistance technique pour le Burundi	Submitted by Burundi	A/HRC/6/L.29/Rev.1, Final: A/HRC/RES/6/5	Adopted without a vote, as revised
Item 1: Mandate of the Special Rapporteur on the situation of human rights in the Sudan	Submitted by Egypt (on behalf of the African Group)	A/HRC/6/L.20, Final: A/HRC/DEC/6/103	Adopted without a vote
Item 1: Human rights and indigenous peoples: Mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People	Submitted by Guatemala	A/HRC/6/L.26, Final: A/HRC/RES/6/12	Adopted without a vote, as revised
Item 1: Mandate of the Special Rapporteur on the right to food	Submitted by Cuba	A/HRC/6/L.5/Rev.1, Final: A/HRC/RES/6/2	Adopted without a vote
Item 1: Technical cooperation and advisory services in the Democratic Republic of the Congo	Submitted by Egypt (on behalf of the African Group)	A/HRC/6/L.19, Final:	Deferred to the seventh session
Item 1: Technical cooperation and advisory services in the Democratic Republic of the Congo	Submitted by Egypt (on behalf of the African Group)	A/HRC/6/L.19, Final:	Deferred to the seventh session
Item 1: Elimination of all forms of intolerance and of discrimination based on religion or belief	Submitted by Portugal	A/HRC/6/L.15, Final:	Deferred to December 2007
Item 1: Human rights and international solidarity	Submitted by Cuba	A/HRC/6/L.6, Final: A/HRC/RES/6/3	Adopted (34/12/1), as revised
Point 1: Situation des droits de l'homme en Haïti	Submitted by the President	A/HRC/6/L.28, Final: A/HRC/PRST/6/1	Adopted without a vote
Item 3: Creation of Working Group to elaborate a set of Human Rights Voluntary Goals to be launched on the occasion of the celebration of the 60th anniversary of the Universal Declaration of Human Rights	Submitted by Brazil	A/HRC/6/L.36, Final:	Deferred to December 2007
Item 3: Protection of cultural heritage as an important component for the promotion and protection of cultural rights	Submitted by Armenia	A/HRC/6/L.33, Final: A/HRC/RES/6/11	Adopted without a vote, as revised

Item 3: United Nations Declaration on Human Rights Education and Training	Submitted by Morocco & Switzerland	A/HRC/6/L.31, Final: A/HRC/RES/6/10	Adopted without a vote, as revised
Item 3: Prevention of genocide	Submitted by Armenia	A/HRC/6/L.14, Final: A/HRC/DEC/6/104	Adopted without a vote
Item 3: Draft President's statement - The 20th anniversary of the entry into force of the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	Submitted by Denmark	A/HRC/6/L.22, Final: A/HRC/PRST/6/2	Adopted without a vote
Item 3: Development of public information activities in the field of human rights, including the World Public Information Campaign on Human Rights	Submitted by Italy	A/HRC/6/L.25, Final: A/HRC/RES/6/9	Adopted without a vote
Item 3: Human rights and equitable access to safe drinking water and sanitation	Submitted by Spain & Germany	A/HRC/6/L.13/Rev.1, Final: A/HRC/RES/6/8	Adopted without a vote
Item 3: Human rights and unilateral coercive measures	Submitted by Cuba (on behalf of the Non-Aligned Movement)	A/HRC/6/L.7, Final: A/HRC/RES/6/7	Adopted (34/11/2), as revised
Item 3: Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity	Submitted by Cuba	A/HRC/6/L.3/Rev.1, Final: A/HRC/RES/6/6	Adopted without a vote, as revised
Item 3: Protection of cultural rights and properties in the situation of armed conflict	Submitted by Azerbaijan	A/HRC/6/L.1, Final: A/HRC/RES/6/1	Adopted without a vote, as revised
Item 5: Forum on minority issues	Submitted by Austria	A/HRC/6/L.34, Final: A/HRC/RES/6/15	Adopted without a vote, as revised
Item 5: Special Rapporteur on contemporary forms of slavery	Submitted by United Kingdom of Great Britain and Northern Ireland	A/HRC/6/L.23/Rev.1, Final: A/HRC/RES/6/14	Adopted without a vote, as revised
Item 5: Informal meeting to discuss the most appropriate mechanisms to continue the work of the Working Group on Indigenous Populations	Submitted by Bolivia	A/HRC/6/L.35, Final: A/HRC/RES/6/16	Adopted without a vote
Item 5: The Social Forum	Submitted by Cuba	A/HRC/6/L.17/Rev.1, Final: A/HRC/RES/6/13	Adopted without a vote
Item 6: Establishment of funds for the universal periodic review mechanism of the Human Rights Council	Submitted by Egypt (on behalf of the Group of African States)	A/HRC/6/L.12/Rev.1, Final: A/HRC/RES/6/17	Adopted without a vote
Item 6: Establishment of funds for the universal periodic review mechanism of the Human Rights Council	Submitted by Egypt (on behalf of the Group of African States)	A/HRC/6/L.12/Rev.1, Final: A/HRC/RES/6/17	Adopted without a vote
Item 7: Human rights situation in Palestine and other occupied Arab territories: Follow-up to Human Rights Council resolutions S-1/1 and S-3/1	Submitted by Palestine	A/HRC/6/L.2, Final: A/HRC/RES/6/18	Adopted without a vote
Item 7: Religious and cultural rights in the Occupied	Submitted by Palestine	A/HRC/6/L.4, Final:	Adopted (31/1/15)

Palestinian Territory including East Jerusalem		A/HRC/RES/6/19	
Item 8: Integrating the human rights of women and a gender perspective throughout the United Nations system	Submitted by Chile	A/HRC/6/L.32, Final:	Deferred to December 2007
Item 9: Preparations for the Durban Review Conference	Submitted by Egypt (on behalf of the African Group)	A/HRC/6/L.27, Final: A/HRC/RES/6/23	Adopted (33/10/3), as revised
Item 9: Elaboration of international complementary standards to the international convention on the elimination of all forms of racial discrimination	Submitted by Egypt (on behalf of the African Group)	A/HRC/6/L.8/Rev.1, Final: A/HRC/RES/6/21	Adopted (32/10/4), as revised
Item 9: From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance	Submitted by Egypt (on behalf of the African Group)	A/HRC/6/L.9/Rev.1, Final: A/HRC/RES/6/22	Adopted (28/13/5), as revised
Item 10: Regional cooperation for the promotion and protection of human rights in the Asia-Pacific Region	Submitted by Indonesia	A/HRC/6/L.21, Final: A/HRC/RES/6/25	Adopted without a vote
Item 10: World Programme for Human Rights Education	Submitted by Costa Rica	A/HRC/6/L.16, Final: A/HRC/RES/6/24	Adopted without a vote, as revised

Second part of the session (10 to 14 December 2007)

Title	Main Sponsor	Preliminary and Final resolution number	Voting result / Remarks
Item 3: Amendment to draft resolution A/HRC/6/L.15/Rev.1	Submitted by Pakistan (on behalf of the Organization of Islamic Conference)	A/HRC/6/L.49, withdrawn	Withdrawn
Item 3: Alliance of Civilizations	Submitted by Turkey and Spain	A/HRC/6/L.37, A/HRC/DEC/6/106	Adopted without a vote
Item 3: Adequate housing as a component of the right to an adequate standard of living	Submitted by Germany and Finland	A/HRC/6/L.41, A/HRC/RES/6/27	Adopted without a vote, as orally revised
Item 3: Elaboration of human rights voluntary goals to be launched on the occasion of the celebration of the sixtieth anniversary of the Universal Declaration of Human Rights	Submitted by Brazil	A/HRC/6/L.36/Rev.1, A/HRC/RES/6/26	Adopted without a vote
Item 3: Mandate of the Representative of the Secretary-General on the human rights of internally displaced persons	Submitted by Austria	A/HRC/6/L.46, A/HRC/RES/6/32	Adopted without a vote, as orally revised
Item 3: Mandate of the Representative of the Secretary-General on the human rights of internally displaced persons	Submitted by Austria	A/HRC/6/L.46, A/HRC/RES/6/32	Adopted without a vote, as orally revised
Item 3: Protection of Human Rights and fundamental freedoms while countering terrorism: Mandate of the Special Rapporteur	Submitted by Mexico	A/HRC/6/L.43, A/HRC/RES/6/28	Adopted without a vote

on the promotion and protection of Human Rights & fundamental freedoms while countering terrorism			
Item 3: Protection of Human Rights and fundamental freedoms while countering terrorism: Mandate of the Special Rapporteur on the promotion and protection of Human Rights & fundamental freedoms while countering terrorism	Submitted by Mexico	A/HRC/6/L.43, A/HRC/RES/6/28	Adopted without a vote
Item 3: Right of everyone to the enjoyment of the highest attainable standard of physical and mental health	Submitted by Brazil	A/HRC/6/L.44, A/HRC/RES/6/29	Adopted without a vote
Item 4: Amendment to draft resolution A/HRC/6/L.39 (Group of experts on the situation of human rights in Darfur)	Submitted by Egypt (on behalf of the African Group)	A/HRC/6/L.47, withdrawn	Withdrawn
Item 4: Amendment to draft resolution A/HRC/6/L.40 (Mandate of the Special Rapporteur on the situation of human rights in Sudan)	Submitted by Egypt (on behalf of the African Group)	A/HRC/6/L.48, withdrawn	Withdrawn
Item 4: Follow-up to the report A/HRC/6/14 on the situation of human rights in Myanmar	Submitted by Portugal	A/HRC/6/L.38, A/HRC/RES/6/33	Adopted without a vote, as orally revised
Item 4: Group of experts on the situation of human rights in Darfur	Submitted by Portugal	A/HRC/6/L.39, withdrawn	Withdrawn
Item 4: Human Rights Council Group of Experts on the situation of human rights in Darfur	Submitted by Egypt (on behalf of the African Group) & Portugal (on behalf of the European Union)	A/HRC/6/L.51, A/HRC/RES/6/35	Adopted without a vote
Item 4: Mandate of the Special Rapporteur on the situation of human rights in the Sudan	Submitted by Egypt (on behalf of the African Group)	A/HRC/6/L.50, A/HRC/RES/6/34	Adopted without a vote
Item 5: Expert mechanism on the rights of indigenous peoples	Submitted by Bolivia	A/HRC/6/L.42, A/HRC/RES/6/36	Adopted without a vote, as orally revised
Item 10: Mandate of the Special Rapporteur on the situation of human rights in Sudan	Submitted by Portugal	A/HRC/6/L.40, withdrawn	Withdrawn
Item 10: Advisory services and technical assistance for Liberia	Submitted by the United Kingdom of Great Britain and Northern Ireland (on behalf of the European Union)	A/HRC/6/L.45, A/HRC/RES/6/31	Adopted without a vote, as orally revised

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