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Overview

A central issue this year was the question of how States would follow up last year's historic General Assembly resolution on the moratorium on the use of the death penalty.¹ Going into the session, co-sponsors of last year's text advised that their goal was to maintain momentum on the implementation of moratoriums on the death penalty around the world, and to continue to promote constructive dialogue on the abolition of the death penalty without provoking the same controversies and intense debates that accompanied last year's resolution.² As a result, co-sponsors proposed a brief procedural resolution³ in the hope of broadening support for the resolution to include those States that had established a *de facto* moratorium on the use of the death penalty in the last twelve months. However, this approach prevented the inclusion of substantive provisions advocated by some States, with the support of NGOs, such as on the prohibition on the use of the death penalty on juvenile offenders, and the need for various agreed international safeguards to be complied with where the death penalty is used. Despite the best intentions of the co-sponsors, debate on the resolution was polarised from the start and bogged down by discussion of seven amendments suggested by Uganda (on behalf of the OIC). These were all defeated in the Third Committee, and the General Assembly adopted the resolution, with results showing a slight gain in support compared to 2007.⁴

Although several new special procedures reported to the General Assembly this year, the mandate holders covering civil and political rights were familiar faces from previous years. Many sponsors of a number of the related resolutions sought to incorporate and endorse the recommendations and/or findings of these independent experts into their initial draft texts, but unfortunately these efforts were more often than not hindered by opponents, and relevant provisions were either diluted or deleted.

For example, the resolution on **counter-terrorism and human rights**⁵ sought to address due process flaws in the listing of terrorist suspects by the Sanctions Committee of the Security Council (absence of opportunity to be informed in advance and to present submissions). The Special Rapporteur's report suggested several options to remedy these flaws,⁶ but in an effort to reach consensus, the paragraph adopted by the General Assembly requiring the Security Council to use 'clear and fair' procedures in its counter-terrorism sanctions regime was significantly weakened by not specifically referring to some co-sponsors' recent proposals to the Security Council on the due process implications of listing and de-listing.⁷

Sponsors also attempted to include new language on citizenship and religious discrimination in administrative procedures in the annual resolution on the **elimination of all forms of intolerance and**

¹ General Assembly *Resolution 62/149*.

² See ISHR's Report on civil and political rights at the 62nd session of the General Assembly, available at www.ishr.ch/new_york_monitor_ga.

³ Moratorium on the use of the death penalty, General Assembly *Resolution 63/168*.

⁴ This year in the General Assembly, 106 States voted in favour, 46 against, and 34 abstained. In 2007, 104 voted in favour, 54 against, and 29 abstained. One of the more positive outcomes of the vote this year was that several countries in the Arab League changed their vote against the resolution from last year, to abstention this year (Bahrain, Jordan, Oman, Mauritania). Opposition to the text came mostly from other members of the OIC, Singapore, China, and a few of the Caribbean countries. African countries were generally split on the issue.

⁵ General Assembly *Resolution 63/185*.

⁶ A/63/223. The suggested remedies included: the establishment of an independent review mechanism at the UN level to ensure that individuals or groups listed as terrorist suspects received fair and timely hearings, information compiled against them, and an effective remedy.

⁷ In summer 2008, Switzerland, Denmark, Germany, Liechtenstein, the Netherlands, and Sweden submitted to the Security Council a discussion paper containing concrete proposals for establishing an independent panel of experts that would be authorised to submit recommendations concerning de-listing to the Security Council Sanctions Committee. The proposals have also been published as official UN documents, see A/62/891-S/2008/428.

of discrimination based on religion or belief,⁸ two issues which were highlighted in the Special Rapporteur's report.⁹ A provision in the first draft urged States to provide for the alternative of civil registration of marriages where only official recognition of religious marriages existed, and another urged States to refrain from forcing someone to swear allegiance to a religion against his/her will in oath-taking for a public post. Ultimately, the paragraph on the first issue was deleted, and language on the latter was watered down considerably.

At the start of the Third Committee session, the United States (US) informally discussed with States and NGOs putting forward a resolution on the right to freedom of expression. The idea was widely viewed as a means of countering the increasing promotion of the concept of 'defamation of religions' by the OIC in the Council and the General Assembly over the past few years. Many States, particularly those in the Western European and Others Group (WEOG) perceived the latter concept to be inconsistent with international human rights principles, and in particular, the right to freedom of expression. Though no US text emerged during the session, the increasing aversion to the defamation of religions notion appeared to lead to one concrete result: the erosion of support for the **defamation of religions** resolution compared to last year.¹⁰ For the first time, countries voting against or abstaining on the text outnumbered States supporting the resolution. One strategy of the co-sponsors to persuade reluctant States to sign on was to drop the resolution's singular focus on ending the defamation of Islam, and to extend it to combating defamation of *all* religions. They also sought to draw international legal support for the concept from the UN Global Counter-Terrorism Strategy¹¹ adopted by consensus at the General Assembly in 2006, which noted that terrorism was not associated with any nationality or religion. Nonetheless, these changes failed to encourage any additional States to support the text.

The biennial resolution on **extrajudicial, summary or arbitrary executions**¹² included positive new language on three issues raised in the Special Rapporteur's report to the General Assembly,¹³ namely: the importance of the protection of witnesses in the prevention of impunity; the need for essential guarantees to be exercised in States retaining the death penalty (in particular the right to seek commutation of sentence); and the function of national commissions of inquiries in ensuring accountability and combating impunity. The resolution also contained a new reference to the 'responsibility to protect'.

Although States found consensus on a previously controversial paragraph on the death penalty for the first time since the introduction of this resolution on extrajudicial executions, a provision including a reference to sexual orientation evoked similar levels of controversy as it had in previous years. Uganda, on behalf of the OIC, tabled an amendment to delete the phrase on the grounds that discrimination on the basis of sexual orientation was 'not recognised' in international law. States supporting inclusion of the phrase pointed out that the Special Rapporteur on extrajudicial executions had identified this type of discrimination in reports since 1999 and that the reference had been included in previous resolutions. As in previous years, the co-sponsors stood firm, and the proposed amendment was rejected by a vote.¹⁴ The General Assembly eventually adopted the resolution in its entirety, though it passed by a lesser margin than in 2006.¹⁵ The outcome of this debate took on added weight this year and was watched

⁸ General Assembly *Resolution 63/181*.

⁹ A/63/161.

¹⁰ General Assembly *Resolution 63/171*. This year, 86 States voted in favour of the resolution, 53 voted against, and 42 countries abstained. In 2007, 108 States voted in favour, 51 against, and 25 abstained on a resolution of the same name.

¹¹ General Assembly *Resolution 60/288* reaffirmed General Assembly *Resolution 62/272*.

¹² General Assembly *Resolution 63/182*.

¹³ A/63/313.

¹⁴ Fifty-nine States voted in favour, 77 against, and 25 abstained.

¹⁵ This year, 127 States voted in favour and 58 abstained. In 2006, 137 States voted in favour and 43 abstained.

closely by human rights and lesbian, gay, bisexual and transgender (LGBT) groups alike in light of the first ever General Assembly statement on sexual orientation and gender identity. Another new controversy in the extrajudicial executions resolution emerged in the discussion over language on foreign occupation.

New language in this year's resolution on **torture and other cruel, inhuman or degrading treatment or punishment**¹⁶ also touched on subjects covered by the Special Rapporteur on this topic: the situation of detainees or people held in solitary confinement, and persons with disabilities. Another notable development was the invitation to the Chairpersons of the Committee against Torture (CAT) and the Subcommittee on the Prevention of Torture to present oral reports on the work of these treaty bodies and to engage in an interactive dialogue with the General Assembly at its next session.

Please refer to the technical annex to this report for more information about the special procedures who addressed the Third Committee and for a list of the key reports and resolutions the Committee considered under this agenda item.

Counter terrorism and human rights

Presentation by the Special Rapporteur¹⁷

In his oral report to the Third Committee of the General Assembly (GA), **Mr. Martin Scheinin**, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

- Highlighted key findings from his visits to Guantánamo Bay Detention Camp in December 2007, a US detention centre located in Guantánamo Bay, Cuba, and from his visit to Spain in May 2008. His findings on Guantánamo, including the fact that prisoners held there cannot be guaranteed the right to a fair trial, were presented in his third report to the Human Rights Council (Council) in December 2007. The mission report to Spain had not yet been released.
- Noted that strategies employed by States to fight terrorism must comply with international human rights law, international humanitarian law, and customary law to ensure the protection of human rights, in particular the right to a fair trial and due process;
- Emphasised nine best practices to secure a fair trial and due process while combating terrorism including, but not limited to, the following: securing an independent and impartial judiciary, providing representation for the accused, ensuring trials remain public, supplying the defence with all evidence in the possession of the prosecution, and prohibiting the use of torture to obtain evidence;
- Advocated several options to remedy due process flaws in the current listing of terrorist suspects by the 1267 Sanctions Committee of the Security Council, including the establishment of an independent review mechanism at the UN level to ensure that individuals or groups listed as terrorist suspects receive fair and timely hearings, information compiled against them, and an effective remedy.

The Special Rapporteur noted that visits to Algeria, Egypt, Malaysia, Pakistan and the Philippines are currently pending, and Tunisia extended him an invitation to visit in June 2008.

¹⁶ General Assembly *Resolution 63/166*.

¹⁷ Further information on the special procedure is available at <http://www2.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm>

Interactive dialogue¹⁸

States taking part in the interactive dialogue asked for advice and commented on the following key issues:

- The need to reconcile the relationship between the jurisdiction of nations in listing and de-listing of terrorist suspects and that of the 1267 Sanctions Committee of the Security Council (Switzerland), and the role of the GA in remedying the de-listing and listing of terrorist suspects (Gambia). *The Special Rapporteur acknowledged that once the UN lists an individual or group as terrorist suspects, there is little leeway at the national level to question the listing. If States do not comply with the listing, then they will be subject to sanctions. However, the Special Rapporteur called on States to continue judicial review of these terrorist listings at the national level until the proper due process protections are incorporated at the UN level. The Special Rapporteur noted that while the GA has no authority to ask the Security Council to comment on the jurisdiction of national judicial bodies to implement the listing and de-listing of terrorist suspects issued by the UN, States could comment on these issues in its drafting of the resolution relating to protecting and promoting human rights while countering terrorism;*
- Best practices and most urgent concerns to ensure due process is met both in military and other tribunals (France on behalf of the European Union (EU)). *The Special Rapporteur reiterated that each of the nine concerns listed in paragraph 45 of his report are the most urgent concerns to ensure due process. He warned States that, based on findings in several studies, there is a direct causal link between the denial of the right to a fair trial and the commission of further acts of terrorism;*
- Clarifying that the *lex specialis* that applies to the detainees at Guantánamo Bay is international humanitarian law, not international human rights laws (US). *The Special Rapporteur pointed to paragraphs 11 and 12 of his report, and strongly emphasised that regardless of situations that arise where a State may validly depart from treaty law, the right to a fair trial is a fundamental human right, recognized as such by international humanitarian law, international criminal law, and customary international law. He called upon States to address the right to a fair trial in the context of these international legal standards as a fundamental human right. He concluded by stating that human rights law can and should be the *lex specialis* that informs this issue of a right to a fair trial;*
- Recommendations to improve cooperation between the Special Rapporteur and States with regard to country visits (Denmark). *The Special Rapporteur noted the slow process involved in obtaining the cooperation of States for country visits due to national security concerns, and that the Security Council's Counter Terrorism Committee plays an key role in sending the message that human rights need to be taken into account in countering terrorism. He reiterated his openness to visiting States to review their draft legislation on countering terrorism.*

The Special Rapporteur discussed several other issues with States, including the Special Rapporteur's policy regarding bilateral dealings with countries before and after a country visit (Pakistan); the differences in the due process treatment of certain groups listed as terrorist suspects by the Security Council (Mexico, Liechtenstein); and the challenges faced by military judges presiding over military trials at Guantánamo Bay (Cuba).

Key resolution and outcomes

¹⁸ The UN press release that covers the interactive dialogue is available at: <http://www.un.org/News/Press/docs/2008/gashc3925.doc.htm>

This year's annual resolution on **protecting human rights and fundamental freedoms while countering terrorism**¹⁹ was sponsored by Mexico and supported by co-sponsors across regional and

political groupings. The resolution underscores that States' obligations to respect and promote human rights must be a fundamental basis for the adoption of any counter-terrorism measure.

New provisions incorporated a number of key recommendations made by the Special Rapporteur, and included encouragement to States to implement the following measures in their efforts to improve the protection of human rights while combating terrorism: refrain from the use of torture or from profiling based on racial, ethnic or religious stereotypes; comply with international obligations to provide periodic review of detentions and fair trial guarantees; define laws criminalizing acts of terrorism with precision and in a non-discriminatory manner; and provide human rights guarantees for national listings of individuals suspected of terrorism.

The resolution also encourages the Security Council to enhance the efficiency and transparency of the UN terrorism related sanctions regime in operative paragraph 18. In operative paragraph 25, the text calls upon international, regional and subregional organisations to coordinate and strengthen their information-sharing in an effort to better protect and promote human rights while countering terrorism. The text adds a new operative paragraph 27 requesting the Special Rapporteur to continue to make recommendations within the context of his mandate to prevent, combat and redress violations of human rights in the context of counter terrorism. Finally, operative paragraph 24 requests that the Counter-Terrorism Implementation Task Force assist States in their efforts to comply with international law while countering terrorism.

As occurred in last year's session, the resolution was adopted by consensus. Prior to the adoption of the text by consensus, South Africa withdrew its amendment calling on the GA to express serious concern for the victims of human rights violations that can occur while countering terrorism. Despite serious misgivings regarding the draft, most notably its disagreement with the co-sponsors that violations of human rights are a mere inconvenience to victims in the war on terror, South Africa said it joined consensus with the hope that future sponsors will make the text more compatible with international human rights standards.

Cuba and Syria made statements after the adoption of the resolution. After expressing concern that a portion of the text should be more balanced, Cuba withdrew its concern as it was informed that the individual paragraphs regarding the Security Council's and the States' responsibilities to enhance the counter terrorism sanctions regime and the listing of terrorist suspects, respectively, should be read in concert. Syria expressed its reservation to a reference in the text to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto as Syria is not a party to either.²⁰

The GA plenary adopted the resolution by consensus. After the adoption, Syria expressed the same concerns it noted in Third Committee, as well as explained its interpretation that the individuals and entities specified in operative paragraphs 18 and 19 of the text referred to the list of entities and individuals issued by the Security Council.²¹

¹⁹ A/C.3/63/L.39/Rev.1 (as orally revised), available at <http://www.un.org/ga/third/63/propolist.shtml>

²⁰ The UN press release on the *introduction* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3937.doc.htm>. The UN press release on the *adoption* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3942.doc.htm>

²¹ The UN press release on the General Assembly adoption of this resolution and the other resolutions mentioned in this report is available at <http://www.un.org/News/Press/docs/2008/ga10801.doc.htm>

Death penalty

Key resolution and outcomes

In December 2007 the GA adopted its first resolution on the moratorium on the use of the death penalty,²² reaffirming the UN's commitment towards the abolition of the death penalty. The 'core group'²³ that had led last year's resolution was disbanded, in an effort to engage an even wider range of cross-regional co-sponsors, and to undermine the continuing view that this was a European initiative. Thus Angola introduced the 2008 resolution on the **moratorium on the use of the death penalty**²⁴ to the Third Committee while Chile spoke on behalf of the co-sponsors in presenting the resolution before the vote. In the end, the text attracted two more co-sponsors compared to the previous year.

The goal of this year's follow-up resolution was to maintain the momentum on the moratorium, and to continue to promote constructive dialogue on the abolition of the death penalty without provoking the same controversies and intense debates that accompanied last year's resolution. As a result the final text was concise, with only three operative paragraphs, and was described by the co-sponsors as a 'procedural resolution'. The co-sponsors hoped that by making the text procedural, they could widen the support for the resolution to include those countries that had established a de facto moratorium on the use of the death penalty since the passage of the previous year's resolution.

The first paragraph welcomes the report of the Secretary-General²⁵ on implementation of resolution 62/149, which referred to 'the ongoing trend' towards the abolition of the death penalty, the second paragraph requests the Secretary-General to provide a report on the progress in the implementation of resolution 62/149 and the present resolution to the 65th session of the GA, and the final paragraph decides to consider the matter again at the 65th session of the GA.

In the numerous informal negotiations on the resolution, some States, supported by various NGOs, had pushed for the inclusion of a specific provision on the prohibition on the use of the death penalty on juvenile offenders, as well as a paragraph on the need for various agreed international safeguards to be complied with where the death penalty is used. Neither proposal was included primarily due to a strong desire to keep the text as non-controversial as possible, as well as a perceived need to keep the principles of State obligation, as established by the human rights treaty bodies, separate from the moratorium on the use of the death penalty. Another issue raised during the informals was the level of support for the recommendations in the Secretary-General's report. Motivated by a desire to achieve a consensus, the co-sponsors agreed to the relatively weaker language of 'welcoming' rather than endorsing the recommendations. Ultimately this did not prevent Uganda, on behalf of the OIC, submitting an amendment to that operative paragraph.

The topics of discussion that took place both during the informal negotiations and in the Third Committee on the resolution were remarkably similar to the debates on the death penalty in the March 2007 session of the HRC, with States fiercely polarised as to whether there was an international prohibition on the use of the death penalty in international law and whether its application was a matter of international human rights law or a matter for individual States to decide.

²²General Assembly *Resolution 62/149*

²³ Albania, Angola, Brazil, Croatia, Gabon, Mexico, New Zealand, the Philippines, Portugal (for the EU) and Timor Leste.

²⁴ A/C.3/63/L.19/Rev.1, available at: <http://www.un.org/ga/third/63/propslist.shtml>

²⁵ A/63/293

NGO side event: Fatal mistakes in death penalty cases

To coincide with the death penalty debate Amnesty International organised a panel discussion with judges and prosecutors from Japan, Jordan, Nigeria and the USA on October 21. The panellists told UN delegates why judicial systems, even the most developed ones, fail to prevent fatal mistakes in death penalty cases and why they now oppose the death penalty.²⁶

The vote

Despite the brevity of the text and a determined attempt by the co-sponsors to achieve consensus, this year's resolution was not only voted upon, at the behest of Uganda, but also fiercely debated. Uganda, on behalf of the OIC, tabled seven amendments, all of which were defeated (L.62 - L.68). One amendment sought to triennialise the resolution, while two sought to insert a paragraph that in effect would reiterate Article 2(7) of the UN Charter articulating the principle of non-interference in a State's internal affairs. Another amendment sought to provide balance to the paragraph reaffirming the previous year's resolution by also reaffirming the 'note verbale' written by States retaining the death penalty to the Secretary-General in 2007. The remaining three amendments were attempts to weaken the language used in the perambulatory and operative paragraphs. Unlike in the previous year, there was no amendment concerning the right to life or the need to respect (cultural) diversity.

Following the defeat of the amendments the representatives of Barbados and Singapore each called for a vote on individual paragraphs, a move labelled as 'time wasting' by opponents.²⁷ The proposals were defeated by a wide margin, ensuring that the resolution was voted on in its entirety.

The text as a whole was adopted by 105 States in favour, 48 against, and 31 abstaining. This was a slight improvement from 2007, when 104 States voted in favour, 54 against and 29 abstained. One of the more positive outcomes of the vote was that several countries in the Arab League changed their vote against the resolution from last year to abstaining.²⁸ Guinea Bissau and Peru also voted yes for the first time, but Swaziland changed its vote to no, without providing an explanation.

Opposition to the text came mostly from members of the OIC, Singapore, China and a few of the Caribbean countries. African countries were generally split on the issue. Opposing States and States that abstained explained their vote along the same premises as had been exposed in the previous year, namely that:

- the death penalty is a question for national criminal justice systems and it is the right of every State to chose its own legal justice system without interference, as articulated in Article 2(7) of the UN Charter;²⁹
- there is no international consensus on the death penalty and thus co-sponsors were imposing their values on other members States and failing to afford States that retain the death penalty the same rights as those that have decided to abolish it;³⁰

²⁶ <http://www.amnesty.org/en/library/info/ACT50/018/2008/en>

²⁷ The proposal of Barbados to vote on a preambular paragraph that would have the Assembly reaffirm resolution 62/149 was defeated by a vote of 88 against to 53 in favour, with 24 abstentions; and the Singapore proposal to vote on a paragraph welcoming the Secretary-General's report, was rejected by a vote of the 88 against to 55 in favour, with 24 abstentions.

²⁸ Bahrain, Jordan, Oman and Mauritania.

²⁹ Egypt, Singapore, Barbados, China, Malaysia, Sudan, Syria, Swaziland, Iran, Myanmar, Guyana, Thailand., Yemen., Papua New Guinea, St Vincents and the Grenadines, Saudi Arabia, Benin.

³⁰ Singapore, Sudan, Jamaica, Syria, Libya, China, Barbados, Malaysia, Bahamas, Yemen, St Vincents and the Grenadines.

- the use of the death penalty complies with international law so long as internationally established safeguards are applied. The resolution was therefore an attempt to reinterpret the International Covenant on Civil and Political Rights (ICCPR);³¹ and
- the use of the death penalty is an effective deterrent to criminal acts and supported by domestic populations. To apply a moratorium on the death penalty in response to international pressure would thereby undermine the important values of democratic and representative government.³²

In addition Singapore provided a harsh critique of the report by the Secretary-General, noting that his conclusion that there is an ‘global trend’ towards abolition was not based on any statistics and had failed to take into account opinion polls in countries, a position supported by Barbados, the Bahamas and Egypt. Bahamas also disagreed with the ‘arbitrary’ classification of countries as ‘abolitionist’ or ‘retentionist’ in the report. In response, Italy cited several statistics on the use of the death penalty in the last decade, noting that in 1977 only 16 countries had abolished the death penalty, however, by 1998, 92 countries no longer used the penalty, a figure that had increased to 141 in 2007.

The success of the resolution means that the Committee will consider this matter at its 65th session, where the Secretary-General will also present a new report on the implementation of the resolution.³³

In the GA plenary, more States supported the resolution than in the Third Committee with 106 States in favour, 46 against and 34 abstentions. The previous year the GA vote was marginally smaller, with 104 in favour, 54 against and 29 abstentions.³⁴

Extrajudicial, summary or arbitrary executions

Presentation by the Special Rapporteur³⁵

In his oral report to the Committee, Mr. **Philip Alston**, the Special Rapporteur on extrajudicial, summary or arbitrary executions:

- Highlighted the vital importance of establishing effective **eyewitness protection arrangements**, noting that without witnesses, perpetrators of extrajudicial killings enjoy comprehensive impunity. The Special Rapporteur encouraged the GA, the Council and the Office of the High Commission for Human Rights (OHCHR) to provide the financial, technical and political support needed to develop effective programs at the national level;
- Emphasised that **military commissions** should be compliant with international human rights standards, noting that perpetrators of extrajudicial killings far too often receiving an inadequate punishment or no punishment at all when they are investigated and tried by a military justice system;
- Drew attention to the potential importance and possible shortcomings of **national commissions of inquiry** as a response to extrajudicial executions, remarking on the widespread inadequacy of the commission established following the killings of unarmed protesters in Guinea in 2007,

³¹ Egypt, Libya, Malaysia, India, Nigeria, United States (US), Barbados, Yemen.

³² Syria, Bahamas, Ghana, Vietnam, Guyana, Nigeria.

³³ The UN press release on the *introduction* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3937.doc.htm>. The UN press release on the *adoption* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3938.doc.htm> and <http://www.un.org/News/Press/docs/2008/gashc3939.doc.htm>

³⁴ The UN press release on the General Assembly adoption of this resolution and others mentioned in this report is available at <http://www.un.org/News/Press/docs/2008/ga10801.doc.htm>

³⁵ Further information on the special procedure is available at <http://www2.ohchr.org/english/issues/executions/index.htm>

which had failed to take any steps to hold the perpetrators accountable. By contrast the Special Rapporteur applauded the success of Kenyan the Commission of Inquiry into Post-Election Violence but urged the Kenyan government to implement its recommendations;

- Recalled that his previous reports to the GA had stressed the needed to uphold the international prohibition against the **execution of juvenile offenders** and highlighted in particular the 20 communications sent to the Iranian government in relation to juvenile offenders on death row, and appealed once again to the Iranian government to cease this practice and allow a visit by the Special Rapporteur to the country; and
- Commented that the system of Special Procedures is undermined when countries fail to **make invitations** for a visit by the Special Rapporteur after a visit is requested.

The Special Rapporteur remarked that he had carried out four country visits since his last report to the GA, namely Brazil, the Central African Republic (CAR), Afghanistan and the US. The US was the only country discussed by the Special Rapporteur at the Third Committee since he presented on the other country visits to the Council. As of October 2008, further invitations had been issued by Guatemala, Israel, Kenya, Lebanon, Nigeria, Peru and the Philippines and Sri Lanka, with 23 other countries failing to respond to the Special Rapporteur's requests. The Special Rapporteur presented to the 8th Session of the Council in June 2008 in which he summarised his activities from 1 January 2007 to March 31 2008.

Interactive dialogue³⁶

A large number of diverse states took part in an energetic interactive dialogue with the Special Rapporteur. Key themes and questions raised in the dialogue included:

- The level of political will to improve witness protection programs (Canada), best practices for the implementation of such programs and the role of the OHCHR in the process (Canada and France on behalf of the EU). *The Special Rapporteur commented that witness protection was a neglected issue and often incorrectly perceived as a luxury reserved only for wealthy countries. The Special Rapporteur stressed the vital importance of witness protection programs, and urged States to adequately fund them. He recommended that the OHCHR set up a trust fund for aiding states in strengthening their national witness protection schemes, and advised that there are low-cost ways to implement such programs, The Special Rapporteur further urged the Council to focus on the issue in its future work;*
- The impact of the Universal Periodic Review (UPR), and whether it has improved compliance with the Special Rapporteur's mandate (Malaysia and Brazil). *The Special Rapporteur responded that the UPR was an important innovation, which could reinforce the work of the treaty bodies and the special procedures. Nonetheless, the Special Rapporteur was of the view that verdict is still open on the impact of the UPR;*
- The number of civilian killings in Afghanistan and Iraq (US and Sudan). *The Special Rapporteur reported that since issuing his report on Afghanistan large scale civilian killings by the Taliban had increased. On civilian casualties committed by coalition forces, the Special Rapporteur observed that while such killings have continued, media reports suggest that high level US generals have recently acknowledged the need to afford better protection to civilians. He indicated that he has raised the issue of civilian killings in Iraq with the relevant authorities;*
- Prevention of mass arbitrary killings in Darfur, Sudan (US). *The Special Rapporteur lamented that the co-operation he received in Afghanistan and Iraq stands in contrast to the situation in Darfur, where the Group of Experts sent to monitor the situation on Sudan were disbanded after the presentation of their report to the HRC. Despite this development, the*

³⁶ The UN press release that covers the interactive dialogue is available at:

<http://www.un.org/News/Press/docs/2008/gashc3927.doc.htm>

Special Rapporteur has received reliable reports of extrajudicial killings in Darfur continue, He added that the International Criminal Court (ICC) could be a valuable means to end impunity for extrajudicial killings.

The Special Rapporteur also engaged with States on several other issues, including the juvenile death penalty (Iran); the possibility of a visit to the Occupied Palestinian Territories (OPT) by the Special Rapporteur; and follow up to the Special Rapporteur's visit to Brazil in November 2007 (Brazil).

Key resolution and outcomes

The biennial resolution on **extrajudicial, summary or arbitrary executions**³⁷ was introduced by Sweden, on behalf of the Nordic countries. Building on resolutions from previous years, this year's text sought once again to reflect the international community's determination to address the abhorrent yet continued practice of extrajudicial killings. The resolution included language on three of the issues the Special Rapporteur raised in his annual report, namely: the importance of the protection of witnesses in the prevention of impunity; the need for essential guarantees to be exercised in States retaining the death penalty (in particular the right to seek commutation of sentence); and the function of national commission of inquiries in ensuring accountability and combating impunity. The resolution also contains a new reference to the responsibility to protect in preambular paragraph eight.

The co-sponsors held numerous informal negotiations in an attempt to produce a consensus on the resolution for the first time. As a result, the co-sponsors agreed to include a reference to the 'mutually reinforcing' relationship between international humanitarian law (IHL) and international human rights law, at the behest of the US.³⁸ The spirit of flexibility also pervaded negotiations concerning the controversial paragraph on the death penalty (operative paragraph five). The co-sponsors accepted modifications to this provision to reflect the view of the Organisation of the Islamic Conference (OIC) that all States need to comply with their international obligations in order to prevent extrajudicial execution, and not just those States that retained the death penalty, as the OIC believed the original provision implied. Uganda (on behalf of the OIC) as a result of the compromise withdrew an amendment in the formal plenary concerning this paragraph. This was a significant advancement from the rigid position held by Singapore, Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC) that opposed any reference to the death penalty in the resolution of the Council extending the mandate of the Special Rapporteur in June 2008, and progress from the intense debate sparked by the issue in resolution in the Third Committee's 61st session. In that session an amendment to delete references to States carrying out the death penalty was tabled but failed.

The OIC states wanted to include a new reference³⁹ to 'foreign occupation' in operative paragraph six (b) concerning extrajudicial killings targeting specific groups. The co-sponsors eventually agreed to include it in a paragraph also mentioning the killings of persons affected by terrorism or hostage-takings.

The informal consultations were also unable to resolve the continued concern held by several States of the OIC and some African States regarding the inclusion of a specific reference to killings based on sexual orientation in the paragraph concerning vulnerable groups. Although Sweden had dropped insistence of reference to this group in the procedural resolution extending the mandate of the Special Rapporteur in the HRC in June 2008, the co-sponsors were determined not to do the same in the

³⁷ A/C.3/63/L.35/Rev 1, available at <http://www.un.org/ga/third/63/propolist.shtml>

³⁸ The active involvement of the US in the informal negotiations reflected its ongoing interest in the subject-matter of extrajudicial executions, as had been reflected by the extensive participation of the US in the debates at the Human Rights Council (Council) on the extension of the mandate of the Special Rapporteur in June 2008.

³⁹ The original resolution made no mention of foreign occupation nor had the resolution from 61st session or the Council resolution on the extension of the mandate.

substantive resolution before the Third Committee, primarily due to their view that the GA should not shy away from making specific reference to vulnerable groups that, according to verifiable data, disproportionately at risk or victims of extrajudicial killings. The counter-suggestion of including abortion as a category of extrajudicial executions was not raised at the GA, despite Egypt's threat of the inclusion of such a provision during the negotiations over the Special Rapporteur's mandate in June.

The vote

Controversy over the reference to foreign occupation and sexual orientation led to separate votes on the issues. The proposed changes were included in an amendment to operative paragraph six at the request of Uganda (on behalf of the OIC).⁴⁰ Both proposed changes, relating to foreign occupation and to sexual orientation, were rejected.

The OIC, unsatisfied with the compromise in relation to the reference to foreign occupation in operative paragraph 6 (b) tabled an amendment to the relevant paragraph which included the proposal to insert '*peoples* under foreign occupation' following the reference to refugees and internally displaced people, rather than the original version which referred to 'killings of *persons* affected...by foreign occupation.' Speaking against the proposed changes, Finland, Sweden and Denmark argued that the resolution was primarily concerned with the prevention of extra-judicial executions of various *individuals* belonging to different groups and the prompt investigation of such killings, rather than the collective plight of individuals and that the proposed amendment would broaden the scope of the resolution. Syria and Egypt took the floor to support the amendment, but it failed when put to a vote⁴¹ and the reference to foreign occupation was kept in its original form, which according to the sponsors is consistent with wording based on other resolutions.

The vote on paragraph (c) in the amendment - the suggestion to delete the provision on sexual orientation - evoked similar levels of controversy and debate as it had in the 61st session. When the resolution came before the Third Committee, Uganda, on behalf of the OIC tabled an amendment which included the suggestion that would have replaced 'all killings committed for any discriminatory reason, including sexual orientation' with a generic reference to 'all killings committed for any discriminatory reason *whatsoever*'. Uganda claimed that discrimination on the basis of sexual orientation does not exist in international law and that there was no justification to highlight this form of discrimination over others. Argentina, the Netherlands and Sweden spoke in favour of the retention of the reference, noting that this form of discrimination has been identified by the Special Rapporteur in reports since 1999 and that the reference has not been removed from previous resolutions. In particular, the Netherlands noted that if the Third Committee accepted amendment, it would 'imply that impunity for such crimes exist'. The proposed amendment was rejected by a vote of 77 States against to 59 in favour, with 25 abstentions.⁴²

The Third Committee eventually adopted the resolution in its entirety by 121 votes in favour, 57 abstentions with no States voting against. This represents a marginal decline in support since the Third Committee considered the issue in 2006, when 129 states voted in favour, with 42 abstentions and no States against the resolution.

⁴⁰ A/C.3/63/L.75, available at <http://www.un.org/ga/third/63/propolist.shtml>

⁴¹ 60 States, largely from the African and OIC blocks, voted in favour of the amendment proposed by the OIC, while 78 voted against and 29 abstained.

⁴² During the 61st Session, the vote to reject the phrase sexual orientation resulted in 57 in support of rejecting the phrase, 69 against and 25 abstentions. The amendment was thus defeated, but then the entire paragraph with the reference was voted on separately. It was retained by a vote of 93 for the paragraph, to 30 against and 28 abstaining.

Despite the flexibility of the co-sponsors to the US position in the negotiations, the US abstained in its vote on the resolution as it had in the Third Committee in 2006, adhering to its long-held position that the international community should refrain from including references to extrajudicial executions in international conflicts in the resolution because the law applicable in such situations is international humanitarian law, and not international human rights law. Israel echoed such views when explaining its abstention on the resolution. The US also abstained due to the reference to the role of the ICC, since the ICC has no jurisdiction over extrajudicial executions, a view supported by Sudan. Iran, Egypt and Sudan abstained primarily due to concerns over language dealing with sexual orientation and foreign occupation. The voting patterns were similar to the 61st session, the EU and the Western and Other Group of States (WEOG) States (with the exception of US and Israel) voted in favour, as did most Latin American and Caribbean States. Most African States abstained,⁴³ and the majority of Asian states voted for the resolution, unless they were members of the OIC, in which case they abstained.⁴⁴

In the GA, 127 States voted in favour of the resolution, none voted against and 58 abstained. Attempts to include in the resolution the same amendments as proposed in the Third Committee were defeated. The resolution had passed by a greater margin at the 61st session in 2006, with 137 States in favour, none against and 43 abstentions.⁴⁵

Freedom of religion and belief

Presentation by the Special Rapporteur⁴⁶

In her oral presentation to the Committee, Ms. Asma Jahangir, the Special Rapporteur on freedom of religion or belief:

- Outlined the main areas of her work, as guided by the review of her mandate by the Council in 2007, including highlighting activities and country visits she undertook;
- Noted that two key issues in her present report to the GA concerned citizenship issues and religious discrimination in administrative procedures, and indicated that her research shows that the compulsory listing of an individual's religion on identity cards can pose a serious risk that discrimination based on religion or belief will arise;
- Commented on the importance, in light of the 60th Anniversary of the Universal Declaration of Human Rights (UDHR), of Article 18 of the UDHR in guiding the work of the mandate, emphasising that the right to change one's religion or belief is a cornerstone of Article 18, despite the views of some members of the Council to the contrary;
- Observed that the UPR provides a valuable means by which to follow-up the Special Procedures' communications and country visits, and expressed her intention to reinforce follow-up procedures in the exercise of her mandate, particularly in regards to the implementation of recommendations following a country visit;

In the context of country visits since her last report, she said she had visited Angola, Israel, India, Turkmenistan, and the OPT, informing the Committee that the Angola mission report was presented to the Council at its 7th session in March 2008, while the report on the other visits will be presented at the 10th Session of the Council.

⁴³ Voting in favour of the resolution from Africa were South Africa, Botswana, Cameroon, Cape Verde, Chad, Congo, Eritrea, Ethiopia, Ghana, Guinea Bissau, Liberia, Lesotho, Mauritania, Morocco, Mozambique, Namibia, Tunisia.

⁴⁴ The UN press release on the *introduction* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3934.doc.htm>. The UN press release on the *adoption* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3941.doc.htm>

⁴⁵ The UN press release on the General Assembly adoption of this resolution and others mentioned in this report is available at <http://www.un.org/News/Press/docs/2008/ga10801.doc.htm>

⁴⁶ Further information on the special procedure is available at <http://www2.ohchr.org/english/issues/religion/index.htm>

Interactive dialogue⁴⁷

A large number of diverse states took part in a lively interactive dialogue with the Special Rapporteur. States commented on and requested the Special Rapporteur's views on the following key issues:

- In the context of determining nationality, advice on how Governments can use the concept of 'proportionality' when the protection of right to freedom of religion, and 'matters sensitive to the state' appear to conflict (France, on behalf to the EU and Libya). *The Special Rapporteur explained that it is important to have national mechanisms capable of balancing competing objectives, such as independent judicial forums. Such bodies should refer to guidelines in international jurisprudence on the balancing of rights, such as the 1984 Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (ICCPR). In terms of individuals who pose threats to the State, the Special Rapporteur agreed that there is a right to deny citizenship, however the State would be discriminating on the basis of religion if it were to exclude all those members of a particular religion from becoming nationals;*
- The occurrence of contemporary instances of genocide, or forms of 'quasi-genocide' (Greece). *The Special Rapporteur had not seen any signs of genocide, although she had witnessed violence in a number of States and situations where governments were keeping certain communities under perpetual threat and persecution, which could eventually destroy religious minorities both collectively and individually. The Special Rapporteur encouraged States to take measures toward preventing religious polarisation, noting that in many countries, non-state actors, rather than governments were perpetuating violence on citizens;*
- The relationship between freedom of religion and democracy (Indonesia). *The Special Rapporteur noted that although there is a link between democracy and freedom of religion, her research has indicated that even in mature democracies where freedom of religion is generally respected, minorities can still be excluded, although discrimination in these situations is usually more subtle;*
- The meaning of gender-based discrimination based on religion or belief, since religious edicts tended to apply to both sexes (Libya). *The Special Rapporteur responded that if a woman was asked to accept certain injustices because of her sex, such as religious norms that were not expected of a man that also amounted to discrimination on the basis of gender. The Special Rapporteur referred to the report by her predecessor which had documented several examples of discrimination not just on the basis of religion but also on the basis of gender;*
- The right to limit freedom of expression in order to protect freedom of speech (Netherlands). *The Special Rapporteur noted that neither freedom of expression nor freedom of religion could be sacrificed for the sake of the other, and that the threshold for tolerance of freedom of expression needed to be raised. The Special Rapporteur recalled the very constructive and valuable expert meeting in organised with the High Commissioner for Human Rights on Article 19 and 20, the outcomes of which inform the work she is doing in this area;*⁴⁸
- Elements characterising good co-operation on country visits, and future country visits (US) and Canada). *A successful visit includes access to all necessary government departments, and the capacity to conduct private meetings without interference, surveillance or threats to the people who had talked to her.. Impending country missions include Bangladesh, Bhutan, Cambodia, Chile, China, Cuba, Korea, Eritrea, Ethiopia, Iran, Kyrgyzstan, Laos, Malaysia, Mauritania, Mauritius, Russia, Serbia, Thailand, Uzbekistan and Vietnam.*

⁴⁷ The UN press release that covers the interactive dialogue is available at:

<http://www.un.org/News/Press/docs/2008/gashc3925.doc.htm>

⁴⁸ The OHCHR website, available at <http://www.ohchr.org>, has more information on this meeting.

http://www2.ohchr.org/english/issues/opinion/articles1920_iccpr/index.htm

The Special Rapporteur touched on a number of other issues with States including: ways to cultivate a culture of peace and tolerance among people of different religious beliefs (Indonesia); examples of positive legislative reforms on the citizenship issues laid out in her report (Canada); the need to include religious minorities in various political processes (Denmark); issues relating to the OPT (Palestine), including questions about the establishment of checkpoints which prevent worship in particular areas (Lebanon); and the possibility of follow up on her recommendations on the right to change one's religion without reprisal, including in regard to Democratic Republic of Korea (DPRK), Iran and Eritrea (US).

Key resolutions and outcomes

Elimination of all forms of intolerance and of discrimination based on religion or belief

The annual resolution on the **elimination of all forms of intolerance and of discrimination based on religion or belief**⁴⁹ was led by France, on behalf of the EU. The text is based on the 1981 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, and reaffirms the international community's desire to on eliminate intolerance and to help promote freedom of religion and belief.

Sponsors attempted this year to include strong new language in operative paragraphs that responded to issues of citizenship and religious discrimination in administrative procedures highlighted in the Special Rapporteur's report. For example, the first draft included urging States to provide for the alternative of civil registration of marriages where official recognition of religious marriages exist; and to refrain from forcing someone to swear allegiance to a religion against his will in oath-taking for a public post. Ultimately though the provision on the first issue was deleted and the second was diluted considerably.

The co-sponsors held several rounds of intense informal negotiations, in particular on issues of concern for the States of the OIC and the African Group. Reflecting the EU's strong desire to achieve consensus, most of their concerns were accommodated, including on the connection between freedom of expression and freedom of religion (a specific paragraph on the importance of freedom of opinion and expression to eliminate all forms of intolerance was replaced with the more muted expression "freedom of religion or belief and freedom of expression are interdependent, interrelated and mutually reinforcing(OP10)."); and in regard to changing of a religion (the language in a preambular paragraph on the right to have the "freedom to change one's religion" was changed to the right "to have or to adopt a religion...of one's choice (PP10).")

As a result, a weaker resolution from the original draft was eventually adopted by consensus at the Third Committee. Nonetheless, despite the extensive last minute accommodations, the OIC made strong qualifying statements, including expressing its concern that the resolution failed to include references to: the concept of 'defamation of religions'; the recent and deliberate stereotyping of religions by media and political parties; and the need to respect for national laws and religious norms in terms of the right to change one's religion. Uganda also expressed its understanding that the 'welcoming' of the work of the Special Rapporteur in the resolution did not mean it agreed with her conclusions and recommendations.⁵⁰

⁴⁹ A/C.3/63/L.34, available at <http://www.un.org/ga/third/63/propolist.shtml>

⁵⁰ The UN press release on the *introduction* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3937.doc.htm> . The UN press release on the *adoption* of the resolution at the Third Committee is available <http://www.un.org/News/Press/docs/2008/gashc3942.doc.htm>

Notably, a resolution of the same name renewing the mandate was adopted by vote (a departure from past years when the mandate was adopted by consensus) in the Council at its 6th Session in December 2007, and the debates that took place during Council informal negotiations echoed those in the GA.⁵¹

In the GA the resolution was also approved by consensus, as it was the previous year.⁵²

NGO/OHCHR side event with the Special Rapporteur on freedom of religion and belief

The Special Rapporteur spoke at a side event on freedom of religion and belief on October 21, co-sponsored by the Office of the High Commissioner for Human Rights and the NGO Committee on Freedom of Religion and Belief. At this meeting, attended by missions, international religious organisations and freedom of speech organisations, the Special Rapporteur commented that defamation of religion only becomes a human rights violation when it reaches the level of incitement of religious hatred, and at that stage, the government has an obligation to act. The Special Rapporteur expressed her concern that defamation of religions fosters more intolerance, and stunts debates on theology. She expressed the view that interfaith dialogue was not enough to combat religious intolerance, rather, there needs to be undertakings by policy makers and legislators that those involved in incitement to violence or religious hatred are not granted impunity.

Combating defamation of religions

Uganda introduced the annual resolution on **combating defamation of religions**⁵³ on behalf of the OIC, Belarus and Venezuela. Drawing from GA resolutions of previous years and the Council resolution on combating defamation of religions adopted in March 2008,⁵⁴ the goal of this year's resolution was to once again express the international community's concern over the negative stereotyping of religions and manifestations of intolerance and discrimination in matters of religion or belief. For the first time, this year's resolution sought to draw international legal support for the concept from the UN Global Counter-Terrorism Strategy, adopted by consensus at the GA, which notes that terrorism is not associated with any nationality or religion.

The co-sponsors held a number of informal negotiations attended by a large number of delegations, although as in previous years, the EU States did not to attend. In an attempt to persuade reluctant States, the co-sponsors no longer singularly focused the text on the defamation of Islam, but the combating defamation of *all* religions: the text dropped two exclusive references to Islam and inserted several generic references. Nonetheless, these changes failed to encourage any additional States to support the text and there remained a widespread perception, particularly among the WEOG states, that the concept of defamation of religions is inconsistent with international human rights principles, and in particular, the right to freedom of expression. Others States, including India and Brazil agreed with the sentiments in the resolution but remained concerned that the text continued to disproportionately focus on Islamaphobia.

⁵¹ 'Elimination of all forms of intolerance and of discrimination based on religion or belief'

Human Rights Council *Resolution* 6/37 was adopted by 29 votes in favor and 18 abstentions. Eighteen countries, mostly from the African or OIC states, abstained on the resolution.

⁵² The UN press release on the General Assembly adoption of this resolution and others mentioned in this report is available at <http://www.un.org/News/Press/docs/2008/ga10801.doc.htm>

⁵³ A/C.3/63/L.22, available at <http://www.un.org/ga/third/63/propolist.shtml>

⁵⁴ Human Rights Council *Resolution* 7/19 (27 March 2008).

The vote

The final vote on the resolution was 85 States in favour, 50 against and 42 abstentions, a significant decrease in favourable votes compared to the last year's session where 95 voted for the resolution, 52 against and 30 States abstained. States that changed their position from the previous year did not explain the basis for that decision.⁵⁵

As in previous years, controversy over the relationship between human rights principles as set forth in the ICCPR and UDHR and the concept of defamation of religions pervaded discussion on the resolution. Of particular concern to States opposing the resolution was that it would be used to penalise religious minorities (Holy Sea, France (on behalf of the EU)) and undermine the right to freedom of speech (US, France (on behalf of the EU), Colombia and Chile).

France, on behalf of the EU, also expressed concern with the concept of defamation of religions which seeks to protect ideas rather than to protect individuals, and expressed support for the recommendation of the Special Rapporteur on contemporary racism, racial discrimination and xenophobia that the concept of should be replaced with the legal norm of non-incitement to religious hatred. The EU, supported by Brazil, emphasised that the limits of religious rights and conflicts be defined in the legal field rather than the political field, and courts should consider limitations on the right to freedom of expression as per traditional human rights principles. The US criticised the conflation of racism and religion in the resolution, since the text implies that an individual's religion is a characteristic that he/she cannot change, like race, Article 18 of the UDHR details the right to change and choose religion, or to choose not to practice a religion at all.⁵⁶

In the GA a similar number of States supported the resolution as they did in the Third Committee, with 86 States in favour, 53 against and 42 abstentions. This represents a decline in support from the previous year when 108 states voted for the resolution, 51 against and 25 abstentions.⁵⁷

Independence of judges and lawyers

Presentation by Special Rapporteur⁵⁸

In his oral report to the Committee, **Mr. Leandro Despouy**, the Special Rapporteur on the independence of judges and lawyers:

- Elaborated on the principles and standards that should be used under 'states of exception', and highlighted the need to give greater attention to the protection of human rights during such times. He also encouraged the creation of a specific universal instrument on the overall standards to be applied in states of exception. This would help guarantee due process during the state of exception as well as prevent the creation by States of parallel systems to respond to national security issues, to fight terrorism or regarding immigration;

⁵⁵ Angola, Belize, Benin, Costa Rica, Dominican Republic, Equatorial Guinea, Haiti, Saint Lucia, Timor-Leste, Uruguay and Trinidad and Tobago all changed their votes in favour last year to abstaining this year. Fiji and Nigeria went from abstaining to voting in favour and Vanuatu changed from voting against last year to abstaining this year.

⁵⁶ The UN press release on the *introduction* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3937.doc.htm>. The UN press release on the *adoption* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3941.doc.htm>

⁵⁷ The UN press release on the General Assembly adoption of this resolution and others mentioned in this report is available at <http://www.un.org/News/Press/docs/2008/ga10801.doc.htm>

⁵⁸ More information on this special procedure and their mandate is available at <http://www.unhchr.ch/html/menu2/7/b/judges-lawyers/index.html>

- Underscored the need to guarantee due process in the fight against terrorism, to ensure that legislation does not violate fundamental human rights, and to promote the role of the judiciary in protecting due process. He reminded States that frequently terrorist suspects were denied due process, and that the right to a fair trial had been recognized by numerous international treaties and laws, adding that those treaties still need to be implemented even when States worked outside of their own borders;
- Highlighted the need to guarantee decent salary for judges in order to ensure their ability to be impartial and protect them from political or economic pressures;
- Mentioned the ICC in relation to the Democratic Republic of the Congo (DRC), Uganda and Sudan. In Darfur, he referred to the outstanding arrest warrant for Ahmed Harun, and stressed that the capacity of the national judicial system to end impunity needed to be evaluated.

He also described his mandate, activities and country missions, including visits to the DRC and the Russian Federation. He mentioned an upcoming visit to Guatemala in early 2009, and lamented that Fiji had repeatedly ignored his requests for a visit since 2006.

Interactive dialogue⁵⁹

Following the Special Rapporteur's statement, several States took part in a dialogue, asking questions and requesting advice on the following issues:

- Transitional justice issues (Switzerland). *The Special Rapporteur said that many countries had undergone transitions, and more than 40 countries were at the time considered in "transition situations". Now, these countries are trying to implement judiciary systems again, and the reconstruction of the judiciary constitutes a key opportunity for the State to solidify the transition process;*
- Due process as a universal principle in international law (Brazil). *The Special Rapporteur reaffirmed that due process is a universal principle of contemporary international law. The Special Rapporteur also asserted that due process in the state of exception is ruled by standards and rules, but these rules should ensure the rule of law and not legitimize dictators. During states of exception, rules and principles relating to human rights protection should still be implemented. Latin American military dictatorships used the state of exception to violate human rights;*
- Standards on enforced disappearance (Argentina). *The Special Rapporteur underscored the importance of the Convention on Enforced Disappearances and his belief that it would have a strong preventative effect;*
- Correlation between the independence of judges and their remuneration (US); abuse of principles concerning remuneration of judges (France, on behalf of the EU). *The Special Rapporteur pointed out that there were many ways to control the judiciary, and limiting or refusing to pay salaries to judges was an example. The Special Rapporteur pledged to address the issue further in future reports, adding that the salary issue was only the tip of the iceberg;*
- International jurisdiction of the Special Rapporteur's mandate in relation to national acts of racism and xenophobia (Rwanda). *The Special Rapporteur said that the mandate's response and function in such cases needed further discussion and thought, but added that he had reported on a parallel situation regarding immigrants lack of access to justice in his latest report to the GA.*

Some States also responded to information concerning their countries in the Special Rapporteur's report and presentation, including on the following issues: the ICC/Darfur (Sudan), issues of jurisdiction in Guantanamo, and the Special Rapporteur's interpretation of humanitarian law (US), the

⁵⁹ The UN press release that covers the interactive dialogue is available at <http://www.un.org/News/Press/docs/2008/gashc3927.doc.htm>

incorporation of the Special Rapporteur's recommendations on the judicial system (Maldives), State approval of a visit by the Special Rapporteur for November 2008 (Fiji).

Torture

Presentation by the Special Rapporteur⁶⁰

In his oral report to the Committee, **Mr. Manfred Nowak**, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment:

- Reiterated that the prohibition of torture was absolute, non-derogable and constituted *jus cogens*;
- Highlighted, in the context of the 60th anniversary of the UDHR, the condition of detainees; who are a particularly vulnerable group. He queried whether the use of torture and other ill-treatment forms have really decreased compared with the progress made on drafting of human rights standards;
- Reminded the Committee of the need to review the anti-torture framework in relation to persons with disabilities in light of the Convention on the Rights of Persons with Disabilities and its Optional Protocol (OP) which have recently entered into force. He recommended that States ratify the Convention and then widely disseminate the document, adopt legislation that guarantees access to justice to persons with disabilities, and create monitoring mechanisms;
- Drew attention to the Istanbul Statement on the Use and Effects of Solitary Confinement, encouraging States to consider it as a valuable tool to promote the respect and protection of the rights of detainees;
- Emphasised that country visits constitute an opening up for independent scrutiny and open debates about torture, creating an opportunity to work together to end torture.

The Special Rapporteur recalled his recent visits to Equatorial Guinea, Denmark, including Greenland, in May 2008, and his joint visit with the Special Rapporteur on Violence against Women to Moldova in July 2008. He also stated he hoped to visit Equatorial Guinea in early November 2008, as well as Iraq and Russia in the near future.

Interactive dialogue⁶¹

Following the Special Rapporteur's statement, several States took part in a dialogue, asking questions and requesting advice on the following issues:

- Effective implementation of national mechanisms, and their relationship with the Convention on the Rights of Persons with Disabilities (France, on behalf of the EU). *The Special Rapporteur reminded States that if they ratify the Optional Protocol to the Convention Against Torture (OPCAT), they are obligated to establish national mechanisms. These mechanisms should take people with disabilities (PWD) into consideration, which could be achieved by visiting psychiatric institutions and meeting with doctors, and psychologists, etc, as well as through considering PWD more generally in situations such as pretrial detention. To be effective, national mechanisms must be independent, well-resourced and carry out regular visits. The Convention on the Rights of Persons with Disabilities also obligates State parties to establish national monitoring bodies, and these should cooperate with national human rights mechanisms established by OPCAT;*

⁶⁰ More information on this special procedure and their mandate is available at

<http://www2.ohchr.org/english/issues/torture/rapporteur/>

⁶¹ The UN press release that covers the interactive dialogue is available at

<http://www.un.org/News/Press/docs/2008/gashc3926.doc.htm>

- The lack of connection between the death penalty and torture (Singapore); and the relationship between the death penalty and other cruel, degrading and inhuman treatment (France, on behalf of the EU). *The Special Rapporteur reasserted the clear link between the death penalty and his mandate, which covers cruel, inhuman and degrading punishment, and specifically pointed to his responsibility to respond and comment if a method of execution is particularly cruel and a violation of human rights. He stated that he often appealed to governments not to carry out certain death sentences, especially when relating to minors or if the method of execution amounted to cruel treatment. The Special Rapporteur also commented that, in response to the previous year's GA resolution on a moratorium on the death penalty, he had requested that the GA and the Council look further into the question of when the death penalty amounted to cruel, inhuman and degrading punishment;*
- Violence against PWD by private actors, models of domestic criminal laws that address such acts of abuse, and the Special Rapporteur's interpretation of the provisions of the prohibition of torture and these acts (US). *The Special Rapporteur recognized that the definition of torture in Article one of the Convention against Torture (CAT) is fairly narrow and refers to the acquiescence of State officials in the case of acts of torture by private individuals. He mentioned that violence against women is also a violation of prohibition of torture if governments do not undertake due diligence to protect women, children and the disabled. Regarding best practices of a State to protect PWD from domestic violence, the Special Rapporteur stated that all States that have enacted such legislation on domestic violence against women and children are good examples;*
- Gender perspective and torture, and the integration of the issue into the Special Rapporteur's reports (Thailand). *The Special Rapporteur mentioned that his upcoming report to the Council has incorporated the gender perspective and torture, including private acts of rape against women, and in regard to PWD. He stressed that women with disabilities are more prone to sexual violence within and outside detention;*
- Improving human rights conditions in solitary confinement (Switzerland). *The Special Rapporteur highlighted that solitary confinement should be a measure of last resort. He also added that it might be necessary in pre-trial detention, but it should not be for a long time and should only take place under strict review.*

Some States also complained about information concerning their countries in the Special Rapporteur's report, including on the following issues: diplomatic assurances (Denmark); solitary confinement and PWD (Nigeria); out-of-date case law (Uruguay); solitary confinement and the alleged lack of implementation of the Special Rapporteur's recommendations (Mongolia); competing interpretations of the CAT and Convention on Persons with Disabilities by the two respective treaty-body monitoring Committees (Norway).

Key resolution and outcomes

The main sponsor of the resolution on **torture and other cruel, inhuman or degrading treatment or punishment**⁶² was Denmark, as in previous years. The annual resolution was co-sponsored on a cross-regional basis.

The text reaffirms that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be respected under all circumstances permitting no exceptions, including on grounds of national security. The text also calls on States to implement effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, highlighting special concerns with the situation of detainees or people who are deprived of their liberty in solitary confinement, and also PWD. Neither focus was present in last year's resolution.

⁶² A/C.3/63/L.18/Rev.1, available at <http://www.un.org/ga/third/63/propolist.shtml>

The resolution welcomes the entry into force of the *Convention on the Rights of Persons with Disabilities* and sheds light on the need to integrate disability into torture prevention and protection. Another important development was the invitation of the chairpersons of the Committee on CAT and the Subcommittee on the Prevention of Torture to present oral reports on the work of the Committees and to engage in an interactive dialogue with the GA at its sixty-fourth session. Operative paragraph three strengthens language on prevention by welcoming the establishment of national preventive mechanisms to prevent torture, and also encourages all States that have not done so to establish such mechanisms.

The positive developments in the text were a result of open consultations and attempts to accommodate a number of concerns raised by various States, including on language on non-refoulement and solitary confinement. The aim was to adopt a consensual text, as in previous years.

A Denmark-sponsored resolution with similar content was tabled at the Council during its 8th Session, in June 2008.⁶³ The Council text renewed the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Both the GA and Council texts condemn all forms of torture and other cruel, inhuman or degrading treatment or punishment, recalling its prohibition at any time and in any place. Most notably, both resolutions now both refer to cruel, inhuman and degrading punishment as customary international law. Both texts also point out the need to pay special attention to the situation of incarcerated people, address the non-refoulement principle, and contain a gender perspective.

The resolution was adopted by consensus, as in past years, although rumors swirled that a vote would be called (it was not) due to the invitation in operative paragraph 27 to the Chairman of the Subcommittee on Prevention of Torture to present an oral report to the Third Committee. Several States made statements to highlight their concerns with the text despite joining the consensus, including Egypt, which complained that the invitations to the chairpersons of the Committee against Torture and the Subcommittee on Prevention of Torture were a “real breach to the norms and standing procedures of the work of the Third Committee”, that should not be repeated in the future. The United Kingdom (UK) highlighted the importance of properly interpreting and abiding strictly by the definition of torture, including by following the definition encompassed in Article one of the CAT, which highlights the intention behind the act and its purpose, rather than the nature of the act. Israel lamented that the resolution contained inaccurate information when it stated that all international, regional and domestic courts had held the prohibition of cruel, inhuman or degrading treatment or punishment to be customary international law.⁶⁴

Side event: Peoples with disabilities and torture

Before the introduction of this resolution in the Third Committee, Costa Rica organised a side event, co-sponsored by the International Disability Alliance’s Convention on the Rights of Persons with Disabilities Forum (IDA-CRPD), the Association for the Prevention of Torture (APT), and Human Rights Watch (HRW). The event was a roundtable aimed at discussing the situation of people with disabilities who are subject to torture. It was an important avenue to address the need of more collaboration around the issue of children with disabilities and torture, and also about other vulnerable groups such as detainees and drug addicts. One of the speakers was the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

⁶³ Human Rights Council *Resolution* 8/8.

⁶⁴ The UN press release on the *introduction* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3929.doc.htm> The UN press release on the *adoption* of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3938.doc.htm>

The GA plenary also adopted the resolution by consensus.⁶⁵ Following adoption, the UK repeated its explanation of position given in the Third Committee.

Looking forward

The 2008 Third Committee session was less confrontational than the previous year, in large part due to the decision to bring only a procedural resolution on a moratorium on the death penalty. Though still controversial, this year's follow-up resolution did not spark the same level of divisiveness as last year's more substantive one, which had led to strained relations and retaliatory actions that affected processes and outcomes on a number of other resolutions. Despite hopes by some States and NGOs for an annual reporting cycle on the issue by the Secretary-General, the agreement was for him to submit his next report on a moratorium on the death penalty to the GA only in 2010. Domestic developments in regard to moratoriums or the abolishment of the death penalty will likely influence how States address the issue at that time and how the session as a whole unfolds.

The Durban Review Conference (Durban II) is due to be held in Geneva in April 2009 and will likely be the forum for further debate on the question of the relationship between freedom of expression and incitement to religious hatred. Given the flagging support for the defamation of religions resolution at the GA this year, it remains to be seen if this debate will continue to be approached by the OIC through the perspective of defamation of religions.

Background

The General Assembly is the main deliberative organ of the UN. It is composed of representatives of all member States and has a general mandate to discuss and make recommendations on any matters within the scope of the United Nations Charter. Under Article 13 of the Charter, the General Assembly is specifically mandated to 'initiate studies and make recommendations for the purpose of ... assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. The regular session of the General Assembly runs from the beginning of September to the end of December. Each year the GA addresses over 150 agenda items, which are considered either in the plenary or in one of its six committees.⁶⁶ The Third Committee (Social, Cultural, and Humanitarian) addresses most agenda items relevant to human rights defenders, including advancement of women, children's rights, the rights of indigenous peoples, the elimination of racism, and human rights questions. Numerous special procedures also report to the Third Committee on a number of these issues and engage in an interactive dialogue with States. The Fifth Committee (Administrative and Budgetary) is also particularly relevant to human rights defenders since it evaluates and approves the budgetary requirements arising out of the work of the other five committees. After completing their work, the Third and the Fifth Committee, as well as the other three main committees, submit draft resolutions to the General Assembly for final adoption.

⁶⁵ The UN press release on the General Assembly adoption of this resolution and others mentioned in this report is available at <http://www.un.org/News/Press/docs/2008/ga10801.doc.htm>

⁶⁶ For further information on the main committees of the GA, refer to the ISHR's [General Assembly Fact Sheet: the General Assembly's main committees](http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192), available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

Technical Annex: Civil and Political Rights⁶⁷

Reports

- Report of the Secretary-General on combating defamation of religions (A/63/365)
- Note by the Secretary-General transmitting the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/63/313)
- Note by the Secretary-General transmitting the interim report of the Special Rapporteur on freedom of religion or belief (A/63/161)
- Note by the Secretary-General transmitting the report of the Special Rapporteur on the independence of judges and lawyers (A/63/271)
- Report of the Secretary-General on the moratorium on the use of the death penalty (A/63/293/CORR)
- Note by the Secretary-General transmitting the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/63/175)
- Report of the Secretary-General on the protection of human rights and fundamental freedoms while countering terrorism (A/63/337)

⁶⁷ The technical annex provides information on the UN resolutions and reports we covered in this report. All other resolutions relating to civil and political rights and to human rights in general from the 63rd session can be found at <http://www.un.org/ga/third/63/docslst.shtml> (Third Committee) and at <http://www.un.org/ga/63/resolutions.shtml> (General Assembly)

Special procedures

Special procedure	Date for renewal of mandate	GA report number	Date report presented	Last presentation of report/s to Human Rights Council	Next report to Council due
Special Rapporteur on extrajudicial, summary or arbitrary executions	2011	A/63/313	24 Oct 08	8 th session, June 08 ⁶⁸ (A/HRC/8/3/Corr.1)	11 th session June 09
Special Rapporteur on freedom of religion or belief	2010	A/63/161	22 Oct 08	7 th session, March 2008 ⁶⁹ (A/HRC/7/10/Add.1, Add .2, Add .3, Add.4)	10 th session March 09
Special Rapporteur on the independence of judges and lawyers	2011	A/63/271	24 Oct 08	8 th Session, June 2008 ⁷⁰ (A/HRC/8/4/Add.1)	11 th session June 09
Special Rapporteur on human rights while countering terrorism	2010	A/63/223	22 Oct 08	4 th session, March 2007 ⁷¹ (A/HRC/4/26) 6 th session, December 2007 ⁷² (A/HRC/6/17)	10 th session March 09
Special Rapporteur on torture	2011	A/63/175	23 Oct 08	7 th session, March 2008 ⁷³ (A/HRC/7/3)	11 th session, June 09

⁶⁸ Mr Philip Alston presented his report on the activities of 2007 and the first three months of 2008, as well as his final report on the visit to the Philippines, preliminary notes on his missions to Brazil, Central African Republic (CAR) and Afghanistan and follow-up country recommendations on Nigeria and Sri Lanka. A report on the interactive dialogue of the Council with Mr Alston is available at: http://www.ishr.ch/hrm/council/dailyupdates/session_008/2_june_2008.pdf

⁶⁹ Ms Jahangir presented a summary of cases transmitted and replies received from 1 December 2006 to 30 November 2007 and replies received by governments by 30 January 2008, as well as reports of her country visits to Tajikistan, United Kingdom of Great Britain and Northern Ireland and Angola.

⁷⁰ Mr. Leandro Despouy presented his report, as well as country reports from his missions to Democratic Republic of the Congo(DRC). A report on the interactive dialogue of the Council with Mr. Despouy is available at http://www.ishr.ch/index.php?option=com_docman&task=doc_download&gid=22&Itemid=

⁷¹ Mr. Martin Scheinin presented his second report, as well as his country report from his mission to Turkey and the results of his studies on Australia. A report on the interactive dialogue of the Council with Mr. Scheinin is available at http://www.ishr.ch/hrm/council/dailyupdates/session_004/26_march_2007.pdf and http://www.ishr.ch/hrm/council/dailyupdates/session_004/27_march_2007.pdf

⁷² Mr. Martin Scheinin presented his third report, as well as country reports from his missions to the US, South Africa, and Israel. A report on the interactive dialogue of the Council with Mr. Scheinin is available at http://www.ishr.ch/hrm/council/dailyupdates/session_006/12_december_2007.pdf and http://www.ishr.ch/hrm/council/dailyupdates/session_006/13_december_2007.pdf

⁷³ Mr. Manfred Nowak presented his second report which summarizes his activities, and also includes updates on country visits (Missions to Paraguay, Nigeria, Togo, Sri Lanka, and Indonesia), future visits and pending requests for invitations, as well as highlights of key presentations and meetings. The report also addresses the protection of women from torture and sets out his conclusions and recommendations. A report on the interactive dialogue of the Council with Mr. Nowak is available at http://www.ishr.ch/hrm/council/dailyupdates/session_007/10_march_2008.pdf.

Key resolutions

Initial resolution number/final number	Main Sponsor	Title	Previous GA resolution	Action
A/C.3/63/L.39/Rev.1 and A/RES/63/185	Mexico	Protection of human rights and fundamental freedoms while countering terrorism	62/159 ⁷⁴ annual	Adopted by C3 25 Nov 07 by consensus Adopted by GA 18 Dec 08 by consensus
A/C.3/63/L.35 and A/RES/63/182	Sweden	Extrajudicial, summary or arbitrary executions	61/173 ⁷⁵ biennial	Adopted by C3 24 Nov 08 vote: 121-0-57 Adopted by GA 18 Dec 08 vote: 127-0-58
A/C.3/63/L.19/Rev.1 and A/RES/63/168	Chile and Gabon	Moratorium on the use of the death penalty	62/149 ⁷⁶ biennial	Adopted by C3 20 Nov 08 vote: 105-48-31 Adopted by GA 18 Dec 08 vote: 106 - 46 - 34
A/C.3/63/L.34 and A/RES/63/181	France (on behalf of the EU)	Elimination of all forms of intolerance and of discrimination based on religion or belief	62/157 ⁷⁷ annual	Adopted by C3 24 Nov 08 by consensus Adopted by GA 18 Dec 08 by consensus
A/C.3/63/L.22 and A/RES/63/171	Uganda (on behalf of OIC)	Combating defamation of religions	62/154 ⁷⁸ annual	Adopted by C3 25 Nov 08 vote: 85-50 -42 Adopted by GA 18 Dec 08 vote: 86-53-42
A/C.3/63/L.18/Rev.1 and A/RES/63/166	Denmark	Torture and other cruel, inhuman or degrading treatment or punishment	62/439 ⁷⁹ annual	Adopted by C3 18 Nov 2007 by consensus Adopted by GA 18 Dec 08 by consensus

⁷⁴ See ISHR's report on Civil and Political Rights from the GA's 62nd session, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

⁷⁵ See ISHR's report on the GA's 61st session, available at http://www.ishr.ch/hrm/archive/GA/GA61/GA61_Contents.htm

⁷⁶ See ISHR's report on Civil and Political Rights from the GA's 62nd session, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

⁷⁷ See ISHR's report on Civil and Political Rights from the GA's 62nd session, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

⁷⁸ See ISHR's report on Civil and Political Rights from the GA's 62nd session, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

⁷⁹ See ISHR's report on Civil and Political Rights from the GA's 62nd session, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

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