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Overview

The Council heard the presentation of the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on the afternoon of 2 June and continued the dialogue for over 5 hours through the morning of 3 June. Mr Frank La Rue was presenting his first Council report as the Special Rapporteur and focused on explaining his thematic approach to the mandate. Many States addressed a joint declaration the Special Rapporteur had issued together with several regional mechanisms dealing with freedom of expression. In the declaration, referred to in the report of the Special Rapporteur, the mandate holders had expressed concern about the use of the concept of ‘defamation of religion’. Several members of the African Group and the Organisation of the Islamic Conference (OIC) questioned the suitability of the new mandate holder to carry out his mandate as set out in Council *Resolution 7/36*¹ and alleged that Mr La Rue had violated the Code of Conduct of special procedures.

Presentation by the Special Rapporteur²

Mr La Rue identified three themes as set out in his first report. These were: the question of limitations on the right to freedom of expression; safety and protection of journalists and media professionals in armed conflict; and implementing the right of access to information in areas of extreme poverty. This was followed by a summary of the country missions undertaken by himself and the previous Special Rapporteur, Mr Ambeyi Ligabo, to the Maldives and Honduras respectively.

Mr La Rue also paid particular attention to the recent Durban Review Conference, held in Geneva in April 2009,³ in contributing towards what he called ‘a new era in the fight against racism’. He applauded the achievements of the outcome document in balancing the promotion of the freedom of speech with the need to prevent excesses.⁴ In view of the following interactive dialogue, it was noteworthy that Mr La Rue clearly stated its conviction that

¹ See http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_36.pdf.

² Report available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.4.pdf>.

³ See http://www.ishr.ch/index.php?option=com_content&task=view&id=492&Itemid=1.

⁴ See http://www.un.org/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf.

incitement to racial hatred needs to be combated, while upholding freedom of expression. The Special Rapporteur highlighted the importance of paragraphs 58, 13 and 60 of the outcome document in protecting the fundamental right to freedom of expression and at the same time protecting against abuses of that right. Acceptable limitations of the right must be established in order to ensure the correct application of the rule.

Mr La Rue went on to state that journalists have a particular responsibility to foster adherence to human rights principles and should thus be trained in it. In light of this, he suggested the creation of an online training programme, to enable journalists to strengthen their professionalism and reduce the possibility of attracting unwarranted censorship or interference. His report also highlighted the need to address the impunity surrounding crimes committed against journalists and reminded States that journalists are not to be considered as a legitimate target so long as they do not constitute ‘an effective contribution to military action’.⁵

As developed in his report, the Special Rapporteur highlighted that the right to freedom of opinion and expression is particularly difficult to ensure in regions of extreme poverty, since access to communication significantly limits the enjoyment of these rights. The Special Rapporteur was keen to point out that this lack of access exists in all States, including for example in those with a large migrant worker population. Highlighting the importance of the right to access to information as an auxiliary to the enjoyment of the right to freedom of opinion, the Special Rapporteur acknowledged the interrelationship of all human rights and suggested that he would conduct his studies in light of this.

In addition to outlining his approach to the mandate for the coming years, the Special Rapporteur reported on his and the previous mandate holder’s visits to the Maldives and to Honduras respectively. He advised the Maldives on consulting more with its population, decriminalising defamation and improving education on rights related to the freedom of expression. The State assured the Council of its determination to implement the recommendations ‘in a suitable manner’ and emphasised the need to train journalists on their rights and responsibilities when reporting. In this regard it declared its intention to revise its media bills to comply with international standards and will implement them expeditiously.

The mission to Honduras undertaken by Mr Ligabo in 2007 had focused on the access of the poor to information, and the need to address impunity for crimes against journalists. Honduras replied that it had made significant improvements since the visit and stated that it has no legal provisions that purport to impose arbitrary or unjustified restrictions on the media. However, alleged threats against journalists have not been tried before the courts and there are currently bills being formed regarding defamation.

Interactive dialogue

Following the controversial renewal of the mandate of the Special Rapporteur on the right to freedom of expression in 2008, and the election of a new incumbent to the position, it was unsurprising that some States chose to take the opportunity to criticise Mr La Rue’s interpretation of his mandate and the focus of his first report. During the renewal of the mandate, Pakistan (on behalf of the OIC) had introduced a very contested amendment mandating the Special Rapporteur to report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination.⁶ In his report, the Special Rapporteur did not explicitly include a section on ‘abuses of freedom of expression’. Instead, he highlighted comments made by the previous mandate holder about the concept of ‘defamation of religion’ and its debatable legal status. Along with other regional mechanisms, the Special Rapporteur had furthermore issued a declaration, encouraging the General Assembly and Human Rights Council to ‘desist from further adoption of statements supporting the idea of defamation of religion’.⁷

⁵ *Supra* n. 2, at para. 49.

⁶ See for instance ISHR’s *Overview of the 7th session*, available at www.ishr.ch.

⁷ See paragraph 24 of the Special Rapporteur’s report.

These statements met with severe opposition from many States. Pakistan (on behalf of the OIC) claimed that Mr La Rue has operated outside of his mandate when supporting the declaration on defamation of religions. Egypt (on behalf of the African Group) argued that the Special Rapporteur had violated the Code of Conduct for special procedures mandate holders, and outlined the function available to the President of bringing attention to cases of persistent non-compliance before the Council, as set out in Presidential statement 8/2 of 18 June 2008 on ‘terms in office of special procedure mandate holders’.⁸ Sri Lanka questioned the impartiality of the Special Rapporteur, who was said to have interpreted his mandate in an ‘extremely broad manner’, which ‘suggests political alignments’. Indonesia stated that it was incompatible with the role of a Special Rapporteur as an elected position by the Council, to question decisions by that same Council, arguing that special procedures ‘represent Council views’. This constitutes a gross misrepresentation of the aim and purpose of the system of special procedures. India, when referring to the Code of Conduct, also noted that press releases always need to be provided to the State concerned. Qatar emphasised the need to be ‘open and tolerant’, whilst also emphasising that it is inappropriate to ‘judge cultures from other cultural positions’. Malaysia supported this point of view by adding that the Special Rapporteur’s comments on defamation of religion were outside his mandate, and that such actions may indicate hostile intentions towards certain countries or groups of countries. This outspoken and scathing attack was sensationally concluded by Malaysia stating that ‘sensitive issues should not be tested by Special Rapporteur’s’.

A further set of criticism was based the perceived lack of a specific focus on abuses of freedom of expression in the report of the Special Rapporteur. Egypt, on behalf of the African Group, instigated the most sustained attack against the Special Rapporteur, accusing him of ‘ignoring’ his mandate in this regard and claiming that he had shown ‘no effort’ to deal with abuses of the freedom of expression. Pakistan made similar remarks, complaining that the Special Rapporteur did not look at the misuse of the freedom of expression. In its opinion the Special Rapporteur was therefore not in line with his mandate. Saudi Arabia, Azerbaijan and the United Arab Emirates also supported this line of reproach, expressing their ‘dissatisfaction’ at the Special Rapporteur’s apparent ‘omission’ in relation to abuses of the freedom of expression.

This harsh criticism, bordering on personal attacks against the mandate holder, sparked a strong reaction from a number of States. Canada asserted that the Special Rapporteur, in his reports, clearly commits to addressing concerns about incitement to religious hatred in line with his mandate. The Czech Republic (on behalf of the EU) confirmed its support for the continued independence of special procedures and emphasised that they must be allowed to define their own programmes of work, and are free to choose how and in what timeframe they will discharge their mandates. Italy also said that while it is possible to agree or disagree with the statements made by special procedures without criticising them for the way they carry out their mandates. The US set out its strong support for the work of the Special Rapporteur and re-emphasised his independence. It stressed that ‘the Special Rapporteur should be allowed to comment on all issues relevant to his mandate.’

The Netherlands also strongly supported the independence of the Special Rapporteur and criticised ‘some members of the Council who are not willing to accept the independence of the special procedures, by calling on them to allow all special procedures to decide how to organise their work. It furthermore said it failed to see how Mr La Rue had contravened the Code of Conduct. Referring to allegations made concerning paragraph 4(d) of the Special Rapporteur’s mandate, the Netherlands felt that it is not for States to decide whether he has reported sufficiently on a particular part of his mandate in the present report. Instead, the Netherlands underlined that he had brought attention to this part of his mandate and that this was sufficient for the time being. It called on all States to use the opportunity for dialogue to engage on aspects of the report and not to question the integrity of the mandate holder. Mexico stressed that the Special Rapporteur could take up subjects ‘that he considers relevant’ and called on him to continue dealing with the type of issues raised in his report.

In a statement that attempted to address many of the concerns raised by States in reaction to the report, Canada reminded them that the Special Rapporteur could not address all pressing topics in his initial report, and that the thematic approach was to be commended for its clarity and focus. Greece, Switzerland, France and Denmark

⁸ See ISHR’s *Daily Update* for the Human Rights Council 8th Session, 18 June 2008, available at http://www.ishr.ch/hrm/council/dailyupdates/session_008/18_june_2008.pdf, at 2.

explicitly supported these statements. NGOs also spoke to this effect, with Action Canada for Population and Development arguing that States could not expect a newly appointed mandate holder to deal with all aspects of the mandate in their initial reports, and ‘looked forward’ to future reports, especially on aspects of his mandate not already mentioned in the interactive dialogue. The Canadian HIV/AIDS Legal Network expressed ‘dismay’ at the attacks on the Special Rapporteur. Providing support to the actions of the Special Rapporteur, the NGO asserted that the Code of Conduct is clear in protecting mandate holders from undue pressure including from States, and asked if he would elaborate on how the freedom of expression could be enhanced and better protected within the Council itself. It also encouraged the Council to be ‘more active’ in this regard, and to not allow no-motion actions to stifle debate.

In response to the severe criticism aimed at him, the Special Rapporteur in his answers assured States that he would assume all duties mandated to him, including the function of investigating instances of abuses of the right to freedom of expression. In this regard he also made it clear that he would stick as closely as possible to the legal instruments that give rise to his mandate, and demonstrated his intention to address the issue of limitations to the right to freedom of expression. He did, however, stress that limitations to the freedom should be ‘the exception and not the rule’, and that he would therefore approach the topic from this position. Dealing with the last of the accusations regarding the limited scope of his report, the Rapporteur responded that his initial report was intended to raise just some of the topics of interest.

Some States were keen to establish more concrete **limitations on the right to freedom of expression**, in what Cuba called an ‘holistic approach’ to the right. Venezuela proposed limiting the dissemination of information to sources which are ‘accurate’ and which do not try to ‘stir up disruption within the country’. Russia seemed to agree to a point, suggesting the instigation of a study on the right to ‘objective and reliable’ information. It also attempted to re-structure the debate, approaching the right from a negative perspective; it claimed that increased access to multiple sources of information actually served to undermine the right and it wanted to ensure the ‘responsible use of information’. Pakistan (on behalf of the OIC) supported this approach, stating that there is a difference between ‘expressing and insulting’, and suggested that the views and values of others are to be respected above all.

Other States preferred to take a more measured approach to limitations, with Chile maintaining that limitations of the right to freedom of expression should always be established by law. The UK, supporting the views of the EU, underscored the need to provide for legitimate limitations in order to protect people from discrimination based on religion and sexual orientation, for example. The Canadian HIV/AIDS Legal Network stated that limitations to the right to freedom of expression should be ‘narrowly’ defined and expressed its concern at the act of suppression of information in any form.

Significant debate formed around the focus of the report on **access to information in situations of extreme poverty**. Egypt, on behalf of the African Group, expressed concern that this indicated a bias against developing countries, intended to embarrass them. Turkey pointed out that freedom of expression should be protected and applied universally without focus on countries, regardless of their economic development. The Philippines echoed the sentiments and pointed out that this problem exists in more economically developed countries too, something the Czech Republic on behalf of the EU was quick to agree with. In contrast to the Special Rapporteur’s report, Qatar emphasised the importance of a free media in terms of giving the poor a voice and developing a better understanding of poverty issues.

India challenged the notion that lack of information – or access thereto – should in any way be identified as a cause of poverty. India’s blanket rejection of the links between freedom of expression and poverty went against the apparent consensus in the dialogue. It went on to make some concerning remarks about the Special Rapporteur’s chosen areas of interest, suggesting that UNESCO had already addressed his ideas on mass media outlets in areas of poverty. The Special Rapporteur responded to this concern by stating his belief that ‘poverty’ could be found in many countries and in many forms, and certainly does not exist exclusively in less economically developed countries. On the contrary, he highlighted the existence of ‘pockets’ of extreme poverty, characterised by limited access to information, in what many consider to be ‘highly developed’ countries.

On the topic of **the role of journalists and the media** in enhancing the right to freedom of expression, participation in the dialogue was limited. Notably, Egypt (on behalf of the African Group) and Pakistan (on behalf of the OIC) did not contribute to the dialogue. Those who did provided a diverse array of perspectives. The Czech Republic (on behalf of the EU) highlighted two particular cases of journalists being killed in the Democratic Republic of Congo (DRC) and asked that they be investigated expeditiously. It also expressed the EU's interest in the Special Rapporteur's proposal to study violence against media professionals. Peru supported the attention paid to journalists and encouraged Mr La Rue to develop the topic of access to information. Turkey asked whether, and to what extent the Special Rapporteur would implement standards of international humanitarian law for the protection of journalists. The UK called upon all governments to ensure swift investigations of violence committed against journalists and Norway called for a study on the elimination of impunity for crimes committed against journalists. In light of restrictions sometimes placed on journalists using the Internet, Sweden asked the Special Rapporteur what his focus for expounding on freedom of the press would be for the coming year.

Reporters without Borders congratulated the Rapporteur on his intention to address the issue of journalists at risk in war zones. It also highlighted the need to address the problem of journalists being denied access to war zones in order to report freely, and brought the Council's attention to cases in Sri Lanka where journalists are being detained illegally. It furthermore highlighted the plight of a group of reporters in Somalia who were killed after identifying themselves as journalists and asked if any measures would be taken to investigate this.

On a more critical note, the Russian Federation claimed that the development of mass media, modern technology and the globalisation of information sources constitute 'obstacles' to the enjoyment of the right to freedom of expression. In light of this 'concern' it asked for more information on the 'responsible' use of information. Venezuela claimed that it is sometimes necessary to stop the operation of certain private media outlets which 'try to stir up disruption within the country' and which are not 'accurate'.

Several States took the opportunity to recognise the importance of **linking the right to freedom of expression with other rights**, and this respect the scope of the Special Rapporteur's mandate was reinforced by the statements of Cuba, Canada and the Philippines. The former commented on the importance of emphasising the linked right to education as having strong relevance in dealing with access to information in areas of extreme poverty. Canada recognised the indivisibility of all human rights and the Philippines made a statement declaring that the interrelationship of economic, social and cultural, and civil and political rights demonstrates the universality of these principles. It furthermore suggested that the Special Rapporteur should continue to focus on linking rights in this manner. The Special Rapporteur took up this point in his response and emphasised the interrelationship between all human rights. He also recognised the interrelationship between various parts of his mandate.

Further information

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- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to information@ishr.ch.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.
- More informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.

NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.

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