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## Overview

On 6 October 2008, the Third Committee of the UN General Assembly (GA) will get underway, and by the end of November or early December, it is expected to adopt some 60 resolutions on a broad range of human rights matters. Some of these will be highly controversial, such as those dealing with country-specific situations and the death penalty. Others may trigger heated debate about the independence of the Office of the High Commissioner for Human Rights (OHCHR) and its budget, a debate which has been brewing in the Human Rights Council in Geneva. The Committee's interactive dialogues with special procedures will have an element of the unknown as nine of the 21 mandate holders scheduled to attend only took up their role in 2008 and have not previously come before the Third Committee. These discussions will occur against the backdrop of the impending review conference on the implementation of the Durban Declaration and Programme of Action (Durban Review Conference),<sup>1</sup> the celebration of the 60<sup>th</sup> anniversary of the *Universal Declaration on Human Rights (UDHR)* and the world food crisis - making for an interesting session. This 'Alert' outlines the new developments, emerging controversies and old arguments that are expected during the 63<sup>rd</sup> session of the GA.

## New developments

### Adoption of ICESCR Optional Protocol

The only standard-setting instrument for consideration by the GA this session is the draft optional protocol to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. If adopted by the GA, this will establish an individual complaints procedure under ICESCR similar to that under the *International Covenant on Civil and Political Rights (ICCPR)*. The draft optional protocol is contained in the Report of the Human Rights Council to the GA, but it is expected that the GA will consider the adoption of the protocol in a separate process.

Although a resolution in support of the adoption of the draft optional protocol found consensus in the Human Rights Council (the Council) at its 8<sup>th</sup> session in June 2008, the polarised debates that characterised the passage of this resolution may be reopened in New York. The main point of dispute in the Council was the decision of the Working Group tasked with drafting the optional protocol to *not* include the right of self-determination (Part I of ICESCR) within the scope of the optional protocol. To the surprise of many States that were involved in crafting the Working Group's 'delicate compromise' text, amendments to this text proposed by Pakistan<sup>2</sup> were accepted in a last minute effort to ensure the Council's adoption of the resolution.<sup>3</sup>

As a result, the draft optional protocol that will come before the GA will provide that 'all' the rights covered by ICESCR are within its scope. States opposed to these amendments in the Council placed on record their interpretation that the right to self-determination alone could not be invoked to trigger a complaint under a future complaints mechanism.<sup>4</sup> These States may actively seek to oppose its adoption or to reopen the text at the GA. In any case, as its title suggests, it is an 'optional' instrument that States will ultimately elect to ratify, or not.

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<sup>1</sup> <http://www2.ohchr.org/english/issues/racism/DurbanReview/index.htm>.

<sup>2</sup> Supported by Algeria, Syria and Palestine.

<sup>3</sup> See ISHR's *Analytical Overview of the 8th session of the Human Rights Council*, pp 19-21, available at [www.ishr.ch](http://www.ishr.ch).

<sup>4</sup> The UK, Turkey, Canada, Australia and Switzerland. For more information, see ISHR's *Analytical Overview of the 8th session of the Human Rights Council*.

## Independence of OHCHR from Human Rights Council – Programme 19

Another expected carry-over from the Council is the brewing debate about the independence of the Office of the High Commissioner for Human Rights (OHCHR) vis-a-vis the Council. Though one of the major underlying battles of the Council's 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> sessions, the Council is yet to formally address the matter.<sup>5</sup>

Many States have argued that the Council should have greater oversight of OHCHR,<sup>6</sup> and in particular have a role in approving the Office's budget, while others vigorously defend the High Commissioner's and OHCHR's independence.<sup>7</sup> These debates have brought up complex legal and political issues, revealing divergent views among States about the interpretation of various UN resolutions and other documents that established the High Commissioner and her office, and which govern the status of OHCHR and its relationship with the Council and other UN bodies, including the General Assembly.<sup>8</sup> Some States are of the opinion that these matters are beyond the mandate of the Council and would be more appropriately addressed by the GA, given its superior status to the Council.<sup>9</sup>

The GA's consideration of the human rights component (Programme 19) of the UN's *Proposed strategic framework for the period 2010-2011*<sup>10</sup> could provide a trigger for this debate in the GA. The strategic framework was drafted by the UN Secretariat and reviewed in July by the Committee for Programmes and Coordination (CPC) of the GA. The Third Committee will consider Programme 19 under its agenda item 119.<sup>11</sup> Unlike in previous years, when the Third Committee considered Programme 19 relatively late in its program in December, a discussion on this agenda item is now scheduled for the very first day of its program in an attempt to allow sufficient time to reach consensus in the Third Committee well before the end of the GA's main session.

## Sexual orientation and gender identity – cross regional joint statement

In recent years, some States have repeatedly called on the Human Rights Council to formally consider human rights violations based on sexual orientation or gender identity and generally discrimination against lesbian, gay, bisexual, transgender and intersex people (LGBTI).<sup>12</sup> Despite these repeated calls for such an in-depth discussion, the issue has been quite controversial and has raised the opposition of several States. The GA and its Third Committee are yet to formally consider discrimination on the basis of sexual orientation and gender identity, although in previous years States have discussed and voted on the inclusion of the issue in a paragraph of the biannual GA resolution on extrajudicial, summary or arbitrary executions (EJEs).<sup>13</sup>

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<sup>5</sup> See for instance ISHR's *Analytical Overview of the 8th session of the Human Rights Council*, or ISHR's *Daily Updates* of 8 September 2008.

<sup>6</sup> For example, Algeria, Malaysia, Philippines and Uzbekistan called for a formal discussion of OHCHR's strategic framework for 2009-2010 at the Council's 8<sup>th</sup> session. During the same session, Pakistan and Uzbekistan were critical of the High Commissioner's decision to open its office for the Central Asian region in Kyrgyzstan, alleging she had failed to consult with States in the region. Algeria went further, arguing the Council should be consulted before any country office is opened by OHCHR.

<sup>7</sup> France (on behalf of the EU), Thailand, Australia, Canada, Czech Republic, Ireland, Norway, Iceland, Belgium.

<sup>8</sup> In particular, GA *Resolution 48/141* establishing OHCHR and GA *Resolution 60/251* establishing the Human Rights Council.

<sup>9</sup> Netherlands.

<sup>10</sup> Contained in A/63/6 (Prog.19). The strategic framework is the principal policy directive of the United Nations, which serves as the basis for programme planning, budgeting, monitoring and evaluation, with effect from the biennium 2010-2011.

<sup>11</sup> Switzerland and Morocco are the Facilitators for agenda item 119.

<sup>12</sup> For example, in 2006 Norway delivered a statement to this effect that was supported by 54 States from four of the five geographic regions. More recently, the Council's universal periodic review process has addressed the matter, prompting some States, most notably Egypt, to repeatedly insist that this form of discrimination is not recognised under international human rights law and therefore beyond the scope of the review.

<sup>13</sup> See ISHR analysis of GA's 61<sup>st</sup> session. [http://www.ishr.ch/hrm/archive/GA/GA61/eje\\_61.pdf](http://www.ishr.ch/hrm/archive/GA/GA61/eje_61.pdf)

France has publicised its intention to deliver a cross-regional statement on discrimination on the basis of sexual orientation and gender identity at the plenary of this session of the GA. Like the 2006 Norwegian statement, it will focus on the most egregious violations against members of the LGBTI community, such as arbitrary detention, torture and extrajudicial execution. France is currently drawing together a core group of supportive States around a draft text and hopes to attain more than 54 cross-regional supporters. The timing for the tabling of the statement is not determined but most likely will occur in early to mid December. There have been rumours of a counter-initiative by States from the Organisation of the Islamic Conference (OIC) and others who are strongly opposed to any discussion of discrimination on the basis of sexual orientation and gender identity in a human rights body of the UN. It is not yet clear whether such a counter-initiative will materialise or what form it might take.

It is also anticipated that the Independent Expert on extreme poverty (Ms Sepulveda) will make reference to sexual orientation and gender identity in her report. A resolution on extrajudicial, summary or arbitrary executions is also likely to be tabled this year, and may, as in previous years, consider sexual orientation in its listings of ‘vulnerable groups’. Although the Council renewed the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions during its 8<sup>th</sup> session, a proposal to include killings of persons because of their sexual orientation was dropped during the negotiation of that resolution.<sup>14</sup>

### **Special procedures – review of mandates and their independence**

By the end of the Council’s 9<sup>th</sup> session, it had completed the review, rationalisation and improvement of all special procedures mandates, as required by its institution-building package contained in *Resolution 5/1*. The modalities used to conduct the review included an interactive dialogue with the mandate holder, Council members and observers, NGOs and national human rights institutions. This opportunity for both States and civil society to comment on the work of the special procedures and provide their views on the future orientation of the mandates was seen as a key improvement on the workings of the former Commission on Human Rights (the Commission).<sup>15</sup>

Although the review of most mandates went smoothly, there were some notable exceptions. It was evident during the Council’s 7<sup>th</sup> session that many States were reluctant to resort to country mandates, and as in previous sessions, were only willing to renew these mandates if the State concerned agreed. As a basis for discarding country mandates, some States also put forward the familiar but questionable argument that the Council’s UPR process provided a more effective and non-selective means of examining each country’s human rights record. Although the special procedures of the Council include a number of country mandates, only the Special Rapporteurs for Myanmar, Democratic People’s Republic of Korea (DPRK) and the Occupied Palestinian territories will participate in an interactive dialogue with the Third Committee this year.

Some States also used the Council’s review and rationalisation of special procedures mandates as an opportunity to publicly criticise individual mandate holders about aspects of their work, and to insinuate, at times, that some mandate holders should be barred from carrying out a second 3-year term in office. The most controversial examples were that of the Special Rapporteur on extrajudicial, summary or arbitrary executions (Mr Phillip Alston, Australia) and the Special Rapporteur on torture (Mr Manfred Nowak, Austria).<sup>16</sup> One development arising from these heated exchanges was a Presidential statement that linked the terms of office of mandate holders with the implementation of the Code of Conduct for special procedures mandate holders.<sup>17</sup>

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<sup>14</sup> See ISHR’s *Analytical Overview of the 8<sup>th</sup> session of the Human Rights Council*, pp. 6-8.

<sup>15</sup> See [http://www.ishr.ch/index.php?option=com\\_content&task=view&id=209&Itemid=284](http://www.ishr.ch/index.php?option=com_content&task=view&id=209&Itemid=284) for a list of special procedures mandates and link to their review.

<sup>16</sup> See ISHR’s *Analytical Overview of the 8<sup>th</sup> session of the Human Rights Council*, available at [www.ishr.ch](http://www.ishr.ch)

<sup>17</sup> See also ISHR’s *Analytical Overview of the 8<sup>th</sup> session of the Human Rights Council*. The Code of Conduct is set out in Council *Resolution 5/2*.

In light of these developments, it will be interesting to see how the Third Committee handles the interactive dialogue with special procedures that some States regularly criticise for ‘overstepping their mandate’, including with the Special Rapporteurs on torture and on extrajudicial executions.

This year’s interactive dialogues with special procedures will have an added element of the unknown as nine of the 21 mandate holders scheduled to attend only took up their role in 2008 and have not previously come before the Third Committee.<sup>18</sup> Notably, it will also be the first time that the Special Rapporteurs on the right to education and the right to adequate housing, as well as the Special Representative of the Secretary-General on human rights and transnational corporations, will report to a universal membership. Each special procedure mandate is allocated one hour for the presentation of their report and the interactive dialogue with the Committee. The Chairman of the Committee has discouraged States from reading prepared statements in favour of more spontaneous dialogue on the points raised by the mandate holders.

### **The GA’s consideration of R2P – the responsibility to protect’**

The post of Special Adviser to the Secretary-General on the responsibility to protect (R2P) had a troubled birth, but was officially established in February 2008. Concerns on the part of some GA Member States delayed the appointment of Mr Ed Luck to the post by eight months and resulted in his official title being watered down to simply ‘Special Adviser to the S-G’. Despite initial denials by some members of the Non-Aligned Movement (NAM) that Heads of State had agreed to the concept of ‘the responsibility to protect’ at the 2005 World Summit,<sup>19</sup> there now seems to be increasing acceptance of the concept. This is due in part to the Special Adviser’s proactive approach<sup>20</sup> to his mandate to ‘develop conceptual clarity and consensus for the evolving norm’, as well as the Secretary-General’s Berlin speech in July 2008, which introduced the concept of the three pillars of R2P.<sup>21</sup> Those States which were amongst its strongest critics seem to be reassured by the three pillars approach,<sup>22</sup> which Mr Luck supports and which will form the basis of the Secretary-General’s first report on the matter to the General Assembly, expected later this year. However, there is concern amongst some civil society organisations that, in the new approach, the strength of R2P and what most distinguishes it from humanitarian intervention is not being given the prominence it deserves, namely the responsibility of the UN to intervene using coercive or consensual measures when a State is unwilling or unable to protect its population.

Following the release of the Secretary-General’s report, it is expected that the General Assembly will hold a debate to discuss its recommendations. This may occur in the first quarter of 2009, depending on the willingness of States and the President of the GA to engage on the matter. The recommendations may articulate the Secretary-General’s desire to establish a joint office on genocide prevention and R2P within the UN Secretariat, which he foreshadowed in his Berlin speech, and which appears to be the way the Secretary-General intends to operationalise and mainstream R2P across the UN system.

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<sup>18</sup> The new mandate holders to address the Third Committee are: extreme poverty (Ms Sepulveda); Myanmar (Mr Quintana); Palestinian Occupied Territories (Mr Falk); human rights defenders (Ms Sekaggya); food (Mr de Schutter); foreign debt (Mr Lumina); health (Mr Grover) and racism (Mr Muigai) and housing (Ms Rolnik). The complete list of Special Procedures and Chairpersons of treaty bodies who will address the Third Committee is available at <http://www.un.org/ga/third/63/dialogues.pdf>

<sup>19</sup> China, Cuba, Egypt, India, Pakistan and Venezuela.

<sup>20</sup> The Special Adviser has consulted widely with States, including members of NAM, African States and the so-called ‘Friends of R2P’ which are predominantly Western States, as well as some civil society organisations.

<sup>21</sup> See the Secretary-General’s address at an event on *Responsible Sovereignty: International Cooperation in a Changed World*, Berlin, 15 July 2008, available at <http://www.un.org/News/Press/docs/2008/sgsm11701.doc.htm>

<sup>22</sup> The three pillars emphasise firstly, the notion of ‘sovereignty as responsibility’, rather than sovereignty as a shield against international intervention; secondly, the international commitment to assist States to build their capacity to protect their populations from genocide, ethnic cleansing, war crimes and crimes against humanity; and finally, the responsibility of the UN to intervene in a timely and decisive manner, in accordance with the UN Charter, to protect people from these four crimes if the State is manifestly failing to do so.

## **Sudan – ICC application to issue arrest warrant against Sudanese President Bashir**

On 14 July 2008, the Chief Prosecutor of the International Criminal Court (ICC), Mr Ocampo, presented ICC judges with an application for a warrant of arrest against Sudanese President Omar Hassan al-Bashir. The charges in the warrant related to alleged genocide, crimes against humanity and war crimes in Darfur. The ICC's judges are yet to rule on whether to grant the warrant, and are expected to take their time, given the seriousness of the charges and Sudan's warnings immediately following the Prosecutor's announcement of a host of adverse consequences if the warrant is issued.<sup>23</sup>

The African Union, the Arab League and the OIC have urged the UN Security Council to suspend ICC proceedings against President Bashir. The OIC's communiqué following an emergency meeting of its Executive Committee on 4 August 2008 decided that: 'the OIC should coordinate its efforts with the African Union, the League of Arab States, the Non-Aligned Movement and other political groupings to support steps in the UN and elsewhere aimed at defusing this dangerous situation ...the meeting instructed the OIC Group in New York to evolve best ways and means of tackling the issue during the 63<sup>rd</sup> session of the UNGA.'<sup>24</sup> Although these efforts may be aimed more at the GA plenary, the matter may also be pursued at the level of the Third Committee.

## **UDHR 60<sup>th</sup> Anniversary**

Human Rights Day, 10 December 2008, marks the 60<sup>th</sup> anniversary of the adoption of the *Universal Declaration on Human Rights* by the GA. It also marks the close of the year-long campaign that was launched by the Secretary-General under the theme 'Dignity and justice for all of us'. The campaign has sought to raise international awareness about the Declaration and to mobilise the UN, States, teachers, civil society and others to promote the message that 'the UDHR belongs to everyone and should be celebrated everywhere as our universal heritage'. To mark the occasion, the GA will hold a commemorative meeting on the morning of 10 December. Following statements from the President of the GA, the Secretary-General and the High Commissioner for Human Rights, the UN Human Rights prizes will be awarded in a ceremony in the GA Hall. Each of the Chairs of the five regional groups will have an opportunity to speak, as will the US Government as the host country.

Although the Third Committee will have concluded its meeting by 10 December, it is expected that many States will make references to the anniversary when they address the Third Committee and some will be keen to inform the Committee of their initiatives under the year-long campaign. Likewise, recognition and celebration of the 60<sup>th</sup> anniversary will be a common thread running through many of the side-events during the 63<sup>rd</sup> session.

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<sup>23</sup> The Sudanese Government warned that the approval of the warrant would negatively impact on the peace process in Darfur, humanitarian operations in the country, Sudan's cooperation with African Union/ United Nations hybrid force in Darfur and Sudan's north-south conflict. For more information see *Security Council Report*, Update Report No.4, Sudan, 28 July 2008, available at <http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.4381649/>.

<sup>24</sup> Saudi Press Agency, *OIC holds meeting, issues communiqué*, 4 August 2008, available at <http://www.zawya.com/Story.cfm/sidZAWYA20080805084422/OIC%20holds%20meeting.%20issues%20communique%20%20/>.

## Follow up from the 62<sup>nd</sup> session of the GA

### Moratorium on death penalty – right to life backlash

The resolution calling for a moratorium on the use of the death penalty was one of the most contentious of last year's session of the Third Committee.<sup>25</sup> One controversy involved some States arguing that a death penalty resolution should be comprehensive in scope, and thus include a prohibition on the use of abortion. On the same note, Lebanon warned that a resolution without such language would trigger future resolutions on the right to life. It is not yet clear whether this year's resolution on the use of the death penalty may prompt such a counter measure.

Foreshadowing the passion of the debate that is to come, some States used an informal preparatory meeting organised by the incoming Chairman of the Third Committee to vent their opposition to this year's resolution on the death penalty. Singapore attacked the Secretary-General's report on the implementation of last year's resolution on the death penalty<sup>26</sup> for its 'unbalanced' citations, failure to acknowledge the lack of international consensus on the legality of the death penalty and the absence of any reference to state sovereignty over national criminal justice systems. Despite the content of its remarks, Singapore ironically appealed for the Committee to deal with the matter in a 'respectful and open atmosphere', and was supported in this respect by Antigua and Barbuda (on behalf of the G77 and China). In addition, 58 States formally objected to any attempt to impose a moratorium on executions or abolition of the death penalty in a letter to the UN Secretary-General in January 2008,<sup>27</sup> virtually guaranteeing that this year's resolution will have an equally rough passage in the Third Committee.

### Gender Equality Architecture Reform (GEAR) – progress at last

Over the last few years, women's rights advocates have lobbied the UN and Member States to create a new, stronger and adequately funded UN entity for women. They argued that a *single* UN entity was needed to drive the gender equality and women's empowerment agenda at the UN, which must be headed by an Under-Secretary-General. This would ensure the necessary status required for representation and decision-making at the highest levels both in policy-development and program operations at the global and country levels. Further, this entity must have extensive field presences and a strong policy and programmatic mandate to ensure it is capable of improving the lives of women on the ground, and of achieving gender mainstreaming across the UN system. Despite their efforts at several sessions of the Commission on the Status of Women (CSW) and their input over several years into the General Assembly's 'system-wide coherence' (SWC) reform agenda, progress was slow. That is until the 62<sup>nd</sup> session of the GA began to draw to a close in mid 2008.

A breakthrough came when the GA adopted by consensus a resolution that placed the gender architecture discussion squarely on the agenda of the next session of the GA under the banner of 'system-wide coherence'.<sup>28</sup> Significantly for NGOs involved in the GEAR Network,<sup>29</sup> the resolution also 'welcomed' the paper prepared by the Deputy Secretary-General, who had presented a series of options to strengthen the

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<sup>25</sup> Resolution 62/149. Vote: 104 in favour; 54 against; 29 abstentions. For more information see ISHR's *New York Monitor* on Civil and Political Rights from the 62<sup>nd</sup> session of the GA, September to December 2007, available at [http://www.ishr.ch/index.php?option=com\\_content&task=view&id=131&Itemid=192](http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192)

<sup>26</sup> A/63/293 available at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/462/15/PDF/N0846215.pdf?OpenElement>

<sup>27</sup> For more information see Amnesty International *UN General Assembly 2008: Implementing a moratorium on executions*, September 2008, p.3-4, available at <http://www.amnesty.org/en/library/info/ACT50/016/2008/en>

<sup>28</sup> A/RES/62/277.

<sup>29</sup> The Network aims to establish an independent women-specific entity at the UN that will combine OSAGI, DAW and UNIFEM, have both normative and operational responsibilities, be better resourced, and be led by an Under-Secretary General. It includes more than 260 women's, human rights and social justice groups from around the world.

UN's work on gender equality and women's empowerment.<sup>30</sup> The resolution requested the Secretary-General to prepare a more detailed paper on how the 'composite entity' (the option that sparked the most interest among GA Members and was endorsed by the GEAR Network) could be funded and function. The Secretary-General's paper is intended to facilitate 'substantive action' on the matter within the 63<sup>rd</sup> session of the GA. This opens the way for more serious and focussed discussions on these issues and gender mainstreaming more generally during this year's Third Committee and the GA plenary.

### Durban Review Conference

In 2006, the GA voted to hold a review of the 2001 Durban World Conference Against Racism,<sup>31</sup> which will take place in Geneva from 20-24 April 2009. Given the deep divisions and animosity that was sparked by the Durban Conference,<sup>32</sup> even the prospect of a review with a limited mandate to evaluate progress on the commitments reached since 2001, has created deep divisions amongst States. So far only Canada has announced it will not participate in the Review Conference, but other States including the US, Israel, France and the UK continue to consider their participation. They have made it clear they will "disengage" if their "legitimate demands are not taken into account" in the preparatory processes, and if the Review Conference looks like becoming a platform for anti-Semitic sentiments.<sup>33</sup>

The general debate on this topic at the Human Rights Council's 9<sup>th</sup> session in September 2008 reaffirmed that States fall are divided into two broad 'camps'. The Western and European States on the one hand are adamant that the Review Conference should focus solely on the review of the Durban Declaration and Plan of Action (DDPA) and on strengthening the implementation of agreements already reached. All other States, led by Egypt (on behalf of the African Group) and Pakistan (on behalf of the OIC) have a broader agenda for the Review Conference that includes discussion of:

- religious intolerance, particularly Islamophobia;
- racial profiling (in the context of the fight against terrorism);
- redressing the balance between freedom of expression and freedom of religion/belief; and
- the prohibition against incitement of religious hatred and the emerging concept of defamation of religion.

On 1 and 2 October 2008, OHCHR organised an expert seminar on the links between articles 19 and 20 of the ICCPR,<sup>34</sup> a question that has been discussed repeatedly in the Human Rights Council under the follow-up item to Durban. It can be hoped that these expert consultations will bring some objectivity to the so far very polarised debate.<sup>35</sup> On 3 November, the Third Committee will engage in an interactive dialogue with the Libyan Chair of the Durban Review Conference Preparatory Committee. States may use this occasion to voice similar positions to those they have expressed in Geneva, only adding to the divisive atmosphere that already overshadows this initiative. If so, this will do little to inspire hope that the Review Conference will live up to its own slogan: 'United against racism: dignity and justice for all'.

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<sup>30</sup> Dated 23 July 2008. Available at <http://www.reformtheun.org/index.php/issues/2063?theme=alt4>

<sup>31</sup> A/RES/61/149.

<sup>32</sup> Israel and the US walked out of the Durban conference after it "degenerated into an open and divisive expression of intolerance and anti-Semitism that undermined the principles of the United Nations," to quote Canada's Minister of Foreign Affairs, Mr Maxime Bernier, 23 January 2008, available at <http://www.ynetnews.com/articles/0,7340,L-3498103,00.html>

<sup>33</sup> Statement by President of France, Nicolas Sarkozy, 26 February 2008, as quoted in <http://www.ejpress.org/article/24625>

<sup>34</sup> Article 19 enshrines the freedom of expression, while article 20 prohibits incitement to hatred.

<sup>35</sup> Check ISHR's website for a short update on the seminar (forthcoming).

## **Annual controversies**

### **Report of the Human Rights Council**

Since the establishment of the Human Rights Council in 2006, the question of how its annual report to its parent body, the GA will be dealt with has been vexed.<sup>36</sup> In 2006, there was extensive discussion amongst States, with some<sup>37</sup> arguing the Council should report to the Third Committee as had been the practice with its predecessor, the Commission on Human Rights. Other States wanted the new Council to report directly to the Plenary of the GA, in line with its more elevated status in the UN hierarchy. The eventual compromise agreed to by the General Committee which determines these procedural matters, stipulated that the Council's report would be considered by both the GA and the Third Committee, with the 'understanding that the Third Committee would consider and act on all recommendations of the Council to the General Assembly.' To prevent possible deterioration of the Council's status, Lichtenstein and other States ensured that the President of the Council addressed the GA before addressing the Third Committee.

The Council's report to last year's session of the GA also experienced a rocky path as States argued similar points about whether it should be considered by the GA plenary, the Third Committee, or both. Ultimately the General Committee determined that it would first go to the Third Committee (the body with human rights expertise), and then be presented to the GA plenary for more general consideration.

At its first consideration of the matter during the current session of the GA, the General Committee deferred its decision. As it is unclear when the General Committee will reach a decision, the Third Committee has made space in its provisional program of work to consider the Council's Report on the afternoon of Thursday 30 October. One option on the table is that the President of the Human Rights Council could introduce the report (as a whole) to the GA plenary, which would then hold a general debate on it. The President of the Council would present only the recommendations from the Council's report to the Third Committee, which would consider, debate and take action them. At the conclusion of these processes, the GA plenary would take action on the recommendations presented and take note of the report. This proposal and any others will be the subject of negotiation between members States and the President of the GA and it is unclear at this stage when a decision will be reached.

### **Country specific resolutions – the impact of the UPR**

This session of the General Assembly will be the first since the universal periodic review (UPR) process of the Council got underway. This is significant because many States from NAM and OIC argued at last year's Third Committee (before the UPR process even started) that it would render the use of country-specific resolutions in the General Assembly obsolete. It is to be expected that these arguments will only be more strident at this year's session, given that three sessions of the UPR have occurred, and on balance, many States and civil society organisations have commented favourably on the *potential* of the UPR to contribute to States' implementation of their human rights obligations under international law, although the jury is still out for most.<sup>38</sup>

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<sup>36</sup> Uncertainty about the formal relationship between the Council and the General Assembly can be traced back to the lack of clear guidance in the General Assembly *Resolution 60/251* that established the Council. Although that resolution clearly stated that the Council is a subsidiary body of the GA, it was silent on what if any relationship the Council should have with the GA's Third Committee. As a subsidiary body of ECOSOC, the Commission on Human Rights had a much lower place in the UN hierarchy than its successor, the Human Rights Council, and thus reported to the GA via the Third Committee. Some States argued that continuing this practice with the Council would undermine the efforts made during the reform process to ensure that the status of the Council reflected the importance of human rights at the institutional level.

<sup>37</sup> The African Group, Cuba, the Russian Federation and China.

<sup>38</sup> It is important to emphasise that most analytical reviews avoid making definitive conclusions about the impact of the UPR. This is firstly because some aspects of the Council's reporting process are still being bedded down and secondly, many argue that the true test of the worth of the UPR process will be after four years when States start reporting back to the Council on their

The Western and European States will probably argue forcefully for the retention of country-specific resolutions in the Third Committee to counter impunity and assist the victims of serious human rights violations. Their view that every resolution should be considered on its merits, and their objection to any moves to stifle debate on serious human rights matters within the Third Committee, are likely to be repeated. So too is their point that the universal membership of the Third Committee, coupled with its human rights expertise, renders it the most suitable forum to raise and discuss the most serious human rights violations.

Country specific resolutions in relation to Myanmar, Democratic People’s Republic of Korea and Iran are expected at the upcoming session of the Third Committee. The US is not expected to introduce a resolution on Belarus as it has done in previous years, mainly due to the fact that the Government of Belarus has released all political prisoners, which was one of the key demands of last year’s resolution.

## **Background**

### **The Third Committee**

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 GA 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. 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 of the Human Rights Council 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 GA plenary for final adoption.

### **Office bearers of the Third Committee**

- Chairperson: Ambassador Frank Majoor (Netherlands)
- Vice- Chairs: Ms Divina Adjoa Seanedzu (Ghana), Mr Ara Margarian (Armenia) and Mr Julio Peralta (Paraguay)
- Rapporteur: Mr Khalid Alwafi (Saudi Arabia).

### **Voting in the GA and Third Committee**

Each of the 192 Member States in the GA has one vote. Voting on designated ‘important issues’ (such as recommendations on peace and security, the election of Security Council members, and budgetary matters) requires a two-thirds majority of Member States. Otherwise most other questions are decided by simple majority (50% of all votes plus one), or adopted without a vote.

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implementation of the recommendations. For ISHR’s analytical overview of the first two sessions of the UPR, see [http://www.ishr.ch/index.php?option=com\\_content&task=view&id=314&Itemid=499](http://www.ishr.ch/index.php?option=com_content&task=view&id=314&Itemid=499)

In recent years, a special effort has been made to achieve consensus on issues, rather than deciding by a formal vote. A notable exception to this trend towards consensus decision-making in the human rights field are the country-specific resolutions (e.g. Iran and Myanmar), which are generally subject to a vote.

In 1945, the UN had 51 members. It now has 192, of which more than two-thirds are developing countries. Because of their numbers, regional groups of States (e.g. the African Group) or political groupings (such as the Non-Aligned Movement, NAM and G77) are often able to influence the character of debates and the voting patterns of the GA plenary and its six main committees. For many developing countries, the UN is the source of much of their diplomatic influence and the principal outlet for their foreign relations initiatives.

### The five regional groups

All but two of the UN's current Member States have arranged themselves into the following regional groups:

1. African Group - 53 members, coordinated during this year's Third Committee by Egypt.
2. Asian Group - 53 members (Asia Pacific, including much of the Middle East).
3. Eastern European Group - 23 members.
4. GRULAC - 33 members (Latin America and the Caribbean).
5. WEOG - 28 members (Western European and Others). This includes the EU (plus Iceland, Liechtenstein, Norway, Switzerland, Turkey), Australia, Canada, New Zealand, Israel (subject to renewal every four years).

One exception is Kiribati (geographically in Asia), which does not participate in any regional grouping within the UN. The other special case is the US, which is not a member of any group but attends meetings of the WEOG as an observer and is considered a member of this group for voting purposes.

### Political groupings

The four most powerful and influential political groupings operating at the UN are:

1. **Organization of the Islamic Conference (OIC)** which was established in 1969 to strengthen solidarity and cooperation among its membership, and now includes 57 Islamic States which span four continents (29 percent of the GA). It describes itself as 'the collective voice of the Muslim world ... espousing all causes close to the hearts of over 1.5 billion Muslims.' Its Charter contains a pledge in 'support of the struggle of the people of Palestine, to help them regain their rights and liberate their land' and as a result, OIC members are strong critics of Israel. Uganda currently represents the OIC at UNHQ. Uganda is the Coordinator of the OIC Group in New York Group during this year's Third Committee.
2. **Non-Aligned Movement (NAM)** was founded in 1961 to ensure 'the national independence, sovereignty, territorial integrity and security of non-aligned countries' in their 'struggle against imperialism, colonialism, neo-colonialism, racism, Zionism, and all forms of foreign aggression, occupation, domination, interference or hegemony as well as against great power and bloc politics.' Very much a product of the Cold War, its members sought to distance themselves from the US and the Soviet Union. In reality, most NAM members were sympathetic, if not aligned, with the Soviet Union.<sup>39</sup> With the end of the Cold War, NAM (particularly Iran, Democratic People's Republic of Korea, Sudan, Venezuela, and current NAM Chair, Cuba) has rallied its members around opposition to US foreign policy. In the Third Committee, the NAM focuses its efforts on the right to development and containing the consideration of country-specific resolutions. Its current membership stands at about 118 States (61 percent of the GA).

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<sup>39</sup> Brett D. Schaefer, *Who leads the United Nations?*, Heritage Lecture Series No. 1054, The Heritage Foundation, 4 December 2007, available at <http://www.heritage.org/Research/internationalorganizations/hl1054.cfm>

3. **Group of 77 (G-77)** was established in 1964 by 77 developing countries. Its aim is to coordinate, articulate, and promote the economic interests of developing countries by leveraging their ‘joint negotiating capacity on all major international economic issues within the United Nations system.’ Its current membership stands at 130 States (67 percent of the GA). Like the OIC, the G-77 offers resolutions and decisions in the General Assembly, its committees, and various UN bodies and specialised agencies. In the Third Committee, the G77 focuses on social development, elimination of racism, and the right to development. The G77 will be represented by Antigua Barbuda during this year’s Third Committee.

Over the course of 2008 in the GA, the G77 and NAM have increasingly begun to operate as a single block, which they refer to as the **JCC** (Joint Coordinating Committee of the G77 and NAM). When they do so, their combined membership is sufficient to pass resolutions in the GA. It remains to be seen whether they will continue this alliance in the Third Committee, or operate as two separate blocs.

4. The **European Union (EU)** is an international organization that coordinates cooperation among member states on issues such as human rights, trade, development and security. It includes 25 UN member states. In the Third Committee, the EU historically has addressed country specific issues, and undertaken efforts with regard to the abolition of the death penalty. It works on the implementation of human rights standards, and is active across a number of Committee thematic issues, including women’s rights, children’s rights, rights of peoples with disabilities.

## **NEW YORK MONITOR STAFF**

**Michelle Evans**, Representative to the UN, New York  
**Vanessa Jackson**, Human Rights Officer, New York

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