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Human Rights Monitor Series

COUNCIL UPDATE – DECISIONS AND RESOLUTIONS HUMAN RIGHTS COUNCIL, 12TH SESSION 1 AND 2 OCTOBER 2009

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Overview

On 1 and 2 October 2009, the Human Rights Council adopted 33 draft resolutions submitted for the 12th session.

Among other things, the Council established a new open ended working group to review the Council's work and functioning starting after June 2010. Notably, the draft had found co-sponsors from all regional groups. According to General Assembly *Resolution 60/251* establishing the Council, the Council should review its work and functioning five years after its establishment, therefore in March 2011. During the negotiations on the draft resolution, NGOs expressed reservations about an early commencement of the review process.

The Council also adopted a resolution on the situation of human rights in Honduras since the coup d'état of 28 June 2009. The resolution expresses deep concern about violations of human rights following the coup d'état and calls for the restoration of democracy. It demonstrates the Council's capacity to address urgent situations of concern in a timely manner. The resolution also requests the High Commissioner to present a report on the human rights violations since the coup d'état and a preliminary report to the General Assembly at its upcoming 64th session.

The Russian Federation's resolution on traditional values was put to a vote and adopted, despite initial claims by the Russian Federation that they were seeking a consensual outcome. The resolution was already condemned by NGOs during the interactive dialogue on Item 8 on 30 September as intentionally seeking to invoke traditional values as a justification for violations of human rights. The consideration of the resolution saw a number of States join in expressing their serious concern that it ran the risk of undermining the universality of human rights by introducing 'erroneous cultural relativism'. Despite pleas of civil society that the Council return 'to the business of human rights', 26 States nonetheless voted in favour of the resolution, a resolution which was accurately described as 'having nothing to do with human rights' and, without a definition of 'traditional values', no-one could claim they fully understood.

A resolution by Colombia and Mexico on elimination of discrimination against women was significantly watered down in the face of strong opposition from OIC States and others to the creation of a new independent expert on laws that discriminate against women. Instead, OHCHR will produce a study on gaps in protection and how various UN mechanisms are addressing laws that discriminate against women.

The Council also adopted, without a vote, a short statement expressing concern at the recent conviction of Ms Aung San Suu Kyi, although a number of Asian States distanced themselves from the resolution. Cuba went so far as criticising the reference to 'political prisoners' in the text arguing that this was not a recognised concept.

While the decision on follow up to the Goldstone report on the investigation of violations committed during the Gaza conflict in early 2009 had been much anticipated, the Council decided to postpone the consideration of the resolution put forward by Palestine. It remains to be seen how member States will bridge their different views on the report and its follow up.

Resolutions adopted without a vote

Item 1

Working group on the review of the Council

The Russian Federation introduced its draft resolution entitled 'Open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council'.¹ It announced that 64 States, from all regions, co-sponsored the proposal. The resolution establishes a working group mandated to review the work and functioning of the Council. The Russian Federation introduced one oral revision to the text. Instead of requesting the High Commissioner for Human Rights to submit a report on how to improve conference and secretariat services, this task would now be entrusted to the Secretary-General.

France (on behalf of the members of the EU that are members of the Council) stated that 'generally speaking' the EU could accept the proposal. As a general comment, France highlighted that transparency and a spirit of consensus would be key elements in the review of the Council. It added that while the EU had hoped for a better respect of the letter of General Assembly *Resolution 60/251*, it was willing to accept the draft resolution on the understanding that the working group would only meet after the 15th session of the Council in September 2010.

The resolution was adopted without a vote.

Item 2

¹ A/HRC/12/L.28.

Cooperation with the UN, its representatives and mechanisms

Hungary, on behalf of 59 co-sponsors, presented the draft resolution on cooperation with the UN, its representatives and mechanisms in the field of human rights.² The resolution, first adopted in 1990, addresses the responsibility to protect people that cooperate or seek cooperation with the UN system from all acts of intimidation or reprisal. Hungary highlighted the importance of this resolution referring to recent statements directly threatening persons cooperating with human rights defenders, an indirect reference to comments made by the President of the Gambia. It called the adoption of this resolution a core obligation of the Council. Hungary explained that the resolution's scope had been expanded to all UN human rights representatives and mechanisms, including for example including field presence of the OHCHR, the human rights components of peace keeping missions and human rights advisors to UN country teams. The resolution was adopted without a vote.

Item 3

Elimination of discrimination against women

Mexico (and Colombia) presented the draft resolution entitled 'elimination of discrimination against women' on behalf of the cosponsors.³ Mexico explained that the goal of the resolution is the repeal or amendment of all laws resulting in discrimination against women. This goal was articulated in 1995 in the *Beijing Declaration and Platform for Action*, adopted by the Fourth World Conference on Women.

The draft resolution is a result of lengthy consultations among States and civil society. During these consultations, there was much discussion of the possibility of establishing a special procedures mandate on laws that discriminate against women. However, the resolution presented by Mexico falls short of the establishment such a mandate as States could not agree to this idea. Rather, it requests that OHCHR undertake a thematic study on discrimination against women and how UN bodies and mechanisms are addressing this topic. A half day discussion will be held during the next session of the Council in March 2010 to discuss the study and consider taking further possible action on discrimination against women. In addition, the resolution reaffirms the obligation of States to take all appropriate measures to eliminate discrimination against women 'by any person, organization or enterprise', and further calls upon States to revoke any remaining laws that discriminate on the basis of sex and remove gender bias from the administration of justice.

In explanations of vote before the vote, several States offered their comments on the resolution. Some were disappointed that the resolution did not directly establish a new special procedures mandate, but merely provided for a discussion about the possibility of establishing such a mechanism.⁴ However, all commenting States emphasised the importance of the topic of the resolution.⁵

The resolution was adopted without a vote.

Movement and dumping of toxic and dangerous products and wastes

A draft resolution on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights⁶ was adopted without vote. The draft was presented by Côte d'Ivoire on behalf of the African Group. It proposes to hold a panel discussion on the future work of the Special Rapporteur on toxic waste, particularly focusing on existing problems, new trends and solutions regarding the movement of toxic

² A/HRC/12/L.8.

³ A/HRC/12/L.3/Rev.1.

⁴ Norway, United States, Sweden.

⁵ Norway, United States, Sweden, Pakistan, Mexico.

⁶ A/HRC/12/L.4/Rev.1.

waste. Furthermore the draft stresses the negative impacts of toxic waste on the enjoyment of human rights, in particular in developing countries.

France (on behalf of the EU) endorsed the draft resolution but expressed concern that the text does not refer to States' responsibilities to promote and protect human rights and fundamental freedoms. As a co-sponsor, Brazil called upon States to strengthen mechanisms of control movement and dumping of toxic and dangerous products. The US stressed concern that the term 'dangerous products and wastes' is too vague and suggested to include a focus on illicit transfer. It also underlined that the panel should not 'replicate' the role of the Special Rapporteur but should be used to increase awareness and facilitate his work.

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

Hungary presented a draft resolution entitled 'independence and impartiality of the judiciary, jurors, and assessors and the independence of lawyers'.⁷ The draft resolution focuses on the importance of effectively guaranteeing the independence of judges and lawyers and urges States to take steps to ensure this. It also requests that the Special Rapporteur on the independence of judges and lawyers elaborate safeguards to ensure and strengthen the independence of lawyers 'as a guarantee in the protection of human rights and the rule of law'.

The resolution was adopted without a vote.

World Programme for Human Rights Education

Costa Rica introduced its draft resolution on the second phase of the 'World Programme for Human Rights Education'.⁸ It introduced minor revisions to the text. The draft was adopted without a vote.

Freedom of opinion and expression

Egypt and the US introduced their joint resolution on freedom of opinion and expression.⁹ Egypt explained that it had sought to reach consensus on this text during the negotiations. It underlined that freedom of expression is an essential foundation of any democratic society and indispensable for the development of the individual and humanity as a whole. It further explained that the resolution emphasises both rights and responsibilities related to freedom of expression. Noting that the text may not satisfy all, Egypt expressed the hope that the resolution would be a solid basis to build on for the future. The US explained that it had worked as main sponsor of the resolution as a manifestation of its commitment to multilateral engagement within the Council. It stated that it was also pleased to bridge 'an unhelpful divide' within the Council, and regain consensus on this important topic through strengthened cooperation and collaboration. The US expressed thanks to other States for reaffirming the importance of freedom of expression.

South Africa made a general comment before the adoption. It explained that freedom of expression has long been a highly politicised and controversial topic in the Council and previously in the Commission on Human Rights. It stated that the current resolution represents, in its view, a 'major set-back' and highlighted three particular shortcomings. It regretted that the resolution did not adequately reflect the content of article 20 of the *International Covenant on Civil and Political Rights* (ICCPR) on punishment of incitement to hatred; it did not reaffirm General Comment 15 of the Committee on the Elimination of Racial Discrimination on prohibition of dissemination of racially inciting propaganda; and operative paragraph 4's reference to stereotyping was not sufficiently clear.

Several States made explanations of vote before the vote. France (on behalf of the EU) explained that all people must be able to enjoy the right to freedom of expression and that restrictions on this right should not be more

⁷ A/HRC/12/L.7.

⁸ A/HRC/12/L.9.

⁹ A/HRC/12/L.14/Rev.1.

extensive than permitted by international human rights law. On operative paragraph 4, it stated that this was a ‘final compromise’ for the EU and that its understanding of this paragraph is that ‘racial and religious stereotyping’ only applies to individuals and not to religions or abstract ideas or concepts. It reiterated its rejection of the concept of ‘defamation of religions’. It further stated that the moral and social responsibilities of the media referred to in operative paragraph 8 goes well beyond the special duties and responsibilities stated in article 19 of the ICCPR, and noted that the EU could not go along with this concept in such general terms. In this regard, it also noted that States should not interfere with the work of the media or journalists. France (on behalf of the EU) also expressed strong support for the work of the Special Rapporteur. Finally, it stated that it would ‘go along with the consensus’ on the resolution.

Pakistan (on behalf of the OIC) underlined that while it attaches ‘immense importance’ to freedom of expression, the exercise of this right carries special duties and responsibilities. It welcomed the resolution that addresses ‘important contemporary issues’. Pakistan (on behalf of the OIC) stated its strong belief that negative stereotyping of or ‘defamation of religions’ is a contemporary manifestations of religious hatred, discrimination and xenophobia and result in stereotyping of the followers of religions and leads to discrimination and violence against them. It underlined that defamation not only applies to individuals but also to religions and belief systems. It therefore welcomed operative paragraph 4, clearly stating a different interpretation of this paragraph than the one explained by the EU. It regretted that the resolution did not explicitly refer to the obligations under international law to combat incitement to hatred, such as the ICCPR and the *International Convention on the Elimination of all forms of Racial Discrimination*.

Cuba expressed support for the views expressed by South Africa and criticised the resolution for being unbalanced and containing a ‘selective interpretation’ of the right to freedom of expression.

Chile stated that it had not intended to speak but that following the other comments made it now saw a need to clarify its position. It noted that restrictions on freedom of expression must be in accordance with international law. It further stated that the concept of ‘defamation of religions’ takes us outside the right to freedom of expression and that the use of this concept could lead to prohibition of opinions. It underlined that we should not seek to broaden or expand the limitations to freedom of expression. Chile called on the Council to not stress the differences of opinion or loose sight of the main objective, namely to promote and protect the right to freedom of expression.

The resolution was adopted without a vote.

In general comments by observer States, Algeria complained that no reference was made in the text to article 20 of the ICCPR that includes States obligations to prohibit incitement to hatred. Furthermore, it argued that the resolution should have called on the Special Rapporteur to comply with his mandate according to the Council’s *Resolution 7/36*. Canada stressed that the Council must ensure that the resolution is consistent with human rights law.

Protection of the human rights of civilians in armed conflict

Egypt presented a draft resolution that invites the OHCHR ‘to convene a second expert consultation on the issue of protecting the human rights of civilians in armed conflict’.¹⁰ This draft recalled the Council’s *Resolution 9/9*. Egypt explained that particularly women, children and vulnerable groups need protection in time of armed conflict. The draft resolution proposes to undertake a second expert consultation that would allow completion of the expert consultations of April this year. The draft resolution was adopted without a vote.

¹⁰ A/HRC/12/L.15.

Human rights of migrants: Migration and human rights of the child

Mexico introduced its resolution on migration and human rights of the child.¹¹ The resolution focuses on four main aspects: the rights of children who are in their countries of origin whose parents or families have emigrated; special protections for children who emigrate in consideration of their vulnerability to trafficking and violence; the need to avoid detention of children and the importance of seeking alternatives to detention for families with children; and the importance of States' development of non-discriminatory policies toward migrants. The draft resolution also requests that OHCHR prepare a study on challenges and best practices in the protection of the rights of the child in the context of migration. The resolution was adopted without a vote.

Elimination of discrimination against persons affected by leprosy

Japan introduced its follow-up resolution¹² to Council *Resolution 8/13*, which also builds on the 'draft set of principles and guidelines for the elimination of discrimination against persons affected by leprosy' submitted by the Human Rights Council Advisory Committee to the 12th session of the Council. The draft resolution mandates the Advisory Committee to continue its discussion of the issue, and finalise the draft set of principles taking into account the views of all stakeholders and submit it to the Council's 15th session. It was adopted without a vote.

Human rights and access to safe drinking water and sanitation

The Council adopted without a vote the draft resolution presented by Germany and Spain on access to safe drinking water and sanitation.¹³ The draft, which was supported by 50 co-sponsors, highlights that insufficient efforts have been made to achieve the Millennium Development Goal to halve the proportion of people without access to basic sanitation by 2015. The draft recognises the findings of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation,¹⁴ Ms Catarina de Albuquerque. It calls upon States to create an environment to address access to sanitation and recognises the contribution of the private sector and the important role of the international community. The main sponsors introduced oral revisions to the text before it was adopted without a vote.

Brazil and Bolivia disassociated themselves from consensus on the resolution, explaining that the text did not include the concerns regarding the role of the private sector. Brazil and Bolivia would like the text to include that the role of the private sector needed to be in compliance with the regulatory framework of States and according to priorities established by public policies. They joined consensus on the understanding that these concerns were implicitly reflected in the text.

Follow up to the seventh special session of the Human Rights Council on the negative impact of the worsening of the world food crisis on the realization of the right to food for all

Cuba presented a draft resolution entitled 'follow up to the seventh special session of the Human Rights Council on the negative impact of the worsening of the world food crisis on the realization of the right to food for all'.¹⁵ The resolution stresses that all States have a primary obligation to make their best efforts to meet the vital food needs of their own population and urges States to ensure the realisation of the right to food as an essential human

¹¹ A/HRC/12/L.16.

¹² A/HRC/12/L.17.

¹³ A/HRC/12/L.19.

¹⁴ A/HRC/12/24.

¹⁵ A/HRC/12/L.21.

rights objective. The resolution also requests that the Special Rapporteur on the right to food continue to promote the right to food as outlined in his mandate and inform the Council on the world food crisis. Cuba emphasised its hope that the Council would maintain its 'historic unity on commitment to the right to food' in adopting the resolution.

The US, in an explanation of vote before the vote, expressed its agreement with the sentiment of the resolution that the world food problem is of profound significance and emphasised its commitment to the eradication of poverty. The US noted, however, that it is not a party to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and that it does not recognise any change in the status of international legal obligations with respect to economic and social rights by expressing its support for the resolution.

The resolution was then adopted without a vote.

Access to medicine in the context of the right of everyone to the highest attainable standard of physical and mental health

Brazil introduced its resolution on access to medicine in the context of the right of everyone to the highest attainable standard of physical and mental health.¹⁶ It explained that the resolution aims at filling an important gap in human rights protection expanding equal access to medicine for both communicable and non-communicable diseases. It stated that ensuring access to medicine is a fundamental element of States' responsibility to ensure the right to health and underlined that access to medicine must be available to all without discrimination. The resolution invites OHCHR to convene an expert consultation to identify challenges related to access to medicine. It also invites the Special Rapporteur on the right to health to present a summary of the discussion at the consultation to the Council. Brazil presented a number of oral revisions to the text.

Several States made general comments before the adoption. Pakistan explained that it believes that access to medicine at affordable prices is a prerequisite for the enjoyment of the right to health. It also underlined that intellectual property rights and trade should not hinder access to medicine. It noted that although the resolution had 'lowered human rights aspirations' regarding this topic it was still a welcome initiative.

France (on behalf of the EU) regretted that the resolution does not refer to other important aspects of health, such as access to health systems. It underlined that it is the responsibility of States to ensure access to medicine and noted that the resolution could be interpreted as creating expectations that are unrealistic and unfair. It also underlined its understanding that operative paragraph 2 does not extend State obligations under article 12 of ICESCR or create new obligations. Finally, it stated that issues related to the World Health Organisation and the World Trade Organisation should be discussed in those forums and not by the Council.

In an explanation of vote before the vote, the US regretted the resolution's 'selective emphasis' on intellectual property and trade. It noted that the text should have referred to other issues that affect access to medicines such as taxes, tariffs and health systems. It encouraged the Special Rapporteur to consider and focus on other aspects of his mandate that have been neglected.

The resolution was then adopted without a vote.

Protection of human rights in the context of HIV/AIDS

A draft resolution on the protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) was introduced by Brazil and supported by 8 co-sponsors.¹⁷ It aims at including a human rights perspective to the prevention and treatment of HIV/AIDS. It explained the need for

¹⁶ A/HRC/12/L.23.

¹⁷ A/HRC/12/L.24

this resolution by the high number of infected people throughout the world. The text requests the Secretary-General to elaborate an analytical study on this issue to be presented at the Council's 16th session in March 2011. Although joining the consensus on the draft resolution, France (on behalf of the EU) raised concern that not all key resolutions adopted by other UN bodies on this issue have been referenced in the text. It stressed that while including some vulnerable population groups identified by UN bodies, illicit drug users, sex workers, detainees and men having sex with men were not addressed in the draft. Furthermore the Council should, according to its mandate, not deal with questions such as intellectual property rights and trade. Egypt stressed, before the adoption, that all references made to the UN Guidelines on HIV/AIDS and Human Rights should be restricted to the 12 guidelines annexed to Commission on Human Rights *Resolution 1997/33*. Indonesia expressed support for the resolution on the understanding that the references to the Guidelines on HIV/AIDS and Human Rights do not go beyond universal norms and standards of human rights. The draft resolution was adopted without a vote.

Follow-up to 10th special session on the impact of the global economic and financial crises

Brazil, on behalf of 22 co-sponsors, introduced a draft resolution on the follow-up to the 10th special session on the Human Rights Council on the impact of the global economic and financial crises on the universal realisation and effective enjoyment of human rights.¹⁸ The text, which was adopted without a vote, re-emphasises the challenging effects of the ongoing global economic and financial crisis on the enjoyment of human rights. It stresses the interrelation and interdependence of all human rights, as well as the causes and effects of the crises. The draft also recalls General Assembly *Resolution 63/303*, in which the urgency for follow-up action to cope with depth of the crises was recognised. Furthermore it reiterates Council *Resolution S-10/1* to highlight the negative impacts of the crises that were particularly dramatic for developing countries. Egypt co-introduced the draft resolution and called for a high-level panel discussion during the Council's 13th session in March 2010.

France (on behalf of the EU) urged States not to reduce their primary responsibility to protect human rights and fundamental freedoms. Furthermore it urged the Council not to confuse international cooperation and development aid, and stressed that the Council has no mandate to discuss financial obligations, international trade or development. The EU saw no need to hold a high level discussion on this topic but rather suggested that the topic could be addressed within the general debates.

The US, commenting before the vote, stressed that a lack of development does not justify not fulfilling human rights obligations.

After the vote, Nigeria expressed support for the draft resolution. Brazil accused the EU of resisting discussion of human rights issues that are of particular importance to developing countries. France (on behalf of the EU) rejected Brazil's comment, stating that it supported the resolution and that its reservations only concerned how to address the issue.

Human rights and transitional justice

Switzerland on behalf of 47 co-sponsors introduced the draft on Human rights and transitional justice initiatives¹⁹, based on last year's resolution. It focuses on continuing the efforts of truth seeking processes in particular truth and reconciliation commissions and the realisation of transitional justice in correspondence with States national strategies. In a general comment the US joined consensus on this resolution but noted that truth-seeking mechanisms may under certain circumstances include granting pardon to perpetrators based on their 'credible participation in a legitimate truth-seeking process'. The draft was adopted without a vote.

Right to the truth

¹⁸ A/HRC/12/L.25

¹⁹ A/HRC/12/L.26

Argentina introduced its draft resolution on the right to the truth.²⁰ It explained that the draft resolution is focused on preservation of archives and protection of witnesses. The resolution requests the High Commissioner for Human Rights to present a report on protection of witnesses and the need for guidelines in this area. It also requests the organisation of a seminar on the preservation of archives. The resolution was adopted without a vote.

Draft guiding principles on extreme poverty and human rights

France introduced a resolution entitled ‘draft guiding principles on extreme poverty and human rights’.²¹ France expressed support for the work of the Independent Expert on the question of human rights and extreme poverty in developing draft guiding principles on extreme poverty and human rights. The resolution asks the Independent Expert to continue her work and requests that that OHCHR provide the Independent Expert with the necessary support to allow her to fulfil her mandate. The resolution was adopted without a vote.

Human rights and indigenous peoples

Guatemala introduced a draft resolution on the rights of indigenous peoples.²² The resolution calls upon the Expert Mechanism on the rights of indigenous peoples to conduct a study on indigenous people and their right to take part in decision making processes. This study will be conducted in addition to the yearly report from OHCHR on the situation of human rights for indigenous people. Furthermore, the draft resolution calls on all States to consider ratifying the International Labour Organization’s Convention 169 on Indigenous and Tribal Populations. The resolution was adopted without a vote.

Regional arrangements for the promotion and protection of human rights

Belgium presented its resolution on regional arrangements for the promotion and protection of human rights.²³ The resolution follows up on *Resolution 6/20* and suggests an annual workshop on regional arrangements. The High Commissioner is invited to present a report on the outcome of the workshop to the Council’s 15th session. The resolution was adopted without a vote.

Item 4

The situation of human rights in Honduras since the coup d’état of 28 June 2009

Colombia (on behalf of the Group of Latin American States) introduced the draft resolution on the situation of human rights in Honduras since the coup d’état of 28 June 2009.²⁴ The resolution reaffirms resolutions of the General Assembly and expresses deep concern about violations of human rights following the coup d’état. It calls for unconditional respect for human rights and demands an immediate end to human rights violations in Honduras. It also calls for the restoration of democracy. The resolution also requests the High Commissioner to present a report on the human rights violations since the coup d’état and a preliminary report to the General Assembly at its upcoming 64th session.

Nicaragua, in a general comment before the adoption, underlined the importance of the Council’s action in response to the situation in Honduras. It expressed strong condemnation of the coup.

²⁰ A/HRC/12/L.27.

²¹ A/HRC/12/L.30

²² A/HRC/12/L.33

²³ A/HRC/12/L.2/Rev.1.

²⁴ A/HRC/12/L.31.

The resolution was adopted without a vote.

India explained that it supported the resolution but expressed serious reservations about how the rules of procedure were violated to deny the Honduran delegation the right to participate in the Council's session. The denial of participation, it believed, was a serious mistake and should not constitute a precedent.

Aung San Suu Kyi and other political prisoners in Myanmar

Sweden (on behalf of EU) and eight co-sponsors presented a draft resolution on Aung San Suu Kyi and other political prisoners in Myanmar.²⁵ In the text the Council calls for an immediate and unconditional release of political prisoners enabling them to fully participate in the 2010 elections. Furthermore it invites the Government of Myanmar to engage in a dialogue with representatives and members of all political parties and ethnic groups.

China, Cuba, Pakistan (on behalf of the OIC), the Philippines, the Russian Federation and Indonesia opposed the draft resolution by explaining that the Council should not adopt country specific resolutions. Cuba also expressed concerns that the resolution was political as it made no references to human rights. States opposed also argued that the resolution would not contribute to the process of democratisation in Myanmar. China, Cuba and Pakistan (on behalf of the OIC) also expressed concerns that the resolution would impinge on the national sovereignty of Myanmar. This view was also expressed by Vietnam. Cuba went as far as to oppose the use of the term 'political prisoner', arguing that it did not constitute recognised UN language. China, the Philippines and the Russian Federation noted the frequency of resolutions on Myanmar and feared that it could affect the Council's mechanisms and procedures.

Myanmar, the concerned country, joined the arguments of opposing States. Furthermore it highlighted, that the special rapporteur had not submitted a report on this issue to the Council. It defended the decision to keep Aung San Suu Kyi detained, by stating that she violated national laws and the rule of law must be maintained. IT highlighted the release of 7,000 prisoners as a sign of good will and would continue with the seven step political process on the way to democracy.

There was one explanation before the vote by India, welcoming the statements that opposed the draft resolution. The draft resolution was adopted without a vote.

After the vote, Japan expressed appreciation for the adoption of this resolution. It regretted the recent trial of Aung San Suu Kyi, but welcomed the release of 100 political prisoners. It suggested Myanmar undertake further releases and announce further steps to support democratisation processes in Myanmar. In a general comment at the end of the session, Thailand welcomed the current steps taken to improve the democratic situation in Myanmar, but expressed concern about the imprisonment of Aung San Suu Kyi.

Item 5

Missing persons

Azerbaijan introduced a draft resolution on missing persons.²⁶ The resolution follows up on *Resolution 7/28*, which tasked the Human Rights Council Advisory Committee with completing a study on best practices in the matter of missing persons by the Council's 12th session. As the study is not yet finalised, this draft resolution requests that the Advisory Committee complete the study by the Council's 14th session in June 2010. The resolution was adopted without a vote.

²⁵ A/HRC/12/L.32.

²⁶ A/HRC/12/L.1.

UN Declaration on Human Rights Education and Training

Costa Rica, Italy, Morocco, Slovenia, the Philippines, Senegal and Switzerland submitted a draft resolution on the United Nations Declaration on Human Rights Education and Training.²⁷ This draft follows a mandate given to the Advisory Committee in two Council resolutions.²⁸ It suggests that the Council holds a high-level discussion on the draft declaration during its 13th session in March 2010. The draft was adopted without a vote.

Item 10

Advisory services and technical assistance for Cambodia

Japan introduced the draft resolution on Cambodia.²⁹ The draft extends the mandate of the Special Rapporteur on the situation of Cambodia for one year. Japan underlined that Cambodia had made significant progress in the past year, which is acknowledged in the draft resolution. At the same time, it said, the draft also takes note of remaining challenges. The cooperation with the Government of Cambodia was described as positive and fruitful. Japan introduced oral revisions to the text, which generally made references to past human rights violations less specific. It ended with expressing its hope that Cambodia would engage constructively in the UPR in December 2009.

Cambodia, as the concerned country, thanked Japan for the constructive approach during the negotiations. It committed to continue its cooperation, but also asked the Special Rapporteur to focus his work on ‘advisory services’ in the coming year.

The resolution was adopted without a vote.

Assistance to Somalia in the field of human rights

Nigeria on behalf of the African Group presented a draft resolution on ‘assistance to Somalia in the field of human rights’.³⁰ The draft reiterated the urgent need for national action to improve the respect for human rights and humanitarian law. The resolution demands an immediate end to all human rights abuses. The text particularly expresses concerns at repeated attacks against civilians, journalists and humanitarian workers. It stresses the need for access to humanitarian assistance, particularly for vulnerable groups such as women and children. Furthermore it renews the mandate of the Independent Expert on the situation of human rights in Somalia for one year and requests him to report on the status of implementation of technical cooperation inside Somalia at the Council’s 13th and 15th sessions.

Somalia thanked for the expressed solidarity by drafting and supporting this resolution. It stressed that after two decades of crisis it is crucial to create an environment where human rights and fundamental freedoms are respected.

The draft was adopted without a vote.

Resolutions adopted by vote

Item 3

Human rights and unilateral coercive measures

²⁷ A/HRC/12/L.11.

²⁸ Council *Resolutions* 6/10 of 28 September 2007 and 10/28 of 27 March 2009.

²⁹ A/HRC/12/L.18.

³⁰ A/HRC/12/L.29

Egypt on behalf of the Non-Aligned Movement presented a draft resolution on human rights and unilateral coercive measures.³¹ The resolution opposes ‘unilateralism and unilaterally-imposed measures by certain States’ to prevent violation of the UN Charter and international law. Egypt argued that such unilateral measures could create obstacles to trade relations among States and would therefore threaten the full realisation of all human rights and the freedom of trade.

The US rejected this draft resolution, calling it a ‘misinterpretation of international law’. France opposed the text on behalf of the EU, arguing that it concentrates on relations between States and lacks focus on the enjoyment of human rights by individuals. This was not in line with the Council’s mandate. The resolution was adopted by 32 votes in favour and 14 against.

Human rights and international solidarity

Cuba, the traditional main sponsor of the draft resolution on ‘human rights and international solidarity’, introduced its proposal.³² It explained that the resolution included a novel paragraph compared to last years’ similar text, calling on the international community to ‘overcome the negative effects of the current economic, financial and climate crises’.

France (on behalf of the EU) reiterated its reservations about the draft resolution. While supporting the concept of international solidarity in general, France nevertheless expressed its doubts about the possibility of transposing the concept of international solidarity to human rights. While the latter has specific legal obligations attached, France argued that this was not the case with the moral principle of international solidarity. Therefore, it called for a vote. The Council adopted the draft resolution with 33 votes in favour and 14 against.

The effect of foreign debt on the enjoyment of human rights

Cuba introduced the draft resolution on foreign debt³³ as a means to ensure that financial resources were made available to the Independent Expert on foreign debt, and to clarify that foreign debt is a human rights issue and that the work of the Independent Expert is ‘vitaly important’.

In its explanation of vote before the vote, France (on behalf of the EU) explained that it was concerned with the implications of resources for work that is more appropriately dealt with in other bodies. It therefore called for a vote and declared that EU States would vote against. The Council adopted the draft resolution with 31 votes in favour, two abstentions (Mexico and Norway) and 13 against (EU States, US, Japan and Republic of Korea).

Right to development

Egypt (on behalf of NAM) introduced the draft resolution on the right to development.³⁴ Egypt said it was a procedural resolution welcoming the report of the Working Group on the right to development. The draft resolution mandates the High Level Task Force to elaborate ‘criteria and sub-criteria’ to comprehensively address ‘essential features’ of the right to development. From these elements, the Working Group would then develop a set of standards with a view to developing a legally binding instrument on the right to development. Egypt added that in the opinion of NAM this instrument would take the form of an international convention on the right to development.

The US in an explanation of vote explained that despite being committed to supporting development throughout the world and being the world’s largest donor of bilateral aid, it could not support the text. While it looked forward

³¹ A/HRC/12/L.5

³² A/HRC/12/L.20.

³³ A/HRC/12/L.22.

³⁴ A/HRC/12/L.6/Rev.1.

to work with the Working Group on the right to development and the High Level Task Force on the right to development, it felt that developing criteria, which would form the basis of a legal instrument, would be inappropriate. The US asked for a vote and announced that it would abstain.

France, on behalf of the EU members that are members of the Council, also explained that it was unable to support the text. Instead of international legal standards on the right to development, the EU felt that national legislation and a functioning rule of law was more important for the enjoyment of all human rights by individuals. France and the EU members of the Council would abstain.

The resolution was adopted with 33 votes in favour and 14 abstentions.

Item 8

Promoting human rights through a better understanding of traditional values

The President announced that the resolution on traditional values³⁵ now had 29 co-sponsors. As main sponsor, the Russian Federation claimed that the resolution had been carefully thought out and the draft was the result of in-depth consultations since the last Council session in June. It claimed that the resolution clearly addressed the universality of human rights and the ownership of human rights by all without discrimination. It also stated that the resolution's call for a seminar on traditional values was intended to encourage understanding of human rights through the traditional values that underpin human rights. It made two 'minor' oral amendments to the text, removing 'within existing resources' in operational paragraph 1' and at the end of the text removing limiting participation in the conference to 'members of the UN' in order to ensure the widest possible participation.

Bolivia added a general comment as a co-sponsor that 'values are values because they add something to human rights', and that Bolivia could in no way interpret this to include harmful traditions. They called on States to see this as an opportunity to learn from each other.

In explanations of vote before the vote, Norway was the first State among the many that spoke to explain that it would vote against the resolution. It stated that the Russian Federation had been open and transparent in the negotiation process, and Norway recognised that the roots of human rights exist in traditions all over the world. However, it noted that many human rights have also developed in spite of traditional values, including women's rights and gender equality. Norway viewed that the current draft may undermine this equality and so would vote against. The general view that the resolution could serve to undermine rather than strengthen human rights norms and the protection of women, children, minorities and other vulnerable groups on the basis of traditional values was also expressed by France (on behalf of the EU), Chile, Mexico, Japan, the US, Argentina and the Republic of Korea.

France (on behalf of the EU) claimed that the Russian Federation did not continue to seek consensus when approached by the EU with language that would ensure that traditional values should be in keeping with international human rights law. The Republic of Korea went further by challenging why the resolution was being tabled at all considering that the Russian Federation had originally claimed that it sought consensus, but was now proceeding to a vote. France declared that there is nothing to be gained from this discussion, as the universality of all human rights is contained in international instruments. Mexico and Chile stressed that the Russian Federation had failed to provide any definition of what 'traditional values' means, and so it ran the risk of 'erroneous cultural relativism'. Chile feared that this could actually erode consensus that has already been achieved. Argentina also stated that it would abstain (but not vote against) for these reasons.

China, Indonesia and Senegal, on the other hand, expressed their support for the resolution on the reasoning that traditional values pre-date human rights values (China); family values serve as a good foundation for

³⁵ A/HRC/12/L.13/Rev.1.

understanding human rights (Indonesia); and traditional values are recognised in the African Charter of Human and Peoples' Rights (Senegal). Senegal noted that it shares the idea that traditional values should in no way impinge on agreed human rights, and that it was a 'challenge for the Council that it will in no way be fooled'.

The resolution was then put to a vote and adopted by 26 votes in favour, six abstentions and 15 against.

In its explanation of vote after the vote, Nigeria explained that there could be no pre-determining of the positive influence of traditional values without having such a panel discussion. Cuba alleged that States had intentionally misread the content of this resolution, claiming that a 'value' is one thing, but 'practice' is another. It listed solidarity, good faith and dialogue as common values, and insinuated that the latter was absent from some States that had come to the discussion with 'pre-conceived notions'.

General comments on the draft resolution on traditional values³⁶ were made by Australia (also on behalf of Canada and New Zealand) and Switzerland. These States were concerned that the text might not be consistent with the *Universal Declaration of Human Rights* (UDHR).

Further information

For further information on the Human Rights Council, please consult the following resources:

- Follow ISHR on Twitter: [@ishr_geneva](https://twitter.com/ishr_geneva).
- 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.
- Oral statements made at the Council, as well as other 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'.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 12th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/12session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/12session/reports.htm>.

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.

³⁶ A/HRC/12/L.13.

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