

# NEW YORK MONITOR

International Service for Human Rights



Human Rights Monitor Series

## NEW YORK UPDATE GENERAL ASSEMBLY, 62<sup>ND</sup> SESSION HUMAN RIGHTS COUNCIL REPORT 5 NOVEMBER - 21 DECEMBER 2007

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### Overview

The Report of the Human Rights Council (the Report) was considered under agenda item 65 of the 62<sup>nd</sup> session of the General Assembly. The Report was introduced by the President of the Council, and Member States then held a general discussion about the Report. Under agenda item 70, the High Commissioner for Human Rights delivered a Statement to the Committee and held a general discussion with Member States.

For a number of reasons, contention accompanied the resolution that requested the General Assembly (GA) to welcome the Report from the day of its introduction through to and including its eventual adoption by a vote in the plenary on the final day of the session.<sup>1</sup>

In the first instance, it had been left undecided whether the Report would be considered by the General Assembly Plenary, the Third Committee, or both. Second, the resolution proposing that the GA welcome the Report noted HRC *Resolution 5/1* (regarding the institution building package (IBP)) but lacked any specific

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<sup>1</sup> Following an amendment to the original resolution (A/C.3/62/L.32), the final version (A/C.3/62/L.84, sponsored by Cuba) only 'took note' of the Council's resolutions relating to its institution building package and Code of Conduct for Special Procedures Mandate-holders, and endorsed the Council's decision to adopt these resolutions on 18 June 2007.

reference to HRC *Resolution 5/2* (the Code of Conduct for the Special Procedures Mandate-holders).<sup>2</sup> Third, although the IBP had been adopted by consensus in the Council, it was not without controversy, both in terms of its content and its considerable budget implications, and this led to concerns that the package could be reopened in the GA.

The allocation of the Report within the General Assembly proved contentious because States held differing opinions depending on whether they regarded the Council as a potential principal UN body<sup>3</sup> or a perpetual subsidiary organ of the General Assembly. States that thought the Report should go directly to the GA Plenary maintained that the Council's stature required direct reporting to the most senior body at UN Headquarters, while those<sup>4</sup> that were pushing for the Third Committee to consider the report pointed to the need for it to be considered by a body with human rights expertise.<sup>5</sup> The eventual decision adopted by the General Committee,<sup>6</sup> and subsequently the General Assembly, stipulated that the Council's Report would be considered by the Third Committee and then forwarded to the Plenary. As there was no decision to clarify the process whereby next year's HRC Report would be considered, we can expect controversy to hinder the passage that report as well.

In regard to the Council's institution-building package, most States were positive overall, noting that compromises were made to achieve a consensus outcome, which on balance they could live with. The inclusion of a standing agenda item solely concerning human rights in the Occupied Palestinian Territory (OPT) however drew pointed criticism from Israel and the United States of America (USA), among others. The discontinuation of the special procedure mandates relating to Cuba and Belarus was also a subject of rebuke by several States belonging to the Western European and Others Group (WEOG).

The Code of Conduct for Special Procedures Mandate-holders (the Code) also became a divisive issue. The Russian Federation (backed by the African Group and the Non-Aligned Movement (NAM)) regarded the Code as a critical check and balance mechanism that had enabled them to support the Human Rights Council's adoption of the IBP. They therefore argued it was essential that both of these resolutions from the Council be referenced in the GA's resolution regarding the Report – not just HRC *Resolution 5/1*. Although many States and a number of human rights NGOs had concerns about including the reference to the Code, in part because it could lead to an attempt to micromanage Council decisions, the GA resolution was ultimately amended to take note of and endorse both Council resolutions.<sup>7</sup>

Although rumours circulated in the months leading up to the 62<sup>nd</sup> session of the Third Committee that a few States<sup>8</sup> may move to reopen the IBP in that Committee, this did not eventuate. However Israel did call for a vote on the package, which allowed those like-minded States with strong objections to the IBP to express

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<sup>2</sup> Some States considered the IBP to include the Code of Conduct. Certainly, this was a deal that was struck at the last minute in Geneva and is reflected in HRC *Decision 5/101*, which states that HRC *Resolutions 5/1 and 5/2* are to be acted upon jointly.[0] Both resolutions are available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/5/1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1)

<sup>3</sup> During the lead up to the creation of the Human Rights Council, the former Secretary-General Kofi Annan and many Member States had expressed their hope that the body would become a principal organ of the United Nations. Member States eventually decided that it would be only a subsidiary organ of the General Assembly. However, OP1 of GA Resolution 60/251 which created the Council provides that the Assembly will review the Council's status within five years of its formation.

<sup>4</sup> States such as those from the African Group, Cuba, the Russian Federation, the USA, and China.

<sup>5</sup> The General Assembly delegates most human rights matters to the Third Committee, which is viewed as having the expertise on such issues.

<sup>6</sup> The General Committee makes decisions on organisational matters, which are then submitted to the General Assembly for adoption. It does not decide on any political questions. The General Committee is composed of the President and 21 Vice-Presidents of the General Assembly and the Chairmen of the six Main Committees.

<sup>7</sup> See A/C.3/62/L.84 which contains Cuba's amendment to the draft resolution to welcome the HRC Report (A/C.3/62/L.32). Both are available at <http://www.un.org/ga/third/62/propolist.shtml>

<sup>8</sup> Canada, Israel, United States of America (USA).

their concerns,<sup>9</sup> but ultimately the overwhelming majority of the Committee voted in support of the resolution regarding the HRC Report as amended.

The final and most controversial aspect of the Human Rights Report was the size of the budget required to implement the institution building package. The General Assembly's Advisory Committee on Administrative and Budgetary Questions (ACABQ) recommended the Fifth Committee dramatically revise the budget from just over \$8 million to just over \$2.4 million. This drew strong criticism from a number of States for several reasons, not least of which was their concern that it would compromise the resources available to implement the IBP and its centre-piece, the universal periodic review mechanism. This and other budget controversies resulted in the GA's session having to be extended to provide additional time for consensus to be reached within the Fifth Committee.

The GA ultimately approved a slightly higher budget of \$3.98 million for the implementation of the institution building package, the bulk of which will allow for 17 new posts in the Office of the High Commissioner for Human Rights (OHCHR) to carry out significant elements of the UPR process. Most of the remainder of the budget will go towards the cost of providing conference services when the Council is meeting. In addition, the GA approved additional resources (including additional posts) to support the work of the HRC as requested by the Secretary-General.<sup>10</sup> It should be noted, however, that the resources ultimately approved did not meet the total requirements requested.<sup>11</sup>

At the end of these lengthy and complex deliberations, there was a sense that the Council now has some of the resources to carry out its mandate and to give effect to its institution building package. Nonetheless, seven States led by the USA and Australia voted against the adoption of the resolution on the Report, either because they believed the IBP was 'unbalanced', or because they could not support what they regarded as a 'politicised' Council.

The final day of the 62<sup>nd</sup> session of the Assembly was slightly marred when it failed to adopt the U.N.'s overall budget by consensus, breaking with a twenty year tradition. This prompted the Secretary-General to issue a public statement expressing his 'regret' at this development. He 'urged all Member States to return to consensus decision-making and to demonstrate a greater sense of flexibility and compromise, beyond individual national interests and in the common cause of multilateralism for the good of humankind.'<sup>12</sup> This was a clear rebuke of the U.S' decision to be the sole dissenting voice on the Organisational budget.

### **Statement by the High Commissioner for Human Rights**

On 24 October 2007, the High Commissioner for Human Rights, Ms. Louise Arbour, delivered a statement to the Third Committee under agenda item 70.<sup>13</sup> Her opening remarks focussed on the significance of the UPR mechanism as a tool that will allow the Council to review the human rights record of all U.N. Member States, but acknowledged that this creates an expectation that this new level of scrutiny will translate into an improved human rights situation on the ground. To facilitate such change, dedicated financial support will be needed to assist developing countries to meet their obligations.

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<sup>9</sup> The seven States who joined Israel in voting against the adoption of the Report were the USA, Australia, Canada, Palau, Micronesia, Marshall Islands. Nauru and Equatorial Guinea abstained. Swaziland initially appeared to have abstained, but later clarified it had intended to vote in favour.

<sup>10</sup> See A/62/125 for the S-G's report, submitted to the GA in fulfilment of HRC *Decision 3/104*. It sets out the resources and serviced needed to implement the Council's decisions, which total \$8,057,000.

<sup>11</sup> Although the GA only agreed to fund a small component of the considerable conference services, administration and public information costs that were requested by the Secretary-General, this was because the Fifth Committee advised that many of these expenses could be met from within the regular budget of the UN if the S-G deemed them a priority.

<sup>12</sup> See SG/SM/11348, GA/10685, available at <http://www.un.org/News/Press/docs/2007/sgsm11348.doc.htm>

<sup>13</sup> Agenda item 70 relates to the Promotion and Protection of Human Rights.

Now that the institution building phase is largely complete, the High Commissioner expressed the view that the Council is expected to devote its undivided attention to the many human rights situations that demand action. The frequency of the Council's meetings would assist in this regard, and might also work to put human rights abusers on notice that situations of concern will be scrutinised all year round in real time.

The High Commissioner referred to the value of the country visits she has undertaken as a means of strengthening country engagement and dialogue with government representatives. She made particular reference to her address to the NAM Ministerial meeting on human rights and cultural diversity in Iran, where she pointed out that the failure to understand or accommodate diversity inevitably leads to an erosion of rights. During the subsequent discussion with States she elaborated on her visit to Sri Lanka and mentioned her travel to Nepal, Japan, Indonesia and the Great Lakes region of Africa.

It was a matter of concern to the High Commissioner that impunity for gross violations of human rights and grave breaches of humanitarian law remain pervasive, and she reminded States of their duty to investigate such reports and bring the perpetrators to justice.

In closing she urged all States to use the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights as a motivation to move into the era of universal implementation of the Declaration's principles. She later advised that her Office will be launching a major public awareness campaign in December to promote the anniversary.

### **Discussion with the High Commissioner**

Several delegations asked the High Commissioner about the relationship between the Human Rights Council and the Third Committee. She answered diplomatically saying only that the Council was a subsidiary body of the Assembly, and the question of whether it should be a principal organ of the U.N would be considered by Member States in four year's time when the GA reviews the Council's status.

Answering questions about treaty body reform, the High Commissioner commented on the increasing number of human rights instruments, and the demanding nature of the work required to monitor their implementation. She predicted that the UPR mechanism would generate more ratifications and more timely country reports, both of which will mean more work for the treaty bodies. As a result, States need to take a sober view of where the treaty body system will be in five to ten years time. She later added that treaty body reform process is a work in progress, and that some Committees are very concerned about maintaining their unique character, specificities and mandate, which States need to be mindful of when proposing change.<sup>14</sup> Any effort to harmonize or streamline the work of treaty bodies should be balanced with those concerns.

Asked about the geographic distribution of the staff in her Office, the High Commissioner admitted that it should be the very model of diversity, but it has to recruit according to the rules set down by Member States, which set up considerable constraints. She outlined where progress was being made, particularly in relation to the increase in staff from non-Western States.

Responding to a question about her Office's interactions with Member States, she said that regular briefings had been held in Geneva, but that it might be desirable for similar briefings to be provided by herself or senior staff from her New York Office in addition to formal briefings.

In response to a question about the country reports on Northern Uganda and Nepal that her Office had submitted to the Third Committee, but which were withdrawn in some controversy, the High Commissioner responded that her Office would cooperate with all the requirements of Member States. She explained that her Office's presence in Uganda, Nepal and elsewhere is the subject of a Memorandum of Understanding with the

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<sup>14</sup> Here she was referring the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Committee on the Rights of the Child (CRC).

government concerned, and in each case this provides that public reports are submitted, including to the HRC and the General Assembly. It was on this basis that the reports were submitted to the Third Committee. Uganda responded by stating that although there was an MoU as the High Commissioner described, the Government of Uganda had no prior information that a report would be presented, and reiterated its comments at the opening of the Third Committee that it had been 'ambushed' by the report from the High Commissioner.

### **The Report of the Human Rights Council<sup>15</sup>**

The Report of the Human Rights Council contains the resolutions and decisions adopted by the Human Rights Council from 18 September 2006 to 22 June 2007. This period covers its second, third, fourth and fifth sessions, as well as its first organizational meeting and its third and fourth special sessions.

### **Allocation of the Report**

When the allocation of the Report was considered by the General Assembly on 5 November 2007, Lichtenstein, Switzerland and New Zealand all spoke against the Report only being considered by the Third Committee. Several of them reminded Member States that the 61<sup>st</sup> session of the GA had split the allocation of the item on the HRC Report between the Plenary and the Third Committee. New Zealand also reminded the Committee that 18 months ago the GA had agreed to establish the HRC as a subsidiary body of the GA as a means of elevating its standing within the UN human rights system. It was therefore not appropriate that the report of the HRC only be presented to the Third Committee. Switzerland advised that in future, it will advocate for the report to be considered in the Plenary either exclusively or in part. Switzerland and Mexico both expressed regret about the closed consultations that had determined the allocation of the Report, and appealed for greater transparency in future.

Egypt, a member of the General Committee that recommended to the Plenary that the Report be allocated to the Third Committee, defended the General Committee's decision, pointing out that it adopted the recommendation by consensus. Egypt explained that last year the Report had gone to both the Plenary and the Third Committee because the HRC had not yet completed its first year. However, it was now 'old enough' to be heard in just one forum, and the Third Committee was the most appropriate. Egypt also refuted earlier suggestions by Lichtenstein that there was a relationship between the institutional building package included in the Report of the HRC and the allocation of this agenda item to the Third Committee.

The General Assembly then adopted the recommendation of the General Committee and undertook to inform the Chairperson of the Third Committee of the decision to allocate this agenda item to his Committee.

### **Presentation of the Report**

The President of the Human Rights Council, Mr. Doru-Romulus Costea, addressed the Third Committee of the General Assembly on 5 November 2007 and summarised the progress made by the Council in relation to its institution-building processes. He described the universal periodic review (UPR)<sup>16</sup> as the most important innovation of the Council to date and advised that the review of the first 16 States would begin in April 2008 with another 16 to follow in May, followed by the first report in June 2008.

The President also commented on the sheer number and broad scope of special procedure mandates that now support the work of the Council. He referred to the new Code of Conduct as well as the criteria for eligibility, the process for nomination, selection and appointment of the special procedures, and reminded the Committee members that new mandate holders would be appointed in March 2008.

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<sup>15</sup> A/62/53 available at <http://www.un.org/ga/third/62/docslist.shtml>

<sup>16</sup> For more information on the UPR, see [www.ishr.ch/handbook/Chpt6.pdf](http://www.ishr.ch/handbook/Chpt6.pdf)

Also of note were the President's remarks in relation to the future challenges for the Council, particularly of living up to and being able to deliver on the expectations it has raised amongst victims of human rights violations. The President spoke of the Council as a new body in an old institution which is only just entering a 'normal mode of functioning.' The real test is only now about to begin. He noted the 60th anniversary of the Universal Declaration of Human Rights and the need for the Council to uphold the highest human rights standards.

The President also referred to other important developments in the transition phase of the Council, which is coming to a close, including:

- Its preparedness to hold special sessions to deal with the most serious human rights violations in the OPT, Dafur and most recently Myanmar. When dealing with situations of such gravity, a new approach of resorting to more than one special procedure to seek the appropriate actions to address the situation is also being employed;
- A new 18-member Advisory Committee (replacing the former Sub-Commission on the Promotion and Protection of Human Rights) will be elected in March 2008, reflecting equitable geographic distribution and a gender balance in its membership;
- The revised complaint procedure will be more 'victim-oriented'. It will consider situations or consistent patterns of gross human rights violations, as well as communications individuals and groups of persons;
- The Special Rapporteur on Contemporary Forms of Slavery, and the Forum on Minority Issues replace the working groups of the former Sub-Commission that dealt with these matters, and will report directly to the HRC; and
- In December an informal meeting will be held involving States, indigenous peoples and others to discuss an appropriate mechanism to replace the former Working Group on Indigenous Populations.<sup>17</sup>

### General Discussion

Of the 32 States that spoke over the two day discussion on the Council Report,<sup>18</sup> most welcomed the progress made by the Council and several acknowledged the role of the former HRC President to generate the consensus outcomes in the time available. The prevailing view was that although far from ideal, the institution-building package is a carefully negotiated consensus that States are prepared to live with. Despite some rumours to the contrary, no State moved to re-open discussion of the package. On the contrary, several States called on the Third Committee to adopt the package as a whole and not reopen debate.<sup>19</sup>

Most States who welcomed the institution-building package also spoke positively of the Code of Conduct for Special Procedures Mandate-holders. However, many of the same States stressed that the Code must be strictly adhered to in order to avoid any perception of bias, and to ensure that the independence and professionalism of the mandate-holders remain beyond question. Only the Netherlands expressed criticism of the Code of Conduct, arguing it is unnecessary and undesirable because it interferes with the execution of the mandates.

Most States expressed the view that the UPR is the strength of the institution-building package that holds out real potential to avoid the politicisation, selectivity, and partiality that plagued the Commission on Human Rights.<sup>20</sup> Several of these States also expressed the view that their support is due to the requirement that *all*

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<sup>17</sup> At its resumed 6<sup>th</sup> session in December, the Council decided to establish a new expert mechanism on indigenous issues. See *New York Monitor Update on Indigenous Issues* for more detail on this matter. Available at <http://www.ishr.ch>

<sup>18</sup> In addition to those referred to below, other participating States included: Cuba, Russia, Switzerland, Columbia, China, Republic of Korea, Lichtenstein, Holy See, Belarus, Bangladesh, Malaysia, Ukraine, Chile and Algeria.

<sup>19</sup> Portugal (on behalf of the E.U.), Brazil, Egypt, Iran and Poland. Japan called for the Council report to be 'respected by the General Assembly'.

<sup>20</sup> Myanmar, Sri Lanka, DRC, Uganda, UK, Syria, Japan, Indonesia, Nicaragua, Mexico and Iran.

States are subject to review, the State under review is a central participant in the process, and only credible information can be considered in the review.<sup>21</sup> In their view, these factors will allow human rights matters to be resolved through meaningful dialogue, rather than selective, political and confrontational processes that are characteristic of the Third Committee. As a consequence, these same States generally went on to call for an end to country-specific resolutions being brought before the Third Committee. They also emphasised the importance of the Code of Conduct<sup>22</sup> to improve transparency and accountability of special procedures - and to ensure that they operate within their mandates.

Several States took a very positive view of the progress of the Council to-date, referring to its work on Darfur and Myanmar as evidence of its capacity to respond to urgent and serious human rights violations.<sup>23</sup>

Where States were critical of the institution-building package, their comments were in relation to specific elements, such as the loss of the country-specific mandates for Belarus and Cuba<sup>24</sup> or the inclusion of an agenda item on the OPT.<sup>25</sup> Others, such as the USA, expressed the view that the Council has yet to demonstrate that it can address critical human rights issues (such as the right to freedom of religion, association and expression) or effectively address the principal human rights violators (such as the Sudan, Iran and the DPRK). The USA pointed out that the UPR mechanism is not designed to deal with emergencies, but the Council must be prepared to deal with critical situations as they emerge – even where this requires it to condemn fellow Member States. Instead the USA was concerned that some States intend to use the Council to protect governments that are violating human rights.

The most critical comments were made by Israel, who described the Council as embodying the 'moral bankruptcy and numerous shortcomings' of its predecessor, the Commission on Human Rights. In Israel's view, the Council is ignoring the burning human rights issues of our time, such as Darfur, as shown by the fact that the Council resolution on Darfur failed to find the Sudanese Government culpable of atrocities. Israel accused the Council of running a 'ritualistic and virulent campaign' against it, as evidenced by the 12 'discriminatory and one-sided resolutions', three special sessions, and a stand-alone agenda item entirely focussed on the OPT. Israel advised that it would call for a vote on the institution-building package, which it considered unacceptable.

Several States flagged the need for the General Assembly to streamline human rights issues between the Council and the Third Committee.<sup>26</sup> Although Sri Lanka commented that human rights issues would gain greater prominence if they were 'sifted through the Third Committee', no State elaborated on what division of responsibilities should be instituted between the two bodies. Mexico pointed to the need for the General Assembly to develop a constructive dialogue on the roles of the Third Committee and the HRC to avoid duplication of their work,<sup>27</sup> adding that the HRC's current status as a subsidiary body of the General Assembly should not result in backsliding on, or sidelining of, its decisions.

Some States commented on the need to clarify which body would receive and consider the HRC Report at its 63<sup>rd</sup> session. The E.U.<sup>28</sup> called for the 2008 Council Report to be considered by the General Assembly Plenary which would better reflect the status of the Council within the UN human rights system, as well as the status of human rights as one of the key pillars of the UN system.

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<sup>21</sup> Bangladesh, Belarus, Malaysia, South Africa, DRC and Uganda.

<sup>22</sup> For more information on the Code, see <http://www2.ohchr.org/english/bodies/chr/special/index.htm#code>

<sup>23</sup> U.K., France, Netherlands, Mexico, Lichtenstein, Switzerland and Canada.

<sup>24</sup> USA, Netherlands, UK and Poland.

<sup>25</sup> USA, Netherlands, UK.

<sup>26</sup> Sri Lanka, Mexico, Brazil.

<sup>27</sup> Similar comments were also made by Uganda, Indonesia and Sri Lanka.

<sup>28</sup> The U.K. and the Netherlands made separate statements supporting the E.U.'s joint statement.

Other States<sup>29</sup> including India expressed the view that the Council report is most appropriately considered by the Third Committee which has universal membership and the appropriate human rights expertise. India went on to warn that formalising reporting arrangements between the HRC and the General Assembly should not be trivialised by arguments that the HRC is a subsidiary body of the General Assembly, but not of the Third Committee as this 'may not advance the goal of ensuring an effective Council.'

New Zealand and Switzerland suggested emulating last year's compromise model, in which the allocation of the Report was split between the Plenary and the Third Committee.<sup>30</sup>

Some States also commented on the role of the Office of the High Commissioner for Human Rights. Egypt warned that the Third Committee should 'confront with all decisiveness' attempts by the High Commissioner to supersede the mandate of the Human Rights Council and the Third Committee by entering into Memorandums of Understanding with States (who are signing these agreements in good faith) that unnecessarily expand her authority. Syria advised that the work of the OHCHR should be supervised and followed by the Council to avoid duplication.

### ***The Resolution***

The Resolution (as amended by Cuba) provides that the General Assembly:

- Taking note* of HRC resolutions 5/1 and 5/2 of 18 June 2007,
- Endorses* the decision of the HRC to adopt resolution 5/1 and 5/2 of 18 June 2007, including their annexes and appendices.

On 16 November 2007, the Third Committee considered the draft resolution relating to the Report<sup>31</sup> and an amendment introduced by Cuba, the latter enjoying cross-regional sponsorship.<sup>32</sup> The amendment sought to address Russia's concern that the resolution only referred to the institution-building package of the Human Rights Council (Resolution 5/1), but not the Code of Conduct (Resolution 5/2). The Cuban amendment provided for the Third Committee to 'take note' of both HRC resolutions and to 'endorse' the decision of the Council to adopt both resolutions.

Israel and the USA took the floor to disassociate themselves from the amendment. Israel also warned that if adopted, it would call for a vote on the amended resolution. The amendment was adopted without a vote, and the Committee moved on to consider the draft resolution on the report of the Human Rights Council as amended.

### ***The Vote in the Third Committee***

As promised, Israel called for a vote on the resolution. In explanation before the vote, the USA advised it would vote with Israel and reiterated its concerns about the 'deep structural flaws' of the Council, its failure to bring the most serious human rights violators to account, and its 'relentless focus' on Israel.

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<sup>29</sup> States supporting consideration of the report by the Third Committee include the USA, India, Cuba, China, the Russian Federation, Indonesia, Columbia, Sri Lanka, Egypt and several African States. For these States, there may be the perceived advantage of having a greater degree of control over the passage of the HRC Report in the Third Committee than if it is considered by the Plenary. Symbolically, it may also provide a means of subordinating the role of the HRC to that of the Third Committee within the UN human rights system.

<sup>30</sup> This allowed the Third Committee to consider the recommendations addressed to the GA, such as the adoption of the then draft Declaration on the Rights of Indigenous Peoples. However, the Report was then 'taken note of' by the Plenary.

<sup>31</sup> A/C.3/62/L.32, available at <http://www.un.org/ga/third/62/propolist.shtml>

<sup>32</sup> A/C.3/62/L.84, available at <http://www.un.org/ga/third/62/propolist.shtml>. The sponsors of the amendment were: Armenia, Brazil, China, Costa Rica, Cuba (on behalf of NAM States), Liechtenstein, Mexico, New Zealand, Norway, Russian Federation, Switzerland and Uruguay.

Other States who took the floor to explain why they would vote against the resolution included Palau, Israel, Micronesia, Australia and Canada. Several of these States shared the concern that the institution-building package had been 'pushed through' the Council late one night, allegedly after States had been informed that the institution-building package would be dealt with the following morning. On this basis, they argued that there was no agreement on the institution-building package in the Council, and this 'unorthodox' procedure 'set a dangerous precedent'.<sup>33</sup>

Belarus also made a statement explaining its support of the institution-building package, which it sees as an important element in the process of rationalising and streamlining the special procedures of the Council. Belarus spoke in similarly positive terms about the UPR because it will be applied equally and to all States, and called on Israel to look 'honestly and openly' at the institution-building package and reconsider its position.

China also took the floor to call on all States to vote in support of the institution-building package. While China agreed with other States that the institution-building package is far from perfect, it was the result of a year of negotiations and reflects the consensus view of the Council. It found the expressed lack of support for the institution-building package 'regrettable' as the Council moves into its implementation phase.

The resolution, as amended, was put to a vote and was adopted with 167 States in favour, 7 opposed,<sup>34</sup> and 2 abstaining.<sup>35</sup> The Third Committee responded with applause.

Following the vote, Japan was the only State to make reference to the budgetary implications of the resolution. Although it welcomed the adoption of the resolution,<sup>36</sup> it expressed regret at its 'huge' financial implications. Japan encouraged further streamlining of ineffective or unnecessary mandates that report to the Council and advised that it will closely monitor the Council's budget.

### **Budget implications of the Report**

According to the Programme Budget Implications (PBI) document prepared by the Secretariat,<sup>37</sup> the implementation of the Human Rights Council's institution building package would require \$8,147,600 in 2008-09. The estimated costs covered in the PBI related to the operation of the UPR mechanism, special procedures, the Human Rights Council Advisory Committee, and the complaint procedure. Some of the specific costs the PBI outlined to implement the institution-building package included:

- \$3,054,000 for 18 new posts within the Office of the High Commissioner for Human Rights (OHCHR);<sup>38</sup> and
- \$5,093,600 in non-post resources (including consultants, experts, travel, general operating expenses, grants and contributions).

Following the close of the Third Committee, the General Assembly's Advisory Committee on Administrative and Budgetary Questions (ACABQ) considered several documents relating to the funding requirements for

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<sup>33</sup> Comments made by Australia. The USA, Israel and Canada expressed similar concerns about whether there was agreement on the IPB when it was adopted by the HRC.

<sup>34</sup> Australia, Canada, Israel, Marshall Islands, Micronesia, Palau, USA voted against the resolution.

<sup>35</sup> Nauru and Equatorial Guinea abstained from the vote. Swaziland originally appeared to have abstained from the vote, but later clarified that it intended to vote in favour.

<sup>36</sup> States welcoming the adoption of the resolution included: Japan, Pakistan, Cuba, Portugal (on behalf of the EU), Netherlands, Poland, Iran, UK and France.

<sup>37</sup> A/C.3/62/L.60, available at <http://www.un.org/ga/third/62/propolist.shtml>

<sup>38</sup> Of these 18 new posts, 17 would support the operation of the UPR mechanism and one would be responsible for developing and maintaining the public list of candidates for positions of special procedures mandate holders. See para.23 and 26 of A/C.5/62/12.

the HRC's institution building package.<sup>39</sup> The fact that a single document integrating these various budget requests was not prepared, meant that the consideration of budget for the IBP was very complicated for all concerned, and drew strong criticism from Member States.

Some countries, though supportive in principle of meeting the expenses for the UPR and associated OHCHR staff, expressed concern about how the UPR may function in practice and expressed an unwillingness to go 'overboard' with funding. The question of what is 'adequate' was on many minds during negotiations. It was therefore not unexpected that deliberations within the ACABQ would take some time, but the Committee came under considerable criticism for taking a month to provide its recommendations to the Fifth Committee of the General Assembly.

The ACABQ reported to the Fifth Committee on 17 December 2007. In relation to the budget for the HRC's institution building package, the ACABQ recommended a total of \$2,420,000 be provided, with an additional \$815,000 for the operation of the HRC in 2008-09.<sup>40</sup> Much of this combined figure of \$3,235,000 was recommended for allocation to OHCHR to cover the establishment of 12 new posts, in recognition that 'support for the UPR review process is a significant new function for the Office,'<sup>41</sup> as well as a further five new posts to support the work of the HRC in 2008-09. Approval was also recommended to fund an additional team of 20 interpreters in Geneva to provide translation during HRC meetings. The ACABQ showed little support for budget requests relating to media coverage of the UPR meetings, or general conference management services and administration costs, arguing that a significant amount of these could be met from within existing resources.

The ACABQ's recommendations met with strong criticism from some States in the Fifth Committee for several reasons.<sup>42</sup> Firstly, States were concerned that it would compromise the resources available to implement the IBP and its centre-piece, the universal periodic review mechanism. Secondly, little time remained in the session for States to consider the implications of the multiple budget recommendations. Thirdly, some States were concerned that the ACABQ had overstepped its mandate and entered the territory of substantive decision-making. Given the nature of these concerns, the Fifth Committee resolved to hold further informal discussions to consider the recommendations.

### *The vote in the General Assembly*

On 21 December 2007, the Fifth Committee reported its findings to the General Assembly Plenary, which took action on the resolution relating to the Human Rights Council Report. Funding of \$3.98 million was recommended to implement the Report, which included \$3.11 million for OHCHR.

Prior to the vote, the USA explained that it would be 'compelled' to vote against the resolution because the General Assembly had failed to address the deficiencies that had politicized the HRC and prevent it from operating as an effective human rights body. The USA reiterated the criticisms of the HRC that it had detailed in the Third Committee.

The representative of Australia also addressed the General Assembly to explain that although her newly elected government was committed to the protection of human rights and supports the work of the HRC, the

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<sup>39</sup> These were: firstly the PBI which requested \$8,147,600 (A/C.3/62/L.60); secondly A/62/125, which was prepared by the Secretary-General, in fulfilment of HRC decision 3/104. It set out the overall estimated additional requirements arising from the HRC's requested programme budget for the biennium 2006-07 (\$4,351,500) and the proposed programme budget for the biennium 2008-09 (\$3,705,500), which when combined, total \$8,057,000; and thirdly document A/C.5/62/12, which also contained the programme budget implications of the institution building package. This document was also prepared by the Secretary-General to detail the programme budget implications of draft resolution A/C.3/62/L.84 following its adoption by the Third Committee.

<sup>40</sup> These recommendations are contained in documents A/62/7/Add.25 and A/62/7/Add.26.

<sup>41</sup> Paragraph 9 of A/62/7/Add.26.

<sup>42</sup> Switzerland and Japan were the most critical of the States who spoke. Brazil (on behalf of Argentina) and Guatemala also indicated they had concerns but needed more time to consider the reports.

institution building package was unbalanced. The undue focus on the OPT contradicted the Council's mandate to maintain its objectivity, and Australia would therefore vote against the resolution.

The resolution then went to a vote with 150 States in favour, 7 against, and 1 abstention.<sup>43</sup> Following the vote, Cuba and Sudan made brief remarks, critical of the USA and Australia's decisions to oppose the resolution.

## LOOKING FORWARD

At the closing of the Third Committee, it moved to adopt the work program for its 63<sup>rd</sup> session. Egypt raised concern over the absence of the Report of the Human Rights Council from the agenda. The Secretariat reminded the Committee that last year the Report was not on the draft agenda of 62<sup>nd</sup> session when adopted. Uruguay, which was at the General Committee meeting where the allocation of the Report was discussed, said that it was clear that that Committee would make another decision on the Report next year.<sup>44</sup>

This lack of clarity in the process for the passage of the HRC Report means it is highly likely that next year's Report will have a similarly rocky passage through the General Assembly. However, this lack of clarity may also prompt States to develop more substantive arguments about why a particular body within the General Assembly should be required to consider the Report, and ultimately to consider the future status of the HRC within the UN human rights system. Given that the HRC's universal periodic review process will only have been in operation for a few months prior to the 63<sup>rd</sup> session of the General Assembly, it may be premature for States to determine whether the HRC should become a principal organ of the UN, but preliminary discussions about such matters may get underway.

## BACKGROUND

The General Assembly is the main deliberative organ of the United Nations (UN). It is composed of representatives of all member States and has a general mandate to discuss and make recommendations on any matters within the scope of the United Nations Charter. Under Article 13 of the Charter, the General Assembly is specifically mandated to 'initiate studies and make recommendations for the purpose of ... assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. The regular session of the General Assembly runs from the beginning of September to the end of December. Each year the GA addresses over 150 agenda items, which are considered either in the plenary or in one of its six committees.<sup>45</sup> The Third Committee (Social, Cultural, and Humanitarian) addresses most agenda items relevant to human rights defenders, including advancement of women, children's rights, the rights of indigenous peoples, the elimination of racism, and human rights questions. Numerous special procedures also report to the Third Committee on a number of these issues and engage in an interactive dialogue with States. The Fifth Committee (Administrative and Budgetary) is also particularly relevant to human rights defenders since it evaluates and approves the budgetary requirements arising out of the work of the other five committees. After completing their work, the Third and the Fifth Committee, as well as the other three main committees, submit draft resolutions to the General Assembly for final adoption.

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<sup>43</sup> GA resolution A/RES/62/219. States voting against the resolution were Australia, Canada, Federated States of Micronesia, Israel, Marshall Islands, Palau and the USA. Nauru abstained.

<sup>44</sup> During the General Assembly's 61<sup>st</sup> regular session, States also extensively discussed how the Council would report to the General Assembly. In the end, a compromise was found, and the report of the Council was shared between both.

<sup>45</sup> Information on the main committees of the General Assembly (GA) is available at <http://www.un.org/ga/maincommittees.shtml>

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The New York Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments in the UN in New York.

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