

GENERAL ASSEMBLY 65TH SESSION



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The issue of sexual orientation featured again throughout the Third Committee¹ (October to November 2010) and deeply divided States along regional lines. Although the discussions demonstrated just how far the international community has to travel before it extends international human rights protections to lesbian, gay, bisexual, transgender and intersex (LGBTI) people, they also prompted the US to step forward as a lead advocate for LGBTI rights at the UN. The US' commitment to speak up and be proactive on the issue, together with massive mobilisation by LGBTI NGOs globally, led to one of the most anticipated plenary meetings on record.

The theme of religion took on a more prominent role, due mostly to the controversial text on defamation of religion, but also because of a growing number of religion-focused initiatives, including a new plenary text on 'interfaith harmony' from Jordan. The unbending approach of some States in the Organisation of Islamic Conference (OIC) during negotiations on the defamation resolution ensured support for it continued to wane. The European Union (EU) resolution on the elimination of religious intolerance maintained a fragile consensus. However, in a plenary intervention that shamelessly favoured politics over principle, the OIC threatened to break the consensus in 2011 as retaliation for Western States' lack of cooperation on the defamation text.

On the positive side, more States voted in favour of stronger country resolutions, and for a text calling for a moratorium on the death penalty. They also agreed to establish a working group to consider the feasibility of an international instrument on the human rights of older persons. The ongoing resource constraints affecting the treaty body system prompted States to agree to reinvigorate the process of comprehensive treaty body reform. For human rights defenders, the acknowledgement of reprisals against people who cooperate with the UN system in the resolution on torture was a welcome development.

Resolutions that had a more difficult passage included violence against women and the right to development. The call for a high-level meeting of the General Assembly to mark the ten-year anniversary of the Durban racism conference marred the passage of the already divisive omnibus racism resolution. The adoption of the annual report of the Human Rights Council (the Council) also proved a challenging and complex undertaking. It spurred many States to call for procedural obstacles, such as ambiguous reporting and budget lines between the Council and the General Assembly, to be addressed during the ongoing review of the Council.

THEMATIC DEVELOPMENTS

Reference to sexual orientation in extrajudicial executions resolution sparks controversy

Following the divisive debates during last year's Third Committee in relation to sexual orientation and gender identity, it was not surprising that opponents to the use of this term at the UN organised cross-regional support for their negative initiatives in 2010.² The backlash against any recognition of LGBT rights at the UN began early in the session with the rejection of the final report to the General Assembly of the outgoing Special Rapporteur on education. The report, which recognised the human right to 'comprehensive sexual education', was successfully shelved by opposition from African, Arab, Islamic and

¹ The General Assembly (GA) allocates the bulk of its work to six committees. The Third Committee considers human rights questions. In December, the Committees present their recommendations, usually in the form of draft resolutions and decisions, to a plenary meeting of the General Assembly for its consideration and adoption. At the time of writing only the Third Committee draft resolutions were available online at <http://bit.ly/eXnKM3>. Check <http://bit.ly/5UC64R> for final GA resolutions. In this report, references to voting on a resolution refer to plenary voting, unless otherwise indicated.

² The debates in 2009 were sparked by the report of the Special Rapporteur on counter-terrorism, Mr Martin Scheinin. He interpreted his mandate, to include a 'gender perspective' in his work, to mean he should address how the rights of LGBTI individuals are impacted by States' counter-terrorism measures.

Caribbean States.³ Informal negotiations on the resolution on the rights of the child⁴ (jointly sponsored by the EU and the Latin American and Caribbean Group (GRULAC)) were complicated by opposition from some OIC members (led by Syria and Qatar) and the Holy See⁵ to various proposals, including language viewed as LGBT-related.⁶

Despite these early warning signs, Western and Latin American States appeared caught off-guard by the African Group's amendment to the extrajudicial executions resolution.⁷ The fact that the African Group voted as a block with the support of the Arab Group and the OIC, meant its amendment was adopted by a margin of nine votes in the Third Committee.⁸ As a result, the long-standing paragraph that referred to more than 15 groups that are vulnerable to extrajudicial killings, no longer specifically urged States to protect against killings committed on the basis of sexual orientation.

Human rights defenders saw this as a major backward step. The resolution on extrajudicial executions was the only UN text where member States formally acknowledged their responsibility to prevent discrimination on the basis of sexual orientation. The language had been a feature of the resolution since 1999, when it was incorporated at the recommendation of the Special Rapporteur on extrajudicial executions. Although it was routinely the subject of a vote in the Third Committee, States had always voted to retain the reference to sexual orientation. As Sweden warned in 2010, the loss of the reference falsely implied the General Assembly was prepared to turn a blind eye to killings targeting people because of their perceived or actual sexual orientation.

The counter-response from States was decisive. On International Human Rights Day, the US Ambassador spoke of being 'incensed' by the vote and vowed to 'fight to restore the reference to sexual orientation'.⁹ At the same UN high-level event, for the first time, the UN Secretary-General, Mr Ban Ki-moon, pledged to 'speak out, at every opportunity, wherever I go ...to rally support for the decriminalization of homosexuality everywhere in the world.' These two speeches, combined with a major lobbying effort by the US and LGBTI

NGOs around the world, proved sufficient to convince States to change their vote in the plenary and reinsert the reference to sexual orientation into the resolution.¹⁰

Regardless of the outcome on the extrajudicial executions resolution this session, the battle lines in relation to future discussion of sexual orientation and gender identity at the UN are now firmly drawn. The challenge for States, the leadership of the UN human rights system, and civil society is to foster a constructive dialogue on those aspects of the debate where there is the most potential for consensus, such as unlawful killings and decriminalisation of consensual homosexual behaviour. It is essential a multiplicity of voices take part in these dialogues, so they cannot be dismissed as a 'Western initiative', designed to impose foreign values onto others without respect for their religious or cultural diversity.

Good result, bad atmosphere on defamation of religion

Old fault lines were also re-opened by the 'defamation of religion' text. Despite the genuine desire of Morocco (on behalf of the OIC) and the US to find middle ground, the negotiation process proved to be ideologically driven and alienated many States. The text ultimately passed with less support than last year indicating the international community's support for the concept of 'defamation of religion', continues to decline.¹¹ This mirrored a development at the Council, where support for the defamation of religion resolution was at an all-time low during its March 2010 session. The resolution contained some superficial changes compared to the 2009 text, including the replacement of 'defamation of religions' with 'vilification of religions' in most of the resolution. However these, and other supposed concessions made by the sponsors,¹² were inadequate to dispel most States' concerns about negative implications of the defamation concept, for both freedom of religion and belief, and freedom of expression. Unfortunately, discussions on this polarising issue were not only limited to the resolution. It also featured as a prominent theme in the interactive dialogues with the special procedures on racism and on freedom of religion and belief.¹³

As in previous years, the General Assembly adopted the EU-sponsored resolution on the elimination of all forms of intolerance and of discrimination based on religion or belief without a vote. However as a result of losing ground on defamation, the OIC repeatedly attempted to inject language relevant to it into the EU resolution, and to obstruct new

3 More information is available at <http://bit.ly/es60Pe>.

4 A/C.3/65/L.21/Rev.1. The EU and GRULAC retained the same format for the resolution as in 2009, which meant States focused their negotiations on the 2010 theme of early childhood, rather than entering into discussions on existing sections of the omnibus text.

5 The Holy See (representing the Vatican) has permanent UN observer status.

6 This included resistance to words like 'households' (instead of parents) which some construed to endorse same sex couples.

7 A/C.3/65/L.29/Rev.1. The amendment (contained in A/C.3/65/L.65) replaced the words in Operative Paragraph (OP) 6(b) '...any discriminatory reason, including sexual orientation' with '...discriminatory reasons on any basis'.

8 The vote was 79:70:17 (for:against:abstentions). More information is available at <http://bit.ly/bUmvRR>. In 2008, Uganda (on behalf of the OIC) proposed a similar amendment to the resolution, which was defeated in the Third Committee: 59:77:25.

9 The US Ambassador's statement and more information about the high-level event is available at <http://bit.ly/hvUHKK>.

10 The US amendment was adopted by a vote of 93:55:27 (for:against:abstentions). Angola, South Africa, Rwanda, and Cape Verde broke ranks with the African Group to vote in favour. The resolution was then adopted as amended by a vote of 122:1:62.

11 A/C.3/65/L.46. The resolution was adopted by a vote of 79:67:40. This was a margin of 12 votes, compared to 19 in 2009.

12 This included the addition of a reference to religions other than Islam, in PP9: 'including Islamophobia, Judeophobia and Christianophobia.'

13 More information on the interactive dialogues and adoption of the defamation resolution is available at <http://bit.ly/gJd6Nc>.

language aimed at strengthening the text. This led to the withdrawal by the EU of new language on anti-discrimination legislation, and language reaffirming the right to change one's religion. Part of the success of the OIC strategy was holding the EU to 'compromise' language agreed to at the Council in June 2010 in the resolution renewing the mandate of the Special Rapporteur on freedom of religion or belief.¹⁴

It is not clear how the steady erosion of support for combating 'defamation of religion' at the General Assembly will affect the OIC's strategy at upcoming meetings, including the next Ad Hoc Committee on Complementary Standards (postponed from November 2010 to early 2011) and the Council in March 2011, when the OIC is expected to table another resolution on the subject. However, the developments create renewed momentum for NGOs and supportive States to build on efforts to fight 'defamation of religion.'¹⁵

The fate of the religious intolerance resolution is regrettably linked to the defamation text. During the General Assembly's adoption of the Third Committee reports, the OIC indicated it would withhold its support for the religious intolerance text in 2011 since the EU did not support its defamation text. The fragile consensus on the resolution is thus unlikely to hold unless further concessions to the OIC are made. 2011 may also see the introduction of a US-sponsored 'compromise' resolution, similar to the one on freedom of expression co-sponsored with Egypt at the Council in 2009. The US had suggested it would bring such a text in 2010, but this never materialised.

G77 insists on high-level event for Durban anniversary

Unsurprisingly, consensus on the annual five-part resolution on the implementation of and follow up to the Durban Declaration and Programme of Action (DDPA) proved elusive again in 2010.¹⁶ The major controversy was the inclusion by the Group of 77 (G77) of a call for a one-day high-level meeting of the General Assembly in 2011, to commemorate the

tenth anniversary of the adoption of the DDPA. The initiative was viewed as inherently flawed by Western States and Israel. Their main concern was its bad timing (coinciding with the tenth anniversary of 'September 11'), and the possibility of a repeat of the vitriol of past Durban events, rather than a focus on an anti-racism agenda. The same States also failed to see value in adopting another political declaration only a year after the Durban review conference.¹⁷

Many States also criticised the flawed negotiation process,¹⁸ and complained several provisions lacked conformity with international law, especially with ICCPR Articles 18, 19 and 20. In addition, the text did not show a clear commitment to protect all individuals from racism, regardless of the group or community they belong to. Regrettably, only a small group of States (a few G77 members, the EU and some Western European and Others Group (WEOG) States) participated in negotiations on this resolution. Without broader, more serious engagement by the international community, the negotiation dynamics and the voting pattern on the resolution are unlikely to change.

Less acrimonious negotiations on death penalty

A resolution renewing the General Assembly's call for a moratorium on the use of the death penalty was also adopted by vote, with a slightly larger margin than last year.¹⁹ The resolution, the third text in four years, calls on States to respect international standards that safeguard the rights of those facing the death penalty, and to make available information on their use of the death penalty. The passage of the resolution was less acrimonious than in recent years, because retentionist States who failed to 'kill' the resolution on the death penalty in 2007, now reluctantly accept the issue as part of the General Assembly's work.²⁰ In 2010, key detractors (such as Egypt, Botswana, Singapore, and Bahamas) proposed hostile amendments to weaken the text in the Third Committee but were defeated.²¹ The resolution is biennial so the General Assembly will not formally consider the death penalty again until 2012.

General Assembly takes a stand on reprisals

The Sub-Committee on the Prevention of Torture brought the serious problem of reprisals against individuals who cooperate with the UN human rights system to the attention of the

14 The language on the right to change one's religion was included in 2007 Council Resolution 6/37, which was adopted by a vote for the first time. However States did not include it in the June 2010 Council resolution to renew the Special Rapporteur's mandate to maintain consensus. The Council 2010 and General Assembly 2010 resolutions can accommodate States' different interpretations of international law on this issue, thus the compromise language in both texts was ultimately not a 'deal-breaker' for the EU.

15 Several other meetings in 2011 may be important for defenders watching this brief. From 7- 25 March 2011 in New York, the Human Rights Committee will read for the second time draft General Comment No. 34 on Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR). The draft includes paragraphs on the decriminalisation of defamation and blasphemy. From 9-10 February 2011 in Vienna, OHCHR will hold an expert workshop on the prohibition of incitement to national, racial or religious hatred, as a follow-up to the 2008 expert seminar on articles 19 and 20 of the ICCPR. More information is available at <http://bit.ly/eos4e6>.

16 A/65/454. The General Assembly vote on the resolution was 104:22:33 (for:against:abstentions).

17 Those voting against included US, UK, Germany, Italy, Sweden, Canada, Netherlands, Australia, Czech Republic, Denmark, Estonia, Israel, Latvia, Lithuania, Marshall Islands, Micronesia, Palau, Poland, Romania, Slovakia, and The former Yugoslav Republic of Macedonia. EU States who did not vote against the text abstained on it.

18 The US, EU and Switzerland (on behalf of Iceland, Liechtenstein, New Zealand, and Norway). They criticised the limited number of 'informals', and the introduction by the G77 of four pages of amendments just before the vote in the Third Committee.

19 A/C.3/65/L. 23/Rev.1 . The resolution was adopted by a vote of 109:41:35. The vote in 2008 was 106:46:34.

20 For more information on the adoption of the death penalty resolution, see <http://bit.ly/eDny2T>.

21 See A/C.3/65/L.61, A/C.3/65/L.62, A/C.3/65/L.63, available at <http://bit.ly/eXnKM3>. Voting sheets available at <http://bit.ly/hPzFX0>.

General Assembly.²² In a welcomed move, Denmark included a new paragraph in its annual resolution on torture to take up this issue. States were reminded they have an obligation to ensure no person or organisation is subject to 'any sanction or prejudice' because of their 'contact' with a national or international body that works to combat or prevent torture and ill-treatment.²³ Although this proved a controversial addition for some States, it was a long-overdue step by the General Assembly that should be built upon in years to come, including by the Council.

States' obligation to ensure victims of torture and ill-treatment can access a range of rehabilitation services was also elaborated in the 2010 text, which was adopted by consensus. Although victims' entitlement to redress, compensation and rehabilitation was already addressed, the text now spells out States' responsibility to establish or at least support rehabilitation facilities for victims, and to ensure the safety of their staff and patients.²⁴

Report by Special Rapporteur on human rights defenders gets luke-warm reception

No resolution on human rights defenders was adopted in 2010 (it is biennial and will be considered again in 2011) and the Special Rapporteur's report was not enthusiastically received by many States. The EU, Pakistan and the UK questioned the appropriateness of assigning human rights responsibilities to non-state actors, and argued only States can be responsible for human rights violations. The Special Rapporteur vigorously defended the analysis in her report by pointing out the *Declaration on Human Rights Defenders* itself assigns these responsibilities to non-state actors. However, she agreed States bear the ultimate responsibility under human rights law to respect, protect and fulfill human rights, which includes exercising due diligence to prevent, investigate and punish any violations by non-state actors.²⁵

States shun controversial recommendations by Special Rapporteur on counter-terrorism

Mexico avoided incorporating the Special Rapporteur's controversial call for an overhaul of the Security Council's counter-terrorism framework into its annual resolution on counter-terrorism.²⁶ Nonetheless, the Mexican delegation ensured a general acknowledgement of the report of the Special Rapporteur was restored to the text, despite objections from some permanent members of the Security Council.²⁷

22 The Sub-Committee's annual report (A/65/44, Annex VII, para.35, available at <http://bit.ly/hwhhOy>) expressed 'concerns about the possibility of reprisals after its visits to interview people in detention'.

23 OP9 of A/C.3/65/L.26/Rev.1.

24 Report of the Special Rapporteur on torture (A/65/273 para.91), available at <http://bit.ly/hwhhOy>.

25 More information about the reception of the Special Rapporteur's report is available at <http://bit.ly/gDKBTy>.

26 More information about the reception of the Special Rapporteur's report in the General Assembly and Security Council is available at <http://bit.ly/dWGEMM>.

27 The Russian Federation and the US objected to OP18, which 'takes note'

Attempts at other modest changes also succeeded, and the text was adopted by consensus. Changes included the incorporation of new language regarding States' obligation to safeguard the right to privacy in their counter-terrorism responses.²⁸ In an effort to improve the UN's own record on mainstreaming human rights across its counter-terrorism work, the General Assembly requested all seven of the UN's working groups on counter-terrorism incorporate a human rights perspective in their work.²⁹ It also called on UN bodies to ensure any legislative or other follow-up measures taken by States as a result of UN technical assistance, are consistent with international human rights law.

Consensus on violence against women endangered by debate over 'traditional values'

Although 2010 was a ground-breaking year for gender equality at the UN,³⁰ the negotiation of the resolution on violence against women again proved very difficult, though consensus was maintained.

One of the major contentions was a paragraph adopted by consensus in 2008, which referred to the need for States to 'refrain from invoking any custom, tradition or religious consideration' to avoid their obligations to end discrimination against women.³¹ However, controversies at the Council in the intervening years about whether undefined 'traditional values' could be used to justify human rights violations, meant some delegations in New York saw the language in a new light this time around.³²

The reluctance of the main sponsors to deviate from agreed language led the African group to table a series of controversial amendments.³³ Although these were ultimately withdrawn and the language on traditional values remained unchanged, the co-sponsors had to orally incorporate several other amendments to achieve consensus.³⁴ This did not avoid a string of criti-

of the report. In 2009, States deleted any positive acknowledgement of the Special Rapporteur's report, as most objected to its recommendations on how to protect the rights of LGBTI individuals when implementing counter-terrorism measures.

28 A/C.3/65/L.43/Rev.1, OP 6(f) provides that where States 'interfere' with the right to privacy, legislation is required to regulate State action, ensure effective oversight and appropriate redress.

29 A/C.3/65/L.43/Rev.1, OP14. More information on the working groups is available at <http://bit.ly/fKpRdm>.

30 Among the initiatives taken were: GA's creation of a new agency to work on gender equality and women's empowerment (UN Women), GA's adoption of a global plan of action against trafficking in persons; the Council's establishment of a working group on discrimination against women; Security Council's adoption of *Resolution 1960* to combat impunity for mass rape; Secretary-General's launch of a global strategy on women and children's health.

31 OP8 of A/C.3/65/L.17/Rev.2. This language was taken from the Beijing Declaration.

32 See ISHR news story on 'traditional values and human rights' seminar at <http://bit.ly/fNgkuK>.

33 A/C.3/65/L.28. The African Group proposed a reference to 'harmful aspects of certain traditional, customary or modern practices' in OP8.

34 For example, Latin American States (led by Guatemala) strongly objected to the deletion of agreed language on violence against indigenous

cal statements from Morocco (on behalf of the Arab Group), the Russian Federation, Pakistan and the Holy See. They stressed religions' long history of safeguarding the well-being of all people. The Russian Federation added that harmful practices should be distinguished from traditional values, as the latter contributed to the enjoyment of human rights.

Another notable change to the resolution was its conversion to a biennial 'omnibus' text that deals with all aspects of eliminating violence against women.³⁵ To ensure the resolution more comprehensively reflects States' legal obligations to prevent violence from occurring, the co-sponsors successfully incorporated more than ten recommendations from the report of the Special Rapporteur on violence against women³⁶ Changes were also made to equally recognise the work of the International Criminal Court and the ad hoc international criminal tribunals to end impunity for rape and other crimes of sexual violence.³⁷

Potential for a convention on the rights of older persons

In an historic move, and despite considerable resistance from some Western States, the General Assembly agreed to establish an open-ended working group to strengthen the protection of the human rights of older persons.³⁸ It will consider the existing international framework for the human rights of older persons and identify '...possible gaps and how best to address them, including by considering ...the feasibility of further instruments and measures'. Although this does not guarantee a legally-binding convention will result,³⁹ it is the first time UN resources will be used to facilitate inclusive, expert and focused discussion on how best to improve the lives of older persons. The first meeting of the working group will take place in early 2011 to decide on a programme of work. This and other meetings of the working group will be held in New York, and will be open to participation by States, 'relevant NGOs with an interest in the matter', UN special procedures, treaty bodies and others. It is anticipated the working group will hold two subsequent meetings in 2011.

General Assembly overturns agreed language on the right to development

In 2010 Cuba (on behalf of the Non-Aligned Movement (NAM)) introduced new language to suggest a legally-binding international standard on the right to development, however this proved a step too far for most Western States.⁴⁰ Not only

was this a departure from language agreed in the General Assembly for several years, it also ran counter to the Council resolution on the same issue that had been adopted only a matter of weeks earlier. Although only a handful of States spoke up,⁴¹ they consistently criticised the main sponsor for its unwillingness to consider constructive proposals that might have allowed for adoption by consensus.⁴²

Most of the States that voted 'no' expressed support for the right to development and indicated their preparedness to continue to engage in discussions on the matter in Geneva. Nonetheless Belgium (on behalf of the EU) suggested NAM should bring a procedural resolution to the next General Assembly and leave the substantive discussions to the Council.

World conference on indigenous peoples

At the instigation of Bolivia, the General Assembly agreed to hold a high-level meeting in 2014 to 'share perspectives and best practices on the realisation of the rights of indigenous peoples'.⁴³ Details relating to how indigenous peoples will participate are to be determined by the President of the General Assembly, following consultations with States and indigenous peoples. The challenge will be to balance UN security restrictions that apply during all high-level events, with the need to ensure indigenous representatives can participate in a manner they consider meaningful and empowering.

COUNTRY RESOLUTIONS

For the third year running, the General Assembly only dealt with the human rights situation in three countries: the Democratic Peoples' Republic of Korea (DPRK), Myanmar and Iran. With the universal periodic review (UPR) well established at the Council, much of the discussion focused on the principled objection of NAM members and others (Brazil, China, and the Russian Federation) to country specific resolutions in New York. However, many NAM members either voted in support of one or more of the resolutions, or abstained.⁴⁴ The DPRK's non-acceptance of all 161 UPR recommendations, along with its long-standing refusal to cooperate with the UN human rights system, was the likely reason for deviation from the NAM policy in the case of the DPRK resolution.⁴⁵ The DPRK's failure to return abducted Japanese citizens also prompted some States to support the resolution.⁴⁶

developed into the basis for consideration of an international legal standard rather than agreed language of 'evolve into a basis for consideration of an international legal standard'.

women, which was ultimately reinserted (PP4 of L.17).

35 The practice up until 2010 has been to alternate the focus of the resolution each year between the responsibilities of States to end violence against women, and the role of the UN system in this respect.

36 OP16.

37 PP5 and OP18.

38 A/C.3/65/L.8/Rev.1, sponsored by the G77 and China, was adopted by consensus.

39 Other potential outcomes include the establishment of a Special Rapporteur, or development of an optional protocol to the ICCPR or ICESCR.

40 OP8 of A/C.3/65/L.41/Rev.1 suggested the standards would be

41 Belgium (on behalf of the EU), Canada, Switzerland, and the US.

42 The resolution was adopted by vote, at the request of the US, 133:24:28 (for:against:abstentions).

43 A/C.3/65/L.22/Rev.1.

44 Chile voted in favour of all three country resolutions, whereas Colombia and the Philippines consistently abstained. India voted against the resolution on Myanmar, but abstained from the votes on DPRK and Iran. Benin and Brazil both abstained from the votes on Myanmar and Iran, and Brazil continued its positive vote on the DPRK as at the Council.

45 A/C.3/65/L.47. The vote on the DPRK resolution was 106:20:57.

46 Benin, a NAM member, voted in favour of the resolution on the DPRK to

In the case of Myanmar and Iran, the motivations behind States' voting patterns were more complicated. Both texts were significantly strengthened, though only the resolution on Iran was adopted with a wider margin than in recent years.⁴⁷ It remains to be seen whether this outcome is helpful to those States that want to ensure the General Assembly and the Council continue to adopt country resolutions.

The passage of the EU's resolution on Myanmar⁴⁸ through the Third Committee was complicated by the first national elections in 20 years being held mid-session, on 7 November. This led several key regional power brokers, such as China and some Association of Southeast Asian Nations (ASEAN) members, to warn of the adverse consequences for the country and the region, if the international community sought to intervene at such a critical moment. These factors weighed on EU members, who ultimately decided not to call for establishment of a commission of inquiry to investigate mass atrocity crimes in Myanmar since 2002.⁴⁹ Although this was a central recommendation of the Special Rapporteur on Myanmar, its omission from the text probably helped to discourage Myanmar from bringing a non-action motion. Nonetheless, the EU stood firm on its harsh criticism of the electoral process in Myanmar, and one ASEAN member (Philippines) agreed the election irregularities should be addressed.⁵⁰

On many issues, the EU was able to strengthen existing language. A range of benchmarks were established⁵¹ to enable both the Council and the General Assembly to review Myanmar's progress over the coming year. If its actions fall short, the call for a commission of inquiry could well be revived in 2011.⁵²

The surprise amongst the country resolutions was Canada's text on Iran. The increase in support for the text was not widely anticipated,⁵³ nor was the embarrassing margin of defeat that Iran's no-action motion suffered in the Third Committee.⁵⁴

show solidarity to Japan. It explained this was the first time it ever supported a country resolution. Brazil also cited the DPRK's record on abductions as a factor in its 'yes' vote.

47 The vote on the Myanmar text was 85:25:46 (for:against:abstentions), as compared to the 2009 vote of 86:23:39. The vote on the Iran resolution was 78:45:59 as compared to the 2009 vote of 74:49:59.

48 A/C.3/65/L.48/Rev.1.

49 More information is available at <http://bit.ly/grDkaY>.

50 Brazil, China and Vietnam welcomed the elections, particularly their peaceful nature. India, Indonesia and Thailand regarded the elections as a positive step.

51 These included calling on the Government to undertake an independent investigation into human rights violations 'without further delay, and to initiate an inclusive post-election phase'.

52 The Council's special procedures mandates on the DPRK and on Myanmar both expire in March 2011, and the Council will have to decide on their continuation. It is not clear how this will affect future resolutions at the General Assembly on these countries.

53 A/C.3/65/L.49.

54 The vote on the no-action motion in 2010 was lost by 40 votes: 51:91:32. The no-action motion was said to be a last-minute decision by the high-level delegation from Tehran that came to lobby against the resolution. Iran last attempted a no-action motion in 2008, which it lost by ten votes (70:81:28), and in 2007 its no-action motion was lost by only one vote (78:79:24).

Canada erred on the side of caution with the content of the text, and did not take up the recommendation of several human rights organisations to establish a follow-up mechanism on Iran. It also omitted any reference to the official visit to Iran by the High Commissioner for Human Rights, which she vowed to undertake in 2011.⁵⁵ Instead, the resolution presents a range of measures that will heighten the level of scrutiny of the human rights situation in Iran over the coming year, by both the General Assembly and the Human Rights Council. Key among these is a request that the Secretary-General submit an interim report to the 16th session of the Council (March 2011), which is yet to address the situation in Iran. The Secretary-General's annual report to the next General Assembly on the same matter should include 'options and recommendations to improve' the implementation of the resolution, thereby leaving the door open for the Secretary-General to suggest an appropriate follow-up mechanism. In addition, the resolution 'strongly encourages' Iran to 'seriously consider' the recommendations from its UPR, and to do so with the 'full and genuine participation of civil society'.

In response to the concerns raised in the Secretary-General's report, the General Assembly also supported strong language to protect human rights defenders, journalists, religious minorities, political opponents, students and other groups be retained or further strengthened.

INSTITUTIONAL DEVELOPMENTS

Review of the Council should address reporting and resourcing problems

The process for adoption of the Council's report followed a similarly complicated path to the previous year. The Third Committee was asked to consider numerous recommendations from the Council that required action, and the plenary of the General Assembly dealt with the report as a whole.⁵⁶

In the Third Committee some recommendations were addressed individually in separate resolutions,⁵⁷ in addition to a general resolution sponsored by the African Group that 'acknowledged' all the recommendations.⁵⁸ The EU object-

55 The High Commissioner made this announcement in April 2010, when she expressed concern about Iran's violent response to protesters during and after the 2009 presidential elections. See <http://reut.rs/ei3Fnh>.

56 The annual report to the GA comprised of the reports of the 12th-15th sessions of the Council, and the report of the 13th special session (A/65/53 and A/65/53/Add.1). The seven recommendations and requests were contained in Resolutions 15/1 (follow-up to fact-finding mission on the humanitarian flotilla); 15/7 (expansion of indigenous Voluntary Fund); 15/10 (leprosy); 15/18 (20th anniversary of working group on arbitrary detention); 15/21 (new Special Rapporteur on rights to freedom of assembly and association); 15/23 (new working group on discrimination against women in law and practice); 15/26 (working group to consider an international regulatory framework for private military and security companies). The latter four of these resolutions contained programme budget implications.

57 Leprosy (A/C.3/65/L.37). Right to truth (A/C.3/65/L.59), enforced disappearance (A/C.3/65/L.30).

58 A/C.3/65/L.57.

ed to this approach on procedural grounds. It argued States should be given an opportunity to present their views on each of the Council's recommendations, and the Third Committee should not comment on the report as a whole. Together with other delegations, the EU reiterated its objection to the Council's report being taken up in the Third Committee, rather than the plenary of the General Assembly.⁵⁹

At the request of Israel, the general resolution on the Council's report was put to a vote. Israel objected to being unfairly targeted by the Council. Although Israel did not refer to it directly, Morocco (on behalf of the OIC) and Turkey drew attention to the Council's recommendation the General Assembly consider the report of the fact-finding mission that investigated Israel's attacks on the so-called Flotilla.⁶⁰ As a staunch ally of Israel, this resolution placed the US in a difficult position. It explained that, as a member of the Council, it had been proud to support a number of its resolutions over the past year. However, there were a number of resolutions that unfairly singled out Israel and excluded violations by Hamas, which it could not support. Together with the EU and some Latin American States, the US abstained.⁶¹ The report was supported by 123 States, with only Israel voting against it.

The President of the Council presented the Council's report to the Third Committee and the plenary, and emphasised the review of the Council provided a 'timely opportunity to address the relationship between the General Assembly and the Human Rights Council'. In particular, he appealed to the General Assembly to align the Council's reporting cycle with that of the General Assembly, as this would help provide 'adequate financial and political backing' and ultimately enable the Council to promptly respond to human rights issues.⁶² He explained that currently, newly-established Council activities and mandates were either being postponed or supported by reallocating resources on a temporary basis, which had negative implications for both the Council and the work of OHCHR. When States discussed the report of the Council, most agreed these procedural and technical issues required effective solutions and should be addressed when the General Assembly undertakes its review of the status of the Council.⁶³

The High Commissioner for Human Rights also touched on the review in her address to the Third Committee, and referred to the OHCHR non-paper on the review.⁶⁴ She also offered constructive suggestions to improve the flow of information between the Council and General Assembly, to help ensure Council decisions with financial implications are implemented in a timely manner. One suggestion was that the General Assembly take up the relevant issues soon after they have occurred in the Council, rather than waiting until the end of the year to do so. An alternative or complementary idea could be to establish a contingency fund to provide money at required times.

States reluctant to approve additional resources for treaty bodies without system-wide reforms

Two separate resolutions regarding the Committee Against Torture (CAT) and the Committee on the Elimination of Racial Discrimination (CERD) were presented by Denmark and Slovenia respectively.⁶⁵ Both requested increased resources to enable the Committees to hold additional meetings, on a temporary basis, to eliminate backlogs in State party reports and communications.⁶⁶ In addition, the resolution on torture requested adequate staff and facilities be provided to the CAT, the Sub-Committee on the Prevention of Torture and the Special Rapporteur on torture to ensure they could fulfil their mandates.⁶⁷

The resource requests were not well received by many States, particularly Japan, the Russian Federation and the UK. Drawing on the findings of a report by OHCHR on the issue,⁶⁸ the UK and the Russian Federation successfully pushed for the resolutions on CAT and CERD to call on the Secretary-General to report to the next General Assembly on 'concrete and tailored proposals' for treaty body reform. This report should propose how to improve the effectiveness of the treaty bodies, identify efficiencies in their working, and suggest how they can better manage their workloads. ■

59 Norway (on behalf of Iceland, Liechtenstein, New Zealand, and Switzerland), Canada, Costa Rica, and Mexico.

60 The report concluded Israel violated international humanitarian law and human rights law and that its blockade of Gaza was illegal. More information is available at <http://bit.ly/f9n7mg>.

61 Latin American States were split. Argentina, Brazil, Uruguay, and Mexico abstained, whereas Bolivia, Chile, Colombia, and Peru voted in favour. Last year, the report of the Human Rights Council was adopted by consensus.

62 Under the current arrangements, the Council's annual reporting cycle is from 1 July to 30 June. This means resolutions with budget implications from the Council's September session are not considered by the GA until the following year. The GA has agreed on an ad hoc basis to bring forward its consideration of the report of the September session, but each year this procedural issue leads to uncertainty.

63 The review of the status of the Council, which is mandated in GA resolution 60/251, began on 1 December 2010, when the co-facilitators held the first informal meeting to discuss the possible scope of the process.

64 See <http://bit.ly/enhqD5>. The non-paper discusses governance issues related to the review of Council status, including the reporting line of the Council to the GA, the Council's reporting cycle, and the Council report's format.

65 Although it was not a matter for the GA, delegates were also aware of a budget request for additional meeting time from the Committee on Economic, Social and Cultural Rights. ECOSOC deferred this request to 2011 when the Chairperson of the Committee is invited to address the Council to speak to the request.

66 CAT requested an additional week of meetings be added to each of its two sessions in 2011 and 2012 (a total of four extra weeks). CERD made a similar request, but States reduced it to apply only to 2012.

67 OP37 of A/C.3/65/L.26/Rev.1.

68 A/65/317. It recommended a comprehensive study on the resource requirements of the treaty bodies be undertaken, with particular emphasis on meeting time, staffing levels, conference facilities and documentation.