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Overview

This year the Third Committee of the 62nd General Assembly (GA) considered four country-specific resolutions under agenda item 70(c).¹ These related to the Democratic People's Republic of Korea (DPRK), Myanmar, Iran and Belarus. All of the resolutions were ultimately adopted after lengthy and heated debates, and despite 'no-action motions' being proposed in relation to all but the DPRK resolution. The level of resistance towards the resolution on Iran in the GA plenary resulted in the proposal of a second a no-action motion, as well as the unusual attempt to make an oral amendment to the text,² both of which were unsuccessful. Unlike in previous years, there were no retaliatory country-specific resolutions initiated by the States who were the subject of such resolutions.

Consideration of country-specific matters was as controversial as it has been in previous years, though the political agreement struck in the Human Rights Council's (HRC) on its institution building package in the months prior to the GA's 62nd session added a new element to the long-standing regional tensions. The HRC's adoption of the Universal Periodic Review (UPR) mechanism to individually review the human rights record of each UN Member State, meant that many States belonging to the Non-Aligned Movement (NAM) expressed strong opposition to the Third Committee continuing to consider country-specific resolutions. They argued repeatedly that the HRC's UPR mechanism provides a non-selective, non-confrontational and non-political means of addressing human rights concerns through direct dialogue and engagement with States, and criticised the Third Committee for undermining the HRC's authority to exclusively deal with these matters. NAM's strong advocacy of the UPR mechanism as the circuit breaker for political debate in the Third Committee only adds to the already significant pressure on this mechanism to deliver on expectations.

Despite the controversy, the voting patterns of the Third Committee on the country-specific resolutions and the concern on the part of many members of the Western European and Others Group (WEOG) that the universal body continue to consider any country situation that raises a serious human rights issue, suggest that there is sufficient will for this type of resolution to continue. Most States are aware that the overlapping roles and responsibilities of the HRC and the Third Committee need to be addressed, but the effectiveness of the UPR mechanism, which commences operation in 2008, will play a key role in determining the division of responsibilities between the two bodies. The fact that the HRC is a standing body that theoretically has the ability to address human rights violations year-round, will also be a factor in this evaluation.

Also under agenda item 70(c), the Third Committee considered the reports of, and held interactive dialogues with, the Special Rapporteurs on the human rights situation in the

¹ Agenda item 70: Promotion and protection of human rights (c) Human rights situations and reports of special rapporteurs and representatives.

² The no-action motion was proposed by the Islamic Republic of Iran (Iran), and the oral amendment by Venezuela.

DPKR, Myanmar, the Occupied Palestinian Territory (OPT) and the Sudan, and the Independent Experts on the situation of human rights in the Democratic Republic of the Congo (DRC) and Burundi. With the exception of Burundi, each of the special procedures reported that the human rights situation had failed to improve or had worsened over the course of the year. However the OPT, Sudan, DRC and Burundi all continue to experience serious human rights violations and are struggling to address an entrenched atmosphere of impunity. The absence of political stability is a further impediment to demonstrable improvements in peoples' ability to more fully enjoy their human rights in these countries.

The reports from the High Commissioner for Human Rights on the human rights situation in Nepal³ and Northern Uganda⁴ which were introduced on the opening day of the Third Committee brought considerable drama to proceedings. Both Nepal and Uganda were highly critical of OHCHR for failing to make copies of the reports available to them prior to their consideration by the Committee, and argued that due process had not been followed. Rather than inquiring with OHCHR about the circumstances surrounding the submission of these reports, or deferring consideration of them to another time, the Committee, on the suggestion of the Chairperson, decided to withdraw them from the agenda altogether.

SITUATION OF HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (DPRK)

Information before the Committee

The Third Committee considered two reports on the human rights situation in the DPRK:

- Secretary-General's report on the situation of human rights in the DPRK;⁵ and
- Special Rapporteur's report on the situation of human rights in the DPRK.⁶

While the reports acknowledge that there have been some modest improvements within the country and positive developments in bilateral and multilateral discussions, both emphasise the grave, widespread, and systemic nature of the human rights abuses that continue to occur. The Secretary-General's report notes the limited progress that has been made in implementing the recommendations of past UN resolutions, treaty body reports, and special procedures and thus calls on the Government of the DPRK to extend free and full access to UN agencies and other humanitarian actors to carry out their mandates, including the Office of the High Commissioner for Human Rights (OHCHR).

³ A/62/346.

⁴ A/62/347.

⁵ See A/62/318 available at: <http://www.un.org/ga/third/62/docslst.shtml>

⁶ See A/62/264 available at: <http://www.un.org/ga/third/62/docslst.shtml>

The Special Rapporteur's report makes similar recommendations to the Government of the DPRK, emphasising also his need gain entry to the country to properly carry out his mandate. This report draws heavily on the Special Rapporteur's report to the fourth session of the Human Rights Council.⁷

Presentation of the Special Rapporteur on the situation of human rights in the DPRK⁸

The Special Rapporteur on the situation of human rights in the DPRK, **Mr. Vitit Muntarbhorn**, addressed the Third Committee on 26 October 2007. After providing an oral summary of his report,⁹ the Special Rapporteur referred to several of its recommendations which were directed at both the Government of the DPRK and the international community. The Special Rapporteur noted where the DPRK had made progress, including that it is now party to four international human rights instruments,¹⁰ permitted entry to various U.N. agencies for specific humanitarian-focused efforts, and amended its criminal procedure codes in 2004 and 2005. The six party talks aimed at denuclearising the DPRK,¹¹ along with developments following the October 2007 summit between the DPRK and the Republic of Korea were also welcomed.¹² However, as in his most recent report to the Human Rights Council, the Special Rapporteur stressed that the human rights situation remains grave, particularly in relation to:

- the right to food and nutrition;
- enjoyment of fundamental freedoms, including security of person, humane treatment and justice, particularly for more vulnerable groups;
- the right to asylum; and
- the responsibility of State authorities to protect its citizens' human rights.

Interactive Dialogue

The DPRK reiterated its outright rejection of the resolution establishing the Special Rapporteur's mandate, arguing that it was “full of fallacies”. However the DPRK asked a rhetorical question of the Special Rapporteur, which he welcomed and noted was the first

⁷ See A/HRC/4/15 available at <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/KPIndex.aspx> .

⁸ The mandate was established by the Commission on Human Rights in *Resolution 2004/13* for an unspecified duration. It was extended for one year in *HRC Resolution 2005/11*. In *Decision 1/102*, the HRC extended all mandates and mandate holders of the CHR exceptionally for one year. The mandate will therefore be considered again by the HRC at its 7th session in March 2008. The Government of the DPRK has not accepted the mandate and has not afforded the Special Rapporteur any cooperation or assistance.

⁹ See A/62/264 available at: <http://www.un.org/ga/third/62/docslst.shtml>

¹⁰ *The International Covenant on Civil and Political Rights (ICCPR)*, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, *Convention on the Rights of the Child (CRC)* and *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)*.

¹¹ The six parties involved in these talks are China, DPRK, Japan, Republic of Korea, Russian Federation, and the USA.

¹² For more information on the talks between the DPRK and Japan in 2002, see: <http://www.fpri.org/enotes/asia.20021203.rozman.japanrelationsnorthkorea.html>

of its kind.¹³ The DPRK also explained that human rights are just as much about protecting the rights and freedoms of their people as they are about protecting the dignity and sovereignty of the nation. Pointing out that the DPRK had a history of cooperation on human rights matters, including with the Special Rapporteur on violence against women as well as with delegations from the European Union (EU) and Amnesty International, it made clear that the creation of the mandate of the Special Rapporteur had put an end to this approach.

Several States asked the Special Rapporteur to elaborate on the six-party talks.¹⁴ He commented that they offered a platform for human rights concerns to be discussed and that they may herald a more auspicious period of multilateral and bilateral cooperation between the DPRK and other States, as well as with UN agencies.

The Special Rapporteur raised the matter of people seeking asylum from the DPRK because of hunger, and noted that they could be regarded as refugees because they had a well-founded fear of persecution if they were to return or were sent back. Although this category of refugee does not fit the traditional definition, he called on the international community to assist countries of first asylum to find durable solutions to this problem, and the associated problem of people smuggling. This prompted questions from several States, including one from the EU as to whether the UN High Commissioner for Refugees (UNHCR) had a role in this regard.¹⁵

The Special Rapporteur sympathised with first-asylum countries that were fearful of mass exodus from the DPRK and urged the international community to provide assistance to these countries, in addition to meeting the needs of those seeking refuge. He stressed that UNHCR should have full access to refugees wherever they are. With respect to the smuggling and trafficking of refugees, the Special Rapporteur noted that the DPRK has some relevant laws, but the problem is driven by criminal elements working across the borders. He urged all countries to review the tenets in the *Convention on Transnational Organized Crime*.¹⁶

Draft resolution on the situation of human rights in the DPRK¹⁷

In this resolution the GA:

¹³ The DPRK asked if the Special Rapporteur had ever considered addressing the human rights violations of individual countries through the treaty body process, rather than singling out a country through a resolution.

¹⁴ These included: Portugal, Japan, Republic of Korea and the EU.

¹⁵ Other States to ask questions about the refugee situation and people smuggling included the USA and the Republic of Korea.

¹⁶ For more information on the *United Nations Convention against Transnational Organized Crime* and its Protocols, see: http://www.unodc.org/unodc/crime_cicp_convention.html

¹⁷ See A/C.3/62/L.37/Rev.1: <http://www.un.org/ga/third/62/proplist.shtml>

- *Strongly urges* the government of the DPRK to end all human rights violations, and to implement relevant resolutions from the GA and Commission on Human Rights and recommendations from UN special procedures and treaty bodies.¹⁸
- *Strongly urges* the DPRK to tackle the root causes of refugee outflows and criminalise those exploiting refugees through smuggling, trafficking and extortion – not victims (new operative paragraph).¹⁹
- *Strongly urges* the government to extend its full cooperation to the Special Rapporteur on the DPRK, to engage in technical cooperation activities with OHCHR, and to grant access to UN agencies and other humanitarian actors in support of their mandates.²⁰
- *Strongly urges* the DPRK to ‘urgently resolve’ questions of international concern relating to the abduction of foreigners by enforced disappearances, including by ensuring the immediate return of abductees.²¹
- *Notes* ‘the prompt action’ of the Government of the DPRK to the latest floods and its preparedness to seek foreign assistance, but is highly critical of the Government’s overall misallocation of resources away from its basic infrastructure and its failure to allow humanitarian agencies access to all areas in need.²²
- *Decides* to continue its examination of the situation of human rights in the DPRK and requests reports from both the Secretary-General and the Special Rapporteur at its 63rd session.²³

This resolution was submitted by **Portugal** on behalf of the EU and **Japan** and is the third time a resolution on this matter has been considered by the Third Committee in as many years. When introducing the resolution, Portugal explained that it had 54 co-sponsors, but had been unable to engage the DPRK in negotiations on the text.

Japan also explained that the resolution was prompted by the DPRK’s failure to take steps to implement last year’s resolution, and from Japan’s perspective, its ongoing and serious concern about the abduction of foreigners in the DPRK. The resolution was designed to send a very clear message from the international community to the DPRK to work constructively with the various UN human rights mechanisms and to uphold its international human rights obligations. Japan also argued that the GA is the sole universal body in the UN system with responsibility for human rights, and given that the Human Rights Council’s universal periodic review process will only commence in 2008 and will not be able to consider the DPRK for a further two years, it was incumbent on all States to vote in favour of the resolution.

Although there are strong similarities between this year’s text and last year’s,²⁴ the EU and Japan have reworked the structure of the resolution to more clearly set out what

¹⁸ OP4(a).

¹⁹ OP4(b).

²⁰ OP4(c).

²¹ OP2.

²² OP3.

²³ OP5.

²⁴ A/Res/61/174 available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

human rights violations are of ‘serious concern’ and the kinds of actions the international community expects of the DPRK to address them. More prominence has been given to the abduction of foreigners,²⁵ and a new sub-paragraph included to express ‘serious concern’ about violations of workers’ rights, which includes a reminder of the prohibition of the economic exploitation of children.²⁶

To give effect to recommendations contained in the Special Rapporteur and Secretary-General’s reports, the resolution ‘strongly urges’ the DPRK to ‘tackle the root causes leading to refugee outflows and criminalise those who exploit refugees by human smuggling, trafficking and extortion’.²⁷ The Government is also ‘strongly urged’ to allow humanitarian actors ‘all access necessary’ to carry out their mandates.²⁸

Other new language includes efforts on the part of the co-sponsors to acknowledge where the DPRK has sought to address aspects of the human rights situation, or engage with the international community. For example, a new preambular paragraph welcomes the outcome of the inter-Korean summit in October 2007, as well as the recent progress achieved in the Six-Party Talks.²⁹ A second new preambular paragraph ‘notes with appreciation’ the efforts of the DPRK to collaborate with the UN Children’s Fund and the World Health Organization.³⁰ However although the text ‘[n]otes the prompt reaction of the Government of the DPRK to the latest floods’ and the ‘openness shown in seeking outside assistance’, it goes on to repeat old criticisms about the precarious humanitarian situation that is compounded by the misallocation of resources away from basic need.³¹

It is also worth noting that reference to ‘treason’ (in relation to the situation of refugees) has been removed from the text.³²

The vote

In its statement made before the vote, the North Korean delegation categorically rejected the resolution saying that both the EU and USA were leading a plot to eliminate his country’s ideology and system of government. The DPRK questioned why the EU was not drawing attention to the human rights violations occurring in Iraq or the suppression of Koreans in Japan.

Many other States also voiced their opposition or explained that their abstention was on the basis that:

²⁵ OP1(b)(v) of A/Res/61/174 expressed ‘very serious concern’ about abduction of foreigners, but listed it as one of seven such concerns. In contrast, this year’s text addresses this issue in more detail in a stand-alone operative paragraph (OP2).

²⁶ OP1(b)(viii).

²⁷ OP4(b).

²⁸ OP4(e).

²⁹ PP8, which was added by oral amendment prior to consideration of L.37 by the Third Committee.

³⁰ PP5.

³¹ OP3.

³² The reference to treason appeared in OP1(b)(ii) in last year’s resolution (A/Res/61/174).

- the HRC is a more appropriate forum for discussion of the matter;³³
- they do not support 'politicised' and 'selective' country specific resolutions;³⁴ or
- they have an in principle opposition to country-specific resolutions.³⁵

The resolution, called to a vote by the North Korean delegation, was adopted with 97 States in favour, 23 in opposition, and 60 in abstention.³⁶ Last year the resolution passed by a similar majority both at the Third Committee (90:21:58).

Following the vote, a number of States wished to draw attention to their concerns about the abduction of foreigners in the DPRK, and explain how this influenced their vote. For example, although Indonesia voted against the resolution, it called upon the DPRK to pay attention to the legitimate concerns expressed by the international community about the situation on the ground, including the abduction of foreigners, and to adhere to the human rights instruments it has ratified. Other States who had earlier expressed an in-principle opposition to country-specific resolutions or abstained from the vote on the DPRK took the floor to condemn the abduction of nationals of one country by another.³⁷

The resolution was also adopted in the General Assembly with more States voting in favour of its adoption as compared to the Third Committee (101:22:59).³⁸ Last year the resolution also passed by a clear majority in the General Assembly (99:21:56).

SITUATION OF HUMAN RIGHTS IN BELARUS

Information before the Committee

This year the Third Committee was not able to consider a report from a special procedure or to engage in an interactive dialogue on this matter as the mandate had been discontinued by the 5th session of the Human Rights Council. This decision was part of the political agreement struck by Member States of the HRC during negotiations on the

³³ Costa Rica, Ecuador, Algeria and Guatemala.

³⁴ Egypt, Belarus, Venezuela and Cuba (on behalf of NAM).

³⁵ Malaysia, Vietnam, India, China and Nepal.

³⁶ WEOG States voted in favour of the resolution, along with some African States (Malawi, Morocco, Ghana, Eritrea, Burundi, Liberia) and some Latin American States (Argentina, Brazil, Chile, Mexico, Uruguay, Panama, Paraguay, Peru). Those voting against included several African, Arab and Asian States (Zimbabwe, Syria, Uganda, Sudan, Libya, Egypt, Algeria, Iran, DPRK, Laos, Malaysia, Myanmar, Indonesia, China, Vietnam) plus the Russian Federation, Belarus and Cuba. Those abstaining included: Singapore, Thailand, India, Nepal, Pakistan, Ethiopia, Senegal, South Africa, Columbia and several Caribbean States.

³⁷ India abstained from the vote on the resolution; Vietnam voted against it; Columbia did not express a particular position on country-specific resolutions, but abstained from the vote on the DPRK resolution.

³⁸ The voting pattern in the plenary was along similar lines to that in the Third Committee. For further details see A/62/439/Add.3, p.6-7.

institution building package.³⁹ The Special Rapporteur's last official engagement was at the 5th session of the HRC when he presented his report⁴⁰ and participated in a generally hostile interactive dialogue.⁴¹

Draft resolution on the situation of human rights in Belarus⁴²

The **United States of America** (USA) again sponsored a resolution on the situation of human rights in Belarus.⁴³ In contrast to last year, Belarus did not bring a counter-resolution against the USA this year.⁴⁴

In this resolution the GA:

Expresses deep concern at:

- The continued use of the criminal justice system to silence political opposition and human rights defenders (new operative paragraph).⁴⁵
- The arbitrary application of registration standards to prevent NGOs from operating (new operative paragraph).⁴⁶
- The continued and persistent reports of harassment and closure of NGOs and a range of civil society organisations, as well as the harassment and prosecution of individuals (particularly students) engaged in the protection and promotion of human rights, the rule of law and democracy.⁴⁷

³⁹ The HRC discontinued country specific mandates on Belarus and Cuba at its 5th session in June 2007. There was a clear division amongst those States who supported the mandate holders and wanted their mandates to continue in both countries (such as the EU, USA, Canada), and those who opposed the mandates (such as the Russian Federation, South Africa, Iran, Indonesia, Malaysia, China, Venezuela, India, Pakistan, the DPRK and Cuba). The discontinuation of the two country-specific mandates remains a matter of contention for many States from the Western and Other Group. Canada for example, has pointed out that the HRC did not have an opportunity formally decide to discontinue the mandates, and that due process was not followed.

⁴⁰ See A/HRC/4/16, 15 January 2007.

⁴¹ On 12 June 2007, when the Special Rapporteur participated in the interactive dialogue, he explained that he had been unable to visit Belarus because authorities had consistently rejected his mandate and refused to cooperate with him. Although some States praised the Special Rapporteur for his work, many others called on the Council to abolish all its country specific mandates. Those promoting this course of action advocated the creation of a code of conduct with regard to the work of the Special Procedures of the Council, which was subsequently adopted in HRC *Resolution 5/2*. For a summary of the interactive dialogue, see ISHR's *Council Monitor*, HRC 5th session, daily update 12 June 2007, available at <http://www.ishr.ch>

⁴² See A/C.3/62/L.51. Available at: <http://www.un.org/ga/third/62/propslist.shtml>

⁴³ Last year it sponsored a resolution by the same name, A/C.3/61/L.40. Available at: <http://www.un.org/ga/61/third/proposalslist.shtml> The text as adopted by the GA is contained in A/RES/61/175, available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

⁴⁴ See [A/C.3/61/L.42](http://www.un.org/ga/61/third/proposalslist.shtml) available at <http://www.un.org/ga/61/third/proposalslist.shtml>

⁴⁵ OP1(a).

⁴⁶ OP1(d).

⁴⁷ OP1(g). Rather than referring to civil society organisations, OP1(g) lists the following entities that are subject to these practices: national minority organizations, independent media outlets, religious groups, opposition political parties and independent trade unions, independent youth and student organizations. This year's text particularly emphasises the impact of these practices on students, especially those returning to Belarus.

- Belarus' failure to meet its commitments to hold free and fair elections during municipal elections in January 2007 (new operative paragraph).⁴⁸

Urges the Government:

- To release immediately and unconditionally all individuals detained for political reasons or for exercising or promoting human rights (new operative paragraph).⁴⁹
- To cease politically motivated prosecution, harassment and intimidation of political opponents, pro-democracy activists, human rights defenders, other civil society organisations and students.⁵⁰
- To bring the electoral process and legislative framework into line with international standards.⁵¹
- To investigate and hold accountable those responsible for the mistreatment, arbitrary arrest and incarceration of human rights defenders and political opponents.⁵²
- To carry out the recommendations of the International Labour Organisation Commission regarding freedom of association (new operative paragraph).⁵³

Insists that the Government:

- Cooperate fully with the HRC and its mechanisms.⁵⁴

The resolution maintains the 'strong concerns' of the GA that were expressed in last year's resolution, adding pre-ambular and operative paragraphs to reflect new developments of concern. For example, last year's resolution emphasised Belarus' failure to hold free and fair presidential elections in 2006, and urged the Government to investigate and prosecute those responsible for the arbitrary use of State power against political opponents, human rights defenders and other pro-democracy groups.⁵⁵ This year, these concerns are repeated and 'disappointment' and 'deep concern' expressed at the Government's failure to hold free local elections in January 2007.⁵⁶ The Government is again 'urged' to bring the electoral process into conformity with international standards.⁵⁷

Another example of the 'further erosion of the democratic process' identified in this year's resolution⁵⁸ is the harassment of students. The resolution 'expresses deep concern' about the harassment and prosecution of students who are returning to Belarus and engaging in the promotion and protection of human rights, the rule of law and democracy. This

⁴⁸ OP1(c).

⁴⁹ OP2(a).

⁵⁰ OP2(b). Rather than referring to civil society organisations, OP2(b) lists the following entities: independent media, national minority activists, religious organisations, educational institutions.

⁵¹ OP2(c).

⁵² OP2(g).

⁵³ OP2(h). For more information, see

http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang-en/WCMS_005226/index.htm

⁵⁴ OP3.

⁵⁵ See A/C.3/61/40 PP5, OP1(b), OP1(c), OP2(a), OP2(e), OP2(g).

⁵⁶ See A/C.3/62/L.51 PP6 and OP1(c).

⁵⁷ OP2(c).

⁵⁸ OP1(b).

concern also extends to their relatives.⁵⁹ The Government is 'urged' to 'create conditions whereby students can continue their studies in Belarus.'⁶⁰

A new course of action that the Government is also 'urged' to take is the immediate and unconditional release of all people detained for political reasons or for exercising or promoting human rights.⁶¹ This is coupled with new calls for all harassment and closures of NGOs to cease,⁶² and for the Government to heed the recommendations of the ILO regarding freedom of association for workers.⁶³

Conspicuously absent from this year's resolution is mention of the abolition of the mandate of the Special Rapporteur on Belarus.

Introducing the resolution, the USA stressed that it was a moderate account of the facts on the ground, rejecting Belarus' claim made in response to other country-specific resolutions, that they are a political tool.⁶⁴ The US highlighted its concern about the dismantling of democratic institutions and referred specifically to Belarus' failure to allow entry to international election observers, the de-registration of political parties and NGOs as well as the detention of their members, secret trials, and increased media censorship. The USA also noted that the 38 co-sponsors of the resolution were unsuccessful in their attempt to 'reach out' to Belarus during the drafting process. Lastly, the USA emphasized that the Third Committee of the General Assembly was the proper venue to address human rights violations, and called upon the body to hold Belarus to account. Norway and Liechtenstein spoke in favour of the resolution.

The ten countries which took the floor in opposition of this resolution,⁶⁵ all regretted the Third Committee continued to allow country-specific resolutions. In their view, these resolutions are contrary to the spirit and letter of the United Nations Charter and had a negative affect on human rights practices. They warned that this type of politicisation and selectivity was responsible for the undermining of the Commission on Human Rights, and argued that the Human Rights Council and its newly established Universal Periodic Review (UPR) was the appropriate place for this discussion as the country under consideration is included in the dialogue. The Russian Federation also commented that the Human Rights Council's decision to abolish the country-specific mandate on Belarus provided a 'clear signal' about the true human rights situation in Belarus.

⁵⁹ OP1(g).

⁶⁰ OP2(b).

⁶¹ OP2(a).

⁶² OP1(g) also includes 'national minority organizations, independent media outlets, religious groups, opposition political parties and independent trade unions, independent youth and student organizations' and students.

⁶³ For more information, *see*

http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_005226/index.htm.

⁶⁴ Belarus took the floor following action on resolutions on the situation of human rights in Myanmar (A/C.3/62/L.41/Rev.1) the Democratic People's Republic of Korea (A/C.3/62/L.37/Rev.1), and Iran (A/C.3/62/L.43) to condemn country specific resolutions as political tools that are selective and biased.

⁶⁵ Uzbekistan, Venezuela, Russia, Syria, Zimbabwe, Turkmenistan, Iran, Sudan, and DPRK.

Additionally, Belarus took the floor to make a statement in response to the resolution. It criticised not only the practice of country specific resolutions, but also more broadly the exchange of statements in the General Assembly in lieu of a real debate. It argued that the Third Committee has the most divisive voting patterns of all the General Assembly Committees, and that this kind of resolution is ineffective in bringing about change. Belarus concluded by asking States to consider how they could move forward from this political stand-off.

The vote

Two votes were taken in relation to the resolution on the situation of human rights in Belarus: first on a no action motion, put forward by the Russian Federation and supported by China and Cuba; and second on the resolution itself after the no action motion was defeated. The resolution was adopted.

In advocating the no action motion, the Russian Federation, China, and Cuba reiterated their criticisms of country-specific resolutions, and their preference for the openness, transparency, and equality of the UPR mechanism in the Council. Cuba and Russia both suggested that the Belarus resolution was undermining and contravening recent decisions of the Council. In opposition to the no-action motion, Portugal (on behalf of the E.U.) and San Marino argued that the universal membership of the Third Committee and its mandate to deal with serious human rights concerns make it an appropriate forum to consider country-specific resolutions.

The no action motion was rejected with 65 votes in favour, 79 against, and 31 abstentions.⁶⁶ Last year the no-action motion, also requested by the Russian Federation, was similarly rejected (67:75:31).

The vote on the resolution resulted in its adoption, although more States abstained than voted in favour of the resolution (68:32:76).⁶⁷ Last year this resolution was also adopted by a vote, although fewer States abstained (70:31:67).

Eight countries⁶⁸ took the opportunity to explain their votes, with all but one (Paraguay, who spoke in favour of the resolution) lamenting country-specific resolutions on principle. Belarus, in closing, assured the Committee that it will recognize neither the

⁶⁶ Most States voting in favour of the no-action motion were NAM members, plus China, India, Singapore, Thailand, Myanmar, DPRK. WEOG States voted against it. African States were divided in their votes with many voting in favour (South Africa, Angola, Gambia, Egypt, Namibia, Botswana, Senegal, Sudan, DRC, Congo, Uganda, Zambia, and Zimbabwe), some abstaining (Ghana, Kenya, Malawi, Mali, Mozambique, Niger, Nigeria) and a few voting against (Burundi, Benin, Liberia, Togo). Caribbean and Latin American States were divided. The voting sheet is available at <http://www.un.org/ga/third/62/votingsheets.shtml>

⁶⁷ WEOG States voted in support of the resolution, and NAM States against it. African States were divided in their voting patterns on the resolution. Most abstained, but a few voted in favour of the resolution (Burundi, Liberia) and several voted against it (Algeria, Gambia, Egypt, Libya, Zimbabwe). Most Caribbean and Latin American States abstained.

⁶⁸ Myanmar, Kyrgyzstan, Egypt, Ukraine, Jamaica, Algeria, and Brazil.

form nor the substance of the resolution, but is optimistic about and ready for engagement with the Human Rights Council.

The vote in the General Assembly mirrored that of the Third Committee with more States in abstention than in support of the vote (72:33:78).⁶⁹ Last year's vote in the GA was similar, but again, not as many States abstained (72:32:69).⁷⁰ Following this year's vote, Belarus advised that it did not recognise the resolution or consider it to hold any legal, political or moral force. However Belarus intended to continue to carry out its legal human rights obligations and will 'interact' with the special procedures of the HRC. It 'looks optimistically' at the HRC, a body it intends to cooperate with.

Other documents

This year, under agenda item 70(c) the Permanent Representative of Belarus submitted to the Committee a letter and attached document entitled 'Certain facts and figures on the protection of human rights in the Republic of Belarus.'⁷¹ This document listed positive information on its human rights record and the legal protections underpinning rights in relation to: freedom of association, freedom of the mass media, freedom of conscience and religion, right to judicial protection, interaction between State agencies and citizens, rights of refugees, gender equality, and social and economic rights. No separate discussion on this document took place.

SITUATION OF HUMAN RIGHTS IN MYANMAR

Information before the Committee

The Committee considered two reports on Myanmar:

- Note by the Secretary-General transmitting the report of the Special Rapporteur on the Situation of Human Rights in Myanmar,⁷² and
- Report of the Secretary-General on the Situation of Human Rights in Myanmar.⁷³

The report of the Special Rapporteur on the Situation of Human Rights in Myanmar focuses on the pattern of human rights violations observed between January and July 2007, which are similar to those highlighted in his previous report. It also outlines the initial steps taken to implement the road-map to democracy, and notes other concrete developments to fight impunity in Myanmar. However, the report deplores the fact that the Special Rapporteur had not been able to visit Myanmar since 2003, and encourages

⁶⁹ This reflected the fact that most States voted in the GA as they had in the Third Committee.

⁷⁰ For more information on the vote, refer to the voting sheet available at <http://www.un.org/ga/61/third/votingrecords/c3140.pdf>

⁷¹ A/C.3/62/4. Available at <http://www.un.org/ga/third/62/doclist.shtml>.

⁷² A/62/223. Available at: <http://www.un.org/ga/third/62/doclist.shtml>

⁷³ A/62/498. Available at: <http://www.un.org/ga/third/62/doclist.shtml>

the international community to pursue a range of strategies and cooperation with the Government of Myanmar to promote political transition and basic human rights.

The report of the Secretary-General is more up-to-date, covering the intensification of his good offices in Myanmar in response to the civil unrest that broke out on 19 August 2007. It emphasises that the Secretary-General is 'committed to make every effort to ensure that the United Nations can continue to work in partnership with Myanmar and support its efforts towards national reconciliation, the transition to democracy and full respect for human rights'. The report notes this will require the 'active support of the international community', particularly ASEAN countries, and welcomes their constructive role to date.⁷⁴

Presentation of the Special Rapporteur on the situation of human rights in Myanmar⁷⁵

On 24 October 2007, the Special Rapporteur, **Paulo Sérgio Pinheiro**, presented his annual report⁷⁶ to the Third Committee on the situation of human rights in Myanmar.⁷⁷ Although his report predated the recent public protests in Myanmar, his statement to the Third Committee focussed on the 'tragic events' that began in Myanmar on 19 August and continued through September 2007. His remarks echoed those he had made only a matter of weeks earlier to the Human Rights Council at its 5th special session which also addressed the human rights situation in Myanmar.

In his presentation to the General Assembly, the Special Rapporteur was particularly concerned about the use of excessive force (including killings, torture and disappearances) used to repress peaceful demonstrations, as well as the arbitrary arrest of peaceful protesters by security forces, non-law enforcement officials and non-State armed groups. He pointed to the need for:

- The immediate and unconditional release of all political prisoners;
- Violations of international law to be investigated and prosecuted;

⁷⁴ These extracts are from the Summary of the S-G's report (A/62/498).

⁷⁵ The mandate of the Special Rapporteur was established by *Resolution 1992/58* of the Commission on Human Rights. It was extended in *Resolution 2005/10*, and extended for a further year by *Decision 1/102* of the Human Rights Council. Mr. Pinheiro is the third mandate holder and commenced in this role in December 2000. The HRC considered the mandate again during the second part of its sixth session and adopted a resolution requesting the Special Rapporteur to conduct a follow-up visit to Myanmar before its seventh session in March 2008 to assess in greater detail the human rights violations that have occurred and are occurring as a result of the continued violent repression of recent peaceful demonstrations. The seventh session of the HRC will also review the mandate of the Special Rapporteur. For more information on Mr. Pinheiro's work, see: <http://www.ohchr.org/english/countries/mm/mandate/index.htm>

⁷⁶ A/61/223. Available at: <http://www.un.org/ga/third/62/docslist.shtml>

⁷⁷ Mr. Paulo Sérgio Pinheiro presented his sixth report to the Third Committee, as well as his Myanmar country reports that had been presented the fourth session of the Human Rights Council in February 2007, see A/HRC/4/14, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/107/31/PDF/G0710731.pdf?OpenElement>

- Clear and accurate information about the number and treatment of those arrested, detained or killed;
- Meaningful and inclusive dialogue between the Government of Myanmar, political representatives and ethnic groups to initiate the national reconciliation process;
- Myanmar to continue cooperation with the Secretary-General's Special Advisor on Myanmar, Mr Gambari;
- States in the region to coordinate their different approaches to promoting democracy and the rule of law in Myanmar; and
- International actors, including the HRC to contribute to the reconciliation process in Myanmar.

Interactive Dialogue

During the ensuing interactive dialogue, the Ambassador from Myanmar, H.E. U Thaung Tun, countered that the report was based on unsubstantiated sources. Myanmar was cooperating with the special procedures by inviting the Special Rapporteur to visit Myanmar in November. The Ambassador explained that the Government had exercised restraint and not intervened in the protests for nearly a month, but violence had occurred because subversive rabble-rousers, influenced by foreign supporters, had intervened. The security forces had then had to intervene to restore peace and security.

Other countries asked questions of the Special Rapporteur, specifically inquiring after treatment of political prisoners and pressed for more details regarding this visit in November.⁷⁸ Several inquired about how best the international community could respond.⁷⁹ The Special Rapporteur responded that he would spend the next visit focusing on the recent crisis in order to better assess the numbers and treatment of political prisoners. He estimated that there were around 1,300 political prisoners; this was down from the 2,677 detained immediately during and after the recent protests. He had no details on his visit as the invitation was very recent.

China expressed its pleasure at the announcement by Myanmar that Mr. Pinheiro had been invited back to the country after denying him access during the last four years. China added that a politically successful democracy would be in the interest of Asia and the greater international community. The USA questioned how the Special Rapporteur was coordinating his mandate with that of the Secretary-Generals' Special Adviser on Myanmar, Mr Gambari.

Presentation by the Under-Secretary-General for Political Affairs⁸⁰

⁷⁸ These States included France, New Zealand, and Japan.

⁷⁹ These States included Germany, Australia, and Canada.

⁸⁰ Mr. B. Lynn Pascoe. For more information on Mr. Pascoe, please *see*: <http://www.un.org/Depts/dpa/usg.html>

On 29 October 2007 the Under-Secretary-General (USG) for Political Affairs, B. Lynne Pascoe, addressed the Third Committee on behalf of the Secretary-General's Special Adviser, Ibrahim Gambari, to introduce the Secretary-General's report⁸¹ on the human rights situation in Myanmar.

The USG provided an update on the human rights situation in Myanmar and the efforts to engage the Myanmar authorities through the good offices by Mr Gambari, who visited the country in September under GA resolution 61/232.⁸² He stressed that both the Secretary-General and the international community believe that a return to the status quo is not an option. Despite the lifting of the curfew, the USG expressed serious concern that the Government 'crackdown' was continuing, particularly at night when there are raids on private homes, beatings and disappearances. Further, the USG reported on the recent special session of the Human Rights Council focussing on the human rights situation in Myanmar, and its adoption of a resolution on the matter.⁸³

General Discussion with the USG

Myanmar responded by pointing out this was the first time the USG for Political Affairs had introduced a human rights report to the Committee, noting it was peculiar he had only commented on one country when there are serious violations occurring in other places. He went on to refer to a range of recent positive developments, including the release of over 2,700 detained demonstrators, the appointment of a Minister to liaise with Daw Aung San Suu Kyi, and Myanmar's greater openness to engage with the UN, which he thought was acknowledged in the S-G's report. The representative asked the international community to promote the positive developments his country is taking instead of focusing on the negative, and to cooperate with and support his country's efforts to pursue a seven-step process to democracy.

Following the lead of Myanmar, Gambia made several statements objecting to the USG presentation of the S-G's report, questioning which procedural rule had authorised the visit and whether the Third Committee was the proper forum to introduce this report. The Secretary of the Committee intervened to explain that the Secretary-General is permitted to speak to any Committee he chooses, and the USG added that Mr Gambari was unable to attend due to other commitments in Asia. Gambia was unsatisfied with both answers. The U.S. commented it was wholly appropriate for the USG to represent the Special Adviser in his absence.

Portugal (on behalf of the E.U.) and Japan also participated in the discussion with the USG, in support for the good offices mandate in Myanmar. They sought more detailed information on recent developments on the ground, how the Special Adviser's mandate was being coordinated with that of the Special Rapporteur, and how the good-offices

⁸¹ A/62/498. Available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/N07/557/46/PDF/N0755746.pdf?OpenElement>

⁸² Available at: <http://www.un.org/Depts/dhl/resguide/r61.htm>

⁸³ See A/HRC/S-5/2 available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/5session/A.HRC.S-5.2_en.pdf

efforts were being received in Myanmar. Following the USG's responses to these questions, the representative of Myanmar took the floor to emphasise that life in Myanmar had in fact returned to normal and there was no crackdown.

Mr. Ibrahim Gambari, the Special Adviser of the Secretary-General, addressed the Security Council on 13 November 2007 regarding his recent visit to Myanmar.⁸⁴

Draft resolution on the situation of human rights in Myanmar⁸⁵

Portugal, on behalf of the E.U., introduced the resolution on Myanmar. This year's resolution had program budget implications as a result of its request that the Secretary-General 'give all necessary assistance to enable the Special Adviser and the Special Rapporteur to discharge their mandates'.⁸⁶

In this Resolution the GA:

- Strongly condemns* the use of violence against peaceful demonstrators.⁸⁷
- Expresses *grave concern* at the: continuing high number of political prisoners;⁸⁸ violations suffered by ethnic minorities; major and repeated violations of international humanitarian law committed against civilians.⁸⁹

Welcomes:

- The agreement by the Government to allow the Special Rapporteur access to the country in November 2007;⁹⁰
- The designation of a Special Advisor to pursue the S-G's good offices mandate, his November 2007 visit to Myanmar, and the invitation for his return;⁹¹
- The leading regional role of ASEAN and neighbouring countries in encouraging Myanmar to hasten democratic reforms with respect for human rights.⁹²

Strongly calls on the Government to:

- End all restrictions on fundamental freedoms, uphold international human rights law, and investigate and bring to justice perpetrators of violations;⁹³
- Grant the Special Rapporteur full, free and unimpeded access, and ensure immediate and safe access to all areas for UN and international humanitarian organisations;⁹⁴

⁸⁴ For more detailed account of Mr Gambari's visit to the Security Council, please see: S/PV.5777

<http://daccessdds.un.org/doc/UNDOC/PRO/N07/595/87/PDF/N0759587.pdf?OpenElement>

⁸⁵ A/C.3/62/L.41/Rev.1. Available at: <http://www.un.org/ga/third/62/proplist.shtml>

⁸⁶ See OP6(c). The PBIs requested amounted to USD\$865,100 and are set out in A/C.3/62/L.83 available at <http://www.un.org/ga/third/62/proplist.shtml> However, the General Assembly ultimately agreed to provide funding of \$781,900 on 21 December 2007.

⁸⁷ OP1.

⁸⁸ OP2(b). These violations of humanitarian law were 'denounced' by the International Committee of the Red Cross in June 2007.

⁸⁹ OP2(d) and OP2(c).

⁹⁰ OP3(a).

⁹¹ OP3(b).

⁹² OP3(g).

⁹³ OP4(a).

- Give serious consideration to the recommendations of the Special Advisor to the S-G, and fully implement those of the Special Rapporteur and other U.N. bodies;⁹⁵
- End the arrest of and violence against peaceful protestors, and release all those arbitrarily arrested and all political prisoners;⁹⁶
- Immediately end the use of child soldiers, and put an end to both military operations targeting civilians in ethnic areas and the systematic forced displacement of large numbers of people to neighbouring countries;⁹⁷ and
- Requests the S-G* to report to the 63rd session of the GA on progress made in implementing this resolution.⁹⁸

Given that last year's General Assembly resolution pre-dated the violent repression of peaceful protests in Myanmar, this year's resolution focuses on addressing this development, as well as reiterating most of the key elements of last year's text. For example, this year's resolution makes clear the need for the Government to take a range of concrete steps, such as an end to all arrests of peaceful demonstrators, the release of all political prisoners, and the inclusion of 'all political actors' and ethnic nationalities in the national reconciliation and democratization process.⁹⁹

However the Third Committee's condemnation of the use of violence against peaceful protesters is carefully balanced with some of the positive developments that have occurred throughout the year. For example, the Government's invitations to the Special Rapporteur and the Secretary-General's Special Adviser to conduct country visits are welcomed, but the resolution cautions Myanmar that it has to 'cooperate fully' with the mandate holders and ensure that no person or organisation assisting them is subject to intimidation, harassment or punishment.¹⁰⁰ Further, last year's call from the GA for Myanmar to work with the International Labour Organisation gives rise in this year's resolution to a paragraph 'welcoming' the conclusion of an understanding between Myanmar and the ILO which is designed to provide a mechanism for victims of forced labour to seek redress.¹⁰¹ However there is a subsequent paragraph calling on the Government to follow through and implement this undertaking.¹⁰²

Missing from this year's resolution is any reference to the need for the Government to end the military's use of sexual violence, particularly against women belonging to ethnic nationalities, and to facilitate independent investigation of these violations.¹⁰³

⁹⁴ OP4(e) and (f).

⁹⁵ OP4(b).

⁹⁶ OP4(c).

⁹⁷ OP4(g) and (h).

⁹⁸ OP6(d).

⁹⁹ This later point is made in OP5(a) and (b).

¹⁰⁰ OP4(e).

¹⁰¹ OP3(d).

¹⁰² OP5(f).

¹⁰³ Last years resolution referred to the military's 'widespread' use of rape and other forms of sexual violence and 'strongly called on' the Government to 'facilitate a genuinely independent investigation of

This year's General Assembly resolution also contains stronger language than the recent Human Rights Council resolution following its fifth special session on Myanmar in October 2007.¹⁰⁴ For example, the General Assembly text 'strongly condemns' rather than 'strongly deplors' the Government's use of violence against peaceful protestors, and it 'strongly calls' on the Government (rather than 'urging' it) to take particular actions. Although there are strong similarities in the actions that both resolutions call on the Government of Myanmar to take to address the recent human rights violations, the HRC resolution focused on the immediate situation and in contrast to the General Assembly text, did not remind Myanmar of the need to address historic human rights violations such as discrimination against ethnic groups and violations of humanitarian law. Nor did the HRC resolution refer to positive developments and initiatives on the part of the Government of Myanmar in relation to the transition to democracy or international cooperation.

In introducing the resolution,¹⁰⁵ Portugal (on behalf of the E.U.) explained that it expressed deep concern about the violent repression of peaceful demonstrators, and sought to build on concerns that had been expressed by the international community through the recent convening of the Human Rights Council's special session on Myanmar. After outlining key provisions of the resolution, Portugal confirmed its attempts to negotiate the text with Myanmar, and although they had not succeeded, said it remained available for further consultations.

Myanmar questioned whether the E.U. had a genuine desire to consult on the text, given that they received a copy only three days prior to its introduction. Compared to last year's text, the resolution was 'intrusive' on Myanmar's sovereignty and its harsh tone would not contribute to the efforts being made by the good offices of the Secretary-General. Further the resolution failed to reflect a range of recent positive developments in his country which the S-G's Special Adviser on Myanmar had reported to the Security Council. Cooperation with the UN remained the cornerstone of Myanmar's foreign policy.

The vote

Two votes were taken regarding the resolution on the human rights situation in Myanmar. The first was a no-action motion that Myanmar requested, which was defeated. The second vote was on the resolution itself, which was adopted.

China and Angola took the floor to support the no-action motion proposed by Myanmar. Both countries stated that the Third Committee was not the proper forum for such a resolution, rather the UPR in the Human Rights Council was tailor-made for this purpose. China added that dialogue based on mutual respect and taking into account different

continuing reports of sexual violence', particularly against women of ethnic nationalities. See OP3(b) and OP3(e)(ii) of A/Res/61/232 available at: <http://www.un.org/Depts/dhl/resguide/r61.htm>

¹⁰⁴ Note *Resolution S-5/1: Situation of human rights in Myanmar*, was adopted by the Human Rights Council by consensus on 2 October 2007.

¹⁰⁵ The resolution was introduced into the Third Committee on 9 November 2007.

religions and cultural backgrounds was what was needed to promote human rights in Myanmar. China argued the no action would not suffocate debate but rid the Committee of double standards and the politicisation of its work.

Norway and New Zealand spoke against the no-action motion, expressing their regret that it had been proposed. Norway argued that regardless of the content of the resolution, all texts should be reviewed on their merits, delegations should be allowed to express their opinions and procedure should not be used to stop action. New Zealand pointed to the Third Committee's mandate to address human rights situations anywhere in the world and argued that the serious questions about the situation in Myanmar warranted the Committee's attention. Resolutions expressing collective concern about such situations had been adopted for more than 30 years, and some countries that had been the subject of these resolutions had become strong defenders of human rights.

The Committee then voted on the no-action motion, which was defeated with 54 in favour, 88 against, and 34 abstentions.¹⁰⁶ Perhaps the recent use of violence against the demonstrators explains why more States voted against the no-action motion this year, as compared to last year's motion, which was defeated less resoundingly (64:77:30).

Myanmar took the floor to remind the Committee that the UN Charter places human rights in the context of international cooperation, while this type of resolution only generates conflict. It was very critical of the E.U.'s 'yearly ritual' of attacking his country and accused it of making a mockery of the institution building package of the Human Rights Council. Further, it argued that the content of the resolution falls under the sovereign domain of its government and it would not be bound by the resolution. Myanmar asked the international community to allow it the opportunity to continue cooperation with the Secretary-General's good offices, and assured the Committee that stability had been restored in his country.

Eleven other States took the floor in explanation of their votes before the vote.¹⁰⁷ The majority condemned country-specific resolutions and argued that the Human Rights Council's UPR mechanism was designed to deal with these issues. Thailand credited Myanmar for the positive steps it had taken in recent times, encouraging it to continue to work with ASEAN and engage in a time-bound and broad-based dialogue. China agreed with Myanmar's conclusion that the substance of the resolution was under domestic sovereignty and should remain an internal process.

The vote on the resolution resulted in its adoption, with 88 in favour, 24 against, and 66 abstentions. WEOG States voted in favour of the resolution, however the NAM did not have as clear a pattern. Several of its African, Latin American and Caribbean members

¹⁰⁶ Most NAM States and China voted in favour of the no-action motion, as did several African States (South Africa, Zimbabwe, Uganda, Sudan, Namibia, Gambia, Cote d'Ivoire, Congo, and DRC). WEOG and most Latin American States voted against it (Mexico, Argentina, Brazil, Guatemala, Chile, and Peru).

¹⁰⁷ Portugal (on behalf of the E.U.), Algeria, China, Uzbekistan, Thailand, Venezuela, Barbados, Belarus, Egypt, Malaysia and the Sudan.

voted in favour or abstained.¹⁰⁸ The majority of ASEAN members either voted against the resolution or abstained from voting. This compares to last years resolution, which was adopted in the Third Committee with 79 in favour, 28 against, and 63 abstentions.

Following the adoption of the resolution, twelve states spoke in explanation of their vote after the vote.¹⁰⁹ Most repeated earlier arguments about the appropriateness of the UPR mechanism to deal with country-specific matters so the Third Committee could be a forum for genuine dialogue. However India (who voted against the resolution) added a note of caution, pointing out that the voting pattern on country-specific resolutions was emerging as a major challenge for the Third Committee, and it was time for it to undertake a critical self-assessment of its effectiveness in improving people's human rights. India regretted that the adoption of this resolution would have a detrimental effect on the important work being done by the Special Rapporteur and the S-G's Special Adviser on Myanmar. Singapore expressed a similar concern about whether the resolution would discourage Myanmar from future cooperation with the UN and the international community more generally.

Myanmar closed discussions by stating it disassociated itself from the resolution and would not be bound by it. Further, it pointed out that the majority of the Third Committee did not vote in support of the resolution.

Following approval of the budgetary implications of the resolution by its Fifth Committee,¹¹⁰ the General Assembly also adopted the resolution on Myanmar with 83 States in favour, 22 against and 47 abstentions.¹¹¹ Given the strength of the international community's condemnation of the decision by the Government of Myanmar to use violence against peaceful demonstrators, some may have expected more support for the adoption of this resolution than in previous years. However the voting pattern was very similar to last year's General Assembly vote (82:25:45) with only three States changing their vote to support the adoption of the resolution.

Other information before the Committee

¹⁰⁸ Bolivia, Bahamas, Honduras, Peru, Panama, Ghana and Tanzania voted in favour of the resolution. NAM members who abstained included: Antigua Barbuda, Barbados, Columbia, Jamaica, Haiti, Cameroon, Chad, Cote d'Ivoire, DRC, Eritrea, Ethiopia, Ghana, Senegal and South Africa.

¹⁰⁹ India, Indonesia, Singapore, Algeria, Cuba, Bangladesh, the Philippines, Japan, Vietnam, Brazil, Myanmar and Switzerland.

¹¹⁰ As contained in document A/62/439/Add.3 (Annex IX). Consideration of this resolution was delayed in the General Assembly due to its budgetary implications which required the consideration and approval of the Fifth Committee. A total of \$781,900 was approved by both the Fifth Committee and the General Assembly on 21 December 2007.

¹¹¹ WEOG States voted in favour of the resolution and NAM was split as most African States abstained. The five African States who voted with NAM were: Algeria, Egypt, Libya, Sudan and Zimbabwe.

Myanmar wrote a letter to the President of the General Assembly¹¹² to put forward its own perspective on the human rights situation in its country and to explain the events leading to the recent unrest. In particular, the Government of Myanmar sought to make clear that foreign subversives and political opportunists were to blame for triggering the crackdown on demonstrators, and that members of the National League for Democracy disseminated malicious news to foreign media to fuel international media attention. Above all, Myanmar wished to emphasise that the root causes of the unrest are domestic matters that should be dealt with internally by the citizens of Myanmar. Representatives of Myanmar presented these arguments orally on several occasions in the Third Committee as well as in the Security Council when it was briefed by Mr Gambari following his first visit to Myanmar to pursue the Secretary General's good offices mandate.¹¹³

SITUATION OF HUMAN RIGHTS IN THE ISLAMIC REPUBLIC OF IRAN

Information before the Committee

The Third Committee did not consider any reports on the human rights situation in Iran and there are no special procedures mandated to consider this issue.

*Draft resolution on the situation of human rights in the Islamic Republic of Iran*¹¹⁴

The annual draft resolution on the situation of human rights in the Islamic Republic Iran was again sponsored by **Canada**.¹¹⁵ It was introduced to the Third Committee on 9 November and considered on 20 November 2007.

In this resolution the GA:

*Expresses its deep concern at the ongoing systemic violations of human rights and fundamental freedoms in Iran, and the failure of the Government to implement previous UN resolutions.*¹¹⁶

Expresses very serious concern at:

Torture and cruel, inhuman or degrading treatment or punishment, including flogging, amputations, public executions and stonings;¹¹⁷

¹¹² See A/C.3/62/7: Letter dated 5 November from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General available at <http://www.un.org/ga/third/62/docslist.shtml>

¹¹³ Mr Gambari visited Myanmar from 3-8 November 2007 under GA resolution 61/232.

¹¹⁴ A/C.3/62/L.43. Available at: <http://www.un.org/ga/third/62/proplist.shtml>.

¹¹⁵ Last year's resolution on the situation of human rights in the Islamic Republic of Iran, A/RES/61/176, was also sponsored by Canada. Available at <http://www.un.org/ga/61/third/proposalslist.shtml>

¹¹⁶ OP1.

¹¹⁷ OP2(a-c).

- Execution of persons under the age of 18 at the time of committing an offence;¹¹⁸
- Arrests, violent repression, and sentencing of women exercising their right to peaceful assembly, including women's human rights defenders and girls;¹¹⁹
- Increasing discrimination and other human rights violations against persons belonging to religious, ethnic, linguistic or other minorities, particularly of the Baha'i faith;¹²⁰
- Ongoing, systemic and serious restrictions of freedom of peaceful assembly, association, opinion and expression, and increasing harassment, intimidation and persecution of political opponents and human rights defenders.¹²¹
- Calls upon* the Government to fully respect its human rights obligations and 'eliminate in law and in practice' the abovementioned violations.¹²²
- Urges* the Government to live up to its standing invitation to special procedures to visit Iran, and illustrate how their recommendations are being addressed.¹²³
- Decides* to continue its examination of the situation and requests the Secretary-General to submit a report on human rights in Iran at its 63rd session.¹²⁴

This year's resolution is considerably shorter than last year's, making the message clearer and more direct. There is no section 'welcoming' developments in Iran; rather the operative paragraphs go straight to expressions of 'deep concern' and 'serious concern'. However the Government of Iran is only 'called upon' or 'urged' to undertake a range of actions to implement its human rights obligations, end impunity and stop all forms of discrimination, which is essentially the same as last year. This weaker language contrasts with other country-specific resolutions this year in which governments have been 'strongly called upon' or the GA 'insists' they take particular courses of action.

Upon introducing the resolution, Canada emphasised the continued deterioration of the rights of individuals in Iran, despite the previous UN resolutions.¹²⁵ It confirmed that such a resolution would not be needed when Iran displayed a commitment to human rights. Canada reminded the Committee that there have been confirmed instances of grave human rights abuses and the GA has an obligation to hold the Iranian Government accountable.

In response, Iran stated that this resolution is highly politicised and a blatant abuse of the GA's time and resources. It questioned Canada's motives for bringing the resolution when the Human Rights Council is the appropriate body for such matters. Iran stated that many of the issues discussed in this resolution are out of date, such as the accusation that Iran is not cooperating with UN special procedures.¹²⁶ Iran argued that since 2002 it has

¹¹⁸ OP2(d).

¹¹⁹ OP2(e).

¹²⁰ OP2(f).

¹²¹ OP2(g).

¹²² OP3.

¹²³ OP4.

¹²⁴ OP5.

¹²⁵ For last year's resolution, A/RES/61/176, see <http://www.un.org/Depts/dhl/resguide/r61.htm>.

¹²⁶ PP4.

voluntarily extended standing invitations to all special procedures and declared its level of cooperation with the special procedures to be among the highest in the international community. Iran affirmed its commitment to human rights as demonstrated by its sponsorship of a resolution on cultural diversity¹²⁷ and its meeting with the High Commissioner for Human Rights, Ms. Louise Arbour, in September 2007.

The vote

Two votes were taken in relation to the resolution on the situation of human rights in Iran. First a no-action motion initiated by Iran and supported by Pakistan and Venezuela, and second on the resolution itself, which was adopted.

Iran moved a no-action motion on the grounds that the Human Rights Council is the appropriate UN body to consider human rights issues. Pakistan highlighted that country-specific resolutions are confrontational and against the spirit of international cooperation and dialogue. Venezuela furthered such arguments by stating that this resolution runs counter to the guiding principles of the UN Charter.

The two States that spoke against the no-action motion were Lichtenstein and Canada. Lichtenstein said that the Third Committee is a universal body with a mandate to consider human rights matters and it is important that any country, regardless of its size, can express a view on any matter before the Committee to allow diversity of opinion. The representative added that unlike other resolutions before the Committee, the text did not have a counterpart in the Council. Canada echoed these sentiments adding that a no-action motion would deny Member States the right to discuss matters that have been under international scrutiny, and each resolution should be considered on its merits.

The Chairman then called for a recorded vote and the no-action motion was defeated by a margin of just one vote (78 in favour, 79 against, and 24 abstentions).¹²⁸ The no-action motion brought against the resolution on Iran last year was also defeated by a narrow margin (75:77:24).

In explanation of vote before the vote, seven countries¹²⁹ spoke against country-specific resolutions and States interfering in the domestic affairs of others under the pretext of human rights. Syria said that country-specific resolutions violate the international norms of non-selectivity, national sovereignty, territorial integrity, and transparency. Sudan added that no country is free from human rights violations and that such claims amount to double standards. Iran delivered a scathing attack on Canada's human rights record, including its discrimination of indigenous peoples.

¹²⁷ A/C.3/62/L.39. Available at: <http://www.un.org/ga/third/62/proplist.shtml>.

¹²⁸ WEOG States voted against the no-action motion. However many African and Asian States voted in favour (including South Africa, Senegal, Cote d'Ivoire, Congo, DRC, Gambia, Namibia, Uganda, Zambia, Zimbabwe; China, DPRK, Thailand, Malaysia, Indonesia, India, Pakistan, Bangladesh, Singapore, and Vietnam). Most Latin American and Caribbean countries either abstained or voted against the resolution.

¹²⁹ Syria, Belarus, Pakistan (on behalf of the Organization of Islamic Conference), Sudan, Egypt, Venezuela and Libya.

The vote on the resolution resulted in its adoption, with 72 in favour, 50 against, and 55 abstentions. No State from the Organisation of the Islamic Conference voted in favour of the resolution, contrasting with WEOG States who voted in favour of it. The NAM was divided, with some African, Latin American, and Caribbean countries voting in favour, but the majority of NAM States voting against it. This outcome is similar to last year when the resolution was also defeated (70:48:55).

Five States spoke in explanation of their vote.¹³⁰ Both Algeria and Cuba voted against the resolution because they did not want the Third Committee to become a forum for analysing developing countries. Japan voted in favour of the resolution, but wanted to welcome the positive steps taken by the Iranian Government. Although Brazil abstained on the basis that the HRC should deal with country-specific matters, it condemned the serious human rights violations, including the mistreatment of the Baha'i community.

When the resolution was considered by the General Assembly, Iran took the unusual step of calling for another no-action motion. Iran and the two States supporting the no-action motion, Venezuela and Pakistan, repeated the argument that the Human Rights Council, through its UPR mechanism, is the 'most competent human rights institution' to deal with country-specific matters. This prompted strong criticism from Portugal (representing the E.U.) and San Marino (speaking on behalf of several members of WEOG) on the basis that if the motion were successful, it would undermine the credibility of the Third Committee. The motion was ultimately defeated with 80 votes in support, 84 votes against and 19 abstentions.¹³¹

In a further attempt to challenge the standing of the Third Committee, Venezuela sought to move an oral amendment to the last operative paragraph of the resolution and requested a vote be recorded on the matter.¹³² This highly irregular move drew strong criticism from Canada on the basis that no State had raised this objection to the text during informal negotiations or in the Third Committee, and no State could confer with their capitals. Canada pointed to recent reports of serious human rights abuses in Iran and the 42 co-sponsors of the resolution to counter Iran's accusation that it lacked support amongst the GA for the passage of the resolution. By supporting Venezuela's motion to amend the text, Iran forced the matter to a vote, which was also defeated (57 in favour, 70 against, 45 abstentions).

¹³⁰ Algeria, Cuba, Japan, Brazil, and Portugal spoke in explanation of vote after the vote.

¹³¹ A mixture of States abstained, including (Belize, Benin, Bhutan, Botswana, Brazil, Colombia, Dominica, Ghana, Guyana, Jamaica, Lesotho, Malawi, Mauritius, Mozambique, Nepal, Nigeria, Saint Kitts and Nevis, Sierra Leone, Trinidad and Tobago). However 24 Pacific Island, Latin American and Caribbean States joined with WEOG to defeat the motion.

¹³² The amendment sought related to OP5, which requested that the Secretary-General submit a comprehensive report on the human rights situation in Iran to the next session of the GA. Venezuela's amendment sought to delete this follow-up action on the basis that it would set a 'dangerous precedent' that would undermine the role of the HRC and its UPR mechanism to deal with country-specific matters. Venezuela suggested that if such a report was needed, it should be prepared by a special procedure of the HRC. Interestingly Venezuela did not seek to delete the beginning of OP5 which refers to the GA's decision to continue to examine the human rights situation in Iran at its next session.

The General Assembly then voted on the resolution as a whole, adopting it with 73 in favour, 53 against and 55 abstentions.¹³³ This outcome is similar to last year's resolution in the GA (71:50:55).

SITUATION OF HUMAN RIGHTS
IN THE PALESTINIAN
TERRITORIES OCCUPIED SINCE
1967

**Presentation of the Special
Rapporteur on the situation of
human rights in the Palestinian
territories occupied since 1967**¹³⁴

On 24 October 2007, **Professor John Dugard**, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, presented his report to the Third Committee.¹³⁵

In his oral presentation, the Special Rapporteur emphasised the worsening human rights situation since his last report and the extent of the humanitarian crisis in the Occupied Palestinian Territories (OPT).¹³⁶ The Special Rapporteur drew attention to three issues:

- the Palestinian people's right of self-determination which is seriously threatened by the dispute between Fatah and Hamas, and aggravated by the Quartet¹³⁷ supporting one faction against another;
- the consequences of 'prolonged' Israeli occupation of the West Bank, Gaza, and East Jerusalem, which includes 'apartheid-like' laws and practices that discriminate against the Palestinian people and favour settlers;¹³⁸ and
- whether the U.N. (as the principal protector of human rights) should remain a member of the Quartet given the Quartet's demonstrated 'pro-Israeli' stance, its

¹³³ Some 25 African States abstained from the vote. However some 20 Pacific Island, Latin American and Caribbean States joined with WEOG to ensure the adoption of the resolution. For the voting record, see <http://www.un.org/News/Press/docs/2007/ga10678.doc.htm>

¹³⁴ The mandate of the Special Rapporteur was established in 1993 by *Resolution 1993/2 A* of the Commission on Human Rights 'until the end of the Israeli occupation'. For further information about the work of Mr. John Dugard, see <http://www.ohchr.org/english/countries/ps/mandate/index.htm>.

¹³⁵ A/62/275. Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N07/463/16/PDF/N0746316.pdf?OpenElement>.

¹³⁶ The Special Rapporteur's report itemises the serious human rights violations that are being experienced by the Palestinian people and states that over 80% of the population is living in poverty.

¹³⁷ The Quartet is comprised of the UN, the EU, the Russian Federation and the USA.

¹³⁸ In the subsequent interactive dialogue, the Special Rapporteur commented that it was politically incorrect to suggest that Israeli practices in the OPT were akin to apartheid. However, many of Israel's practices discriminate against Palestinians on racial grounds.

scant regard for the human rights of Palestinians and its 'dubious legal foundation'.

Elaborating on the recommendations outlined in his report, the Special Rapporteur suggested that the International Court of Justice (ICJ) be asked for a further advisory opinion on the consequences of prolonged occupation of the Palestinian territories. This recommendation and the Special Rapporteur's suggestion that it is needed because Israel's 'prolonged occupation' of the OPT has the 'features of colonialism and apartheid for the occupied people' are drawn from his most recent report to the Human Rights Council.¹³⁹ In both reports he suggests that the advisory opinion address the legal consequences for Israel, the Palestinian people, and third States who are involved in the dispute.

The Special Rapporteur also called upon the Secretary-General to seek to persuade the Quartet to take a more even-handed approach to Israeli-Palestinian dispute, and if this was not possible, to seriously consider the role of the U.N. in the Quartet. He stressed that this is not an appeal to the U.N. to withdraw from the Quartet, but rather an attempt to ignite serious debate amongst all U.N. stakeholders.

Interactive Dialogue

In response to the presentation, Palestine expressed its appreciation for the Special Rapporteur's straightforward and candid report. Israel then responded by reading a three-page written statement that questioned the objectivity of the Special Rapporteur and condemned his report as simplistic and one-sided.¹⁴⁰ Israel pointed out that the report fails to address Palestinian terrorism and violence, and consequently condemns any measure taken by Israel to defend its citizens as unwarranted and disproportionate. Further, Israel stated that the Special Rapporteur's staunch opposition to the Quartet far exceeded his mandate and his inflammatory language, at a time when the parties' negotiating teams are gearing up to discuss the situation, was counter-productive.

The Special Rapporteur responded to Israel's concerns by providing an explanation of his statement that terrorism is a relative concept both in his country's (South Africa) experience and Israel's. He urged Israel to consider the legality of its actions, such as the construction of the wall, the ongoing arrest of Palestinian people, the humanitarian crisis and the operation of its check points. These are the real issues that must be addressed if a solution is to be found, not arguments about terrorism.

Indonesia, Kuwait, Nicaragua, and South Africa each asked how an additional advisory opinion from the ICJ will further the Palestinian people's right of self-determination. The Special Rapporteur explained that the ICJ's 2004 advisory opinion was confined to the

¹³⁹ See A/HRC/4/17 paragraphs 58-62. Available at <http://www.ohchr.org/EN/countries/MENARegion/Pages/PSIndex.aspx>

¹⁴⁰ Ms. Ady Schonmann's statement is available at: <http://israel-un.mfa.gov.il/mfm/Data/124524.doc>.

legal consequences of the construction of the wall in the OPT and that there are a host of other legal issues that need to be clarified.¹⁴¹

In response to a question from Portugal (on behalf of the E.U.) about what could be done to improve the situation, the Special Rapporteur appealed to the international community to play the role of mediator and try to bring the two sides together.

Egypt, South Africa and Indonesia questioned the role of the Quartet in securing human rights in the OPT and called for a more active role for the U.N. within the Quartet. The Special Rapporteur agreed that the Quartet needs to pay more attention to human rights and ensure that a human rights based approach to the conflict is taken. He urged the U.N. to be the Quartet's mediator and not allow the political will of its most powerful member to dominate its agenda. Most of the Quartet's statements were highly critical of Palestine and did not reflect the fact that Israel was in serious violation of international law.

The U.S. responded by characterising the Special Rapporteur's suggestion that the U.N. consider withdrawing from the Quartet as 'deeply irresponsible'. The U.S. would not support a further ICJ advisory opinion. It found the Special Rapporteur's report to be 'politically biased' and lacking in an extensive discussion of terrorism. The US asserted that its goal is to promote peace and set normative parameters for action.

In response, the Special Rapporteur stated that such normative parameters should respect human rights norms and the 2004 advisory opinion of the ICJ. He advised that human rights violations could not be justified as actions to curb terrorism.

Cuba, the Libyan Arab Jamahiriya, Sudan, the Syrian Arab Republic, and Yemen also participated in the interactive dialogue.

SITUATION OF HUMAN RIGHTS IN THE SUDAN

Presentation of the Special Rapporteur on the situation of human rights in the Sudan¹⁴²

On 29 October 2007, **Ms. Sima Samar**, the Special Rapporteur on the situation of human rights in the Sudan presented her report to the Third Committee covering the period from 1 August 2006 to 31 August 2007.¹⁴³ In light of the range of initiatives the Human Rights

¹⁴¹ The Advisory Opinion of 9 July 2004 of the ICJ on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* is available at: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&code=mwp&case=131&k=5a>.

¹⁴² The mandate for the Special Rapporteur on the situation on human rights in the Sudan was created by HRC *Resolution 2005/82* for one year. It was extended for one year by HRC *Decision 1/102*. On 14 December 2007, the HRC decided (A/HRC/DEC/6/103) to extend the mandate by one year. For more information about Ms Samar's work, see: <http://www2.ohchr.org/english/bodies/chr/special/countries.htm>

¹⁴³ A/62/352. Available at: <http://www.un.org/ga/third/62/docslist.shtml>

Council had taken in relation to Dafur during this period,¹⁴⁴ she sought to address human rights concerns in other parts of the Sudan and visited these areas from 25 July to 2 August 2007.

During her oral presentation, the Special Rapporteur summarised the main findings of her report, acknowledging where 'some slow progress' has been made, but concluded that these positive steps were yet to translate into tangible benefits for the people of the Sudan.¹⁴⁵ One positive on the horizon was the Security Council's decision to authorise a hybrid peacekeeping operation in Dafur, and she hoped that this would help improve the protection of human rights. However, she explained that many of the concerns she highlighted last year still stand, including:

- All parties to the conflict continue to commit gross violations of human rights, including arbitrary arrest, illegal taxation, extortion, forced displacement, killing and sexual violence;
- The Comprehensive Peace Agreement (CPA) has been poorly implemented, particularly those elements that have the potential to improve the human rights situation;
- There is a pervasive atmosphere of impunity as the legal and institutional human rights framework remains weak,¹⁴⁶ and the Human Rights Commission is yet to be established; and
- Widespread poverty continues to aggravate political unrest nationally.

The Special Rapporteur concluded her statement by expanding on the recommendations detailed in her report, instructing both the Government of National Unity and the Government of Southern Sudan to:

- implement the CPA faster;
- disarm, demobilize and reintegrate militias and other armed groups;
- deploy credible and professional police forces;
- ensure transparent investigation of human rights violations;
- cooperate fully with the International Criminal Court to arrest those under indictment; and
- guarantee the freedom of the media and human rights defenders.

Addressing the warring factions, the Special Rapporteur called for their support for the political process to achieve peace in Dafur, as well as their full cooperation with the U.N, African peacekeeping forces and those organisations providing humanitarian

¹⁴⁴ For example, the HRC held a special session on Dafur, sent a high-level mission to the region and established the Group on Dafur to work with the Government of Sudan on human rights.

¹⁴⁵ Reforms noted by the Special Rapporteur included: Sudan's signature of the International Convention on the Rights of Persons with Disabilities; the drafting of new bills; the issuance of orders; and the recent appointment of a Chief Justice, a deputy and over 200 legal counsellors and prosecutors in Southern Sudan.

¹⁴⁶ The Special Rapporteur noted that some 60 laws need to be reformed in an open, inclusive and participatory way.

assistance. The U.N. in turn should take a more proactive role in the protection of citizens.

The international community was called upon to:

- provide ongoing technical and financial assistance to the Sudanese Governments to implement the CPA and build institutions for the protection of human rights;
- support the African Union/U.N. hybrid force, politically and financially; and
- assist and facilitate the political process to end the conflict in Darfur.

Interactive Dialogue

Sudan began the interactive dialogue by recalling that it is a signatory to several international and regional human rights instruments¹⁴⁷ and is cooperating with a range of human rights institutions operating in his country. It spoke of the 'immense progress for achieving peace and human rights' as a result of signing of the CPA and assured the Committee that the political will existed to properly implement the agreement. It criticised the inaccuracies, generalisations and lack of realism in the Special Rapporteur's report and accused her of being 'hostage' to misleading information in an attempt to extend her mandate.

Most countries welcomed the report by the Special Rapporteur. Canada and Portugal (on behalf of the E.U.) queried what more the international community could do to ensure those responsible for grave human rights violations were brought to justice. Cuba asked what role the international community might play in order to ensure economic and social rights in the country. The U.S. sought more detailed information about the CPA and its shortcomings.

Both Canada and Libya expressed their gratitude to the Special Rapporteur for the work she had done to safeguard humanitarian assistance and assist the victims of the conflict. They hoped that she would continue her efforts to protect human rights in the Sudan. She agreed that it was important that the mandate be extended, but advised that she did not personally wish to continue in the role.

China, Libya, Syria and Egypt focused on the positive developments in the Sudan and called on the international community to lend support to the efforts to achieve a peaceful and lasting resolution to the conflict. Syria went further, suggesting that rather than launching criticisms, the international community should exert pressure on the rebel forces to return to the peace negotiations. Egypt warned that threatening to impose sanctions on those factions and forcing them into a peace treaty would only exacerbate the situation.

¹⁴⁷ The delegate from the Sudan specifically referred to the ICCPR, the ICESCR, the CRC, CEDAW, and the optional protocol on the sale of child pornography.

The Special Rapporteur briefly responded, agreeing with China's point that the cooperation and support of the international community is critical to the resolution of any conflict situation – not just in the Sudan. In response to Egypt, the Special Rapporteur said all parties have committed human rights violations and although positive steps have been taken, they are yet to improve the situation on the ground. She exhorted all parties to cease hostilities and redirect the money they were spending on the conflict into investment in development to improve the prospects for peace. Lastly, she addressed the need to concentrate on women's human rights issues.

Sudan, under a right of reply, asserted that the E.U., the U.S., and Canada should not throw stones because they live in glass houses. They should acknowledge that the Sudan is racing ahead in the achievement of peace and stability, as demonstrated by its participation in the high-level peace talks in Libya.

SITUATION OF HUMAN RIGHTS IN BURUNDI

Presentation of the Independent Expert on the situation of human rights in Burundi¹⁴⁸

On 26 October 2007, **Mr. Akich Okola**, the Independent Expert on the situation of human rights in Burundi, presented his report to the Third Committee which focused on his visit to the country for a week in May 2007.¹⁴⁹ It concluded that although the overall human rights situation 'seems to have improved', cases of human rights violations continue to be reported. These reports include ill-treatment and torture by military personnel and police, as well as violations of legal procedure by police and judicial officers.

In his oral presentation, the Independent Expert highlighted a number of concerns addressed in his report, including:

- The worsening food security and the need for international humanitarian assistance to overcome cyclical famine;
- The need for greater enjoyment of economic and social rights;
- An increase in arbitrary arrests;
- The 'steady trend' in reporting sexually violent crimes, including over 300 cases of rape of women and minors during the first five months of 2007; and
- The lack of progress in fighting impunity.

¹⁴⁸ This mandate was established by CHR *Resolution 2004/82* for an unspecified duration. It was extended in CHR *Resolution 2005/75* for one year, and extended for a further year by *Decision 1/102* of the Human Rights Council. On 28 September 2007, the HRC adopted *Resolution 6/5* by consensus to extend the mandate by one year. For more information about Mr Okola's work, see:

<http://www.ohchr.org/english/countries/bi/mandate/index.htm>

¹⁴⁹ A/62/213. Available at: <http://www.ohchr.org/english/bodies/GA/62documents.htm>.

Augmenting the recommendations outlined in his report, the Independent Expert called upon the Government of Burundi to:

- Speed up the process of establishing the Truth and Reconciliation Commission and the Special Tribunal;
- Respect due process in the prosecution of the former Chairman of the ruling party and release his associates who have been arbitrarily detained;
- Investigate and bring to justice those accused of sexual violence;
- Release the investigation reports relating to the massacre at Muyinga and bring to justice all those implicated; and
- Overcome continuing political instability, which is adversely affecting the Government's ability to uphold human rights and maintain the peace process.

Interactive Dialogue

Six countries¹⁵⁰ participated in the interactive dialogue, commencing with Burundi, who emphasised the need for international humanitarian assistance to ensure his country could feed its people and deliver them the human right to food.

Portugal, on behalf of the E.U., commended Burundi for not granting amnesty to the perpetrators of serious human rights violations during the armed conflict and highlighted the importance of transitional justice in post-conflict countries to ensure stability. Portugal had further questions regarding the Truth and Justice Tribunal's Steering Committee, progress on judicial reform and whether there was a need for further legal reform to combat the atmosphere of impunity and address sexual violence.

Guinea Bissau and Cameroon both appealed to Independent Experts to conduct longer and more frequent country visits to ensure they have a better understanding of the situation on the ground. They agreed that post-conflict countries need greater international assistance to recover and rebuild.

The United States expressed concerned at what appeared to be conflicting information in the Independent Expert's report regarding the extent to which military personnel are involved in human rights violations. In paragraph 19 of the report, the Independent Expert asserted that military personnel committed few of the human rights violations. However paragraphs 22 and 36 refer to the involvement of military personnel in killings and forced labour.

The Independent Expert responded to the interventions by acknowledging the rapid progress made in Burundi over the last two years and the achievement of a 'state of normality' and 'relative peace'. He commented that although the Government falters from time to time, there are less human rights violations today than when he first visited the country. Elections have been held; democratic institutions were being put in place; one-third of the government is female (giving effect to gender equity requirements under the

¹⁵⁰ Burundi, Portugal (on behalf of the E.U.), Guinea Bissau, Tanzania, the U.S. and Cameroon.

Arusha Peace Agreement); and the military is being continuously trained and sensitised to human rights issues. Issues of child soldiers for example, are no longer on the agenda.

In response to U.S.'s concerns, the Independent Expert said he did not mean to say that the military were not guilty of violations, rather that they were happening less frequently as compared to two years ago. He explained that the Steering Committee is yet to develop a timetable or terms of reference, but its main purpose would be to bring reconciliation to Burundians. He acknowledged the divide in public opinion on the need to establish a Special Tribunal, but encouraged the Government to do so.

SITUATION OF HUMAN RIGHTS IN THE DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

Presentation of the Independent Expert on the situation of human rights in the DRC¹⁵¹

On 26 October 2007, **Mr. Titinga Frédéric Pacéré**, the Independent Expert on the situation of human rights in the Democratic Republic of the Congo (DRC) presented his progress report to the Third Committee at the 62nd session of the General Assembly.¹⁵² In his oral presentation, he highlighted some findings from his visit, including:

- Despite democratic elections, serious human rights violations are being committed, particularly by armed forces and the police, including arbitrary executions, rape and inhumane treatment;
- Militias have been massacring civilians in Southern Kivu;
- Sexual violence continues throughout the country, but only a miniscule number of cases are brought before a court;
- There is a pervasive climate of impunity;
- Prisons are overcrowded and conditions very poor; and
- Political and military interference in the judicial system results in the most serious human rights violations not being investigated.

Elaborating on the recommendations in his report, the Independent Expert called upon the Government of the DRC to:

- Adopt a zero tolerance approach to human rights violations and begin independent investigations of those violations that occurred earlier this year;

¹⁵¹ This mandate was established by CHR *Resolution 2004/84* for an unspecified time period. The HRC extended the mandate for one year in *Resolution 2005/85* and extended for an additional year in *Decision I/102*. During the first part of the HRC's 6th session, at the request of Egypt (on behalf of the Africa Group and with the support of Sri Lanka), the HRC agreed to postpone consideration of the renewal of the mandate for the DRC until its seventh session in March 2008. For more information about his work, see <http://www.ohchr.org/english/countries/zr/mandate/index.htm>.

¹⁵² A/62/313. Available at: <http://www.ohchr.org/english/bodies/GA/62documents.htm>.

- Accede to the Rome Statute of the International Criminal Court;
- Establish an international tribunal to try perpetrators of crimes against humanity and acts of genocide committed prior to 1 July 2002;¹⁵³
- Better fund the judicial system to promote its independence and efficiency; and
- Implement a vetting process to root out human rights violators working in the defence and security forces.

Interactive Dialogue

The DRC responded critically to the 'one-sided' nature of the Independent Expert's remarks and listed actions his country was taking to address the litany of human rights violations that had been referred to.¹⁵⁴ He hoped the Independent Expert would be more understanding of the complicated historic, economic, and political context of his country, which was emerging from a very tumultuous time and heading in a positive direction.

Similarly the representatives of Rwanda and Burundi were critical of what they regarded as serious omissions from the Independent Expert's report. Rwanda pointed out the need for recommends addressing the impunity of those forces who were responsible for the violence in the DRC, and also bore part responsibility for the Rwanda massacre in 1994. Burundi thought the Independent Expert should have referred to the recent successful elections it had held, and how this could contribute to stability in the region.

In response, the Independent Expert pointed out that the DRC was equivalent in size to Western Europe and it was not possible to comprehensively cover all human rights developments. Rather he had attempted in his current report to focus on crimes committed by police and other law enforcement agencies, and to draw attention to the lack of capacity within the judiciary to deal with the serious impunity problem.

The U.S. and Guinea-Bissau brought up the U.N. Mission in the DRC (MONUC),¹⁵⁵ which the Independent Expert had not mentioned. Mr. Pacéré assured them that he was in constant contact with that office to cooperate on information gathering and received over 250 pages a day on the human rights situation in the DRC.

Portugal (on behalf of the E.U.) asked about the serious sexual violence that had come to the attention of UNICEF, and whether the Independent Expert could comment on the extent to which this was occurring in the region. The Independent Expert did not respond directly, but advised that his previous report had dealt with the tragedy of child soldiers in some detail.

In response to Canada's question about prospects for stability in the Great Lakes region, the Independent Expert concluded by advising that it was critical for all States in the

¹⁵³ The ICC came into force on that day; therefore it cannot hear cases regarding events prior to that date.

¹⁵⁴ These include: a commitment to international justice and the ICC; participation in the Human Rights Council's Universal Periodic Review mechanism; the strengthening of the administration of justice; and a major works project that aims to create business opportunities.

¹⁵⁵ For more information, see: <http://www.monuc.org/>.

region to jointly negotiate a solution to the violence that could win unanimous acceptance and lead to lasting peace.

LOOKING FORWARD

Many stakeholders will be closely monitoring and evaluating the first round of the UPR in 2008 to assess whether it lives up to expectation as an apolitical, inclusive and impartial process that enhances the promotion and protection of human rights the world over. Should this not be the case, arguments from NAM States that the Third Committee should not be dealing with country-specific human rights matters will have little currency. However, given that the true worth of the UPR process will not be known for some time, it is likely that the 63rd session of the Third Committee will hear similar arguments being put forward by NAM States, and the same rebuttals by members of WEOG. It will be interesting to see if a majority of States continue to share the view that as the U.N.'s most senior universal body with a mandate to consider human rights matters, the Third Committee, should continue to consider human rights concerns wherever they occur.

Looking forward, other matters of interest will be the renewal of the mandates of special procedures in the HRC. These decisions come in the wake of the HRC's political compromise to discontinue the mandates of the special procedures in Belarus and Cuba in order to secure the passage of its institution building package. And although the HRC recently extended the mandates of the Independent Expert on Burundi, as well as the Special Rapporteurs on the Sudan, Haiti and Myanmar, it decided to remain silent on the future of the Expert Group on Dafur, thereby shutting down this much-lauded mechanism.

The renewal of the mandate for Burundi and Haiti in the HRC was supported by the countries concerned, which led a number of States to assert that 'the express will of the country concerned' was vital for the continuation of any country-specific mandate.¹⁵⁶ As noted in ISHR's *Council Monitor*, although support for the mandate by the State concerned is to be welcomed and bodes well for cooperation with the mandate holder, 'this recent interpretation of the support shown by Burundi and Haiti could well lead to an unwritten rule that the express support of the country concerned is required. This, however, would run counter to the institution-building text and the spirit of the negotiations leading to its adoption.'¹⁵⁷

Many eyes will be on the HRC at its March 2008 session to see how it deals with the renewal of the mandate of the Special Rapporteur on the DPRK and Myanmar (which will not enjoy the support of the governments concerned) and the DRC.

¹⁵⁶ These remarks were made by Egypt on behalf of the African Group.

¹⁵⁷ See p6 of ISHR *Council Monitor: Human Rights Council*, 6th Session First Part, Session Overview, 10-28 September 2007, available at http://www.ishr.ch/hrm/council/cmreports/sessionoverviews/sixth/council_overview_6_session_firstpart_a_e.pdf

BACKGROUND

The General Assembly is the main deliberative organ of the UN. It is composed of representatives of all Member States and has a general mandate to discuss and make recommendations on any matters within the scope of the *United Nations Charter*. Under Article 13 of the Charter, the 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.¹⁵⁸ 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.

¹⁵⁸ Information on the main committees of the General Assembly (GA) is available at <http://www.un.org/ga/maincommittees.shtml>

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