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Overview

The Human Rights Council (the Council) resumed in formal session this morning with a continuation of general debate on the High Commissioner's update report¹ by member and observer States and non-government organisations (NGOs). This was followed by States exercising their rights of reply to statements relating to the interactive dialogue with the Special Rapporteur on freedom of religion or belief and the general debate with the High Commissioner that began on Thursday 13 September. The President then closed the discussion in order to move to the presentation of the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.² The fact that close to thirty-five States and 19 NGO's wished to speak during the interactive dialogue resulted in the incomplete assessment of the mandates of the Special Rapporteur on freedom of religion or belief and the Working Group on arbitrary detention, to be continued on Monday. In the afternoon, the Assistant Minister of Foreign Affairs of Serbia, H.E. Feodor Starcevic, also addressed the Council on behalf of the Chairman of the Committee of Ministers of the Council of Europe.

¹ For a summary of the High Commissioner's statement, as well as the general debate, see ISHR Daily Update of 13 September 2007, available at <http://www.ishr.ch/hrm/council>.

² For a summary of the report, see http://www.ishr.ch/hrm/council/reports_in_short/summaries_pdfs/sum_sixth_session_2007/sr_racism_defamation_religion.pdf

Address by Assistant Minister of Foreign
Affairs of the Republic of Serbia, H.E.
Ambassador Feodor Starcevic

After a few announcements at the beginning of the afternoon session, the President gave the floor to the Assistant Minister of Foreign Affairs of Serbia, H.E. Mr Feodor Starcevic, who delivered a statement on behalf of the Chairman of the Committee of Ministers of the Council of Europe (CoE). He started by referring to the 2005 Summit of Heads of State of the COE, of which Serbia is the current Chair, where the protection and promotion of human rights, democracy and the rule of law were discussed. He drew parallels between the work of the COE and the UN, particularly since human rights is a key priority for the COE, and remarked that both organisations set standards, monitor compliance and provide assistance to member States. He stressed that it was essential to share experiences and expertise in order to strengthen human rights at the regional and international level.

He mentioned five key areas where cross-fertilisation of the work of the COE and the UN could be beneficial, and also highlighted the regional mechanisms that were in place in these areas. These were the upholding of human rights in the fight against terrorism; the Optional Protocol to the Convention Against Torture (OP-CAT) and the creation of the Subcommittee on Prevention; trafficking in persons; the CoE's partnership with the UN and UNICEF in promoting children's rights; and the effective abolition of the death penalty. He also called for support from other countries for a General Assembly resolution on a global moratorium on executions, which would be supported by CoE member States. Mr Starcevic ended his address to the Council by highlighting the intention of the COE to cooperate with the UN in the human rights field, given the new opportunity for engagement provided by the Council, such as the universal periodic review (UPR).

General debate on the statement by the High
Commissioner

The content of the general debate during the morning meeting revolved around the core issues of the High Commissioner's statement from the previous day. These included:

The universal periodic review mechanism

The important role of OHCHR in facilitating and supporting the UPR mechanism was discussed by a number of States. Some States focused their comments on the importance of ensuring that the UPR is a fair, impartial and objective mechanism.³ Morocco captured this spirit, describing the UPR as the Council's 'jewel in the crown', the integrity of which must be preserved. It also called for a 'dynamic partnership between' the Council and States under review. The Democratic People's Republic of Korea (DPRK) committed to making every effort to ensure that the UPR is a 'politicisation free mechanism'.

Other States addressed the technicalities of the UPR's operation.⁴ These included:

- Algeria⁵, Ethiopia⁶, and the African Union⁷ called for the swift establishment of the voluntary funds to assist developing countries' preparation for and attendance of reviews.⁸ Argentina supported calls for developing countries to be assisted in their review preparations.

³ Argentina, Democratic People's Republic of Korea (DPRK), Morocco, New Zealand, Sudan, Thailand, and Turkey.

⁴ African Union and Algeria.

⁵ Aligning itself with the statements made by Egypt on behalf of the African Group and Pakistan on behalf of the Organization of the Islamic Conference (OIC) on the afternoon of Thursday, 13 September 2007. See footnote 1.

- A number of speakers also pressed that States need to be given adequate time to prepare for reviews. Algeria cast this in terms of the preparation of national reports. The African Union spoke of the time that would be required to run public awareness campaigns and departmental training to ensure an effective national consultation process toward reviews. Turkey stated that adequate preparation time would be essential to ensuring that the initial rounds of the UPR set the right tone for later reviews.
- Argentina, Morocco and New Zealand pressed that the effectiveness of the UPR will be measured against State compliance with and implementation of recommendations.
- Argentina stated that it was importance to ensure the contribution civil society organisations toward country reviews.
- The African Union discussed OHCHR's task to prepare compilations for State reviews, drawing the High Commissioner's attention to the peer evaluation mechanisms and biannual report systems established under the African Charter. Turkey described OHCHR's role in the UPR process as 'crucial'.

Special procedures

Following from the High Commissioner's support the previous afternoon for the continuation of country mandates within the system of special procedures, the Democratic People's Republic of Korea (DPRK) stated that the country mandates of the former Commission on Human Rights were created for political reasons. The DPRK was s a 'major victim' of this process. Sudan also favoured putting an end to what it termed 'constantly reviewed mandates'. New Zealand claimed that the system needed to be invested with a capacity to evolve. Argentina prioritised the importance of maintaining the independence of the system in the review process. The International Commission of Jurists (ICJ) appealed to States to adhere to the recommendations of mandate holders.

Country offices, visits, and situations

- Discussing OHCHR's plans to open a North African office, Algeria asked the High Commissioner to make a practice of consulting with relevant States before establishing regional offices. New Zealand acknowledged OHCHR's good work in the Asia-Pacific region.
- Belgium welcomed the extension of OHCHR's mandate in Colombia. Amnesty International, the Colombian Commission of Jurists, and ICJ seized the opportunity to express concern at continuing violations of human rights and international humanitarian law in Colombia. They cited impunity, arbitrary executions and detention, the killing of human rights defenders and trade unionists, and kidnapping and hostage taking by paramilitary organisations.
- The High Commissioner's visits to Colombia and the Great Lakes region (namely Burundi and the Democratic Republic of the Congo (DRC)) received broad discussion. Belgium acknowledged OHCHR's good work in Burundi and the DRC. Noting the progress made in Burundi, it called on OHCHR to continue its efforts in both countries, particularly in the eastern part of DRC. The African Union also recognised OHCHR's work in the region. Condemning impunity, it pressed that reconciliation is a complicated process that requires time. Burundi⁹ thanked the High Commissioner for OHCHR's work in its country. It urged the international community to sustain its support of Burundi's reconstruction and economic development, and to shift its focus from humanitarian to development assistance. Acknowledging the High Commissioner's visit, the DRC stated that it was determined to ensure respect for human rights and the rule of law in its country. As evidence of this commitment it cited the provision of reparations to victims, increases in the pay of judges, a refusal to grant amnesties for war crimes and

⁶ Aligning itself with the statement made by Egypt on behalf of the African Group on the afternoon of Thursday, 13 September 2007.

⁷ Ibid

⁸ As provided in Council *Resolution 5/1* of 18 June 2007.

⁹ Aligning itself with the statements made by Egypt on behalf of the African Group and Cuba on behalf of the Non-Aligned Movement (NAM) on the afternoon of Thursday, 13 September 2007.

crimes against humanity, changes to the legal classification of sexual violence offences, and ‘remarkable progress’ in combating impunity.

- Myanmar told the Council that, with its National Convention now concluded and the drafting of the remaining chapters of its Constitution underway and to be put to a referendum, its transformation into a democratic State is ‘moving ahead’. It complained about recent protests in Myanmar (by unnamed actors) that have sought to damage its image and cause civil and social unrest. It also explained that recent increases of fuel prices are linked to increased consumption and importation costs. Asian Forum for Human Rights and Development (FORUM-ASIA), Human Rights Watch (HRW), and ICJ expressed concern at the situation of political prisoners and the suppression of peaceful protests in Myanmar. HRW claimed that there are some 1,100 political prisoners in Myanmar.
- FORUM-ASIA, HRW, ICJ and International Educational Development each addressed the situation of human rights in Sri Lanka. Citing human rights and international humanitarian law violations by all parties in the conflict, the recruitment of child soldiers, and rising numbers of abductions and disappearances, HRW and ICJ urged the Sri Lankan Government to agree to the establishment of an OHCHR field presence in the country. FORUM-ASIA, expressing enthusiasm at the High Commissioner’s upcoming visit to Sri Lanka, requested that the Council hold a Special Session on Sri Lanka. Thailand, noting ‘positive developments’ in Sri Lanka, called on the Government to continue a constructive dialogue with OHCHR.
- Cursory discussion also addressed Iraq,¹⁰ Nepal,¹¹ Somalia,¹² and Zimbabwe.¹³
- Centrist Democratic International also made an attempt to discuss impunity and political imprisonment in Cuba but was cut short by two points of order from Cuba. Alleging, firstly, that the NGO was speaking off-topic and, secondly, that it carried out politically motivated activities with United States funding, Cuba called on the President to withdraw Centrist Democratic International’s speaking rights and to order an investigation into the NGO. The President asked Cuba to submit its request in writing to both the NGO Committee of the Economic and Social Council (ECOSOC) and to the Council’s Bureau and, as an interim measure, suspended Centrist Democratic International’s speaking rights until the complaint could be explored. In the afternoon, the President returned to this issue and informed that the NGO Liaison Office of the UN Office in Geneva together with the Secretariat had examined the issue further and had concluded that the concerned NGO and its delegates were duly accredited. They had been issued badged for the session on the basis of valid passports and were therefore entitled to attend and speak. However, after careful examination of the statement the President had concluded that it was out of order in light of the item under consideration at the time. He further explained that any communication by the delegation of Cuba would be directed to ECOSOC or the Council’s Bureau depending on its nature. Finally, he affirmed that discipline should at all times prevail in the room and encouraged all delegates not to make personal attacks and to ensure that their statements are closely related to the item at hand.

Relationship between OHCHR and the Council

Only Algeria chose to address the question of the relationship between OHCHR and the Council.¹⁴ The Ambassador briefly welcomed the High Commissioner’s willingness to explore ‘ways and means of dialogue’ with the Council, and stated that there needed to be greater transparency in the management of OHCHR and its consultation with the Council.

¹⁰ Belgium identified the support of civil society organisations in Iraq and transitional justice strategies as priorities.

¹¹ FORUM-ASIA stated that, despite improvements, more work is required in Nepal.

¹² HRW called on the Council to condemn continuing human rights and international humanitarian law violations.

¹³ ICJ cited an escalation in attacks on opposition political parties.

¹⁴ This had been addressed the previous day by Bangladesh, China, Egypt (on behalf of the African Group), Jordan, Nigeria, Pakistan (on behalf of the OIC), Russian Federation, and South Africa.

Other issues

The African Union, Algeria and Argentina expressed their satisfaction with the outcome of the recent Preparatory Committee of the Durban Review Conference, with Argentina expressing its lasting commitment to the Durban process. The African Union proposed however that the next session of the Committee should aim towards reaching agreement on substantive issues to be addressed by the Durban Review Conference in 2009.

Thailand took note of the positive comments of the previous day by Australia and Sweden on the ASEAN Charter, and proclaimed that human rights and security are key elements of the Charter. A joint statement by the Asian Legal Resource Centre¹⁵ also welcomed the High Commissioner's support for the inclusion of human rights elements in the proposed Charter. New Zealand thanked the High Commissioner for her work in the region and Belgium notified the Council that its resolution on regional arrangements for the promotion and protection of human rights would be arranged as soon as possible. Morocco also credited the High Commissioner for her participation in the Non-Aligned Movement's conference on human rights and cultural diversity in Tehran, and informed the Council of its intention to table a resolution on the subject.

The International Commission of Jurists drew attention to the Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, encouraging States to adopt a 'comprehensive' approach to its scope. It also requested that the Council should address discrimination on the ground of sexual orientation.

Response of the High Commissioner

Although the President re-iterated that this segment was not an interactive dialogue and the High Commissioner was not required to respond, she nonetheless took the floor to make a very short statement. She told the Council that she looked forward to exchanging views with members in the future, that OHCHR was committed to supporting the UPR in its present framework and that she hoped the requisite funding was in place by the beginning of the cycle. She concluded by welcoming the adoption of the Declaration on the Rights of Indigenous Peoples and all who had worked for its adoption, including all indigenous persons and groups who are continually pursuing justice and the enjoyment of their rights.

Rights of reply

Iran was the first State to exercise its right of reply at the end of the High Commissioner's segment to 'totally refute...the unfounded allegations' made the previous day by Canada and 'an NGO' as an example of old politicisation, and claimed that the human rights situation in Canada should be brought to the attention of the Council. This included torture and death cases in custody and violence against women and children of indigenous people 'who are treated like second class people by the Canadian government'.

China exercised its right of reply to the statement made by the Society for Threatened People urging the Council to condemn the Communist government's abduction of the child designated by the Dalai Lama as the reincarnation of the living Buddha. China stated that the Dalai Lama's pronouncement about the boy counters historical Buddhist conventions and is illegal because the child is only a normal boy and deserves to live a normal life. China's position was that there is no issue of a 'so-called disappearance' and therefore the statement from the NGO was based on ignorance of Tibetan Buddhism and Chinese history.

The Sri Lankan delegation issued a reply to the joint statement made on behalf of Pax Romana, Asian Legal Resource Centre, FORUM-ASIA, and IMADR from the previous day on the issue of alleged attacks on religious leaders and places of worship in Sri Lanka. They asserted that contrary to the portrayal of the government by the NGOs in question, Sri Lanka is in fact a multi-ethnic and multi-religious society

¹⁵ The statement was joined by Forum Asia, Pax Romana and IMADR.

committed to the investigation of any and all alleged violations of freedom of religion. This commitment is demonstrated by the cooperation with the Special Rapporteur on Freedom of Religion's in relation to her visit in May 2005.

Zimbabwe exercised its right of reply to statements made by Portugal (on behalf of the EU) the previous day, claiming that it 'reserves the right to enact legislation to protect its national security and sovereignty' and that it was ironic that the EU 'feigned its concern for the suffering of the Zimbabwean people' when that suffering is a result of 'illegal' sanctions that the EU has imposed.

Presentation of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Following the rights of reply, the President opened agenda item 9 and gave the floor to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Doudou Diène. Mr Diène opened by stating that the report, in accordance with *Decision 4/9* of the Council, focused on defamation of religion, with a particular focus on the implications of **Islamophobia** on the enjoyment of all rights. He particularly highlighted the association of Islam with terrorism as one of the burgeoning manifestations of Islamophobia and defamation of religion. His report focussed on the alarming rise of Islamophobia and also dealt with other manifestations of religious discrimination and incitement to hatred, including anti-Semitism and Christianophobia.

He noted that one of the most problematic aspects of the issue of defamation was the necessity of attaining a **balance between freedom of expression and freedom of religion**. He asserted that Islamophobia was currently the most serious form of religious defamation, where the rhetoric of a global 'clash of civilizations' was manipulated by governments, political leaders, the media and others to present freedom of expression and freedom of religion as opposing and conflicting, rather than as complementary rights.

As the trend toward religious polarisation continues to grow, he stated that there were numerous examples of national movements that sought to incorporate **xenophobic ideology into democratic politics**. This could be seen most recently by newspaper publications in Sweden reminiscent of the Danish cartoons depicting Mohammed, and the recent billboard posters in Switzerland of the far-rightwing UDC party depicting three white sheep evicting a black sheep from Switzerland.

Mr Diène identified five bases for the **recommendations** of his report: the central role of the acceptance of diversity; the need to focus on dialogue which addresses the commonalities of religions rather than dogma; the need to look at the theoretical underpinnings of defamation of religions; the responsibility of all religions to promote human rights within society; and the balance between freedom of religion and freedom of expression as complementary standards. He concluded that the world has moved from the cold war to a period of 'cold peace' where we are moving further toward ideological, religious and cultural polarisation, and while certain organisations are working towards furthering this divide, there is no reaction from most States. What is required is to move beyond legal strategy, which has limitations, towards 'ethical and cultural strategies' to attack discrimination at the roots.

Interactive dialogue

There was a list of over thirty States wishing to speak and around nineteen NGOS, which the President in the end was compelled to cut down to 3 in order to accommodate the already long list of speakers.

The interactive dialogue that followed Mr Diène's presentation showed that the comments of States closely reflected the issues brought up by his report and presentation. The main issues, closely connected to one

another, that were raised during the course of the afternoon related to the issue of the rise of Islamophobia as a manifestation of the defamation of religion, the relationship between freedom of expression and freedom of religion and belief, the use of racist and defamatory rhetoric from political platforms, and the ways in which the recommendations of the special rapporteur could be implemented.

States largely welcomed Mr Diène's report and affirmed its importance in a contemporary context. Egypt (on behalf of the African Group), for example, identified the subject matter of Mr Diène's report as 'one of the most serious national and international threats to stability' and one that is ever increasing on account of the increasingly intertwined nature of race, religion and culture. Norway called the report 'comprehensive and 'thought-provoking', while Brazil termed the report 'useful and stimulating'. Many states expressed their concern at the 'alarming increase' in incidents of intolerance,¹⁶ and affirmed the importance of inter-cultural and inter-faith dialogue,¹⁷ with some States mentioning the importance for the continuation of the work done by the Alliance of Civilisations, a joint initiative of Spain and Turkey under the former Secretary-General of the UN, Mr Kofi Anan.¹⁸

Many States agreed that the main problems were intolerance, prejudice and xenophobia, and condemned incitement to violence or discrimination against any religion. However, given the complex nature of the issue at hand and Mr. Diène's detailed analysis of the concept of defamation, States were divided on a few broad key issues, in addition to specific disagreement with elements of the report. In terms of the general issues, one was whether the defamation of religions should be addressed as an issue broadly falling under the mandate of the Special Rapporteur on religion and belief, perhaps in conjunction with the Special Rapporteur on freedom of expression, or whether this was a separate issue that required special attention. Closely related to this debate was the difference of views on whether freedom of expression and freedom of religion were conflicting rights, or whether they were complementary. States advocating the latter view expressed their support to Mr Diène's proposal in conjunction with the Special Rapporteur on freedom of religion, Ms Asma Jahangir, to encourage the Human Rights Committee to develop complementary standards on the freedom of religion and the freedom of expression by developing a general comment on Article 20 of the International Covenant on Civil and Political Rights (ICCPR). Specific comments by States on the main themes of the interactive dialogue are presented thematically below.

- **Defamation of religion, and the relationship between the freedom of expression and freedom of religion**

Portugal (on behalf of the EU) thanked Mr Diène for the elaboration and presentation of his report, but reiterated its established position that it 'finds it difficult to reconcile the notion of defamation with the concept of discrimination'. The latter, it stated, falls clearly within the scope of human rights, whereas 'defamation of religion' is not a valid concept in human rights discourse as 'human rights law protects primarily individuals in the exercise of their freedom of religion or belief and not the religions as such'. Nonetheless, the EU found value in the report insofar as it addressed racial discrimination and related intolerance, and the double discrimination of race and religion. Norway also asked for a more 'profound' exploration of freedom of expression and religion, instead of depicting them as conflicting rights, and also pointed out that defamatory stereotypes of religions could also occur in multi-faith societies.

India also expressed its opinion that Mr Diène's report demonstrated the 'inherent limitations in analysing defamation' as a separate issue, and stated that India viewed it as falling under the topic of religious intolerance or abuse of freedom of expression. India went on to state that defamation was a broader issue of the issue of freedom of religion or belief and that any further analysis of the issue should be undertaken with the full involvement of the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on

¹⁶ South Africa, Russian Federation, Bangladesh, Azerbaijan, Thailand, Iran, Sudan and Malaysia.

¹⁷ Armenia, South Africa, Norway, Brazil, Azerbaijan, Republic of Korea, Syrian Arab Republic, Philippines, Indonesia, Malaysia, Thailand, Senegal and ICC-NHRIs.

¹⁸ Thailand and Spain.

freedom of expression. India also made special mention of its disagreement with Mr Diène that his references to the caste system in India had no relevance to racism or defamation, as caste had no basis in race.¹⁹

While welcoming the current report, Chile affirmed that it should be read alongside Mr Diène's other reports, and that creating a 'hierarchy of rights' should be avoided, a point that found broad agreement among several States.²⁰ However, Chile was also quick to emphasise that freedom of expression 'is not and cannot be seen as a problem' and religions must be willing to accept 'respectful criticism'.

Pakistan (on behalf of the OIC) claimed that there is a need to fill the 'judicial vacuum' in addressing the issue of religious intolerance and suggested that the Council, in conjunction with OHCHR, should look at the possibility of drafting a 'convention to combat defamation of religions and to promote religious intolerance'. This was strongly supported by Iraq, who wanted a resolution that 'defamation is not a freedom of expression issue', and said that they viewed defamation as a crime 'worse than murder' that should be made punishable by law. South Africa also felt that Mr Diène's report identified a 'substantive gap between freedom of expression, freedom of religion and non-discrimination', and that defending defamation as connected with the right to freedom of expression was 'meaningless'. They went on to highlight that freedom of expression did not extend to incitement to imminent violence and advocating hatred.

The Holy See offered a balanced view of how to address this issue, and said that there was 'no contrast between religious freedom and freedom of expression', and that both rights pertain to the public and private actions of individuals.

- **Human Rights Committee General Comment on Article 20 of ICCPR**

Portugal (on behalf of the EU) asked Mr Diène if he had had the opportunity to engage with the Human Rights Committee in light of their consideration to draft the general comment on Article 20, and, if so, whether he could suggest any inputs. Egypt (on behalf of the African Group), however, argued that the Human Rights Committee's pursuance of the general comment would not constitute a new development as such under treaty body norms, as General Recommendation No. 15 of the Committee on the Elimination of Racial Discrimination already states that 'the prohibition of racial discrimination is compatible with freedom of expression'. The delegate suggested that the Special Rapporteur might provide further recommendations in this regard. Many States expressed their interest or support for the development of complementary standards between freedom of expression and freedom of religion through a general comment.²¹

- **Rise of Islamophobia and the global war on terror**

Several States commented on the rise in Islamophobia after the events following 9/11 and the global war on terror.²² South Africa spoke about the 'erroneous association of Islam with terrorism'. Pakistan (on behalf of the OIC) likened the 'demonisation and dehumanisation' of Muslims to the treatment of Jews in the 'interwar period', yet claimed that where freedom of expression is rightfully limited in the case of anti-Semitism it is unhindered with regard to Islamophobic speech. The delegate asserted that the international media 'continues to use the misguided actions of a small minority as an excuse to malign the entire Muslim world as well as the religion of Islam'. It stressed that the international community must address the root causes of terrorism, including poverty and 'grave injustice and repression involving Muslims...which fuel extremism and terrorism'.

¹⁹ A/HRC/5/10, 25 May 2007. This report is available at <http://ohchr.org/english/bodies/hrcouncil/5session/reports.htm>. ISHR has produced an unofficial summary of this report (*Reports in Short*) that is available at www.ishr.ch/hrm/council/reports_in_short/. The Committee on the Elimination of Racial Discrimination extensively discussed this issue in its examination of India's 15th - 19th periodic report at its 70th session. For an overview of the discussion please see, http://www.ishr.ch/hrm/tmb/treaty/cerd/reports/cerd_70/cerd_70_india.pdf

²⁰ India, Djibouti, Tunisia, Brazil and Portugal (on behalf of the EU).

²¹ Armenia, India, South Africa

²² Cuba, Syrian Arab Republic, Bangladesh, Sudan, Lesotho, Malaysia, Iran, ICC-NHRIs, Armenia, South Africa, Djibouti, Tunisia,

- **Racist or defamatory rhetoric from political platforms**

Many States expressed their concern at the use of racist or discriminatory rhetoric to further political agendas, and the use of electoral platforms to do so.²³ The Russian Federation expressed its agreement with the analysis of the Special Rapporteur on the use of political factors to attack religion, and commented that in several democratic countries xenophobic rhetoric was used as an instrument of political struggle, and that political ‘smear campaigns’ were not only religiously directed, but also aimed at ethnic and social groups, which could lead to polarisation and outbreaks of violence.

Switzerland responded to Mr Diène’s comments on the political posters in the country, as well as the States refusal to allow the construction of minarets, by claiming that in Switzerland, as elsewhere, the dynamics of globalisation could create tensions that could be exploited. In Switzerland controversial issues can be discussed openly, even if opinions expressed are ‘sometimes regrettable’, and section 261 (bis) of the Penal Code criminalises incitement to hatred, in accordance with Switzerland’s obligations under the Convention on the Elimination of Racial Discrimination. Egypt (on behalf of the African Group) thanked the Rapporteur for his prompt response to the UDC poster and insisted that the Swiss Government should remove it immediately without any pretext for delay.

Pakistan (on behalf of the OIC), along with some other States, drew attention to the recent sketches in Sweden²⁴ and posters in Switzerland²⁵ as examples of an alarming rise of defamation of religions, and raised its particular concern at the tendency to dismiss individual acts of discrimination as ‘trivial’. The response to such acts lay in the need for closer interaction of followers of different religions and States at the national level checking the political misuse of discrimination and xenophobia.

- **Racism, religious discrimination and the Durban Declaration and Programme of Action (DDPA)**

Bangladesh, who affirmed that defamation could not be dissociated from racial discrimination, emphasised the need to put in place legal and administrative policies in line with the DDPA. The importance of DDPA and its role in combating defamation and religious discrimination was affirmed by many States.²⁶ Algeria emphasised that as part of the implementation of the DDPA, all States were invited to formulate policies and national action plans to combat racism, in addition to making regional and international efforts. China requested Mr Diène for his assessment of the implementation of the DDPA so far and areas where more effort could be made.

- **Other issues**

France vehemently voiced its disapproval at what they saw as the Special Rapporteur’s insinuation that France’s immigration policy somehow encouraged Islamophobia. It said that France had an ‘all-inclusive policy towards immigration’, and that it felt that immigration could ‘enrich their national identity’. However, France added that it was open to immigration only to the point allowed by its national capacity and social balance, and that it hoped to stimulate immigration irrespective of race or religion, as ‘long as they respect the values of France’. This point ironically echoed a criticism of the Special Rapporteur in his report, regarding how Muslims living abroad are asked to ‘assimilate’ in local cultures, implicitly or explicitly requesting them to abandon their cultural and religious heritage and even their visibility.²⁷ The delegate of France affirmed that France was a secular country, but that it adopted a firm attitude to prosecution when places of worship are attacked, a concern also expressed by some other States.²⁸ France also brought up the issue of having the right to change, renounce or not believe in religion.

²³ China, Cuba, Bangladesh, Azerbaijan, Russia, Tunisia, Philippines and Russian Federation.

²⁴ Iran, Bangladesh, and Syrian Arab Republic.

²⁵ Lesotho and Association of World Citizens.

²⁶ South Africa, Bangladesh, Azerbaijan, Algeria, Syrian Arab Republic, Thailand, ICC-NHRIs, and Brazil.

²⁷ A/HRC/6/6, Paragraph 15.

²⁸ Belgium and Malaysia.

The Netherlands objected to the Rapporteur's reference to Europe as a place where Christianophobia prevailed, due to dogmatism and the separation of Church and State, and said that they did not 'recognise Europe in this description'. They pointed to a number of religious schools, political parties and civil society organisations in the Netherlands, and requested that the Rapporteur focus his next report on civil society organisations that promote religion in the Netherlands and other parts of the world.

Malaysia stated that they provided financial support for places of worship, but that due to zoning laws and in the interest of maintaining public order, they could not freely allow people to build places of worship.

- **National initiatives and suggestions for future activities of the mandate holder**

Brazil drew attention to three national initiatives it had taken to eradicate discrimination and religious intolerance, namely, the creation of a special section to promote racial equality, a conference on how to fight racism, and a regional conference in 2008 on the DDPA. Republic of Korea drew attention to the importance of religious leaders in that country in combating defamation. The Sudan mentioned several conferences held in Khartoum in 2007 to promote the sustainability of peace through the coexistence of all religions. Indonesia stressed the differences in national cultural contexts, and that States should decide for themselves on how to engage in inter-faith dialogues.

Egypt (on behalf of the African Group) asked Mr Diène whether he could return to the question of the root causes of racism as the main hindrance to national and international security, and provide recommendations on how to address his conclusions. Belgium asked Mr. Diène if he had qualitative and quantitative data to evaluate the difficulty of religions other than Islam that had trouble establishing places of worship or performing religious practices in Europe.

Review, rationalisation and improvement of the mandates of special procedures

The Council was expected to begin the review of mandates in the afternoon session, but due to the large backlog of States wishing to address Mr Diène, the President was forced to suspend the assessment of the first mandates – on the Special Rapporteur on freedom of religion or belief and the Working Group on arbitrary detention – until 5 pm, but only after curtailing the list of NGO's from nineteen to three speakers in the interactive dialogue with Mr Diène.

The President introduced the process of review, rationalisation and improvement of special procedures mandates as an important task for the Council to embark on at this session. He informed that the review of the Working Group on arbitrary detention would begin on Monday (17 September) instead of that afternoon. However, as the Chair of the Working Group, Ms Leila Zerrougui, could only be present on that day, she was given the floor first.

Egypt (on behalf of the African group) stated that it would like to revisit the modalities for the participation of certain stakeholders in the interactive dialogue during the review of mandates.²⁹ While this was not relevant for the thematic mandates it would be an issue in relation to the review of country mandates.

The President noted that the process of review and its modalities should remain uniform and said that consultations on the modalities would take place next week.

Special Rapporteur on freedom of religion or belief

Portugal (on behalf of EU) as main co-sponsor of the mandate was given the floor first. It explained that the mandate was established in 1986 and since then had dealt with many important issues in relation to forms of

²⁹ This was endorsed by Pakistan (on behalf of the OIC).

discrimination and intolerance on the basis of religion or belief. The mandate highlighted the situation of particular vulnerable groups, in addition to examining the relationship of freedom of religion with other human rights standards. Many of the issues addressed by the mandate were very sensitive and Portugal commended Ms Jahangir and previous mandate holders for the non-political manner in which they had discharged a difficult mandate. Further, Portugal believed that while ‘very complete international standards concerning freedom of religion or belief’ were in place, significant efforts were required at national and international levels to eliminate such intolerance and discrimination and to prevent violations of freedom of religion or belief. Ms Jahangir had stated last year to the Council that the freedom of religion or belief ‘is often violated and reluctantly protected’. Moreover, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief was still not universally implemented. Portugal suggested the renewal of the mandate for a three-year period.

Portugal raised questions to Ms Jahangir regarding her views on the priorities for the mandate in the coming three years; on the future role of the mandate in developing strategies for prevention of violations of the right to freedom of religion or belief; and on strategies to address the situation of vulnerable groups.

Ms Jahangir was then given the floor to address the Council. She recalled that when the mandate was established it was entitled ‘Special Rapporteur on religious intolerance’ and that the title had been changed by the Commission on Human Rights after a review in 2000. She said that the current title acknowledged a broader role for the mandate to also promote freedom of religion or belief and prevent violations of this right. She went on to comment on the importance of the mandate for a holistic vision of human rights since violations of a number of human rights often occur simultaneously. She also informed the Council of some of the activities of the mandate since its establishment, including joint communications and joint reports with other special procedures mandates, the development of a framework for communications and an online digest of the Special Rapporteur’s findings, country visits with good cooperation from States, and the sending of allegation letters and urgent appeals with a response rate of 63.6 percent.

Ms Jahangir went on to say, with regret, that freedom of religion or belief remains unrealised for many and that religious intolerance has been increasing. She emphasised that it was important that the mandate continue to play a role in not only receiving allegations of human rights violations but also in preventing conflicts. She encouraged the Council to continue to quote the Madrid Final Document in its resolutions. Finally, she expressed the hope that the review would preserve the strengths and independence of the special procedures system and enhance human rights protection.

Interactive Dialogue

Both Pakistan (on behalf of the OIC) and the Russian Federation spoke about the importance of the mandate and both acknowledged that the mandate is increasingly topical and has become important after the terrorist attacks of 11 September 2001. Canada said that the mandate is crucial for ensuring freedom of religion and belief.

The Netherlands and the Russian Federation supported the renewal of the mandate. Pakistan (on behalf of the OIC) expressed its willingness to engage constructively in negotiations of a draft resolution on the mandate but regretted that it had not yet received a formal proposal from the EU.

In commenting generally on the mandate, Pakistan (on behalf of the OIC), noted that the mandate has addressed a range of issues and that there was a need to address these issues through collective efforts to eliminate discrimination based on religion and belief. It was unclear whether this was an indirect call on the international community to step up its efforts to address religious intolerance or whether the delegation was suggesting a collective, perhaps a working group, to examine these issues in the future. Both Canada and the Netherlands spoke of the rights to adopt, change and renounce religion or belief as key elements of the rights to freedom of religion and belief and expressed concern about the violation of these rights.

Pakistan (on behalf of the OIC) also said that it would like for all resolutions renewing a special procedures mandate to clearly affirm that mandate holders must exercise the mandate functions in accordance with the

Code of Conduct for special procedures mandate holders.³⁰ This was endorsed by the Russian Federation adding that the mandate holders must not overstep the mandate entrusted to them by the Council. Canada, on the other hand, supported the independence of mandate holders of the special procedures. These statements recalled the division among States in the working group on the review of mandates during the institution-building process.³¹

Working Group on arbitrary detention

The Chair of the Working Group on arbitrary detention, Ms Leila Zerrougui, recalled that the mandate was created by Commission on Human Rights *Resolution 1991/42* to investigate cases of arbitrary detention. The mandate had been redefined and expanded in 1997³² to also cover administrative detention of migrants and asylum seekers.

Ms Zerrougui explained that one of the added values of the special procedures generally was their ability to address allegations of human rights violations on the basis of prima facie information and without exhaustion of domestic remedies. Turning to the mandate of the Working Group specifically, she described it as particularly legal in nature as its role was to examine the legality of detention, including conformity of detention with domestic law and its application in accordance with human rights standards. Further, the Working Group is made up of five individual members from the five regional groups giving it both geographical balance but also representation of different legal systems. She also informed that the Working Group contributes to the prevention of arbitrary detention and assists States in meeting their international obligations. In this respect it has developed guidelines for assessing whether a detention is arbitrary. Furthermore, the Working Group has established a quasi-judicial procedure for examining individual communications. This work has contributed to the interpretation and implementation of relevant human rights standards. Ms Zerrougui also stated that the Working Group had issued more than 600 opinions on cases, had conducted 25 country visits and that these activities have allowed it to identify best practices, analyse recurrent trends and causes and to contribute to the prevention of arbitrary detention. Finally, she reaffirmed that arbitrary detention is a universal problem that can occur in all places although the intensity and gravity of the violations vary.

Next steps

The President announced that as a result of the delay in the programme of work of the Council the segment for general statements under Item 3 will be rescheduled until some time during the week of 17 September. He also said that there would be other changes to the programme of work but did not indicate what they might be. However, he did inform that the election of the President of the Working Group on the right to development will take place on Monday 17 September in the morning. This will be followed by the continued review of mandates starting with the Special Rapporteur on freedom of religion or belief and to be followed by the review of the Working Group on arbitrary detention. Each review will be allocated one and a half hours.

After the review the Council will consider the other reports under Item 3.³³ On Tuesday, 18 September, the Council will begin consideration of Item 5 as outlined in the programme of work.³⁴

³⁰ The Code of Conduct is contained in *Resolution 5/2*.

³¹ For more information, please see ISHR's reports on the discussions in the working group available at www.ishr.ch.

³² Commission on Human Rights *Resolution 1997/50*.

³³ This will cover the technical and objective requirements for mandate holders of the special procedures and for members of the Advisory Committee as well as the future of the Working Groups of the former Sub-Commission on the Promotion and Protection of Human Rights.

³⁴ The latest version of the programme of work is dated 12 September and is available on the extranet of OHCHR. The OHCHR extranet can be accessed (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

COUNCIL MONITOR STAFF

Kaavya Asoka, Fellow
Eléonore Dziurzynski, Communications Officer
Michael Ineichen, Human Rights Officer
Benjamin Lee, Human Rights Officer
Gareth Sweeney, Deputy Manager
Katrine Thomasen, Manager

Contributors

Ridwan Al-Jassar, Intern
Christopher Brown, Intern
Shushan Khachyan, Intern
Tina Kristensen, Intern
Alison Leon, Intern
Yuri Saito, Intern
Johanna Somerville, Intern

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