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Overview

The Human Rights Council (the Council) started its second week with a meeting of the Open-Ended Working Group on the right to development. The Working Group elected a new Chairperson-Rapporteur, Dr Arjun Sengupta. The President of the Council, Ambassador Doru Romulus Costea of Romania, then opened the Council's session by outlining the changes in the programme of work for the week. Under the item on review, rationalisation and improvement of special procedures mandates, the Council continued its consideration of the mandate of Special Rapporteur on freedom of religion or belief. It later considered the mandate of the Working Group on arbitrary detention. Most States that took the floor supported the renewal of both mandates. A number made comments on the methodology to be used to review mandates.

The afternoon session was dedicated to the presentation by the United Nations (UN) Deputy High Commissioner for Human Rights, Ms Kyung-Wha Kang, of the report of the UN High Commissioner for Human Rights (the High Commissioner) on equitable access to drinking water and the report of the Secretary General on human rights and unilateral coercive measures. This was followed by a general debate on agenda Item 3 ('promotion and protection of human rights'), which included States' and NGOs' comments on the reports as well as any other issue that speakers wished to raise under the agenda item. These issues included, among others, the right to self-determination (Pakistan), the abolition of the death penalty (the European Union (EU)) and the need for the Council to address persistent human rights violations against marginalized groups (the Canadian HIV/AIDS Legal Network).

Election of the Chairperson-Rapporteur of the Open-Ended Working Group on the right to development

The Council's morning session opened with a meeting of the Open-Ended Working Group on the right to development. The meeting, chaired by Ms Maria Francesca Ize-Charrin,¹ was held to elect a new Chairperson-Rapporteur to replace Dr Ibrahim Salama.² Taking the floor, Dr Salama expressed his gratitude to States for their support during his term of office. He told the Council that the clearest lesson he had learned in office was that States can find common ground if there is honesty, vision, and political will in their negotiations. He also pressed that technical advice and expertise had been important to the Working Group's work.

Sri Lanka, speaking on behalf of the Asian Group, presented the candidature of Dr Arjun Sengupta, the current Independent Expert on the question of human rights and extreme poverty, for appointment as the working group's new Chairperson-Rapporteur.³ It cited Dr Sengupta's experience as a former Independent Expert on the right to development,⁴ as a former member and advisor of the High Level Taskforce on the right to development, and as a leading authority and published author on the right to development. Egypt (speaking on behalf of the African Group), Cuba (speaking on behalf of the Non-Aligned Movement (NAM)), Honduras (speaking as Chairperson of the Geneva Chapter of the Group of 77⁵ and China), and Brazil each endorsed Dr Sengupta's candidature. Each State also paid tribute to Dr Salama's work.

The Working Group appointed Dr Sengupta as the new Chairperson-Rapporteur of the Working Group by acclamation, after which India took the floor to express its support of Dr Sengupta's (an Indian national) appointment. Dr Sengupta was not present.

Review, rationalisation and improvement of special procedures mandates

President Costea explained that the Council would continue its review of the mandate of the Special Rapporteur on freedom of religion or belief and of the Working Group on arbitrary detention, both started late last week.⁶ During the lunch break, Portugal (on behalf of the EU) held informal consultations on a draft resolution extending the mandate of the Special Rapporteur on freedom of religion or belief. Interspersed in the statements made during the formal session in the morning and during the informal consultation, a number of comments were made regarding the methodology of the process of review.

¹ Representative of the High Commissioner for Human Rights.

² Dr Salama resigned as Chairperson-Rapporteur to head the Office of the High Commissioner for Human Rights' (OHCHR) Treaties and Council Branch.

³ Keeping in mind paragraph 44 of the institution-building package (A/HRC/5/1) regarding the non-accumulation of human rights functions, it is to be assumed that Dr Sengupta will resign as Independent Expert.

⁴ 1994-2004.

⁵ The Group of 77 (G-77) was established on 15 June 1964 by 77 developing countries that signed the "Joint Declaration of the Seventy-Seven Countries" issued at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD) in Geneva.

⁶ See ISHR's *Daily Update* of 14 September 2007, available at <http://www.ishr.ch/hrm/council>.

Freedom of religion or belief

The Council continued its interactive dialogue on the review, rationalisation and improvement of mandates, returning to its consideration of the mandate of the Special Rapporteur on freedom of religion and belief.⁷

A number of States took the floor to express support for the continuation of the mandate,⁸ some seeking an extension of three years.⁹ The United Kingdom¹⁰ went so far as to call for the retention of Ms Asma Jahangir as the mandate holder.

Each State augmented their statements of support by citing the specific elements of the mandate that they found most compelling. Brazil described the mandate as a ‘balanced monitoring mechanism’, welcoming the Special Rapporteur’s comprehensive and non-selective approach to the discharge of her mandate.

The United Kingdom described the mandate as of ‘ever increasing importance’, discussing the difficulties that States face in ensuring that all people are protected in their right to freedom of religion or belief. The Republic of Korea, welcoming the Special Rapporteur’s ‘holistic approach’ to her work, echoed these points.

Australia described freedom of religion or belief as ‘a basic right and an essential element of any free society’, a statement repeated by Argentina. Australia, calling on the Council to play an ‘active role’ in protecting freedom of religion or belief, also acknowledged the Special Rapporteur’s focus on freedom of expression. Belgium¹¹ noted that freedom of religion or belief are not absolutes and called for the Special Rapporteur to take up the question of a person’s right not to have a religion or belief.¹²

In an NGO statement the International Association for Religious Freedom¹³ called for systematic follow-up to the recommendations of the current and previous mandate holders.¹⁴ The Worldwide Organization for Women¹⁵ stated that the mandate would only have an impact if women and girls can participate in their communities, and when tolerance of religion or belief is taught in schools.

Taking the floor at the close of discussion, Portugal (speaking on behalf of the EU) stated that it felt ‘reassured’ by State comments in support of the continuation of the mandate. It called for the entire special procedures system to be strengthened and for the independence of mandate holders to be ensured. It also announced that it would hold an open-ended consultation on its draft resolution on the elimination of all forms of intolerance and discrimination based on religion or belief during the lunch interval.

Working Group on arbitrary detention

⁷ As above.

⁸ Brazil, United Kingdom, Australia, Argentina, Belgium, Colombia.

⁹ India, Republic of Korea.

¹⁰ Aligning itself with the statement made by Portugal (on behalf of the European Union (EU)) on the afternoon of Friday, 14 September 2007. See footnote 1.

¹¹ As above.

¹² Colombia stated that ensuring freedom of religion and belief is a core challenge faced by the international community in its attempts to secure a peaceful world. It called for a dialogue amongst civilisations to tackle religious hatred.

¹³ In a joint statement with Baha’i International Community, Anglican Consultative Council, Pan Pacific and South East Asia Women’s Association, Franciscans International, Institute for Planetary Synthesis, Conscience and Peace Tax International, World Federation of Methodist and Uniting Church Women, International Federation of Social Workers, Worldwide Organization for Women, Susila Dharma International Association, International Federation of University Women, Dominicans for Justice and Peace.

¹⁴ It also called for inter-religious dialogue, and respect for persons with no religion or belief.

¹⁵ In a joint statement with Pan Pacific and South East Asia Women’s Association, Women’s Federation for World Peace International, International Educational Development.

The Chair of the Working Group on arbitrary detention, Ms Leila Zerrougui, addressed the Council last Friday, 14 September 2007 but was absent during today's discussion.¹⁶ In line with the President's proposed first stage of the review of mandates, France as the main co-sponsor was given the floor first to introduce the mandate of the Working Group on arbitrary detention (the Working Group).¹⁷ France expressed its view that arbitrary detention was of priority concern for all States. It commended the professional and competent manner in which the Working Group had contributed to the promotion and protection of human rights over the past 16 years.

With a number of other States and NGOs that took the floor in the ensuing discussion, France stressed that the Working Group had contributed considerably to the development of the concept of arbitrary detention, including the establishment of key definitions toward this.¹⁸ It also identified the quasi-judicial character of the mandate and the opinions that it has adopted,¹⁹ its capacity to examine individual complaints,²⁰ the large number of country visits carried out by the Working Group²¹ and its collegial nature.²² Composed of five members, the Working Group is representative of all major legal traditions and geographic regions. Concluding its introductory remarks, France stated that it would present a short resolution to extend the mandate for three years, and announced it would hold informal consultations to that effect.

States that took the floor supported the continuation of the Working Group's mandate.²³ The majority of States acknowledged the Working Group's role in preventing arbitrary detention. A number of States also commended the Working Group for its role in combating arbitrary detention in the context of counter-terrorism.²⁴ The Working Group's preventive role²⁵ in defending the rights of vulnerable groups, asylum seekers, immigrants²⁶ and prisoners²⁷ was emphasised by many delegations. Switzerland noted that the Working Group has highlighted important international human rights law issues such as military justice, detention based on sexual orientation, incommunicado detention, secret detention and the imprisonment of conscientious objectors. Other issues included the key role of the Working Group in the realisation of the International Covenant on Civil and Political Rights (ICCPR)²⁸ and the ability of the Working Group to challenge the legality of detention.²⁹

Some States were concerned that a short resolution extending the mandate as proposed by France would fail to address potential improvements of the mandate.³⁰ On this point, China called on co-sponsoring States to provide a clear justification for extending the mandate. Algeria suggested that the Working Group provide the Council with an account of the challenges that it has faced, including negative responses to mission requests, absence of replies, or difficulties in speaking directly to detainees. This would give the Council guidance toward improving the mandate. The Russian Federation stressed that the resolution extending the mandate

¹⁶ See ISHR's *Daily Update* of 14 September 2007, available at <http://www.ishr.ch/hrm/council>.

¹⁷ The mandate on arbitrary detention was created by Commission on Human Rights *Resolution 1991/42* to investigate cases of arbitrary detention. The mandate was redefined and expanded in 1997 by the Commission on Human Rights.

¹⁸ Peru and the Republic of Korea noted that the Working Group has played a fundamental role in defining whether administrative arbitrary detention could be arbitrary.

¹⁹ Supported by Brazil, Amnesty International.

²⁰ Supported by Brazil, Peru, Canada, Switzerland, Chile, Federation of Human Rights Leagues (FIDH), Human Rights Watch, OMCT, the International Commission of Jurists (ICJ).

²¹ Also highlighted by Brazil, Canada, Amnesty International, FIDH, Human Rights Watch, OMCT, ICJ.

²² Canada, China and Turkey commented favourably about the visits to their countries.

²³ Canada, Portugal (on behalf of the EU), Peru, Switzerland, Russian Federation, the Republic of Korea, China, Nigeria, Argentina, Turkey, Chile, Ethiopia, Tanzania.

²⁴ Brazil, the Republic of Korea and Nigeria raised the issue of arbitrary detention in the context of the war on terror.

²⁵ Raised by Argentina and Chile.

²⁶ Raised by the Republic of Korea.

²⁷ Raised by the Republic of Korea, Turkey.

²⁸ Portugal (on behalf of the EU).

²⁹ Portugal (on behalf of the EU), Peru.

³⁰ Egypt (on behalf of African Group), Pakistan (on behalf of OIC), Algeria, China.

must take account of the *Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council* (the Code of Conduct) adopted in June.³¹

Discussing potential improvements to the Working Group's mandate, Ethiopia highlighted the importance of gender mainstreaming, suggesting that the scope of the Working Group's mandate be extended to include the situation of women.

A number of NGOs expressed support for the Working Group and made suggestion toward its improvement. The Federation of Human Rights Leagues (FIDH) discussed the collegial nature of the Working Group³² and its ability to receive individual communications. Amnesty International stressed that the Working Group has played a significant role in considering many high profile cases. The International Commission of Jurists (ICJ) stated that the non-requirement of exhaustion of domestic remedies should be upheld. It also welcomed the Working Group's role in preventing arbitrary detention, including rendition in the context of counter terrorism, and called for its role to be extended to include an address of extra-judicial killings, enforced disappearances and other forms of inhuman treatment while in detention.

Worldview International Foundation drew the Council's attention to arbitrary detention in Burma. Defence for Children International suggested extending the scope of the mandate by including an item on its agenda devoted to the detention of children.

Debate on the methodology of the review

Egypt (on behalf of the African Group) urged the Council to reflect on the methodology to be used when assessing special procedures mandates. In particular, Egypt was of the view that the presentation by the sponsors of resolutions should include proposals on the terms of reference of the mandate in question. It again suggested that a reference to the Code of Conduct be included in every resolution.³³ Pakistan (on behalf of the Organization of the Islamic Conference (OIC)) agreed, saying that the Council should not 'jump into' the review of mandates without first discussing how the review would be done.³⁴ It stated that the sponsors of mandates should provide the Council with a background paper on the mandate that includes terms of reference for the mandate holders and suggestions on how to improve, rationalise or simply review the mandate. Pakistan (on behalf of the OIC) was also of the view that the staggered approach currently used, whereby mandates are reviewed over the course of the year across several sessions, would deprive the Council of the overall perspective. To remedy this, it proposed that the December 2007 session of the Council be used exclusively for the review of mandates.³⁵ China suggested that decisions on all mandates should be taken as a package since some mandates might be merged or extended in the process.³⁶ Argentina, while not commenting on the methodology in general, recalled that the Council needed to look at the special procedures system in its entirety. Algeria expressed its dissatisfaction with the order in which the review was being

³¹ Egypt (on behalf of the African Group) suggested including such a reference in all renewed mandates.

³² In a joint statement with Human Rights Watch and OMCT. Supported by Amnesty International.

³³ Supported by the Russian Federation.

³⁴ The Working Group on the review of mechanisms established by Council decision 1/104 has met three times for a total of 20 working days over the course of the first year of the Council. However, the Working Group not only failed to review all special procedures mandates, for which it was mandated, but also failed to lay down clear criteria and processes on how to conduct reviews. The Council decided in its institution-building package adopted in June 2007 (A/HRC/5/1 and A/HRC/5/2) to review mandates 'in the context of the negotiations of the relevant resolution' (paragraph 55).

³⁵ The December session is scheduled from 6 to 13 December 2007.

³⁶ Supported by the Russian Federation.

carried out.³⁷ According to Algeria, the mandates of mandate holders whose second terms expired in 2006 should be reviewed first.³⁸

The President tried to clarify the situation by repeating his idea of a three-stage process shared at the beginning of the current session.³⁹ The first stage would be an assessment of a mandate, in which sponsors and other States could express views on it. In a second stage, the mandate holder would present their final or annual reports. The third stage would involve the adoption of a resolution determining the future of the mandate. Facing criticism for having started the review process without deliberations on the methodology to be used, the President stated that he had insisted on starting the review at this session because the Council was already running. He did, however, urge all members to properly assess each mandate and to take into account all of its aspects before actually taking a decision on its future. When Egypt (on behalf of the African Group) insisted on discussing methodology first, he said that the Bureau would discuss the different suggestions made, but asked all delegations to focus on the substance of the mandate under review.

A number of States disagreed with the approach taken by Portugal, which submitted a draft resolution renewing the mandate of the Special Rapporteur on freedom of religion or belief. To these States, Portugal's draft mirrored resolutions traditionally used to renew mandates, rather than focusing on the review, rationalisation and improvement of the given mandate. These States were also of the view that the review of mandates should form part of a separate resolution,⁴⁰ providing a 'justification' for the renewal of the mandate.⁴¹

Other States were satisfied with the interactive dialogue so far held on the review of mandates. Portugal (on behalf of the EU) justified its approach to the matter by recalling paragraph 55 of the institution-building package⁴², pointing out that the review of mandates should be done 'according to the programme of work'.

General debate on Item 3 – promotion and protection of human rights

Before turning to the reports of the High Commissioner on equitable access to drinking water⁴³ and the Secretary General on human rights and unilateral coercive measures,⁴⁴ the President informed the Council that the Special Rapporteur on freedom of religion or belief, Ms Asma Jahangir, had been able to follow the discussions on the assessment of her mandate via the webcast,⁴⁵ and had submitted comments to the Council to be considered in any manner it considered appropriate.⁴⁶ The President then stated that the presentation of

³⁷ For a (slightly outdated) list of which mandates would be reviewed at which session of the Council, see the OHCHR extranet <http://portal.ohchr.org/portal/page/portal/HRCExtranet/6thSession/OrganizationalMeeting>. 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. Read in conjunction with the regularly updated programme of work of the Council, available at <http://ohchr.org/english/bodies/hrcouncil/6session/ood.htm>.

³⁸ The second term of Ms Asma Jahangir, the current Special Rapporteur on freedom of religion or belief, would only expire in 2010.

³⁹ See ISHR's *Daily Update* of 10 September 2007, available at <http://www.ishr.ch/hrm/council>.

⁴⁰ Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC), China.

⁴¹ China.

⁴² Council Resolution 5/1 adopted on 18 June 2007.

⁴³ Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, UN Doc. A/HRC/6/3, available at <http://www.ohchr.org/english/bodies/hrcouncil/6session/reports.htm>.

⁴⁴ UN Doc. A/HRC/6/2, available at <http://www.ohchr.org/english/bodies/hrcouncil/6session/reports.htm>.

⁴⁵ The live webcast of the meetings of the Council is available at <http://www.un.org/webcast/unhrc/index.asp>.

⁴⁶ The comments from Ms Jahangir are available on the OHCHR extranet. See footnote 37.

the reports would be followed by a general debate encompassing comments on the reports and any other issues that States wished to raise in relation to agenda Item 3 (promotion and protection of human rights).

Presentation of the report and comments on equitable access to safe drinking water

UN Deputy High Commissioner for Human Rights, Ms Kyung-Wha Kang, presented the Council with a very brief introduction to the report of the High Commissioner on equitable access to drinking water. She listed the sources that were consulted in the preparation of this report, and specifically pointed out the increasing recognition that access to safe drinking water and sanitation needs to be addressed through a human rights framework. States thanked the Office of the High Commissioner for Human Rights (OHCHR) for preparing the Report.⁴⁷ Germany commented on the pertinence of this report, while Switzerland noted that it helped to better define the content and scope of the right to safe water and sanitation. The Netherlands believed that this clarification would increase the awareness of duty-bearers and facilitate the effective protection of this right.

A number of States chose to address the substance of the High Commissioner's report and the question of the right to water more generally:

- Bolivia observed that the late submission of the report and the fact that it was not translated into Spanish made it difficult for some delegations to analyse this report.
- Portugal (on behalf of the EU) reminded the Council that 'despite significant progress in addressing problems of human deprivation, many people still...suffer from lack of drinking water and sanitation'. Several delegations quoted figures demonstrating the prevalence of this problem.⁴⁸
- A number of delegations spoke of the need to eliminate discrimination and inequality in access to safe drinking water and sanitation.⁴⁹ Italy stated that women and children are the most vulnerable, and pointed out that the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child are the two international legal instruments which make the most explicit reference to this right. The Netherlands observed that the report highlighted the fact that no one should be deprived of a minimum quantity of water because of inability to pay.
- A number of delegations gave examples of the recognition and protection of the right to drinking water and sanitation at the national level.⁵⁰ Taking this into account, some States and NGOs suggested the sharing of best practices.⁵¹
- Bangladesh underscored the importance of developing sustainable water sources while preserving the ecosystem. Similarly, Turkey stated that water lies at the core of sustainable development. Spain, referring to its own experiences, referred to water as a 'scantly resource'. Bolivia remarked that poor countries often have to shoulder the burden of development in rich countries in the form of climate change and water shortages. It thus highlighted the need for consistency to be achieved between implementation of liberalisation of trade and of human rights.
- Many delegations expressed a desire to further elaborate and debate the issue of safe drinking water and sanitation.⁵² Germany undertook to draft a resolution calling for the dissemination of this report and calling for a debate on this issue at the Council's 7th regular session in March 2008. The latter

⁴⁷ India, Switzerland, Italy, Bolivia, Cuba, Uruguay.

⁴⁸ Germany, Italy, Netherlands, Turkey. According to the United Nations Development Program, more than one billion people without access to drinking water and 2.5 billion people without adequate sanitation. 17% of world's population does not have access to clean water, and 42% does not have access to sanitation.

⁴⁹ Bangladesh, Italy, Netherlands, Belgium.

⁵⁰ Italy, Bolivia, Morocco, Spain, Belgium.

⁵¹ Netherlands, Bolivia, Uruguay, Centre on Housing Rights and Evictions (COHRE).

⁵² India, Netherlands, Germany, Italy, Spain, Belgium, Algeria, COHRE.

point was supported by a number of delegations,⁵³ while others mentioned the benefit of having a follow-up to this report.⁵⁴

- A number of recommendations were made aside from the dissemination of best practices mentioned above. Bangladesh articulated their wish to consider establishment of access to water as a basic human right. Spain wanted this issue to be the subject of discussion and analysis among states and with civil society in the context of 2008 Expo in Zaragoza entitled *Water and Sustainable Development*. The International Environmental Law Research Centre supported the High Commissioner's recommendation that each State should develop relevant legislation. It also encouraged the appointment of a special procedure on water and sanitation. The Centre on Housing Rights and Evictions (COHRE) made five concrete proposals: the appointment of a Special Rapporteur on water to monitor and spread best practices; the creation of Charter bodies to promote the right to water; calling on OHCHR to provide technical support to States; calling on all States to ensure that the right to water is reflected in national legislation; and urging action on this issue as a priority.

Presentation of the report and comments on human rights and unilateral coercive measures

Ms Kang gave the Council a similarly cursory presentation of the Secretary General's report on human rights and unilateral coercive measures. She stated that the report followed the request of the Council to seek the views of all States on the implications and negative effects of unilateral coercive measures, and summarised the replies received from Colombia, Costa Rica, Lebanon, Georgia, Romania and the Syrian Arab Republic. Ms Kang concluded her presentation of both reports by trusting that they might inform the future work of the Council in this regard.

Certain States responded to the report of the Secretary General and the question of unilateral coercive measures during the general debate:

- Pakistan (on behalf of the OIC) supported NAM's 'principled position regarding unilateral coercive measures' as a contravention of the UN Charter and the norms and principles governing peaceful relations between States. Belarus termed this a 'gross and manifest violation of the UN Charter'.
- Expressing first its intent to table a resolution on the subject, Cuba submitted that universal coercive measures were harmful to the independent sovereignty of States and that the principal victims of unilateral coercive measures were vulnerable groups such as women, children and the elderly.⁵⁵
- According to Cuba, the United States has maintained a policy of aggression that has sought to destroy the economic and social system of the country. This constitutes a violation of the rights of the people of Cuba and a failure to respect the sovereignty of others. According to the delegate, this view was reflected in the General Assembly's recent resolution to lift the blockade against Cuba.
- The representative of Belarus expressed his concern that despite continual condemnation by the Council and other bodies of the UN, the use of unilateral coercive measures continues to spread, which testifies to a 'significant protection gap'. The Council should therefore take a leading role in monitoring the manifestation and effects of universal coercive measures on human rights.
- Algeria vowed to continue to push for the abolition of unilateral coercive measures at the Council, in allegiance with the position taken by NAM. Pakistan (on the behalf of the OIC) called for an immediate end to such measures, particularly against OIC States.

Other issues

⁵³ Italy, Spain.

⁵⁴ Belgium, Algeria, COHRE.

⁵⁵ Supported by Cuba

Portugal (on behalf of the EU) was one of two States, alongside Armenia, to use the general debate as an opportunity to address a range of issues of concern under the heading of ‘promotion and protection of human rights’ that did not pertain to the substance of the two reports presented. On the basis of the principle of the universality and indivisibility of all rights, Portugal first urged the **ratification** by all that had not done so of the ICCPR and International Covenant on Economic, Social and Cultural Rights, as well as the implementation of the **Millennium Development Goals**,⁵⁶ and encouraged support of the mandates of the Special Rapporteurs on **health, food, housing and education**. Turning to civil and political rights, Portugal pinpointed the need for **domestic legislation** compliant with international standards, and urged all States to **abolish the death penalty** in order to contribute to the enhancement of human dignity. Portugal then commended the work of the Rapporteurs on **extrajudicial executions, torture, freedom of expression, freedom of religion or belief** and the Working Group on **arbitrary detention** before concluding that the Council and the international community ‘cannot remain passive to the pleas of the oppressed’.

Armenia requested that the Council distinguish between the ‘early warning’ and ‘early preventions’ of violations, and identified that closer cooperation between the **Special Advisor of the Secretary General on the prevention of genocide** and the Council would be a good example of the latter practice. They also stated that the protection of **cultural heritage** at the Council level would promote respect between peoples and is therefore indispensable for peace and security.

Pakistan spoke on the **right to self-determination** as an established ‘and most fundamental collective human right of peoples’, as enshrined in the UN Charter, the international Covenants and various World Conference declarations. It asserted that ‘the people of **Jammu and Kashmir** have yet to assert that right’ and that the human rights situation continues to be serious, including extrajudicial killings and torture, citing Amnesty International and Human Rights Watch as independent verification of the same. Pakistan claimed that improvement of the human rights situation would help in the resolution of the dispute. The content of Pakistan’s statement was re-iterated and supported by a number of NGOs.⁵⁷ India exercised its right of reply by stating that Jammu and Kashmir is an integral part of India, and that the composite dialogue with Pakistan was the appropriate forum for moving forward on the issue. A member of the International Youth and Student Movement of the UN also raised the situation of **Western Sahara** as ‘a result of political and military conflict’. This solicited a derisory right of reply from the Ambassador of Morocco, who claimed that ‘when you are in your own home you are not ‘occupying’ anything’.

A joint statement provided by the Friends World Committee for Consultation⁵⁸ welcomed the adoption by the General Assembly of the **UN Declaration on the Rights of Indigenous Peoples** on 13 September 2007 and stated that it looked forward to States ‘seizing the historic opportunity...to enter into a new commitment to the protection of the human rights of indigenous peoples’. It regretted that Australia, Canada, New Zealand and the United States had voted against the Declaration.

The Canadian HIV/AIDs Legal Network raised issue of the Council’s responsibility to address **persistent human rights violations against marginalized groups**. It approached the question in the context of HIV/AIDs related-discrimination and the slowness of the international community to respond, or even acknowledge, certain groups at risk, ‘such as men who have sex with men, people who use drugs and sex-workers’. The Network responded that the Council must be vigorous in addressing these needs. It looked forward to a discussion of **human rights violations based on gender identity and sexual orientation** at a future session of the Council.

⁵⁶ The implementation of the Millennium Development Goals in order to eradicate extreme poverty was later supported by Luxembourg.

⁵⁷ World Muslim Congress, International Islamic Federation of Student Organisations, the International Human Rights Association of American Minorities.

⁵⁸ Friends World Committee for Consultation, International Service for Human Rights, Amnesty International and FIDH.

Action Canada addressed the issue of **protection gaps within the system of special procedures**. It proposed that the Council should first define areas for which new mandates should be created, and secondly identify ‘areas falling into gaps for which initial exploration can be undertaken by one or more existing mandate holders’.

Informal consultations

Informal consultations on the draft resolution renewing the mandate of the Special Rapporteur on indigenous people

Prior to the opening of the Council’s morning session, Guatemala and Mexico held an informal consultation presenting their draft resolution renewing the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people for a period of three years. Guatemala announced that informal consultations would be held every day this week.⁵⁹ The review of the mandate of the Special Rapporteur on indigenous people is currently scheduled for Monday, 24 September 2007.

Guatemala and Mexico stated that their draft incorporated paragraphs from previous resolutions,⁶⁰ aiming at establishing a broad mandate. The only new element to the text was in operative paragraph 1(g), which mentioned the role of the mandate holder in promoting the implementation of the UN Declaration on the Rights of Indigenous Peoples,⁶¹ in conformity with existing international standards and national legislation. Several co-sponsoring States,⁶² while expressing their support for the inclusion of this paragraph, were concerned that this addition might give rise to further discussion by States. Responding to this concern, Mexico explained that all special procedures’ mandates linked to a UN human rights declaration are mandated to promote it.

In addition to strong proclamations of support for the mandate of the Special Rapporteur⁶³ and minor textual changes,⁶⁴ the meeting also touched on issues such as support for the participation of all relevant stakeholders,⁶⁵ collaboration with regional mechanisms,⁶⁶ and the timing of the presentation of the annual report of the Special Rapporteur.⁶⁷ On the latter point, Guatemala and Mexico responded that while the Special Rapporteur would present a report at the current session, the submission of the annual report would take place in accordance with the annual programme of work.

Informal consultations on the draft resolution on religious intolerance

Portugal convened an informal consultation on its draft resolution on the elimination of all forms of intolerance and discrimination based on religion or belief during the lunch break. It opened the meeting by

⁵⁹ (18 September, Room 23, 2-3 pm; 19 September, Room 24, 1-3 pm; 20 September, Room 22, 2-4 pm and 21 September, Room 21, 1-3 pm).

⁶⁰ Mexico stated that the current text is primarily based on Commission on Human Rights *Resolutions* 2001/57 and 2004/62.

⁶¹ For more information on the Declaration, please see ISHR’s New York Monitor at www.ishr.ch.

⁶² Denmark, Switzerland, Norway.

⁶³ Australia, Finland.

⁶⁴ Switzerland proposed merging several separate articles of the resolution together (paragraphs 1(d) and 1(e) and 1(b) and 1(h)), and Belgium proposed using the word regional ‘mechanism’ or ‘arrangement’, instead of ‘organism’ as currently stated in the text.

⁶⁵ Switzerland expressed its strong support for a reference in the text of the participation of all relevant stakeholders, such as indigenous peoples, NGOs, relevant UN bodies, and other regional or sub-regional international institutions.

⁶⁶ Finland asked Guatemala to qualify what working of the Special Rapporteur in close cooperation with regional mechanisms would entail, to which Guatemala provided the example of the Inter-American Court.

⁶⁷ Finland.

explaining that the resolution creating the mandate on freedom of religion or belief had traditionally been sponsored by the Netherlands and the EU. Portugal also explained that its current initiative had taken due regard of *Resolution 5/1* which affirmed that the review, rationalisation and improvement of each mandate would 'take place in the context of the negotiations of the relevant resolutions'.⁶⁸ It also recalled that *Resolution 5/1* had renewed all mandates until 'the date on which they are considered by the Council according to the programme of work'.⁶⁹

In introducing the draft resolution, Portugal highlighted new elements in the text, some of which were drawn from the Special Rapporteur's two latest reports.⁷⁰ The draft resolution continues the mandate's current terms of reference. It also requests the mandate holder to submit an annual report to the March 2009 session of the Council and outstanding interim reports in accordance with the programme of work.

Several States expressed support for the continuation of the mandate.⁷¹ However, a number of delegations were concerned about issues that had been raised in the morning's plenary debate and questioned whether the draft resolution would prejudge the review of mandates.⁷² Pakistan and the Russian Federation believed that the review and renewal of the mandate should be kept separate from the thematic resolution on religious intolerance. South Africa expressed strong disagreement with the approach taken by the EU to the review of the mandate, arguing that the Council had exceptionally extended all mandates for one year, which expired in June 2007, and that all of the mandates could not be assumed to be active. India, on the other hand, said that the institution-building package was quite clear on the status of mandate holders.

Many delegations believed that the text was too long and detailed and requested that it be shortened.⁷³ In connection with this, it was also suggested that the resolution should set out the terms of reference of the mandate more clearly.⁷⁴ China proposed that a general package on review of mandates would be more comprehensive and appropriate than individual initiatives. Australia and Canada said that there was no need to change the terms of reference. The Russian Federation suggested that the resolution be based on all previous resolutions on the issue of religious intolerance while India said that the resolution should take account of the last two reports of the Special Rapporteur.⁷⁵

There was also discussion about the reporting obligations under the mandate. Algeria questioned why the Special Rapporteur would submit an annual report as this was only expected of the High Commissioner and the Secretary General. India supported an annual cycle of reporting and did not see a need for the Council to receive interim reports.

Portugal at the close of the meeting announced that it would attempt to shorten the draft and would convene informal consultations again next Wednesday.⁷⁶

Next steps

⁶⁸ Council *Resolution 5/1*, paragraph 55.

⁶⁹ Council *Resolution 5/1*, paragraph 61.

⁷⁰ PP7, PP8, PP9, PP12, OP4(a), OP4(b), OP8, OP12, OP13, OP20, OP21, OP26, OP27.

⁷¹ Australia, Canada, India, the Russian Federation.

⁷² Algeria, Russian Federation.

⁷³ Algeria, South Africa, Pakistan, India, and China.

⁷⁴ South Africa, Egypt.

⁷⁵ India also stated that it was not appropriate for the draft resolution to list Islamophobia, anti-Semitism and Christianophobia as all religions experienced cases of intolerance.

⁷⁶ It remains unclear whether this is Wednesday, 19 September or Wednesday, 26 September 2007.

At the close of the afternoon meeting, the President announced that revised Facilitator's non-papers on the outstanding institution-building issues had been distributed.⁷⁷ He proposed that informal consultations be held on the morning of Tuesday, 18 September 2007 in place of the scheduled plenary session. These consultations could take place among groups and delegations on the non-papers and on the many proposed draft resolutions on other issues. The Council would then resume its session at 3pm and hold informal consultations on the three non-papers with approximately one hour dedicated to each.

⁷⁷ The documents are available on the OHCHR extranet. See footnote 37.

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