

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## DAILY UPDATE HUMAN RIGHTS COUNCIL, 8<sup>TH</sup> SESSION 18 JUNE 2008

### Overview

The last day of the 8<sup>th</sup> session of the Human Rights Council (the Council) also marked the end of the Council's second cycle and the last day of membership for some States. On 19 June, the new membership will take over, and a new President will be elected.<sup>1</sup> The Council was supposed to start the day with the appointment of special procedures mandate holders, based on a list prepared by President Costea. However, there seemed to be some disagreement among members of the Council on the names provided by the President. Accordingly, the consideration of the President's list was postponed to the end of the day.

The Council proceeded to the adoption of resolutions and decisions. Among others, it took decisions on the following:

- A Presidential statement on the 'terms in office of special procedure mandate holders', a text that had been hotly debated in informal meetings over the past few days. It will allow the Council to consider information about 'persistent non compliance by a mandate holder' with the code of conduct for special procedures. The proclaimed purpose of the Presidential statement is to 'guarantee the integrity and independence of the system of special procedures'. However, many fear that the text will be used to control mandate holders and limit their independence, thereby undermining the effectiveness of the special procedures system.
- The draft optional protocol to the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR).
- In the course of the review, rationalisation, and improvement of special procedures mandates, the Council renewed the mandates of the special procedures covering the following thematic issues: extrajudicial, summary or arbitrary executions; education; the independence of judges and lawyers; human rights and transnational corporations and other business enterprises; torture and other cruel, inhuman or degrading treatment or punishment; migrants; extreme poverty; and trafficking.
- Other decisions adopted included a critical European Union-led resolution on the human rights situation in Myanmar; resolutions on the promotion of a democratic and equitable international order, and the promotion of the right of peoples to peace (both by vote); and a resolution on eliminating discrimination against persons affected by leprosy and their family members.
- Amidst some controversy regarding the President's difference of views with the Consultative Group on candidates, a decision was adopted on the appointment of new special procedures mandate holders and the members of the new expert mechanism on the rights of indigenous people.
- The draft report on the eighth session was adopted *ad referendum*.

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<sup>1</sup> The new members are: Zambia, Ghana, Burkina Faso, Gabon, Japan, Bahrain, republic of Korea, Pakistan, Slovakia, Ukraine, Chile, Brazil, Argentina, France, United Kingdom.

## Resolutions adopted by consensus

### Conference facilities and financial support

The draft resolution entitled ‘conference facilities and financial support for the Human Rights Council’ was submitted and introduced by the President.<sup>2</sup> It intends to ensure the availability of all documentation for the Council in all official UN languages, and the possibility of webcasting meetings of the Council and its Working Groups. The draft asks OHCHR and the Conference Services Division of the United Nations Office in Geneva to conduct an assessment of the situation and report back to the 9<sup>th</sup> session in September 2008, including proposals on measures to be taken and an estimation of the necessary resources. The resolution was adopted by consensus.

### Terms in office of special procedure mandate holders

The President explained that he had held ‘long consultations’ with various stakeholders to solve the issue of ‘reappointment’ of mandate holders. He said that the statement was intended to supersede other proposals formally submitted on the same issue.<sup>3</sup> According to the Presidential statement, the President will ‘convey to the Council information brought to his or her attention, including inter alia by States and/or the Coordination Committee of special procedures, concerning cases of persistent non compliance, by a mandate holder with the provisions of the Council *Resolution 5/2*’ (code of conduct). Based on this information, the Council will ‘act upon it as appropriate’. Only in the absence of such information, ‘the terms in office of the mandate holder in question will be extended for a second three year term. The Presidential statement was adopted by consensus.

At first sight, the Presidential statement is a purely procedural decision clarifying an alleged ambiguity of the institution-building text adopted one year ago.<sup>4</sup> However, given the history of its negotiations, it is clear that it can pose a real risk to the independence of special procedures mandate holders and to the system as a whole. The draft resolution tabled and withdrawn by India and the Russian Federation would have imposed a requirement of ‘re-appointing’ all mandate holders after their first term of three years. This requirement is not explicitly included in the Presidential statement. The Council and all States must be cautious in the use of this new procedure and avoid placing the special procedures under constant surveillance and undue pressure in the performance of their work.

The negative way some States may intend to use the Presidential statement was exemplified by Jordan’s comment immediately following the adoption of the statement. It announced that it would make use of the Presidential statement for the consideration of one of the mandates to be formally renewed in the afternoon, and would like to provide further information.<sup>5</sup>

Amnesty International revisited this issue later in the day. While acknowledging that an acceptable solution had been found to the controversy, it expressed concern that the Council had served to undermine itself by ‘solving a problem that didn’t exist until the Council decided to create it’. It welcomed the ‘sensible’ safeguards that had now been built in to the new procedure, and considered that the new thresholds should ensure that the process would not be blocked ‘on the whim of States’ offended by the criticisms of special procedures. Amnesty International stressed that complaints made against mandate holders must be well-

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<sup>2</sup> A/HRC/8/L.3.

<sup>3</sup> While not making this explicit, the President referred to draft resolution L.15, which had been submitted by India and the Russian Federation.

<sup>4</sup> The Presidential statement carries no document number yet. The institution-building text is contained in *Resolution 5/1* of the Council.

<sup>5</sup> See also below the consideration of the draft resolution renewing the mandate of the Special Rapporteur on torture.

substantiated by reference to specific provisions of the code of conduct. It called on States to reflect carefully before making use of this procedure.

### **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights**

Portugal introduced the draft resolution entitled *Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights*.<sup>6</sup> The protocol will provide for an individual communications procedure under the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR). Some States<sup>7</sup> voiced concerns about amendments made outside of the Working Group to Articles 2 and 11<sup>8</sup>, which, in the latest version of the text, effectively expanded the scope of the optional protocol to cover the right to self-determination (Part I of ICESCR). The United Kingdom (UK) and Canada alluded to the possibility of not becoming parties to the protocol. Romania stated that the latest amendments could affect the ‘climate of trust’ that had prevailed in the Working Group.

Pakistan described the right to self determination as *jus cogens* and stated that other provisions of the ICESCR oblige its implementation. Many States<sup>9</sup> also praised Portugal for its efforts to strike a balance between political rights and economic, social, and cultural rights. Several States<sup>10</sup> placed on record their interpretation that the right to self-determination could not be invoked to trigger a complaint under a future complaints mechanism.

The adoption of the resolution by consensus triggered applause among the audience.

### **Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions**

Sweden introduced the draft resolution on the *Mandate of the Special Rapporteur on extrajudicial, summary, or arbitrary executions*,<sup>11</sup> and announced the deletion of operative paragraph 7b, which had requested the Special Rapporteur to respond effectively to information presented to her/him, particularly when an extrajudicial, summary, or arbitrary execution is imminent, threatened or has already occurred. The resolution sought to extend the mandate of the Special Rapporteur for three years.

Although no general comments were made, Egypt (on behalf of the African Group) and Pakistan (on behalf of the Organisation of the Islamic Conference) offered explanations of vote. Both of these statements disapproved of the inclusion of references to the death penalty in the mandate, and deplored attempts made by numerous delegations to promote certain issues<sup>12</sup> in the resolution that both the African Group and the OIC did not consider to be linked to extrajudicial killings. Egypt expressed the African Group’s disappointment with the exclusion of any reference to the deliberate targeting of civilians in armed conflict. It added that, in its view, the elaboration of this resolution had not constituted a ‘serious review exercise’, and that the process had not merely been a procedural one, as had been claimed by some.

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<sup>6</sup> A/HRC/8/L.2/Rev.1/Corr.1.

<sup>7</sup> UK, Germany, Switzerland, China, Japan, Turkey.

<sup>8</sup> Oral statements made at the Council and all resolutions can be accessed on the OHCHR extranet at <http://portal.ohchr.org> (fill out the form on <http://www2.ohchr.org/english/bodies/hrcouncil/form.htm> to receive user name and password). An audiovisual archive of all public meetings of the Council ('webcast') is available at <http://www.un.org/webcast/unhrc/index.asp>.

<sup>9</sup> Germany, Egypt, South Africa, Romania, Qatar, Mexico.

<sup>10</sup> The United Kingdom, Turkey, Canada, Australia, Switzerland.

<sup>11</sup> A/HRC/8.L4/Rev.1.

<sup>12</sup> It appears that this was an allusion to a proposed reference to extrajudicial killings based on sexual orientation.

Despite these critical comments, the resolution was adopted by consensus.

### **The right to education**

Portugal, as the main sponsor, introduced the resolution on the right to education,<sup>13</sup> which it said had built on similar resolutions in the former Commission on Human Rights. The resolution welcomed the contributions of the UN Children's Fund (UNICEF) and the UN Educational, Scientific and Cultural Organisation (UNESCO) towards achieving universal primary education and eliminating gender disparity in education. It urged States to give full effect to the right to education without discrimination, and included new language on the rights of girls and persons with disabilities, and emergency situations. The resolution extended the mandate of the Special Rapporteur on the right to education for three years.

The resolution was adopted without a vote.

### **Mandate of the Special Rapporteur on the independence of judges and lawyers**

Hungary, as the main sponsor, introduced the resolution on the extension of the mandate of the Special Rapporteur on the independence of judges and lawyers.<sup>14</sup> It stressed that an independent and impartial judiciary, an independent legal profession and the integrity of the judicial system are essential prerequisites for the protection of human rights. The text also notes with concern the increasingly frequent attacks on the independence of judges, lawyers, and court officials, and renews the Special Rapporteur's mandate for another three years. Hungary explained that the current text took as its starting point the original mandate, and that subsequent changes reflected the mandate's organic evolution over the last 14 years.

The resolution was adopted without a vote.

### **Mandate of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises**

India, as co-sponsor, introduced the draft resolution.<sup>15</sup> It highlighted the obligations of States to promote and protect human rights, which were balanced with business' responsibilities to respect rights. The resolution recognised the three pillars as laid out in the report of the Special Representative: namely, State duty to protect; corporate responsibility to respect; and access to effective remedies. India also noted that the draft resolution recognised the need to operationalise the existing framework and requested the provision of concrete recommendations to businesses and other stakeholders. The draft also renewed the mandate of the Special Representative for a further three years.

Slovenia (on behalf of the EU) stated that while it looked forward to the adoption, it noted that only States had obligations under international law, and that the need to protect against non-State actors required careful analysis.

In its explanation of vote, South Africa acknowledged the work done so far, and recognised the conceptual framework addressing the three pillars mentioned above. It stressed the need to breach existing governance gaps, but was concerned that the current formulation of the terms of reference kept the mandate trapped in its

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<sup>13</sup> A/HRC/8/L.5.

<sup>14</sup> A/HRC/8/L.7.

<sup>15</sup> A/HRC/8/L.8.

first phase. Referring to the impact of corporations on developing countries with weak legislation, South Africa considered that the Special Representative should be requested to prepare a coherent international legal agreement that bridges the existing governance gaps. Noting that its proposals had not ‘resonated well’ during negotiations, South Africa dissociated itself from the resolution.

The resolution was adopted without a vote.

### **Torture and other cruel, inhuman or degrading treatment or punishment**

Denmark, as the main sponsor, introduced this resolution,<sup>16</sup> noting that it was the first opportunity for the Council to adopt a resolution on this topic. Its main focus was to extend the mandate of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment for three years. Denmark explained that the resolution defined robust terms of reference for the mandate. New elements contained in the resolution included a call on States to provide education and training for personnel who may be involved in the custody, interrogation, or treatment of individuals under arrest or in detention.

Drawing on General Assembly *Resolution 60/251* establishing the Council, and Human Rights Council *Resolution 5/1* on institution-building, Jordan reserved the right to bring to the attention of the President ‘in due course’ important information relating to the non-compliance of the Special Rapporteur to the relevant provisions. It appears that the reference made is to alleged non-compliance with the code of conduct. Further, Jordan requested that the President act on such information in the manner outlined in the Presidential statement as soon as possible, and prior to the official confirmation of the mandate holder.<sup>17</sup>

The resolution was adopted without a vote.

### **Human rights of migrants: mandate of the Special Rapporteur on the human rights of migrants**

Mexico, as the main sponsor, introduced this resolution,<sup>18</sup> which primarily focused on the extension of the mandate for a period of three years. The resolution would require the Special Rapporteur, among other things, to examine ways to overcome obstacles to the protection of the human rights of migrants, recognising the particular vulnerability of women, children, and those who were undocumented or in an irregular situation. It emphasised the need to seek practical solutions, and improve international cooperation.

Slovenia (on behalf of the European Union) reiterated its commitment to the human rights of all individuals without discrimination. It added that addressing the challenges and opportunities of migration was a key priority for the EU, whose migration policy was built on solidarity and mutual trust between the member States. It considered migration to be a complex issue, and noted the paramount importance of a rights-based approach to the issue.

The resolution was adopted without a vote.

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<sup>16</sup> A/HRC/8/L.9.

<sup>17</sup> As noted above, the Presidential statement carries no document number yet. On this issue, see also ISHR Daily Updates from 26 March 2007, 21 September 2006.

<sup>18</sup> A/HRC/8/L.14.

## **Human rights and extreme poverty**

France introduced the draft resolution for the renewal of the mandate of the Independent Expert on human rights and extreme poverty.<sup>19</sup> France noted that the relationship between the non-enjoyment of human rights and poverty, while accentuated in developing countries, was not restricted to them. It was noted with concern that insufficient progress had been made in this area despite the commitment of States.

During its explanation of vote, South Africa, for the second time in the session, dissociated itself from the resolution<sup>20</sup> It noted that the question of poverty and hunger was a major challenge for developing countries, and that the plight of people in these countries should not be ‘trivialised’ nor addressed as narrowly as was the case in the resolution. It stressed that the problem should be addressed with due linkages to development issues.

The resolution was adopted without a vote.

## **Special Rapporteur on trafficking in persons, especially women and children**

The Philippines and Germany, as main sponsors, introduced this resolution.<sup>21</sup> The Philippines noted that the key priorities, as set out in the text, were to enhance cooperation, curb trafficking, and protect the victims. The mandate could play a critical role to this end, by highlighting the human rights dimensions of the issue, and assisting States appropriately. The text requested a continued gender- and age-sensitive perspective in tackling the problem. Germany added that the mandate was based on the Commission on Human Rights resolution of 2004 that had created the mandate, and that the text under consideration was an effort to combine two related initiatives sponsored by Germany and the Philippines.

The resolution was adopted without a vote.

## **Elimination of discrimination against persons affected by leprosy and their family members**

This draft resolution<sup>22</sup> was introduced by Japan, which noted that leprosy was one of the oldest and most dreadful of diseases. There remained, according to Japan, a deep-rooted fear and lack of understanding of the disease, whose cure had been discovered as recently as the 1980’s. The resulting prejudices limited access to sufferers and their families to all aspects of social life. The draft resolution highlighted the awareness-raising activities and guidelines that were needed to address these issues.

The resolution was adopted without a vote.

## **Situation of human rights in Myanmar**

Slovenia (on behalf of the EU) expressed regret that a resolution on Myanmar<sup>23</sup> again needed to be tabled in the Council. It had hoped to see positive developments in Myanmar following the adoption of previous resolutions, but these had not been forthcoming. The decision to table a further resolution was motivated by

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<sup>19</sup> A/HRC/8/L.16

<sup>20</sup> See above under Mandate of the Special Representative to the Secretary General on the issue of transnational corporations and other business enterprises.

<sup>21</sup> A/HRC/8/L.17

<sup>22</sup> A/HRC/8/L.18

<sup>23</sup> A/HRC/8/L.12

several recent developments and concerns, including the continued detention of political prisoners; the untimely constitutional referendum shortly after Cyclone Nargis in May, which was characterised by intimidation and complete disregard for the principles of free and fair elections; the Government's obstruction of timely international assistance following Cyclone Nargis; and its lack of effort to investigate and prosecute those responsible for the violent crackdown on peaceful protests in August 2007.

Several States criticised the resolution. Some argued that it was untimely, premature, intrusive, and condemnatory;<sup>24</sup> risked undermining constructive engagement with the Government;<sup>25</sup> and failed to reflect positive developments in Myanmar on reconciliation and democratisation, which deserved due recognition and support from the international community.<sup>26</sup> Some States considered the resolution politicised,<sup>27</sup> while India argued that all Council initiatives should be non-condemnatory and 'forward looking'.<sup>28</sup> In similar terms, Pakistan (on behalf of the OIC) stressed that it always promoted a non-selective approach to considering human rights situations worldwide, and questioned whether country mandates facilitated actual improvements in human rights. Other States emphasised that sufficient time should be granted before assessing whether the situation on the ground had improved.<sup>29</sup>

Sri Lanka and Indonesia argued that the cooperation of the concerned country was essential in developing country-focused resolutions. The Russian Federation predicted that the resolution would have a negative effect on the work of the Special Rapporteur. Several States<sup>30</sup> encouraged greater progress in reconciliation and democratisation, while India and the Russian Federation announced their dissociation from the adoption of the resolution.

Myanmar, as the concerned country, considered the resolution an attempt by 'powerful States' to apply political pressure on the Government, and called it 'lopsided and highly intrusive'. It outlined various efforts it had undertaken recently to improve the situation of its people, including international cooperation on relief efforts in the aftermath of Cyclone Nargis, the May national referendum on the constitution, and cooperation with the Council 'in a spirit of goodwill and sincerity'. Myanmar announced that it was considering acceding to a request for a visit by the Special Rapporteur prior to the September 2008 session of the Council.

Despite the various criticisms expressed, the resolution was adopted without a vote.

#### Decisions adopted by vote

#### **Promotion of a democratic and equitable international order**

Cuba introduced the draft resolution on the promotion of a democratic and equitable international order<sup>31</sup> noting that this was the first time the subject had come before the Council. Cuba stressed that the resolution rejected a unilateralist approach to international relations, and underscored multilateral solutions as the only acceptable means of 'grappling with international problems'. Oral adjustments made to the text included an amended reference to the non-use of force and non-intervention.

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<sup>24</sup> India, Sri Lanka, Pakistan (OIC), Russian Federation.

<sup>25</sup> India, Philippines.

<sup>26</sup> India, Philippines, Pakistan (OIC), Sri Lanka, Indonesia, Russian Federation, Malaysia, China.

<sup>27</sup> India, Pakistan on behalf of the OIC, Sri Lanka, Sudan.

<sup>28</sup> Supported by Sri Lanka.

<sup>29</sup> Philippines, Sri Lanka, China.

<sup>30</sup> Philippines, Malaysia, Japan, Thailand, Indonesia.

<sup>31</sup> A/HRC/8/L.6.

Slovenia (on behalf of the EU) stated that while some of the issues addressed in the resolution were important, the text covered issues that extended beyond the mandate of the Council. In particular, it focused on relations between States rather than that between States and their citizens, and some of the issues would be better addressed by other mechanisms. Slovenia proceeded to call for a vote and announced that it would vote against.

Decision adopted by vote: 33 in favour<sup>32</sup>, 13 against<sup>33</sup> and one abstention.<sup>34</sup> During explanations of vote after the vote, Ghana amended its vote. Having originally abstained, it wanted the record amended to reflect that it wished to vote in favour.

### **Promotion of the right of peoples to peace**

The draft resolution on the promotion of the right of peoples to peace<sup>35</sup> was introduced by Cuba. Cuba noted that the text stressed the importance of the right of peoples to live in peace and a sound environment, enjoying life without war. It also requested the High Commissioner for Human Rights to convene a workshop on this issue in 2009.

Slovenia, speaking on behalf of the EU, stated that while it was supportive of some of the principles in the text, the absence of peace could not justify a failure to respect human rights. Slovenia called for a vote on the resolution, declaring that the EU would vote against.

The draft resolution was adopted by vote with 32 in favour<sup>36</sup>, 13 against<sup>37</sup> and two abstentions<sup>38</sup>.

### **Other Issues**

#### **Approval of the President's list of mandate holders**

The President presented his list of recommended special procedures candidates, which also included recommended names of experts to join the Expert Mechanism on the rights of indigenous peoples.<sup>39</sup> He attempted to gavel through the decision as per his list. However Egypt, on a point of order, requested a suspension of the session in order to conduct further consultations, and stated that it did not consider the list

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<sup>32</sup> Angola, Azerbaijan, Bangladesh, Bolivia, Brazil, Cameroon, China, Cuba, Djibouti, Egypt, Gabon, Ghana, Guatemala, India, Indonesia, Jordan, Madagascar, Malaysia, Mali, Mauritius, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Uruguay, Zambia.

<sup>33</sup> Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain.

<sup>34</sup> Mexico.

<sup>35</sup> AS/HRC/8/L.13

<sup>36</sup> Angola, Azerbaijan, Bangladesh, Bolivia, Brazil, Cameroon, China, Cuba, Djibouti, Egypt, Gabon, Ghana, Guatemala, Indonesia, Jordan, Madagascar, Malaysia, Mali, Mauritius, Nicaragua, Nigeria, Pakistan, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Uruguay, Zambia.

<sup>37</sup> Bosnia-Herzegovina, Canada, France, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain.

<sup>38</sup> India, Mexico.

<sup>39</sup> The list can be accessed on the OHCHR extranet at <http://portal.ohchr.org> (fill out the form on <http://www2.ohchr.org/english/bodies/hrcouncil/form.htm> to receive user name and password). Then follow the links to 'follow-up to Human Rights Council *Resolution 5/1* on the institution-building package', 'Special Procedures'. The list contained candidates that had been put forward for the Council's consideration by the President, following consultations with the Consultative Group. These covered mandates on the following issues: freedom of opinion and expression; physical and mental health; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; trafficking in persons; people of African descent, arbitrary detention, the situation of human rights in Haiti. The list also included candidates for the expert mechanism on the rights of indigenous peoples, and the forum on minority issues.

adopted. There was a lengthy delay, following which the President reiterated that all mandate holders shall fulfil their responsibilities in strict accordance with the relevant Council resolutions covering their mandates. On that basis, the list was approved. The Republic of Korea and Portugal expressed criticism of the President's approach to the procedure. These statements were clearly motivated by the fact that their own nationals had not been recommended by the President to fill mandates, despite having been presented to the President by the Consultative Group as the latter's top preferences.<sup>40</sup> Notably, the candidate from Portugal sat next to the delegate and visibly encouraged him to make the intervention. The Republic of Korea called for the procedure to be more transparent and objective, and for the President to provide a clear rationale whenever he disagreed with the preferences of the Consultative Group. Guatemala, despite one of its candidates having been chosen for a mandate, claimed that the Council had become as 'politicised and non-transparent' as the Commission on Human Rights. It reasoned that the consultations on candidates had gone well beyond the objective criteria of the exercise and had questioned the person's faith and political views.

### **Adoption of the report of the eighth session of the Human Rights Council**

The President noted that the draft report of the eighth session of the Council included only one innovation compared to the usual format of such reports – that being the consideration of outcomes of the universal periodic review. The draft report was adopted *ad referendum*. Delegations were given two weeks to propose any amendments to the draft, following which the eighth session was formally brought to a close.

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<sup>40</sup> It should be noted that the President retains the prerogative to choose from the Consultative Group's list whichever candidate/s he deems most suitable, and is thus not obliged to concur with the preferences of the Group.

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