



GENERAL ASSEMBLY: HISTORIC NEW DEVELOPMENTS, BUT GROWING THREATS TO OHCHR'S INDEPENDENCE VIS-À-VIS THE HUMAN RIGHTS COUNCIL

INTRODUCTION

This year's session of the General Assembly (September – December 2008) coincided with the celebration of the 60th anniversary of the *Universal Declaration of Human Rights* (UDHR), and a number of significant initiatives were undertaken to mark the occasion. These included the adoption of the optional protocol to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the adoption of a General Assembly declaration on the UDHR,¹ and a number of unprecedented statements on sexual orientation and gender identity. Although some of these initiatives reaffirmed the unifying power of the UDHR, they also exposed the fragile nature of international consensus on human rights issues.

The General Assembly adopted the strategic framework for the Office of the High Commissioner for Human Rights (OHCHR) for 2010-2011, (also referred to as 'Programme 19'), but for the first time by a vote. Although Israel called the vote in response to an unwanted reference to follow-up to the *Durban Declaration and Programme of Action* (DDPA), the fact that a vote was called at all on this important document set an unfortunate precedent. The negotiation process was tarnished by the attempt by some States to insert language into the strategic framework

that threatened the independence of OHCHR. Although these attempts were unsuccessful, they foreshadowed the difficult and protracted debate expected in the discussions on the subject of the relationship between the Human Rights Council (the Council) and OHCHR at the 10th session of the Council in March 2009.

In other areas, however, this year's global financial, food, and energy crises appeared to generate a greater level of cooperation amongst States as they more frequently sought to focus on where there was common ground and to cultivate consensus on a number of resolutions. A new initiative by Morocco to draw attention to the work of Ombudsmen, mediators, and other national human rights institutions was one case in point.² Designed to 'overcome sterile confrontations' and foster 'mutual dialogue and respect', this resolution gave practical effect to the rhetoric of the Non-Aligned Movement (NAM) that was repeated throughout the session. However, the fact that Morocco's new initiative was not well-known prior to the commencement of the General Assembly's session meant there was considerable overlap with Germany's decision to revive the General Assembly's resolution on national human rights institutions.³ This only served to underscore the fact that considerable scope to improve communication and collaboration amongst member States still remains.

¹ General Assembly Resolution 63/116. All resolutions adopted are available at www.un.org/ga/63/resolutions.shtml. See also ISHR's *New York Alert* on the end of the General Assembly's 63rd session, available at www.ishr.ch/new_york_monitor_ga.

² General Assembly Resolution 63/169, adopted by consensus. All resolutions and voting sheets from the Third Committee are available at www.un.org/ga/third/63/documentation.shtml.

³ General Assembly Resolution 63/172. The resolution on national human rights institutions was last adopted in 2005, General Assembly Resolution 60/154. It was a biennial resolution from 1993 to 1999.

Nonetheless, the General Assembly adopted over 50 resolutions on human rights matters, mostly by consensus. There were only two new initiatives, both of which were adopted: Morocco's resolution referred to above, and Cuba's proposal to develop a quota system to achieve equal geographic representation on human rights treaty bodies.⁴ The General Assembly also approved five resolutions with significant budget implications, including two that will allow additional meetings of two treaty bodies to clear their backlog of State reports.⁵ As in previous years, the following resolutions proved the most contentious and in addition to a vote, they were subject to lengthy and at times heated debate: extrajudicial executions; moratorium on the death penalty; follow-up to the DDPa; and the human rights situation in Iran. This year also saw new patterns in voting emerge on key resolutions, including the Council's annual report; the right to development; follow-up to the DDPa; and the implementation of the World Programme of Action Concerning Disabled Persons.⁶

THE HUMAN RIGHTS COUNCIL'S ANNUAL REPORT AND THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Two of the most complicated and divisive items on the Third Committee's agenda this year were the Council's annual report and Programme 19.

Although Programme 19 was eventually adopted with little variation to the original text as drafted by OHCHR, it was subject to two significant obstacles. The first of these was a raft of amendments proposed by Cuba and the African Group, with both attempting to scale back the level of independence of the High Commissioner's office and delegate new authorities to the Council. These included a proposal that an independent party undertake a cost-benefit analysis of OHCHR's existing field offices and provide the Council with recommendations about their future operation, as well as the suggestion that follow-up to the findings and recommendations of special procedures first be approved by the Council. These proposals were discussed in

informal negotiations and not included in the final text. In a further challenge to OHCHR, Israel broke with convention in the Third Committee by calling for a vote on the adoption of Programme 19, due to its strong objection to OHCHR undertaking any follow-up work on the DDPa. Although Australia and Canada chose to abstain, only the United States (US) shared Israel's objections and voted against Programme 19, while the overwhelming majority of States expressed support for OHCHR and voted to approve its strategic framework.

The Council's annual report to the General Assembly had a similarly difficult passage through the Third Committee. Once the uncertainty recurring every year over how to allocate the report between the Third Committee and the General Assembly plenary was resolved,⁷ the Committee took action on three controversial recommendations that required its endorsement. The first of these, regarding the optional protocol to ICESCR, was adopted by consensus relatively early in the session, thanks in large part to the determined efforts of Portugal, the main sponsor of the resolution.⁸ This early adoption paved the way for the adoption of the optional protocol in the General Assembly plenary on International Human Rights Day, coinciding with the General Assembly's commemoration of the 60th anniversary of the UDHR. Not only was this seen as a fitting way to reaffirm the vision of the universality of human rights embodied in the UDHR, but many, including the High Commissioner, regarded the creation of an individual complaints mechanism to address violations of economic, social and cultural rights as the closure of a historic protection gap. For more information about the adoption of the optional protocol, see the chapter 'Major developments in international human rights law' of the current edition.

The fate of the Council's two other recommendations to the General Assembly was notable for very different reasons. Although the General Assembly adopted these recommendations in a single resolution, the text provided only lukewarm support for them, which resulted in neither being allocated funds for implementation.⁹ One of the recommendations proposed the establishment of an Office of the President of the Council, as well as additional funds to cover the increasing costs associated with the

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General Assembly Resolution 63/167 was adopted by a vote: 128 votes in favour, 55 against, two abstentions.

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The Committee on the Elimination of Racial Discrimination will meet for an additional week during each of its two annual sessions from August 2009 until 2011 (General Assembly Resolution 63/243); and the Committee on the Rights of the Child will meet in parallel chambers between October 2009 and January 2011 (General Assembly Resolution 63/244). Both Committees requested these additional meetings.

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For more information, see www.un.org/disabilities/default.asp?id=23.

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The General Assembly's General Committee, which has responsibility for allocating the Council's report, sent it first to the Third Committee for action only on the Council's recommendations, and then called on the General Assembly plenary to take action on the report as a whole. Each year since the establishment of the Council, the General Committee has taken a different approach to the allocation of the report, and avoided establishing a clear precedent on this issue.

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General Assembly Resolution 63/117.

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Rather than 'endorsing' the recommendations, as is the practice in the General Assembly to indicate a sufficient level of approval to warrant funds being allocated to implement a resolution, Cuba (one of the main sponsors of the resolution on the Council's report) orally amended the text to only 'acknowledge' the Council's recommendations. This triggered the withdrawal of the document proposing the allocation of resources to fund the implementation of the resolution.

Council's universal periodic review (UPR) process, including webcasting and the translation of official documents. The other recommended that the General Assembly consider the report of the Council's high-level mission to Beit Hanoun in the occupied Palestinian territory (OPT), with the participation of members of that mission. Although the possibility remains that the General Assembly could develop a new proposal between now and the conclusion of its current session in September 2009 to implement the Council's recommendations, it appears unlikely that States will advocate for additional funds for initiatives that lack widespread support. Further, the global financial crisis and the increasing pressure from all parts of the UN to meet expenses using 'existing resources' are likely to prompt greater budgetary prudence across the organisation.

The fact that the Council's recommendations were caught in this limbo, coupled with the fact that both Programme 19 and the Council's annual report were forced to a vote, did not reflect positively on the relationship between New York and Geneva. Rather, it added to the general resignation amongst States that the 10th session of the Council in March 2009 would be the setting for a heated, if not hostile debate about the relationship between the High Commissioner and the Council. This debate looks set to see Western States seeking to bolster or at least defend the independence of the High Commissioner and her Office, and those belonging to the NAM and the Organization of the Islamic Conference (OIC) intent on strengthening the Council's authority *vis-à-vis* OHCHR. Thus, the High Commissioner's first encounter with the Third Committee was best viewed as a polite welcome, rather than a reflection of the future reception she can expect in either Geneva or New York.

The perennial question of how to deal with the 'division of labour' between the Council, the Third Committee, and the General Assembly plenary was also raised with greater frequency this year, suggesting that more States are beginning to formulate their views on this in anticipation of the upcoming review of the Council by the General Assembly in 2011. Discussions indicated not only that there was little consensus on this matter, but that some States were compiling a large variety of ideas about what

the review should cover. This already extensive list indicates that careful consideration and an inclusive discussion amongst States and civil society organisations is needed to ensure that an adequate and realistic agenda for the review is developed.

CIVIL AND POLITICAL RIGHTS

A central issue this year was the question of how States would follow up last year's historic General Assembly resolution on the moratorium on the use of the death penalty.¹⁰ Going into the session, co-sponsors of last year's text advised that their goal was to maintain momentum on the implementation of moratoriums on the death penalty around the world, and to continue to promote constructive dialogue on the abolition of the death penalty without provoking the same controversies and intense debates that accompanied last year's resolution.¹¹ As a result, co-sponsors proposed a brief procedural resolution¹² in the hope of broadening support for the resolution to include those States that had established a *de facto* moratorium on the use of the death penalty in the last twelve months. However, this approach prevented the inclusion of substantive provisions advocated by some States, with the support of NGOs, such as on the prohibition on the use of the death penalty on juvenile offenders, and the need for various agreed international safeguards to be complied with where the death penalty is used. Despite the best intentions of the co-sponsors, debate on the resolution was polarised from the start and bogged down by discussion of seven amendments suggested by Uganda (on behalf of the OIC). These were all defeated in the Third Committee, and the General Assembly adopted the resolution, with results showing a slight gain in support compared to 2007.¹³

Although several new special procedures reported to the General Assembly this year, the mandate holders covering civil and political rights were familiar faces from previous years. Many sponsors of a number of the related resolutions sought to incorporate and endorse the recommendations and/or findings of these independent experts into their initial draft texts, but unfortunately these efforts were more often than

¹⁰ See ISHR's report on civil and political rights at the 62nd session of the General Assembly, available at www.ishr.ch/new_york_monitor_ga.

¹¹ Moratorium on the use of the death penalty, General Assembly Resolution 63/168.

¹² This year in the General Assembly, 106 States voted in favour, 46 against, and 34 abstained. In 2007, 104 voted in favour, 54 against, and 29 abstained. One of the more positive outcomes of the vote this year was that several countries in the Arab League changed their vote against the resolution from last year, to abstention this year (Bahrain, Jordan, Oman, Mauritania). Opposition to the text came mostly from other members of the OIC, Singapore, China, and a few of the Caribbean countries. African countries were generally split on the issue.

¹³ General Assembly Resolution 63/185.

not hindered by opponents, and relevant provisions were either diluted or deleted.

For example, the resolution on **counter-terrorism and human rights**¹⁴ sought to address due process flaws in the listing of terrorist suspects by the Sanctions Committee of the Security Council (absence of opportunity to be informed in advance and to present submissions). The Special Rapporteur's report suggested several options to remedy these flaws,¹⁵ but in an effort to reach consensus, the paragraph adopted by the General Assembly requiring the Security Council to use 'clear and fair' procedures in its counter-terrorism sanctions regime was significantly weakened by not specifically referring to some co-sponsors' recent proposals to the Security Council on the due process implications of listing and de-listing.¹⁶

Sponsors also attempted to include new language on citizenship and religious discrimination in administrative procedures in the annual resolution on the **elimination of all forms of intolerance and of discrimination based on religion or belief**,¹⁷ two issues which were highlighted in the Special Rapporteur's report.¹⁸ A provision in the first draft urged States to provide for the alternative of civil registration of marriages where only official recognition of religious marriages existed, and another urged States to refrain from forcing someone to swear allegiance to a religion against his/her will in oath-taking for a public post. Ultimately, the paragraph on the first issue was deleted, and language on the latter was watered down considerably.

At the start of the Third Committee session, the US informally discussed with States and NGOs putting forward a resolution on the right to freedom of expression. The idea was widely viewed as a means of countering the increasing promotion of the concept of 'defamation of religions' by the OIC in the Council and the General Assembly over the past few years. Many States, particularly those in the Western European and Others Group (WEOG) perceived the latter concept to be inconsistent with international human rights principles, and in particular, the right to freedom of expression. Though no US text emerged during the session, the increasing aversion to the defamation of religions notion appeared to lead to one concrete result: the erosion of support for

the **defamation of religions** resolution compared to last year.¹⁹ For the first time, countries voting against or abstaining on the text outnumbered States supporting the resolution. One strategy of the co-sponsors to persuade reluctant States to sign on was to drop the resolution's singular focus on ending the defamation of Islam, and to extend it to combating defamation of *all* religions. They also sought to draw international legal support for the concept from the UN Global Counter-Terrorism Strategy²⁰ adopted by consensus at the General Assembly in 2006, which noted that terrorism was not associated with any nationality or religion. Nonetheless, these changes failed to encourage any additional States to support the text.

The biennial resolution on **extrajudicial, summary or arbitrary executions**²¹ included positive new language on three issues raised in the Special Rapporteur's report to the General Assembly,²² namely: the importance of the protection of witnesses in the prevention of impunity; the need for essential guarantees to be exercised in States retaining the death penalty (in particular the right to seek commutation of sentence); and the function of national commissions of inquiries in ensuring accountability and combating impunity. The resolution also contained a new reference to the 'responsibility to protect'.

Although States found consensus on a previously controversial paragraph on the death penalty for the first time since the introduction of this resolution on extrajudicial executions, a provision including a reference to sexual orientation evoked similar levels of controversy as it had in previous years. Uganda, on behalf of the OIC, tabled an amendment to delete the phrase on the grounds that discrimination on the basis of sexual orientation was 'not recognised' in international law. States supporting inclusion of the phrase pointed out that the Special Rapporteur on extrajudicial executions had identified this type of discrimination in reports since 1999 and that the reference had been included in previous resolutions. As in previous years, the co-sponsors stood firm, and the proposed amendment was rejected by a vote.²³ The General Assembly eventually adopted the resolution in its entirety, though it passed by a lesser margin than in 2006.²⁴ The outcome of this debate took on added weight this year and was watched closely by human rights and lesbian,

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A/63/223. The suggested remedies included: the establishment of an independent review mechanism at the UN level to ensure that individuals or groups listed as terrorist suspects received fair and timely hearings, information compiled against them, and an effective remedy.

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In summer 2008, Switzerland, Denmark, Germany, Liechtenstein, the Netherlands, and Sweden submitted to the Security Council a discussion paper containing concrete proposals for establishing an independent panel of experts that would be authorised to submit recommendations concerning de-listing to the Security Council Sanctions Committee. The proposals have also been published as official UN documents, see A/62/891-S/2008/428.

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General Assembly Resolution 63/181.

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A/63/161.

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General Assembly Resolution 63/171. This year, 86 States voted in favour of the resolution, 53 voted against, and 42 countries abstained. In 2007, 108 States voted in favour, 51 against, and 25 abstained on a resolution of the same name.

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General Assembly Resolution 60/288 reaffirmed General Assembly Resolution 62/272.

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General Assembly Resolution 63/182.

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A/63/313.

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Fifty-nine States voted in favour, 77 States against, and 25 abstained.

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This year, 127 States voted in favour and 58 abstained. In 2006, 137 States voted in favour and 43 abstained.

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General Assembly Resolution 63/166.

gay, bisexual and transgender (LGBT) groups alike in light of the first ever General Assembly statement on sexual orientation and gender identity (see section below).

Another new controversy around the extrajudicial executions resolution emerged in the discussion over language on foreign occupation (see section on foreign occupation below).

New language in this year's resolution on **torture and other cruel, inhuman or degrading treatment or punishment**²⁵ also touched on subjects covered by the Special Rapporteur on this topic: the situation of detainees or people held in solitary confinement, and persons with disabilities. Another notable development was the invitation to the Chairpersons of the Committee against Torture (CAT) and the Subcommittee on the Prevention of Torture to present oral reports on the work of these treaty bodies and to engage in an interactive dialogue with the General Assembly at its next session.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Third Committee's consideration of economic, social and cultural rights this session was distinguished by greater collaboration and cooperation amongst States than in recent years. This was due in part to the session occurring against the backdrop of the world crisis in relation to fuel, food, and finance, which forged a more cooperative spirit amongst States. In addition, Cuba as the main sponsor of some of the key resolutions, took a more constructive approach than in recent years. Several States expressed their appreciation to Cuba for its efforts to reach consensus on resolutions that had been a traditional battleground along the North-South divide, such as the right to development, which came close to being adopted by consensus this year.²⁶ The US however, remained the lone voice in opposition to resolutions such as this and on the right to food, preventing their adoption by consensus.²⁷ Nonetheless, the Third Committee was able to breathe new life into some resolutions, such as on the right to food, which now, as a result of its strong call for States to take a

human rights-based approach to the global food crisis, is more in line with recent Council resolutions on this matter.²⁸

This year the Third Committee's consideration of economic, social and cultural rights included interactive dialogues with three newly-appointed special procedures (on the right to food, health, and foreign debt), as well as its interaction for the first time with three other mandates (on the right to education, adequate housing, and transnational corporations). Although this resulted in a broader consideration of human rights issues, it was more the exception than the rule that a useful and meaningful 'dialogue' between the Third Committee and the special procedures developed. One exception was the interactive dialogue with the Special Rapporteur on the right to food, which was welcome given the currency of the global food crisis. The special procedures on the right to adequate housing, health, and extreme poverty also impressed upon States the need for a human rights-based approach to be adopted if progress were to be made. All three emphasised the need for the most vulnerable rights holders to participate in a meaningful way in the development, implementation, and monitoring of public policies designed to impact them, and advised they would work closely with these groups.

COUNTRY SITUATIONS

This year the Third Committee considered three country resolutions relating to the human rights situations in: the **Democratic People's Republic of Korea (DPRK)**, **Myanmar**, and **Iran**.²⁹ The US decided not to present a resolution on the human rights situation in Belarus as it had done in recent years due to the release of all political prisoners in Belarus shortly before the beginning of the main session of the General Assembly. Although there was speculation that the US might bring a resolution on the worsening human rights situation in Zimbabwe, this did not happen. Nonetheless, the US and France on behalf of the European Union (EU), drew attention to, *inter alia*, the serious human rights violations occurring in Zimbabwe, Belarus, and the Sudan during the Committee's general discussion on country situations.

²⁵ General Assembly Resolution 63/178 was adopted in the General Assembly with 182 States in favour, four against (US, Marshall Islands, Palau, Ukraine), and two abstentions (Israel and Canada). In the Third Committee the vote was similar with only the US voting against it: 177 in favour, one against, and two abstentions.

²⁶ General Assembly Resolution 63/187 was adopted in the General Assembly with 184 States in favour, the US against, and no abstentions.

²⁷ See also the current edition's chapter on the Human Rights Council.

²⁸ DPRK: General Assembly Resolution 63/190, Myanmar: Resolution 63/245, Iran: Resolution 63/191.

²⁹ In 2006, the vote in the Third Committee on the no-action motion was 75 in favour, 77 against, and 24 abstentions, and in 2007 it was 78 in favour, 79 against, and 24 abstentions.

Many States and human rights defenders were concerned about the passage of the country resolutions in both the Third Committee and the General Assembly this year. This was due in part to the expectation that States belonging to the NAM would strongly argue that the Council's UPR process was the only appropriate mechanism to deal with country situations, given its grounding in the principles of 'impartiality, non-selectivity and non-politicisation'. Further, the general level of support for the UPR process among States and the lack of political will in the Council to support country resolutions and country-specific special procedures only added to concerns that more States might vote against country resolutions in the General Assembly. Concern was strongest in relation to the resolution on Iran, due to the fact that Iran's proposal of a no-action motion had been defeated by a margin of only one or two votes in the last two years in the Third Committee.³⁰ Perhaps because it was buoyed by these factors, Iran also boasted before the Third Committee that it was confident it would have sufficient numbers to win the no-action motion, and went so far as to co-opt the slogan of then President-Elect Obama, 'yes we can'.

Ultimately the no-action motions against the resolutions on Myanmar and Iran were defeated³¹ and all country resolutions were adopted, although generally by a slightly smaller margin than last year.³² Although the General Assembly is likely to consider a small number of country resolutions next year, the heated and protracted debate that these resolutions generated in New York is set to continue, if not escalate as members of NAM and other States opposed to country resolutions seek to dissuade Western States from perpetuating this type of international criticism. This is particularly concerning given resistance in the Security Council to add new situations to its agenda and the Human Rights Council's limited action on country situations.

A confrontational atmosphere was also evident in some of the interactive dialogues with country special procedures, particularly with the new mandate holder on the human rights situation in the occupied Palestinian territory. In addition to dialogues with the Council's special procedures, the Third Committee also engaged with the Secretary-General's Special Adviser on Myanmar, making an important connection between the

work of the Security Council and the General Assembly on this issue.

WOMEN AND CHILDREN'S RIGHTS

The main focus under the women's rights agenda item this year was the resolution on **violence against women**.³³ Unlike in recent years, the Third Committee avoided addressing exclusively the controversial issue of honour crimes, and focused its energies on a broader resolution covering all forms of violence against women. This year, the co-sponsors focused on ending impunity, although a number of countries, including the Russian Federation and Egypt, ensured the focus was not only on ending impunity but on preventing violence as well.

The Third Committee heard for the last time from the current Special Rapporteur on violence against women, who highlighted the mandate's success over the last 15 years as an institutional mechanism for regular in-depth review and reporting on violence against women. Among other impacts, the mandate contributed to the expansion of human rights beyond the conventional focus on violations perpetrated mainly by State actors in the public sphere, to include actions by private individuals under the doctrine of State responsibility.

Although not on the agenda of the Third Committee, human rights and women's rights groups were closely watching the session to see if States moved the 'gender equality architecture' process forward. In a positive step on the eve of the close of the 62nd session in September 2008, States adopted a consensus resolution to move the process forward during the following session. Specifically, the text requested the Secretary-General to draft a detailed paper to discuss the four institutional options³⁴ proposed in a document by the Deputy Secretary-General from August 2008. The document is supposed to spotlight the 'composite entity',³⁵ the option supported by NGOs in the GEAR campaign,³⁶ a group which has actively advocated for effective civil society participation in the process. The tentative timeline for discussion by the General Assembly of the Secretary-General's paper is in early 2009.

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The no-action motion against the Myanmar resolution in the Third Committee was defeated by a comfortable margin with 54 States in favour, 90 against and 34 abstentions, which was almost the same as the vote on the no-action motion the previous year. While last year's no-action motion against the Iran resolution was defeated by just one vote (78 in favour, 79 against, and 24 abstentions), this year's no-action motion was defeated by a larger margin of ten votes (71 in favour, 81 against and 28 abstentions). This increased margin was due in part to a decision by seven OIC States to abstain from the vote, rather than joining their colleagues in supporting the motion (Bahrain, Djibouti, Gabon, Libya, Maldives, Morocco, and Yemen).

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This year the DPRK resolution was adopted with 94 in favour, 22 against, and 63 abstentions. In 2007 the vote was 101 in favour, 22 against, and 59 abstentions. The resolution on Myanmar was adopted this year with 80 in favour, 25 against, and 45 abstentions. In 2007 the vote was 83 in favour, 22 against, and 47 abstentions. This year the vote on Iran was 69 in favour, 54 against, and 57 abstentions. In 2007 the vote was 73 in favour, 53 against, and 55 abstentions.

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General Assembly Resolution 63/155.

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The options are: retaining the status quo; establishing a fund or programme; creating a department; or developing a hybrid or composite entity.

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The GEAR campaign believes this model will help ensure that the entity has a strong country presence, significant funding capacity, high-level leadership, and a strategic normative and policy-making function.

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The GEAR is a global campaign to strengthen the Gender Equality Architecture at the UN. See <http://gear.collectivex.com/main/summary>.

The 'omnibus' resolution on the rights of the child was the centrepiece of the agenda item on this topic, and was similar to previous years except for a few modifications, including a new section on child labour. As in previous years, several States³⁷ expressed frustration that the process and framework for negotiations were not as open as they could have been, and that such a long resolution could lose its power by being 'unwieldy' and by giving the impression that issues not included were not important. Nonetheless it was adopted in the General Assembly by 159 votes in favour and only the US against, with no abstentions.³⁸

One major disappointment during the session was the lack of appointment of a Special Representative of the Secretary-General on violence against children, which had been requested by the General Assembly in its *Resolution 62/141*. Some States, supported by NGOs, pushed for this year's omnibus resolution to include a strong call to the Secretary-General to move more quickly on the issue. The resolution ultimately contained language criticising the delay and requesting the Secretary-General to appoint the Special Representative at the highest possible level and without delay. However no appointment had been made by the end of the year.

A separate procedural resolution enabling the Committee on the Rights of the Child (CRC) to meet in parallel chambers was also adopted (see treaty body section below).³⁹

RACISM AND THE DURBAN REVIEW CONFERENCE

As was anticipated, this year's consideration of the theme of racism was dominated by the Durban Review Conference, scheduled for April 2009 in Geneva. Events at the General Assembly this year only served to confirm widespread concerns among States that achieving consensus at the Durban Review Conference may prove an impossible goal. This was despite the best efforts of the High Commissioner for Human Rights, the Special Rapporteur on racism, and the Chairperson of the Preparatory Committee to appeal to States to put their views on the 2001 Durban Conference to one side and concentrate

on where common ground existed or could be built to address the continuing scourge of racism, xenophobia, and intolerance.

Instead, the deepening divisions among States that were evident at the Council during the year carried across to New York and resulted in a vote on the resolution on follow-up to the *Durban Declaration and Programme of Action*.⁴⁰ In a telling outcome, most Western States either abstained from the vote or voted against it, as in the case of the US, Israel, and a handful of others.⁴¹ The fact that the EU was unable to vote as a unified block gave further indication of the depth of division that this issue arouses, even among like-minded States.

The General Assembly also did little to address requests from the Council and its Preparatory Committee for additional funds to ensure the broadest possible participation in the Review Conference.⁴²

On a positive note, the General Assembly showed an increased interest in the Council's work on racism by requesting briefings from both the Chairperson of the Committee on the Elimination of Racial Discrimination (CERD) and the Vice-Chairperson of the Preparatory Committee for the Durban Review Conference. Indicating an ongoing interest in the work of CERD, particularly the efficiency of its methods of work, the General Assembly adopted a resolution to invite the Chairperson to return in two year's time for an interactive dialogue.⁴³ However this resolution also proved controversial due to the fact that it requested significant financial resources to enable the Committee to meet for an extra two weeks per year to address its growing backlog in State party reports (see treaty body section below).

Other arguments that surfaced in discussions about racism in Geneva were also carried across to New York. Foremost among these was the debate about how to ensure that enjoyment of the right to freedom of expression does not lead to incitement to racial or religious hatred or intolerance. This debate arose in a third General Assembly resolution on racism, which sought to address the upsurge in violence by neo-Nazis and skinheads against immigrants and other minorities.⁴⁴ As with the two other resolutions, this also went to a vote as the US disapproved of

³⁶ Norway, New Zealand, Switzerland.

³⁷ General Assembly *Resolution 63/241*.

³⁸ General Assembly *Resolution 63/244*.

³⁹ General Assembly *Resolution 63/242*.

⁴⁰ The vote in the Third Committee was 130 in favour, 11 against, and 35 abstentions. The 11 States that voted against the resolution were: the US, Israel, Australia, Canada, the Czech Republic, Denmark, Monaco, the Netherlands, Poland, Romania, and the UK. In the General Assembly plenary, the vote was 109 in favour, 13 against, and 35 abstentions. The Marshall Islands and Palau joined with the 11 States to vote against the resolution.

⁴¹ Although the General Assembly endorsed the relevant recommendations from the Council and the Preparatory Committee, it did not allocate additional funds to facilitate participation.

⁴² General Assembly *Resolution 63/243*. The Programme Budget Implication (PBI) was contained in A/C.3/63/L.72.

⁴³ General Assembly *Resolution 63/162* entitled 'Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance'.

⁴⁴ The full title of the Declaration is the *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*.

its failure to, in its view, ‘appropriately differentiate’ between actions and statements that should be protected by freedom of expression, and those designed to incite hatred and violence, which should be prohibited. It was also clear from the Third Committee’s interactive dialogue with the Special Rapporteur on racism that the interface between the right to freedom of expression and the right to practice one’s religion will be the subject of closer scrutiny by this new mandate holder. Although the new Special Rapporteur expressed strong support for his predecessor’s report on ‘combating defamation of religions’, which encouraged States to move from the concept of ‘defamation of religions’ to the notion of ‘incitement to racial and religious hatred’, States from the OIC indicated the need for future work in this area to address the concept of defamation of religions and the growth in Islamophobia since 11 September 2001.

HUMAN RIGHTS DEFENDERS

Somewhat overshadowed by the focus on the 60th anniversary of the UDHR was the 10th anniversary of the UN *Declaration on Human Rights Defenders*,⁴⁵ which fell on 9 December 2008. Thanks in part to the remarks of the Secretary-General to the General Assembly on the joint anniversary, the important work and sacrifice of human rights defenders did not go unnoticed. The Secretary-General praised the contribution of defenders who were ‘ordinary people who find extraordinary courage and stand up for what is rightfully theirs, yours, mine and ours’. His sentiments were echoed in subsequent remarks to the General Assembly by the President of the Human Rights Council, the former High Commissioner for Human Rights, Ms Mary Robinson, and several group statements by States.⁴⁶ Further, to mark the 10th anniversary, five independent experts from the regional human rights systems circulated a joint media statement to draw attention to the need for States and others to treat the activities of human rights defenders as legitimate human rights work, remove all obstacles in their path, and take proactive measures to support their work.⁴⁷

A number of new initiatives at the General Assembly this year also drew attention to human

rights defenders as a cross-cutting issue. For example, the statement on sexual orientation and gender identity delivered in the General Assembly by Argentina made a point of urging States to ‘ensure adequate protection of human rights defenders, and remove obstacles which prevent them from carrying out their work on issues of human rights and sexual orientation and gender identity’. Similarly, the General Assembly’s consensus declaration on the UDHR included an oblique reference to the valuable work of men and women human rights defenders.⁴⁸ These references were in addition to very specific details about the violations experienced by defenders that are now routinely included in General Assembly resolutions on the human rights situation in Iran and Myanmar.⁴⁹

The Third Committee’s attention was also brought to the work of human rights defenders through its interactive dialogue with the newly-appointed Special Rapporteur on this issue. Outlining her priorities, the Special Rapporteur emphasised the need to increase focus on defenders who are exposed to specific violations as a result of the sensitive nature of their work. She flagged the need for States and others to take deliberate steps to create a ‘safer, more enabling and accepting environment’ for defenders working on the rights of women and gay, lesbian, bisexual and transgender people, amongst others. To further enhance the protection function of the mandate, the Special Rapporteur also advised of her intention to develop an ‘early-warning mechanism’ capable of anticipating systemic threats to defenders.

SPECIAL PROCEDURES

As reflected above, a significant portion of the Third Committee’s meeting time was taken up by its engagement with the Council’s special procedures, some of whom held genuinely ‘interactive’ and sometimes robust exchanges with the Third Committee. The Third Committee’s interest in opening up this practice to a wider range of mandate holders was a welcome development that looks set to continue. Resolutions adopted this session will see the return of the Special Rapporteur on indigenous peoples at the next session of the General Assembly,⁵⁰

⁴⁵ Israel (on behalf of WEOG), Mexico (Rio Group), Iceland (Nordic Group).

⁴⁶ The joint statement is available at www.osce.org/documents/odhr/2008/12/35607_en.pdf

⁴⁷ Para. 4 of the Declaration (General Assembly Resolution 63/116) states: ‘We laud the courage and commitment of all women and men around the world who have devoted their lives to promoting and protecting human rights’.

⁴⁸ Para. 2(d) and (f) and Para. 3(h) of General Assembly Resolution 63/191 on the human rights situation in Iran, and Para. 2(a) of General Assembly Resolution 63/245 on the human rights situation in Myanmar.

⁴⁹ General Assembly Resolution 63/161.

and the following year, the Independent Expert on minority issues will address the General Assembly for the first time since the mandate was created.⁵¹ In addition, the General Assembly revealed its increasing interest in following the human rights of migrants by extending a standing invitation to the Special Rapporteur on this theme to present a report to future sessions of the General Assembly.⁵²

It remains to be seen if the Third Committee will discontinue its invitations to some of the mandate holders who have been regular presenters in previous years, in order to allocate sufficient time to mandate holders who are being invited for the first time. In the interests of time management, the Third Committee may be forced to do so, rather than taking a comprehensive approach to its interaction with the special procedures.

TREATY BODIES

The General Assembly has also taken an increased interest in the work of the human rights treaty bodies. This was reflected in the Third Committee's decision to organise interactive dialogues with the Chairpersons of three treaty bodies as a means of enhancing their level of communication.⁵³ This practice looks set to continue following the General Assembly's adoption of resolutions that invite the Chairpersons of three other treaty bodies, as well as the Chairperson of the Subcommittee on the Prevention of Torture, to similarly engage with the General Assembly.⁵⁴ Of particular note amongst these was the resolution on the protection of migrants, which issued a standing invitation to the Chairperson of the Committee on Migrant Workers (CMW) to address the General Assembly 'at its future sessions'.⁵⁵

Another aspect of the General Assembly's interest in the work of the treaty bodies concerned the efficiency of their working methods. Although this has been a concern of the General Assembly for some time, this session saw the adoption of three resolutions in response to requests from treaty bodies for additional meeting time to address their growing backlogs of State reports as ratifications increase.⁵⁶ In the case of CERD and the CRC, these requests entailed

substantial budget implications, which were not well received by Japan, the US, Singapore, and others. Several States were loathed to support these requests without some assurance that the recipient treaty bodies would take concrete steps to revise and improve their working methods. As a result, both resolutions requested OHCHR to 'comprehensively evaluate' how the treaty bodies can address their backlog, as well as the increasing reporting burden of State parties. This evaluation will be considered by the General Assembly in 2010. An interim report on these matters from the CRC is expected at the next session.

A further area of concern amongst some States in relation to the treaty bodies was the geographic balance amongst their members. This prompted a new initiative, sponsored by Cuba, which was adopted by a vote and may result in a future establishment of a regional quota system for the membership of each treaty body.⁵⁷ Members of WEOG voted against the resolution, citing concerns about interference in the independence of the treaty bodies, and the existence of adequate guidelines on treaty body membership in the treaties themselves, of which geographic representation was but one component. To progress the matter, the High Commissioner for Human Rights has been asked to 'submit concrete recommendations' to achieve equitable geographic representation to the next session, based on input from the Chairpersons of the treaty bodies.

A number of States were also very critical of treaty bodies during the general discussion on this agenda item. Some emphasised the need for treaty bodies to operate within their mandates and to avoid the temptation of seeing themselves as legal or quasi judicial bodies.⁵⁸ The Russian Federation argued that treaty bodies had 'no legal basis' to consider a State party's compliance with an instrument in the absence of a State report, and rebuked OHCHR for its inability to enhance the effectiveness of the treaty bodies. Treaty bodies' use of information from NGOs and other allegedly 'unverified' sources also came under attack from a handful of States.⁵⁹ Whilst these were not 'new' criticisms, the tone of the message certainly was.

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General Assembly *Resolution 63/174*.
The mandate was created in 2005.

51
General Assembly *Resolution 63/184*.

52
The Chairpersons of the Committee on the Elimination of Discrimination against Women (CEDAW), the CRC, and CERD.

53
The next session of the General Assembly will receive reports from and engage in interactive dialogues with the Chairpersons of the following treaty bodies: CMW; CAT and the Subcommittee on Prevention of Torture; and CRC. The subsequent session of the General Assembly (65th) will see the return of the Chairperson of CERD.

54
Para. 22 of General Assembly *Resolution 63/184*.

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The CMW will meet for an additional three weeks in 2009 (Para. 25 of General Assembly *Resolution 63/184*); CERD will meet for an additional two weeks each year starting August 2009 until 2011 (Para. 13 of General Assembly *Resolution 63/243*); and the CRC will meet in parallel chambers between October 2009 and January 2011 (Para. 2 of General Assembly *Resolution 63/244*).

56
General Assembly *Resolution 63/167* was adopted by a vote with 128 in favour, 55 against, and two abstentions.

57
China, the Russian Federation, the US. The US singled out CEDAW for particular criticism, given its consideration of issues related to abortion when examining country reports, which it argued were not covered by the Convention.

58
Algeria, China, the Russian Federation.

DISABILITY

Occurring in parallel to the main session of the General Assembly was the first meeting of the conference of State parties to the *Convention on the Rights of Persons with Disabilities*. Following the entry into force of the Convention in 2008, the main task of the conference was to elect the 12 members of the Committee on the Rights of Persons with Disabilities. Although this was technically unrelated to the work of the Third Committee, these important steps to operationalise the Convention were welcomed in the now annual consensus resolution on the Convention.⁶⁰

Unfortunately, these positive developments were somewhat overshadowed by what many States regarded as Uganda's (on behalf of the OIC) 'regrettable' decision to propose a controversial oral amendment during the adoption of the resolution related to the Implementation of the World Programme of Action Concerning Disabled Persons.⁶¹ The OIC was ultimately successful in its ambition to insert a new Preambular Paragraph drawing attention to the need for protection of persons with disabilities 'during armed conflicts and foreign occupation.'⁶² However, the controversial nature of this language (see next section below) and its last-minute introduction resulted in a vote on the resolution for the first time.⁶³ The States that voted against the incorporation of this language or abstained criticised the OIC for needlessly 'politicising' what had always been and, they believed, should remain an issue where States could reach consensus. Not surprisingly a number of States, including France (on behalf of the EU) withdrew their co-sponsorship of the resolution.

NEW THEMATIC DISCUSSIONS AND CROSS-CUTTING ISSUES

Foreign occupation and armed conflict

Perhaps inspired by the very successful initiative of a handful of Latin American States last year to incorporate language about the rights of

indigenous peoples into 12 General Assembly resolutions, the OIC and the Arab Group set out with a similar goal this year. The only difference was the cross-cutting issue they sought to raise in other resolutions and discussions, namely 'foreign occupation and armed conflict', was highly political given its obvious connection to the ongoing conflicts in the OPT, Iraq, Afghanistan, and other parts of the Muslim world.

Although the OIC successfully amended the resolution on the Implementation of the World Programme on Action on Disabilities, its efforts to incorporate similar amendments in the resolution on extrajudicial executions failed in both the Third Committee and the General Assembly plenary.⁶⁴ In these two resolutions, the OIC's divisive tactics overshadowed its intended goal of drawing the General Assembly's attention to the suffering and human rights violations experienced by people living under foreign occupation and in situations of armed conflict. As in previous years, armed conflict and foreign occupation were included in the omnibus resolution on the rights of the child as factors in the continuing critical situation for children.

Statements on sexual orientation and gender identity

December 2008 marked the first occasion on which the General Assembly formally and substantively addressed human rights violations based on sexual orientation and gender identity. Rather than proposing a resolution, States opted to make statements on the theme. Prompted by the 60th anniversary of the UDHR and the desire of many States to affirm its basic premise that all human rights apply equally to everyone at all times, the first of these statements, a joint statement co-sponsored by 66 States from around the world, was delivered by Argentina.⁶⁵ Although many intended this statement to '... make debate about human rights and sexual orientation commonplace at the UN' and to 'eliminate the taboo that surrounds the problem,'⁶⁶ it also proved to be the source of division. It elicited a strong response from the OIC, many African States, the Holy See, and Syria. Statements from the Russian Federation and Belarus were also delivered.⁶⁷

59

General Assembly Resolution 63/192 adopted by consensus in both the Third Committee and the General Assembly plenary.

60

General Assembly Resolution 63/150.

61

Preambular Para. (u) of the *Convention on the Rights of Persons with Disabilities*.

62

The vote on the amendment was 67 in favour, 41 against, and 52 abstentions. The vote on the resolution as a whole was 176 in favour, none against, and no abstentions.

63

The vote on the amendment to General Assembly Resolution 63/182 on extrajudicial executions was defeated in the Third Committee (with 60 votes in favour, 78 against, and 29 abstentions), and the General Assembly (with 71 votes in favour, 75 against, and 23 abstentions).

64

Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Central African Republic, Chile, Colombia, Croatia, Cuba, Cyprus, the Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Nepal, the Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, the UK, Uruguay, Venezuela.

65

Statement by the Dutch Minister for Foreign Affairs at a high-level side event at the UN on 18 December 2008.

66

The Russian Federation cautioned against the General Assembly considering any topic that 'exposed division or fostered confrontation' amongst States. Belarus expressed its preference for these 'sensitive' issues to be approached in a more 'prudent' and less 'hasty' manner.

67

Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands, Norway.

Argentina's statement represented the strongest language on sexual orientation and gender identity yet to be delivered in the General Assembly. Initiated by France, and coordinated by States from four continents,⁶⁸ the statement affirmed that the principle of non-discrimination applied equally to every human being regardless of their sexual orientation or gender identity, and 'condemned' human rights violations based on sexual orientation and gender identity, particularly the use of the death penalty and torture, and the deprivation of economic, social and cultural rights, such as the right to health. Further, the statement advocated the worldwide repeal of criminal penalties on the basis of sexual orientation and gender identity, including execution, arrest, and detention. It also called for the perpetrators of human rights abuses to be held accountable and emphasised the importance of protecting human rights defenders working on human rights issues related to sexual orientation and gender identity.

Syria's statement, largely orchestrated by Egypt, was co-sponsored by 57 States.⁶⁹ It questioned the 'so-called notions of "sexual orientation" and "gender identity"' and expressed 'serious concern' at the attempt to introduce these 'ominous' concepts into the UN. The co-sponsors asserted that not only did these concepts 'have no legal foundations in any human rights instrument', but recognition of them as rights could usher in the 'social normalisation, and possibly the legitimisation of many deplorable acts including paedophilia',⁷⁰ and 'seriously jeopardise the entire international human rights framework'. States were urged to 'refrain from attempting to give priority to the rights of certain individuals, which could result in positive discrimination at the expense of others' rights.' Instead, they were encouraged to devote special attention to protect the family as 'the natural and fundamental group unit of society'. On a more positive note, Syria's statement 'strongly deplore[d] all forms of stereotyping, exclusion, stigmatisation, prejudice, intolerance, discrimination and violence' directed at any person on any ground, anywhere.

The Holy See had at first voiced strong opposition to the draft joint statement before it was delivered by Argentina. However, following criticism from human rights defenders around the world at what was perceived as a discriminatory

position, the Vatican tempered its message to the General Assembly. Like Syria, the Holy See expressed the view that the categories of 'sexual orientation' and 'gender identity' had no clear definition in international law and would create 'uncertainty in the law and challenge existing human rights norms'. However, it went on to condemn all forms of violence against 'homosexual persons' and called on all States to 'do away with' criminal penalties against homosexuals, indicating a significant step forward in its official position on this matter.⁷¹

The High Commissioner for Human Rights also added her voice to the discussion of sexual orientation and gender identity at the UN. She delivered a video statement at a high-level side event to express her 'absolute support' for the statement delivered by Argentina.⁷² She pointed out that evolving jurisprudence rendered 'untenable' the argument that international human rights law did not recognise discrimination on the basis of sexual orientation and gender identity. Further, she criticised those States that 'continue to criminalise sexual relations between consenting adults of the same sex in defiance of established human rights law' and declared that the UN 'must now show leadership' and 'secure the climate for implementation' of the principles of universality and non-discrimination as expressed in the UDHR.

CONCLUSIONS AND LOOKING FORWARD

The 2008 Third Committee session was less confrontational than the previous year, in large part due to the decision to bring only a procedural resolution on a moratorium on the death penalty. Though still controversial, this year's follow-up resolution did not spark the same level of divisiveness as last year's more substantive one, which had led to strained relations and retaliatory actions that affected processes and outcomes on a number of other resolutions. Despite hopes by some States and NGOs for an annual reporting cycle on the issue by the Secretary-General, the agreement was for him to submit his next report on a moratorium on the death penalty to the General Assembly only in 2010. Domestic developments in regard to moratoriums or the

68 Afghanistan, Algeria, Bahrain, Bangladesh, Benin, Brunei Darussalam, Cameroon, Chad, Comoros, Côte d'Ivoire, the Democratic People's Republic of Korea, Djibouti, Egypt, Eritrea, Ethiopia, Fiji, the Gambia, Guinea, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kenya, Kuwait, Lebanon, the Libyan Arab Jamahiriya, Malawi, Malaysia, the Maldives, Mali, Mauritania, Morocco, Niger, Nigeria, Oman, Pakistan, Qatar, Rwanda, Saint Lucia, Saudi Arabia, Senegal, Sierra Leone, Solomon Islands, Somalia, the Sudan, Swaziland, the Syrian Arab Republic, Tajikistan, Togo, Tunisia, Turkmenistan, Uganda, the United Arab Emirates, Tanzania, Yemen, and Zimbabwe.

69 Presumably in an effort to attract more co-sponsors, the draft text was amended to delete the reference to 'bestiality, or even incest' as other possible consequences of the recognition of discrimination on the basis of sexual orientation and gender identity.

70 In the past, the Vatican has opposed the decriminalisation of sexual relations between consenting adults of the same sex.

71 The side event was jointly hosted by the missions of France, the Netherlands, Argentina, Brazil, Croatia, Gabon and Norway.

72 China, India, Russian Federation, South Africa, US.

abolishment of the death penalty will likely influence how States address the issue at that time and how the session as a whole unfolds.

Questions and concerns continue to surround what will take place at the upcoming Durban Review Conference. The uncertainty about the level of participation of civil society, NHRIs, and developing States in the Review Conference, coupled with the objections to the proposed final outcome document, and hesitation or outright refusal on the part of key States to participate in the process, do not augur well for global efforts to combat racism.

Another key challenge in 2009 will be how to address the attempts by some members of the Council to control and undermine the High Commissioner's authority as was seen during negotiations on Programme 19. The discussion on the relationship between the Council and the OHCHR at the 10th session of the Council in March 2009 looms large in this respect.

One of the brightest spots this year at the General Assembly was the delivery of the historic joint statement on sexual orientation and gender identity. Although it is clear that much work remains to be done to achieve the 'climate of implementation' that the High Commissioner advocated in this regard, it is important to note that no State took issue with the principle that all persons should be equally protected from discrimination and violence. This opens the way for the international community to begin to address this longstanding deficiency in the international human rights protection system, and to engage with lesbian, gay, bisexual, transgender and intersex people in an inclusive, respectful, and constructive manner. It now remains to be seen how the General Assembly will take up this challenge in the future, and many will be watching those most powerful and populated States that chose not to sponsor either the Argentinean or the Syrian statement.⁷³

⁷³

China, India, Russian Federation, South Africa, US.