

NEW YORK ALERT

Forecast of key developments at UN General Assembly 65th session

The New York office of ISHR will monitor and report on key human rights developments at the Third Committee, which meets at UN Headquarters in New York from 4 October until late November 2010. The General Assembly delegates most of its human rights-related work to its Third Committee, including the endorsement of the annual report of the Human Rights Council; interactive dialogues with invited special procedures and treaty body chairpersons; and the negotiation of some 50 human rights resolutions. This Alert outlines the key issues and potential flashpoints.

RESOLUTIONS

- **Death penalty moratorium.** A lengthy and heated debate is expected on the General Assembly's third death penalty resolution, though perhaps not as acrimonious as in previous years.¹ A cross-regional 'task force' (consisting of Angola, Burundi, Belgium (on behalf of the EU), Croatia, New Zealand, Timor Leste, Micronesia, Chile, Argentina and Norway) plans to use the 2007 death penalty text as the basis for inclusive negotiations. No substantive new elements are expected to be included, except perhaps a call for States to provide more information and transparency about the specifics of the processes and procedures under which the death penalty is imposed.² A vote is expected; the question is whether and how many amendments opponents may bring. The African group is divided on the issue, and the co-sponsorship of key African countries will likely prove to be an important element in facilitating the text's adoption.
- **Country situations.** Three country specific resolutions are expected on: Democratic Peoples' Republic of Korea (DPRK), Iran and Myanmar. All three texts will be voted; the question is whether opponents to the Iran and Myanmar texts will revive their use of 'no-action' motions, a procedural tactic to derail the resolutions, which was not used last year due to lack of support. Also in the case of Iran and Myanmar, NGOs have recently stepped up their encouragement for new language to be incorporated to hold the respective governments more accountable for their ongoing, widespread and systematic violations of human rights.

¹ Following the adoption of the most recent General Assembly resolution on the death penalty, 53 States wrote to the UN Secretary-General (A/63/716), to express their "persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition in contravention to existing stipulations under international law".

² This would pick up on recommendations by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24), and the Secretary-General in his most recent report to the Human Rights Council (A/HRC/15/19). Such information would not only assist in more accurately recording the use of the death penalty internationally, it would also help to prevent the violation of the human rights of those who are executed, as well as their families.

- **Iran:** As has been the case since 2006, NGOs are seeking to strengthen the text through the creation of a special mechanism to monitor and report on the human rights situation. Currently this responsibility is borne by the Secretary-General, who submits an annual report on the situation to the General Assembly.³ However, NGOs argue the international community needs to signal to Iran that there are consequences for its inaction and persistent human rights violations. They suggest that a mechanism that can directly engage with and follow the situation in Iran is now warranted. It is unclear what form the mechanism might take, but possible options include: a commission of inquiry; a Special Representative of the Secretary-General;⁴ a group of existing special procedures of the Human Rights Council being mandated to investigate and report. The traditional sponsor of the resolution, Canada, is yet to indicate whether it will present a text. This reticence could be linked to its candidacy in Security Council elections, though it lost its bid for a seat on 12 October. It could also be a result of the now standard delay in the release of the Secretary-General's report on the situation in Iran, which is used to inform some of the key language in the resolution.
- **Myanmar:** NGOs are calling on States to heed the recommendation of the Special Rapporteur on the situation of human rights in Myanmar in March 2010,⁵ that the UN consider establishing a commission of inquiry to investigate possible war crimes and crimes against humanity, with a specific fact-finding mandate. One suggestion has been that the General Assembly should request the Secretary-General establish the committee.⁶ Although Aung San Suu Kyi's political party and a number of Western States have expressed support for a committee of inquiry,⁷ it remains to be seen whether there is sufficient international support to act. The positions of ASEAN States and others such as India, which have previously been reluctant to intervene, will be key. This year, matters are further complicated by the first general elections in Myanmar in twenty years, which will take place on 7 November, in the middle of the General Assembly session. As a result, some States would prefer to take a 'wait-and-see approach', despite mounting evidence that the elections will be a sham.⁸ As he has done for some years, the Secretary-General continues to publicly press for "an inclusive and transparent election" that is "conducted in a transparent and inclusive and credible manner, with all political prisoners freed before the election".⁹
- **Defamation of religions versus religious intolerance.** Resolutions on both topics are expected from the Organisation of the Islamic Conference (OIC)¹⁰ and the EU respectively. The margin of adoption for the defamations text has declined in recent years in the General Assembly, as in the Council, and there is optimism that this trend will continue. The religious intolerance text is expected to be similar to

³ The Secretary-General's report is prepared by the Office of the High Commissioner for Human Rights, and the Executive Office of the Secretary-General invites Iran to comment on the final draft, prior to issuing the report. These discussions usually delay the release of the report on Iran, which in turn delays work on the associated resolution.

⁴ A foreseeable difficulty of this option is the associated cost, as there is general reluctance amongst States to spend scarce UN resources on any new activities. The appointment of a Special Envoy by the Secretary-General (which does not require the support of Member States), is not favoured as it would be unlikely to achieve progress in Iran.

⁵ Mr Tomas Quintana, A/HRC/13/48.

⁶ Human Rights Watch, available at <http://bit.ly/aGUTDs>

⁷ These include Australia, Canada, Czech Republic, France, Hungary, Ireland, Netherlands, New Zealand, Slovakia, UK, US. Parliamentarians in Indonesia and the EU have also endorsed a commission of inquiry.

⁸ See joint report by Alternative ASEAN Network on Burma (ALTSEAN - Burma) and the International Federation for Human Rights (FIDH), available at <http://bit.ly/ag5Kox>

⁹ Remarks by the UN Secretary-General during a press conference at UN Headquarters, 6 October 2010, available at <http://bit.ly/bDtL7Z>

¹⁰ Morocco is coordinating the OIC this year during the GA. However, as in previous years, Egypt, Malaysia and Pakistan are expected to play an active role in the passage of the resolution.

last year.

At the time of writing, it was unclear whether the US might seek to negotiate a consensus resolution on freedom of expression at the General Assembly, which would be a first. The US and Egypt co-sponsored such a text at the 12th session of the Council¹¹ in an effort to defuse the polarisation between OIC and Western States that is caused by the term 'defamation of religion.' The US also sought to steer the debate towards the underlying issues, including negative racial and religious stereotyping in the media, the scope of the right to freedom of expression under international law, and State obligations to protect and uphold freedom of expression. If such a resolution is forthcoming in New York, it is expected to absorb a significant amount of delegates' and NGOs' time and energy, given the sensitivity of the issues involved and how States are dealing with them domestically.

In a related but separate development in the General Assembly plenary, Jordan will bring a resolution entitled 'World Interfaith Harmony Week'.

- **Extrajudicial executions.** This biennial resolution makes a return this year under the sponsorship of Finland. As in previous years, an amendment is anticipated (most likely from the OIC) to delete the operative paragraph that refers to discrimination on the grounds of 'sexual orientation' as an unlawful basis for execution.
- **Treaty bodies.** Both the Committee Against Torture (CAT) and the Committee on the Elimination of Racial Discrimination (CERD) have requested more meetings to deal with their backlog of State party reports and communications.¹² The General Assembly will need to adopt resolutions that approve the associated budget increases, and this will not be easy given the UN's budget situation, due in part to the global financial crisis (see also dot point below).
- **Human Rights Council annual report.** As was the case last year, the General Assembly will consider the annual report of the Council,¹³ in addition to the report of its most recent (15th) session.¹⁴ Also consistent with past practice, the Third Committee will only consider the Council's recommendations that require the General Assembly's action, leaving the General Assembly plenary to endorse / note the reports. As a result, ISHR expects¹⁵ that the Third Committee will consider three contentious recommendations that each have budget implications:
 - dispatch of an independent, international fact-finding mission to investigate violations of international law, resulting from the Israeli attacks on the Turkish flotilla of ships;¹⁶
 - establishment of a working group of five independent experts on discrimination against

¹¹ Resolution 12/16, which was co-sponsored by the US and Egypt.

¹² Denmark is the main sponsor of a procedural resolution on CAT, which is expected to request that its two annual sessions each be extended by a week (each session currently runs for three weeks).

¹³ The annual reporting cycle of the Council is from 1 July – 30 June each year. Thus the annual report before the General Assembly covers the 12th – 14th regular sessions, plus the 13th special session of the Council.

¹⁴ This session took place in September 2010, and technically falls outside the Council's annual reporting cycle. However, the budget implications of some of the recommendations in the report have likely prompted some States to push for its early consideration, thereby opening the possibility of funding approval by the current session of the General Assembly, rather than the next session in 2011.

¹⁵ At the time of writing, neither the annual report of the Human Rights Council, nor the final report of its 15th session were available. The advance/draft copy of each is available from OHCHR at <http://bit.ly/bvwpep> and <http://bit.ly/9dzmEj> respectively.

¹⁶ Council Resolution 14/1, para.8.

- women;¹⁷
- establishment of a new Special Rapporteur on the rights to freedom of peaceful assembly and of association.¹⁸

At this stage is unclear how these three issues will be dealt with in the Third Committee.¹⁹ However, a difficult passage for the resolution/s is expected, given their political ramifications, and the UN's financial situation. Adding to the difficulty is the \$500 million price tag associated with the operationalisation of the new UN entity for gender equality, UN Women, which should begin work on 1 January 2011.

- **Progress towards an international convention on rights of older persons.** A new development in the annual resolution on 'Follow-up to the Second World Assembly on Ageing', is a paragraph proposing that the General Assembly establish a working group to 'consider the feasibility' of such a convention.²⁰ If supported, this would be the first international human rights instrument negotiated by the General Assembly since its adoption of the *Convention on the Rights of Persons with Disabilities* in 2006.
- **Other issues.** ISHR will also be closely following resolutions on the rights of the child (special theme of early childhood);²¹ counter-terrorism; a range of texts on economic, social and cultural rights (including the right to development, and to food); racism; torture; violence against women (role of Member States in addressing such violence).

INTERACTIVE DIALOGUES

Thirty-six special procedures and treaty body chairpersons are [scheduled](#) to present [reports](#) and hold dialogues with the Third Committee, which represents a slight increase on last year. In addition, there will be interactive dialogues with the High Commissioner for Human Rights (20 Oct); the Special Envoy on Myanmar, Mr Vijay Nambiar (26 Oct); and the President of the Human Rights Council will present the Council's annual report (2 November to the Third Committee and 3 November to the Assembly). All these discussions will require the Committee to strictly adhere to time limits; something it has not always managed well.

It is likely that some States will criticise the reports of certain special procedures. In previous years, the Third

¹⁷ The resolution was adopted by consensus during the Council's 15th session, despite strong opposition from several States, in particular from within the OIC. One point of contention amongst these States was whether there were financial resources to support the creation of another special procedure, given existing mechanisms such as the CEDAW Committee and UN Women. More information is available from ISHR at <http://www.ishr.ch/council>

¹⁸ The mandate was established during the 15th session of the Council at the initiative of a cross-regional group of States including the US, Czech Republic, Maldives, Nigeria, Lithuania, Mexico, Indonesia, Latvia. Despite principled opposition to the creation of this mandate on spurious grounds by the Russian Federation, Egypt and China, the resolution was adopted by consensus. However, China, Pakistan, Cuba and Libya disassociated from consensus.

¹⁹ Options include three separate resolutions (each requiring a main sponsor to step forward to initiate the text and steer negotiations); one collective resolution to deal with all recommendations from the Council's reports; or dealing with the recommendations in other related resolutions (which seems unlikely at this point).

²⁰ Para.22bis of A/C.3/65/L.8, available at <http://bit.ly/9nBbse> The main sponsor is Malaysia (on behalf of the G77+ China).

²¹ The resolution is expected to be influenced by the outcome of the recent UNESCO conference in Moscow that adopted an action plan for improving early childhood care and education, referred to as the 'Moscow Framework of Action'. More information is available at <http://bit.ly/cnlOr0>

Committee's disapproval of reports has escalated to personal attacks on mandate holders and accusations that they have not complied with the Code of Conduct for special procedures. Similar concerns remain this year in relation to the following reports:

- **Counter-terrorism (A/65/258)**: recommends that the Security Council replace its three counter-terrorism resolutions with a single resolution, not adopted under Chapter VII of the Charter, in order to systematize the counter-terrorism measures and reporting duties of States under one framework. *Resolution 1373 (2001)* is singled out by the special rapporteur for strong criticism, including that the Security Council lacked the legal authority under the Charter to adopt the text, and nine years on, it 'continues to pose risks to the protection of a number of international human rights standards'. The permanent members of the Security Council (China, France, Russian Federation, UK, US) are likely to be the most strident critics of these recommendations. They were key architects in the development of the counter-terrorism resolutions and related sanctions regimes by the Security Council.
- **Right to education (A/65/162)**: recognises the human right to 'comprehensive sexual education', and an obligation for States to provide a 'scientific, democratic and pluralistic education that is free of prejudice and stereotypes.' It recommends that States should 'ensure that the gender dimension, human rights, new patterns of male behavior, diversity and disability' are included in the curriculum for sexual education from primary school onwards. Such a broad interpretation of the right to education is expected to provoke strong condemnation from members of the OIC and several African States. In recent years, they have resisted all efforts by others in the General Assembly to discuss discrimination on the basis of sexual orientation and gender identity, arguing amongst other things, that this form of discrimination does not exist under international law.²²
- **Extrajudicial, summary or arbitrary executions (A/65/321)**: explores how new technologies (such as social networking sites and user-generated content sites) could tackle extrajudicial executions and the rampant impunity associated with them, as well as imperil human rights defenders. It also shows how rapid advances in lethal robotic technology have outstripped the development of an international legal framework capable of minimising civilian deaths or holding responsible States and individuals accountable for violations of international human rights and humanitarian law. The US is named as the 'primary user' of lethal robots in the post 11 September 2001 era in conflicts in Afghanistan and Iraq. A third aspect of the report is the Special Rapporteur's scathing critique of the US Government's partial response to his recent report to the Human Rights Council on targeted killings. In that report, he challenged the US, Israel and the Russian Federation for asserting the legality of targeted killings 'in excessively broad circumstances'. Israel and the Russian Federation have not responded.
- **Freedom of opinion and expression (A/65/284)**: highlights the sharp increase in the number of targeted killings of journalists and the near total impunity for such crimes in 2009. The special rapporteur names the twelve States with the highest number of unsolved murders of journalists per head of population (para.29). He also draws attention to the grave risks faced by 'citizen journalists', who are often bloggers, and cites numerous examples from communications with China, Egypt, Honduras and Iran amongst others, which are alleged to have restricted the right to freedom of opinion of these so-called 'amateur reporters'.

²² See ISHR's analysis of the impact of the report of the Special Rapporteur on counter-terrorism at the 64th session of the General Assembly, available at <http://bit.ly/clZOvO>. The report examined how counter-terrorism measures impacted the human rights of lesbian, gay, bisexual, transgender and intersex persons.

There are also a number of noteworthy 'comings and goings' in relation to the special procedure mandate-holders which will shape the interactive dialogues they hold with the Third Committee:

- **Three new special rapporteurs will present reports submitted by their predecessors.** It is not clear whether they will speak to these reports, or seek to distance themselves from them: right to education (Mr Singh, replacing Mr Muñoz Villalobos); extrajudicial executions (Mr Heyns, replacing Mr Alston); freedom of religion and belief (Mr Bielefeldt, replacing Ms Jahangir).
- **Two long-standing special rapporteurs will report to the General Assembly for the first time** (freedom of opinion and expression, Mr La Rue; and sale of children, child prostitution and child pornography, Ms Maalla).
- **Three mandate-holders will present their final reports:** counter-terrorism (Mr Scheinin); internally displaced persons (Mr Kalin); torture (Mr Nowak).
- **The Independent Expert on access to safe drinking water and sanitation will present her first annual report to the General Assembly** (Ms de Albuquerque; A/65/254). This should provoke an interesting debate as it comes in the wake of the General Assembly's recent voted resolution to acknowledge that safe and clean drinking water and sanitation is a human right essential to the full enjoyment of life and all other human rights,²³ and the Council's recent clarification that this right is contained in existing human rights treaties and is therefore legally binding.
- **The new Special Rapporteur on the DPRK** will outline his approach to the mandate (Mr Darusman, replacing Mr Muntarhorn). He is only the second expert to hold the mandate since its establishment in 2004.

OTHER DEVELOPMENTS

The negative politics and political machinations that were on display at **the most recent Human Rights Council session** in September will likely adversely impact the atmosphere of the Third Committee. These included a resolution from Cuba that sought to undermine the independence of the High Commissioner for Human Rights and that of her Office; an attempt by the OIC to pass a resolution against the recent threats in the US to burn the Koran;²⁴ resistance to the renewal of country mandates such as Sudan; and concerted opposition to the creation of new thematic mandates to address discrimination against women and the right to freedom of assembly.²⁵

During the 65th session, some States may also present their positions on **the review of the Human Rights Council**. Although the Council will begin to review its work and functions at the end of October,²⁶ many fundamental questions remain unanswered about when and how the General Assembly will conduct its review

²³ See ISHR's news article following the adoption of the resolution on 29 July 2010, available at <http://bit.ly/clZOvO> and the Independent Expert's press release, dated 1 October 2010, available at <http://bit.ly/9fGcXP>

²⁴ The resolution was withdrawn in preference to a declaration by the President of the Council on religious intolerance that did not contain problematic language.

²⁵ More information is available from ISHR's news stories during the 15th session, at <http://www.ishr.ch/council>

²⁶ General Assembly *Resolution 60/251* that established the Council also mandated it to 'review its work and functioning five years after its establishment and report to the General Assembly' (para. 16). Council *Resolution 12/1* established an inter-governmental Open Ended Working Group (OEWG) to conduct the review of its work and functions. The first OEWG meeting is set for 25 – 29 October 2010 in Geneva.

of the status of the Council.²⁷ Despite the recent joint understanding between the Presidents of the Council and the General Assembly about the sequencing and deadlines for each review process,²⁸ a wide range of conflicting views are expected from States during the Third Committee.

The theme of sexual orientation and gender identity: ending violence and criminal sanctions will be the focus of a high-level side event on 9 December in New York. In addition to a number of keynote speakers, it will feature a panel discussion with human rights defenders from around the world who have experienced these kinds of violations. It is hoped that this informal approach to the issue will help raise awareness amongst States and facilitate more open and constructive dialogue in future.

The following day, **International Human Rights Day**, will begin a year-long focus by the High Commissioner for Human Rights on human rights defenders who act to end discrimination. Under the slogan of 'Speak Up ... Stop Discrimination', a series of events will be held in Geneva on 10 December, and New York will mark the day with a panel discussion featuring human rights defenders.

On 21st October, ISHR will co-sponsor a panel discussion on 'the **responsibility for human rights violations against defenders by non-State actors**,' which is also the focus of the report of the Special Rapporteur on Human Rights Defenders. In addition to a presentation by the Special Rapporteur, human rights defenders (from Hungary and Uganda) will speak concretely to the issues raised in this report.

For more information about key developments during the 65th session of the General Assembly and its Third Committee, visit ISHR's [General Assembly](#) webpage. In the next edition of the *Human Rights Monitor Quarterly* (due out in early 2011), ISHR will publish an analytical overview of the 65th session.

²⁷ An article about the 2011 review of the Council is available in ISHR's *Human Rights Monitor Quarterly*, second edition (July 2010) at <http://www.ishr.ch/quarterly>

²⁸ On 5 October 2010, the two Presidents announced that they had agreed that 'The review process in New York will be finalised only after the review process in Geneva is concluded and should be brought to a conclusion by July 2011.'